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**Summary**

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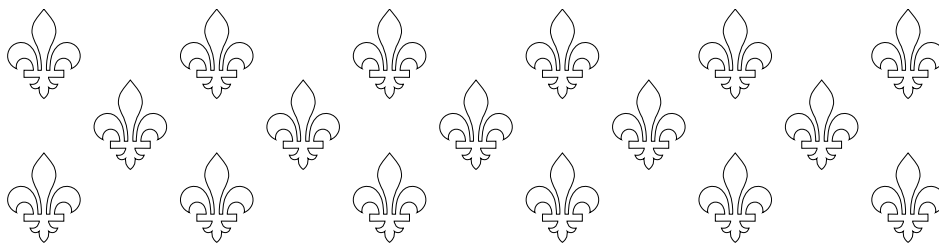
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# NATIONAL ASSEMBLY

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FIRST SESSION

THIRTY-EIGHTH LEGISLATURE

Bill 69

(2008, chapter 22)

## **An Act to amend the Election Act and other legislative provisions**

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**Introduced 14 December 2007  
Passed in principle 2 April 2008  
Passed 17 June 2008  
Assented to 20 June 2008**

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## EXPLANATORY NOTES

*This Act amends the Election Act as regards information sharing for the purposes of entering names on and updating the permanent list of electors and as regards voting and certain rules governing the financing of political parties and the control of election expenses.*

*To that end, the Act provides that the Chief Electoral Officer will obtain from the Régie de l'assurance maladie du Québec and from the Chief Electoral Officer of Canada the information needed to update the permanent list of electors. It also provides that the Chief Electoral Officer will obtain information from the Régie in order to enter names on the list.*

*The Act requires persons in charge of a lodging facility to give and facilitate access to a mobile board of revisors in the facility.*

*As for voting procedures, the Act provides for the implementation of provisions relating to electors who are inmates or are detained or held in a youth custody facility under the Youth Criminal Justice Act. It adds three extra days for voting at a mobile advance poll. In addition, it enables the returning officer to issue an authorization to vote, on polling day, to election officers who have not yet voted and whose name does not appear on the list of electors of any of the polling stations at the place where they are working. It leaves it up to the Chief Electoral Officer to decide to extend voting hours if there has been a delay or an interruption in the voting.*

*On the subject of election financing and the control of election expenses, the Act relaxes certain provisions relating to mandatory publications in the newspapers, the payment of allowances to political parties, the reimbursement of election expenses, the identification of advertisements, the minimum amount for which a detailed invoice is required and sworn declarations. It also provides that a contribution made contrary to the law will be paid over to the Minister of Finance if the contributor is found guilty of an offence in connection with that contribution.*

*Moreover, the Act authorizes the Chief Electoral Officer to adapt the provisions of the Election Act relating to voting procedures and the counting of the votes when circumstances so require because of the area covered by the electoral division or because some electors live a great distance away.*

**LEGISLATION AMENDED BY THIS ACT:**

- Health Insurance Act (R.S.Q., chapter A-29);
- Election Act (R.S.Q., chapter E-3.3);
- Act to amend the Election Act to encourage and facilitate voting (2006, chapter 17).





## Bill 69

### AN ACT TO AMEND THE ELECTION ACT AND OTHER LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

- 1.** Section 37 of the Election Act (R.S.Q., chapter E-3.3) is amended by inserting “authorized” before “independent” in the fifth line.
- 2.** Section 40.4 of the Act is amended by inserting “, the Chief Electoral Officer of Canada” after “Curator” in the fourth line of the first paragraph.
- 3.** Section 40.6 of the Act is amended by replacing “Two” in the first line of the second paragraph by “Unless the request concerns a change of address of an elector whose name is already entered on the list or the entry on the list by the Public Curator of the name of an elector in respect of whom the Public Curator exercises tutorship, two”.
- 4.** Section 40.7 of the Act is replaced by the following section:

**“40.7.** The Chief Electoral Officer shall obtain from the Régie de l’assurance maladie du Québec notice of any change in the name, address, date of birth or sex of a person whose name is entered on the permanent list of electors, and, where applicable, of the date of the person’s death and the corresponding address expiry codes. The Chief Electoral Officer shall also obtain from the Régie the name, address, date of birth and sex of any person of full age who has informed the Régie that he has acquired Canadian citizenship or has stated, on registering for the first time with the Régie, that he holds Canadian citizenship. The Chief Electoral Officer shall obtain the same information from the Régie concerning any person who is about to reach 18 years of age, at least six months before the person’s eighteenth birthday, and concerning any person who meets the criteria set out in subparagraphs 1 to 3 of the first paragraph of section 1 and whose name is not yet entered on the permanent list of electors.

If the Régie has been unable to identify an elector whose name is entered on the list of electors in its own file of insured persons, the Chief Electoral Officer may communicate with the elector concerned to verify the accuracy of the information held concerning the elector and may request that the elector correct or complete the information where necessary.

After receiving an advisory opinion from the Commission d'accès à l'information, the Chief Electoral Officer shall, on request, obtain from the Régie any other personal information needed to compile and update the permanent list of electors.

As well, the Chief Electoral Officer shall, on request, obtain from the Régie a list of all the residential addresses in Québec.”

**5.** Section 40.7.1 of the Act is amended by inserting “address,” after “name,” in the second line.

**6.** The Act is amended by adding the following section after section 40.7.1:

**“40.7.2.** The Chief Electoral Officer shall obtain from the Chief Electoral Officer of Canada the information contained in the Register of Electors that is required for the updating of the information entered on the permanent list of electors.”

**7.** Section 40.37 of the Act is amended by adding “authorized” before “independent” in the last line of the first paragraph.

**8.** Section 41 of the Act is amended by inserting “, independent Member” after “party authority” in the first line of the first paragraph.

**9.** Section 42 of the Act is amended

(1) by inserting “, an independent Member” after “a party authority” in the first line;

(2) by inserting “by the independent Member” after “leader,” in the third line.

**10.** Section 57 of the Act is amended by replacing “and in at least one newspaper published in Québec and circulated in all parts of Québec” at the end of the first paragraph by “and post the notice on the Chief Electoral Officer’s website”.

**11.** Section 59 of the Act is amended by replacing the second paragraph by the following paragraph:

“During the period for filing nomination papers, an application for authorization may be made on the form prescribed for the nomination paper, and the candidate’s official representative is the official agent designated by the candidate on the nomination paper.”

**12.** Section 62.1 of the Act is replaced by the following section:

**62.1.** An application for authorization made by a Member of the National Assembly who becomes an independent without having been elected as such must be in writing and contain the information referred to in section 59, with the necessary modifications.”

**13.** Section 64 of the Act is amended by replacing “and in at least one newspaper published in Québec and circulated, in the case of a party, in all parts of Québec or, in the case of a party authority, an independent Member or a candidate, in the electoral division for which the authorization was granted” at the end of the first paragraph by “and post the notice on the Chief Electoral Officer’s website”.

**14.** Section 65 of the Act is amended by replacing “and 59” in the second line of the first paragraph by “, 59 and 62.1”.

**15.** Section 66 of the Act is amended by inserting “be signed by an officer of the party and” after “must” in the first line of the second paragraph.

**16.** Section 67 of the Act is amended

(1) by replacing the second sentence of the first paragraph by the following sentence: “The Chief Electoral Officer may, upon the written application of an authorized independent Member or of an authorized independent candidate, withdraw the authorization of the Member or candidate unless the debts arising from that person’s election expenses have not been fully paid.”;

(2) by inserting “, by the independent Member” after “leader of the party” in the second line of the fourth paragraph.

**17.** Section 72 of the Act is amended by replacing “and in at least one newspaper published in Québec and circulated, in the case of a party, in all parts of Québec or, in the case of a party authority, an independent Member or a candidate, in the electoral division or part of Québec for which the authorization was granted” at the end of the first paragraph by “and post the notice on the Chief Electoral Officer’s website”.

**18.** Section 74.1 of the Act is amended by inserting “either following an application filed under section 67,” after “authorized” in the first line of the first paragraph.

**19.** Section 84 of the Act is amended by adding the following sentence at the end of the first paragraph: “The allowance may also be paid by means of a transfer of funds to an account held by the official representative.”

**20.** Section 86 of the Act is amended by replacing “Within thirty days of the payment of the allowance” in the first line of the second paragraph by “Not later than 1 April each year”.

**21.** Section 88 of the Act is amended by replacing “and the goods or services produced by such work” at the end of subparagraph 1 of the second paragraph by “, the goods or services produced by such work and the use of a personal vehicle supplied for no consideration for that purpose”.

**22.** Section 100 of the Act is replaced by the following section:

**“100.** Any contribution or part of a contribution made contrary to this division must, as soon as the fact is known, be remitted to the Chief Electoral Officer and returned to the contributor.

Despite the first paragraph, the funds must be paid over to the Minister of Finance if

- (1) the contributor’s identity is not known; or
- (2) the contributor has been found to have contravened section 87, 90, 91 or 95.”

**23.** Section 101 of the Act is amended by inserting “authorized” before “independent” in paragraph 1.1.

**24.** Section 103 of the Act is amended by replacing “of a party, of a party authority or of an independent Member” in the first and second lines by “of an authorized entity or any person designated in writing by the official representative”.

**25.** Section 108 of the Act is amended by striking out subparagraph 1 of the first paragraph.

**26.** Section 117 of the Act is amended

(1) by inserting “authorized” before “independent” in the second line of the first paragraph;

(2) by inserting “be prepared in the form prescribed by the Chief Electoral Officer and” after “shall” in the first line of the second paragraph;

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

“The official representative of an authorized independent candidate must file such a report if no election was held in the fiscal year during which the independent candidate was authorized.”

**27.** Section 118 of the Act is amended by inserting “authorized” before “independent” in the second line.

**28.** Section 121 of the Act is amended by inserting “authorized” before “independent” in the fourth line.

**29.** Section 122 of the Act is amended by inserting “in the form prescribed by the Chief Electoral Officer and” after “filed” in the first line of the third paragraph.

**30.** Section 146 of the Act is amended by inserting “authorized” before “independent” in the third line of the third paragraph.

**31.** Section 180 of the Act is amended

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

“**180.** A board of revisors must sit at the returning officer’s main office and the additional boards of revisors, at the returning officer’s branch offices or at any other place determined by the returning officer after being authorized by the Chief Electoral Officer. Those offices and places must be accessible to handicapped persons.

If the Chief Electoral Officer considers it expedient given the time of the year, a board of revisors may sit at any place where a university or a general and vocational college maintains a student residence. The institution must permit the use of those premises free of charge for that purpose.”;

(2) by inserting “authorized” before “independent” in the third line of the fifth paragraph.

**32.** Section 185 of the Act is amended by replacing “under section 184” in the third and fourth lines of the first paragraph by “for that purpose by each authorized party represented in the National Assembly”.

**33.** Section 187 of the Act is amended by inserting “authorized” before “independent” in the fourth line.

**34.** The Act is amended by inserting the following section after section 196:

“**196.1.** The owner, manager, operator, superintendent, caretaker or person in charge of a place described in section 135.1 must facilitate access by the electors domiciled or lodged in such a place to the mobile board of revisors assigned to that place, and cooperate with the revisors to facilitate the exercise of their functions.”

**35.** Section 212 of the Act is amended by replacing “or where” in the fourth line of the first paragraph by “, in a case described in the second paragraph of section 192 or where”.

**36.** Section 239 of the Act is amended by adding the following paragraph:

“The nomination paper filed by an independent candidate who wishes to be authorized must include the candidate’s telephone number and the information required under subparagraphs 3, 4 and 5 of the first paragraph of section 59.”

**37.** Section 262 of the Act is amended by replacing subparagraph 2 of the first paragraph by the following subparagraph:

“(2) by mail, in the case of electors outside Québec and of electors who are inmates or are detained in a place of temporary detention or held in a youth custody facility under the Youth Criminal Justice Act (Statutes of Canada, 2002, chapter 1); or”.

**38.** Section 263 of the Act is amended by replacing “from the eleventh day to the ninth day before polling day and from the sixth day to the fourth day before” in the third and fourth lines by “on the tenth, ninth, sixth, fifth and fourth days before”.

**39.** Section 269 of the Act is amended by replacing “eleventh” in the third line of the first paragraph by “tenth”.

**40.** Section 271 of the Act is amended by replacing “eleventh” in the third line of the second paragraph by “tenth”.

**41.** Section 274 of the Act is amended by replacing “from the eleventh day to the ninth day before polling day and from the sixth day to the fourth day before” in the first and second lines by “on the tenth, ninth, sixth, fifth and fourth days before”.

**42.** The Act is amended by inserting the following section after section 299:

“**299.1.** Sections 294 to 299 apply, with the necessary modifications, to electors detained in a place of temporary detention or held in a youth custody facility under the Youth Criminal Justice Act (Statutes of Canada, 2002, chapter 1).”

**43.** Section 301.7 of the Act is amended by replacing “during the hours determined by the returning officer” in the second line by “. The returning officer shall determine the day and hours”.

**44.** Section 301.16 of the Act is amended by replacing the second paragraph by the following paragraph:

“The mobile advance poll is held on the tenth, ninth, sixth, fifth and fourth days before polling day. The returning officer shall determine the day and hours each polling station is to visit electors. On the last day, voting ends at 2:00 p.m.”

**45.** Section 302 of the Act is amended by inserting “, is established for the purpose of setting up a polling station in a residential facility in accordance with section 301.6” after “territory” in the first line of the fourth paragraph.

**46.** Section 312.1 of the Act is amended by inserting the following paragraph after the second paragraph:

“If there is only one polling station on the premises, the returning officer may allow the deputy returning officer and the poll clerk to act as panel members.”

**47.** Section 340 of the Act is amended

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

“(6) who is an election officer in the electoral division of his or her domicile and whose name is entered on the list of electors of that electoral division but does not appear on the list of electors of any of the polling stations at the place where he or she is working on polling day.”;

(2) by replacing “3” in the second line of the third paragraph by “5”.

**48.** Section 353 of the Act is amended by replacing “it shall be continued until it has lasted eleven hours” at the end by “the Chief Electoral Officer may extend polling hours at the polling station concerned for as long as the Chief Electoral Officer determines”.

**49.** Section 361 of the Act is amended by replacing the second paragraph by the following paragraph:

“Before counting the votes cast during the advance poll, the deputy returning officer and the poll clerk take the oath provided in Schedule II. The deputy returning officer and the poll clerk may be persons other than those appointed to act at the advance polling station. In that case, sections 312 and 313 do not apply.”

**50.** Section 370.8 of the Act is amended by replacing the second paragraph by the following paragraphs:

“The Chief Electoral Officer appoints as deputy returning officer the person recommended by the party that received the greatest number of votes in the last general election.

The Chief Electoral Officer appoints as poll clerk the person recommended by the party that received the second greatest number of votes in the last general election.”

**51.** Section 370.10 of the Act is amended by replacing “, the rejected ballot papers, the spoiled or cancelled ballot papers and the unused ballot papers” in the second and third lines of the second paragraph by “and the rejected ballot papers”.

**52.** Section 409 of the Act is amended by replacing “returning officer” in the fourth line of the first paragraph by “Chief Electoral Officer”.

**53.** Section 410 of the Act is amended by replacing “returning officer” in the third line of the first paragraph by “Chief Electoral Officer”.

