

1990, chapter 44

**AN ACT TO AMEND THE COURTS OF JUSTICE
ACT WITH RESPECT TO THE PENSION PLANS OF
THE JUDGES OF THE COURT OF QUÉBEC**

Bill 72

Introduced by Mr Gil Rémillard, Minister of Justice

Introduced 15 May 1990

Passage in principle 22 June 1990

Passage 1 November 1990

Assented to 2 November 1990

Coming into force: 2 November 1990

Acts amended:

Courts of Justice Act (R.S.Q., chapter T-16)

Act to amend the Courts of Justice Act and the Code of Civil Procedure and to establish the Conseil de la magistrature (1978, chapter 19)

Act to amend the Courts of Justice Act (1987, chapter 50)



CHAPTER 44

An Act to amend the Courts of Justice Act with respect to the pension plans of the judges of the Court of Québec

[Assented to 2 November 1990]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

c. T-16,
s. 3, am. **1.** Section 3 of the Courts of Justice Act (R.S.Q., chapter T-16) is amended by striking out the words “, the Act respecting the Civil Service Superannuation Plan (chapter R-12)” in the second and third lines.

c. T-16,
s. 5.4,
repealed **2.** Section 5.4 of the said Act is repealed.

c. T-16,
s. 92.1,
added **3.** The said Act is amended by inserting, after section 92, the following section:

Retirement
age **“92.1** A judge who reaches 70 years of age shall cease to hold office.

Continuance
in office However, if the Government deems that it serves the interests of justice, it may authorize a judge to continue, for the period it determines, to hold office after having reached that age.”

c. T-16,
s. 93.1,
added **4.** The said Act is amended by adding, after section 93, the following section:

Disability **“93.1** A judge suffering from a permanent disability which, in the opinion of the Government, prevents him from effectively performing the duties of his office shall cease to hold such office.

Reappoint-
ment If the judge recovers, the Government may reappoint him as a judge of the court where he formerly held office without having recourse to the selection procedure prescribed by regulation under section 88, even if all the posts in that court are already filled.

Disability The permanent disability is established, after inquiry, by the Conseil de la magistrature, at the request of the Minister of Justice. Termination of permanent disability is established in the same manner.”

c. T-16,
s. 122, am. **5.** Section 122 of the said Act is amended by inserting the word “plan” after the word “pension” in the second line.

c. T-16,
Part VI,
heading,
replaced **6.** The heading of Part VI of the said Act is replaced by the following heading:

“PENSION PLAN OF THE JUDGES OF THE COURT OF QUÉBEC”.

c. T-16,
s. 225,
replaced **7.** The said Act is amended by replacing section 225 by the following:

“CHAPTER I

“APPLICATION

Applicability **“225.** This pension plan, as established by this Part, applies to judges of the Court of Québec appointed on or after 30 May 1978, and to judges of the Court of Québec appointed before that date who have opted for the plan provided for in this Part pursuant to the legislative provisions granting such option enacted by chapter 19 of the statutes of 1978 or by chapter 44 of the statutes of 1990.

Applicability However, the plan does not apply to judges appointed on or after 30 May 1978 to whom the pension plan in force in the municipalities of Montréal, Laval or Québec which corresponds to that established by Part VI.1 has already applied, unless they have opted for the pension plan in force in those municipalities which corresponds to this plan pursuant to the legislative provisions granting such option enacted by chapter 19 of the statutes of 1978 or by chapter 44 of the statutes of 1990.”

c. T-16,
s. 226,
repealed **8.** Section 226 of the said Act is repealed.

c. T-16,
ss. 227 to
235,
replaced **9.** Sections 227 to 235 of the said Act, including sections 231 and 234 which were amended by chapter 5 of the statutes of 1990, are replaced by the following:

“CHAPTER II

“RETIREMENT PENSION

“DIVISION I

“ELIGIBILITY FOR RETIREMENT WITH A PENSION

Pension **“227.** A judge who reaches 70 years of age or who suffers from a permanent disability defined in the first paragraph of section 93.1 is eligible for retirement with a pension.

Pension However, if, pursuant to section 92.1, the Government authorizes a judge who has reached 70 years of age to continue to hold office, the judge will be eligible for retirement with a pension upon ceasing to hold office.

Require- **“228.** A judge who ceases to hold office is eligible for retirement with a pension provided he satisfies one of the following requirements:

(1) he has reached 65 years of age;

(2) he has 25 years of service or more to his credit;

(3) he has at least 20 years of service to his credit, has opted for the plan provided for in this Part pursuant to the legislative provisions granting such option and was in office on 30 May 1978.

Year of **“229.** For the purposes of this plan, a year or part of a year of service is any year or part of a year

(1) during which the judge held judicial office at the Court of Québec;

(2) during which the judge held any other function to which pensionable service is attached under this plan;

(3) for which service is transferred to this plan pursuant to a transfer agreement made under section 246.24;

(4) during which the judge was entitled to benefits under a social benefits plan established under section 122, as a replacement of his salary.

Refund If a judge has received a refund of the contributions he paid or from which he was exempt for the years 1979 to 1989, his service during those years shall be counted for the sole purpose of eligibility for a pension, unless the sums refunded are remitted in accordance with section 244.9 or 244.10.

Restriction In no case may a year or part of a year of service be counted under this plan if it is counted under another plan.

