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Summary

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PROVINCE OF QUÉBEC

1ST SESSION

39TH LEGISLATURE

QUÉBEC, 19 JUNE 2009

OFFICE OF THE LIEUTENANT-GOVERNOR

Québec, 19 June 2009

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

21 An Act to amend the Professional Code and other legislative provisions in the field of mental health and human relations

34 An Act to amend various legislative provisions concerning specialized medical centres and medical imaging laboratories

26 An Act respecting clinical and research activities relating to assisted procreation

28 An Act respecting the boundaries of the waters in the domain of the State and the protection of wetlands along part of the Richelieu River

32 An Act to amend the Act respecting the professional status and conditions of engagement of performing, recording and film artists and other legislative provisions

42 An Act to amend the Environment Quality Act and other legislative provisions in relation to climate change

43 Tobacco-related Damages and Health Care Costs Recovery Act

46 An Act to amend the Professional Code and other legislative provisions

51 An Act respecting the representation of certain home childcare providers and the negotiation process for their group agreements, and amending various legislative provisions

62 An Act to amend the Lobbying Transparency and Ethics Act

200 An Act respecting Ville de Malartic

201 An Act respecting Ville de Boucherville

204 An Act respecting Ville de Brownsburg-Chatham

205 An Act respecting Ville de Saint-Hyacinthe and Ville de Shawinigan

206 An Act to amend the Act to amend the charter of La Mutuelle Ecclésiastique d'Ottawa

207 An Act respecting 75D rue Sainte-Ursule, Québec

208 An Act concerning an immovable occupied by Ville de Boucherville

209 An Act respecting Ville de Gaspé

210 An Act respecting Ville de Sainte-Catherine-de-la-Jacques-Cartier and Ville de Lac-Sergent

212 An Act respecting Ville de Mont-Saint-Hilaire

213 An Act respecting Ville de Percé, Ville d'Amos and Ville de Rouyn-Noranda

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

NATIONAL ASSEMBLY

FIRST SESSION THIRTY-NINTH LEGISLATURE

Bill 21
(2009, chapter 28)

An Act to amend the Professional Code and other legislative provisions in the field of mental health and human relations

Introduced 24 March 2009
Passed in principle 12 June 2009
Passed 18 June 2009
Assented to 19 June 2009

Québec Official Publisher
2009

EXPLANATORY NOTES

This Act amends the Professional Code to provide a new definition of professional activities in the field of mental health and human relations for psychologists, social workers, marriage and family therapists, vocational guidance counsellors and psychoeducators.

Under this Act, members of these professions will also engage in the educational, promotional and prevention activities common in certain health professions. This Act specifies suicide prevention as a prevention activity.

This Act reserves activities where there is a risk of prejudice in the field of mental health and human relations to the members of certain professional orders.

Finally, this Act provides a framework for the practice of psychotherapy. It gives a definition of psychotherapy, restricts the right to practise psychotherapy and use the title of psychotherapist to physicians, psychologists and members of professional orders whose members may hold a psychotherapist's permit and provides for the administration of such permits by the Ordre professionnel des psychologues du Québec and the creation of an interdisciplinary advisory council on the practice of psychotherapy.

LEGISLATION AMENDED BY THIS ACT:

– Professional Code (R.S.Q., chapter C-26);

– Nurses Act (R.S.Q., chapter I-8);

– Medical Act (R.S.Q., chapter M-9).

Bill 21

AN ACT TO AMEND THE PROFESSIONAL CODE AND OTHER LEGISLATIVE PROVISIONS IN THE FIELD OF MENTAL HEALTH AND HUMAN RELATIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

PROFESSIONAL CODE

1. Section 27 of the Professional Code (R.S.Q., chapter C-26), amended by section 1 of chapter 11 of the statutes of 2008, is again amended by inserting "and a description of any reserved activities they may engage in" after "law" in the third line of the third paragraph.

2. Section 27.2 of the Code, amended by section 1 of chapter 11 of the statutes of 2008, is again amended by inserting "and a description of any reserved activities they may engage in" after "law" in the fourth line of the fourth paragraph.

3. Section 36 of the Code is amended

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

"(*d*) use the title "Social Worker" or any other title or abbreviation which may lead to the belief that he is a social worker, or use initials which may lead to the belief that he is a social worker or the initials "P.S.W.", "T.S.P.", "S.W." or "T.S.", or use the title "Marriage and Family Therapist", "Marriage Therapist", "Family Therapist", or a title or abbreviation which may lead to the belief that he is such a therapist, or use the initials "M.F.T.", "T.C.F.", "M.T.", "T.C.", "F.T." or "T.F.", unless he holds a valid permit for that purpose and is entered on the roll of the Ordre professionnel des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec;";

(2) by replacing subparagraph *g* of the first paragraph by the following subparagraph:

"(*g*) use the title "Vocational Guidance Counsellor", "Guidance Counsellor", "Vocational Counsellor" or any other title or abbreviation which may lead to the belief that he is such a counsellor, or use initials which may lead to the belief that he is such a counsellor, or use the initials "V.G.C.", "G.C.", "V.C.", "C.O.P.", "C.O." or "O.P.", or use the title "Psychoeducator" or any other title or abbreviation which may lead to the belief that he is a psychoeducator, or

use initials which may lead to the belief that he is a psychoeducator, or use the abreviations "Ps. Ed." or "ps. éd.", unless he holds a valid permit for that purpose and is entered on the roll of the Ordre professionnel des conseillers et conseillères d'orientation et des psychoéducateurs et psychoéducatrices du Québec;".

4. Section 37 of the Code is amended

(1) by replacing paragraph *d* by the following paragraph:

"(*d*) the Ordre professionnel des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec:

"i. if practising the profession of social worker: assess social functioning, determine an intervention plan and see to its implementation, and support and restore social functioning in relation to a person's milieu with a view to fostering the optimal development of the person in interaction with his environment;

"ii. if practising the profession of marriage and family therapist: assess the relationship dynamics of couples and families, determine a treatment and intervention plan, and restore and improve a couple's or a family's lines of communication with a view to fostering better relations between spouses or family members in interaction with their environment;";

(2) by replacing paragraph *e* by the following paragraph:

"(*e*) the Ordre professionnel des psychologues du Québec: assess psychological and mental functioning, and determine, recommend and carry out interventions or treatments with a view to fostering the psychological health and restoring the mental health of a person in interaction with his environment;";

(3) by replacing paragraph *g* by the following paragraph:

"(*g*) the Ordre professionnel des conseillers et conseillères d'orientation et des psychoéducateurs et psychoéducatrices du Québec:

"i. if practising the profession of vocational guidance counsellor: assess psychological functioning, personal resources and the conditions of the milieu, respond to needs with regard to identity, and develop and maintain proactive adjustment strategies with a view to helping a person make personal and vocational choices throughout life, regain socio-vocational autonomy and carry out career projects in interaction with his environment;

"ii. if practising the profession of psychoeducator: assess adjustment problems and the capacity to adjust, determine an intervention plan and see to its implementation, restore and develop a person's capacity to adjust, and

contribute to the development of the conditions in the milieu with a view to fostering the optimal adjustment of the person in interaction with his environment;";

(4) by adding "for a person in interaction with his environment" at the end of paragraph *m*;

(5) by replacing "the functional abilities of a person" in the first and second lines of paragraph *o* by "functional abilities";

(6) by replacing "skills" in the third line of paragraph *o* by "a person's skills", and by replacing "in order to foster optimal autonomy" at the end of that paragraph by "with a view to fostering the optimal autonomy of the person in interaction with his environment".

5. Section 37.1 of the Code is amended

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

"(1.1) the Ordre professionnel des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec:

" (1.1.1) if practising the profession of social worker:

"(*a*) assess a person suffering from a mental or neuropsychological disorder attested by the diagnosis or evaluation of an authorized professional;

"(*b*) assess a person further to a decision of the director of youth protection or of a tribunal made under the Youth Protection Act (chapter P-34.1);

"(*c*) assess an adolescent further to a decision of a tribunal made under the Youth Criminal Justice Act (Statutes of Canada, 2002, chapter 1);

"(*d*) assess a person with regard to child custody and access rights;

"(*e*) assess a person who wishes to adopt a child;

"(*f*) undertake the psychosocial assessment of a person with regard to the protective supervision of a person of full age or with regard to a mandate given in anticipation of the mandator's incapacity;

"(*g*) determine the intervention plan for a person who suffers from a mental disorder or exhibits suicidal tendencies and who resides in a facility run by an institution operating a rehabilitation centre for young persons with adjustment problems;

"(*h*) assess a child not yet admissible to preschool education who shows signs of developmental delay, in order to determine the adjustment and rehabilitation services required;

"(*i*) make decisions as to the use of restraint measures in accordance with the Act respecting health services and social services (chapter S-4.2) and the Act respecting health services and social services for Cree Native persons (chapter S-5); and

"(*j*) make decisions as to the use of isolation measures in accordance with the Act respecting health services and social services and the Act respecting health services and social services for Cree Native persons;

"(1.1.2) if practising the profession of marriage and family therapist:

"(*a*) assess a person suffering from a mental or neuropsychological disorder attested by the diagnosis or evaluation of an authorized professional;

"(*b*) assess a person with regard to child custody and access rights; and

"(*c*) assess a person who wishes to adopt a child;

"(1.2) the Ordre professionnel des psychologues du Québec:

"(*a*) assess a person suffering from a mental or neuropsychological disorder attested by the diagnosis or evaluation of an authorized professional;

"(*b*) assess mental disorders;

"(*c*) assess neuropsychological disorders, provided a training certificate has been issued to the member by the Order pursuant to a regulation under paragraph *o* of section 94;

"(*d*) assess an adolescent further to a decision of a tribunal made under the Youth Criminal Justice Act;

"(*e*) assess a person with regard to child custody and access rights;

"(*f*) assess a person who wishes to adopt a child;

"(*g*) assess a handicapped student or a student with a social maladjustment with a view to formulating an individualized education plan in accordance with the Education Act (chapter I-13.3);

"(*h*) assess a child not yet admissible to preschool education who shows signs of developmental delay, in order to determine the adjustment and rehabilitation services required;

"(*i*) make decisions as to the use of restraint measures in accordance with the Act respecting health services and social services and the Act respecting health services and social services for Cree Native persons; and

"(*j*) make decisions as to the use of isolation measures in accordance with the Act respecting health services and social services and the Act respecting health services and social services for Cree Native persons;

"(1.3) the Ordre professionnel des conseillers et conseillères d'orientation et des psychoéducateurs et psychoéducatrices du Québec:

"(1.3.1) if practising the profession of vocational guidance counsellor:

"(*a*) assess a person suffering from a mental or neuropsychological disorder attested by the diagnosis or evaluation of an authorized professional;

"(*b*) assess mental disorders, provided a training certificate has been issued to the member by the Order pursuant to a regulation under paragraph *o* of section 94;

"(*c*) assess mental retardation;

"(*d*) assess a handicapped student or a student with a social maladjustment with a view to formulating an individualized education plan in accordance with the Education Act; and

"(1.3.2) if practising the profession of psychoeducator:

"(*a*) assess a person suffering from a mental or neuropsychological disorder attested by the diagnosis or evaluation of an authorized professional;

"(*b*) assess a person further to a decision of the director of youth protection or of a tribunal made under the Youth Protection Act;

"(*c*) assess an adolescent further to a decision of a tribunal made under the Youth Criminal Justice Act;

"(*d*) determine the intervention plan for a person who suffers from a mental disorder or exhibits suicidal tendencies and who resides in a facility run by an institution operating a rehabilitation centre for young persons with adjustment problems;

"(*e*) assess a handicapped student or a student with a social maladjustment with a view to formulating an individualized education plan in accordance with the Education Act;

"(*f*) assess a child not yet admissible to preschool education who shows signs of developmental delay, in order to determine the adjustment and rehabilitation services required;

"(*g*) make decisions as to the use of restraint measures in accordance with the Act respecting health services and social services and the Act respecting health services and social services for Cree Native persons; and

"(*h*) make decisions as to the use of isolation measures in accordance with the Act respecting health services and social services and the Act respecting health services and social services for Cree Native persons;";

(2) by adding the following subparagraphs after subparagraph *d* of paragraph 2:

"(*e*) assess a handicapped student or a student with a social maladjustment with a view to formulating an individualized education plan in accordance with the Education Act; and

"(*f*) assess a child not yet admissible to preschool education who shows signs of developmental delay, in order to determine the adjustment and rehabilitation services required;";

(3) by adding the following subparagraphs after subparagraph *d* of paragraph 4:

"(*e*) make decisions as to the use of isolation measures in accordance with the Act respecting health services and social services and the Act respecting health services and social services for Cree Native persons;

"(*f*) assess a person suffering from a mental or neuropsychological disorder attested by the diagnosis or evaluation of an authorized professional;

"(*g*) assess a handicapped student or a student with a social maladjustment with a view to formulating an individualized education plan in accordance with the Education Act; and

"(*h*) assess a child not yet admissible to preschool education who shows signs of developmental delay, in order to determine the adjustment and rehabilitation services required;".

6. Section 38 of the Code is amended by adding the following paragraph:

"The right to exercise a professional activity reserved under section 37.1 for members of a professional order must not be interpreted as prohibiting members of an order to which this division applies from exercising the activities described in section 37, in the letters patent constituting an order or in an amalgamation or integration order."

7. Section 39.2 of the Code is amended by inserting "to 26, 28" after "24".

8. Section 39.4 of the Code is amended

(1) by inserting "suicide," after "preventing";

(2) by replacing "The field of practice of the members of an order" by "The practice of the profession of the members of an order also".

9. Section 182.1 of the Code, amended by section 1 of chapter 42 of the statutes of 2007 and by sections 1 and 129 of chapter 11 of the statutes of 2008, is again amended by replacing "the second paragraph of section 187.4" in subparagraph 1 of the first paragraph by "the first paragraph of section 187.4.1".

10. Section 182.2 of the Code, amended by section 2 of chapter 42 of the statutes of 2007 and by sections 1 and 130 of chapter 11 of the statutes of 2008, is again amended by replacing "the second paragraph of section 187.4" in the sixth paragraph by "the first paragraph of section 187.4.1".

11. Chapter VI.1 of the Code, comprising sections 187.1 to 187.5, is replaced by the following chapter:

"**CHAPTER VI.1**

"PSYCHOTHERAPIST'S PERMIT

"**187.1.** With the exception of physicians and psychologists, no person shall practise psychotherapy or use the title of "Psychotherapist" or any other title or abbreviation which may lead to the belief that he is a psychotherapist, unless he holds a psychotherapist's permit and is a member of the Ordre professionnel des conseillers et conseillères d'orientation et des psychoéducateurs et psychoéducatrices du Québec, the Ordre professionnel des ergothérapeutes du Québec, the Ordre professionnel des infirmières et infirmiers du Québec or the Ordre professionnel des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec.

Psychotherapy is psychological treatment for a mental disorder, behavioural disturbance or other problem resulting in psychological suffering or distress, and has as its purpose to foster significant changes in the client's cognitive, emotional or behavioural functioning, his interpersonal relations, his personality or his health. Such treatment goes beyond help aimed at dealing with everyday difficulties and beyond a support or counselling role.

The Office shall establish by regulation a list of actions which relate to psychotherapy but do not constitute psychotherapy within the meaning of the second paragraph, and shall define those actions.

"**187.2.** Every physician, psychologist or holder of a psychotherapist's permit shall practise psychotherapy in accordance with the laws and regulations governing the physician, psychologist or permit holder, and with the following rules:

(1) establish a structured process of interaction with the client;

(2) do a thorough initial evaluation;

(3) apply therapeutic procedures based on communication; and

(4) use scientifically recognized theoretical models and proven intervention methods that respect human dignity.

"**187.3.** To obtain a psychotherapist's permit, a person shall apply to the board of directors of the Ordre professionnel des psychologues du Québec and pay the annual fees set by the board.

"**187.3.1.** The Office shall determine, by regulation,

(1) the conditions to be met for a physician, psychologist or holder of a psychotherapist's permit to use the title of "Psychotherapist";

(2) the standards for the issue of a psychotherapist's permit; and

(3) the framework for the continuing education requirements with which a physician or psychologist practicing psychotherapy, or a holder of a psychotherapist's permit must comply, in accordance with the conditions set by resolution of the board of directors of the Collège des médecins du Québec and the Ordre professionnel des psychologues du Québec, the penalties for failing to comply and, where applicable, the cases in which a member may be exempted from complying.

"**187.3.2.** In exercising the regulatory power conferred by section 187.3.1, the Office is authorized to take transitional measures during the first six years following (*insert the date of coming into force of section 187.1 enacted by section 11 of this Act*). These measures may have effect, in whole or in part, from any date not prior to that date.

The Office is also authorized, for the period specified in the first paragraph and under the conditions it determines, to allow a psychotherapist's permit to be issued by the board of directors of the Ordre professionnel des psychologues du Québec to persons who do not satisfy the conditions of issue respecting a permit of one of the professional orders whose members may practise psychotherapy, and to determine the provisions of the Professional Code and the regulations made under it by the board of directors of the Ordre professionnel des psychologues du Québec that will apply to such a holder of a psychotherapist's permit.

"**187.4.** When carrying out a specific inspection or an inquiry, the professional inspection committee or the syndic of the professional order to which the holder of a psychotherapist's permit belongs must retain the services of an expert who is a member of the Ordre professionnel des psychologues du Québec.

The board of directors of the professional order to which the holder of a psychotherapist's permit belongs must inform the board of directors of the Ordre professionnel des psychologues du Québec of any recommendation or decision made by the professional inspection committee or the disciplinary

council and of any decision of the board of directors further to that recommendation concerning a member of the same order who holds a psychotherapist's permit.

"**187.4.1.** The board of directors of the Ordre professionnel des psychologues du Québec may suspend or revoke the psychotherapist's permit of any person who fails to maintain his membership in a professional order, pay the annual fees, meet the conditions relating to the use of the title of "Psychotherapist", or satisfy the standards for the issue of a psychotherapist's permit.

A decision made under the first paragraph may be appealed from to the Professions Tribunal in accordance with the provisions of Division VIII of Chapter IV.

"**187.4.2.** The board of directors of the Ordre professionnel des psychologues du Québec shall suspend or revoke a psychotherapist's permit if the holder has been the subject of a decision by the board of directors of the professional order of which he is a member or of a final decision by the disciplinary council of that order or by the Professions Tribunal, imposing a suspension or a full restriction on the right to practise psychotherapy. The permit is suspended for the duration specified in the decision of the board of directors, the disciplinary council or the Professions Tribunal.

If the holder of a psychotherapist's permit has been the subject of a decision by the board of directors of the professional order of which he is a member or of a final decision by the disciplinary council of that order or by the Professions Tribunal, imposing a partial restriction on the right to practise psychotherapy, the board of directors of the Ordre professionnel des psychologues du Québec shall restrict, under the same conditions, the right to practise psychotherapy.

The board of directors of the Ordre professionnel des psychologues du Québec shall inform the board of directors of the professional order of which the holder of the psychotherapist's permit is a member of any suspension or revocation of the permit.

"**187.4.3.** Any penal proceedings for the unlawful practice of psychotherapy or the unauthorized use of the title of "Psychotherapist" are instituted by the Ordre professionnel des psychologues du Québec on a resolution of the board of directors or the executive committee.

"**187.5.** An interdisciplinary advisory council on the practice of psychotherapy is hereby established within the Ordre professionnel des psychologues du Québec for a ten-year term renewable by the Government.

"**187.5.1.** The mandate of the interdisciplinary advisory council is to give advisory opinions and make recommendations to the Office des professions du Québec on the draft regulations made by the Office under this chapter, before their adoption by the Office, and on any other matter concerning the practice of psychotherapy that the Office considers expedient to submit to it.

It is also the mandate of the interdisciplinary advisory council to give advisory opinions and make recommendations to the board of directors of the professional orders whose members may practise psychotherapy on the draft regulations on the practice of psychotherapy made by those orders, before their adoption by the order in question, and on any other matter concerning the practice of psychotherapy that the board of directors considers expedient to submit to it.

The interdisciplinary advisory council must also, through the agency of the Office, give advisory opinions and make recommendations to the Minister responsible for the administration of legislation respecting the professions, on any matter concerning the practice of psychotherapy that the Minister considers expedient to submit to it.

"**187.5.2.** The interdisciplinary advisory council consists of the following members appointed by the Government for their knowledge, experience or professional expertise in the field of psychotherapy:

(1) two psychologists, one of whom is the chair of the council, after consultation with the Ordre professionnel des psychologues du Québec;

(2) two physicians, one of whom is the vice-chair of the council, after consultation with the Collège des médecins du Québec;

(3) a member from each professional order whose members may hold a psychotherapist's permit and, if applicable, a holder of each class of permit issued by that professional order, after consultation with the order concerned.

The interdisciplinary advisory council may consult any person whose expertise is required or who represents a body concerned in a matter under consideration, and authorize him to participate in its meetings.

"**187.5.3.** The interdisciplinary advisory council may adopt rules for the conduct of its affairs.

"**187.5.4.** The advisory opinions and recommendations submitted by the interdisciplinary advisory council must, if applicable, include the position of each member.

The advisory opinions and recommendations must be filed with the Office des professions du Québec or with the Minister responsible for the administration of legislation respecting the professions.

"**187.5.5.** The Ordre professionnel des psychologues du Québec shall provide the necessary administrative support to the interdisciplinary advisory council, see to the preparation and conservation of its minutes, advisory opinions and recommendations, and convene its meetings when requested.

The operating costs of the interdisciplinary advisory council shall be assumed jointly by the Ordre professionnel des psychologues du Québec and the professional orders whose members may practise psychotherapy.

"**187.5.6.** At the expiry of a period of five years after (*insert the date of coming into force of section 187.5 enacted by section 11 of this Act*) and every five years thereafter, the interdisciplinary advisory council shall report to the Office des professions du Québec on the implementation of the provisions of Chapter VI.1 and in particular of the transitional measures set out in section 187.3.2.

The Minister responsible for the administration of legislation respecting the professions shall, not later than six months after the expiry of any period set out in the first paragraph, present a report to the Government on the implementation of the provisions of Chapter VI.1.

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

12. Schedule I to the Code is amended by replacing paragraph 28 by the following paragraph:

"28. The Ordre professionnel des conseillers et conseillères d'orientation et des psychoéducateurs et psychoéducatrices du Québec;".

NURSES ACT

13. Section 14 of the Nurses Act (R.S.Q., chapter I-8), amended by section 212 of chapter 11 of the statutes of 2008, is again amended by adding the following paragraph at the end:

"(*g*) determine the training and clinical experience in psychiatric nursing care required to exercise the activity referred to in subparagraph 16 of the second paragraph of section 36."

14. Section 36 of the Act is amended

(1) by replacing "a person's state of health, determining and carrying out of the" in the first paragraph by "health, determining and carrying out the";

(2) by replacing "or restore health and" in the first paragraph by "and restore the health of a person in interaction with his environment and";

(3) by adding the following subparagraphs at the end of the second paragraph:

"(15) deciding to use isolation measures in accordance with the Act respecting health services and social services and the Act respecting health services and social services for Cree Native persons;

"(16) assessing mental disorders, except mental retardation, if the nurse has the university degree and clinical experience in psychiatric nursing care required under a regulation made in accordance with paragraph *g* of section 14;

"(17) assessing a child not yet admissible to preschool education who shows signs of developmental delay, in order to determine the adjustment and rehabilitation services required."

MEDICAL ACT

15. Section 31 of the Medical Act (R.S.Q., chapter M-9) is amended

(1) by replacing "in the health of human beings" in the first paragraph by "in health";

(2) by replacing "restore health" at the end of the first paragraph by "restore the health of a person in interaction with his environment";

(3) by adding the following subparagraph at the end of the second paragraph:

"(11) deciding to use isolation measures in accordance with the Act respecting health services and social services and the Act respecting health services and social services for Cree Native persons."

TRANSITIONAL AND FINAL PROVISIONS

16. Holders of a social worker's permit or a marriage and family therapist's permit issued by the board of directors of the Ordre professionnel des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec may practise the activities reserved for their respective professions under paragraph 1.1 of section 37.1, enacted by paragraph 1 of section 5, within the framework of the activities that paragraph *d* of section 37, enacted by paragraph 1 of section 4, allows them to practise, until the date of coming into force of a regulation made by the board of directors of the Ordre professionnel des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec under paragraph *m* of section 94 of the Professional Code.

17. Holders of a vocational guidance counsellor's permit or a psychoeducator's permit issued by the board of directors of the Ordre professionnel des conseillers et conseillères d'orientation et des psychoéducateurs et psychoéducatrices du Québec may practise the activities reserved for their respective professions under paragraph 1.3 of section 37.1, enacted by paragraph 1 of section 5, within the framework of the activities

that paragraph *g* of section 37, enacted by paragraph 3 of section 4, allows them to practise, until the date of coming into force of a regulation made by the board of directors of the Ordre professionnel des conseillers et conseillères d'orientation et des psychoéducateurs et psychoéducatrices du Québec under paragraph *m* of section 94 of the Professional Code.

18. Anyone who, at the date of coming into force of a provision of section 5 of this Act, fails to fulfil the conditions for obtaining the permit of an order referred to in the provision for the activities reserved for its members and who was exercising the professional activity referred to in the provision at the date of its coming into force or at the date that is one year after 19 June 2009, whichever is earlier, may continue to exercise the activity as long as the order concerned is informed in the manner determined by its board of directors.

The board of directors of an order referred to in the first paragraph may determine by regulation the terms and conditions on which such a person may exercise the activity; the regulation may also determine which of the regulatory standards applicable to the members of the order apply to that person. Before adopting such a regulation, the board of directors must consult any order whose members exercise the activity.

Section 95 of the Professional Code applies to a regulation referred to in the second paragraph.

The first paragraph does not apply to the activities referred to in subparagraphs *b* and *c* of paragraph 1.2 or in subparagraphs *b* and *c* of subparagraph 1.3.1 of paragraph 1.3 of section 37.1 amended by paragraph 1 of section 5 of this Act.

19. The provisions of this Act come into force on the date or dates to be set by the Government.

NATIONAL ASSEMBLY

FIRST SESSION THIRTY-NINTH LEGISLATURE

Bill 26
(2009, chapter 30)

An Act respecting clinical and research activities relating to assisted procreation

Introduced 22 April 2009
Passed in principle 29 May 2009
Passed 18 June 2009
Assented to 19 June 2009

Québec Official Publisher
2009

EXPLANATORY NOTES

The object of this Act is to regulate clinical and research activities relating to assisted procreation in order to ensure high-quality, safe and ethical practices. The Act is also designed to encourage the ongoing improvement of services in that area.

In that respect, the Act provides that any assisted procreation activity, allowing for exceptions, must be carried out in a centre for assisted procreation for which a licence has been issued by the Minister of Health and Social Services and which is under the direction of a physician. The director must ensure that the activities carried out in the centre reflect high-quality, safe and ethical practices. The Act also states that a centre must have its activities accredited by a body recognized by the Minister.

This Act requires that a research project on assisted procreation activities be approved and supervised by a research ethics committee.

The Act also requires a centre to prepare an annual activity report. It grants inspection powers to the Minister and provides that the Minister may request the board of directors of the Ordre professionnel des médecins du Québec to provide opinions on the quality, safety and ethical nature of the assisted procreation activities and on the professional competence of the physicians in a centre, as well as on the standards to be adopted to improve the quality, safety and ethical nature of assisted procreation activities.

The Act grants regulatory powers to the Minister and the Government as regards centres for assisted procreation and their activities, and prescribes administrative and penal sanctions to ensure that the provisions of the law are respected.

Lastly, the Act amends the Health Insurance Act in order to provide, in particular, that the assisted procreation services determined by regulation are insured services within the meaning of that Act.

LEGISLATION AMENDED BY THIS ACT:

– Health Insurance Act (R.S.Q., chapter A-29);

– Act respecting administrative justice (R.S.Q., chapter J-3);

– Act respecting medical laboratories, organ, tissue, gamete and embryo conservation, and the disposal of human bodies (R.S.Q., chapter L-0.2);

– Medical Act (R.S.Q., chapter M-9);

– Act to amend the Public Health Protection Act (1997, chapter 77).

Bill 26

AN ACT RESPECTING CLINICAL AND RESEARCH ACTIVITIES RELATING TO ASSISTED PROCREATION

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

OBJECT, DEFINITIONS AND OTHER INTRODUCTORY PROVISIONS

1. This Act recognizes the necessity of preventing infertility and promoting reproductive health and is designed to protect the health of persons and more particularly the health of women who resort to assisted procreation activities that may be medically required and of children born of such activities, whose filiation is then established according to the provisions of the Civil Code.

For that purpose, the object of this Act is to regulate clinical and research activities relating to assisted procreation in order to ensure high-quality, safe and ethical practices. The Act is also designed to encourage the ongoing improvement of services in that area.

2. For the purposes of this Act,

(1) "assisted procreation activities" means any support given to procreation by medical or pharmaceutical techniques or laboratory manipulation, whether clinical, to create a human embryo, or in the field of research, to improve clinical procedures or acquire new knowledge.

The following activities are targeted in particular: the use of pharmaceutical procedures to stimulate the ovaries; the removal, treatment, *in vitro* manipulation and conservation of human gametes; artificial insemination with a spouse's or a donor's sperm; preimplantation genetic diagnosis; embryo conservation; embryo transfer in women.

However, the surgical procedures to restore normal reproductive functions in a woman or a man are not targeted; and

(2) "centre for assisted procreation" means any premises designed for carrying out assisted procreation activities, except activities determined by regulation and carried out on the conditions set out in the regulation. Such premises may be located in a facility maintained by an institution or in a private health facility within the meaning of the Act respecting health services and social services (R.S.Q., chapter S-4.2), in an institution or in a professional's private consulting office within the meaning of the Act respecting health services

and social services for Cree Native persons (R.S.Q., chapter S-5) or in a laboratory within the meaning of the Act respecting medical laboratories, organ, tissue, gamete and embryo conservation, and the disposal of human bodies (R.S.Q., chapter L-0.2).

3. Only a person or a partnership may operate a centre for assisted procreation. However, if a centre is located in a facility maintained by an institution within the meaning of the Act respecting health services and social services, it may be operated by that institution only, in accordance with the provisions of that Act and to the extent that they are not inconsistent with this Act.

The same applies to a centre located in an institution within the meaning of the Act respecting health services and social services for Cree Native persons.

4. A physician who is a member of the Collège des médecins du Québec is the only natural person who may operate a centre for assisted procreation. If the operator of the centre is a legal person or a partnership, more than 50% of the voting rights attached to the shares of the legal person or the interests in the partnership must be held

(1) by physicians who are members of that professional order;

(2) by a legal person or partnership all of whose voting rights attached to the shares or interests are held

(*a*) by physicians described in subparagraph 1; or

(*b*) by another legal person or partnership all of whose voting rights attached to the shares or interests are held by such physicians; or

(3) both by physicians described in subparagraph 1 and by a legal person or partnership referred to in subparagraph 2.

The affairs of a legal person or a partnership that operates a centre for assisted procreation must be administered by a board of directors or an internal management board that includes a majority of physicians who practise at the centre; those physicians must at all times form the majority of the quorum of the board.

The shareholders of a legal person or the partners in a partnership that operates a centre for assisted procreation may not enter into an agreement that restricts the power of the directors of the legal person or partnership.

This section does not apply to a centre for assisted procreation operated by an institution within the meaning of the Act respecting health services and social services or the Act respecting health services and social services for Cree Native persons.

5. For the purposes of this Act, the expression "centre for assisted procreation" is used to designate the premises referred to in section 2 or, if used as the subject of rights or obligations, to designate the person or partnership operating the centre.

CHAPTER II

ASSISTED PROCREATION ACTIVITIES

6. No assisted procreation activities, except those determined by regulation and carried out on the conditions set out in the regulation, may be carried out elsewhere than in a centre for assisted procreation for which a licence has been issued by the Minister under this Act.

7. A person carrying out an assisted procreation activity must respect the conditions and standards for carrying out such activities determined by regulation.

8. A research project on assisted procreation activities must be approved and supervised by a recognized research ethics committee or a research ethics committee established by the Minister. The Minister determines the composition and the operating conditions of the committee, which are published in the *Gazette officielle du Québec*.

The same applies to a research project involving embryos resulting from assisted procreation activities and not used for that purpose. In addition, such a research project must respect the conditions determined by regulation.

9. If an assisted procreation activity raises social and ethical questions on fundamental issues concerning Québec society, the Minister may bring the matter before a competent body, such as the Health and Welfare Commissioner, to request an opinion.

10. In order to comply with recognized medical standards, which aim in particular to protect the health of both the woman and the child, no embryo may be transferred to a woman who is no longer of childbearing age.

CHAPTER III

CENTRE FOR ASSISTED PROCREATION

DIVISION I

GENERAL PROVISIONS

11. A centre for assisted procreation must appoint a member of the Ordre professionnel des médecins du Québec as its director. That physician must hold a specialist's certificate in obstetrics-gynaecology or be trained in another field considered equivalent by the centre, and be chosen from among the physicians who practise at the centre.

Under the authority of the operator, the director must ensure that the assisted procreation activities carried out in the centre reflect high-quality, safe and ethical practices, and that the centre and the persons carrying out those activities in the centre comply with this Act and any other applicable Act or standard. The director must also comply with the obligations determined by regulation.

A centre must notify the Minister in writing of the director's name, and must also immediately notify the Minister in writing of any change of director.

12. A centre must respect the standards governing equipment, operation and the disposal of biological material, and any other standard governing assisted procreation activities determined by regulation.

13. A centre must establish standard operating procedures in the cases determined by regulation and forward a copy of those procedures to the Minister as soon as possible. The same applies when any change is made to the procedures.

14. Not later than 31 March each year, a centre must forward to the Minister an annual activity report for the preceding calendar year. The report must be produced in the form determined by the Minister and contain any information and be accompanied by any document required by regulation.

DIVISION II

LICENCE AND ACCREDITATION

15. A person may not operate a centre for assisted procreation without holding a licence issued by the Minister for that purpose.

16. Within three years after the licence is issued, a centre must have its assisted procreation activities accredited by an accreditation body recognized by the Minister and retain its accreditation at all times afterwards.

17. The Minister issues to the centre a licence for one of the following classes of activities:

(1) clinical activities;

(2) research activities; or

(3) clinical and research activities.

The licence may be issued for a subclass provided for by regulation.

18. A centre applying for a licence or the modification or renewal of a licence must forward the application to the Minister, using the prescribed form, respect the conditions determined by regulation and include the information, documents or reports required by regulation.

19. The Minister may issue, modify or renew a licence for a centre that meets the conditions provided for in this Act. However, the Minister may refuse to issue such a licence in the public interest.

Furthermore, the issue, modification or renewal of a licence may be subjected to any condition, restriction or prohibition the Minister determines.

20. The licence is issued for three years and may be renewed for the same period.

The licence specifies the class and, where applicable, the subclass of activities for which it is issued, the premises, the period of validity and any conditions, restrictions or prohibitions attached to the licence.

The Minister must make the information provided for by this section public.

21. A centre must carry out its activities in accordance with the licence.

A centre must immediately notify the Minister in writing of any change in its activities.

22. The holder of a licence must respect the conditions determined by regulation, supply the information and produce the documents and reports prescribed by regulation within the time specified.

23. A centre may not transfer its licence without the written authorization of the Minister.

24. A centre that wishes to cease its activities must first notify the Minister in writing and respect any conditions the Minister sets.

CHAPTER IV

INSPECTION AND OVERSIGHT

25. A person authorized in writing by the Minister to inspect centres for assisted procreation may, at any reasonable time, enter a centre or any premises on which the person has reason to believe that assisted procreation activities are carried out, to ascertain whether this Act and the regulations are being respected.

The inspector may

(1) examine and make a copy of any document relating to the assisted procreation activities carried out on those premises; and

(2) demand any information relating to the application of this Act and the production of any document connected with it.

A person having custody, possession or control of such documents must, on request, make them available to the inspector.

The inspector must, on request, produce a certificate signed by the Minister attesting to the authorization received.

26. It is forbidden to hinder in any way an inspector carrying out the functions of office, to mislead the inspector by concealment or false declarations, or to refuse to hand over a document or information the inspector may demand under this Act or under a regulation under this Act.

27. An inspector may not be prosecuted for an act performed in good faith while carrying out the functions of office.

28. If, following an inspection, the Minister is informed that a centre is being operated without a licence, the Minister must immediately notify the Régie de l'assurance maladie du Québec in writing for the purposes of the prohibition against remuneration provided for in the second paragraph of section 22.0.0.0.1 of the Health Insurance Act (R.S.Q., chapter A-29). On receiving the notice, the Régie must inform the physicians who practise at the centre concerned of the prohibition against remuneration.

29. The Minister may apply to the board of directors of the Ordre professionnel des médecins du Québec for an opinion on the quality, safety and ethical nature of the assisted procreation activities carried out in a centre and on the professional competence of the physicians carrying out those activities.

The Minister may also request an opinion on the standards to be adopted to improve the quality, safety and ethical nature of assisted procreation activities.

CHAPTER V

REGULATIONS

30. The Government may, by regulation,

(1) determine the assisted procreation activities that may be carried out outside a centre for assisted procreation, and the conditions to be respected;

(2) determine the conditions a person carrying out assisted procreation activities must respect, and the standards governing those activities, which may vary, in particular, with the age of the person resorting to those activities;

(3) determine the conditions a research project referred to in the second paragraph of section 8 must respect;

(4) determine the obligations with which the director of a centre must comply;

(5) prescribe the standards governing equipment, operation and the disposal of biological material, and any other standard governing assisted procreation activities that a centre must respect;

(6) prescribe the information that a centre's annual report must contain and the documents that must accompany the report;

(7) establish subclasses of licences and, for each class and subclass of a licence, the conditions of issue, maintenance or renewal, as well as the information to be provided and the documents and reports to be produced within the time specified;

(8) determine the assisted procreation activities on which information need not be kept permanently;

(9) determine the provisions of a regulation under this Act the violation of which constitutes an offence; and

(10) prescribe any measure to facilitate the application of this Act.

31. The Minister may, by regulation,

(1) determine the cases in which a centre must establish standard operating procedures; and

(2) determine the provisions of a regulation under this Act the violation of which constitutes an offence.

CHAPTER VI

ADMINISTRATIVE SANCTIONS

32. The Minister may suspend, revoke or refuse to modify or renew the licence of a centre for assisted procreation

(1) if the centre no longer meets the conditions required for the issue of a licence or does not respect a condition, restriction or prohibition attached to the licence;

(2) if the centre does not have its activities accredited within three years after the issue of the licence or if it does not maintain its accreditation;

(3) if the centre made a false declaration or distorted a material fact upon applying for the issue, modification or renewal of a licence, or in a report, a document or information required by the Minister under this Act or under a regulation under this Act;

(4) if the centre does not comply with any other provision of this Act or with a regulation under this Act;

(5) if the director does not respect the obligations imposed by this Act or by a regulation under this Act;

(6) if it is in the public interest;

(7) if the assisted procreation activities carried out in the centre do not reflect high-quality, safe and ethical practices in the opinion of the board of directors of the Ordre professionnel des médecins du Québec;

(8) if the operator fails to maintain control over the operation of the centre for assisted procreation, in particular if the Minister ascertains that the operator is not the owner or lessee of the centre's facilities, is not the employer of the personnel required for the operation of the centre or does not have the authority required to allow physicians who apply to practise at the centre to do so; or

(9) if the centre or a physician who practises at the centre has been convicted of an offence under the fourth or ninth paragraph of section 22 or section 22.0.0.1 of the Health Insurance Act (R.S.Q., chapter A-29) for an act or an omission concerning the centre.

33. Before suspending, revoking or refusing to modify or renew the licence of a centre, the Minister may order the centre to take the necessary corrective action within a specified period of time.

If the centre fails to comply with the order within the time specified, the Minister may suspend, revoke or refuse to modify or renew the licence.

The Minister must make public the decision to suspend, revoke or refuse to renew the licence of a centre for assisted procreation.

34. Except in emergencies, before refusing to issue, modify or renew a licence, or before suspending or revoking a licence, the Minister must notify the centre in writing as prescribed by section 5 of the Act respecting administrative justice (R.S.Q., chapter J-3) and allow the centre at least 10 days to submit observations.

The Minister must notify the centre in writing of the decision to suspend, revoke or refuse to renew the licence, giving the reasons.

The Minister's notice must also mention that the prohibition against remuneration if a licence is suspended, revoked or not renewed, provided for in the second paragraph of section 22.0.0.0.1 of the Health Insurance Act (R.S.Q., chapter A-29), applies. The notice may be sent to the physicians practising at the centre concerned. Similarly, a decision by the Minister to suspend, revoke or refuse to renew the licence must state that the prohibition against remuneration applies. The Minister must send a copy of the decision without delay to the Régie de l'assurance maladie du Québec, which, upon receiving it, must inform the physicians practising at the centre concerned that the prohibition against their being remunerated applies.

The operator whose licence is suspended, revoked or not renewed must immediately inform the clientele of the centre concerned.

35. A centre whose application for a licence or the modification or renewal of a licence is refused, or whose licence is suspended or revoked, may contest the Minister's decision before the Administrative Tribunal of Québec within 60 days following the date on which the centre received notification of the decision.

When assessing the facts or the law, the Tribunal may not substitute its assessment of the public interest for the assessment the Minister made in reaching a decision.

CHAPTER VII

PENAL PROVISIONS

36. A person that contravenes section 6 or 15 is guilty of an offence. A natural person is liable to a fine of $2,000 to $30,000 and a legal person is liable to a fine of $6,000 to $90,000.

37. A person that contravenes a provision of a regulation the violation of which constitutes an offence under paragraph 9 of section 30 or paragraph 2 of section 31 is liable to a fine of $1,000 to $10,000.

38. A person that fails or refuses to provide any information, report or other document that must be made available under this Act is guilty of an offence and is liable to a fine of $1,000 to $10,000.

39. A person that contravenes section 26 is guilty of an offence and is liable to a fine of $1,000 to $10,000.

40. A person that aids, abets, counsels, allows, authorizes or orders another person to commit an offence under this Act or under a regulation under this Act is guilty of an offence.

A person convicted of an offence under this section is liable to the same penalty as that prescribed for the offence the person aided or incited another person to commit.

41. In the case of a subsequent offence, the minimum and maximum fines prescribed in this Act are doubled.

CHAPTER VIII

INFORMATION ON ASSISTED PROCREATION ACTIVITIES

42. Subject to Chapter IV, the information contained in the forms, documents, reports or opinions forwarded to the Minister under this Act must not allow a person who resorted to assisted procreation activities, or a child born of such activities, to be identified.

The Minister may forward that information to a person or body for the purposes of study, research or statistics, as long as the information cannot be used to identify a centre for assisted procreation.

43. Any information on assisted procreation activities, except those determined by regulation, concerning a person who resorted to such activities, or a child born of such activities, must be kept permanently by the person that carried out those activities.

44. In order to provide ongoing surveillance of the health of persons who resorted to assisted procreation activities and of the children born of such activities, the Minister must collect information, both personal and non-personal, in accordance with the Public Health Act (R.S.Q., chapter S-2.2).

Information that allows a person who resorted to assisted procreation activities, or a child born of such activities, to be identified is confidential and may not be disclosed, even with the consent of the person concerned, except for the purposes of the Public Health Act.

45. Statistical data on assisted procreation activities gleaned from the annual activity reports of centres for assisted procreation must appear in a separate chapter of the department's annual report.

CHAPTER IX

AMENDING, TRANSITIONAL AND FINAL PROVISIONS

46. Section 3 of the Health Insurance Act (R.S.Q., chapter A-29) is amended by inserting the following subparagraph after subparagraph *d* of the first paragraph:

"(*e*) the assisted procreation services determined by regulation."

47. Section 22.0.0.0.1 of the Act, enacted by section 30 of chapter 29 of the statutes of 2009, is amended

(1) by replacing "operated without a permit or whose permit" in the second paragraph by "or a centre for assisted procreation within the meaning of the Act respecting clinical and research activities relating to assisted procreation (2009, chapter 30) that is operated without a permit or licence or whose permit or licence" and by adding "or revoked," after "cancelled";

(2) by replacing "cancel or refuse to renew the permit or the Minister's notice informing it that the specialized medical centre or the laboratory is being operated without a permit" in the third paragraph by "cancel or revoke, or refuse to renew, the permit or licence, or the Minister's notice informing it that the specialized medical centre, laboratory or centre for assisted procreation is being operated without a permit or licence".

48. Section 69 of the Act is amended by inserting the following subparagraph after subparagraph *c*.1 of the first paragraph:

"(*c*.2) determine in which cases and on which conditions, such as age, assisted procreation services must be considered as insured services for the purposes of subparagraph *e* of the first paragraph of section 3;".