**54.** Section 411 of the Act is amended by replacing “The returning officer shall, without delay, inform the chief electoral officer” in the first and second lines of the first paragraph by “The Chief Electoral Officer shall inform the returning officer without delay”.

**55.** Section 417 of the Act is amended by replacing the second paragraph by the following paragraph:

“A person may, however, contribute his personal services and the use of his personal vehicle without remuneration and for no consideration, provided that he does so freely and not as part of his work in the service of an employer.”

**56.** Section 419 of the Act is amended by striking out “and address” in the fourth line of the third paragraph.

**57.** Section 420 of the Act is amended by striking out “and address” in the third line of the last paragraph.

**58.** Section 421 of the Act is replaced by the following section:

**“421.** Any writing, object or advertising material relating to an election must bear the name of the printer or manufacturer and the name and title of the official agent or deputy official agent who had it produced.

Any election advertisement published in a newspaper or other publication must mention the name and title of the official agent or deputy official agent who had it published.

In any election advertisement broadcast on radio or television or circulated by means of any other information medium or technology, the name and title of the official agent or deputy official agent must be mentioned at the beginning or at the end of the advertisement.”

**59.** Section 421.1 of the Act is replaced by the following section:

**“421.1.** If, under section 401, a writing, an object, an advertising material or an advertisement must mention the name and title of a private intervenor within the meaning of Division V of this chapter or the name and title of the representative of such an intervenor, it must also mention the authorization number issued under section 457.6.

If the cost of a writing, object, advertising material or advertisement covered by section 421 exceeds \$300, only the name and title of the official agent or deputy official agent of a candidate or authorized party may be mentioned as the person who had the writing, object, material or advertisement produced, published or broadcast.”

**60.** Section 422 of the Act is amended by striking out “and address” in the fourth and fifth lines.



**61.** Section 424 of the Act is amended by replacing “\$60” in the first line of the first paragraph by “\$200”.

**62.** Section 426 of the Act is amended

(1) by inserting “equal to or” after “is” in the fifth line of the fourth paragraph;

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

“If the amounts set out in this section are adjusted during an election period, the adjusted amount applies for the entire election period.”

**63.** Section 431 of the Act is amended by inserting “within the meaning of Division II.2 of the Executive Power Act (chapter E-18) nor to services rendered by a member of an office staff” after “office staff” in the second line.

**64.** Section 432 of the Act is amended by striking out “sworn” in the second line of the second paragraph.

**65.** Section 434 of the Act is amended by striking out “sworn” in the second line of the second paragraph.

**66.** Section 436 of the Act is amended

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

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

“Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no person has a right of access to those documents before the expiry of the filing period. If they are filed after that period, they are accessible as soon as they are filed.

Any person may examine and copy the documents at the information centre of the Chief Electoral Officer during regular office hours.”

**67.** Section 442 of the Act is amended

(1) by replacing “or party leader” in the second line of the first paragraph by “, the party leader or, if the party leader is not a Member of the National Assembly, the leader of the party in the House”;

(2) by replacing “or party leader” in the first and second lines of the second paragraph by “, the party leader or the leader of the party in the House, as the case may be,”.

**68.** Section 454 of the Act is amended by adding the following paragraph:

“The reimbursement may also be paid by means of a transfer of funds to an account held by the official representative.”

**69.** Section 456 of the Act is repealed.

**70.** Section 457 of the Act is amended

(1) by replacing “the amount of the debts resulting from his election expenses” in the second paragraph by “the sum of the amount of the debts resulting from the candidate’s election expenses and the amount of the candidate’s personal contribution”;

(2) by adding “and, where applicable, under the third paragraph of that section” at the end of the third paragraph.

**71.** The heading of Division V of Chapter VI of Title IV of the Act is replaced by the following heading:

“AUTHORIZATION AND EXPENSES OF PRIVATE INTERVENORS”.

**72.** Section 457.2 of the Act is amended by inserting the following paragraph before the first paragraph:

“**457.2.** No person may incur expenses described in paragraph 13 of section 404 unless the person has been issued an authorization in accordance with this division.”

**73.** Section 457.18 of the Act is amended by striking out “sworn” in the second line of the second paragraph.

**74.** Section 489.1 of the Act is replaced by the following section:

“**489.1.** The Chief Electoral Officer, with the consent of the authorized parties represented in the National Assembly, may, if circumstances so require, in particular because of the area covered by the electoral division or because some electors live a great distance away, adapt the provisions concerning the enumeration of electors, the revision process, the filing of nomination papers, the advance poll, the establishment of an identity verification panel, the polling procedure or the counting of the votes.”

**75.** Section 510 of the Act is amended by adding the following sentence at the end of the first paragraph: “If circumstances so require, in particular because of the area covered by the electoral division or because some electors live a great distance away, the Chief Electoral Officer may authorize the appointment of a second assistant returning officer.”

**76.** Section 527 of the Act is amended by replacing “an administrator, Class V” at the end of the first paragraph by “a Class 05 manager”.

**77.** Section 553 of the Act is amended by replacing paragraph 1 by the following paragraph:

“(1) every executive director, manager, superintendent, caretaker, operator, owner or person in charge of a place described in section 135.1 who hinders access to a mobile board of revisors, to a polling station set up in that place or to a mobile polling station;”

**78.** The Act is amended by inserting the following section after section 559.1:

**“559.2.** The following persons are liable to a fine of \$500 to \$10,000:

(1) the printer, manufacturer or owner of the newspaper or other publication, the radio or television broadcaster or the person using another information medium or technology, if a writing, object, advertising material or advertisement relating to an election is printed, made, published, broadcast or circulated without the particulars required under section 421 or 421.1;

(2) the official agent or deputy official agent, or the private intervenor or the representative of a private intervenor, who allows a writing, object, advertising material or advertisement relating to an election to be printed, made, published, broadcast or circulated without the particulars required under section 421 or 421.1.”

**79.** Section 564 of the Act is amended by replacing the first paragraph by the following paragraph:

**“564.** A person who contravenes any of sections 62, 64, 66, 74, 76, 87 to 93, 95 to 97, 99, 100, 102 to 106, 408, 410, 413 to 420, 422 to 424, 429, 429.1, 457.2, 457.9 and 457.11 to 457.17 is liable to a fine of \$500 to \$10,000.”

**80.** Schedule I to the Act is amended by replacing the second paragraph by the following paragraph:

“This electoral division comprises the territories of the municipalities of Grosse-Île and Les Îles-de-la-Madeleine.”

**81.** Schedule II to the Act is amended by replacing “272” by “361”.

**82.** Schedule III to the Act is amended by replacing “277” by “298”.

**83.** Schedule IV to the Act is amended by replacing “293” by “275 and 287”.

## AMENDING AND TRANSITIONAL PROVISIONS

**84.** Section 65.0.1 of the Health Insurance Act (R.S.Q., chapter A-29) is replaced by the following section:

**“65.0.1.** The Board shall send the Chief Electoral Officer notice of any change in the name, address, date of birth or sex of an insured person whose name is entered on the permanent list of electors established under section 40.1 of the Election Act (chapter E-3.3), and, where applicable, of the date of the person’s death and the corresponding address expiry codes. The Board shall also send the Chief Electoral Officer the name, address, date of birth and sex of any insured person of full age who has informed the Board that he has acquired Canadian citizenship or has stated, on registering for the first time with the Board, that he holds Canadian citizenship. The Board shall send the Chief Electoral Officer the same information concerning any insured person who is about to reach 18 years of age, at least six months before the person’s eighteenth birthday, and concerning any insured person who meets the criteria set out in subparagraphs 1 to 3 of the first paragraph of section 1 of the Election Act and whose name is not yet entered on the permanent list of electors.

After receiving an advisory opinion from the Commission d’accès à l’information, the Board shall send the Chief Electoral Officer, on request, any other personal information needed to compile and update the permanent list of electors.

The Board shall also send the Chief Electoral Officer, on request, a list of all the residential addresses in Québec.”

**85.** Section 13 of the Act to amend the Election Act to encourage and facilitate voting (2006, chapter 17) is amended by inserting “in a case described in the second paragraph of section 192 or” after “present” in the fifth line of the first paragraph of section 210 of the Election Act which it replaces.

**86.** For the fiscal year 2006-2007, the fees payable for the communication of information contained in the permanent list of electors to the Chief Electoral Officer of Canada under and for the purposes of section 40.42 of the Election Act are set at \$378,265.

**87.** Until the Nomination Regulation (1989, G.O. 2, 1569) is amended in accordance with section 550 of the Election Act, the Chief Electoral Officer may adjust the form prescribed in that regulation for cases where an application for authorization by an independent candidate is filed with the nomination paper, or prescribe a new form for that purpose.

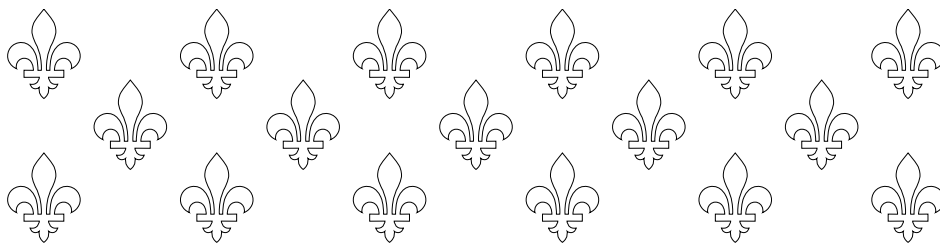
**88.** Until the Voting Regulation (1989, G.O. 2, 1580) is amended in accordance with section 550 of the Election Act, the Chief Electoral Officer may adjust the forms prescribed in that regulation to reflect the provisions of this Act.

**89.** This Act does not apply to an election ordered on or before 20 June 2008 or within 60 days after that date.

FINAL PROVISION

**90.** This Act comes into force on 20 June 2008.





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# NATIONAL ASSEMBLY

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FIRST SESSION

THIRTY-EIGHTH LEGISLATURE

Bill 71  
(2008, chapter 23)

## **An Act to amend the Auditor General Act and other legislative provisions**

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**Introduced 18 December 2007**  
**Passed in principle 3 June 2008**  
**Passed 19 June 2008**  
**Assented to 20 June 2008**

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**Québec Official Publisher  
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## EXPLANATORY NOTES

*The object of this Act is to allow the Auditor General, for any fiscal year in which a grant is made by a public body or a government agency to a body in the health and social services network or the education network whose name appears on the list of such bodies that are part of the reporting entity defined in the Government's annual financial statements included in the public accounts tabled in the National Assembly, to act as the auditor of that grant beneficiary's books and accounts.*

*The Act also allows the Auditor General to audit the books and accounts of certain bodies and agencies to which the Auditor General Act does not apply but which are related to bodies or agencies to which that Act applies.*

*Consequently, the Act specifies the scope of the Auditor General's audit of the books and accounts of those grant beneficiaries and related bodies or agencies. It also empowers the Auditor General to oversee the work of the auditors who audit the books and accounts of those grant beneficiaries and related bodies or agencies.*

*The Act further provides expressly that the Auditor General is not required to audit the books and accounts of budget-funded bodies within the meaning of the Public Administration Act every year.*

*Moreover, the Act proposes that the books and accounts of a health and social services agency be audited annually by an auditor whom the agency's board of directors is authorized to appoint.*

*The Act also proposes that the books and accounts of the Agence métropolitaine de transport be audited by the Auditor General annually and whenever the Government so orders.*

*The Act amends the Act respecting the governance of state-owned enterprises with regard to certain obligations to assess the effectiveness and performance of the enterprises governed by that Act.*

*Lastly, the Act contains consequential amendments and transitional provisions.*



**LEGISLATION AMENDED BY THIS ACT:**

- Act respecting the Agence métropolitaine de transport (R.S.Q., chapter A-7.02);
- Public Service Act (R.S.Q., chapter F-3.1.1);
- Act respecting the governance of state-owned enterprises (R.S.Q., chapter G-1.02);
- Police Act (R.S.Q., chapter P-13.1);
- Act respecting the Régie du logement (R.S.Q., chapter R-8.1);
- Act respecting health services and social services (R.S.Q., chapter S-4.2);
- Transport Act (R.S.Q., chapter T-12);
- Courts of Justice Act (R.S.Q., chapter T-16);
- Auditor General Act (R.S.Q., chapter V-5.01).



## Bill 71

### AN ACT TO AMEND THE AUDITOR GENERAL ACT AND OTHER LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

**1.** Section 22 of the Auditor General Act (R.S.Q., chapter V-5.01) is amended by inserting the following paragraph after paragraph 2:

“(2.1) funds and other property of a body or agency described in section 30.2; and”.

**2.** Section 23 of the Act is amended by adding the following paragraph at the end:

“The Auditor General is not required to audit the books and accounts of a budget-funded body within the meaning of the Public Administration Act (chapter A-6.01) every year.”

**3.** The Act is amended by inserting the following sections after section 30:

**“30.1.** If the Auditor General considers it advisable, the Auditor General may, for any fiscal year in which a grant is made by a public body or a government agency to a body in the health and social services network or the education network whose name appears on the list of such bodies that are part of the reporting entity defined in the Government’s annual financial statements included in the public accounts tabled in the National Assembly, act as the auditor of that grant beneficiary’s books and accounts.

The Auditor General shall notify the grant beneficiary in writing of the Auditor General’s decision to audit the beneficiary’s books and accounts for a specified fiscal year. From the date of the notice, the Auditor General is, without further formality, the auditor of the grant beneficiary’s books and accounts for the fiscal year specified in the notice.

Sections 25, 26 and 29 apply, with the necessary modifications, to the Auditor General’s audit of the books and accounts of any grant beneficiary referred to in the first paragraph.

**“30.2.** If the Auditor General considers it advisable, the Auditor General may audit the books and accounts of a body or agency not described in section 4 or 5 that meets the following conditions:

(1) at least half of its revenues are derived directly or indirectly from the consolidated revenue fund or any other fund managed by a public body, a government agency or a grant beneficiary referred to in the first paragraph of section 30.1; and

(2) at least half of its members or directors are appointed by a body or agency described in any of sections 3, 4 and 30.1 or a combination of such bodies and agencies and, if applicable, by a minister, or at least half of its members or directors are delegated by or represent a body or agency described in any of sections 3, 4 and 30.1 or a combination of such bodies and agencies.

The Auditor General shall send written notice of the decision to audit the books and accounts for a specified fiscal year to the board of directors or, if there is none, to the executive. From the date of the notice, the Auditor General is, without further formality, the auditor of the books and accounts for the fiscal year specified in the notice.

Sections 25, 26 and 29 apply, with the necessary modifications, to the Auditor General's audit of those books and accounts."

**4.** Section 31 of the Act is amended by replacing "or government enterprise" in the third line by ", government enterprise, grant beneficiary referred to in the first paragraph of section 30.1, or body or agency described in section 30.2".

**5.** Section 32 of the Act is replaced by the following section:

**"32.** The auditor of the books and accounts of a government agency, government enterprise, grant beneficiary referred to in the first paragraph of section 30.1, or body or agency described in section 30.2, other than the Auditor General, must, at the latter's request and with dispatch, provide the Auditor General with a copy of

(1) the annual financial statements of the government agency, government enterprise, grant beneficiary, or body or agency;

(2) the audit report on those statements; and

(3) any other report of the auditor to the board of directors, the executive or the chief executive officer, as the case may be, of the agency, grant beneficiary referred to in the first paragraph of section 30.1, or body or agency described in section 30.2 on the auditor's findings and recommendations."

