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PROVINCE OF QUÉBEC

1ST SESSION

38TH LEGISLATURE

QUÉBEC, 20 JUNE 2008

OFFICE OF THE LIEUTENANT-GOVERNOR

Québec, 20 June 2008

This day, at fourteen minutes past two o'clock in the afternoon, His Excellency the Lieutenant-Governor was pleased to sanction the following bills:

22 An Act to amend various legislative provisions concerning Montréal (*modified title*)

47 An Act respecting the transfer of securities and the establishment of security entitlements (*modified title*)

68 An Act to amend the Supplemental Pension Plans Act, the Act respecting the Québec Pension Plan and other legislative provisions

69 An Act to amend the Election Act and other legislative provisions

71 An Act to amend the Auditor General Act and other legislative provisions

77 Derivatives Act

86 An Act to amend the Act respecting the Government and Public Employees Retirement Plan and other legislation concerning pension plans in the public sector

87 An Act to establish a mining heritage fund

93 An Act to amend the Charter of Ville de Québec

95 An Act to amend the Act respecting medical laboratories, organ, tissue, gamete and embryo conservation, and the disposal of human bodies

214 An Act respecting the Régie intermunicipale des infrastructures portuaires de Trois-Pistoles et Les Escoumins

215 An Act respecting Ville de Sherbrooke

217 An Act respecting Ville de Huntingdon

218 An Act respecting Ville de Saint-Bruno-de-Montarville

219 An Act respecting Investia Services Financiers inc.

To these bills the Royal assent was affixed by His Excellency the Lieutenant-Governor.

NATIONAL ASSEMBLY

FIRST SESSION THIRTY-EIGHTH LEGISLATURE

Bill 22
(2008, chapter 19)

An Act to amend various legislative provisions concerning Montréal

Introduced 21 June 2007
Passed in principle 13 December 2007
Passed 20 June 2008
Assented to 20 June 2008

Québec Official Publisher
2008

EXPLANATORY NOTES

This Act introduces various legislative amendments concerning Montréal.

The Act amends the Charter of Ville de Montréal to include recognition of its status as the metropolis of Québec and one of Québec's key actors in economic development.

The Act grants Ville de Montréal a general taxation power in its territory, subject to certain restrictions and conditions, as well as the power to collect duties on the transfer of immovables at a higher rate than that provided for by law when transactions exceed $500,000. It also grants the council of Ville de Montréal the power to declare that the exercise of a jurisdiction or power assigned by law to all the borough councils is within its jurisdiction, if it considers it to be in the general interest of the city.

The Act gives the council of Ville de Montréal the power to initiate amendments to the city's planning program and provides that public consultations on draft amendments will be carried out by the Office de consultation publique de Montréal.

The Act provides that, beginning on 2 November 2009, the mayor of Ville de Montréal will be the mayor of the borough of Ville-Marie and the director general of the city will be the director of that borough. The composition of the borough council of Ville-Marie is also modified for the purposes of the general election of November 2009.

Under the Act, the urban agglomeration council of Ville de Montréal must establish an audit committee. The Act establishes the Liaison Secretariat for the urban agglomeration of Montréal to respond to inquiries on behalf of members of the urban agglomeration council about any aspect of the administration of the central municipality of interest to the urban agglomeration.

The Act introduces a new budget requirement enabling all urban agglomeration council members, except the mayor of Ville de Montréal, to obtain reimbursement for their research and secretarial expenses.

The Act modifies the exclusive jurisdiction of the urban agglomeration council over the arterial road system, replaces the urban agglomeration's list of equipment, infrastructures and activities of collective interest, and provides that any modification to the list or the system by the urban agglomeration council must be approved by the Minister of Municipal Affairs and Regions.

The Act provides that, from the municipal fiscal year 2009, urban agglomeration expenditures will be financed by aliquot shares required from the related municipalities, and that those municipalities will be able to determine the maximum property tax rate applicable to the non-residential immovables in their territory.

Lastly, the Act cancels the special tax status of the Société du Palais des Congrès de Montréal and provides that first responder services in the territory of Ville de Côte-Saint-Luc are not an urban agglomeration power.

LEGISLATION AMENDED BY THIS ACT:

– Act respecting the Agence métropolitaine de transport (R.S.Q., chapter A-7.02);

– Charter of Ville de Montréal (R.S.Q., chapter C-11.4);

– Cities and Towns Act (R.S.Q., chapter C-19);

– Act respecting duties on transfers of immovables (R.S.Q., chapter D-15.1);

– Act respecting the exercise of certain municipal powers in certain urban agglomerations (R.S.Q., chapter E-20.001);

– Act respecting municipal taxation (R.S.Q., chapter F-2.1);

– Act to again amend various legislative provisions concerning municipal affairs (2005, chapter 50).

Bill 22

AN ACT TO AMEND VARIOUS LEGISLATIVE PROVISIONS CONCERNING MONTRÉAL

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ACT RESPECTING THE AGENCE MÉTROPOLITAINE DE TRANSPORT

1. Section 48 of the Act respecting the Agence métropolitaine de transport (R.S.Q., chapter A-7.02), replaced by section 1 of chapter 10 of the statutes of 2007, is amended by striking out "of the island" in the second line.

CHARTER OF VILLE DE MONTRÉAL

2. Section 1 of the Charter of Ville de Montréal (R.S.Q., chapter C-11.4) is amended by adding the following paragraph after the second paragraph:

"Montréal is the metropolis of Québec and one of its key actors as regards economic development."

3. Section 17 of the Charter is amended by inserting the following paragraph after the first paragraph:

"In the case of the borough of Ville-Marie, the city mayor is the borough mayor."

4. Section 48 of the Charter is amended

(1) by replacing "The" in the first line of the first paragraph by "Subject to the second paragraph, the";

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

"The director general of the city shall act as director of the borough of Ville-Marie."

5. Section 72 of the Charter is amended

(1) by replacing "seven" in the first line of the second paragraph by "nine";

(2) by replacing "six" in the second line of the second paragraph by "eight" and by replacing "a vice-chair" in that line by "two vice-chairs";

(3) by replacing "the vice-chair" in the second line of the third paragraph by "a vice-chair";

(4) by inserting "and one vice-chair is chosen from among the members of the council of the central municipality that are in the political party with the second largest number of councillors on that council" after "municipality" in the last line of the third paragraph.

6. Section 83 of the Charter is amended by replacing subparagraph 2 of the first paragraph by the following subparagraphs:

"(2) to hold a public consultation on any draft by-law revising the city's planning program;

"(2.1) to hold a public consultation on any draft by-law amending the city's planning program, except those adopted by a borough council;".

7. The Charter is amended by inserting the following section after section 85.4:

"**85.5.** If the city council considers it to be in the general interest of the city, it may declare, in respect of all the boroughs and for a period it determines, that the exercise of a jurisdiction or power assigned by law to all the borough councils is within its jurisdiction.

The resolution by which the council makes the decision is adopted by an absolute majority vote of the council members. However, the resolution is adopted by a two-thirds majority vote of the council members if the period for which the council declares its jurisdiction exceeds two years or if the resolution extends the application of a declaration of jurisdiction so as to render it applicable for a period exceeding two years."

8. Section 130.3 of the Charter is amended

(1) by inserting ", concurrently with the city council," after "exercise" in the first line of the first paragraph;

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

"The power provided for in the first paragraph may not be exercised in respect of an object to which a draft amendment adopted by the city council pertains."

9. The Charter is amended by inserting the following before Chapter V:

"**DIVISION III**

"GENERAL TAXATION POWER

"**151.8.** The city may, by by-law, impose a municipal tax in its territory if it is a direct tax and if the by-law satisfies the criteria set out in the fourth paragraph.

The city is not authorized to impose the following taxes:

(1) a tax in respect of the supply of a property or a service;

(2) a tax on income, revenue, profits or receipts, or in respect of similar amounts;

(3) a tax on paid-up capital, reserves, retained earnings, contributed surplus or indebtedness, or in respect of similar amounts;

(4) a tax in respect of machinery and equipment used in scientific research and experimental development or in manufacturing and processing or in respect of any assets used to enhance productivity, including computer hardware and software;

(5) a tax in respect of remuneration that an employer pays or must pay for services, including non-monetary remuneration that the employer confers or must confer;

(6) a tax on wealth, including an inheritance tax;

(7) a tax on an individual because the individual is present or resides in the territory of the city;

(8) a tax in respect of alcoholic beverages within the meaning of section 2 of the Act respecting offences relating to alcoholic beverages (chapter I-8.1);

(9) a tax in respect of tobacco or raw tobacco within the meaning of section 2 of the Tobacco Tax Act (chapter I-2);

(10) a tax in respect of fuel within the meaning of section 1 of the Fuel Tax Act (chapter T-1);

(11) a tax in respect of a natural resource;

(12) a tax in respect of energy, in particular electric power; or

(13) a tax collected from a person who uses a public highway within the meaning of section 4 of the Highway Safety Code (chapter C-24.2), in respect of equipment placed under, on or above a public highway to provide a public service.

For the purposes of subparagraph 1 of the second paragraph, "property", "supply" and "service" have the meanings assigned to them by the Act respecting the Québec sales tax (chapter T-0.1).

The by-law referred to in the first paragraph must satisfy the following conditions:

(1) it must state the subject of the tax to be imposed;

(2) it must state the tax rate or the amount of tax payable; and

(3) it must state how the tax is to be collected and the designation of any persons authorized to collect the tax as agents for the city.

The by-law referred to in the first paragraph may provide for

(1) exemptions from the tax;

(2) penalties for failing to comply with the by-law;

(3) collection fees and fees for insufficient funds;

(4) interest and specific interest rates on outstanding taxes, penalties or fees;

(5) assessment, audit, inspection and inquiry powers;

(6) refunds and remittances;

(7) the keeping of registers;

(8) the establishment and use of dispute resolution mechanisms;

(9) the establishment and use of enforcement measures if a portion of the tax, interest, penalties or fees remains unpaid after it is due, including measures such as garnishment, seizure and sale of property;

(10) considering the debt for outstanding taxes, including interest, penalties and fees, to be a prior claim on the immovables or movables in respect of which it is due, in the same manner and with the same rank as the claims described in paragraph 5 of article 2651 of the Civil Code, and creating and registering a security by a legal hypothec on the immovables or movables; and

(11) criteria on the basis of which the rate and the amount of the tax payable may vary.

"**151.9.** The city is not authorized to impose a tax under section 151.8 in respect of any of the following:

(1) the State, the Crown in right of Canada or one of their mandataries;

(2) a school board, a general and vocational college, a university establishment within the meaning of the University Investments Act (chapter I-17) or the Conservatoire de musique et d'art dramatique du Québec;

(3) a private educational institution operated by a non-profit body in respect of an activity that is exercised in accordance with a permit issued under the Act respecting private education (chapter E-9.1), a private educational institution accredited for purposes of subsidies under that Act or an institution whose instructional program is the subject of an international agreement within the meaning of the Act respecting the Ministère des Relations internationales (chapter M-25.1.1);

(4) a public institution within the meaning of the Act respecting health services and social services (chapter S-4.2) or a health and social services agency governed by that Act;

(5) a private institution referred to in paragraph 3 of section 99 or section 551 of the Act respecting health services and social services in respect of an activity that is exercised in accordance with a permit issued to the institution under that Act and is inherent in the mission of a local community service centre, a residential and long-term care centre or a rehabilitation centre within the meaning of that Act; or

(6) any other person determined by a regulation of the Government.

"**151.10.** This division does not limit any other taxation power granted to the city by law.

"**151.11.** The use of an enforcement measure established by a by-law adopted under section 151.8 does not prevent the city from using any other remedy provided by law to recover the amounts owing under this division.

"**151.12.** The city may enter into an agreement with another person, including the State, providing for the collection and recovery of a tax imposed under section 151.8 and the administration and enforcement of a by-law imposing the tax. The agreement may authorize the person to collect the taxes and oversee the administration and enforcement of the by-law on the city's behalf."

10. Schedule D to the Charter is amended by adding the following at the end:

"— the aréna Maurice-Richard".

CITIES AND TOWNS ACT

11. Section 107.17 of the Cities and Towns Act (R.S.Q., chapter C-19) is amended by adding the following paragraphs at the end:

"Despite the first paragraph, in the case of the urban agglomeration of Montréal, the council must establish an audit committee composed of not more than 10 members appointed on the proposal of the mayor of the central municipality. Two of the committee members must be council members representing the reconstituted municipalities. Those two members shall take part in deliberations and votes of the committee on any matter related to an urban agglomeration power.

In addition to the other powers that may be entrusted to it, the committee established in the case of the urban agglomeration of Montréal shall submit opinions to the urban agglomeration council on the requests, findings and recommendations of the auditor general concerning the urban agglomeration. It shall also inform the auditor general of the interests and concerns of the urban agglomeration council with respect to the audit of the accounts and affairs of the central municipality. On an invitation by the committee, the auditor general or a person designated by the auditor general may attend a sitting and take part in deliberations."

12. Section 474.0.1 of the Act is amended by replacing "The" in the first line of the first paragraph by "Subject to section 474.0.2.1, the".

13. The Act is amended by inserting the following section after section 474.0.2:

"**474.0.2.1.** In the case of the urban agglomeration of Montréal, the part of the central municipality's budget under the responsibility of the urban agglomeration council must include an appropriation to provide for payment of sums to the members of that council, except the mayor of the central municipality, as reimbursement for their research and secretarial expenses.

The appropriation must be equal to or greater than 1/60 of 1% of the total of all other appropriations provided for in that part of the budget.

The amount of the sums referred to in the first paragraph is established by dividing the appropriation equally among all the members of the urban agglomeration council, except the mayor of the central municipality.

The sums established for a member of the urban agglomeration council who is a councillor on the regular council of the central municipality and who is a member of an authorized party on 1 January of the fiscal year covered by the budget are assigned to that party.

The sums established under section 474.0.2 for a councillor of the regular council of the central municipality who is a member of the urban agglomeration council must be reduced by the sums established for the member under this section, and the budget of the central municipality must be adjusted to reflect that reduction."

14. Section 474.0.3 of the Act is amended by inserting ", or, if applicable, a member of the urban agglomeration council of Montréal other than the mayor of the central municipality," after "councillor" in the first line of the first paragraph.

ACT RESPECTING DUTIES ON TRANSFERS OF IMMOVABLES

15. Section 2 of the Act respecting duties on transfers of immovables (R.S.Q., chapter D-15.1) is amended by adding the following paragraph after the second paragraph:

"However, to calculate the duties on the transfer of an immovable situated entirely within its territory, Ville de Montréal may, by by-law, set a rate higher than that provided for in subparagraph 3 of the first paragraph for any part of the basis of imposition which exceeds $500,000."

ACT RESPECTING THE EXERCISE OF CERTAIN MUNICIPAL POWERS IN CERTAIN URBAN AGGLOMERATIONS

16. Section 20 of the Act respecting the exercise of certain municipal powers in certain urban agglomerations (R.S.Q., chapter E-20.001), amended by section 8 of chapter 33 of the statutes of 2007, is again amended by replacing "Title IV.1 or IV.2, taking into consideration the provisions included in that title" in the first and second lines of the second paragraph by "Titles IV.1 to IV.3, taking into consideration the provisions included in those titles".

17. The Act is amended by inserting the following after section 28:

"**DIVISION IV.1**

"PUBLIC SECURITY

"**28.1.** Despite subparagraph *a* of paragraph 8 of section 19, the component of public security consisting in first responder services on the territory of Ville de Côte-Saint-Luc is a power other than an urban agglomeration power and is under the responsibility of that city."

18. The Act is amended by inserting the following after section 118.78:

"**TITLE IV.3**

"SPECIAL PROVISIONS APPLICABLE TO THE URBAN AGGLOMERATION OF MONTRÉAL

"**CHAPTER I**

"ALIQUOT SHARES

"**118.79.** An expenditure incurred by the central municipality in the exercise of an urban agglomeration power is financed by aliquot shares paid by the related municipalities of the urban agglomeration.

The first paragraph does not prevent the central municipality from financing such an expenditure by revenue from a source other than a tax or a compensation. The only mode of tariffing that may be provided for by the central municipality for that purpose is a fixed amount described in subparagraph 3 of the second paragraph of section 244.2 of the Act respecting municipal taxation (chapter F-2.1) or exigible in the same manner as a subscription.

For the purposes of this section, Ville de Côte-Saint-Luc is not a related municipality for the apportionment of expenditures related to the component of public security consisting in first responder services.

This section applies subject to Division III.6 of Chapter XVIII of the Act respecting municipal taxation.

"**118.80.** Urban agglomeration expenditures are apportioned among the related municipalities in proportion to their respective fiscal potentials established according to the rules prescribed by the Minister of Municipal Affairs and Regions.

However, the urban agglomeration council may provide, by a by-law subject to the right of objection under section 115,

(1) that a related municipality not contribute to the payment of part of the urban agglomeration expenditures; or

(2) that all or part of the urban agglomeration expenditures be apportioned according to another criterion, or to a change in an element of the criterion, provided the new criterion or the change in an element of the criterion complies with the rules prescribed by the Minister of Municipal Affairs and Regions.

The first and second paragraphs apply subject to sections 39 and 44 of chapter 19 of the statutes of 2008 and the following sections of Order in Council 1229-2005 dated 8 December 2005, concerning the urban agglomeration of Montréal:

(1) section 57, as amended by section 86 of Order in Council 1003-2006 dated 2 November 2006 and by section 30 of chapter 19 of the statutes of 2008;

(2) section 64, as amended by section 32 of chapter 19 of the statutes of 2008;

(3) section 68, as replaced by section 34 of chapter 19 of the statutes of 2008.

The first and second paragraphs also apply subject to any decision of an urban agglomeration council on the financing of work mentioned in paragraph 5 of section 23; the decision must be approved by the Minister to have effect.

"**118.81.** The urban agglomeration council may, by a by-law subject to the right of objection under section 115, prescribe the manner in which the aliquot shares and their payment by the related municipalities are determined.

The by-law may, in particular, prescribe, for every possible situation with respect to the coming into force of the part of the budget of the central municipality related to the exercise of its urban agglomeration powers,

(1) the date on which the data used to establish provisionally or finally the basis of apportionment of the urban agglomeration expenditures are to be considered;

(2) the time limit for determining each aliquot share and for informing each related municipality of it;

(3) the obligation of each related municipality to pay its aliquot share in a single payment or its right to pay it in a certain number of instalments;

(4) the time limit within which each instalment must be paid;

(5) the rate of interest payable on an outstanding instalment; and

(6) the adjustments that may result from the deferred coming into force of a part of the budget of the central municipality related to the exercise of its urban agglomeration powers or from the successive use of provisional and final data in determining the basis of apportionment of the urban agglomeration expenditures.

"**118.82.** For the purpose of financing the urban agglomeration expenditure that is the contribution of the central municipality to the financing of the expenditures of the Société de transport de Montréal, section 488 of the Cities and Towns Act (chapter C-19) applies to each related municipality as if the aliquot share was an amount payable directly to the Société.

"**CHAPTER II**

"MODIFICATIONS

"**118.83.** This chapter applies for the purpose of modifying or rendering inapplicable certain provisions of this Act with regard to the urban agglomeration of Montréal.

"**118.84.** Section 22 is modified by replacing "subject to the right of objection under section 115" in the second and third lines of the first paragraph by "approved by the Minister".

"**118.85.** Sections 23 to 24.1 are replaced by the following section:

"**23.** The central municipality's exclusive jurisdiction over the thoroughfares identified includes

(1) determining minimum standards for managing the system;

(2) determining standards for harmonizing the rules governing traffic signs and signals and traffic control;

(3) determining the usefulness of arterial thoroughfares;

(4) general system planning, including traffic planning within the urban agglomeration;

(5) work to open, extend or develop an arterial thoroughfare, connect such thoroughfares or standardize their configuration, as far as that work concerns

(*a*) boulevard Notre-Dame;

(*b*) autoroute Bonaventure, phase 1;

(*c*) rue Sherbrooke east of 36e avenue;

(*d*) boulevard Cavendish (Cavendish/Cavendish/Royalmount);

(*e*) boulevard Jacques-Bizard, up to autoroute 40;

(*f*) boulevard Rodolphe-Forget (Bourget);

(*g*) boulevard Pierrefonds;

(*h*) the urban boulevard in the right of way of autoroute 440;

(*i*) municipal road works made necessary by the projects of the Ministère des Transports du Québec relating to the Turcot interchange, the Dorval interchange, autoroute 25 and autoroute 40.".

"**118.86.** Section 35 is modified by replacing "from a tax or other" in the second line of the second paragraph by "from a".

"**118.87.** Section 37 is replaced by the following section:

"**37.** The central municipality's exclusive jurisdiction over assistance intended specifically for business consists, as regards tax credits, in prescribing, by a by-law subject to the right of objection under section 115, the rules that a related municipality, including the central municipality, must comply with when establishing a program for granting such a credit."

"**118.88.** Section 39 is modified by replacing "subject to the right of objection under section 115" in the first and second lines of the first paragraph by "approved by the Minister".

"**118.89.** Section 46 is modified by striking out "or levy taxes" in the second line of the second paragraph.

"**118.90.** Section 70 is modified by replacing "tout" in the first line in the French text by "le".

"**118.91.** Section 76 is modified

(1) by replacing "any tax or other method of financing imposed" in the first and second lines of the first paragraph by "any method of financing ordered";

(2) by striking out the second paragraph.

"**118.92.** Sections 78, 85 to 89, 91 to 99 and 100 to 108 do not apply.

"**118.93.** Section 110 is modified by replacing "taxes and other methods of financing imposed" in the seventh line of the first paragraph by "methods of financing ordered".

"**118.94.** Section 114 does not apply.

"**118.95.** Section 115 is modified by replacing "22, 27, 30, 34, 36, 38, 39, 41, 47, 55, 56, 69, 78, 85 or 99.1" in the first paragraph by "27, 30, 34, 36, 37, 38, 41, 47, 55, 56, 69, 99.1, 118.80 or 118.81".

"**118.96.** Section 115.1 is modified

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

"(1) is provided for in section 118.80 or 118.81;";

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

"The possibility of using an overpayment of an aliquot share referred to in section 118.79 to reduce an aliquot share determined for the following fiscal year is one way of managing the resolutory effects of a refusal."

"**118.97.** Section 118.1 is modified by striking out "taxes and other" in the first line of the third paragraph."

19. Section 175 of the Act, amended by section 10 of chapter 33 of the statutes of 2007, is repealed.

ACT RESPECTING MUNICIPAL TAXATION

20. Section 204 of the Act respecting municipal taxation (R.S.Q., chapter F-2.1) is amended by striking out paragraph 18.

21. Subdivision 9 of Division II of Chapter XVIII of the Act, comprising section 231.5, is repealed.

22. Section 236 of the Act is amended by striking out paragraph 14.

23. Section 244.40 of the Act is amended by adding the following paragraph after the second paragraph:

"A municipality to which subparagraph 1 of the second paragraph applies may, by by-law, determine a coefficient greater than the one applicable to it under that subparagraph."

