

NATIONAL ASSEMBLY

SECOND SESSION

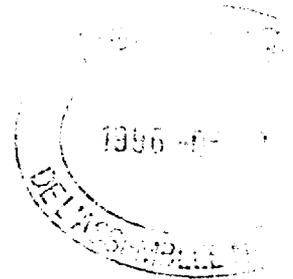
THIRTY-FIFTH LEGISLATURE

Bill 20

An Act to amend the Legal Aid Act

Introduction

**Introduced by
Mr Paul Bégin
Minister of Justice**



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EXPLANATORY NOTES

This bill proposes a reform of the legal aid system.

Firstly, the object of legal aid is defined, which is to afford persons who are financially eligible for legal aid the benefit of legal services before the courts and in other circumstances specified by the bill. The bill also sets out the principles that are to guide the management and provision of legal aid services.

The Government is conferred the power to make regulations prescribing the rules whereby the financial eligibility of applicants for legal aid is to be determined. Furthermore, more people will have access to legal aid thanks to the introduction of a contributory form of legal aid, which will be available, on payment of a recipient's contribution, to individuals who do not qualify for gratuitous legal aid. As well, the administrative committee of the Commission des services juridiques is given discretionary power, in certain exceptional circumstances, to declare eligible for legal aid persons who would not otherwise qualify for any form of aid.

Moreover, the legal services for which legal aid is to be granted in criminal, penal and other matters are specified, as are the conditions on which it is to be granted in certain cases. The administrative committee of the Commission des services juridiques is allowed some discretion, in exceptional circumstances, concerning the services for which legal aid may be provided.

The Commission des services juridiques will be required to maintain a telephone help line to provide advice free of charge in criminal and penal matters. The functions of legal aid centres are specified as regards information programs and consultation services designed to apprise persons financially eligible for legal aid of their rights and obligations.

The bill proposes various other amendments to the Legal Aid Act.

Thus, a mechanism is introduced for the recovery of legal aid costs and, to that end, the Government is empowered to determine, by regulation, the cases in which a recipient will be required to repay the cost of legal aid.

Under the bill, the Minister of Justice is authorized to make agreements regarding legal aid with other governments or with the Barreau du Québec or the Chambre des notaires du Québec.

As well, the Commission des services juridiques and regional legal aid centres are authorized to determine, by agreement with associations of experts, the fees and expenses payable to experts who act as expert witnesses within the scope of the Legal Aid Act.

The bill also contains various rules designed to enhance administrative efficiency of the legal aid system. For example, the Commission des services juridiques and the legal aid centres are specifically prohibited from incurring expenditures or assuming obligations, during a fiscal year, in excess of the funds allocated to them for that year and from making commitments in excess of the authorized amount. The borrowings of the Commission des services juridiques will also be made subject to the authorization of the Government. In addition, in order to ensure sound management of public funds, certain areas of activity may, according to the circumstances, be reserved to advocates or notaries employed by legal aid centres or to advocates or notaries in private practice.

Lastly, terminological changes are made to harmonize the language of the Act with that introduced by the Civil Code of Québec.

Bill 20

An Act to amend the Legal Aid Act

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

1. The heading of Division I of the Legal Aid Act (R.S.Q., chapter A-14) is replaced by the following heading:

“INTERPRETATION”.

2. Section 1 of the said Act is amended

(1) by replacing the words “an economically underprivileged” in the first line of paragraph *a* by the word “a”;

(2) by replacing the words “physical person or a group of persons or a non-profit corporation whose members are economically underprivileged physical persons” in the first, second and third lines of paragraph *b* by the words “natural person or a group of natural persons or a legal person operated without purpose of gain whose members are natural persons financially eligible for legal aid”;

(3) by striking out paragraph *c*;

(4) by replacing paragraphs *e* and *f* by the following paragraphs:

“(e) “regional legal aid centre” or “regional centre”: a regional centre established under this Act and authorized by the Commission to provide legal aid;

“(f) “legal aid centre” or “centre”: a regional legal aid centre or a local centre referred to in paragraph *c* of section 32;”;

(5) by replacing the word “corporation” in the second line of paragraph *g* by the word “centre”;

(6) by replacing the word “corporation” in the second line of paragraph *h* by the word “centre”.