49. Section 25 of the Act respecting administrative justice (R.S.Q., chapter J-3) is amended by inserting "0.1," after "paragraphs" in the first line of the first paragraph.

50. Schedule I to the Act is amended by inserting the following paragraph before paragraph 1 of section 3:

"(0.1) proceedings under section 35 of the Act respecting clinical and research activities relating to assisted procreation (2009, chapter 30);".

51. The title of the Act respecting medical laboratories, organ, tissue, gamete and embryo conservation, and the disposal of human bodies (R.S.Q., chapter L-0.2) is amended by replacing ", tissue, gamete and embryo" by "and tissue".

52. Section 1 of the Act is amended by striking out subparagraph *m*.1 of the first paragraph.

53. Section 1 of the Medical Act (R.S.Q., chapter M-9) is amended by adding the following paragraph at the end:

"(*h*) "centre for assisted procreation": a centre within the meaning of the Act respecting clinical and research activities relating to assisted procreation (2009, chapter 30)."

54. Section 15 of the Act is amended by adding the following paragraph at the end:

"(*e*) give an opinion to the Minister of Health and Social Services, on its own initiative or at the request of the Minister, on the quality, safety and ethical nature of the assisted procreation activities carried out in a centre for assisted procreation, the professional competence of the physicians carrying out those activities and the standards to be adopted to improve the quality, safety and ethical nature of those activities."

55. Section 16 of the Act is amended

(1) by replacing "paragraph *a* or *a.*1" in the first line by "paragraphs *a, a.*1 and *e*";

(2) by inserting ", the quality and safety of the activities carried out in centres for assisted procreation" after "institutions" in the third line.

56. Sections 2, 8, 9 and 10 of the Act to amend the Public Health Protection Act (1997, chapter 77) are repealed.

57. A person or partnership operating a centre for assisted procreation on (*insert the date of coming into force of section 15 of this Act*) may continue to do so provided that, within six months of that date, the person or partnership, in accordance with this Act, obtains a licence to operate a centre for assisted procreation.

A person who carries out assisted procreation activities in such a centre may continue to do so until the centre obtains a licence in accordance with the first paragraph.

58. In any Act or statutory instrument, the title of the Act respecting medical laboratories, organ, tissue, gamete and embryo conservation and the disposal of human bodies must read as the Act respecting medical laboratories, organ and tissue conservation and the disposal of human bodies.

59. The Minister of Health and Social Services is responsible for the administration of this Act.

60. The Minister must, no later than (*insert the date that occurs 3 years after the date of coming into force of this Act*), report to the Government on the implementation of this Act and on the advisability of maintaining it in force or amending it.

The report must be laid before the National Assembly by the Minister within 30 days or, if the Assembly is not sitting, within 30 days of resumption.

The report must be referred to the appropriate parliamentary committee for consideration within 15 days of its tabling in the National Assembly.

61. This Act comes into force on the date or dates to be set by the Government.

NATIONAL ASSEMBLY

FIRST SESSION THIRTY-NINTH LEGISLATURE

Bill 28
(2009, chapter 31)

An Act respecting the boundaries of the waters in the domain of the State and the protection of wetlands along part of the Richelieu River

Introduced 25 March 2009
Passage in principle 11 June 2009
Passed 18 June 2009
Assented to 19 June 2009

Québec Official Publisher
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EXPLANATORY NOTES

This Act determines the location of the boundaries of the waters in the domain of the State along part of the Richelieu River.

This Act is also intended to protect the River's ecosystems by granting protected status as a proposed biodiversity reserve to certain wetlands along the River, and introducing other measures designed to better safeguard certain zones identified as being of ecological interest.

The part of the Richelieu River affected by this Act lies between the Québec-U.S. border and the southern boundary of lands located near the Gouin bridge in the territory of Ville de Saint-Jean-sur-Richelieu. It runs through seven municipalities in the territory of the Municipalité régionale de comté du Haut-Richelieu: Municipalité de Lacolle, Municipalité de Henryville, Municipalité de Noyan, Municipalité de Sainte-Anne-de-Sabrevois, Municipalité de Saint-Blaise-sur-Richelieu, Ville de Saint-Jean-sur-Richelieu and Paroisse de Saint-Paul-de-l'Île-aux-Noix.

LEGISLATION AMENDED BY THIS ACT :

– Act respecting administrative justice (R.S.Q., chapter J-3).

Bill 28

AN ACT RESPECTING THE BOUNDARIES OF THE WATERS IN THE DOMAIN OF THE STATE AND THE PROTECTION OF WETLANDS ALONG PART OF THE RICHELIEU RIVER

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

OBJECTS AND SCOPE

1. This Act determines the location of the boundaries of the waters in the domain of the State along part of the Richelieu River. In doing so it seeks to reinforce the legal status of titles of ownership along that part of the River.

The Act also seeks to ensure the protection of the River and its ecosystems. Through the boundaries chosen and the other measures set forth, the Act recognizes the remarkable ecological interest of certain wetlands along that part of the River and the need to preserve them for the benefit of present and future generations.

2. The part of the River to which this Act applies crosses the following seven municipalities situated in the Municipalité régionale de comté du Haut-Richelieu: Municipalité de Lacolle, Municipalité de Henryville, Municipalité de Noyan, Municipalité de Sainte-Anne-de-Sabrevois, Municipalité de Saint-Blaise-sur-Richelieu, Ville de Saint-Jean-sur-Richelieu and Paroisse de Saint-Paul-de-l'Île-aux-Noix.

The part of the River in question lies between the Québec-U.S. border and, at Saint-Jean-sur-Richelieu:

(1) on the west shore, the cadastral boundaries of the city of Saint-Jean and the parish of Saint-Jean in the registration division of Saint-Jean; and

(2) on the east shore, north of the Gouin bridge, the southern boundary of lot 643 in the cadastre of the town of Iberville in the registration division of Saint-Jean,

as shown on the map tabled in the National Assembly on 11 June 2009 in two versions, one on hard copy and one containing information on a computer medium, as Sessional Paper No. 109-20090325. The same map, in both versions, is also filed with the office of the Surveyor General of Québec.

3. If there is a discrepancy between the two versions of the map referred to in section 2, the computer version prevails. The map is reproduced, in a smaller version, in Schedule I.

The photographs that appear as a background on the map and the lot numbering and similar information given on the map to facilitate understanding are for information purposes only and without legal value.

CHAPTER II

BOUNDARIES OF THE WATERS IN THE DOMAIN OF THE STATE

DIVISION I

LOCATION OF THE DIVIDING LINE

4. As of 19 June 2009, the boundary of the waters in the domain of the State along the part of the River covered by this Act is the line appearing on the map referred to in section 2.

The first paragraph applies despite articles 919, 965 and 966 of the Civil Code and any other general or special provision of that Code or of an Act, title, deed, judgment or other document.

5. As of 19 June 2009, a reference, for property purposes, in any Act, title, deed, judgment or other document, to the boundary of the waters in the domain of the State, to the high-water mark or to the shore of the River as a property line must be understood as a reference, for the part of the River covered by this Act, to the boundary defined in section 4, subject to the corrections provided for in section 9 and to any alienation or other act that may affect the position of that boundary, in accordance with the law, after 19 June 2009.

As of the same date, for the same purposes, and subject to the same conditions, any description or representation of the boundaries of a lot or immovable appearing in a document that exists on 19 June 2009, including a cadastral plan, location certificate, or minutes of boundary determination, and that does not already respect the line referred to in section 4, is deemed to be modified and the boundaries described or represented, rectified as required.

6. Titles of ownership, instruments transferring authority, administration or other rights, leases, servitudes, or any other right, charge or obligation of a person, including the State, that relate to the area extending away from the River, beyond the line established in section 4, and that were entered into or

established before 19 June 2009 may not be invalidated by sole reason of an erroneous map reference to the waters in the domain of the State.

In addition, if an acquisitive prescription may be applied in that area, the duration of possession for a period preceding 19 June 2009 may not be reduced or denied on the grounds that the land concerned was not subject to prescription during that period because it was in waters in the domain of the State.

7. Legal action may not be taken against the State or any other person to claim, directly or indirectly, a reimbursement of costs or other sums, nor to obtain any compensation, indemnity or reparation as a result or because of the effects of this Act and the boundaries it provides for.

8. The line referred to in section 4 of this Act is not pertinent and may not be cited in legal proceedings undertaken for or against any person, including the State, in order to support contentions as to the location of the high-water mark for a period preceding 19 June 2009, to determine the location of that mark on a part of the River other than that covered by this Act, or to determine the location of that mark or of the waters in the domain of the State in relation to the islands in the part of the River covered by this Act.

Similarly, the line referred to in section 4 is not pertinent and may not be cited in legal proceedings to determine the line the waters of the River may reach for purposes other than property purposes. In particular, it may not be used to establish water levels or flood levels when applying measures for public safety or when applying measures for environmental protection, including the identification of the limits of the land protected by the Marcel-Raymond ecological reserve.

9. The Minister may, before 19 June 2011 and with the permission of the owner concerned, make minor changes to the line referred to in section 4 in order to resolve a technical problem or locate with greater precision in the area the boundary of the waters in the domain of the State.

A notice of any changes made must be published in the *Gazette officielle du Québec*. In addition to briefly describing the changes, the notice must state where a person may go to examine or obtain a hard copy or a computer version of the map with changes included. Section 3 applies, with the necessary modifications, to any map changed in this way.

If the Minister decides to reject a request for a change or decides not to accept the requested change as formulated, the person concerned may contest the decision before the Administrative Tribunal of Québec within 30 days after the decision has been rendered.

A decision rendered by the Minister under the first paragraph with regard to a request for a change addressed to the Minister must be sent by registered mail to the person concerned. If unfavourable, the decision must state that the person has the right to appeal before the Administrative Tribunal of Québec.

10. When a cadastral plan is established for an area that includes or adjoins the part of the River covered by this Act, the line referred to in section 4, as modified if applicable, must be reproduced on the plan as representing the boundary of the waters in the domain of the State. The plan must be made in accordance with this section and, more specifically, so that

(1) the boundaries of the lots concerned are redrawn in accordance with the line referred to in section 4 and do not extend beyond it toward the middle of the River; and

(2) any lot, other than one relating to an island, that would be situated entirely beyond that line toward the middle of the River must be registered as being owned by the Gouvernement du Québec.

This section applies despite any general or special provision of an Act or other document to the contrary, including the provisions of the Act to promote the reform of the cadastre in Québec (R.S.Q., chapter R-3.1).

11. The Minister must ensure that a copy of this Act and of both versions of the map referred to in section 2 is entered in the Register of the domain of the State. This may be done without further formality or procedure.

The first paragraph applies, with the necessary modifications, to any version of the map that is changed by the Minister under section 9. Any changed version of the map is also sent to the office of the Surveyor General of Québec.

12. With the exception of the requirements of section 11, and despite the provisions of any general or special Act, including the Civil Code, no additional measure is required to publicize the boundary set in this Act between the waters in the domain of the State and the lands along the part of the River covered by this Act.

13. To increase awareness of the boundaries of the waters in the domain of the State established by this Act, the Minister sends to the registry office, on the basis of the information at the Minister's disposal and as it becomes available, a notice containing the text set out in Schedule II and specifying the lots the Minister considers likely to be affected by the boundary provided for in section 4 and the names of the cadastres and registration divisions in which the lots are situated, so that the registrar may enter the notice for each lot.

The first paragraph applies, with the necessary modifications, to any changes made to the line under section 9, in which case the text to be reproduced for the notice is that published in the *Gazette officielle du Québec* under that section.

Subject to the fees payable for the publication of notices, it is not necessary to follow the prescriptions of the Civil Code or its regulations regarding the publication of rights when making these applications and entries.

In addition to making the information available to the public via the office of the Surveyor General of Québec, the Minister may use any other means he or she judges appropriate to increase awareness of the boundaries of the waters in the domain of the State on the part of the River covered by this Act.

DIVISION II

COMPENSATION PAID BY THE REGIONAL COUNTY MUNICIPALITY

14. As compensation for the boundary delimitation carried out, including cartographic work, the Municipalité régionale de comté du Haut-Richelieu must pay a sum of $725,000, of which $400,000 is paid to the fund established in Chapter IV, in accordance with the provisions of that chapter, and $325,000 is paid to the Minister of Sustainable Development, Environment and Parks not later than 17 September 2009. Any balance not paid to the Minister by that date bears interest, capitalized monthly, at the rate set under the first paragraph of section 28 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31).

Despite the first paragraph, the Minister and the regional county municipality may agree to another schedule for payments made to the Minister in order, for example, to permit payment by instalments or to review the moment at which an unpaid balance begins bearing interest.

15. The Municipalité régionale de comté du Haut-Richelieu may require the local municipalities identified in section 2 to reimburse the sums paid under section 14.

The regional county municipality and the local municipalities concerned must agree on the sharing criteria to be used to determine the contribution of each local municipality, as well as the payment schedule, the interest and the other applicable terms of payment.

If no agreement is reached, the Minister, at the request of the regional county municipality or one of the local municipalities, sets the contribution of each local municipality, determines the payment schedule, the interest and the other applicable terms of payment, and notifies the local municipalities, as well as the regional county municipality in writing of his or her decision. To this end, the Minister may take into account the linear metres of shore affected by the boundary provided for in section 4, the use or zoning of the immovables concerned, or their value.

In order to finance its contribution, a local municipality may impose any tax or other method of financing at its disposal. It may, for instance, impose a special tax and establish to that end any criterion or distinction it judges pertinent, such as the imposition of such a tax only on taxable immovables affected by the boundary provided for in section 4. However, a general or

specific tax introduced to finance a local municipality's contribution may not be imposed on immovables that are adjacent to areas established as a proposed biodiversity reserve under section 16, and that would be riverfront property were it not for the reserve.

CHAPTER III

PROTECTION OF THE RIVER AND ITS WETLANDS

DIVISION I

CREATION OF A PROPOSED BIODIVERSITY RESERVE

16. The area in the zones marked "A" on the map referred to in section 2 and reproduced in Schedule I is deemed to be a proposed biodiversity reserve on 19 June 2009, in accordance with Title III of the Natural Heritage Conservation Act (R.S.Q., chapter C-61.01), for a period of four years beginning on that date. This proposed reserve is provisionally called the "Samuel-De Champlain proposed biodiversity reserve".

Not later than six months after 19 June 2009, but subject to an extension authorized by the Government, the Minister has the government-approved conservation plan for the proposed reserve published in the *Gazette officielle du Québec*. During the period preceding the publication of the plan, the activities permitted or prohibited on the proposed biodiversity reserve are those provided for in subparagraphs 1 and 2 of the first paragraph of section 92 of the Natural Heritage Conservation Act, with the necessary modifications.

The other provisions of that Act also apply, with the necessary modifications. For the purposes of section 42 of that Act, the date of the notice for the setting aside of a reserve is that provided for in the first paragraph.

Despite the regulations on waters in the domain of the State made under the Watercourses Act (R.S.Q., chapter R-13) and in order to ensure proper management of the protected area, the Minister may stipulate the conditions under which rights in that area may be granted or transferred.

DIVISION II

SPECIAL PROTECTION SCHEME FOR CERTAIN ZONES OF ECOLOGICAL INTEREST

17. This division applies to the zones of ecological interest marked "B" on the map referred to in section 2 and reproduced in Schedule I.

18. In a zone of ecological interest referred to in section 17, despite any provision to the contrary and without restricting other requirements or authorizations provided for in an Act or its regulations, the following activities may not be carried on unless a certificate of authorization is first obtained

from the Minister under section 22 of the Environment Quality Act (R.S.Q., chapter Q-2), regardless of the purpose for which they are undertaken:

(1) the removal of vegetation cover or the cutting of trees or shrubs;

(2) all land development, including filling, clearing, digging, burying and earthworks, as well as the creation, development or maintenance of a watercourse;

(3) the use, spreading or depositing, by any method whatsoever, of materials or substances to control the presence, growth or number of plant or wildlife species; and

(4) the construction, erection, addition or alteration of a building, facility or work; however, repair and maintenance of a building, facility or work are not subject to this section unless the repairs or maintenance require authorization under one of the preceding paragraphs or is such as may result in a significant disturbance of soil, water or surrounding ecosystems.

Subparagraph 2 of the first paragraph does not apply to maintenance work on a watercourse carried out in a zone of ecological interest by a municipal authority, which remain subject to the general system set out in the Environment Quality Act.

The provisions of the Environment Quality Act and its regulations on applications for authorization and certificates of authorization apply, with the necessary modifications, to applications for authorization and certificates of authorization for the activities covered by this section. Without restricting the generality of the foregoing, the following apply to such activities, applications and certificates: sections 23, 24, 106, 107, 114, 115, 119, 119.1, 122.1, 122.2 and 123.1, as well as the other provisions of Divisions XI, XIII and XIV of Chapter I of that Act relating to recourse before the Administrative Tribunal of Québec, the penal provisions and other sanctions, as well as the general provisions, including those on powers of inspection.

19. In evaluating an application for authorization filed under section 22 of the Environment Quality Act for a project located in a zone of ecological interest referred to in section 17, the Minister must take into consideration the fact that such a zone, located in the littoral zone of the River, must, in principle, be maintained in its natural state.

In addition and without limiting the consideration of any other relevant element, the Minister may not issue a certificate of authorization for such a project unless of the opinion that activities or works in the zone are justified by the impossibility or great difficulty of engaging in them or carrying them out elsewhere, or by the necessity or manifest interest of engaging in them or carrying them out within the zone.

A certificate of authorization issued for a project in such a zone may specify, among other things, the procedures and conditions imposed by the Minister in order to reduce the prejudicial impact of the activity or works to a minimum, given the significance and characteristics of the zone which, among other functions,

(1) acts as a pollution filter, controls erosion and retains sediments, thus preventing and reducing surface water and ground water pollution and sediment input;

(2) acts as a regulator of water levels by retaining meteoric water and allowing part of it to evaporate, thus reducing the risk of flood;

(3) helps preserve a rich biological diversity by providing food, protection and habitat to the numerous plant and animal species it harbours;

(4) acts as a natural sun screen and wind-shield by maintaining vegetation, which in turn prevents excessive warming of water temperatures and protects soils and crops from wind damage; and

(5) preserves the natural beauty of the watercourse and the countryside associated with it, thus contributing to the value of land in surrounding areas.

CHAPTER IV

FUND FOR THE PROTECTION, RESTORATION AND ENHANCEMENT OF THE RICHELIEU RIVER AND ITS WETLANDS

20. The Fund for the Protection, Restoration and Enhancement of the Richelieu River and its Wetlands is hereby established in the Municipalité régionale de comté du Haut-Richelieu.

The Fund is dedicated to the financing of measures taken by the regional county municipality to promote the protection, restoration and enhancement of the part of the River covered by this Act, as well as its wetlands, including its shores and flood plain.

With the authorization of the regional county municipality and under the conditions it determines, the Fund may also be used to finance measures taken by the local municipalities identified in section 2.

The measures financed by the Fund must be aimed first and foremost at restoring to their natural state the zones identified by the committee formed under section 21.

21. The regional county municipality must create a committee responsible for advising it on any question involving the management of the Fund submitted to the committee, in particular questions as to which projects or works should be financed and how such projects or works can best be carried out to ensure the protection or restoration of ecosystems.

The committee may also advise the regional county municipality on these matters on its own initiative.

22. The committee, whose members are appointed by the regional county municipality, comprises, aside from the representatives of the local municipalities identified in section 2, at least one person in each of the following categories:

(1) a person with recognized expertise in the protection or restoration of wetlands, shores, littoral zones or flood plains;

(2) a person involved with local or regional environmental protection groups; and

(3) a person chosen from among those, in the territory of the regional county municipality, who are responsible for applying or enforcing urban planning by-laws designed to protect shores, littoral zones or flood plains.

The regional county municipality may also appoint to the committee, as non-voting members, employees of the Ministère du Développement durable, de l'Environnement et des Parcs or the Ministère des Ressources naturelles et de la Faune, designated by those departments.

23. Sections 148.4, 148.5 and 148.7 to 148.13 of the Act respecting land use planning and development (R.S.Q., chapter A-19.1) apply to the committee, with the necessary modifications.

24. The regional county municipality sets the date on which the Fund begins to operate and determines its assets and liabilities and the nature of the costs that may be charged to it.

If the regional county municipality chooses to spread payment of the initial amount provided for in paragraph 1 of section 25 over two or more instalments rather than pay the whole amount at the outset, it must also provide the dates or intervals of payment.

25. The Fund is made up of

(1) the sums paid into it by the regional county municipality, including an initial amount of $400,000, and the other amounts paid into it by the local municipalities identified in section 2;

(2) the gifts, legacies and other contributions paid into it to further the achievement of the objects of the Fund;

(3) the sums paid into it by a Minister or a government body out of the appropriations granted for that purpose by Parliament;

(4) the revenues allocated to that purpose by the Government, and any contribution determined by the Government on a proposal of the Minister of Finance;

(5) the fines paid by those who commit an offence under an Act or regulation applied by the regional county municipality or one of the local municipalities identified in section 2, if the offence relates to the development, management or protection of the shores, littoral zone or flood plain of the River;

(6) the fees or other amounts collected after 31 December 2009 by the regional county municipality and the local municipalities identified in section 2 to compensate expenditure or reimburse costs incurred for the measures they are authorized to take for the development, management or protection of the shores, littoral zone or flood plain of the River, such as costs and other amounts related to recourse taken under section 227 and following of the Act respecting land use planning and development; and

(7) the income generated by the investment of the sums making up the Fund.

26. The management of the sums making up the Fund is entrusted to the Municipalité régionale de comté du Haut-Richelieu.

The regional county municipality keeps the Fund's books and records its financial commitments. The regional county municipality also ensures that those commitments and the payments arising from them do not exceed and are consistent with the available balances.

Article 203 of the Municipal Code of Québec (R.S.Q., chapter C-27.1) applies to the Fund, with the necessary modifications.

27. The fiscal year of the Fund ends on 31 December.

28. Despite paragraph 1 of section 25, if the Fund's activities have not begun on 19 December 2009, the regional county municipality must pay the sum of $400,000 provided for in that paragraph to the Minister of Sustainable Development, Environment and Parks, to be deposited in the Green Fund created under section 15.1 of the Act respecting the Ministère du Développement durable, de l'Environnement et des Parcs (R.S.Q., chapter M-30.001) and used first and foremost to manage and protect the wetlands and waters of the Richelieu River.

Sections 14 and 15 apply, with the necessary modifications, to the payment of that sum by the regional county municipality.

CHAPTER V

AMENDING AND FINAL PROVISIONS

29. Schedule III to the Act respecting administrative justice (R.S.Q., chapter J-3) is amended by inserting "section 9 of the Act respecting the boundaries of the waters in the domain of the State and the protection of wetlands along part of the Richelieu River (2009, chapter 31)," after "under" in paragraph 3.

30. The Minister of Sustainable Development, Environment and Parks must examine without delay any draft management plan under the protection policy for riverbanks, littoral zones and floodplains that is presented to the Minister for the area covered by this Act.

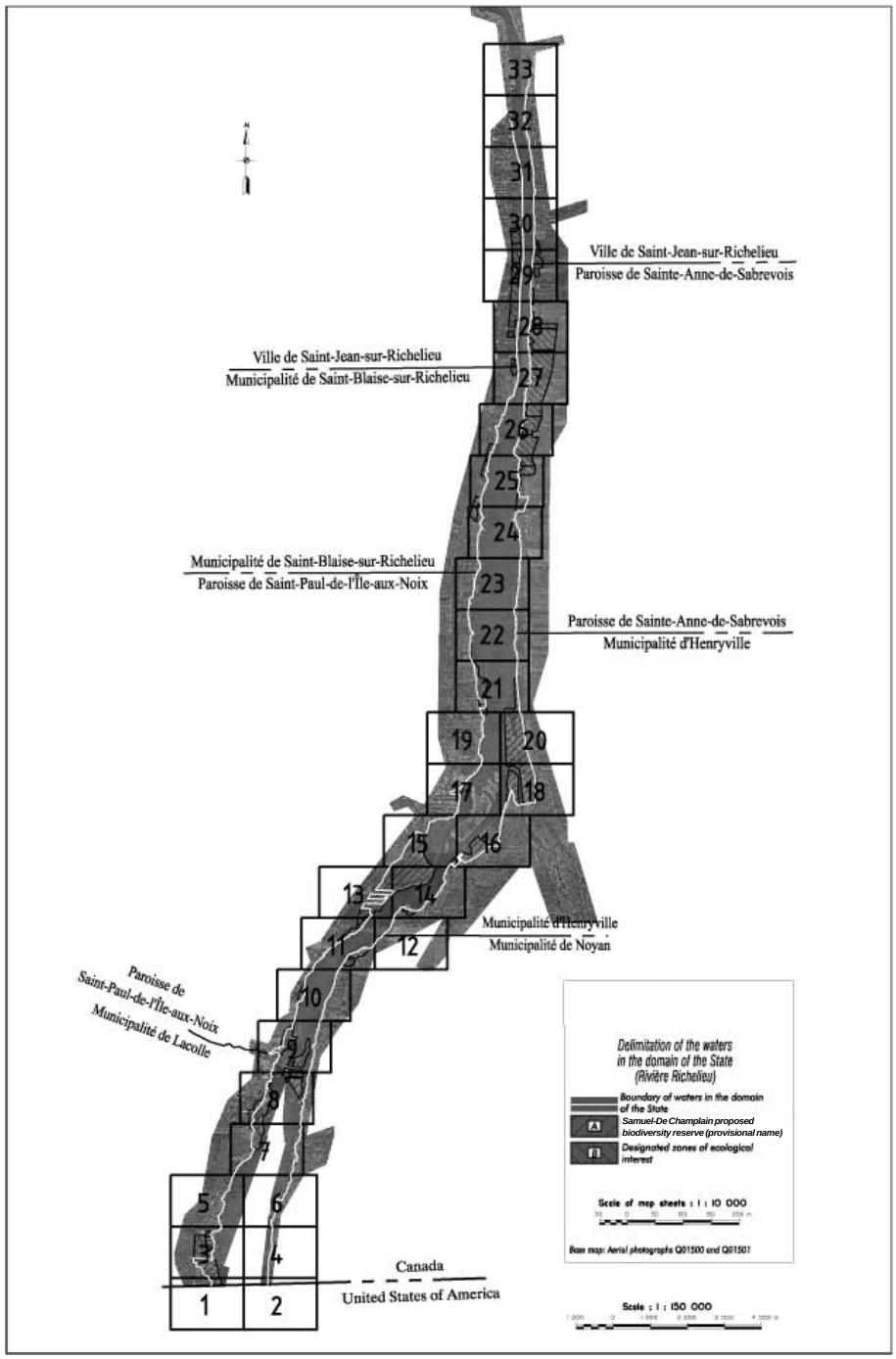
As portions of the plan come in, the Minister, without prejudging the final decision, must inform the authority concerned and any interested department of the result of the Minister's summary assessment of the admissibility of each portion of the plan.

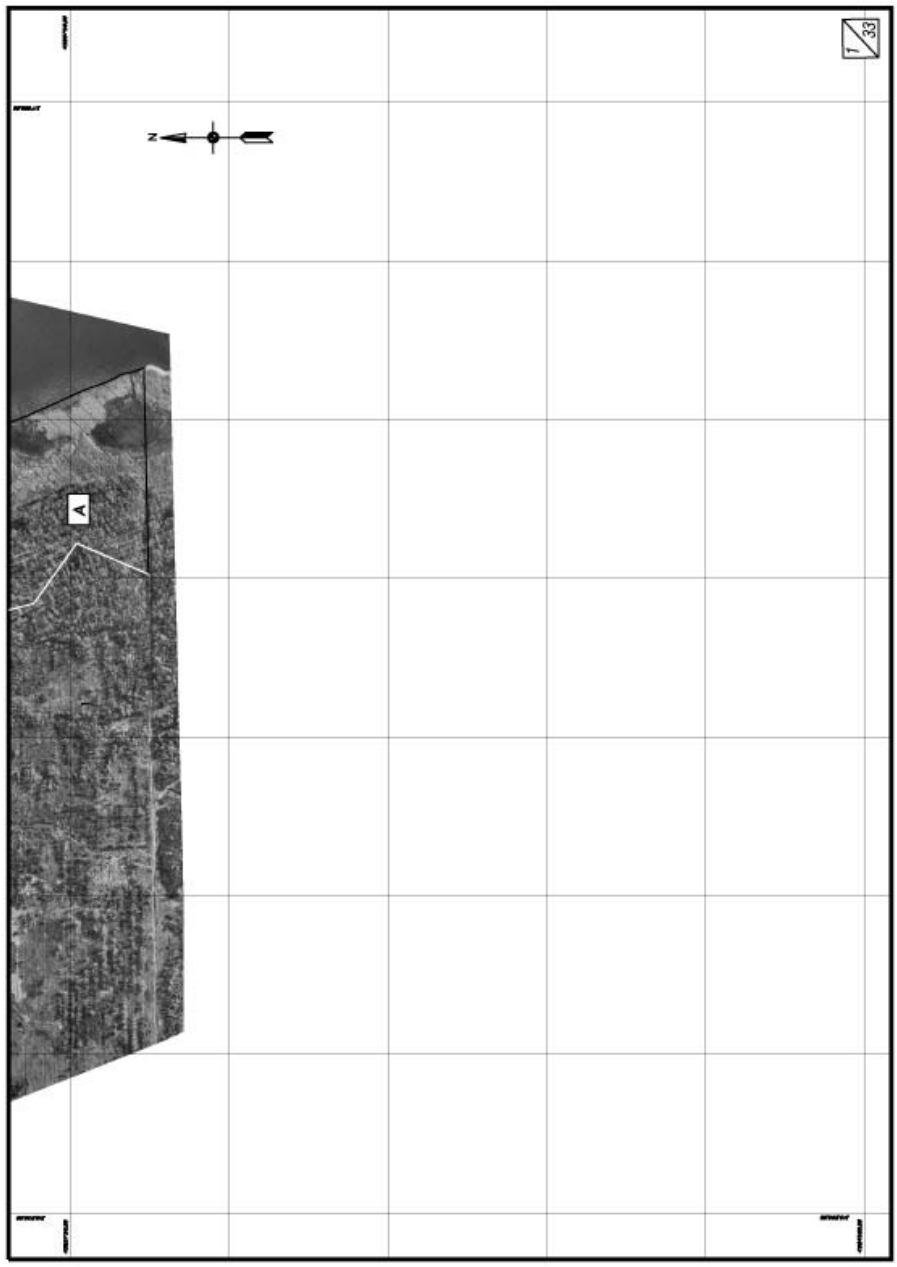
31. The Minister of Sustainable Development, Environment and Parks is responsible for the administration of this Act.

32. This Act applies to the Government, its ministers, and bodies that are mandataries of the State.

33. This Act comes into force on 19 June 2009.

SCHEDULE I
(*Section 3*)