OTHER AMENDING PROVISIONS

24. Section 4 of Order in Council 645-2005 dated 23 June 2005 is amended by replacing ", Sud-Ouest and Ville-Marie" by "and Sud-Ouest".

25. The Order in Council is amended by inserting the following section after section 10:

"10.1. The council of the Ville-Marie borough is composed of

(1) the borough mayor who is the mayor of the city;

(2) a city councillor for each of the three electoral districts in the borough; and

(3) two councillors chosen by the mayor of the city from among the members of the city council."

26. Section 4 of Order in Council 1229-2005 dated 8 December 2005, concerning the urban agglomeration of Montréal, is amended by adding the following paragraph at the end:

"In exercising the functions of office, a member of the urban agglomeration council must take into account the interest of the citizens of the agglomeration as a whole."

27. The heading of Title II of the Order in Council is amended by inserting ", LIAISON SECRETARIAT" after "COUNCIL".

28. The Order in Council is amended by inserting the following after section 17:

"**CHAPTER I.1**

"LIAISON SECRETARIAT

"17.1. A secretariat is established under the name "Liaison Secretariat".

"17.2. The urban agglomeration council appoints the secretariat director by a decision made by a two-thirds majority vote of its members.

To be effective, the appointment must be approved by the Minister of Municipal Affairs and Regions.

"17.3. The secretariat director reports directly to the urban agglomeration council.

"17.4. The role of the Liaison Secretariat is to respond to any inquiry on behalf of a member of the urban agglomeration council about any aspect of the administration of the central municipality of interest to the urban agglomeration.

To do so, the director and employees of the secretariat are authorized to communicate with the persons designated by the director general in order to obtain the documents, explanations or information they consider necessary.

"17.5. The part of the central municipality's budget that falls within the jurisdiction of the urban agglomeration council must include an appropriation to provide for payment of a sum to the Liaison Secretariat to cover the expenditures relating to the exercise of the Secretariat's role.

The appropriation must be equal to or greater than 1/40 of 1% of the total of the other appropriations provided for in that part of the budget."

29. Section 47 of the Order in Council, amended by section 83 of Order in Council 1003-2006 dated 2 November 2006, is again amended by striking out the second sentence of the third paragraph.

30. Section 57 of the Order in Council, amended by section 86 of Order in Council 1003-2006 dated 2 November 2006, is again amended by replacing "the general urban agglomeration property tax" in the third paragraph by "the revenues deriving from the shares paid by the related municipalities in accordance with section 118.80 of the Act respecting the exercise of certain municipal powers in certain urban agglomerations".

31. Sections 60 and 61 of the Order in Council are repealed.

32. Section 64 of the Order in Council is amended by replacing the seventh paragraph by the following paragraph:

"For the purpose of financing the expenditures resulting from the application of the third, fourth and fifth paragraphs, the urban agglomeration council may fix by by-law the share of the expenditures relating to a contract or an agreement that is to be payable by each municipality concerned."

33. Section 67 of the Order in Council, amended by section 130 of chapter 60 of the statutes of 2006, is again amended by replacing "2008" in the second paragraph by "2009".

34. Section 68 of the Order in Council is replaced by the following section:

"68. Despite any inconsistent provision, the actual costs relating to the supply of water provided by the central municipality in its territory and in the territories of the reconstituted municipalities are shared among the central municipality and the reconstituted municipalities in proportion to the actual consumption attributable to their respective territories.

For the purpose of financing the expenditures relating to the exercise of its powers as regards the supply of water in its territory and in the territories of the reconstituted municipalities, the central municipality has the use only of the revenue collected pursuant to the first paragraph, to the exclusion of any means of financing it would otherwise be authorized to use under the applicable legislative provisions.

However, the second paragraph does not prevent the central municipality from requiring, in accordance with section 118.80 of the Act respecting the exercise of certain municipal powers in certain urban agglomerations, all the related municipalities to pay a share of the cost of constituting, in accordance with section 569.8 of the Cities and Towns Act (R.S.Q., chapter C-19), a financial reserve to finance expenditures to improve water supply technology and methods and to develop and repair water supply infrastructures. To that end, section 569.8 of the Cities and Towns Act is deemed to be modified so that subparagraph *a* of paragraph 2 reads as follows:

"(*a*) any share of the contribution required for the supply of water;".

To pay the share required under the third paragraph, a related municipality may use amounts from the financial reserve for water supply it may have created under section 569.7 of the Cities and Towns Act.

This section ceases to have effect on 31 December 2009."

35. Section 69 of the Order in Council is repealed.

36. The schedule to the Order in Council, amended by section 5 of Order in Council 299-2006 dated 5 April 2006, is replaced by the following schedule:

"**SCHEDULE I**
(s. 37)

EQUIPMENT, INFRASTRUCTURES AND ACTIVITIES OF COLLECTIVE INTEREST

– Parc du Mont-Royal

– Parc Jean-Drapeau

– Parc du complexe environnemental Saint-Michel, except lot 3 790 260 of the cadastre of Québec, and part of lot 3 237 027 of the cadastre of Québec, as shown in the schedule to the By-law of the urban agglomeration council amending the schedule to the order in council respecting the urban agglomeration of Montréal (1229-2005, 8 December 2005)

– The following ecoterritories: Senneville Woods, Rivière l'Orme Ecoforest Corridor, Île-Bizard Ecoforest Corridor, Cheval-Blanc Rapids except lots 1 170 731, 1 170 759, 3 093 109, 3 093 114, 3 093 115 and 3 093 121 of the cadastre of Québec, registration division of Montréal, Bertrand Stream Basin, Summits and Slopes of Mount Royal, De Montigny Stream Basin, East Island Greenbelt, except a closed lane in Rivière-des-Prairies—Pointe-aux-Trembles borough, northeast of avenue Armand-Chaput, between rue Eugène-Couvrette and rue Rolland-Jeanneau, made up of lots 2 801 510 and 3 387 149 to 3 387 170 inclusively of the cadastre of Québec. Those lots are marked ABCDEFGHA on plan A-84 Rivière-des-Prairies, prepared by Johanne Rangers, land surveyor, on 3 March 2005, and bearing minute number 721, file 20052, in the ecoterritory of the East Island Greenbelt except for the lands owned by Ville de Montréal within the perimeter in orange on the attached plan prepared by C. Lahaie, Service de la mise en valeur du territoire et du patrimoine, Direction des stratégies et transactions immobilières, Division de la gestion du portefeuille et des transactions, Section des services immobiliers, in February 2007. The lands thus excluded from the ecoterritory of the East Island Greenbelt are included in the perimeter bounded to the east and to the south by the right-of-way of boulevard Métropolitain, to the west, by the right-of-way of the railway tracks at the limits of Montréal and Montréal-Est, and to the north by the right-of-way of the railway tracks south of boulevard Maurice-Duplessis, but do not include the zones marked in yellow on that plan, which continue to be part of the ecoterritory and are not covered by this by-law, except the lots shown as items 1 to 28 in the schedule to the By-law of the urban agglomeration council amending the schedule to the order in council respecting the urban agglomeration of Montréal (1229-2005, 8 December 2005) (RCG 06-043), except the lots shown as items 1 to 26 in the schedule to the By-law of the urban agglomeration council amending the schedule to the order in council respecting the urban agglomeration of Montréal (1229-2005, 8 December 2005) (RCG 06-042), except lot 3 447 691 of the cadastre of Québec, registration division of Montréal, Lachine Rapids, except lots 3 684 093, 3 684 094, 3 684 095, 3 684 096, 3 684 097, 3 105 949 and 3 105 592 of the cadastre of Québec, Saint-Jacques Escarpment

– Culture Montréal

– Cité des Arts du cirque

– Tour de l'Île

– Assistance for elite athletes and metropolitan, national and international sports competitions

– Implementation of the framework agreement between Ville de Montréal, the Ministère de la Culture et des Communications and the Bibliothèque nationale du Québec

– City-wide bikeway network

– Municipal contributions and management of agreements and government programs to fight poverty

– Municipal contributions and management of agreements and government programs to develop property, sites and districts recognized under the Cultural Property Act

– Municipal contributions to government programs or Communauté métropolitaine de Montréal programs set up to improve the protection and conditions of use of the banks and shores bordering the urban agglomeration of Montréal or to create waterside parks in the urban agglomeration

– Development and redevelopment of public lands, including infrastructure works, in an urban agglomeration sector designated as the downtown area and delimited as follows (the directions are approximate): commencing at a point being the intersection of rue Amherst and rue Cherrier; thence southeast along rue Amherst and its extension to the St. Lawrence River; thence south along the bank of the St. Lawrence River to the point of intersection with Autoroute 15-20, namely the Champlain Bridge; thence west along Autoroute 15-20 to the point of intersection with the railway right-of-way; thence northeast along the railway right-of-way and the building alongside the railway to the point of intersection with the end of that building; thence northwest along the building to the point of intersection with rue du Parc-Marguerite-Bourgeoys; thence northeast along rue du Parc-Marguerite-Bourgeoys and the railway right-of-way to the point of intersection with the extension of rue Sainte-Madeleine; thence west along rue Sainte-Madeleine to the point of intersection with rue Le Ber; thence north along rue Le Ber and its extension to the point of intersection with the extension of rue de Sébastopol; thence west along rue de Sébastopol to the point of intersection with rue Wellington; thence north along rue Wellington to the point of intersection with rue Bridge; thence west along rue Bridge to the point of intersection with rue Saint-Patrick; thence northwest to the point of intersection with rue Guy, rue William and rue Ottawa; thence northwest along rue Guy to the point of intersection with rue Notre-Dame Ouest; thence northwest along the boundary of

Ville-Marie borough to the point of intersection with the boundary of the Mount Royal Historic and Natural District; thence northwest along the boundary of the Mount Royal Historic and Natural District to the point of intersection with avenue des Pins Ouest; thence northeast along avenue des Pins Ouest to the point of intersection with rue Saint-Denis; thence southeast along rue Saint-Denis to the point of intersection with rue Cherrier; thence northeast along rue Cherrier to the point of intersection with rue Amherst, that point being the point of commencement."

ACT TO AGAIN AMEND VARIOUS LEGISLATIVE PROVISIONS CONCERNING MUNICIPAL AFFAIRS

37. Section 133 of the Act to again amend various legislative provisions concerning municipal affairs (2005, chapter 50) is amended by replacing "2008" in the first line of the second paragraph by "2009".

MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

38. A contribution of a related municipality of the urban agglomeration of Montréal to finance the deficit of equipment situated in the territory of Ville de Montréal and mentioned in Schedule V to the Act respecting the Communauté métropolitaine de Montréal (R.S.Q., chapter C-37.01) is made by Ville de Montréal; such a contribution constitutes an urban agglomeration expenditure that must be financed by urban agglomeration revenues.

39. A debt relating to work carried out between 1 January 2006 and 31 December 2008 by Ville de Montréal on the thoroughfares forming the arterial road system of the urban agglomeration must be financed by an aliquot share payable by the related municipality in whose territory the work is carried out.

A loan by-law that was adopted before 1 January 2009 by the urban agglomeration council of Ville de Montréal and that, to finance the work referred to in the first paragraph, imposes a tax on the taxable immovables of only part of the territory of a related municipality or requires compensation from the owners or occupants of such immovables is deemed to be amended for the purpose of replacing that tax or compensation by an aliquot share that is payable by the related municipality concerned and that secures the same revenues for the central municipality as would be the case if the tax or compensation applied. A related municipality concerned must then, to finance its aliquot share, impose taxes on the same immovables or require the payment of a tax or compensation by the same persons as would be the case if the urban agglomeration tax or compensation applied.

For the purposes of the first paragraph, "debt" means a net expenditure to be financed, including interest.

40. Section 148 of chapter 60 of the statutes of 2006, amended by section 14 of chapter 33 of the statutes of 2007, continues to apply, for each of the fiscal years 2008 to 2010, in respect of a municipality in

which there is no coefficient in force determined in accordance with the third paragraph of section 244.40 of the Act respecting municipal taxation (R.S.Q., chapter F-2.1), enacted by section 23.

41. Section 4 of Order in Council 645-2005 dated 23 June 2005, as amended by section 24, and section 10.1 of that Order in Council, enacted by section 25, apply for the purposes of the 2009 general election and any by-election held before the 2013 general election.

42. Subject to the second paragraph, sections 2 to 9.1 of Order in Council 1210-2005 dated 7 December 2005, respecting various taxation measures relating to the reorganization, do not apply to the related municipalities of the urban agglomeration of Montréal.

The provisions referred to in the first paragraph continue to have effect, for the purposes of section 149 of chapter 60 of the statutes of 2006, with the necessary modifications, with respect to the reconstituted municipalities of that urban agglomeration. Those modifications include replacing the third paragraph of that section by the following paragraph:

"The amount of the loan may not exceed the total sum that the reconstituted municipality could have paid to the central municipality for the fiscal year concerned, under section 3 of the Order in Council mentioned in the first paragraph, in respect of all the categories of immovables."

43. The urban agglomeration council of Ville de Montréal may, by a by-law that is subject to the right of objection provided for in section 115 of the Act respecting the exercise of certain municipal powers in certain urban agglomerations (R.S.Q., chapter E-20.001), determine the variation resulting from sections 18, 19 and 29 to 34 in the tax burden borne by the related municipalities and their ratepayers, and provide for measures to average that variation over a maximum period of 10 years.

A related municipality may borrow in order to reduce the fiscal impact of a variation in the tax burden resulting from the sections referred to in the first paragraph. The loan has a maximum term of 10 years and is non-renewable. The loan by-law requires only the approval of the Minister of Municipal Affairs and Regions.

44. Subject to section 39, a provision of a by-law of the urban agglomeration council of Ville de Montréal adopted before 1 January 2009 ordering a loan and imposing a tax or requiring a compensation to finance the repayment of the loan is deemed to be amended for the purpose of replacing that tax or compensation by aliquot shares that are payable by the related municipalities and that secure the same revenues for the central municipality as would be the case if the tax or compensation applied.

A related municipality must, in any by-law on the financing of an aliquot share payable under the first paragraph, impose on the same immovables or require the payment of a tax or compensation by the same persons as would be the case if the urban agglomeration tax or compensation applied.

45. A loan by-law of a reconstituted municipality of the urban agglomeration of Montréal whose purpose is to contract a loan under a provision referred to in the first paragraph of section 42 in order to reduce the amount of the taxes imposed for a fiscal year preceding the fiscal year 2009 continues to have effect.

46. Sections 12 to 14, 16 to 22, 27 to 36, 38, 39, 42, 44 and 45 have effect for the purposes of any municipal fiscal year from the fiscal year 2009.

47. Despite the Règlement sur les districts électoraux n° 08-018, adopted by the council of Ville de Montréal on 28 May 2008, the division of the territory of the borough of Ville-Marie into electoral districts is, for the purposes of the 2009 general election and any by-election held before the 2013 general election, the division established for the purposes of the general election held on 4 November 2001 by Order in Council 852-2001 dated 4 July 2001, with the necessary modifications.

48. This Act comes into force on 20 June 2008, except sections 3 and 4, which come into force on 2 November 2009.

NATIONAL ASSEMBLY

FIRST SESSION THIRTY-EIGHTH LEGISLATURE

Bill 47
(2008, chapter 20)

An Act respecting the transfer of securities and the establishment of security entitlements

Introduced 13 November 2007
Passed in principle 8 May 2008
Passed 18 June 2008
Assented to 20 June 2008

Québec Official Publisher
2008

EXPLANATORY NOTES

This Act is modelled on the Uniform Securities Transfer Act that was approved by the Uniform Law Conference of Canada and adhered to by all the Canadian provinces and territories. Its purpose is to provide a suppletive legal framework for certain private law aspects of the transfer of securities and the establishment of security entitlements to financial assets.

The Act applies to the performance of duties imposed by law or contract that are involved in the process of transferring securities or establishing security entitlements. It first specifies its scope of application and what is meant by the transfer of a security and the establishment of a security entitlement, and defines the terms "transfer", "issuer" and "securities intermediary" as well as other basic concepts that must be grasped in order to understand the new legislation, including the concepts of "security" and "financial asset". Its general provisions address a certain number of elements that are common to or incidental outgrowths of security transfers and security entitlement acquisitions.

The Act then establishes a system of rules for the transfer of securities purchased and held within a legal relationship binding the investor and the issuer directly, with no intermediary. The rules reflect the fact that, in today's world, securities are often disembodied in the sense that an actual paper certificate is not issued. They determine how securities are to be transferred and specify the rights of purchasers, the endorsements or instructions required for a transfer to be made, and the warranties made to purchasers, most notably, by those making endorsements or originating instructions. The rules also set terms and conditions for the registration of transfers of securities on issuers' transfer books, and the duties of issuers in that regard.

The Act establishes a system of rules for the establishment of security entitlements to financial assets, purchased and held within a legal relationship binding the investor, called the entitlement holder, and a securities intermediary. The rules determine how security entitlements are to be established and specify the rights of purchasers and the warranties made to entitlement holders by securities intermediaries as well as those made to securities intermediaries by endorsers, originators of instructions and originators of entitlement orders. They also set out the duties owed by securities intermediaries to entitlement holders.

The Act furthermore amends the Civil Code to introduce special rules for movable hypothecs granted on securities or security entitlements when delivery is effected by the creditor obtaining control of the securities or entitlements in accordance with the new legislation. It introduces new conflict of laws rules for securities and security entitlements, and particularly for the security regime applicable to them. It extends the rules in the Code of Civil Procedure on the seizure of company shares to include all securities and security entitlements. Lastly, it makes consequential amendments to a number of statutes.

LEGISLATION AMENDED BY THIS ACT:

– Civil Code of Québec (1991, chapter 64);

– Charter of Ville de Montréal (R.S.Q., chapter C-11.4);

– Cities and Towns Act (R.S.Q., chapter C-19);

– Code of Civil Procedure (R.S.Q., chapter C-25);

– Municipal Code of Québec (R.S.Q., chapter C-27.1);

– Act respecting the Communauté métropolitaine de Montréal (R.S.Q., chapter C-37.01);

– Companies Act (R.S.Q., chapter C-38);

– Act respecting municipal debts and loans (R.S.Q., chapter D-7);

– Securities Act (R.S.Q., chapter V-1.1).

Bill 47

AN ACT RESPECTING THE TRANSFER OF SECURITIES AND THE ESTABLISHMENT OF SECURITY ENTITLEMENTS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

PURPOSE AND SCOPE

1. The purpose of this Act is to establish a legal framework for certain private law aspects of the transfer of securities and the establishment of security entitlements to financial assets, as part of an effort by the Canadian provinces and territories to harmonize their laws on the matter.

2. The provisions of this Act pertaining to the rights and obligations arising out of a transfer of securities or the establishment of security entitlements to financial assets are suppletive provisions.

However, the obligations of good faith, prudence, diligence and reasonableness applicable in carrying out those provisions may not be disclaimed by the parties, but the parties may establish standards of conduct whose observance will be considered to imply the performance of those obligations, so long as such standards are not manifestly unreasonable.

3. Unless the context indicates otherwise, a person who is required by a statute, law, rule, agreement or judgment to put a security or financial asset in the possession of another person satisfies that requirement by delivering the security to that other person or causing that other person to acquire a security entitlement to the financial asset as set out in this Act.

For the purposes of this Act, groups of persons or properties not endowed with juridical personality, such as general, limited or undeclared partnerships, associations that are not legal persons, trusts and funds constituted as patrimonies by appropriation, are considered to be persons.

4. The provisions of this Act are applicable to a clearing agency only to the extent that they do not conflict with the rules adopted by the clearing agency governing legal relationships between the clearing agency and its participants or between participants in the clearing agency. Those rules are effective even if they affect the rights and obligations of a person who does not consent to them.

In this Act, "clearing agency" means any person that carries on activities of a clearing agency or clearing house within the meaning of the Securities Act (R.S.Q., chapter V-1.1) or the securities regulatory law of another province or a territory in Canada, that is authorized to carry on such activities by the Autorité des marchés financiers and that is a securities and derivatives clearing house for the purposes of section 13.1 of the Payment Clearing and Settlement Act (Statutes of Canada, 1996, chapter 6, Appendix) or operates a clearing and settlement system designated under Part I of that Act.

Except for the purposes of the first paragraph, "clearing agency" also means a person that, without being authorized by the Autorité des marchés financiers to carry on activities of a clearing agency or clearing house, is nonetheless recognized as such by the equivalent authority of another province or a territory in Canada and meets the other conditions set out in the second paragraph.

5. This Act is applicable to the State, bodies of the State and any other legal person established in the public interest.

CHAPTER II

GENERAL PROVISIONS

DIVISION I

TRANSFER OF SECURITY, ESTABLISHMENT OF SECURITY ENTITLEMENT AND RELATED CONCEPTS

6. For the purposes of this Act, a security is transferred when a person acquires rights in the security and takes delivery of the security from the issuer or another person and a security entitlement to a financial asset is established when a person acquires rights in a financial asset held by a securities intermediary. A reference in this Act to a purchaser is a reference to a person acquiring rights in a security or financial asset.

The acquisition of rights in a security or financial asset ("purchase") may result from any act constituting or conveying rights in the security or financial asset, whether by onerous title ("for value") or by gratuitous title ("not for value"), including an issue, sale, exchange, gift or hypothec, provided only that the act is consensual.

7. For the purposes of this Act, "issuer" means

(1) a person who issues a security represented by a security certificate or who, other than as the person entrusted with authenticating the origin, genuineness and integrity of documents, places or authorizes the placing of the person's name on a security certificate to evidence a share or similar participation or the person's duty to perform an obligation represented by the security certificate;

(2) a person who issues a share or similar participation or undertakes to perform an obligation that is an uncertificated security; or

(3) a person who stands surety for or is otherwise bound by the obligations of a person described as an issuer in subparagraph 1 or 2.

"Issuer" also means, with respect to a registration of a transfer of a security, a person on whose behalf transfer books are maintained.

8. Clearing agencies are securities intermediaries within the meaning of this Act, as are dealers, banks, financial services cooperatives, trust companies, savings companies and other persons that in the ordinary course of their business maintain securities accounts for others and are acting in that capacity.

A securities account is an account to which a financial asset is or may be credited in accordance with an agreement under which the securities intermediary maintaining the account undertakes to consider the account holder as being entitled to exercise the rights that constitute the financial asset.

9. For the purposes of this Act,

(1) "security certificate" means a paper certificate only;

(2) "participation" includes any title conferring rights in property or in an enterprise.

DIVISION II

DISTINCTION BETWEEN SECURITY AND FINANCIAL ASSET

§1. — *Security*

10. A security within the meaning of this Act is a share or similar participation in an issuer or an obligation of an issuer

(1) that is represented by a security certificate in bearer form or registered form, or the transfer of which may be registered on books maintained for that purpose by or on behalf of the issuer;

(2) that is one of a class or series, or by its terms is divisible into a class or series, of shares, participations or obligations; and

(3) that is, or is of a type, dealt in or traded on securities exchanges or financial markets, or that is a medium for investment in the area in which it is issued or dealt in or traded and by its terms expressly provides that it is a security for the purposes of this Act.

