

Regulations and other acts

Gouvernement du Québec

O.C. 994-2008, 15 October 2008

Courts of Justice Act
(R.S.Q., c. T-16)

Pension plans of the judges of the Court of Québec and of certain municipal courts — Partition and assignment of benefits accrued

Regulation respecting the partition and assignment of benefits accrued under the pension plans of the judges of the Court of Québec and of certain municipal courts

WHEREAS, under section 246.22 of the Courts of Justice Act (R.S.Q., c. T-16), the Government may make a regulation on the matters set forth therein and relating to the partition and assignment of benefits accrued under the pension plans of the judges of the Court of Québec and of certain municipal courts;

WHEREAS, under that provision, such a regulation may take effect on a date fixed in the regulation that is prior to the date of publication of the regulation in the *Gazette officielle du Québec*;

WHEREAS the Government made the Regulation respecting the partition and assignment of benefits accrued under the pension plans of the judges of the Court of Québec, by Order in Council 460-92 dated 1 April 1992, amended by the regulation made by Order in Council 1189-95 dated 6 September 1995 and by the regulation made by Order in Council 1430-98 dated 27 November 1998;

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 respecting the partition and assignment of benefits accrued under the pension plans of the judges of the Court of Québec and of certain municipal courts was published in Part 2 of the *Gazette officielle du Québec* of 30 April 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 without amendment;

IT IS ORDERED, therefore, on the recommendation of the Minister of Justice:

THAT the Regulation respecting the partition and assignment of benefits accrued under the pension plans of the judges of the Court of Québec and of certain municipal courts, attached to this Order in Council, be made.

GÉRARD BIBEAU,
Clerk of the Conseil exécutif

Regulation respecting the partition and assignment of benefits accrued under the pension plans of the judges of the Court of Québec and of certain municipal courts

Courts of Justice Act
(R.S.Q., c. T-16, s. 246.22)

DIVISION I STATEMENT OF THE JUDGE'S OR FORMER JUDGE'S BENEFITS

1. Every application for a statement referred to in section 246.16 of the Courts of Justice Act (R.S.Q., c. T-16) must contain the following information and be accompanied by the following documents:

(1) the name, address, social insurance number and date of birth of the judge or former judge and his or her spouse;

(2) a marriage certificate and, where applicable, the date on which the spouses resumed living together or a certificate of civil union;

(3) a written confirmation from a certified mediator to the effect that the mediator has obtained a family mediation mandate or a written confirmation from a notary to the effect that the spouses in a civil union have undertaken a joint procedure for the dissolution of their civil union or, as the case may be, the joint declaration dissolving the civil union and the notarized transaction contract, or a copy of the application for separation from bed and board, divorce, annulment of marriage, dissolution of civil union or payment of a compensatory allowance or, where applicable, a copy of the judgment disposing of such an application;

(4) the information that must be provided by the Minister of Justice and by the municipalities that joined the pension plan provided for in Part V.1 or VI of the Act, in accordance with section 246.27 of the Act, for the year during which the assessment is determined up to the date set for that assessment, as well as for the previous year; that information must be certified by the Minister of Justice or the municipality concerned.

Any application filed under this section is also valid for the other pension plans administered by the Commission administrative des régimes de retraite et d'assurances or for which the Commission is responsible for paying benefits.

2. Within 90 days following the date of receipt of a duly completed application, the Commission shall provide the judge or former judge and his or her spouse with a statement containing the following information:

(1) the date on which the judge or former judge took office while covered by the pension plan established by Part V.1, VI or VI.1 of the Act and, where applicable, the date on which the judge ceased to hold office and to be covered by the pension plan;

(2) the benefits accrued to the judge or former judge, without taking into account any reduction resulting from a prior partition or assignment of benefits, from the time the judge or former judge took office while covered by the pension plan established by Part V.1, VI or VI.1 of the Act until the date of assessment provided for in the second paragraph of section 246.17 of the Act, as well as the value of those benefits;

(3) the benefits accrued during the period of the marriage or civil union as well as the value of those benefits;

(4) where applicable, the value of the reduction of the benefits accrued as a result of any prior partition or assignment of benefits that would be applicable at the date of that assessment;

(5) the terms and conditions for payment of the sums awarded to the spouse under Division III.

