



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-FIFTH LEGISLATURE

Bill 35
(1996, chapter 43)

Pay Equity Act

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Passage in principle 29 May 1996
Passage 21 November 1996
Assented to 21 November 1996

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EXPLANATORY NOTES

This bill is designed to eliminate the salary gap due to the systemic gender discrimination suffered by persons holding positions in predominantly female job classes.

The bill requires every employer whose enterprise employs 10 or more but fewer than 50 employees to determine the adjustments in compensation required to afford the same remuneration, for work of equal value, to employees holding positions in predominantly female job classes as to employees holding positions in predominantly male job classes.

An employer whose enterprise employs 50 or more employees must establish a pay equity plan. He must, in addition, at the request of a certified association representing employees in the enterprise, establish a separate plan applicable to those employees.

An employer whose enterprise employs 100 or more employees must also, in order to enable his employees to participate in the establishment of the pay equity plan, set up a pay equity committee which includes employee representatives.

The four stages of a pay equity plan are: the identification of predominantly female job classes and of predominantly male job classes in the enterprise; the description of the method and tools to be used to determine the value of job classes and the development of a value determination procedure; the determination of the value of job classes, comparisons between them, the valuation of differences in compensation and the determination of the required adjustments in compensation and of the terms and conditions of payment.

The results of the pay equity processes will be required to be posted in prominent places easily accessible to the employees concerned, together with information concerning employee rights and the time within which they may be exercised.

To facilitate the establishment of pay equity plans in a sector of activity, a sector-based committee composed of representatives of employers and of employees may be set up to develop plan elements that can be used in any enterprise in that sector.

The time allowed for determination of compensation adjustments or for completion of a pay equity plan is four years. The first adjustments in compensation must be paid by the employer upon the expiry of that time, although the payment of the total amount may be spread over the next four years. No employer may, in order to achieve pay equity, reduce wages or salaries paid in his enterprise.

Thereafter, the employer must maintain pay equity in his enterprise, particularly upon the creation of new positions or new job classes, the modification of existing positions or of the conditions applicable to existing positions and the negotiation or renewal of a collective agreement. When a collective agreement is being negotiated or renewed, the certified association is also responsible for ensuring that pay equity is maintained.

Provisions dealing with pay equity plans or pay relativity plans completed or in progress before the Act is assented to will allow such plans to be recognized, in whole or in part, as being consistent with the new Act.

The bill provides for remedies that may be exercised before the Commission de l'équité salariale and pursued before the Labour Court. It also contains provisions defining regulatory powers as well as penal provisions and transitional and consequential provisions.

The Commission de l'équité salariale, to be established under the Pay Equity Act, will be responsible for the administration of the Act. The Minister of Labour will be responsible for the carrying out of the Act.

LEGISLATION AMENDED BY THIS BILL:

- Charter of human rights and freedoms (R.S.Q., chapter C-12).

Bill 35

Pay Equity Act

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

PURPOSE AND SCOPE

1. The purpose of this Act is to redress differences in compensation due to the systemic gender discrimination suffered by persons who occupy positions in predominantly female job classes.

Differences in compensation are assessed within the enterprise, except if there are no predominantly male job classes in the enterprise.

2. This Act has effect notwithstanding any provision of an agreement, an individual employment contract, a collective agreement within the meaning of paragraph *d* of section 1 of the Labour Code (R.S.Q., chapter C-27), a decree made under the Act respecting collective agreement decrees (R.S.Q., chapter D-2), a collective agreement made pursuant to the Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., chapter R-20) and any other agreement respecting conditions of employment, including a government regulation giving effect thereto.

3. This Act is binding on the Government, government departments and bodies and the mandataries thereof.

For the purposes of this Act,

(1) the Conseil du trésor is the employer as regards the Government, government departments and bodies whose personnel

is appointed or remunerated in accordance with the Public Service Act (R.S.Q., chapter F-3.1.1), colleges, school boards and institutions to which the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors (R.S.Q., chapter R-8.2) applies and any body whose employees are subject to conditions of employment or standards and scales of remuneration which by law are determined or approved by the Government;

(2) the Government, government departments and bodies whose personnel is appointed or remunerated in accordance with the Public Service Act, colleges, school boards and institutions to which the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors applies and any body whose employees are subject to conditions of employment or standards and scales of remuneration which by law are determined or approved by the Government form a single enterprise;

(3) the bargaining agent appointed under the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors shall exercise the rights and assume the obligations of a certified association with regard to the public and parapublic sectors.

4. This Act applies to every employer whose enterprise employs 10 or more employees.

Anyone who causes work to be done by an employee is an employer.

5. For the purposes of this Act, a federation of savings and credit unions or a confederation of savings and credit unions within the meaning of the Savings and Credit Unions Act (R.S.Q., chapter C-4.1) is deemed, upon the forwarding of a notice to the Commission de l'équité salariale, to form a single enterprise. The federation or confederation is thereupon the employer of all the employees of the savings and credit unions and, where applicable, of the federations of savings and credit unions affiliated with it. The federation or confederation shall inform the employees and the certified associations within the meaning of the Labour Code representing employees of the savings and credit unions or federations of the forwarding or revocation of a notice hereunder.

6. For the purposes of this Act, the number of employees in an enterprise is the average number of employees in the enterprise in the course of the 12-month period preceding (*insert here the date of coming into force of this section*). The average number is determined

on the basis of the number of employees entered on the employer's payroll for each pay period.

In the case of an enterprise that begins its operations in the 12-month period preceding (*insert here the date of coming into force of this section*) or after that date, the reference period is the 12-month period beginning on the date on which the first employee commenced employment with the employer.

7. A person remains subject to the obligations originally imposed on him under this Act regardless of a change in the number of employees in the enterprise.

