STEPHEN WEINSTEIN*

Securities Law in Canada: Quebec, A Case Study†

Under section 92 of the Constitution Act, 1867,[1] the power to regulate securities legislation in Canada was given to the provinces. Although this section does not specifically mention the term "securities," the right to enact securities legislation falls under the general category of subsection 13 of section 92, being "Property and Civil rights in the Province." Because Canada has ten provinces, and each province has its own securities act, the lack of uniformity is often a problem for both practitioners of securities law and prospective issuers. When a person contemplates making a distribution of securities in Canada, two provinces are usually focused upon, Ontario and Quebec. In the Province of Quebec, in 1985, over 290 prospectuses, representing issues of all types and having a value in excess of Can.$12.1 billion, were approved by the Commission des valeurs mobilières du Québec (the Quebec Securities Commission),[2] the regulatory and administrative body charged with overseeing the application of the securities legislation in the province.[3] In 1978 the Legislature of the Province of Ontario revised its securities legislation by passing the Securities Act, 1978.[4] On December 16, 1982, the National Assembly of Quebec, following the lead of its sister province, assented to the Secu-

*Partner in the law firm McDougall, Caron, of Montreal, Quebec; Member of the Barreau du Quebec, Canadian Bar Association, American Bar Association, and the International Bar Association.

†The legislation, regulation, and procedures referred to throughout this article are updated and in force as of Sept. 1, 1986.

1. CONSTITUTION ACT, 1867, 30-31 Vict., ch. 3.

2. Throughout this article, the Commission des valeurs mobilières du Québec (the Quebec Securities Commission) will be referred to as the Commission.

3. Bulletin de Statistiques, Commission des valeurs mobilières du Québec, juillet/decembre 1985, volume VIII, no. 2 [hereinafter Bulletin].

4. Securities Act, ONT. REV. STAT. ch. 466 (1980). This act was first enacted as the Securities Act, 1978, ONT. STAT. ch. 47 (1978).

rities Act.[5] The law completely revised the previous securities legislation, which had been enacted in 1955 and last amended in 1979.[6] In 1984 the Quebec National Assembly again amended the Securities Act, primarily to modify the rules applicable to takeover bids[7] and to simplify the procedures for distribution of securities to the public, to provide for additional protection to investors, and to deal more effectively with contraventions against the Act.[8]

The stated purposes of the Act (as amended) are to: promote efficiency in the securities market; protect investors against unfair, improper, or fraudulent practices; regulate the information that must be disclosed to security holders and to the public in respect of persons engaged in the distribution of securities and on the securities issued by these persons; and define a framework for the professional activities of persons dealing in securities, their associations, and their self-regulating organizations.[9] Furthermore, the Act also gives the Commission a large amount of power and decision making authority, some aspects of which are discussed elsewhere in this article.

The regulation of securities transactions in Quebec has several sources. In addition to the Act and the various regulations promulgated thereunder,[10] the Commission publishes a weekly Bulletin Hebdomadaire de la Commission des valeurs mobilières du Québec (Bulletin Hebdomadaire) containing summaries of various decisions rendered by it, insider trading reports, and other matters of public interest relating to the Act. The Commission has adopted a series of policy statements, in conformity with section 274 of the Act, which establishes the rules as to how the Commission will apply the Act and the regulations.[11] As of September 1986,

5. Securities Act, QUE. REV. STAT. ch. V-1 (1977), *amended by* ch. 48, 1982 Qué. Stat. 899.

6. Securities Act, QUE. REV. STAT. ch. V-1 (1977), *amended by* ch. 79, 1979 Qué. Stat. 1227.

7. Securities Act, QUE. REV. STAT. ch. V-1.1 (1982), *amended by* ch. 41, 1984 Qué. Stat. 841. The provisions regarding takeover bids have not yet been proclaimed in force and there is no indication as to when this section of Bill 7 will enter into force.

8. For purposes of this article, the Act refers to the Revised Statutes of Quebec (R.S.Q.) version of the Securities Act, which includes all amendments thereto. *See* QUE. REV. STAT. ch. V-1.1 (1984) [hereinafter Act].

9. *Supra* note 5.

10. The main regulation is entitled the Regulation Respecting Securities, O.C. 660-83 (March 30, 1983) [hereinafter Regulation]. This regulation was amended by the Securities (Amendment) Regulation, O.C. 1758-84 (Aug. 8, 1984). The regulations were substantially amended by the Regulation amending the Regulation Respecting Securities, O.C. 1263-85 (June 26, 1985).

