



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SIXTH LEGISLATURE

Bill 14

(2002, chapter 5)

An Act to amend the Act respecting the Ministère du Revenu and other legislative provisions as regards the protection of confidential information

Introduced 15 May 2001

Passage in principle 18 December 2001

Passage 7 May 2002

Assented to 15 May 2002

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EXPLANATORY NOTES

This bill amends primarily the Act respecting the Ministère du Revenu so as to clarify and give greater precision to the provisions of that Act relating to the confidentiality of fiscal information and to coordinate the application of those provisions and the provisions of the Act respecting Access to documents held by public bodies and the Protection of personal information.

The bill introduces the notion of a person's tax record into the Act respecting the Ministère du Revenu. The bill establishes that a person's tax record is constituted of the information held by the Minister in respect of the person for the application or enforcement of a fiscal law, and is confidential. The bill enacts the rule that the information contained in a person's tax record cannot be used or communicated unless the person concerned consents thereto or unless the use or communication of the tax record is authorized under the Act respecting the Ministère du Revenu.

The bill provides for a specific right of access to one's tax record and specifies the manner in which this right is to be exercised. Rules are introduced concerning access to a tax record within the Ministère du Revenu. They specify who is to have access to a tax record and on what conditions, and in what circumstances fiscal information may be communicated to a third party and on what conditions, in particular in the context of the awarding of a contract or the making of an agreement. Rules are introduced concerning the communication of certain information to a police force in connection with the fight against organized crime. Restrictions are imposed on the persons to whom information is communicated, limiting the communication and use of the information to certain specific purposes. The rule concerning testimony that relates to information contained in a tax record is clarified and specific provision is made with respect to such testimony before the Commission d'accès à l'information.

The bill specifies that the Ministère du Revenu will have the obligation to inform taxpayers annually concerning the purposes for which information collected by the department may be used and concerning the accessibility rules that apply to such information.

New penal provisions are introduced. An offence is created for the unauthorized access to information contained in a tax record and offences relating to the unauthorized communication or use of such information are defined more precisely.

Lastly, the bill amends the Act respecting Access to documents held by public bodies and the Protection of personal information to ensure that it does not operate to undermine the protection granted to fiscal information by the Act respecting the Ministère du Revenu, while preserving the precedence of the former Act.

LEGISLATION AMENDED BY THIS BILL :

- Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1);
- Act respecting the Ministère du Revenu (R.S.Q., chapter M-31);
- Act respecting the Québec Pension Plan (R.S.Q., chapter R-9);
- Act to amend the Supplemental Pension Plans Act and other legislative provisions (2000, chapter 41).

Bill 14

AN ACT TO AMEND THE ACT RESPECTING THE MINISTÈRE DU REVENU AND OTHER LEGISLATIVE PROVISIONS AS REGARDS THE PROTECTION OF CONFIDENTIAL INFORMATION

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

ACT RESPECTING THE MINISTÈRE DU REVENU

1. Section 1 of the Act respecting the Ministère du Revenu (R.S.Q., chapter M-31) is amended by adding the following paragraph after paragraph *f*:

“(g) “person”: a natural person, a corporation, a partnership, a trust, a government department, a body, a succession and any other entity that is a person within the meaning of another fiscal law.”

2. Section 9 of the said Act is replaced by the following section :

“9. The Minister may, in accordance with the applicable legislative provisions and with the authorization of the Government, enter into any agreement with any government, a department of that government, an international organization or a body of that government or international organization, that is consistent with the interests and rights of Québec, for the application of a fiscal law or to facilitate the carrying out of a fiscal law, avoid double taxation or give effect to international fiscal agreements. Such an agreement may authorize that government, government department, international organization or body to enter into any agreement with a third person with a view to facilitating its implementation.

The Minister may also, with the authorization of the Government, enter into any agreement with any person, to entrust the person with the application of all or part of a fiscal law.”

3. Section 9.0.4 of the said Act is amended

(1) by replacing “any department or body and with any person, association or partnership” in the first paragraph by “any person” ;

(2) by replacing “any department or body and with any person, association or partnership” in the second paragraph by “any person”.

4. Section 31 of the said Act is amended by replacing “section 69” in the fourth paragraph by “Division VIII”.

5. Section 37.5 of the said Act is repealed.

6. The said Act is amended by inserting the following before section 69 :

“§1. — *Confidential information*”.

7. Sections 69 and 69.0.0.1 of the said Act are replaced by the following :

“69. The tax record of a person is confidential ; no information contained in a person’s tax record may be used or communicated unless the person consents thereto or the use or communication is authorized by this Act.

A person’s tax record shall consist of the information held by the Minister in respect of the person, in whatever form, for the application or enforcement of a fiscal law.

Any proceeding or decision pertaining to the application or enforcement of a fiscal law filed at the office of a court does not form part of a tax record.

A record established for the administration or direction of the Ministère du Revenu, pursuant to the first paragraph of section 2 and sections 3 to 6, or for an offence, pursuant to sections 71.3.1 to 71.3.3, is not a tax record.

“69.0.0.1. Any information to the effect that a person is or is not the holder, under a fiscal law, of a certificate, registration, licence, permit or any other similar title, that the person has been the holder of such a title, or that the Minister has suspended, revoked or refused to renew such a title held by the person, and a person’s name and the identification number or registration number assigned to the person by the Minister under a fiscal law, is public information.