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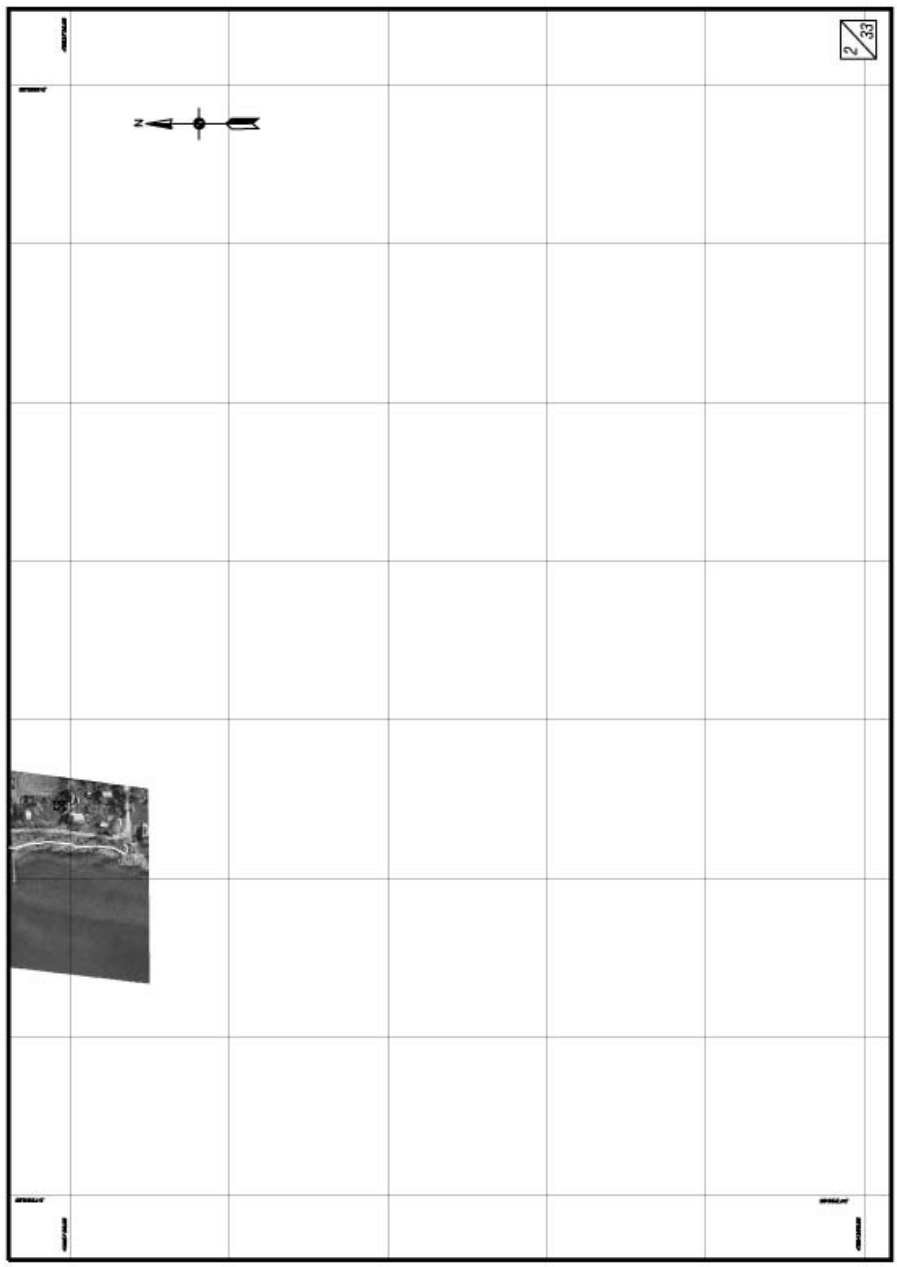
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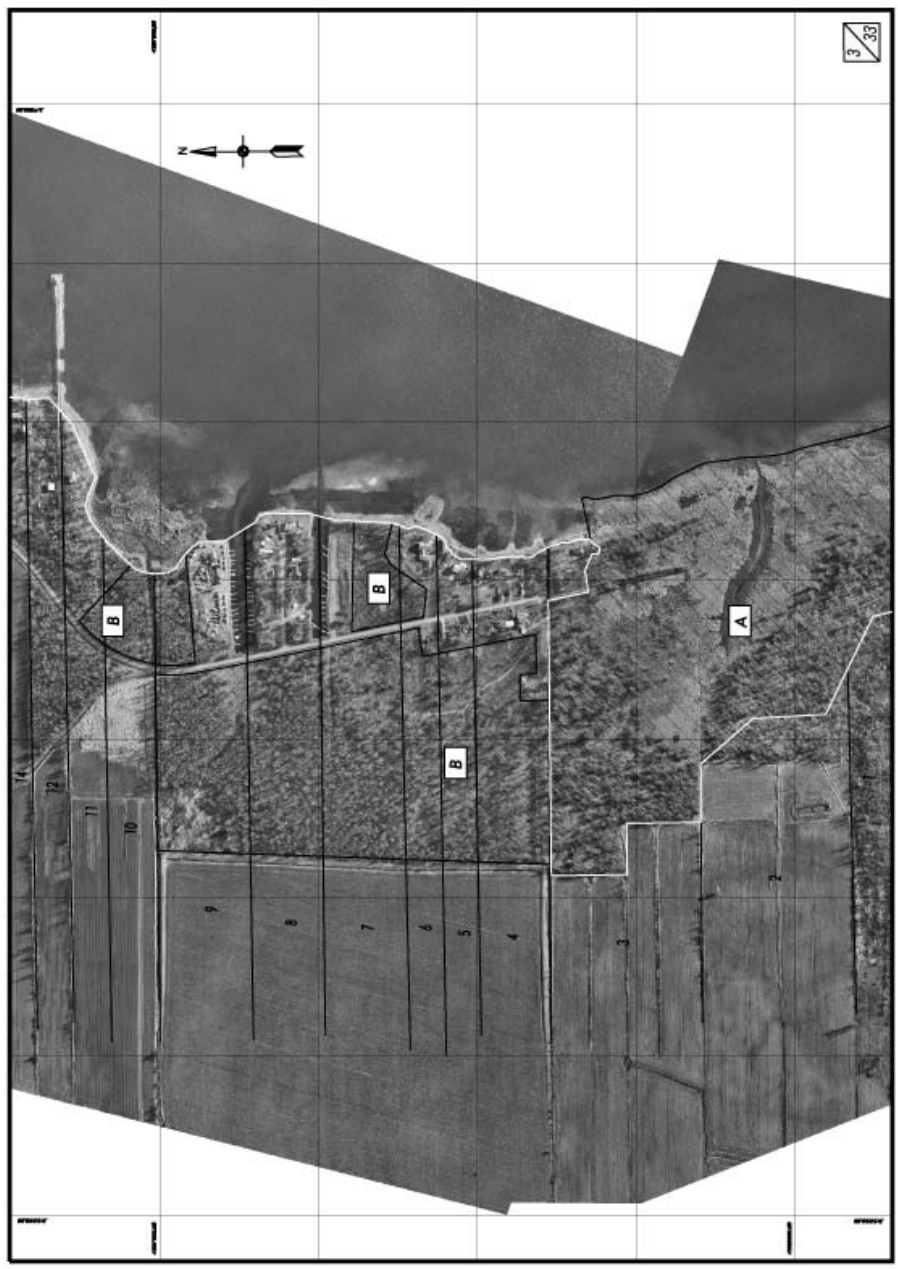
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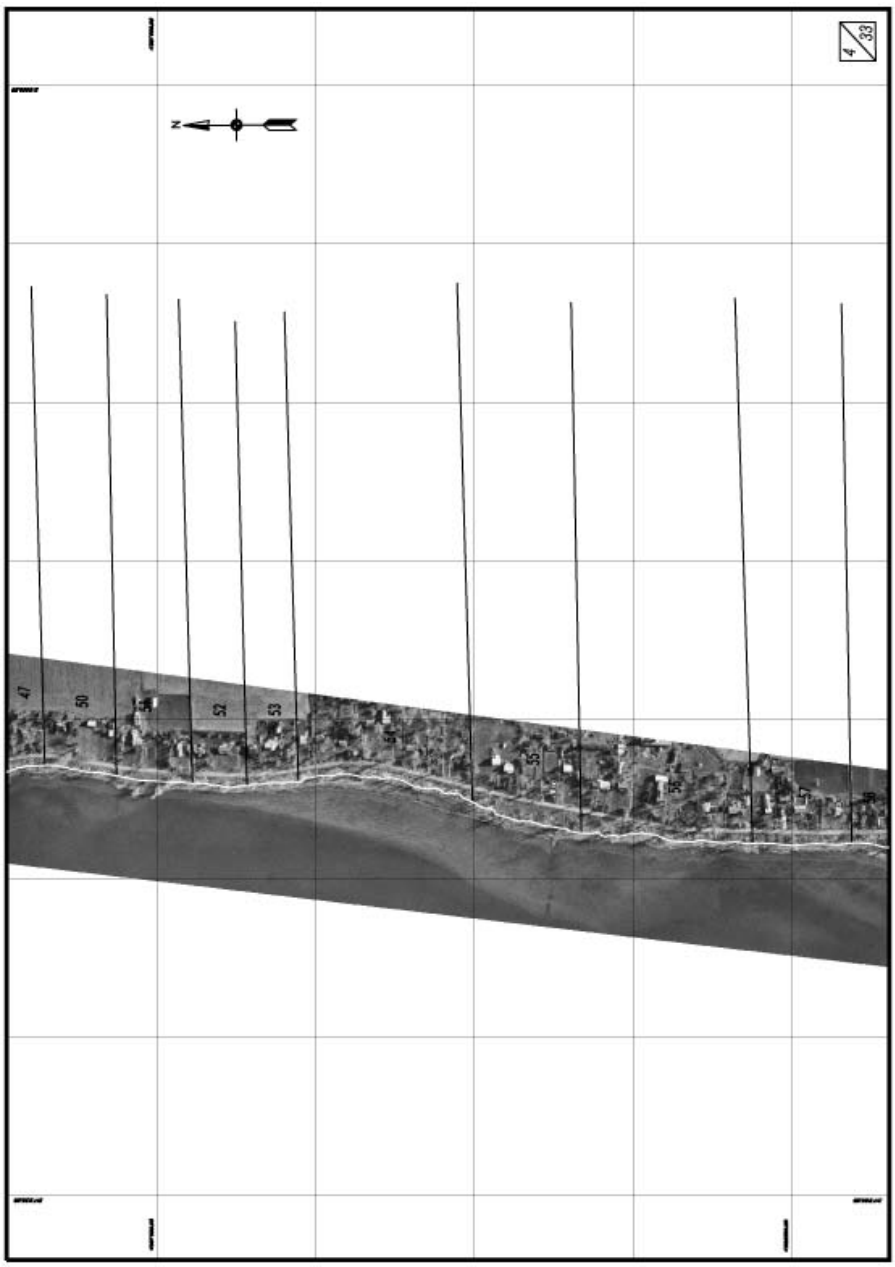
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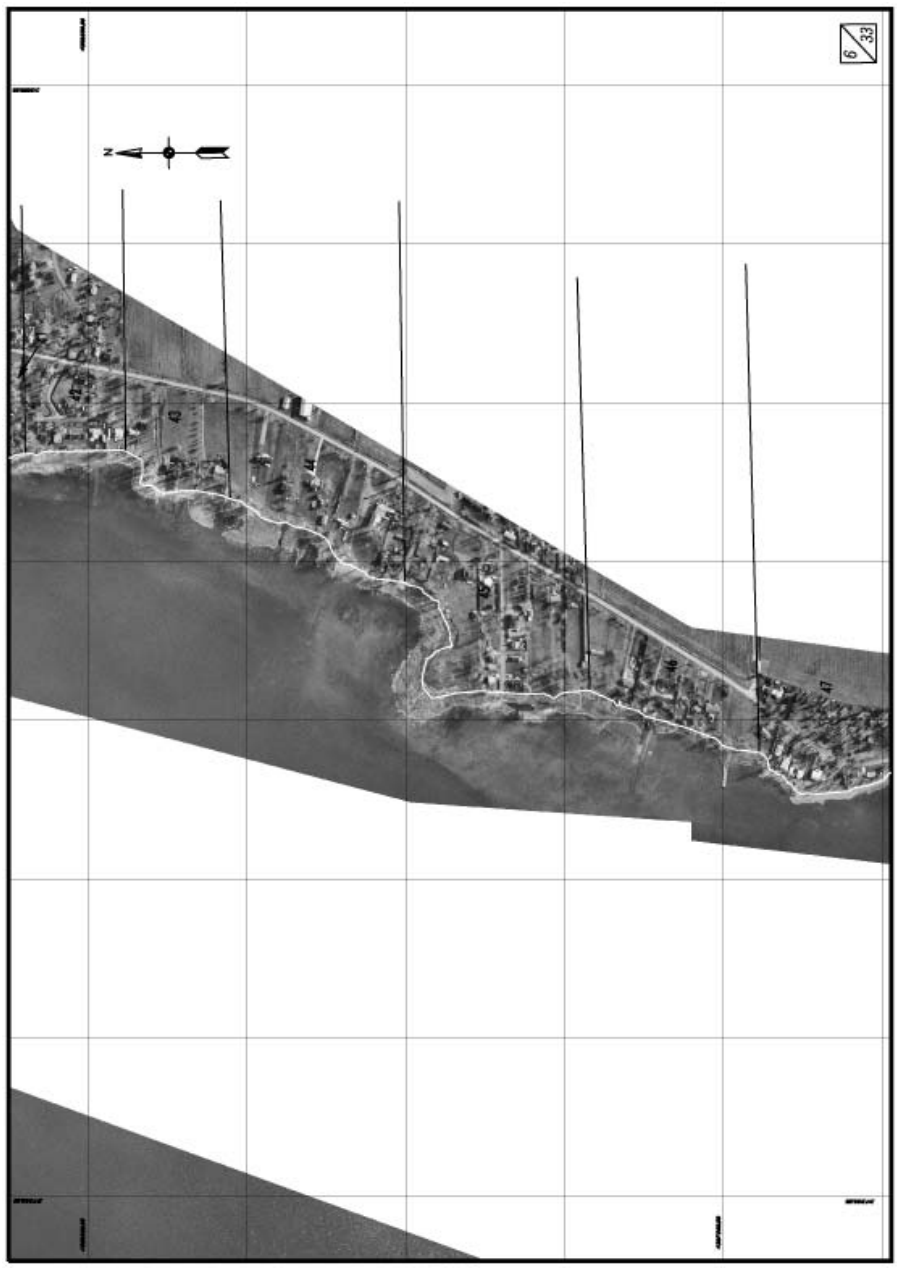
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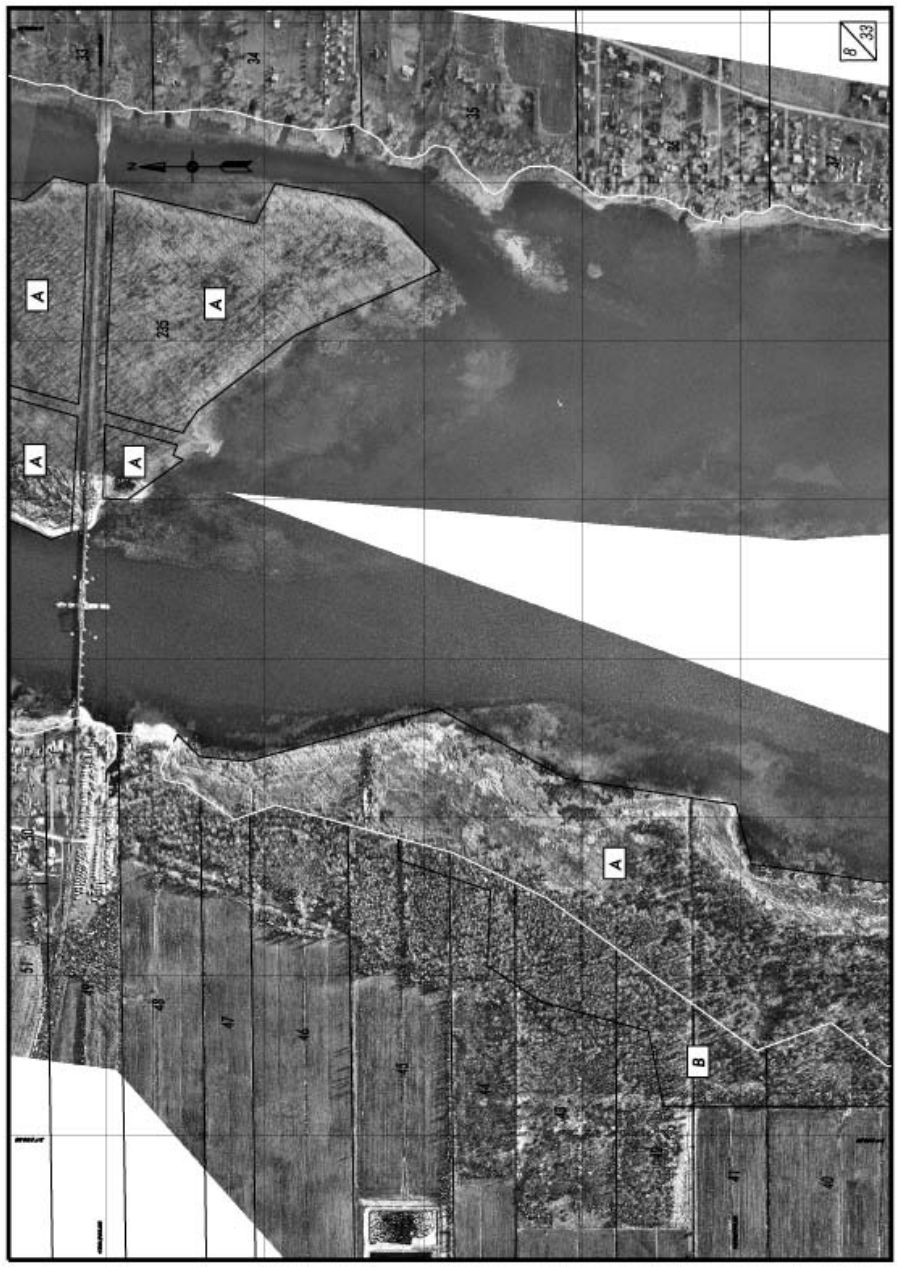
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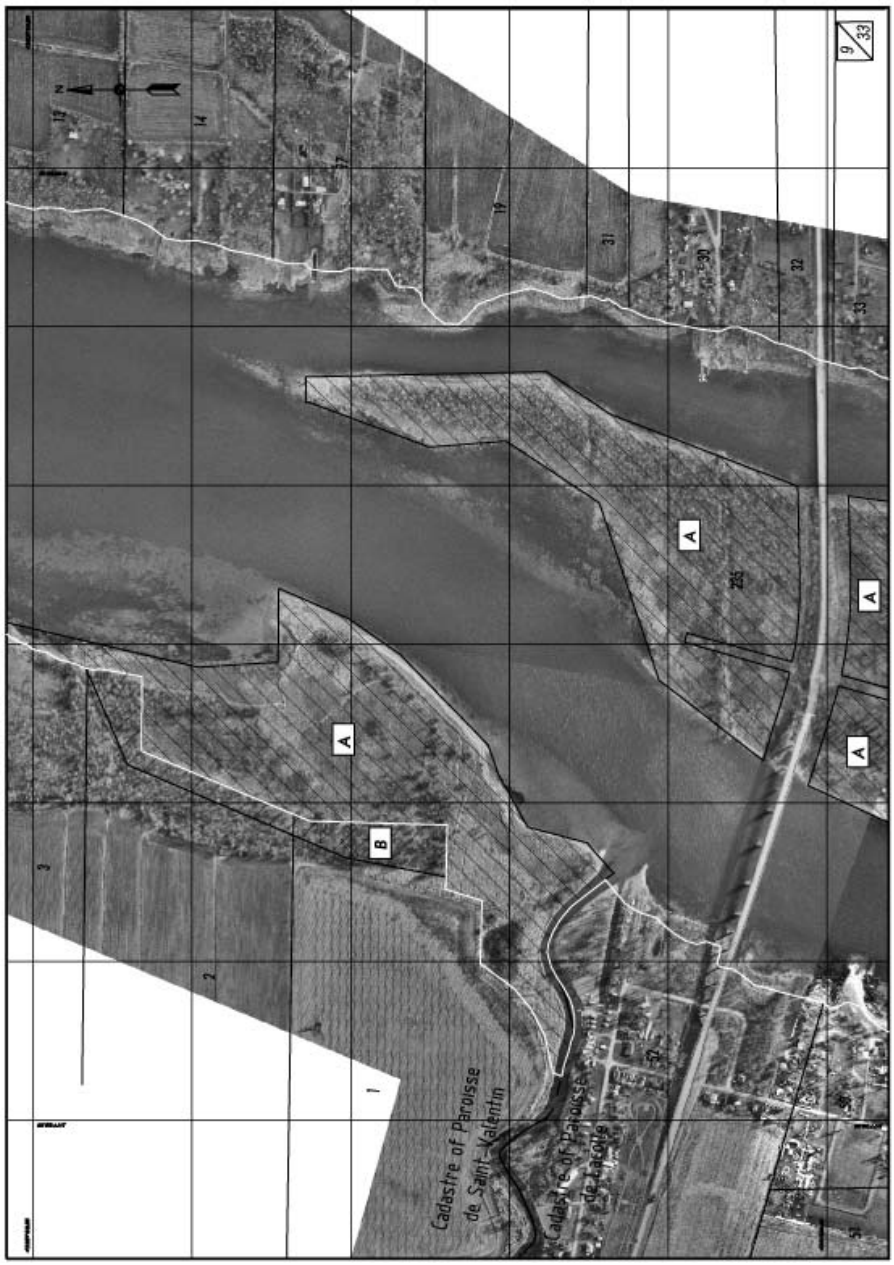
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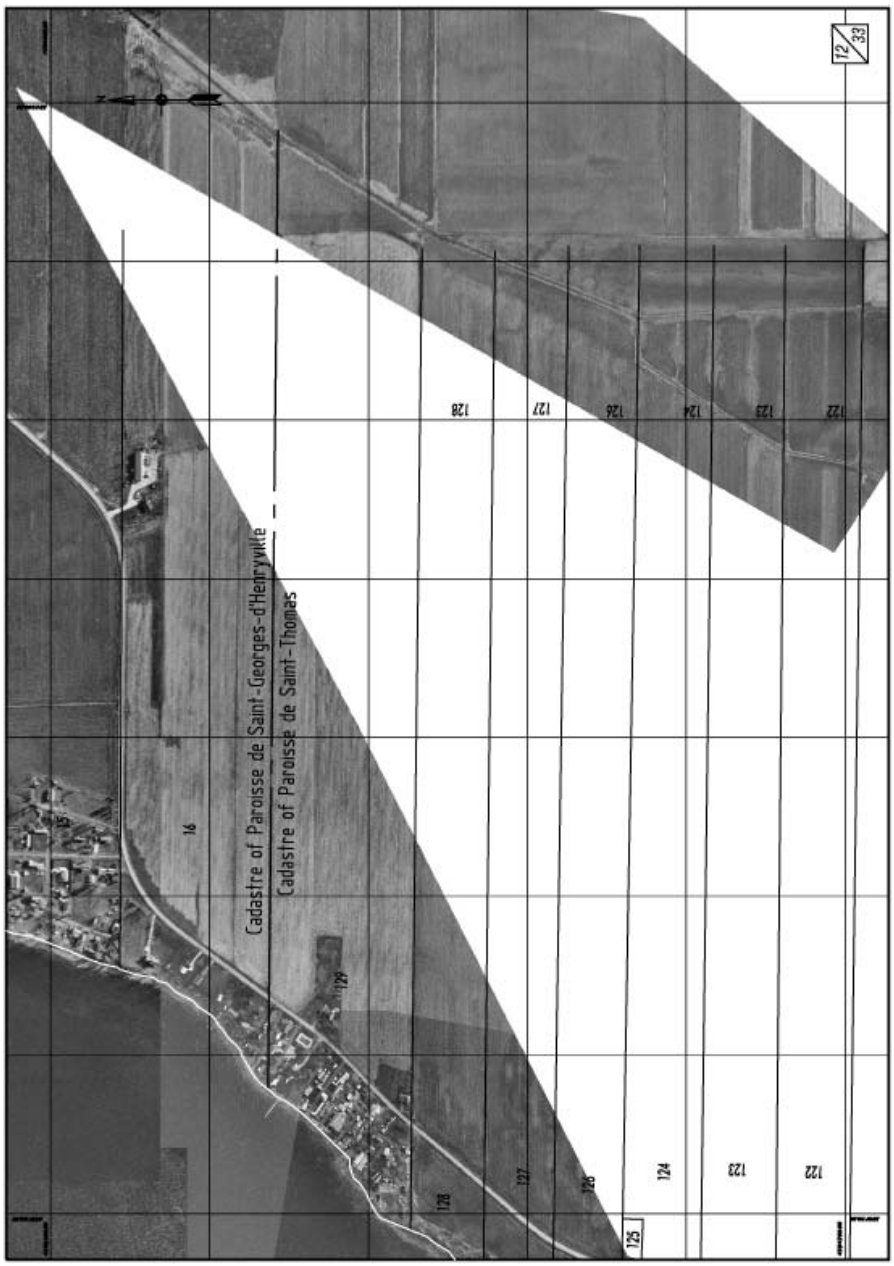
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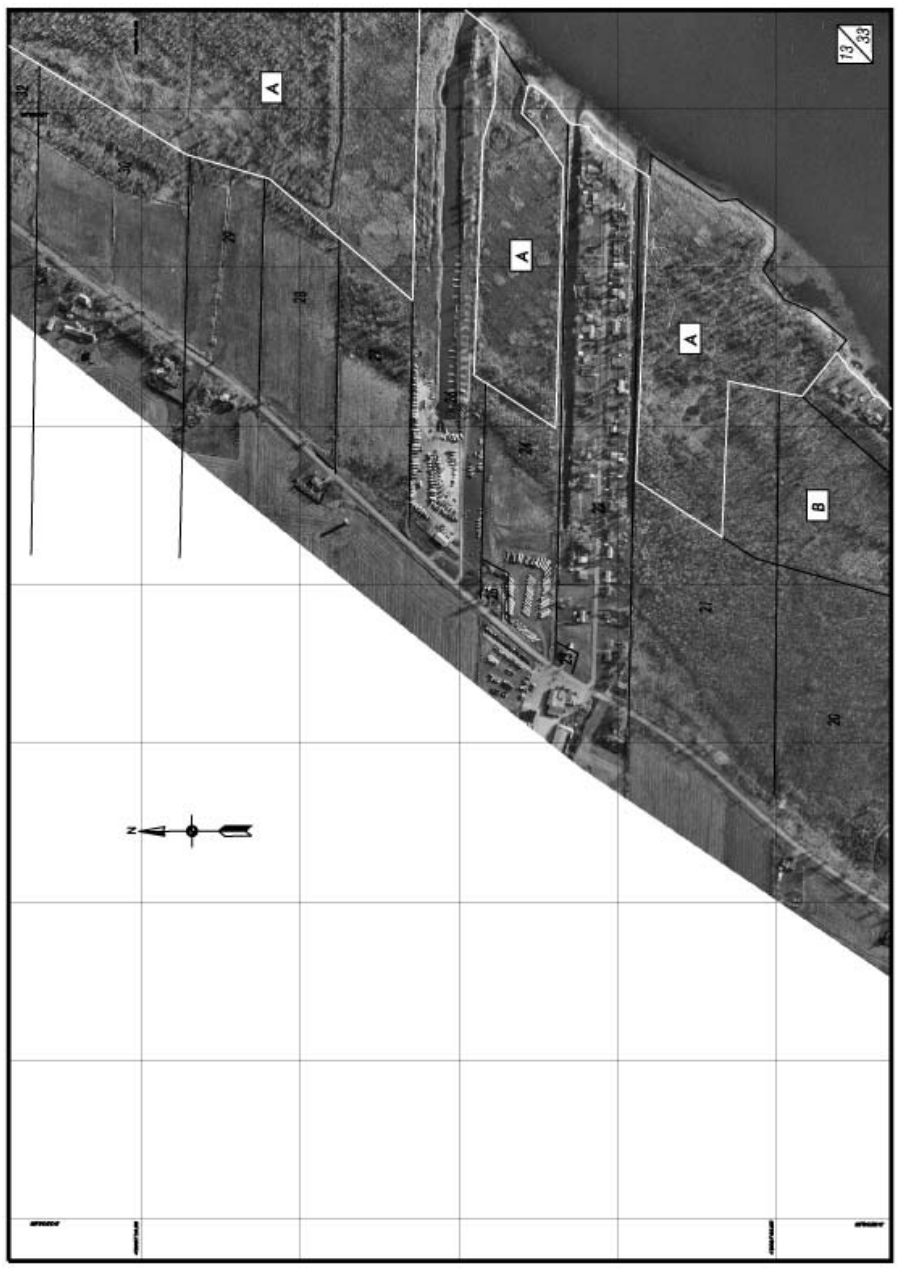
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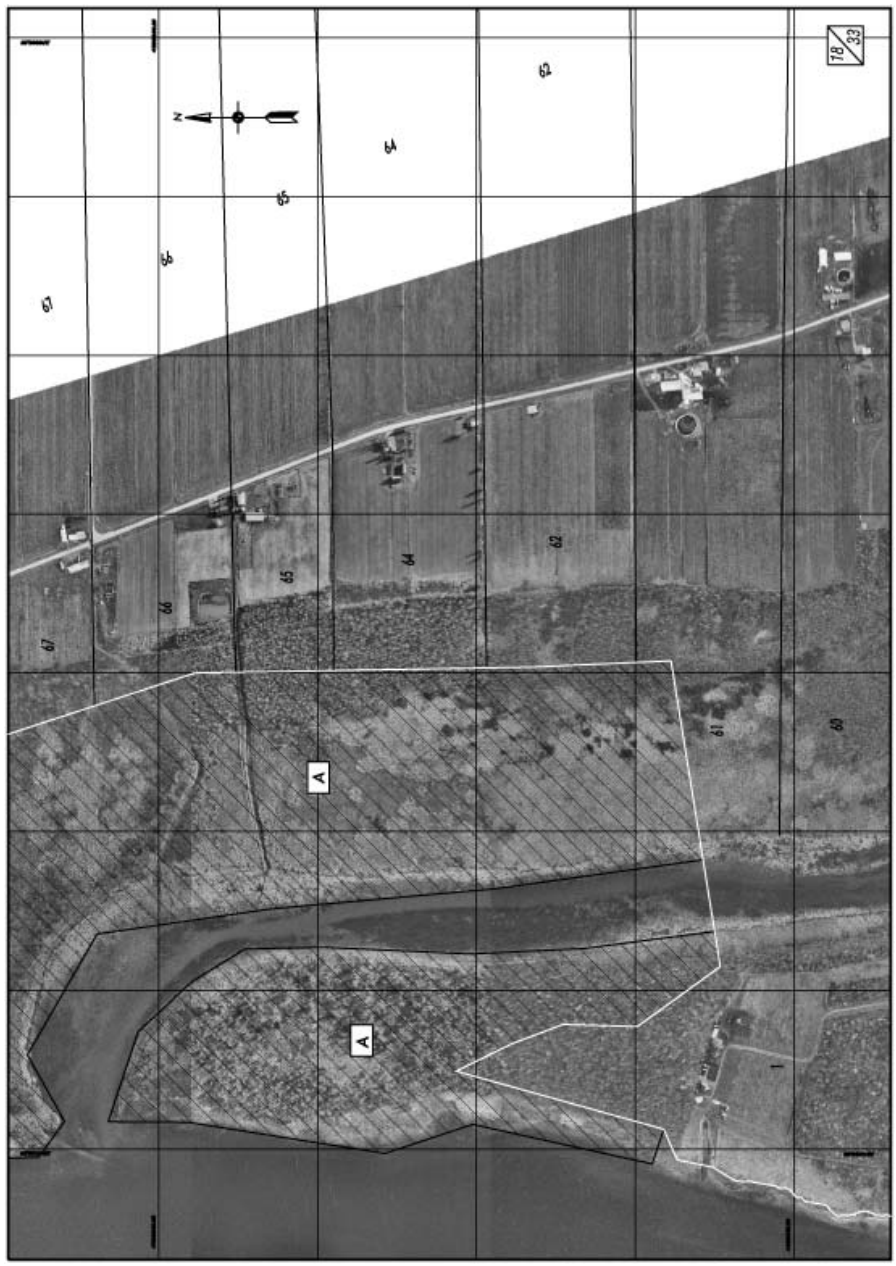
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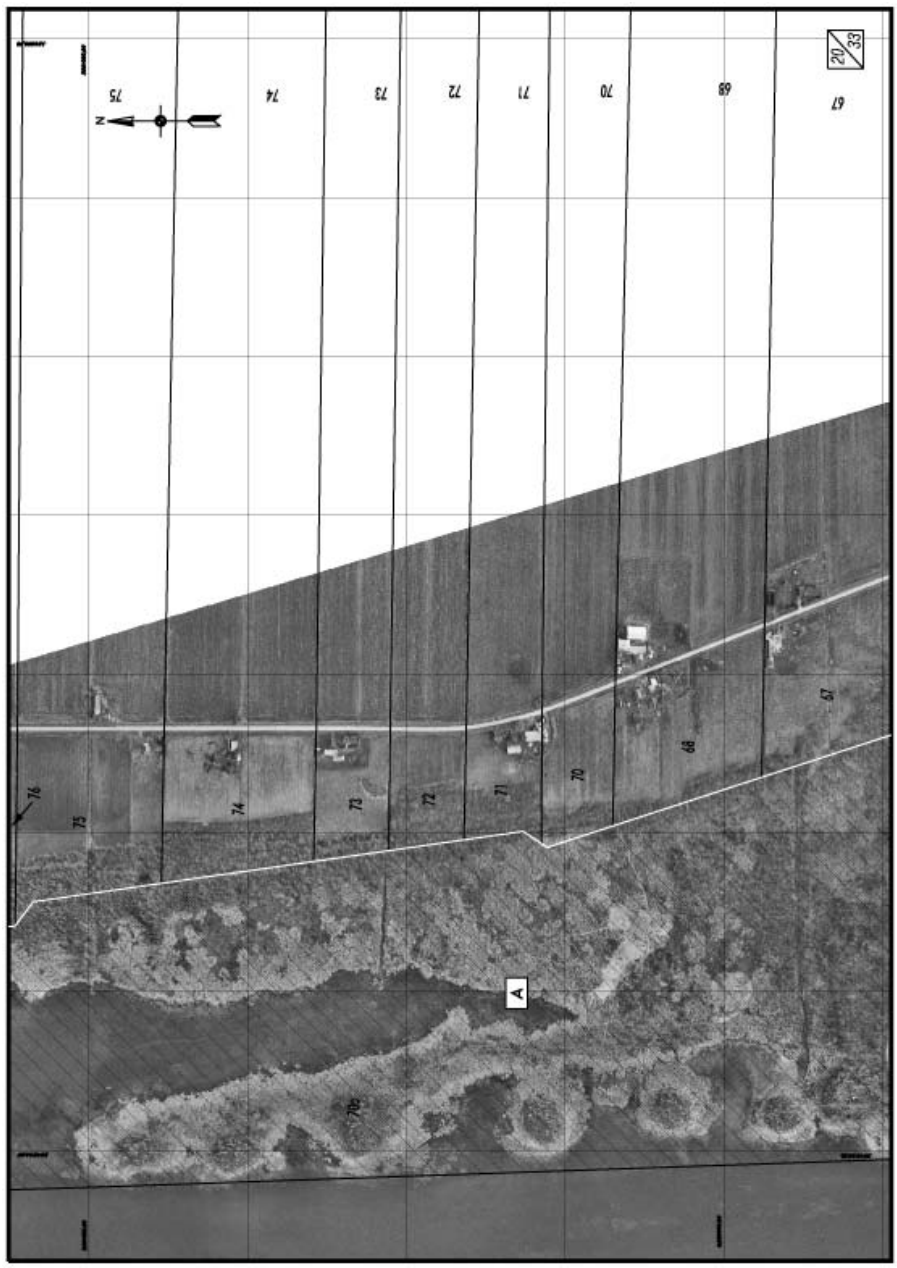
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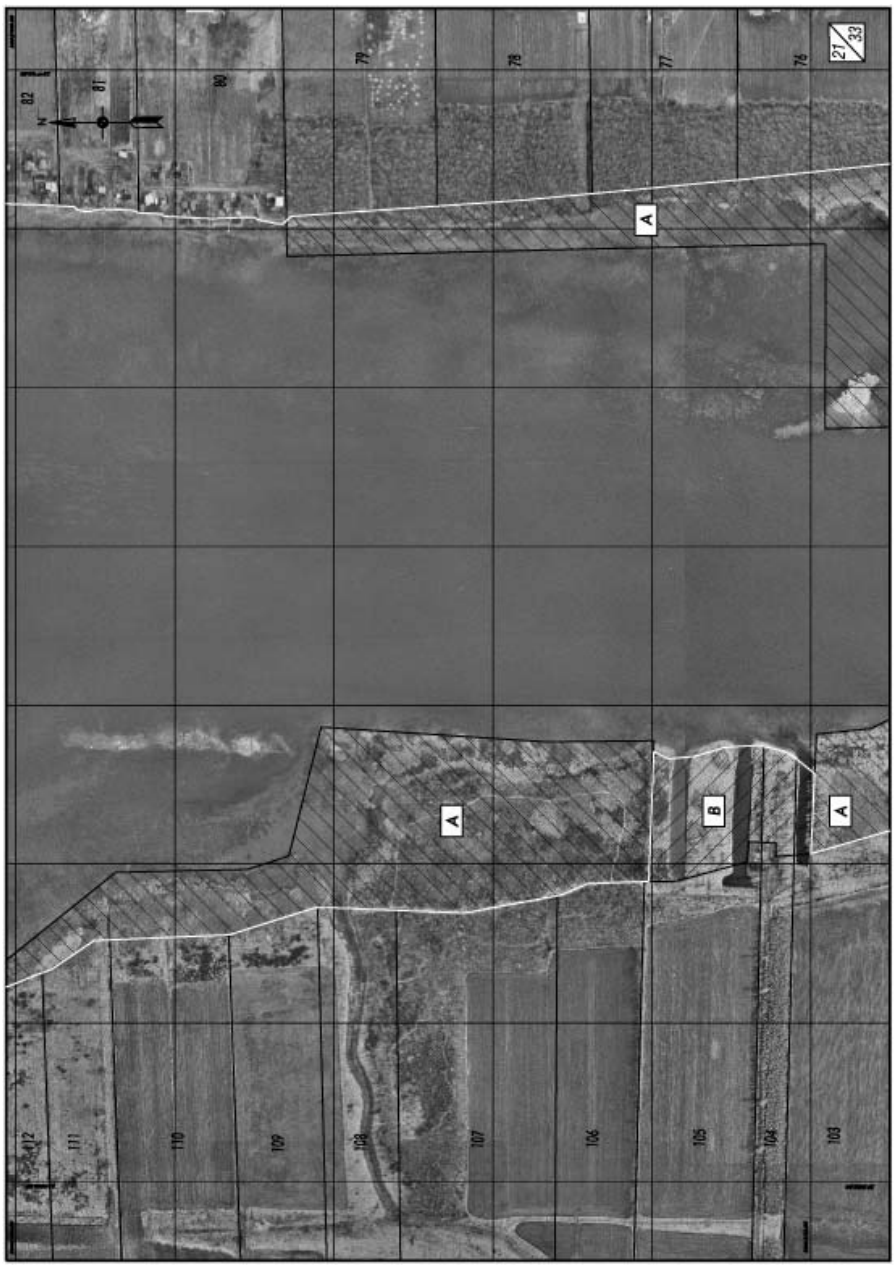
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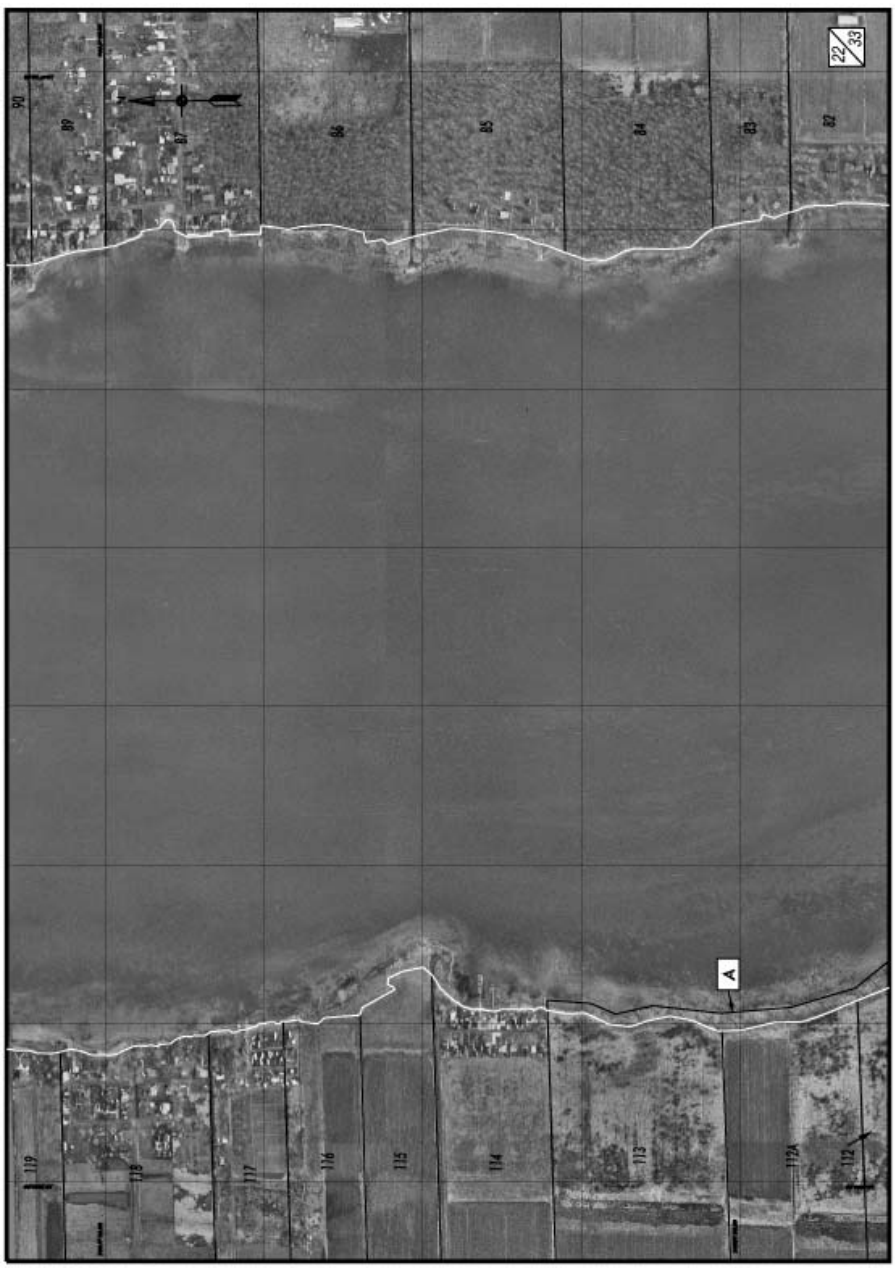
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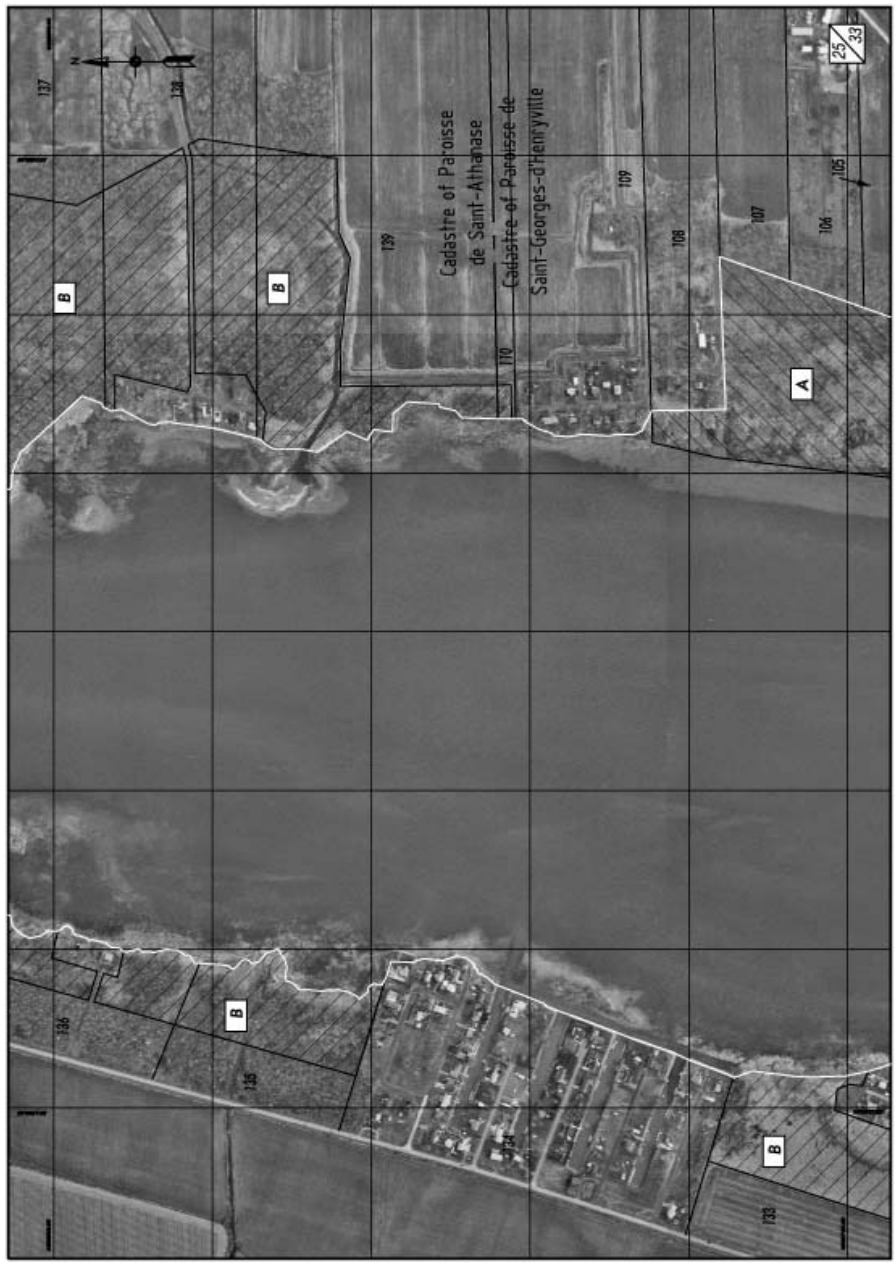
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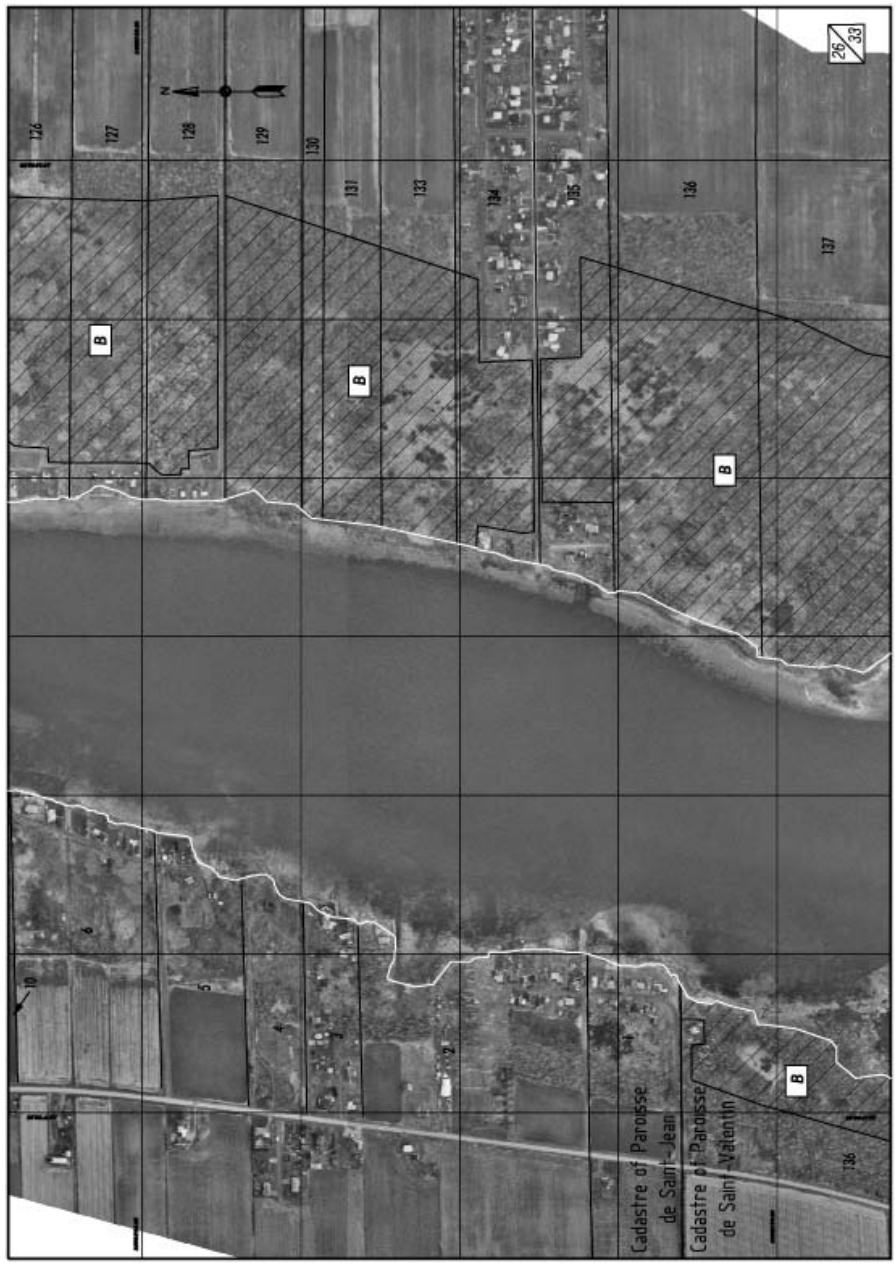
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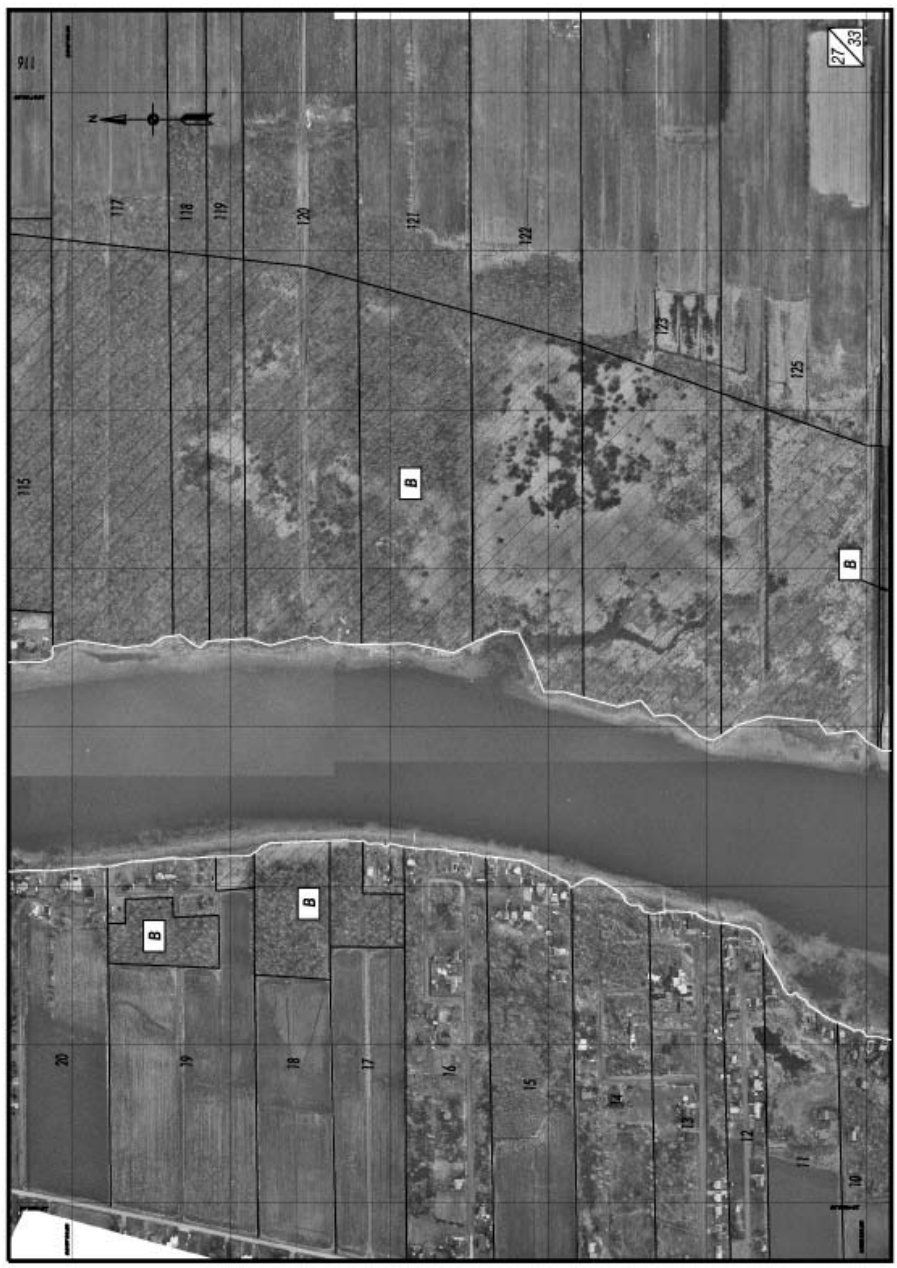
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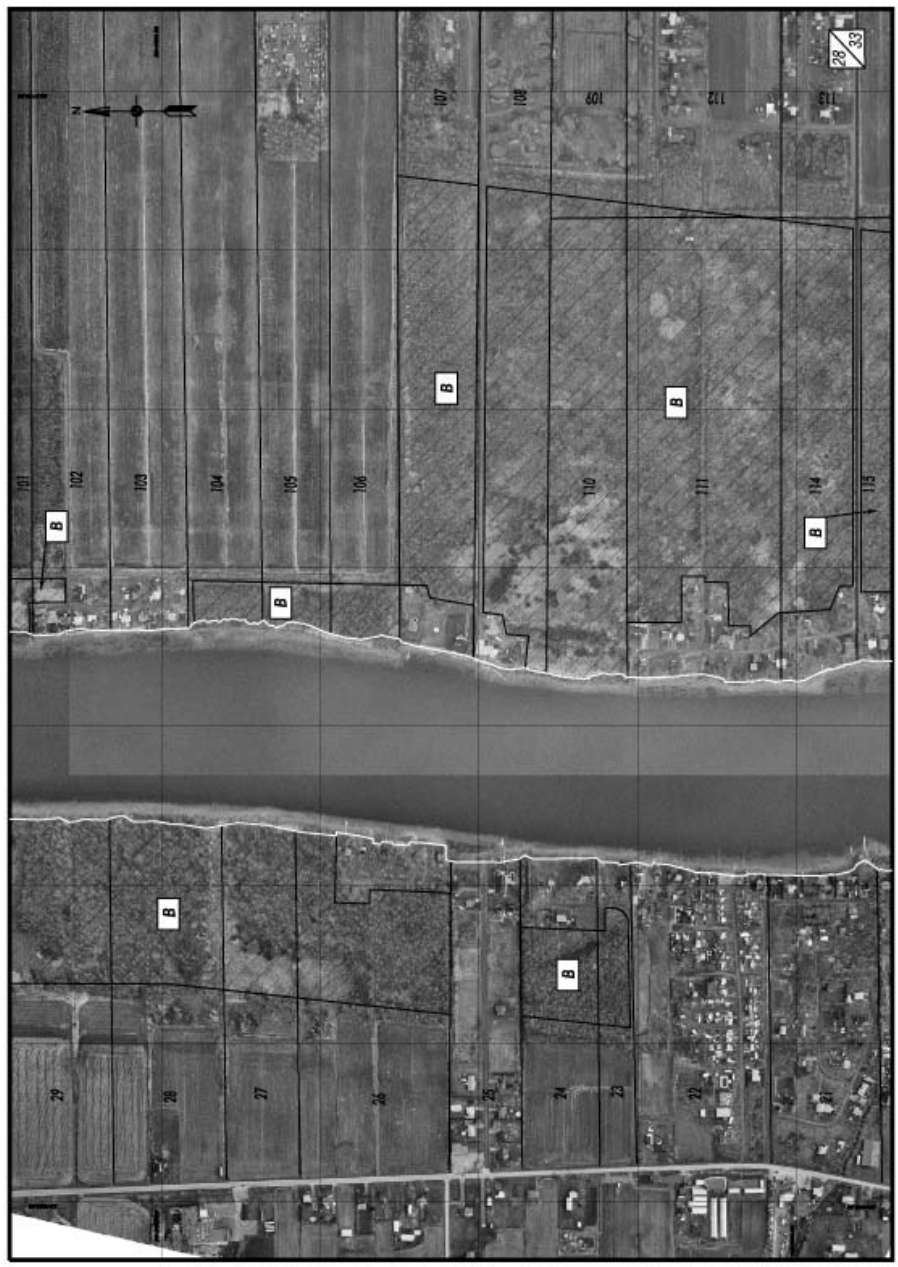
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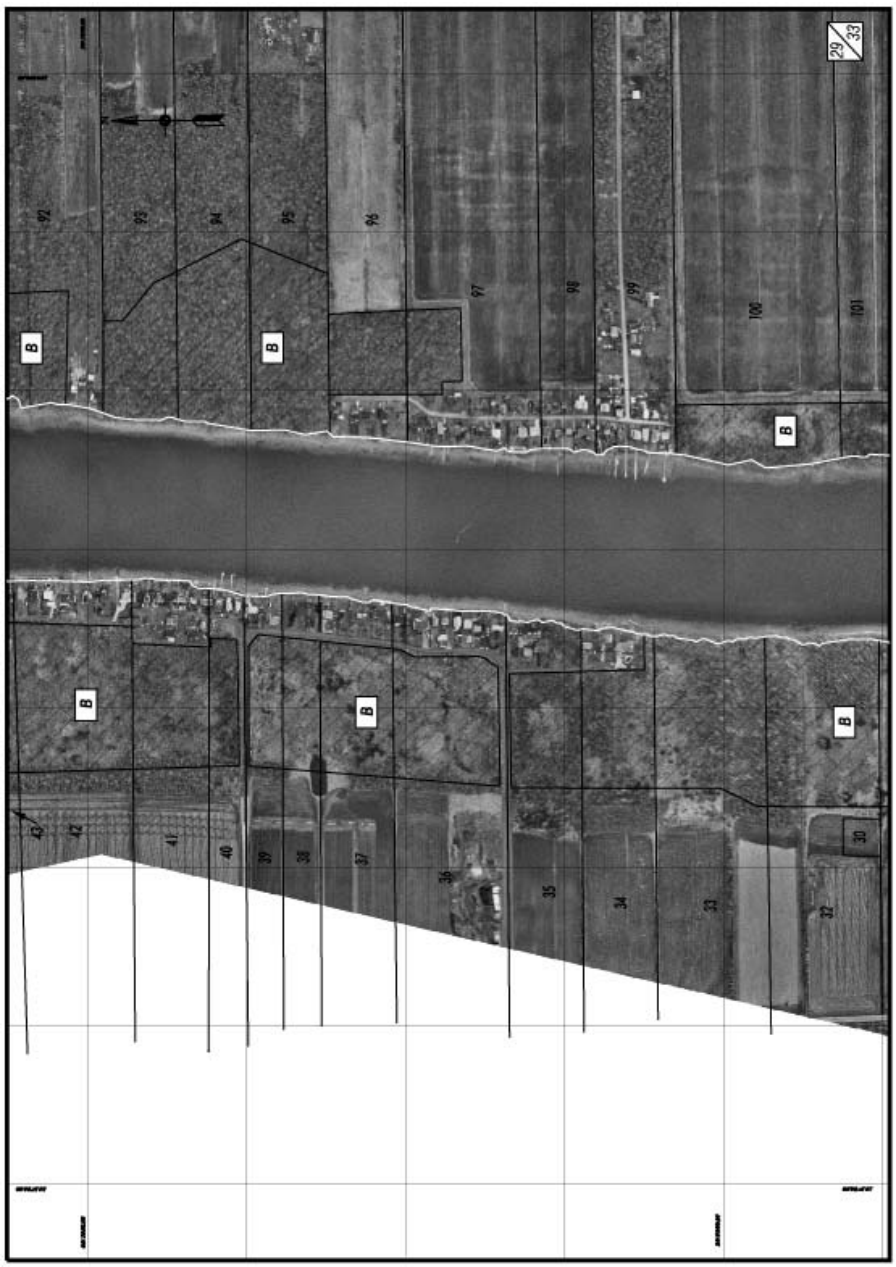
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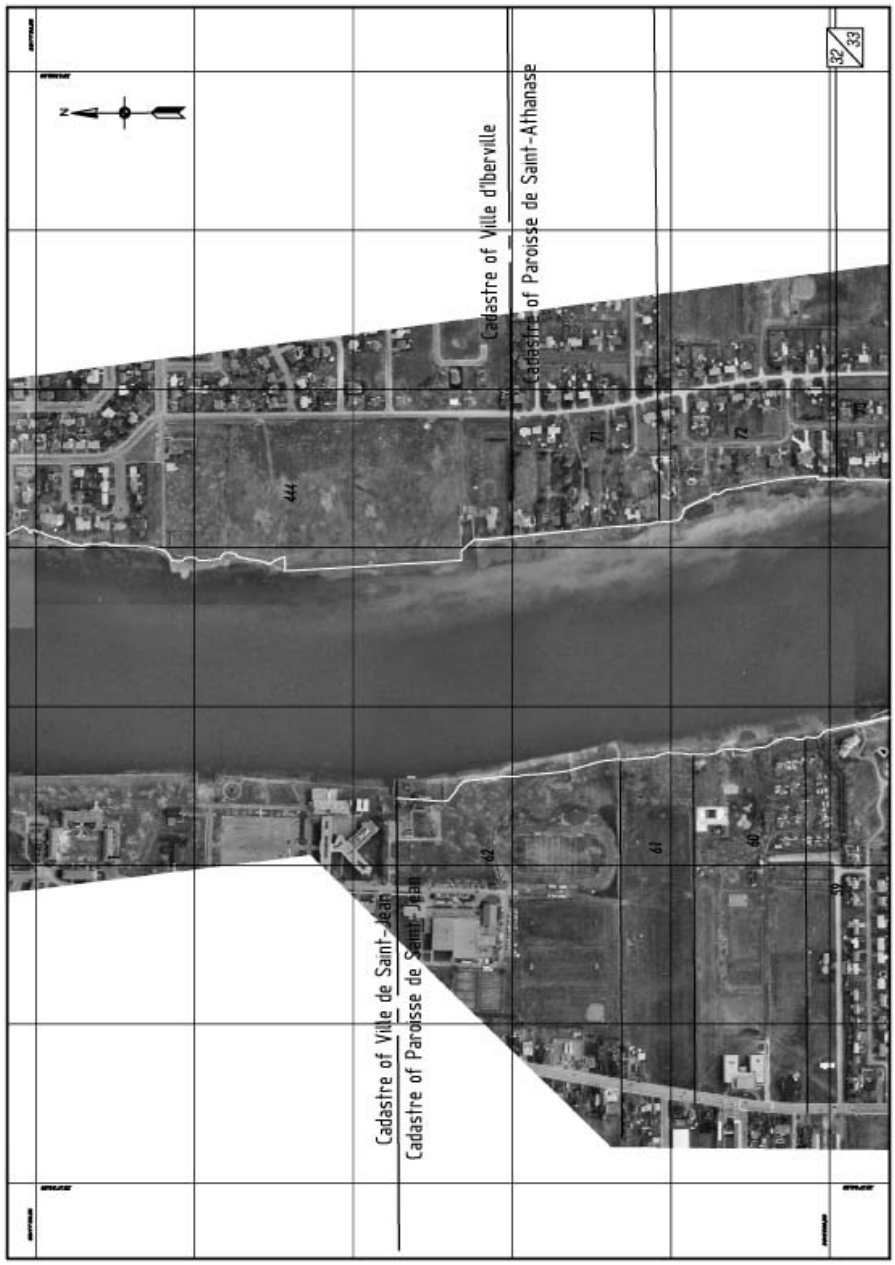
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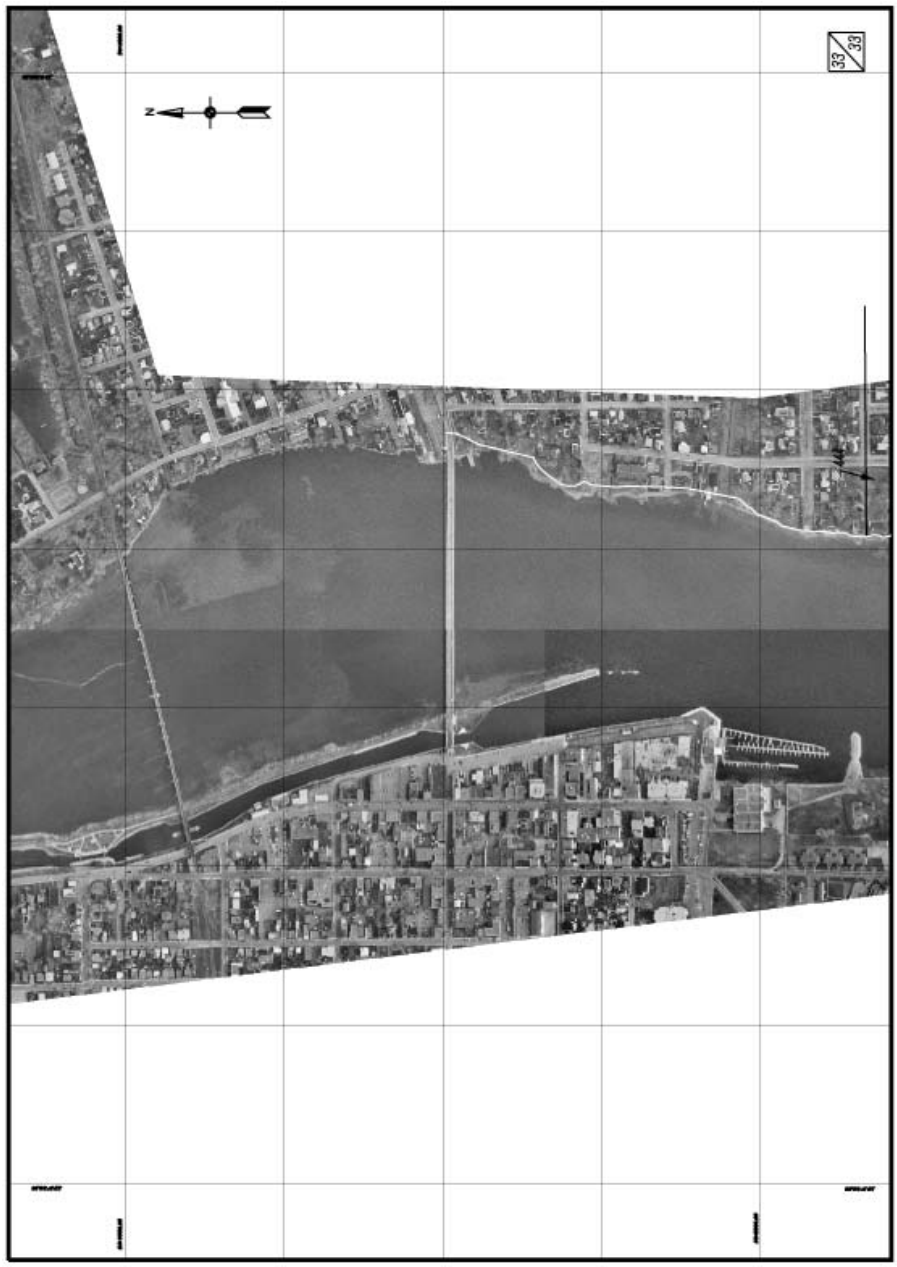
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SCHEDULE II
(*Section 13*)