11. In light of the uniqueness of the Canadian federal system, in addition to provincial policy statements applicable in a given province only, a series of National Policy Statements have been drafted and are used by several of the provincial securities regulators. As of September 1986, thirty-six National Policy Statements had been adopted. The subjects

eighteen policy statements were in force. Finally the Commission itself has a series of internal directives used by its employees in reaching decisions on a day-to-day basis. These internal directives are generally not for public distribution. Also, other laws, such as the Quebec Civil Code, the Canada Business Corporations Act, the Charter of the French Language, and the Quebec Companies Act,[12] may have an effect on securities law because of their general application. The Quebec securities system is known as a closed regime, that is, there is only one way to issue a security in the province and to do so the issuer must comply with the provisions of the Act or fall under a specific exemption.

The general rule on which the Act is based is that every person intending to make a distribution of securities must prepare a prospectus and obtain a receipt therefor from the commission.[13] This rule applies to a distribution made from Quebec to people in Quebec; a distribution made from Quebec to people outside of Quebec; and a distribution made outside Quebec to persons established in Quebec. The rule is composed of three elements: the security; the distribution; and the prospectus. The purpose of this article is to survey the Act in the context of the rule stated above by discussing each of its constituent elements.

I. The Security

Since the last revision of securities legislation in Quebec prior to enacting the current law, the scope of what constitutes a security has been greatly extended, limited only by the imagination of financiers, underwriters, and practitioners. For example, there has been a recent increase in the attempted distribution of subordinated voting shares. In Policy Statement Number 17 of the Commission, in force as of March 29, 1985,[14]

covered by these statements range from disclaimer clauses in prospectuses to national advertising warnings; from conflict of interest guidelines to requirements concerning unincorporated issuers.

In virtue of National Policy Statement Number 1 (revised Nov. 30, 1984), the steps to be taken by an underwriter or an issuer wishing to clear a prospectus in more than one province are outlined. This includes choosing a "principal jurisdiction" by the party making the filing. The securities administrator in the principal jurisdiction assumes the responsibility on behalf of each of the other provincial administrators for clearing deficiencies in the prospectus and advising the other provinces where the prospectus is filed. Notwithstanding this practice, no loss of provincial jurisdiction occurs as a result of selecting one province over another as a principal jurisdiction. Therefore, even if the Province of Ontario is chosen as a principal jurisdiction, Quebec securities law will still be applicable, should the issuer desire to tap the Quebec market.

12. Canada Business Corporations Act, CAN. STAT. ch. 33, (1974-75); Charter of the French Language, QUE. REV. STAT. ch. C-11 (1977); Quebec Companies Act, QUE. REV. STAT. ch. C-38 (1977).

13. Act, *supra* note 8, § 11.

14. Bulletin Hebdomadaire, vol. XVI, no. 13.

the use, scope, and rights attached to such shares have been rigorously defined and controlled by the Commission in an attempt to protect investors in accordance with its mandate. The Act itself does not define the word "securities" per se. It does however define the form of investments that are subject to the Act, and it is those forms of investments that, in fact, serve as the definition. The Act applies to the following forms of investments:

(1) any security recognized as such in the trade, more particularly, a share, bond, capital stock of an incorporated entity, subscription right or option to purchase;
(2) an instrument, other than a bond, evidencing a loan of money;
(3) a deposit of money, whether or not evidenced by a certificate except a deposit received by the Government of Quebec, the Government of Canada, or one of their departments or agencies;
(4) an option or a negotiable futures contract pertaining to securities, or a Treasury bond futures contract;
(5) an option on a commodity futures contract or financial instrument futures contract;
(6) a share in an investment club;
(7) any option negotiable on an organized market; and
(8) an investment contract.[15]

The Act defines "investment contract" as:

> [A] contract whereby a person, having been led to expect profits, undertakes to participate in the risk of a venture by a contribution of capital or loan, without having the required knowledge to carry on the venture or without obtaining the right to participate directly in decisions concerning the carrying on of the venture.[16]

By including investment contracts as a form of investment subject to the Act, risk capital schemes such as real estate investment projects, oil and gas drilling funds, film deals and limited partnerships, as well as schemes such as cattle or horse breeding operations will fall under the closed system of the Act, thereby achieving adequate investor protection, one of the primary goals of the Act.[17] In addition to the foregoing specific