“§2. — *Rights of the person concerned*

“69.0.0.2. Every person is entitled to be informed of the existence, in the person’s tax record, of any information relating to the person, and to receive communication of and consult any document containing such information.

Every person who is an heir, successor or beneficiary under a life insurance policy of a deceased person or a beneficiary of a death benefit under a law applicable in Québec is entitled to be informed of the existence, in the tax record of the deceased person, of any information, to receive communication thereof and to consult any document containing such information, insofar as the information or document pertains directly to the person’s interests or rights as an heir, successor or beneficiary.

To give rise to review proceedings under sections 135 to 154 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), a written request must be addressed to the person designated in accordance with section 8 of that Act.

This section applies notwithstanding the first paragraph of sections 43 and 94 of the Act respecting Access to documents held by public bodies and the Protection of personal information, and the rules provided in sections 83 to 87, the second and third paragraphs of section 94 and sections 95 to 102.1 and 135 to 154 of that Act apply, with the necessary modifications, to a request for access made in accordance with the third paragraph.

“69.0.0.3. Notwithstanding section 88 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), the Minister shall refuse to give communication to a person of any information contained in the person’s tax record, where it can reasonably be considered that its disclosure would reveal information relating to another person or the existence of such information, unless the latter person consents thereto or the information is necessary for the application or enforcement, in respect of the person, of a fiscal law or of an Act, chapter or program referred to in subparagraph *b* of the first paragraph of section 69.0.0.7.

“69.0.0.4. The rights which this division confers on a person may be exercised by the person’s representative or by a person who is authorized by law to represent the person or who, pursuant to an Act, is administering, winding up or controlling the property or business of the person concerned.

For the purposes of the first paragraph, the representative of a person concerned is

(a) in the case of a natural person, the person who proves that he or she is the representative of the person concerned, that he or she is the person having parental authority or, where the person concerned is deceased, that he or she is the liquidator of the succession ;

(b) in the case of a corporation, the president, vice-president, secretary or treasurer of the corporation, a person authorized by the board of directors of the corporation or another person who is authorized by any of those persons ;

(c) in the case of a corporation that has been dissolved or struck off the register, in addition to a person authorized by law, a person who was, immediately before the dissolution or striking off, a person referred to in paragraph *b* or a person authorized by the person to whom all of the voting shares of the corporation belonged immediately before its dissolution or striking off ;

(d) in the case of a partnership, one of the partners or, where the partnership has been dissolved, a person who was a partner immediately before its dissolution, or a person expressly authorized ;

(e) in the case of a trust, one of the trustees.

“69.0.0.5. For the purposes of this division and Division V.1, where the Minister receives a document or information filed or required to be filed under a fiscal law from or on behalf of a person by way of electronic filing or of a computer-generated medium, any person who prepares or files the document or information or who acts as an intermediary in the transmission of the document or information is deemed to be the representative of the person concerned for the purposes of allowing the Minister to process the document or information.

However, information that relates to a person may only be communicated to such a representative if the information is directly related to the task the representative is performing on behalf of the person and is necessary for proper performance of the task by the representative.

“§3. — *Accessibility and use of information within the Ministère du Revenu*

“69.0.0.6. Within the Ministère du Revenu, information contained in a tax record shall only be accessible, without the consent of the person concerned, in the cases and subject to the conditions set out below :

(a) to the Minister or to a natural person designated by the Minister to assist the Minister, where the information is necessary for the exercise of his or her functions; in that respect, the Minister shall establish in writing, after consultation with the Deputy Minister, the rules governing access to such information by the Minister and the persons so designated;

(b) to a public servant or employee of the Ministère du Revenu who is qualified to receive the information, where the information is necessary for the exercise of his or her functions.

The rules established pursuant to subparagraph *a* of the first paragraph shall take effect on the date indicated therein and shall be filed without delay with the Commission d'accès à l'information.

“69.0.0.7. Information contained in a tax record shall not be used within the Ministère du Revenu without the consent of the person concerned except for the following purposes :

(a) the application or enforcement of a fiscal law ;

(b) the application or enforcement of

i. the Act to facilitate the payment of support (chapter P-2.2) ;

ii. Chapter III of Title II of the Act respecting income support, employment assistance and social solidarity (chapter S-32.001) ;

iii. the housing allowance program for the elderly and families established under an order in council made under sections 3 and 3.1 of the Act respecting the Société d'habitation du Québec (chapter S-8);

(c) the carrying out of a study or research or the production of statistics;

(d) the application of sections 2 to 6 as regards the administration or direction of the Ministère du Revenu and the application of sections 71.3.1 to 71.3.3 as regards a penal offence;

(e) the carrying out of surveys to ascertain the expectations and satisfaction of the population with respect to the Acts and programs under the administration of the Minister provided that, as regards an Act, a chapter or a program referred to in subparagraph *b*, only the persons to whom that Act, chapter or program applies are surveyed.

For the purposes mentioned in subparagraph *e* of the first paragraph, the Minister shall prepare a three-year plan for the surveys the Minister intends to carry out and which involve the use of information contained in a fiscal record. The Minister shall submit the plan to the Commission d'accès à l'information for an opinion.

The Commission d'accès à l'information shall issue an opinion on the plan within 60 days of receiving it. Should the Commission d'accès à l'information give an unfavourable opinion, the plan may be submitted to the Government for approval.

The three-year plan, together with the opinion of the Commission d'accès à l'information and, where applicable, the approval of the Government, shall be tabled in the National Assembly within 30 days of the date of the opinion or approval if the Assembly is sitting or, if it is not in session, within 30 days of resumption.

