

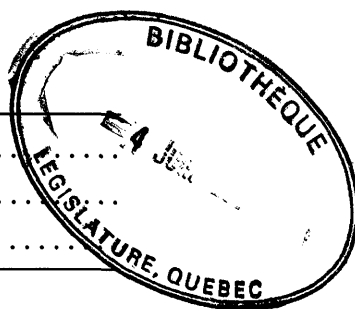
THIRTY-SECOND LEGISLATURE

NATIONAL ASSEMBLY OF QUÉBEC

Bill 71

An Act to amend the Legal Aid Act

First reading
Second reading
Third reading



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Minister of Justice

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EXPLANATORY NOTES

The object of this bill is to introduce new provisions into the Legal Aid Act to facilitate its administration and financing.

The bill amends the notion of “economically underprivileged person” on which the plan is based so that, henceforth, legal aid in civil matters granted to recipients of social aid will be provided to them as a special need under the Social Aid Act.

Furthermore, the bill provides, in accordance with regulations made by the Government, that a recipient may be required to refund the costs of legal aid provided to him if the aid results in his acquiring property or a right.

Similarly, recipients of legal aid who are not eligible for social aid will, to have their case examined, be required to pay the costs established by regulation.

Finally, the bill provides a new sharing of regulation making powers between the Government and the Commission des services juridiques.

Bill 71

An Act to amend the Legal Aid Act

HER MAJESTY, with the advice and consent of the National Assembly of Québec, enacts as follows:

1. Section 2 of the Legal Aid Act (R.S.Q., chapter A-14) is replaced by the following section:

“2. The expression “economically underprivileged person” means, for the purposes of this Act, any person to whom legal aid may be granted as a special need under the Social Aid Act (R.S.Q., chapter A-16) or, if he is not eligible thereunder, any person who in the opinion of the Commission or, as the case may be, of a legal aid corporation, lacks sufficient financial means to assert a right, obtain legal counsel or retain the services of an advocate or notary without depriving himself of necessary means of subsistence, according to the criteria established by regulation under subparagraph *a* of section 80.

The fact that a person is a recipient of social aid for his ordinary needs is *prima facie* proof that he is an economically underprivileged person within the meaning of the preceding paragraph.”

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

“4. In no case may legal aid be granted except according to the conditions and modalities established by this Act, subject to the conditions relating to the eligibility of a person for legal aid.

An economically underprivileged person must, to receive legal aid, establish the probable existence of a right or, as the case may be, the need of legal service.”

3. Section 5 of the said Act is amended by adding, at the end, the following paragraph:

“However, in accordance with the regulations, a recipient must, at the request of the Commission or of a corporation, refund, in consideration of the right or property he obtains, the costs of the legal aid provided to him.”

4. Section 60 of the said Act is replaced by the following section:

“60. An advocate or notary not in the employ of a corporation and rendering professional services to a recipient shall not receive or recover, with respect to those services, any fees or expenses except those provided for by this Act. Every person who has paid a sum of money or supplied any other benefit not provided for in this Act is entitled to recover it.”

5. Section 62 of the said Act is amended by adding, at the end, the following paragraph:

“Where the probable existence of a right or, as the case may be, the need of legal service has been established, the person is bound to pay, for the examination of his application, costs in the amount fixed by regulation, unless he is a recipient of or eligible for social aid.”

6. Section 63 of the said Act is amended by adding, at the end of the first paragraph, the following words: “or, as the case may be, the need of legal service.”

7. Section 69 of the said Act is amended by replacing the second paragraph by the following paragraphs:

“However, if the applicant fails to collect an amount equivalent to what his advocate would have been paid had the applicant received legal aid, and if the general manager considers it warranted by the circumstances, legal aid may be granted to him, after deducting any amount collected, retroactively from the date of the application refused under the first paragraph.

Where legal aid is granted under this section because the judgment cannot be executed, the corporation is subrogated in the rights of the applicant against the adverse party for the amount of the aid granted. The claim of the corporation is paid in preference to that of the applicant.”

8. Section 72 of the said Act is amended by replacing the second paragraph by the following paragraphs:

“Withdrawal ordered during a trial or after judgment requires the party to refund to the corporation all the costs, expenses and fees from which he had been dispensed.

“The corporation shall pay to the advocate or notary, for the services he has rendered before being notified of the reduction, suspension or withdrawal of legal aid, the amounts to which he would have been entitled if the reduction, suspension or withdrawal had not been ordered.”

9. Section 80 of the said Act, amended by section 35 of chapter (*insert here the chapter number of Bill 18*) of the statutes of 1982, is again amended

(1) by replacing the first and second lines of the first paragraph by the following:

“80. Regulations may be made for the purposes of this Act and in particular to”;

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

“(b) determine the nature of the disputes or suits which may be the object of legal aid;”;

(3) by inserting the words “du Québec” after the words “Chambre des notaires” in the second line of subparagraph *f* of the first paragraph in the French text;

(4) by adding, at the end of the first paragraph, the following subparagraphs:

“(r) fix the amount of the costs to be charged by a local corporation or an office in accordance with section 62;

“(s) determine the legal services for which the Commission or a corporation must require a recipient to refund to it, in whole or in part, in consideration of the right or property he acquires, the costs of the legal aid provided, fix for each such service the amount exigible or the criteria by which that amount may be determined, and establish the terms and conditions of payment of the refund.”;

(5) by replacing the second paragraph by the following paragraphs:

“The Government makes the regulations contemplated in subparagraphs *a*, *b*, *b.1*, *h*, *l*, *o*, *r* and *s*. Every other regulation is made by the Commission and is submitted to the Government for approval.

After adoption or approval, as the case may be, a regulation made under this section must be published in the *Gazette officielle du Québec*, and comes into force from such publication or on any later date indicated therein.”

10. Section 81 of the said Act is amended by replacing the second paragraph by the following paragraph:

“Notwithstanding any general law or special Act, the Government may make regulations to ratify an agreement contemplated in the first paragraph or, failing such an agreement, to establish such tariffs for the purposes of this Act. Such regulations may also prescribe which person may determine the fees applicable to services for which no tariff is fixed. Such regulations come into force from their publication in the *Gazette officielle du Québec*.”

This section is declaratory.

11. A regulation made by the Commission des services juridiques under subparagraph *a, b, b.1, h, l* or *o* of section 80 of the Legal Aid Act, which is in force at the coming into force of this Act, remains in force until it is repealed or replaced by a regulation made by the Government.

12. This Act shall operate notwithstanding the provisions of sections 2 and 7 to 15 of the Constitution Act, 1982 (*insert here the reference to the chapter number of the Canada Act in the compilation of the Acts of the Parliament of the United Kingdom for 1982*).

13. This Act comes into force on the day of its sanction.