

NATIONAL ASSEMBLY
Thirty-fourth Legislature, second session

1992, chapter 60
**AN ACT TO AMEND THE SUPPLEMENTAL
PENSION PLANS ACT**

Bill 30

Introduced by Mr André Bourbeau, Minister of Manpower, Income Security and Skills Development

Introduced 14 May 1992

Passage in principle 9 June 1992

Passage 21 December 1992

Assented to 22 December 1992

Coming into force: 1 January 1993; however, the provisions of paragraph 3 of section 230.1 and section 230.7, enacted by section 34, will come into force on 1 July 1994

Act amended:

Supplemental Pension Plans Act (R.S.Q., chapter R-15.1)



CHAPTER 60

An Act to amend the Supplemental Pension Plans Act

[Assented to 22 December 1992]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

c. R-15.1,
s. 14, am.

1. Section 14 of the Supplemental Pension Plans Act (R.S.Q., chapter R-15.1) is amended

(1) by striking out the words “and address” in the first line of subparagraph 1 of the second paragraph;

(2) by replacing the words “refunds or pension benefits are” in the first line of subparagraph 8 of the second paragraph by the words “the plan is”;

(3) by adding, after subparagraph 15 of the second paragraph, the following subparagraph:

“(16) which of the employer only, the members and beneficiaries only or both the employer and the members and beneficiaries will be entitled to the surplus of assets determined upon the total termination of the plan, and, in the latter case, the percentage of such a surplus due to them. The percentages may, where the surplus is to be used to increase pension benefits, take into account the value of the obligations arising from such increases.”

c. R-15.1,
s. 20, am.

2. Section 20 of the said Act is amended

(1) by inserting the words “cancels refunds or pension benefits, limits eligibility therefor or” after the word “which” in the first line of the first paragraph;

(2) by striking out the words “or published” in the last line of the first paragraph;

(3) by adding, at the end of the last paragraph, the following sentence: "This restriction is not applicable, however, in the cases mentioned in the preceding paragraph."

c. R-15.1,
s. 22, am. **3.** Section 22 of the said Act is amended by replacing the second paragraph by the following paragraph:

Conversion
of benefits "In addition, if the amendment is intended to convert benefits resulting from the application of provisions which grant members defined benefits for service credited to them under the plan up to the date on which the amendment becomes effective, into amounts which, credited as defined contributions, will be used to purchase a pension of an indeterminate amount, such an amendment may be authorized only if the value of the benefits of every member who agrees to the conversion is equal to or greater than the value to which he would have been entitled had the plan been partially terminated on the date on which the amendment is to become effective."

c. R-15.1,
s. 26, am. **4.** Section 26 of the said Act is amended by replacing the words "a reduction of benefits" in the eighth line of subparagraph 2 of the first paragraph by the words "the cancellation of refunds or pension benefits, new conditions limiting eligibility therefor or a reduction in the amount or value of the benefits of members or beneficiaries".

c. R-15.1,
s. 33, am. **5.** Section 33 of the said Act is amended by inserting the words "by the replacement of his pension pursuant to section 92" after the words "another plan," in the third line of the second paragraph.

c. R-15.1,
s. 45.1,
added **6.** The said Act is amended by inserting, after section 45, the following section:

Reduction
of amounts
due **"45.1** Where the interest due on the amounts credited to a member is to be calculated on the basis of the return obtained on the assets invested, and the investment results in a loss, such amounts may be reduced proportionally to the fraction that the amount of the loss is of such assets."

c. R-15.1,
s. 46, am. **7.** Section 46 of the said Act is amended by adding, at the end, the following paragraph:

Method "The method used to calculate the loss incurred by the assets and the resulting reduction of the value of the contributions shall, for the purposes of section 45.1, be determined in the same way."

c. R-15.1,
s. 47, am. **8.** Section 47 of the said Act is amended

(1) by inserting the words “, subject to the provisions of section 45.1,” after the word “continue” in the eighth line;

(2) by inserting the words “are used to replace a pension under section 92,” after the word “contributions” in the ninth line.

c. R-15.1,
s. 60, am.

9. Section 60 of the said Act is amended

(1) by adding, at the end of subparagraph 2 of the first paragraph, the words “pursuant to subparagraph 2 of the first paragraph of section 86”;

(2) by adding, at the end of the second paragraph, the following subparagraphs:

“(5) to that part of any pension benefits accrued for a period of service which, even though no employer contributions were paid in respect of the member, was nevertheless credited by reason of the exercise by the member of an election offered to him under the plan for that purpose, insofar as it is provided that all the obligations arising from the election are to be borne by the member;

“(6) to a benefit to which subparagraph 1 of the first paragraph applies and which was purchased with amounts to be refunded, or is the result of the conversion of a benefit other than a life pension.”

c. R-15.1,
s. 63.1,
added

10. The said Act is amended by inserting, after section 63, the following section:

Refund of
excess

“63.1 Where the value of the benefits of a member or a beneficiary under a pension plan exceeds the upper limit fixed in that respect by fiscal rules, the pension committee must refund the excess portion to him in order that the plan may continue to be a registered pension plan as defined in section 1 of the Taxation Act.”

c. R-15.1,
s. 71, am.

11. Section 71 of the said Act is amended by replacing the second paragraph by the following paragraph:

Early
payment of
deferred
pension

“However, a member who is entitled to a deferred pension may, whether or not he has terminated continuous employment, receive early payment of that pension if he applies therefor within ten years of attaining the normal retirement age fixed by the plan giving him entitlement to the deferred pension.”

c. R-15.1,
s. 103, am.

12. Section 103 of the said Act is amended by inserting the words “and subject to the provisions of section 45.1,” after the word “interest,” in the first line.

c. R-15.1,
s. 165.1,
added

13. The said Act is amended by inserting, after section 165, the following section:

Notifica-
tion of
reduction
in number
of active
members

“165.1 As soon as it is informed thereof, the pension committee shall notify the Régie in writing of any effective or proposed reduction in the number of active members due to changes of a technological or economic nature in the enterprise of an employer who is a party to the plan, or to the division, merger, alienation or closing down of the enterprise.”

c. R-15.1,
s. 195, am.

