

FOURTH SESSION
THIRTY-FIRST LEGISLATURE

ASSEMBLÉE NATIONALE DU QUÉBEC

Bill 54

An Act respecting the collection of certain debts

First reading
Second reading
Third reading

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institutions financières

L'ÉDITEUR OFFICIEL DU QUÉBEC

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EXPLANATORY NOTES

This bill introduces an act respecting the collection of certain debts to replace the Collecting Agents Act.

The bill prohibits a certain number of practices on the part both of persons who collect debts for others and of persons who collect debts that are owed to themselves.

The bill also deals more particularly with collection agents. It requires collection agents to hold a permit in order to carry on their business. The permit is granted provided that certain terms and conditions are met, including a deposit to compensate persons injured by an infringement to the act. The bill also requires collection agents to maintain a trust account for the keeping of the sums of money collected for others. Finally, the bill prohibits collection agents from using certain specific practices.

The bill establishes certain rules of proof and procedure intended to facilitate the carrying out of the act. It also provides penalties that may be incurred by persons who infringe the act.

The application of this act is under the supervision of the Office de la protection du consommateur.

Bill 54

An Act respecting the collection of certain debts

HER MAJESTY, with the advice and consent of the Assemblée nationale du Québec, enacts as follows:

CHAPTER I

DEFINITIONS

Interpre-
tation.

1. In this act and in the regulations, unless otherwise re-
quired by the context,

“collection
agent”;

“collection agent” means a person who personally or through
a representative and for remuneration collects or attempts or
offers to collect a debt for another person;

“repre-
sentative”.

“representative” means a person acting for a collection agent
or regarding whom a collection agent has given reasonable cause
to believe that such person is acting for him.

CHAPTER II

PROHIBITED PRACTICES

False
representa-
tions.

2. No person may, by any means whatever, make false or
misleading representations for the collection of a debt.

“repre-
sentation.”

For the purposes of this section, “representation” includes an
affirmation, a behaviour or an omission.

Prohibited
practices.

3. No person may, for the collection of a debt,

(1) represent that, failing payment, the debtor is liable to
arrest or penal proceedings;

(2) communicate with the debtor when the latter has notified him to communicate with his legal adviser;

(3) use harassment, threats or intimidation;

(4) disclose information that might cause undue injury to the debtor, his surety, their spouses or members of their families;

(5) collect or claim from a debtor a sum of money greater than that which is due;

(6) use a writing that might be mistaken for a document used, authorized, issued or approved by a tribunal, a government, a municipal corporation or an agency of any of these.

Prohibited
practice.

4. No person may, for the purpose of collecting a debt, communicate with the spouse of the debtor or a member of the family, the employer or the neighbours of the debtor except where one of these persons is surety for the debtor or to obtain the address of the debtor.

Identifi-
cation.

Every person who, for the purpose of collecting a debt, communicates with a debtor or a person contemplated in the first paragraph must identify himself.

CHAPTER III

COLLECTION AGENTS

DIVISION I

APPLICABILITY

Applica-
bility.

5. This chapter applies

(1) to a collection agent;

(2) to a person who, personally or through a representative, claims the payment of a debt of which he is the assignee when the formalities prescribed in articles 1571 to 1571*d* of the Civil Code have not been complied with.

Excep-
tions.

6. This chapter does not apply

(1) to the public curator, to an advocate, a notary, an insurance agent, a bailiff, a sheriff, a trustee in bankruptcy, a liquidator, a sequestrator, a tutor, a curator, a testamentary executor, a trustee or a trust company in the exercise of his or its functions;

(2) to a director, partner or employee charged, in the carrying out of his functions, with the collection of the debts owing to the corporation, partnership or employer concerned;

(3) to a bank or a savings and credit union;

(4) to the collection, from a merchant, of a debt that arose from the operation of his business.

DIVISION II

PERMITS

Permit. **7.** Every person contemplated in section 5 must hold a permit.

Appli- **8.** Every person applying for a permit must send his appli-
cation. cation to the president of the Office de la protection du consom-
mateur, established under the Consumer Protection Act (1978,
c. 9), in the form and together with the documents prescribed by
the act and the regulation.

Security. The application must be accompanied with security in the
amount and form prescribed by regulation.

Artificial **9.** If the applicant is a corporation or a partnership, the
person. application must be submitted by a director duly commissioned or
by a partner, and the president may require every director or
partner to comply with the same requirements as those prescribed
by this act or the regulations in respect of any person applying
for a permit.

Issuance. **10.** The president shall issue the permit in the name of a
natural person or of a partnership or corporation; he may, on
demand, issue a duplicate of the permit.