**6.** Section 34 of the Act is amended

(1) by replacing "or government enterprise" at the end of the first paragraph by ", government enterprise, grant beneficiary referred to in the first paragraph of section 30.1, or body or agency described in section 30.2";

(2) by replacing “or government enterprise” at the end of the second paragraph by “, government enterprise, grant beneficiary, or body or agency”.

**7.** Section 40 of the Act is amended by adding the following paragraph at the end:

“In addition, section 38 applies, with the necessary modifications, to the report of the Auditor General on the annual financial statements of a grant beneficiary referred to in the first paragraph of section 30.1 or of a body or agency described in section 30.2 and on those of any fund they administer.”

**8.** Section 42 of the Act is amended by inserting the following subparagraph after subparagraph 5 of the first paragraph:

“(6) bodies or agencies described in section 30.2.”

**9.** Section 43 of the Act is amended by inserting “, those of grant beneficiaries referred to in the first paragraph of section 30.1 and bodies or agencies described in section 30.2” after “government enterprises” in paragraph 1.

**10.** Section 47 of the Act is amended by inserting “, grant beneficiaries referred to in the first paragraph of section 30.1, bodies or agencies described in section 30.2” after “government enterprises” in the third line of the first paragraph.

**11.** Section 48 of the Act is amended by inserting “, grant beneficiaries” after “enterprises” in the first line of the first paragraph.

**12.** Section 54 of the Act is amended by inserting “, grant beneficiaries referred to in the first paragraph of section 30.1, bodies or agencies described in section 30.2” after “government enterprises” in the third line.

#### ACT RESPECTING THE AGENCE MÉTROPOLITAINE DE TRANSPORT

**13.** Section 89 of the Act respecting the Agence métropolitaine de transport (R.S.Q., chapter A-7.02) is amended by replacing the first sentence by the following sentence: “The books and accounts of the Agency are audited by the Auditor General annually and whenever the Government so orders.”

#### PUBLIC SERVICE ACT

**14.** Section 125 of the Public Service Act (R.S.Q., chapter F-3.1.1) is replaced by the following section:

“**125.** The books and accounts of the Commission are audited by the Auditor General.”

## ACT RESPECTING THE GOVERNANCE OF STATE-OWNED ENTERPRISES

**15.** Section 15 of the Act respecting the governance of state-owned enterprises (R.S.Q., chapter G-1.02) is amended

(1) by inserting “in the case of La Financière agricole du Québec, Investissement Québec, the Régie de l’assurance maladie du Québec, the Société de l’assurance automobile du Québec, the Société des alcools du Québec, the Société des loteries du Québec, the Société générale de financement du Québec and the Société immobilière du Québec,” before “adopting” at the beginning of paragraph 15;

(2) by replacing “by an independent firm” at the end of paragraph 15 by “by the Auditor General or, if the Auditor General considers it appropriate and has so informed the board of directors, by an independent firm”.

**16.** Section 41 of the Act is amended by striking out “to be carried out by an independent firm at the request of the board of directors” at the end of the second paragraph.

## POLICE ACT

**17.** Section 211 of the Police Act (R.S.Q., chapter P-13.1) is replaced by the following section:

“**211.** The books and accounts of the ethics committee are audited by the Auditor General.”

## ACT RESPECTING THE RÉGIE DU LOGEMENT

**18.** Section 27 of the Act respecting the Régie du logement (R.S.Q., chapter R-8.1) is replaced by the following section:

“**27.** The books and accounts of the board are audited by the Auditor General.”

## ACT RESPECTING HEALTH SERVICES AND SOCIAL SERVICES

**19.** Section 395 of the Act respecting health services and social services (R.S.Q., chapter S-4.2) is replaced by the following section:

“**395.** The agency is subject to sections 280 and 288 to 295, with the necessary modifications, with respect to the reports it must transmit to the Minister and the audits of its books and accounts which it must cause to be carried out.”

**20.** Division III.2 of Chapter IV of Title I of Part IV.1 of the Act, comprising section 530.31.5, is repealed.

#### TRANSPORT ACT

**21.** Section 30 of the Transport Act (R.S.Q., chapter T-12) is amended by replacing “shall be audited by the Auditor General each year and also whenever the Government so orders; the reports of the Auditor General must accompany the annual report of the Commission” by “are audited by the Auditor General”.

#### COURTS OF JUSTICE ACT

**22.** Section 246.40 of the Courts of Justice Act (R.S.Q., chapter T-16) is replaced by the following section:

“**246.40.** The books and accounts of the committee are audited by the Auditor General.”

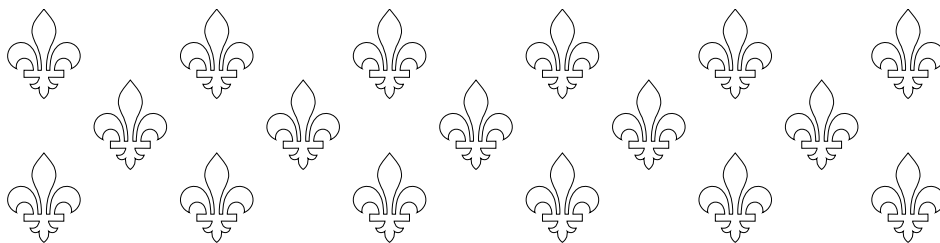
#### TRANSITIONAL AND FINAL PROVISIONS

**23.** Section 89 of the Act respecting the Agence métropolitaine de transport (R.S.Q., chapter A-7.02), as amended by section 13 of this Act, applies from the fiscal year 2008.

**24.** This Act comes into force on 20 June 2008.







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# NATIONAL ASSEMBLY

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FIRST SESSION

THIRTY-EIGHTH LEGISLATURE

Bill 77  
(2008, chapter 24)

## **Derivatives Act**

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**Introduced 9 April 2008**  
**Passed in principle 8 May 2008**  
**Passed 19 June 2008**  
**Assented to 20 June 2008**

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**Québec Official Publisher**  
**2008**

## EXPLANATORY NOTES

*The purpose of this Act is to establish a legislative framework specifically for derivatives, certain of which are currently governed by the Securities Act.*

*This Act therefore requires that entities be recognized by the Autorité des marchés financiers before they may offer derivatives to the public. It specifies the obligations they must comply with, in particular, as regards their operating rules, activities and governance and the information to be disclosed or communicated. It also includes provisions on the oversight and monitoring of regulated entities by the Authority itself or by the Bureau de décision et de révision en valeurs mobilières.*

*The Act furthermore provides that derivatives dealers and advisers must be registered, and specifies the requirements applicable to them as regards the management of their business, their conduct and the conduct of their officers, representatives and employees.*

*The Act gives the Authority special powers for the purposes of the new legislation, including inspection and investigation powers and the power to apply conservatory measures. It prescribes offences and contains penal provisions.*

*Lastly, the Act contains transitional provisions to ensure that persons registered or entities recognized under the Securities Act that now come under the Derivatives Act continue to be validly registered or recognized and that the obligations and requirements set out in the new legislation apply to them.*

## LEGISLATION AMENDED BY THIS ACT:

- Act respecting insurance (R.S.Q., chapter A-32);
- Act respecting the Autorité des marchés financiers (R.S.Q., chapter A-33.2);
- Consumer Protection Act (R.S.Q., chapter P-40.1);
- Securities Act (R.S.Q., chapter V-1.1);
- Act respecting the transfer of securities and the establishment of security entitlements (2008, chapter 20).

## **Bill 77**

### **DERIVATIVES ACT**

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

#### **TITLE I**

#### **GENERAL PROVISIONS**

#### **CHAPTER I**

#### **PURPOSES**

**1.** This Act seeks to foster honest, fair, efficient and transparent derivatives markets and to protect the public from unfair, improper or fraudulent practices and market manipulation.

It also seeks to ensure that the public, and more particularly, market participants and their clients, have access to adequate, true and clear information, tailored to the level of financial knowledge and experience of those for whom it is intended.

**2.** The purposes of this Act are, more specifically,

- (1) to govern derivatives offering and trading and related activities;
- (2) to provide for oversight of the activities of derivatives market professionals so as to ensure that their conduct is honest, fair and responsible;
- (3) to provide for the monitoring of regulated entities and, more specifically, of their activities, their exercise of delegated powers, the adequacy of their resources, the accessibility of their services, and the transactions carried out via the facilities or systems they operate;
- (4) to regulate market participants and regulated entities so as to ensure compliance with the principles set out in this Act and with the obligations deriving from those principles;
- (5) to facilitate the control of systemic risk in derivatives trading, particularly in clearing house operations; and
- (6) to provide for the implementation and administration of programs to deal with client complaints and protect clients in derivatives-related matters.

## CHAPTER II

### SCOPE AND INTERPRETATION

**3.** For the purposes of this Act, unless the context indicates otherwise,

“accredited counterparty” means

(1) a government, government department or public body or a wholly owned enterprise or entity of a government;

(2) a municipality, public board or commission or other similar municipal administration, a metropolitan community, a school board, the Comité de gestion de la taxe scolaire de l'Île de Montréal or an intermunicipal management board in Québec;

(3) a financial institution, including the Business Development Bank of Canada established under the Business Development Bank of Canada Act (Statutes of Canada, 1995, chapter 28), or a subsidiary of such a financial institution to the extent that the financial institution holds all the subsidiary's voting shares, other than the voting shares held by directors of the subsidiary or its employees;

(4) a dealer or adviser registered under this Act, a dealer or adviser registered under the Securities Act (R.S.Q., chapter V-1.1) or a person authorized to act as such or to exercise similar functions under equivalent legislation applicable outside Québec;

(5) a registered representative of a person described in paragraph 4 or a representative who has ceased to be so registered within the last three years;

(6) a pension fund regulated by the Office of the Superintendent of Financial Institutions established by the Office of the Superintendent of Financial Institutions Act (Revised Statutes of Canada, 1985, chapter 18, 3rd Supplement), the Régie des rentes du Québec or a pension commission or similar regulatory authority in Canada whose investment policy provides for or authorizes the use of derivatives, or an entity that is analogous in form and function established under legislation applicable outside Québec;

(7) a person who establishes in a conclusive and verifiable manner

(a) that the person has the requisite knowledge and experience to evaluate the information provided to the person about derivatives, the appropriateness to the person's needs of proposed derivatives strategies, and the characteristics of the derivatives to be traded on the person's behalf;

(b) that the person has assets equal to or in excess of the minimum assets specified by regulation; and

(c) that the person has at the person's disposal net assets in the amount specified by regulation and sufficient to fulfill the person's delivery or payment obligations under the terms of derivatives to which the person is party, in light of the positions held in the person's account and the orders the person is seeking to have executed;

(8) an investment fund whose investment policy includes or authorizes the use of derivatives, that distributes or has distributed its securities under a prospectus for which the Autorité des marchés financiers ("the Authority") or another authority empowered to issue receipts under the securities legislation of another province or a territory of Canada has issued a receipt, or that distributes or has distributed its securities exclusively to

(a) a person who is or was an accredited investor within the meaning of the Securities Act at the time of the distribution;

(b) a person who acquires or has acquired securities of the fund in order to make a minimum amount investment or an additional investment under the conditions prescribed by the Securities Act; or

(c) a person described in subparagraph *a* or *b* who acquires or has acquired securities of the fund in order to reinvest in the fund, in the circumstances set out in the Securities Act;

(9) an investment fund that is advised by an adviser described in paragraph 4;

(10) a charity registered under the Income Tax Act (Revised Statutes of Canada, 1985, chapter 1, 5th Supplement) or the Taxation Act (R.S.Q., chapter I-3) that, in regard to the trade in question, has used the services of an adviser registered under this Act or of a person authorized to act as such or to exercise similar functions under the equivalent legislation of another province or a territory of Canada;

(11) a person all of whose interest holders, except the holders of voting securities required by law to be held by directors, are accredited investors within the meaning of the Securities Act;

(12) a hedger, that is, a person who, because of the person's activities,

(a) is exposed to one or more risks attendant upon those activities, including supply, credit, exchange and environmental risks and the risk related to fluctuations in the price of an underlying interest; and

(b) seeks to hedge that risk by engaging in a derivatives transaction, or a series of derivatives transactions, where the underlying interest is the underlying interest directly associated with that risk or a related underlying interest; or

(13) a person specified by regulation or designated by the Authority as an accredited counterparty under section 87;

“adviser” means a person who engages or purports to engage in the business of advising others as to derivatives or the buying or selling of derivatives, or in the business of managing derivatives portfolios;

“clearing house” means a person who maintains a system for netting derivatives trades on a multilateral basis and who acts as central counterparty to that end;

“dealer” means a person who engages or purports to engage in

(1) derivatives trading on the person’s own behalf or on behalf of others; or

(2) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of an activity described in paragraph 1;

“derivative” means an option, a swap, a futures contract or any other contract or instrument whose market price, value, or delivery or payment obligations are derived from, referenced to or based on an underlying interest, or any other contract or instrument designated by regulation or considered equivalent to a derivative on the basis of criteria determined by regulation;

“director” means a member of the board of directors of a legal person, or a natural person acting in a similar capacity for another person;

“hedging” means the entering into of a derivatives transaction or a series of derivatives transactions, and the maintaining of the position or positions resulting from the transaction or series of transactions if

(1) the intended effect of the transaction or series of transactions is

(a) to offset or reduce the risk related to fluctuations in the value of an underlying interest or a position, or of a group of underlying interests or positions; or

(b) to substitute a risk to one currency for a risk to another currency, provided the aggregate amount of currency risk to which the hedger is exposed is not increased by the substitution;

(2) the transaction or series of transactions results in a high degree of negative correlation between changes in the value of the underlying interest or position or group of underlying interests or positions being hedged and changes in the value of the derivatives with which the value of the underlying interests or positions is hedged; and

(3) there are reasonable grounds to believe that the transaction or series of transactions no more than offsets the effect of price changes in the underlying interest or position, or group of underlying interests or positions, being hedged;

“hybrid product” means an instrument, contract or security that combines elements of derivatives and securities;

“market participant” or “participant” means a dealer, adviser or representative, an accredited counterparty with direct access to trading on a published market, a subscriber of an alternative trading system, or any other person designated as such by regulation;

“officer” means the chair or vice-chair of the board of directors, the chief executive officer, the chief operating officer, the chief financial officer, the president, the vice-president, the secretary, the assistant secretary, the treasurer, the assistant treasurer or the general manager of a person, or a natural person designated as such by a person or acting in a similar capacity for another person;

“over-the-counter derivative” means any derivative other than a standardized derivative;

“person” means a natural person or a legal person, and also includes a partnership, a trust, a fund, an association, a syndicate, a body, an entity or any other group of persons that is not constituted as a legal person and any person acting as trustee, liquidator, executor or legal representative;

“published market” means an exchange, an alternative trading system or any other derivatives market that

(1) constitutes or maintains a system for bringing together buyers and sellers of standardized derivatives;

(2) brings together the orders of multiple derivatives buyers and sellers; and

(3) uses non-discretionary methods under which the orders interact with each other and the derivatives buyers and sellers entering the orders agree to the terms of a trade;

“regulated entity” means an exchange, an alternative trading system not registered as a dealer, or another published market, a clearing house, an information processor, a self-regulatory organization or any person the Authority, where it considers it necessary for the proper operation of the market, designates as a regulated entity in accordance with the rules prescribed by regulation;

“standardized derivative” means a derivative that is traded on a published market, whose intrinsic characteristics are determined by that market and whose trade is cleared and settled by a clearing house.