The statement of benefits and values established at the date of assessment on the basis of information known to the Commission not later than on the date of that statement is presumed accurate.

DIVISION II **ESTABLISHMENT AND ASSESSMENT OF** **ACCRUED BENEFITS**

§1. Establishment of benefits

3. The benefits accrued under the pension plans provided for in Part V.1, VI or VI.1 of the Act are established in accordance with the Act.

However, where the Act prescribes that a judge would be entitled to a pension if the judge ceased to hold office before reaching 65 years of age or 70 years of age, as the case may be, the judge's benefits are deemed to correspond to a deferred pension payable

(1) at 65 years of age, where Part V.1 or VI of the Act applies; or

(2) at 70 years of age, where Part VI of the Act prescribed that the deferred pension was payable at 70 years of age or where Part VI.1 of the Act applies.

The benefits accrued during the period of the marriage or civil union are established in accordance with the first and second paragraphs on the basis of the years or parts of a year of service counted during that period, on the assumption that the judge or former judge acquired for that period benefits of the same nature as those accrued to the judge or former judge between the date of taking office, while covered by the pension plan provided for in Part V.1, VI or VI.1 of the Act, and the date of assessment.

For the purpose of establishing and assessing the accrued benefits, the benefits correspond to the benefits acquired under the judge's plan at the date of assessment on the basis of the years or parts of a year of service counted at that date. For those purposes, the judge is deemed to have ceased to hold office at the date of assessment.

4. The years or parts of a year of service redeemed are counted proportionately to the amounts paid in capital for their payment out of the total capital amount. Those years and parts of a year are deemed to be counted for the period of the marriage or civil union to the extent that they were paid during that period.

5. Where the number of years or parts of a year of service counted for the purposes of the pension plan established by Part V.1, VI or VI.1 of the Act in accordance with section 246.24 of the Act is less than the number of years or parts of a year of service recognized under the initial pension plan, and where a

fraction of that number of years is comprised in the period of the marriage or civil union, the number of years or parts of a year of service counted in accordance with that section and comprised in the period of the marriage or civil union is equal to “A” in the following formula:

$$B \times \frac{C}{D} = A, \text{ where}$$

“B” is the number of years or parts of a year of service counted for the purposes of the pension plan established by Part V.1, VI or VI.1 in accordance with section 246.24 of the Act;

“C” is the number of years or parts of a year of service recognized under the initial pension plan for the period of the marriage or civil union;

“D” is the number of years or parts of a year of service recognized under the initial pension plan.

Where the number of years or parts of a year of service recognized under the initial pension plan for the period of the marriage or civil union is unknown to the Commission, the number of years or parts of a year of service counted in accordance with section 246.24 of the Act and comprised in the period of the marriage or civil union is equal to “A” in the following formula:

$$B \times \frac{E}{F} = A, \text{ where}$$

“B” is the number of years or parts of a year of service counted for the purposes of the pension plan established by Part V.1, VI or VI.1 of the Act in accordance with section 246.24 of the Act;

“E” is the number of calendar days having elapsed under the initial pension plan for the period of the marriage or civil union;

“F” is the number of calendar days having elapsed during membership in the initial pension plan.

6. If section 232 of the Act, as it read on 31 December 1991, applies and if the period of the marriage or civil union is shorter than the period comprising the date on which the judge or former judge took office and was covered by the pension plan provided for in Part V.1, VI or VI.1 of the Act, as the case may be, until the date of assessment, the amount of pension for the period of the marriage or civil union is equal to “L” in the following formula:

$$G \times \frac{H}{J} = L, \text{ where}$$

“G” is the amount of pension for the period of the marriage or civil union without taking into account section 232 of the Act, as it read on 31 December 1991;

“H” is the amount of pension established under section 232 of the Act, as it read on 31 December 1991;

“J” is the amount of pension computed at the date of assessment without taking into account section 232 of the Act, as it read on 31 December 1991.