A security certificate is in bearer form if it expressly states that the security is payable to the certificate bearer. A security certificate is in registered form if it specifies a person entitled to the security and if a transfer of the security may be registered on books maintained for that purpose by or on behalf of the issuer, or the security certificate states that it may be so registered.

11. Despite the conditions set out in section 10, a share or similar participation issued by a joint-stock company is a security, as is a participation in a trust. A share, unit or similar participation, other than an insurance policy or annuity contract issued by an insurance company, that is issued by a mutual fund within the meaning of the Securities Act is also a security.

§2. — *Financial asset*

12. A financial asset within the meaning of this Act is

(1) a security;

(2) a share or other participation in a person or an obligation of a person that, without being a security, is, or is of a type, dealt in or traded on financial markets or is a medium for investment in the area in which it is issued or dealt in or traded;

(3) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Act; or

(4) a credit balance in a securities account, unless the securities intermediary has expressly agreed with the person for whom the account is maintained that the credit balance is not to be treated as a financial asset under this Act.

13. A security entitlement is established when a security or other financial asset is, or is to be, credited to a securities account maintained by a securities intermediary.

§3. — *Classification of certain property*

14. A unit of or similar participation in a partnership or a limited liability company is not a security unless

(1) it is, or is of a type, dealt in or traded on securities exchanges or securities markets;

(2) its terms expressly provide that it is a security for the purposes of this Act; or

(3) the partnership or company is a mutual fund.

Whether considered a security or not, such a unit or participation is a financial asset if it is held in a securities account.

In this Act, "limited liability company" means a group not endowed with juridical personality, other than a partnership, that is formed under the laws of a legislative authority other than Québec and whose legal status grants to each of its members limited liability with respect to the liabilities of the group.

15. Bills of exchange and promissory notes to which the Bills of Exchange Act (Revised Statutes of Canada, 1985, chapter B-4) applies and depository bills and depository notes to which the Depository Bills and Notes Act (Statutes of Canada, 1998, chapter 13) applies are not securities, but are financial assets if held in a securities account.

16. Options, other than options on futures contracts, issued by a clearing agency in favour of its members, and other similar obligations, are not securities but are financial assets.

17. Commodity futures contracts, security futures contracts, financial instrument futures contracts and other similar futures contracts as well as options on such contracts are neither securities nor financial assets.

They are however, for the purposes of security law, including the related publication rules and conflict of law rules, considered to be financial assets if held in a securities account.

DIVISION III

OTHER GENERAL MATTERS CONCERNING TRANSFER OF SECURITY OR ESTABLISHMENT OF SECURITY ENTITLEMENT

§1. — *Notices relating to security or financial asset*

I — General provisions

18. For the purposes of this Act, a person has notice of a fact if the person has received a notice of it, if the person has knowledge of it or if the fact comes to the person's attention under circumstances in which a reasonable person would take cognizance of it.

19. A notice is considered to be given if the person giving the notice has taken such steps as may be reasonably required in the normal course to ensure that the other person receives the notice, whether or not the other person takes cognizance of it.

20. A notice is considered to be received by the person to whom it is addressed when

(1) the notice comes to the person's attention;

(2) in the case of a notice under a contract, the notice is delivered to the place of business through which the contract was made; or

(3) the notice is delivered to any other place held out by the person as the place for receipt of such notices.

21. A group, endowed with juridical personality or not, is considered to have notice of a fact concerning a particular transaction from the time when the fact is brought to the attention of the individual conducting the transaction on behalf of the group or would have been brought to the attention of that individual if the group had exercised due diligence.

A group exercises due diligence if it maintains reasonable routines for communicating significant information about a transaction to the individuals conducting the transaction on its behalf and there is reasonable compliance with those routines. Due diligence does not require an individual acting on behalf of the group to communicate information unless that communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

22. A notice is to be communicated by sending a signed writing unless the person giving the notice and the person receiving the notice have agreed to other means.

II — Notice of adverse claim

23. A person has notice of an adverse claim if

(1) the person knows of the adverse claim;

(2) the person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

(3) the person has a duty, imposed by law, to investigate whether an adverse claim exists and the investigation, if carried out, would establish the existence of the adverse claim.

In this Act, "adverse claim" means a claim that the claimant has rights in a security or financial asset and that it is or would be a violation of the rights of the claimant for another person to hold, transfer or deal with the security or financial asset.

24. Having knowledge that a security or financial asset is being or has been transferred by a representative does not impose any duty of inquiry into the rightfulness of the transfer and is not notice of an adverse claim.

Despite the first paragraph, a person is considered to have notice of an adverse claim if the person knows that the representative is deriving a personal benefit from the transfer or is making the transfer in breach of a duty owed by the representative.

25. An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate, or that sets a date on or after which a security certificate is to be presented or surrendered for redemption or exchange, does not by itself constitute notice of an adverse claim except in the case of a transfer that takes place more than one year after a date set for presentation or surrender for redemption or exchange, or more than six months after the date on which the amounts to be paid against presentation or surrender of the security certificate became available.

26. A purchaser of a certificated security is considered to have notice of an adverse claim if

(1) the security certificate, whether in bearer form or registered form, has been endorsed "for collection" or "for surrender" or for some other purpose not involving a transfer; or

(2) the security certificate is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor.

The mere writing of a name on a security certificate does not by itself constitute an unambiguous statement that the security certificate is the property of a person other than the transferor.

27. Registration in the register of personal and movable real rights is not notice of an adverse claim to a security or financial asset.

§2. — *Terms of security*

28. The terms of a certificated security include the terms stated on the security certificate and any terms made part of the security by reference on the security certificate to a juridical act or another document, to the extent that those terms are compatible with the terms stated on the security certificate.

The terms of an uncertificated security include the terms stated in any act or document under which the security is issued.

§3. — *Validity of security and signatures, certificates, issues, rights and transfer restrictions*

29. A security is valid if it is issued in accordance with the issuer's constituting instrument and with the provisions of the applicable law, determined according to the conflict of laws rules set out in the Civil Code.

30. A security with a defect going to its validity is enforceable against the issuer if held by a purchaser for value and without notice of the defect.

31. When the terms of a certificated security are made part of the security by reference on the security certificate to a juridical act or another document, the reference does not by itself constitute notice to a purchaser for value of a defect that goes to the validity of the security, even if the security certificate expressly states that a person accepting it admits notice.

32. An unauthorized signature placed on a security certificate before or in the course of issue is ineffective except that the signature is effective in favour of a purchaser for value of the security if the purchaser is without notice of the lack of authority and the signing has been done by

(1) a trustee, transfer registrar, transfer agent or other person entrusted by the issuer with the signing or the preparation for signing of security certificates or with the authentication of the origin, genuineness and integrity of security certificates; or

(2) an employee of the issuer, or of any persons referred to in paragraph 1, entrusted with handling of the security certificate.

33. Subject to section 32, evidence that a security certificate is forged or counterfeited is a complete defence, even against a purchaser for value and without notice of the defect.

34. All other defences of the issuer of a security that are not referred to in sections 31 to 33, including a defence based on a defect in the delivery of a security, are ineffective against a purchaser for value of the security who has taken the security without notice of the particular defence.

35. After an act or event that creates a right to immediate performance of the principal obligation represented by a certificated security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is deemed to have notice of a defect in the security's issue or of any other defect that may be raised by the issuer if

(1) the act or event requires that, on presentation or surrender of the security certificate, money be paid, a certificated security be delivered or a transfer of an uncertificated security be registered, the money or security is available on the date set for redemption or exchange, and the purchaser takes delivery of the security more than one year after that date; or

(2) the act or event is not one to which paragraph 1 applies and the purchaser takes delivery of the security more than two years after the date on which performance of the principal obligation became due or the date set for presentation or surrender.

This section does not apply to a call that has been revoked.

36. A charge in favour of an issuer encumbering a certificated security is enforceable against a purchaser only if it is noted conspicuously on the security certificate.

37. A restriction on the transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless

(1) the security is a certificated security and the restriction is noted conspicuously on the security certificate; or

(2) the security is an uncertificated security and the registered holder has received notice of the restriction.

38. If a security certificate contains the signatures necessary to the security's issue or transfer but is incomplete in any other respect, any person may complete the security certificate by filling in the blanks in accordance with the person's authority and, even if any of the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took the security for value and without notice of the incorrectness.

A security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

§4. — *Purpose, nature and effectiveness of endorsement, instruction and entitlement order*

I — Purpose and nature of endorsement, instruction and entitlement order

39. The transfer or redemption of a security is initiated by means of an endorsement or instruction and that of a financial asset, by means of an entitlement order.

In this Act,

"endorsement" means a signature that, alone or accompanied by other words, is made on a security certificate in registered form or on a separate document for the purpose of initiating the transfer or redemption of the security;

"entitlement order" means a notice communicated to a securities intermediary directing the transfer or redemption of a financial asset to which an entitlement holder has a security entitlement;

"instruction" means a notice communicated to the issuer of an uncertificated security that directs that the transfer of the security be registered or that the security be redeemed.

II — Effectiveness of endorsement, instruction and entitlement order

40. An endorsement, instruction or entitlement order is effective if

(1) it is made by the appropriate person;

(2) it is made by a representative of the appropriate person; or

(3) the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

41. In this Act, "appropriate person" means,

(1) with respect to an endorsement, the person specified by a security certificate or by an effective special endorsement to be entitled to the security;

(2) with respect to an instruction, the registered holder of an uncertificated security; and

(3) with respect to an entitlement order, the entitlement holder.

42. Persons empowered by law to act for the appropriate person or to exercise an appropriate person's rights in a security or financial asset, including as the administrator of the property of another, are considered to be the appropriate person's representatives.

43. An endorsement, instruction or entitlement order made by a representative is effective even if

(1) the representative has failed to comply with the instrument granting the representative authority or with the law governing the representative's rights and duties, including any provisions requiring the representative to obtain court approval of the transfer or redemption; or

(2) the representative's action in making the endorsement, instruction or entitlement order or using the proceeds of the transaction is otherwise a breach of duty owed by the representative.

44. If a security is specially endorsed to a representative or registered in the name of a representative, or if a securities account is maintained in the name of a representative, an endorsement, instruction or entitlement order made by the representative is effective even if the representative is no longer serving in that capacity at the time the endorsement, instruction or entitlement order is made.

45. The effectiveness of an endorsement, instruction or entitlement order is determined as of the date that the endorsement, instruction or entitlement order is made.

§5. — *Overissues of securities*

46. Except as otherwise provided in this subdivision, the provisions of this Act that make a security enforceable against an issuer despite a defence or defect or that compel a security's issue or reissue do not apply to the extent that the application of such provisions would result in an overissue, that is, an issue of securities in excess of the number or amount that the issuer is authorized to issue.

47. If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to the issue of a security, or a person entitled to enforce a security against an issuer despite a defence or defect as provided in sections 30 to 32 and 34, may compel the issuer to acquire the security and deliver it, if certificated, or register the transfer of the security, if uncertificated, against surrender of any security certificate the person holds.

If such a security is not reasonably available for acquisition, a person entitled to issue of a security may recover from the issuer the price that the last purchaser for value paid for the security.

48. An overissue is deemed not to have occurred if appropriate action has cured the overissue.

§6. — *Depositary's or agent's liability to adverse claimant*

49. A depositary or agent, including a dealer, who has dealt with a security or other financial asset at the direction of a client or principal is not liable to a person having an adverse claim to the security or financial asset for any loss suffered by the person as a result, except if the depositary or agent

(1) acted as directed after having been served with a judgment enjoining the depositary or agent from doing so and after having had a reasonable opportunity to abide by the judgment;

(2) acted in collusion with the client or principal in violating the rights of the person who has the adverse claim; or

(3) in the case of a security certificate that has been stolen, acted with notice of the adverse claim.

CHAPTER III

TRANSFER OF SECURITY

DIVISION I

DELIVERY AND RIGHTS OF PURCHASER

§1. — *Delivery*

50. Delivery of a certificated security occurs when the purchaser acquires possession of the security certificate or another person acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the security certificate, acknowledges that the person holds the security certificate for the purchaser.

When the person who acquires possession of the security certificate on behalf of the purchaser is a securities intermediary, however, delivery of the certificated security only occurs if the security certificate is in registered form and

(1) the security certificate is registered in the name of the purchaser;

(2) the security certificate is payable to the order of the purchaser; or

(3) the security certificate is specially endorsed to the purchaser by an effective endorsement and has not been endorsed to the securities intermediary or in blank.

51. Delivery of an uncertificated security occurs when the issuer registers the purchaser as the registered holder, on the original issue or the registration of transfer, or another person, other than a securities intermediary, either becomes the registered holder of the uncertificated security on behalf of the purchaser or, having previously become the registered holder, acknowledges that the person holds the uncertificated security for the purchaser.

§2. — *Rights of purchaser*

52. A purchaser of a security acquires all rights in the security that the transferor had or had power to transfer.

53. A protected purchaser acquires rights in the security free of any adverse claim.

A protected purchaser is a purchaser who purchases a security for value, does not, at the time of the purchase, have notice of any adverse claim, and obtains control of the security.

54. The purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve that purchaser's position by virtue of taking from a protected purchaser.

55. A purchaser has control of a certificated security that is in bearer form if the certificated security is delivered to the purchaser. A purchaser has control of a certificated security that is in registered form if the certificated security is delivered to the purchaser and the security certificate is endorsed to the purchaser or in blank by an effective endorsement or is registered in the name of the purchaser at the time of the original issue or registration of transfer by the issuer.

56. A purchaser has control of an uncertificated security if the uncertificated security is delivered to the purchaser or the purchaser enters with the issuer of the security into an agreement, called "control agreement", under the terms of which the issuer agrees to comply with instructions that are originated by the purchaser without the further consent of the registered holder.

A purchaser has control of an uncertificated security even if the registered holder retains the right to originate instructions to the issuer, to make substitutions for the uncertificated security or to otherwise dispose of the uncertificated security.

57. The following rules apply to a control agreement regarding an uncertificated security:

(1) the issuer may not enter into a control agreement without the consent of the registered holder;

(2) the issuer is not required to confirm the existence of a control agreement to a third person unless requested to do so by the registered holder;

(3) the issuer is not required to enter into a control agreement even if the registered holder so requests; and

(4) a purchaser who is party to a control agreement is considered to be the representative of the registered holder for the purposes of any instruction.

58. Unless otherwise agreed, a purchaser of a certificated or uncertificated security has a right to require that the transferor supply the purchaser, on demand, with proof of entitlement to the security or of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security. If the purchase is not for value, the purchaser may so require only on payment of the necessary expenses.

If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject the transfer or consider the transfer contract to be rescinded.

DIVISION II

ENDORSEMENT AND INSTRUCTION

§1. — *Endorsement*

59. An endorsement of a security certificate may be in blank or special.

An endorsement in blank includes an endorsement to bearer.

For an endorsement to be a special endorsement, the endorsement must specify to whom the security is to be transferred or who has the power to transfer the security.

The certificate holder may convert an endorsement in blank to a special endorsement.

60. A partial endorsement, that is, an endorsement in respect of only some of the securities represented by the certificate, is effective only if the securities are intended by the issuer to be separately transferable.

61. An endorsement of a security certificate, whether special or in blank, does not constitute a transfer of the security until the delivery of the security certificate on which the endorsement appears or, if the endorsement is on a separate document, until the delivery of both the security certificate and the document on which the endorsement appears.

62. If a security certificate in registered form has been delivered to a purchaser without a necessary endorsement, the transfer is complete against the transferor on delivery.

However, the purchaser may become a protected purchaser only when the endorsement is supplied, and has a right to have any necessary endorsement supplied at any time.

63. An endorsement of a security certificate in bearer form may constitute notice of an adverse claim to the security certificate, but does not otherwise affect any right that the certificate holder has.

§2. — *Instruction*

64. An instruction originated by the appropriate person with respect to an uncertificated security may, if necessary, be completed by any person in accordance with the person's authority.

The issuer may rely on the instruction as completed, even if it has been completed incorrectly.

DIVISION III

WARRANTIES

§1. — *Warranties by endorser or originator*

65. A person who endorses a security certificate warrants to the purchaser for value and to any subsequent purchaser that

(1) the security certificate is neither forged nor counterfeited and has not been materially altered;

(2) the endorser does not know of any fact that might impair the validity of the security;

(3) there is no adverse claim to the security;

(4) the transfer does not violate any restriction on transfer;

(5) the endorsement is made by the appropriate person or, if the endorser is a representative of the appropriate person, the endorser has actual authority to act on behalf of the appropriate person; and

(6) the transfer is otherwise effective and rightful.

66. A person who endorses a security certificate warrants to the issuer that there is no adverse claim to the security and that the endorsement is effective.

67. A person who originates an instruction for the registration of transfer of an uncertificated security to a purchaser for value of the security warrants to the purchaser that

(1) the instruction is made by the appropriate person or, if the originator is a representative of the appropriate person, the originator has actual authority to act on behalf of the appropriate person;

(2) the security is valid;

(3) there is no adverse claim to the security; and

(4) at the time that the instruction is presented to the issuer, the purchaser will be entitled to the registration of transfer, the transfer will be registered by the issuer free from all prior claims, hypothecs, restrictions and claims other than those specified in the instruction, the transfer will not violate any restriction on transfer, and the transfer will otherwise be effective and rightful.

68. A person who originates an instruction for the registration of transfer of an uncertificated security warrants to the issuer that the instruction is

effective and that, at the time that the instruction is presented to the issuer, the purchaser will be entitled to the registration of transfer.

69. Unless otherwise agreed, a person making an endorsement or originating an instruction does not warrant that the security will be honoured by the issuer and makes only the warranties set out in this subdivision.

§2. — *Warranty on signature, endorsement or instruction*

70. A person who guarantees a signature of an endorser of a security certificate warrants that, at the time of signing,

(1) the signature was neither forged nor counterfeited;

(2) the signer was the appropriate person to endorse or, if the signature is by a representative of the appropriate person, the representative had actual authority to act on behalf of the appropriate person; and

(3) the signer had legal capacity to sign.

71. A person who guarantees a signature of the originator of an instruction warrants that, at the time of signing,

(1) the signature was neither forged nor counterfeited;

(2) if the person specified in the instruction as the registered holder was, in fact, the registered holder at that time, the instruction was effective; and

(3) the signer had legal capacity to sign.

A person who guarantees a signature of the originator of an instruction does not by that guarantee warrant that the person who is specified in the instruction as the registered holder is in fact the registered holder.

72. A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under section 71 and also warrants that, at the time that the instruction is presented to the issuer,

(1) the person specified in the instruction as the registered holder of the security will in fact be the registered holder of the security; and

(2) the transfer of the security will be registered by the issuer free from all prior claims, hypothecs, restrictions and claims other than those specified in the instruction.

73. A signature guarantor does not warrant the rightfulness of the transfer otherwise than under sections 70 to 72.

74. A person who guarantees an endorsement of a security certificate makes the warranties of a signature guarantor and also warrants the rightfulness of the transfer in all respects.

75. A person who guarantees an instruction that requests the transfer of an uncertificated security makes the warranties of a special signature guarantor and also warrants the rightfulness of the transfer in all respects.

76. An issuer may not require a special guarantee of signature, a guarantee of endorsement or a guarantee of instruction as a condition to the registration of transfer.

77. The warranties under this subdivision are made to a person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to the person for any loss resulting from any breach of those warranties.

An endorser or an originator of an instruction whose signature, endorsement or instruction has been guaranteed is liable to a guarantor for any loss resulting from any breach of the warranties of the guarantor.

§3. — *Other warranties*

78. A person signing a security certificate in a capacity such as trustee, transfer registrar or transfer agent for the purpose of certifying the origin, genuineness and integrity of the security certificate for the issuer warrants to the purchaser for value of the security, if the purchaser is without notice of a particular defect in respect of that security, that

(1) the security certificate is neither forged nor counterfeited;

(2) the person is acting within the person's capacity and within the scope of the authority received by the person from the issuer; and

(3) the person has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

Unless otherwise agreed, the person signing the security certificate does not assume responsibility for the validity of the security in any respect other than that set out in the first paragraph.

79. A person who transfers a certificated security to a purchaser for value otherwise than by endorsement warrants to the purchaser that

(1) the security certificate is neither forged nor counterfeited and has not been materially altered;

(2) the transferor does not know of any fact that might impair the validity of the security;

(3) there is no adverse claim to the security;

(4) the transfer does not violate any restriction on transfer; and

(5) the transfer is otherwise effective and rightful.

80. A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants to the purchaser that

(1) the security is valid;

(2) there is no adverse claim to the security;

(3) the transfer does not violate any restriction on transfer; and

(4) the transfer is otherwise effective and rightful.

81. A person who presents a security certificate for the registration of transfer or for payment, redemption or exchange warrants to the issuer that the person is entitled to the registration, payment, redemption or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants to the issuer only that the person has no knowledge of any unauthorized signature in a necessary endorsement.

82. A person who, as an agent, delivers a security certificate that the person has received from the principal or from a third person at the direction of the principal, to a purchaser who knows the identity of the principal, warrants to the purchaser only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

83. A secured creditor who redelivers a security certificate received from a debtor or, after payment and on order of the debtor, delivers the security certificate to a third person, makes only the warranties of an agent set out in section 82.

84. Subject to section 82, a dealer acting for a client makes to the issuer or a purchaser the warranties set out in sections 65 to 68, 79 and 81.

A dealer that delivers a security certificate to the dealer's client makes to the dealer's client the warranties set out in sections 65 and 79 and has the rights of a purchaser provided under sections 65, 79, 82 and 83.

A dealer that causes the dealer's client to be registered as the holder of an uncertificated security makes to the client the warranties set out in sections 67 and 80 and has the rights of a purchaser provided under those sections.

The warranties of and in favour of a dealer under this section are in addition to the warranties given by and in favour of the dealer's client.

DIVISION IV

REGISTRATION OF TRANSFER

§1. — *Conditions for registration*

85. If an endorsed security certificate in registered form is presented to an issuer with a request to register a transfer of the certificated security or an instruction is presented to an issuer with a request to register a transfer of an uncertificated security, the issuer registers the transfer as requested if

(1) under the terms of the security, the purchaser is eligible to have the security registered in that person's name;

(2) the endorsement or instruction is made by the appropriate person or by that person's representative;

(3) reasonable assurance is given that the endorsement or instruction is neither forged nor counterfeited and is authorized;

(4) any applicable fiscal law that imposes duties on the issuer at the time of the transfer has been complied with;

(5) the transfer does not violate any restriction on transfer imposed by the issuer that is enforceable against the purchaser or imposed by law; and

(6) the transfer is rightful or is to a protected purchaser.