14. Section 195 of the said Act is amended

(1) by striking out the second sentence of the first paragraph;

(2) by inserting, after the first paragraph, the following paragraph:

Identical
effects of
provisions
of new plan

“The Régie may not authorize such a division except where the plan into which a portion of the assets to be divided is to be transferred includes provisions which, in respect of the allocation of any surplus assets in case of termination, are identical in their effects to the provisions of the plan from which such assets are transferred. In verifying whether the effects are identical as required by this paragraph, only the terms in force when the application for authorization is made shall be considered.”

c. R-15.1,
s. 196, am.

15. Section 196 of the said Act is amended

(1) by adding, at the end of the first paragraph, the following sentence: “In verifying whether the effects are identical, only the terms in force when the application for authorization is made shall be considered.”;

(2) by inserting, after the first paragraph, the following paragraph:

Authoriza-
tion where
effects not
identical

“However, where the effects of the terms are not identical, the merger may still be authorized if all the members and beneficiaries of the absorbed plan who are affected by the merger are informed of the effects thereof – in particular those effects which result from the application of the last paragraph – and if less than 30 % of them are opposed to the merger. The provisions of sections 230.4 to 230.6 apply, adapted as required, in respect of the procedure to be followed to inform and consult the said members and beneficiaries.”;

(3) by adding, at the end of the section, the following paragraph:

Terms of
absorbing
plan to
apply

“Where a merger is authorized in the conditions provided for in the second paragraph, only the terms of the absorbing plan will, for matters concerning the allocation of surplus assets in case of termination of the plan, apply to the members and beneficiaries to whom that paragraph applies.”

c. R-15.1,
s. 199.1,
added

16. The said Act is amended by inserting, after section 199, the following section:

Partial
termination

“199.1 Where several partial terminations have occurred in respect of the same pension plan, or where, in a given period and on different dates, several events have occurred which could each result in a partial termination of the plan, those terminations or events may, for the purposes of this chapter, be considered to be or to relate to one and the same partial termination if, in the opinion of the Régie, they are based on similar circumstances, such as those mentioned in section 165.1.”

c. R-15.1,
s. 200, am.

17. Section 200 of the said Act is amended

(1) by striking out the words “in the case of a contributory plan, the effective date shall not be later than the date of the decision and,” in the fourth, fifth and sixth lines, by replacing the word “not” in the sixth line by the words “the effective date shall not be”, and by striking out the words “and not later than the date of the decision of the Régie” in the eighth line;

(2) by adding, at the end, the following paragraph:

Contents of
decision

“Where it relates to the partial termination of a plan, the decision of the Régie may indicate that the members who subsequently cease to be active shall also be affected by the termination, to the extent that the terminations in question are based on similar circumstances, such as those mentioned in section 165.1.”

c. R-15.1,
s. 202, am.

18. Section 202 of the said Act is amended by inserting, after the first sentence of the first paragraph, the following sentence: “In addition, where the provisions of subdivision 4.1 of Division II of Chapter XIII must be applied in order to determine to whom the surplus assets are to be allocated, the draft report shall mention, in respect of that surplus, only the amount thereof.”

c. R-15.1,
s. 203, am.

19. Section 203 of the said Act is amended by adding, at the end of subparagraph 2 of the first paragraph, the following sentence: “However, this information is not required where the provisions of subdivision 4.1 of Division II of Chapter XIII must be applied in order to determine the person entitled thereto;”.

c. R-15.1,
s. 204, am.

20. Section 204 of the said Act is amended

(1) by replacing the words “receiving the notice of conformity” in the fourth line of the first paragraph by the words “transmission of the statements referred to in section 203”;

(2) by striking out the last paragraph.

c. R-15.1,
s. 205, am.

21. Section 205 of the said Act is amended

(1) by inserting the words “or within such extension of time, of not more than 60 days, as may be granted by the Régie,” after the word “representations,” in the third line of the first paragraph;

(2) by inserting the words “, the newspaper in which it appeared” after the figure “204” in the fourth line of the second paragraph.

c. R-15.1,
s. 205.1,
added

22. The said Act is amended by inserting, after section 205, the following section:

Approval of
supplement
to the
draft report

“205.1 Each time the provisions of subdivision 4.1 of Division II of Chapter XIII are applied to determine to whom the surplus assets are to be allocated, the pension committee shall, within 60 days after the making of an agreement, the transmission of a declaration or the date on which an arbitration award becomes executory, present to the Régie, for approval, a supplement to the draft termination report setting out the final allocation of the surplus and the share, if any, due to each of the members and beneficiaries.”

c. R-15.1,
s. 206, am.

23. Section 206 of the said Act is amended

(1) by inserting the words “or a supplement thereto” after the word “report” in the first line of the first paragraph;

(2) by replacing the words “to whom the assets are to be allocated under the terms of the plan” in the fourth and fifth lines of the first paragraph by the words “entitled thereto”;

(3) by striking out the second paragraph.

c. R-15.1,
s. 207, am.

24. Section 207 of the said Act is amended

(1) by inserting the words “of the draft termination report or a supplement thereto” after the word “approval” in the second line;

(2) by replacing the words “If the draft termination report is approved” in the fifth and sixth lines by the words “If approval is given”;

(3) by inserting the words “or supplement thereto” after the word “report” in the tenth line.

c. R-15.1,
s. 207.1,
added

25. The said Act is amended by inserting, after section 207, the following section:

Amendment
after date
of total
termination

“207.1 A pension plan which has been totally terminated may not be amended after the date of termination, except to allow any increase in benefits which may result from a written instrument to which allocation of surplus assets is subject, in particular an agreement or an arbitration award referred to in section 230.1.

Registra-
tion of
amendment

This provision shall not prevent the Régie from registering after that date an amendment to the plan made before that date.”

c. R-15.1,
s. 208,
repealed

26. Section 208 of the said Act is repealed.

c. R-15.1,
s. 210, am.

27. The first paragraph of section 210 of the said Act is amended

(1) by inserting the words “or supplement thereto” after the word “report” in the second line;

(2) by inserting the words “of the employer and” after the word “benefits” in the fourth line;

(3) by inserting the words “or supplement thereto” after the word “report” in the sixth line.

c. R-15.1,
s. 213,
replaced

28. Section 213 of the said Act is replaced by the following section:

Assessment
of benefits

“213. The benefits of members affected by a total or partial termination of a pension plan shall be assessed in accordance with actuarial assumptions and methods identical to those which were sent to the Régie and which, on the date on which the members ceased to be active members, were used to determine the value of the pension benefits to which section 60 applies and to which the members were entitled on that date.”

c. R-15.1,
s. 216, am.