Each year, the Minister shall prepare a report on the surveys that were carried out. The Commission d'accès à l'information shall issue an opinion on the report within 60 days of receiving it. The report, together with the opinion, shall be tabled in the National Assembly within 30 days of the date of the opinion if the Assembly is sitting or, if it is not in session, within 30 days of resumption.

“69.0.0.8. Any information from a tax record that the Minister uses for a purpose provided for in any of subparagraphs *b* to *e* of the first paragraph of section 69.0.0.7 and that is included in another record remains subject to the rules set out in this division, except information that does not reveal, even indirectly, the identity of the person concerned or that cannot be associated with that person.

“69.0.0.9. The Minister may circulate a letter or any other document contained in the tax record of a person, except an advance ruling, in which the Ministère du Revenu states its position with respect to the application or

enforcement of a fiscal law, to the extent that the document so circulated does not reveal, even indirectly, the identity of the person and may not be associated with that person.

“§4. — *Communication*

“**69.0.0.10.** Notwithstanding sections 53, 59 and 59.1 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), information contained in a tax record may only be communicated in the cases provided for in this division, except if the person concerned authorizes its disclosure.

“**69.0.0.11.** A public servant or employee of the Ministère du Revenu may communicate information contained in a tax record, without the consent of the person concerned, to prevent an act of violence, including suicide, where the public servant or employee believes on reasonable grounds that there is imminent danger of death or serious bodily injury to a person or identifiable group of persons or where there is an emergency situation that threatens their lives, health or safety.

In such a case, the information may be communicated to the person or persons exposed to the danger, to their representative or to any person who may provide assistance.

Only the information necessary for the purposes of the communication may be communicated.

Where information is communicated in such a case, the person in charge of the protection of personal information within the Ministère du Revenu shall record the communication in a register kept for such purpose.

The Deputy Minister must issue a directive establishing the terms and conditions according to which the information may be communicated. The public servants and employees of the department are bound to comply with the directive.

“**69.0.0.12.** A public servant or employee of the Ministère du Revenu authorized by regulation may, without the consent of the person concerned, communicate information contained in a tax record to a member of a police force, with the authorization of a judge of the Court of Québec where the judge is satisfied on the basis of an affidavit that there is reasonable cause to believe that the information may serve to prevent or repress a serious offence committed or about to be committed by a person who is a member of a criminal organization or who participates or has participated in the activities of a criminal organization, whether or not the person has been convicted in relation to that participation.

Every application for authorization made under this section and the record pertaining to the hearing are confidential. The clerk of the Court of Québec

shall take the necessary measures to preserve the confidentiality of the record relating to the application for authorization and of any information relating thereto.

The judge to whom the application for authorization is made shall hear the public servant or employee *ex parte* and *in camera*. The judge may make any order the judge considers desirable to preserve the confidentiality of the application and the information submitted at the hearing. The record shall subsequently be sealed and kept in a place to which the public has no access.

In this section,

“criminal organization” means any group consisting of three or more persons, however organized, one of whose primary objects or activities is to commit or facilitate the commission of one or more serious offences which, if committed, could result, directly or indirectly, in a material benefit, in particular a financial benefit, for the group or a person who is a member of the group; however, such a criminal organization does not include a group of individuals formed by chance for the immediate perpetration of a single offence;

“serious offence” means an indictable offence for which the maximum punishment is imprisonment for five years or more or any other offence designated by regulation.

“69.0.0.13. No information contained in a tax record which is communicated to a police force in accordance with section 69.0.0.12 or 69.0.2 may be used or communicated to a member of another police force or to the Attorney General except for the purposes for which it was obtained from the Ministère du Revenu or in connection with a suit or a proceeding relating to those purposes.

The information must be destroyed at the time those purposes have been finally achieved, except where the information is filed as evidence in connection with a suit or a proceeding.

“69.0.0.14. In addition to the situations described in section 59 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), a police force may communicate, without the consent of the person concerned if the person is a member of a criminal organization within the meaning of section 69.0.0.12 or if the person participates or has participated in the activities of such a criminal organization, whether or not the person has been convicted in relation to that participation, any information for the application or enforcement of a fiscal law, to a public servant or employee authorized in conformity with the first paragraph of section 69.0.0.12.

“69.0.0.15. The right of access provided for in section 69.0.0.2 of this Act and in sections 9, 83 and 94 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1) does not apply to information communicated under any of sections 69.0.0.12 to 69.0.0.14 or to information that could, even indirectly, disclose the existence of such communication.

The first paragraph does not apply where access to the information or the disclosure of the fact that the information was communicated under any of sections 69.0.0.12 to 69.0.0.14 would no longer hinder the progress of an investigation or of proceedings, disclose a method of investigation, a confidential source of information, a program or a plan of action designed to prevent, detect or repress crime or statutory offences, endanger a person, prejudice the interest of a person who is the source or the subject of the information, disclose the components of a communications system intended for the use of a person responsible for law enforcement, disclose information obtained in confidence from a police force having jurisdiction outside Québec, prejudice the fair hearing of a person’s case or impair the efficiency of a security system designed for the protection of persons or property, in particular a witness protection program.

“69.0.0.16. Information contained in a tax record may be communicated, without the consent of the person concerned, either to a person where the communication is necessary for the application or enforcement of a fiscal law or to a police force where a public servant or employee of the Ministère du Revenu believes on reasonable grounds that the person concerned has committed or is about to commit, in respect of the Ministère du Revenu, one of its public servants or employees or with respect to the application of a fiscal law, an indictable or penal offence and the information is necessary for the investigation relating to that offence.