8. Any natural person who undertakes to do work for remuneration under the direction or control of an employer is an employee, except

(1) a student who works during the school year in an establishment chosen by an educational institution under a program recognized by the Ministère de l'Éducation which combines practical experience with academic training or a student who works in a field related to his field of study in the educational institution he is attending;

(2) a student employed for his vacation period;

(3) a trainee undergoing professional training recognized by law;

(4) a trainee under a vocational integration contract provided for in section 61 of the Act to secure the handicapped in the exercise of their rights (R.S.Q., chapter E-20.1);

(5) a person who, while participating in a program to achieve entry on the labour market, is eligible for last resort assistance benefits under the Act respecting income security (R.S.Q., chapter S-3.1.1) and in respect of whom the provisions concerning the minimum wage in the Act respecting labour standards (R.S.Q., chapter N-1.1) do not apply;

(6) a senior management officer;

(7) a police officer or a fire fighter.

9. This Act does not apply to an independent operator, that is, a natural person who does business for his own account, by himself or within a partnership, and has no employees.

An independent operator who in the course of his business carries on activities for a person similar to or connected with those carried on in the enterprise of that person is considered an employee of that person, except

(1) where he carries on the activities

(a) simultaneously for several persons;

(b) under a remunerated or unremunerated service exchange agreement with another independent operator carrying on similar activities; or

(c) for several persons in turn and supplies the required equipment, and the work done for each person is of short duration; or

(2) in the case of activities that are only intermittently required by the person who retains his services.

CHAPTER II

APPLICATION

DIVISION I

PROVISIONS APPLICABLE TO ENTERPRISES EMPLOYING 100 OR MORE EMPLOYEES

§ 1. — *General provisions*

10. An employer whose enterprise employs 100 or more employees shall establish, in accordance with this Act, a pay equity plan applicable throughout his enterprise.

The employer may, except as regards establishments covered by an agreement under the second paragraph of section 11, apply to the Commission for authorization to establish a separate plan applicable to one or more establishments, if it is warranted by regional disparities.

11. At the request of a certified association representing employees of the enterprise, the employer shall establish a pay

equity plan applicable to those employees throughout the enterprise or one or more plans applicable to those employees in accordance with the authorization obtained under the second paragraph of section 10.

As well, the employer and a certified association representing employees of the enterprise may agree to establish one or more separate plans applicable to those employees in one or more establishments of the enterprise that are not covered by an authorization under the second paragraph of section 10. In that case, the employer may establish a separate plan applicable in such establishment or establishments to employees who are not represented by the certified association.

12. Two or more employers may develop a common procedure for the establishment of a pay equity plan applicable to each of their enterprises. The development of a common procedure requires the agreement of the pay equity committees of each of the enterprises.

Each employer remains responsible for the establishment of the pay equity plan in his enterprise in accordance with the other requirements of this Act.

13. In an enterprise where there are no predominantly male job classes, the pay equity plan shall be established in accordance with the regulations of the Commission.

14. At the Commission's request, an employer shall post, in prominent places easily accessible to employees, or distribute to the employees, every information document concerning pay equity furnished to him by the Commission.

15. No employer, certified association or member of a pay equity committee may, in the establishment of a pay equity plan, act in bad faith or in an arbitrary or discriminatory manner or exhibit gross negligence with regard to employees in the enterprise.

§ 2. — *Participation of employees in pay equity committee*

16. An employer shall enable employees to take part in the establishment of a pay equity plan by setting up a pay equity committee on which they are represented.

17. A pay equity committee shall be composed of not less than three members.

Not less than two-thirds of the members of the pay equity committee shall represent the employees. Not less than half of the members representing the employees must be women.

The other members of the committee shall represent and be designated by the employer.

18. Where all the employees concerned by a pay equity plan are represented by a certified association, the association shall designate their representatives on the pay equity committee. The association may come to an agreement with the employer for the application of a mode of employee participation different from that provided for in this subdivision, subject to at least half of the committee members representing the employees being women.

19. Where a pay equity plan only concerns employees who are not represented by a certified association, those employees shall designate their representatives on the pay equity committee.

20. Where the employees concerned by a pay equity plan are represented by more than one certified association or where some of those employees are not represented by a certified association, the representatives of the employees on the pay equity committee shall be designated as follows :

(1) each certified association representing employees shall designate one member;

(2) the employees not represented by a certified association shall designate one member;

(3) if the employees represented by one certified association or the employees not represented by a certified association form the majority of the employees concerned by the plan, that certified association or those non-represented employees shall designate the majority of the members representing the employees.

The employer may grant a certified association referred to in subparagraph 1 of the first paragraph or the employees referred to in subparagraph 2 of the first paragraph the right to designate more than one member. In determining the number of additional members, the employer must, while complying with the provisions of subparagraph 3 of the first paragraph, take into account the number of employees represented by the certified association in relation to the number of employees not represented by a certified association.

21. The number of members that may be designated under the first paragraph of section 20 to represent the employees on a pay equity committee may not exceed 12.

If the application of the first paragraph of section 20 would cause their number to exceed 12, the mode of designation of the 12 members shall be determined by agreement between the employer and the employees or, failing agreement, by the Commission on the application of the employer, of a certified association or of an employee not represented by a certified association. In determining the mode of designation, the Commission shall take into account the number of employees represented by a certified association in relation to the number of employees not represented by a certified association, as well as the representation of predominantly female job classes and predominantly male job classes among those employees.

22. A certified association or an employee not represented by a certified association may apply to the Commission for a determination as to whether the number of members representing the association or the employee on the pay equity committee is in conformity with the provisions of section 20.

23. The employer shall allow employees not represented by a certified association to hold a meeting in the workplace for the purpose of designating their representatives on the pay equity committee.