15. *Id.* § 1.
16. *Id.*
17. In the case of Pacific Cost Coin Exch. of Canada v. Ontario Sec. Comm'n, 80 D.L.R.3d 529 (Can. 1978), the Supreme Court of Canada held that a commodity account agreement entered into by an investor whereby he agreed to buy bags of silver coins, paying only a portion of the price, constituted an "investment contract" under the Ontario securities legislation. Mr. Justice de Grandpre, rendering the majority decision and having examined the facts of the case in light of certain U.S. tests with respect to investment contracts, stated:

> It is clearly legislative policy to replace the harshness of *caveat emptor* in security related transactions and Courts should seek to attain that goal even if tests carefully formulated in prior cases prove ineffective and must continually be broadened in scope. It is the policy and not the subsequently formulated judicial test that is decisive. *Id.* at 542. In

forms of investment, the government may, by regulation as the need arises, determine other forms of investments or securities that will be subject to the Act.[18]

Although no other type of securities or investments were decreed in the Regulation, the August 1984 amendments thereto brought commodities futures contracts, financial futures contracts, currencies futures contracts, and stock indices future contracts as forms of investment subject to the Act.[19] This amendment was brought about as a result of the increased activity of the Montreal Exchange (formerly the Montreal Stock Exchange) in these products and shows the ability of the Government to adapt the application of its laws to the changing nature of the financing and investment field. In the June 1985 amendment to the Regulation, limited partnership units were specifically included as well.[20]

Certain forms of investments or securities are exempt from the application of the general rule.[21] The rule does not, for example, apply to a security issued by a "closed company" in conformity with its constituting documents except where a closed company has an interest in another company whose securities are traded on an organized market.[22] A "closed company" is defined as a company, other than a mutual fund, whose constituting documents: provide for restrictions on the free transfer of shares; prohibit any distribution of securities to the public; and limit the number of its shareholders to fifty, not including the present or former employees of the company or of a subsidiary.[23] The previous act used the expression "private company," to denote what is currently called a "closed company."[24] When applying for an incorporation, practitioners will usually include in the incorporation documents the above restrictions so that the issue of shares of the company will not automatically be subject to the Act. Should the board of directors of the company decide to take steps to shed the status of a "closed company," appropriate steps can be taken to amend the constituting documents.

Other forms of investments exempted from the application of the Act include: a debt security issued by the Government of Quebec, the Government of Canada, or the government of a Canadian province;[25] an

light of this decision and the definition found in the Act, there seems to be unwillingness to adopt the U.S. view on the matter of "investment contracts."

18. Act, *supra* note 8, § 1(9).
19. Regulation, *supra* note 10 (O.C. 1758-84, § 1 adding §§ 1.1 to 1.6 to the Regulation).
20. Regulation, *supra* note 10 (O.C. 1263-85, § 1 adding § 1.7 to the Regulation).
21. Act, *supra* note 8, § 3.
22. *Id.* § 3(2).
23. *Id.* § 5.
24. *Supra* note 6, § 1(13).
25. Act, *Supra* note 8, § 3(1).

instrument evidencing a debt and issued in settlement of a credit or conditional sale, as long as it is not transferred to a natural person;[26] an instrument evidencing a debt including a bond, as long as the issue and transfer thereof constitute, for the issuer as well as for the subscriber, and any subsequent purchaser, isolated transactions;[27] and a debt security issued or guaranteed by a bank established under federal banking statutes or the Quebec Savings Bank Act, provided that sufficient priority ranking is given in the event of a default under the terms of payment of the debt security.[28] Common or preferred shares issued by Quebec-based institutions such as accredited savings and credit unions, cooperatives, or cooperative agricultural associations, represent other forms of investments or securities that are exempt from the application of the Act.[29]

II. The Distribution

For the general rule to apply, the securities transaction must constitute a "distribution," and an understanding of this term is essential to comprehending how the Act works. The Act defines the word "distribution" as follows:[30]