“69.0.0.17. Where the Minister, for a purpose provided for in section 69.0.0.7, awards to a person a contract that involves the communication of information contained in a tax record, the information may be communicated to the person without the consent of the person concerned if the information is necessary for the performance of the contract.

A person to whom a contract is awarded in accordance with the first paragraph, or another person referred to in this paragraph, may award to another person a contract that involves the communication of information contained in a tax record and obtained in accordance with the first paragraph, if the person first obtains the authorization of the Deputy Minister or of a person designated by the Deputy Minister, and may communicate that information to that other person if the information is necessary for the performance of the contract.

A person who performs a contract referred to in this section in connection with which information contained in a tax record is communicated is bound by the following obligations:

(a) to take the necessary measures to preserve the confidentiality of the information communicated;

(b) except where exempted by the Deputy Minister or by a person designated by the Deputy Minister, to transmit to the Deputy Minister or to the person designated, on the prescribed form and before the information is communicated, a confidentiality agreement completed by every person to whom the information may be communicated;

(c) to use the information only in the performance of the contract;

(d) to communicate the information only to a person providing services in connection with a contract referred to in this paragraph or to a public servant or employee of the Ministère du Revenu, insofar as the information is necessary for the exercise of the person's functions;

(e) where the contract is performed on the premises of the Ministère du Revenu, to refrain from transmitting any information or transporting any document containing such information outside those premises, except where permitted by the Deputy Minister or a person designated by the Deputy Minister, and to refrain from retaining such a document after the termination of the contract;

(f) where part or all of the contract is performed outside the premises of the Ministère du Revenu, to remit to the Deputy Minister or to a person designated by the Deputy Minister, immediately after the termination of the contract, any document containing such information;

(g) to notify without delay the Deputy Minister or a person designated by the Deputy Minister of any breach or attempted breach by any person of any obligation relating to confidentiality set out in this division, in the confidentiality agreement or in the contract;

(h) to allow the Deputy Minister or a person designated by the Deputy Minister to make any verification or inquiry relating to the confidentiality of the information communicated.

Except where the contract is awarded to a member of a professional order referred to in Schedule I to the Professional Code (chapter C-26) who is bound by professional secrecy, the contract must be made in writing and set out the obligations under the third paragraph."

8. Section 69.0.1 of the said Act is amended

(1) by replacing the portion preceding paragraph *a* by the following:

"69.0.1. Information contained in a tax record may, without the consent of the person concerned,";

(2) by replacing “communicate confidential information” in paragraph *a* by “be communicated”;

(3) by replacing “communicate confidential information” and “association, person or partnership” in paragraph *a.1* by “be communicated” and “person”, respectively;

(4) by inserting the following paragraph after paragraph *a.1* :

“(a.2) for the purposes of an agreement entered into under section 9 by the Minister and another government, a department of that government, an international organization or a body of that government or organization, be communicated to that other government or to that department, organization or body;”;

(5) by striking out paragraphs *b* to *d*;

(6) by adding the following paragraphs after paragraph *d*:

“(e) be communicated to another government or to one of its bodies for the purposes of an Act providing for the imposition of a tax or a duty of that nature which is entrusted to the government or body;

“(f) be communicated to the Commission d’accès à l’information for the purposes of its functions;

“(g) be communicated to the Minister of International Relations, in relation to official communications with foreign governments and their departments, international organizations, and bodies of those governments or organizations, concerning the government, department, organization or body concerned or one or more of its employees.”

9. Section 69.0.2 of the said Act is amended

(1) by replacing “Notwithstanding section 69, the” in the first paragraph by “The”;

(2) by striking out “an enterprise crime offence or” in the second line of the second paragraph;

(3) by replacing “obtained by or on behalf of the Minister” in subparagraph *c* of the third paragraph by “held by the Minister”;

(4) by replacing “the person in respect of whom the order is made” in the fifth paragraph by “the Minister or a public servant designated by the Minister”.

10. Section 69.0.4 of the said Act is amended by striking out the second paragraph.

11. The said Act is amended by inserting the following section after section 69.0.4 :

“69.0.5. Information contained in a tax record may, for the purposes of an agreement made under section 17 of the Tobacco Tax Act (chapter I-2) or section 51 of the Fuel Tax Act (chapter T-1) between the Minister and a person referred to in either of those sections, be communicated, without the consent of the person concerned, to a person holding a collection officer’s permit issued under either of those Acts.”

12. Section 69.1 of the said Act, amended by section 136 of chapter 9 of the statutes of 2001, is again amended

(1) by replacing the portion before subparagraph *a* of the second paragraph by the following :

“69.1. Information contained in a tax record may be communicated, without the consent of the person concerned, to the persons mentioned in the second paragraph and solely for the purposes provided for in that paragraph.