24. The designation of the representatives of the employees on a pay equity committee shall be effected so as to ensure representation of the major predominantly female job classes and of the major predominantly male job classes.

25. The representatives of the employees as a group and the representatives of the employer as a group have one vote, respectively, within the pay equity committee.

If, on a given question, a majority decision is not reached among the representatives of the employees, the employer shall decide the question.

26. The employer shall provide the required training to every employee who, as a member of a pay equity committee, takes part in the establishment of a pay equity plan.

The cost of the training is deemed to be an eligible training expenditure within the meaning of section 5 of the Act to foster the development of manpower training (1995, chapter 43).

27. A pay equity committee shall establish its own operating rules, including rules governing the holding of meetings.

28. An employee who is a member of a pay equity committee may, without loss of pay, absent himself from work for the time required to attend training sessions and meetings of the pay equity committee and to perform any committee task. The employee shall be deemed to be working and shall be remunerated at the normal rate during that time.

29. The employer is bound to disclose to the members of the pay equity committee the information necessary to establish the pay equity plan. The employer shall also facilitate the collection of the necessary data.

The members of the pay equity committee are bound to protect the confidentiality of any information and data obtained.

30. If the certified association or the employees do not designate their representatives on a pay equity committee, the employer shall act alone to establish the pay equity plan applicable to his employees.

In such case, the employer shall send a notice to the Commission advising it that the association or the employees are not or are no longer participating in the pay equity committee and indicating that he is acting alone to devise the pay equity plan applicable to his employees. The employer shall post a copy of the notice in prominent places easily accessible to employees.

DIVISION II

PROVISIONS APPLICABLE TO ENTERPRISES EMPLOYING 50 OR MORE BUT FEWER THAN 100 EMPLOYEES

31. An employer whose enterprise employs 50 or more but fewer than 100 employees shall establish, in accordance with this Act, a pay equity plan applicable throughout his enterprise.

The employer may, except as regards establishments covered by an agreement under the second paragraph of section 32, apply to the Commission for authorization to establish a separate plan applicable to one or more establishments, if it is warranted by regional disparities.

The employer may elect to set up a pay equity committee in accordance with sections 16 to 29.

32. At the request of a certified association representing employees of the enterprise, the employer and the association shall establish jointly a pay equity plan applicable to those employees throughout the enterprise or one or more plans applicable to those employees in accordance with the authorization obtained under the second paragraph of section 31.

As well, the employer and a certified association representing employees of the enterprise may agree to establish one or more separate plans applicable to those employees in one or more establishments of the enterprise that are not covered by an authorization under the second paragraph of section 31. In that case, the employer may establish a separate plan applicable in such establishment or establishments to employees not represented by the certified association.

As regards the joint establishment of a pay equity plan, the employer and the certified association have the same obligations as those imposed on a pay equity committee by Chapter IV.

Section 29, adapted as required, shall apply.

33. Sections 12 to 15, adapted as required, shall apply.

DIVISION III

PROVISIONS APPLICABLE TO ENTERPRISES EMPLOYING FEWER THAN 50 EMPLOYEES

34. An employer whose enterprise employs fewer than 50 employees shall determine the adjustments in compensation required to afford the same remuneration, for work of equal value, to employees holding positions in predominantly female job classes as to employees holding positions in predominantly male job classes. The employer must ensure that the process does not discriminate on the basis of gender.

The employer may elect to establish a pay equity plan subject to the same conditions as those applicable to enterprises employing 50 or more employees. In such case, the employer shall send a notice to the Commission and post a copy in a prominent place easily accessible to employees.

35. The employer shall, at the expiry of the time limit set out in section 37, post in prominent places easily accessible to employees a notice setting out the adjustments in compensation determined by the employer in order to achieve pay equity or setting out that no compensation adjustments are required.

The posting shall also include information concerning the rights exercisable under section 76 and the remedies available under section 99.

36. Sections 12 to 15, adapted as required, shall apply.

The provisions governing the terms and conditions of payment of compensation adjustments contained in sections 70 to 74 shall apply to the employer.

DIVISION IV

TIME FRAME

37. The adjustments in compensation required to achieve pay equity must be determined or a pay equity plan must be completed within four years of the coming into force of this chapter.

38. In an enterprise where there are no predominantly male job classes, the adjustments in compensation must be determined or the pay equity plan must be completed either within the time limit set out in section 37 or within two years of the coming into force of the regulation made by the Commission under subparagraph 1 or 2 of the first paragraph of section 114, whichever time limit expires last.

39. In the case of an enterprise which begins its operations in the 12-month period preceding (*insert here the date of coming into force of section 6*) or after that date, the time limits set out in sections 37 and 38 shall apply from the first anniversary of the beginning of its operations.

DIVISION V

CHANGED CIRCUMSTANCES IN ENTERPRISE AND MAINTENANCE OF PAY EQUITY

40. The employer shall, after adjustments in compensation have been determined or a pay equity plan has been completed, maintain pay equity in his enterprise.

In particular, the employer shall ensure maintenance of pay equity upon the creation of new positions or new job classes, the modification of existing positions or of the conditions applicable to existing positions and the negotiation or renewal of a collective agreement. When a collective agreement is being negotiated or renewed, the certified association concerned shall also ensure that pay equity is maintained.

41. If, before the completion of a pay equity plan, an association is certified under the Labour Code to represent employees in the enterprise, obligations relative to the establishment of the plan remain unchanged.

The employer may, at the request of the association, elect to establish a pay equity plan applicable to the employees represented by the association.

42. The alienation of the enterprise or the modification of its juridical structure shall have no effect upon obligations relative to adjustments in compensation or to a pay equity plan, which shall be binding on the new employer.

Where two or more enterprises are affected by a modification of juridical structure by amalgamation or otherwise, the provisions of this Act which apply according to the size of the enterprise shall, in respect of the enterprise resulting from the modification, be determined to be those applicable to the enterprise which employed the greatest number of employees.