Refusal. **11.** The president may refuse to issue a permit

(1) if he is of opinion that the applicant, by reason of his
financial condition, is not in a position to assume the obligations
arising from his business;

(2) if he is of opinion that the conduct of the applicant shows
that he is unable to carry on his business with honesty and com-
petence;

(3) if the name or the corporate name of the partnership or
corporation applying for the permit is identical to that of another
partnership or corporation holding a permit, or so resembles it
that it may easily be mistaken for it; or

(4) if the applicant does not meet a requirement prescribed
by this act or by regulation.

Refusal. **12.** The president may refuse to issue a permit to any applicant who, during the three years preceding his application, was found guilty of

(1) an offence against any law or regulation the application of which is under the supervision of the Office;

(2) an indictable offence; or

(3) an offence punishable on summary conviction for contravening subsection 3 of section 330, paragraph *b* or *c* of subsection 1 of section 331 or section 381 of the Criminal Code.

Suspension or cancellation. **13.** The president may suspend or cancel the permit of any holder who, during the term of the permit, has been found guilty of an offence or an indictable offence contemplated in section 12.

Refusal, suspension or cancellation. **14.** The president may refuse to issue and may suspend or cancel a permit by reason of the fact that an applicant or holder made misrepresentations or distorted an important fact when he applied for a permit.

Suspension or cancellation. **15.** The president may suspend or cancel the permit of any holder who, during the term of the permit, no longer meets the requirements prescribed by this act or the regulations for the issuance of a permit.

Representations. **16.** The president, before refusing to issue a permit to a person or before suspending or cancelling the permit he has issued to him, must give that person an opportunity to be heard. The deposition of every person heard on that occasion must be taken down by stenography or stenotype or recorded by any other method authorized by the Government.

Decision. **17.** Any decision refusing to issue, suspending or cancelling a permit must give the reason therefor. The president must give notice of his decision to the person concerned by registered or certified mail.

Term of the permit. **18.** A permit is valid for two years. It is renewed on the conditions prescribed by this act and the regulations.

Exception. The president may, however, issue a permit for a shorter period if he deems that the public interest is at stake or for administrative reasons.

Untransferability. **19.** The rights conferred by a permit cannot be transferred except in the case of the death of the holder of such permit. In such case, the president may authorize the transfer upon payment

of the duties exigible and on the conditions prescribed by this act and by regulation.

Security. **20.** In accordance with the terms and conditions prescribed by regulation, the security contemplated in section 8 shall be used, first, to compensate any person who was awarded final judgment in the case contemplated in section 49, then, to pay the fine imposed on the person who stood surety or to his representative.

Firm name. **21.** Every holder of a permit must carry on business under a name or a firm name that includes the words "collection agency" or "collection agent".

Establishment. **22.** Every holder of a permit must have an establishment in Québec.

Place of business. Such establishment must be situated in an immoveable or part of an immoveable in which the holder carries on business.

Books. **23.** Every holder of a permit must keep the registers, accounts, books and records prescribed by this act and by regulation.

Notification of changes. **24.** Every holder of a permit must notify the president within fifteen days of any change of address, of name or firm name, of directors in the case of a corporation or of partners in the case of a partnership.

"address". For the purposes of this section, "address" means the place where an establishment is located and does not mean a post office box.

Financial statement. **25.** Every holder of a permit must, each year, furnish the president with the financial statements prescribed by regulation, audited by a chartered accountant, in the form prescribed by regulation.

Date. Such statements must be furnished within three months following the end of the fiscal period or, failing a fiscal period, not later than 31 March of the following year.

Contents. Such statements must be accompanied with the information prescribed by regulation.

DIVISION III

TRUST ACCOUNTS

Trust account. **26.** Every holder of a permit who receives a sum of money for the account of another must place that sum in a trust account until the sum is remitted to the person on whose account he received it.

Single account. **27.** Every holder of a permit shall, at all times, have only one trust account in a bank, savings and credit union, trust company or other institution authorized by the Deposit Insurance Act (R.S.Q., c. A-26) to receive deposits, to keep the sums of money he has received for the account of others.

Information to the president. From the time the account is opened, he must inform the president of the place where such account is kept and the number of such account.

Accounting. **28.** Every holder of a permit must enter in his books or registers the appropriate accounting items in regard to the sums he must place in trust under section 26.

Rendering of account. **29.** Every holder of a permit must, at the demand of the person from or for whom he has received a sum of money, render account of it.

Joint liability. **30.** Where the holder of a permit is a corporation, each director is jointly and severally liable with the corporation for the sums which must be placed in a trust account in accordance with section 26, unless the director proves that he acted in good faith.

Injunction. **31.** Where the president has reason to believe that sums that must be kept in trust in accordance with section 26 may be misappropriated, he may apply for an injunction ordering any person in Québec having the deposit, control or custody of such funds to keep them in trust for the period and on the conditions determined by the court.