(1) the endeavour to obtain, or the obtaining, by an issuer, of subscribers or purchasers for his securities;
(2) the endeavour to obtain, or the obtaining, by a firm underwriter of purchasers for securities he has underwritten;
(3) the endeavour to obtain, or the obtaining, by a subscriber or purchaser of securities which he acquired under an exemption provided under [certain] sections [of the Act], of purchasers for such securities without the benefit of a final exemption from a prospectus;
(4) the endeavour to obtain, or the obtaining, by a subscriber or purchaser of securities which he acquired through a transaction for which no prospectus was prepared as required by law and no exemption was granted, of purchasers for such securities;
(5) the endeavour to obtain, or the obtaining, by a subscriber or purchaser of securities which he acquired outside of Quebec, of purchasers for such securities in Quebec, except on a stock exchange or on the over-the-counter market;
(6) the endeavour to obtain, or the obtaining, of purchasers for securities of a formerly closed company that have not previously been the subject of a prospectus;
(7) the endeavour to obtain, or the obtaining, by an agent, of subscribers or purchasers for securities being distributed in accordance with [sections] 1-6 above;

26. *Id.* § 3(8).
27. *Id.* § 3(9).
28. *Id.* § 3(15).
29. *Id.* §§ 3(4)-(6).
30. Act, *supra* note 8, § 5. The original version of the definition of the word "distribution" was completely redrafted with the 1984 amendments to the Securities Act.

(8) the giving in guarantee by an issuer of securities issued by him for that purpose.

An examination of the above definition reveals that the distribution relates first of all to the primary market—the obtaining or endeavouring to obtain purchasers or subscribers for securities by an issuer, a dealer, or an underwriter. The distribution to the secondary market is the next type of transaction envisioned. A purchaser of previously exempt securities who desires to sell such securities is deemed to be distributing them, unless the primary distribution was made with the benefit of a secondary trade exemption. Similarly, a purchaser who has acquired securities outside Quebec and desires to sell them to purchasers or subscribers inside Quebec (except on a stock exchange or over-the-counter market) will find himself subject to the provisions of the Act. One final type of distribution merits comment: the case of the previously "closed company" seeking purchasers for its securities. This last case covers the question of smaller companies seeking outside financing by attempting to entice persons, other than present or former employees, to invest in the company by means of a stock issue or debt financing. This type of distribution will bring the closed company into the loop established by the Act, subject however to specific exemptions from prospectus requirements that may be applicable.

The large definition of "distribution" must be seen in light of the goals of the Act itself. The disclosure of information, the regulation of persons involved in the distribution process, and investor protection are the foremost reasons why the Act was introduced. Hence, it was decided to encompass as broad a spectrum as possible in order to achieve the goals set out.

Certain distributions are nevertheless exempt from prospectus requirements, as is discussed in the next section.

III. The Prospectus

The Act distinguishes between several categories of prospectuses. These categories may be divided as follows: (1) the standard long-form prospectus; (2) the simplified prospectus; and (3) the shelf prospectus. In addition, the Act further provides the following classifications: (1) the preliminary prospectus; (2) the draft final prospectus; and (3) the final prospectus. Following is a brief description of the various prospectuses and when each can be used.

A. The Standard Long-Form Prospectus

The long-form prospectus is the document that describes in detail the exact nature of the distribution of the securities. The Regulation sets forth

forty items that must be found in the prospectus.[31] These items include information concerning the distribution spread, the plan of distribution, summary of the prospectus, use of net proceeds from distribution, capital shares of the issuer, risk factors, financial information, shares being offered, the names and addresses of all senior executives, their remuneration and indebtedness to the issuer, principal holders of securities, material contracts, and information as to options, rights, and warrants. The prospectus must also contain and disclose all material facts likely to affect the value or the market price of the securities to be distributed.

B. The Simplified Prospectus

The simplified prospectus can be used by an issuer who is a reporting issuer.[32] A reporting issuer is an issuer that has previously made a distribution to the public or has obtained the authorization of the Commission to become a reporting issuer by reason of equivalent disclosure requirements established by another legislative authority.

A reporting issuer may use the simplified prospectus under two conditions.[33] First, the reporting issuer must have filed the permanent information record with the Commission. The permanent information record must contain, inter alia, the following information: (1) name and incorporation of the reporting issuer; (2) a description of the business of the issuer; (3) principal financial disclosure; (4) an analysis of the financial position and operating results; (5) an identification of the markets on which the securities are traded; (6) an indication of the frequency and amount of dividends declared during the last two financial periods; (7) important subsidiaries of the issuer; and (8) a list of the senior executives, their salaries and shareholdings.[34]

Second, the reporting issuer must have satisfied the disclosure requirements contained in the Act for one year.[35] The reporting issuer is subject to continuous disclosure requirements, which are of two types: timely disclosure and periodical disclosure.[36] The timely disclosure provisions require a reporting issuer immediately to prepare, distribute, and file a press release disclosing the substance of a material change that is likely

31. Schedules I and II to the Regulation, *supra* note 10, form the basis for the Standard Long-Form Prospectus.

32. Act, *supra* note 8, § 68, defines the notion of "reporting issuer."

33. *Id.* § 18.