43. Where, because of changed circumstances in the enterprise, the compensation adjustments or the pay equity plan are no longer appropriate to maintain pay equity, the employer shall make the modifications necessary to maintain pay equity.

CHAPTER III

SECTOR-BASED PAY EQUITY COMMITTEE

44. A joint sector-based association, one or more employers' associations and one or more employees' associations, a parity committee or any other group recognized by the Commission, including a regional group, may, with the approval of the Commission, form a sector-based pay equity committee for a sector of activity.

45. A sector-based pay equity committee shall be composed of an equal number of representatives of employers and representatives of employees. The Commission shall lend assistance to the committee.

46. The mandate of a sector-based pay equity committee is to facilitate the work of pay equity committees, or of employers in the absence of such committees, in establishing pay equity plans, by developing the following elements:

- (1) the identification of major predominantly female job classes and of major predominantly male job classes;
- (2) the description of the method and tools to be used to determine the value of such job classes;
- (3) the determination of a value determination procedure.

A sector-based committee may also develop any other element relative to pay equity plans.

No element developed by a sector-based committee may discriminate on the basis of gender.

47. Elements developed under section 46 shall be submitted to the Commission for approval.

If they are approved by the Commission, the elements can be used in the determination of adjustments in compensation or in the establishment of a pay equity plan within an enterprise of the sector concerned. The pay equity plan must, nevertheless, be completed so as to satisfy the other requirements of this Act.

48. The Commission shall, on the request of a pay equity committee, or on request of the employer or a certified association referred to in section 32 in the absence of such a committee, furnish the documents pertaining to elements developed under section 46 that the Commission has approved.

49. Elements approved by the Commission that are used in the determination of adjustments in compensation or in the establishment of a pay equity plan cannot be the subject of a remedy before the Commission.

CHAPTER IV

PAY EQUITY PLAN

DIVISION I

GENERAL PROVISIONS

50. A pay equity plan shall include

- (1) the identification of the predominantly female job classes and of the predominantly male job classes in the enterprise;

(2) the description of the method and tools selected to determine the value of job classes and the development of a value determination procedure;

(3) the determination of the value of the job classes, a comparison between them, the valuation of differences in compensation and the determination of the required adjustments;

(4) the terms and conditions of payment of the adjustments in compensation.

51. The employer must ensure that no element of the pay equity plan discriminates on the basis of gender and that all elements are applied on a gender neutral basis.

52. Where more than one pay equity plan is being established in an enterprise and, within the scope of a plan, no predominantly male job classes have been identified, the predominantly female job classes to which the plan applies shall be compared with male job classes throughout the enterprise.

DIVISION II

IDENTIFICATION OF JOB CLASSES

53. The pay equity committee, or the employer in the absence of such a committee, shall identify predominantly female job classes and predominantly male job classes.

54. For the purpose of identifying predominantly female job classes and predominantly male job classes, positions held by employees which have the following common characteristics shall be grouped together:

(1) similar duties or responsibilities;

(2) similar required qualifications;

(3) the same remuneration, that is, the same rate or scale of compensation.

The remuneration in a job class is the highest rate of compensation or the maximum in the compensation scale applicable to the positions within the class.

A job class may consist of only one position.

55. A job class shall be considered predominantly female or predominantly male if 60 per cent or more of the positions in that class are held by employees of the same sex.

A job class may also be considered predominantly female or male if

(1) the difference between the rate of representation of women or men in the job class and their rate of representation in the total workforce of the employer is considered significant;

(2) the historical incumbency of the job class in the enterprise indicates that it is a predominantly female or predominantly male job class; or

(3) owing to gender stereotypes of fields of work, the job class is commonly associated with women or men.

DIVISION III

JOB CLASS VALUE DETERMINATION METHOD

56. The method selected by the pay equity committee, or by the employer in the absence of such a committee, for determining the value of job classes must allow the predominantly female job classes to be compared with predominantly male job classes.

It must highlight the specific characteristics of predominantly female job classes and those of predominantly male job classes.

57. The value determination method must take the following factors into account in respect of each job class :

(1) required qualifications;

(2) responsibilities;

(3) effort required;

(4) the conditions under which the work is performed.

58. The pay equity committee, or the employer in the absence of such a committee, shall determine the tools and devise the procedure to be used to determine the value of job classes.

DIVISION IV

DETERMINATION OF VALUE OF JOB CLASSES, VALUATION OF DIFFERENCES
IN COMPENSATION AND DETERMINATION OF REQUIRED ADJUSTMENTS

59. The pay equity committee, or the employer in the absence of such a committee, shall determine the value of each predominantly female job class and of each predominantly male job class using the value determination method selected.

60. The pay equity committee, or the employer in the absence of such a committee, shall compare predominantly female job classes and predominantly male job classes so as to value the differences in compensation between them.

61. Differences in compensation between a predominantly female job class and a predominantly male job class may be valued on an overall or individual basis or according to any other method prescribed by regulation of the Commission for valuating differences in compensation.

62. Valuation on an overall basis shall be effected by comparing each predominantly female job class with the earning curve of all predominantly male job classes.

63. Valuation on an individual basis shall be effected according to the job-to-job method of comparison, that is, by comparing a predominantly female job class with a predominantly male job class of equal value.

In applying the job-to-job method of comparison, where there are two or more predominantly male job classes of equal value but with different remuneration, comparisons are made on the basis of the average remuneration for those job classes.

Where the job-to-job method of comparison cannot be applied to a predominantly female job class, its remuneration shall be valued proportionately to the remuneration of the predominantly male job class the value of which is closest to its value.