86. An issuer may require the following assurance that each endorsement or each instruction is neither forged nor counterfeited and is authorized:

(1) a guarantee of the signature of the person making the endorsement or originating the instruction, given by a guarantor reasonably believed by the issuer to be a responsible person;

(2) if the endorsement is made or the instruction is originated by a representative of the appropriate person, appropriate evidence of actual authority to act on the appropriate person's behalf; or

(3) if the endorsement is made or the instruction is originated by a person not referred to in subparagraph 2, assurance appropriate to the case corresponding as nearly as may be to the assurance required by that subparagraph.

An issuer may adopt standards for the purpose of determining whether a guarantor is a responsible person, so long as those standards are not manifestly unreasonable.

87. In the case of a representative who is designated by a court, any document issued by or under the direction or supervision of the court or an officer of the court and dated within 60 days before the date of presentation for transfer is appropriate evidence of the representative's authority to act on the appropriate person's behalf.

In any other case, a copy of a document showing that the representative has the authority to act on the appropriate person's behalf, a certificate certifying that authority issued by a person reasonably believed by the issuer to be a responsible person or, in the absence of such a document or certificate, other evidence that the issuer reasonably considers appropriate is appropriate evidence of the representative's authority to act on the appropriate person's behalf.

88. An issuer may elect to require assurance beyond that specified in section 86 that an endorsement or instruction is neither forged nor counterfeited and is authorized, provided that such assurance is reasonable in the circumstances.

89. A person who is the appropriate person to make an endorsement or to originate an instruction may demand that the issuer not register a transfer of the security.

The demand is made by communicating a notice to the issuer setting out, among other things, the identity of the registered holder, the issue of which the security is a part, and the correspondence address of the person making the demand.

The issuer is under a duty to consider the demand only if the issuer has had a reasonable opportunity to act on it, having regard to the circumstances of receipt of the demand.

90. If, after a demand that the issuer not register a transfer of a security, a certificated security is presented to an issuer with a request to register a transfer or an instruction is presented to an issuer with a request to register an uncertificated security, the issuer promptly gives a notice to each interested person who initiated the demand, presented the request or originated the instruction.

The notice must state expressly

(1) that a request to register the transfer of the security has been presented to or an instruction for the registration of transfer of the security has been received by the issuer;

(2) that a demand that the issuer not register the transfer had previously been received; and

(3) that the issuer will withhold registration of transfer for a period of time stated in the notice in order to provide the person entitled to the security an opportunity to either obtain a judgment enjoining the issuer from registering the transfer or furnish security sufficient in the issuer's judgment to protect the issuer or a transfer registrar, transfer agent or other representative of the issuer from any loss that those persons may suffer by refusing to register the transfer.

The period of time stated in the notice may not exceed 30 days from the date on which the notice is given. The notice may specify a shorter period so long as it is not manifestly unreasonable.

§2. — *Issuer's duties*

91. Before due presentation for registration of transfer of a certificated security in registered form or the receipt of an instruction for registration of transfer of an uncertificated security, the issuer or the issuer's representative may treat the registered holder as the person exclusively entitled to vote, to receive notices, to receive any payments, dividends or other distributions and to otherwise exercise all the rights and powers of a registered holder.

92. An issuer that refuses or fails to register or unreasonably delays registering the transfer of a security despite the registration conditions being met is liable for any loss suffered as a result of the refusal, failure or delay by the person who presented the request to register the transfer or originated the instruction requesting the registration of transfer or by that person's principal.

When an issuer has received an effective demand from the person entitled to the security that the issuer not register a transfer, the registration conditions are considered to be met if the person has not, within the time allotted, either obtained a judgment enjoining the issuer from registering the transfer or furnished the security required by the issuer.

93. An issuer is not liable, to an appropriate person who initiated a demand that the issuer not register a transfer, for any loss that the person suffers as a result of the registration of a transfer in accordance with an effective endorsement or instruction if the person has not, within the time allotted, either obtained a judgment enjoining the issuer from registering the transfer or furnished the security required by the issuer.

94. An issuer is liable for wrongful registration of transfer.

Wrongful registration of transfer is registration of a transfer of a security to a person not entitled to the security when the transfer is registered by the issuer

(1) under an ineffective endorsement or instruction;

(2) without complying, in accordance with section 90, with an effective demand that the issuer not register the transfer which the issuer was under a duty to consider;

(3) after the issuer had been served with a judgment enjoining the issuer from registering the transfer and had a reasonable opportunity to abide by the judgment before registering the security; or

(4) acting in collusion with the person who requested the registration.

95. Subject to any applicable fiscal law that imposes duties on the issuer at the time of transfer, an issuer is liable for the loss resulting from registration of the transfer of a security under an effective endorsement or instruction only if the registration otherwise constitutes wrongful registration within the meaning of section 94.

96. An issuer that is liable for wrongful registration of transfer must, if the person entitled to the security so requests, provide the person with an identical certificated or uncertificated security, as the case may be, and with any payments, dividends or other distributions that the person did not receive as a result of the wrongful registration.

If the provision of a like security would result in an overissue, the issuer's liability to provide the person with an identical security is governed by section 47.

97. If the registered holder of a certificated security, whether in registered form or bearer form, claims that the security certificate has been lost, wrongfully taken or destroyed, the issuer must issue a new security certificate if the registered holder

(1) so requests before the issuer has notice that the lost, wrongfully taken or allegedly destroyed security certificate has been delivered to a protected purchaser;

(2) provides security sufficient in the issuer's judgment to protect the issuer from any loss that the issuer may suffer by issuing a new certificate; and

(3) satisfies any other reasonable requirements imposed by the issuer.

98. If, after the issue of a new security certificate, a protected purchaser of the lost, wrongfully taken or allegedly destroyed security certificate presents that security certificate for the registration of the transfer of the security, the issuer must register the transfer, as requested by that purchaser.

This rule does not apply if the registration of the transfer would result in an overissue, in which case the issuer's liability to the protected purchaser is governed by section 47.

An issuer that suffers a loss as a result of the application of this section may exercise against the registered holder to whom the issuer issued a new security certificate all the rights the issuer may have under the security provided by the registered holder.

99. Despite any contrary provision in this subdivision, the registered holder of a security may not assert a claim under section 96 or 98 against the issuer if

(1) the holder had notice of the fact that the security certificate had been lost, wrongfully taken or destroyed but failed to give a notice to the issuer of that fact within a reasonable time; and

(2) the issuer registered a transfer of the security before receiving a notice of the loss, wrongful taking or destruction of the security certificate.

100. A person who, in a capacity such as trustee, transfer registrar or transfer agent, is entrusted with certifying the origin, genuineness and integrity of securities for an issuer in the registration of a transfer of the issuer's securities, in the issue of new security certificates or uncertificated securities or in the cancellation of security certificates has the same obligation and liability to the registered holder of a security with regard to the particular function performed as the issuer has in regard to that function.

101. Nothing in this subdivision relieves an issuer from liability for loss resulting from the registration of a transfer under an endorsement or instruction that was not effective.

102. Nothing in this Act affects the liability of the registered holder of a security for a call, assessment or the like.

CHAPTER IV

ESTABLISHMENT OF SECURITY ENTITLEMENT

DIVISION I

ESTABLISHMENT OF SECURITY ENTITLEMENT AND RIGHTS OF ENTITLEMENT HOLDER OR OTHER PURCHASER

§1. — *Establishment of security entitlement*

103. A person acquires a security entitlement and so becomes the entitlement holder if a securities intermediary

(1) indicates, by book entry, that a financial asset has been credited to the person's securities account;

(2) receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

(3) becomes obligated under another law, regulation or rule or under a judgment to credit a financial asset to the person's securities account.

104. A person may have a security entitlement even if the securities intermediary does not itself hold the financial asset.

105. A person is not considered to have a security entitlement with respect to a financial asset if a securities intermediary holds the financial asset for that person and the financial asset

(1) is registered in the name of, payable to the order of or specially endorsed to that person; and

(2) has not been endorsed to the securities intermediary or in blank.

106. Issuance of a security does not in itself establish a security entitlement.

§2. — *Rights of entitlement holder or other purchaser*

107. To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all rights in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not the property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary except as otherwise provided in section 130.

Each entitlement holder has a proportionate right with respect to that financial asset, without regard to the time that the entitlement holder acquired the security entitlement or the time that the securities intermediary acquired the rights in that financial asset.

108. An entitlement holder's rights may only be enforced against the securities intermediary and only by the exercise of the entitlement holder's rights under the provisions of Division II of this chapter that relate to the duties of all securities intermediaries.

109. Despite section 108, an entitlement holder's rights with respect to a financial asset may be enforced against a purchaser of the financial asset, or rights in it, if

(1) bankruptcy or insolvency proceedings have been initiated by or against the securities intermediary;

(2) the securities intermediary does not have sufficient rights in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset; and

(3) the securities intermediary violated its obligations under section 116 by transferring rights in the financial asset to the purchaser.

A trustee or liquidator acting on behalf of all entitlement holders having security entitlements to a particular financial asset may exercise the entitlement holders' rights. If the trustee or liquidator does not take action, the entitlement holders may each exercise their rights against the purchaser.

An action based on the entitlement holder's rights with respect to a particular financial asset, however framed, may not be brought against any purchaser of a financial asset who purchases the financial asset for value, obtains control or possession of the financial asset, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under section 116.

110. An action based on an adverse claim to a financial asset, however framed, may not be brought against the entitlement holder if the entitlement holder acquired the security entitlement for value and did not, at the time of the acquisition, have notice of the adverse claim.

111. Subject to the provisions of the Civil Code regarding hypothecs and the provisions of Division IV of this chapter regarding priority rules, an action based on an adverse claim to a security entitlement or the financial asset to which an entitlement holder has a security entitlement, however framed, may not be brought against a purchaser of the security entitlement who purchased the security entitlement from the entitlement holder if the purchaser is a protected purchaser or if such an action could not have been brought against the entitlement holder under section 110.

112. The purchaser of a security entitlement is a protected purchaser if the purchaser purchases the security entitlement for value, does not, at the time of the purchase, have notice of any adverse claim to the security, and obtains control of the security entitlement.

113. A purchaser of a security entitlement has control of the security entitlement if

(1) the purchaser becomes the entitlement holder;

(2) the purchaser enters with the securities intermediary into an agreement, called "control agreement", under the terms of which the securities intermediary agrees to comply with entitlement orders that are originated by the purchaser without the further consent of the entitlement holder; or

(3) another person has control of the security entitlement on behalf of the purchaser or, having previously obtained control of the security entitlement, acknowledges that the person has control on behalf of the purchaser.

A purchaser has control of the security entitlement even if the entitlement holder retains the right to originate entitlement orders to the securities intermediary, to make substitutions for the security entitlement or to otherwise dispose of the security entitlement.

114. The following rules apply to a control agreement relating to a security entitlement:

(1) the securities intermediary may not enter into a control agreement without the prior consent of the entitlement holder;

(2) the securities intermediary is not required to confirm the existence of a control agreement to a third person unless requested to do so by the entitlement holder;

(3) the securities intermediary is not required to enter into a control agreement with the purchaser even if the entitlement holder so requests; and

(4) a purchaser that is party to a control agreement is considered to be the representative of the entitlement holder for the purposes of any entitlement order.

§3. — *Status of securities intermediary as purchaser*

115. A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favour of the holder of a securities account maintained by the securities intermediary is considered to be a purchaser for value of the financial asset.

A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary is considered to acquire the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favour of the holder of a securities account maintained by the securities intermediary.

If rights in a security entitlement are granted by the holder of a securities account to the securities intermediary that maintains that account, the securities intermediary is considered to have control of the security entitlement.

DIVISION II

DUTIES OF SECURITIES INTERMEDIARY

116. A securities intermediary must promptly obtain and then maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements that the securities intermediary has established in favour of its entitlement holders with respect to that financial asset.

The securities intermediary may maintain the financial asset directly or through one or more other securities intermediaries. Except to the extent otherwise agreed to by its entitlement holder, a securities intermediary may not encumber the financial asset with a security.

This section does not apply to a clearing agency that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

117. A securities intermediary must take action to obtain a payment, dividend or other distribution made by the issuer of a financial asset.

On receiving a payment, dividend or other distribution from the issuer of a financial asset, the securities intermediary is obligated to its entitlement holders having security entitlements to the financial asset.

118. A securities intermediary must exercise rights with respect to a financial asset if directed to do so by an entitlement holder.

119. A securities intermediary must comply with an entitlement order within a reasonable time if the securities intermediary has had a reasonable opportunity to assure itself that the entitlement order is effective.

120. A securities intermediary that has transferred a financial asset in accordance with an effective entitlement order is not liable for any loss suffered as a result of the transfer by a person having an adverse claim to the financial asset unless

(1) the securities intermediary transferred the financial asset after being served with a judgment enjoining the securities intermediary from doing so and after having a reasonable opportunity to abide by the judgment;

(2) the securities intermediary acted in collusion with the originator of the entitlement order in violating the rights of the person who has the adverse claim; or

(3) in the case of a stolen security certificate, the securities intermediary acted with notice of the adverse claim.

121. If a securities intermediary transfers a financial asset under an ineffective entitlement order, the securities intermediary must re-establish a security entitlement in favour of the previous entitlement holder and pay or credit any payments, dividends or other distributions that the previous entitlement holder did not receive as a result of the wrongful transfer.

122. A securities intermediary must act at the direction of an entitlement holder to change a security entitlement, when possible, into a security or another available form of holding or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary.

123. A securities intermediary is considered to satisfy the duties imposed under this division if the securities intermediary acts with respect to the duty as agreed between the entitlement holder and the securities intermediary or, in the absence of such an agreement, the securities intermediary exercises due care.

In the case of the duty imposed under section 118, the securities intermediary is considered to satisfy that duty if, in the absence of an agreement with the entitlement holder, the securities intermediary acts so as to enable the entitlement holder to directly exercise the entitlement holder's rights under that section.

124. Subject to specific standards specified by another law, regulation, rule or by a contract, a securities intermediary and an entitlement holder must perform their duties and exercise their rights under this division in a commercially reasonable manner.

125. If the substance of a duty imposed on a securities intermediary under this division is the subject of another law, regulation or rule, compliance with that other law, regulation or rule is considered to satisfy the duty.

Nothing in this division requires a securities intermediary to take any action that is otherwise prohibited by another law, regulation or rule. Nothing in this division prevents a securities intermediary from exercising its rights arising out of a security on a financial asset or from invoking exception for nonperformance against an entitlement holder who has obligations to the securities intermediary.

DIVISION III

WARRANTIES

126. A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary

(1) that the person is the appropriate person or has the authority to act on behalf of the appropriate person; and

(2) that there is no adverse claim to the financial asset.

127. A person who delivers a security certificate to a securities intermediary for credit to a securities account makes to the securities intermediary the warranties set out in section 65 or 79, according to whether the certificate is in registered form or bearer form.

A person who directs a securities intermediary to credit an uncertificated security to a securities account makes to the securities intermediary the warranties set out in section 67.

128. A securities intermediary that delivers a security certificate to an entitlement holder makes to the entitlement holder the warranties set out in section 65 or 79, according to whether the certificate is in registered form or bearer form.

A securities intermediary that causes an entitlement holder to be registered as the holder of an uncertificated security makes to the entitlement holder the warranties set out in section 67 or 80, as applicable.

DIVISION IV

PRIORITY RULES

129. A purchaser for value of rights in a security entitlement who obtains control of the security entitlement has priority over such a purchaser who does not obtain control. When two or more such purchasers have control of a security entitlement, the purchaser who first obtained control has priority over the other; however, the purchaser who obtains control by becoming the person for whom the securities account in which the security entitlement is carried is maintained has priority.

A securities intermediary as purchaser always has priority over a conflicting purchaser who has control of the security entitlement.

The rules set out in this section apply subject to the rules set out in the Civil Code with regard to hypothecs.

130. If a securities intermediary does not have sufficient rights in a financial asset to satisfy both the securities intermediary's obligations to entitlement holders who have security entitlements to that financial asset and the securities intermediary's obligation to a creditor of the securities intermediary who has a security on that financial asset, the claims of entitlement holders have priority over the claim of the creditor.

However, the claim of a creditor of a securities intermediary that has a security on a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if

(1) the securities intermediary is a clearing agency; or

(2) the creditor has control of the financial asset.

CHAPTER V
AMENDING PROVISIONS

CIVIL CODE

131. The Civil Code of Québec (1991, chapter 64) is amended by inserting the following article after article 2479:

"**2479.1.** If the insured has assigned or hypothecated his right to a premium overpayment refund to or in favour of the person who paid the premium and the insurer has received notice of the assignment or hypothec, the insurer is bound to make the overpayment refund to the assignee or to the holder of the hypothec.

The assignment or hypothec may not be set up against third persons until the insurer receives notice of the assignment or hypothec.

If two or more assignments or hypothecs are made or granted on the same right to a premium overpayment refund, priority is determined according to when the insurer received notice."

132. Article 2677 of the Code is amended

(1) by inserting "certain and determinate" after "A hypothec on" in the first paragraph;

(2) by replacing ", provided the registration of the hypothec" in the first paragraph by ". Publication of the hypothec by registration subsists only if the registration".

133. The Code is amended by inserting the following article after article 2684:

"**2684.1.** Notwithstanding article 2684, a natural person not carrying on an enterprise may grant a hypothec on a universality of present or future securities or security entitlements, within the meaning of the Act respecting the transfer of securities and the establishment of security entitlements, provided the securities or security entitlements are securities or security entitlements that the person may encumber with a hypothec without delivery.

Such a natural person may also grant a hypothec on any other universality of present or future property determined by regulation, provided the property is property that the person may encumber with a hypothec without delivery."

134. The Code is amended by inserting the following article after article 2701:

"**2701.1.** A movable hypothec constituted by a securities intermediary on securities or security entitlements within the meaning of the Act respecting the transfer of securities and the establishment of security entitlements is deemed to be published by the sole fact of its constitution, and does not require registration.

If the securities intermediary has constituted two or more movable hypothecs on the same securities or security entitlements, the hypothecs rank concurrently among themselves, regardless of when they were published."

135. Article 2702 of the Code is amended by replacing "by delivery" by "by physical delivery" and by inserting "physically" after "continuing to".

136. The Code is amended by inserting the following after article 2714:

"§5. — *Movable hypothecs with delivery on certain securities or security entitlements*

"**2714.1.** In the case of securities and security entitlements within the meaning of the Act respecting the transfer of securities and the establishment of security entitlements, the requirement that the property be delivered to and held by the creditor in order for a movable hypothec with delivery to be constituted and set up against third persons may be met by the creditor obtaining control of the securities or security entitlements in accordance with that Act.

"**2714.2.** From the time a creditor secured by a movable hypothec with delivery obtains control of the securities or security entitlements, that hypothec ranks ahead of any other movable hypothec on the same securities or security entitlements, regardless of when that other hypothec is published.

If two or more movable hypothecs with delivery are granted on the same securities or on the same security entitlements in favour of creditors each of whom has obtained control of the securities or security entitlements, the hypothecs rank among themselves according to when the creditors obtained control. However, in the case of security entitlements, the hypothec granted in favour of the creditor who obtained control of the security entitlements by becoming the entitlement holder ranks ahead of the other.

"**2714.3.** A movable hypothec with delivery granted in favour of a securities intermediary on security entitlements to a financial asset credited to a securities account maintained by the securities intermediary for its grantor ranks ahead of any other hypothec on those security entitlements.

"**2714.4.** A movable hypothec with delivery encumbering securities represented by a certificate in registered form, even if granted in favour of a creditor who does not have control of the securities, ranks ahead of any movable hypothec without delivery encumbering the same securities, regardless of when the hypothec without delivery is published.

"**2714.5.** Except in the case of securities represented by a certificate, a natural person not carrying on an enterprise may grant a movable hypothec with delivery only on those securities or security entitlements that the person may, under the conditions prescribed, encumber with a movable hypothec without delivery.

"**2714.6.** Unless otherwise agreed between the grantor and the creditor, a creditor holding a movable hypothec with delivery on securities or security entitlements may alienate the securities or security entitlements or grant a movable hypothec on them in favour of a third person.

"**2714.7.** Certificates representing securities within the meaning of the Act respecting the transfer of securities and the establishment of security entitlements do not have to be negotiable for hypothecary delivery to be validly effected through the physical delivery and holding of the certificates; hypothecary delivery results from the delivery of the certificates in accordance with that Act."

137. Article 2756 of the Code is repealed.

138. Article 2759 of the Code is replaced by the following article:

"**2759.** A creditor holding a hypothec on securities or security entitlements within the meaning of the Act respecting the transfer of securities and the establishment of security entitlements may sell the securities or security entitlements or otherwise dispose of them without having to give a prior notice, obtain their surrender or observe the time limits prescribed by this Title, if the agreement between the creditor and the grantor so permits and, when the creditor does not have control of the securities or security entitlements, if they are, or are of a type, dealt in or traded on securities exchanges or financial markets.

A creditor who so disposes of securities or security entitlements acts on behalf of the grantor and is not bound to declare the creditor's position as creditor to the purchaser. The creditor imputes the proceeds of the disposition to payment of the costs incurred to dispose of the securities or security entitlements, to payment of the hypothecary claims prior to the creditor's claim and, finally, to payment of the creditor's claim; the creditor remits any surplus to the grantor. The disposition purges the real rights to the extent provided by the Code of Civil Procedure in respect of the effect of a sale of property seized.

The rules of this Title pertaining to a sale by a creditor are applicable in all other respects to the disposition of securities or security entitlements by a creditor, with the necessary modifications."

139. The Code is amended by inserting the following after article 3108:

"§4. — *Securities and security entitlements to financial assets*

"**3108.1.** The validity of a security is governed by the law of the country under which the issuer is constituted or, if the security is issued by a country, by the law of that country.

"**3108.2.** The following matters are governed by the law of the country under which the issuer is constituted or, if permitted by the law of that country, by another law specified by the issuer:

(1) the rights and duties of the issuer with respect to the registration of transfer of a security on its books, and the validity of the registration;

(2) whether the issuer owes any duty to an adverse claimant to a security issued by the issuer; and

(3) whether an adverse claim may be asserted against a person to whom the transfer of a security is registered in the records of the issuer or who obtains control of an uncertificated security issued by the issuer.

If the issuer is constituted under the law of a country that comprises several territorial units having different legislative jurisdictions, the applicable law is the law in force in the territorial unit where the issuer has its head office or, if permitted by the law of the country that comprises the territorial units, another law specified by the issuer.

"**3108.3.** Despite article 3108.2, if the issuer is a country, the matters listed in that article are governed by the law of that country or, if the law of that country so permits, by the law specified by that country.

"**3108.4.** Québec as an issuer and any issuer constituted under a law of Québec may specify the law governing the matters listed in article 3108.2.

"**3108.5.** Whether a security is enforceable against the issuer despite a defect or defence related to matters other than those listed in articles 3108.1 and 3108.2 is governed by the law of the country under which the issuer is constituted or, if the issuer is constituted under the law of a country that comprises several territorial units having different legislative jurisdictions, by the law of the territorial unit in which the issuer has its head office.