34. *Id.* § 85. In addition, see Regulation, *supra* note 10, § 159, and Schedule IX to the Regulation, which contain the details for the Annual Information Form used as part of the Permanent Information Record.

35. Act, *supra* note 8, § 18(2).

36. *Id.* §§ 68-80 deal with disclosure requirements. The timely disclosure provisions are contained in §§ 73, 74. The periodical disclosure provisions are found in §§ 78-80.

to have a significant influence on the value or the market price of the securities of the issuer when such change is not generally known. Where senior management of the issuer has reasonable grounds to believe that disclosure would be seriously prejudicial to the interests of the issuer and that no transactions in the securities of the issuer have been or will be carried out on the basis of the information not generally known, then no press release is required.

In addition to the timely disclosure requirements, every reporting issuer must, within 140 days from the end of its financial year, file annual financial statements and an auditor's report. Furthermore, within 60 days from the end of the first three quarters of its financial year, quarterly financial statements are required.[37] Copies of all statements and reports must be sent to each registered holder of the securities other than holders of debt securities.[38] An exemption may be obtained from reporting any information that should normally appear in the statements if the issuer proves that such reporting would be seriously prejudicial to it.[39] By referring to the permanent information record rather than incorporating financial information in the prospectus itself, the simplified prospectus is more compact and simpler to prepare.

The time for approval of a simplified prospectus is also technically shorter than the standard prospectus, and no minimum asset or equity value or rating is required before being able to use this type of prospectus for financing purposes. Any reporting issuer, therefore, can take advantage of the simplified prospectus.

C. The Shelf Prospectus

The shelf prospectus was added in the 1984 amendments to the Act and came into force on August 1, 1985.[40] The shelf prospectus is a special type of preliminary simplified prospectus that may be prepared by an eligible issuer.[41] The Regulation provides that a reporting issuer that has filed a permanent information record and that fulfills certain conditions is eligible to use the shelf prospectus system.[42] The conditions vary according to the category of security to be issued. For example, when common shares are issued, a three-year disclosure period is required in order to be able to issue a shelf prospectus. Or if the total value of the

37. The time delays were amended in the 1984 amendments to the Act, *supra* note 7, in order to conform to similar time requirements contained in Ontario securities legislation.

38. Act, *supra* note 8, § 78.

39. *Id.* § 79.

40. Act to Amend the Securities Act, ch. 41, 1984, Qué Stat. § 8.

41. Act, *supra* note 8, § 24.1.

42. Regulation, *supra* note 10, § 62.1.

outstanding shares (except preferred shares held by persons who control less than 10 percent exceeds Can.$100 million, a shelf prospectus may be used. The conditions also change in the case of debt securities or non-convertible preferred shares.[43]

The shelf prospectus contains the following information: (1) the distribution spread; (2) a description of the issuer's activities; (3) the issuer's corporate name, head office, and place of business; (4) the capital structure; (5) a description of the use of the net proceeds; (6) the stock exchanges on which the securities are listed; and (7) a description of the shares issued.[44] It also incorporates the various disclosure documents required by the Act, such as annual financial statement, proxy circulars, quarterly financial statements and notices of any material changes.[45] An issuer that has filed a shelf prospectus may prepare a supplement thereto; the shelf prospectus with a supplement constitutes the final prospectus.[46]

The goal of the shelf prospectus is to allow an issuer to take advantage of windows in the market palace. The shelf prospectus allows the frequent issuer easier and quicker access to the market, thereby providing more flexible financing capability. However, if an issuer does not make a distribution of securities at least once a year, a new shelf prospectus must be filed with the Commission at the same time as the annual information required under the Act is updated.[47]

D. The Preliminary, Draft and Final Prospectuses

The Act also allows for different stages in the evolution of a prospectus before it becomes a final prospectus ready for approval by the Commission and the granting of a receipt. For example, the Act allows for, but does not require the filing of a preliminary shelf prospectus or a preliminary standard prospectus before the filing of the final prospectus.[48] The filing of a preliminary prospectus allows the forwarding of the document to prospective investors or purchasers to inform them of the intended issue. It also (1) permits the distribution of advertising documents, provided that they adequately reflect the information presented in the preliminary prospectus without distorting it by selective presentation or by adding misleading statements, and (2) allows the solicitation of prospective sub-

43. *Id.* §§ 160-162.

