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chapter R-15.1

SUPPLEMENTAL PENSION PLANS ACT

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REPEAL SCHEDULES

CHAPTER I

APPLICATION AND INTERPRETATION

1. This Act applies to pension plans provided

- (1) for employees who report for work at an establishment of their employer located in Québec or, if not, who receive their remuneration from such an establishment, provided, in the latter case, they do not report for work at any other establishment of their employer;
- (2) for employees not referred to in paragraph 1 who, while residing in Québec and being employed by an employer whose main establishment is located in Québec, work outside Québec, provided the plans are not governed by an Act of a legislative body other than the Parliament of Québec which provides for a deferred pension.

1989, c. 38, s. 1.

2. This Act does not apply to

- (1) a pension plan to which the employer is not required to make contributions. However, it applies to a pension plan where membership therein is a condition precedent to membership in another plan to which an employer is required to make contributions or, conversely, where membership therein is conditioned by membership in that other plan; where that is the case, such pension plans are deemed, for the purposes of this Act, to constitute a single pension plan;
- (2) a pension plan established for employees who are also members of a plan governed by this Act, if their employer makes contributions to both plans in their respect and if, under the terms of the other plan, they are entitled to benefits at least equal to the maximum benefits which may be paid under the terms of a registered pension plan defined in section 1 of the Taxation Act (chapter I-3);
- (3) a profit sharing plan or a deferred profit sharing plan referred to in Titles I and II of Book VII of Part I of the Taxation Act;
- (4) a pension plan established by an Act, the Government or the Office of the National Assembly, unless the Act, the Government or the Office of the National Assembly renders the plan subject to this Act;
 - (5) (subparagraph repealed);
- (6) a voluntary retirement savings plan governed by the Voluntary Retirement Savings Plans Act (chapter R-17.0.1).

The Government may, by regulation and on the conditions it determines, exempt any pension plan or category of pension plan it designates from the application of all or part of this Act, particularly by reason of the special characteristics of the plan or category or by reason of the complexity of the Act in relation to the number of members in the plan. The Government may also prescribe special rules applicable to the plan or category.

A regulation made under the second paragraph may, if it so provides, have retroactive effect from a date that is prior to the date of its coming into force but not prior to 31 December of the penultimate year preceding the year in which it was published in the *Gazette officielle du Québec* under section 8 of the Regulations Act (chapter R-18.1). The regulation, if it is made in relation to a pension plan administered by the Commission de la construction du Québec or a mandatary of the Commission de la construction du Québec may, if it so provides, have retroactive effect from a date that is prior to the date of its coming into force.

1989, c. 38, s. 2; 1991, c. 25, s. 178; 1995, c. 46, s. 30; 1993, c. 45, s. 1; 1999, c. 40, s. 254; 2000, c. 41, s. 1; 2002, c. 52, s. 7; 2009, c. 1, s. 1; 2011, c. 8, s. 1; 2013, c. 26, s. 135; 2015, c. 20, s. 55.

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- **2.1.** This Act, except sections 6, 64 and 107, the first paragraph of section 110 and section 171.1, which apply with the necessary modifications, does not apply to a pension plan if
- (1) all the members of the pension plan are persons connected with the employer within the meaning of subsection 3 of section 8500 of the Income Tax Regulations (Consolidated Regulations of Canada, 1978, chapter 945) and membership in the plan is optional and is restricted to those persons;
 - (2) only employees described in section 1 may become members of the pension plan; and
- (3) active membership in the plan ceases when the member ceases to be a person connected with the employer

Moreover, such a pension plan is deemed, for the purposes of section 98, not to be a pension plan governed by this Act.

A pension plan to which the first paragraph applies becomes subject to this Act upon being amended to allow other persons to become members.

2000, c. 41, s. 2.

3. For the purposes of this Act,

"actuary" means any member of the Canadian Institute of Actuaries having the title of "Fellow" or a status recognized as equivalent by such Institute;

"accountant" means any person who, being a member of the professional order of accountants listed in Schedule I to the Professional Code (chapter C-26), is authorized under the Act constituting the order to act as an accountant for the purposes of a provision of this Act.

1989, c. 38, s. 3; 1994, c. 40, s. 457; 2012, c. 11, s. 32.

4. For the purposes of this Act, any person who avails himself of the services of a worker who is not an employee and makes contributions to a pension plan in respect of such worker is deemed to be the worker's employer.

1989, c. 38, s. 4; 1999, c. 40, s. 254.

5. Any provision of a pension plan which is incompatible with this Act is without effect.

However, a pension plan may contain provisions that are more advantageous to members or beneficiaries than those contained in this Act.

1989, c. 38, s. 5; 1999, c. 40, s. 254.

CHAPTER II

PENSION PLANS

DIVISION I

NATURE

- § 1. General provisions
- **6.** A pension plan is a contract under which retirement benefits are provided to the member, under given conditions and at a given age, the funding of which is ensured by contributions payable either by the employer only, or by both the employer and the member.

- (1) he received from the employer a remuneration equal to or greater than 35% of the Maximum Pensionable Earnings, established for the reference year in accordance with the Act respecting the Québec Pension Plan (chapter R-9);
 - (2) he completed at least 700 hours of employment with the employer.

The optional or compulsory nature of the membership does not constitute a requirement for the purposes of the first paragraph.

Where an employee has been employed by two or more employers participating in a multi-employer pension plan, the minimum remuneration required shall be determined on the basis of the overall remuneration from, or the overall hours of work for, each of the participating employers, in either of the following cases:

- (1) the employees eligible for membership in the plan are governed by the same collective agreement or arbitration award in lieu thereof;
- (2) the participating employers are a parent company and its subsidiaries or subsidiaries of the same parent company.

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1989, c. 38, s. 34; 2000, c. 41, s. 20.
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- **35.** Retraite Québec may order a pension committee to accept, as member of the plan, every employee who meets the requirements set out in section 34
- (1) where it is of the opinion that, in view, in particular, of the nature and requirements of the employment concerned, those of the elements serving to determine the class of employees for whom the plan is established which are invoked as grounds to dismiss the employee's application for membership are unreasonable;
- (2) where there is a dispute as to whether or not the employee belongs to the class of employees for whom the plan is established.