**4.** A hybrid product is subject to this Act unless its terms, the terms of any collateral agreement governing it and the circumstances of its offering, issue or entering into show that it is predominantly a security within the meaning of the Securities Act, in which case it is considered to be a security and is governed by that Act.

A hybrid product is presumed to be predominantly a security if

(1) the offeror receives payment of the purchase price on the delivery of the hybrid product;

(2) the purchaser is under no obligation to make any additional payment beyond the purchase price as a margin deposit, margin, settlement or other such amount during the life of the hybrid product or at maturity; and

(3) the terms of the hybrid product do not include margin requirements based on a market value of its underlying interest.

**5.** A patrimony endowed with a certain degree of autonomy, such as a pension fund, partnership, trust or group without legal personality, is subject to this Act as if it had legal personality, but the responsibility for compliance with this Act rests with its administrators, and both civil and penal proceedings under this Act may be brought against them for acts or omissions relating to the patrimony.

In the case of a partnership, such proceedings may be brought against the partnership or against the partners, except the special partners.

**6.** This Act does not apply to the following instruments:

(1) a warrant or subscription right;

(2) an investment contract within the meaning of the second paragraph of section 1 of the Securities Act;

(3) an insurance or annuity contract issued by an insurer holding a licence under the Act respecting insurance (R.S.Q., chapter A-32) or under other insurance legislation in Canada;

(4) an option or other non-traded derivative whose value is derived from, referenced to or based on the value or market price of a security, granted as compensation or as payment for a good or service; and

(5) any other instrument specified by regulation.



**7.** The provisions of Titles III and IV, sections 94 to 114, Division III of Chapter I and Divisions I and II of Chapter II of Title V of this Act and Chapter III.1 of Title I of the Act respecting the Autorité des marchés financiers (R.S.Q., chapter A-33.2) do not apply in the case of over-the-counter derivatives activities or transactions involving accredited counterparties only or in any other case specified by regulation.

However, the provisions referred to in the first paragraph, except those of Titles III and IV, apply if a derivative is offered or entered into in the circumstances described in section 150, 151 or 153.

**8.** A dealer or adviser who trades on a client's behalf under a mandate granting the dealer or adviser full discretion in executing the mandate is considered to be acting on behalf of an accredited counterparty.

Title III applies to such a dealer or adviser, subject to section 70.

**9.** A derivative cannot be invalidated for the sole reason that a counterparty is not an accredited counterparty within the meaning of this Act.

**10.** A standardized derivative must be designed so as to ensure a high degree of protection against manipulation.

**11.** A document required to be communicated to a client under this Act must be drawn up in French only or in French and English.

## **TITLE II**

### **REGULATED ENTITIES**

#### **CHAPTER I**

##### **RECOGNITION OF REGULATED ENTITIES**

**12.** No regulated entity may carry on derivatives activities in Québec unless it is recognized by the Authority as an exchange, a published market, a clearing house, an information processor or a self-regulatory organization.

No regulation services provider may carry on activities in Québec unless it is recognized as such by the Authority on the conditions the Authority determines.

**13.** Subject to section 31, a regulation services provider may assume all or part of the obligations set out in this Title on behalf of a recognized regulated entity, in accordance with the terms of its recognition decision. The regulation services provider is then considered to be a recognized regulated entity for the purposes of this Act.

**14.** An application for recognition or for the modification of a recognition decision must be filed with the documents and information required by the Authority.

The Authority publishes a notice of the application in its Bulletin and invites interested persons to make representations in writing.

**15.** The Authority may recognize a regulated entity on the conditions it determines.

**16.** Despite section 60 of the Act respecting the Autorité des marchés financiers, a recognized exchange or other recognized published market or a recognized clearing house may oversee or regulate the conduct of its participants or members and their representatives without being recognized as a self-regulatory organization.

**17.** The Authority may require that an exchange, clearing house or regulation services provider obtain recognition as a self-regulatory organization under Title III of the Act respecting the Autorité des marchés financiers in order to carry on its activities. On being recognized, the exchange, clearing house or regulation services provider is subject to the provisions of this Act that are applicable to self-regulatory organizations.

**18.** Sections 19 to 26 and 32 to 35 do not apply to information processors.

## CHAPTER II

### OBLIGATIONS OF RECOGNIZED REGULATED ENTITIES

#### DIVISION I

##### GENERAL OBLIGATIONS

§1. — *Constituting documents, internal by-laws, rules and procedures*

**19.** A recognized regulated entity must make operating rules to govern its activities and the activities of its members or of market participants.

It must also, in its internal by-laws, include appropriate procedures for making and amending those rules.

**20.** The constituting documents, internal by-laws and operating rules of a recognized regulated entity must allow unrestricted membership for any person who meets the admission criteria and equal access by members or market participants to the services offered, on the basis of transparent criteria providing for fair and equitable competition.

They must also provide for the imposition of disciplinary measures for any contravention of the law or violation of the internal by-laws or operating rules.

**21.** The operating rules of a recognized regulated entity must include a complaint examination procedure that allows for timely, fair and equitable resolution of disputes involving the entity.

In establishing its rules, the entity must consider the costs to its members and to market participants that may result from their application.

**22.** To make an amendment to its operating rules, a recognized regulated entity must complete the self-certification process established by regulation and file a notice with the Authority confirming that the amendment was made in accordance with the regulation.

If the entity shows that self-certification poses serious difficulties, it must submit a draft amendment to the Authority for approval.

This section applies to recognized self-regulatory organizations despite section 74 of the Act respecting the Autorité des marchés financiers.

**23.** A recognized regulated entity must enforce its operating rules.

**24.** A draft amendment to the constituting documents or internal by-laws of a recognized regulated entity requires the approval of the Authority.

**25.** The amendment is deemed to be approved on the expiry of a period of 30 days or any other period agreed with the recognized regulated entity concerned, unless the Authority has invited the entity to make representations on its merits.

## §2. — *Governance*

**26.** The governance practices of a recognized regulated entity must be clear and transparent. They must serve the interests of its members or of market participants while also serving the public interest.

In addition, they must include an accurate and informative system for reporting information to directors and officers.

## §3. — *Controls*

**27.** A recognized regulated entity must use information processing systems of sufficient capacity to enable it to carry out operations safely and reliably.

**28.** A recognized regulated entity must implement appropriate risk management procedures for the transactions carried out via its facilities or systems by the entity, by its members or by market participants, so as to ensure the security, performance and continuous accessibility of those facilities or systems.

§4. — *Activities*

**29.** A recognized regulated entity must organize and control its activities diligently and effectively.

**30.** A recognized regulated entity must at all times have adequate financial and human resources to carry on its activities effectively and exercise any powers delegated to it by the Authority.

**31.** A recognized regulated entity retains full responsibility under this Act for any outsourced activities.

§5. — *Decisions*

**32.** Before making a decision that adversely affects the rights of a person, a recognized regulated entity must give the person an opportunity to make representations.

However, the entity may, without prior notice, make a provisional decision or order, valid for a period of not more than 15 days, if it is of the opinion that there is an emergency or that any time given to the person to make representations may be prejudicial.

A decision or order must include reasons and becomes effective on its service on the person. The person may make representations to the entity within six days after receiving the decision or order.

The entity may revoke a decision or order made under this section.

**33.** In the interest of good morals or public order, a recognized regulated entity may, on its own initiative or on request, close a sitting to the public or prohibit the publication or release of specified information or documents.

**34.** Decisions of a recognized regulated entity on the admission of a member or a market participant or on a disciplinary matter must be communicated to the Authority as soon as possible.

§6. — *Disclosure*

**35.** A recognized regulated entity must make its rules, and the instruments for the application and interpretation of those rules, accessible to its members and to market participants, as it must any other pertinent information regarding their rights and obligations.

**36.** A recognized regulated entity must provide the Authority with periodic, timely and other disclosure of information, to the extent and in accordance with the conditions set out in its recognition decision.

**37.** A recognized regulated entity must communicate to the Authority any information relating to its activities that may be useful to the Authority in exercising its functions and powers and that the Authority might reasonably expect to receive.

**38.** Within 90 days after the end of its fiscal year, a recognized regulated entity must file its financial statements, an audit report and any other information with the Authority, according to the requirements set by the Authority.

## **DIVISION II**

### **SPECIAL OBLIGATIONS**

#### *§1. — Recognized exchanges and other published markets*

**39.** A dealer who engages in over-the-counter trading of a standardized derivative is deemed to operate a published market for the purposes of this subdivision, unless such trading is compliant with the operating rules of the published market.

**40.** A published market may not be structured to operate in a manner that unfairly favours certain market participants over others.

Any differences in treatment among categories of market participants must be clearly identified and disclosed.

**41.** The operating rules of a published market must, to ensure its proper operation, include measures prohibiting and aimed at countering market abuse and manipulation, fraud and deceptive trading.

The published market must ensure that the measures are effective.

**42.** A published market must ensure that participants are able to fulfill their obligation to their clients to achieve best execution of their orders.

**43.** A published market must put in place monitoring and investigative mechanisms and disciplinary procedures conducive to sufficient pre- and post-trade transparency.

**44.** The operating rules of a published market must allow it to suspend trading or modify trading conditions in order to ensure its orderly operation.

**45.** The Authority may require that a published market provide information, including data on its activities, such as its order book, and trade-related or trade-matching information or data, in the manner determined by the Authority.

§2. — *Clearing houses*

**46.** A clearing house must apply sound internal management practices in order to ensure its proper operation. To that end, it must put in place

- (1) an appropriate risk management process for derivatives clearing that integrates prudent risk limits;
- (2) sound information systems and risk measurement procedures;
- (3) comprehensive internal controls and audit procedures;
- (4) continuous monitoring, and frequent monitoring reporting to its senior management; and
- (5) appropriate oversight by its directors.

For the purposes of subparagraph 1 of the first paragraph, “derivatives clearing” includes all arrangements through which a clearing house, in accordance with its rules,

- (1) matches positions between market participants or parties to derivatives;
- (2) receives margin deposits or margins, and mutualizes or transfers the credit risk arising from a derivative among its members or clearing agents;
- (3) substitutes the credit of the clearing house for that of the parties to a derivative; and
- (4) nets those transactions on a multilateral basis, and settles them or, failing settlement, liquidates or cancels the relevant positions.

**47.** A clearing house must use the necessary means to offer fair and secure clearing and settlement services.

§3. — *Recognized self-regulatory organizations*

**48.** A self-regulatory organization must set standards governing the integrity, fitness and admission of its members or market participants.

### CHAPTER III

#### MONITORING AND ENFORCEMENT OF RECOGNIZED REGULATED ENTITIES

**49.** The Bureau de décision et de révision en valeurs mobilières (“the Board”), established by section 92 of the Act respecting the Autorité des marchés financiers, may prescribe a course of conduct to a recognized regulated entity if it considers that it is necessary for the proper operation of the entity or for the protection of the public.

However, in the case of a self-regulatory organization that is not recognized as an exchange, clearing house or regulation services provider, the course of conduct may be prescribed by the Authority.

**50.** The Authority, in the manner it considers appropriate, may suspend the application of all or part of the internal by-laws or of a rule of a recognized regulated entity.

**51.** The Authority may order a recognized regulated entity to amend its constituting documents, internal by-laws or operating rules if it considers that it is necessary in order to make them consistent with this Act.

**52.** The Authority may modify, suspend or withdraw all or part of the recognition granted to a regulated entity if it considers that

(1) the entity has failed to comply with undertakings given to the Authority;  
or

(2) the interests of the entity's members or of market participants or the public interest would so be better served.

In addition, the Authority may, on the same grounds, modify, suspend or withdraw an exemption granted to an entity in relation to the application of this Title.

**53.** A recognized regulated entity that wishes to terminate its activities must request authorization from the Authority.

If it considers that the interests of the entity's members or market participants and the public interest are sufficiently protected, the Authority grants the authorization on the conditions it determines.

### **TITLE III**

#### **DEALERS AND ADVISERS**

##### **CHAPTER I**

##### **REGISTRATION**

**54.** No person may carry on business as a dealer or adviser unless registered as such with the Authority.

**55.** The Authority may require that an applicant for registration or category of applicants it determines carry on their derivatives activities through a subsidiary.

**56.** Every natural person carrying on business as a dealer or adviser on behalf of a person subject to registration under section 54 must be registered with the Authority as a representative of that person.

With the exception of such remunerated activities as are permitted by a government regulation under this Act, the representative of a dealer may not concurrently carry on activities as such and hold employment with a financial institution.

**57.** A dealer, adviser or representative registered in accordance with section 148 or 149 of the Securities Act who meets the conditions imposed by this Act for registration to carry on business in derivatives and pays the related fees required under this Act is deemed to be registered under this Act for as long as the dealer, adviser or representative remains registered under the Securities Act.

**58.** The categories of registration, the conditions to be met by applicants, the duration of registration and the rules governing the business of dealers, advisers and representatives are determined by regulation.

**59.** After verifying that an applicant meets the conditions set by regulation, the Authority grants registration if it considers that

(1) the applicant or, in the case of a legal person, its officers and directors, exhibit the requisite competence and integrity to ensure the protection of clients; and

(2) the applicant is solvent and, in the case of a legal person, has the financial footing needed to ensure the viability of its business.

The Authority may impose any restriction or condition on the registration of an applicant, including limiting its duration.

**60.** The Authority may recognize an alternative trading system as an exchange or register it as a dealer.

Sections 39 to 45 apply to an alternative trading system even if it is registered as a dealer.

## **CHAPTER II**

### **OBLIGATIONS OF REGISTRANTS**

#### **DIVISION I**

##### **MANAGEMENT OF BUSINESS**

**61.** Dealers and advisers must organize and control their affairs diligently and effectively. To that end, they must put in place procedures to facilitate compliance with this Act and ensure that their books, registers and records are kept in such a manner that they may be audited.



**62.** Dealers and advisers must have adequate financial resources to honour their business commitments at all times and deal with the risks to which their business is exposed.

## **DIVISION II**

### **CONDUCT**

**63.** Dealers and advisers must see that their officers, representatives and employees act in compliance with this Act.

**64.** Dealers, advisers and representatives must at all times meet the accepted standards of integrity and fairness in the derivatives industry.

Representatives must furthermore meet the standards of diligence and competence that govern their conduct and, to that end, maintain an appropriate level of knowledge relating to derivatives.

**65.** In dealing with clients and executing the mandates clients entrust to them, dealers, advisers and representatives must act with honesty and loyalty, and exercise all the care that may be expected of a knowledgeable professional in the same circumstances.

To that end, dealers, advisers and representatives must take the necessary means to obtain or confirm such information about a client as will enable them to

- (1) properly determine the client's identity;
- (2) assess the client's needs;
- (3) recommend a derivatives product or a related service that suits those needs; and
- (4) determine whether the trade they are being asked to carry out is in keeping with the rules and principles governing their business.

**66.** Dealers, advisers and representatives must refuse to act on behalf of a client if they have reasonable grounds to believe that the trade in question is unlawful or is likely to bring the derivatives market into disrepute.