DIVISION IV

OBLIGATIONS AND PROHIBITIONS

Written mandate. **32.** The mandate by which a creditor entrusts the collection of a debt to the holder of a permit must be recorded in a writing in conformity with the model prescribed by regulation.

Identifi-
cation.

33. Every holder of a permit, or his representative, who claims the payment of a debt from a debtor must identify himself, give the name of the collection agency where that is the case, the permit number, the amount of the debt and the name of the creditor.

Prohibited
practices.

34. No holder of a permit or his representative may

(1) communicate verbally with a debtor before having sent a notice of payment in conformity with the model prescribed by regulation;

(2) communicate verbally with a debtor who has notified him to communicate with him in writing only;

(3) communicate verbally with the debtor or his surety, or with their spouses or members of their families at a time other than from 9:00 o'clock a.m. to 9:00 o'clock p.m. on working days;

(4) threaten to reveal the debtor's failure to pay, to persons other than those who are a party to the obligation or who could be bound to perform it, or threaten to publish his failure to pay or to have it published, or to have an unfavourable entry of it made;

(5) represent that, failing payment, judicial proceedings will be instituted;

(6) claim the performance of an obligation in addition to that which is owing, particularly as a collection fee or in consideration of a delay of payment;

(7) undertake to assume the judicial costs which might be incurred by reason of the collection of a debt;

(8) provide a writing which could be addressed by a creditor to his debtor in the name of a permit holder or a third person.

Notice.

The notice provided for in subparagraph 2 of the first paragraph is valid for three months from the date it is sent to the permit holder and is valid with regard to all the debts which that holder is charged with collecting from the debtor.

Purchased
debts.

Excepting subparagraph 5 of the first paragraph and notwithstanding paragraph 2 of section 6, this section also applies where a collection agent claims the payment of a debt he has purchased.

Signature
binding.

35. The signature of a representative of a permit holder on a document intended for a creditor or debtor binds the permit holder.

DIVISION V

APPEALS

Appeal. **36.** A person whose application for a permit is refused or whose permit is suspended or cancelled may appeal from the decision of the president before the Provincial Court.

Procedure. **37.** The appeal is brought by a motion filed in the office of the Provincial Court at the chief place of the judicial district of the domicile or establishment of the applicant, within fifteen days following receipt of the decision by the applicant; it is served on the president, who shall then send to the court the record relating to that decision.

Decision. **38.** The court shall render its decision on the record transmitted to it by the president, after giving the parties the opportunity to be heard.

Additional evidence. **39.** The court may also, in exceptional circumstances, and where the purposes of justice require it, authorize the presentation of additional documentary or oral evidence.

Authorization. The application for an authorization is made by a written and sworn motion; it is presented to the court for adjudication after the adverse party is notified.

Witnesses. If the motion is granted, each party may examine and cross-examine the summoned witnesses and state his arguments.

Execution. **40.** The appeal does not suspend the execution of the decision of the president, unless the court orders otherwise.

Hearing. **41.** The court, in the manner it considers appropriate, shall notify the parties at least five days in advance, of the date, time and place where they may be heard.

Ex parte proceedings. **42.** If a party so convened fails to appear or refuses to be heard at the sitting held for such purpose, or at any resumption of such sitting, the court may, as the case may be, proceed *ex parte*, make the appropriate orders or even declare the appeal abandoned.

Decision. **43.** The court may confirm, amend or quash any decision submitted to it and render the decision that should have been rendered.

Judgment. The judgment must be made in writing and it must contain, in addition to the conclusion, a statement of the reasons on which it is based.

Copy. **44.** A certified true copy of the judgment shall be sent forthwith by registered or certified mail to each of the parties.

CHAPTER IV

PROOF, PROCEDURE AND CIVIL RECOURSES

DIVISION I

PROOF AND PROCEDURE

Private agreement prohibited. **45.** No person may derogate from this act by private agreement.

True document. **46.** Every document certified true to the original by the president or any person generally or specially authorized by him for that purpose is receivable as proof and has the same value as the original.

Exemption. **47.** The Attorney-General and the president are exempt from the obligation to give security in order to obtain an injunction under this act.

Contempt of court. **48.** Where an injunction granted under this act is not complied with, a motion for contempt of court may be presented before the court of the place where the contempt was committed.

DIVISION II

CIVIL RECOURSES

Damages. **49.** If a person fails to fulfil an obligation imposed on him by this act or the regulations, the person affected by that failure may claim damages.

Pre-scription. **50.** An action based on section 49 is prescribed by three years.