If the issuer is a country, the applicable law is the law of that country. If the issuer is a country that comprises several territorial units having different legislative jurisdictions, the applicable law is the law of that country or any other law specified by that country.

"**3108.6.** The law of the country in which a security certificate is located at the time of its delivery determines whether an adverse claim to the security it represents may be asserted against a person to whom the security certificate is delivered.

"**3108.7.** The law expressly specified in a juridical act governing a securities account maintained for an entitlement holder by a securities intermediary as the law applicable to that act governs the following matters, unless the act specifies another law as the law applicable to them:

(1) acquisition of a security entitlement from the securities intermediary;

(2) the rights and duties of the securities intermediary and the entitlement holder arising out of the security entitlement;

(3) whether the securities intermediary owes any duty to a person who has an adverse claim to a security entitlement; and

(4) whether an adverse claim may be asserted against a person who acquires a security entitlement from the securities intermediary or who acquires rights in a security entitlement from the entitlement holder.

If no law is specified in a juridical act governing a securities account, the applicable law is the law of the country in which the establishment expressly mentioned in such an act as being the place where the securities account is maintained is located or, if no establishment is expressly specified in such an act, the law of the country in which the establishment identified in an account statement as the establishment serving the entitlement holder's account is located. If no law may be determined on the basis of the account statement, the applicable law is the law of the country in which the decision-making centre of the securities intermediary is located.

"**3108.8.** The validity of a security encumbering a security or security entitlement to a financial asset, the publication of the encumbering security and the effects of publication are governed by the following laws, determined, with respect to the validity of the encumbering security, at the time of its creation:

(1) in the case of a certificated security, the law of the country in which the security certificate is located;

(2) in the case of an uncertificated security, the law governing the matters listed in article 3108.2 relating, among other things, to certain rights and duties of the issuer; and

(3) in the case of a security entitlement to a financial asset, the law governing acquisition of a security entitlement from a securities intermediary.

However, whether an encumbering security is published by registration and whether an encumbering security without delivery granted by a securities intermediary is considered to be published by the sole fact of its being granted are governed by the law of the country in which the grantor is domiciled."

CHARTER OF VILLE DE MONTRÉAL

140. Section 124 of Schedule C to the Charter of Ville de Montréal (R.S.Q., chapter C-11.4) is amended by striking out the last sentence of the second paragraph.

CITIES AND TOWNS ACT

141. Section 549 of the Cities and Towns Act (R.S.Q., chapter C-19) is amended

(1) by striking out the fifth and sixth paragraphs;

(2) by striking out the following sentence at the end of the seventh paragraph: "That condition is added to the pertinent transfer procedure mentioned in the fifth or sixth paragraph.";

(3) by replacing the eighth paragraph by the following paragraph:

"A transfer in accordance with the Act respecting the transfer of securities and the establishment of security entitlements (2008, chapter 20) or with the fifth paragraph of this section, as applicable, conveys all rights in the bond to the transferee and entitles the transferee to bring an action based on the bond in the transferee's own name."

142. Section 551 of the Act is amended by replacing "the person entitled thereto pursuant to the last four paragraphs of section 549 when the interest specified therein falls due" in the first paragraph by "the person entitled to payment of the interest when the interest specified therein falls due, whether the bearer, the person in whose name the bond is registered or the endorsee".

CODE OF CIVIL PROCEDURE

143. The Code of Civil Procedure (R.S.Q., chapter C-25) is amended by replacing the heading before article 617 by the following heading:

"**SECTION III**

"SEIZURE OF SECURITIES AND SECURITY ENTITLEMENTS TO FINANCIAL ASSETS".

144. Articles 617 to 619 of the Code are replaced by the following articles:

"**617.** Securities represented by a certificate are seized by seizure of the certificates, through service of a writ of execution on the person holding the certificates, and notification of the seizure to the issuer or the issuer's transfer agent in Québec.

"**618.** Uncertificated securities or security entitlements to financial assets are seized through service of a writ of seizure by garnishment on the issuer or on the securities intermediary that maintains the debtor's securities account.

"**619.** Uncertificated or certificated securities or security entitlements to financial assets may also be seized through service of a writ of seizure by garnishment on a secured creditor if

(1) the certificates representing the securities are in the secured creditor's possession;

(2) the uncertificated securities are registered in the secured creditor's name in the issuer's records; or

(3) the security entitlements to financial assets are held in the secured creditor's name in a securities account maintained by a securities intermediary for the debtor.

"**619.1.** The seizure of securities or security entitlements to financial assets entails the seizure of the dividends, distributions and other rights attached.

"**619.2.** When securities represented by a certificate are seized, the issuer must declare to the bailiff the number of securities held by the debtor, the extent to which the securities are paid up and the dividends or other distributions declared but not paid."

145. Article 620 of the Code is amended by replacing "of the declaration of the company" by "of the declaration of the issuer".

146. Article 621 of the Code is amended

(1) by replacing "of the shares is subject under the constituting act and by-laws of the company" at the end of the first paragraph by "of the securities or security entitlements to financial assets is subject under the constituting act and by-laws of the issuer or the instrument governing the securities account maintained by the securities intermediary";

(2) by replacing "shares" in the second paragraph by "securities or security entitlements".

147. Article 622 of the Code is amended

(1) by replacing "of shares" in the first paragraph by "of securities or security entitlements";

(2) by replacing "Shares" in the second paragraph by "Securities or security entitlements" and by replacing "other shares" in that paragraph by "other securities or security entitlements".

148. Article 623 of the Code is amended by replacing "share" and "shares" by "security" and "securities" respectively.

149. Article 624 of the Code is amended by replacing "shares of companies" by "securities or security entitlements to financial assets".

MUNICIPAL CODE OF QUÉBEC

150. Article 1068 of the Municipal Code of Québec (R.S.Q., chapter C-27.1) is amended by replacing "the person entitled thereto under articles 1086 and 1087 when the interest specified therein falls due" in the first paragraph by "the person entitled to payment of the interest when the interest specified therein falls due, whether the bearer, the person in whose name the bond is registered or the endorsee".

151. Article 1086 of the Code is repealed.

152. Article 1087 of the Code is amended by striking out the second paragraph.

153. Article 1088 of the Code is amended

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

"**1088.** A transfer in accordance with the Act respecting the transfer of securities and the establishment of security entitlements (2008, chapter 20) or with article 1087, as applicable, conveys all rights in the bond to the transferee and entitles the transferee to bring an action based on the bond in the transferee's own name.";

(2) by replacing "articles 1086 and 1087" in the second paragraph by "article 1087".

ACT RESPECTING THE COMMUNAUTÉ MÉTROPOLITAINE DE MONTRÉAL

154. Section 203 of the Act respecting the Communauté métropolitaine de Montréal (R.S.Q., chapter C-37.01) is amended by striking out the last sentence of the second paragraph.

COMPANIES ACT

155. Section 46 of the Companies Act (R.S.Q., chapter C-38) is amended by replacing "property and are transferable in the manner and on the conditions prescribed by this Part, the constituting act or the by-laws of the company" in the first paragraph by "property; the transfer of company shares is governed by the Act respecting the transfer of securities and the establishment of security entitlements (2008, chapter 20), on the conditions prescribed by this Part and, if the conditions are effective under that Act, by the constituting act or the by-laws of the company".

156. Section 48 of the Act is amended by adding the following sentence at the end of subsection 13: "Likewise, the purchase or redemption of shares by a company that is compelled to do so under the Act respecting the transfer of securities and the establishment of security entitlements (2008, chapter 20) shall not be considered to reduce its capital stock."

157. Section 54 of the Act is amended by striking out ", and the shares may be transferred by delivery of the warrant" in subsection 2.

158. Sections 74 to 76 of the Act are repealed.

159. Section 123.44 of the Act is amended by adding the following sentence at the end of the first paragraph: "It may also hold its own shares if compelled to do so under the Act respecting the transfer of securities and the establishment of security entitlements (2008, chapter 20)."

160. Section 123.93 of the Act is amended by adding the following at the end of the third paragraph: "or, if the shares are uncertificated securities within the meaning of the Act respecting the transfer of securities and the establishment of security entitlements (2008, chapter 20) and the person did not receive notice of such an agreement".

161. Section 144 of the Act is amended by replacing "property and are transferable in the manner and on the conditions prescribed by this Part or by the charter or by-laws of the company" in the first paragraph by "property; the transfer of company shares is governed by the Act respecting the transfer of securities and the establishment of security entitlements (2008, chapter 20), on the conditions prescribed by this Part, by the charter of the company or, if the conditions are effective under that Act, by the by-laws of the company".

162. Section 146 of the Act is amended by adding the following sentence at the end of subsection 13: "Likewise, the purchase or redemption of shares by a company that is compelled to do so under the Act respecting the transfer of securities and the establishment of security entitlements (2008, chapter 20) shall not be considered to reduce its capital stock."

163. Section 152 of the Act is amended by striking out ", and the shares may be transferred by delivery of the warrant" in subsection 2.

164. Sections 166 to 168 of the Act are repealed.

ACT RESPECTING MUNICIPAL DEBTS AND LOANS

165. Section 24 of the Act respecting municipal debts and loans (R.S.Q., chapter D-7) is amended by adding the following sentence at the end of the first paragraph: "However, if the debenture is held jointly by two or more holders, the clerk, secretary or secretary-treasurer is not required to enter more than one holder."

166. Section 25 of the Act is amended by replacing "his right of ownership of such debenture" in the first paragraph by "that person's rights in the debenture".

167. Section 27 of the Act is repealed.

168. Section 28 of the Act is amended by striking out the second paragraph.

169. Section 29 of the Act is amended

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

"**29.** A transfer in accordance with the Act respecting the transfer of securities and the establishment of security entitlements (2008, chapter 20) or with section 28, as applicable, conveys all rights in the bond to the transferee and entitles the transferee to bring an action based on the bond in the transferee's own name.";

(2) by replacing "sections 27 and 28" in the second paragraph by "section 28".

SECURITIES ACT

170. Sections 10.2 to 10.5 of the Securities Act (R.S.Q., chapter V-1.1) are repealed.

CHAPTER VI

MISCELLANEOUS AND TRANSITIONAL PROVISIONS

171. The Minister of Justice is responsible for the administration of this Act.

172. The provisions of this Act are not applicable to proceedings pending on 1 January 2009.

173. Movable hypothecs with delivery effected by the creditor obtaining control of securities or security entitlements within the meaning of this Act may not be cancelled or declared unenforceable against third persons on the grounds that control of the securities or security entitlements, though obtained in the manner provided for by that Act, was obtained before 1 January 2009.

174. Movable hypothecs with delivery which became enforceable against third persons before 1 January 2009 after being published in a manner not recognized by the new provisions enacted by this Act retain their original enforceability provided they are published in the year that follows that date in accordance with the law in force at the time of publication. In the absence of such publication, the initial publication of those hypothecs ceases to have effect on the expiry of that year.

For the sole purposes of the first paragraph, hypothecs published by registration in the register of personal and movable real rights will in all cases be considered to be published in accordance with the law in force at the time of publication.

175. This Act applies to hypothecs referred to in sections 173 and 174, especially as regards their publication or their ranking among themselves or in relation to other hypothecs on the same securities or security entitlements.

176. This Act comes into force on 1 January 2009.

NATIONAL ASSEMBLY

FIRST SESSION THIRTY-EIGHTH LEGISLATURE

Bill 68
(2008, chapter 21)

An Act to amend the Supplemental Pension Plans Act, the Act respecting the Québec Pension Plan and other legislative provisions

Introduced 2 April 2008
Passed in principle 14 May 2008
Passed 18 June 2008
Assented to 20 June 2008

Québec Official Publisher
2008

EXPLANATORY NOTES

This Act amends the Supplemental Pension Plans Act, mainly so that pension plan members may be given the prospect of a phased retirement. It clarifies the meaning of that Act with respect to the conditions to which pension benefits may be subject and to the employer's obligations, particularly when a plan is terminated. It also amends that Act and the Act to amend the Supplemental Pension Plans Act, particularly with respect to the funding and administration of pension plans, in order to supplement or clarify certain measures set out in the latter Act. In addition, it repeals the Act respecting the funding of certain pension plans and prescribes transitional measures aimed at protecting the rights of the parties to the pension plans referred to in that Act.

This Act also amends various aspects of the Act respecting the Québec Pension Plan. It entitles beneficiaries of a retirement pension who contribute to the plan to an additional pension based on their post-retirement earnings. It also supplements the provisions on the coordination of disability pension benefits with the income replacement indemnities payable under the Act respecting industrial accidents and occupational diseases and the Automobile Insurance Act. It extends the retroactive payment of benefits in certain specific situations and includes various amendments related to the partition of earnings and of pension benefits, and to the revision and recovery of certain payments. Furthermore, this Act empowers the Régie des rentes du Québec to make regulations providing ways of submitting applications other than in writing.

LEGISLATION AMENDED BY THIS ACT:

– Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001);

– Act respecting the Québec Pension Plan (R.S.Q., chapter R-9);

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

– Act to amend the Supplemental Pension Plans Act, particularly with respect to the funding and administration of pension plans (2006, chapter 42).

LEGISLATION REPEALED BY THIS ACT:

– Act respecting the funding of certain pension plans (2005, chapter 25).

Bill 68

AN ACT TO AMEND THE SUPPLEMENTAL PENSION PLANS ACT, THE ACT RESPECTING THE QUÉBEC PENSION PLAN AND OTHER LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The Supplemental Pension Plans Act (R.S.Q., chapter R-15.1) is amended by inserting the following section after section 14:

"**14.1.** Unless expressly provided by this Act, no provision of a defined benefit plan or defined benefit-defined contribution pension plan may operate to make the following conditional on an extrinsic factor so that they are limited or reduced:

(1) the crediting of service or the accumulation of benefits under the plan;

(2) the amount or value of the benefits accumulated in respect of service prior to the date on which the value of the obligations arising from the plan are established with regard to the member or beneficiary whose rights are at stake.

The following, in particular, are considered to be extrinsic factors:

(1) the financial position of the pension fund;

(2) employer contributions paid in relation to the obligations arising from the pension plan with regard to the member or beneficiary;

(3) the exercised discretionary powers attributed exclusively to a person other than a member or beneficiary;

(4) certification or cancellation of the certification of an association of employees;

(5) technological or economic changes in the employer's enterprise or the division, merger, alienation or closing down of the enterprise; and

(6) the withdrawal of an employer from the pension plan or the termination of the pension plan."

2. The Act is amended by inserting the following section after section 21.2:

"**21.3.** In the case of a pension plan to which the conditions set out in subparagraphs 1 and 2 of the first paragraph of section 146.1 apply, no amendment having an impact on the funding or solvency of the plan may be made unless the surplus assets are appropriated to the payment of the value of the additional obligations arising from the amendment."

3. Section 58 of the Act is amended

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

"**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.";

(2) by replacing "A defined benefit plan or a defined contribution-defined benefit plan" in the first line of the second paragraph by "A plan to which Chapter X applies";

(3) by inserting the following paragraph after the third paragraph:

"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."

4. Section 59 of the Act is amended

(1) by inserting ", except in the case of the pension provided for in section 67.2," after "benefits" in the first line;

(2) by inserting the following paragraph before paragraph 1:

"(0.1) the pension is adjusted under the second paragraph of section 58 or the second or third paragraph of section 67.4;";

(3) by inserting "by reason of a redetermination of the pension pursuant to the fifth paragraph of section 87," after "modified" in the fifth line of paragraph 2.

5. Section 60 of the Act is amended

(1) by inserting ", established at the time of the earliest of the following events," after "interest" in the first line of the first paragraph;

(2) by inserting the following subparagraph after subparagraph 1 of the first paragraph:

"(1.1) of any benefit to which the member would have become entitled, including benefits related thereto, if the member had retired on the date of application for payment of the benefit, in the case of a benefit paid under subdivision 0.1 of Division III of Chapter VI;";

(3) by inserting ", in the second paragraph of section 67.4" after "58" in the first line of subparagraph 4 of the second paragraph;

(4) by adding the following subparagraph after subparagraph 7 of the second paragraph:

"(8) to a pension provided for in section 67.2."

6. The Act is amended by inserting the following after the heading of Division III of Chapter VI:

"§0.1. — *Phased retirement benefits*

"**67.2.** A pension plan to which Chapter X applies or which is referred to in paragraph 1 of section 116 may provide that a pension be paid, on application, to a member who is employed by an employer party to the plan and who meets the following conditions:

(1) the member makes an agreement to that effect with the employer;

(2) the member is at least 60 years of age or, if under 60 years of age, the member is at least 55 years of age and, if the period of continuous employment ended on the date payment of the pension begins, would be entitled to an early retirement pension without any reduction by reason of payment having begun before the normal retirement age; and

(3) the member is under 65 years of age.

"**67.3.** The details of the pension paid under section 67.2 are set under the agreement referred to in that section. However, the annual amount of the pension may not exceed,

(1) in the case of a member who receives a retirement pension under the plan or is entitled to a retirement pension that is suspended at the time the member applies for payment of the pension, 60% of the annual amount of the pension to which the member is entitled at that time, not considering any benefits referred to in section 83 or 104; or,

(2) in the case of a member not referred to in subparagraph 1 who is not receiving a retirement pension under the plan on the date the member applies for payment of the pension, 60% of the annual amount of any pension to which the member would have been entitled if the member had retired on that date, not considering any benefits referred to in section 83 or 104, the spouse's right to a pension referred to in section 87, or the options provided for in the plan.

In case of conflict, the details set out in the agreement prevail over those set out in the plan.

Neither the agreement nor, despite the second paragraph of section 5, the plan may contain provisions that allow the payment of the pension payable under section 67.2 if the member is 65 years of age or over. In addition, the member may not receive, for the same period, that pension and another benefit payable under the plan, except benefits referred to in section 67.5, 83 or 104.

The payment of any benefit, other than benefits referred to in section 67.5, 83 or 104, that the member receives at the time the member applies for payment of a pension provided for in section 67.2, is suspended for the period during which the member receives that pension. The plan may provide that the payment of benefits provided for in section 67.5, 83 or 104 is suspended at the request of the member who receives a pension provided for in section 67.2.

"**67.4.** The remuneration paid during the period beginning with the payment of a benefit referred to in this subdivision and ending on the date on which the payment of the retirement pension begins or begins again, or the date the member reaches 65 years of age, whichever occurs first, may not be taken into consideration for the calculation of the benefits relating to credited service that does not relate to that period, unless it is to the advantage of the member.

Also, the following adjustments apply:

(1) in the case referred to in subparagraph 1 of the first paragraph of section 67.3, if contributions are paid during that period, the member is entitled to an additional pension determined in accordance with the rules set forth in section 78 for the calculation of the minimum value of the pension

resulting from the contributions paid during a postponement period. In addition, if the retirement pension of the member was reduced by reason of payment having begun before the normal retirement age, the reduction must be recalculated at the end of the suspension of payment provided for in section 67.3; and

(2) in the case referred to in subparagraph 2 of the first paragraph of section 67.3, if contributions were paid during that same period, the member is entitled to a pension that cannot be less than the pension resulting from the application of the rules set forth in section 78.

The adjustments provided for in the second paragraph also apply to the benefits referred to in section 83 or 104, the payment of which was suspended under the fourth paragraph of section 67.3.

"**67.5.** A pension plan which, without being a defined contribution plan, includes provisions identical to those of that type of plan, and a plan referred to in paragraph 2 or 3 of section 116 may provide that a benefit other than a pension be paid, on application, to a member at least 55 years of age but under 65 years of age who is employed by an employer party to the plan with whom the active member makes an agreement to that effect.

The details of the benefit are set under the agreement, with the proviso that the annual amount of the benefit may not exceed 60% of the ceiling on the life income the member could receive under a replacement pension purchased under section 92. That amount is established at the beginning of the year during which payment of the benefit begins, based on the amounts credited to the member at that date and the age of the member at the end of the preceding year. The amount must be redetermined at the beginning of each year. Neither the agreement nor, despite the second paragraph of section 5, the plan may contain provisions that are more advantageous than those contained in this section.

In case of conflict, the details set out in the agreement prevail over those set out in the plan.

The value of the benefits to which the member is entitled, established on the date the benefit is paid, is reduced by the amount of that benefit."

7. Section 69.1 of the Act is amended by inserting "that provided for in section 67.5 or" after "and" in the fourth line of the second paragraph and striking out "a pension" at the end of the fourth line and the beginning of the fifth line of that paragraph.

8. Section 74 of the Act is amended by inserting ", except an active member who has received a retirement pension under the pension plan," after "member" in the second line.

9. Section 83 of the Act is amended by inserting "other than a pension provided for in section 67.2" after "on which a pension" in the fourth line of the first paragraph.

10. Section 85 of the Act is amended

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

"Spousal status is established as at either the day a member begins receiving payment of a retirement or disability pension, a pension that replaces it or a bridging benefit, or the day preceding the death of the member, whichever date is adopted by the pension plan, or, if neither is adopted, whichever date occurs first. However, if the member dies without having received payment of such a pension or benefit, spousal status is established as at the day preceding the death.";

(2) by replacing "during a marriage or civil union or a period of conjugal relationship prior to" in the second and third lines of the third paragraph by "prior to".

11. Section 86 of the Act is amended

(1) by replacing "any refund or pension benefit under the pension plan other than the benefit provided for in section 69.1" in the first, second and third lines of the first paragraph by "payment of a retirement or disability pension, a pension that replaces it or a bridging benefit";

(2) by inserting "retirement or disability" after "any" in the first line of subparagraph 1 of the first paragraph;

(3) by inserting "retirement or disability" after "not entitled to a" in the first line of subparagraph 2 of the first paragraph;

(4) by adding "without reference to the death of the member" after "those amounts" at the end of subparagraph 1 of the second paragraph.

12. Section 87 of the Act is amended

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

"(1) a retirement or disability pension or a pension that replaces it;";

(2) by striking out subparagraph 3 of the first paragraph;

(3) by replacing the second paragraph by the following paragraphs:

"The spouse is also entitled to a pension as of the death of the member if, before the death, the member was entitled to a pension referred to in the first paragraph, the payment of which was suspended under the second paragraph of section 58 or under section 67.3.

The amount of the spouse's pension must be equal to or greater than 60% of the amount of the member's pension, including,

(1) when the member dies during the period during which payment of the pension was suspended under section 58 or 67.3, the proceeds of the adjustment of the pension required by section 58 or 67.4 at the end of the period of suspension; and

(2) during the period of replacement, the amount of any temporary pension and, until the date on which the member, had the member survived, would have ceased receiving it, the amount of any bridging benefit.

The amount calculated in accordance with the third paragraph is increased by an amount equal to or greater than 60% of the amount of the pension provided for in section 83 or 104 that the member was receiving before the member's death or the payment of which was suspended under section 58 or 67.3, adjusted, if the member died while the pension was suspended, as provided for in section 58 or 67.4, with the necessary modifications.";

(4) by adding the following sentence at the end of the third paragraph: "In addition, if payment of a pension provided for in section 83 or 104 began before the date a person acquired the status of spouse of the member, the pension must be redetermined at that date to take into account the spouse's entitlement to the pension provided for in this section."