29. Section 216 of the said Act is amended by striking out the words “made after 1 January 1990 and” in the third line of the first paragraph.

c. R-15.1,
s. 217, am.

30. Section 217 of the said Act is amended

(1) by replacing the word “Any” in the first line by the words “Except in the case of a share of the surplus assets, any”;

(2) by adding, at the end, the following sentence: “Where the amount due is due under a defined contribution plan, or where it is due under provisions of the plan which relate to additional voluntary contributions or under provisions which, in a defined benefit plan, are identical to those of a defined contribution plan, the rate of interest shall be the rate mentioned in section 44 or 45 and which is applicable to the contributions paid under the plan.”

c. R-15.1,
s. 218, am.

31. Section 218 of the said Act is amended

(1) by inserting the words “, other than the benefits referred to in subparagraph 6 of this paragraph,” after the word “benefits” in the first line of paragraph *a* of subparagraph 1 of the first paragraph;

(2) by replacing the word “concurrently” in the second line of subparagraph 5 of the first paragraph by the words “in that order”;

(3) by adding, at the end of the first paragraph, the following subparagraph:

“(6) the value of the benefits payable to members under the terms of the plan granting them an indemnity in case of cessation of their continuous employment due to changes of a technological or economic nature in the enterprise of the employer who is a party to the plan, or to the division, merger, alienation or closing down of the enterprise.”

c. R-15.1,
s. 219,
repealed

32. Section 219 of the said Act is repealed.

c. R-15.1,
s. 228, am.

33. Section 228 of the said Act is amended

(1) by replacing the first paragraph by the following paragraph:

Amount to
be funded

“**228.** The amount to be funded to ensure full payment of the benefits of the members or beneficiaries affected by the total termination of a pension plan or partial termination of a multi-employer plan due to the withdrawal of an employer who was a party to the plan shall constitute a debt of the employer.”;

(2) by inserting, after the first paragraph, the following paragraph:

Amount to
be funded

“The amount to be funded to ensure full payment of the benefits of the members or beneficiaries affected by the partial termination of a plan not exempt from the provisions of sections 220 to 227, except a partial termination to which the first paragraph applies, shall be paid by the employer into the pension fund as though it were an amount determined pursuant to subparagraph 4 of the second paragraph of

section 137, subject to the first paragraph of section 229 as to spreading the payment.”;

(3) in the French text, by replacing the word “cette” in the first line of the new third paragraph by the word “la”.

c. R-15.1,
ss. 230.1-
230.8, added

34. The said Act is amended by inserting, after section 230, the following subdivision:

“§ 4.1.—*Distribution of surplus assets in the event of total termination*

Allocation
of surplus
assets

“230.1 The allocation of any surplus assets from a pension plan which has been totally terminated is subject

(1) to an agreement to be made between the employer, the members and the beneficiaries pursuant to sections 230.2 to 230.6; or

(2) where the plan is established pursuant to a collective agreement, an arbitration award in lieu thereof or an order which renders such an agreement compulsory,

(a) to the application of the provisions, if any, of the agreement or the arbitration award in lieu thereof which provide for the allocation of the surplus assets in the event of total termination of the plan. A joint statement by the parties bound by the agreement or award must, in that case, be sent to the pension committee, stating that under the agreement or award the surplus assets will be allocated, as the case may be, to the employer only, to the members and beneficiaries only or to both the employer and the members and beneficiaries and, in the latter case, the percentage due to each; or

(b) to an agreement to be made between the parties bound by the agreement or award, establishing the surplus assets on the date of termination, which of the employer only, the members and beneficiaries only or both the employer and the members and beneficiaries is entitled thereto and, in the latter case, the percentage due to each.

Agreement

In all cases, however, the parties bound by the agreement or award may elect to make an agreement pursuant to paragraph 1 of this section. Finally, the application of the provisions of the agreement or award providing for the allocation of the surplus, or the making of an agreement under subparagraph *b* above, does not remove the obligation also to make an agreement under the said paragraph 1 which affects any other members who are not governed by the agreement or award, and the beneficiaries; or

(3) in all the cases provided for in section 230.7, to an arbitration award rendered pursuant to Chapter XIV.1.

Draft
agreement

“230.2 In order that an agreement may be made pursuant to paragraph 1 of section 230.1, the employer must, within six months after transmission to the pension committee of the decision of the Régie which fixes the date of termination of the plan, send to the pension committee a draft agreement indicating

(1) the surplus assets determined on termination of the plan;

(2) to whom such a surplus is to be allocated: to the employer only, to the members and beneficiaries only or to both the employer and the members and beneficiaries and, in the latter case, the percentage due to each;

(3) where an agreement has been made or a statement sent pursuant to paragraph 2 of section 230.1, the portion of the surplus assets due to those who are governed by the collective agreement or the arbitration award in lieu thereof, and the proportion that the value of their benefits is of the value of the benefits of all the members and beneficiaries;

(4) to the extent that all or part of the surplus is to be allocated to the members and beneficiaries, the method of apportionment to be used to determine the share of each;

(5) any other information prescribed by regulation.

Method of
apportion-
ment

The method referred to in subparagraph 4 of the first paragraph shall be the method of proportionalization of the surplus according to the value of the benefits of the members and beneficiaries; however, the following methods may also be used in the conditions described:

– a method which grants members who are non-active on the date of termination a larger share of the surplus assets than they would have received on a proportional basis;

– if an actuary certifies that all or part of the surplus is a result of circumstances related to a given group of members or beneficiaries, a method which grants them a larger share than they would have received on a proportional basis;

– if the plan provides that all or part of the surplus must be used to increase their benefits, a method which grants members or beneficiaries a share of the surplus which, although different from the share they would have received on a proportional basis, corresponds to the share to which they are entitled under the plan;

– a method which combines elements from several of the abovementioned methods;

– any other method, provided that no member or beneficiary subsequently opposes the draft agreement within the period prescribed by section 230.4.

Adjustment
of shares

Such a method shall provide for the adjustment of the share of every member or beneficiary in the surplus assets in the event of a change in the amount of the surplus or in the overall value of the benefits of the members and beneficiaries between the date of termination and the date of payment of the share to the persons entitled thereto.