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1989, c. 38, s. 35; 2015, c. 20, s. 61.
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- **36.** For the purposes of this Act, every member of a pension plan is deemed to be an active member
- (1) until he ceases to be a member in accordance with the withdrawal requirements or until he no longer meets the eligibility requirements fixed by the plan;
 - (2) until his period of continuous employment, as defined in section 54, is terminated;
 - (3) until he dies.

The plan may, however, provide that the member remains an active member for a given period after the end of his period of continuous employment. Notwithstanding the second paragraph of section 5, the said period, increased by any period of layoff with a right of recall referred to in section 54, shall not exceed 24 consecutive months.

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1989, c. 38, s. 36; 1994, c. 24, s. 1; 1999, c. 40, s. 254; 2000, c. 41, s. 21.
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CHAPTER V

CONTRIBUTIONS

DIVISION I

TYPE OF CONTRIBUTIONS

2015, c. 29, s. 5.

37. The member contribution is the contribution that an active member is required to pay or the amount he elects to pay with a concurrent contribution by the employer.

The employer contribution is the contribution that the employer is required to pay.

An additional voluntary contribution is the amount that a member elects to pay without a concurrent contribution by the employer.

1989, c. 38, s. 37.

38. A current service contribution is the amount that the employer and, as the case may be, the active members are required to pay to ensure payment of the refunds and pension benefits provided under the pension plan in respect of service completed during a fiscal year of the plan and credited under the plan and, in the case of a plan to which Chapter X applies, to establish a stabilization provision, determined in accordance with section 125, in respect of those obligations.

The part of the current service contribution intended to establish the stabilization provision is to be called a current service stabilization contribution.

1989, c. 38, s. 38; 2015, c. 29, s. 6.

- **38.1.** The following are amortization payments:
- (1) the technical amortization payment, intended to amortize the unfunded actuarial liability determined in accordance with section 131;
- (2) the stabilization amortization payment, intended to amortize the unfunded actuarial liability determined in accordance with section 132; and
- (3) improvement amortization payments, intended to amortize any unfunded actuarial liability determined in accordance with section 134.

2015, c. 29, s. 7.

38.2. The special improvement payment is a payment that, in respect of the additional obligations arising from an amendment to the pension plan, must be paid in accordance with section 139.

2015, c. 29, s. 7.

38.3. The special annuity purchasing payment is a payment that may be required on a payment of benefits made in accordance with the annuity purchasing policy and that, if applicable, must be calculated and paid in accordance with the provisions provided for in section 142.4.

2015, c. 29, s. 7.

DIVISION II

PAYMENT OF CONTRIBUTIONS

2015, c. 29, s. 8.

- **39.** The employer shall, in each fiscal year of the pension plan, pay as employer contributions an amount which, when added to the member contributions, is equal to or greater than,
 - (1) in the case of an insured plan, the current service contribution as established in section 40;
 - (2) in the case of an uninsured plan, the sum of the following amounts:
 - (a) the current service contribution determined in accordance with sections 128 and 129; and
- (b) the sum of the amortization payments determined for the fiscal year and the special improvement payments payable during the fiscal year.

In the case of a multi-employer plan, the employer contribution shall be paid jointly by the employers who are parties to the plan.

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1989, c. 38, s. 39; 2006, c. 42, s. 5; 2008, c. 21, s. 30; 2015, c. 29, s. 9.
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- **39.1.** Notwithstanding section 39, Retraite Québec may authorize an employer, to the extent and for the period determined by Retraite Québec, to pay a lesser contribution into the pension fund than would otherwise be required if
- (1) the pension plan is a designated plan within the meaning of section 8515 of the Income Tax Regulations (C.R.C., c. 945) on the date on which the amount of contribution to be paid is determined;
- (2) the said Regulations exclude the payment as an eligible contribution of all or part of the contribution that should be paid by the employer pursuant to section 39; and
 - (3) all members and beneficiaries agree thereto.

The agreement referred to in subparagraph 3 of the first paragraph is not required if the contribution reduction is less than or equal to the sum of the current service stabilization contribution and the stabilization amortization payment.

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2000, c. 41, s. 22; 2006, c. 42, s. 6; 2015, c. 20, s. 61; 2015, c. 29, s. 10.
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40. In the case of an insured plan, the current service contribution shall correspond to the premium required by the insurer to guarantee the refunds and pension benefits to which the members are entitled in respect of service completed in any fiscal year of the plan and credited under the plan.

Furthermore, where an insurer guarantees refunds and pension benefits in respect of service credited for a period prior to the current fiscal year of the plan, the required premium shall, to ensure that the plan remains insured, be paid to the insurer in a lump sum as soon as the service is credited or the related benefits are improved under the plan.

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1989, c. 38, s. 40.
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41. The employer contribution, less the portion the employer is relieved of paying under section 42.1 or that relates to a special improvement payment, must be paid in as many instalments as there are months in the fiscal year of the plan, each being paid not later than the last day of the month following the month for which it is made.

The monthly payments shall be of equal amounts. However, if they relate to the current service contribution, the monthly payments may represent an hourly rate or a rate of the remuneration of or a percentage of the total payroll for the active members; the rate or proportion shall be uniform unless it is established by reference to a variable authorized by Retraite Québec.

In the case of a pension plan to which Chapter X applies, where the employer contribution is not determined at the beginning of the fiscal year, the employer shall, until an actuarial valuation report is transmitted to Retraite Québec, continue to pay the monthly amounts fixed for the preceding fiscal year. If the contribution so paid is less than what should have been paid according to the report, the first monthly amount payable after the transmission of the report to Retraite Québec shall be increased by the difference between the monthly amounts paid and the amounts that should have been paid according to the report, plus any portion of the contribution the employer is relieved of paying under section 42.1 and the interest provided for in section 48 where applicable. The amount of the contribution may also be adjusted if the contribution that should have been paid according to the report is less than what was paid.

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1989, c. 38, s. 41; 2000, c. 41, s. 23; 2006, c. 42, s. 7; 2008, c. 21, s. 31; 2015, c. 20, s. 61; 2015, c. 29, s. 11.
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42. If the amortization period for an unfunded actuarial liability begins in the course of a fiscal year of the plan, the amortization payment determined in relation to that liability for that year must be paid in as many monthly payments as there are months in the portion of the fiscal year included in the amortization period.