13. The Act is amended by inserting the following section after section 93:

"**93.1.** Despite sections 91.1 to 93, a member who has become entitled to a pension provided for in section 67.2 may not replace it."

14. Section 104 of the Act is amended by replacing "A member is entitled, from the date payment of a pension begins," in the first line by "From the date payment of a pension other than a pension provided for in section 67.2 begins, a member is entitled".

15. Section 112 of the Act is amended

(1) by striking out the second paragraph;

(2) by striking out the second sentence of the third paragraph.

16. The Act is amended by inserting the following sections after section 113:

"**113.1.** When it has been notified that an association has been formed to represent, for the purposes of the pension plan, active members not represented by a certified association, non-active members or beneficiaries of the plan, the pension committee must enclose a notice giving such information as it possesses with respect to the name and address of the association, its purpose and admission procedures with the following documents sent to the persons the association is mandated to represent:

(1) the annual statement sent out under section 112; and

(2) the notice sent to the members and beneficiaries under the second paragraph of section 146.3.1, section 146.6, the second paragraph of section 196 or the first paragraph of section 230.4.

The exemption provided by the second paragraph of section 112 does not dispense the pension committee from sending members the notice provided for in the first paragraph.

"**113.2.** If an association referred to in section 113.1 requests the name and address of the persons it is meant to represent, the pension committee must inform each person concerned of the request in a notice enclosed with the first of the following documents to be sent to the person after the committee receives the request:

(1) the annual statement sent under section 112; or

(2) the statement provided under the first paragraph of section 113.

The notice must include a note explaining that the person concerned may, within 30 days of receiving the notice, consent to the committee's sending the information in question to the association concerned.

The committee must provide the association with the name and address of the persons who gave their consent

(1) within 30 days following the expiry of the deadline given in the second paragraph, as regards persons who gave their consent after receiving a notice enclosed with the annual statement sent out under section 112; or

(2) at the latest 30 days after the end of the fiscal year of the plan during which consent was given, as regards persons who gave their consent after receiving a notice enclosed with the statement provided for under the first paragraph of section 113.

The committee is not required to comply more than once with a request made under the first paragraph by the same association. If it does, it may charge a fee."

17. Section 142 of the Act is amended by inserting "in section 67.5, the one provided for" after "provided for" in the first line of the second paragraph.

18. Section 161 of the Act is amended by replacing "and accompanied by the attestations and documents prescribed by regulation" in the fourth and fifth lines of the first paragraph by ", along with the attestations and documents mentioned in the form".

19. Section 210 of the Act is amended by replacing "an early retirement benefit provided for in section 69.1, in whole or in part and subject to the conditions it fixes, as well as a pension in payment" in the second, third and fourth lines of the fourth paragraph by ", 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".

20. The Act is amended by inserting the following section after section 228:

"**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."

21. Section 237 of the Act is amended

(1) by replacing "The vested" at the beginning of the first line of the first paragraph by "With the exception of a pension provided for in section 67.2, the vested";

(2) by inserting "or suspended" after "in payment" in the second line of the first paragraph.

22. Section 244 of the Act is amended by striking out subparagraph 8.3 of the first paragraph.

23. The Act is amended by inserting the following section after section 288.1:

"**288.1.1.** An employer may, upon providing the pension committee with a letter of credit, be relieved of paying a portion of the contribution required under sections 39 and 140. The employer contribution that the employer must pay into the pension fund is reduced accordingly.

The portion of the employer contribution of which an employer may be relieved may not exceed an amount corresponding to the amount obtained by multiplying by 20% the difference, established at the date of the last complete actuarial valuation, between the assets and liabilities of the fund, determined on a solvency basis.

The form, terms and conditions of the letter of credit referred to in the first paragraph must comply with the rules prescribed for the purposes of the Act respecting the funding of certain pension plans (2005, chapter 25), which apply with the necessary modifications.

A letter of credit provided by the employer under the first paragraph forms part of the assets of the plan for the purpose of determining its solvency. However, the amount of the letter, or the total amount of such letters, is taken into account for that purpose only up to 15% of the value of the liabilities of the plan.

This section ceases to have effect on 31 December 2009."

24. The Act is amended by inserting the following section before section 289:

"**288.3.** A letter of credit provided under section 288.1.1 or under paragraph 2 of section 5 of the Act respecting the funding of certain pension plans (2005, chapter 25) and in force on 1 January 2010 is deemed to have been provided under section 42.1. The second paragraph of section 42.1 does not invalidate such a letter of credit."

25. The Act is amended by inserting the following section after section 292:

"**292.1.** With respect to a pension plan to which a municipality is a party, subdivision 0.1 of Division III of Chapter VI does not apply to members in the employ of the municipality unless the council of the municipality adopts a resolution explicitly providing that it applies to them."

26. The Act is amended by inserting the following sections after section 305:

"**305.1.** For the purposes of its application before 1 January 2010, section 113.1 reads as if "the second paragraph of section 146.3.1," were struck from subparagraph 2 of the first paragraph.

"**305.2.** The date of the actuarial valuation referred to in section 121 must be later than 14 December 2009."

27. The Act is amended by inserting the following section after section 306.7:

"**306.7.1.** In the case of members or beneficiaries of a pension plan who have given the required consent to the application of the procedures set out in section 8 of the Act respecting the funding of certain pension plans, as long as amortization amounts remain to be paid with respect to the amount or balance for which the amortization procedures are set out in that section, no amendment concerning the benefits of the members or beneficiaries whose consent was required may be made to the plan unless a special amortization

payment equal to the value of the additional obligations arising from the amendment and determined on a solvency basis, is paid into the pension fund.

The special amortization payment must be paid as soon as the report on the first actuarial valuation to take the amendment into consideration is sent to the Régie. Any interest accrued since the valuation date is added, calculated at the rate referred to in section 48 of this Act.

The amortization amounts referred to in the first paragraph include those considered to be amortization payments under section 49 of the Act to amend the Supplemental Pension Plans Act, particularly with respect to the funding and administration of pension plans (2006, chapter 42).”

28. The Act is amended by inserting the following section after section 319:

“**319.1.** Sections 14.1 and 228.1 are declaratory.”

ACT RESPECTING THE FUNDING OF CERTAIN PENSION PLANS

29. The Act respecting the funding of certain pension plans (2005, chapter 25) is repealed.

ACT TO AMEND THE SUPPLEMENTAL PENSION PLANS ACT, PARTICULARLY WITH RESPECT TO THE FUNDING AND ADMINISTRATION OF PENSION PLANS

30. Section 5 of the Act to amend the Supplemental Pension Plans Act, particularly with respect to the funding and administration of pension plans (2006, chapter 42) is amended by replacing subparagraph *b* of paragraph 2 of the first paragraph of the section 39 it amends by the following subparagraph:

“(*b*) the higher of the following amounts: the amortization payment determined in respect of the funding deficiency or the sum of the amortization payments determined in respect of the solvency deficiencies and the special amortization payments payable during the fiscal year.”

31. Section 7 of the Act is amended by replacing paragraph 1 by the following paragraph:

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

“**41.** The employer contribution, less the portion the employer is relieved of paying under section 42.1 or that relates to a special amortization 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.”;”.

32. Section 9 of the Act is amended by replacing the first paragraph of the section 42.1 it enacts by the following paragraph:

"**42.1.** Under the conditions prescribed by regulation, an employer may, upon providing the pension committee with a letter of credit established in accordance with the regulations, be relieved of paying the portion of the employer contribution that relates to an amortization payment in relation to a solvency deficiency or a special amortization payment, up to the total of the amortization payments determined for the current fiscal year of the pension plan in respect of the solvency deficiencies and the special amortization payments payable during the year."

33. Section 11 of the Act is amended

(1) by replacing the second sentence of the third paragraph of the section 123 it enacts by the following sentence: "However, the amount of the letter, or the total amount of such letters, is taken into account for that purpose only up to 15% of the value of the liabilities of the plan.";

(2) by inserting "in section 67.5, the one provided for" after "provided for" in the first line of the second paragraph of the section 143 it enacts.

34. Section 13 of the Act is amended

(1) by replacing "30 days" in the eighth line of the second paragraph and in the eighth line of the third paragraph of the section 146.3.1 it enacts by "60 days";

(2) by replacing the section 146.3.3 it enacts by the following section:

"**146.3.3.** The conditions set out in subparagraphs 1 and 2 of the first paragraph of section 146.1 and sections 146.3 to 146.3.2 do not apply in the case of a pension plan to which the second paragraph of section 146.4 does not apply or in the case of a pension plan that was subject to an amendment made in accordance with section 146.5 confirming the employer's right to appropriate the plan's surplus assets to the payment of the value of the additional obligations arising from an amendment to the plan."

35. Section 40 of the Act is amended by replacing paragraph 2 by the following paragraph:

"(2) by inserting the following subparagraph after subparagraph 8 of the first paragraph:

"(8.0.1) for the purposes of section 128, determine the elements that contribute to the establishment of the reserve and the method of calculating the provision for adverse deviation;";".

ACT RESPECTING THE QUÉBEC PENSION PLAN

36. Section 91 of the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9) is amended by replacing "during a marriage, a civil union or period of *de facto* union prior to" in the second paragraph by "prior to".

37. Section 95.1 of the Act is amended

(1) by striking out "work and" in the first paragraph;

(2) by adding the following sentence at the end of the first paragraph: "When the third paragraph of section 95 may apply, the person must also produce his work history."

38. Section 102.3 of the Act is amended by inserting the following after "civil union to" in the first paragraph: "the end of the year preceding, in the case of a marriage, the date proceedings for divorce, annulment of marriage or separation from bed and board are instituted or, in the case of a civil union, the date proceedings for the dissolution or annulment of the civil union are instituted or the date a joint declaration dissolving the civil union is executed before a notary. However, if proceedings are instituted before 1 January 2009 or the joint declaration is notarized before that date, the period of partition ends at".

39. Section 102.4.1 of the Act is replaced by the following section:

"**102.4.1.** If benefits are payable to or in respect of at least one of the former spouses, and the Board establishes that neither former spouse would benefit from the partition, it does not effect the partition or, on application by a former spouse within the time set by regulation, it annuls a partition already effected.

The Board informs each of the former spouses in writing if it knows their addresses."

40. The Act is amended by replacing "Régie" wherever it appears in sections 102.5, 102.7 and 102.7.1 by "Board".

41. The Act is amended by inserting the following section after section 102.8.1:

"**102.8.2.** The question of the period subject to partition or whether or not to partition earnings may not be raised more than three years after the judgment giving rise to partition becomes effective, unless the court considers that circumstances justify it."

42. Section 102.10.5 of the Act is amended by adding ", except the months included in the year of the effective date of the judgment granting the divorce or the annulment of marriage or in the year of the effective date of dissolution,

by judgment or by joint declaration executed before a notary, or annulment of the civil union" at the end of subparagraph *b* of the second paragraph.

43. Section 105.2 of the Act is amended by adding the following paragraph at the end:

"If a contributor is no longer entitled to such an indemnity, the Board may, despite the exclusion from entitlement to a disability pension and subject to section 96, consider that the contributor is disabled from a date prior to the termination of the indemnity."

44. The Act is amended by inserting the following section after section 105.2:

"**105.3.** If an indemnity referred to in section 105.1 or 105.2 is reduced or cancelled and, under section 363 of the Act respecting industrial accidents and occupational diseases (chapter A-3.001) or section 83.51 or 83.52 of the Automobile Insurance Act, the benefits already paid to the contributor are not recoverable, sections 105.1 and 105.2 apply as though the indemnity had not been reduced or cancelled."

45. Section 116.5 of the Act is amended by replacing "which" in the first line of the first paragraph by "for a year subsequent to 1997 but prior to 2008 that".

46. The Act is amended by inserting the following section after section 120.2:

"**120.3.** When, for a year subsequent to 2007, unadjusted pensionable earnings relate to months subsequent to the end of a contributor's contributory period, within the meaning of subparagraph *a* or *b* of the first paragraph of section 101, the contributor is entitled to an additional pension from 1 January of the following year. This additional pension is deemed to be a retirement pension. However, section 157.1 does not apply to the payment of the additional pension.

The initial monthly amount of the additional pension is equal to 1/12 of 0.5% of the amount of the contributor's total unadjusted pensionable earnings for the year concerned, minus the basic exemption. However, for the year during which the contributor's contributory period ends under subparagraph *a* or *b* of the first paragraph of section 101, the unadjusted pensionable earnings to be used are those deemed to be related to the months of the year that are subsequent to the end of the contributor's contributory period and the basic exemption is multiplied by the proportion that the number of those months bears to 12."

47. Section 136 of the Act is amended by adding "either" after "account" in the third line of the definition of the letter d of the formula and ", or of an additional pension established under section 120.3" at the end of the definition of the letter d of the formula.

48. Section 137 of the Act is amended by replacing "or adjustments provided for in sections 120.1 and 120.2" by ", any adjustments provided for in sections 120.1 and 120.2, or any additional pension established under section 120.3" at the end of the first sentence of subparagraph 1 of the first paragraph.

49. Section 139 of the Act is amended

(1) by inserting "or as prescribed by regulation of the Board" after "in writing" in the first paragraph;

(2) by inserting "or a contributor who is entitled to an additional pension under section 120.3" after "defined by regulation" in the fourth paragraph.

50. Section 144 of the Act is amended by striking out the fourth paragraph.

51. Section 150 of the Act is amended by adding the following paragraph at the end:

"Deductions from a benefit interrupts prescription. Deductions made by a third party, for the benefit of the Board, from a reimbursement, indemnity or other amount the third party owes to the debtor of the Board also interrupts prescription."

52. Section 151 of the Act is amended

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

"**151.** If the amount is not recovered, the Board may issue a certificate

(1) stating the name and address of the debtor;

(2) attesting to the amount of the debt; and

(3) either attesting to the debtor's failure to apply for a review of the decision rendered under section 149 or to bring a proceeding before the Administrative Tribunal of Québec against a review decision, or mentioning the Tribunal's final decision confirming all or part of the Board's decision.";

(2) by inserting "or of the Administrative Tribunal of Québec" after "of the Board" in the second paragraph.

53. Section 158.4 of the Act is replaced by the following section:

"**158.4.** When one of the spouses applies for the partition of pension benefits, the Board notifies the other spouse only if it establishes that the amount paid to that other spouse could be reduced."

54. Section 170 of the Act is amended by inserting "or 176.1" after "108.3" in the second paragraph.

55. Section 172 of the Act is amended by adding ", except as provided in sections 172.1 and 176.1" at the end of the fourth paragraph.

56. The Act is amended by inserting the following section after section 172:

"**172.1.** To set the date on which an orphan's pension or a disabled contributor's child's pension becomes payable, the Board may, if circumstances justify it, use the date of the application for any benefit related to the death of the contributor or the date of the application for a disability pension. Unless warranted by exceptional circumstances in the opinion of the Board, retroactivity is limited to 36 months, including the month the application for the orphan's pension or disabled contributor's child's pension is submitted."

57. The Act is amended by inserting the following section after section 176:

"**176.1.** If the contributor has disappeared or is absent, the retroactive payment of the surviving spouse's pension and the orphan's pension may exceed 12 months, provided the application for a pension is made before the end of the twelfth month following the declaratory judgment of death, the attestation of death or the identification of the deceased contributor. Unless warranted by exceptional circumstances in the opinion of the Board, retroactivity is limited to 36 months, including the month the application is submitted.

In order for retroactivity to exceed 12 months, the application for a declaratory judgment of death must, in the opinion of the Board, have been made with due diligence under the circumstances."

58. Section 186 of the Act is amended by replacing "one year" in the second paragraph by "90 days".

59. Section 219 of the Act is amended by inserting the following paragraph after paragraph *j*.2:

"(*j*.3) prescribing ways other than in writing to apply for the benefits it determines;".

ACT RESPECTING INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES

60. Section 42.1 of the Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001) is amended by inserting the following subparagraph after subparagraph *b* of the second paragraph:

"(*b*.1) the identification, for the purposes of section 105.3 of that Act, of the contributors whose income replacement indemnity was reduced or cancelled

and the months or parts of a month for which that indemnity was payable if, under section 363, the benefits already paid to the contributors as an income replacement indemnity are not recoverable;".

TRANSITIONAL AND FINAL PROVISIONS

61. The pension committee must add a brief description of the rights and obligations that arise from sections 67.2 to 67.5, 113.1 and 113.2 of the Supplemental Pension Plans Act (R.S.Q., chapter R-15.1) enacted by this Act to the documents it sends out under section 112 of the Supplemental Pension Plans Act after the end of the first fiscal year of the pension plan that ends after this Act comes into force.

62. The date of disability set in cases referred to in the second paragraph of section 105.2 of the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9), enacted by section 43, may not be earlier than 1 January 2008.

63. Section 105.3 of the Act respecting the Québec Pension Plan, enacted by section 44, applies even with respect to months prior to 1 July 2008.

64. In addition to the transitional provisions in this Act, the Government may, by regulation made before 1 July 2010, make any other transitional provision concerning the application of this Act.

Such a regulation, to the extent that it concerns the application of sections 1 to 35 and 61, is not subject to the publication requirement set out in section 8 of the Regulations Act (R.S.Q., chapter R-18.1).

Despite section 17 of that Act, such a regulation comes into force on the date of its publication in the *Gazette officielle du Québec*, or on any later date set in the regulation. However, once it is published and if it so provides, it may apply from any date not prior to 20 June 2008.

65. This Act comes into force on 20 June 2008; however,

(1) sections 36, 44, 49, 51 to 60 and 63 come into force on 1 July 2008;

(2) sections 38, 39, 41 to 43 and 62 come into force on 1 January 2009;

(3) sections 2 and 24, section 26, insofar as it enacts section 305.2 of the Supplemental Pension Plans Act, and sections 27 and 29 to 35 come into force on 1 January 2010.

Regulations and other acts

Notice

Amendments to the Rules of Practice of the Superior Court of the district of Québec in civil matters (C-25, r.1.02)

Notice is hereby given, to be published in the *Gazette officielle du Québec*, that the judges of the Superior Court appointed for the district of Quebec, at their annual meeting on May 30th, 2008, have established the Rules of Practice in civil matters (2008) to amend the Rules of Practice of the Superior Court of the district of Quebec in civil matters, the text of which appears below, in virtue of the inherent power of the Court and of section 47 of the Code of Civil Procedure (R.S.Q., c. C-25).

Québec, 1 August 2008

ROBERT PIDGEON,
Senior Associate Chief Justice

Superior Court (District of Québec)

Rules of practice in civil matters (2008) *

1. The Rules of practice in civil matters of the Superior Court (District of Québec) is amended as follows:

2. The following sections are added after section 4.2:

"**4.2.1.** In the case of a motion for judicial review or evocation, the Judge called upon to fix the date of the hearing, having consulted the assistant to the Chief Justice, shall manage the proceeding by determining with the parties:

(a) the questions in dispute;

(b) the applicable standard of review;

(c) the reason for which the decision should be reviewed, cancelled or upheld;

(d) the duration of the hearing and the date of filing of

i. exhibits, if any;

ii. authorities.

4.2.2. In the case of a motion for an interlocutory injunction, the Judge called upon to fix the date of the hearing, having consulted the assistant to the Chief Justice, manages the proceeding by determining with the parties:

(a) the questions in dispute;

(b) the date of filing of

i. the affidavits necessary to establish the facts;

ii. the documents that the parties intend to refer to (a. 754.1 C.C.P);

(c) the number and identity of the witnesses, if any (a. 754.2 C.C.P), and the subject of their testimonies;

(d) the date on which out-of-court examinations are held and filed;

(e) the duration of the hearing.".

3. The following Division is added after Division VIII:

"**DIVISION IX**
USE OF A TECHNOLOGICAL MEANS

18.1. Extension of the 180-day time limit. Any application for extension of the 180-day time limit (a. 110.1 C.C.P.) presented to the Court must specify the reasons for the extension and be accompanied by a draft agreement (amended if necessary) on the conduct of the proceeding, with a mention that it is contested or not.

It must be transmitted to the Office of the Court before 4:00 p.m. on Tuesday of each week, in order to be heard on Friday between 9:00 a.m. and 10:00 a.m., in a case management hearing, by telephone conference held on the Court's initiative.

* Made under the inherent power of the Court and article 47 of the Code of Civil Procedure

18.2. Duty judge or judge in chambers. A motion to the duty judge or the judge in chambers not requiring the hearing of witnesses may be heard by telephone conference or videoconference, after 24 hours advance notice.

18.3. Motions in Practice Division. The Court may authorize the presentation of a motion fixed in Civil Practice, Family, Administrative, Commercial or Criminal Division by telephone conference or videoconference, if the parties agree thereto and after 48 hours advance notice to the judge assigned to the division concerned.

18.4. Hearing of witnesses. With the authorization of the Court, witnesses may be heard by way of videoconference at the hearing of a motion to institute proceedings, after 7 days advance notice to the judge in chambers.

18.5. Videoconferencing. The Court may authorize an examination on discovery, an examination on an affidavit or an examination of a witness out of court to be held by way of videoconference if the manner proposed appears to be reliable and proportional to the circumstances of the case, taking into account the available facilities, after 48 hours advance notice to the judge in chambers (arts. 4.1 and 4.2 C.C.P. and 2869, 2870 and 2874 C.C.Q.).".

8911

Draft Regulations

Draft Regulation

Professional Code
(R.S.Q., c. C-26)

Certified General Accountants
— Code of Ethics
— Amendments

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the "Regulation to amend the Code of ethics of certified general accountants", passed by the Bureau of the Ordre des comptables généraux licenciés du Québec, may be submitted to the Government which may approve it, with or without amendment, upon the expiry of 45 days following this publication.

The main purpose of this draft Regulation is to provide for standards of independence for the exercise of public accountancy by members of the Ordre des comptables généraux licenciés du Québec holding a public accountancy permit.

According to the Ordre des comptables généraux licenciés du Québec, this draft Regulation has no impact on businesses, including small and medium-sized businesses.

Further information may be obtained by contacting Mr. André Cantin at the Ordre des comptables généraux licenciés du Québec, 500, place d'Armes, Suite 1800, Montréal (Québec) H2Y 2W2; telephone: 514 861-1823 or 1 800 463-0163; facsimile: 514 861-7661; E-mail: acantin@cga-quebec.org

Any interested person having comments to make on the matter is asked to send them, prior to the expiry of the 45-day period, to the Chair of the Office des professions du Québec, 800 Place D'Youville, 10th Floor, Québec City (Québec) G1R 5Z3. These comments will be forwarded by the Office to the minister responsible for the enforcement of legislation applicable to professionals; they may also be forwarded to the professional corporation which passed the Regulation as well as to any interested persons, departments and organizations.