Expenses
and fees
payable by
employer

“230.3 If the employer fails to send a draft agreement to the pension committee within the time and containing the indications prescribed in the first paragraph of section 230.2 and in the regulations, the employer shall be bound, to the extent to be determined by the arbitrator or arbitrators in view of the circumstances of such a failure, to pay the expenses and fees payable by the members and beneficiaries with respect to any arbitration which may follow and which relates to the surplus. This section shall not apply, however, where the members and beneficiaries have agreed to have recourse to arbitration before the end of the six-month period.

Transmis-
sion of
the draft
agreement

“230.4 Upon receipt of the draft agreement, the pension committee shall send a copy to every member and beneficiary affected, together with a notice informing them

(1) of the provisions of the plan relating to the allocation of surplus assets in the event of total termination;

(2) that they may, within sixty days, inform the pension committee in writing of their opposition to the draft agreement.

Notice of
termination

Unless the pension committee is exempted therefrom by the Régie where it is attested in writing that all the members and beneficiaries who may be entitled to assert rights under the plan or under this Act have been notified personally, the pension committee shall, in addition, not later than the date on which the notices provided for in the first paragraph are sent, cause to be published in a newspaper circulated in the region of Québec where the greatest number of members who were active at the date of termination reside, a notice of the total termination of the plan and of the existence of a surplus of assets and a draft agreement submitted by the employer

concerning apportionment of that surplus. The notice shall also invite any person who has not received the abovementioned notice and who believes he has rights under the plan or under this Act

– to assert his rights with the pension committee within sixty days after the publication, subject to the additional time granted by section 230.8;

– to the extent that he is able to justify his rights, to consult the text of the draft agreement at the office of the pension committee, or to request a copy thereof from the committee and, where applicable, to inform the committee in writing of his opposition within the abovementioned time.

Time limit

The time allowed under this section to assert rights or to oppose the draft agreement begins to run only from the date on which the statement provided for in section 203 is sent to every member or beneficiary, where that statement is sent after the copy of the draft agreement.

Draft agreement

The pension committee shall also send without delay to the Régie a copy of the draft agreement, the notice sent to members and beneficiaries and, where applicable, the notice published in the newspaper.

Non-conformity of draft agreement

“230.5 Where the content of the draft agreement or the transmission thereof does not conform to the provisions of this Act or the regulations, the Régie may order that any measure be taken to correct the irregularity, provided this may still be done within the six-month period provided for in section 230.2. If the period expires before the irregularity is corrected, the Régie is bound to invalidate the draft agreement, unless it grants an additional period not exceeding four months if it is satisfied that the employer or the pension committee, as the case may be, was unable to act sooner or could not correct the irregularity for a reason outside their control or if the Régie is of the opinion that an additional period would serve the interests of the parties to the plan.

Non-conformity of notices

Where the content or publication of the notices referred to in section 230.4 does not conform to the requirements of that section, the Régie may order the pension committee to take any corrective measure it indicates, within the time fixed, including the prorogation of the time for opposition or assertion of rights.

Draft agreement deemed accepted

“230.6 The draft agreement submitted by the employer is, upon expiry of the time for opposition, deemed to be accepted, unless

(1) 30 % or more of the members and beneficiaries oppose it;

(2) at least one member or beneficiary opposes it when the proposed method of apportionment, under the terms of the second paragraph of section 230.2, admits of no opposition;

(3) the Régie has invalidated it by reason of an irregularity.

Statement
of accep-
tance

The pension committee shall send forthwith to the Régie a statement evidencing the acceptance.

Arbitration

“230.7 Where

– 30 % or more of the members and beneficiaries oppose the draft agreement submitted by the employer;

– the employer has failed to send a draft agreement to the pension committee within the time prescribed by section 230.2;

– at least six months have elapsed since the decision of the Régie fixing the date of termination of the plan was transmitted to the pension committee, and no statement was sent and no agreement was made as provided, respectively, in subparagraphs *a* and *b* of paragraph 2 of section 230.1;

– the agreements made and statements sent do not affect all the members and beneficiaries of the plan;

– the Régie has invalidated the draft agreement submitted by the employer by reason of an irregularity;

– the pension committee has not regularized the content or publication of the notices referred to in section 230.4, as it was ordered to do by the Régie;

– the interested persons have agreed to have recourse to arbitration before expiry of the time prescribed in sections 230.2 to 230.4,

the employer, the employees' association and, unless they are prevented from doing so by the effect of other legislation, any member or beneficiary, may have recourse to arbitration pursuant to Chapter XIV.1 in order to determine who is entitled to the surplus assets and what share of that surplus is due to them.

Arbitration

Such persons may also have recourse to arbitration even where an agreement has been reached, in order to obtain a decision on any difficulty in interpreting or implementing the agreement.

Duties of
arbitrators

The arbitrator or arbitrators seized of a matter may, of his or their own initiative or on application, and after giving the interested

persons the opportunity to present their points of view, decide that an agreement made under section 230.1 is prejudicial to the rights of any employer, member or beneficiary not affected by the agreement and that as a result all or part of it may not be set up against him. He or they may also, in such a case and notwithstanding the provisions of such an agreement, fix the share of the surplus assets to be paid to the employer, to the members and to the beneficiaries affected by the agreement.

Extension

"230.8 The recourse to arbitration provided for in the first paragraph of section 230.7 extends the time limit established by the second paragraph of section 230.4 for asserting rights until the date on which the matter is taken under advisement."

c. R-15.1,
s. 238.1,
added

35. The said Act is amended by inserting, after section 238, the following section:

Failure to
act within
time limit

"238.1 Subject to the provisions of section 238, failure by a person to assert his rights within the time prescribed by this Act shall deprive that person of the right to claim payment of the corresponding benefits out of the assets of the pension plan, unless that person shows, before the payment of the benefits of the affected members or beneficiaries begins, that it was impossible for him to act sooner or that he did not receive the information to which he was entitled under this Act for a reason outside his control."

c. R-15.1,
ss. 240.1-
240.3,
added

36. The said Act is amended by inserting, after section 240, the following sections:

Life
pension

"240.1 The share of the surplus assets to which a member or beneficiary is entitled may be paid to him in the form of a life pension only, except for the fraction of that part which was determined in relation to a refund or benefit resulting from the exercise of an election under subparagraphs 4 to 6 of the first paragraph of section 93.