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1989, c. 38, s. 42; 2006, c. 42, s. 8; 2015, c. 29, s. 12.
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42.1. Under the conditions prescribed by regulation, an employer may, on providing the pension committee with a letter of credit established in accordance with the regulation, be relieved of paying all or part of the portion of the employer contribution determined for the current fiscal year of the pension plan in respect of the stabilization amortization payment payable during the year.

The total amount of such letters of credit may not exceed 15% of the liabilities of the plan, determined on a funding basis.

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2006, c. 42, s. 9; 2008, c. 21, s. 32; 2010, c. 41, s. 1; 2015, c. 29, s. 13.
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42.2. Employer contributions that are technical amortization payments or stabilization amortization payments, except those paid by letter of credit, must be the subject of special monitoring. Employer contributions paid in excess of the contributions required must be included as well.

Member contributions that are technical amortization payments or stabilization amortization payments must also be the subject of special monitoring.

Interest on those contributions, at the rate of return obtained on the investment of the plan assets, reduced by the investment and administration fees, must be included as well.

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2015, c. 29, s. 13.
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43. Every person or body who or which collects member contributions or additional voluntary contributions shall, on or before the last day of the month following the month in which they are received, pay such contributions into the pension fund on behalf of the members or, in the case of an insured plan, to the insurer.

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1989, c. 38, s. 43.
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44. All member contributions and additional voluntary contributions and, in the case of a defined contribution plan, all employer contributions shall bear interest, from the first day of the month following the month in which they are payable into the pension fund or to the insurer,

- (1) in the case of an uninsured plan other than a defined contribution plan, at the rate of return derived from the investment of the plan assets, less investment expenses and administration costs, or, if the plan so provides and to the extent that the contribution relates to refunds or pension benefits that remain insured, at the monthly rate of return on personal five-year term deposits with chartered banks, as compiled by the Bank of Canada;
- (2) in the case of a defined contribution plan, at the rate of return derived from the investment of all the assets of the plan or, where the plan so provides, of only such part of the assets as may be related to a particular group of members, less investment expenses and administration costs;
- (3) in the case of an insured plan, at the monthly rate referred to in subparagraph 1 or, if the plan so provides, at the rate of return derived from the investment of the insurer's assets that are not included in the separate groups of assets constituted by the insurer, less, in the last case, investment expenses and administration costs.

However, if the plan provides that the members may direct what investments are made with all or part of the contributions credited to their accounts or if additional voluntary contributions are invested into a separate uninsured plan, all such investments shall be excluded from the plan assets for the purposes of subparagraphs 1 and 2 of the first paragraph, and the contributions so invested shall bear interest at the rate of return on such investments.

The provisions of this section which are applicable to the contributions paid under a defined contribution plan also apply to the contributions paid under terms in a defined benefit plan that are identical to those of a defined contribution plan.

1989, c. 38, s. 44; 2000, c. 41, s. 24.

45. Despite subparagraph 2 of the first paragraph of section 44, employer contributions paid under a defined contribution pension plan may, if the plan so provides, bear interest at the rate of return on the investment of the contributions paid by the members under that plan or another pension plan which may or may not be governed by this Act, insofar as the investment is decided by the members.

1989, c. 38, s. 45.

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.

1992, c. 60, s. 6.

46. Unless provided in the plan, the method used for calculating the rates of return and the method used for applying the monthly rate of interest shall, for the purposes of sections 44 and 45, be determined by the actuary or the accountant selected by the pension committee; in the case of an insured plan, the methods shall be determined by the insurer.

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.

1989, c. 38, s. 46; 1992, c. 60, s. 7.

- **47.** Where a member or beneficiary has become entitled to a benefit under the terms of the pension plan,
 - additional voluntary contributions,
 - member or employer contributions paid under a defined contribution plan or under terms in a defined benefit plan that are identical to those of a defined contribution plan, and

— member contributions above the limit set by section 60,

shall continue, subject to the provisions of section 45.1, to bear interest at the rate prescribed by section 44 or 45 until such contributions are used to replace a pension under section 92, are transferred in accordance with section 98 or are refunded, or until an additional pension is purchased with such contributions as provided in section 83.

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1989, c. 38, s. 47; 1992, c. 60, s. 8; 2000, c. 41, s. 25.
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48. Unless a pension plan or, in the case of an insured plan, an insurance contract sets a higher rate of interest, any contribution which has not been paid into the pension fund or to the insurer shall bear interest, from the last day of the month following the month for which it should have been paid or, as the case may be, the last day of the month following the month in which it was collected, at the rate prescribed by section 44 or 45 or, in the case of the employer contribution under a defined benefit plan, at the rate of return of the pension fund.

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1989, c. 38, s. 48; 2000, c. 41, s. 26.
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- **49.** Until contributions and accrued interest are paid into the pension fund or to the insurer, they are deemed to be held in trust by the employer, whether or not the latter has kept them separate from his property.
- 1989, c. 38, s. 49.
- **50.** The employer shall, on remitting the contributions, inform the pension committee or, in the case of an insured pension plan, the insurer, of the reason for any significant variation in the contributions payable into the pension fund or to the insurer.

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1989, c. 38, s. 50.
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51. The pension committee or, in the case of an insured pension plan, the insurer shall notify Retraite Québec of any unpaid contribution within 60 days after it becomes due.

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1989, c. 38, s. 51; 2000, c. 41, s. 27; 2015, c. 20, s. 61.
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52. Unless they have exercised the prudence, diligence and care that a reasonable person would have exercised in comparable circumstances or unless, in the same circumstances they were unaware of the default, the directors of a legal person which, as an employer, is a party to a pension plan, shall be solidarily liable for contributions which become due and remain unpaid during their term in office, with interest, up to a contributory period of six months.

In the case of a multi-employer pension plan that is not considered as such pursuant to section 11, the directors of a subsidiary are liable for the contributions only if the parent company fails to pay the contributions referred to in the first paragraph. Where the directors of the subsidiary also fail to pay the contributions for which they are liable under this paragraph, the directors of the parent company become liable for the contributions.

The six-month limit set out in the first paragraph does not apply where the pension fund is managed by the employer.