64. No method of comparison may be used which excludes a predominantly female job class.

65. For the purposes of the valuation of differences in compensation, remuneration includes flexible pay if it is not equally available to all the job classes that are the subject of the comparison.

Flexible pay includes merit and performance pay and income from gain-sharing schemes.

66. Where benefits having pecuniary value are not equally available to all the job classes that are the subject of the comparison, the value thereof must be determined and must be included in the remuneration for the purpose of determining differences in compensation.

Benefits having pecuniary value include, in addition to indemnities and bonuses,

(1) the various forms of paid leave including sick leave, family-related and parental leave, vacation and holidays, rest and meal periods and other benefits of that nature;

(2) retirement and group protection plans including pension funds, health and disability insurance and other group plans of that nature;

(3) non-salary benefits including the supply and maintenance of tools and uniforms or other clothing, except where required under the Act respecting occupational health and safety (R.S.Q., chapter S-2.1) or except where the uniforms or other clothing are a job requirement, parking privileges, meal allowances, the supply of vehicles, payment of professional dues, paid educational leave, reimbursement of tuition fees, low-interest loans and other benefits of that nature.

67. For the purpose of valuating differences in compensation, differences between job classes based on any of the following factors shall not be taken into account:

(1) seniority, unless this factor is applied so as to discriminate on the basis of gender;

(2) an assignment of fixed duration, such as an employee training, development or orientation assignment;

(3) the region in which the employee works, unless this factor is applied so as to discriminate on the basis of gender;

(4) a shortage of skilled workers;

(5) red circling, that is, a situation where a person's compensation is maintained, following a reclassification, demotion or special

arrangement for the handicapped, at its former level until the compensation in the person's new job class attains that level;

(6) non-enjoyment of benefits having pecuniary value by reason of the temporary, casual or seasonal nature of a position.

68. The pay equity committee, or the employer in the absence of such a committee, shall determine the adjustments required to eliminate differences in compensation.

DIVISION V

TERMS AND CONDITIONS OF PAYMENT OF COMPENSATION ADJUSTMENTS

69. The employer shall determine the terms and conditions of payment of adjustments in compensation after consultation, where applicable, with the pay equity committee or with the certified association referred to in section 32.

70. Adjustments in compensation may be spread over a maximum period of four years.

Where adjustments in compensation are spread over time, the instalments must be annual and equal in amount.

71. The employer shall make the first adjustments in compensation under a pay equity plan on the date by which the plan must be completed or, in the case of an enterprise employing fewer than 50 employees, on the date by which adjustments in compensation must be determined.

If the employer fails to make adjustments in compensation within the applicable time limits, the unpaid adjustments shall bear interest at the legal rate from the time as of which they were payable.

72. The Commission may, subject to the conditions it determines, authorize an employer who shows that he is unable to pay the adjustments in compensation to extend by a maximum of three years the period over which the adjustments are spread.

The Commission may, however, where it has reasonable grounds to believe that the financial situation of the employer has improved, order payment of the adjustments or determine new terms and conditions.

The Commission may, for such purposes, require of the employer that he furnish any document or information and that he report on any steps he has taken to obtain a loan from a financial institution.

73. An employer shall not, in order to achieve pay equity, reduce the remuneration payable to any employee holding a position in his enterprise. For the purposes of this section, remuneration includes flexible pay and benefits having pecuniary value.

74. Adjustments in compensation in respect of predominantly female job classes and the terms and conditions of payment thereof determined in accordance with this Act are deemed to form part of the collective agreement applicable to employees holding positions in those job classes.

DIVISION VI

POSTING

75. Upon completion of the stages of the pay equity plan provided for in paragraphs 1 and 2 of section 50, the pay equity committee, or the employer in the absence of such a committee, shall post the results thereof in prominent places easily accessible to the employees concerned by the plan, together with information concerning the rights exercisable under section 76 and the time within which they may be exercised.

The committee or employer shall do likewise upon completion of the stages of the pay equity plan provided for in paragraphs 3 and 4 of section 50. The results of these stages shall be posted with a copy of those already posted under the first paragraph.

76. Within 60 days of a posting under section 35 or 75, any employee may, in writing, request additional information from or make observations to the pay equity committee, or to the employer in the absence of such a committee.

Where such rights are exercised, the pay equity committee, or the employer in the absence of such a committee, shall effect a new posting within 30 days of the expiry of the time limit set out in the first paragraph, with any amendments clearly indicated or with an indication that no amendments are needed. In the absence of a pay equity committee, the posting must include information concerning the remedies available under this Act and the time within which they may be exercised.

CHAPTER V

COMMISSION DE L'ÉQUITÉ SALARIALE

DIVISION I

ESTABLISHMENT AND ORGANIZATION

77. The Commission de l'équité salariale is hereby established.

78. The Commission shall be composed of three members, including a president, appointed by the Government after consultation with the bodies most representative of employers, employees and women.

The Government may, after consulting with the Commission and where it considers it necessary for the proper dispatch of business, appoint any additional member for the period of time it determines; the Government shall fix the salary and, where applicable, the additional salary, fees and allowances of any such additional member.

79. The term of office of the members of the Commission shall not exceed five years.

On the expiry of their term of office, they shall remain in office until they are replaced or reappointed.

80. The members of the Commission shall devote their time exclusively and on a full-time basis to the duties of their office.

81. The president is responsible for the direction and administration of the affairs of the Commission and shall preside at sittings of the Commission.

82. If the president is absent or unable to act, the Government shall designate a member of the Commission to replace the president subject to the conditions determined by the Government.

If another member of the Commission is absent or unable to act, the Minister may appoint another person to replace him subject to the conditions determined by the Minister.

83. The Government shall determine the remuneration, social benefits and other conditions of office of the members of the Commission.

84. The quorum at sittings of the Commission is two members.

In case of a tie-vote, the president has a casting vote.