Excess
value

In addition, if the value of the benefits to be paid under the first paragraph to the member or beneficiary in the form of a life pension exceeds the amount which, under a registered pension plan as defined in section 1 of the Taxation Act, may be transferred directly into another plan, the excess value shall be reimbursed to the member or beneficiary.

Lump sum
payment

Notwithstanding the previous paragraphs, every member or beneficiary to whom a pension is paid on the date of termination of the plan is entitled, if he applies therefor, to the payment in a lump sum of the pension which, constituted with his share of the surplus

assets, should have been paid to him from that date up to the application, had the surplus been liquidated on that date. Every other participant who, on the date on which the surplus assets were liquidated, had attained the normal retirement age, is also entitled to such a payment; in this case, the lump sum payment is established by presuming that the payment of the pension constituted with the share of the excess assets due to the member began on the more recent of the date of termination and the date on which he attained the abovementioned age.

Duration
of membership

“240.2 The members affected by the partial termination of a pension plan whose benefits were paid in full on that occasion or subsequently shall remain members, notwithstanding the provisions of the second paragraph of section 33, for the sole purpose of the apportionment of any surplus assets which may be made pursuant to this Act.

Exemptions

“240.3 The Régie may, in the cases and on the conditions set out in paragraphs 1, 2 and 3 below, and to the extent that it considers it in the interest of the members and beneficiaries, exempt a pension plan which has been totally or partially terminated from the application of the provisions of this chapter mentioned in the said paragraphs:

(1) any plan which, at the time of its total termination, had 15 members or less, may be exempted from the application of all or some of the provisions of this chapter, provided the following conditions are satisfied:

- the pension committee attests in writing that the persons who may be entitled to assert rights under the plan have all been notified personally of the termination of the plan and the value of their benefits;

- all such persons have accepted, in writing, the assessment of their benefits;

- any other conditions which the Régie may fix;

(2) any plan which is partially terminated, other than a multi-employer plan, may be exempted, in matters relating to the termination, from the application of all or some of the provisions of sections 202 to 210, 212 to 227 and 231 to 240, provided the conditions fixed by the Régie are satisfied;

(3) any multi-employer plan which is totally or partially terminated may, on the conditions fixed by the Régie, be exempted from the application of the provisions of sections 220 to 227 and 236.”

c. R-15.1,
ss. 243.1-
243.19,
added

37. The said Act is amended by inserting, after Chapter XIV, the following chapter:

“CHAPTER XIV.1

“ARBITRATION

Provisions
applicable

“243.1 The provisions of Title I of Book VII of the Code of Civil Procedure (R.S.Q., chapter C-25), with the exception of articles 940, 940.1, 940.5 to 942, 942.6, 943 to 944, 944.10, 945.4 and 946 to 947.4 apply, adapted as required and subject to the provisions of this chapter and the regulations, to any arbitration under this Act.

Jurisdic-
tion

“243.2 Any matter relating to the allocation of a surplus of assets determined upon the total termination of a pension plan comes under the exclusive jurisdiction of the arbitrators appointed pursuant to this chapter.

Number of
arbitrators

“243.3 The mission of arbitration shall be entrusted

(1) to one arbitrator, where the value involved does not exceed \$100 000;

(2) to one arbitrator or, if the representatives of the parties designated pursuant to section 243.6 agree thereto, to three arbitrators, where the value involved is more than \$100 000 but does not exceed \$350 000;

(3) to one arbitrator or, if any of the representatives mentioned above so requests, or if the representatives agree thereto, to three arbitrators, where the value involved is more than \$350 000 but does not exceed \$1 000 000;

(4) to three arbitrators or, if the representatives mentioned above agree thereto, to one arbitrator, where the value involved exceeds \$1 000 000.

Natural
person

“243.4 Only a natural person may act as an arbitrator.

Qualifying
criteria

The Government may, by regulation, determine the qualifying criteria and other conditions to be met by any person in order to act as an arbitrator, in particular the experience required in the field of pension plans or the professional training required in subjects related to the issues raised by arbitration.

Recourse
to arbitra-
tion

“243.5 Recourse to arbitration is introduced by an application made to the pension committee.

Applica-
tion for
arbitration

The information which must be contained in the application, and the documents which must accompany it, shall be fixed by government regulation.

Selection
of repre-
sentatives

“243.6 Upon receiving an application for arbitration, the pension committee must convene the members and beneficiaries concerned to a meeting to select the natural person who will represent them for the purposes of sections 243.3 and 243.7, and request the employer to communicate the name of the natural person who will be his representative for the same purposes.

Several
employers

In cases where several employers are parties to the plan, the pension committee must, unless it receives confirmation of a written agreement concerning the selection of the employers' representative, convene the employers to a meeting to proceed with the selection of their representative.

Appoint-
ment of
represent-
atives

The manner of convening such meetings, the quorum and the terms and conditions applicable to the appointment of representatives shall be fixed by regulation of the Government.

Selection
of arbitra-
tion body

“243.7 The representatives appointed pursuant to section 243.6 shall select, from among the arbitration bodies accredited by the Government, the body that will be responsible for organizing the arbitration; they shall inform the pension committee and the Minister of Manpower, Income Security and Vocational Training thereof forthwith. Failing agreement between them concerning the selection of a body, it shall be designated by the Minister.

Appoint-
ment of
arbitrators

The same representatives must also appoint the arbitrator or arbitrators and inform the arbitration body thereof. Failing agreement concerning the selection of one or more arbitrators, the said body shall be entrusted with completing the appointments from the list of arbitrators drawn up pursuant to section 243.17.

Notice of
appoint-
ments

The arbitration body must, as soon as the appointments are made as required by the second paragraph, so inform the parties to the arbitration in the manner prescribed by government regulation.

Application
for arbitra-
tion

“243.8 The pension committee shall forward to the arbitration body the application for arbitration, accompanied with the provision for costs and the information and documents prescribed by regulation of the Government; the body shall, in turn, submit them to the appointed arbitrators.

Copy of
application
to the
Régie

A copy of the application, together with the accompanying documents or information, must also be furnished by the committee to the Régie.