§2. Assessment of benefits

7. Where the accrued benefits consist in a refund of contributions under section 224.4 of the Act, in a refund of contributions under section 244.4 of the Act or in a refund of amounts under section 246.14.2 of the Act, the value of those benefits corresponds to the amounts paid with interest computed in accordance with the Act and accrued to the date of assessment as though the refund had been issued at that date. The same applies in respect of the value of the benefits accrued for the period of the marriage or civil union.

8. The actuarial value of the benefits is established according to the following actuarial method and assumptions:

(1) actuarial method

the “distribution of benefits” method;

(2) actuarial assumptions for the benefits based on the salary for the best-paid years:

(a) mortality rate: GAM-83 male and GAM-83 female (The 1983 Group Annuity Mortality Table, Transactions of the Society of Actuaries, Vol. XXXV, pp. 880 and 881), weighted equally;

(b) interest rate: 9% for the first 15 years following the date of assessment and 6.5% for subsequent years:

(c) rate of increase in the Pension Index within the meaning of the Act respecting the Québec Pension Plan (R.S.Q., c. R-9): 5.5% for the first 15 years following the date of assessment and 3% for subsequent years.

9. Where the accrued benefits correspond to a pension or to a deferred pension, the value of those benefits is equal to “D” in the following formula:

$d_1 + d_2 + d_3 + d_4 = D$, where

“d₁” is the actuarial value of the part of any pension indexed from the date on which it is paid according to the rate of increase in the Pension Index determined under the Act respecting the Québec Pension Plan (R.S.Q., c. R-9);

“d₂” is the actuarial value of the part of any pension indexed from the date on which it is paid by the amount by which that rate exceeds 1%;

“d₃” is the actuarial value of the part of any pension indexed from the date on which it is paid by the amount by which that rate exceeds 3%;

“d₄” is the actuarial value of the part of any pension indexed from the date on which it is paid by the greater of

(1) 50% of the rate of increase in the Pension Index determined under the Act respecting the Québec Pension Plan; and

(2) the amount by which the rate of increase in the Pension Index determined under that Act exceeds 3%.

A separate value must be computed in the manner prescribed in the first paragraph for the part of the pension corresponding to the value of the benefits accrued under another pension plan that has been transferred under section 246.23.1 of the Courts of Justice Act to the pension plan established by Part V.1 or VI, for each case.

The value of the benefits accrued for the period of the marriage or civil union is established in accordance with the first and second paragraphs.

10. Where the accrued benefits consist in a pension being paid at the date of assessment or that would be paid if the former judge had filed an application to that effect, the value of those benefits is obtained by computing the actuarial value of such a pension.

The value of the benefits accrued for the period of the marriage or civil union are established in accordance with the first paragraph.

DIVISION III

PAYMENT OF THE SUMS AWARDED TO THE SPOUSE AS A RESULT OF THE PARTITION OR ASSIGNMENT OF BENEFITS

11. In this Division, the expression “life income fund” has the meaning assigned to it by section 18 of the Regulation respecting supplemental pension plans,

approved by Order in Council 1158-90 dated 8 August 1990, and the expressions “locked-in retirement account” and “annuity contract” have the meaning assigned to them by sections 29 and 30 of that Regulation.

12. An application for payment of the sums awarded to the spouse must be preceded by an application for assessment made in accordance with Division I and must contain the name and address of the judge or former judge and his or her spouse, their social insurance numbers and their dates of birth.

That application is also valid for all the pension plans for which the Commission has provided a statement.

13. An application for payment of the sums awarded to the spouse must be accompanied by the following documents:

(1) the judgment ruling on separation from bed and board, divorce, dissolution of the civil union, nullity of marriage or civil union or payment of a compensatory allowance;

(2) where applicable, any other judgment relating to the partition or assignment of the benefits of the judge or former judge or the joint declaration dissolving the civil union and the notarized transaction contract;

(3) where applicable, the agreement entered into between the spouses regarding the terms for payment out of benefits accrued under the pension plan established by Part V.1, VI or VI.1 of the Act;

(4) the divorce certificate.

