

FOURTH SESSION
THIRTY-FIRST LEGISLATURE

ASSEMBLÉE NATIONALE DU QUÉBEC

Bill 83 *(Reprint)*

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, the prothonotary of the Superior Court will be empowered to effect the seizure of moveable or immovable property and act for the creditor in various proceedings aimed at promoting payment of support. The bill also provides that seizures by garnishment of salary or wages remain binding not only for arrears, but also for payments of support to become due, for one year; a measure allowing the suspension of seizure in certain cases is also introduced.

The bill also provides that the court may order a person to furnish a creditor of 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, that up to fifty per cent of the income of a person owing support is seizable and that the creditor may be paid by preference out of one-half of the sums seized.

The amendments to the Civil Code provide for the indexing of support payments. They fix the prescription of arrears of support at three years, while allowing the debtor who wishes to be released, wholly or in part, from the payment of support to invoke, in certain special circumstances, 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 Minister of Social Affairs more flexible.

Bill 83

An Act to promote the payment of support

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

1. The Code of Civil Procedure (R.S.Q., c. C-25) is amended by replacing the word and figure “and 584” in article 42 by the word and figures “, 584 and 659.5”.

2. Article 545 of the said Code is amended by replacing the word and figure “and 544” by the word and figures “, 544 and 546.1”.

3. The said Code is amended by adding, after article 546, the following article:

“546.1 Where a judgment awarding support has become executory, a judge may, on the motion of the person entitled to support and 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 providing for the confidentiality or non-disclosure of certain information or documents. It does not, however, apply to a person who has received the information in the practice of his profession and who is bound to the debtor by professional secrecy.”

4. Article 553 of the said Code, amended by section 29 of chapter 37 of the statutes of 1979, is again amended

(1) by replacing paragraph 7 by the following paragraph:

“7. Benefits granted to employees out of a pension plan created by law or registered under the Act respecting supplemental pension plans (R.S.Q., c. R-17) as well as contributions paid or to be paid into such plans;”;

(2) by replacing the last paragraph by the following paragraph:

“However, notwithstanding any contrary provision of a general law or special act, any income referred to in paragraph 6, 7, 8, 10 or 11 is unseizable, in the case of a debt for support, only to the extent of fifty per cent.”

5. Article 598 of the said Code is amended by inserting, at the end, the following paragraph:

“In the matter of support, the opposition is taken by motion and is heard and decided by preference.”

6. 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.”

7. 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, as indexed, if such is the case, and it remains binding until release is given.

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, including all arrears accrued from the time of the seizure, 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.”

8. Article 641*a* of the said Code is renumbered 641.3.

9. Article 647 of the said Code is amended by replacing the second paragraph by the following paragraphs:

“If a claim has been filed, the prothonotary, after collocating the seizing creditor for his costs, must distribute among the creditors, in proportion to their claims, the amounts deposited and have sent to each creditor at his last known address the amount to which he is entitled.

However, the prothonotary must then pay exclusively to the person entitled to support the difference between the moneys seized in accordance with the last paragraph of article 553 and that part of all income that is ordinarily seizable. Furthermore, he must pay to the person entitled to support, out of that part, the amounts required to make the total of the sums distributed to him equal to at least one-half of the moneys deposited every month, up to such amounts as may be due to him, and this does not affect his right to be collocated for his share with the other creditors.

The distribution to the creditors must be made at least once every three months but it must be made at least once every month to the person entitled to support.”

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

“SECTION IV.1

“SEIZURE IN EXECUTION OF MOVEABLES BY THE PROTHONOTARY

“659.1 Upon the application of the creditor of a judgment awarding support, compulsory execution is effected by the prothonotary against the moveable property of the debtor. The prothonotary then follows the rules provided in 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 or of the district of his residence, by filing in the record a certified true copy of the judgment and an affidavit indicating

- (a) his surname, given name and residential address;
- (b) the surname and given name 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.

“659.3 The prothonotary of the district in which the application was made acts as seizing creditor for the judgment creditor; he may also enter any proceeding aimed at favouring the execution of the judgment.

Where the application concerns a foreign judgment that has become executory in Québec by filing or by registration, the prothonotary of the district in which the judgment was filed or registered acts as seizing creditor.

“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, on the 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 Where the execution has been suspended, the debtor is released from the seizure at the expiration of the period fixed for the suspension, unless the seizure has become executory again.

“659.10 In such cases as it may determine, the Government may, by regulation, impose on the debtor the payment of

costs connected with the application of this section and establish the tariff thereof.”

11. The said Code is amended by adding, after article 661, the following article:

“661.1 The prothonotary of the district in which an application was made in accordance with article 659.2 may act as seizing creditor for the judgment creditor.”

12. Article 662 of the said Code is amended by adding, at the end, the following paragraph:

“However, where the prothonotary acts as seizing creditor under article 661.1, no advance may be required by the seizing officer.”

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

14. The Civil Code is amended by adding, after article 169, the following article:

“169.1 The court orders, even *ex officio*, that maintenance payable as a pension be indexed according to an index established by order, unless the condition of the parties justifies the fixing of another index.”

15. The said Code is amended by adding, after article 170, the following article:

“170.1 The debtor from whom arrears are claimed may oppose any change which has occurred in his condition or in that of his creditor since the judgment and be released, wholly or in part, from payment.

However, where the arrears claimed are due for over six months, in no case may the debtor be released from payment unless he shows that he was unable to exercise his recourses to obtain a review of the judgment fixing the alimentary pension.”

16. The said Code is amended by inserting, after article 2260a, the following article:

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

17. Article 2267 of the said Code is amended by inserting, after the figure “2260a”, the figure “, 2260b”.

18. 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 sums 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, neglects or is unable 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 the 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 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.

“13.2 A beneficiary may authorize the prothonotary, who acts for his benefit under article 659.3 or 661.1 of the Code of Civil Procedure, to pay to the Minister part of the sums that he collects.”

19. Section 26 of the said act is repealed.

20. The subrogations which were effected *pleno jure* in favour of the Minister of Social Affairs 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.

21. This act will come into force on the date to be fixed by government proclamation, except the provisions excluded by the proclamation, which will come into force on any other date to be fixed by government proclamation.