- Dismissal** **“243.9** At all times during the arbitration proceedings, the arbitrator or arbitrators may, on an application, dismiss the recourse to arbitration if it is proved to them that the recourse is frivolous or clearly devoid of substance.
- Costs** In such a case, the person who instituted the recourse, notwithstanding the provisions of section 243.18, shall be bound to pay the arbitration costs and the arbitrators’ fees, to the extent that the arbitrators determine in view of the circumstances.
- Arbitration decision** **“243.10** The arbitration decision must be rendered within a period of six months from the date on which the arbitrator or arbitrators appointed were seized of the case, unless, before its expiry, the period is extended by an agreement of the parties or by the arbitration body following an application by one of the parties.
- Immunity** **“243.11** No arbitrator may be prosecuted by reason of acts performed in good faith in the performance of his duties.
- Recusation prohibited** **“243.12** No arbitrator may be recused except where the prevailing circumstances may give rise to doubts as to his impartiality, independence or qualifications.
- Powers of arbitrator** **“243.13** Any arbitrator may ask a witness any question he considers useful; he may also summon a witness and require him to state what he knows or produce any document requested by the arbitrator.
- Compelling order** If the witness so summoned fails to appear, the arbitrator may apply to a judge for a compelling order in accordance with article 284 of the Code of Civil Procedure.
- Rulings** **“243.14** The arbitrators shall rule in accordance with the rules of law; they shall also, where circumstances justify it, call on equity.
- Considerations** In particular, the evolution of the pension plan, any amendments made to it and the circumstances in which those amendments were made, the origin of the surplus assets concerned, the use made in the past of any surplus assets, as well as any information sent to members and beneficiaries in relation to any such matter, shall be taken into consideration.
- Decision binding** The arbitration decision, upon being rendered, is binding on any person who has rights or obligations under the plan.
- No appeal** No appeal lies from an arbitration decision.

Arbitration
decision

“243.15 A certified copy of the arbitration decision must be filed without delay by the arbitrator or arbitrators who rendered the decision, at the office of the prothonotary of the Superior Court of the district in which the office of the pension committee is located.

Execution

Once filed, the arbitration decision becomes executory as a judgment of that court.

Copy of
decision
to pension
committee

A copy of the arbitration decision must also be sent to the pension committee which, upon receipt, shall transmit to each member or beneficiary involved a notice summarizing the decision and indicating where a copy of it may be obtained.

Recourses
prohibited

“243.16 Except on a question of jurisdiction, no recourse provided under articles 33 and 834 to 846 of the Code of Civil Procedure may be exercised, nor any injunction granted, against an arbitration body, the committee formed pursuant to section 243.17 or an arbitrator acting in his official capacity.

Annulment

A judge of the Court of Appeal may, on a motion, summarily annul any decision, order or injunction rendered, issued or granted contrary to the first paragraph.

List of
arbitrators

“243.17 The list of persons who may be appointed as arbitrators by the arbitration body shall be drawn up by a committee composed of the following members, appointed by the Government for the period it determines:

(1) two persons recommended by the Minister;

(2) one person appointed after consultation with the Régie;

(3) one person appointed after consultation with the most representative employees' associations;

(4) one person appointed after consultation with the most representative employers' associations.

Costs and
fees

“243.18 The costs of arbitration and the arbitrators' fees shall be payable by the pension fund but only up to the amount of the surplus assets under consideration. The arbitration body alone is competent to draw up the account of such costs and fees for payment. The account must be paid before execution of the arbitration decision begins.

Tariff

The Government shall determine the arbitration costs that are subject to a tariff, and shall fix the rate applicable to those costs and to the arbitrators' fees.

Arbitration
costs

For the purposes of this section, arbitration costs include the expenses incurred by the arbitration body and the cost of its services.

Regulations

“243.19 In addition to the regulatory powers conferred on it by this chapter, the Government may make any other regulation required for the purposes of this chapter, in particular in respect of

(1) the transmission of any document required under this chapter;

(2) the time limits applicable to the execution of any obligation, procedure or formality under this chapter.”

c. R-15.1,
s. 244, am.

38. Section 244 of the said Act is amended by inserting, after subparagraph 12 of the first paragraph, the following subparagraph:

“(12.1) prescribe the information other than that required under section 230.2 which must be contained in any draft agreement sent by the employer to the pension committee concerning the apportionment of surplus assets;”.

c. R-15.1,
s. 246, am.

39. Section 246 of the said Act is amended by inserting the words “, a report respecting its termination” after the word “plan” in the fourth line of paragraph 6.

c. R-15.1,
s. 250, am.

40. Section 250 of the said Act is amended by adding, at the end, the following paragraph:

Delegation
of powers

“It may also delegate, irrevocably, to any person it designates the powers conferred on it by this Act concerning the review of a decision or order. The act of delegation shall also be published in the *Gazette officielle du Québec*.”

c. R-15.1,
s. 256, am.

41. Section 256 of the said Act is amended by inserting the words “or arbitration proceedings” after the word “action” in the second line.

c. R-15.1,
s. 257, am.

42. Section 257 of the said Act is amended

(1) by replacing the word and figure “and 210” in the fifth line of paragraph 1 by the word and figures “, 210 and 240.1”;

(2) by inserting, after paragraph 1, the following paragraph:

“(1.1) permits the allocation of all or part of surplus assets determined upon total termination of the plan other than in the conditions prescribed by the provisions of subdivision 4.1 of Division II of Chapter XIII or of section 311.3;”;

(3) by inserting the figure “, 230.5” after the figure “35” in the first line of paragraph 3.

c. R-15.1,
s. 258, am.

43. Section 258 of the said Act is amended by replacing the second line of paragraph 1 by the following: “to 144, 165.1, 182, 203, 204, 207, 230.4, 230.6, 243.6, 243.8, the second paragraph of section 310.1 or section 313 or 314;”.

c. R-15.1,
s. 264, am.

44. Section 264 of the said Act is amended

(1) by striking out the word “and” in the fourth line of the second paragraph;

(2) by inserting the words “, and any life pension having replaced another pension pursuant to section 92,” after the word “amounts” in the fifth line of the second paragraph.

c. R-15.1,
s. 283,
replaced

45. Section 283 of the said Act is replaced by the following section:

c. R-17,
replaced
in part

“283. This Act replaces the Act respecting supplemental pension plans (R.S.Q., chapter R-17), except for the first paragraph of section 9.1, the first and last paragraphs of section 43.1 and section 43.2, and except to the extent that it continues to apply to a plan by virtue of section 286 or 316.