14. Upon receipt of a duly completed application for payment, the Commission shall send the judge or former judge a statement showing the sums awarded to the spouse as well as the amount of the reduction computed pursuant to Division IV. The Commission shall also send the spouse a statement showing the sums awarded to the spouse.

The spouse must, within 60 days of the date on which the statement is mailed to him or her, provide the Commission with the name and address of the financial institution and with an identification of the annuity contract, locked-in retirement account, life income fund or, where applicable, registered retirement savings plan or registered retirement income fund into which the sums awarded to the spouse must be transferred.

Except where the spouse has been paid otherwise, the Commission shall, within 120 days of the expiry of the period provided for in the second paragraph, transfer the

sums awarded to the spouse into an annuity contract, locked-in retirement account, life income fund or, where applicable, registered retirement savings plan or registered retirement income fund with a financial institution chosen by the spouse, provided that the steps necessary for the transfer of those sums have been taken.

Should the spouse fail to indicate a choice or to take the necessary steps within the prescribed period, the Commission shall transfer those sums into a locked-in retirement account or, where applicable, a registered retirement savings plan in the spouse's name with the financial institution with which the Commission entered into an agreement to that effect.

Where the spouse proceeds by way of compulsory execution, the judgment authorizing a seizure by garnishment stands in lieu of an application for payment and this section applies.

15. The Commission shall transfer the sums awarded to the spouse into an annuity contract, a locked-in retirement account or a life income fund where those sums come from an entitlement to a pension or to a deferred pension.

However, the Commission shall transfer those sums into a registered retirement savings plan or a registered retirement income fund if those sums come from an entitlement to a refund of contributions under section 224.4 of the Act, to a refund of contributions under section 244.4 of the Act, or to a refund of amounts under section 246.14.2 of the Act, or, upon application by the spouse, into an annuity contract, a locked-in retirement account or a life income fund.

Despite the first and second paragraphs, those sums are paid to the spouse's successors in the event of the spouse's death.

16. The sums awarded to the spouse are apportioned among each of the values computed pursuant to the first and second paragraphs of section 9, in the proportion that the value of those sums is of the total value of the benefits accrued under the plan at the date of assessment.

17. Interest compounded annually and accrued from the date of assessment up to the date of payment must be added to the sums awarded to the spouse at the rate determined for each period under Schedule VI to the Act respecting the Government and Public Employees Retirement Plan (R.S.Q., c. R-10).

DIVISION IV REDUCTION OF ACCRUED BENEFITS

18. If the amount paid to the spouse comes from an entitlement to a refund of contributions under section 224.4 of the Courts of Justice Act, to a refund of contributions under section 244.4 of the Act or to a refund of amounts under section 246.14.2 of the Act, or to a deferred pension, the benefits of the judge or former judge are established in accordance with the Act and recomputed as follows:

(1) where the judge or former judge is entitled to a refund of contributions under section 224.4 of the Act, to a refund of contributions under section 244.4 of the Act or to a refund of amounts under section 246.14.2 of the Act, the amount of the refund is reduced by the sums awarded to the spouse at the date of assessment with the interest provided for in section 244.12 of the Act, and accrued from the date of assessment to the date on which the refund is made;

(2) where the judge or former judge is entitled to transfer an amount under a transfer agreement concluded in accordance with section 246.24 of the Act, the amount is reduced by the sums awarded to the spouse at the date of assessment with interest provided for in section 244.12 of the Act and accrued from the date of assessment to the date on which the transfer is made;

(3) where the judge or former judge is entitled to a deferred pension or a pension, the pension is reduced, from the date on which it becomes payable or from the date of payment, as the case may be, by the amount of pension that would be obtained on the basis of the sums awarded to the spouse at the date of assessment.

19. If the amount paid to the spouse comes from an entitlement to a pension, the pension is reduced, from the date of payment or from the date on which it becomes payable in the case of a judge 65 years of age, or 70 years of age or over, as the case may be, at the date of assessment, by the amount of pension that would be obtained on the basis of the sums awarded to the spouse at the date of assessment.