“DIVISION II

“COMPUTATION AND PAYMENT OF THE PENSION

Computation of pension **“230.** The annual amount of a judge’s pension is equal to his average salary multiplied by 2.8 % per year of service, up to 25 years.

Average salary **“231.** The average salary of a judge is the average salary of his three best remunerated years of service or, if he has less than three years of service, the average salary of all his years of service.

Computation of annual salary The annual salary is computed on the basis of the salary the judge received pursuant to the orders made under section 115 or, if the judge did not receive that salary, on the basis of the salary he would have received pursuant to those orders. However, the additional remuneration paid to a chief judge, senior associate chief judge, associate chief judge or coordinating judge and any other remuneration paid to a judge who is on leave without pay or to a judge to which any of sections 131 to 134 applies are excluded in computing the average salary.

Sums included in year’s salary Any lump sum paid as an increase or adjustment of salary for a preceding year forms part of the salary for the year during which it is paid. However, if the lump sum is paid during a year for which no service is credited, it forms part of the salary for the last year for which service is credited prior to the payment of the lump sum.

Minimum amount of pension **“232.** The pension of a judge who retires under paragraph 3 of section 228 and who, on 30 May 1978, had held office as chief judge or associate chief judge or had had the status thereof for 10 years or more or who was holding office as such on that date and held it for 10 years or more, shall not, upon retirement, be less than 63 % of the average salary of his five best remunerated years of service.

Minimum amount of pension The pension of a judge who has opted for the plan provided for in this Part pursuant to the legislative provisions granting such option and who retires because he has reached 70 years of age shall not, upon retirement, be less than 56 % of the average salary of his five best remunerated years of service. However, if, on 1 January 1979, the judge had held office as chief judge or associate chief judge or had had the status thereof for 10 years or more, or if he was holding office as such on that date and held it for 10 years or more, his pension shall not, upon retirement, be less than 63 % of that average salary.

Life
pension

“233. The pension shall be paid for life and is payable from the day on which the judge retires.

Payment
to spouse

“234. The pension of a judge who dies after retirement shall continue to be paid to his spouse or, if he leaves no spouse, to his heirs until the first day of the month following the death of the judge.

“CHAPTER III

“SPOUSE’S AND CHILDREN’S PENSION

Spouse’s
pension

“235. From the day the payment of the pension of a judge ceases by reason of death or from the day of the death of a judge in office, a life pension equal to 50 % of the pension the judge was receiving or would have received if he had retired with a pension at the time of his death is granted to his spouse.”

c. T-16,
s. 236,
replaced

10. Section 236 of the said Act is replaced by the following section:

Spouse

“236. For the purposes of this Part, the spouse of a judge is the person who, at the time of the judge’s death:

- (1) is married to the judge;
- (2) has been living in a *de facto* union with the judge, who was unmarried, for not less than three years, or for not less than one year if:
 - a child has been born or is to be born of their union;
 - they have jointly adopted a child during their *de facto* union;
 - or if one of them has adopted the child of the other during that *de facto* union.”

c. T-16,
ss. 237 to
244,
replaced

11. Sections 237 to 244 of the said Act are replaced by the following:

Computa-
tion of
spouse’s
pension

“237. For the purpose of computing the spouse’s pension, the pension that would have been received by a judge having opted for the plan provided for in this Part pursuant to the legislative provisions granting such option, who was in office on 30 May 1978 and died while in office before having at least 20 years of service to his credit or reaching 70 years of age, shall in no case be less than 56 % of the average salary of his five best remunerated years of service. However, if, at the time referred to in the first paragraph of section

232, the judge held office as chief judge or associate chief judge or had the status thereof for 10 years or more, the pension that he would have received, for the purpose of computing his spouse's pension, shall in no case be less than 63 % of that average salary.

Reduction **"238.** A judge may, at any time before a pension or deferred annuity becomes payable to him, elect to reduce such pension or deferred annuity to allow his spouse to benefit from a pension more advantageous than the pension provided for in section 235. This reduction may, at the judge's option, be equal to 3.5 %, in which case the spouse will be entitled to receive a pension equal to 60 % of the reduced pension, or 5.7 %, in which case the spouse will be entitled to receive a pension equal to 66 $\frac{2}{3}$ % of the reduced pension.

Irrevocability The election is irrevocable from the time the judge's pension is payable, even in the absence of a spouse entitled to a pension.

Presumption However, the election is deemed never to have been made if the judge dies while in office, leaving no spouse entitled to a pension.

Children's pension **"239.** Each child of a judge who dies while in office or after retirement is entitled to receive, as pension,

(1) if a pension is paid to the judge's spouse, 10 % of the pension used as the basis for computing the spouse's pension;

(2) if there is no spouse entitled to a pension, 20 % of the pension which would have been used as the basis for computing the spouse's pension;

(3) if the judge's spouse dies while receiving a pension, 20 % of the pension used as the basis for computing the spouse's pension and indexed from the judge's death.

More than four children However, if there are more than four children, the total amount of the pensions payable to them shall in no case exceed the amount representing 10 % or 20 %, as the case may be, of the basis amount, multiplied by four, which shall be divided equally among the children.