The following persons are entitled to such communication :” ;

(2) by replacing subparagraphs *c*, *d* and *e* of the second paragraph by the following subparagraphs :

“(c) the Auditor General, or a professional under contract with the Auditor General, in relation to audits and inquiries to be effected by the Auditor General in the exercise of his functions, and for the purposes of a report to be produced by the Auditor General ;

“(d) the Minister of Finance, where the information is necessary for the evaluation and formulation of the fiscal policy of the Government and the carrying out of the functions referred to in sections 26 and 33 to 36 of the Financial Administration Act (chapter A-6.001), and to inform a person concerning the application of the fiscal policy in his or her respect ;

“(e) a public body referred to in section 31.1.4 and an agent of that body, where the information is communicated for the purposes of the second paragraph of section 30.1 and sections 31 and 31.1.1 ;” ;

(3) by replacing subparagraph *i* of the second paragraph by the following subparagraph :

“(i) the Public Protector, in respect of interventions and investigations conducted under the Public Protector Act (chapter P-32) ;” ;

(4) in the French text, by replacing “ces renseignements sont nécessaires” in subparagraph *k* of the second paragraph by “le renseignement est nécessaire” ;

(5) in the French text, by replacing “ces renseignements sont nécessaires” wherever they appear in subparagraph *m* of the second paragraph by “le renseignement est nécessaire”;

(6) by replacing subparagraph *n* of the second paragraph by the following subparagraph:

“(n) the Régie des rentes du Québec, to the extent that the information

(1) relates to the earnings and contributions of contributors and is required for the purposes of the Act respecting the Québec Pension Plan (chapter R-9);

(2) is required for the keeping of a Record of Contributors within the meaning of the Act respecting the Québec Pension Plan;

(3) is required to establish a person’s entitlement to benefits under the Act respecting family benefits (chapter P-19.1) or the Act respecting parental insurance (2001, chapter 9);

(4) is required for the purposes of the allocation provided for in the second paragraph of section 31;”;

(7) by inserting “, address and telephone number” after “name” in the last line of subparagraph *o* of the second paragraph;

(8) in the French text, by replacing “ces renseignements sont nécessaires” in subparagraph *p* of the second paragraph by “le renseignement est nécessaire”;

(9) by adding the following subparagraphs after subparagraph *p* of the second paragraph:

“(q) a minister or body responsible for rendering a decision or issuing an attestation, certificate, stamp or similar document for the purposes of a fiscal law and, where applicable, for revoking such a document, to the extent that the information relates directly to his or its functions;

“(r) the Régie de l’énergie, but only to the extent that the information relates to a corporation and is necessary for the application of a regulation concerning the rates and terms and conditions of payment of the annual duty in the petroleum products sector, adopted under section 112 of the Act respecting the Régie de l’énergie (chapter R-6.01).”;

(10) by striking out the third paragraph.

13. The said Act is amended by inserting the following sections after section 69.1:

“69.2. Information contained in a tax record may be communicated, without the consent of the person concerned, for the purposes of an agreement entered into under the second paragraph of section 9, except an agreement referred to in paragraph *a.2* of section 69.0.1.

“69.3. No person to whom the Minister communicates information under section 69.1 or 69.2 may, unless the person concerned consents thereto, use the information for any purpose or communicate it in any case other than those provided for in sections 69.4 to 69.7 and 69.9.

A person to whom the Minister communicates information under section 69.1 or 69.2 may communicate the information to a person to whom the information may be communicated in accordance with section 88.1 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1).

“69.4. The Régie des rentes du Québec may, in relation to a partition of earnings referred to in Division I.1 of Title IV of the Act respecting the Québec Pension Plan (chapter R-9) or an agreement entered into under section 211 or 215 or in accordance with section 213 of that Act, communicate, without the consent of the person concerned, information obtained from the Minister under subparagraph 1 or 2 of subparagraph *n* of the second paragraph of section 69.1.

Notwithstanding section 88 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), the Régie des rentes du Québec may communicate, without the consent of a person, any information relating to the person obtained by the Régie under subparagraph *n* of the second paragraph of section 69.1, to another person who is entitled to a benefit, where the information is necessary to ascertain the other person’s entitlement to a benefit under the Act respecting the Québec Pension Plan, the Act respecting family benefits (chapter P-19.1) or the Act respecting parental insurance (2001, chapter 9).

“69.5. The Institut de la statistique du Québec may communicate, in accordance with section 28 of the Act respecting the Institut de la statistique du Québec (chapter I-13.011) and without the consent of the person concerned, information obtained from the Minister under subparagraph *k* of the second paragraph of section 69.1.

The Institut de la statistique du Québec may also communicate, without the consent of the person concerned, to a statistical body of another government, but solely for statistics, research or analysis purposes, information that the Institut has obtained from the Minister under subparagraph *k* of the second paragraph of section 69.1 in respect of that person and that pertains to the activities of an enterprise or establishment operated by the person.

“69.6. A person to whom information is communicated under section 69.1 or 69.2 may communicate, without the consent of the person concerned, information obtained from the Minister under that section to a person referred to in paragraph *f* of section 69.0.1 or subparagraph *c* or *i* of the second paragraph of section 69.1, solely for the purposes provided for in that paragraph.

“69.7. Where a person to whom information is communicated under any of the subparagraphs of the second paragraph of section 69.1 or section 69.2 awards to another person, in relation to a purpose provided for in that paragraph or in the agreement entered into with the Minister, as the case may be, a contract involving the communication of information obtained from the Minister under that subparagraph or that section, the information may be communicated, without the consent of the person concerned, to that other person if the information is necessary for the performance of the contract; in such a case, that other person is bound by the obligations provided for in the third paragraph of section 69.0.0.17, with the necessary modifications.

A person to whom a contract is awarded in accordance with the first paragraph or any other person referred to in this paragraph may, if the person obtains prior authorization from the person to whom information is communicated under section 69.1 or 69.2 or from a person designated by the latter person, award to another person a contract that involves the communication of information originating from a tax record and obtained pursuant to the first paragraph, and the person may communicate that information to that other person if the information is necessary for the performance of the contract; in such a case, that other person is bound by the obligations provided for in the third paragraph of section 69.0.0.17, with the necessary modifications.

