

FOURTH SESSION
THIRTY-FIRST LEGISLATURE

ASSEMBLÉE NATIONALE DU QUÉBEC

Bill 83

An Act to promote the payment of support

First reading
Second reading
Third reading

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L'ÉDITEUR OFFICIEL DU QUÉBEC

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EXPLANATORY NOTES

This bill proposes various amendments to the Code of Civil Procedure, the Civil Code and the Social Aid Act.

The object of the amendments to the Code of Civil Procedure is to establish measures designed to promote the payment of support.

Thus, a procedure for payment of support awarded by judgment to the prothonotary of the Superior Court is established. It is also provided that seizures by garnishment of salary or wages remain binding not only for arrears, but also for payments to become due, for one year.

The bill also provides that the court may order any person to furnish a person entitled to support awarded by judgment with information on the place of residence or of work of his debtor.

In addition, it provides, notwithstanding any act to the contrary, for the seizability, up to fifty per cent, of the pensions, benefits, salary, pay or wages of a person owing support.

The amendments to the Civil Code fix the prescription of arrears of support at three years, while allowing the debtor to invoke changes that have occurred in his condition or in that of his creditor since the judgment.

Finally, the Social Aid Act is amended to render the exercise of subrogation in favour of the Ministre des affaires sociales more flexible.

Bill 83

An Act to promote the payment of support

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

1. The Code of Civil Procedure is amended by adding, after article 546, the following article:

“546.1 Where a judgment awarding support has become executory, a judge may, on motion, if circumstances justify it, order a person to furnish the person entitled to support with the information he has on the residence and place of work of the debtor in default.

This article applies notwithstanding any inconsistent provision of a general law or special act.”

2. Article 553 of the said Code, amended by section 29 of chapter 37 of the statutes of 1979, is again amended by replacing the last paragraph by the following paragraph:

“However, notwithstanding any contrary provision of a general law or special act, the pensions, benefits, salary, pay or wages mentioned in paragraphs 7, 8, 10 and 11 are unseizable, in the case of a debt for support, only to the extent of fifty per cent.”

3. Article 634 of the said Code is amended by adding at the end of the first paragraph the following words: “or, if the writ has been served by mail, service has been proved in accordance with the second paragraph of article 146.”

4. The said Code is amended by adding, after article 641, the following articles:

“641.1 Where a seizure by garnishment takes place for the execution of a judgment awarding support or if a claim to that effect is filed in the record of a seizure by garnishment, the seizure has effect for payments to become due as well as for arrears and it remains binding until the prothonotary gives a release of it.

If there is no other claim in the record and if execution has not been suspended in accordance with article 659.5, no release may be given until one year after the arrears of support have been paid.

“641.2 If a judgment amends the amount of support while a seizure is binding or its execution is suspended in accordance with article 659.5, the amount of the seizure or of the claim of the person entitled to support is amended accordingly, of right, from the service of the judgment on the prothonotary.”

5. Article 641a of the said Code is renumbered 641.3.

6. The said Code is amended by adding, after article 659, the following:

“SECTION IV A

“SEIZURE IN EXECUTION OF MOVEABLES BY THE PROTHONOTARY

“659.1 The compulsory execution, by the prothonotary, of a judgment awarding support is effected against the moveable property of the debtor in accordance with Title II of Book Four, subject to the rules provided by this section.

“659.2 From the time a payment of support is not paid when due, the creditor may apply for the compulsory execution of the judgment awarding support, to the prothonotary of the district in which the judgment was rendered, by filing in the record an affidavit indicating

- (a) his surname, given names and his residential address;
- (b) the surname and given names of the debtor, his residential address, the name of his employer and the place where he works, and a description of his moveable and immoveable property, if known;
- (c) the date of the default of the debtor, the amount of support and of the payments to become due and the amount of arrears, if any.

The creditor may, however, apply to the prothonotary of the district of his residence, who shall then send the application to

the prothonotary of the district in which the judgment was rendered.

“659.3 The prothonotary of the district in which the judgment was rendered acts as seizing creditor for the benefit of the person in whose favour the judgment was rendered.

“659.4 Service of a writ of seizure by garnishment may be made by registered or certified mail.

“659.5 Where the execution is effected by way of seizure by garnishment of salary or wages, and there is no other claim in the record, the prothonotary may, upon application of the debtor and once the arrears are paid, suspend the execution of the seizure, if the debtor offers to pay directly to him the payments of support when due, and if he furnishes satisfactory guarantees that he will comply with his undertakings.

The suspension is granted for a period of not less than six months nor more than one year.

“659.6 If the prothonotary grants the application of the debtor, he gives notice thereof, by registered or certified mail, to the creditor and the garnishee, who, upon receiving the notice, ceases his deposits with the prothonotary.

“659.7 During the period when the seizure is suspended, the prothonotary pays to the person entitled to support, at least once a month, the amounts he receives from the debtor.

“659.8 When the debtor fails to make a payment when due, or if a claim is filed by a third person in the record of the seizure by garnishment, the seizure becomes executory again; the prothonotary then gives notice thereof, by registered or certified mail, to the creditor and the garnishee, who, within five days after receiving the notice, must deposit with the prothonotary, personally or by registered or certified mail, the seizable portion of what he owes to the debtor.

“659.9 When the execution has been suspended, the prothonotary must give a release of the seizure at the expiration of the period fixed for the suspension, unless the seizure has become executory again.

“659.10 The Government may, by regulation, impose the payment of costs of administration connected with the application of this section, establish the tariff thereof and determine the cases in which these costs are payable.”

7. The second paragraph of paragraph 5 of article 993 of the said Code is repealed.

8. The Civil Code is amended by adding, after article 170, the following article:

“170.1 The court may reduce or cancel arrears of support if the debtor from whom they are claimed can show that a change has occurred after judgment in his ability to pay or in the needs of his creditor.”

9. The said Code is amended by adding, after article 2260*a*, the following article:

“2260*b*. Arrears of support granted by judgment are prescribed by three years.”

10. Section 13 of the Social Aid Act (R.S.Q., c. A-16) is replaced by the following sections:

“13. A person may receive social aid pending payment of a sum that is to accrue to him from the exercise of a right, including the execution of a judgment, or from the winding-up of a business, if he is otherwise eligible for social aid.

He then assumes the obligation to repay the amount of the aid so granted to him, up to the sum of money or the value of the property he is to receive, unless the Minister has elected to be subrogated in the rights of such person up to the amount of such sums and the value of such property.

“13.1 If social aid is paid to a person entitled to support awarded by judgment and if the creditor refuses or neglects to exercise his rights against the debtor for support, the Minister may, by way of a notice to the creditor, elect to be subrogated in the rights of the latter.

The subrogation is effected *pleno jure* up to amount of the aid granted and the amounts due by the debtor, and the Minister may, to exercise the subrogation, take any proceeding that the creditor could have taken himself. The Minister may exercise the subrogation for the period he determines, which must not be less than six months nor more than one year. The subrogation may be renewed for the same period.

Furthermore, if the amount of support is greater than the amount of the aid, the creditor may mandate the Minister in writing, if he is already subrogated, to collect the difference on his behalf.”

11. Section 26 of the said act is repealed.

12. The subrogations which were effected *pleno jure* in favour of the Ministre des affaires sociales under the former sections 13 and 26 of the Social Aid Act continue to be governed by the former provisions until they are terminated by the Minister or until he elects to maintain and exercise them in accordance with the new sections 13 and 13.1

13. This act will come into force on the date to be fixed by government proclamation, except the provisions or parts of provisions excluded by the proclamation, which will come into force on any later date to be fixed by government proclamation.