Applicability of
prohibition

In addition, the prohibition enacted by the first and last paragraphs of the said section 43.1 shall cease to apply to any surplus assets of a plan which is totally terminated

(1) from the date on which the Act to amend the Supplemental Pension Plans Act (1992, chapter 60) comes into force, where that surplus has been the subject of judicial proceedings, of apportionment or of an order or decree referred to in section 311.1, or of a judgment that acquires the authority of a final judgment (*res judicata*) before that date;

(2) from the date on which a statement was sent or the agreement was made, where the surplus has been the subject of an agreement or statement mentioned in paragraph 1 or 2 of section 230.1;

(3) from the date on which the award becomes executory, where the surplus has been the subject of an arbitration award referred to in paragraph 3 of section 230.1 or in section 311.3.”

c. R-15.1,
s. 286, am.

46. Section 286 of the said Act is amended

(1) by replacing the word “The” in the first line of the first paragraph by the words “Subject to section 311.1, the”;

(2) by striking out the third paragraph.

c. R-15.1,
s. 286.1,
added

47. The said Act is amended by inserting, after section 286, the following section:

Provisions
applicable

“286.1 With the exception of the applications for review referred to in section 286 which remain subject to the Act respecting supplemental pension plans, and subject to the provisions of sections 308.2 and 311.1, any applications for review pending before the Régie on the date on which the Act to amend the Supplemental Pension Plans Act (1992, chapter 60) comes into force, or introduced after that date and relating to decisions rendered before that date, shall be decided according to the provisions of this Act as they read before that date.”

c. R-15.1,
ss. 288.1
and 288.2,
added

48. The said Act is amended by inserting, after section 288, the following sections:

Provisions
not appli-
cable

“288.1 The provisions of subparagraph 16 of the second paragraph of section 14 are not applicable to pension plans in force on the date on which the Act to amend the Supplemental Pension Plans Act (1992, chapter 60) comes into force.

Entitlement
to surplus
assets

However, subject to any contrary provision of an agreement or arbitration award referred to in section 230.1, where such a plan does not specify to whom the surplus assets determined at the time of total termination are to be allocated, only the members and beneficiaries shall be entitled thereto.

Pending
cases

“288.2 The provisions of the second paragraph of section 22, as they read before the date on which the Act to amend the Supplemental Pension Plans Act (1992, chapter 60) comes into force, shall continue to apply to cases pending before the Régie on that date which relate to the conversion of the type of the plan if, before 14 May 1992, a written offer had been made to the members and beneficiaries to convert their benefits in accordance with the new version of the provisions of the second paragraph of section 22. Those provisions continue to apply to such cases in respect of the surplus assets of the plan, but only up to the amount offered to the members and beneficiaries who have agreed to the conversion.”

c. R-15.1,
s. 289, am.

49. Section 289 of the said Act is amended by replacing the word “Member” in the first line by the words “Subject to the provisions of section 45.1, member”.

c. R-15.1,
s. 290, am. **50.** Section 290 of the said Act is amended by adding, at the end, the words “, without prejudice to the application to that benefit of section 61”.

c. R-15.1,
s. 291, am. **51.** Section 291 of the said Act is amended by inserting the words “, subject to the provisions of section 45.1,” after the word “and” in the seventh line of the first paragraph.

c. R-15.1,
s. 295, am. **52.** Section 295 of the said Act is amended

(1) by replacing the words “sections 69 and 71” in the first line of the first paragraph by the words “section 69 and the first paragraph of section 71”;

(2) by replacing the fifth line of the first paragraph by the words “following requirements either at the time he ceases to be an active member or, if at that time he does not meet those requirements but continues to work for the same employer, at the time his period of continuous employment ends:”.

c. R-15.1,
s. 299, am. **53.** Section 299 of the said Act is amended by inserting the words “, subject to the provisions of section 45.1,” after the word “and” in the fifth line of the second paragraph.

c. R-15.1,
ss. 308.1-
308.3,
added **54.** The said Act is amended by inserting, after section 308, the following sections:

Allocation
of surplus
assets

“308.1 Any pension plan to which the second paragraph of section 288.1 applies and of which division of the assets and liabilities must be authorized by the Régie shall be considered, for the purposes of the second paragraph of section 195, as including a provision which, in case of total termination, allocates the surplus assets to the members and beneficiaries only.

Existing
rights

“308.2 Members affected by the partial termination of a pension plan whose settlement is pending before the Régie on the date on which the Act to amend the Supplemental Pension Plans Act (1992, chapter 60) comes into force, shall, notwithstanding the repeal of section 213 as it read before that date, retain the rights in the surplus assets that the draft termination report proposes to allocate to them, provided that

(1) where the date of the termination occurs before the date on which the said Act is introduced before the National Assembly, the pension committee has, before that date, sent the statement provided for in section 203 to the affected members or, if it did not do so,

provided that the prescribed period for so doing expired before that date;

(2) where the date of the termination occurs before the date on which the said Act comes into force, the employer has, before that date, agreed in writing to grant such rights to the affected members, even where the statement provided for in section 203 has not been sent to them before that date.

Continua-
tion of
membership

“308.3 In cases where, before the date on which the Act to amend the Supplemental Pension Plans Act (1992, chapter 60) comes into force, the Régie has only approved in part the draft termination report relating to the partial termination of a plan occurring on a date before the date on which the said Act comes into force, thus postponing its decision regarding the allocation of all or part of the surplus assets, those members affected by the termination whose benefits were paid between 1 January 1990 and the above date shall remain members, notwithstanding the second paragraph of section 33, for the sole purpose of the apportionment of any surplus of assets which may be determined in the event of total termination of the plan.”

c. R-15.1,
ss. 310.1
and 310.2,
added

55. The said Act is amended by inserting, after section 310, the following sections:

Members or
beneficia-
ries

“310.1 For the purposes of the provisions of subdivision 4.1 of Division II of Chapter XIII and of section 311.3, persons whose benefits under a pension plan have been paid before 1 January 1990 by means of an annuity contract entered into with an insurer, and persons designated as beneficiaries under the terms of such a contract who are still entitled to benefits thereunder, shall be considered to be members or beneficiaries, as the case may be, provided that, in all cases, the interested parties have acted within the prescribed time limits.

Notice

In addition, each time the provisions of the said sections are to be applied following the termination of a pension plan which was in force on 1 January 1990, the notice of which publication is required under section 230.4 shall also state the rule established by the first paragraph of this section. However, if the matter was submitted to arbitration under section 230.7 or 311.3 without publication of the notice, the pension committee shall, as soon as it is informed that the matter will be submitted to arbitration, cause to be published in a newspaper circulated in the region of Québec in which the greatest number of members who were active at the date of termination reside, a notice mentioning the application for arbitration and the rule established by the first paragraph of this section, and informing the

interested parties that they may, until the matter is taken under advisement, assert their rights with the committee. A copy of the notice shall be sent forthwith to the Régie.