Notice

The Act respecting the boundaries of the waters in the domain of the State and the protection of wetlands along part of the Richelieu River (2009, chapter 31) determines the boundaries of the waters in the domain of the State along certain parts of the Richelieu River. Its provisions may apply in particular to the lots mentioned below. Under the Act, the boundaries of the lots may have changed on or after 19 June 2009. It is therefore important to consult the Act, in particular section 4 and the map it refers to.

NATIONAL ASSEMBLY

FIRST SESSION THIRTY-NINTH LEGISLATURE

Bill 32
(2009, chapter 32)

An Act to amend the Act respecting the professional status and conditions of engagement of performing, recording and film artists and other legislative provisions

Introduced 1 April 2009
Passed in principle 10 June 2009
Passed 18 June 2009
Assented to 19 June 2009

Québec Official Publisher
2009

EXPLANATORY NOTES

This Act broadens the scope of the Act respecting the professional status and conditions of engagement of performing, recording and film artists by providing that the artists to which the Act applies will, in the audiovisual production industry, also include other persons who contribute directly to the creation of the artistic work. This Act introduces new negotiating sectors in that industry, and sets out measures aimed at maintaining and adapting recognition previously granted to the artists' associations working in those sectors.

This Act abolishes the Commission de reconnaissance des associations d'artistes et des associations de producteurs and transfers its functions to the Commission des relations du travail.

Lastly, it contains related, transitional and consequential amendments.

LEGISLATION AMENDED BY THIS ACT:

– Financial Administration Act (R.S.Q., chapter A-6.001);

– Labour Code (R.S.Q., chapter C-27);

– Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10);

– Act respecting the Pension Plan of Management Personnel (R.S.Q., chapter R-12.1);

– Act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters (R.S.Q., chapter S-32.01);

– Act respecting the professional status and conditions of engagement of performing, recording and film artists (R.S.Q., chapter S-32.1).

Bill 32

AN ACT TO AMEND THE ACT RESPECTING THE PROFESSIONAL STATUS AND CONDITIONS OF ENGAGEMENT OF PERFORMING, RECORDING AND FILM ARTISTS AND OTHER LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The Act respecting the professional status and conditions of engagement of performing, recording and film artists (R.S.Q., chapter S-32.1) is amended by inserting the following sections after section 1:

"**1.1.** For the purposes of this Act, an artist is a natural person who practises an art on his own account and offers his services, for remuneration, as a creator or performer in a field of artistic endeavour referred to in section 1.

"**1.2.** In the context of an audiovisual production mentioned in Schedule I, a natural person who, whether covered by section 1.1 or not, exercises on his own account one of the following occupations, or an occupation judged analogous by the Commission, and offers his services for remuneration is considered to be an artist:

(1) an occupation relating to the design, planning, setting up, making or applying of costumes, hairstyles, prostheses, make-up, puppets, scenery, sets, lighting, images, sound, photography, visual or sound effects, special effects, or any occupation relating to recording;

(2) an occupation relating to sound or picture editing and continuity;

(3) the occupations of script supervisor or location scout manager, and occupations relating to the management or logistics of an efficient and safe shoot, whether indoors or outdoors, including the transport and handling of equipment and accessories;

(4) the occupations of trainee, team leader and assistant in relation to persons exercising occupations referred to in this section or section 1.1.

The following are not covered by this section: accounting, auditing, management and representation, legal and advertising services, or similar administrative services that have only a peripheral contributing value or interest in the creation of a work."

2. Section 2 of the Act is amended

(1) by striking out the definition of "artist";

(2) by inserting the following before the definition of "film":

""**"Commission"** means the Commission des relations du travail established by section 112 of the Labour Code (chapter C-27);".

3. Section 6 of the Act is amended by inserting "or exercise an occupation referred to in section 1.2" after "practise an art".

4. Section 9 of the Act is amended by replacing "Commission de reconnaissance des associations d'artistes et des associations de producteurs established by section 43" in paragraph 2 by "Commission des relations du travail".

5. Section 18.1 of the Act is replaced by the following section:

"**18.1.** If an application for recognition for a sector has been filed with the Commission and another association files an application for that sector or part of that sector, the parties may jointly request that the Commission designate a person to facilitate an agreement between them.

Sections 68.3 and 68.4 apply with the necessary modifications."

6. Section 19 of the Act is replaced by the following section:

"**19.** Recognition granted to an association takes effect on the date of the Commission's decision."

7. Section 23 of the Act is replaced by the following section:

"**23.** A withdrawal of recognition takes effect on the date of the Commission's decision."

8. Sections 26.1, 29, 31 to 33, 34 and 35.2 of the Act are amended by replacing "Commission" wherever it occurs by "Minister", with the necessary grammatical modifications.

9. Section 35 of the Act is amended by replacing "with the Commission" in the first paragraph by "with the Minister of Labour".

10. Section 35.1 of the Act is amended by inserting the following paragraph after the first paragraph:

"Section 101 of the Labour Code, including section 129 to which it refers, applies, with the necessary modifications, to arbitration awards made as part of the grievance arbitration procedure."

11. The heading of Chapter IV of the Act is replaced by the following heading:

"FUNCTIONS AND POWERS OF COMMISSION DES RELATIONS DU TRAVAIL".

12. Division I of Chapter IV of the Act, comprising sections 43 to 55 and including its heading, is repealed.

13. The heading of Division II of Chapter IV of the Act is struck out.

14. Section 56 of the Act is replaced by the following section:

"**56.** For the purposes of this Act, the Commission's functions are

(1) to decide any application for recognition submitted by an artists' association or an association of producers; and

(2) to decide whether the membership requirements provided for by the by-laws of recognized associations comply with this Act and whether those requirements are enforced."

15. Section 58 of the Act is amended by adding ", including the status of artist or producer within the meaning of this Act" at the end.

16. The Act is amended by inserting the following section after section 59:

"**59.1.** The Commission may resolve any difficulty arising from the application of the provisions of this Act and those of the Labour Code. To that end the Commission may, among other things, specify the respective scope of a certification and a recognition granted under those provisions, refuse to issue a certification or recognition or, within the scope of its power under paragraph 1 of section 118 of the Code, summarily reject any application made for the principal purpose of circumventing this Act or obtaining another certification or recognition in addition to a previously granted certification or recognition."

17. Section 61 of the Act is repealed.

18. Section 62 of the Act is amended by striking out the second sentence of the first paragraph.

19. Section 63 of the Act is amended by striking out the last paragraph.

20. Section 63.1 of the Act is repealed.

21. Sections 64 to 68 of the Act are replaced by the following sections:

"**64.** The provisions of the Labour Code respecting the Commission des relations du travail, its commissioners and its labour relations officers apply, with the necessary modifications, to any application that lies within the Commission's purview under this Act. Likewise, the provisions of the Code and the regulations that set out rules of procedure, evidence or practice apply to any application the Commission may receive.

"**65.** A copy of every decision made by the Commission under this Act must be sent to the Minister."

22. The Act is amended by inserting the following after section 68:

"**CHAPTER IV.1**

"INQUIRY AND OTHER ADMINISTRATIVE MEASURES

"**68.1.** The Minister may designate any person to inquire into any matter relating to the carrying out of this Act.

Such a person has, for the purposes of the inquiry, the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (chapter C-37), except the power to impose imprisonment.

"**68.2.** The Minister shall draw up, annually, a list of mediators and arbitrators for the purposes of this Act, after consultation with recognized artists' associations and associations of producers.

With the consent of the parties concerned, the Minister may also designate as mediator a conciliation officer or mediator from the Ministère du Travail identified by the Minister of Labour.

"**68.3.** Except with the consent of the parties, nothing that is said or written in the course of a mediation session may be admitted as evidence before a court of justice or before a person or administrative body exercising adjudicative functions.

"**68.4.** Mediators cannot be compelled to divulge, before a court of justice or before a person or administrative body exercising adjudicative functions, information revealed to them or brought to their knowledge in the course of their mediation functions, or to produce documents made or obtained in the course of their mediation functions.

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 the documents of a mediation file."

23. The Act is amended by adding the following schedule at the end:

"SCHEDULE I
(*section 1.2*)

"Audiovisual productions in the fields of film and recording of commercial advertisements

"*film and television productions*" means film and television productions, including pilots, that are to be first marketed for distribution to the public via movie theatres, television, home viewing, Internet viewing or some other means. A film or television production includes an audiovisual production that qualifies as a film within the meaning of this Act and is not an "advertising film" or a "video-clip";

"*advertising film*" means audiovisual commercial advertisements, whatever the medium, that are to be first marketed via television or movie theatres;

"*video-clip*" means

(1) any video-clip, whatever the medium and regardless of how it is to be marketed to the public; and

(2) any total or partial recording of a musical, comedy or variety show, whatever the medium, except a recording that is to be first marketed via movie theatres or television."

AMENDING PROVISIONS

FINANCIAL ADMINISTRATION ACT

24. Schedule 2 to the Financial Administration Act (R.S.Q., chapter A-6.001) is amended by striking out "Commission de reconnaissance des associations d'artistes et des associations de producteurs".

LABOUR CODE

25. The Labour Code (R.S.Q., chapter C-27) is amended by inserting the following after section 152:

"**CHAPTER X.1**

"RESPONSIBILITY

"**152.1.** The Minister of Labour is responsible for the administration of this Code. The Minister's responsibility with regard to the Commission des relations du travail extends to the exercise of the Commission's functions under this Code and under any other Act."

26. Schedule I to the Code is amended by inserting the following paragraphs after paragraph 18:

"(18.1) sections 15, 21 and 23 of the Act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters (chapter S-32.01);

"(18.2) sections 12, 20, 22, 42.5, 56, 57, 58 and 59.1 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists (chapter S-32.1);".

ACT RESPECTING THE GOVERNMENT AND PUBLIC EMPLOYEES RETIREMENT PLAN

27. Schedule I to the Act respecting the Government and Public Employees Retirement Plan (R.S.Q., chapter R-10) is amended by striking out "the Commission de reconnaissance des associations d'artistes et des associations de producteurs".

ACT RESPECTING THE PENSION PLAN OF MANAGEMENT PERSONNEL

28. Schedule II to the Act respecting the Pension Plan of Management Personnel (R.S.Q., chapter R-12.1) is amended by striking out "the Commission de reconnaissance des associations d'artistes et des associations de producteurs".

ACT RESPECTING THE PROFESSIONAL STATUS OF ARTISTS IN THE VISUAL ARTS, ARTS AND CRAFTS AND LITERATURE, AND THEIR CONTRACTS WITH PROMOTERS

29. Section 3 of the Act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters (R.S.Q., chapter S-32.01) is amended by inserting the following definition after the definition of "association":

""Commission" means the Commission des relations du travail established by section 112 of the Labour Code (chapter C-27);".

30. Section 10 of the Act is amended by replacing "Commission de reconnaissance des associations d'artistes et des associations de producteurs, established by section 43 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists (chapter S-32.1)" by "Commission".

31. Section 20 of the Act is replaced by the following section:

"**20.** Recognition granted to an association takes effect on the date of the Commission's decision."

32. Section 24 of the Act is replaced by the following section:

"**24.** A withdrawal of recognition takes effect on the date of the Commission's decision."

33. Section 48 of the Act is amended by replacing "Commission de reconnaissance des associations d'artistes et des association de producteurs" by "Commission".

TRANSITIONAL AND FINAL PROVISIONS

34. For the purposes of the Act respecting the professional status and conditions of engagement of performing, recording and film artists (R.S.Q., chapter S-32.1), and despite any previous decision, in the context of audiovisual productions mentioned in Schedule I to that Act, the appropriate negotiating sectors and the recognized artists' associations are determined, with regard to the occupations referred to in section 1.2 of that Act, by sections 35 and 36, subject to the measures set out in sections 39 to 44.

For the purposes of those provisions,

"AQTIS" means the Alliance québécoise des technicians de l'image et du son;

"ARRQ" means the Association des réalisateurs et réalisatrices du Québec;

"IATSE" means the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada. A reference to IATSE is a reference to local 514 or 667 of the Alliance, in accordance with the respective fields represented by each.

"QDCDGC" means the Québec District Council of the Directors Guild of Canada; and

"sector 1", "sector 2", "sector 3" and "sector 4" are the sectors provided for in the 24 September 2008 agreement between AQTIS and IATSE. The description of sectors 3 and 4 must be read in conjunction with the production budget parameters specified in the 17 September 2008 letters sent to those associations by the Deputy Minister of Culture, Communications and the Status of Women. Excluded from these sectors are audiovisual productions that are "advertising films" and "video-clips" described in Schedule I to the Act respecting the professional status and conditions of engagement of performing, recording and film artists. The definitions and other provisions of that agreement that contribute to clarifying the scope of these sectors and facilitating the identification of their respective spheres of application may not be invoked or used except to those ends.

The agreement and letters were tabled as Sessional Documents Nos. 137-20090401, 138-20090401 and 139-20090401. The Minister of Culture, Communications and the Status of Women may also take the necessary steps to make these documents available to the persons concerned.

35. In the case of audiovisual productions that are film and television productions described in Schedule I to the Act respecting the professional status and conditions of engagement of performing, recording and film artists, the eight negotiating sectors and the recognized artists' associations are as follows:

(1) Negotiating sectors and recognized associations:

(*a*) Sectors 1: Sector 1 — Video (video and other media) and Sector 1— Film:

— ARRQ: director (non-English-language production);

— QDCDGC: director (English-language production), production designer and art director;

— AQTIS:

— the occupations that are deemed under paragraph 2 to be covered by section 1.2 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists, except draftsperson and set designer; and

— the other occupations covered by section 1.2 for the productions of that sector;

(*b*) Sectors 2: Sector 2 — Video (video and other media) and Sector 2 — Film:

— QDCDGC: director (English-language production), 1st assistant director, 2nd assistant director, 3rd assistant director, production designer, art director, assistant art director, art department coordinator, assistant art department coordinator;

— AQTIS: location manager, assistant location manager, location scout manager;

— IATSE:

— the other occupations that are deemed under paragraph 2 to be covered by section 1.2 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists, except draftsperson and set designer; and

— the other occupations covered by section 1.2 for the productions of that sector;

(*c*) Sectors 3: Sector 3 — Video (video and other media) and Sector 3 — Film:

— QDCDGC: director (English-language production), 1st assistant director, 2nd assistant director, 3rd assistant director, production designer, art director, assistant art director;

— AQTIS:

— the other occupations that are deemed under paragraph 2 to be covered by section 1.2 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists, except draftsperson and set designer; and

— the other occupations covered by section 1.2 for the productions of that sector;

(*d*) Sectors 4: Sector 4 — Video (video and other media) and Sector 4 — Film:

— QDCDGC: director (English-language production), 1st assistant director, 2nd assistant director, 3rd assistant director, production designer, art director, assistant art director, art department coordinator, assistant art department coordinator;

— AQTIS: location manager, assistant location manager, location scout manager;

— IATSE:

— the other occupations that are deemed under paragraph 2 to be covered by section 1.2 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists, except draftsperson and set designer; and

— the other occupations covered by section 1.2 for the productions of that sector.

For the purposes of this section, the "Video (video and other media)" and "Film" subdivisions must be understood as consisting of the sectors recognized by the Commission de reconnaissance des associations d'artistes et des associations de producteurs.

(2) Occupations deemed to be covered:

The occupations of set designer and draftsperson, and the occupations that are the subject of the group agreements of 15 October 2001, 1 July 2005 and

17 June 2007, tabled as Sessional Document No. 140-20090401 and to which the Association des producteurs de films et de télévision du Québec is party, are deemed to be covered by section 1.2 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists. The Minister of Culture, Communications and the Status of Women may take the necessary steps to make these documents available.

The tasks and responsibilities entailed by these occupations may continue to vary according to the characteristics of the productions concerned, the nature of the medium or the means of distribution. Since the occupations related to audiovisual productions also vary according to context, the group agreements concerning the various types of audiovisual production may continue to differ in scope without the imposition, under the first paragraph of paragraph 2, of any standard of uniformity or comprehensiveness regarding the occupations concerned.

36. Audiovisual productions that are "advertising films" or "video-clips" as described in Schedule I to the Act respecting the professional status and conditions of engagement of performing, recording and film artists constitute distinct negotiating sectors for the purposes of that Act.

With regard to the occupations covered by section 1.2 of that Act, the following artistic associations are recognized for those sectors:

— ARRQ: director (non-English-language production);

— QDCDGC: director (English-language production), production designer and art director;

— AQTIS: the other occupations covered by section 1.2 of that Act.

Despite the descriptions of occupations in subparagraphs 1 to 4 of the first paragraph of section 1.2 of that Act, the first list of occupations applicable in terms of AQTIS recognition with regard to each type of audiovisual production must be established on the basis of the following lists of occupations, adjusting or removing if necessary those occupations considered unsuitable for such productions:

(1) in the case of "advertising films", the occupations covered by the group agreement of 17 June 2007, which is part of Sessional Document No. 140-20090401; and

(2) in the case of "videoclips", the occupations covered by the agreements of 15 October 2001 and 1 July 2005, which are part of Sessional Document No. 140-20090401.

The second paragraph of paragraph 2 of section 35 applies, with the necessary modifications, to occupations that may be specified by the Commission.

No application may be made to the Commission before 1 July 2010 with a view to further specifying, for the purposes of AQTIS recognition, the other occupations to which the second paragraph refers. At the request of an interested association, the Minister may extend this period, which may not however, by the extensions granted, run beyond 1 January 2011. The Minister advises the associations concerned in writing of the extension granted.

37. At the request of AQTIS or any interested association of producers, the Minister may, so far as an application has not been filed with the Commission, designate a mediator to help the associations concerned clarify the list of occupations applicable for each type of production referred to in section 36. The Minister assumes the expenses of and remunerates such a mediator.

38. A notice of negotiation may be given under section 28 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists without waiting for the expiry of the period provided for in section 36 of this Act, unless the parties are bound by an agreement.

An application for arbitration under section 33 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists can only be filed after the expiry of the period provided for in section 36 of this Act.

For the purposes of section 34 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists, the date of receipt of any notice of negotiation sent during that period is deemed to be the day following the expiry of the period.

39. The recognitions of AQTIS, ARRQ and QDCDGC provided for in this Act must be interpreted so as not to restrict the recognitions respectively held by those associations on 1 July 2009.

Moreover, in accordance with the succession rules set out in section 37 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists, recognitions under this Act do not affect the continued application of any group agreement, or any arbitration award made in lieu of a group agreement, that is binding on one of those associations, nor permit the renegotiation of such an agreement.

40. The recognitions provided for in sections 35 and 36 must be interpreted so as not to impinge on the recognition held by the Association des professionnels des arts de la scène du Québec (APASQ) or any other artists' association recognized under the Act respecting the professional status and conditions of engagement of performing, recording and film artists.

41. No later than 31 July 2009, IATSE must file a certified copy of its by-laws with the Commission des relations du travail.

42. The recognition of a representative artists' association for the occupations of draftsperson and set designer in the context of audiovisual productions described in Schedule I to the Act respecting the professional status and conditions of engagement of performing, recording and film artists is determined in accordance with the provisions of that Act.

43. The sectors of negotiation provided for in sections 35 and 36 apply until the Commission des relations du travail modifies or replaces them; however, those sectors of negotiation may not be modified or replaced before 1 July 2014.

The time period provided for in the first paragraph does not prevent an application being presented to the Commission des relations du travail to review the subdivision of the sectors of negotiation provided for in section 35 in relation to the audiovisual production media, on condition that the application is made jointly by the artists' association recognized for the sector and a concerned association of producers. These parties may, among other things, request that the Commission ratify any agreement made in relation to the subdivision of the sector.

On request or on the Minister's own initiative, the Minister may designate a mediator to facilitate a rapid resolution of a difficulty in interpreting or applying the sectors of negotiation provided for in section 35 with regard to a production. The Minister assumes the expenses of and remunerates such a mediator. The parties are required to attend any meeting to which the mediator convenes them.

44. The recognitions of artists' associations provided for in sections 35 and 36 take effect on 1 July 2009, in particular for the purposes of paragraph 2 of section 14 and the first paragraph of section 37 of the Act respecting the professional status and conditions of engagement of performing, recording and film artists.

Except with regard to negotiations involving the ARRQ, the first negotiations in the negotiation sectors provided for in sections 35 and 36 after the taking effect of a recognition determined by those sections constitute negotiations for a first group agreement within the meaning of the Act respecting the professional status and conditions of engagement of performing, recording and film artists.

45. The vice-president of the Commission de reconnaissance des associations d'artistes et des associations de producteurs becomes, for the unexpired portion of her term, a commissioner of the Commission des relations du travail assigned to the labour relations division. She must, before 30 August 2009, take the oath provided for in section 137.32 of the Labour Code (R.S.Q., chapter C-27).

The new commissioner's term may be renewed in accordance with the procedure provided for in sections 137.19 and 137.20 of the Code.

Section 137.12 of the Code does not apply to the new commissioner, even on subsequent renewal, for as long as she is a commissioner.

The Regulation respecting the remuneration and other conditions of employment of commissioners of the Commission des relations du travail, made by Order in Council 1193-2002 (2002, G.O. 2, 5466), applies to the new commissioner.

46. The term of the part-time member and those of the additional temporary members of the Commission de reconnaissance des associations d'artistes et des associations de producteurs end on 1 July 2009.

A member may, however, under the same conditions, with the authorization of and for the time determined by the president of the Commission des relations du travail, continue in office to conclude cases the member has begun to hear but has not yet decided.

47. The persons who are members of the personnel of the Commission de reconnaissance des associations d'artistes et des associations de producteurs on 30 June 2009 are deemed to have been appointed in accordance with the Public Service Act (R.S.Q., chapter F-3.1.1).

The Conseil du trésor determines their assignment, remuneration and classification and any other conditions of employment applicable to them. This cannot result in a regular salary below that which they received as members of the personnel of the Commission.

48. Matters pending before the Commission de reconnaissance des associations d'artistes et des associations de producteurs on 30 June 2009 are continued before the Commission des relations du travail.

Unless the president of the Commission des relations du travail decides otherwise, such cases are continued by one of the persons who sat on the panel of the Commission de reconnaissance des associations d'artistes et des associations de producteurs that heard the parties.

However, Case No. R-124-08 between the Union des artistes, the Festival international de jazz de Montréal and other parties, pending before the Commission de reconnaissance des associations d'artistes et des associations de producteurs, is to be continued by the panel that began to hear the parties.

With regard to matters the hearing of which began prior to 1 July 2009, and continued before a person other than those who heard the parties, the Commission may, with the parties' consent, rely, as regards oral evidence, on the notes and minutes of the hearing or on the stenographer's notes or the recording of the hearing, if any, subject to a witness being recalled or other

evidence being required if the Commission finds the notes or the recording insufficient. The same applies to matters the hearing of which ended before that date, but for which a decision had not yet been rendered.

49. The Minister of Culture, Communications and the Status of Women is substituted for the Commission de reconnaissance des associations d'artistes et des associations de producteurs, except with regard to the handling of matters pending before the Commission, and acquires its rights and obligations.

50. The records, documents and archives of the Commission de reconnaissance des associations d'artistes et des associations de producteurs become records, documents and archives of the Commission des relations du travail or the Minister of Culture, Communications and the Status of Women, according to the functions conferred on each by this Act.

However, the Minister of Labour becomes the depositary of group agreements and arbitration decisions in lieu of agreements filed with the Commission de reconnaissance des associations d'artistes et des associations de producteurs before 1 July 2009.

51. This Act comes into force on 1 July 2009.

NATIONAL ASSEMBLY

FIRST SESSION THIRTY-NINTH LEGISLATURE

Bill 34
(2009, chapter 29)

An Act to amend various legislative provisions concerning specialized medical centres and medical imaging laboratories

Introduced 24 March 2009
Passed in principle 3 June 2009
Passed 18 June 2009
Assented to 19 June 2009

Québec Official Publisher
2009

EXPLANATORY NOTES

This Act proposes certain adjustments to the legislative provisions applicable to specialized medical centres and medical imaging laboratories.

It amends certain provisions concerning the voting rights attached to the shares of a legal person or the interests in a partnership operating a specialized medical centre or a medical imaging laboratory, provisions concerning the physicians who make up the board of directors or internal management board of such a legal person or partnership and provisions concerning the appointment of the medical director of such a centre or laboratory.

This Act also sets out the responsibilities of the board of directors or internal management board of a legal person or partnership operating a specialized medical centre or a medical imaging laboratory and the obligations of the operator of a specialized medical centre where only physicians who have opted out of the health insurance plan practise.

Moreover, the Act specifies that the specialized medical treatments that can be provided in a specialized medical centre will from now on be determined by the Government. It also specifies the types of medical imaging examinations using diagnostic radiology or magnetic resonance imaging that can be carried out in a medical imaging laboratory. In addition, it sets out the conditions under which a community organization may offer termination of pregnancy services on its premises.

This Act introduces a prohibition against remuneration by the Régie de l'assurance maladie du Québec for insured services provided by a physician in a specialized medical centre or a laboratory operating without a permit or for which the permit has been suspended or cancelled or has not been renewed.

Lastly, this Act contains transitional and consequential provisions.

LEGISLATION AMENDED BY THIS ACT:

– Health Insurance Act (R.S.Q., chapter A-29);

– Act respecting medical laboratories, organ, tissue, gamete and embryo conservation, and the disposal of human bodies (R.S.Q., chapter L-0.2);

– Act respecting health services and social services (R.S.Q., chapter S-4.2);

– Act to amend the Act respecting health services and social services and other legislative provisions (2006, chapter 43).

REGULATIONS AMENDED BY THIS ACT:

– Regulation respecting the application of the Health Insurance Act (R.R.Q., 1981, chapter A-29, r. 1);

– Regulation respecting the specialized medical treatments provided in a specialized medical centre (2008, G.O. 2, 2941).

Bill 34

AN ACT TO AMEND VARIOUS LEGISLATIVE PROVISIONS CONCERNING SPECIALIZED MEDICAL CENTRES AND MEDICAL IMAGING LABORATORIES

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ACT RESPECTING HEALTH SERVICES AND SOCIAL SERVICES

1. Section 333.1 of the Act respecting health services and social services (R.S.Q., chapter S-4.2) is amended by replacing "Minister" in the first, third and fourth paragraphs by "Government".

2. The Act is amended by inserting the following section after section 333.1:

"**333.1.1.** Specialized medical treatment not provided for in a regulation under the first paragraph of section 333.1 may be provided only in an institution operating a hospital centre if general, spinal or limb block, excluding digital block, anaesthesia is used."

3. Section 333.2 of the Act is amended

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

"**333.2.** A physician who is a member of the Collège des médecins du Québec is the only natural person who may operate a specialized medical centre. If the operator of the centre is a legal person or a partnership, more than 50% of the voting rights attached to the shares of the legal person or the interests in the partnership must be held

(1) by physicians who are members of that professional order;

(2) by a legal person or a partnership all of whose voting rights attached to the shares or interests are held

(*a*) by physicians described in subparagraph 1; or

(*b*) by another legal person or partnership all of whose voting rights attached to the shares or interests are held by such physicians; or

(3) both by physicians described in subparagraph 1 and by one or more legal persons or partnerships described in subparagraph 2.";

(2) by replacing the first independent clause of the second paragraph by the following independent clause: "The affairs of a legal person or a partnership that operates a specialized medical centre must be administered by a board of directors or internal management board a majority of whose members are physicians practising in the centre;";

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

"The shareholders of a legal person or the partners in a partnership that operates a specialized medical centre may not enter into an agreement that restricts the power of the directors of the legal person or the partnership."

4. The Act is amended by inserting the following section after section 333.4:

"**333.4.1.** The operator of a specialized medical centre must ensure that the medical services provided in the centre meet generally recognized standards of quality and safety."

5. Section 333.5 of the Act is amended

(1) by replacing "a member of the Collège des médecins du Québec" in the first paragraph by "chosen from among the physicians practising in the centre";

(2) by inserting ", under the authority of the operator," after "The medical director" at the beginning of the second paragraph.

6. Section 333.6 of the Act is amended

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

"**333.6.** The operator of a specialized medical centre described in subparagraph 2 of the first paragraph of section 333.3 must offer persons who have surgery or receive some other specialized medical treatment referred to in section 333.1 in the centre, either directly or through another private resource with which the operator has entered into an agreement and to which the operator refers those persons, all the preoperative and postoperative services normally associated with the surgery or treatment, excluding any services associated with complications, and all the rehabilitation services and home care support services needed for complete recovery. The operator of the centre must also inform a person who wishes to receive such surgery or specialized medical treatment in the centre that the person must also obtain the preoperative, postoperative, rehabilitation and home care support services either in the centre or from another private resource. In addition, the operator of the centre must inform the person of the total foreseeable cost of the preoperative, postoperative, rehabilitation and home care support services that the person must obtain either in the centre or from another private resource.";

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

"The cost of medical services obtained from a private resource under the first or second paragraph may not be assumed by the Régie de l'assurance maladie du Québec."

7. Section 333.7 of the Act is replaced by the following section:

"**333.7.** Only the following medical services may be provided in a specialized medical centre:

(1) medical services necessary for surgery or any other specialized medical treatment referred to in section 333.1 and entered on the permit issued to the operator of the specialized medical centre under section 441;

(2) medical services identified in section 333.6 that are associated with such surgery or such specialized medical treatment; and

(3) medical services corresponding to activities permitted in a private health facility.

The operator of a specialized medical centre must ensure compliance with the first paragraph."

8. The Act is amended by inserting the following section after section 333.7:

"**333.7.1.** Not later than 31 March each year, the operator of a specialized medical centre must send the Minister and the agency in the centre's territory a report on the centre's activities for the preceding calendar year. The report must include the name of the medical director, the name of the general practitioners and the specialists, by specialty, who practised in the centre, the number of specialized medical treatments provided in the centre, by type of treatment entered on the permit, and any other information required by the Minister.

The information provided under the first paragraph must not allow the centre's clientele to be identified."

9. The Act is amended by inserting the following section after section 338:

"**338.1.** Despite any inconsistent provision of this Act or the regulations, a community organization may offer termination of pregnancy services on its premises if it obtains authorization from the Minister.

A community organization seeking that authorization must send its application to the agency so the agency may determine whether the needs in its region justify those services.

After approving the application, the agency shall send it to the Minister, who shall grant the authorization if of the opinion that it is in the public interest.

The authorization is valid until it is revoked.

Sections 333.4, 333.5, 333.8, 446.1 to 450 and 489 apply, with the necessary modifications, to such a community organization, as the operator for the purposes of those sections."

10. Section 440 of the Act is amended

(1) by inserting "the number of operating rooms it can provide," after "the centre is operated," in the second paragraph;

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

"The Minister shall make public the information required under this section."

11. Section 441 of the Act is amended by adding the following paragraph at the end:

"The Minister may not issue a specialized medical centre permit authorizing more than five beds, or issue a permit that would increase the total number of beds within a single facility to more than five."

12. Section 446.1 of the Act is amended by adding the following paragraphs at the end:

"(5) the operator or any of the physicians practising in the specialized medical centre has been convicted of an offence under the fourth or ninth paragraph of section 22 or under section 22.0.0.1 of the Health Insurance Act (chapter A-29), for an act or omission that concerns the centre; or

"(6) the operator fails to maintain control over the operation of the specialized medical centre, for instance if the Minister ascertains that the operator is not the owner or lessee of the centre's facilities, is not the employer of the personnel required for the operation of the centre or does not have the authority required to allow physicians who apply to practise in the centre to do so."

13. Section 449 of the Act is amended by adding the following paragraph at the end:

"If the permit is a specialized medical centre permit, the Minister shall also mention in the notice that the prohibition against remuneration if a permit is suspended, cancelled or not renewed, set out in the first paragraph of section 22.0.0.0.1 of the Health Insurance Act (chapter A-29), applies.

The notice may be sent to the physicians practising in the specialized medical centre concerned. Similarly, a decision by the Minister to suspend, cancel or refuse to renew the permit must state that the prohibition against remuneration applies. The Minister shall send a copy of any such decision without delay to the Régie de l'assurance maladie du Québec, which, upon receiving it, shall inform the physicians practising in the specialized medical centre concerned that the prohibition against their being remunerated applies. An operator whose permit is suspended, cancelled or not renewed must immediately inform the clientele of the specialized medical centre concerned of the fact."

14. Section 489 of the Act is amended by adding ", including, in the case of a specialized medical centre, any document proving that the operator controls the operation of the centre" at the end of subparagraph 2 of the second paragraph.

15. The Act is amended by inserting the following section after section 489.1:

"**489.2.** If, following an inspection, the Minister is informed that a specialized medical centre is being operated without a permit, the Minister shall immediately notify the Régie de l'assurance maladie du Québec in writing for the purposes of the prohibition against remuneration set out in the first paragraph of section 22.0.0.0.1 of the Health Insurance Act (chapter A-29). On receiving the notice, the Régie shall inform the physicians practising in the specialized medical centre concerned that the prohibition against their being remunerated applies."

16. Section 505 of the Act, amended by section 2 of chapter 8 of the statutes of 2008, is again amended by inserting the following paragraph after paragraph 21.1:

"(21.2) determine the other specialized medical treatments that may be provided in a specialized medical centre under section 333.1;".

17. Section 531 of the Act is amended by inserting "section 333.1.1," after "of section 135," in the first paragraph.

18. Section 531.3 of the Act is amended

(1) by inserting ", the first or second paragraph of section 333.6" after "of section 333.5" in the first paragraph;

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

"If the third paragraph of section 333.2 is contravened, each shareholder or partner that is party to the agreement is guilty of an offence and is liable to the penalty prescribed in the first paragraph.";

(3) by replacing "third" in the second paragraph by "fourth".

ACT RESPECTING MEDICAL LABORATORIES, ORGAN, TISSUE, GAMETE AND EMBRYO CONSERVATION, AND THE DISPOSAL OF HUMAN BODIES

19. Section 30.1 of the Act respecting medical laboratories, organ, tissue, gamete and embryo conservation, and the disposal of human bodies (R.S.Q., chapter L-0.2) is amended by inserting "determined by government regulation" after "examinations".

20. Section 30.2 of the Act is amended

(1) by replacing the last two sentences of the first paragraph by the following: "If the physician acts for the benefit of an association, all the members of the association must hold such a certificate. If the physician acts for the benefit of a legal person or a partnership, more than 50% of the voting rights attached to the shares of the legal person or the interests in the partnership must be held

(1) by physicians holding such a certificate;

(2) by a legal person or a partnership all of whose voting rights attached to the shares or interests are held

(*a*) by physicians described in subparagraph 1; or

(*b*) by another legal person or partnership all of whose voting rights attached to the shares or interests are held by such physicians; or

(3) both by physicians described in subparagraph 1 and by one or more legal persons or partnerships described in subparagraph 2.";

(2) by replacing "that includes a majority of physicians who hold a specialist's certificate in diagnostic radiology issued by the Collège des médecins du Québec; such physicians" in the second paragraph by "a majority of whose members are radiologists practising in the laboratory; such radiologists";

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

"The shareholders of a legal person or the partners in a partnership for which a medical imaging laboratory permit is issued may not enter into an agreement that restricts the power of the directors of the legal person or the partnership."

