



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-EIGHTH LEGISLATURE

Bill 40
(2008, chapter 4)

**An Act to amend the Courts of Justice
Act and the Act to amend the Act
respecting municipal courts, the Courts
of Justice Act and other legislative
provisions**

**Introduced 13 November 2007
Passed in principle 9 April 2008
Passed 1 May 2008
Assented to 6 May 2008**

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EXPLANATORY NOTES

This Act amends the Courts of Justice Act and the Act to amend the Act respecting municipal courts, the Courts of Justice Act and other legislative provisions in light of the Superior Court decision of 4 June 2007 concerning the remuneration of judges of the Court of Québec and of municipal courts.

The Act stipulates that pension benefits accumulated under the pension plan established by Part V.1 of the Courts of Justice Act are to be indexed annually to the increase in the rate of the Pension Index, determined in accordance with the Act respecting the Québec Pension Plan.

The Act also stipulates that judges of the Court of Québec who, under chapter 8 of the statutes of 2001, could have elected to participate in the pension plan established by Part V.1 of the Courts of Justice Act may make that election for a period of six months as of the date of coming into force of the provisions contained in the Act.

As well, the Act implements that part of the resolution voted by the National Assembly on 6 November 2007 that concerns the Government's new answer to the report from the committee on the remuneration of the judges of the Court of Québec and the municipal courts for the years 2004 to 2007 with respect to the impact of certain retroactive amounts paid to judges on the pension plans established under Parts V.1 and VI of the Courts of Justice Act.

LEGISLATION AMENDED BY THIS ACT:

- Courts of Justice Act (R.S.Q., chapter T-16);
- Act to amend the Act respecting municipal courts, the Courts of Justice Act and other legislative provisions (2002, chapter 21).

Bill 40

AN ACT TO AMEND THE COURTS OF JUSTICE ACT AND THE ACT TO AMEND THE ACT RESPECTING MUNICIPAL COURTS, THE COURTS OF JUSTICE ACT AND OTHER LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. Section 224.23 of the Courts of Justice Act (R.S.Q., chapter T-16) is replaced by the following section:

“224.23. Every pension is indexed annually, at the time prescribed under section 119 of the Act respecting the Québec Pension Plan (chapter R-9), by the rate of increase of the Pension Index determined in accordance with that Act.

Deferred pensions are indexed in accordance with the first paragraph. In this case, indexation applies only from 1 January following the date on which the judge reaches 65 years of age.”

2. Section 246.23.2 of the Act is amended by adding the following paragraph at the end:

“However, section 224.23 applies as it read before 6 May 2008 to deferred pensions accrued before that date.”

3. Section 57 of the Act to amend the Act respecting municipal courts, the Courts of Justice Act and other legislative provisions (2002, chapter 21) is amended by replacing the first sentence of the second paragraph by the following sentence: “The new president judge is entitled to additional remuneration equal to 10% of his salary until 30 June 2004.”

TRANSITIONAL PROVISIONS

4. Judges who, under section 22 of chapter 8 of the statutes of 2001, could have elected to participate in the pension plan established by Part V.1 of the Courts of Justice Act, but did not do so, may do so under the conditions prescribed in this Act.

Judges who wish to make the election must give the Commission administrative des régimes de retraite et d’assurances written notice to that

effect before 6 November 2008. Once such notice has been received by the Commission, the election is irrevocable.

5. Judges to whom the second paragraph of section 4 applies must pay to the Commission administrative des régimes de retraite et d'assurances the contributions required under section 224.2 of the Courts of Justice Act for the year during which the election is made. They must also pay, as contributions for past service subsequent to 1989, an amount equal to the contributions they would have had to pay under section 224.2 of the Courts of Justice Act from 1 January 2000 to 31 December of the year preceding receipt of the notice. However, that amount may not exceed the amount qualifying as contributions for past service under the applicable fiscal rules.

Payment of the amounts referred to in the first paragraph must be made in full within 60 days of the date of mailing by the Commission of a notice to that effect, or else in equal instalments, with interest charged as of the 61st day, over a period not exceeding three years determined by agreement between the judge and the Commission. The amount pertaining to the contributions for the year of receipt of the notice that may be paid in instalments is limited to the amount indicated in the notice. Amounts that remain unpaid 30 days after the expiry of the prescribed time are subject to interest.

However, all amounts must be paid in full before the day on which payment of the judge's pension begins or, if the judge retires after the coming into force of this Act, within 60 days of the date of mailing by the Commission of a notice to that effect. Amounts that are not paid within the prescribed time are deducted from the judge's pension, with interest.