**67.** In determining a course of conduct, dealers, advisers and representatives must place the client's interests above their own and refrain from taking advantage of a client's trust in them.

**68.** Dealers and advisers must make reasonable efforts to achieve best execution of the orders received from a client.

The obligation set out in the first paragraph does not apply to an alternative trading system registered as a dealer, subject to the conditions prescribed by regulation.

**69.** Dealers and advisers may not carry out a derivatives trade on behalf of a client or recommend a derivatives trade to a client unless they have made sure that the client has

(1) the information the client ordinarily needs for the purposes of their business relationship;

(2) the information required to make an informed decision and give clear trade instructions; and

(3) information on the margin requirements to which the trade is subject and on the consequences of the client failing to meet those requirements when called on to do so.

**70.** Dealers must, before the first trade on behalf of a client, give the client the risk information document prescribed by regulation.

If trades on behalf of a client are in a derivative created and marketed by a qualified person, dealers must also give the client the qualification information submitted to the Authority by that person.

Dealers who trade on behalf of a client who is not an accredited counterparty under a mandate granting them full discretion in executing the mandate are exempted from the application of this section.

**71.** Dealers, advisers and representatives must avoid placing themselves in situations of conflict of interest such that their ability to serve their client impartially is affected.

If a conflict of interest cannot be avoided, before carrying out a trade on behalf of the client, they must

(1) inform the client of the conflict of interest; and

(2) take measures consistent with the principles of loyalty, fairness and transparency to ensure that the client's interests are not affected by the situation.

**72.** Dealers, advisers and representatives are responsible for the property entrusted to them by a client. Unless the law, a regulation or the rules governing them stipulate otherwise, they must segregate the client's property from their own property and maintain separate accounting records.

**73.** Dealers must supervise the conduct of accredited counterparties to whom they provide direct trading access to a published market.

They must inform the published market or the appropriate regulation services provider of any conduct of an accredited counterparty that seems contrary to the rules governing the counterparty's participation in the published market.

**74.** Dealers and advisers must provide equitable resolution of complaints filed with them. To that end, they must each adopt a policy dealing with

(1) the examination of complaints and claims filed by persons having an interest in a product or service they have provided; and

(2) the settlement of disputes regarding such products or services.

The Government may frame the policy or elements of the policy by regulation.

**75.** Dealers and advisers must inform each complainant, in writing and without delay, that, if dissatisfied with the examination of the complaint or its outcome, the complainant may request that a copy of the complaint record be sent to the Authority.

On the complainant's request, the dealer or adviser must send a copy of the complaint record to the Authority.

The Authority examines the complaint record and may, if it considers it appropriate and the parties agree, act as a mediator. It may also enter into an agreement for that purpose in accordance with section 33.1 of the Act respecting the Autorité des marchés financiers.

**76.** Despite sections 9 and 83 of the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1), the Authority may not communicate a complaint record without the authorization of the dealer or adviser concerned.

**77.** A mediator may not be compelled to disclose anything revealed to or learned by the mediator in the exercise of mediation functions or to produce, before a court of justice or a person or body of the administrative branch exercising adjudicative functions, a document prepared or obtained in the course of those functions.

Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information, no person has a right of access to a document contained in the mediation record.

### **DIVISION III**

#### **DISCLOSURE**

**78.** Dealers, advisers and representatives must, in the cases and within the time determined by regulation, notify the Authority of any change in the information provided at the time of registration.

If the regulation so provides, no change may be made unless the Authority approves it within the time and in the manner specified or the specified time limit for objecting expires without the Authority objecting to the change. If the Authority objects to the change, it may prescribe a course of conduct.

**79.** Dealers and advisers must, on any date that the Authority may specify, submit a report to the Authority as at that date concerning their complaint examination policy.

The report must include the number of complaints filed and a description of the nature of the complaints.

### **CHAPTER III**

#### **SURRENDER AND SUSPENSION OF REGISTRATION**

**80.** Dealers, advisers or representatives who wish to surrender their registration must first file an application for surrender with the Authority.

The Authority may, on the conditions it determines, suspend, modify, or impose conditions or restrictions on, the registration during examination of the application for surrender.

The Authority may impose such conditions as it may determine on the surrender and accepts the surrender if it considers that the interests of clients and of the public are sufficiently protected.

The Authority retains jurisdiction with regard to acts performed by a dealer, adviser or representative prior to the surrender.

**81.** On the request of the Authority or of any interested person, the Board may revoke or suspend the rights granted by registration, or impose restrictions or conditions on the exercise of those rights, if the Board considers that a dealer, adviser or representative is not in compliance with this Act or if it is necessary for the protection of the public.

### **TITLE IV**

#### **QUALIFIED PERSONS**

**82.** A person, other than a recognized regulated entity, who creates or markets a derivative must be qualified by the Authority, as prescribed by regulation, before the derivative is offered to the public.

The person must also have the derivative authorized by the Authority.

The Authority may refuse to qualify a person if it considers it necessary for the protection of the public.

**83.** A person referred to in section 82 who creates or markets a derivative that has not been authorized by the Authority in accordance with that section must have the derivative authorized by the Authority before it is offered to the public.

A derivative is authorized when the Authority gives its authorization or when the time limit specified by regulation expires without the Authority objecting to the derivative being offered to the public.

**84.** A qualified person who wishes to cease marketing a derivative must give prior notice of not less than 30 days to the Authority.

In such a case, the Authority may impose such conditions as it considers necessary for the protection of the public.

**85.** A qualified person must, every year within the time determined by regulation, file the information prescribed by regulation with the Authority.

## TITLE V

### ADMINISTRATION OF THIS ACT

#### CHAPTER I

##### FUNCTIONS AND POWERS OF THE AUTHORITY

#### DIVISION I

##### GENERAL PROVISIONS

**86.** The Authority may, on its own initiative or on application by an interested person, exempt a derivative, a person, a group of persons, an offer or a trade from any or all of the requirements or obligations under this Act if it considers that the exemption is not prejudicial to the public interest.

The Authority's decision is final.

**87.** The Authority may, in accordance with the rules prescribed by regulation, designate a person as an accredited counterparty if the person's business, level of financial knowledge and experience, and asset level are equivalent to those of an accredited counterparty.

**88.** The Authority may refuse the filing of documents part or all of which was prepared or signed by a person who, in the five years preceding the date of the filing, was convicted of a disciplinary, penal or indictable offence relating to derivatives trading for which the person has not obtained a pardon.

**89.** The Authority may accept as a substitute for a document or certificate required under this Act a document or certificate required under any other legislation or any other document containing information that it considers to be equivalent.

**90.** The Authority or its appointed agent may require that any information or document considered useful for the pursuit of its mission be communicated to it by

- (1) a dealer, adviser or representative;
- (2) a recognized exchange or one of its participants;
- (3) a recognized clearing house or a person holding an account with it;
- (4) a person who operates an alternative trading system that is recognized as an exchange or registered as a dealer, or one of its subscribers;
- (5) a recognized information processor or one of its users;
- (6) a self-regulatory organization or one of its members;
- (7) a regulation services provider;
- (8) a person filing an application or a document required under this Act or the regulations with the Authority; or
- (9) a market participant.

In addition, the Authority or its appointed agent may require a person to confirm, in a sworn statement, the authenticity of the document or the veracity of the information.

**91.** The Authority or its appointed agent may require a person referred to in section 90 or the officers, directors, mandataries or other representatives of such a person to submit to examination under oath.

**92.** A certificate issued by the Authority regarding the registration of a person, the filing of a document, the time when facts having given rise to proceedings came to the knowledge of the Authority and any other matter relating to the administration of this Act is proof of its content in any proceeding without further proof of the signature or authority of the signatory.

**93.** Sections 296 to 297.4 of the Securities Act apply for the purposes of this Act, with the necessary modifications. For the purposes of those sections, a qualified person, a recognized regulated entity and a market participant within the meaning of this Act are respectively considered to be an issuer, a self-regulatory organization and a market participant under that Act.

**94.** The Authority may, on its own initiative and without notice, intervene in any proceeding relating to a provision of this Act or the regulations.

**95.** The Authority may appoint any expert whose assistance it considers useful in the pursuit of its mission under this Act.

**96.** The Authority may make policy statements relating to the carrying out of this Act.

The policy statements set out how the Authority intends to exercise its discretionary powers for the purposes of the administration of this Act.

**97.** The Authority may, on its own initiative or on application by an interested person, take any steps to ensure compliance with an undertaking given to the Authority and with this Act.

It may, in particular, require changes to any document prepared under this Act, prohibit the circulation of a document or order the circulation of changes to an existing document or to specified information.

**98.** The Authority may, within the scope of its powers, participate in the decision making of any other derivatives market regulator.

**99.** The Authority may, in the manner and on the conditions it determines, make a decision that is general or particular in its application and relates specifically to any matter within its jurisdiction under this Act.

However, in exercising delegated or subdelegated functions or powers, a delegate of the Authority may not make a decision that is general in its application.

**100.** The Authority must exercise its discretion in the public interest.

**101.** The Authority may, in the cases and on the conditions prescribed by regulation, impose an administrative monetary penalty, up to the amounts prescribed by regulation, for an act or omission in contravention of a provision of this Act.

**102.** A staff member or a delegate of the Authority who has examined a matter prior to the opening of an investigation under section 116 must refrain from participating in any decision pertaining to the matter, unless the parties consent.

**103.** The Authority may suspend making a decision on an application until the applicant undertakes to assume all or part of the cost of the research work the Authority considers necessary in order to make the decision.

Moreover, the Authority may require the applicant to pay for the representation of a client or, if required in the public interest, it may assume such cost itself.

**104.** Before making a decision that adversely affects the rights of a person, the Authority or a delegate of the Authority must give the person 15 days' prior notice of the proposed decision and of the grounds on which it is based, and give the person an opportunity to make representations or produce documents.

However, the Authority or the delegate may, without prior notice, make a provisional decision, valid for a period of not more than 15 days, if the Authority or the delegate is of the opinion that there is an emergency or that any time given to the person to make representations or produce documents may be prejudicial.

A decision must include reasons and becomes effective as of the time the Authority gives notice of it to the person concerned. The person may, within six days after receiving the notice, make representations to the Authority or the delegate or produce documents.

The Authority or the delegate may revoke a decision made under this section.

**105.** Before making a decision or issuing an order under any of sections 49 to 52, the Authority must give the recognized regulated entity prior notice of the proposed decision or order, of the grounds on which it is based and of its effective date, and give the entity an opportunity to make representations or produce documents.

However, the Authority may, without prior notice, make a provisional decision or issue a provisional order, valid for a period of not more than 15 days, if it is of the opinion that there is an emergency or that any time given to the entity to make representations or produce documents may be prejudicial.

A decision or order must include reasons and becomes effective on its service on the entity. The entity may, within six days after receiving the decision, make representations to the Authority or produce documents.

The Authority may revoke a decision or order made under any of those sections.

**106.** Any delegate of the Authority examining a matter may refer it back to the Authority.

**107.** The Authority may call before it any matter that is before a delegate of the Authority and decide the matter in the delegate's stead.



**108.** For the purposes of making a decision, the Authority may, within the scope of a consultation mechanism established by regulation or of an agreement under the second paragraph of section 33 of the Act respecting the Autorité des marchés financiers, consider a factual analysis prepared by the staff of an organization pursuing similar objects.

**109.** A decision made by the Authority or a delegate of the Authority is communicated to the person concerned by the Authority.

However, a decision made by a recognized regulated entity or a person exercising a power subdelegated by such an entity is communicated to the person concerned by the entity.

**110.** A decision made by the Authority may be rectified on the record by the Authority in order to correct any clerical or typographical error or error in calculation.

**111.** Subject to section 113, the Authority may review its decisions at any time, except for error of law.

A delegate of the Authority may review a decision made by the delegate when a new fact warrants doing so.

**112.** Subject to section 113, the Authority may, on its own initiative, review any decision made by a delegate of the Authority or a recognized regulated entity, after having given the delegate or entity an opportunity to make representations or produce documents within the time allowed under section 104.

**113.** A person directly affected by a decision of the Authority, of a delegate of the Authority or of a recognized regulated entity may, within 30 days, apply to the Board for a review of the decision.

**114.** On the expiry of the time for applying to the Board for a review, a decision of the Authority or of a delegate of the Authority may, on the Authority's request, be homologated by the Superior Court or the Court of Québec, according to their respective jurisdiction. A homologated decision becomes enforceable under the authority of the court that has homologated it.

## **DIVISION II**

### **INSPECTIONS AND INVESTIGATIONS**

**115.** The Authority may, in accordance with Chapter III of Title I of the Act respecting the Autorité des marchés financiers, inspect the affairs of a dealer, adviser or market participant in order to verify compliance with this Act.

The Authority may also inspect the affairs of a recognized regulated entity to verify compliance with this Act, with the conditions specified in its recognition decision or with any other decision of the Authority, or to verify the manner in which the entity exercises the functions and powers delegated to it by the Authority.

**116.** In addition to its investigation powers under Chapter III of Title I of the Act respecting the Autorité des marchés financiers, the Authority may, on its own initiative or on request, order an investigation

(1) with a view to countering offences under the derivatives legislation of another legislative authority;

(2) within the scope of an agreement; or

(3) with a view to requesting the Superior Court to order the appointment of a receiver in accordance with section 19.1 of that Act.

**117.** No person called on to testify in the course of an investigation or being examined under oath may refuse to answer or refuse to produce a document on the grounds that the person might, by doing so, be incriminated or exposed to a penalty or to civil proceedings, subject to the Canada Evidence Act (Revised Statutes of Canada, 1985, chapter C-5).

**118.** The Authority may require the communication or delivery of any document that is relevant to an investigation. It may return documents to those who provided them or otherwise decide how documents are to be disposed of.

A person who has provided documents to the Authority may inspect them or copy them at the person's own expense, by arrangement with the Authority.

### **DIVISION III**

#### **CONSERVATORY MEASURES**

##### **§1. — Freeze orders**

**119.** The Authority may, for the purposes or in the course of an investigation, request the Board

(1) to order the person actually or potentially under investigation not to dispose of funds, securities or other property in the person's possession;

(2) to order the person actually or potentially under investigation to refrain from withdrawing funds, securities or other property on deposit with or under the control or in the safekeeping of any other person;

(3) to order any other person not to dispose of funds, securities or other property referred to in paragraph 2; or

(4) to order a person who is party to or has control over a contract to liquidate the contract and retain the proceeds of liquidation until the Board, in writing, revokes the order or agrees to exclude a particular amount from its application, or until a court orders otherwise.

**120.** A freeze order is effective from the time the person concerned is notified of it, for a renewable period of 120 days.

The person must be given at least 15 days' notice of the hearing during which the Board is to consider extending the order. The Board may grant the extension if the person does not wish to be heard or fails to establish, to the satisfaction of the Board, that the grounds on which the order was initially based have ceased to exist.

**121.** If the other person named in a freeze order under paragraph 3 of section 119 has leased a safety deposit box to the person actually or potentially under investigation or put such a box at that person's disposal, that other person must immediately notify the Authority.

On the Authority's request, that other person must break open the safety deposit box in the presence of an agent of the Authority, draw up an inventory of the contents in triplicate, and give one copy to the Authority and another to the person actually or potentially under investigation.

**122.** A freeze order does not apply to funds or securities deposited with a clearing house or a transfer agent unless it specifically names those funds or securities.