3. The said Act is amended by inserting, after section 1, the following sections:

“1.1 The word “spouses” means

(1) persons who are married to each other and who cohabit;

(2) persons who live together as husband and wife and who are the mother and father of one and the same child;

(3) persons of full age who live together as husband and wife and who, at one time, cohabited for a period of not less than one year.

“1.2 A family is composed

(1) of the father or the mother or, in the cases determined by regulation, another person designated therein, and of the minor children living with the mother, father or person who are neither married nor the father or mother of a child, and of the children of full age who attend, within the meaning of the regulations, an educational institution and who are neither the spouse of another person nor the father or mother of a child;

(2) of the spouses and any child described in subparagraph 1; or

(3) of the spouses, where there are no children.

However, a person shall remain, become or cease to be a member of a family in such circumstances as are prescribed by regulation.”

4. Section 2 of the said Act is repealed.

5. The said Act is amended by inserting, after Division I, the following division:

"DIVISION I.1

"OBJECT AND PRINCIPLES

"3.1 The object of the legal aid system established by this Act is to afford persons who are financially eligible for legal aid the benefit of legal services to the extent provided for in this Act and the regulations.

"3.2 For the purposes of this Act, the management and provision of legal aid services shall be guided by the following principles:

(1) the importance of providing to financially eligible persons the legal services which they need;

(2) the need for efficient management of such services and of the resources allotted to their provision;

(3) the importance, for the purposes of the principle defined in paragraph 2, of coordinating the activities of the Commission and of legal aid centres through concerted action and cooperation between the Commission and the centres and among the members of their personnel in order to ensure a rational utilization of resources;

(4) the importance of facilitating, through concerted action, a coherent application of this Act and the regulations throughout the regions."

6. The heading of Division II and section 4 of the said Act are replaced by the following:

"DIVISION II

"GRANTING AND EFFECT OF LEGAL AID

"4. Legal aid shall be granted, on application, to a person who is financially eligible according to the provisions of subdivision 1 of this division for the legal services described in subdivision 2 of this division, in section 32.2 and in the regulations and to the extent provided for therein.

"§ 1. — Financial eligibility

"4.1 Any person who demonstrates that his net income, liquidities and other net assets, within the meaning of the regulations,

and, to the extent prescribed by the regulations, those of his family, do not exceed the level and value fixed by regulation for financial eligibility for gratuitous legal aid is financially eligible for gratuitous legal aid.

Any person who receives benefits, other than special benefits, under Chapter II of the Act respecting income security (chapter S-3.1.1) or any member of a family receiving such benefits is deemed financially eligible for gratuitous legal aid.

“4.2 Any person who is not financially eligible for gratuitous legal aid under section 4.1 but whose net income, within the meaning of the regulations and, to the extent prescribed by the regulations, the net income of whose family, does not exceed the level fixed by regulation for financial eligibility is financially eligible for contributory legal aid, that is legal aid on payment of a recipient’s contribution.

“4.3 On the recommendation of the director general of a regional centre, the administrative committee of the Commission may declare a person who is not financially eligible for legal aid under sections 4.1 and 4.2 to be financially eligible for contributory legal aid, if the committee considers that it is warranted by exceptional circumstances and that failure to declare the person to be financially eligible for legal aid would cause the person irreparable harm.

The decision of the administrative committee of the Commission is not subject to review by the committee formed under paragraph *k* of section 22.

“§ 2.— Legal services for which legal aid may be granted

“4.4 Legal aid shall be granted, to the extent determined by the provisions of this subdivision and the regulations, for matters brought or to be brought before a court; it may be granted at any stage of the proceedings, in first instance or in appeal; it may be granted, to the same extent, in respect of proceedings in execution.