21. The Act is amended by inserting the following section after section 30.4:

"**30.4.1.** The operator of a medical imaging laboratory must ensure that the medical imaging services provided in the laboratory meet generally recognized standards of quality and safety."

22. Section 30.5 of the Act is amended

(1) by replacing "hold a specialist's certificate in diagnostic radiology issued by the Collège des médecins du Québec" in the first paragraph by "be chosen from among the radiologists practising in the laboratory";

(2) by inserting ", under the authority of the operator," after "The medical director" at the beginning of the second paragraph.

23. Section 34 of the Act is amended by adding the following sentence at the end of the second paragraph: "If the application is for a medical imaging laboratory permit, the person shall also mention the types of medical imaging examinations using diagnostic radiology or magnetic resonance imaging that are to be carried out in the laboratory."

24. Section 35 of the Act is amended by adding the following paragraph at the end:

"A medical imaging laboratory permit must also state the types of medical imaging examinations using diagnostic radiology or magnetic resonance imaging that may be carried out in the laboratory."

25. Section 38 of the Act is amended by adding the following paragraph at the end:

"A legal person, partnership or association for which a permit is issued must ensure that the permit holder fulfils the obligations imposed by this Act or the regulations."

26. The Act is amended by inserting the following section after section 39:

"**39.1.** The permit holder must carry on activities in accordance with the permit."

27. Section 40.3.2 of the Act is amended

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

"(*f*) acts for the benefit of a legal person, partnership or association for which a permit is issued who fails to fulfil the obligations imposed by this Act or the regulations.";

(2) by adding the following subparagraph at the end of the second paragraph:

"(3) fails to maintain control over the operation of the laboratory, for instance if the Minister ascertains that the holder or the legal person, partnership or association for whose benefit the holder acts is not the owner

or lessee of the laboratory facilities, is not the employer of the personnel required for the operation of the laboratory or does not have the authority required to allow radiologists who apply to practise in the laboratory to do so.";

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

"If the permit is a laboratory permit, the Minister shall also mention in the notice that the prohibition against remuneration if a permit is suspended, cancelled or not renewed, set out in the second paragraph of section 22.0.0.0.1 of the Health Insurance Act (chapter A-29), applies. The notice may be sent to the physicians practising in the laboratory concerned. Similarly, a decision by the Minister to suspend, cancel or refuse to renew the permit must state that the prohibition against remuneration applies. The Minister shall send a copy of any such decision without delay to the Régie de l'assurance maladie du Québec, which, upon receiving it, shall inform the physicians practising in the laboratory concerned that the prohibition against their being remunerated applies. An operator whose permit is suspended, revoked or not renewed must immediately inform the clientele of the laboratory concerned of the fact."

28. The Act is amended by inserting the following section after section 67:

"**67.1.** If, following an inspection, the Minister is informed that a laboratory is being operated without a permit, the Minister shall immediately notify the Régie de l'assurance maladie du Québec in writing for the purposes of the prohibition against remuneration set out in the second paragraph of section 22.0.0.0.1 of the Health Insurance Act (chapter A-29). On receiving the notice, the Régie shall inform the physicians practising in the laboratory concerned that the prohibition against their being remunerated applies."

HEALTH INSURANCE ACT

29. Section 15.1 of the Health Insurance Act (R.S.Q., chapter A-29) is amended by replacing "determined by the Minister" in the first paragraph by "determined by a regulation made".

30. The Act is amended by inserting the following section after section 22:

"**22.0.0.0.1.** Despite the first paragraph of section 22, a physician is not entitled to be remunerated for an insured service the physician furnished in a specialized medical centre being operated without a permit or whose specialized medical centre permit has been suspended or cancelled or has not been renewed, unless it is a medical service described in subparagraph 3 of the first paragraph of section 333.7 of the Act respecting health services and social services (chapter S-4.2).

The same applies for all insured services furnished by a physician in a laboratory operated without a permit or whose permit has been suspended or cancelled or has not been renewed.

The prohibition against remuneration set out in the first and second paragraphs applies upon receipt by the Board of the copy of the Minister's decision to suspend, cancel or refuse to renew the permit or the Minister's notice informing it that the specialized medical centre or the laboratory is being operated without a permit."

ACT TO AMEND THE ACT RESPECTING HEALTH SERVICES AND SOCIAL SERVICES AND OTHER LEGISLATIVE PROVISIONS

31. Section 55 of the Act to amend the Act respecting health services and social services and other legislative provisions (2006, chapter 43) is repealed.

TRANSITIONAL AND FINAL PROVISIONS

32. A person or partnership that, on 31 December 2007, operated a private health facility in which one of the types of surgery mentioned in section 333.1 of the Act respecting health services and social services (R.S.Q., chapter S-4.2) was performed has until 30 September 2009 to obtain a permit, in accordance with section 441 of that Act, authorizing it to operate a specialized medical centre.

A permit issued to a person or partnership referred to in the first paragraph is valid from 30 September 2009.

33. A community organization within the meaning of section 334 of the Act respecting health services and social services that, on 24 March 2009, offered pregnancy termination services on its premises is deemed to have obtained the authorization required by section 338.1 of the Act respecting health services and social services, enacted by section 9.

34. Despite section 333.3 of the Act respecting health services and social services, a physician subject to an agreement entered into under section 19 of the Health Insurance Act (R.S.Q., chapter A-29) may continue to practise in a specialized medical centre described in subparagraph 2 of the first paragraph of section 333.3 of the Act respecting health services and social services if

(1) the operator of the specialized medical centre obtained a permit on or before 30 September 2009;

(2) on 31 December 2007, the specialized medical centre was a private health facility in which both physicians subject to an agreement entered into under section 19 of the Health Insurance Act and non-participating physicians within the meaning of that Act practised;

(3) the number of non-participating physicians in the specialized medical centre was equal to or greater than the number of physicians subject to an agreement entered into under section 19 of the Health Insurance Act; and

(4) not later than 120 days after the issue of the permit referred to in subparagraph 1, the physician sent the Minister of Health and Social Services an application for recognition in order to be authorized to practise in the specialized medical centre covered by the permit, together with sufficient proof of compliance with the conditions set out in subparagraphs 2 and 3.

After analyzing the application, the Minister grants the recognition requested if all the conditions set out in the first paragraph have been met. The recognition is valid only for a specialized medical centre described in the first paragraph. It belongs exclusively to the physician who applied for it and may in no case be transferred.

The medical services rendered in a specialized medical centre described in the first paragraph by a physician to whom recognition has been granted are deemed, despite any inconsistent provision, to be rendered by a non-participating physician within the meaning of the Health Insurance Act.

35. A physician who, at the time of obtaining recognition under section 34, has also been appointed to practise in a centre operated by an institution must, as of that time and for the duration of any subsequent reappointment, at all times fulfil the obligations attached to the privileges the physician enjoys.

The institution's director of professional services must inform the Minister immediately of any failure to comply with this section on the part of the physician. In such a case, after giving the physician an opportunity to submit observations in writing, the Minister may withdraw the recognition granted.

36. Until the types of medical imaging examinations using diagnostic radiology or magnetic resonance imaging that may be carried out in a medical imaging laboratory are determined by the Government under section 30.1 of the Act respecting medical laboratories, organ, tissue, gamete and embryo conservation, and the disposal of human bodies (R.S.Q., chapter L-0.2), as amended by this Act, those types of examinations are as follows:

(1) magnetic resonance imaging;

(2) mammography;

(3) osteodensitometry;

(4) general radiography;

(5) fixed radioscopy (fixed fluoroscopy);

(6) mobile radioscopy (mobile fluoroscopy); and

(7) tomodensitometry.

37. The holder of a medical imaging laboratory permit issued before 19 June 2009 must, on the renewal of the permit, provide the Minister with proof of the types of medical imaging examinations using diagnostic radiology or magnetic resonance imaging that were carried out in the laboratory on 24 March 2009 that is sufficient for the Minister to enter them on the permit.

38. Section 1 of the Regulation respecting the specialized medical treatments provided in a specialized medical centre, made by Order 2008-08 of the Minister of Health and Social Services (2008, G.O. 2, 2941), is amended by striking out paragraph 3.

39. Section 22 of the Regulation respecting the application of the Health Insurance Act (R.R.Q., 1981, chapter A-29, r. 1) is amended by adding the following subparagraph at the end of paragraph *r*:

"(iii) if it is provided in a laboratory under an agreement entered into with the operator of a specialized medical centre under the first paragraph of section 333.6 of the Act respecting health services and social services (R.S.Q., chapter S-4.2)."

40. The provisions of this Act come into force on 19 June 2009, except paragraph 2 of section 3, paragraph 1 of section 5, paragraph 2 of section 20 and paragraph 1 of section 22, which come into force on 1 January 2010.

NATIONAL ASSEMBLY

FIRST SESSION THIRTY-NINTH LEGISLATURE

Bill 42
(2009, chapter 33)

An Act to amend the Environment Quality Act and other legislative provisions in relation to climate change

Introduced 12 May 2009
Passed in principle 9 June 2009
Passed 18 June 2009
Assented to 19 June 2009

Québec Official Publisher
2009

EXPLANATORY NOTES

The purpose of this Act is to reduce greenhouse gas emissions, which affect the quality of the atmosphere and contribute to global warming and climate change.

Under this Act, the Minister may require that emitters determined by regulation of the Minister report their greenhouse gas emissions for the purposes of a greenhouse gas emissions inventory. The information reported by emitters is to be kept in a public register.

This Act prescribes that the Minister prepare a climate change action plan and submit it to the Government. It also requires the yearly publication by the Minister of a greenhouse gas emissions inventory and of a report on the measures implemented to reduce greenhouse gas emissions and to fight climate change.

This Act provides that the Government is to set greenhouse gas reduction targets using 1990 emissions as the baseline.

It also contains various provisions allowing the Government to put in place, by regulation, all the mechanisms required to implement a cap-and-trade system.

In addition, it requires that certain emitters cover their greenhouse gas emissions with an equivalent number of emission allowances, whether emission units, offset credits or early reduction credits, which may be traded and banked under the cap-and-trade system. Caps on the number of emission units the Minister may grant are to be set by the Government.

This Act contains various other provisions relating to the management and operation of the cap-and-trade system—including delegation of its management to a third party—and to its harmonization and integration with similar systems implemented by other authorities.

Lastly, this Act provides that sums collected under the new provisions are to be used to finance various climate change measures.

LEGISLATION AMENDED BY THIS ACT:

– Environment Quality Act (R.S.Q., chapter Q-2);

– Act respecting the Régie de l'énergie (R.S.Q., chapter R-6.01).

Bill 42

AN ACT TO AMEND THE ENVIRONMENT QUALITY ACT AND OTHER LEGISLATIVE PROVISIONS IN RELATION TO CLIMATE CHANGE

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The Environment Quality Act (R.S.Q., chapter Q-2) is amended by inserting the following before section 47:

"§1. — *Climate change action plan and cap-and-trade system*

"**46.1.** This subdivision applies to a person or municipality (the "emitter") who carries on or operates a business, facility or establishment that emits greenhouse gases, who distributes a product whose production or use entails the emission of greenhouse gases or who is considered to be such an emitter by regulation of the Government or, for the purposes of section 46.2, by regulation of the Minister.

The term "greenhouse gas" means carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulphur hexafluoride (SF_6) or any other gas determined by regulation of the Government or, for the purposes of section 46.2, by regulation of the Minister.

"**46.2.** So that an inventory of greenhouse gas emissions may be taken and updated or so that measures aimed at reducing those emissions may be implemented, every emitter determined by regulation of the Minister must, subject to the conditions, within the time and at the intervals determined by regulation of the Minister,

(1) report greenhouse gas emissions to the Minister, whether they are attributable to the carrying on or operation of the emitter's business, facility or establishment or to the production or use of a product distributed by the emitter;

(2) provide the Minister with any information or documents required by regulation of the Minister to determine the emissions referred to in subparagraph 1, which information and documents may vary according to the class of business, facility or establishment, the processes used and the type of greenhouse gas emitted; and

(3) pay the fee determined by regulation of the Minister for registration in the register maintained under the third paragraph.

A regulation made under this section is preceded by the publication of a draft regulation in the *Gazette officielle du Québec* for the purposes of a 60-day consultation.

The Minister maintains a public register of greenhouse gas emissions containing such information as the nature and reported quantity of each emitter's emissions.

"**46.3.** The Minister prepares a multiyear climate change action plan, including measures aimed at reducing greenhouse gas emissions, and submits it to the Government. The Minister is responsible for the implementation and coordination of the action plan.

"**46.4.** To fight global warming and climate change, the Government sets, by order, an overall greenhouse gas reduction target for Québec for each period it determines, using 1990 emissions as the baseline.

The Government may break that target down into specific reduction or limitation targets for the sectors of activity it determines.

When setting targets, the Government considers such factors as

(1) the characteristics of greenhouse gases;

(2) advances in climate change science and technology;

(3) the economic, social and environmental consequences of climate change, and the likely impact of the emission reductions or limitations needed to achieve the targets; and

(4) emission reduction goals under any program, policy or strategy to fight global warming and climate change or under any Canadian intergovernmental agreement or international agreement made for that purpose.

Target-setting under this section is subject to special consultations by the competent parliamentary committee of the National Assembly.

An order 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 order.

"**46.5.** A cap-and-trade system is established by this subdivision to contribute to the achievement of the targets set under section 46.4 and mitigate the cost of reducing or limiting greenhouse gas emissions.

"**46.6.** Every emitter determined by regulation of the Government must, subject to the conditions and for each period determined by regulation of the Government, cover its greenhouse gas emissions with an equivalent number of emission allowances.

Emission allowances include emission units, offset credits, early reduction credits and any other emission allowance determined by regulation of the Government, each being equal to one metric ton of greenhouse gas expressed in CO_2 equivalents.

"**46.7.** In light of the targets set under section 46.4, the Government, by order, sets a cap on the emission units that may be granted by the Minister for each period referred to in the first paragraph of section 46.6.

The Government may break the cap down into specific caps for the sectors of activity or classes of businesses, facilities or establishments it determines.

The Government publishes in the *Gazette officielle du Québec* a notice of the caps it intends to set, stating that the order may not be made before 60 days have elapsed after publication of the notice and that interested persons may, during that 60-day period, send comments to the person specified in the notice.

An order 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 order.

"**46.8.** Subject to the conditions determined by regulation of the Government, the Minister may grant

(1) the available emission units, either by allocating them without charge to emitters required to cover their greenhouse gas emissions, or by selling them at auction or by agreement to persons or municipalities determined by regulation of the Government;

(2) offset credits to emitters who have reduced their greenhouse gas emissions or to persons or municipalities who avoid causing emissions or who capture, store or eliminate greenhouse gases in the course of activities and during a period determined by regulation of the Government;

(3) early reduction credits to emitters who are required to cover their greenhouse gas emissions and have voluntarily, during a period determined by regulation of the Government, reduced their emissions before the date on which they were legally required to cover them; and

(4) any other type of emission allowance determined by regulation of the Government.

After each allocation of emission units without charge, the Minister publishes in the *Gazette officielle du Québec* a list of the emitters required to cover their greenhouse gas emissions and the number of emission units allocated to each of them.

"**46.9.** Emission allowances may be traded between the persons or municipalities determined by regulation of the Government subject to the conditions determined by regulation of the Government.

Emission allowances not used to cover greenhouse gas emissions by the end of a prescribed period may, subject to the conditions determined by regulation of the Government, be banked for use or trade during a later period.

"**46.10.** Any emitter who ceases to carry on or operate a business, facility or establishment must, subject to the conditions determined by regulation of the Government, surrender to the Minister the emission units allocated without charge to the emitter that are not needed to cover the emitter's emissions.

"**46.11.** To provide for emission allowance accounting and tracking, the Minister maintains a public register of emission allowances containing the names of the holders of emission allowances, the number and type of emission allowances credited to their respective accounts and any other information determined by regulation of the Government.

"**46.12.** The Minister may suspend, withdraw or cancel any emission allowance granted by the Minister

(1) if the emission allowance was granted, traded or used to cover emissions on the basis of false or inaccurate information;

(2) if this subdivision or a regulation of the Government under this subdivision has been contravened; or

(3) for any other reason determined by regulation of the Government.

However, the emitter concerned must be given prior notice of the Minister's decision, including reasons, and at least 10 days to submit observations.

"**46.13.** The Minister may, by regulation, delegate the administration of all or part of a regulation made under section 46.2 or the management of the register of greenhouse gas emissions established under that section to a person or a body.

The Government may, by regulation, delegate all or part of the cap-and-trade system established by this subdivision or the administration of all or part of a regulation of the Government concerning that system to a person or a body.

"**46.14.** The Minister may, in accordance with the Act respecting the Ministère des Relations internationales (chapter M-25.1.1) or the Act respecting the Ministère du Conseil exécutif (chapter M-30), enter into an agreement with a government other than that of Québec, with a department of such a government, with an international organization or with an agency of such a government or organization for the harmonization and integration of cap-and-trade systems.

Such an agreement may provide for

(1) the reciprocal recognition of the emission allowances granted under the different cap-and-trade systems and how they correspond to each other;

(2) the consolidation of registers; and

(3) the mutual recognition of decisions made by the competent authorities regarding the suspension, withdrawal or cancellation of emission allowances.

The Government may, by regulation, take the necessary measures to give effect to an agreement entered into under this section.

"**46.15.** The Government may, by regulation,

(1) specify what information or documents a person or municipality acquiring or trading emission allowances must provide to the Minister for emission allowance accounting and tracking purposes;

(2) prescribe administrative, monetary or other penalties for acts or omissions in contravention of this subdivision or of a regulation of the Government under this subdivision;

(3) determine the fees payable by an emitter or another person or municipality for an entry in the register of emission allowances and on being granted offset credits or early reduction credits, and the interest and penalties payable if a fee is not paid; and

(4) define any term or expression used in this subdivision.

"**46.16.** All sums collected under this subdivision or regulations under this subdivision and all greenhouse gas emission charges collected in accordance with a regulation under subparagraph *e*.1 of the first paragraph of section 31 are paid into the Green Fund in accordance with section 15.4 of the Act respecting the Ministère du Développement durable, de l'Environnement et des Parcs (chapter M-30.001) and are to be used to finance greenhouse gas reduction, limitation or avoidance measures, the mitigation of the economic and social impact of emission reduction efforts, public awareness campaigns and adaptation to global warming and climate change, or to finance the development of and Québec's participation in related regional and international partnerships.

"**46.17.** The Minister submits a report to the Government on the achievement of the greenhouse gas reduction targets set under section 46.4 not later than two years after the end of the period for which the targets were set.

In addition, not later than 31 July each year, the Minister submits a report to the Government on the use of the sums paid into the Green Fund under section 46.16.

"**46.18.** Every year, the Minister publishes

(1) the greenhouse gas emissions inventory for the year that occurs two years before the year of publication; and

(2) an exhaustive and, if applicable, quantitative report on the measures implemented to reduce greenhouse gas emissions and to fight climate change.

"§2. — *Other depollution measures*".

2. Section 96 of the Act, amended by section 23 of chapter 21 of the statutes of 2009, is again amended by inserting "refuses to grant emission allowances under subdivision 1 of Division VI, disallows the use of such emission allowances to cover greenhouse gas emissions, suspends, withdraws or cancels such allowances or imposes any other penalty under that subdivision," after "section 32.5 or 35," in the second paragraph.

3. The heading of Chapter VI.3 of the Act respecting the Régie de l'énergie (R.S.Q., chapter R-6.01) is amended by replacing "ADAPT TO" by "FIGHT".

4. Section 85.35 of the Act is replaced by the following section:

"**85.35.** The Government, for the period and subject to the conditions it determines, sets the overall financial investment toward reducing greenhouse gas emissions and fighting climate change that is to be funded by the distributors referred to in section 85.33."

5. Section 85.36 of the Act is amended by replacing "objectives" in the portion before paragraph 1 by "greenhouse gas reduction targets set under section 46.4 of the Environment Quality Act (chapter Q-2)".

6. Section 85.38 of the Act is amended by adding ", to be used for the purposes set out in section 46.16 of the Environment Quality Act (chapter Q-2)" at the end of the second paragraph.

7. Section 85.39 of the Act is amended by striking out "on the achievement of the objectives set, and".

8. The climate change action plan entitled *Québec and Climate Change: A Challenge for the Future*, established under section 11 of the Act respecting the Ministère du Développement durable, de l'Environnement et des Parcs

(R.S.Q., chapter M-30.001) and approved by Orders in Council 543-2006 (2006, G.O. 2, 2941, in French only) and 1079-2007 (2007, G.O. 2, 5921, in French only), is deemed to have been established under section 46.3 of the Environment Quality Act (R.S.Q., chapter Q-2), enacted by section 1.

9. The greenhouse gas emission reduction objective set by Order in Council 407-2007 (2007, G.O. 2, 2286, in French only) under section 85.35 of the Act respecting the Régie de l'énergie (R.S.Q., chapter R-6.01) is deemed to be a target set under the first paragraph of section 46.4 of the Environment Quality Act (R.S.Q., chapter Q-2) enacted by section 1.

10. The provisions of this Act come into force on the date or dates to be set by the Government, except sections 46.1 to 46.4 and section 46.18 of the Environment Quality Act, enacted by section 1, and sections 3 to 5, 7, 8 and 9, which come into force on 19 June 2009.

NATIONAL ASSEMBLY

FIRST SESSION THIRTY-NINTH LEGISLATURE

Bill 43
(2009, chapter 34)

Tobacco-related Damages and Health Care Costs Recovery Act

Introduced 14 May 2009
Passed in principle 11 June 2009
Passed 18 June 2009
Assented to 19 June 2009

Québec Official Publisher
2009

EXPLANATORY NOTES

The purpose of this Act is to establish special rules for the recovery of tobacco-related health care costs attributable to a wrong committed by one or more tobacco product manufacturers. It also seeks to make some of those rules applicable to the recovery of damages for a tobacco-related injury.

More specifically, the Act confirms the Government's right to recover directly from tobacco product manufacturers the health care costs assumed by the Government or by a government body and caused or contributed to by a wrong committed by those tobacco product manufacturers, including a failure in their obligation to inform the public about the risks and dangers posed by tobacco products.

The Act also modifies how the right of recovery may be exercised, allowing the Government to bring an action on a collective basis to recover the costs incurred for all health care recipients stemming from exposure to tobacco products of one or more types, or on an individual basis to recover the part of the costs incurred for certain particular recipients of similar health care. With respect to those two types of actions, the Act introduces certain modifications to the ordinary rules of civil liability otherwise applicable.

Consequently, and aside from the inherent characteristics of collective or individual actions, the Act provides that statistical data or data derived from epidemiological, sociological or any other relevant studies will be admissible as evidence in such actions, for instance to establish causation between the wrong committed by a defendant and the health care costs whose recovery is being sought or between exposure to a tobacco product and the disease suffered by the health care recipients, or to determine the health care costs being sought. In the case of an action brought on a collective basis, the Act also sets out specific rules with respect to the elements of proof required to find a defendant liable, as well as the means by which the amount of the health care costs for which the defendant is held liable may be reduced or the defendant's share of responsibility for the cost may be adjusted, and establishes the conditions for finding two or more defendants solidarily liable. In the case of an action taken on an individual basis, the Act also sets out rules for

apportioning liability among two or more defendants that are parties to the action, including the factors the court may consider in apportioning liability.

Under the Act, the special rules for an action brought by the Government on an individual basis are applicable to an action brought by a person or the person's heirs or other successors to recover damages for a tobacco-related injury caused or contributed to by a wrong committed in Québec by a tobacco product manufacturer, as well as to a class action based on the recovery of damages for such injury.

Lastly, the Act introduces special rules, common to all or some of the actions described in the Act, to complement the other new rules or to ensure that they are applied in keeping with the object of the Act. Some of those rules have to do with the right of a defendant to bring a recursory action against one or more of its co-defendants, demanding that they pay their share of the health care costs or damages the defendant is required to pay in addition to its share. Other rules provide that an action, including a class action, commenced before or within three years after the date the provisions come into force may not be dismissed on the ground that the right to recover the health care costs or damages is prescribed; the rules also authorize an action that may have been dismissed on that ground in the past to be revived under certain conditions. Other rules in the Act not only grant the Government regulatory power to take any measure necessary or useful for their application, but also give the provisions of the Act all the retroactive effect necessary to ensure their full application, in particular to enable the Government to exercise its right to recover tobacco-related health care costs regardless of when the tobacco-related wrong was committed.

Bill 43

TOBACCO-RELATED DAMAGES AND HEALTH CARE COSTS RECOVERY ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

PURPOSE AND DEFINITIONS

1. The purpose of this Act is to establish specific rules for the recovery of tobacco-related health care costs attributable to a wrong committed by one or more tobacco product manufacturers, in particular to allow the recovery of those costs regardless of when the wrong was committed.

It also seeks to make certain of those rules applicable to the recovery of damages for an injury attributable to a wrong committed by one or more of those manufacturers.

2. For the purposes of this Act, "tobacco product manufacturer" means any group of persons or assets, whatever its legal form, that manufactures or manufactured, or causes or caused another group to manufacture, tobacco, a tobacco derivative or a product containing tobacco.

The following groups of persons or assets are considered tobacco product manufacturers:

(1) a group that, during the course of a fiscal year, derives or derived 10% or more of its revenues, calculated on a consolidated basis in accordance with accounting principles generally accepted in Canada, from research on, or the manufacture, marketing or promotion of, tobacco products by itself or by another group;

(2) a group that engages or engaged, or causes or caused another group to engage, in research on or the marketing or promotion of tobacco products; and

(3) a group that is or was a trade association whose principal activity consists or consisted in promoting the interests of tobacco product manufacturers, or engaging, or causing another group to engage, in research on or the marketing or promotion of tobacco products.

The manufacture of a tobacco product includes the production, assembly and packaging of the product.

3. A group of persons or assets means, among other things, a joint stock company or other legal person, a partnership, an association without a legal personality, a trust and a foundation whose assets constitute a patrimony by appropriation.

It also means a joint venture, that is, a group of persons whose relationship does not constitute a legal person or a partnership and in which each person has an undivided interest in assets of the group.

4. Despite section 2, a group whose tobacco-related activity is limited to acting or having acted as a wholesaler or retailer of tobacco products is considered a tobacco product manufacturer only if it is or was related to a group that manufactures or manufactured, or causes or caused another group to manufacture, tobacco products.

Similarly, a group whose tobacco-related activity is limited to deriving or having derived revenues from research on, or the manufacture, marketing or promotion of, tobacco products, or to engaging or having engaged, or causing or having caused another group to engage, in research on or the marketing or promotion of tobacco products is considered a tobacco product manufacturer only if

(1) it is or was related to a group that manufactures or manufactured, or causes or caused another group to manufacture, tobacco products; or

(2) it is or was related to a group that is or was a trade association whose principal activity consists or consisted in promoting the interests of tobacco product manufacturers, or in engaging, or causing another group to engage, in research on or the marketing or promotion of tobacco products.

5. A group is considered to be related to another group if

(1) it belongs to the same group as the other group; or

(2) it is an affiliate of the other group or an affiliate of an affiliate of that group.

6. Two groups are considered to be members of the same group if one is an affiliate of the other, both are affiliates of the same group or both are controlled by the same group or natural person.

A group is considered to be controlled by another group or a natural person when

(1) voting securities of the group representing over 50% of the votes required to elect its directors are held, otherwise than solely as security, by or on behalf of that other group or that person; and

(2) the number of votes carried by those securities is sufficient to elect a majority of the directors of the group.

7. A group is considered to be an affiliate of another group if

(1) it is a joint-stock company and if the other group, or a group of groups not dealing with each other at arm's length of which the other group is a member, holds an interest in shares of the company

(*a*) carrying at least 50% of the votes required to elect the directors of the company and a sufficient number of votes to elect a director of the company;

(*b*) having a fair market value, including a premium for control, if applicable, of at least 50% of the fair market value of all the issued and outstanding shares of the company;

(2) it is a partnership, trust or joint venture and the other group, or a group of groups not dealing with each other at arm's length of which the other group is a member, has an interest in the assets of the partnership, trust or joint venture that entitles it to receive at least 50% of the profits or at least 50% of the assets on the dissolution, winding up or termination of the partnership, trust or joint venture; or

(3) the other group, or a group of groups not dealing with each other at arm's length of which the other group is a member, has direct or indirect influence that, if exercised, would result in de facto control of the group, except if the other group deals at arm's length with that group and derives influence solely as a lender.

For the purposes of this section, "not dealing at arm's length" has the meaning assigned to it in the Taxation Act (R.S.Q., chapter I-3).

8. Health care is tobacco-related when the disease or general deterioration of health warranting it, or the risk of the disease or deterioration, is caused or contributed to by the health care recipient's exposure to a tobacco product by contact, ingestion, inhalation or assimilation, including exposure to smoke or another by-product of the use, consumption or combustion of the tobacco product.

CHAPTER II

RECOVERY OF TOBACCO-RELATED HEALTH CARE COSTS

DIVISION I

GENERAL CONDITIONS FOR RIGHT OF RECOVERY

9. The Government has the right to recover directly, from one or more tobacco product manufacturers, tobacco-related health care costs caused or contributed to by a wrong committed by a tobacco product manufacturer, in

particular, failure to inform the public of the risks and dangers posed by tobacco products.

This right is not a subrogated right. It belongs to the Government in its own right, and exists even if health care recipients or other persons have received damages for injury caused or contributed to by a wrong committed by a tobacco product manufacturer.

10. The health care costs the Government is entitled to recover from tobacco product manufacturers under this Act are the sum of

(1) the present value of the total expenditure by the Government or by government bodies for tobacco-related health care; and

(2) the present value of the estimated total expenditure by the Government or by government bodies for tobacco-related health care that it could reasonably expect would have to be provided by the Government or a government body.

11. The cost of tobacco-related health care includes the cost of medical services, health services and other health and social services, including pharmaceutical services and drugs, the Government or a government body covers under, in particular, the Hospital Insurance Act (R.S.Q., chapter A-28), the Health Insurance Act (R.S.Q., chapter A-29), the Act respecting prescription drug insurance (R.S.Q., chapter A-29.01), the Act respecting health services and social services (R.S.Q., chapter S-4.2) and the Act respecting health services and social services for Cree Native persons (R.S.Q., chapter S-5).

The cost of tobacco-related health care also includes the cost of any type of program and service established or insured by the Government or a government body to deal with a disease or a general deterioration of health associated with tobacco, including programs and services to educate the public about the risks and dangers posed by tobacco products or to fight tobacco addiction.

DIVISION II

EXERCISING RIGHT OF RECOVERY

§1. — *General provisions*

12. When exercising the right to recover tobacco-related health care costs under this Act, the Government may bring an action on a collective basis to recover the costs incurred for all recipients of health care required following exposure to one or more types of tobacco product, or on an individual basis, to recover the costs incurred for certain particular recipients of that health care.

Each of the following products, as well as any combination of those products, constitutes a type of tobacco product: cigarettes, cigars, cigarillos, cigarette tobacco, pipe tobacco, chewing tobacco, nasal snuff, oral snuff and any other form of tobacco prescribed by regulation.

§2. — *Special provisions for an action brought on a collective basis*

13. If the Government brings an action on a collective basis, it is not required to identify particular health care recipients individually or prove the cause of the disease suffered by, or the general deterioration of health of, a particular health care recipient or the portion of the health care costs incurred for such a recipient.

Moreover, no one may be compelled in such an action

(1) to answer questions on the health of, or the health care provided to, particular health care recipients; or

(2) to produce the medical records and documents of, or the documents related to health care provided to, particular health care recipients, except as provided by a law or a rule of law, practice or procedure that requires the production of documents relied on by an expert witness.

14. Despite the second paragraph of section 13, the court may, at the request of a defendant, order the production of statistically meaningful samples of records and documents concerning, or relating to health care provided to, particular health care recipients.

In that case, the court determines conditions for the sampling and for the communication of information contained in the samples, specifying, among other things, what kind of information may be disclosed.

The identity of, or identifying information with respect to, the particular health care recipients concerned by the court order may not be disclosed. Moreover, no record or document concerning, or relating to health care provided to, particular health care recipients may be produced under the order unless any information they contain that reveals or may be used to trace the identity of the recipients has been deleted or blanked out.

15. In an action brought on a collective basis, proof of causation between alleged facts, in particular between the defendant's wrong or failure and the health care costs whose recovery is being sought, or between exposure to a tobacco product and the disease suffered by, or the general deterioration of health of, the recipients of that health care, may be established on the sole basis of statistical information or information derived from epidemiological, sociological or any other relevant studies, including information derived from a sampling.

The same applies to proof of the health care costs whose recovery is being sought in such an action.

16. For a defendant who is a party to an action brought on a collective basis to be held liable, the Government must prove, with respect to a type of tobacco product involved in the action, that

(1) the defendant failed in the duty to abide by the rules of conduct, to which the defendant is bound in the circumstances and according to usage or law, in respect of persons in Québec who have been or might become exposed to the type of tobacco product;

(2) exposure to the type of tobacco product may cause or contribute to a disease or the general deterioration of a person's health; and

(3) the type of tobacco product manufactured by the defendant was offered for sale in Québec during all or part of the period of the failure.

17. If the Government establishes the elements of proof required under section 16, the court presumes

(1) that the persons who were exposed to the type of tobacco product manufactured by the defendant would not have been exposed had the defendant not failed in its duty; and

(2) that the exposure to the type of tobacco product manufactured by the defendant caused or contributed to the disease or general deterioration of health, or the risk of disease or general deterioration of health, of a number of persons who were exposed to that type of product.

18. When the presumptions set out in section 17 apply, the court sets the cost of all the health care required following exposure to the category of tobacco products involved in the action and provided after the date of the defendant's first failure.

Each defendant to whom the presumptions apply is liable for the costs in proportion to its market share in the type of product involved. That share, determined by the court, is equal to the relation between

(1) the quantity of tobacco products of the type involved in the action that were manufactured by the defendant and that were sold in Québec between the date of the defendant's first failure and the date of the action; and

(2) the total quantity of tobacco products of the type involved in the action that were manufactured by all the manufacturers of those products and that were sold in Québec between the date of the defendant's first failure and the date of the action.

19. The court may reduce the amount of the health care costs for which a defendant is liable or adjust among the defendants their share of responsibility for the health care costs if one of the defendants proves either that its failure did not cause or contribute to the exposure of the persons in Québec who were exposed to the type of product involved in the action, or that its failure did not cause or contribute to the disease suffered by, or the general deterioration of health of, a number of those persons, or cause or contribute to the risk of such a disease or such deterioration.

20. Defendants who are parties to an action brought on a collective basis are solidarily liable for the health care costs set by the court

(1) if the failure to abide by the rules of conduct to which the defendants are bound in respect of the persons in Québec who have been or might become exposed to a type of tobacco product involved in the action is common to all of them; or

(2) if, because of the common failure, at least one of the defendants is found liable for the health care costs set by the court.

21. Failure to abide by the rules of conduct to which they are bound in respect of the persons in Québec who have been or might become exposed to a type of tobacco product, is deemed to be a common failure committed by two or more tobacco product manufacturers, whether or not the manufacturers are defendants in the action, if

(1) at least one of those manufacturers is held to have failed in its duty to abide by the rules of conduct; and

(2) the manufacturers would be held under a law or a rule of law to have conspired, acted in concert or acted as each other's representatives with respect to the failure, or to be solidarily, even vicariously, liable for the injury caused or contributed to by the failure in a civil action that awarded damages for the injury.

§3. — *Special provisions for an action brought on an individual basis*

22. If it is not possible to determine which defendant in an action brought on an individual basis caused or contributed to the exposure to a type of tobacco product of particular health care recipients who suffered from a disease or a general deterioration of health resulting from the exposure, but because of a failure in a duty imposed on them, one or more of the defendants also caused or contributed to the risk for people of contracting a disease or experiencing a general deterioration of health by exposing them to the type of tobacco product involved, the court may find each of those defendants liable for health care costs incurred, in proportion to its share of liability for the risk.

23. In apportioning liability under section 22, the court may consider any factor it considers relevant, including

(1) the length of time a defendant engaged in the conduct that caused or contributed to the risk;

(2) a defendant's market share in the type of tobacco product that caused or contributed to the risk;

(3) the degree of toxicity of the substances in the type of tobacco product manufactured by a defendant;

(4) the sums spent by a defendant on research, marketing or promotion with respect to the type of tobacco product that caused or contributed to the risk;

(5) the degree to which a defendant collaborated or participated with other manufacturers in any conduct that caused, contributed to or aggravated the risk;

(6) the extent to which a defendant conducted tests and studies to determine the health risk resulting from exposure to the type of tobacco product involved;

(7) the extent to which a defendant assumed a leadership role in the manufacture of the type of tobacco product involved;

(8) the efforts a defendant made to warn the public about the health risks resulting from exposure to the type of tobacco product involved, and the concrete measures the defendant took to reduce those risks; and

(9) the extent to which a defendant continued manufacturing, marketing or promoting the type of tobacco product involved after it knew or ought to have known of the health risks resulting from exposure to that type of tobacco product.

24. The provisions of section 15 that relate to the establishment of causation between alleged facts and to proof of health care costs are applicable to actions brought on an individual basis.

CHAPTER III

RECOVERY OF TOBACCO-RELATED DAMAGES

25. Despite any incompatible provision, the rules of Chapter II relating to actions brought on an individual basis apply, with the necessary modifications, to an action brought by a person or the person's heirs or other successors for recovery of damages for any tobacco-related injury, including any health care costs, caused or contributed to by a tobacco-related wrong committed in Québec by one or more tobacco product manufacturers.

Those rules also apply to any class action based on the recovery of damages for the injury.

CHAPTER IV

RECURSORY ACTIONS, PRESCRIPTION AND REGULATIONS

DIVISION I

RECURSORY ACTIONS

26. Unless found liable under section 22, a defendant that is required to pay health care costs or damages for injury following a judgment in an action under this Act may demand from the other defendants found liable in the same action their respective shares in those costs or damages, whether or not the defendant has paid all or only a part of its share in those costs or damages.

In that case, the court apportions liability among the defendants and determines each defendant's contribution, considering, if the court deems it relevant, the factors listed in section 23.

DIVISION II

PRESCRIPTION

27. An action, including a class action, to recover tobacco-related health care costs or damages for tobacco-related injury may not be dismissed on the ground that the right of recovery is prescribed, if it is in progress on 19 juin 2009 or brought within three years following that date.

Actions dismissed on that ground before 19 juin 2009 may be revived within three years following that date.

DIVISION III

REGULATIONS

28. In addition to the regulatory power conferred on it by section 12, the Government may, by regulation, take any measure necessary or useful for carrying out this Act and fully achieving its purposes.

CHAPTER V

FINAL PROVISIONS

29. The Minister of Health and Social Services is responsible for the administration of this Act.

30. This Act may not be interpreted as preventing rules similar to those provided in the Act with respect to an action brought by the Government on a collective basis from being applied in a class action brought to recover damages for tobacco-related injuries.

31. This Act has the retroactive effect necessary to ensure its full application, in particular to enable the Government to exercise its right to recover tobacco-related health care costs regardless of when the tobacco-related wrong was committed.

32. This Act comes into force on 19 June 2009.

NATIONAL ASSEMBLY

FIRST SESSION THIRTY-NINTH LEGISLATURE

Bill 46
(2009, chapter 35)

An Act to amend the Professional Code and other legislative provisions

Introduced 13 May 2009
Passed in principle 2 June 2009
Passed 16 June 2009
Assented to 19 June 2009

Québec Official Publisher
2009

EXPLANATORY NOTES

This Act amends the Professional Code and other legislative provisions in order to facilitate the administration of Québec's professional system.

In that perspective, this Act amends certain rules relating to designations of professional orders and reserved titles. It also makes adjustments to rules concerning the professional disciplinary process, penal provisions and professional practice within a limited liability partnership or a joint-stock company.

This Act amends the rules relating to certain activities. Among other things, it expressly gives to chartered accountants, and to certified general accountants and certified management accountants whether or not they hold a public accountancy permit, the exclusive right to perform a compilation engagement that is not exclusively for internal management purposes; in addition, it forbids optometrists from having an interest in an undertaking for the manufacture or sale of eyeglass frames, medications or other products pertaining to the practice of optometry.

Lastly, this Act contains provisions relating to the administration of professional orders as well as provisions to ensure the harmonization, consistency and concordance of certain provisions of the Professional Code with the provisions of statutes constituting professional orders.

LEGISLATION AMENDED BY THIS ACT:

– Architects Act (R.S.Q., chapter A-21);

– Land Surveyors Act (R.S.Q., chapter A-23);

– Act respecting the Barreau du Québec (R.S.Q., chapter B-1);

– Professional Chemists Act (R.S.Q., chapter C-15);

– Professional Code (R.S.Q., chapter C-26);

– Chartered Accountants Act (R.S.Q., chapter C-48);

– Dental Act (R.S.Q., chapter D-3);

– Nurses Act (R.S.Q., chapter I-8);

– Engineers Act (R.S.Q., chapter I-9);

– Medical Act (R.S.Q., chapter M-9);

– Notaries Act (R.S.Q., chapter N-3);

– Optometry Act (R.S.Q., chapter O-7);

– Pharmacy Act (R.S.Q., chapter P-10);

– Midwives Act (R.S.Q., chapter S-0.1);

– Radiology Technologists Act (R.S.Q., chapter T-5).

Bill 46

AN ACT TO AMEND THE PROFESSIONAL CODE AND OTHER LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 32 of the Professional Code (R.S.Q., chapter C-26) is amended by replacing "radiology technologist" in the first paragraph by "medical imaging technologist or radiation oncology technologist".

2. Section 36 of the Code is amended

(1) by replacing "licenciés" in subparagraph *b* of the first paragraph by "accrédités";

(2) by replacing "Ordre professionnel des travailleurs sociaux du Québec" in subparagraph *d* of the first paragraph by "Ordre professionnel des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec" ;

(3) by inserting ", "Speech-Language Pathologist"" after ""Speech Therapist"" and ", speech-language pathologist" after "speech therapist" in subparagraph *m* of the first paragraph;

(4) by replacing subparagraph *n* of the first paragraph by the following subparagraph:

"(*n*) use the title "Physiotherapist", "Physical Therapist", "Physical Rehabilitation Therapist", "Physiotherapy Therapist", "Physical Rehabilitation Technician" or "Physiotherapy Technician", the abbreviation "pht" or the initials "P.T." or "P.R.T.", or any other title, abbreviation or initials which may lead to the belief that he is one, unless he holds a valid permit for that purpose and is entered on the roll of the Ordre professionnel de la physiothérapie du Québec;";

(5) by replacing "or "I.A.L." or" in subparagraph *p* of the first paragraph by ", "I.A.L.", "L.P.N.",";

(6) by inserting "or "Licensed Practical Nurse"" after ""Nursing Assistant"" in subparagraph *p* of the first paragraph.

3. Section 37 of the Code is amended

(1) by replacing "licenciés" in paragraph *b* by "accrédités";

(2) by replacing "Ordre professionnel des travailleurs sociaux du Québec" in paragraph *d* by "Ordre professionnel des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec".

4. Section 70 of the Code is amended by replacing the second paragraph by the following paragraph:

"Each ballot shall contain a blank space for voting purposes to the right of the name of each candidate."

5. Section 71 of the Code, amended by sections 1 and 42 of chapter 11 of the statutes of 2008, is again amended by replacing the second paragraph by the following paragraph:

"They shall cast their vote by marking the ballot paper within one or more of the blank spaces provided for that purpose, according to whether there are one or more candidates to be elected."

6. Section 74 of the Code, amended by section 1 of chapter 11 of the statutes of 2008, is again amended by inserting the following paragraphs after the first paragraph:

"Any ballot paper marked within one or more of the blank spaces provided for that purpose shall be considered valid.

However, the secretary of the order shall reject a ballot paper if it

(1) was not certified by the secretary of the order;

(2) is not marked;

(3) is marked for more candidates than there are to elect;

(4) is marked for a person who is not a candidate;

(5) is marked outside the space provided for voting purposes;

(6) bears a fanciful or injurious marking; or

(7) bears a mark by which the elector can be identified.

No ballot paper may be rejected for the sole reason that the mark extends beyond the space provided for voting purposes or that the space is not completely filled in."