**123.** A freeze order under paragraph 3 of section 119 that names a Canadian bank or financial institution applies only to the branch or agency specified.

**124.** A freeze order also applies to funds, securities and other property received after the order becomes effective.

**125.** A person directly affected by a freeze order may apply to the Board for a determination of the specific funds, securities or other property to which the order applies.

**126.** The Authority may register or publish its decision to order an investigation under section 116 or an order issued under section 119 at the registry office or with any agency of the Gouvernement du Québec or the Government of Canada where such a decision or order may be registered or published.

Once registered or published, the decision or order is enforceable against any person whose right is registered or published subsequently.

§2. — *Remedial measures*

**127.** Following a failure to comply with an obligation under this Act, the Authority may request the Board to issue one or more of the following orders against any person in order to remedy the situation or deprive a person of the profit realized as a result of the non-compliance:

- (1) an order requiring the person to comply with
  - (a) a provision of this Act;
  - (b) a decision of the Authority under this Act; or
  - (c) a rule of a recognized regulated entity, or a decision or order made on the basis of such a rule;
- (2) an order directing a market participant to submit to a review of practices and procedures and institute such changes as may be directed by the Authority;
- (3) an order rescinding a derivatives transaction entered into by the person, and directing the person to repay to another person any part of the money paid by that other person for derivatives;
- (4) an order directing the person to offer, purchase, dispose of, cancel or liquidate any derivative or position in derivatives and dispose of the proceeds or loss from the liquidation in a specified manner;
- (5) an order directing the person to produce to a court or an interested person financial statements or reports in a form consistent with the accounting principles applicable to derivatives or in such other form as may be determined by the Board;
- (6) an order directing a person to rectify a register or other records;
- (7) an order directing the person to disgorge to the Authority amounts obtained as a result of the non-compliance.

**128.** The Authority may, by motion, apply to a judge of the Superior Court for an injunction in respect of any matter relating to this Act.

The motion for an injunction is a proceeding in itself.

The procedure prescribed in the Code of Civil Procedure (R.S.Q., chapter C-25) applies, except that the Authority cannot be required to give security.

**129.** If it considers it to be warranted in the public interest, the Authority may, by motion, apply to the court for a declaration that a person has failed to comply with an obligation under this Act and an order directing the person to pay damages up to the amount of the injury caused to any other person.

The court may also impose punitive damages, or order the person to repay to another person the profits realized as a result of the non-compliance.

The motion is filed in the district in which the residence or principal establishment of the person concerned is situated or, if the person has no residence or establishment in Québec, in the district of Montréal.

## **CHAPTER II**

### **BUREAU DE DÉCISION ET DE RÉVISION EN VALEURS MOBILIÈRES**

#### **DIVISION I**

##### **POWERS**

**130.** The Board may deny an exemption under this Act if it considers it to be required in the public interest.

In particular, the Board may deny an exemption to any person who has

- (1) made improper use of such an exemption;
- (2) contravened this Act;
- (3) contravened any other provision relating to derivatives; or
- (4) contravened the rules of a recognized exchange.

**131.** The Board may order a person or group of persons to cease all activities for the purpose of trading in a particular derivative.

As well, the Board may order a person or group of persons to cease all activities related to the offering or trading of a particular derivative.

**132.** The Board may order a person or group of persons to cease carrying on business as an adviser.

**133.** An order under section 131 or 132 is effective from the time the person concerned is notified or becomes aware of it.

If the order is against a group of persons, its publication in the Authority's Bulletin or through any other medium normally available to the persons concerned in the exercise of their functions is valid as notification under the first paragraph.

**134.** If it is brought to the Board's knowledge that a dealer, an adviser, a representative, a market participant, a recognized regulated entity, a qualified person or a person granted an exemption under this Act has failed to comply

with a provision of this Act, the Board may, once the facts have been established, reprimand the offender or impose an administrative penalty on the offender to be collected by the Authority.

If it is brought to the Board's knowledge that a market participant, a dealer, an adviser, a representative or any other person acting on their behalf has, by an act or omission, contravened or aided a person in contravening a provision of this Act, the Board may, once the facts have been established, impose an administrative penalty on the offender.

The amount of the penalty may in no case exceed \$1,000,000.

**135.** In addition to imposing a measure under section 134, the Board may require the offender to repay to the Authority the costs incurred in connection with the inspection or investigation that established non-compliance with a provision of this Act, according to the tariff set by regulation.

**136.** Sections 323 to 323.11 of the Securities Act apply, with the necessary modifications, to the procedure and decisions of the Board under this Act.

**137.** The Board may, on its own initiative or on application by an interested person, review its decisions at any time, except for error of law.

**138.** An application to the Board for a review of a decision does not suspend the decision, unless the Board decides otherwise.

## **DIVISION II**

### **APPEALS**

**139.** Any person directly interested in a final decision of the Board may appeal the decision to the Court of Québec.

**140.** Sections 325 to 330 of the Securities Act apply, with the necessary modifications, to appeals.

## **CHAPTER III**

### **INTERJURISDICTIONAL COOPERATION**

**141.** Chapter II of Title X of the Securities Act, which deals with interjurisdictional cooperation, applies for the purposes of this Act.

## **TITLE VI**

### **FINANCIAL PROVISIONS**

**142.** The costs incurred and determined each year by the Government for the carrying out of this Act are borne by the Authority.

**143.** The costs incurred by the Authority for the administration of Title II in connection with activities governed by this Act are borne by the recognized regulated entities that carry on such activities.

Those costs are determined by the Authority at the end of its fiscal year for each entity and consist of a minimum contribution set by the Authority and the amount, if any, by which actual costs exceed that contribution. The actual costs are determined on the basis of the tariff set by regulation.

The amount to be paid by each entity is set out in a certificate issued by the Authority.

## **TITLE VII**

### **PROHIBITIONS, SPECIFIC OFFENCES AND PENAL PROVISIONS**

#### **CHAPTER I**

##### **MISCELLANEOUS PROHIBITIONS**

**144.** No person who has access to information on the investment program established by an investment fund or by an adviser who is a portfolio manager may use the information for the person's own benefit in trading in derivatives included in the program.

**145.** The following persons, in addition to the adviser, are deemed to have access to information on the investment program of an adviser who is a portfolio manager if they participate in formulating the adviser's investment decisions or recommendations to the client for whom the portfolio is managed or have knowledge of them before they are implemented:

- (1) a partner of the adviser;
- (2) an affiliate of the adviser;
- (3) an officer or director of the adviser or of an affiliate of the adviser; and
- (4) a member of the staff of the adviser or of an affiliate of the adviser.

**146.** No person may make any representation that the Authority has given a favourable opinion on the merits of a derivative or on the financial situation, competence or conduct of a dealer, an adviser, a representative or a person qualified under section 82.

**147.** Dealers and advisers may not engage in multiple transactions on a client's behalf for the sole purpose of increasing their remuneration.

**CHAPTER II****SPECIFIC OFFENCES****148.** It is an offence

- (1) to contravene a decision of the Authority or the Board;
- (2) to breach an undertaking given to the Authority or the Board;
- (3) to fail to provide information or a document required under this Act within the prescribed time;
- (4) in the course of an investigation, to fail to appear after summons, refuse to testify or refuse to communicate or deliver a document or a thing required by the Authority or its investigator; or
- (5) to attempt, in any manner, to hinder a representative of the Authority in the exercise of the representative's functions in the course or for the purposes of an inspection or an investigation.

**149.** It is an offence for a registered dealer or adviser to employ a natural person who is not registered with the Authority as a representative or to employ a natural person to carry on a remunerated activity specified by regulation.

**150.** It is an offence to influence or attempt to influence the market price or the value of a derivative or of the underlying interest of a derivative by means of unfair, improper or fraudulent practices.

**151.** A person who directly or indirectly engages or participates in any transaction, series of transactions or trading method relating to a trade in or the purchase of a derivative or underlying interest, or in any act, practice or course of conduct is guilty of an offence if the person knows, or ought reasonably to know, that the transaction, series of transactions, trading method, act, practice or course of conduct

- (1) creates or contributes to a misleading appearance of trading activity in, or an artificial price for, a derivative or underlying interest; or
- (2) perpetrates a fraud on any person.

**152.** A person who makes a misrepresentation in

(1) the risk information document or the qualification information submitted to the Authority and given to the client in accordance with section 70, or

(2) the information required to be filed with the Authority every year under section 85 in connection with the person's qualification,

is guilty of an offence.



For the purposes of this section and section 153, a misrepresentation is any misleading information on a fact that is likely to influence a client's or reasonable investor's decision, or any pure and simple omission of such a fact.

**153.** A person who otherwise makes a misrepresentation

- (1) about the offering or trading of a derivative,
- (2) in any document or information filed with the Authority or one of its agents for the purposes of the administration of this Act, or
- (3) in any document sent or register kept under this Act,

is guilty of an offence.

**154.** A dealer, adviser or representative who, at the time of a derivatives offer or trade or another derivatives transaction, makes a claim to a client that all or part of a margin deposit or a premium paid will be reimbursed is guilty of an offence.

**155.** A dealer, adviser or representative who offers a derivative created or marketed by a person who has not obtained qualification under section 82, trades in such a derivative or engages in any transaction involving such a derivative is guilty of an offence.

**156.** A person other than a registered derivatives dealer, adviser or representative who discloses information to the public that could influence the use of derivatives by another person and who so derives an advantage other than the person's ordinary remuneration is guilty of an offence.

**157.** A person who creates or markets a derivative and does not obtain qualification under section 82 before the derivative is offered to the public is guilty of an offence.

**158.** An adviser who is a portfolio manager and who, in executing a mandate, knowingly participates in

- (1) the making of a loan or provision of a guarantee to a person an officer or director of which is a person described in section 145 or an associate of that person, except with a written authorization given, with full knowledge of the facts, by the client for whom the portfolio is managed,
- (2) the purchase of derivatives having as their underlying interest the securities of a person referred to in paragraph 1, except with a written authorization given, with full knowledge of the facts, by the client for whom the portfolio is managed,

(3) a derivatives offer or trade or another derivatives transaction with a person described in section 145 or an associate of such a person, or

(4) the making of a loan or provision of a guarantee to a person described in section 145 or an associate of such a person,

is guilty of an offence.

For the purposes of this section, an “associate” of a person means any company in which the person owns securities representing more than 10% of a class of shares to which are attached voting rights or an unlimited right to participate in earnings and in the assets on winding-up, any partner of the person, any trust or succession in which the person has a substantial ownership interest or in relation to which the person acts as trustee or liquidator or in a similar capacity, the person’s spouse, any child of the person or any relative of the person or of the person’s spouse, if that relative shares the person’s residence.

**159.** A person who hinders the Authority or a person it has authorized in the exercise of a power under section 115 or 116 is guilty of an offence.

### CHAPTER III

#### PENAL PROVISIONS

**160.** Unless otherwise specified, any person who contravenes this Act is guilty of an offence and is liable to a minimum fine of \$2,000 in the case of a natural person and \$3,000 in the case of any other person, or of double the profit realized, whichever is greater. The maximum fine is \$150,000 for a natural person and \$200,000 for any other person, or four times the profit realized, whichever is greater.

In determining the amount of a fine, the court considers such factors as the benefits derived from the offence and the injury caused.

**161.** Any contravention of a regulation made under this Act is an offence that is subject to the same provisions as offences under this Act.

**162.** In the case of an offence under section 150 or 151 and in the case of a transaction carried out without the risk information document or qualification information being given to the client as required under section 70, the minimum fine is \$5,000, double the profit realized, or double the amounts invested in the transaction or series of transactions, whichever is greatest. The maximum amount of the fine is \$5,000,000, four times the profit realized, or four times the amounts invested in the transaction or series of transactions, whichever is greatest.

**163.** An officer, director or employee of the principal offender, including a person remunerated on commission, who authorizes or permits an offence under this Act is liable to the same penalties as the principal offender.

**164.** Conspiracy to commit an offence under this Act is an offence punishable by the penalties set out in section 160 or 162, according to the offence.

**165.** A person who, by act or omission, aids another person in the commission of an offence is guilty of the offence as if the person had committed it. The person is liable to the penalties set out in section 160 or 162, according to the offence.

The same applies to a person who, by encouragement or advice or by an order, induces another person to commit an offence.

**166.** Despite articles 231 and 348 of the Code of Penal Procedure (R.S.Q., chapter C-25.1), a person who engages in a derivatives offer or trade or another derivatives transaction in contravention of section 82 or contravenes any of sections 150, 151 and 163 to 165 is liable, in addition to the fine set out in the applicable penal provision, to imprisonment for a period not exceeding five years less one day.

**167.** Penal proceedings for an offence under this Act may be instituted by the Authority.

**168.** When the Authority takes charge of the prosecution, the fine imposed by the court belongs to the Authority.

**169.** Penal proceedings for an offence under any of sections 54, 56, 61 to 65, 67 to 74, 78, 80, 82, 84, 144 and 146 to 158 are prescribed five years from the date on which the investigation record relating to the offence was opened.

A certificate of the secretary of the Authority stating the date on which the investigation record was opened constitutes conclusive proof of that date in the absence of any evidence to the contrary.

**170.** The Authority may recover its investigation costs from any person found guilty of an offence under this Act or under the derivatives legislation of another legislative authority, according to the tariff set by regulation.

The Authority prepares a statement of costs and presents it to a judge of the Court of Québec after giving the interested parties five days' prior notice of the date of presentation.

The judge taxes the costs, and the judge's decision may be appealed with leave of a judge of the Court of Appeal.

**171.** A judge of the Court of Québec may, on satisfactory proof of signature, endorse a warrant of arrest issued by a judge of another province or of a territory of Canada against any person on a charge of contravening the derivatives legislation of that province or territory.

The warrant so endorsed is sufficient authority to the bearer or any peace officer of Québec to execute it and to take the person arrested to the place specified in the warrant.

### **TITLE VIII**

#### **DELEGATION AND IMMUNITY**

**172.** Subject to Title VII, the Authority's power to review its decisions, institute court proceedings in its name or make a decision under Title II may only be delegated to a superintendent or to another officer reporting directly to the president and director general of the Authority.

**173.** In addition to applying to the Authority itself, section 34.1 of the Act respecting the Autorité des marchés financiers applies to an officer of the Authority, a member of the Authority's staff, an agent appointed by the Authority and a delegate of the Authority exercising a function or power of the Authority.

### **TITLE IX**

#### **REGULATIONS**

**174.** The Authority may, by regulation,

(1) determine the procedure to be followed in any matter relating to the carrying out of this Act;

(2) determine, for the purposes of section 72, exceptions to the obligations of dealers, advisers or representatives relating to the segregation of their clients' property or the maintenance of separate accounting records;

(3) set the tariffs referred to in sections 135, 143 and 170;

(4) determine the provisions of Title III whose contravention may be sanctioned by an administrative monetary penalty, and the amount of and the conditions for imposing such a penalty; and

(5) prescribe the fees payable for any formality required by this Act or for services rendered by the Authority, and the terms of payment.

A regulation under this section must be submitted to the Government, which may approve it with or without amendments.

The Government may make or amend a regulation under this section if the Authority does not do so within the time specified by the Government.

A draft regulation or regulation under this section must be published in the Authority's Bulletin.