JEAN PAUL DUTRISAC,
Chair of the Office des professions du Québec

Regulation to amend the Code of ethics of certified general accountants

Professional Code
(R.S.Q., c. C-26, s. 87)

1. Paragraph *h* of Section 1.01 of the Code of ethics of certified general accountants is amended:

(1) by adding the phrase "by the member holding a public accountancy permit or by the member" in the first paragraph following the word "auditing";

(2) in the second paragraph by replacing subparagraph *ii* by the following:

"ii. public accountancy for the member holding a public accountancy permit;";

(3) in the second paragraph by adding the following subparagraph after subparagraph *iii*:

"iv. the audit engagement for the member in such cases as the law permits;".

2. Section 2.11 of this code is repealed.

3. This code is amended by adding, after Section 3.02.13, the following sections:

"**3.02.13.01.** A member who is responsible, in whole or in part, for preparing or approving financial statements or for overseeing the accounting and financial reporting processes shall also ensure that such statements and processes result in a fair presentation in accordance with generally accepted accounting principles.

3.02.13.02. A member who participates in an assurance engagement or a specified auditing procedures engagement shall notify the person responsible for the engagement if the financial statements are not presented fairly in accordance with generally accepted accounting principles.

If, after notification, the financial statements are still not presented fairly, the member shall notify in writing one of the partners or shareholders with voting rights of the partnership or joint-stock company within which he practices his profession. Such partner or shareholder shall hold the most senior position within the partnership or joint-stock company.

The member shall send the notifications provided for in the first and second paragraphs prior to the issuance of the financial statements or, failing which, as soon as possible. He shall also record and retain in the file the purpose of the notifications and the date upon which the notifications were sent.

The information and the notifications referred to in the second paragraph shall be retained for a minimum of 24 months from the date they were sent.

3.02.13.03. A member who is responsible for applying generally accepted accounting principles or for overseeing their application within an enterprise that is the subject of an engagement contemplated in Section 3.02.13.02 shall notify his immediate superior if the financial statements are not presented fairly in accordance with these principles.

If, after such notification, the financial statements are still not presented fairly, the member shall also notify in writing the enterprise's audit committee or similar body or, where there is no audit committee or similar body, the board of directors and the professional responsible for the engagement.

A member shall satisfy the obligations provided for in the third and fourth paragraphs of Section 3.02.13.02.

3.02.13.04. A member who prepares or approves, in whole or in part, financial statements prepared solely for internal use within an enterprise or for a specified user within the meaning of the Independence Standard published and adopted by the Certified General Accountants Association of Canada, 2006, first edition, version 1.2, and any subsequent amendments thereto, is relieved from satisfying the obligations set out in Sections 3.02.13.01, 3.02.13.02 and 3.02.13.03.".

4. Section 3.02.18 of this code is amended by replacing the portion of the first paragraph preceding paragraph *a* by the following:

"**3.02.18.** A member holding a public accountancy permit and, in the cases where the law so permits, a member:".

5. This code is amended by adding, after Section 3.05.09, the following section:

"**3.05.09.01.** A member shall comply with the Independence Standard published and adopted by the Certified General Accountants Association of Canada, 2006, first edition, version 1.2, and any subsequent amendments thereto.".

6. Section 4.02.01 of this code is replaced by the following:

"**4.02.01.** A member shall cooperate with the Order or any person representing it and reply without undue delay to any letter from the Order or such person.".

7. Section 4.02.02 of this code is amended by replacing the words "A practicing member" by the words "A member";

8. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

8907

Draft Regulation

Professional Code
(R.S.Q., c. C-26)

Certified General Accountants — Continuing education for holding a public accountancy permit

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the "Regulation respecting continuing education for certified general accountants of Quebec holding a public accountancy permit", passed by the Bureau of the Ordre des comptables généraux licenciés du Québec, may be submitted to the Government which may approve it, with or without amendment, upon the expiry of 45 days following this publication.

The purpose of this draft Regulation is to determine the continuing education activities which the holder of a public accountancy permit must complete, the penalties applicable in the event of default and, as the case may be, the circumstances under which exemptions may be granted.

According to the Ordre des comptables généraux licenciés du Québec, this draft Regulation has no impact on businesses, including small and medium-sized businesses.

Further information may be obtained by contacting Mr. André Cantin at the Ordre des comptables généraux licenciés du Québec, 500, place d'Armes, Suite 1800, Montréal (Québec) H2Y 2W2; telephone: 514 861-1823 or 1 800 463-0163; facsimile: 514 861-7661; E-mail: acantin@cga-quebec.org

Any interested person having comments to make on the matter is asked to send them, prior to the expiry of the 45-day period, to the Chair of the Office des professions du Québec, 800 Place D'Youville, 10th Floor, Québec City (Québec) G1R 5Z3. These comments will be forwarded by the Office to the minister responsible for the enforcement of legislation applicable to professionals; they may also be forwarded to the professional corporation which passed the Regulation as well as to any interested persons, departments and organizations.

JEAN PAUL DUTRISAC,
Chair of the Office des professions du Québec

Regulation respecting continuing education for certified general accountants holding a public accountancy permit

Professional Code
(R.S.Q., c. C-26, s. 187.10.2, 2nd para.; 2007, c. 42, s.3)

DIVISION I
CONTINUING EDUCATION

1. A member of the Ordre des comptables généraux licenciés du Québec holding a public accountancy permit shall, unless exempt pursuant to division IV, accrue at least 60 hours of continuing education activities per three-year reference period, with a minimum of 20 hours in each reference year. The 60 hours shall relate to the audit engagement, the review engagement and other activities related to public accountancy.

The member shall choose the continuing education activities that are best suited to his needs. He shall choose continuing education activities among those provided for in the program developed by the Order in accordance with section 4.

Continuing education activities shall include:

(1) continuing education courses organized or offered either by the Order or by a person or organization recognized by the Bureau;

(2) courses offered by educational institutions or by other professional orders;

(3) symposiums, seminars or conferences of a technical or educational nature;

(4) participation in courses or structured training activities offered in the workplace;

(5) participation in various structured training sessions, particularly seminars or case studies;

(6) participation in distance learning activities;

(7) acting as a lecturer, instructor or preparer for activities contemplated in paragraphs 1 to 6;

(8) participation in research projects;

(9) authorship of specialized published articles.

However, as part of the 60 hours to be accumulated in a given reference period, the Bureau may impose on a member holding a public accountancy permit a specific continuing education activity listed among the activities provided for in the program contemplated in section 4.

2. A member to whom the Order issues a public accountancy permit after August 1 of a given year shall, unless exempt pursuant to division IV, accumulate a minimum of 1.5 continuing education hours for each full calendar month by the end of the current reference year. Such person shall also accumulate at least 20 hours per full reference year.

DIVISION II
FRAMEWORK FOR CONTINUING EDUCATION ACTIVITIES

3. A continuing education activity must allow members to maintain and develop skills and professional, legal or ethical knowledge relating to the practice of public accountancy.

4. The Order shall establish the program of continuing education activities to be followed by the member holding a public accountancy permit. The Order shall:

(1) set the start and end date of the reference period contemplated in the first paragraph of section 1;

(2) determine which continuing education activities shall be provided as part of the program and the persons, organizations or educational institutions that may organize or offer them;

(3) determine, as appropriate, the activities it will impose under paragraph 4 of section 1;

(4) establish, where appropriate, criteria for calculating the eligible duration of these activities for the computation of the number of hours required under section 1, where that number differs from the actual duration of the activity.

When determining the activities that are included in the program and, where appropriate, establishing the criteria for calculating the eligible duration of an activity, the Order shall take into consideration the following criteria:

(1) the relevance of the training activity;

(2) the competence and qualifications of the instructor in relation to the subject matter;

(3) the fact that the training activity meets a need;

(4) compliance with the continuing education objectives set out in this Regulation;

(5) the fact that the training activity objectives are verifiable and set out in a clear and concise manner;

(6) the framework within which the training activities are provided;

(7) if applicable, the quality of the materials provided;

(8) the existence of a certificate of attendance or of an evaluation;

(9) the fact that the continuing education activity has been developed, supervised or provided by the Order, an instructor or a team of competent instructors recognized by the Bureau.

DIVISION III
VERIFICATION

5. Members shall submit to the Order, no later than 60 days after the end of each reference year within a reference period, a duly completed and signed training activity report using the form provided by the Order. They shall indicate therein the training activities engaged in during the reference year, the name of the person, body or educational institution organizing or offering the activity, the marks obtained, the number of hours completed, as well as the activities in respect of which they have obtained an exemption in accordance with division IV.

To determine whether the member has met the requirements of this Regulation, the Order may require relevant and reliable supporting documents in addition to the training activity report, including receipts identifying the activities engaged in, their duration and content, the organization and/or person offering the activity and, if applicable, a certificate of attendance or attestation of results obtained.

6. Successful completion of the training activity or, if there is no evaluation, the member's attendance, are the criteria by which the Order recognizes that members have engaged in a training activity for the purposes of meeting the requirements of this Regulation.

However, where the activity is not evaluated and attendance is not required, the Order shall recognize that members have engaged in a training activity if the members attest to having acquired sufficient knowledge of the activity's content to adequately carry out their professional activities.

Where the Order has identified training activities that members are required to attend, their attendance may be verified by any means established by the Order, such as an attendance sheet signed by the member.

7. No later than 180 days following the ultimate deadline for filing of the training activity report, the Order shall send a notice to the member specifying the hours which it recognizes and does not recognize as well as a statement listing the cumulative number of training activity hours for the previous year and for the given reference year.

8. Members may request a review of the Order's decision by submitting a written application to the committee set up by the Bureau within 30 days of receipt of the notice provided for in section 7.

This committee shall be made up of persons who have not taken part in the decision in respect of which a review is requested.

9. Members shall keep the documents in support of their reported hours, including the attendance sheet and proof of registration, for 24 months following the end of the reference period in question.

DIVISION IV
EXEMPTIONS FROM CONTINUING EDUCATION ACTIVITIES

10. Members who have attended or intend to attend a training activity that is not listed in the program of activities adopted by the Order are exempted, for a given reference period, from having to attend a training activity provided for in this program as long as the content of the unlisted activity is equivalent to that of an activity listed in the program.

11. Members shall be exempted, for a given reference period, from having to attend training activities provided for in the program of activities adopted by the Order if they are able to demonstrate that they are unable to attend.

The fact that the Committee on Discipline or the Professions Tribunal has suspended or struck a member off the Roll, or that the Bureau has suspended or imposed limitations on a member's right to engage in professional activities, does not constitute an inability to attend.

Exemptions are not to exceed a maximum period of one year and are renewable.

12. Members may be exempted pursuant to section 10 if they submit a written request for recognition of the activity to the Secretary of the Order, at least 30 days before the scheduled date of the activity or within 60 days of having attended such activity, as the case may be.

The request shall include the following information:

(1) a description of the training activity in question;

(2) the duration of the activity;

(3) the number of continuing education hours requested for this activity;

(4) if the request is made prior to the training activity taking place, the name and address of the person, organization or institution responsible for the activity;

(5) any other information deemed relevant for the purposes of recognition of the training activity.

13. Members may obtain an exemption pursuant to section 11 if they notify the Secretary of the Order in writing specifying the reasons for the exemption request and providing, as the case may be, a doctor's note or any other evidence attesting to the fact that they are unable to attend.

14. As soon as the circumstances referred to in the first paragraph of section 11 pursuant to which the member has been exempted have ceased to apply, the member shall notify forthwith the Secretary of the Order in writing and satisfy the obligations provided for in section 1, according to the terms and conditions set by the administrative committee.

15. Where the administrative committee grants an exemption to a member, it shall determine the number of hours which the latter is not required to complete during a given reference period.

The committee shall provide the member with its written decision setting out its reasons within 60 days following receipt of the application for exemption.

DIVISION V
PENALTIES

16. The Order shall send a notice to those members who fail to comply with their continuing education requirements, which notice shall set out the unfulfilled obligations and the penalties members face and the timeframe allowed for remedial action, which cannot be less than 30 days or more than 60 days and begins with the receipt of the notice.

Training hours completed after receiving a default notice may only be credited to the reference period during which the member was in default.

17. The Order shall send a final notice to members who fail to cure their default before the deadline determined by the Order, specifying that they have an additional 15 days from the date of receipt of the final notice to comply.

18. The Order shall suspend or revoke the public accountancy permit of those members who have not cured the default described in the notice provided for in section 17 before the deadline set out therein.

The Order shall notify members in writing of the penalty imposed.

19. The suspension or revocation of the public accountancy permit shall remain in effect until the member provides evidence to the Order that he has met the requirements listed in the default notice provided for in section 17, and the penalty is lifted by the Order.

DIVISION VI
FINAL PROVISION

20. This Regulation comes into force on the fifteenth day following its publication in the *Gazette officielle du Québec*.

8906

Draft Regulation

Professional Code
(R.S.Q., c. C-26)

Certified General Accountants
— Public accountancy permit

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the "Regulation respecting the public accountancy permit of the Ordre des comptables généraux licenciés du Québec", passed by the Bureau of the Ordre des comptables généraux licenciés du Québec, may be submitted to the Government which may approve it, with or without amendment, upon the expiry of 45 days following this publication.

The purpose of this draft Regulation is to determine the standards for issuing and holding a public accountancy permit which apply to members of the Ordre des comptables généraux licenciés du Québec.

According to the Ordre des comptables généraux licenciés du Québec, this draft Regulation will enable businesses, including small and medium-sized businesses, to retain a certified general accountant holding a public accountancy permit to audit their financial statements.

Further information may be obtained by contacting Mr. André Cantin at the Ordre des comptables généraux licenciés du Québec, 500, place d'Armes, Suite 1800, Montréal (Québec) H2Y 2W2; telephone: 514 861-1823 or 1 800 463-0163; facsimile: 514 861-7661; E-mail: acantin@cga-quebec.org

Any interested person having comments to make on the matter is asked to send them, prior to the expiry of the 45-day period, to the Chair of the Office des professions du Québec, 800 Place D'Youville, 10th Floor, Québec City, (Québec) G1R 5Z3. These comments will be forwarded by the Office to the minister responsible for the enforcement of legislation applicable to professionals; they may also be forwarded to the professional corporation which passed the Regulation as well as to any interested persons, departments and organizations.

JEAN PAUL DUTRISAC,
Chair of the Office des professions du Québec

Regulation respecting the public accountancy permit of the Ordre des comptables généraux licenciés du Québec

Professional Code
(R.S.Q., c. C-26, s. 187.10.2, first para.; 2007, c. 42, s. 3)

DIVISION I
STANDARDS FOR ISSUE OF THE PUBLIC ACCOUNTANCY PERMIT

§1. General provision

1. The Bureau of the Ordre des comptables généraux licenciés shall issue a public accountancy permit to a member who

(1) has met the requirements concerning the public accountancy training period in accordance with subsection (2);

(2) has successfully completed refresher training determined by the Order or training recognized as equivalent by the Order of at least 14 hours relating to the applicable standards in force in Québec in public accountancy, ethics, professional liability and record keeping.

(3) is not subject to a decision of the Order decreeing the revocation of his public accountancy permit for non-compliance with his continuing education duty, unless the Order has lifted such penalty.

§2. Training period

2. The training period shall enable the member to assimilate, in a concrete occupational environment, the overall knowledge acquired, in particular in public accountancy, and to develop the skills required for the application of that knowledge in a decision-making setting.

This training period shall facilitate the attainment of the following objectives:

(1) the application and development of theoretical knowledge and professional training;

(2) the practice and development of decision-making, leadership and administrative skills;

(3) the development of integrity and independent thinking;

(4) the development of the ability to identify and respond to the client's needs and to deal with critical situations;

(5) the improvement of interpersonal and professional skills.

3. The training period required to obtain a public accountancy permit shall be of a duration of 24 months and shall consist of not less than 2,500 hours of professional services rendered to the public. Of those 2,500 hours, 100 hours shall be rendered in taxation and not less than 1,250 hours shall involve:

(1) accounting services, insofar as they involve synthesis, analysis, advice, counsel or interpretation, and compilation engagements, but excluding record keeping;

(2) assurance services including audit and review engagements, derivative reports and specified auditing procedures engagements;

(3) taxation services, insofar as they involve advice, counsel or interpretation, including the preparation of tax returns and other statutory documents if required or connected with one of the public accounting services offered, but excluding personal income tax returns;

(4) investigative and forensic accounting services, including financial investigation and financial litigation support;

(5) financial planning services.

Of those 1,250 hours, not less than 625 hours shall pertain to auditing.

For the application of the first and second paragraphs, the following hours shall be taken into consideration:

(1) the hours completed by the member during his training period for the issue of his certified general accountant's permit and which meet the conditions of the training period for obtaining a public accountancy permit;

(2) the hours completed by the member as part of a review or audit engagement in the practice of his profession as a certified general accountant;

4. The training period shall be authorized by the Order. The member shall make an application to the Order on the form provided by the latter.

Where the training period meets the requirements provided for in section 3, the Bureau, on the recommendation of the committee set up by the Bureau to study authorization applications, shall authorize the member's training period and shall appoint a training supervisor having at least 5 years of experience in public accountancy. The training supervisor shall not be subject to any disciplinary action by the Disciplinary Committee of the Order or by the Professions Tribunal.

The written decision shall be forwarded to the member.

5. The member shall notify the Secretary and his training supervisor of any changes affecting the training period initially authorized by the Bureau. The Secretary shall submit to the authorization process provided for in section 4 any changes having an impact on the requirements set out in section 3.

6. An authorized training period shall be deemed to begin on the date when the formal application procedure is completed, in compliance with section 4.

7. At the end of each year of the training period, an evaluation questionnaire, provided by the Bureau, shall be completed by the member and submitted to his training supervisor within 30 days.

The training supervisor shall ensure that the evaluation questionnaire has been correctly completed and shall draw up a report containing his recommendations. This report shall contain a section with respect to the evaluation of the candidate, which shall specifically relate to the following:

(1) professional conscientiousness and integrity;

(2) competence;

(3) human relations and communication skills;

(4) personality;

(5) self-discipline.

The training supervisor shall, as soon as possible, forward the completed evaluation questionnaire and his report to the Secretary of the Order and to the member. He shall notify the Secretary when the training period ends.

8. Once the training period has been completed, the Secretary shall forward the evaluation questionnaires completed by the member and the reports from the

training supervisor to the committee set up by the Bureau, the members of which shall not be members of the Bureau. The committee shall examine these documents and make its recommendations to the Bureau.

At the first meeting following the date of receipt of the recommendation of this committee, the Bureau shall decide whether a member has met the requirements of the training period. Where a member has not met the training requirements, the Bureau shall specify the items to be completed and of the process by which they may be met, in order to satisfy the requirements of the training period. The Secretary shall notify the member in writing of this decision.

9. A member who is notified that he has not met the training requirements may apply to the Bureau for a review, provided that he applies to the Secretary in writing within 30 days following the date upon which the decision is received. He may add written representations to his application to the attention of the Bureau.

The Bureau shall have 60 days following the date of receipt of the application for review to hand down its decision.

The decision shall be final and shall be forwarded to the member within 30 days following the date upon which it was handed down.

DIVISION II
STANDARDS FOR HOLDING THE PUBLIC ACCOUNTANCY PERMIT

§1. Monitoring program

10. A member holding a public accountancy permit in respect of whom the hours required for the training period in public accountancy were completed more than 5 years prior to the date of application for the public accountancy permit shall successfully complete the monitoring program.

This program is aimed at enabling the incorporation and updating of the professional standards and responsibilities in order to confirm the achievement of the objectives set out in section 2.

11. The Order shall examine the duration of the monitoring program that the member is required to follow, which shall not exceed 24 months. For the purpose of determining the duration of the monitoring program, the Order shall take into account the professional experience of the member in public accountancy.

12. The program shall be organized by the Order and supervised by a training supervisor, who shall have at least 5 years of experience in public accountancy and never have been subject to any disciplinary action by the Disciplinary Committee of the Order or by the Professions Tribunal.

The program shall consist of periodic meetings with the training supervisor during which the latter shall assess the work performed by the member in public accountancy. The training supervisor shall draw up a report of the meetings indicating the progress achieved and the requisite improvements to be made, as the case may be.

13. The training supervisor shall report on the ability of the member to practice public accountancy, referring to the items provided for in section 7, and, within 30 days following the end of the program, he shall provide an opinion to the committee set up for this purpose by the Bureau, the members of which shall not be members of the Bureau.

The committee shall make its recommendation to the Bureau within 90 days following receipt of the opinion from the training supervisor.

14. Following receipt of the recommendation from the committee, the Bureau shall decide whether a member has met the requirements of the monitoring program. It shall notify the member in writing within 15 days following the date of its decision.

Where the member has not met the requirements of the monitoring program, the Bureau shall notify the member thereof and inform him of the items to be completed, such as additional training courses and meetings, and the process by which they may be met in order to satisfy these requirements, in accordance with this Regulation.

15. A member, who is notified of the decision that he has not met the requirements of the monitoring program, may apply to the Bureau for a review, provided that he applies in writing to the Secretary within 30 days following the date on which the decision is received. He may add written representations to his application to the attention of the Bureau.

The Bureau shall have 60 days following the date of receipt of the application to hand down its decision.

The decision shall be final and shall be forwarded to the member within 30 days following the date upon which it was handed down.

§2. Professional liability insurance

16. A member holding a public accountancy permit shall provide the Order no later than April 1 of each year evidence that he has taken out insurance against any liability which he may incur as a result of any fault or negligence which he may perpetrate in the practice of public accountancy.

17. This Regulation comes into force on the fifteenth day following its publication in the *Gazette officielle du Québec*.

8905

Draft Regulation

Professional Code
(R.S.Q., c. C-26)

Radiology technologists
— Code of ethics
— Amendments

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Regulation to amend the Code of ethics of radiology technologists, made by the Bureau of the Ordre des technologues en radiologie du Québec, may be submitted to the Government which may approve it, with or without amendment, on the expiry of 45 days following this publication.

According to the Ordre des technologues en radiologie du Québec, the main purpose of the draft Regulation is to adapt certain rules of ethics to the reality of the practice of the profession of radiology technologist within a partnership or a joint-stock company, as established in the draft Regulation respecting the practice of the profession of radiology technologist within a partnership or a joint-stock company.

The Ordre des technologues en radiologie du Québec advises that the Regulation will have no impact on enterprises, including small and medium-sized businesses.

Further information may be obtained by contacting Emmanuelle Duquette, Ordre des technologues en radiologie du Québec, 6455, rue Jean-Talon Est,bureau 401, Saint-Léonard (Québec), H1S 3E8; telephone: 514 351-0052; fax: 514 355-2396.

Any person wishing to comment on the draft Regulation is requested to submit written comments to the Chair of the Office des professions du Québec, 800, place D'Youville, 10e étage, Québec (Québec) G1R 5Z3, within the 45-day period. The comments will be sent by the Office to the Minister responsible for the administration of legislation respecting the professions. They may also be sent to the professional order that made the Regulation and to interested persons, departments and bodies.