7. Section 108.8 of the Code is amended by adding the following subparagraph after subparagraph 2 of the first paragraph:

"(3) the following information concerning a person who, pursuant to a regulation under paragraph *h* of section 94 or under an Act constituting a professional order, carries on professional activities as part of a period of professional training determined pursuant to a regulation under paragraph *i* of section 94 or as part of a program of study leading to a diploma giving access to a permit or a specialist's certificate:

(*a*) the person's name;

(*b*) the person's sex;

(*c*) information concerning the place where the person carries on professional activities;

(*d*) the professional activities the person is authorized to carry on;

(*e*) the dates on which the person starts and ceases to carry on professional activities; and

(*f*) any penalties imposed on the person by the board of directors pursuant to a regulation under paragraph *i* of section 94."

8. Section 112 of the Code, replaced by section 77 of chapter 11 of the statutes of 2008, is amended

(1) by inserting "by the committee" after "appointed" in the third paragraph;

(2) by replacing "as determined" in the third paragraph by "as may be determined".

9. Section 118 of the Code, amended by section 82 of chapter 11 of the statutes of 2008, is again amended by replacing the third and fourth paragraphs by the following paragraphs:

"The Government shall designate a replacement chair from among the persons who can act as substitute chairs but are not chairs of a council.

The replacement chair shall exercise the functions of a disciplinary council chair if the latter is unable to act. The replacement chair shall enter into office as soon as the Office notes the inability to act and shall remain in office until the Office notes the end of the inability to act or the Government designates a new chair.

The replacement chair shall also exercise the powers provided for in the third paragraph of section 118.3."

10. Section 118.3 of the Code, amended by sections 1 and 83 of chapter 11 of the statutes of 2008, is again amended by adding the following paragraphs at the end:

"Where a chair or substitute chair continues to hear a complaint pursuant to the first paragraph, the decision on a conviction and, if applicable, the decision on a penalty, must be rendered within six months from the time the chair or substitute chair is replaced. Failure to observe that time limit shall not cause the matter to be withdrawn from the former chair or substitute chair.

However, the replacement chair may, at the request of one of the parties, extend the time limit on specified conditions or remove the matter from the former chair or substitute chair if the decision is not rendered within the time allowed. The replacement chair must take the circumstances and the interest of the parties into account.

The request must be filed with the secretary of the disciplinary council concerned. It must be served in accordance with the Code of Civil Procedure on the council members who are seized of the complaint.

Where a chair or substitute chair is no longer seized of a complaint, a new division shall be formed without delay to hear it.

The replacement chair may not hear a complaint with respect to which he has made a decision under this section."

11. Section 133 of the Code, amended by sections 1 and 101 of chapter 11 of the statutes of 2008, is again amended by replacing "hearing and" in the first paragraph by "beginning of the hearing. The hearing must begin".

12. Section 134 of the Code, amended by section 102 of chapter 11 of the statutes of 2008, is again amended by replacing "is to be enclosed" in the third paragraph by "may be enclosed".

13. Sections 143.1 and 143.2 of the Code, amended by sections 1 and 213 of chapter 11 of the statutes of 2008, are again amended by inserting "or substitute chair" after "chair" wherever it appears and section 143.2 only is amended by replacing "the chair's" by "their".

14. Section 143.3 of the Code, amended by sections 1 and 213 of chapter 11 of the statutes of 2008, is again amended by adding "or substitute chair" after "chair".

15. Section 143.4 of the Code, amended by sections 1 and 213 of chapter 11 of the statutes of 2008, is again amended by inserting "or substitute chair" after "chair" wherever it appears.

16. Section 151 of the Code, amended by sections 1 and 213 of chapter 11 of the statutes of 2008, is again amended by inserting "or substitute chair" after "chair" in the third paragraph.

17. Section 164 of the Code, amended by sections 1, 118 and 213 of chapter 11 of the statutes of 2008, is again amended

(1) by replacing "or its chair" in subparagraph 2 of the first paragraph by "or its chair, substitute chair or replacement chair";

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

"The parties other than the appellant must file a written appearance at the office of the Court of Québec within 10 days of receipt of the motion for appeal or the motion for leave to appeal, as the case may be.";

(3) by replacing "fourth" in subparagraphs *a* and *b* of the last paragraph by "fifth".

18. Section 182.1 of the Code, amended by sections 1 and 129 of chapter 11 of the statutes of 2008, is again amended by replacing "Sections 163," in the second paragraph by "Section 163, the fourth paragraph of section 164, sections".

19. Section 182.2 of the Code, amended by section 2 of chapter 42 of the statutes of 2007 and by sections 1 and 130 of chapter 11 of the statutes of 2008, is again amended by striking out ", in particular," wherever it appears.

20. Section 182.4 of the Code is amended by adding the following paragraph:

"The only documents to be included in the factum filed by a party are the documents and extracts from the evidence that are necessary to determine the questions at issue under the rules of the Professions Tribunal."

21. Section 187.10.1 of the Code, enacted by section 3 of chapter 42 of the statutes of 2007, is amended

(1) by inserting "ou d'auditrice" after "le titre d'auditeur" in the first paragraph in the French text;

(2) by adding the following sentence at the end of the first paragraph: "However, a member of the Ordre professionnel des comptables généraux accrédités du Québec or the Ordre professionnel des comptables en management accrédités du Québec may, without holding such a permit, perform a compilation engagement that is not exclusively for internal management purposes.";

(3) by inserting ", with the exception of compilation engagements that are not exclusively for internal management purposes," after "who practise public accountancy" in the second paragraph;

(4) by adding "ou d'auditrice" at the end of the second paragraph in the French text.

22. Section 187.10.2 of the Code, enacted by section 3 of chapter 42 of the statutes of 2007 and amended by section 1 of chapter 11 of the statutes of 2008, is again amended by inserting ", with the exception of compilation engagements that are not exclusively for internal management purposes," after "who practises public accountancy" in the second paragraph.

23. The Code is amended by inserting the following section after section 187.10.2:

"**187.10.2.1.** The boards of directors of the Ordre professionnel des comptables agréés du Québec, the Ordre professionnel des comptables généraux accrédités du Québec and the Ordre professionnel des comptables en management accrédités du Québec shall each determine, by regulation, the conditions applicable to the use of the title of auditor."

24. Section 187.10.4 of the Code, enacted by section 3 of chapter 42 of the statutes of 2007 and amended by section 1 of chapter 11 of the statutes of 2008, is again amended by replacing "or to the standards for receiving or holding a permit" by ", to the standards for receiving or holding a permit or to the conditions applicable to the use of the title of auditor".

25. The Code is amended by inserting the following section after section 189:

"**189.0.1.** Penal proceedings for the unlawful practice of a profession, unlawful engagement in a professional activity reserved to members of an order in the case of an order referred to in section 39.2, or unauthorized use of a title reserved for members of an order are prescribed one year after the date on which the prosecutor becomes aware of the commission of the offence.

However, no proceedings may be brought if more than five years have elapsed since the commission of the offence.

A certificate from the secretary of an order attesting the date on which the order became aware of the commission of the offence constitutes, in the absence of any evidence to the contrary, sufficient proof of that fact."

26. Section 196.2 of the Code, amended by section 143 of chapter 11 of the statutes of 2008, is again amended by inserting the following sentence after the first sentence in the third paragraph: "Any surplus or deficit expected by the Office for a fiscal year may also be taken into account in whole or in part."

27. Schedule I to the Code is amended

(1) by replacing "radiologie" in paragraph 15 by "imagerie médicale et en radio-oncologie";

(2) by replacing "licenciés" in paragraph 23 by "accrédités";

(3) by replacing "Ordre professionnel des travailleurs sociaux du Québec" in paragraph 25 by "Ordre professionnel des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec".

ARCHITECTS ACT

28. The heading of Division IV of the Architects Act (R.S.Q., chapter A-21) is amended by striking out "TEMPORARY".

LAND SURVEYORS ACT

29. Section 52 of the Land Surveyors Act (R.S.Q., chapter A-23) is amended by inserting ", the name of the partnership or company within which he carries on professional activities" after "land surveyor".

30. Section 56 of the Act, amended by section 212 of chapter 11 of the statutes of 2008, is again amended by adding the following sentence at the end of subsection 2: "Sections 95.2 and 95.3 of the Professional Code apply to such a regulation."

31. Section 57 of the Act, amended by section 212 of chapter 11 of the statutes of 2008, is again amended

(1) by inserting "or shareholders" after "members" in subsection 2;

(2) by inserting "or shareholders" after "members" in subsection 4.

ACT RESPECTING THE BARREAU DU QUÉBEC

32. Section 5 of the Act respecting the Barreau du Québec (R.S.Q., chapter B-1) is amended by replacing "The Bar of Hull" in subsection 3 by "The Bar of the Outaouais".

33. Section 10 of the Act, amended by section 212 of chapter 11 of the statutes of 2008, is again amended by replacing "Hull" in subsection 3 by "the Outaouais".

34. Section 11 of the Act, amended by section 212 of chapter 11 of the statutes of 2008, is again amended by replacing "examining committee" in subsection 1 by "committee for access to the profession".

35. Section 15 of the Act, amended by sections 162 and 212 of chapter 11 of the statutes of 2008, is again amended by striking out paragraph *o* of subsection 1.

36. Section 22.1 of the Act, amended by sections 164 and 212 of chapter 11 of the statutes of 2008, is replaced by the following section:

"**22.1.** The executive committee may delegate to an applications committee the exercise of its powers under sections 48, 70, 71, 72 and 122 of this Act and the exercise of the powers of the General Council under sections 55.1 to 55.3 and 161 of the Professional Code (chapter C-26).

The applications committee consists of at least 25 members appointed by the General Council and of the members of the executive committee and the outgoing members having sat on the executive committee during the two preceding years. The members of the applications committee may not be members of the disciplinary council.

The applications committee may sit in divisions consisting of three members, including a chair. The executive committee shall designate the chair of the division from among its members or the outgoing members having sat on the executive committee during the two preceding years. The other two members are designated by the Bâtonnier of the Province of Québec or, on failure of the Bâtonnier, by the executive committee.

The executive committee shall determine the operating rules applicable to the examination of applications that may be referred to the applications committee."

37. Section 44 of the Act, amended by section 167 of chapter 11 of the statutes of 2008, is again amended by replacing "and *i*" by ", *i* and *o*".

38. Section 45 of the Act is amended by replacing subsection 1 by the following subsection:

"**45.** (1) The General Council shall establish the committee for access to the profession and appoint its members, including the chair. The committee shall be composed of at least 10 members. The committee may sit in divisions consisting of three members, including the chair or a member designated by the chair to chair the division. The other two members are designated by the chair of the committee. The members of the committee may not be members of the disciplinary council."

39. Section 46 of the Act is amended by replacing "examining committee" by "committee for access to the profession".

40. Section 48 of the Act, amended by section 212 of chapter 11 of the statutes of 2008, is again amended by inserting "or the decisions of a committee referred to in section 44 for the purposes of a regulation under paragraph *o* of section 94 of the Professional Code" after "training".

41. Section 75 of the Act is amended by striking out subsection 4.

42. Section 131 of the Act, amended by section 174 of chapter 11 of the statutes of 2008, is again amended by inserting the following subsection after subsection 2:

"(2.1) An advocate shall communicate the content of a will or codicil to a testator or a person authorized by the testator. On proof of the testator's death, the advocate shall communicate the content of the will, in whole or in part, to a person who proves that he is a representative, heir or successor of the testator, the liquidator of the succession, a beneficiary of life insurance or of a death benefit, or the person having parental authority even if the minor child is deceased."

43. Section 142 of the Act is amended by replacing "examining committee contemplated in section 45 and to its members" by "the applications committee, a committee referred to in section 44, the committee for access to the profession and the members of those committees".

44. Schedule I to the Act is amended by replacing "Hull" in the *Sections* column by "Outaouais".

PROFESSIONAL CHEMISTS ACT

45. Sections 12 to 15 of the Professional Chemists Act (R.S.Q., chapter C-15) are repealed.

CHARTERED ACCOUNTANTS ACT

46. Section 19 of the Chartered Accountants Act (R.S.Q., chapter C-48), amended by section 4 of chapter 42 of the statutes of 2007, is again amended by adding the following paragraph:

"(3) performing a compilation engagement that is not exclusively for internal management purposes."

47. Section 25 of the Act is amended

(1) by replacing "or by" by ", by";

(2) by adding ", or by a partnership within which members are authorized to carry on professional activities in accordance with Chapter VI.3 of the Professional Code (chapter C-26)" at the end.

48. Sections 30 to 40 of the Act are repealed.

DENTAL ACT

49. Section 30 of the Dental Act (R.S.Q., chapter D-3), amended by section 212 of chapter 11 of the statutes of 2008, is again amended by striking out ", but shall not exceed one year, except with the authorization of the Government, when the public interest so requires".

50. Section 38 of the Act is amended by adding ", provided they perform them under the conditions prescribed in the regulation" at the end of subparagraph *c* of the second paragraph.

NURSES ACT

51. Section 11 of the Nurses Act (R.S.Q., chapter I-8), amended by section 212 of chapter 11 of the statutes of 2008, is again amended by replacing "students in nursing" in subparagraph *e* of the first paragraph by "holders of a registration certificate".

52. Section 12 of the Act, amended by section 212 of chapter 11 of the statutes of 2008, is again amended by striking out "to a student in nursing".

53. Section 33 of the Act is amended by striking out "of a student in nursing".

54. Section 34 of the Act is amended

(1) by replacing "high school leaving certificate" in paragraph *a* by "secondary school diploma";

(2) by adding the following paragraphs:

"Every person who serves a training period pursuant to a regulation under paragraph *c* of section 93 of the Professional Code (chapter C-26) or whose diploma or training has been recognized as equivalent by the Order and who has fulfilled the conditions and formalities determined by regulation under section 12 is also entitled to a registration certificate.

The persons described in the first and second paragraphs must be registered before they may engage in professional activities authorized under a regulation under paragraph *h* of section 94 of the Professional Code."

55. Section 38 of the Act is amended by striking out the second paragraph.

ENGINEERS ACT

56. Section 26 of the Engineers Act (R.S.Q., chapter I-9) is amended

(1) by replacing "pas" in the second paragraph in the French text by "ni";

(2) by adding ", nor shall it apply to partnerships or companies within which members of the Ordre des ingénieurs du Québec are authorized to carry on professional activities in accordance with Chapter VI.3 of the Professional Code (chapter C-26)" at the end of the second paragraph.

MEDICAL ACT

57. Section 34 of the Medical Act (R.S.Q., chapter M-9), amended by section 212 of chapter 11 of the statutes of 2008, is again amended by striking out ", but shall not exceed one year, except with the authorization of the Government, when the public interest so requires".

58. Section 43 of the Act is amended by adding ", provided they engage in them under the conditions prescribed in the regulation" at the end of subparagraph *f* of the second paragraph.

NOTARIES ACT

59. Section 6 of the Notaries Act (R.S.Q., chapter N-3), amended by sections 200 and 212 of chapter 11 of the statutes of 2008, is again amended

(1) by replacing "the power to decide applications under" in subparagraph 4 of the first paragraph by "the powers conferred on the executive committee under";

(2) by replacing "power is" by "powers are" in subparagraph 4 of the first paragraph.

60. Section 9 of the Act, amended by section 212 of chapter 11 of the statutes of 2008, is again amended by adding the following sentence at the end of the first paragraph: "The quorum consists of four members."

61. Section 12 of the Act, amended by sections 201 and 212 of chapter 11 of the statutes of 2008, is again amended

(1) by inserting ", the outcome, whether passage or failure, of such training," after "professional training" in the first paragraph;

(2) by replacing the third and fourth paragraphs by the following paragraphs:

"The executive committee shall exercise the powers provided for in sections 45 to 45.3, 46.0.1, 48 to 56, 159 and 161 of the Professional Code (chapter C-26). Chapter VIII of the Code applies to the executive committee and its members, to the secretary of the Order and, if applicable, to the committee to which the powers referred to in this section are delegated pursuant to subparagraph 4 of the first paragraph of section 6, and its members and secretary.

The executive committee has the powers needed to carry out its mandate; it may, in particular, by summons signed by a member of the executive committee, the secretary of the Order or, if applicable, a member or the secretary of the committee to which powers are delegated pursuant to subparagraph 4 of the first paragraph of section 6, exercise the powers of the

Superior Court to compel a candidate or any other person to appear, to answer under oath or to produce any information or document. The Code of Civil Procedure applies, with the necessary modifications, for the purposes of this paragraph."

62. Section 13 of the Act, amended by section 212 of chapter 11 of the statutes of 2008, is again amended by replacing "applicant" by "person concerned".

63. Section 28 of the Act is amended

(1) by inserting "an incompatibility under section 27 or" after "informed of" in the first paragraph;

(2) by adding the following sentence at the end of the first paragraph: "The secretary shall immediately notify the notary concerned."

64. Section 37 of the Act is amended by inserting "si" after the first occurrence of "ou" in the French text.

OPTOMETRY ACT

65. Section 20 of the Optometry Act (R.S.Q., chapter O-7) is amended by inserting ", eyeglass frames, medications or other products pertaining to the exercise of optometry" after "lenses".

PHARMACY ACT

66. Section 18 of the Pharmacy Act (R.S.Q., chapter P-10) is amended by replacing "circumstances" in the second paragraph by "cases".

67. Section 37 of the Act is amended by replacing "the circumstances of time and place in which" in paragraph *b* by "the cases in which and the conditions on which".

MIDWIVES ACT

68. Sections 52 to 56 of the Midwives Act (R.S.Q., chapter S-0.1) are repealed.

RADIOLOGY TECHNOLOGISTS ACT

69. The title of the Radiology Technologists Act (R.S.Q., chapter T-5) is replaced by "Act respecting medical imaging technologists and radiation oncology technologists".

70. Section 1 of the Act, amended by section 212 of chapter 11 of the statutes of 2008, is again amended

(1) by replacing "radiologie" in paragraph *a* by "imagerie médicale et en radio-oncologie";

(2) by replacing ""radiology technologist" in paragraph *c* by ""medical imaging technologist", "radiation oncology technologist"".

71. The heading of Division II of the Act is amended by replacing "RADIOLOGIE" by "IMAGERIE MÉDICALE ET EN RADIO-ONCOLOGIE".

72. Section 2 of the Act is amended by replacing "radiology technologist" by "medical imaging technologist or radiation oncology technologist" and by replacing both occurrences of "radiologie" by "imagerie médicale et en radio-oncologie".

73. Section 7 of the Act is amended by replacing "radiology technologists" in the second paragraph by "medical imaging technologists and radiation oncology technologists".

74. Section 11 of the Act is amended

(1) by replacing "radiology technologist" in the first paragraph by "medical imaging technologist or radiation oncology technologist";

(2) by replacing "Radiology technologists" in the second paragraph by "Medical imaging technologists and radiation oncology technologists".

75. Section 12 of the Act is amended by replacing "radiology technologist" in the first paragraph by "medical imaging technologist or radiation oncology technologist".

TRANSITIONAL AND FINAL PROVISIONS

76. In any Act, regulation, by-law, order, proclamation, resolution, letters patent, contract or other document, "Ordre professionnel des comptables généraux licenciés du Québec" and "Ordre des comptables généraux licenciés du Québec" are replaced, respectively, by "Ordre professionnel des comptables généraux accrédités du Québec" and "Ordre des comptables généraux accrédités du Québec", and in the French text of any regulation or by-law made under the Professional Code (R.S.Q., chapter C-26), "comptable général licencié" is replaced, with the necessary modifications, by "comptable général accrédité".

77. In any Act, regulation, by-law, order, proclamation, resolution, letters patent, contract or other document, "Ordre professionnel des technologues en radiologie du Québec" and "Ordre des technologues en radiologie du Québec" are replaced, respectively, by "Ordre professionnel des technologues en imagerie médicale et en radio-oncologie du Québec" and "Ordre des technologues en imagerie médicale et en radio-oncologie du Québec", and in

any regulation or by-law made under the Professional Code, "radiology technologist" is replaced, with the necessary modifications, by "medical imaging technologist or radiation oncology technologist".

78. In any Act, regulation, by-law, order, proclamation, resolution, letters patent, contract or other document, "Ordre professionnel des travailleurs sociaux du Québec" and "Ordre des travailleurs sociaux du Québec" are replaced, respectively, by "Ordre professionnel des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec" and "Ordre des travailleurs sociaux et des thérapeutes conjugaux et familiaux du Québec".

79. In any Act, regulation, by-law, order, proclamation, resolution, letters patent, contract or other document, "Bar of Hull" is replaced by "Bar of the Outaouais".

80. Sections 30 to 40 of the Chartered Accountants Act (R.S.Q., chapter C-48), as they read on 18 June 2009, remain applicable to the persons to whom they applied on that date.

81. Despite section 12 of the Dental Act (R.S.Q, chapter D-3), the term of the president of the Ordre des dentistes du Québec in office on 19 June 2009 is five years.

82. This Act comes into force on 19 June 2009, except sections 19 and 20, which come into force on the date to be set by the Government.

NATIONAL ASSEMBLY

FIRST SESSION THIRTY-NINTH LEGISLATURE

Bill 51
(2009, chapter 36)

An Act respecting the representation of certain home childcare providers and the negotiation process for their group agreements, and amending various legislative provisions

Introduced 13 May 2009
Passed in principle 9 June 2009
Passed 18 June 2009
Assented to 19 June 2009

Québec Official Publisher
2009

EXPLANATORY NOTES

This Act establishes a system for the representation of certain home childcare providers to whom the Educational Childcare Act applies, and the negotiation process for their group agreements.

This Act prescribes the rules and conditions that must be met so that the Commission des relations du travail may grant recognition to an association to represent home childcare providers in dealings with the Minister. To this end, it stipulates that recognition is granted according to the territories determined under the Educational Childcare Act.

This Act sets out a procedure for the recognition of home childcare providers associations, along with the implications for recognized associations, such as the power to negotiate group agreements for its members and the obligation to uphold their rights.

It defines the subject matter that may be included in a group agreement, the procedures to be followed by the Minister and the association in negotiating an agreement and the applicable mediation and dispute-settlement mechanisms. In certain cases it provides for rights of recourse to the Commission des relations du travail, or to an arbitrator according to the procedure determined by the parties in the agreement. It also contains penal provisions.

This Act gives the Government the power to establish, by regulation, a protective re-assignment plan for home childcare providers, and to determine its conditions and mechanics as well as how it is to be funded and managed. The plan is to be administered by the Commission de la santé et de la sécurité du travail.

This Act amends the Educational Childcare Act to specify the composition of the board of directors of a non-profit body, other than the holder of a childcare centre permit, that may be accredited as a home childcare coordinating office. It specifies the functions of a coordinating office, and introduces a liability-exemption clause applicable to coordinating offices and their directors and employees acting in good faith in the performance of their duties.

It specifies that a home childcare provider is an own-account self-employed worker when providing childcare services under a contract with parents.

This Act defines the obligations of a subsidized childcare provider as to the provision of services and the parental contribution set by regulation. It also sets out the powers of the Minister to determine, in the subsidy agreement, conditions with respect to the mandatory service agreement between the provider of the childcare and the parent whose child occupies a subsidized childcare space, as well as the terms and amount of any additional contribution that may be requested for goods or services determined by regulation or by the subsidy agreement.

Lastly, it contains consequential and transitional measures.

LEGISLATION AMENDED BY THIS ACT:

– Labour Code (R.S.Q., chapter C-27);

– Taxation Act (R.S.Q., chapter I-3);

– Educational Childcare Act (R.S.Q., chapter S-4.1.1).

REGULATION AMENDED BY THIS ACT:

– Educational Childcare Regulation (Order in Council 582-2006, 2006, G.O. 2, 2161).

Bill 51

AN ACT RESPECTING THE REPRESENTATION OF CERTAIN HOME CHILDCARE PROVIDERS AND THE NEGOTIATION PROCESS FOR THEIR GROUP AGREEMENTS, AND AMENDING VARIOUS LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

SCOPE

1. This Act applies to home childcare providers whose operation is subsidized under the Educational Childcare Act (R.S.Q., chapter S-4.1.1) and to the associations that represent them.

This Act does not apply to the persons home childcare providers hire to assist or replace them.

CHAPTER II

RIGHT OF ASSOCIATION

DIVISION I

RECOGNITION OF A HOME CHILDCARE PROVIDERS ASSOCIATION

2. A home childcare provider has the right to belong to the home childcare providers association of that person's choice and to participate in the formation, activities and management of such an association.

3. A home childcare providers association is entitled to recognition by the Commission des relations du travail established by section 112 of the Labour Code (R.S.Q., chapter C-27) if

(1) it is a professional syndicate within the meaning of the Professional Syndicates Act (R.S.Q., chapter S-40) or an association whose object is similar to that of such a syndicate;

(2) it meets the conditions set out in this Act as to the representation of home childcare providers operating in a given territory; and

(3) it meets the other conditions set out in this Act.

For the purposes of this Act, "territory" refers to a territory assigned under section 44 of the Educational Childcare Act.

4. An association of home childcare providers may only be recognized if its by-laws

(1) provide for the right of its members to participate in meetings and to vote;

(2) require that its financial statements be disclosed to its members each year and that copies be given free of charge to any member who requests them; and

(3) require that any election to an office within the association be by secret ballot of its members.

5. No person may use intimidation or threats to induce someone to become a member, refrain from becoming a member or cease to be a member of a home childcare providers association.

6. No person may, in any manner, seek to dominate or hinder the formation or activities of a home childcare providers association.

7. A complaint relating to section 5 or 6 must be filed with the Commission within 30 days after the alleged contravention comes to light.

8. An application for recognition of a home childcare providers association is made in the form of a written document addressed to the Commission, and must be sent together with duly dated membership forms. On receipt of the application, the Commission sends a copy to the Minister along with any information it considers appropriate.

The application must specify the territory concerned, be authorized by a resolution of the association and be signed by representatives specially mandated for that purpose.

Within 20 days after receiving a copy of the application, the Minister sends to the Commission and the association a list of the names and contact information of all home childcare providers operating in the territory for which recognition has been requested.

The Commission may, by any means it considers appropriate, make a copy of the application available to the public for consultation.

9. An application for recognition must be accompanied by up-to-date documents evidencing the establishment of the association, a certified copy of its by-laws and a list of its members.

To be considered a member of an association, a home childcare provider must, on or before the date on which the application for recognition is filed,

(1) maintain a home childcare operation in the territory covered by the application;

(2) have signed, and not revoked, a duly dated membership form; and

(3) have personally paid the initiation fee, set by the association, within the 12 months preceding the date on which the association's application for recognition is filed.

10. Recognition for a given territory may be applied for

(1) at any time with regard to home childcare providers who are without a recognized association;

(2) 12 months after the date on which an association was recognized, if a group agreement has not been reached and provided no dispute is under arbitration, and no lawful concerted action or action in response to lawful concerted action has been taken;

(3) nine months after the date on which a group agreement expired, if a subsequent agreement has not been reached and provided no dispute is under arbitration and no concerted action has been taken;

(4) from the ninetieth to the sixtieth day prior to the date of expiry or renewal of a group agreement whose term is three years or less;

(5) from the one hundred and eightieth to the one hundred and fiftieth day prior to the date of expiry or renewal of a group agreement whose term is more than three years and, where such term so allows, during the period extending from the one hundred and eightieth to the one hundred and fiftieth day prior to the sixth anniversary of the signing or renewal of the group agreement and every second anniversary thereafter, except where such a period would end within 12 months of the one hundred and eightieth day prior to the date of expiry or renewal of the group agreement.

11. The filing of an application for recognition for a territory in which the home childcare providers are without a recognized association renders inadmissible any other application filed after the date of the first filing.

For the purposes of the first paragraph, an application is deemed to have been filed on the day it is received by one of the offices of the Commission.

12. If an application for recognition is rejected by the Commission or withdrawn, no further application may be filed for a period of three months except in the case of an application inadmissible under section 11.

13. The Commission grants recognition if it is satisfied that the membership of the applicant association comprises an absolute majority of the home childcare providers operating in the territory and that the other conditions set out in this Act have been met.

If between 35% and 50% of the home childcare providers operating in the territory are members of the association, the Commission holds a secret ballot to ensure that the association is truly representative. The Commission grants recognition to the association if it obtains an absolute majority of the votes of the home childcare providers operating in the territory and meet the other conditions set out in this Act.

14. If two or more associations seek recognition for the same territory and the membership of one of them comprises an absolute majority of the home childcare providers operating in the territory, the Commission grants recognition to that association provided it meets the other conditions set out in this Act.

If none of the associations meet the requirements of the first paragraph, but at least one of them has a membership comprising between 35% and 50% of the home childcare providers operating in the territory, the Commission holds a secret ballot to determine the extent to which the associations are representative.

Only the association or associations whose membership comprises at least 35% of the home childcare providers operating in the territory and the association recognized for the territory, if any, are to appear on the ballot. The Commission grants recognition to the association that obtains the most votes provided the home childcare providers who participated in the vote constitute an absolute majority of the home childcare providers operating in the territory and the other conditions set out in this Act are met.

15. The Commission makes its decision within 60 days of receiving an application and notifies the applicant; a copy of the decision is sent to the Minister.

If granted, recognition takes effect on the date of notification.

16. The Commission may not grant recognition to an association if it is established to the Commission's satisfaction that section 5 or 6 has been contravened by that association.

The Commission may, on its own initiative, investigate any alleged contravention of either of those sections, and when ruling on an application for recognition, the Commission may, of its own motion, invoke non-compliance.

17. A person's membership in a home childcare providers association may not be revealed by anyone during recognition or recognition revocation proceedings, except to the Commission, a member of its personnel, or the judge of a court to which an action under Title VI of Book V of the Code of Civil Procedure (R.S.Q., chapter C-25) relating to a certification is referred. These persons and any other person who becomes aware of a person's membership in such an association are bound to secrecy.

18. A recognized home childcare providers association represents all the home childcare providers operating in a given territory. It has the following rights and powers:

(1) to defend and promote the economic, social, moral and professional interests of home childcare providers;

(2) to cooperate with any organization pursuing similar interests;

(3) to research or study any subject likely to have an impact on the economic and social situation of home childcare providers;

(4) to set the amount of dues payable by home childcare providers; and

(5) to negotiate and sign a group agreement in accordance with this Act.

19. A recognized home childcare providers association notifies the Minister in writing of the amount it has set as dues.

Within 30 days after receiving such notification, the Minister withholds these dues from the subsidies payable to home childcare providers, whether or not they are members of the association, and remits the dues to the association each month.

20. A recognized home childcare providers association must not act in bad faith or in an arbitrary or discriminatory manner, or exhibit serious negligence towards any home childcare providers, whether or not they are members of the association.

21. A home childcare provider who believes that an association has contravened section 20 may lodge a complaint with the Commission within six months after the occurrence of the alleged contravention.

If the Commission is of the opinion that the association has contravened section 20, it may authorize the home childcare provider to submit the complaint to an arbitrator appointed by the Minister of Labour for a decision in accordance with the disagreement arbitration procedure provided for in the group agreement or, in the absence of such a procedure, in accordance with the procedure provided for in the second paragraph of section 56. The association pays the expenses incurred by the home childcare provider.

22. If a complaint is referred to an arbitrator under section 21, the Minister may not allege the association's non-observance of the procedure or the time periods provided for in the group agreement for the settlement of disagreements.

23. At the Commission's request, a home childcare providers association must send a list of its members to the Commission, in the form and within the time determined by the Commission.

The association must also send, at the Commission's request, a copy of any change in its statutes or by-laws to the Commission.

24. The Minister or a home childcare providers association whose membership comprises at least 35% of the home childcare providers operating in a given territory may, within the time periods specified in paragraphs 2 to 5 of section 10, ask the Commission to verify whether a recognized association still exists or still meets the conditions for recognition under this Act.

The Commission notifies the parties of the results of the verification and allows them to present observations within 10 days after receiving such notification.

25. The Commission revokes the recognition of any association that has ceased to exist or no longer meets the conditions set out in this Act and, if applicable, grants recognition to another association.

A newly recognized association is subrogated by operation of law in all rights and obligations resulting from a group agreement that is binding on another association and in force. It is bound by the agreement as though it were named in it and becomes a party to any proceeding relating to the group agreement in the place and stead of the former association.

26. When the Commission revokes a recognition, it notifies the association and the Minister. The revocation takes effect on the date of notification and entails the forfeiture of any rights and advantages the association may have enjoyed under this Act or a group agreement.

27. At any time, at the request of an interested party, the Commission may decide whether a person is a home childcare provider within the meaning of section 1, whether the person is a member of an association or which recognized association may represent the person given the territory in which the person operates as a home childcare provider. In addition, the Commission may decide any other question that may arise while an association is recognized.

DIVISION II

MODIFICATION OF A TERRITORY

28. If the Minister modifies a territory for which a home childcare providers association has been recognized or has filed an application for recognition, the Minister notifies the association or associations concerned in writing.

The recognized association continues to represent the home childcare providers of the original territory until the Commission rules on the representativeness of the association given the new territory determined by the Minister.

Upon such ruling, the Commission may

(1) grant or amend a recognition; or

(2) recognize the home childcare providers association whose membership comprises an absolute majority of the home childcare providers operating in the new territory, or hold a secret ballot under section 14 and grant recognition to the association that obtains the most votes in accordance with that section.

Despite the second paragraph of section 25, the group agreement that is binding on the association recognized for the new territory applies, as of the date on which it is recognized, to the home childcare providers operating in the new territory.

The Commission revokes the recognition of any home childcare providers association that no longer meets the conditions set out in this Act.

29. At the request of an interested party, the Commission may rule on any question relating to the applicability of section 28 and resolve any difficulty arising from its application and effects, in the manner the Commission considers most appropriate.

DIVISION III

GROUP AGREEMENT

30. The Minister may, with the authorization of the Conseil du trésor and on the conditions it determines, negotiate and sign a group agreement with a recognized home childcare providers association or group of such associations.

A group of recognized associations is a union, federation, confederation, legal person, labour body or other organization which a recognized home childcare providers association joins, belongs to or is affiliated with.

For the purpose of negotiating a group agreement, a recognized association designates a person to act as negotiator; if it belongs to a group of recognized associations, this designation is made by the group.

31. The subjects covered in a group agreement may include the following:

(1) the subsidy granted to fund educational home childcare and to give home childcare providers access to programs and services that meet their needs, in particular with regard to plans in such areas as employment benefits, health, safety, training and professional development;

(2) the terms and conditions applicable to days of leave that may be granted to home childcare providers, taking into account unpaid holidays under the Act respecting labour standards (R.S.Q., chapter N-1.1);

(3) the procedure for setting disagreements as to the interpretation or application of the group agreement;

(4) the setting up of committees to determine the mechanics of the different programs;

(5) the circumstances giving rise to and terms and conditions applicable to the indemnification of a home childcare provider for losses sustained as a result of a suspension, revocation or non-renewal of recognition that is subsequently contested before and annulled by the Administrative Tribunal of Québec under section 104 of the Educational Childcare Act.

32. When negotiating the amount of a subsidy referred to in paragraph 1 of section 31, the parties determine what constitutes, for a full service load, funding comparable to the remuneration of persons engaging in analogous activities. To this end, the parties identify jobs in related sectors of activity and adopt an appropriate evaluation methodology.

The parties take into account, among other things, the parent's contribution received by the home childcare provider, benefits enjoyed by the home childcare provider under any other Act, the compensation under sections 2 to 4 of the fourth paragraph and reasonable operating expenses incurred in providing childcare services. What constitutes reasonable operating expenses is determined by the parties.

The funding determined by the parties must be such that the net income from a home childcare operation with a full service load is equitable in relation to the annual salary for the jobs evaluated, taking into account, among other things, the number of days worked.

Such funding must comprise

(1) an integrated, overall percentage to stand in lieu of monetary compensation for days of leave equivalent to those paid under the Act respecting labour standards and under the National Holiday Act (R.S.Q., chapter F-1.1);

(2) financial compensation to offset the difference between the rate of the premium or contribution applicable to a self-employed worker under the plans established by the Act respecting parental insurance (R.S.Q., chapter A-29.011) and the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9), and the rates applicable to an employee under those plans;

(3) financial compensation so that a home childcare provider may enjoy coverage under the Act respecting industrial accidents and occupational diseases (R.S.Q., chapter A-3.001); and

(4) financial compensation based on the contribution that a home childcare provider must pay under section 34.1.1 of the Act respecting the Régie de l'assurance maladie du Québec (R.S.Q., chapter R-5).

The subsidy determined as a result of this process is paid to the home childcare provider according to the terms and conditions determined by the Minister. Home childcare providers may also receive any other additional subsidy to which they are entitled under the Educational Childcare Act.

33. A group agreement may not deal with

(1) a rule, standard or measure under the Educational Childcare Act and its regulations; or

(2) the mandatory service agreement between the parent and the home childcare provider, in particular with regard to the methods of payment of the parent's contribution, the description of the services provided, and the services required by the parent.

34. A group agreement signed by a group of recognized associations is binding on each member association or affiliated association, including any new member association or affiliated association.

35. A group agreement applies to all home childcare providers operating in the territory of a recognized association that is bound by the agreement. It also applies to any new home childcare provider who begins operating in the territory.

36. The Minister or a recognized home childcare providers association or group of such associations may initiate negotiations for a group agreement by giving the other party at least 30 days' written notice of a meeting for the purpose of negotiating a group agreement.

A party that is already bound by a group agreement may give such notice within the 90 days preceding the expiry of the agreement.

37. The parties must begin to negotiate at the time set out in the notice and carry on negotiations with diligence and good faith.

38. A party may request that the Minister of Labour designate a mediator.

39. The mediator attempts to bring the parties to an agreement.

The parties must attend all meetings to which they are convened by the mediator.

40. The mediator has 60 days in which to bring the parties to an agreement. The Minister of Labour may, at the mediator's request, extend the mediation period by a maximum of 30 days.

41. If the mediation period expires without an agreement, the mediator gives to the parties and to the Minister of Labour a report specifying the matters that have been agreed on and those that are still in dispute, including any comments the mediator may have. This report is made public by the Minister of Labour.

42. The parties may jointly request that the Minister of Labour submit a dispute to an arbitrator. They agree beforehand on the limits within which the arbitrator is to render a decision. Sections 75 to 93, 103 and 139 to 140 of the Labour Code apply, with the necessary modifications.

43. A group agreement must have a set term of at least one year and, if it is a first agreement, of no more than three years.

If a fixed and definite term is not stipulated in the agreement, the agreement is deemed to be in force for one year.

44. A group agreement continues to apply after its expiry date until a new agreement comes into force.

45. The signing of a group agreement may occur only after being authorized in a secret ballot by a majority vote of the members of the recognized association who participated in the ballot.

The signing of a group agreement by a group of recognized associations may occur only after being authorized in a secret ballot by a majority vote of the members of the associations of the group who participated in the ballot.

46. A group agreement takes effect only on the filing of two duplicate originals or two true copies of the agreement and its schedules with the Minister of Labour. The same holds for any subsequent amendments to the agreement.

Such filing has retroactive effect to the date stipulated in the agreement for its coming into force or, failing such a date, to the date the agreement was signed.

47. A group agreement is not invalidated by the nullity of one or more of its provisions.

48. A recognized home childcare providers association may exercise any recourse available under the group agreement to the home childcare providers it represents without having to establish an assignment of the claim of the member concerned.

DIVISION IV

PRESSURE TACTICS

49. The right to undertake concerted action with a view to bringing the Minister to sign a group agreement is acquired 90 days after receipt of the notice referred to in section 36.

50. Concerted action that curtails services or affects their quality must be authorized in a secret ballot by a majority vote of the members of the recognized association who participate in the ballot.

If the association belongs to a group of associations, such concerted action must be authorized in a secret ballot by a majority vote of the members of the associations of the group who participate in the ballot.

The recognized association must take the steps necessary in the circumstances to inform its members, at least 48 hours in advance, that a ballot is to be held.

51. Before concerted action described in section 50 is undertaken, a recognized association or group of associations must give the Minister 15 days' written notice of the tactics it plans to use. The association or group must also send a copy of the notice to the Minister of Labour.

52. The Minister may, in response to concerted action described in section 50, reduce or cease to pay a subsidy to a home childcare provider, or cease to participate in a program created under a group agreement.

A subsidized childcare space assigned to a home childcare provider may not be reassigned for the sole reason that the home childcare provider participated in lawfully undertaken concerted action.

In a case described in the first paragraph, the last paragraph of section 97 of the Educational Childcare Act does not apply.

53. Throughout the term of the group agreement and as long as the right to undertake concerted action has not been acquired, it is prohibited for a home childcare provider to take concerted action described in section 50.

Similarly, throughout the term of a group agreement, it is prohibited for an association of home childcare providers or a group of such associations, and their employees, to advise home childcare providers to resort to concerted action described in section 50, or to participate in such action.

54. Concerted action is prohibited as long as a home childcare providers association has not been recognized or the right to undertake concerted action has not been acquired.

55. A home childcare provider may not be penalized solely for participating in lawful concerted action or for acting on any other right conferred by this Act.

Any complaint relating to the first paragraph must be filed with the Commission within 30 days after the alleged contravention comes to light.

DIVISION V

SETTLEMENT OF DISAGREEMENTS

56. Any disagreement on the interpretation or application of a group agreement must be settled according to the procedure provided for in the agreement.

If no such procedure is provided for or if the agreement provides for arbitration, the disagreement is submitted to an arbitrator. Sections 100 to 100.9 and 100.11, paragraphs *a*, *c*, *d*, *e* and *g* of section 100.12 and sections 100.16 to 101.9 and 139 to 140 of the Labour Code apply, with the necessary modifications.

57. Rights and recourses under a group agreement are prescribed six months after the date on which the cause of action occurred. Recourse to the disagreement settlement procedure interrupts prescription.

CHAPTER III

MISCELLANEOUS PROVISIONS

58. The Government may, by regulation, establish a protective reassignment plan for home childcare providers, determine its conditions and mechanics and the rights and obligations of the parties involved, as well as the powers and duties of the Commission de la santé et de la sécurité du travail, established by section 137 of the Act respecting occupational health and safety (R.S.Q., chapter S-2.1), and of the Commission des lésions professionnelles, established by section 367 of the Act respecting industrial accidents and occupational diseases.

The Government may also, by regulation, determine how such a plan is to be funded and managed.

Such a plan is administered by the Commission de la santé et de la sécurité du travail.

59. The provisions of the Labour Code respecting the Commission des relations du travail, its commissioners and its labour relations officers apply, with the necessary modifications, to any application that lies within the purview of the Commission under this Act. Likewise, the provisions of the Code and its regulations that set out rules of procedure, evidence and practice apply to any applications the Commission may receive.

60. Failure to comply with section 45 or 50 only gives rise to the application of Chapter IV.

61. The group representation and negotiation process established by this Act is complete and applies to the exclusion of any other process.

62. No provision of this Act or of a group agreement may restrict or affect the powers and responsibilities conferred by the Educational Childcare Act and its regulations on a home childcare coordinating office or the Minister, nor restrict or affect the jurisdiction conferred on the Administrative Tribunal of Québec by that Act.

63. With the authorization of the Conseil du trésor, the Minister may make all or part of a group agreement entered into with a recognized home childcare providers association or a group of such associations applicable to any home childcare provider not represented by a recognized association for that territory.

CHAPTER IV

PENAL PROVISIONS

64. Any person, association or group that fails to comply with a decision of the Commission des relations du travail is guilty of an offence and liable to a fine of $1,000 to $14,000 and of $2,000 to $28,000 for a second or subsequent conviction.

65. Any person, association or group that contravenes section 5 is guilty of an offence and liable to a fine of $2,000 to $30,000.

66. Any person, association or group that contravenes section 6 is guilty of an offence and liable to a fine of $1,000 to $14,000.

67. A home childcare providers association that contravenes section 23 is guilty of an offence and liable to a fine of $500 to $5,000.

68. A home childcare providers association or group of such associations that contravenes section 45 is guilty of an offence and liable to a fine of $500 to $5,000.

69. Any person, association or group that declares, instigates or participates in concerted action contrary to the provisions of any of sections 49 to 51, 53 and 54 is guilty of an offence and liable to the following fines for each day the action continues:

(1) $75 to $225 in the case of a home childcare provider or a person who assists or replaces a home childcare provider;

(2) $800 to $10,400 in the case of an officer, employee, director, agent or advisor of a home childcare providers association or a group of such associations; and

(3) $7,000 to $126,000 in the case of a home childcare providers association or group of such associations.

70. If a home childcare providers association or a group of such associations contravenes any of sections 64, 65 and 67 to 69, the officer or representative of the association or group who authorized, permitted or consented to the commission of the offence is liable to the fines provided for in those sections. In the case of a second or subsequent conviction, the fines are doubled.

CHAPTER V

AMENDING PROVISIONS

LABOUR CODE

71. Schedule I to the Labour Code (R.S.Q., chapter C-27) is amended by adding the following paragraph after paragraph 27:

"(28) sections 7, 8, 21, 24, 27, 29, 55 and 104 of the Act respecting the representation of certain home childcare providers and the negotiation process for their group agreements, and amending various legislative provisions (2009, chapter 36)."