Legal aid may also be granted for legal services described in sections 4.10 and 32.2, by way of exception, for legal services described in section 4.13.

“Criminal or penal matters

“4.5 In criminal or penal matters, legal aid shall be granted, in first instance,

(1) for the defense of a person facing prosecution before a court for an indictable offence under an Act of the Parliament of Canada;

(2) for the defense of a young person facing proceedings before a court under the Young Offenders Act (Revised Statutes of Canada, 1985, chapter Y-1);

(3) for the defense of a person, other than a young person, facing prosecution before a court for an offence under an Act of the Parliament of Canada that is punishable on summary conviction, or for the defense of a person, whether an adult or a person under 18 years of age, facing prosecution before a court under the Code of Penal Procedure (R.S.Q., chapter C-25.1) where, in either case, upon conviction there is likelihood either of imprisonment or committal to custody, or of loss of means of earning a livelihood or where it is in the interests of justice that legal aid be granted to the accused, having regard to exceptional circumstances, for instance the seriousness of the matter or the complexity of the case; or

(4) for the defense of a person facing proceedings before a court under the Extradition Act (Revised Statutes of Canada, 1985, chapter E-23) or the Fugitive Offenders Act (Revised Statutes of Canada, 1985, chapter F-32).

“4.6 In criminal or penal matters, legal aid shall be granted in appeal or for the exercise of an extraordinary remedy

(1) where the appeal is filed or the extraordinary remedy exercised by the prosecutor in any matter referred to in section 4.5;

(2) where the appeal is filed or the extraordinary remedy exercised by the accused in any matter referred to in section 4.5 if the appeal or extraordinary remedy is reasonably founded.

“In matters other than criminal or penal matters

“4.7 In matters other than criminal or penal matters, where the case is brought or will be brought before a court, legal aid shall be granted

(1) for any family case to which Title IV of Book V of the Code of Civil Procedure (R.S.Q., chapter C-25) applies;

(2) for any case relating to the survival of the obligation to provide support, based on Chapter V of Title III of Book III of the Civil Code of Québec;

(3) for any case relating to tutorship to a minor, protective supervision of a person of full age or a mandate given in anticipation of the mandator's incapacity, or for any case based on article 865.2 of the Code of Civil Procedure;

(4) for any proceedings to obtain a change of name for a minor by way of judicial process or to obtain the review by the court of a decision of the registrar of civil status relating to the assignment of a name to a minor or to the change of a minor's name if application to the court would ensure the physical or mental safety of the minor;

(5) for any case to which the Act respecting the civil aspects of international and interprovincial child abduction (R.S.Q., chapter A-23.01) applies;

(6) for any case in respect of which the court exercises its powers under the Youth Protection Act (R.S.Q., chapter P-34.1);

(7) for any proceedings brought before a tribunal to contest an administrative decision made by a government department or body within the framework of a benefit or compensation program designated by regulation;

(8) for any other case if the freedom of the person to whom legal aid would be granted is or is likely to be seriously restricted, due to the possibility of committal to custody or detention, particularly; or

(9) for any other case if the matter threatens or will in all likelihood threaten a person's physical or mental safety, livelihood or ability to provide for his essential needs or those of his family.

“4.8 No legal aid shall be granted

(1) to the plaintiff in any defamation or libel case;

(2) for any case relating to an election, public consultation or referendum;

(3) for a motion based on Chapter II of Title VI of Book V of the Code of Civil Procedure;

(4) to the plaintiff in any action for damages for breach of promise of marriage; or

(5) to the plaintiff in any action for damages for alienation of affections.

“Other provisions

“4.9 Legal aid shall be granted for the defense of a person facing contempt of court proceedings before a court where upon conviction there is likelihood either of imprisonment or committal to custody, or of loss of the person’s livelihood or where it is in the interests of justice that legal aid be granted to the accused, having regard to exceptional circumstances, for instance the seriousness of the matter or the complexity of the case.