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1989, c. 38, s. 52.
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- **53.** A director shall be liable under section 52 only in either of the following cases:
- (1) where the legal person has been prosecuted within two years after the date the unpaid contribution became due and full satisfaction of the amount awarded by judgment was not obtained upon execution;

(2) where the legal person was, within two years of the date the unpaid contribution became due, the subject of a winding-up order or became bankrupt within the meaning of the Bankruptcy and Insolvency Act (Revised Statutes of Canada, 1985, chapter B-3) and the claim filed has not been discharged.

1989, c. 38, s. 53.

CHAPTER VI

REFUNDS AND PENSION BENEFITS

DIVISION I

GENERAL PROVISIONS

54. The period of continuous employment of an employee is the period during which the employee is employed by an employer, regardless of periods of temporary interruption and periods of disability during which the member continues to accumulate benefits. A period of layoff with a right of recall shall not, for the purposes of this paragraph and notwithstanding the second paragraph of section 5, be considered to be a period of temporary interruption beyond 24 consecutive months, unless the plan so permits and the employee consents thereto.

A change of employer does not, for the purposes of a pension plan, interrupt the period of continuous employment of an employee, provided Retraite Québec authorized the transfer of obligations in the cases referred to in section 22 or in Chapter XII.

In the case of a multi-employer pension plan, even where it is not considered as such pursuant to section 11, a change of employer does not interrupt the period of continuous employment of an employee if the former employer and the successor employer are parties to the plan.

1989, c. 38, s. 54; 1994, c. 24, s. 2; 2015, c. 20, s. 61.

55. The credited service of a member is the service counted under the terms of a pension plan for the vesting or calculation of pension benefits.

1989, c. 38, s. 55.

56. (*Repealed*).

1989, c. 38, s. 56; 2000, c. 41, s. 28.

- **57.** Unless approved by Retraite Québec,
 - employer contributions paid under a defined contribution plan or under terms in a defined benefit plan which are identical to those of a defined contribution plan,
 - the method used for calculating the employer contributions, and
 - the method used for calculating the normal pension payable under the terms of a defined benefit plan or a defined contribution-defined benefit plan,

shall not, with respect to members of the same class of employees and for the same period of credited service, vary according to the number of years of employment or of credited service.

1989, c. 38, s. 57; 2015, c. 20, s. 61.

58. Except in the following cases, a pension paid under a pension plan must be a life pension and may not be paid in any other form during the lifetime of the member or, in the case of a spouse's pension, during the lifetime of the spouse:

- (1) the temporary pension provided for in section 91.1 and the pension derived from that pension;
- (2) a pension provided for in section 67.2; and
- (3) the bridging benefit representing the fraction of a pension which, under the terms of the pension plan, must be paid to the member or beneficiary until a date that is neither earlier than the date on which the member becomes eligible for an early retirement pension payable under the Act respecting the Québec Pension Plan (chapter R-9), the Canada Pension Plan (Revised Statutes of Canada, 1985, chapter C-8), the Old Age Security Act (Revised Statutes of Canada, 1985, chapter O-9) or an income security program prescribed by regulation, nor later than the date on which the member becomes eligible for a retirement pension under such an Act or program.

A plan to which Chapter X applies, however, may provide that payment of a pension may be suspended for a given period at the request of the member when the member is re-employed by the employer party to the plan or, in the case of a multi-employer plan, even a plan not considered to be a multi-employer plan pursuant to section 11, by one of the employers who are parties to the plan, subject to the following conditions:

- (1) if the suspension begins before the first day of the month following the month during which the member attains 65 years of age or, in the case of a member who attains 65 years of age on the first day of a month, before that day, the member accumulates new benefits in respect of his work during the period of suspension preceding that day, in accordance with the terms and conditions provided under the plan for employees of his class, up to the maximum period of service that may be credited to him under the pension plan for the purpose of calculating the normal pension;
- (2) if the pension suspended is a retirement pension reduced by reason of payment having begun before the normal retirement age, the reduction must be recalculated at the end of the suspension;
- (3) if the suspension continues or begins after the day referred to in subparagraph 1, the pension of which payment was suspended shall be adjusted to take account of any recalculation of the reduction pursuant to subparagraph 2 and of any new accumulated benefits referred to in subparagraph 1. The adjustment formula shall be the same as that prescribed in the plan, pursuant to the second paragraph of section 79, for the amount of pension not paid during a postponement period.

Furthermore, the additional pension resulting from the contributions paid during suspension of the pension shall be established in accordance with the rules set forth in section 78 for the calculation of the minimum value of the pension resulting from contributions paid during a postponement period.

A member who is entitled to a retirement pension, other than the normal pension, the payment of which is suspended under the second paragraph may, after the day mentioned in subparagraph 1 of that paragraph, apply for the payment of the pension as provided in section 77, which applies with the necessary modifications.

Suspension of the pension ends upon termination of the member's period of continuous employment or at the time established under paragraph 2 of section 80.

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1989, c. 38, s. 58; 1994, c. 24, s. 3; 1997, c. 19, s. 5; 2000, c. 41, s. 29; 2008, c. 21, s. 3.
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- **59.** The periodic amounts payable as pension benefits, except in the case of the pension provided for in section 67.2, shall be equal unless
- (0.1) the pension is adjusted under the second paragraph of section 58 or the second or third paragraph of section 67.4;
 - (1) the pension is replaced
- (a) by a temporary pension provided for in section 91.1 or a pension derived therefrom, in which cases only the periodic amounts relating to that part of the pension that is not replaced must be equal;

207.5. (Repealed).

2000, c. 41, s. 114; 2015, c. 29, s. 49.

207.6. A pension plan may not be amended after the date of termination, except to allow any increase in pension benefits resulting from the allocation of surplus assets.

This section shall not operate to prevent Retraite Québec from registering an amendment to the plan made before the date of termination after that date.

2000, c. 41, s. 114; 2015, c. 20, s. 61; 2015, c. 29, s. 50.

DIVISION II

WINDING-UP

- § 1. *Interpretation and scope*
- **208.** In this division, the term "date of termination", where used in relation to a multi-employer pension plan that is amended to allow for the withdrawal of an employer, means the date at which the value of the benefits accrued to the members and beneficiaries affected is determined.

1989, c. 38, s. 208; 1992, c. 60, s. 26; 2000, c. 41, s. 116.