85. A member acting alone may exercise the powers conferred on the Commission under Division I of Chapter VI.

86. No member of the Commission may, on pain of forfeiture of office, hold a direct or indirect interest in an enterprise placing his personal interest in conflict with the interest of the Commission.

However, forfeiture of office shall not be incurred if the interest devolves on the member by succession or gift provided he renounces or disposes of it with dispatch.

87. The members of the personnel of the Commission shall be appointed and remunerated in accordance with the Public Service Act.

88. The secretariat of the Commission shall be established at the place determined by the Government. A notice of the location or relocation of the secretariat shall be published in the *Gazette officielle du Québec*.

The Commission may hold sittings anywhere in Québec.

89. The Commission may make by-laws for its internal management.

90. In no case may judicial proceedings be brought against the Commission, its members, the members of its personnel or persons exercising a power delegated by the Commission for any act done or omission made in good faith in the performance of their duties.

Moreover, they are, for the purposes of an investigation, vested with the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (R.S.Q., chapter C-37), except the power to order imprisonment.

91. The Commission shall submit to the Minister, not later than 31 March, a report on its activities for the preceding calendar year.

The report shall contain, in addition, any information the Minister may require.

The Minister shall table the report in the National Assembly within 30 days of receiving it or, if the Assembly is not sitting, within 30 days of resumption.

92. The Commission shall provide the Minister with any information he requires concerning its activities.

DIVISION II

DUTIES AND POWERS

93. For the purposes of this Act, the duties of the Commission shall consist in

(1) overseeing the establishment of pay equity plans, seeing to maintenance of pay equity and, to such ends, requiring any information;

(2) giving advice to the Minister, at his request or on its own initiative, on any matter related to pay equity after consulting, if the Commission sees fit to do so, with the bodies most representative of employers, employees and women;

(3) authorizing an employer to establish a separate plan applicable to one or more establishments, if it is warranted by regional disparities;

(4) determining the mode of designation of members representing the employees on a pay equity committee, in accordance with the second paragraph of section 21;

(5) determining, on the application of a certified association or of an employee not represented by a certified association, whether the number of employees' representatives on a pay equity committee is in conformity with the provisions of section 20 and, if need be, fix the number of employees' representatives that may be designated;

(6) making non-adversary investigations, either on its own initiative or following a dispute referred to in the first paragraph of section 96 or in section 98 or following a complaint under the second paragraph of section 96 or under section 97, 99, 100, 101 or 107 and, where expedient, determining the measures to be taken to ensure that the provisions of this Act are being complied with;

(7) making non-adversary investigations following a complaint under section 19 of the Charter of human rights and freedoms (R.S.Q., chapter C-12) filed by an employee of an enterprise employing fewer

than 10 employees, alleging discrimination in compensation between a predominantly female job class and a predominantly male job class;

(8) lending assistance to enterprises in the establishment of pay equity plans by developing tools to facilitate the implementation of pay equity plans;

(9) developing tools to facilitate the achievement of pay equity in enterprises employing fewer than 50 employees;

(10) fostering the creation of sector-based pay equity committees, assisting them in their work and approving, where expedient, the pay equity plan elements developed by such committees;

(11) fostering a coordination of efforts within enterprises for the implementation of pay equity plans and encouraging the participation of the persons concerned;

(12) assisting in the training of pay equity committee members;

(13) disseminating information designed to promote understanding and acceptance of the purpose and provisions of this Act; and

(14) conducting research and studies on any matter related to pay equity, in particular by means of consultations with any person having an interest in working environments where there are no predominantly male job classes.

94. The Commission may, in exercising its powers and duties,

(1) form advisory committees and determine their powers and duties and their operating rules;

(2) retain the services of experts selected from a list drawn up by the Minister after consulting with the bodies most representative of employers, employees and women;

(3) entrust an investigation to a person other than a member of its personnel, with the obligation to submit a report within a specified time.

95. The Commission may, after expiry of the applicable time limit fixed in any of sections 37 to 39, require of an employer that he send to the Commission within the time it fixes

(1) a report describing the measures he has taken in order to achieve or, as the case may be, maintain pay equity;

(2) any relevant document or information.

The report required under subparagraph 1 of the first paragraph shall be drawn up in the form determined by regulation of the Commission and shall contain the information prescribed therein.

CHAPTER VI

REMEDIES

DIVISION I

POWERS OF INTERVENTION OF THE COMMISSION

96. Where the representatives of the employees and the representatives of the employers on a pay equity committee cannot agree as to the application of this Act, one of the parties shall submit the dispute to the Commission in writing.

In the absence of a pay equity committee in an enterprise employing 100 or more employees, an employee concerned by a pay equity plan or the certified association representing employees in the enterprise may file a complaint with the Commission within 30 days after the expiry of the time limit set out in the second paragraph of section 76.

97. An employee or a certified association representing employees of an enterprise employing 50 or more but fewer than 100 employees who is not covered by a pay equity plan referred to in section 32 may, in the absence of a pay equity committee, within 30 days after the expiry of the time limit set out in the second paragraph of section 76, file a complaint with the Commission if he is of the opinion that the employer has not established a pay equity plan in accordance with this Act.

98. Where a certified association referred to in section 32 and the employer cannot agree as to the application of this Act, one of the parties shall submit the dispute to the Commission in writing.

99. An employee or a certified association representing employees in an enterprise employing fewer than 50 employees may, after the expiry of the time limit set out in section 37, file a complaint with the Commission if the employee or association is of the opinion that the employer has not determined the required adjustments in compensation.

It is incumbent upon the employer to show that the remuneration afforded to his employees in a predominantly female job class is at least equal to that afforded, for equivalent work, to his employees in a predominantly male job class. Where necessary, the Commission shall determine the measures to be taken by the employer and the time allotted for their implementation.