44. *Id.* § 62.3 (which by reference incorporates the information prescribed in Part A of Schedule IV of the Regulation as part of the shelf prospectus).

45. *Id.* § 62.1.

46. Act, *supra* note 8, § 24.1.

47. Regulation, *supra* note 10, § 62.8.

48. Act, *supra* note 8, § 20.

scribers or purchasers without accepting any undertakings on their part.[49] The preliminary prospectus will contain most of the information required in the final prospectus except that it may omit the auditor's report, the certificate of approval of the issuer, the written consent by expert persons to their reports, the number or value of the securities to be distributed, and information relating to the subscription price and selling price.[50] The filing of the preliminary prospectus is generally used as a means to test the market in order to see if there is a demand for the issue in question, without being committed to the issue itself. The preliminary prospectus can always be withdrawn before the filing of the final prospectus.

A person who does not wish to submit a preliminary prospectus may file a draft prospectus before filing a final prospectus. Essentially, the draft prospectus will be the same version as the final prospectus except that any certificates otherwise required, such as those of the auditor, the board of directors, and other professionals involved, need not be signed. The final prospectus, whether in simplified, shelf, or standard form, is the ultimate complete document that is submitted to the Commission in accordance with the Act in order to obtain the receipt needed to commence the distribution.

The granting of a receipt for a prospectus is not an automatic process. The Commission will analyze the prospectus in order to insure it conforms to the Act and Regulation.[51] Where the senior executives of the issuer, the person whose holdings are sufficient to give them a determining influence over its affairs, or the promoter of the venture do not appear to have the integrity necessary to safeguard the interests of the security holders, a receipt may be refused.[52] Similarly, where the issuer does not have the financial resources to ensure the viability of the business, or where necessary for the protection of investors, a receipt may not be granted.[53] Once the final prospectus has been filed with the Commission and has been approved, a receipt is issued.[54] The issuance of the receipt entitles the issuer to commence the distribution of securities.[55]

E. Prospectus Exemptions

Not all distributions are subject to the prospectus requirements in the Act. In fact, a prospectus is not mandatory in over forty specific types

49. *Id.* § 21.
50. For the information required with respect to the preliminary and draft prospectuses, see Regulation *supra* note 10, §§ 74, 75.
51. Act, *supra* note 8, §§ 13-14.
52. *Id.* § 15.
53. *Id.*
54. *Id.* § 14.
55. *Id.* § 16.

of distributions. For example, no prospectus is required for a distribution of a debt security guaranteed by the Quebec Government, the Canadian Government, or the government of a Canadian province. Similarly, a debt security issued or guaranteed by a municipal corporation, a Quebec university, or school corporation also is exempt. There are exemptions based on the nature of the securities,[56] as well as exemptions due to the nature of the distribution.[57]

No prospectus is required if a distribution of securities is made to a sophisticated purchaser and the offer is made without any publicity.[58] A sophisticated purchaser is, for example, a company in which all of the voting securities belong to the Quebec Government, the Government of Canada, or one of its provinces, or to one of their departments or agencies.[59] Banks, trust companies, municipalities, and insurance companies are also examples of sophisticated purchasers.[60] The Commission may also designate who is a sophisticated purchaser.[61] In the last half of 1984, over seventy issues to sophisticated purchasers were made and included common shares, promissory notes, preferred shares, debentures, and shares in limited partnerships.[62]

A prospectus is not required when the distribution is made to employees, officers, or directors of a company that is already subject to reporting requirements.[63] Fifty-one such distributions were made in the last six months of 1985.[64] When a foreign-based public company decides to issue shares, options or other incentives to the employees, officers, or directors who are employed in the Province of Quebec, the prospectus may be avoided by using this exemption.

An exemption from prospectus requirements exists for the distribution of securities without advertisement where the total cost of subscription or the purchase price is at least Can.$150,000 per person.[65] No offering memorandum or circular is required prior to such distribution. Only a notice is required to be given to the Commission once the distribution has been completed. For the six-month period ending December 31, 1985, there were ninety-two distributions made under this exemption.[66] Many

56. *Id.* §§ 41-42.
57. *Id.* §§ 43-56.
58. *Id.* § 43.
59. *Id.* § 44(1).
60. *Id.* §§ 44(2)-(8).
61. *Id.* § 44(12).
62. *Bulletin, supra* note 3.
63. Act, *supra* note 8, § 41.
64. *Bulletin, supra* note 3.
65. Act, *supra* note 8, § 51. The minimum level in the original version of the Act was Can.$100,000 but was raised in the 1984 amendments.
66. *Bulletin, supra* note 3.

of these issues were for shares or units in limited partnerships dealing with real estate projects, oil and gas drilling funds, and shares in mining operations.