209. Sections 216 and 218 do not apply to the payment in full of the benefits of members or beneficiaries affected by the withdrawal of an employer from a multi-employer pension plan or by the termination of a pension plan where the value of the plan assets is equal to or greater than the value of its liabilities, both values being established in accordance with this chapter at the date of termination. If the plan assets nevertheless do not permit payment in full of the benefits of the members and beneficiaries affected, the payment shall be proportional to the value of their accrued benefits.

1989, c. 38, s. 209; 2000, c. 41, s. 116.

- § 2. Calculation of benefits and order of priority for their payment
- **209.1.** Within 30 days after Retraite Québec authorizes an amendment allowing for the withdrawal of an employer from a multi-employer pension plan, the pension committee shall pay in full the benefits of each member and beneficiary affected who has applied therefor, in accordance with the terms of the report transmitted pursuant to the second paragraph of section 202, if any.

2000, c. 41, s. 117; 2015, c. 20, s. 61.

210. No earlier than 30 and no later than 60 days after the date on which the termination report is received by Retraite Québec, unless additional time is granted by Retraite Québec, the pension committee shall pay in full the benefits of each member and beneficiary affected in accordance with the termination report and this Act.

However, the committee may not proceed under the first paragraph if, within 30 days after receipt of the termination report, Retraite Québec orders the pension committee to postpone the operation for the period determined by Retraite Québec or if Retraite Québec orders pursuant to section 240.4 that an irregularity found in the report be remedied within a specified time. In the latter case, the pension committee shall submit a revised termination report to Retraite Québec, which shall acknowledge receipt thereof. The committee shall proceed to make full payment within 30 days after the expiry of the postponement period or within 30 days after the date on which Retraite Québec receives the revised report.

Notwithstanding the first paragraph, the payment in full of the benefits of a member or beneficiary in accordance with the termination report may be deferred to the date of the satisfaction of the entitlement to

surplus assets where the member so requests or where, given the method chosen by the member or beneficiary, the Taxation Act (chapter I-3) prescribes that all benefits under the plan be paid in a lump sum. Moreover, where Retraite Québec permits the employer to spread the payment of an amount due by the employer over a period of time pursuant to section 229, Retraite Québec may determine terms and conditions whereby benefits may be paid in full when payment by the employer is completed.

The pension committee may, however, at any time if the plan is solvent and with the authorization of Retraite Québec if the plan is not solvent, pay, in whole or in part and subject to the conditions it fixes, a pension, other than a pension provided for in section 67.2, that is in payment or suspended at the date of termination of the pension plan or a pension the first instalment of which becomes payable after that date. Where the amount of pension benefits paid exceeds the benefits allocated to the recipient in the termination report for the period covered by the pension benefits, the recipient shall repay the overpayment; otherwise, the overpayment may be deducted from the benefits that remain to be paid to him.

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1989, c. 38, s. 210; 1992, c. 60, s. 27; 2000, c. 41, s. 118; 2008, c. 21, s. 19; 2015, c. 20, s. 61.
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210.1. The share of the surplus assets to which a member or beneficiary is entitled may be paid in a lump sum or, to the extent permitted by the Taxation Act (chapter I-3), be transferred as provided for in section 98, which applies with the necessary modifications, or be used for the purchase of an annuity or another benefit, according to the option specified by the member or beneficiary to the pension committee.

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2000, c. 41, s. 119; 2015, c. 29, s. 51.
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211. Every member affected by the termination of a pension plan who was still active on the date of termination is entitled, in respect of the service credited to him under the plan to the date of termination, to the value of the normal pension, including benefits ancillary to any pension to which he would have been entitled if he had retired on the day preceding the date of termination.

Where the termination of the plan is brought about by the division, merger, alienation or closing down of an enterprise or part of an enterprise, the same applies to every member whose active membership in the plan ceased during the period extending from the date the members were informed of the event and the date of termination.

The amount of the pension shall, where the pension plan provides that it is to be calculated according to the progression of the member's remuneration, be determined so as to take the progression into account until the date of termination, unless the plan provides expressly that it must be taken into account beyond the date of termination

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1989, c. 38, s. 211; 1994, c. 24, s. 17; 2000, c. 41, s. 120.
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- 212. The value of the benefits accrued to the members and beneficiaries affected by the withdrawal of an employer from a multi-employer pension plan or by the termination of a pension plan shall be determined at either of the following dates, on the basis of the assumptions referred to in section 61 that were used at that date to determine the value of the pension benefits to which section 60 applies that were vested at that date:
- (1) the date the member ceased to be an active member, if the benefits whose value is being determined are those accrued to
- (a) a member whose active membership ended before the withdrawal or termination and who, at the date of termination, had already opted, within the time limit set out in subparagraph 1 of the second paragraph of section 99, for the satisfaction of his or her rights under the plan or still had time to exercise such an option, or a beneficiary whose rights under the plan derive from the service credited to such a member; or
 - (b) a member to whom the second paragraph of section 211 applies; or
- (2) the date of termination, if the benefits whose value is being determined are those accrued to any other member or beneficiary affected by the withdrawal or termination.

The benefits accrued to the members and beneficiaries referred to in subparagraph 1 of the first paragraph shall bear interest, from the date their value is determined to the date of termination, at the rate used for the purposes of the determination.

The first paragraph does not apply to a pension that must be insured pursuant to section 237 or to a pension referred to in paragraph 3 of section 200.

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1989, c. 38, s. 212; 1994, c. 24, s. 18; 2000, c. 41, s. 121.
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212.1. The value of the assets of a terminated pension plan at the date of termination shall be established according to their liquidation value or an estimate thereof, reduced by the estimated amount of the costs to be paid out of the pension fund upon termination.

The liabilities of a terminated pension plan at the date of termination shall comprise, in addition to the value of the benefits determined under section 212, the value of any pension that must be insured pursuant to section 237, such value being determined

- (1) in cases where the pension was insured before the date of termination, on the basis of the assumptions referred to in section 61 that were used at that date;
- (2) in cases where the pension was insured after the date of termination but before the preparation of the termination report, by discounting at the date of termination the premium paid to the insurer, according to the estimated rate of return of the pension fund from the date of termination to the date on which the pension was insured; and
- (3) in all other cases, by discounting at the date of termination according to the estimated rate of return of the pension fund, for the period extending from the date of termination to the date of the termination report, the premium that would have been paid to an insurer at the date of the termination report, increased by a margin that allows for any variation in the cost of purchasing the pension between the latter date and the probable date of purchase.