TAXATION ACT

72. Section 134.1 of the Taxation Act (R.S.Q., chapter I-3), amended by section 185 of chapter 11 of the statutes of 2008, is again amended

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

"(*a*.1) dues the individual is required to pay to a recognized association under the Act respecting the representation of certain home childcare providers and the negotiation process for their group agreements, and amending various legislative provisions (2009, chapter 36) as a home childcare provider represented by that association;";

(2) by replacing "subparagraph *a* or *b*" in the second paragraph by "subparagraphs *a* to *b*".

EDUCATIONAL CHILDCARE ACT

73. Section 8 of the Educational Childcare Act (R.S.Q., chapter S-4.1.1) is amended by inserting the following paragraph after paragraph 1:

"(1.1) undertake to ensure the health, safety and well-being of the children to whom childcare is provided;".

74. Section 9 of the Act is repealed.

75. Section 11 of the Act is amended by inserting the following subparagraph after subparagraph 1 of the first paragraph:

"(1.1) undertakes to ensure the health, safety and well-being of the children to whom childcare is provided;".

76. Section 12 of the Act is amended by striking out "of the permit holder's main establishment and" in paragraph 2.

77. Section 31 of the Act is amended by replacing "each facility" in the first paragraph by "the permit holder's facility".

78. Section 40 of the Act is replaced by the following sections:

"**40.** A home childcare coordinating office is a childcare centre permit holder or a non-profit legal person other than a day care centre permit holder, accredited by the Minister to exercise the functions described in section 42.

In exercising its functions, a coordinating office must act in a manner that is respectful of the self-employed-worker status of the home childcare providers it recognizes, in accordance with the directives and instructions of the Minister.

It must also, in collaboration with the home childcare providers in its territory and the associations representing them, strive to enhance the quality of home childcare services and promote the training and professional development of home childcare providers.

"**40.1.** Subject to section 40.2, to be accredited as a home childcare coordinating office, the legal person must have a board of directors that meets the following requirements:

(1) it has at least five members;

(2) the majority of members are parents who are clients of a home childcare provider operating in the office's assigned territory;

(3) one member is from the business sector or the institutional, social, education or community sector;

(4) no more than one member is a home childcare provider operating in the office's assigned territory;

(5) no member is related to another member, to a staff member of the legal person or to a home childcare provider operating in the office's assigned territory.

The following persons may not be members or directors of the legal person: day care centre permit holders and their directors and employees and any persons related to them.

The Minister may accredit as a coordinating office a legal person that meets the requirements of this section and section 43 and makes the proper application, or a legal person solicited by the Minister to assume such a role.

However, if the Minister considers that no legal person under consideration in a given territory meets the requirements of this section and section 43, the Minister may accredit any other non-profit legal person.

"**40.2.** If a childcare centre permit holder is accredited as a home childcare coordinating office, the permit holder must, within six months of being accredited, change the composition of the board of directors so that

(1) it has at least nine members;

(2) at least two thirds of the members are divided equally between parents who use the childcare provided by the childcare centre and parents who use the home childcare coordinated by the childcare centre; and

(3) no more than one member is a home childcare provider recognized by the childcare centre."

79. Section 42 of the Act is replaced by the following sections:

"**42.** A home childcare coordinating office has the following functions in the territory assigned to it:

(1) to grant, renew, suspend or revoke the recognition of home childcare providers, according to the cases and conditions determined by law;

(2) to ensure that the home childcare providers it has recognized comply with the standards that apply to them by law;

(3) to distribute subsidized childcare spaces among recognized home childcare providers according to the childcare needs of parents and the instructions of the Minister;

(4) to determine, according to the cases and conditions determined by regulation, a parent's eligibility for payment of the contribution set by the Government under section 82;

(5) to administer, according to the Minister's instructions, the granting, payment, maintenance, suspension, reduction, withdrawal or recovery of subsidies to recognized home childcare providers, and see to the signing and management of agreements proposed by the Minister and to the management of the documents and information necessary for the administration of subsidies;

(6) to make information about home childcare services available to parents;

(7) to provide technical and pedagogical support on request; and

(8) to deal with complaints concerning recognized home childcare providers.

"**42.1.** A coordinating office and its directors and employees may not be prosecuted for an act or omission in good faith in the exercise of their functions."

80. Section 43 of the Act is amended by replacing the part that precedes subparagraph 1 of the first paragraph by the following:

"**43.** In granting accreditation, the Minister is to consider, among other things, the following criteria:".

81. Section 45 of the Act is replaced by the following section:

"**45.** Accreditation is granted or renewed for three years, or for a shorter period if the Minister considers it appropriate."

82. Section 49 of the Act is amended by adding ", the terms of its accreditation or an instruction or directive given by the Minister" at the end of subparagraph 3 of the first paragraph.

83. Section 52 of the Act is amended by replacing "who, in return for payment, provides childcare in a private residence" by "who is an own-account self-employed worker who contracts with parents to provide childcare in a private residence, in return for payment,".

84. Section 53 of the Act is amended by replacing "who, in return for payment, provides childcare in a private residence" in the first paragraph by "who is an own-account self-employed worker who contracts with parents to provide childcare in a private residence, in return for payment,".

85. Section 54 of the Act is replaced by the following section:

"**54.** A recognized home childcare provider makes a commitment toward parents to provide educational childcare services to their children in accordance with the law and to manage his or her business in such a way as to ensure the children's health, safety and well-being.

A recognized home childcare provider who by obligation or choice takes on an adult as an assistant must do so in accordance with the law."

86. Section 56 of the Act is repealed.

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

"**59.** A coordinating office must keep a register of the recognized home childcare providers in its territory and send a copy to the Minister.

The register must contain the name and contact information of each recognized home childcare provider along with, in each case, the date of recognition, the number of children to whom childcare is to be provided and the number of subsidized childcare spaces assigned.

The coordinating office must inform the Minister without delay of any changes in the information in the register, as they occur.

The Minister may, at any time, require a coordinating office to send an up-to-date copy of the register."

88. Section 61 of the Act is amended by replacing "received" in the second paragraph by "granted".

89. Section 62 of the Act is amended by replacing "received" in the second paragraph by "granted".

90. Section 64 of the Act is amended by adding "and must be sent in the prescribed form" at the end.

91. Section 66 of the Act is amended by adding the following subparagraph at the end of the first paragraph:

"(6) if the board of directors of a childcare centre or coordinating office so requests or is unable to act."

92. Section 83 of the Act is amended

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

"**83.** A subsidized childcare provider must provide educational childcare services according to the age group of the children and in accordance with the type of services and the period, duration and core hours prescribed by regulation.

Childcare services include the services determined by regulation as well as any organized activities, any materials and any other services provided to children while they are in childcare, unless specifically exempted by regulation.";

(2) by replacing "The contribution" in the second paragraph by "The contribution referred to in the first paragraph of section 82".

93. Section 86 of the Act is replaced by the following sections:

"**86.** A subsidized childcare provider may not request or receive, directly or indirectly,

(1) any contribution from a parent who has been exempted from paying it; or

(2) for services prescribed by regulation or provided for in a subsidy agreement, any contribution or additional fees other than those set under section 82 or 92.

Nor may a subsidized childcare provider request or receive, directly or indirectly, any administration, registration or management fees with respect to subsidized services, or any fees for putting a person on a waiting list to obtain a subsidized childcare space.

Moreover, a subsidized childcare provider may not make a child's admission subject to the payment by the parent of a higher contribution than that set by regulation or of any amount in addition to the set contribution. Nor may a subsidized childcare provider refuse to admit a child because the parent refuses to pay such a contribution or amount.

Except to the extent provided by regulation, a subsidized childcare provider may not tolerate or permit a situation in which a child who occupies a subsidized childcare space is given additional goods or services for which any form of service or contribution is to be required directly or indirectly from the parent.

"**86.1.** No person may directly or indirectly induce a parent to pay more than the contribution set by regulation or to pay a contribution the parent is exempted from paying."

94. Section 92 of the Act is amended by adding the following paragraphs:

"In such a subsidy agreement, the Minister may determine the form, content, required elements and any other mandatory clause of a childcare

agreement between the childcare provider and the parent of a child who occupies a subsidized childcare space, and may also determine the terms of renewal of such an agreement. However, the childcare agreement may not, when intended for a home childcare provider, contravene the provisions of a group agreement under the Act respecting the representation of certain home childcare providers and the negotiation process for their group agreements, and amending various legislative provisions (2009, chapter 36).

The Minister may also determine terms for the provision of services and the amount of any fee or any other additional contribution that may be requested or received by a subsidized childcare provider for certain specific goods and services exempted by regulation or for any additional childcare services provided to a child who occupies a subsidized childcare space."

95. Section 97 of the Act is amended by replacing subparagraph 7 of the first paragraph by the following subparagraph:

"(7) contravenes section 86 or 86.1; or".

96. Section 103 of the Act is amended by striking out "subsidized".

97. Section 106 of the Act is amended

(1) by inserting the following paragraph after paragraph 13:

"(13.1) set the ratio of staff to qualified staff present during the provision of childcare services to be respected by a childcare provider;";

(2) by adding "or to a childcare provider" at the end of paragraph 18;

(3) by replacing "to be applied to" in paragraph 23 by "applicable to";

(4) by inserting the following paragraphs after paragraph 24:

"(24.1) determine the goods and services that must be provided by a subsidized childcare provider in return for the contribution set by the Government;

"(24.2) determine the goods, activities and services for which the subsidized childcare provider may request or receive a payment beyond the set contribution;";

(5) by inserting "and paid" after "how it is to be calculated" in paragraph 25;

(6) by inserting the following paragraph after paragraph 27:

"(27.1) determine the terms and conditions to be complied with by a childcare provider in the delivery of subsidized childcare;";

(7) by replacing "the type and duration of childcare services to which" in paragraph 28 by "the type of services, and the period, duration and core hours to which".

98. Section 108 of the Act is amended by inserting the following paragraph after the first paragraph:

"The Minister may also, in a subsidy agreement under section 92, set core hours other than those determined under paragraph 28 of section 106, if the Minister believes that such core hours are preferable given the childcare needs of the parents and the childcare services offered by other childcare providers in the territory served by the applicant for a permit or the childcare provider."

99. Section 109 of the Act is amended by inserting ", section 86.1" after "section 78".

100. The Act is amended by inserting the following division after Division II of Chapter XII:

"**DIVISION II.I**

"ADVISORY COMMITTEE

"**124.1.** The Minister may form an advisory committee to provide advice on all aspects of home childcare, gather pertinent information and report its observations and recommendations to the Minister.

Such a committee must be composed of representatives of the coordinating offices accredited by the Minister or representatives of associations of such coordinating offices."

101. Division III of Chapter XII of the Act, comprising sections 125 to 132, is repealed.

EDUCATIONAL CHILDCARE REGULATION

102. Section 45 of the Educational Childcare Regulation, enacted by Order in Council 582-2006 (2006, G.O. 2, 2161), is amended by replacing "9, 40 or 158" in subparagraph 2 of the first paragraph by "40.1 or 40.2".

103. Section 49 of the Regulation is amended by replacing "the list referred to" in the second paragraph by "the register referred to".

CHAPTER VI

TRANSITIONAL PROVISIONS

104. For the purpose of granting recognition to an association, the Commission des relations du travail, for each territory assigned under section 44 of the Educational Childcare Act (R.S.Q., chapter S-4.1.1), verifies, by means of a secret-ballot vote held according to the terms and conditions provided for in this section, the representativeness of the home childcare providers associations which, before 19 June 2009, filed a petition for certification under section 25 of the Labour Code (R.S.Q., chapter C-27) with respect to home childcare providers operating in that territory.

In each territory assigned under section 44 of the Educational Childcare Act, the following parties are on the ballot:

(1) any association which, before 18 December 2003, filed a petition for certification or obtained certification with respect to one or more home childcare providers recognized by a childcare centre and operating, on 19 June 2009, in that territory;

(2) any association which, on or after 18 December 2003, filed, with respect to home childcare providers operating in that territory, a petition for certification that is pending on 19 June 2009.

Only home childcare providers operating in a territory assigned under section 44 of the Educational Childcare Act on 19 June 2009 may be on the ballot for that territory.

If only one association is on the ballot, the Commission grants recognition to it if it obtains an absolute majority of votes of the home childcare providers entitled to vote in the territory concerned.

If two associations are on the ballot, the Commission recognizes the one that receives the most votes, provided they together obtain an absolute majority of votes of the home childcare providers entitled to vote in the territory concerned.

If more than two associations are on the ballot and they together obtain an absolute majority of votes of the home childcare providers entitled to vote in the territory concerned, without any one of them obtaining an absolute majority, the Commission orders a new secret-ballot vote, removing from the ballot the association that obtained the fewest votes.

On request, the Commission may resolve any difficulty arising from the application of this section, including one that may arise from the rule set out in section 11. To that end, it has all the powers provided for in section 59.

A secret-ballot vote is not required if, for a given territory, among the associations that qualify under the second paragraph, only one has a

membership comprising an absolute majority of home childcare providers. This determination is made on the date the petition for certification is filed. However, with regard to a petition filed before 18 December 2003, the Commission may order a secret-ballot vote to be held if it believes this is required to verify the representativeness of the association concerned. To this end, it takes into account, apart from the date of the petition, the number of home childcare providers who are members of the association on the day of filing of the petition in relation to the number of home childcare providers to whom this Act applies who are currently operating in the territory concerned, the number of home childcare providers who were members of the association but no longer provide childcare in that territory and any other factor it judges pertinent.

105. Subject to section 104, any certification granted to an association representing home childcare providers under the Labour Code, any pending petition for certification and any resulting recourse brought by an association or a home childcare provider before the Commission des relations du travail is without effect.

106. The Government may, by regulation made before 19 June 2010, enact any other transitional provision or measure for the administration of this Act.

Such a regulation is not subject to the publication requirement of section 8 of the Regulations Act (R.S.Q., chapter R-18.1) or to the requirement of section 17 of that Act as regards its date of coming into force.

However, if the regulation so provides, it may apply from a date not prior to 19 June 2009.

107. A regulation made before 19 June 2010 for the purposes of section 58 may have a shorter publication period than that required under section 11 of the Regulations Act, but not shorter than 20 days.

Such a regulation is not subject to the requirement of section 17 of that Act as regards its date of coming into force.

CHAPTER VII

FINAL PROVISIONS

108. The Act respecting labour standards (R.S.Q., chapter N-1.1) and the Act respecting occupational health and safety (R.S.Q., chapter S-2.1) do not apply to home childcare providers to whom this Act applies.

However, sections 40 to 48 of the Act respecting occupational health and safety apply until the coming into force of the first regulation made under section 58.

109. The Commission de l'équité salariale, established by the Pay Equity Act (R.S.Q., chapter E-12.001), may not receive a complaint from a home childcare provider to whom this Act applies.

110. The Minister of Families is responsible for the administration of this Act.

111. Sections 108 and 109 have effect as of 13 May 2009.

112. The provisions of this Act come into force on 19 June 2009, except sections 30 to 48, 56 and 57, which come into force on the date or dates to be set by the Government.

NATIONAL ASSEMBLY

FIRST SESSION THIRTY-NINTH LEGISLATURE

Bill 62
(2009, chapter 37)

An Act to amend the Lobbying Transparency and Ethics Act

Introduced 18 June 2009
Passed in principle 18 June 2009
Passed 18 June 2009
Assented to 19 June 2009

Québec Official Publisher
2009

EXPLANATORY NOTES

This Act provides for the designation of a person to act temporarily as Lobbyists Commissioner if the Lobbyists Commissioner ceases to act or is unable to act.

LEGISLATION AMENDED BY THIS ACT:

– Lobbying Transparency and Ethics Act (R.S.Q., chapter T-11.011).

Bill 62

AN ACT TO AMEND THE LOBBYING TRANSPARENCY AND ETHICS ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The Lobbying Transparency and Ethics Act (R.S.Q., chapter T-11.011) is amended by inserting the following section after section 34:

"**34.1.** If the Lobbyists Commissioner ceases to act or is unable to act, the President of the National Assembly, after consulting with the Leaders of the authorized parties that are represented in the National Assembly and any independent Members of the Assembly, may designate, from among the personnel of a body whose members are appointed by a two-thirds majority of the Members of the Assembly or from among the personnel of a person designated by a two-thirds majority of the Members of the Assembly to perform duties that come under the Assembly, a person to act as Lobbyists Commissioner for a period not exceeding six months. The Government determines the designated person's additional salary and allowances."

2. This Act comes into force on 19 June 2009.

Coming into force of Acts

Gouvernement du Québec

O.C. 883-2009, 12 August 2009

An Act to amend the Act respecting school elections and the Education Act (2006, c. 51)
An Act to amend the Education Act and other legislative provisions (2008, c. 29)
— Coming into force of certain provisions

COMING INTO FORCE of certain provisions of the Act to amend the Act respecting school elections and the Education Act (2006, c. 51) and the Act to amend the Education Act and other legislative provisions (2008, c. 29)

WHEREAS the Act to amend the Act respecting school elections and the Education Act (2006, c. 51) was assented to on 14 December 2006;

WHEREAS, under section 105 of that Act, the Act came into force on 14 December 2006, except sections 1 to 3, 5 and 6, which come into force on the date or dates to be set by the Government;

WHEREAS the Act to amend the Education Act and other legislative provisions (2008, c. 29) was assented to on 29 October 2008;

WHEREAS, under section 56 of that Act, the provisions of the Act come into force on the date or dates to be set by the Government, except sections 27 and 55, which came into force on 1 July 2008;

WHEREAS sections 26, 30 and 35 of the Act to amend the Education Act and other legislative provisions came into force on 11 February 2009 and sections 1 to 8, 19, 20, 22 to 25, 28, 29, 31 to 33 and 54 of that Act came into force on 1 July 2009 under Order in Council 92-2009 dated 11 February 2009;

WHEREAS it is expedient to set 1 September 2009 as the date of coming into force of sections 1 to 3, 5 and 6 of the Act to amend the Act respecting school elections and the Education Act, and sections 37 and 38 of the Act to amend the Education Act and other legislative provisions;

WHEREAS it is expedient to set 1 January 2011 as the date of coming into force of sections 36 and 39 to 53 of the Act to amend the Education Act and other legislative provisions, and 6 November 2011 as the date of coming into force of sections 9 to 18, 21 and 34 of that Act;

IT IS ORDERED, therefore, on the recommendation of the Minister of Education, Recreation and Sports:

THAT sections 1 to 3, 5 and 6 of the Act to amend the Act respecting school elections and the Education Act (2006, c. 51), and sections 37 and 38 of the Act to amend the Education Act and other legislative provisions (2008, c. 29) come into force on 1 September 2009;

THAT sections 36 and 39 to 53 of the Act to amend the Education Act and other legislative provisions come into force on 1 January 2011, and sections 9 to 18, 21 and 34 of that Act come into force on 6 November 2011.

GÉRARD BIBEAU,
Clerk of the Conseil exécutif

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Regulations and other Acts

Gouvernement du Québec

O.C. 875-2009, 12 August 2009

Environment Quality Act
(R.S.Q., c. Q-2)

Declaration of water withdrawals

Regulation respecting the declaration of water withdrawals

WHEREAS, under paragraph *s* of section 46 of the Environment Quality Act (R.S.Q., c. Q-2), amended by section 22 of chapter 21 of the Statutes of 2009, and sections 109.1 and 124.1 of that Act, the Government may make regulations on the matters set forth therein;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1) and section 124 of the Environment Quality Act, a draft of the Regulation respecting the mandatory declaration of water withdrawals was published in Part 2 of the *Gazette officielle du Québec* of 5 November 2008 with a notice that it could be made by the Government on the expiry of 60 days following that publication;

WHEREAS it is expedient to make the Regulation with amendments that take into account the comments received following publication in the *Gazette officielle du Québec*;

IT IS ORDERED, therefore, on the recommendation of the Minister of Sustainable Development, Environment and Parks:

THAT the Regulation respecting the declaration of water withdrawals, attached to this Order in Council, be made.

GÉRARD BIBEAU,
Clerk of the Conseil exécutif

Regulation respecting the declaration of water withdrawals

Environment Quality Act
(R.S.Q., c. Q-2, s. 46, par. *s*, s. 109.1 and s. 124.1; 2009, c. 21, s. 22)

CHAPTER I
PURPOSE, DEFINITIONS AND SCOPE

1. The purpose of this Regulation is to ensure a better knowledge and a better protection of the environment by allowing the Government to assess, through the declaration of water withdrawals, the impact of the withdrawals on water resources and ecosystems, and to allow the Government to establish measures to prevent conflicting uses of water resources.

This Regulation also seeks to achieve more responsible water use through withdrawal accountability mechanisms by making the largest water withdrawers in Québec more acutely aware of

(1) the intrinsic value of water resources; and

(2) the responsibility each person has to preserve the quality of water and sufficient quantity of it to meet the needs of current and future generations.

2. The following definitions apply to this Regulation:

"measuring equipment" means a water meter or other device designed to continuously measure and record a volume of water; (*équipement de mesure*)

"professional" means a professional within the meaning of section 1 of the Professional Code (R.S.Q., c. C-26) whose professional order regulates the practice of a professional activity referred to in this Regulation. This definition also includes any person legally authorized to practise that activity in Québec; (*professionnel*)

"withdrawal" means an action that consists in taking or diverting surface water or groundwater using any means whatsoever; (*prélèvement*)

"withdrawal site" means a location where water enters into man-made works designed to withdraw water; (*site de prélèvement*)

"withdrawer" means a person or municipality within the meaning of section 1 of the Environment Quality Act (R.S.Q., c. Q-2) that operates a withdrawal site. (*préleveur*)

3. This Regulation applies to withdrawers whose water withdrawals total an average daily volume of 75 cubic metres or more per day. That average daily volume is calculated on the basis of the monthly quantity of water withdrawn, divided by the number of withdrawal days in the month concerned.

This Regulation does not apply to

(1) withdrawals of water intended for domestic use, namely withdrawals using a personal well or a surface water intake for the use of one household only;

(2) water withdrawals to supply vehicles, such as vessels and aircraft, either for the needs of the persons or animals being transported or for ballast, or to meet other needs incidental to the operation of those vehicles;

(3) water withdrawals exclusively for firefighting purposes, in particular to supply an aircraft or tank vehicle;

(4) water withdrawals from a distribution system;

(5) water withdrawals intended for agricultural or fish-breeding purposes; and

(6) water withdrawals intended to produce hydro-electric power.

4. This Regulation applies in a reserved area and an agricultural zone established under the Act respecting the preservation of agricultural land and agricultural activities (R.S.Q., c. P-41.1).

CHAPTER II
DETERMINATION OF VOLUMES OF WATER WITHDRAWN

5. For the purposes of the declaration provided for in section 9, every withdrawer is required to determine the volumes of water withdrawn for each withdrawal site by direct measurement taken by measuring equipment.

Despite the foregoing, a withdrawer that does not have measuring equipment may determine the volumes of water withdrawn by estimates based on indirect or spot measurements.

In the case of a withdrawer that does not hold a certificate of authorization issued under the Environment Quality Act, does not have measuring equipment and does not determine the volumes of water withdrawn by means of estimates as provided for in the second paragraph, the quantities of water to be withdrawn and authorized by the Government or the Minister, as the case may be, for each withdrawal site, are to be used to evaluate the volumes withdrawn.

6. A withdrawer who uses direct measurements taken by measuring equipment must comply with the provisions of Chapter IV.

7. A withdrawer who uses estimates based on indirect or spot measurements must comply with the provisions of Chapter V.

The withdrawer must also, for each month, calculate or cause to be calculated all the volumes of water withdrawn, estimated and converted into cubic metres, as well as the margin of error in percentage of the evaluation made according to the estimation method used.

That estimate must be certified by a professional.

8. A withdrawer who establishes or alters a withdrawal site after 10 September 2009 must fit the site with measuring equipment that complies with the provisions of Chapter IV.

CHAPTER III
DECLARATION OF WITHDRAWAL ACTIVITIES AND VOLUMES WITHDRAWN AND KEEPING OF A REGISTER

9. Every withdrawer is required to send an annual declaration describing the withdrawal activities by specifying the monthly volumes of water withdrawn to the Minister of Sustainable Development, Environment and Parks. The data is sent to the Minister using an information technology medium conforming to the standard format provided by the Minister.

The withdrawer must ensure that the declaration is received by the Minister on or before 31 March of the year following the calendar year covered by the declaration or, if the withdrawer ceases to withdraw water, within 60 days after the date on which the withdrawals cease.

The declaration must contain

(1) the withdrawer's name, address, telephone number and, where applicable, Québec business number (NEQ);

(2) the withdrawal sites involved, identified by georeferenced data; and

(3) for each of the withdrawal sites,

(a) the name the lake or watercourse from which water is withdrawn;

(b) the number of days and the dates on which water was withdrawn;

(c) the origin of the water withdrawn, either surface water or groundwater;

(d) whether or not measuring equipment is used and the type of equipment, where applicable;

(e) if the volumes of water withdrawn are not measured using measuring equipment, estimates of the monthly and yearly volumes of water withdrawn, expressed in cubic metres, the name of the professional who evaluated the total volumes of water withdrawn in the year and his or her profession and a description of the estimation method used;

(f) if the volumes of water are measured using measuring equipment, the monthly and yearly volumes of water withdrawn, expressed in cubic metres;

(g) if measuring equipment is used, a description of any malfunction, breakdown, abnormality or other defect that affected the operation of the equipment, including the number of days on which the volume data could not be measured by the equipment in a reliable and accurate manner;

(h) the class of industrial or commercial activities for which the withdrawals are made, established by the North American Industry Classification System (NAICS); and

(i) where the withdrawals are for multiple classes of industrial or commercial activities, the volumes of water, in percentage or cubic metres, broken down per class.

The declaration must be dated and signed by the person making it and attest to the accuracy of the information it contains.

Documents in support of the declaration, including the estimates provided for in section 7 and the verification reports on reading accuracy provided for in section 12 must be kept at the operation site and made available to the Minister for 5 years.

10. Every withdrawer must keep a register containing the following information for each withdrawal site:

(1) a description of the withdrawal site;

(2) a description of the measuring equipment, where applicable;

(3) a description of the estimation method, where applicable;

(4) the results expressed in cubic metres and dates of the measurement of the volumes of water withdrawn where measuring equipment is used;

(5) the results, their units and the dates of the measurement of the volumes of water withdrawn where the estimation method is used;

(6) where applicable, a description and the date of malfunctions, breakdowns, abnormalities or other defects that affected the measuring equipment;

(7) where applicable, the dates and nature of repairs, adjustments and other modifications to the measuring equipment;

(8) the dates and names of the persons who tested the measuring equipment for accuracy and good working order, and maintained the equipment, where applicable; and

(9) a description and the date of any other event that may have an impact on measurement accuracy.

The register is to be kept by the withdrawer at the operation site and made available to the Minister for 5 years after the date of the last entry.

CHAPTER IV
MEASURING EQUIPMENT

11. Unless an authorization or a permit issued by the Government or the Minister, as the case may be, for water withdrawal allows otherwise, measuring equipment must

(1) be installed as close as possible to a withdrawal site;

(2) be installed so that no other equipment, device or conduit affects or alters the measuring or is installed between the withdrawal site and the measuring equipment;

(3) be installed in an accessible location so as to facilitate to the extent feasible its operation, maintenance, repair, replacement, monitoring or control by any person who needs to have access to the equipment to perform work; if the location is still not readily accessible, the equipment must have a remote reader;

(4) be installed to avoid any danger of damage or distortion of the mechanisms by freezing, fire, vandalism or other acts and incidents; and

(5) be installed in compliance with the manufacturer's installation instructions.

12. To ensure the accuracy of measured data, the withdrawer must

(1) maintain all measuring equipment in good working order;

(2) verify, or cause to be verified, the accuracy of the readings of all measuring equipment, at least once every 3 years in the case of a water meter and at least once a year for any other type of measuring equipment, by comparing the readings with the results obtained using either method listed in the last paragraph; and

(3) modify or replace the measuring equipment where no longer suited to the situation or where its precision is no longer within the margin of error set in the second paragraph.

The difference between the volume measured by the measuring equipment and the volume measured using either method in the last paragraph may not exceed 10%.

The recognized methods are

(1) the standards related to the measurement of water or liquid flow in open channels or closed conduits published by the International Organization for Standardization (ISO);

(2) the flow measurement methods in open channels described in Booklet 7 of the Sampling Guide for Environmental Analysis published by the Centre d'expertise en analyse environnementale du Québec.

13. The measuring equipment must give a reading that shows the volume of water withdrawn.

If the measuring equipment has a remote reader and the data displayed by the receiver is different from those displayed by the measuring equipment, only the data from the measuring equipment is to be considered.

14. If more than one measuring equipment unit is present for withdrawals by the same withdrawer, the total volume withdrawn is the sum of the data obtained in the year from all units.

For the purpose of calculating withdrawals, the withdrawer responsible for the withdrawals is required to take the reading of volume data from the measuring equipment at least once a month.

15. If the measuring equipment ceases to function or malfunctions, or a discrepancy in a reading is detected in comparison with an earlier reading, the calculation of the volumes of water withdrawn in the period involved must be estimated on the basis of a 5-day average of the most recent withdrawals that are similar.

If the measuring equipment could not be restored to proper working order or replaced for 3 months or more, the withdrawer must, for each month, calculate or cause to be calculated all the volumes of water withdrawn, estimated and converted into cubic metres, as well as the margin of error in percentage of the evaluation made according to the estimation method used.

That estimate must be certified by a professional.

CHAPTER V
ESTIMATE OF VOLUMES OF WATER WITHDRAWN

16. Every estimate of the volumes of water withdrawn must rely on measurements taken on site using either method referred to in the last paragraph of section 12.

17. Measurements must be taken at intervals that take into account the variability of the volume withdrawn during the current day or month.

18. The margin of error between the monthly volume and the actual volume withdrawn may not exceed 25%.

If the margin of error is exceeded, the withdrawer must replace or modify the estimation method or use measuring equipment for the withdrawal site in accordance with the provisions of Chapter IV.

CHAPTER VI
OFFENCE PROVISIONS

19. Any contravention of one of the provisions of sections 5 to 18 makes the withdrawer liable,

(1) in the case of a natural person, to a fine of $2,000 to $25,000;

(2) in the case of a legal person, to a fine of $6,000 to $100,000.

Any person who tampers with or alters the proper functioning or reading of the measuring equipment or diverts water or otherwise affects the direction, flow rate or streamflow of water, so as to alter the evaluation required under this Regulation of the volume of withdrawals, is also liable to the same penalties.

The fines prescribed in the first paragraph are doubled in the case of a second or subsequent offence.

CHAPTER VII
MISCELLANEOUS PROVISIONS

20. Sections 58 and 59 of the Groundwater Catchment Regulation, made by Order in Council 696-2002 dated 12 June 2002, are amended by striking out their second sentence.

21. For the year 2009, the information in subparagraphs 2 and 3 of the third paragraph of section 9 to be included in the declaration prescribed therein is limited to the information pertaining to the full months following the date of coming into force of this Regulation.

22 Five years after the coming into force of this Regulation, the Minister of Sustainable Development, Environment and Parks must report to the Government on the implementation of this Regulation, including on the advisability of amending certain provisions to reflect the evolution of scientific knowledge and techniques.

The report is to be made available to the public not later than 15 days after being sent to the Government.

23. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

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Gouvernement du Québec

O.C. 887-2009, 12 August 2009

An Act respecting insurance
(R.S.Q., c. A-32)

Regulation

Regulation under the Act respecting insurance

WHEREAS, under sections 420 and 420.1 of the Act respecting insurance (R.S.Q., c. A-32), the Government may, by regulation, among other things, define the different classes of insurance, determine the limits applicable to an insurer's investments and the activities that an insurance company may exercise, establish the conditions applicable to group insurance contracts and their marketing, and to admission to a group of participants, and prescribe the documents and information that must be furnished to the Minister and the Autorité des marchés financiers in relation to the constitution of an insurance company;

WHEREAS the Government made the Regulation respecting the application of the Act respecting insurance by Order in Council 349-82 dated 17 February 1982;

WHEREAS it is expedient to replace the Regulation;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), a draft of the Regulation under the Act respecting insurance was published in Part 2 of the *Gazette officielle du Québec* of 12 November 2008 with a notice that it could be made by the Government on the expiry of 45 days following that publication;

WHEREAS the 45-day period has expired;

WHEREAS it is expedient to make the Regulation with amendments;

IT IS ORDERED, therefore, on the recommendation of the Minister of Finance:

THAT the Regulation under the Act respecting insurance, attached to this Order in Council, be approved.

GÉRARD BIBEAU,
Clerk of the Conseil exécutif

Regulation under the Act respecting insurance

An Act respecting insurance
(R.S.Q., c. A-32, ss. 420 and 420.1)

CHAPTER I
CONSTITUTION, CONTINUANCE AND AMENDMENT OF THE ARTICLES OF INSURANCE COMPANIES

DIVISION I
APPLICATION FOR CONSTITUTION

1. An application for the constitution of an insurance company must be accompanied by the following documents:

(1) the résumés of the persons proposed as directors;

(2) the proposed internal by-law;

(3) a description of the composition and operation of the committee on ethics, the audit committee and, if applicable, the executive committee, the investment committee and any other proposed committee, as well as the names of the persons proposed as members of those committees;

(4) the proposed rules of ethics applicable to directors;

(5) a description of its links with financial institutions that are affiliated legal persons within the meaning of sections 1.2 to 1.4 of the Act respecting insurance (R.S.Q., c. A-32);

(6) a description of the products that will be offered;

(7) copies of the proposed insurance policies and riders;

(8) the proposed product marketing and distribution policy and claim settlement policy;

(9) the proposed investment policy;

(10) copies of the proposed reinsurance contracts;

(11) the name and address of the person proposed as auditor;

(12) the name and address of the person proposed as actuary; and

(13) a list of the shareholders having more than a 10% voting equity interest.

The documents must be sent to the Minister and to the Autorité des marchés financiers.

2. An application for the constitution of an insurance company must also be accompanied by a business plan that contains opening financial statements, five-year financial forecasts and a description of the organizational structure.

The business plan must be supported by a minimum five-year actuarial projection pertaining to the balance sheet, income statement and statement of retained earnings, and capital adequacy.

The actuarial projection must contain a description of the calculation assumptions used, and be drawn up by an actuary who is a Fellow of the Canadian Institute of Actuaries practising in the insurance of persons or damage insurance, depending on the type of insurance to be transacted by the company.

The documents must be sent to the Minister and to the Autorité des marchés financiers.

DIVISION II
AMENDMENT OF ARTICLES OR CONTINUANCE

3. An insurance company that applies for the authorization required by sections 35.2 and 37 of the Act respecting insurance must send the following documents to the Autorité des marchés financiers:

(1) the constituting act of the company and amendments;

(2) the proposed articles of amendment;

(3) a certified true copy of its internal by-law;

(4) a certified true copy of the by-law adopted by the directors of the company regarding the proposed amendments;

(5) an attestation by the secretary of the company that the by-law referred to in paragraph 4 was approved at the general meeting of shareholders, and the notice calling that meeting;

(6) a description of any change in the capital stock of the company and, if the capital stock has been reduced, an attestation by the auditor of the company that the company's financial statements permit the reduction having regard to the requirements of the Companies Act or, as the case may be, the Act respecting the special powers of legal persons (R.S.Q., c. P-16); and

(7) if applicable, a copy of the notice mentioned in paragraph 2 of section 38 of the Act respecting insurance.

4. An insurance company that requests confirmation of a continuance by-law pursuant to section 200.0.15 of the Act respecting insurance or the authorization required by section 200.0.16 of the Act must send the following documents to the Minister and to the Autorité des marchés financiers:

(1) the constituting act of the company and amendments;

(2) the proposed articles of continuance;

(3) a certified true copy of its internal by-law;

(4) a certified true copy of the by-law adopted by the directors of the company regarding its continuance under Part IA of the Companies Act (R.S.Q., c. C-38);

(5) an attestation by the secretary of the company that the by-law referred to in paragraph 4 was approved at the general meeting of shareholders, and the notice calling that meeting; and

(6) a description of any change in the capital stock of the company and, if the capital stock has been reduced, an attestation by the auditor of the company that the company's financial statements permit the reduction having regard to the requirements of the Companies Act or, as the case may be, the Act respecting the special powers of legal persons (R.S.Q., c. P-16).

DIVISION III
SPECIAL PROVISION

5. For the purposes of section 88.1 of the Act respecting insurance, a member of a mutual insurance company who has received the support of 5 voting members may give notice to the company of the proposals that the member intends to submit to the annual meeting.

CHAPTER II
CONSTITUTION OF MUTUAL INSURANCE ASSOCIATIONS, FEDERATIONS OF MUTUAL INSURANCE ASSOCIATIONS AND GUARANTEE FUNDS

DIVISION I
APPLICATION FOR CONSTITUTION

6. An application for the constitution of a mutual insurance association must be accompanied by the following documents, in addition to the articles of the association and the documents required by section 93.18 of the Act respecting insurance:

(1) the résumés of the persons proposed as directors;

(2) the proposed internal by-laws;

(3) a description of the composition and mode of operation of the committee on ethics, the audit committee and, if applicable, the executive committee, the investment committee and any other proposed committee, as well as the names of the persons proposed as members of those committees;

(4) the proposed rules of ethics applicable to directors;

(5) a description of the products that will be offered;

(6) copies of the proposed insurance policies and riders;

(7) the proposed product marketing and distribution policy and claim settlement policy;

(8) the proposed investment policy;

(9) copies of the proposed reinsurance contracts;

(10) the authorization of the federation to carry on the proposed activities;

(11) a description of the organizational structure; and

(12) a minimum three-year business plan that contains opening financial statements and financial forecasts.

The business plan must be supported by a minimum three-year actuarial projection pertaining to the balance sheet, income statement and statement of retained earnings, and capital adequacy.

The actuarial projection must contain a description of the calculation assumptions used, and be drawn up by an actuary who is a Fellow of the Canadian Institute of Actuaries practising in damage insurance.

7. An application for the constitution of a federation of mutual insurance associations must be accompanied by the following documents, in addition to the articles of the federation and the documents required by section 93.121 of the Act respecting insurance:

(1) the résumés of the persons proposed as directors;

(2) the proposed internal by-law;

(3) a description of the composition and mode of operation of the audit committee and, if applicable, the executive committee, the investment committee, the committee on ethics and any other proposed committee, as well as the names of the persons proposed as members of those committees;

(4) the proposed rules of ethics applicable to directors;

(5) the name and address of the person proposed as auditor;

(6) a certified true copy of the resolution of the board of directors of each of the mutual insurance associations, duly confirmed by the members, authorizing the founders to apply for the constitution of the federation; and

(7) a development plan describing the proposed activities of the federation over a period of five years, specifying the nature of the services that it will offer to its members, the means to be used to establish and maintain its services, including an estimate of costs, the training it will provide to its personnel and, if applicable, its investment policy for the investment fund.

8. An application for the constitution of a guarantee fund must be accompanied by the following documents, in addition to the articles of the fund and the documents required by section 93.218 of the Act respecting insurance:

(1) the résumés of the persons proposed as directors;

(2) the name and address of the person proposed as auditor;

(3) the proposed internal by-law; and

(4) an audited statement showing the amount subscribed and paid up by each of the founding mutual associations to constitute the capital of the guarantee fund.

DIVISION II
NAME OF A MUTUAL INSURANCE ASSOCIATION

9. For the purposes of paragraph 6 of section 93.22 of the Act respecting insurance, public authorities are those listed in section 1 of the Regulation respecting the corporate names of companies governed by Part IA of the Companies Act, made by Order in Council 1857-93 dated 15 December 1993.

10. The cases in which the name of a mutual insurance association suggests that the association is related to another person, partnership or group are those mentioned in section 3 of the Regulation respecting the corporate names of companies governed by Part IA of the Companies Act.

The criteria to be taken into account to determine whether the name of an association suggests that the association is so related or leads to confusion with the name used by another person, partnership or group are those set out in sections 4 and 5 of that Regulation.

CHAPTER III
CLASSES OF INSURANCE

DIVISION I
GENERAL

11. A class of insurance that includes insurance against loss of property also includes insurance against loss of enjoyment resulting therefrom.

12. No class of insurance includes insurance against the financial consequences of liability arising out of damage unless specifically mentioned therein.

DIVISION II
INSURANCE OF PERSONS

13. Insurance in the "life insurance" class is insurance whereby the insurer undertakes to pay an agreed amount on the death of the insured. Such insurance may also include an undertaking to pay an amount during the life of the insured, depending on the insured being still alive at a specified time or on the occurrence of an event affecting the existence of the insured. Life and fixed-term annuities transacted by insurers are also included in this class.

14. Insurance in the "accident and sickness insurance" class is insurance whereby the insurer offers one or more of the following protections:

(1) payment of an indemnity in the event of bodily injury, including death, resulting from an accident sustained by an insured;

(2) payment of an indemnity in the event of sickness or disability of an insured;

(3) reimbursement for expenses incurred as a result of the sickness of or an accident sustained by an insured;

(4) reimbursement for expenses incurred for the health care of an insured.

DIVISION III
DAMAGE INSURANCE

15. Insurance in the "automobile insurance" class is insurance whereby the insurer undertakes to indemnify the insured against material loss or damage resulting from an event involving a motor vehicle, under the terms of the insurance policies approved by the Autorité des marchés financiers under section 422 of the Act respecting insurance.

It includes protection against the financial consequences of liability arising out of bodily injury or damage to property caused by a motor vehicle or the use or operation of a motor vehicle.

Insurance providing for payment of an indemnity in the event of bodily injury, including death, resulting from an accident involving a motor vehicle is also included in this class, provided that such insurance is part of a motor vehicle liability insurance contract.

16. Insurance in the "aircraft insurance" class is insurance whereby the insurer undertakes to indemnify the insured against material loss or damage resulting from an event involving an aircraft. It includes protection against the financial consequences of liability arising out of bodily injury or damage to property caused by an aircraft or the use of it.

17. Insurance in the "property insurance" class is insurance whereby the insurer undertakes to indemnify the insured against loss of or damage to property, to the extent that the insurance does not cover property that is more specifically covered by another class of insurance.

18. Insurance in the "boiler and machinery insurance" class is insurance providing one or more of the following protections:

(1) insurance whereby the insurer undertakes to indemnify the insured against material loss or damage sustained by the insured by reason of the explosion or rupture of a boiler or any other pressure vessel, including any mechanism, component or accessory incidental to its operation, or material loss or damage resulting from an accident in the course of its operation;

(2) insurance against the financial consequences of liability arising out of bodily injury or damage to property caused by the explosion or rupture of a boiler or any other pressure vessel, including any mechanism, component or accessory incidental to its operation, or by an accident in the course of its operation;

(3) insurance whereby the insurer undertakes to indemnify the insured against material loss or damage sustained by the insured by reason of the use, breakage or breakdown of machinery;

(4) insurance against the financial consequences of liability arising out of bodily injury or damage to property caused by the use or operation of machinery.

19. Insurance in the "surety insurance" class is insurance whereby the insurer undertakes to guarantee the performance of an obligation or the payment of a penalty or indemnity for default on the part of the debtor. It does not include credit insurance, credit protection insurance or hypothec insurance, which are distinct classes.

20. Insurance in the "credit insurance" class is insurance whereby the insurer undertakes to indemnify an insured creditor against loss resulting from failure on the part of a debtor to repay the insured creditor. This class does not include protection for claims secured by hypothec.

21. Insurance in the "credit protection insurance" class is insurance whereby the insurer undertakes to indemnify a creditor against loss resulting from failure on the part of an insured natural person owing a debt to the creditor to repay the latter by reason of insufficient income, up to the amount of the debt.

22. Insurance in the "hypothec insurance" class is insurance whereby the insurer undertakes to indemnify an insured creditor against loss resulting from failure on the part of a debtor to repay a loan secured by a movable or immovable hypothec.

23. Insurance in the "fidelity insurance" class is insurance whereby the insurer undertakes to indemnify the insured against loss resulting from theft, embezzlement or breach of trust committed by an employee, an agent, a mandatary, a partner, an officer or a member. It includes insurance whereby the insurer undertakes to indemnify the insured should any of those persons fail to perform duties or perform them inappropriately.

24. Insurance in the "legal expenses insurance" class means insurance whereby the insurer undertakes to reimburse the legal costs of the insured, including fees and other costs incurred in respect of the provision of the legal services.

25. Insurance in the "hail insurance" class is insurance whereby the insurer undertakes to indemnify the insured against material loss caused by hail to crops in the field.

26. Insurance in the "fire insurance" class is insurance whereby the insurer undertakes to indemnify the insured against loss or damage that is the direct consequence of fire or the burning of insured property, regardless of the cause, including loss of or damage to property during transportation or resulting from the methods used to extinguish the fire.