Requirements **"240.** To be entitled to a pension under section 239, a child must be a dependant of the judge at the time of the latter's death and must satisfy one of the following requirements:

(1) be under 18 years of age;

(2) be 18 years of age but under 25 and a full-time student in an educational institution designated in Schedule I to the Act respecting

the Teachers Pension Plan (R.S.Q., chapter R-11) or designated by regulation under section 47 of the said Act;

(3) be an invalid as a result of illness or an accident, require medical treatment and be totally unable to perform work of any kind.

Pension

However, the child of a judge who, at the time of the latter's death, is not a dependant of the judge or does not satisfy any of the requirements set out in subparagraphs 1, 2 and 3 of the first paragraph or who ceases to satisfy any such requirement and who, before reaching 25 years of age, satisfies or once again satisfies either of the requirements set out in subparagraphs 2 and 3 of the first paragraph and would have been a dependant of the judge had the latter not died is entitled to receive a pension under section 239.

Minor child

"241. The pension of a minor child is granted until he reaches majority.

Child of full age

The pension of a child of full age who is a full-time student in an educational institution is granted until he reaches 25 years of age for the period during which he attends an educational institution on a full-time basis; the pension of a child of full age who is an invalid is granted for the period of invalidity.

Pension granted to a child

"242. The pension granted to a child is paid from the day on which the spouse's pension becomes payable or, if there is no spouse entitled to a pension, from the day on which a spouse's pension would have become payable. If the spouse dies, the new pension granted to the child is paid from the first day of the month following the month of the death of the spouse.

Pension granted to a child

The pension granted to a child under the second paragraph of section 240 is paid from the first day of the month following the date on which he satisfies or again satisfies either of the requirements set out in subparagraphs 2 and 3 of the first paragraph of the said section.

Pension granted to a child

The pension granted to a child under 18 years of age is paid to the person having the care of the child.

Pension granted to spouse and children

"243. The pension granted to the spouse and children runs until the first day of the month following the date on which the recipient ceases to be entitled to it.

“CHAPTER IV

“DEFERRED ANNUITY

Deferred
annuity

“**244.** A judge who, upon ceasing to hold office, is not eligible for retirement with a pension under Chapter II and has two years or more of service to his credit for the purpose of computing his pension is entitled only to a deferred annuity payable at 65 years of age and computed in accordance with sections 230 and 231, unless he transfers his years of service to another pension plan pursuant to a transfer agreement made under section 246.24.

Payment
of deferred
annuity

The deferred annuity is paid for life and confers on the spouse, children and heirs, from the time it becomes payable, the same rights as those conferred in the case of a judge who is eligible for retirement with a pension under Chapter II.

Cancellation

“**244.1** The deferred annuity is cancelled if the judge is reappointed to an office to which pensionable service is attached under this plan and the years or parts of a year of service he then accumulates are added to those already credited to him.

“CHAPTER V

“JUDGE HOLDING AN OFFICE AFTER RETIREMENT

Reappoint-
ment

“**244.2** A judge who is receiving a pension by reason of a permanent disability within the meaning of the first paragraph of section 93.1 and who is reappointed by the Government as provided in that section ceases to receive his pension.

Computation

The years and parts of a year of service he then accumulates are added to those already credited to him. However, if the judge again holds his office for less than three years after his reappointment, the average salary used as the basis for computing his new pension is computed on the basis of the salary determined under the second paragraph of section 231 for the three years immediately preceding the date on which he ceased to hold office.

Retired
judge

“**244.3** A retired judge who is authorized by the Government under section 93 to exercise judicial functions shall continue to receive his pension, and section 118 shall apply to him. However, he acquires no right to an additional amount of pension.

Retired
judge

A retired judge who receives a salary for holding any other office with the Gouvernement du Québec shall continue to receive his pension, and an amount equal to the amount of his pension shall be deducted from his salary.

"CHAPTER VI

"OTHER BENEFITS

Refund of
contributions

"244.4 A judge who, upon ceasing to hold office, is not eligible for retirement with a pension under Chapter II and has less than two years of service to his credit for the purpose of computing his pension is entitled, if applicable, only to a refund of the contributions which he paid before 1 January 1990 and which were not otherwise refunded to him, unless he transfers the time he held office as judge to another pension plan pursuant to a transfer agreement made under section 246.24.

Contribu-
tions paid
to spouse

If the judge dies before having obtained the refund, his contributions shall be refunded to his spouse or, if he leaves no spouse, to his heirs.

Contribu-
tions paid
to heirs

"244.5 If a judge dies while in office and leaves no spouse entitled to a pension, no child under 25 years of age and no child 25 years of age or over who is an invalid within the meaning of subparagraph 3 of the first paragraph of section 240, his heirs are entitled to a refund of the contributions paid for the years 1979 to 1989 which have not been otherwise refunded.

Contribu-
tions paid
to spouse
or heirs

If a judge who, upon ceasing to hold office, was entitled only to a deferred annuity, dies before he reaches 65 years of age, his contributions shall be refunded to his spouse or, if he leaves no spouse, to his heirs.

Balance
and interest
paid to
heirs

"244.6 If the total of the amounts paid as pension to a judge, his spouse and his children is less than the total of the contributions paid for the years 1979 to 1989, with accrued interest, the difference shall be refunded to his heirs when payment of a pension to the last person entitled to it ceases.

Contribu-
tions
deemed paid

"244.7 For the purposes of a refund of contributions paid for the years 1979 to 1989, the contributions from which the judge was exempt for a period during which he received or was entitled to receive, as a replacement of his salary, benefits under a social benefits plan established under section 122, shall be considered as having effectively been paid.