Where the employer has elected to establish a pay equity plan, section 96, adapted as required, shall apply.

100. Upon receiving a complaint from an employee or a certified association representing employees in an enterprise alleging that pay equity is not being maintained in the enterprise, the Commission shall investigate the matter and determine, where applicable, the measures to be taken to correct the situation, including the establishment of a pay equity plan. Any required adjustments in compensation shall bear interest at the legal rate as of the time they should have been paid.

101. An employee may file a complaint with the Commission in respect of a contravention of section 15 within 60 days of the contravention or of the time the employees became aware thereof.

The Commission shall determine the measures to be taken to restore the employee's rights and, where applicable, any measure required for the achievement of pay equity in accordance with this Act.

102. Following a complaint or a dispute, the Commission shall investigate the matter and endeavour to effect a settlement between the parties.

103. If a settlement is reached between the parties, it shall be evidenced in writing.

If no settlement is possible, the Commission shall determine the measures to be taken so that pay equity may be achieved in accordance with this Act as well as the time allotted for their implementation.

104. Where a party is dissatisfied with the measures determined by the Commission, the party may apply to the Labour Court within 90 days of the decision of the Commission.

105. Where the measures determined by the Commission are not implemented to its satisfaction within the allotted time, the Commission shall refer the matter to the Labour Court.

106. Where the Commission finds, after having investigated on its own initiative, that a provision of this Act is not being complied with, it may refer the matter to the Labour Court.

107. The Commission may, at the request of an employee or on its own initiative, apply to the Labour Court for any appropriate measure against any person who takes reprisals against an employee because

(1) the employee is exercising any right conferred on him by this Act;

(2) the employee has provided information to the Commission pursuant to this Act; or

(3) the employee is a witness in a proceeding under this Act.

The employee's request under the first paragraph must be made to the Commission within 30 days of the reprisals.

The Commission may, in particular, request the Labour Court to order that the injured employee be reinstated, on such date as the Labour Court considers fair and expedient in the circumstances, in the position he would have held had it not been for the reprisals.

Before the Commission may so apply to the Labour Court for measures for an employee's benefit, it must obtain the employee's written consent.

108. If it is shown to the satisfaction of the Labour Court that an employee against whom reprisals have been taken exercised a right set out in the first paragraph of section 107, there is a presumption in his favour that the reprisals were taken against him because he exercised such right and it is incumbent upon the person who exercised the reprisals to prove that they were taken for another good and sufficient reason.

The presumption under the first paragraph shall apply for a minimum period of six months after the date on which the employee exercised his right.

109. Where the Commission does not refer a matter to the Labour Court under section 107, it shall notify the employee, stating the reasons therefor.

Within 90 days after receiving such notification, the employee may submit the matter to the Labour Court.

110. Where an employer is dissatisfied with a decision of the Commission under section 72, he may submit the matter to the Labour Court.

111. The Commission shall refuse or cease to act in favour of the employee or complainant where the employee or complainant so requests, subject to the Commission's ascertaining that such request is made freely and voluntarily.

The Commission may refuse or cease to act in favour of the employee or complainant where

- (1) the employee or complainant does not have a sufficient interest; or
- (2) the complaint is frivolous, vexatious or made in bad faith.

The decision of the Commission shall state in writing the reasons on which it is based and indicate any remedy which the Commission may consider appropriate; it shall be notified to the employee or complainant. Within 90 days after receiving such notification, the employee or complainant may submit the matter to the Labour Court.

DIVISION II

JURISDICTION OF LABOUR COURT

112. The Labour Court created by the Labour Code is competent to hear and dispose of any matter referred to it regarding the application of this Act.

113. Decisions of the Labour Court are final and without appeal.

CHAPTER VII

REGULATORY PROVISIONS

114. The Commission may make regulations

(1) for the purposes of the determination of adjustments in compensation in an enterprise employing fewer than 50 employees where there are no predominantly male job classes, determining typical job classes on the basis of job classes identified in enterprises in which adjustments in compensation have already been determined and prescribing standards or weighting factors to be applied to the valuation of differences in compensation between such job classes, with due regard, in particular, for the characteristics of enterprises whose job classes are to be so compared ;

(2) for the purposes of the establishment of a pay equity plan in an enterprise where there are no predominantly male job classes, determining typical job classes on the basis of job classes identified in enterprises, in which a pay equity plan has already been completed, prescribing methods to be used to determine the value of those job classes and to value the differences in compensation between the typical job classes and the job classes in an enterprise and prescribing standards or weighting factors to be applied to such differences, with due regard, in particular, for the characteristics of enterprises whose job classes are to be so compared ;

(3) determining, for the purposes of section 61, other methods for the valuation of differences in compensation ;

(4) determining the form of the reports provided for in sections 95 and 120 and the content of the report provided for in section 120.

Regulations of the Commission are subject to the approval of the Government and may be amended by the Government upon approval.

No regulation of the Commission may be approved by the Government until it is examined by the appropriate committee of the National Assembly.

CHAPTER VIII

PENAL PROVISIONS

115. Whoever

(1) contravenes any of the provisions of the first paragraph of section 10, sections 14, 15, 16 and 23, the second paragraph of section 29, the first paragraph of section 31, sections 34, 35, 40, 71, 73 and 75, and the second paragraph of section 76,

(2) fails to furnish to the Commission a report, a document or information referred to in section 95, or furnishes false information,

(3) takes or attempts to take reprisals as described in section 107, or

(4) hinders or attempts to hinder the Commission, a member or mandatary of the Commission or a member of its personnel in the performance of its or his duties,

is guilty of an offence and is liable to a fine of not less than \$1,000 nor more than \$25,000.

For a second or subsequent offence, the amounts set out in the first paragraph shall be doubled.