A further exemption from prospectus requirements exists for the attraction of seed capital. Effective August 1, 1985, a nonreporting issuer may distribute his securities to not more than twenty-five subscribers without a prospectus, provided that certain strict conditions are met. These conditions include that: each subscriber act for his own account; the subscriber is able to evaluate the prospective investment; each transaction is evidenced in writing and in conformity with the Regulation; the distribution is completed within six months and with advertisement; the promoter has never before availed himself of this exemption. The issuer must, however, advise the Commission at least ten days prior to the distribution and after its completion.[67]

Tax shelters may qualify for exemption.[68] Tax shelter securities are securities that give the owner entitlement to tax exemptions and have been approved as such by the Director of Information of the Commission. Effective August 1, 1985, no prospectus is required of a nonreporting issuer when he distributes his tax shelter securities to not more than fifty subscribers if certain conditions are met. The conditions are similar to those in force regarding the seed capital exemption described in the preceding paragraph.[69] Regulatory provisions govern the contents of the contracts needed to evidence the transaction.[70] Although no prospectus is required, an offering memorandum must be submitted to the Commission and transmitted to the prospective purchasers.[71] The contents of the offering memorandum are governed by regulation as well.[72] Within ten days after the completion of the distribution of the tax shelter securities, the Commission must be notified.[73] One interesting note before leaving the tax shelter exemption is that the Commission has the power to disagree with the issuer taking the benefit of the exemption, and the Director of Information of the Commission may force the issuer to comply with the prospectus requirements.[74]

The right to an exemption from a prospectus is not absolute in any event. The Commission may deny the benefit of an exemption contained in the Act or Regulation for the protection of investors. If, for example,

67. Act, *supra* note 8, §§ 46-47.
68. *Id.* §§ 47-51.
69. *Id.* § 47.
70. Regulation, *supra* note 10, §§ 66-70.5.
71. Act, *supra* note 8, § 48.1.
72. Regulation, *supra* note 10, § 70.3.
73. Act, *supra* note 8, § 49.
74. *Id.* § 48.1.

a person has made improper use of an exemption, contravened the Act or regulations, or contravened any jurisdiction's laws relating to securities or the rules of a recognized stock exchange, the Commission may step in to deny the benefit of an exemption.[75] Conversely, the Commission may exempt a person from prospectus requirements if it considers the exemption not to be detrimental to the protection of investors.[76]

F. Distribution of Securities through a Dealer

In the Act, a "dealer" is defined as a person (1) carrying on the activities of intermediary in the trading of securities; (2) trading in securities as principal, whether as his main activity or only as a secondary activity; (3) distributing a security for his own or another's account; or (4) soliciting persons as part of the above activities.[77]

The Act requires that the distribution of a security must be completed within twelve months from the date the receipt for the prospectus is issued.[78] In certain cases, the distribution period may be extended for a further twelve months.[79] Where a person subscribes for or purchases securities distributed beyond the twelve-month period or any approved renewal period, he may unilaterally rescind the subscription or purchase.[80]

Once an issuer has made a distribution of securities to the public he has become a "reporting issuer" under the Act.[81] The issuer is then subject to the continuous disclosure rules described above. In addition to the timely and periodical disclosure requirements, the insiders of the reporting issuer are subject to disclosure.[82] The insiders for the purposes of the Act are: the issuer itself, its subsidiaries, its senior executives, and the senior executives of its subsidiaries; and any person or senior executives of that person who exercise control over more than ten percent of a class of shares of a reporting issuer to which are attached voting rights or an unlimited right to a share of the profits and to its assets in case of winding-up.[83]

Insider reports are required when any person becomes an insider,[84] when there is a change in control greater than one percent of the securities

75. *Id.* § 264.
76. *Id.* § 263.
77. *Id.* § 5.
78. *Id.* § 33.
79. *Id.* § 34. The extension of the distribution period must be requested from the Commission within certain delays which may in turn be extended.
80. *Id.* § 36.
81. *Id.* § 68.
82. *Id.* §§ 89-103. These sections of the Act contain the rules regarding insider reports and insider trading.
83. *Id.* § 89.
84. *Id.* § 96.

held by an insider,[85] or when other changes affect the control of the issuer. All insider trading is reported in the Bulletin Hebdomadaire.