In the cases referred to in subparagraphs 2 and 3 of the second paragraph, the liabilities shall also comprise the value of the pension payments to be made to a member by the pension fund between the date of termination and the date the pension begins to be paid by an insurer, such value being determined according to the rate referred to in the relevant subparagraph.

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2000, c. 41, s. 122.
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213. (*Replaced*).

1989, c. 38, s. 213; 1992, c. 60, s. 28; 1994, c. 24, s. 18.

214. (*Repealed*).

1989, c. 38, s. 214; 2000, c. 41, s. 123.

215. (*Repealed*).

1989, c. 38, s. 215; 2000, c. 41, s. 123.

- **216.** Any benefit derived from obligations arising from an amendment to the pension plan related to service completed in a period preceding the effective date of the amendment shall, for payment purposes, be reduced
- (1) by 100%, if the period from the effective date of the amendment to the date of termination is less than one year;
 - (2) by 80%, if the period is one year or more, but less than two years;

- (3) by 60%, if the period is two years or more, but less than three years;
- (4) by 40%, if the period is three years or more, but less than four years;
- (5) by 20%, if the period is four years or more, but less than five years.

1989, c. 38, s. 216; 1992, c. 60, s. 29; 2000, c. 41, s. 124.

- **217.** Except in the case of a share of the surplus assets, any amount due to a member or beneficiary which, pursuant to the pension plan and the provisions of this Act, must be paid following the withdrawal of an employer from a multi-employer pension plan or the termination of the plan shall bear interest, from the date of termination to the date of payment, at the rate used to determine the value of the person's accrued benefits. The rate of interest must be the rate mentioned in section 44 or 45 and which is applicable to the contributions paid under the plan if the amount due is due
 - (1) under a defined contribution plan;
 - (2) under provisions of the plan which relate to additional voluntary contributions;
 - (3) under provisions which, in a defined benefit plan, are identical to those of a defined contribution plan;
 - (4) as member contributions that exceed the limits set under section 60; or
- (5) as amounts credited to the plan following a transfer, even a transfer other than a transfer under Chapter VII.

1989, c. 38, s. 217; 1992, c. 60, s. 30; 2000, c. 41, s. 125; 2006, c. 42, s. 33.

- **218.** Where an employer withdraws from a multi-employer pension plan or a pension plan is terminated, the amounts to which the members and beneficiaries affected are entitled shall be paid out in the following order:
 - (1) amounts corresponding to the following values, concurrently:
 - (a) the value of the additional voluntary contributions paid into the pension fund or to the insurer;
- (b) the value of the member or employer contributions paid into the pension fund under provisions which, in a defined benefit plan, are identical to those of a defined contribution plan; and
- (c) the value of amounts received by the pension plan following a transfer, even a transfer other than a transfer under Chapter VII;
- (2) the value of other benefits, excluding those referred to in subparagraph 4, accrued under the plan and reduced under section 216;
 - (3) the value of any benefit reduction under section 216; and
- (4) the value of benefits payable to members under pension plan terms granting them compensation for cessation of continuous employment due to technological or economic changes in the employer's enterprise or to the division, merger, alienation or closing down of the enterprise.

If the assets are insufficient for the full satisfaction of the rights that are collocated in the same rank, payment shall be made proportionately to the value of the benefits concerned.

The benefits referred to in the first and second paragraphs are the benefits accrued under the plan at the date of termination. The value of those benefits must be established at that date, and is increased by the interest calculated in accordance with section 217.

1989, c. 38, s. 218; 1992, c. 60, s. 31; 2000, c. 41, s. 126; 2006, c. 42, s. 34.

- § 3. *Distribution of the assets*
- **219.** (Repealed).

1989, c. 38, s. 219; 1992, c. 60, s. 32.

220. Where an employer withdraws from a multi-employer pension plan or a multi-employer pension plan is terminated, the assets of the plan shall be distributed among the groups of benefits constituted pursuant to this subdivision, according to the value of the benefits in each group and the order of payment established by this Act.

The assets of the plan shall, for the purpose of such distribution, be increased by the amount representing the contributions that any employer who is a party to the plan has, at the date of termination, failed to pay into the pension fund or to the insurer.

1989, c. 38, s. 220; 2000, c. 41, s. 127.

221. The benefits of the members or beneficiaries not affected by the withdrawal of an employer from a multi-employer pension plan shall be determined at the date of termination, in accordance with sections 211 to 216.

1989, c. 38, s. 221; 2000, c. 41, s. 128.

222. Where an employer withdraws from a multi-employer pension plan, the benefits accumulated under the plan by the members or beneficiaries shall be divided into two groups, one of which shall consist of the benefits of the persons affected by the withdrawal.

Where two or more employers withdraw simultaneously from a multi-employer pension plan, the group of benefits of the members or beneficiaries affected by the withdrawal shall be distributed in accordance with section 223.

1989, c. 38, s. 222; 2000, c. 41, s. 129.

223. In the event of termination of a multi-employer plan, the benefits accumulated under the plan by the members or beneficiaries shall be divided into as many groups as there are employers, each group consisting of the benefits accumulated by members in respect of employment with the employer to whom the group of benefits pertains.

1989, c. 38, s. 223; 2000, c. 41, s. 203.

224. Where a member has been employed by more than one participating employer of a multi-employer pension plan, the benefits accumulated under the plan by that member shall, upon the withdrawal of one of the employers or upon the termination of the plan, be included in the group of benefits pertaining to the last employer by whom he was employed while he was an active member.

However, the first paragraph does not apply if the plan provides that, in such a case, the benefits accumulated by the member in respect of his employment with one of the employers shall be included in the group of benefits pertaining to that employer.

1989, c. 38, s. 224; 2000, c. 41, s. 130.

225. Upon the withdrawal of an employer from a multi-employer pension plan or upon the termination of a multi-employer pension plan, the remainder of the benefits accrued to the members and beneficiaries affected by the previous withdrawal of an employer shall form a separate group of benefits.

1989, c. 38, s. 225; 2000, c. 41, s. 131.

226. (*Repealed*).

1989, c. 38, s. 226; 2000, c. 41, s. 131; 2015, c. 29, s. 52.