Computation

"244.8 For the purposes of this chapter, contributions shall be refunded with interest computed from the midpoint of the year during which they were paid including contributions from which the judge was exempt, until the first day of the month during which the refund is made.

Interest However, for the purpose of computing the interest accrued on contributions under section 244.6, interest is computed up to the date on which the first payment of a pension was made.

“CHAPTER VII

“MISCELLANEOUS PROVISIONS

Past service **“244.9** A judge who has received a refund of the contributions he paid or from which he was exempt for the years 1979 to 1989 and is reappointed to an office to which pensionable service is attached under this plan may, for the purpose of computing his pension, count the service accumulated during those years provided he satisfies the following requirements:

(1) he gives the Commission administrative des régimes de retraite et d'assurances written notice to that effect within the 12 months following the date on which he begins to exercise his new functions;

(2) he remits the amounts that were refunded to him, computed with interest from the date the refund was made.

Payment The judge may pay the amount determined in the first paragraph in a single payment or by equal instalments which may be spread, with interest, over a period determined by agreement between the judge and the Commission, but not exceeding ten years. Any amount remaining unpaid 30 days from the date of mailing by the Commission of a notice to that effect shall also bear interest.

Payment Notwithstanding the foregoing, any amount required to have such service counted for the purpose of computing the judge's pension must be paid in full at the time he retires with a pension, failing which he shall lose the right to count such service as pensionable service, and the amounts he has remitted will be refunded to him with interest computed in accordance with the first paragraph of section 244.8.

Notice by surviving spouse **“244.10** If a judge to whom section 244.9 applies dies before the expiry of the 12 months prescribed in subparagraph 1 of the first paragraph of that section, without having given the Commission the notice provided for in that subparagraph, his spouse may have the service in question counted for the purpose of computing the pension the judge would have received, by giving the Commission written notice to that effect within 90 days from the death of the judge and by paying the amount determined in accordance with section 244.9 in a single payment within 30 days from the date of mailing by the Commission of a notice to that effect.

Payment by
surviving
spouse

If a judge to whom section 244.9 applies dies before having paid in full the amounts required to have the service in question counted for the purpose of computing his pension, his spouse may have that service counted as pensionable service by paying the balance of the sums required, with accrued interest, within 90 days from the date of mailing by the Commission of a notice to that effect, failing which the amounts remitted by the judge will be refunded to the spouse with interest computed in accordance with the first paragraph of section 244.8.

Amounts
refunded
to heirs

If the judge dies leaving no spouse entitled to a pension and before having paid in full the amounts required, or if the spouse dies before having paid such amounts in full, the amounts remitted by the judge shall be refunded to his heirs with interest computed in accordance with the first paragraph of section 244.8.

Indexing

“244.11 Every pension is indexed annually, at the time prescribed pursuant to section 119 of the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9),

(1) for that part attributable to service prior to 1 July 1990, by the rate of increase of the Pension Index determined by the said Act;

(2) for that part attributable to service subsequent to 30 June 1990, to the extent only that this service is necessary to attain a maximum of 25 years of service, by the excess of the rate over 3 %.

Indexing

However, where the pension granted is determined pursuant to section 232 or 237, it shall be indexed annually, at the same time, at the rate provided for in subparagraph 1 of the first paragraph.

Indexing

Deferred annuities are indexed in accordance with the first paragraph. In this case, the indexing applies only from 1 January following the sixty-fifth birthday of the judge.

Interest

“244.12 The interest payable under this plan is 6 % compounded annually.

Inalienability

“244.13 Any amount paid or refunded under this plan shall be inalienable and unseizable.

Maximum
percentage

Notwithstanding the foregoing, such amounts shall be unseizable up to 50 % in the case of the partition between spouses of the family patrimony, the payment of support or the payment of a compensatory allowance.

“CHAPTER VIII

“ARBITRATION”.

c. T-16,
ss. 246,
246.1,
repealed
c. T-16,
Part VI.1,
title, re-
placed

12. Sections 246 and 246.1 of the said Act are repealed.

13. The said Act is amended by replacing the title of Part VI.1 by the following title:

“PENSION PLAN OF CERTAIN JUDGES OF THE COURT OF QUÉBEC”.

c. T-16,
s. 246.2,
replaced

14. Section 246.2 of the said Act is replaced by the following section:

Applicability

“246.2 The pension plan established by this Part applies to those judges of the Court of Québec to whom the plan provided for in Part VI does not apply.”

c. T-16,
s. 246.4, am.

15. Section 246.4 of the said Act is amended

(1) by replacing the words “it is established to the satisfaction of the Government that he is afflicted with a permanent disability preventing him from effectively performing his duties” in the third, fourth and fifth lines of the first paragraph by the words “if he is suffering from a permanent disability within the meaning of the first paragraph of section 93.1”;

(2) by replacing the words “it is established to the satisfaction of the Government that he is afflicted with a permanent disability preventing him from effectively performing his duties” in the fourth, fifth and sixth lines of the second paragraph by the words “if he is suffering from a permanent disability within the meaning of the first paragraph of section 93.1”.

c. T-16,
s. 246.5, am.