Except where the contract is awarded to a member of a professional order referred to in Schedule I to the Professional Code (chapter C-26) who is bound by professional secrecy, the contract must be made in writing and set out the obligations provided for in the third paragraph of section 69.0.0.17, with the necessary modifications.

“69.8. No information contained in a tax record may be communicated under any of paragraphs *a.1* to *e* of section 69.0.1, section 69.1, except subparagraphs *a* to *e* and *i* of the second paragraph, or section 69.2, except within the scope of a written agreement which specifies, among other things,

(*a*) the nature of the information communicated and the purposes for which it is communicated;

(*b*) the methods of communication used;

(*c*) the means to be used and the security measures to be taken to preserve the confidentiality of the information communicated;

(*d*) the intervals at which information is to be communicated;

- (e) the means chosen to inform the persons concerned;
- (f) the duration of the agreement.

An agreement referred to in the first paragraph must be submitted for an opinion to the Commission d'accès à l'information and comes into force on the favourable opinion of the Commission, or, in the absence of an opinion, on the sixtieth day after the Commission receives the agreement or any later date set out in the agreement.

Should the Commission give an unfavourable opinion, the Government may, on request, approve the agreement and fix the applicable conditions. Before approving the agreement, the Government shall publish it in the *Gazette officielle du Québec* together with any conditions it intends to fix as well as a notice that it may approve the agreement on the expiry of 30 days after the publication. The agreement comes into force on the day of its approval or any later date fixed by the Government or specified in the agreement.

This section applies notwithstanding sections 67.3, 67.4, 68, 68.1 and 70 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1).

“69.9. Notwithstanding paragraph 3 of section 171 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), the Minister, a person designated by the Minister to assist the Minister in his or her functions, or a public servant or employee of the Ministère du Revenu may not be summoned or testify in relation to information contained in a tax record or originating from a tax record, or file such information, except in the cases and subject to the strict conditions set out below :

- (a) criminal proceedings ;
- (b) proceedings relating to the application of an Act of the Parliament of Canada or of another province that provides for the imposition or collection of a tax or a duty of that nature ;
- (c) proceedings relating to the application of a fiscal law or of a law, chapter or program referred to in subparagraph *b* of the first paragraph of section 69.0.0.7 and to which the Deputy Minister is a party ;
- (d) proceedings between a person whose interests as regards information that relates to the person are at stake, and a person to whom the information has been communicated in accordance with section 69.1 or 69.2 ;
- (e) an inquiry by a public inquiry commission established under the Act respecting public inquiry commissions (chapter C-37) ;

(f) an appeal before the Commission de la fonction publique under the Public Service Act (chapter F-3.1.1), or a complaint or grievance relating to a disciplinary or administrative measure heard by the Commission des relations du travail established by the Labour Code (chapter C-27) or a grievance arbitrator, where a public servant or employee of the Ministère du Revenu or of a person referred to in section 69.1 or 69.2, or a former public servant or former employee of the department or of such a person is impleaded and information contained in a tax record is relevant to the proceeding;

(g) proceedings relating to the execution of a contract referred to in this subdivision, where the information is needed by a party to assert his or her rights;

(h) an inquiry of the Commission d'accès à l'information made under the Act respecting Access to documents held by public bodies and the Protection of personal information;

(i) an application for review presented to the Commission d'accès à l'information under Division I of Chapter V of the Act respecting Access to documents held by public bodies and the Protection of personal information.

The first paragraph also applies to every person who has ceased to exercise the functions described in that paragraph and to every person to whom information contained in a tax record has been communicated for the performance of a contract or in accordance with section 69.1 or 69.2.

“69.10. In the cases provided for in subparagraphs *b* to *i* of the first paragraph of section 69.9, where the Minister, the Deputy Minister or an assistant deputy minister or director general of the Ministère du Revenu is summoned, he or she may, instead of testifying or filing a document, designate a person having knowledge of the facts to testify or to file the document.

The summons must be served at least 30 days before the date of the hearing and specify the facts concerning which a testimony is required.

“69.11. In the cases provided for in subparagraphs *e* to *h* of the first paragraph of section 69.9, the testimony relating to information contained in a tax record or originating from a tax record and, where applicable, the filing of documents containing such information shall be given or carried out *in camera* and shall be the subject of an order banning disclosure, publication or dissemination, except where each person to whom the information relates consents to the setting aside of those rules.

“69.12. Article 323 of the Code of Penal Procedure (chapter C-25.1) does not apply in respect of the competent authority of the Ministère du Revenu or in respect of a public servant or employee of the Ministère du Revenu or of a person to whom information contained in a tax record has been communicated.”

14. Section 70 of the said Act is repealed.

15. The said Act is amended by inserting the following after section 70:

“§5. — *Collection and use of information*

“**70.1.** Notwithstanding section 65 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), the Minister shall, annually, inform the person in respect of whom the Minister collects information for the application of a fiscal law of

(a) the types of use for which the information is intended;

(b) the categories of persons who will have access to the information;

(c) the obligation to provide the information;

(d) the consequences for the person of refusing to provide information;

(e) the rights of access and correction;

(f) the possibility that comparisons, pairing or cross-matching of information files may be made within the scope of the application of a fiscal law;

(g) the possibility that information could be transmitted to other persons in accordance with this Act.