20. Each part of any pension corresponding to each of the indexing methods applicable thereto must be reduced by the amount of any pension corresponding to each of the indexing methods applicable thereto that would be obtained on the basis of the sums awarded to the spouse at the date of assessment. The same applies where the amount paid to the spouse comes in part from the value of the benefits accrued under another pension plan that has been transferred under section 246.23.1 of the Act to the pension plan established by Part V.1 or VI, for each case.

21. For the purposes of sections 18 and 20, the amount of pension that would be obtained on the basis of the sums awarded to the spouse at the date of assessment is established at that date according to the actuarial method and assumptions in section 8. That amount is presumed applicable on the date of the judge's or former judge's 65th birthday where Part V.1 or VI of the Act applies or on the date of the 70th birthday where Part VI.1 of the Act applies or where the benefit accrued under the pension plan provided for in Part VI of the Act was deemed to correspond to a deferred pension at 70 years of age.

If the pensioner is under 65 years of age, or 70 years of age, as the case may be, on the date on which the annual pension becomes payable, or on the date of payment if the pension is being paid at that date, the amount of pension obtained pursuant to the first paragraph is reduced by 0.50% per month, computed for each month between the date on which that amount of pension begins to apply and the date of the pensioner's 65th or 70th birthday, as the case may be, without exceeding 65%.

If the pensioner retired before the date of payment and if that date occurs after the date of the pensioner's 65th birthday or 70th birthday, as the case may be, the amount of pension obtained pursuant to the first paragraph is increased by 0.50% per month, computed for each month between the date of the pensioner's 65th or 70th birthday and the date on which that amount of pension begins to apply, if the pensioner retired before the date of the pensioner's 65th or 70th birthday, as the case may be, or for each month between the date on which the pensioner retired and the date on which that amount of pension begins to apply, if the pensioner retired on the date of the pensioner's 65th or 70th birthday, as the case may be, or thereafter.

22. For the purposes of sections 19 and 20, the amount of pension that would be obtained on the basis of the sums awarded to the spouse at the date of assessment is established at that date in accordance with the actuarial method and assumptions in section 8. That amount is presumed applicable at the date of assessment.

The amount of pension obtained pursuant to the first paragraph is increased by 0.50% per month, computed for each month between the date of assessment and the date on which that amount of pension begins to apply, if the pension was being paid on the date of assessment or would have been if the former judge had made an application to that effect, or for each month between the date of retirement and the date on which that amount of pension begins to apply, if the pensioner retired between the date of assessment and the date of payment.

23. Where the judge ceases to pay the amounts required to be entitled to the advantage provided for in section 244.9 of the Act or in section 25 of chapter 44 of the Statutes of 1990, and the cost of which was being paid at the time of the assessment, the judge may obtain a refund "R" computed, at the date on which the judge ceases to pay those amounts, as follows:

$$MV_d - \left(\frac{M_a}{V_a} \times MV_c \right) = R, \text{ where}$$

"MV_d" is the total amount paid by the judge to be entitled to the advantage provided for in section 244.9 of the Courts of Justice Act or in section 25 of chapter 44 of the Statutes of 1990, to the date on which the judge ceased the payments, with the interest provided for in section 244.12 of the Act, and accrued to the date on which the judge ceased the payments;

"M_a" is the amount awarded to the spouse at the date of assessment;

"V_a" is the value of the total benefits accrued to the judge at the date of assessment;

"MV_c" is the amount paid by the judge to be entitled to the advantage provided for in section 244.9 of the Courts of Justice Act or in section 25 of chapter 44 of the Statutes of 1990, until the date of assessment, with the interest provided for in section 244.12 of the Act, and accrued from the date of assessment to the date on which the judge ceased the payments.

24. Any refund of contributions or of other amounts to be made following a death must be reduced by the sums awarded to the spouse with the interest provided for in the Act, and accrued from the date of assessment to the first day of the month during which the refund is made, except for the period during which a pension is paid.

25. This Regulation replaces the Regulation respecting the partition and assignment of benefits accrued under the pension plans of the judges of the Court of Québec, made by Order in Council 460-92 dated 1 April 1992.

26. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec* but has effect from 30 May 2001.

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