16. Section 246.5 of the said Act is amended

(1) by striking out the words “shall cease to hold office” in the second line of the first paragraph;

(2) by replacing the second paragraph by the following paragraph:

Pension

“However, if the Government, under section 92.1, authorizes him to continue to hold office, he shall be eligible for retirement with a pension when he ceases to hold office.”

c. T-16,
s. 246.6,
am.

17. Section 246.6 of the said Act is amended by replacing the words “is afflicted with a permanent disability preventing him from

usefully performing his duties” in the second and third lines by the words “is suffering from a permanent disability within the meaning of the first paragraph of section 93.1”.

c. T-16,
s. 246.7,
repealed
c. T-16,
s. 246.10,
am.

18. Section 246.7 of the said Act is repealed.

19. Section 246.10 of the said Act is amended

(1) by replacing the words “first day of the month following the death of a chief judge or judge, in office or retired” in the first and second lines by the words “day on which payment of the pension of a chief judge or judge ceases by reason of death or from and after the day of the death of a chief judge or judge while in office”;

(2) by inserting the words “for life” after the word “granted” in the second line;

(3) by replacing the last sentence by the following sentence: “The pension runs until the first day of the month following the death of the spouse.”

c. T-16,
ss. 246.11
and
246.12, re-
placed
Computation

20. Sections 246.11 and 246.12 of the said Act are replaced by the following sections:

“246.11 A year or part of a year counted for the purposes of eligibility for a pension under this plan is any year or part of a year

(1) during which the judge held judicial office at the Court of Québec;

(2) during which the judge held any function to which pensionable service is attached under this plan;

(3) for which service is transferred to this plan pursuant to a transfer agreement made pursuant to section 246.24;

(4) during which the judge was entitled to benefits under a social benefits plan established under section 122, as a replacement of his salary.

Computation

In no case may a year or part of a year be counted under this plan if it is counted under another plan.

Life
pension

“246.12 The pension of a judge shall be for life and is payable from the day on which the judge retires.

Last
pension
payment

The pension of a judge who dies after retirement shall continue to be paid to his spouse, or if he leaves no spouse, to his heirs until the first day of the month following the death of the judge.”

c. T-16,
s. 246.14,
replaced

21. Section 246.14 of the said Act is replaced by the following sections:

Indexing

“246.14 The pension paid under this plan to a judge having retired before 31 May 1978 or to his surviving spouse is, at the time provided for under section 119 of the Act respecting the Québec Pension Plan, indexed annually by the rate of increase of the Pension Index determined by the said Act.

Indexing

“246.14.1 Any other pension paid under this plan shall not be indexed, except if the requirements of sections 25 to 29 of the Act to amend the Courts of Justice Act with respect to the pension plans of the judges of the Court of Québec (1990, chapter 44) to benefit from such indexing have been satisfied.

Computation

If those requirements have been satisfied, the pension paid to the judge or his surviving spouse shall, from 1 July 1990, be equal to the amount determined under this plan, indexed in accordance with section 246.14, from 1 January 1979.

Refund

“246.14.2 Any judge who is not entitled to an annual pension under this plan at the time he ceases to hold office, is entitled only to a refund of the amounts he paid to benefit from the indexing provided for in the second paragraph of section 246.14.1, unless he transfers his years of service to another pension plan pursuant to a transfer agreement made pursuant to section 246.24. If he dies before having obtained the refund, the amounts shall be paid to his spouse or, if he leaves no spouse, to his heirs.

Refund

If a judge dies while in office and leaves no spouse entitled to a pension, his heirs are entitled to a refund of the amounts paid to benefit from the indexing.

Refund

If the total of the amounts paid as pension to a judge and his spouse is less than the total of the amounts paid to benefit from the indexing, with accrued interest, the difference shall be refunded to the heirs when payment of a pension to the last person entitled to it ceases.

Refund

“246.14.3 For the purposes of section 246.14.2, the amounts paid to benefit from the indexing provided for in the second paragraph of section 246.14.1 shall be refunded with interest at a rate of 6 %, compounded annually and computed from the midpoint of the year

during which they were paid until the first day of the month during which the refund is made.

Interest However, for the purpose of computing the interest accrued on such amounts pursuant to the third paragraph of section 246.14.2, interest is computed up to the date on which the first payment of a pension was made.

Indexing **“246.14.4** A judge who has received a refund of the amounts he paid to benefit from the indexing provided for in the second paragraph of section 246.14.1 and who is reappointed to an office to which pensionable service is attached under this plan, may again benefit from the indexing provided he satisfies the following requirements:

(1) he gives the Commission administrative des régimes de retraite et d'assurances written notice to that effect within the 12 months following the date on which he begins to exercise his new functions;

(2) he remits the amounts that were refunded to him, computed with interest at 6 %, compounded annually, from the date the refund was made.

Applicable provisions Where this is the case, the second and third paragraphs of section 244.9 and section 244.10 apply, adapted as required.

Inalienability **“246.14.5** Any amount paid or refunded under this plan shall be inalienable and unseizable.

Maximum percentage Notwithstanding the foregoing, such amounts shall be unseizable up to 50 % in the case of the partition between spouses of the family patrimony, the payment of support or the payment of a compensatory allowance.”

c. T-16,
ss. 246.15,
246.16,
246.17,
246.20,
246.21
and 246.22,
am.