The first paragraph does not apply to an act performed within the scope of an audit, investigation or inquiry under a fiscal law.”

16. Section 71 of the said Act is amended

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

“**71.** Every public body within the meaning of section 31.1.4, every body having the rights and privileges of a mandatary of the State and every municipal body must file with the Minister any information required by the Minister, where that information is necessary for the administration or enforcement of a fiscal law.”;

(2) by adding the following paragraphs after the second paragraph:

“A municipal body includes

(a) a municipality, a metropolitan community, the Commission de développement de la métropole, an intermunicipal board, an intermunicipal transit authority, an intermunicipal board of transport and the Kativik Regional Government;

(b) any body declared by law to be the mandatary or agent of a municipality, and any body whose board of directors is formed in the majority of members of the council of at least one municipality, except the Union des municipalités du Québec and the Fédération québécoise des municipalités locales et régionales (FQM);

(c) any body whose board of directors is formed of at least one elected municipal officer designated in that capacity and in respect of which a municipality or a metropolitan community adopts or approves the budget or contributes to more than half of the financing, except legal persons constituted under any of chapters 56, 61 and 69 of the statutes of 1994 and chapter 84 of the statutes of 1995;

(d) a mixed enterprise company established in accordance with the Act respecting mixed enterprise companies in the municipal sector (chapter S-25.01).

This section applies notwithstanding sections 67.3, 67.4, 68, 68.1 and 70 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1).”

17. Section 71.0.1 of the said Act is replaced by the following section :

“**71.0.1.** For the purposes of section 71, an agreement may be made in order to specify, among other things, the elements provided in subparagraphs *a* to *f* of the first paragraph of section 69.8.”

18. Section 71.0.5 of the said Act is amended by replacing “information protected under section 69” by “information contained in a tax record”.

19. Section 71.0.6 of the said Act is replaced by the following section :

“**71.0.6.** The Minister shall submit to the National Assembly, for each fiscal year, a report of activities concerning the information files obtained under section 71 for purposes of comparisons, pairing or cross-matching. The report must contain an opinion of the Commission d’accès à l’information. The report and opinion shall be tabled in the National Assembly within 30 days of the opinion, or, if the Assembly is not in session, within 30 days of resumption.

A report mentioned in the first paragraph shall not contain information allowing a person other than a public body within the meaning of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1) that has provided an information file to the Minister in accordance with section 71 to be identified.”

20. Section 71.0.7 of the said Act is replaced by the following section :

“71.0.7. The Minister shall enter in a register

(a) every contract referred to in section 69.0.0.17 awarded by the Minister ;

(b) every agreement made under any of sections 69.0.1, 69.1 and 69.2 or, if there is no such agreement, any communication of information files under any of those sections ;

(c) any request for an information file referred to in section 71.0.2.

A register must include, in particular,

(a) the nature or type of information communicated ;

(b) the name of the persons who transmit information to the Minister ;

(c) the name of the persons with whom the Minister has entered into an agreement or made a contract and to whom information is transmitted ;

(d) the intended use of the information communicated ;

(e) the reasons justifying the communication of information.”

21. Section 71.0.8 of the said Act is repealed.

22. Section 71.0.9 of the said Act is replaced by the following section :

“71.0.9. Every person who so requests shall be given access to the register referred to in section 71.0.7.”

23. Sections 71.0.10 and 71.1 of the said Act are repealed.

24. The said Act is amended by inserting the following after section 71.1 :

“§6. — *Preservation and destruction*”.

25. Sections 71.2 and 71.3 of the said Act are replaced by the following sections :

“71.2. A document containing information originating from a tax record may be transferred to the Keeper of the Archives nationales du Québec in accordance with the Archives Act (chapter A-21.1).

However, the communication of information originating from a tax record or of a document containing such information shall continue to be given in accordance with the rules set out in this division, by the person designated,

within the Ministère du Revenu, in accordance with section 8 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1).

Where a request for information made under section 69.0.0.2 concerns documents held by the Keeper of the Archives nationales du Québec, the Keeper must, at the request of the person designated, within the Ministère du Revenu, in accordance with section 8 of the Act respecting Access to documents held by public bodies and the Protection of personal information, transmit to that person all the information or documents to which the request pertains so the person may give effect to the request.

“71.3. A document containing information originating from a tax record that is transferred to the Keeper of the Archives nationales du Québec in accordance with the Archives Act (chapter A-21.1) shall continue to be governed by the rules provided for in this division until the expiry of the period specified in section 19 of that Act.”

26. The said Act is amended by inserting the following after section 71.3 :

“§7. — Penal provisions

“71.3.1. Every person referred to in section 69.0.0.6 who consults information contained in a tax record or gains access to the information without authorization or for any purpose other than those provided for in section 69.0.0.7, is guilty of an offence and is liable to a fine of not less than \$200 and not more than \$1,000, and, in the case of a second or subsequent offence, to a fine of not less than \$1,000 and not more than \$5,000.

“71.3.2. Every person who communicates or uses information contained in a tax record or originating from such a record otherwise than in accordance with the provisions of this division, or who contravenes a provision of this division, other than a contravention referred to in section 71.3.1, is guilty of an offence and is liable to a fine of not less than \$1,000 and not more than \$10,000, and, in the case of a second or subsequent offence, to a fine of not less than \$10,000 and not more than \$20,000.