If a judge dies before making full payment of the required amounts, the judge's succession must, for the judge's spouse to be entitled to the pension under the pension plan established by Part V.1 of the Courts of Justice Act, pay the balance of those amounts within 60 days of the date of mailing by the Commission of a notice to that effect. If this payment is not made, the judge is deemed never to have elected to participate in the pension plan established by Part V.1 of that Act, and the amounts paid by the judge are refunded to the succession, with interest.

6. Judges who ceased to hold office between 31 December 1999 and the coming into force of this Act may replace the pension to which they are entitled under the pension plan established by Part VI of the Courts of Justice Act by the pension to which they would have been entitled under the pension plan established by Part V.1 of that Act if they had elected to participate in it under section 22 or 25 of chapter 8 of the statutes of 2001. Such a replacement also concerns the amounts to which judges are entitled as supplementary benefits under the plan established under the second paragraph of section 122 of that Act.

Judges to whom the first paragraph applies must give the Commission administrative des régimes de retraite et d'assurances written notice of such a replacement before 6 November 2008. They must also pay, as contributions for past service subsequent to 1989, an amount equal to the contributions they would have had to pay under section 224.2 of the Courts of Justice Act from 1 January 2000 to the date of their cessation of office. However, the portion relating to previous years and due on the date of receipt of the notice must not exceed the amount qualifying as contributions for past service under the applicable fiscal rules.

If the amount is not paid within 60 days of the date of mailing by the Commission of a notice to that effect, it is deducted from the judge's pension, with interest.

If a judge dies before paying that amount, the judge's succession must, for the judge's spouse to be entitled to the pension resulting from the replacement, pay the balance within 60 days of the date of mailing by the Commission of a notice to that effect. If this payment is not made, the judge is deemed never to have requested the replacement, and the amounts paid by the judge are refunded to the succession, with interest.

7. On receipt of the notice and the full amounts required under sections 5 and 6, the Commission adjusts the amount of the pension, including any amount paid as supplementary benefits under the plan established under the second paragraph of section 122 of the Courts of Justice Act. Under the supplementary benefits plan, the Commission pays, in a lump sum, the difference, if any, between the amount of the adjusted pension and the amount of pension effectively received, for each of the months elapsed since payment of the pension began. That amount bears interest at the legal rate as of the later of the following dates: 1 February 2002 and the date of each monthly payment of the pension.

8. If a judge dies without leaving a spouse entitled to a pension and before paying in full the amounts required under sections 5 and 6, or if the judge's spouse dies before the judge's succession has paid those amounts, the judge is deemed never to have elected to participate in the pension plan established by Part V.1 of the Courts of Justice Act or never to have requested the replacement of his or her pension, and the amounts paid by the judge are refunded to the heirs, with interest.

9. For the purposes of sections 5, 6 and 8, the amounts paid or refunded bear interest, compounded annually, at a rate of 6%.

10. Any amount paid by a judge or the judge's succession as contributions for past service under sections 5 and 6 is, for the purposes of the pension plan established by Part V.1 of the Courts of Justice Act, deemed to be contributions paid under section 224.2 of that Act.

11. The amounts collected under sections 5 to 8 are paid into the consolidated revenue fund and the amounts refunded by the Commission administrative des régimes de retraite et d'assurances are taken out of that fund.

12. For judges who elect to participate in the pension plan established by Part V.1 of the Courts of Justice Act, the election to reduce the pension so the spouse may benefit from a larger pension in accordance with section 238 of that Act is presumed to have been made under section 224.16 of that Act.

13. Sections 4 to 10 and 12 also apply to the judges of the Municipal Court of Montréal, with the necessary modifications. The notices required must be given to the clerk of the city within the prescribed time and the amounts collected or refunded under those provisions must be collected or refunded by the city.

14. For the purpose of determining the average salary of a judge under sections 224.9 and 231 of the Courts of Justice Act, any lump sum paid, as a salary adjustment for a preceding year, to the judges of the Court of Québec and to the judges of municipal courts under the authority of a president judge in accordance with Orders in Council 719-2007 (2007, G.O. 2, 3806, in French only), 720-2007 (2007, G.O. 2, 3808, in French only), 32-2008 (2008, G.O. 2, 890, in French only) and 34-2008 (2008, G.O. 2, 893, in French only) forms part of the judge's salary for the year in which it should have been paid.

This rule also applies to supplementary benefits plans for judges to whom the pension plan established under Part V.1 or Part VI of the Courts of Justice Act applies, for the purpose of determining a judge's average salary or annual salary.

15. Section 1 has effect from 1 January 2000, section 3 from 1 July 2002 and section 14 from 1 July 2001.

16. This Act comes into force on 6 May 2008.