22. Sections 246.15, 246.16, 246.17, 246.20, 246.21 and 246.22 of the said Act, enacted by chapter 5 of the statutes of 1990, are amended by replacing the words “retirement and pension plans provided for” wherever they appear by the words “pension plans provided for”.

c. T-16,
ss. 246.23 to
246.28,
added

23. The said Act is amended by inserting, after section 246.22, the following part:

"PART VI.3

"ADMINISTRATION OF THE PENSION PLANS

Administration "246.23 The pension plans provided for in Parts VI and VI.1 are administered by the Commission administrative des régimes de retraite et d'assurances.

Application required No person may obtain any benefit or refund under these plans unless he has applied therefor to the Commission.

Transfer agreement "246.24 The Commission, with the authorization of the Government, and the municipalities of Montréal, Laval or Québec, may make a transfer agreement to permit a judge to whom a pension plan provided for in Part VI or in Part VI.1 or an equivalent plan in force in these municipalities applies to transfer all or part of the service credited to him in the equivalent pension plan which previously applied to him in his capacity as judge of the Court of Québec or, as the case may be, as judge of the court of one of the said municipalities.

Effect An agreement may take effect from any earlier date fixed therein.

Employer's contribution The amount representing the employer's contribution is, at the request of the party to the agreement who undertakes to pay such amount, spread over a period not exceeding five years.

Interest The amounts to be transferred pursuant to an agreement shall bear interest, compounded annually, at the rates determined for each period in Schedule VI to the Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10). They are received or paid according to the pension plans concerned.

Payment "246.25 Any pension paid under the pension plans provided for in Parts VI and VI.1 shall be paid at the intervals and according to the conditions fixed by regulation under section 148 of the Act respecting the Government and Public Employees Retirement Plan.

Actuarial valuation "246.26 At least once every three years, the Commission shall cause an actuarial valuation of the pension plans provided for in Parts VI and VI.1 to be prepared for the Minister of Justice by the actuaries it designates.

Cost The cost of the plans, except contributions paid for the years 1979 to 1989 to the pension plan provided for in Part VI and except amounts paid to benefit from the indexing of pensions payable under the pension plan provided for in Part VI.1, shall be assumed by the Government.

Report

Where a bill is introduced in the National Assembly for the purpose of enacting amendments having an immediate or a long-term impact on either plan, the Commission must prepare a report showing the extent to which the assumptions of the latest actuarial valuation are affected by the proposed amendments.

Information

“246.27 The Commission shall obtain from the Minister of Justice, not later than 1 March each year, any information relating to the previous year that it needs in the performance of its duties.

Consolidated
revenue
fund

“246.28 All sums collected under the pension plans established by Parts VI and VI.1 shall be paid into the consolidated revenue fund. All sums required for the purposes of the plans and for the purposes of Part VI.2 shall be taken out of the consolidated revenue fund, except those sums required for their administration, which shall be granted annually by Parliament.”

c. T-16,
ss. 268 and
271, am.

24. Sections 268 and 271 of the said Act are amended by replacing the words and figures “in accordance with section 230 or 246.7” by the words and figures “pursuant to the third paragraph of section 93.1”.

TRANSITIONAL AND FINAL PROVISIONS

Options

25. A judge of the Court of Québec to whom the pension plan provided for in Part VI.1 of the Courts of Justice Act applies, and who was in office on 1 July 1990 and did not become eligible for retirement before 2 November 1990, may elect

(1) to benefit from the indexing of the pension payable under the pension plan provided for in Part VI.1 provided he pays an amount of \$67 621.00; or

(2) to opt for the pension plan provided for in Part VI of the said Act provided he pays an amount of \$82 990.00, after deducting the contribution from which he would have been exempt pursuant to section 238.1 of the said Act as it read on 31 December 1989, and interest on the contribution computed up to 30 June 1990.

Notice

To be entitled to benefit from his election, the judge shall give written notice of his election to the Commission administrative des régimes de retraite et d'assurances not later than 2 May 1991 or, if he retires before that date, not later than 30 days before the date on which he retires. However, if the judge retires on a date falling between 1 November 1990 and 2 December 1990 the written notice must be given to the Commission before 2 December 1990.

Interest The amounts prescribed in the first paragraph shall be increased, from 1 July 1990, by interest at a rate of 6 %, compounded annually.

Payment **26.** The judge may pay the amounts required to be entitled to benefit from his election under section 25 in a single payment or by equal instalments which may be spread, with interest, over a period determined by agreement between the judge and the Commission, but not exceeding ten years. Any amount remaining unpaid 30 days from the date of mailing by the Commission of a notice to that effect shall also bear interest.

Require-
ments However, any amount required to be entitled to benefit from his election must be paid in full at the time the judge retires with a pension, or, if the judge retires on a date falling between 1 November 1990 and 2 December 1990, within 30 days from the date of mailing by the Commission of a notice to that effect failing which, the judge shall lose the right to benefit from his election, and the amount he has paid shall be refunded to him with interest.

Payment by
surviving
spouse If the judge dies before having paid in full the required amounts, his spouse must, to be entitled to benefit from the election made by the judge, pay the balance thereof, with accrued interest, within 90 days after the date of mailing by the Commission of a notice to that effect, failing which, the amounts paid by the judge shall be refunded to his spouse with interest.

Interest The interest payable pursuant to this section shall be calculated at a rate of 6 %, compounded annually, and it shall be computed on the sums refunded to the judge or his spouse under the second and third paragraphs, in accordance with the first paragraph of section 244.8 of the Courts of Justice Act.