Exemption However, the Régie may exempt the pension committee from the obligation to publish where it is attested in writing that all the members and beneficiaries who may be entitled to assert rights under the plan or under this Act have been notified personally.

Opposition “**310.2** The notice required to be sent under the first paragraph of section 230.4 must, where the person or body required to send it is not, within the meaning of section 318, a pension committee established as prescribed by section 147, indicate that any opposition to the draft agreement on the part of the members and beneficiaries concerned must be filed in writing with the Régie.

Provisions applicable Section 230.6 shall apply in such a case, in respect of opposition communicated to the Régie under this section.”

c. R-15.1,
ss. 311.1-
311.4,
added

56. The said Act is amended by inserting, after section 311, the following sections:

Provisions applicable “**311.1** The provisions of subdivision 4.1 of Division II of Chapter XIII and of section 311.3 also apply to the apportionment of the surplus assets of any pension plan in force on the date on which the Act to amend the Supplemental Pension Plans Act (1992, chapter 60) comes into force, except where that surplus is the subject of

(1) legal proceedings pending on 14 May 1992;

(2) an apportionment proposed in a draft termination report which grants all the surplus to the members and beneficiaries, if one of the following conditions is met:

– the Régie has, before 14 May 1992, considered the draft report to be in conformity with this Act, and the pension committee has, before that date, sent the statement required by section 203 to the members and beneficiaries or, where it has neglected to do so, provided that the time limit for doing so expires before that date;

– the draft termination report has been sent to the Régie before the date on which the above Act comes into force, and the employer has consented in writing to such an apportionment; the apportionment must also be in conformity with the law applicable before the above date;

(3) an apportionment provided for in an agreement made before the date on which the above Act comes into force, pursuant to

subparagraph 2 of the first paragraph of section 43 of the Act respecting supplemental pension plans, provided, however,

- that the Régie has been informed of the agreement before that date and that it has subsequently judged that the apportionment is fair for all the members affected by the termination and the information pertaining thereto to be given to them is adequate;

- that the members have been informed of the agreement before the expiry of the sixth month following the decision of the Régie on the apportionment provided for therein;

- that less than 30 % of the members have, within sixty days after the date on which they were informed of the agreement, informed the Régie, in writing, of their opposition thereto.

Agreement
binding

Where the conditions prescribed by this paragraph are satisfied, the agreement is binding on the parties and on every member who has rights under the plan. The same has always applied to any such agreement when the conditions prescribed in subparagraphs *a* and *b* of paragraph 2 of section 43 of the Act respecting supplemental pension plans have been satisfied;

(4) an order made by the Government under section 43.1 of the Act respecting supplemental pension plans has authorized payment to the employer of all or part of the surplus assets.

Additional
information

Where the surplus assets to be apportioned in accordance with the provisions of subdivision 4.1 of Division II of Chapter XIII or of section 311.3 result from a totally terminated pension plan which continues to be governed by the Act respecting supplemental pension plans pursuant to section 286, the Régie may require, as a condition for approval of the report relating to the termination, that it be provided, in the conditions and within the period it fixes, with any information or document in addition to the said report and relating to the apportionment of such surplus assets.

Time limit

“311.2 In the case of a pension plan with surplus assets for which the Régie has, before 1 January 1994, rendered a decision fixing the date of its total termination, the employer, notwithstanding the time limit provided for in the first paragraph of section 230.2, has until 30 June 1994 to send the draft agreement provided for in that section to the pension committee.

Provisions
applicable

Sections 230.3 and 230.5 shall apply in that case, subject to the time granted by the first paragraph of this section.

Arbitration
award

“311.3 In addition to the provisions in this respect of paragraphs 1 and 2 of section 230.1, the allocation of surplus assets in a pension plan which has been totally terminated may also, before 1 July 1994, be subject to an arbitration award rendered pursuant to Chapter XIV.1, in the following conditions:

(1) the interested parties have, before 1 July 1994, agreed to have recourse to arbitration in order to determine who is entitled to the surplus assets and what share of that surplus is due to them. In such a case, the application for arbitration must be introduced before the above date by a statement sent to the pension committee which evidences the agreement;

(2) the application for arbitration must contemplate all the surplus assets and all the members and beneficiaries of the plan.

Presumption

For the purposes of subparagraph 1 of the first paragraph, the members and beneficiaries are deemed to have agreed to arbitration if, after having been informed by public notice of the agreement of the employer, less than 30 % of them have opposed it. The public notice shall be published in accordance with the modalities prescribed by section 204, which applies adapted as required; the notice shall state the agreement of the employer to the recourse to arbitration and the object of the recourse, and shall invite any person concerned who is opposed to arbitration to notify the pension committee of his opposition within thirty days. The application for arbitration shall, in such a case, be introduced by a statement of the pension committee evidencing the agreement of the employer, the publication of the above notice and the fact that less than 30 % of those concerned have filed their opposition to arbitration. If the pension plan is not, within the meaning of section 318, administered by a pension committee established as prescribed by section 147, the above notice must indicate that those concerned must notify the Régie of their opposition.

Exception

“311.4 The provisions of section 240.1 are not applicable to shares of surplus assets allocated to members or beneficiaries where such shares have been established in a draft termination report considered by the Régie, before 14 May 1992, to be in conformity with this Act.”

c. R-15.1,
s. 312, am.

57. Section 312 of the said Act is amended by replacing the word and figures “23 March 1989” in the third line of the second paragraph by the word and figures “15 November 1988”.

c. R-15.1,
s. 318, am.

58. Section 318 of the said Act is amended by inserting the word “either” after the word “plan” in the fourth line and by inserting the

words “, or, if the plan cannot be amended within that time by reason of its total termination, until it ceases to be in force” after the word “Régie” in the sixth line.

Coming into
force

59. The provisions of this Act will come into force on 1 January 1993; however,

(1) the provisions of section 243.2, enacted by section 37, have effect from 14 May 1992;

(2) the provisions of paragraph 3 of section 230.1 and section 230.7, enacted by section 34, will come into force on 1 July 1994.