**175.** The Authority may, by regulation,

(1) make rules concerning derivatives offers or trades or other derivatives transactions, in particular for the purpose of preventing fraud and manipulation or preventing offers or trades that are prejudicial to clients and investors;

(2) determine the form and content of the documents, declarations and certificates required under this Act;

(3) set time limits and periods for the purposes of this Act;

(4) specify the amount of a person's minimum assets and net assets for the purposes of paragraph 7 of the definition of "accredited counterparty" in section 3;

(5) determine rules relating to the designation of a person as a regulated entity for the purposes of the definition of "regulated entity" in section 3;

(6) designate a person as a market participant for the purposes of the definition of "market participant" in section 3;

(7) specify, for the purposes of section 6, the other instruments to which this Act does not apply;

(8) specify the cases in which the provisions referred to in section 7 do not apply;

(9) make any rule to be applicable to a recognized regulated entity or a market participant, including market operation rules;

(10) establish a process whereby a recognized regulated entity may make a new rule or a rule amendment enforceable through self-certification of the rule or amendment;

(11) make rules concerning derivatives transactions;

(12) prescribe the information about derivatives or derivatives trading that must be communicated to the Authority, recognized regulated entities, market participants, clients and the public;

(13) establish the management rules that dealers, advisers and representatives must comply with in order to safeguard their clients' interests;

(14) prescribe requirements applicable to market participants or to dealers, advisers and representatives, concerning such matters as becoming a member or market participant of a self-regulatory organization and contributing, as a dealer, adviser and representative, to a protection fund;

(15) determine the conditions subject to which persons resident outside Québec may apply for registration;

(16) determine categories of registration, the conditions to be met by applicants for registration, the duration of registration and the rules governing the activities of dealers and advisers and their representatives;

(17) prescribe the conditions on which an alternative trading system registered as a dealer is exempted from the obligation set out in section 68;

(18) prescribe the information to be given under section 70;

(19) prohibit, or impose conditions on, any transaction designed to set, influence or manipulate the market price of a derivative;

(20) determine, for the purposes of section 78, the changes that must be notified to the Authority and those that must be approved by the Authority;

(21) prescribe the conditions on which the Authority may qualify a person for the purposes of section 82;

(22) prescribe the information that a qualified person must file with the Authority every year;

(23) prescribe, for the purposes of section 87, the rules relating to the designation of persons as accredited counterparties;

(24) specify the activities that are remunerated activities for the purposes of section 149;

(25) allow, prohibit or regulate a person's use of documents, including advertising materials, in connection with derivatives offers or trades or other derivatives transactions;

(26) determine how, when and in what form a document required under this Act must be sent or received;

(27) determine, from among the documents required under this Act, those that must be filed or sent in a specified medium or by means of a specified technology;

(28) establish a mechanism for consulting with an organization pursuing similar objects on matters within the scope of this Act and of legislation enacted by the legislative authority having jurisdiction over the organization; and

(29) conditionally or unconditionally exempt a group of persons, derivatives or transactions from any or all of the obligations or requirements under this Act.

A regulation under this section must be submitted to the Minister, who may approve it with or without amendments.

The Minister may make or amend a regulation under this section if the Authority does not do so within the time specified by the Minister.

A draft regulation under this section must be published in the Authority's Bulletin with the notice required under section 10 of the Regulations Act (R.S.Q., chapter R-18.1).

A draft regulation under this section may not be submitted for approval or adopted before 30 days have elapsed since its publication.

A regulation under this section comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation. It must also be published in the Authority's Bulletin.

Sections 4 to 8, 11 and 17 to 19 of the Regulations Act do not apply to a regulation under this section.

**176.** The Government may, by regulation,

(1) determine other types of derivatives that are subject to this Act or determine criteria on the basis of which a contract, security or other financial instrument is considered equivalent to a derivative;

(2) determine the remunerated activities referred to in section 56; and

(3) frame the policy that dealers and advisers must adopt in accordance with section 74 or elements of that policy.

**177.** In exercising their regulatory powers, the Government, the Minister and the Authority may establish various categories of persons, derivatives and transactions and prescribe appropriate rules for each category.

**178.** A regulation under this Act may confer a discretionary power on the Authority.

**179.** The Authority must, not later than 31 July, submit an annual report to the Minister on its regulation activities under this Act for the period ending at the end of its last fiscal year.

The report must describe regulatory amendments and their impact on derivatives markets and on investors, and contain any other information required by the Minister.

The Minister tables the report in the National Assembly within 30 days of its receipt or, if the Assembly is not sitting, within 30 days of resumption.

The competent parliamentary committee of the National Assembly may hear the Authority at least once a year to discuss the report and the Authority's regulation activities.

## **TITLE X**

### **AMENDING PROVISIONS**

#### **ACT RESPECTING INSURANCE**

**180.** The Act respecting insurance (R.S.Q., chapter A-32) is amended by inserting the following section before section 391:

**“390.1.** The provisions of this chapter apply, with the necessary modifications, to the winding-up of an insurance company within the scope of a receivership ordered under Chapter III.1 of Title I of the Act respecting the Autorité des marchés financiers (chapter A-33.2), to the extent that they are not inconsistent with that chapter.”

**181.** Section 391.1 of the Act, enacted by section 45 of chapter 7 of the statutes of 2008, is repealed.

#### **ACT RESPECTING THE AUTORITÉ DES MARCHÉS FINANCIERS**

**182.** Section 4 of the Act respecting the Autorité des marchés financiers (R.S.Q., chapter A-33.2) is amended by inserting the following paragraph after paragraph 4:

“(4.1) supervise derivatives markets, including derivatives exchanges and clearing houses and ensure that regulated entities and other derivatives market practitioners comply with the obligations imposed by law; and”.

**183.** Section 15.1 of the Act, enacted by section 3 of chapter 7 of the statutes of 2008, is amended by inserting “section 116 of the Derivatives Act (2008, chapter 24),” after “Act respecting insurance (chapter A-32),”.

**184.** Section 17 of the Act is amended by striking out “as well as the other persons concerned by the request” at the end of the second paragraph.

**185.** Section 19.1 of the Act, enacted by section 5 of chapter 7 of the statutes of 2008, is amended by inserting “section 116 of the Derivatives Act (2008, chapter 24) or” after “under” in subparagraph 4 of the first paragraph.

**186.** Section 23 of the Act is amended by adding the following sentence at the end of the third paragraph: “Documents intended for the Authority are served on the secretary.”



**187.** Section 32 of the Act is amended by striking out “a superintendent, the secretary” in the first paragraph.

**188.** Section 38.2 of the Act, enacted by section 8 of chapter 7 of the statutes of 2008, is amended by inserting “paragraph 7 of section 127 of the Derivatives Act (2008, chapter 24) or” after “the sums collected under” in the second paragraph.

**189.** Section 65 of the Act is replaced by the following section:

“**65.** An application for recognition or for a delegation of functions or powers, or an application for the modification of a recognition decision or a delegation of functions or powers, must be filed with the documents and information required by the Authority.”

**190.** Section 66 of the Act is amended by striking out the second paragraph.

**191.** Section 91 of the Act is amended by adding the following paragraph at the end:

“The amount to be paid by each organization is set out in a certificate issued by the Authority.”

**192.** Section 93 of the Act is replaced by the following section:

“**93.** On the request of the Authority or of any interested person, the board shall exercise the functions and powers assigned to it under the Derivatives Act (2008, chapter 24) and the Securities Act (chapter V-1.1).

The board may not, when assessing the facts or the law for the purposes of those Acts, substitute its assessment of the public interest for that made by the Authority in making a decision.”

**193.** Section 94 of the Act is amended by replacing “compliance with the provisions of the Securities Act (chapter V-1.1)” by “compliance with an undertaking given under the Derivatives Act (2008, chapter 24) or the Securities Act (chapter V-1.1) or compliance with those Acts”.

**194.** Schedule 1 to the Act is amended by inserting “DERIVATIVES ACT (2008, chapter 24)” in alphabetical order.

#### CONSUMER PROTECTION ACT

**195.** Section 6 of the Consumer Protection Act (R.S.Q., chapter P-40.1) is amended by inserting “the Derivatives Act (2008, chapter 24) or” after “by” in paragraph *a*.

## SECURITIES ACT

**196.** Section 1 of the Securities Act (R.S.Q., chapter V-1.1) is amended, in the first paragraph,

- (1) by replacing “option to purchase” in subparagraph 1 by “warrant”;
- (2) by striking out subparagraphs 4, 5 and 8;
- (3) by inserting the following subparagraph after subparagraph 8:

“(8.1) an option or other non-traded derivative whose value is derived from, referenced to or based on the value or market price of a security, granted as compensation or as payment for a good or service;”.

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

“**2.1.** This Act does not apply to derivatives within the meaning of the Derivatives Act (2008, chapter 24).”

**198.** Section 67 of the Act is repealed.

**199.** Section 92 of the Act, amended by section 37 of chapter 50 of the statutes of 2006, is again amended by adding the following sentence at the end of the first paragraph: “The same applies to an insider of a reporting issuer who purchases or disposes of a derivative within the meaning of the Derivatives Act (2008, chapter 24) whose underlying interest is a security of the reporting issuer.”

**200.** Section 148.1 of the Act is amended by replacing “a candidate or a class of candidates it determines pursue their activities through a subsidiary as regards the field of securities for which registration is sought” by “the securities activities of a candidate or class of candidates be pursued through a subsidiary”.

**201.** Section 167 of the Act is repealed.

**202.** Section 169 of the Act is replaced by the following section:

“**169.** No exchange, clearing house, information processor, matching service utility or regulation services provider may carry on securities activities in Québec unless it is recognized by the Authority.”

**203.** The Act is amended by inserting the following section after section 169:

“**169.1.** An application for recognition or for the modification of a recognition decision must be filed with the documents and information required by the Authority.

The Authority shall publish a notice of the application in its Bulletin and invite interested persons to make representations in writing.”

**204.** Section 170 of the Act is amended

(1) by replacing “The Authority may authorize the carrying on of an activity mentioned in section 169 on” in the first paragraph by “The Authority may recognize a person referred to in section 169 on”;

(2) by replacing “determine that a person that carries on such an activity or any other activity governed by this Act is to be recognized as a self-regulatory organization under Title III of the Act respecting the Autorité des marchés financiers (chapter A-33.2)” in the second paragraph by “require that the person be recognized as a self-regulatory organization under Title III of the Act respecting the Autorité des marchés financiers (chapter A-33.2) in order to carry on the person’s activities”;

(3) by replacing “a person authorized to carry on securities exchange or clearing activities” in the fourth paragraph by “a person recognized as an exchange or clearing house”.

**205.** Section 171 of the Act is replaced by the following section:

“**171.** The Authority may recognize an alternative trading system as an exchange or register it as a dealer.”

**206.** Section 171.1 of the Act is amended

(1) by replacing “apply, with the necessary modifications, to legal persons, partnerships and other entities referred to in sections 169 to 171” in the first paragraph by “apply, with the necessary modifications, to recognized exchanges and clearing houses”;

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

“Sections 80, 87 and 89 of the Act respecting the Autorité des marchés financiers apply to information processors and matching service utilities.”

**207.** Section 171.1.1 of the Act is amended by replacing “electronic securities trading systems, securities information processors or matching service utilities” by “alternative trading systems, information processors, matching service utilities or regulation services providers”.

**208.** Section 172 of the Act is amended by replacing “authorized to carry on securities exchange or clearing activities in Québec” by “recognized”.

**209.** Section 189.1 of the Act, amended by section 58 of chapter 50 of the statutes of 2006, is again amended by inserting “or in other derivatives within the meaning of the Derivatives Act (2008, chapter 24)” after “in options” wherever it appears.

**210.** Section 196 of the Act is amended by striking out paragraph 4.

**211.** Section 204 of the Act, amended by section 149 of chapter 7 of the statutes of 2008, is again amended by replacing “derivatives trading” wherever it appears in the first paragraph by “trading in a related financial instrument or in derivatives”.

**212.** Section 237 of the Act, amended by section 156 of chapter 7 of the statutes of 2008, is again amended by replacing subparagraphs 2.1 to 2.3 of the first paragraph by the following subparagraphs:

“(2.1) a recognized stock exchange or one of its participants;

“(2.2) a recognized clearing house or a person who has an account with such a clearing house;

“(2.3) a person who operates an alternative trading system that is recognized as a stock exchange or registered as a dealer, or one of its subscribers;

“(2.3.1) a regulation services provider;”.

**213.** Section 250 of the Act is amended by replacing “90” in the first paragraph by “120”.

**214.** Section 272.1 of the Act is amended by inserting “with an undertaking given to the Authority and” after “compliance” in the first paragraph.

**215.** Section 274 of the Act is replaced by the following section:

“**274.** The Authority may make policy statements relating to the carrying out of this Act.

The policy statements set out how the Authority intends to exercise its discretionary powers for the purposes of the administration of this Act.”

**216.** Section 305.1 of the Act is amended, in the definition of “Québec securities law” in the first paragraph,

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

“(2.1) the Derivatives Act (2008, chapter 24);”;

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

“(3) regulations under any of the Acts referred to in paragraphs 1 to 2.1;”.

**217.** Section 307.2 of the Act is amended by adding the following paragraph after paragraph 3:

“(4) the powers and functions provided for under sections 110 to 112, 137, 174 and 185 of the Derivatives Act (2008, chapter 24).”

**218.** Section 308.2.1 of the Act is amended by replacing “authorized to carry on an activity under Title VI or a regulation” and “authorized” in paragraph 3 by “recognized in accordance with Title VI or a regulation” and “recognized” respectively.

**219.** Section 310 of the Act is amended

(1) by replacing “The Authority” and “authorized” in the first paragraph by “Subject to section 322, the Authority” and “recognized”, respectively;

(2) by inserting “or produce documents to complete the person’s record” after “present observations” in the second paragraph.

**220.** Section 320 of the Act is amended by replacing the first paragraph by the following paragraph:

“**320.** A decision made by the Authority or a person exercising a delegated power shall be sent by the Authority to the person concerned.”

**221.** Section 321 of the Act is amended by replacing “The Authority” in the first paragraph by “Subject to section 322, the Authority”.

**222.** Section 322 of the Act is amended

(1) by replacing “authorized under” in the first paragraph by “referred to in”;

(2) by striking out the second paragraph.

**223.** Section 323.8.1 of the Act, enacted by section 167 of chapter 7 of the statutes of 2008, is amended

(1) by replacing “Despite sections 323 to 323.8” by “Despite sections 323 to 323.4 and 323.6 to 323.8”;

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

“If it is imperative to do so, the decision may be made in the absence of the person concerned. In such a case, the Bureau must give the person the opportunity to be heard within 15 days in regard to one of the facts referred to in the first paragraph.”

**224.** Section 330.9 of the Act is amended by replacing the third paragraph by the following paragraph:

“The amount to be paid by each self-regulatory organization is set out in a certificate issued by the Authority.”

**225.** Section 331.1 of the Act is amended

(1) by replacing “securities clearing houses, electronic securities trading systems, securities information processors and matching service utilities” in paragraph 9.1 by “clearing houses, alternative trading systems, information processors, matching service utilities and regulation services providers”;

(2) by replacing “authorized” in paragraph 28 by “recognized”;

(3) by replacing “authorized to carry on an activity for the purposes of Québec securities laws, including when the person or class of persons is authorized to carry on the activity” in paragraph 33.7 by “recognized to carry on an activity for the purposes of Québec securities laws, including when the person or class of persons is recognized”.