Require-
ments **27.** A judge to whom section 25 would have applied if he had not retired at a date falling between 30 June 1990 and 2 November 1990 may make an election under the first paragraph of the said section provided he satisfies the following requirements:

(1) he gives the Commission administrative des régimes de retraite et d'assurances written notice of his election not later than 2 December 1990;

(2) he pays the amount required pursuant to section 25 within 30 days from the date of mailing by the Commission of a notice to that effect.

Payment
by survi-
ving spouse If the judge dies before having paid in full the required amount, his spouse must, to be entitled to benefit from the judge's election,

pay the amount, with interest at a rate of 6 %, compounded annually, within 90 days of mailing by the Commission of a notice to that effect.

Require-
ments

28. If a judge to whom section 25 or section 27 applies died before 2 November 1990 or dies after that date, without having made an election and before the time limit for doing so, his spouse may benefit from one of the options under section 25 provided the following requirements are satisfied:

(1) the spouse gives the Commission administrative des régimes de retraite et d'assurances a written notice stating the option chosen, not later than 2 February 1991 if the judge's death occurs before 2 November 1990, or, if it occurs after that date, within 90 days from the death;

(2) the spouse pays the amount required pursuant to section 25 within 30 days from the date of mailing by the Commission of a notice to that effect.

Indexing

29. Every judge having retired with a pension under the pension plan provided for in Part VI.1 of the Courts of Justice Act between 30 May 1978 and 1 July 1990, the surviving spouse of such a judge and the surviving spouse of a judge to whom Part VI.1 applied who died while in office, between the same dates, may avail themselves of the benefit derived from indexing with respect to the pension payable pursuant to the said Part VI.1.

Require-
ments

These persons may benefit from indexing under this section provided they

(1) give the Commission administrative des régimes de retraite et d'assurances written notice to that effect not later than 2 May 1991;

(2) pay, within 30 days from the date of mailing by the Commission of a notice to that effect, an amount equal to the product obtained by multiplying the amount required under section 25 and the quotient obtained by dividing, by 11, the number of years and parts of a year subsequent to 31 December 1978 but prior to 1 January 1990 that are counted for the purposes of eligibility for a pension.

Sums
refunded
to heirs

30. If a judge dies leaving no spouse entitled to a pension and before having paid in full the amounts required, or if the spouse dies before having paid such amounts, the sums paid by the judge shall be refunded to his heirs, with interest determined and computed in accordance with the fourth paragraph of section 26.

Reduction

31. A judge of the Court of Québec to whom the pension plan provided for in Part VI of the Courts of Justice Act applies and who was in office on 1 July 1990 may, even if he retired on or after that date but before 2 December 1990, elect in accordance with section 238 of the said Act to reduce his pension to allow his spouse to benefit from a pension more advantageous than the pension to which his spouse would have been otherwise entitled, provided he satisfies the following requirements:

(1) he gives the Commission administrative des régimes de retraite et d'assurances written notice of his election not later than 2 December 1990 if he retired before 2 November 1990, or, if he retires on or after that date, within 30 days from the date on which he retires;

(2) he remits, according to the election made, the surplus amounts he received as pension from the day on which he retired, within 30 days from the date of mailing by the Commission of a notice to that effect.

Interest

Any amount collected by the Commission pursuant to this section shall bear interest at the rate of 6 %, compounded annually.

Refund

32. The Commission administrative des régimes de retraite et d'assurances shall refund the amounts paid by a judge pursuant to section 40 of the Act to amend the Courts of Justice Act and the Code of Civil Procedure and to establish the Conseil de la magistrature (1978, chapter 19) as it read on 30 June 1990, and not otherwise refunded.

Interest

These amounts shall be increased by interest at a rate of 6 %, compounded annually, computed in accordance with the first paragraph of section 244.8 of the Courts of Justice Act.

Refund

The amounts shall be refunded to the judge even if he has ceased to hold office. If the judge has died, they shall be refunded to his spouse or, if he has no spouse, to his heirs.

Duties
of the
commission

33. The Commission administrative des régimes de retraite et d'assurances shall transmit, before 2 May 1991, to each judge to whom section 32 applies, whether or not he has ceased to hold office, or, as the case may be, to the spouse or heirs of the judge a notice reproducing the provisions of the said section and setting out

(1) the sums paid by the judge pursuant to section 40 of the Act to amend the Courts of Justice Act and the Code of Civil Procedure

and to establish the Conseil de la magistrature (1978, chapter 19) as it read on 30 June 1990;

(2) any amount refunded to him out of these sums pursuant to section 12 of the Act to amend the Courts of Justice Act (1987, chapter 50) as it read on 30 June 1990;

(3) the amount representing the interest on sums which must be refunded under section 32;

(4) any other information prescribed by the Commission.

Refund

34. Any refund under section 32 must be made within the three months following the date of mailing of the notice provided for in section 33.

Payment in lieu of contributions

35. The amounts paid for the purpose of opting, pursuant to section 25, for the pension plan provided for in Part VI of the Courts of Justice Act shall be in lieu of contributions for the years 1979 to 1989 for the purposes of the plan.

Consolidated revenue fund

36. The amounts collected pursuant to sections 26 to 29 and section 31 shall be paid into the consolidated revenue fund and the amounts refunded by the Commission pursuant to sections 26, 30 and 32 shall be taken out of the consolidated revenue fund.