227. Any contribution which, at the date of termination of the pension plan, an employer who is a party to a multi-employer plan has failed to pay into the pension fund or to the insurer, as the case may be, must be deducted from that portion of the assets which is allocated to the group of benefits pertaining to that employer.

1989, c. 38, s. 227; 2000, c. 41, s. 132.

- § 4. Debts of the employer
- **228.** The amount to be funded to ensure full payment of the benefits of the members or beneficiaries affected by the withdrawal of an employer from a multi-employer pension plan or the termination of a pension plan shall constitute a debt of the employer. The amount to be funded shall be established at the date of termination.

If, at the date of termination, the employer has failed to pay contributions into the pension fund or to the insurer, as the case may be, the debt shall be the amount by which the amount to be funded exceeds such contributions.

In the case of a multi-employer plan, this section applies to every employer who is a party to the plan and to whom a group of benefits under subdivision 3 consisting of the benefits of the members or beneficiaries affected by the withdrawal or termination pertains.

1989, c. 38, s. 228; 1992, c. 60, s. 33; 2000, c. 41, s. 133.

228.1. No provision of a defined benefit plan or defined benefit-defined contribution pension plan may operate to limit or reduce the obligations of an employer towards the plan because of the withdrawal of the employer from the pension plan or the termination of the pension plan.

2008, c. 21, s. 20.

229. Any amount owed by an employer under section 228 must, upon its determination, be paid into the pension fund or to the insurer, as the case may be. However, Retraite Québec may, on the conditions it determines, allow any employer to spread the payment of such amount over a period of not more than five years.

Any amount not paid into the pension fund or to the insurer shall bear interest from the date of default, at the rate determined pursuant to section 61 that was applicable at the date of termination.

1989, c. 38, s. 229; 2000, c. 41, s. 134; 2015, c. 20, s. 61.

230. Any amount paid by an employer under this subdivision, including any amount recovered after the date of termination, particularly in respect of contributions outstanding and unpaid at the date of termination, shall be applied to the payment of benefits of members or beneficiaries in the order of priority established under this Act.

1989, c. 38, s. 230; 2000, c. 41, s. 135.

 $\S~4.0.1.$ — Payment options in the event of insufficient assets

2009, c. 1, s. 2.

- **230.0.0.1.** This subdivision applies to pension plans to which Chapter X applies if
- (1) the pension plan is amended to allow for the withdrawal of a participating employer or it is terminated;
- (1.1) the employer who is a party to the plan is bankrupt or subject to an order or judgment under the Companies' Creditors Arrangement Act (R.S.C. 1985, c. C-36), Part III of the Bankruptcy and Insolvency Act (R.S.C. 1985, c. B-3) or the Winding-up Act (R.S.C. 1985, c. W-11);
- (2) the date of withdrawal of the employer or the date of termination of the plan is subsequent to 30 December 2008 and the date of the employer's bankruptcy or the date of the order or the judgment referred to in paragraph 1.1;
 - (2.1) (paragraph repealed);
- (3) on the date of withdrawal of the employer or termination of the plan, the assets do not permit payment in full of the benefits of the members and beneficiaries affected by the withdrawal or termination; and
- (4) the assets necessary to pay the benefits are not likely to be recovered.

2009, c. 1, s. 2; 2010, c. 41, s. 3; 2011, c. 32, s. 1; 2015, c. 29, s. 53.

230.0.0.2. (Repealed).

2009, c. 1, s. 2; 2015, c. 29, s. 54.

230.0.0.3. A member or beneficiary affected by the withdrawal of an employer or the termination of a plan, to whom a pension is being paid on the date of withdrawal or termination and whose benefits are reduced by reason of insufficient assets, may request that his or her pension be guaranteed by an insurer or choose a pension paid out of the assets administered by Retraite Québec under section 230.0.0.4.

2009, c. 1, s. 2; 2015, c. 20, a. 61; 2015, c. 29, s. 55.

230.0.0.4. Retraite Québec shall exercise the powers of the pension committee with respect to the members and beneficiaries of a pension plan who chose the method of payment provided for in section 230.0.0.3 and over the assets of the plan that correspond to the part of the benefits of the members and beneficiaries payable under section 218. The pension committee, or the person or body to which such powers have been delegated or granted, becomes, to the same extent, disqualified from exercising such powers.

Retraite Québec may administer all or some of the plans together. In such a case, the plans administered together are deemed, for that purpose, to constitute a single plan.

In the exercise of such powers, Retraite Québec shall have the same obligations and liability as the pension committee.

2009, c. 1, s. 2; 2015, c. 20, s. 61; 2015, c. 29, s. 56.

230.0.0.5. Despite any other provision, with regard to the assets of a pension plan administered by Retraite Québec, only the members referred to in section 230.0.0.4 are considered members of the plan.

2009, c. 1, s. 2; 2015, c. 20, a. 61.

230.0.0.6. Unless Retraite Québec elects to assume them, the expenses relating to the administration of the plan by Retraite Québec are borne by the part of the pension fund it administers.

2009, c. 1, s. 2; 2015, c. 20, s. 61.

230.0.0.7. Retraite Québec may, in accordance with the terms and conditions prescribed by regulation of the Government, amend the pension plan to improve the benefits of the members and beneficiaries referred to in section 230.0.0.4.

2009, c. 1, s. 2; 2015, c. 20, s. 61.

230.0.0.8. Section 243 does not apply to a decision made by Retraite Québec in the capacity of a trustee or while exercising the powers conferred on it by this subdivision.

2009, c. 1, s. 2; 2015, c. 20, s. 61.

230.0.0.9. Retraite Québec must have an insurer guarantee the pension it pays to the members and beneficiaries referred to in section 230.0.0.4 not later than the end of the tenth fiscal year of the pension plan that follows the fiscal year during which Retraite Québec began exercising the powers of the pension committee with respect to those members and beneficiaries.

The second, third and fourth paragraphs of section 237 then apply, with the necessary modifications.

2009, c. 1, s. 2; 2011, c. 32, s. 2; 2015, c. 20, s. 61; 2015, c. 29, s. 57.

230.0.10. If the assets of the plan administered by Retraite Québec are insufficient to pay the pensions as required, to have them guaranteed by an insurer or to pay the expenses relating to the administration, Retraite Québec may reduce the pensions of the members and beneficiaries.

2009, c. 1, s. 2; 2015, c. 20, s. 61; 2015, c. 29, s. 58.