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

**226.** Section 4 of the Act respecting the transfer of securities and the establishment of security entitlements (2008, chapter 20) is amended,

(1) in the second paragraph,

(a) by inserting “the Derivatives Act (2008, chapter 24),” after “within the meaning of”;

(b) by replacing “is authorized to carry on such activities” by “is recognized”;

(2) by replacing “without being authorized by the Autorité des marchés financiers to carry on activities of a clearing agency or clearing house” in the third paragraph by “without being recognized as a clearing agency or clearing house by the Autorité des marchés financiers”.

#### TITLE XI

#### TRANSITIONAL AND FINAL PROVISIONS

**227.** Sections 1.1 to 1.6, 71 to 72 and 192.1 and subparagraph *e* of paragraph 3 of section 224 of the Securities Regulation, enacted by Order in Council 660-83 dated 30 March 1983 (1983, G.O. 2, 1269), are repealed.

**228.** A dealer, adviser or representative registered before (*insert the date of coming into force of sections 54 and 56*) in accordance with section 148 or 149 of the Securities Act (R.S.Q., chapter V-1.1) who meets the conditions imposed by this Act for registration to carry on business in derivatives only is entitled, on application, to be registered under this Act.

**229.** When a person referred to in section 228 registers under this Act for the first time, the Authority reduces the fees payable under this Act by an amount calculated on a per-month basis to compensate for the fees that the

person has already paid for any period subsequent to the effective date of registration under this Act.

**230.** An exchange or a clearing house authorized under Title VI of the Securities Act, a self-regulatory organization recognized under Title III of the Act respecting the Autorité des marchés financiers (R.S.Q., chapter A-33.2), or an exchange, clearing house or self-regulatory organization granted an exemption by the Authority under section 263 of the Securities Act or section 73 of the Act respecting the Autorité des marchés financiers before (*insert the date of coming into force of section 12*) that carries on activities relating to transactions to which this Act applies is authorized to continue to carry on those activities in Québec in accordance with the conditions prescribed by the Authority under those Acts or, as of the date the Authority may determine, in accordance with the new conditions prescribed by the Authority under this Act.

**231.** Derivatives made available by a person qualified under section 67 of the Securities Act before (*insert the date of coming into force of sections 12 and 82*) are deemed to have been self-certified under this Act.

**232.** A regulation under the Securities Act in force on (*insert the date of coming into force of sections 174 to 176*) applies to a person governed by this Act, to the extent that this Act provides for the relevant regulation-making powers, until a regulation on the same matter is made and brought into force in accordance with this Act.

**233.** An inspection or investigation opened by the Authority before (*insert the date of coming into force of sections 115 and 116*) regarding a matter to which this Act applies is governed by the legislation in force on the date on which it was opened.

**234.** A complaint, disciplinary process or proceeding or any other recourse submitted to, instituted by or exercised before the Authority before (*insert the date of coming into force of section 97*) regarding a matter to which this Act applies is continued in accordance with the legislation in force on the date on which it was submitted, instituted or exercised.

**235.** A proceeding pending before the Board before (*insert the date of coming into force of section 136*) regarding a matter to which this Act applies is continued in accordance with the legislation in force on the date on which the proceeding was commenced.

**236.** The Government may, by a regulation made within 12 months after the date of coming into force of this section, enact any transitional measure conducive to the carrying out of this Act.

A regulation under the first paragraph is not subject to the publication requirement set out in section 8 of the Regulations Act (R.S.Q., chapter R-18.1) and comes into force on the date of its publication in the

*Gazette officielle du Québec* or at any later date specified in the regulation. The regulation may also, if it so provides, apply from any date not prior to 20 June 2008.

**237.** The Authority is responsible for the administration of this Act.

**238.** The Minister of Finance is responsible for the carrying out of this Act.

**239.** Not later than (*insert the date that is five years after the coming into force of section 238*) and subsequently every five years, the Minister must report to the Government on the carrying out of this Act and on the advisability of maintaining or amending this Act.

The report is tabled in the National Assembly within the next 15 days or submitted to the President of the National Assembly if the Assembly is not sitting.

Within one year from the date on which the report is tabled or submitted, the President of the National Assembly convenes a standing committee of the Assembly to examine the advisability of maintaining or amending this Act and to hear the representations of interested individuals and organizations.

**240.** The provisions of this Act come into force on the date or dates to be set by the Government, except sections 180, 181 and 223, which come into force on 20 June 2008.



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## Decisions

### Decision MPTC08-00275, 4 August 2008

An Act respecting transportation services by taxi (R.S.Q., c. S-6.01)

#### Commission des transports du Québec — General fixation of rates for private transportation by taxi

Please note that the Commission des transports du Québec, by its decision MPTC08-00275 of August 4, 2008 and in accordance with section 60 of the Act respecting transportation services by taxi (R.S.Q., c. S-6.01), has fixed the rates for private transportation services by taxi and their conditions of application, in force on August 9, 2008, as contained in the Compendium of tariffs of private transportation by taxi the text of which follows.

Please note that the Compendium of tariffs of private transportation by taxi established by this decision replaces Tariffs of private transportation by taxi established by decision MPTC07-00398 rendered by the Commission on January 8, 2008.

LISE LAMBERT,  
*Chair of the Commission  
des transports du Québec*

### Compendium of tariffs of private transportation by taxi

An Act respecting transportation services by taxi (R.S.Q., c. S-6.01)

#### DIVISION I GENERAL PROVISIONS

**1.** This tariff is applicable to private transportation by taxi except for transportation provided under a specialized taxi permit.

**2.** When the vehicle used by the holder of a taxi permit is not equipped with a taximeter, the distance covered with a customer is measured with an odometer.

**3.** A taxi driver cannot claim for the price of a trip a price higher than the one calculated in accordance with this tariff.

**4.** For the purpose of this tariff, the term “hour or fractions of an hour wait” designates the time during which the taxi is not running or is running at less than 22.625 km per hour during a trip.

The number 22.625 is calculated from the hourly tariff divided by the tariff per km specified in section 6.

#### DIVISION II GENERAL TARIFFS

**5.** General tariffs are applicable to private transportation provided by holders of taxi owner’s permits throughout Québec, subject to the application of special tariffs.

**6.** The price of a trip calculated by the taximeter is as follows:

	Drop rate	Per kilometre covered with a customer	Per hour or fraction of an hour wait
Basic price	\$2.92	\$1.42	\$32.07
5% GST	<u>\$0.15</u>	<u>\$0.07</u>	<u>\$1.60</u>
Price including GST	\$3.07	\$1.49	\$33.67
7.5% QST	<u>\$0.23</u>	<u>\$0.11</u>	<u>\$2.53</u>
Taximeter rate	\$3.30	\$1.60	\$36.20

**7.** The price of a trip calculated by the odometer is as follows:

	Drop rate	Per kilometre covered with a customer	Per hour or fraction of an hour wait
Basic price	\$0.00	\$1.42	\$32.07
5% GST	<u>\$0.00</u>	<u>\$0.07</u>	<u>\$1.60</u>
Price including GST	\$0.00	\$1.49	\$33.67
7.5% QST	<u>\$0.00</u>	<u>\$0.11</u>	<u>\$2.53</u>
Odometer rate	\$0.00	\$1.60	\$36.20

### DIVISION III SPECIAL TARIFFS

**§1.** *Tariffs applicable to transportation for which the starting point or destination is Montréal Trudeau Airport*

**8.** The price of a trip between the airport and downtown Montréal, whatever the number of passengers, is as follows:

Basic flat rate	\$33.67
5% GST	<u>\$1.68</u>
Rate including GST	\$35.35
7.5% QST	<u>\$2.65</u>
Total flat rate	\$38.00

This price applies when the trip has only one pick-up point and one drop-off point.

For the purpose of this section, downtown Montréal is bounded as follows:

— westward: Avenue Atwater to the Lachine Canal; the Lachine Canal to the foot of Rue de Condé; Rue de Condé to Rue St-Patrick; Rue St-Patrick eastward to Rue Bridge; Rue Bridge to the Victoria Bridge;

— eastward: Avenue Papineau;

— southward: the Saint Lawrence River;

— northward: Avenue des Pins; Rue St-Denis, from Avenue des Pins to Rue Cherrier; Rue Cherrier, from Rue St-Denis to Rue Sherbrooke; Rue Sherbrooke, from Rue Cherrier to Avenue Papineau.

Houses and buildings on either side of bordering streets are part of downtown Montréal.

**9.** When picking up customers at more than one location, and after having stopped a first time to drop off a customer, a taxi driver must calculate the price of a trip with the taximeter.

**10.** The minimum price for a trip starting at Montréal Trudeau Airport is \$16.25 including GST and QST.

Any lower taximeter reading is assumed to be \$16.25.

**§2.** *Tariffs applicable to Québec Jean-Lesage Airport*

**11.** The price of a trip between the main terminal of Québec Jean-Lesage International Airport and downtown Québec, whatever the number of passengers, is as follows:

Basic flat rate	\$28.79
5% GST	<u>\$1.44</u>
Rate including GST	\$30.23
7.5% QST	<u>\$2.27</u>
Total flat rate	\$32.50

For the purpose of this section, downtown Québec is bounded as follows:

— northward: Autoroute Félix-Leclerc;

— eastward: Avenue d'Estimauville and its extension to the Saint Lawrence River;

— southward: Saint Lawrence River;

— westward: Autoroute Laurentienne; Rue Saint-Anselme to Rue des Commissaires; Rue des Commissaires; Boulevard Langelier; Côte-de-Salaberry; Avenue de Salaberry and its extension to the Saint Lawrence River.

Houses and buildings on either side of bordering streets are part of downtown Québec.

**12.** The price of a trip from the main terminal of Québec Jean-Lesage International Airport to the Ste-Foy area, whatever the number of passengers, is as follows:

Basic flat rate	\$12.62
5% GST	<u>\$0.63</u>
Rate including GST	\$13.25
7.5% QST	<u>\$1.00</u>
Total flat rate	\$14.25

These tariffs are applicable when there are only one pick-up point and one drop-off point.

For the purpose of this section, the Ste-Foy area is bounded as follows:

— northward: Rang Sainte-Anne; Route de l'Aéroport; Avenue Sainte-Geneviève;

— eastward: Autoroute Henri IV;

— southward: Autoroute Charest;

— westward: Avenue Jean-Gauvin; Boulevard Wilfrid-Hamel; Rue des Champs-Élysés and his extension between Boulevard Wilfrid-Hamel and Autoroute Charest.

Houses and buildings on either side of bordering streets are part of the Ste-Foy area.

**13.** When picking up customers at several locations, and after having stopped a first time to drop off a customer, a taxi driver must calculate the price of the trip with the taximeter.

*§3. Tariffs applicable to the Fermont 297201 and James Bay (Radisson) 299101 servicing areas*

**14.** The price of a trip calculated by the odometer is as follows:

	Drop rate	Per kilometre covered with a customer	Per hour or fraction of an hour wait
Basic price	\$0.00	\$1.99	\$32.07
5% GST	<u>\$0.00</u>	<u>\$0.10</u>	<u>\$1.60</u>
Rate including GST	\$0.00	\$2.09	\$33.67
7.5% QST	<u>\$0.00</u>	<u>\$0.16</u>	<u>\$2.53</u>
Odometer rate	\$0.00	\$2.25	\$36.20

**15.** The minimum price of a trip with an origin or destination in one of these servicing areas is \$6.10, including GST and QST.

Any lower reading is assumed to be \$6.10.

*§4. Tariffs applicable to the Saint-Augustin 298206 (Lower North Shore) servicing area*

**16.** The price of a trip between Saint-Augustin Airport or pier and the Saint-Augustin servicing area as well as between Saint-Augustin Airport and Pakuashipi Reservation is \$7.60, including GST and QST, per customer per trip.

#### DIVISION IV FINAL PROVISIONS

**17.** This tariff replaces Tariffs of private transportation by taxi set by decision MPTC07-00398 rendered by the Commission on January 8, 2008, considering decision MPTC08-00275 rendered by the Commission on August 4, 2008.



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## Notices

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### Notice

Natural Heritage Conservation Act  
(R.S.Q., c. C-61.01)

#### **Abbaye-Cistercienne-de-Rougemont Nature Reserve — Recognition**

Notice is hereby given, in keeping with article 58 of the Natural Heritage Conservation Act (R.S.Q., c. C-61.01), that the Minister of Sustainable Development, Environment and Parks has recognized as a nature reserve a private property which extends over 49,4 hectares, situated on the territory of the Municipality of Rougemont, Regional County Municipality of Rouville, known and designated as a part of lot 1 714 875, a lot 1 716 174, a part of lot 1 716 175, a lot 1 716 372 and a part of lot 1 716 373 of the Québec Land Register, Rouville registry division.

This recognition takes effect on the date of the publication of this notice in the *Gazette officielle du Québec*.

PATRICK BEAUCHESNE,  
*Director of Ecological Heritage and Parks*

8892





## Erratum

M.O., 2008

**Order number AM 2008-010 of the Minister of Health and Social Services dated 11 July 2008**

Tobacco Act  
(R.S.Q., c. T-0.01)

*Gazette officielle du Québec*, Part 2, 23 July 2008,  
Vol. 140, No. 30, page 3050.

Schedule, on page 3051 is replaced by the following:

“ **SCHEDULE**

**WARNING IN FORMAT 1**

**Type A**



**Type B**



## WARNING IN FORMAT 2

## Type A

**LE TABAC  
CAUSE  
LE TIERS  
DES CANCERS**

**1 866 jarrête**  
(527-7383)

*Le ministre de la Santé et des Services sociaux*

**Québec**

This warning sign features a black speech bubble on a white background. The text is in white, bold, sans-serif font. The background of the sign shows a faint image of a city skyline.

## Type B

**FUMER  
TUE**

**1 866 jarrête**  
(527-7383)

*Le ministre de la Santé et des Services sociaux*

**Québec**

This warning sign features a black speech bubble on a white background. The text is in white, bold, sans-serif font. The background of the sign shows a faint image of a city skyline.

**TOBACCO  
CAUSES  
ONE-THIRD OF  
ALL CANCERS**

**1 866 jarrête**  
(527-7383)

*Le ministre de la Santé et des Services sociaux*

**Québec**

This warning sign features a black speech bubble on a white background. The text is in white, bold, sans-serif font. The background of the sign shows a faint image of a city skyline.

**SMOKING  
KILLS**

**1 866 jarrête**  
(527-7383)

*Le ministre de la Santé et des Services sociaux*

**Québec**

This warning sign features a black speech bubble on a white background. The text is in white, bold, sans-serif font. The background of the sign shows a faint image of a city skyline.

WARNING IN FORMAT 3

Type A



A graphic advertisement for anti-tobacco services. It features a dark, jagged-edged speech bubble shape on a light background. The text inside the bubble is in white, bold, sans-serif font. At the bottom of the bubble, there is a small white triangle pointing downwards.

**TOBACCO  
KILLS 10,000  
QUEBECERS  
EVERY YEAR**

**1 866 jarrête**  
(527-7383)

*Le ministre de la Santé et des Services sociaux*

**Québec** 

**Type B**





”

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Abbreviations: **A**: Abrogated, **N**: New, **M**: Modified

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