“71.3.3. Where a person is guilty of an offence under this division, the director, officer or representative of the person who ordered or authorized the commission of the offence, or who consented to or acquiesced or participated in it, is a party to the offence and is liable to the penalty provided, whether or not the person who committed the offence has been prosecuted or found guilty.

“§8. — Final provisions”.

27. Section 71.4 of the said Act is amended by striking out the second paragraph.

28. The said Act is amended by inserting the following sections after section 71.4:

“**71.5.** Every agreement entered into under section 70 and not replaced, revoked or terminated on or before 14 May 2002 is deemed to have been entered into under paragraph *e* of section 69.0.1.

“**71.6.** The functions of the Commission d'accès à l'information shall consist in

(a) hearing, to the exclusion of every other court, an application for review that relates to a request for access made under this Act;

(b) supervising the application of this division.”

29. Section 72.3 of the said Act is replaced by the following section:

“**72.3.** Sections 72.1 and 72.2 shall not operate to confer on the Attorney General the right to receive communication of information contained in a tax record, and no proceedings instituted by the Attorney General under either of those sections constitute proceedings referred to in subparagraph *c* of the first paragraph of section 69.9.”

ACT RESPECTING ACCESS TO DOCUMENTS HELD BY PUBLIC BODIES AND THE PROTECTION OF PERSONAL INFORMATION

30. Section 171 of the Act respecting Access to documents held by public bodies and the Protection of personal information (R.S.Q., chapter A-2.1) is amended by inserting the following paragraph after paragraph 2:

“(2.1) the protection of information contained in a tax record as provided for in Division VIII of Chapter III of the Act respecting the Ministère du Revenu (chapter M-31) in respect of a person referred to in that division;”.

31. Schedule A to the said Act is amended by striking out the following:

“An Act respecting the Sections 69 to 71”
Ministère du Revenu (chapter M-31)

ACT RESPECTING THE QUÉBEC PENSION PLAN

32. Section 25.4 of the Act respecting the Québec Pension Plan (R.S.Q., chapter R-9) is repealed.

33. Section 214 of the said Act is replaced by the following section:

“**214.** The Board may, in accordance with the terms and conditions provided for in the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), provide information

obtained under this Act to any department or agency under the jurisdiction of the Gouvernement du Québec. However, information respecting earnings and contributions shall not be communicated unless the communication is necessary for the performance of a contract referred to in section 69.7 of the Act respecting the Ministère du Revenu (chapter M-31).”

ACT TO AMEND THE SUPPLEMENTAL PENSION PLANS ACT AND OTHER LEGISLATIVE PROVISIONS

34. Section 205 of the Act to amend the Supplemental Pension Plans Act and other legislative provisions (2000, chapter 41) is repealed.

TRANSITIONAL AND FINAL PROVISIONS

35. Every agreement entered into by the Minister of Revenue before 15 May 2002 pursuant to section 69.8 of the Act respecting the Ministère du Revenu is deemed to meet the requirements of Division VIII of Chapter III of that Act.

36. The agreements referred to in section 35, except an agreement referred to in the second paragraph of this section, must, in the year following assent to this Act, be submitted to the Commission d'accès à l'information for an opinion in accordance with section 69.8 of the Act respecting the Ministère du Revenu. However, any lack of conformity indicated in an opinion shall not invalidate the agreement.

The first paragraph does not apply to

(1) an agreement that is replaced, revoked or terminated on or before 15 May 2003;

(2) an agreement entered into for the purposes of subparagraphs *a* to *e* and *i* of the second paragraph of section 69.1 of the Act respecting the Ministère du Revenu;

(3) an agreement in respect of which the Commission d'accès à l'information has issued a favourable opinion, or which is submitted to the Commission for an opinion, on or before 15 May 2002;

(4) an agreement entered into for the purposes of section 71 of the Act respecting the Ministère du Revenu.

The Minister of Revenue shall, within 60 days after the day on which the Minister obtains all the opinions issued by the Commission in respect of the agreements submitted, make a report to the Government on the measures the Minister has taken or intends to take in response to each opinion. The Minister shall table the report in the National Assembly within the next 30 days, or, if the Assembly is not in session, within 30 days of resumption.

37. Section 69.8 of the Act respecting the Ministère du Revenu, enacted by section 13, applies from 15 May 2002. However, where it applies before 15 May 2003, it shall be read with the portion before subparagraph *a* of the first paragraph replaced by the following :

“**69.8.** Information contained in a tax record may be communicated under any of paragraphs *a.1* to *e* of section 69.0.1, section 69.1, except subparagraphs *a* to *e* and *i* of the second paragraph, or section 69.2, within the scope of a written agreement which specifies, among other things,”.

38. Until the date of coming into force of section 114 of the Labour Code (R.S.Q., chapter C-27), enacted by section 63 of chapter 26 of the statutes of 2001, the reference to the Commission des relations du travail established by the Labour Code that is made in subparagraph *f* of the first paragraph of section 69.9 of the Act respecting the Ministère du Revenu enacted by section 13 shall be read as a reference to the labour commissioner general or the Labour Court, according to their respective jurisdictions.

39. This Act comes into force on 15 May 2002, except the words “or the Act respecting parental insurance (2001, chapter 9)” in subparagraph *n* of the second paragraph of section 69.1 and in section 69.4 of the Act respecting the Ministère du Revenu, amended, respectively, by sections 12 and 13, which will come into force on the date to be fixed by the Government, and except section 70.1 of the Act respecting the Ministère du Revenu, enacted by section 15, which comes into force on 15 May 2003.