“4.10 Notwithstanding the provisions of this subdivision, legal aid shall be granted

(1) where

(a) a minor requires the assistance of an advocate for the purposes of an agreement pertaining to the application of voluntary measures under the Youth Protection Act;

(b) a young person requires the assistance of an advocate for the purposes of a program of alternative measures or the review of a disposition under the Young Offenders Act;

(2) to a person who requires assistance in a proceeding before an authority who exercises an administrative function within the framework of a benefit or compensation program designated by regulation and administered by a government department or body and is responsible, by virtue of his position within that department or body, for reviewing an administrative decision concerning that person;

(3) to a person for the drawing up of a document that is customarily within the scope of the professional duties of a notary or

advocate if such service is necessary because of the difficulty the person is having in preserving or asserting his rights or because of the harmful consequences for the person's physical or psychological well-being or that of his family that would result from not being provided the service.

“4.11 In any matter other than a criminal or penal matter, legal aid may be refused or withdrawn, as the case may be, at any stage of the proceedings, where having regard to all the circumstances and from the standpoint of an ordinary advocate and client relationship, the case or remedy does not appear founded because

(1) the applicant cannot establish the probable existence of his right;

(2) the case or remedy has in all likelihood very little chance of succeeding;

(3) the costs involved would be unreasonable in relation to the possible gain or loss for the applicant or recipient, as the case may be, unless the case or remedy threatens his livelihood or ability to provide for his essential needs or those of his family;

(4) the judgment or decision would probably not be susceptible of execution; or

(5) the applicant or recipient has, without valid cause, refused a reasonable proposal for settlement of the case.

Moreover, legal aid shall be refused or withdrawn where the services for which legal aid is applied for can be obtained otherwise, particularly through another government service or another body, under an insurance contract or through a union or association to which the applicant or recipient, as the case may be, belongs.

“4.12 No legal aid shall be granted for the defense of a person facing prosecution under an Act, regulation or by-law for an offence relating to parking.

“4.13 On the recommendation of the director general of a regional centre, the administrative committee of the Commission may grant legal aid to a person who cannot be the recipient of legal aid according to the other provisions of this subdivision and the regulations, if he considers that it is warranted by exceptional circumstances and that refusing to grant to the person legal aid

would cause him irreparable harm. However, the administrative committee of the Commission may not grant legal aid under this section for services in respect of which it is provided in section 4.8 or 4.12 or in the regulations that no legal aid may be granted.

The provisions of the first paragraph may apply, subject to the conditions fixed therein, to allow an applicant to establish his rights in a proceeding leading up to an administrative decision.

The decision of the administrative committee of the Commission is not subject to review by the committee formed under paragraph *k* of section 22.”

7. The said Act is amended by inserting, before section 5, the following:

“§ 3. — *Effects of legal aid as regards payment of fees and costs.*”

8. Section 5 of the said Act is amended

(1) by inserting the words “Subject to the contribution he may be required to pay in accordance with the regulations,” at the beginning of the first line of the first paragraph;

(2) by replacing the word “registrateur” in subparagraph *b* of the first paragraph of the French text by the words “officier de la publicité des droits”;

(3) by replacing subparagraph *d* of the first paragraph by the following subparagraph:

“(d) fees and costs of experts who, with the prior authorization of the director general, act for the recipient.”;

(4) by replacing the second paragraph by the following paragraph:

“However, in the cases determined in the regulations, the cost of the legal aid received shall be recovered in accordance with the provisions of Division VI.1.”

9. Section 6 of the said Act is replaced by the following section:

“**6.** Subject to the regulations, the fees of an advocate or notary not in the employ of a centre that has retained his services in behalf

of a recipient and the fees of a stenographer or bailiff acting in behalf of a recipient shall be paid by the centre having granted legal aid to that recipient, in accordance with the tariffs established by the regulations.”