When an issuer is incorporated under the law of a state other than Canada or a province of Canada and is reporting issuer only because one of its securities is listed on a recognized stock exchange as a self-regulating organization, a simplified continuous disclosure scheme may be applicable.[86] This simplified continuous scheme is to be determined by the Commission; however, as of March 1986, no policy statements had been issued on this section of the Act.

When a Quebec-based company desires to seek equity or debt financing on foreign capital markets, it may be exempt from the general rule provided that the persons to whom the securities are distributed reside outside Quebec.[87] The issuer must advise the Commission of the proposed issue and provide the following information: (1) the date planned for the beginning of the distribution; (2) an estimate of the value of the securities to be distributed; (3) the name of the competent authority entitled to issue a receipt for information documents or to grant exemptions; (4) a copy of the information documents filed with the competent jurisdiction and the text establishing the exemption or decision granting it; and (5) the name and address of the dealer entrusted with the distribution, if known.[88] Should the Commission not object within fifteen days from receipt of the required information, or if the Commission agrees, no prospectus shall be required. A reporting issuer may not be obligated to transmit all the documents above required. Should the securities, however, find their way to Quebec purchasers via the secondary market, prospectus requirements will apply.[89]

G. Language of the Prospectus

One of the unique features of the Province of Quebec in the North American context is the fact that the French language is predominant. Over eighty percent of the population counts French as their mother tongue.[90] The Act requires that all prospectuses, notices and documents filed in Quebec with the Commission be in the French language only or in the English and French languages.[91] The Commission has, indeed,

85. *Id.* § 97.
86. *Id.* § 103.1.
87. *Id.* § 12.
88. Regulation, *supra* note 10, § 155.
89. This transaction will become a secondary distribution and as a result the distribution will come under the closed regime established by the Act, *supra* note 8.
90. 1985 CAN. Y.B. (Minister of Supply and Services) 58, table 2.18.
91. Act, *supra* note 8, § 40.1.

established a series of rules that it will apply with regard to French language requirements, some of which go beyond the requirements of the Charter of the French Language.[92] Although the Act seeks integration with the securities legislation of the other provinces and the United States, the French language requirements may, for some, remain an impediment to doing business in the province.

IV. Conclusion

Securities legislation in the Province of Quebec is still undergoing a transformation, and the practitioner can anticipate additional modifications, both to the Act and to the regulations, as the system develops and matures. The improvement in the economic and political climate of the Province of Quebec will undoubtedly lead to an increase in securities activities as companies seek new capital markets. The Federal Government of Canada in a recent budget announced a plan to exempt from taxation capital gains up to a cumulative amount of Can.$500,000 per person.[93] This new provision, in addition to already existing schemes such as the Quebec Stock Savings Plan and the self-directed Registered Retirement Savings Plan, will see new applications of the Act and its regulations as the goals of issuer flexibility and investor protection are pitted against each other.

The recent loosening of Canadian law regarding foreign investment, the consequent abolition of the Foreign Investment Review Agency and the creation of Investment Canada[94] will also open the gates for new investors for whom the Canadian market will be seen as a potential for additional sources of capital for their projects. The recent linkage between certain U.S. and Canadian stock exchanges and the evergrowing viability of trans-border capital markets constitutes a further motivation for unifying and standardizing securities law, both in the North American and worldwide context. By amending the Act and updating it, Quebec securities legislation now has a greater parallel with other important Canadian securities jurisdictions and the United States, while still maintaining an innovative and unique character.

92. *See* AVIS (1983) XIV Bulletin Hebdomadaire (no. 12), 1.2.1.

93. On May 23, 1985, the Honorable Michael Wilson, Minister of Finance, presented the federal budget speech for the 1985/86 fiscal year. The Province of Quebec, on June 23, 1985, announced that it would follow the federal capital gains exemption although to a lesser extent. On December 2, 1985, Quebec's new finance minister, the Honorable Gerald D. Levesque of the Quebec Liberal Party confirmed his government's intentions of respecting the lifetime capital gains exemptions announced by the defeated Parti Quebecois government.

94. Investment Canada Act, CAN. STAT. ch. 20 (1984-85).