JEAN PAUL DUTRISAC,
Chair of the Office des professions du Québec

Regulation to amend the Code of ethics of radiology technologists *

Professional Code
(R.S.Q., c. C-26. s. 87)

1. The Code of ethics of radiology technologists is amended by inserting the following before Chapter I:

"**CHAPTER 0.I**
GENERAL

0.1. This Code determines, pursuant to section 87 of the Professional Code (R.S.Q., c. C-26), the duties that must be discharged by a radiology technologist, regardless of the context or manner in which a radiology technologist carries on his professional activities or the nature of his contractual relationship with clients.

0.2. A radiology technologist shall comply with the Radiology Technologists Act (R.S.Q., c. T-5), the Professional Code and their regulations.

A radiology technologist shall take reasonable measures to ensure compliance with the Radiology Technologists Act, the Professional Code and their regulations by any person other than a radiology technologist who collaborates with him in the carrying on of his professional activities and any partnership or joint-stock company within which the radiology technologist carries on his professional activities.

0.3. A radiology technologist's duties and obligations under the Radiology Technologists Act, the Professional Code and their regulations are not changed or reduced by the fact that a radiology technologist practises within a partnership or joint-stock company.".

* The Code of ethics of radiology technologists approved by Order in Council 789-98 dated 10 June 1998 (1998, *G.O.* 2, 2289) was amended once by the regulation approved by Order in Council 778-2004 dated 10 August 2004 (2004, *G.O.* 2, 2549).

2. Section 11 is amended by inserting "or persons who carry on their professional activities within the same partnership or joint-stock company as him" after "members of the Order".

3. Section 17 is amended by adding the following sentence at the end:

"A radiology technologist may not invoke the liability of the partnership or joint-stock company within which he carries on his professional activities or the liability of another person also carrying on activities as a ground for excluding or limiting his personal liability.".

4. Section 18 is replaced by the following:

"**18.** A radiology technologist shall, in the practice of his profession, subordinate his personal interests, those of the partnership or joint-stock company within which he carries on his professional activities or in which he has an interest and those of any other person carrying on activities within such a partnership or joint-stock company, to those of the client.".

5. The following is inserted after section 20:

"**20.1.** A radiology technologist may not be a party to an agreement in which the nature and extent of professional expenses can influence the quality of his practice.

A radiology technologist may not be a party to an agreement with another professional in which the nature and extent of the professional expenses of the latter can influence the quality of his practice.

Any agreement entered into by the radiology technologist or a partnership or joint-stock company of which he is a partner or shareholder regarding the enjoyment of a building or a space to practise shall be entirely evidenced in writing and include a declaration that the obligations arising from the agreement comply with the provisions of this Code and a clause authorizing release of the agreement to the Ordre des technologues en radiologie du Québec on request.".

6. Section 21 is replaced by the following:

"**21.** A radiology technologist may share his fees only with another radiology technologist or a person, a trust or an enterprise referred to in subparagraph 1 or 2 of the first paragraph of section 1 of the Regulation respecting the practice of the profession of radiology technologist within a partnership or a joint-stock company, approved by Order in Council (*insert the number and date of the approval order of the Regulation*), or with a partnership or a joint-stock company within which the radiology technologist is authorized to carry on his professional activities.".

7. Section 22 is replaced by the following:

"**22.** A radiology technologist shall refrain from receiving any gratuity, rebate or commission relating to the practice of his profession other than customary tokens of appreciation or gifts of small value. No radiology technologist may pay, offer to pay or undertake to pay such gratuity, rebate or commission.".

8. Section 25 is amended by striking out ", unless the nature of the case so requires".

9. The following is inserted after section 26:

"**26.1.** A radiology technologist shall take reasonable measures to ensure that the secrecy of all confidential information obtained in the practice of his profession is preserved by any employee or person who collaborates with him or carries on his activities within the partnership or joint-stock company where he carries on his professional activities.".

10. The following is inserted after section 35:

"**35.1.** A radiology technologist who practises within a partnership or joint-stock company shall ensure that the fees relating to the professional services provided by radiology technologists are always indicated separately on every invoice or statement of fees that the partnership or joint-stock company sends the client.".

11. The following is inserted after section 36:

"**36.1.** Where a radiology technologist carries on professional activities within a joint-stock company, the fees relating to the professional services rendered by him within and on behalf of the joint-stock company belong to the joint-stock company, unless agreed otherwise.".

12. Section 40 is amended by adding the following paragraph at the end:

"(7) claiming fees for professional services not provided or falsely described.".

13. The following is inserted after section 40:

"**40.1.** It is also derogatory to the dignity of the profession for a radiology technologist who carries on his professional activities within a partnership or joint-stock company

(1) to practise his profession in a partnership or joint-stock company with other persons when he becomes aware that one of the conditions, terms or restrictions pursuant to which he is authorized to carry on his professional activities has not been respected;

(2) to continue to carry on his professional activities within the partnership or joint-stock company when the representative of the partnership or joint-stock company before the Order, a director, an officer or an employee is still performing his duties within the partnership or joint-stock company more than 10 days after he has been struck off the roll for more than 3 months or had his permit revoked;

(3) to continue to carry on his professional activities within the partnership or joint-stock company when a shareholder or a partner is still directly or indirectly exercising a voting right within such partnership or joint-stock company more than 10 days after the effective date on which he was struck off the roll for more than 3 months or had his permit revoked and has not divested himself of his partnership shares or units within 180 days following the aforementioned effective date; or

(4) to enter into an agreement or permit an agreement to be entered into, including a unanimous agreement between shareholders, that operates to impair the independence, objectivity and integrity required for the practice of the profession or compliance by the members with the Radiology Technologists Act, the Professional Code and their regulations.".

14. Section 56 is amended by replacing "logo" by "graphic symbol".

15. The following is inserted after section 56:

"**56.1.** A radiology technologist shall ensure that a partnership or joint-stock company within which he carries on his professional activities does not use the graphic symbol of the Order in connection with its advertising or name unless all the services provided by the partnership or joint-stock company are professional services rendered by radiology technologists.

In the case of a partnership or joint-stock company which provides professional services of radiology technologists and services of persons other than radiology technologists with whom the radiology technologist carries on his professional activities, the graphic symbol of the Order may be used in connection with the name of the partnership or joint-stock company or in its advertising provided the graphic symbol identifying each of the professional orders or organizations to which such persons belong is also used.

The graphic symbol of the Order may always be used in connection with the name of a radiology technologist.

CHAPTER V
NAME

56.2. A radiology technologist shall not practise within a partnership or joint-stock company under a name or designation which is misleading, deceptive or contrary to the honour or dignity of the profession or which is a number name.

56.3. A radiology technologist who carries on his professional activities within a partnership or joint-stock company shall take reasonable measures to ensure that every document filed within the practice of his profession and issued by the partnership or joint-stock company is identified with the name of a radiology technologist.".

16. The Code is amended by replacing

(1) "the user's" in sections 6, 9, subparagraph 3 of the first paragraph of section 27.1 by "the client's" and "the user" in sections 11 and 19 and the first paragraph of section 29 by "the client";

(2) "users" in the heading of Chapter II by "clients" and "the user" in sections 7, 13 and 24, the second paragraphs of sections 29 and 30 and sections 35 to 37 by "the client";

(3) "a user" in sections 12, 16, 24, 26 and 27 by "a client", "member" in the second paragraph of section 53 by "radiology technologist" and by adding "with a client" after "agree" in that paragraph;

(4) "the user" in sections 14 and 16 by "the client", "the applicant" in the first paragraph of section 30 and section 31 by "the client" and "the user" in section 34 by "the client";

(5) "users" in section 15 by "clients".

17. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

8908

Draft Regulation

Professional Code
(R.S.Q., c. C-26)

Radiology technologists
— Practice of the profession within a partnership or a joint-stock company

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Regulation respecting the practice of the profession of radiology technologist within a partnership or a joint-stock company, made by the Bureau of the Ordre des technologues en radiologie du Québec, may be submitted to the Government which may approve it, with or without amendment, on the expiry of 45 days following this publication.

The draft Regulation contains specific provisions intended to govern the terms and conditions for authorization of the practice of the profession of radiology technologist within a partnership or a joint-stock company, in particular as regards the administration of the partnership or joint-stock company and the holding of company shares or partnership units.

In accordance with Chapter VI.3 of the Professional Code (R.S.Q., c. C-26), the conditions also include the requirement to take out insurance to cover liability which may arise from fault or negligence on the part of members authorized to practise the profession within the partnership or joint-stock company. The members must also provide the Order with the required information on the partnership or joint-stock company and maintain the information up to date.

The Ordre des technologues en radiologie du Québec advises that the Regulation will have no impact on enterprises, including small and medium-sized businesses.

Further information may be obtained by contacting Emmanuelle Duquette, Ordre des technologues en radiologie du Québec, 6455, rue Jean-Talon Est, bureau 401, Saint-Léonard (Québec), H1S 3E8; telephone: 514 351-0052; fax: 514 355-2396.

Any person wishing to comment on the draft Regulation is requested to submit written comments to the Chair of the Office des professions du Québec, 800, place D'Youville, 10e étage, Québec (Québec) G1R 5Z3, within the 45-day period. The comments will be sent by the Office to the Minister responsible for the administration of legislation respecting the professions. They may also be sent to the professional order that made the Regulation and to interested persons, departments and bodies.

JEAN PAUL DUTRISAC,
Chair of the Office des professions du Québec

Regulation respecting the practice of the profession of radiology technologist within a partnership or a joint-stock company

Professional Code
(R.S.Q., c. C-26, s. 93, pars. *g* and *h* and s. 94, par. *p*)

DIVISION I
TERMS AND CONDITIONS

1. A member of the Ordre des technologues en radiologie du Québec is authorized to practise within a joint-stock company or a limited liability partnership within the meaning of Chapter VI.3 of the Professional Code (R.S.Q., c. C-26), if

(1) the shares or units of the partnership or joint-stock company are held

(a) by members of the Order;

(b) by legal persons, trusts or any other enterprise whose voting rights attached to the shares, units, equity securities or other rights are held entirely by members of the Order; or

(c) by the spouse, parents or relatives of a member of the Order;

(2) more than 50% of the voting rights attached to the shares or units of the partnership or joint-stock company are held

(a) by members of the Order;

(b) by legal persons, trusts or any other enterprise whose voting rights attached to the shares, units, equity securities or other rights are held entirely by members of the Order; or

(c) by a combination of persons, trusts or enterprises referred to in subparagraphs *a* and *b*;

(3) a majority of the directors of the board of directors of the joint-stock company, the partners or, if applicable, the directors appointed by the partners to manage the affairs of the limited liability partnership are members of the Order; they must constitute the majority of the quorum of such boards;

(4) the chair of the board of directors of the joint-stock company or, as the case may be, the person who performs similar functions in a limited liability partnership is a shareholder with voting rights or a partner and a member of the Order; and

(5) only a member of the Order practising within the partnership or joint-stock company is granted, by agreement or proxy, the voting right attached to a share or unit held by another member of the Order.

A member of the Order must ensure that the conditions listed in the first paragraph appear in the articles of the joint-stock company or in the written contract of the limited liability partnership and that the documents stipulate that the partnership or joint-stock company is constituted for the purpose of carrying on professional activities.

2. If a member of the Order is struck off the roll for a period in excess of 3 months or has had his or her permit revoked, the member may not, during the period of the striking off or revocation, directly or indirectly hold any voting share or unit in the partnership or the joint-stock company.

During that period, the member may not hold the position of director, officer or representative of the partnership or joint-stock company.

3. A member of the Order may practise within a partnership or joint-stock company if the member

(1) provides the Order with a written document from a competent authority certifying that the partnership or joint-stock company is covered by security in compliance with Division II;

(2) provides the Order with a written document from a competent authority certifying the existence of the joint-stock company where the member practises within a joint-stock company;

(3) provides the Order, where applicable, with a certified true copy of the declaration from the competent authority stating that the general partnership has been continued as a limited liability partnership;

(4) provides the Order with a written document certifying that the partnership or joint-stock company is duly registered in Québec;

(5) provides the Order with a written document certifying that the partnership or joint-stock company has an establishment in Québec; and

(6) provides the Order with an irrevocable written authorization from the partnership or joint-stock company within which the member practises allowing a person, committee or tribunal referred to in section 192 of the Code to require disclosure of and obtain any document listed in section 15 from a person or to obtain a copy of such a document.

4. In addition, the member sends to the Order a declaration duly filled out on the form provided by the Order that contains

(1) the name of the partnership or joint-stock company within which the member practises and any other names used by the partnership or joint-stock company in Québec, and the business number that was issued to it by the competent authority;

(2) the legal form of the partnership or joint-stock company;

(3) the professional activities carried on by the member within the partnership or joint-stock company;

(4) the name, home and business address of the member and the member's status within the partnership or joint-stock company;

(5) where a member practises within a joint-stock company, the address of the head office of the joint-stock company and of its establishments in Québec, the names and home addresses of the directors of the joint-stock company and the names and home addresses of the shareholders referred to in subparagraph 1 of the first paragraph of section 1 and the percentage of voting rights held by each shareholder;

(6) where a member practises within a limited liability partnership, the addresses of the establishments in Québec of the partnership specifying the address of the principal establishment, the names and home addresses of all partners domiciled in Québec and, where applicable, the names and home addresses of the directors appointed to manage the affairs of the partnership, whether or not they are domiciled in Québec; and

(7) a written document provided by the member certifying that the shares or units held and the rules respecting the management of the partnership or joint-stock company satisfy the conditions set out in this Regulation.

The member must enclose a fee of $150 with the declaration.

5. A member who fails to satisfy the conditions set out in sections 3 and 4, before practising within a partnership or joint-stock company, is not authorized to practise within a partnership or joint-stock company.

6. If more than one member of the Order carries on professional activities within a partnership or joint-stock company referred to in section 1, one representative must be designated to act on behalf of all the members of the Order who carry on their professional activities in the partnership or joint-stock company.

The representative must be a member of the Order who is a partner, director or shareholder with voting rights in the partnership or joint-stock company.

7. Except for subparagraphs 3 and 4 of the first paragraph of section 4, the representative must ensure that the information provided in the declaration is accurate.

8. The documents referred to in paragraphs 1, 2, 4 and 5 of section 3 and the declaration referred to in section 4 must be updated every year by the member or, if applicable, the representative by 31 March at the latest.

9. A member of the Order or the representative of the Order must immediately inform the Order of any amendment or cancellation of the insurance coverage required by Division II, the striking off, dissolution, assignment of property, bankruptcy, voluntary or forced liquidation of the partnership or joint-stock company or any other cause likely to prevent the partnership or joint-stock company from carrying on in its activities and any change in the information given in the declaration that is contrary to the conditions set out in section 1.

10. A member immediately ceases to be authorized to practise within a partnership or joint-stock company if at anytime the member no longer satisfies the conditions set out in this Regulation or Chapter VI.3 of the Code.

DIVISION II
PROFESSIONAL LIABILITY COVERAGE

11. To be authorized to practise in accordance with this Regulation, a member of the Order practising within a partnership or joint-stock company must furnish and maintain security on behalf of the partnership or joint-stock company by means of an insurance or suretyship contract or by joining a group plan contract entered into by the Order, or by contributing to a professional liability insurance fund established in accordance with section 86.1 of the Code, against liabilities of the partnership or joint-stock company arising from fault or negligence on the part of members of the Order in the practice of the profession within the partnership or joint-stock company.

12. The following minimum conditions for the security must be set out in a contract or specific rider:

(1) an undertaking by the insurer to pay in lieu of the partnership or joint-stock company, over and above the amount of the security to be furnished by the member pursuant to the Règlement sur l'assurance de la responsabilité professionnelle des technologues en radiologie du Québec, approved by the Office des professions du Québec on 30 October 1997, or the coverage actually taken out by the member if it is greater, up to the amount of the security, any sum that the partnership or joint-stock company may be legally bound to pay to an injured third party on a claim filed during the coverage period and arising from fault or negligence on the part of the member in the practice of the profession;

(2) an undertaking by the insurer to take up the cause of the partnership or joint-stock company and defend it in any action against it and to pay, in addition to the amounts covered by the security, all legal costs of actions against the partnership or joint-stock company, including the costs of the inquiry and defence and interest on the amount of the security;

(3) an undertaking that the security extends to all claims submitted in the five years following the coverage period during which a member of the partnership or joint-stock company dies, withdraws from the partnership or joint-stock company or ceases to be a member of the Order, in order to maintain coverage for the partnership or joint-stock company for fault or negligence on the part of the member in the practice of the profession within the partnership or joint-stock company;

(4) the security must be at least $1,000,000 per claim and for all claims filed against the partnership or joint-stock company within a 12-month coverage period;

(5) where a member is a sole practitioner and sole shareholder of a joint-stock company in which no other member of the Order is an employee, the security must be at least $500,000 per claim and for all claims filed against the company within a 12-month coverage period;

(6) an undertaking by the insurer or surety to give the secretary of the Order a 30-day prior notice of intent to terminate the insurance or suretyship contract, to modify it with respect to any of the conditions set out in this section; and

(7) an undertaking by the insurer or surety to give the secretary of the Order a notice that the insurance or suretyship contract has not been renewed; the notice must be sent within 15 days following the expiry of the contract.

13. The suretyship must be with a bank, savings and credit union, trust or insurance company domiciled in Canada and having and maintaining sufficient property in Québec to meet the coverage required under this Division.

The institution referred to in the first paragraph must undertake to provide the coverage in accordance with the conditions of this Division and must waive the benefit of division and discussion.

DIVISION III
ADDITIONAL INFORMATION

14. When a member of the Order who carries on professional activities otherwise than within a partnership or joint-stock company establishes such a partnership or joint-stock company or joins such a partnership or joint-stock company, or when the general partnership within which the member carries on professional activities is continued as a limited liability partnership, the member of the Order must send to the clients, on the date of the occurrence, a notice informing them of the nature and effects of the establishment, the integration of the member or the change of status of the partnership or joint-stock company, in particular with respect to the member's professional liability and the partnership's or joint-stock company's professional liability.

15. The documents for which a member of the Order must obtain an authorization from the partnership or joint-stock company to communicate or obtain copy pursuant to paragraph 6 of section 3 are the following:

(1) if the member of the Order practises within a joint-stock company,

(a) an up-to-date register of the articles and by-laws of the joint-stock company;

(b) an up-to-date register of the shares of the joint-stock company;

(c) an up-to-date register of the directors of the joint-stock company;

(d) any shareholders' agreement or voting agreement, and amendments;

(e) the declaration of registration of the joint-stock company and any update; and

(f) a list of the joint-stock company's principal officers and their home addresses;

(2) if the member of the Order practises within a limited liability partnership,

(a) the declaration of registration of the partnership and any update;

(b) the partnership contract and amendments;

(c) an up-to-date register of the partners;

(d) where applicable, an up-to-date register of the directors of the partnership; and

(e) a list of the partnership's principal officers and their home addresses.

DIVISION IV
DESIGNATIONS

16. In addition to the mention required under section 187.13 of the Code, a member of the Order who practises within a limited liability partnership is authorized to include in or after the limited liability partnership name the words "firm of professionals governed by the Professional Code" or use the abbreviation "FPGPC", except if the limited liability partnership is composed in part of the persons referred to in subparagraph *c* of paragraph 1 of section 1.

A member of the Order who practises within a joint-stock company is also authorized to include those words or use that abbreviation in or after the joint-stock company name.

17. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

8909

Draft Regulation

Professional Code
(R.S.Q., c. C-26)

Speech therapists and audiologists
— Standards for diploma equivalence or training equivalence for the issue of a permit
— Amendments

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Regulation to amend the Regulation respecting the standards for diploma equivalence or training equivalence for the issue of a permit by the Ordre des orthophonistes et audiologistes du Québec, made by the Bureau of the Ordre des orthophonistes et audiologistes du Québec, may be submitted to the Government which may approve it, with or without amendment, on the expiry of 45 days following this publication.

The purpose of the Regulation is to modify, pursuant to paragraph *c*.1 of section 93 of the Professional Code (R.S.Q., c. C-26), the procedure for recognizing an equivalence so that a decision may be the subject of a review by persons other than those who made it.

The Order advises that the Regulation has no impact on enterprises, including small and medium-sized businesses.

Further information may be obtained by contacting Mr Louis Beaulieu, President and General Director of the Ordre des orthophonistes et audiologistes du Québec, 235, boulevard René-Lévesque Est, bureau 601, Montréal (Québec) H2X 1N8, telephone: 514 282-9123 or 1 888 232-9123; fax: 514 282-9541.

Any interested person having comments to make is asked to send them in writing, before the expiry of the 45-day period, to the Chair of the Office des professions du Québec, 800, place D'Youville, 10e étage, Québec (Québec) G1R 5Z3. The comments will be forwarded by the Office to the Minister responsible for the administration of legislation respecting the professions; they may also be sent to the professional order that made the Regulation and to interested persons, departments and bodies.

JEAN PAUL DUTRISAC,
Chair of the Office des professions du Québec

Regulation to amend the Regulation respecting the standars for diploma equivalence or training equivalence for the issue of a permit by the Ordre des orthophonistes et audiologistes du Québec *

Professional Code
(R.S.Q., c. C-26, s. 93, par. *c* and *c*.1)

1. Section 2 of the Regulation respecting the standards for diploma equivalence or training equivalence for the issue of a permit by the Ordre des orthophonistes et audiologistes du Québec is amended by striking out «the Bureau of» wherever it appears.

2. Section 7 of this Regulation is amended by striking out «the Bureau of» in the part preceding the first paragraph.

3. Section 11 of this Regulation is replaced by the following:

«**11.** A candidate who is informed of the Bureau's decision not to recognize the diploma or training equivalence applied for may apply for review, provided that the candidate applies to the secretary in writing within 30 days of the mailing of the Bureau's decision.

The decision must be reviewed within 90 days of receipt of the application by a committee formed by the Bureau, made up of persons other than members of the

* The Regulation respecting the standards for diploma equivalence or training equivalence for the issue of a permit by the Ordre des orthophonistes et audiologistes du Québec, approved by the Order in Council 1141-98 dated 2 September 1998 (1998, *G.O.* 2, 3765), has not been modified since it was approved.

Bureau or the committee referred to in section 9, but with no less than a member holding a permit of each of the two categories established within the Order. Before disposing of the review application, the committee must allow the candidate to make submissions.

For this purpose, the secretary of the Order must inform the candidate of the date, time and place of the meeting where the application will be examined, by means of a written notice sent by registered mail at least 15 days before the date of the hearing.

A candidate who wishes to make submissions in person at the meeting must notify the secretary at least 5 days before the date scheduled for the meeting. The candidate may, however, send written submissions to the secretary at any time before the date scheduled for the meeting.

The decision of the committee is final and must be sent to the candidate in writing by registered mail within 30 days following the date it is made.».

4. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

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Abbreviations: **A**: Abrogated, **N**: New, **M**: Modified