- **230.0.0.11.** The Government may make any regulation required for the purposes of this subdivision. It may, in particular,
- (1) set the rules applicable to the determination of the value of the benefits accrued to the members and beneficiaries and to the distribution of the assets and liabilities of a pension plan to determine which part of the pension fund of the plan must be administered by Retraite Québec;
- (2) prescribe the terms and conditions that make it possible to improve the benefits of the members and beneficiaries referred to in section 230.0.0.4; and
 - (3) prescribe the terms and conditions for reducing the pensions paid by Retraite Québec.

2009, c. 1, s. 2; 2015, c. 20, s. 61; 2015, c. 29, s. 59.

230.0.0.12. (Repealed).

2010, c. 41, s. 4; 2015, c. 29, s. 60.

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

230.0.1. (Section renumbered).

2000, c. 41, s. 136; 2015, c. 29, s. 61.

Note

See section 230.1.

The application for an injunction shall in itself constitute an action.

The procedure provided for in the Code of Civil Procedure (chapter C-25.01) applies except that Retraite Québec cannot be required to give security.

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1989, c. 38, s. 255; 2015, c. 20, s. 61; I.N. 2016-01-01 (NCCP).
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256. Retraite Québec may, of its own initiative and without notice, intervene in any civil action or arbitration proceedings pertaining to this Act to participate in the trial.

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1989, c. 38, s. 256; 1992, c. 60, s. 41; 2015, c. 20, s. 61; I.N. 2016-01-01 (NCCP).
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256.1. Retraite Québec may intervene before the Administrative Tribunal of Québec in any proceeding relating to this Act at any time until the end of the hearing.

If it wishes to intervene, Retraite Québec shall send a notice to each of the parties and to the Tribunal; Retraite Québec is thereupon considered to be a party to the proceeding.

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2000, c. 41, s. 168; 2015, c. 20, s. 61.
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CHAPTER XVII

PENAL PROVISIONS

- **257.** Every person is liable to a fine of \$500 to \$25,000 who:
- (1) contravenes any provision of the first paragraph of section 14 or 16, sections 17, 25, 26, 39, 41, 42, 43, 51, 58, 119, 119.1, 142.5, 158, 159, 161, 166, 168, 169, 171.1 to 176, 179 and 210, subparagraph 1 of the first paragraph of section 252 and section 307;
- (1.1) permits the allocation of all or part of the surplus assets determined upon termination of a pension plan otherwise than as provided in subdivision 4.1 of Division II of Chapter XIII;
- (2) contravenes any regulatory provision made under subparagraph 9 of the first paragraph of section 244 where, for the purposes of subparagraph 15 of the first paragraph of the said section, such contravention is punishable by a penalty;
 - (3) contravenes any order issued by Retraite Québec under section 35, 240.4 or 248;
- (4) makes a false declaration, hinders or attempts to hinder Retraite Québec, a member of its personnel, a provisional administrator, any person to whom Retraite Québec has delegated a power or any inspector appointed by Retraite Québec, in the carrying out of its or his duties;
 - (5) makes a false declaration for the purpose of obtaining
 - (a) a temporary pension under section 91.1;
 - (b) a temporary or life pension or a lump-sum payment under section 92:
- (c) a temporary or life pension or a lump-sum payment payable under a pension plan or annuity contract prescribed by regulation pursuant to the third paragraph of section 98.

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1989, c. 38, s. 257; 1992, c. 60, s. 42; 1997, c. 19, s. 18; 2000, c. 41, s. 169; 2006, c. 42, s. 44; 2015, c. 20, s. 61; 2015, c. 29, s. 70.
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- **258.** Every person is liable to a fine of not over \$2,000 who
- (1) contravenes any provision of sections 111 to 114, 143 to 145, 165.1, 182, 200, 202, 207.1 to 207.4, 209.1, the second paragraph of section 310.1 and sections 313 and 314;

(2) contravenes any regulatory provision other than the provision referred to in paragraph 2 of section 257, where, for the purposes of subparagraph 15 of the first paragraph of section 244, such contravention is punishable by a penalty.

1989, c. 38, s. 258; 1992, c. 60, s. 43; 2000, c. 41, s. 170; 2006, c. 42, s. 45; 2015, c. 29, s. 71.

259. Where any of the offences under sections 257 and 258 is committed by a legal person, the amount of the fine is three times the amount prescribed.

1989, c. 38, s. 259.

260. Every person who, through encouragement or advice or by his orders, incites another person to commit an offence under section 257 or 258 is guilty of the offence and of any other offence committed by the other person as a result of such encouragement, advice or orders, if he knew or ought to have known that it would probably result in the commission of the offence.

1989, c. 38, s. 260.

261. Every person who, by his act or omission, aids another person to commit an offence under section 257 or 258 is guilty of the offence as if he had committed it himself, if he knew or ought to have known that his act or omission would probably result in aiding the commission of the offence.

1989. c. 38. s. 261.

262. In the event of a subsequent offence, the fine is twice the amount prescribed for a first offence.

1989, c. 38, s. 262.

263. In determining the fines, the court shall take into account the prejudice involved and the benefits derived from the offence, if any.

1989, c. 38, s. 263.

CHAPTER XVIII

MISCELLANEOUS AND TRANSITIONAL PROVISIONS

- **264.** Unless otherwise provided by law, the following amounts or contributions are unassignable and unseizable:
 - (1) all contributions paid or payable into the pension fund or to the insurer, with accrued interest;
 - (2) all amounts refunded or pension benefits paid under a pension plan or this Act;
- (3) all amounts awarded to the spouse of a member following partition or any other transfer of benefits effected pursuant to Chapter VIII, with accrued interest, and the benefits deriving from such amounts.

Except as far as they derive from additional voluntary contributions or represent a portion of the surplus assets allocated after termination of the plan, any of the above-mentioned amounts that have been transferred to a pension plan contemplated by section 98, with accrued interest, any refunds of and benefits resulting from such amounts, and any pension or payment having replaced a pension pursuant to section 92 are also unassignable and unseizable.

1989, c. 38, s. 264; 1992, c. 60, s. 44; 1997, c. 19, s. 19; 2000, c. 41, s. 171.

265. (*Repealed*).

1989, c. 38, s. 265; 1992, c. 57, s. 690.