116. Any person who aids, encourages, counsels, allows, authorizes or orders another person to commit an offence under this Act is guilty of an offence.

A person found guilty under this section is liable to the penalty prescribed in section 115.

117. In determining the amount of a fine, the court shall take particular account of the injury suffered and the benefits derived from the commission of the offence.

118. Penal proceedings for an offence against this Act may be instituted by the Commission.

CHAPTER IX

PROVISIONS APPLICABLE TO PAY EQUITY OR RELATIVITY PLANS
ALREADY COMPLETED OR IN PROGRESS

119. A pay equity or relativity plan completed before 21 November 1996 is deemed to have been established in accordance with this Act if it includes

(1) an identification of job classes and an indication of the proportion of women in each job class;

(2) a description of the methods and tools used to determine the value of job classes and a value determination procedure having taken into account such factors as required qualifications, responsibilities, the effort required and the conditions under which the work is performed; and

(3) a method for valuating differences in compensation.

In addition, the plan must have allowed each predominantly female job class to be compared with predominantly male job classes.

The employer must have ensured that no element of the pay equity or relativity plan discriminates on the basis of gender and that all elements are applied on a gender neutral basis.

The same applies to a pay equity or relativity plan in progress on 21 November 1996, if on that date it also meets either of the following conditions:

(1) the plan is completed in respect of at least 50% of predominantly female job classes concerned; or

(2) the determination of the value of job classes has begun.

120. Every employer whose pay equity or relativity plan was completed before 21 November 1996 shall, within 12 months of (*insert here the date of coming into force of this section*), send the Commission a report describing the plan and containing the information referred to in section 119.

The same applies to every employer whose pay equity or relativity plan is in progress on 21 November 1996. In such a case, the report must also indicate the degree of completion of the plan.

The employer shall post the report sent to the Commission and forward it to any certified association representing employees in the enterprise. Any employee or certified association of the enterprise may, within 90 days of the posting, send observations or comments on the employer's report to the Commission.

The Commission shall determine, on the basis of the information contained in the report, the observations or comments received and the verifications it makes, whether the plan meets the conditions set out in section 119.

121. If the Commission determines that the pay equity plan or pay relativity plan does not meet the conditions set out in section 119, it shall indicate to the employer the extent to which the plan falls short of meeting such conditions and determine what corrective measures are required. The employer may submit the matter to the Labour Court within 90 days of the decision of the Commission.

122. An employer whose pay equity or relativity plan is in progress and has been determined to meet the conditions set out in section 119 shall complete the plan within the time limit set out in section 37 and proceed with the payment of the required adjustments in compensation. In such case, sections 70, 71, 73 and 74, adapted as required, shall apply.

123. An employer whose pay equity or relativity plan has been completed and has been determined to meet the conditions set out in section 119 shall, if the required adjustments in compensation have not yet been made, proceed with the payment thereof.

In such case, sections 70, 71, 73 and 74, adapted as required, shall apply. The first adjustments, however, shall be paid within three months of the decision of the Commission or the Labour Court.

124. An employer whose pay equity or relativity plan has been determined to meet the conditions set out in section 119 shall maintain pay equity or relativity in his enterprise. In such case, the provisions of Division V of Chapter II and of Division I of Chapter VI, adapted as required, shall apply.

CHAPTER X

AMENDING, TRANSITIONAL AND FINAL PROVISIONS

125. Section 19 of the Charter of human rights and freedoms (R.S.Q., chapter C-12) is amended by adding, at the end, the following paragraph:

“Adjustments in compensation and a pay equity plan are deemed not to discriminate on the basis of gender if they are established in accordance with the Pay Equity Act (1996, chapter 43).”

126. The said Charter is amended by inserting, after section 49, the following section:

49.1 Any complaint, dispute or remedy the subject-matter of which is covered by the Pay Equity Act (1996, chapter 43) shall be dealt with exclusively in accordance with the provisions of that Act.

Moreover, any question concerning pay equity between a predominantly female job class and a predominantly male job class in an enterprise employing fewer than 10 employees shall be settled by the Commission de l'équité salariale in accordance with section 19 of this Charter.”

127. Section 71 of the said Charter is amended by inserting the words “, except those referred to in section 49.1,” after the word “situation” in the second line of subparagraph 1 of the second paragraph.

128. Complaints concerning discrimination in compensation on the basis of gender in violation of section 19 of the Charter of human rights and freedoms filed with the Commission des droits de la personne et des droits de la jeunesse before (*insert here the date of coming into force of this section*) shall be examined and disposed of in accordance with the provisions of the Charter that were applicable at that time.

129. Upon receipt of a complaint concerning a matter coming under the jurisdiction of the Commission, the Commission des droits de la personne et des droits de la jeunesse shall forward the file to the Commission, which shall thereupon be seized of the matter by operation of law.

130. Not later than (*insert here the date that is the fifth anniversary of the coming into force of this section*), the Minister

shall present a report to the Government on the implementation of this Act as regards enterprises employing fewer than 50 employees and on the advisability of amending it in that respect.

Not later than (*insert here the date that is the ninth anniversary of the coming into force of this section*), the Minister shall present a report to the Government on the implementation of this Act and on the advisability of maintaining it in force or amending it.

The reports shall be tabled by the Minister in the National Assembly within the next 15 days or, if the Assembly is not sitting, within 15 days of resumption. The reports shall be examined by the competent committee of the National Assembly.

131. The sums required for the carrying out of this Act for the fiscal year 1996-97 shall be taken out of the appropriations granted to the Ministère du Travail.

132. The Commission de l'équité salariale is responsible for the administration of this Act.

133. The Minister of Labour is responsible for the carrying out of this Act.

134. This Act comes into force on 21 November 1997 or on any earlier date fixed by the Government, except the provisions of Chapter V, which come into force on 21 November 1996.