CHAPTER V

REGULATIONS

Regulations. **51.** In addition to the other powers provided in the act, the Government may make regulations

(1) determining the form, the terms and conditions and the amount of deposits, the cases where the president may dispose of them and the manner in which they may be distributed;

(2) determining the qualifications required of any person applying for a permit, the renewal of a permit or, in the case provided for in section 19, the transfer of a permit, the conditions he must fulfil, the information and documents he must furnish and the duties he must pay;

(3) prescribing the financial statements a permit holder must furnish to the president and the form in which they are to be furnished;

(4) prescribing model notices of payment and collection mandates;

(5) determining conditions and modes and procedures for the receipt and keeping of sums deposited in trust;

(6) establishing rules governing the keeping of registers, accounts, books and records by a permit holder;

(7) determining the form and the terms and conditions of the rendering of account to be made by a permit holder to a person from or for whom he has received a sum of money;

(8) determining the information that the permit holder must furnish to the president, to a debtor or to a creditor;

(9) determining the form of a document to be furnished to the president;

(10) exempting, in whole or in part, on such conditions as he may determine, any class of persons or debts from the application of this act.

Draft regulation.

52. No draft regulation may be adopted unless it is preceded by a notice of thirty days published in the *Gazette officielle du Québec*. Such prior notice must reproduce the text of the draft.

Coming into force.

A regulation comes into force on the day of the publication in the *Gazette officielle du Québec* of a notice stating that it has been approved by the Government, and, where amended by the latter, of the publication of its final text, or on a later date fixed in that notice or its final text.

CHAPTER VI

OFFENCES AND PENALTIES

Offence.

53. Every person who contravenes this act or any regulation is guilty of an offence.

Penalties.

54. Every natural person who is guilty of an offence against this act or a regulation is liable,

(1) for the first offence, to a fine of \$200 to \$2 000;

(2) for a subsequent offence to the same provision of this act or a regulation within a period of two years, to a fine of \$200 to \$4 000.

Corporation.

A corporation guilty of an offence against this act or a regulation is liable to a minimum fine five times greater and to a maximum fine ten times greater than those provided for in the preceding paragraph.

Seizure and sale.

55. If a condemnation provides for a fine, the court, after ordering the payment of the fine, with or without costs, may order that, failing payment immediately or within such delay as it may fix, the fine, and, where such is the case, the costs, shall be recovered by the seizure and sale of the moveable property and effects of the offender.

Presumption of guilt.

56. Where a corporation is guilty of an offence against this act or any regulation, every director or representative of such corporation who had knowledge of the offence is deemed to be a party to the offence and is liable to the penalty provided for in the first paragraph of section 54, unless he establishes to the satisfaction of the court that he did not acquiesce in the commission of such offence.

Presumption of guilt.

57. Every person who performs or omits to perform an act in view of aiding a person to commit an offence against this act, or a regulation or who advises, encourages or incites a person to commit an offence, is himself guilty of the offence and is liable to the penalty provided in the first paragraph of section 54 in the case of a natural person or to that provided in the second paragraph of section 54 in the case of a corporation.

Attorney-General.

58. Proceedings under this act are instituted by the Attorney-General or by a person generally or specially authorized by him for such purpose. The Summary Convictions Act (R.S.Q., c. P-15) applies to such proceedings.

Presumption.

59. The filing of a complaint creates a presumption that the person who signed it is authorized to make it.

Presumption.

60. The filing of a previous judgment convicting an accused under this act creates a presumption that the offence complained of is a subsequent offence.

Reasonable diligence.

61. No penal proceedings may be sustained if the accused establishes that he employed reasonable diligence by taking all necessary precautions to ensure that this act or the regulations were complied with.

62. The court convicting a person accused of an offence against this act or a regulation may in addition, on the motion of the person suing, order that the offender distribute, in accordance with the terms and conditions which the court considers appropriate to ensure a prompt and adequate communication thereof, the conclusions of the judgment rendered against him, and the corrections, explanations, warnings and other information which the court considers necessary.

63. If a person commits repeated offences against this act or the regulations, the Attorney-General, after instituting penal proceedings against him, may apply to the Superior Court for a writ of interlocutory injunction enjoining such person, his directors, agents or employees to cease committing the offences complained of until a final judgment has been rendered in the penal proceedings.

After such judgment has been rendered, the Superior Court shall itself render a final judgment on the application for an injunction.

CHAPTER VII

TRANSITIONAL AND FINAL PROVISIONS

64. This act replaces the Collecting Agents Act (R.S.Q., c. A-9).

The Collection Agents Act (1974, c. 73) is repealed.

The Government, government departments and government agencies are subject to the application of this act.

The Ministre des consommateurs, coopératives et institutions financières has charge of the carrying out of this act.

The carrying out of this act is under the supervision of the Office de la protection du consommateur.

The sums required for the carrying out of this act are taken, for the fiscal periods 1979-1980 and 1980-1981, out of the consolidated revenue fund and for subsequent fiscal periods, out of the moneys granted each year for that purpose by the Legislature.]]

This act will come into force on the date fixed by proclamation of the Government except any provision excluded by that proclamation, which will come into force on a later date which will be fixed by proclamation of the Government.