Applicable provisions

37. The provisions of sections 25 to 35 apply, adapted as required, to judges of the Municipal Courts of Montréal, Laval or Québec. However, the notice to be given by a judge or, as the case may be, his spouse must be given, within the prescribed time, to the clerk of the municipality concerned, and the amounts collected or refunded under the said provisions shall be collected or refunded by that municipality.

Applicable provisions

38. Sections 32 to 34 and section 36 apply to persons who, in accordance with section 43*b* of the Act to amend the Courts of Justice Act and the Code of Civil Procedure and to establish the Conseil de la magistrature (1978, chapter 19) as it read on 30 June 1990, have paid amounts pursuant to section 40 of the said Act as it read on that date.

Applicable provisions

39. Part VI of the Courts of Justice Act applies, adapted as required, to persons other than judges of the Court of Québec who have opted for the pension plan provided for in Part VI pursuant to the legislative provisions granting such an option.

Minimum amount of pension In no case, however, may the pension of those persons be less than \$20 480.00 if, upon retirement, they have reached 70 years of age or have 25 years of service or more, or \$17 920.00 if, at that time, they have 20 years of service or more. Those amounts shall, from 1 January 1979 and at the time prescribed under section 119 of the Act respecting the Québec Pension Plan, be indexed every year by the rate of increase in the Pension Index determined by the said Act. If the amount of the pension granted to those persons is determined pursuant to this section, the amount continues to be indexed in the same manner.

1978, c. 19, ss. 37 to 43b and 53, repealed **40.** Sections 37 to 43b and 53 of the Act to amend the Courts of Justice Act and the Code of Civil Procedure and to establish the Conseil de la magistrature (1978, chapter 19) are repealed, except the first and third paragraphs of section 38 with respect to persons having retired between 18 July 1978 and 23 June 1987 and for whom the amount of the pension payable has been determined pursuant to the provisions of that section.

1987, c. 50, ss. 10 to 17, repealed Sections 10 to 17 of the Act to amend the Courts of Justice Act (1987, chapter 50) are repealed except

(1) section 11 with respect to persons having retired between 22 June 1987 and 1 July 1990 and for whom the amount of the pension payable was determined pursuant to that section;

(2) section 13 with respect to persons having retired between 18 July 1978 and 1 July 1990 and for whom the amount of the pension payable was determined pursuant to that section.

Applicability The provisions that are not repealed continue to apply to the spouse and children of the persons to which this section applies.

Presumption **41.** Every agreement made pursuant to section 5.4 of the Courts of Justice Act as it read on 30 June 1990 is deemed to have been made pursuant to section 246.24 of the said Act.

Remarriage **42.** Spouses who, after 18 July 1978, have lost entitlement to pension benefits pursuant to section 246.10 of the Courts of Justice Act by reason of remarriage shall recover their entitlement to such benefits for any month subsequent to the remarriage, if they are still living on 1 July 1990.

Interest Any amount due pursuant to this section bears interest at a rate of 6 %, compounded annually.

- Computation** **43.** For the purposes of the pension plan provided for in Part VI of the Courts of Justice Act, the years and parts of a year of service contemplated in section 229 of the said Act which are prior to 1 January 1979 shall be counted from 19 July 1978.
- Continued payment** However, a pension the amount of which has been determined pursuant to the provisions referred to in section 40 that are not repealed shall continue to be paid if the initial amount of the pension, recomputed in order to take such years and parts of a year of service into consideration, is less than that which was determined under the said provisions at the time the pension became payable.
- Interest** Any amount due pursuant to this section bears interest at a rate of 6 %, compounded annually.
- Effect** **44.** The second paragraph of section 39 has effect from 23 June 1987.
- Interest** Any amount due pursuant to this section bears interest at a rate of 6 %, compounded annually.
- Effect** **45.** The repeal of sections 238 and 238.1 of the Courts of Justice Act has effect from 1 January 1990.
- Applicability** However, section 238 remains applicable with respect to any amount paid to a judge after 31 December 1989 as a salary adjustment for a year prior to 1990.
- Effect** **46.** This Act has effect, to the extent that it provides that the pension payable under the pension plan provided for in Part VI of the Courts of Justice Act is computed on the average salary of the three best remunerated years of service, in respect of any pension granted after 30 June 1990, if the judge ceases to hold office, retires or dies after that date.
- Effect** It also has effect, to the same extent, in respect of the pension granted after 30 June 1990 to a judge's spouse or child, if no pension or deferred annuity had been granted to the judge before that date.
- Effect** **47.** This Act has effect, to the extent that it introduces into the pension plan provided for in Part VI of the Courts of Justice Act a clause permitting retirement at 65 years of age and payment of the deferred annuity from that age, and to the extent that the deferred annuity becomes mandatory for any judge having two years of service or more to his credit, with respect to a judge who ceases to hold office after 30 June 1990.

Effect

48. Subject to the provisions of sections 42 to 47, this Act has effect from 1 July 1990 except sections 238, 246.14.2, 246.14.3, 246.14.4, 246.26, 246.27 and 246.28 of the Courts of Justice Act, to the extent that, in the case of section 246.28, it refers to Part VI.2 of the said Act, and except sections 25 to 38 of this Act.

Coming into
force

49. This Act comes into force on 2 November 1990.