27. Insurance in the "liability insurance" class is insurance whereby the insurer offers protection against the financial consequences of liability incurred by the insured for damage to a third person by reason of an injurious act. It includes insurance providing one or more of the following protections:

(1) protection against liability arising out of bodily injury or damage to property sustained by third persons, excluding the employees of the insured;

(2) protection whereby the insurer undertakes to indemnify in the event of an accident, whether liability exists or not, against damage sustained by a person neither living with the insured or on the insured premises, if the protection is provided for in a policy that also includes the protection referred to in subparagraph 1;

(3) protection against the liability of an employer arising out of bodily injury sustained by employees in the performance of their duties;

(4) protection whereby the insurer undertakes to indemnify in the event of an accident, whether liability exists or not, against damage sustained by employees in the performance of their duties, if the protection is provided for in a policy that also includes the protection referred to in subparagraph 3.

This class of insurance does not include liability covered by automobile insurance, aircraft insurance or boiler and machinery insurance.

28. Insurance in the "title insurance" class is insurance whereby the insurer undertakes to indemnify the insured against loss or damage resulting from

(1) the existence of a hypothec, a prior claim, a servitude or any other restriction on the right of ownership of property;

(2) a defect in a document that evidences a hypothec, a prior claim, a servitude or a restriction on the right of ownership of property;

(3) a defect in the title to property; or

(4) any other situation affecting title to property or the existence of another real right, including the right to the enjoyment of property.

DIVISION IV
MARINE INSURANCE

29. Insurance in the "marine insurance" class is insurance covering the risks incident to a marine adventure and may cover the risks of any adventure analogous to a marine adventure, land risks incidental to a marine adventure and risks incident to the building, repair and launch of a ship.

It includes protection against the financial consequences of liability arising out of bodily injury or damage to property arising out of such an adventure.

CHAPTER IV
APPLICATION FOR AN INSURER'S LICENCE

30. Every legal person, other than a professional order, that applies for an insurer's licence must provide the Autorité des marchés financiers with a plan of its activities in Québec. The plan must set out

(1) the nature of the insurance contracts it proposes to offer in Québec;

(2) the sales methods to be used;

(3) the training to be given to its personnel;

(4) the claim settlement services to be set up for its insured in Québec;

(5) the investment policy to be implemented for the funds held for the benefit of its insured in Québec; and

(6) the reinsurance policy and practices to be applied.

31. A licence application made by a legal person transacting insurance of persons, other than a legal person engaged exclusively in reinsurance, must be accompanied by an undertaking to be a party to a contract of adhesion with Assuris and to comply with the conditions stipulated therein, except if the legal person is already a party to such a contract or does not issue policies that guarantee for their duration the amounts of the benefits and premiums fixed in them.

32. A licence application made by a legal person transacting damage insurance, other than a professional order, a mutual insurance association or a legal person engaged exclusively in reinsurance, must also be accompanied by an undertaking to be a party to a contract of adhesion with the Property and Casualty Insurance Compensation Corporation (PACICC) and to comply with the conditions stipulated therein, except if the legal person is already a party to such a contract or intends to issue only insurance policies that are not subject to compensation under the contract.

33. Every legal person constituted under laws other than the laws of Québec that applies for a licence must send to the Minister and to the Autorité des marchés financiers the following documents:

(1) its certificate of registration, its licence or any other similar document issued by the authority in the place where it was constituted;

(2) its financial statements, as they stood at the close of the fiscal year preceding the licence application, that the legal person is required to file with the authority in the place where it was constituted; and

(3) the last inspection report submitted to it by the authority in the place where it was constituted and, if applicable, by any other authority in Canada.

CHAPTER V
COMMERCIAL PRACTICES AND DISCLOSURE OF CONDITIONS OF INSURANCE CONTRACTS

34. Insurers must present themselves under their true identity and not use a phrase that could cause confusion, particularly as regards trademarks or service marks, slogans, symbols or any other identification marks.

35. An insurer may not, in any insurance offer, exaggerate the extent of the protection offered or the amount of payable benefits, nor minimize the cost thereof.

Except in its advertising, an insurer must also specify the exclusions likely to affect the nature or scope of the protection under the contract. The insurer must also expose any limitation resulting from a waiting period.

Upon renewal, cancellation or termination of a contract, the insurer must refer to the relevant provisions in the contract.

36. An insurer advertising that no prior medical examination is required under the contract must specify whether the stipulation applies to the insurance application only, or also to the payment of benefits. The insurer must also indicate the limits to protection under the contract in the case of death, illness or disability resulting from conditions existing prior to the effective date of the insurance.

37. No insurance offer may falsely claim or suggest that the insurance offered constitutes special protection and that the policyholder will be able to benefit from certain additional advantages if the insurance is taken out, or that the insurance is limited to a determined group of persons.

CHAPTER VI
INVESTMENTS

DIVISION I
GENERAL

38. In accordance with subparagraph 2 of the first paragraph of section 244.2 of the Act respecting insurance, an insurer may acquire the shares of a legal person

(1) whose principal activity is the purchase, management, sale or leasing of immovables;

(2) whose principal activity is the offering of shares in investment portfolios, the making of loans and investments, factoring, leasing, the offering of computing services or actuarial advisory services;

(3) whose principal activity is complementary to the distribution of certain insurance products such as travel assistance, legal assistance and road assistance; or

(4) whose activities are those of a firm within the meaning of the Act respecting the distribution of financial products and services (R.S.Q., c. D-9.2) or that offers financial products and services outside Québec.

39. An insurer other than a mutual insurance association may acquire all or any of the shares of a legal person operating a residential and long-term care centre.

40. For the purposes of section 247.1 of the Act respecting insurance, a subsidiary newly acquired by an insurer must undertake

(1) to submit its financial statements each year to the Autorité des marchés financiers;

(2) to submit any document and provide any information on its affairs required by the Autorité des marchés financiers to enable the Authority to verify the fair market value of the investments and whether the conditions set out in paragraph 5 are complied with;

(3) to submit any document and provide any information required by the Autorité des marchés financiers relating to its financial situation or the financial situation of a holding company directly controlling the subsidiary or controlled by the subsidiary, as well as any document or information related to the application of the Act respecting insurance;

(4) to permit the Autorité des marchés financiers or its representative to enter its head office and other establishments outside Québec at any reasonable time so that the Authority or its representative may

(a) examine and make copies of the books, registers, accounts, records and other documents relating to its financial situation or the financial situation of a holding company directly controlling the subsidiary or controlled by the subsidiary;

(b) require any information relating to the administration of the Act respecting insurance and the production of any related document; and

(c) require every person having the custody, possession or control of the books, registers, accounts, records and other documents to allow access to and facilitate examination of them;

(5) to provide, at its own expense, on request by the Autorité des marchés financiers, an assessment made by an independent expert of any proposed investment if, in the opinion of the Autorité des marchés financiers, the assessment made by the subsidiary does not reflect market value; and

(6) to not hold more than 30% of the voting shares issued by a legal person unless

(a) the legal person's principal activity is the purchase, management, sale or leasing of immovables;

(b) the legal person's principal activity is the offering of shares in investment portfolios, the making of loans and investments, factoring, leasing, or the offering of computing services or actuarial advisory services;

(c) the legal person's principal activity is complementary to the distribution of certain insurance products such as travel assistance, legal assistance and road assistance; or

(d) the legal person is an insurer, a bank, a trust company, a savings company, a firm within the meaning of the Act respecting the distribution of financial products and services, a securities dealer or adviser, or offers financial products and services outside Québec.

DIVISION II
INVESTMENTS BY A FEDERATION OF MUTUAL INSURANCE ASSOCIATIONS

41. The following investments must be authorized in advance by the board of directors of a federation of mutual insurance associations:

(1) any transaction for the purpose of acquiring, using the federation's investment fund, securities issued by a restricted party in respect of the federation or by a legal person belonging to the same group as the federation; and

(2) any transfer of assets between the federation's investment fund and a restricted party in respect of the federation or by a legal person belonging to the same group as the federation.

Bad debts, unproductive assets and assets repossessed from a debtor in default may not be transferred to the investment fund.

42. The investment fund of a federation must be valued at least once a year at the time the accounts of the federation are audited. The valuation must be effected in accordance with generally accepted accounting principles.

43. A federation must, within two months after the end of its fiscal year, send a statement to its members setting forth, in comparison with the statement of the preceding year, the financial situation of the investment fund and the value of their participation as at the end of the fiscal year.

CHAPTER VII
ACTIVITIES OF A TRUST COMPANY

44. For the purposes of section 33.2.1 of the Act respecting insurance, the activities of a trust company that an insurance company holding a licence issued under the Act is authorized to carry on are

(1) acting as trustee for any retirement plan, retirement savings plan, education savings plan, disability savings plan or any other plan, fund or mechanism of the same nature administered by the insurance company and registered under the Taxation Act (R.S.Q., c. I-3) or the Income Tax Act (R.S.C. 1985, c. 1, (5th Supp.));

(2) acting as trustee of an investment fund within the meaning of the Securities Act (R.S.Q., c. V-1.1) administered by the insurance company; and

(3) the activities that a trust company may carry on under the Act respecting trust companies and savings companies (R.S.Q., c. S-29.01) in respect of the annuity contracts administered by the insurance company and the insured amounts kept by it for the benefit of others.

CHAPTER VIII
ANNUAL STATEMENTS

DIVISION I
GENERAL

45. Every insurer that transacts insurance of persons and damage insurance must file annual statements for each of those activities.

46. Every insurer must keep, for inspection purposes, all documents including the working sheets used in determining the balance for each item in the annual statement.

47. Mutual benefit associations must send to the Autorité des marchés financiers, along with their annual statement, a true copy of their by-laws if they were amended in the last fiscal year.

DIVISION II
INSURER CONSTITUTED UNDER LAWS OTHER THAN THE LAWS OF QUÉBEC

48. Every insurer constituted under laws other than the laws of Québec that transacts insurance in Québec must send to the Autorité des marchés financiers, in addition to the annual statement required by sections 305 to 312 of the Act respecting insurance, any annual or interim statements required to be filed with another authority in Canada.

49. Every insurer constituted under laws other than the laws of Québec that transacts only marine insurance in Québec must send to the Autorité des marchés financiers the annual statement required by sections 305 to 312 of the Act respecting insurance.

CHAPTER IX
METHODS FOR THE VALUATION OF THE ASSETS AND LIABILITIES OF INSURERS

DIVISION I
GENERAL VALUATION METHOD

50. Subject to the special provisions in this chapter, the assets and liabilities of an insurer or of an insurance fund in the case of a professional order must be valued and presented in their annual statement in accordance with generally accepted accounting principles.

DIVISION II
INVESTMENTS IN LEGAL PERSONS CONTROLLED BY AN INSURER TRANSACTING DAMAGE INSURANCE

51. Investments in legal persons controlled by an insurer transacting damage insurance must be valued on an equity basis.

DIVISION III
SEPARATE FUNDS

52. The assets of separate funds maintained by an insurer transacting insurance of persons and contracting obligations that vary according to the market value of a specified group of assets must be valued in accordance with generally accepted accounting principles.

DIVISION IV
RESERVES MAINTAINED BY MUTUAL BENEFIT ASSOCIATIONS

53. Subject to section 54, the reserve of each of the funds established by a mutual benefit association must be calculated so that it is sufficient to guarantee payment at maturity of the association's obligations in respect of each of the funds.

In calculating the reserve, the actuary must not take into account a possible reduction in mutual benefits or increase in assessments arising from an amendment to the by-laws of the mutual benefit association after the valuation date.

54. If the mutual benefit association issues policies or certificates guaranteeing, for their duration, the amounts of the mutual benefits and assessments fixed in them, the reserve must be calculated in respect of the policies or certificates according to the methods applicable to every insurer under the Act respecting insurance and this Regulation.

CHAPTER X
LOANS

55. Every insurer proposing to contract a loan by issuing bonds or other unsecured evidences of indebtedness must be authorized to do so by its internal by-law and by a resolution of the board of directors fixing the terms and conditions of the issue.

56. The resolution required by section 55 must indicate

(1) the rate of interest on the bonds or other evidences of indebtedness or the fact that the rate may be determined by the board of directors;

(2) the due date and, if applicable, the possibility of pre-payment;

(3) the privilege, if applicable, to convert bonds into shares of the capital stock or that the board of directors is authorized to grant such a privilege;

(4) if the resolution authorizes the issue of one or more series of unsecured bonds, their designation, the rights and the conditions attached to each of them or, as the case may be, that each series has the same rights and conditions as the bonds of any other series, with the exception of the rate of interest, the payment of interest and the dates of issue and redemption for each series; and

(5) the total par value of the series or various series or, in the absence of such a value, the total par value of the unsecured bonds that the insurer proposes to issue immediately, with a statement that the amount may be exceeded only if the insurer is authorized to do so by a new resolution.

57. Unsecured bonds must mention the rights, conditions and restrictions attached to them.

58. Every insurer proposing to contract a loan by accepting subordinated loans must be authorized to do so by its internal by-law and by a resolution of the board of directors fixing the terms and conditions, in particular

(1) the total amount;

(2) the rate of interest or authority for the board of directors to determine it; and

(3) if applicable, the privilege to convert subordinated loans into shares in the capital stock or the authority for the board of directors to grant such a privilege.

CHAPTER XI
GROUP INSURANCE OF PERSONS

DIVISION I
CONDITIONS APPLICABLE TO CONTRACTS FOR GROUP INSURANCE OF PERSONS

§1. General

59. A group life insurance contract or a group sickness or accident insurance contract may be issued under a master policy solely to cover the participants in a specified group and, in some cases, their families or dependants.

60. A specified group of persons is a group whose members share common activities or interests before a group insurance plan is offered to them, including socio-economic or cultural interests.

The group may be composed of such persons as, for example,

(1) persons currently or formerly employed by one or more employers;

(2) persons having the same profession or usual occupation;

(3) the members of a financial services cooperative;

(4) the members of a mutual insurance association.

Despite the foregoing, a specified group of persons may not be constituted for the sole purpose of entering into a group insurance contract, and group insurance may be offered to the members of the group only as a benefit complementary to membership.

61. The policyholder of a group insurance contract must be able to provide for the management of the master policy, in particular the collection of the premiums for the insurer. If the policyholder is an association of employees or a professional syndicate, it may enter into an agreement with the employer or a third party so that the employer or third person manages the master policy in the name of the policyholder.

§2. Conversion of a group life insurance contract

62. Every group life insurance contract must give a participant who ceases to belong to the group before age 65 the option to convert all or part of the participant's life insurance protection or, as the case may be, that of the participant's family and dependants, into an individual life insurance contract.

The amount of insurance on the participant's life that may be converted must be at least $10,000 and may not exceed the lesser of the amount of all the life insurance protections that the participant held under the contract on the conversion date and $400,000.

In addition, the amount of life insurance that may be converted must be at least $5,000 for each family member and each dependant, without exceeding the amount of insurance on the life of those persons on the conversion date.

That conversion option may be exercised by the participant within 31 days after leaving the group, without the participant having to provide evidence of insurability, including for the family and dependants. The group insurance coverage remains in force during that period or until converted into individual insurance.

The conversion option does not apply to sickness or accident insurance incidental to the life insurance contract.

63. The insurer must give a participant who leaves the group either of the following options without the participant having to provide evidence of insurability:

(1) individual life insurance, temporary or permanent, at the participant's option, providing protection comparable to that provided under the group insurance contract both as to amount and term; or

(2) individual life insurance for one year, providing protection comparable to that provided under the group insurance contract, but convertible at the end of the year, at the participant's option, into insurance described in subparagraph 1.

The premium for the first year of the insurance described in subparagraph 1 of the first paragraph may not exceed the premium for temporary one-year insurance.

64. The premiums for an individual life insurance contract resulting from a conversion must be uniform for the term of the contract, except the premiums for the first year. The premiums are established on the basis of the age and sex of the insured in accordance with the rate for standard risks that applies at the time of conversion.

Despite the foregoing, the insurer may, in respect of a participant subject to an extra premium before the conversion of the group insurance, apply a comparable increase at the time the premium for the individual insurance is established.

65. The insurer must allow a participant who opts for individual life insurance under section 63 to pay the premiums for the first year on a quarterly basis or on other terms agreed on.

66. A group life insurance contract must give a participant who has been insured for at least 5 years the option to convert all or part of the life insurance protection into individual life insurance within 31 days after the expiry of the master policy if the master policy is not replaced or the replacement contract provides for a lesser amount of insurance.

The amount of insurance that may be converted must be at least $10,000 or 25% of the amount of the participant's life insurance on the expiry of the master policy, whichever amount is greater.

The participant is not required to provide evidence of insurability and the insurer must comply with sections 63 to 65.

The conversion option does not apply to sickness or accident insurance incidental to the group life insurance contract.

67. For the purposes of sections 63, 70 and 71, protection is comparable if the content is the same despite differences in the amounts of insurance, the amounts of premium waivers or the conditions of eligibility.

§3. Compulsory clauses

68. Every group life insurance contract must stipulate that its expiry or the cancellation of any contract protection may not be set up against a claim based on an event that occurred while the contract was in force or on a death resulting from a disability that arose while the contract was in force.

69. Every group sickness or accident insurance contract must stipulate

(1) that its expiry or the cancellation of any protection may not be set up against a claim based on

(a) death or mutilation resulting from an accident that occurred while the contract was in force; or

(b) a disability that arose or a sickness contracted while the contract was in force; and

(2) that the insurer remains bound to compensate the participant for salary loss if the participant is still disabled after the contract expires.

70. Despite sections 68 and 69, the insurer is not bound to compensate the participant in the event of recurrence of the disabling affliction after the expiry of the contract if the participant has not been disabled for more than 180 days.

In all other cases, coverage ceases as soon as the participant becomes covered by another insurer under a group insurance contract having comparable provisions.

71. If a group life insurance contract or a group sickness or accident insurance contract is terminated and replaced within 31 days by a contract providing comparable coverage for all or part of the same group, the new group insurance contract must stipulate that

(1) a person insured under the former contract may not be excluded from the new contract or be denied benefits solely because of a pre-existing condition limitation that was not applicable or that did not exist in the former contract, or because the person is not at work on the date of coming into force of the new contract; and

(2) every person insured under the former contract is covered *pleno jure* by the new contract on the termination of the former contract if the cessation of insurance is exclusively attributable to the termination and the person belongs to a class of participant covered by the new contract.

72. Despite sections 68 and 69, the new insurer must cover an insured who suffers from a disabling affliction that arose under the former contract but was declared to the previous insurer more than 180 days after it arose, during the new contract.

In addition, even if the insured again has a disability covered by the new contract within 180 days after the end of the first disability, the former contract ceases to apply and the new contract applies as soon as the participant has accumulated 30 days of full-time work after the expiry of the former contract in duties in a class covered by the new contract.

73. A participant in the new contract is exempt from any waiting period if

(1) the new disability period is attributable to the same or related causes that gave rise to the payment of benefits under the former contract; and

(2) a period of less than 180 days has elapsed since the due date of the last benefit or the last premium for which there was waiver and the beginning of the new disability period.

74. Benefits owing by reason of death or mutilation covered by the former contract under sections 68 and 69 are not covered by the new insurer.

Despite the foregoing, the former contract ceases to apply and the new contract applies as soon as the insured has accumulated 30 days of full-time work after the expiry of the former contract in duties in a class covered by the new contract.

DIVISION II
CONDITIONS APPLICABLE TO GROUP INSURANCE CONTRACTS ON THE LIFE OR HEALTH OF DEBTORS AND ON THE LIFE OF DEPOSITORS

§1. General

75. In group insurance on the life or health of debtors and on the life of depositors, the enrollment form or loan agreement must indicate the premiums required to cover all or part of the cost of the life insurance or sickness or accident insurance. If the cost of the premiums is determined by a rate of interest added to the rate of interest for the loan, the enrollment form or loan agreement must indicate the percentage of added interest that constitutes the premium.

All questions or limitations regarding state of health as a condition of eligibility must be clearly specified on the enrollment form.

The policyholder must, at the time the enrollment form is signed by the participant, give a duly completed and signed copy of the form to the participant.

Any form used in the policyholder's business that contains an application for insurance constitutes an enrollment form.

§2. Conditions applicable to group insurance on the life or health of debtors

76. Subject to the provisions of this subdivision, any creditor may underwrite a group insurance contract on the life or health of debtors that provides coverage up to the amounts loaned.

The insurance may also cover the life or health of persons other than debtors, but only if the creditor has a pecuniary interest in their life or health.

77. A creditor does not cease to act as the policyholder by reason of the assignment of the claim to a third person except that, in such a case, the amount payable under the contract must be paid to the assignee.

78. The amount payable under a group insurance contract on the life of debtors is limited to the net debt at the time of the death of the debtor.

79. Despite sections 76 and 78, a group insurance contract on the life or health of debtors may, at the debtors' option, provide for an amount payable that is equal to the amount of their loan or, in the case of a contract extending variable credit, equal to the amount of the variable credit authorized by the creditor.

The maximum amount payable to the creditor is limited to the net debt of the debtor, the balance being paid to the designated beneficiary or, if applicable, to that person's succession.

80. For the purposes of sections 78 and 79, "net debt" means the amount of the original claim increased by only the portion of the credit charges accrued up to the time of death, and decreased by the payments made by the debtor.

81. The group insurance contract on the life of debtors and the documents relevant to the contract given to the debtor must clearly indicate the amount of the benefits payable by the insurer or how that amount is determined.

82. If the debtors are responsible for payment in full of the insurance premiums, the master policy must state the amount of the premiums; the amount may not be greater than the amount remitted by the policyholder to the insurer.

83. The master policy must also stipulate that all the insurance premiums collected by the policyholder must be promptly remitted to the insurer.

84. No dividend or experience rebate may be directly or indirectly paid to the policyholder of a group insurance contract on the life or health of debtors, either during the contract or after its expiry, unless the premiums are paid in full by the policyholder.

Despite the foregoing, the master policy may stipulate that experience rebates and dividends are payable retroactively to the participants, that they may be applied to reduce premiums or that they are deposited with the insurer for the purpose of reducing future premiums.

85. In group insurance on the life or health of debtors, the master policy may not provide for policyholder remuneration other than reimbursement for expenses actually incurred by the policyholder to administer the contract.

Those expenses may not be calculated as a percentage of the premiums or be otherwise associated with the premiums, except in the case of expenses incurred for the collection of the premiums.

§3. Conditions applicable to group depositor insurance

86. Subject to the provisions of this subdivision, any bank, financial services cooperative, trust company, legal person managing mutual funds or any other legal person carrying on similar activities may underwrite a group insurance contract on the life of depositors that provides coverage up to the amounts deposited or invested or up to the amounts to be deposited or invested by the depositor.

87. The amount payable on the death of a participant under a group insurance contract on the life of depositors may not exceed the greatest of

(1) the balance on deposit or the amount invested with the policyholder;

(2) the amounts to be deposited or invested by the depositor with the policyholder;

(3) the amount determined or to be determined, payable at maturity, if the depositor undertook to pay the amount in cash on a date that is specified or to be specified; and

(4) an amount of $25,000 in the case of insurance issued through a financial services cooperative.

The amount in subparagraph 4 of the first paragraph is adjusted annually based on the percentage increase in the average of the Consumer Price Index for Canada, published by Statistics Canada under the Statistics Act (R.S.C. 1985, c. S-19), for the 12 months of the preceding year compared to the 12 months of the year prior to that year.

If an annual average or the percentage calculated pursuant to the second paragraph or the amount thus adjusted has more than two decimals, only the first two decimals are retained and the second is increased by one unit if the third decimal is equal to or greater than five.

CHAPTER XII
TARIFF OF FEES

88. The fees payable under this Regulation are those established in the following table:

Tariff of fees

Act	Fees payable	
	to the Autorité des marchés financiers	to the Minister of Revenue
Constitution of an insurance company	$5,000	
Constitution of a mutual insurance association	$5,000	
Constitution of a federation of mutual insurance associations	$5,000	

Tariff of fees		
Act	Fees payable	
	to the Autorité des marchés financiers	to the Minister of Revenue
Constitution of a guarantee fund	$5,000	
Constitution of a fund to insure professional liability of members of a professional order governed by the Professional Code	$5,000	
Filing of articles and issue of a certificate of constitution of an insurance company		$500
Issue of supplementary letters patent to an insurance company	$2,500	$500
Filing of articles of amendment for an insurance company and issue of a certificate of amendment	$2,500	$500
Amendment to the articles of a mutual insurance association and issue of a certificate of amendment	$2,500	
Amendment to the articles of a federation of mutual insurance associations	$2,500	
Amendment to the articles of a guarantee fund	$2,500	
Amendment to the articles of a mutual benefit association	$2,500	
Amalgamation or conversion of an insurance company or mutual insurance association	$2,500	
Filing of articles of amalgamation or conversion of an insurance company and issue of an amalgamation or conversion certificate		$500
Filing of articles of continuance of an insurance company and issue of a certificate of continuance under section 200.0.15, 200.0.16 or 200.6 of the Act respecting insurance	$2,500	$500
Issue of a first permit to an insurance company, a mutual insurance association or a professional order	$2,500	
Issue of a first licence to a mutual benefit association after amalgamation	$2,500	
Issue of a licence amended to indicate the classes of insurance	$500	
Examination of application and reinstatement of an insurer's licence	$2,500	
True copy of an insurer's licence	$75	
True copy of the appointment of a representative in Québec or a proxy	$75	
Change in the appointment of a representative in Québec or a proxy	$200	
Certification of a document by the Autorité des marchés financiers	$100	

89. The fees provided for in this Regulation for the purposes mentioned in section 88 are the only fees payable.

90. Every cheque in payment of fees under this chapter must be sent with the related application to the Autorité des marchés financiers or, if they are payable to the Minister of Revenue, to the enterprise registrar.

CHAPTER XIII
TRANSITIONAL AND FINAL

91. An insurer who holds a licence to transact surety insurance under the Regulation respecting the application of the Act respecting insurance (R.R.Q., 1981, c. A-32, r.1), as it read on 9 September 2009, is deemed to hold a licence to transact surety and fidelity insurance under this Regulation, unless restrictions to the contrary appear on the licence.

92. An insurer who holds a licence to transact property insurance under the Regulation respecting the application of the Act respecting insurance (R.R.Q., 1981, c. A-32, r.1), as it read on 9 September 2009, is deemed to hold a licence to transact property insurance in addition to a licence to transact fire insurance under this Regulation, unless restrictions to the contrary appear on the licence.

93. An insurer referred to in section 264 of the Regulation respecting the application of the Act respecting insurance (R.R.Q., 1981, c. A-32, r.1), as it read on 9 September 2009, may continue to limit the amount of the insurance liable to conversion in the manner described in that section until the expiry of the master-policy in force.

94. An insurer that, on 18 December 2002, held a licence to transact damage insurance may transact insurance of persons if the insurer is authorized to transact automobile insurance or liability insurance, but only to the extent permitted by those classes of insurance.

95. This Regulation replaces the Regulation respecting the application of the Act respecting insurance (R.R.Q., 1981, c. A-32, r.1).

96. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*, except section 5 which will take effect on the date of coming into force of section 39 of the Ac to amend the Act respecting insurance and other legislative provisions (2002, c. 70), which replaces section 88.1 of the Act respecting insurance.

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Gouvernement du Québec

O.C. 894-2007, 12 August 2009

Health Insurance Act
(R.S.Q., c. A-29)

Regulation
— Amendments

Regulation to amend the Regulation respecting the application of the Health Insurance Act

WHEREAS, under subparagraph *b* of the first paragraph of section 69 of the Health Insurance Act (R.S.Q., c. A-29), the Government may, after consultation with the Régie de l'assurance maladie du Québec or upon its recommendation, make regulations to determine among the services contemplated in section 3 of the Act those which are not to be considered insured services, and how often some of those contemplated in subparagraph *c* of the first paragraph or in the second paragraph of section 3 may be rendered in order to remain insured services;

WHEREAS, under subparagraph *d* of the first paragraph of section 69 of the Act, the Government may, in the same manner, make regulations to determine which services rendered by dentists are to be considered insured services for the purposes of the second paragraph of section 3 in respect of each class of insured persons contemplated therein;

WHEREAS, under subparagraph *g* of the first paragraph of section 69 of the Act, the Government may, in the same manner, make regulations to determine which services rendered by optometrists are considered insured services for the purposes of subparagraph *c* of the first paragraph of section 3 and fix the age of insured persons who may receive such services or some of them;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), a draft of the Regulation to amend the Regulation respecting the application of the Health Insurance Act was published in Part 2 of the *Gazette officielle du Québec* of 4 March 2009 with a notice that it could be made by the Government on the expiry of 45 days following that publication;

WHEREAS the Board has been consulted on the draft Regulation;

WHEREAS it is expedient to make the Regulation with amendments;

IT IS ORDERED, therefore, on the recommendation of the Minister of Health and Social Services:

THAT the Regulation to amend the Regulation respecting the application of the Health Insurance Act, attached to this Order in Council, be made.

GÉRARD BIBEAU,
Clerk of the Conseil exécutif

Regulation to amend the Regulation respecting the application of the Health Insurance Act*

Health Insurance Act
(R.S.Q., c. A-29, s. 69, 1st par., subpars. *b*, *d* and *g*)

1. The Regulation respecting the application of the Health Insurance Act is amended in section 22

(1) by replacing "a 24-month period" in paragraph *j* by "2 consecutive calendar years" and by replacing "a 12-month period" by "a calendar year";

* The Regulation respecting the application of the Health Insurance Act (R.R.Q., 1981, c. A-29, r.1) was last amended by the regulation made by Order in Council 329-2007 dated 2 May 2007 (2007, *G.O.* 2, 1405). For previous amendments, refer to the *Tableau des modifications et Index sommaire*, Québec Official Publisher, 2009, updated to 1 March 2009.

(2) by replacing "except in an emergency" in subparagraph *i* of paragraph *k.*1 by "except an emergency examination or, where the insured person is followed for oncological purposes by a dentist practising in an institution which operates a hospital centre listed in Schedule E, a second examination".

2. Section 34 is amended by replacing "a partial vision examination, as defined" in the second paragraph by "a partial vision examination and an emergency examination, as defined" and by replacing "is considered an insured service" by "are considered insured services".

3. The following is inserted after section 34.1:

"**34.1.1.** The posterior segment examination with pupil dilation is to be considered an insured service, for the purposes of subparagraph *c* of the first paragraph of section 3 of the Act, for insured persons with a known diagnosis of diabetes and treated by medication, and for insured persons with myopia of 5 diopters or more.".

4. Schedule E in Schedule I to this Regulation is inserted after Schedule D.

5. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

Schedule I
(s. 5)

"SCHEDULE E
(s. 22, par. *k.*1)

INSTITUTIONS WHICH OPERATE A HOSPITAL CENTRE WHERE A SECOND DENTAL EXAMINATION DURING A 12-MONTH PERIOD FOR ONCOLOGICAL PURPOSES IS CONSIDERED AN INSURED SERVICE

(1) Hôpital Notre-Dame (CHUM)

(2) Montreal General Hospital

(3) Sir Mortimer B. Davis General Jewish Hospital

(4) Hôpital Maisonneuve-Rosemont

(5) Pavillon L'Hôtel-Dieu de Québec (CHUQ)

(6) C.H.U. de Sherbrooke

(7) Hôpital de Chicoutimi

(8) Centre hospitalier régional de Trois-Rivières – Pavillon Sainte-Marie

(9) Hôpital de Gatineau

(10) Hôpital régional de Rimouski

(11) Hôpital Charles LeMoyne

(12) Hôpital de la Cité-de-la-Santé de Laval"

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Draft Regulations

Draft Regulation

General and Vocational Colleges Act
(R.S.Q., c. C-29)

College Education
— Amendments

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Regulation to amend the College Education Regulations, appearing below, may be made by the Government on the expiry of 45 days following this publication.

The purpose of the draft Regulation is to modify the conditions of admission of students in technical study specialization programs, to allow general and vocational colleges, in certain cases, to make remedial activities compulsory and to change the definition of course.

Further information may be obtained by contacting Christian Ragusich, Director, Direction de l'enseignement collégial, Ministère de l'Éducation, du Loisir et du Sport, 1035, rue De La Chevrotière, 18e étage, Québec (Québec) G1R 5A5; telephone: 418 644-8976.

Any person wishing to comment on the draft Regulation is requested to submit written comments to the Minister of Education, Recreation and Sports, 1035, rue De La Chevrotière, 16e étage, Québec (Québec) G1R 5A5, within the 45-day period.

MICHELLE COURCHESNE,
Minister of Education,
Recreation and Sports

Regulation to amend the College Education Regulations*

General and Vocational Colleges Act
(R.S.Q., c. C-29, s. 18)

1. The College Education Regulations are amended in section 1 by replacing the definition of "course" by the following:

""course" means a set of learning activities for which credits are attributed and comprising at least 45 periods of instruction or, in the cases determined by the Minister, the number of periods of instruction set by the Minister; (*cours*)".

2. Section 2.2 is amended by replacing "In the case referred to in the second paragraph" in the third paragraph, by "In those cases".

3. The following sections are added after section 3.1:

"**3.2.** Despite section 3.1, a college may admit a person to a program of studies leading to a Specialization Diploma in Technical Studies if the person has received instruction the college considers equivalent.

3.3. A college may conditionally admit to a program of studies leading to a Specialization Diploma in Technical Studies a person who, not having attained the set of objectives and standards of a program of studies referred to in section 3.1 or passed the imposed examinations, commits to meeting the conditions to obtain the Diploma of College Studies in the first term.

Despite the foregoing, a person who must complete training components for a number of credits greater than 5 or who has previously failed to fulfil his or her commitments after being conditionally admitted may not be conditionally admitted.".

4. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

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* The College Education Regulations, made by Order in Council 1006-93 dated 14 July 1993 (1993, *G.O.* 2, 3995), were last amended by the regulation made by Order in Council 724-2008 dated 25 June 2008 (2008, *G.O.* 2, 2935). For previous amendments, refer to the *Tableau des modifications et Index sommaire*, Québec Official Publisher, 2009, updated to 1 March 2009.

Draft Regulation

An Act respecting labour relations, vocational training and manpower management in the construction industry
(R.S.Q. c. R-20)

Commission de la construction du Québec — Levy

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Levy Regulation of the Commission de la construction du Québec, the text of which appears below, may be submitted to the Government for approval on the expiry of 45 days following this publication.

The purpose of the draft Regulation is to levy upon the employer alone or upon both the employer and the employee or upon the employee alone or, where applicable, upon the independent contractor, the amounts required for the administration of the Commission and to fix a minimum amount which an employer is bound to pay per monthly period. Such levy, similar to that of the year 2009, constitutes the main source of financing of the Commission.

Further information may be obtained by contacting André Ménard, Chair and Chief Executive Officer, Commission de la construction du Québec, 3530, Jean-Talon Ouest, Montréal, H3R 2G3; tél. 514 341-7740, poste 6296.

Any interested person having comments to make on the matter is asked to send them in writing, before the expiry of the 45-day period, to André Ménard, Chair and Chief Executive Officer, Commission de la construction du Québec, 3530, Jean-Talon Ouest, (Montréal) H3R 2G3, tél.: 514 341-7740, poste 6296.

David Whissell,
MINISTER OF LABOUR

Levy Regulation of the Commission de la construction du Québec

Act respecting labour relations, vocational training and manpower management in the construction industry
(R.S.Q., c. R-20, s. 82, 1st par. Subpar. *c*)

1. The levy imposed by the Commission de la construction du Québec for the year 2010 is:

(1) in the case of an employer, 0.75 of 1% of the total remuneration paid to his employees;

(2) in the case of an independent contractor, 0.75 of 1% of his remuneration as an independent contractor;

(3) in the case of an employee, 0.75 of 1% of his remuneration.

Notwithstanding the first paragraph, the minimum amount that an employer or an independent contractor is bound to pay the Commission per monthly period is $10.

2. The employer shall collect, on behalf of the Commission, the amount levied upon his employees by means of a weekly deduction on their wages.

3. The independent contractor shall deduct weekly, out of the remuneration he received as an independent contractor, the amount levied upon him.

4. The employer and the independent contractor shall remit to the Commission the amount levied for a monthly period in pursuance of this Regulation, not later than the 15th of the following month.

5. This Regulation comes into force on 1 January 2010.

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Draft Regulation

Highway Safety Code
(R.S.Q., c. C-24.2)

Winter driving
— Use of tires specifically designed
— Amendments

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q, c. R-18.1), that the Regulation to amend the Regulation respecting the use of tires specifically designed for winter driving, appearing below, may be made by the Government on the expiry of 45 days following this publication.

The purpose of the draft Regulation is to amend the definition of a tire specifically designed for winter driving and to provide the cases in which the prohibition to use a passenger vehicle or a taxi not equipped with such tires does not apply.

Further information may be obtained by contacting Stéphanie Cashman-Pelletier, Direction de la sécurité en transport, ministère des Transports, 700, boulevard René-Lévesque Est, 16e étage, Québec (Québec) G1R 5H1; telephone: 418 643-3074 extension 2386; fax: 418 643-8914; e-mail: stephanie.cashman-pelletier@mtq.gouv.qc.ca

Any person wishing to comment on the draft Regulation is requested to submit written comments within the 45-day period to the Minister of Transport, 700, boulevard René-Lévesque Est, 29e étage, Québec (Québec) G1R 5H1.

JULIE BOULET,
Minister of Transport

Regulation to amend the Regulation respecting the use of tires specifically designed for winter driving*

Highway Safety Code
(R.S.Q., c. C-24.2, s. 440.1; 2007, c. 40, s. 59; 2008, c. 14, s. 48)

1. The Regulation respecting the use of tires specifically designed for winter driving is amended in section 2 by inserting the following after paragraph 3:

"(3.1) within 7 days of the end of the contract of lease of a passenger vehicle or taxi with a term of one year or more;".

2. Section 3 is amended

(1) by inserting the following after subparagraph 3 of the first paragraph:

"(4) when moving the vehicle from the establishment of a vehicle dealer to a site with a view to its sale at auction, or from such a site to the vehicle dealer's establishment;

(5) when moving the vehicle to a site with a view to its judicial sale, or from such a site to its starting point;

(6) when putting the vehicle back into operation after the owner has elected not to operate the vehicle in accordance with the Regulation respecting road vehicle registration;

(7) upon cancellation of the contract of lease of the vehicle with a term of one year or more.";

(2) by replacing "1 and 2" in the second paragraph by "1, 2 and 4 to 7".

3. Section 6 is amended by replacing "in the case referred to in paragraph 3 of section 2, the sales contract of the vehicle or a copy of that contract" by "in the case referred to in paragraph 3 or 3.1 of section 2, the sales contract or the contract of lease of the vehicle, as the case may be, or a copy of that contract".

4. Section 7 is amended

(1) by inserting, in subparagraph *a* of subparagraph 1 of the first paragraph:

(a) after subparagraph (iii), the following:

"(iii.1) "AT/S" or "AT-S";";

(b) after subparagraph (iv), the following:

"(iv.1) "Cresta";";

(c) after subparagraph (v), the following:

"(v.1) "INSA T1" or "INSA T2" or "INSA TT770";";

(d) after subparagraph (ix), the following:

"(ix.1) "Studdable";

(ix.2) "Studded";

(ix.3) "Studless";

(ix.4) "TS";

(ix.5) "Ultra Grip";";

(2) by adding the following after subparagraph *b* of subparagraph 1 of the first paragraph:

"*(c)* it is a studded tire used in accordance with the Regulation respecting the use of non-skid devices on the tires of certain road vehicles, made by Order of the Minister of Transport dated 5 November 1998;";

(3) by adding, at the end of subparagraph 2 of the first paragraph, "and a studded tire used in accordance with the Regulation respecting the use of non-skid devices on the tires of certain road vehicles".

5. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

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* The Regulation respecting the use of tires specifically designed for winter driving was made by Order in Council 906-2008 dated 17 September 2008 (2008, *G.O.* 2, 4669). The Regulation has not been amended since.

Draft Regulation

An Act to promote workforce skills development and recognition
(R.S.Q., c. D-8.3)

Training mutuals
— Amendments

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Regulation to amend the Regulation respecting training mutuals, made by the Commission des partenaires du marché du travail, may be submitted to the Government for approval on the expiry of 45 days following this publication.

The main purpose of the draft Regulation is to make the possibility of forming training mutuals more readily available to employers by increasing the number of groups of employers that may be recognized as training mutuals.

The draft Regulation also makes technical and consequential amendments.

To date, study of the matter has shown no impact on the public and enterprises, including small and medium-sized businesses.

Further information may be obtained on the draft Regulation by contacting André Bertoldi, Secretariat of the Commission des partenaires du marché du travail, 800, rue du Square-Victoria, 28e étage, C.P. 100, Montréal (Québec) H4Z 1B7; telephone: 514 864-3682; fax: 514 864-8005; e-mail: andre.bertoldi@mess.gouv.qc.ca

Any person wishing to comment on the draft Regulation is requested to submit written comments within the 45-day period to Jean-Luc Trahan, Chair of the Commission des partenaires du marché du travail, 800, rue du Square-Victoria, 28e étage, C.P. 100, Montréal (Québec) H4Z 1B7.

SAM HAMAD,
Minister of Employment and Social Solidarity

Regulation to amend the Regulation respecting training mutuals*

An Act to promote workforce skills development and recognition
(R.S.Q., c. D-8.3, ss. 8, 20 and 21)

1. Section 2 of the Regulation respecting training mutuals is replaced by the following:

"**2.** The purpose of a training mutual is to structure, develop and implement training services adapted to the common problems and specific needs of the workforce in a sector of economic activity, a region, an industrial domain, or those of the workforce belonging to a specific clientele addressed by an integration and job retention committee, as well as to their socio-economic environment and to technological or structural changes in the market.".

2. Section 3 is replaced by the following:

"**3.** A sectoral workforce committee or a parity committee constituted under the Act respecting collective agreement decrees (R.S.Q., c. D-2) may be recognized as a training mutual.

A regional group of employers, a sectoral group of employers, a group of employers, a group of employers that are clients and subcontractors in the same industrial domain or a group of employers with a workforce belonging to a specific clientele addressed by an integration and job retention committee, if the group is constituted as a legal person under Part III of the Companies Act (R.S.Q., c. C-38) and has a multiparty board of directors composed of a majority of employer representatives and representatives of the workforce of the employer members, may also be recognized as a training mutual.

For the purposes of this Regulation, an integration and job retention committee is an organization constituted as a legal person under Part III of the Companies Act and intended particularly to favour the integration and job retention of a specific clientele. For that purpose, the committee identifies the difficulties faced by those persons and develops strategies to facilitate access to employment and to the training necessary for their integration into the labour market.".

* The Regulation respecting training mutuals, approved by Order in Council 1062-2007 dated 28 November 2007 (2007, *G.O.* 2, 3683), has not been amended since it was approved.

3. Section 4 is amended

(1) by replacing "belong to the same sector of economic activity or are from the same region" in the first paragraph by "form a type of group authorized by section 3";

(2) by replacing "and that a sufficient number of employers share a desire to work collaboratively to that end" in the second paragraph by ", that the employers concerned share a desire to work collaboratively and that their number is sufficient to ensure the viability of the training mutual";

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

"Problems are considered common where employers face difficulties of the same nature as to the improvement of their workforce qualifications and skills or to the management and organization of their workforce training.".

4. Section 5 is amended

(1) by inserting "and documents" in the part preceding paragraph 1 after "information";

(2) by replacing paragraph 3 by the following:

"(3) the applicant's sector of economic activity, region, industrial domain or the characteristic specific to the workforce concerned;";

(3) by adding the following paragraphs after paragraph 5:

"(6) a resolution of the board of directors of the legal person applying for recognition;

(7) in the case of a sectoral group of employers for which a sectoral workforce committee exists, a resolution of the board of directors of the sectoral committee in support of the application; and

(8) in the case of a group of employers with a workforce belonging to a specific clientele addressed by an integration and job retention committee, a resolution of the board of directors of that committee in support of the application.".

5. Section 9 is amended

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

"**9.** The sums received by a training mutual as payments made by an employer or the expenditures incurred by the employer with the training mutual must be used in their entirety for";

(2) by replacing "employers" in subparagraph 1 of the first paragraph by "employer members".

6. Section 12 is replaced by the following:

"**12.** When a training mutual ceases its activities, the sum of the unexpended payments received by the mutual and the interest earned on those sums must be paid into the Workforce Skills Development and Recognition Fund.

The amounts paid into the Fund pursuant to the first paragraph are reserved, for a period not exceeding 3 years from the date on which the mutual ceases its activities, to be used to train the workforce for which the training mutual was recognized.".

7. Section 13 is amended by replacing "of the employer's expenditures that are eligible as payments made to or expenditures incurred with the training mutual" by "of payments made to the training mutual or expenditures incurred with the training mutual".

8. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

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Abbreviations: **A**: Abrogated, **N**: New, **M**: Modified