10. Section 7 of the said Act is repealed.

11. Section 10 of the said Act is repealed.

12. Section 18 of the said Act is amended by replacing the word “incapacité” in the second paragraph of the French text by the word “empêchement”.

13. Section 19 of the said Act is replaced by the following section:

“19. The Commission is a legal person.”

14. Section 21 of the said Act is amended by replacing the words “corporate seat” in the first line of the first paragraph by the words “head office”.

15. Section 22 of the said Act is amended

(1) by replacing paragraph *a* by the following paragraph:

“(a) see that legal aid is provided, to the extent provided for in this Act and the regulations, to persons financially eligible therefor;”;

(2) by inserting, after paragraph *d*, the following paragraph:

“(d.1) facilitate, through concerted action, a coherent application of this Act and the regulations by legal aid centres;”;

(3) by replacing the words “to economically underprivileged persons on” in the first and second lines of paragraph *f* by the words “for persons financially eligible for legal aid concerning”;

(4) by inserting, after paragraph *f*, the following paragraph:

“(f.1) maintain a telephone help line, for criminal or penal matters, available at all times and free of charge to any person, whether or not financially eligible for legal aid, who upon being arrested or while in custody requires the assistance of an advocate;”;

(5) by replacing paragraph *k* by the following paragraph:

“(*k*) form a review committee for the purposes of sections 74 and 75;”;

(6) by striking out paragraph *m*.

16. The said Act is amended by inserting, after section 22, the following section:

“22.1 The Commission shall publish, in particular so as to facilitate a coherent application of this Act and the regulations, a periodic bulletin containing general or special information concerning the application of this Act and the regulations. The bulletin may also report the decisions made under this Act.

The Commission shall distribute the bulletin to its members, the members of the boards of directors of legal aid centres, its employees and the employees of legal aid centres. The Commission shall also make it accessible to the extent it determines.”

17. Section 24 of the said Act is amended by inserting, after paragraph *a*, the following paragraph:

“(a.1) if, after investigation, the Commission ascertains that the centre has made during a fiscal year financial commitments in excess of the amount authorized by the Commission for that fiscal year;”.

18. Section 31 of the said Act is amended

(1) by replacing the words “corporation shall be a corporation within the meaning of the Civil Code” in the first and second lines by the words “centre is a legal person”;

(2) by replacing the words “such a corporation” in the fourth line by the words “a legal person”.

19. Section 32 of the said Act is amended by replacing the words “economically underprivileged persons” in the second and third lines and in the fifth and sixth lines of paragraph *d* by the words “persons financially eligible for legal aid”.

20. The said Act is amended by inserting, after section 32, the following sections:

“32.1 It is within the functions of every legal aid centre to develop and implement, in collaboration with the Commission, information programs designed to apprise persons financially eligible for legal aid of their rights and obligations.

“32.2 The advocates and notaries in the employ of a legal aid centre shall give legal advice, on subject matters other than those referred to in paragraph *f.1* of section 22, to persons financially eligible for legal aid who request such advice.

“32.3 The Commission may make an agreement with any association of experts as to the fees and expenses to which experts are entitled when acting within the scope of this Act. Such an agreement shall apply throughout the territory of Québec.

Where no such agreement has been made with an association, any regional centre or any group of regional centres may make an agreement with an association of experts or with individuals who agree to act as expert witnesses. Such an agreement shall apply throughout the territory of Québec or in the regions specified in the agreement.

Where an agreement has been made, a centre may in no case pay fees or expenses for expert testimony in excess of those stipulated in the agreement.

In the absence of any agreement, the director general shall fix the amount of the fees and expenses payable to experts.”

21. Section 45 of the said Act is amended by replacing the words “applies, *mutatis mutandis*,” by the words “,adapted as required, applies”.

22. Section 50 of the said Act is amended

(1) by replacing the words “Division VI” in the fourth line of the second paragraph by the words “Divisions VI to VI.2”;

(2) by replacing the words “apply *mutatis mutandis*” in the fifth line of the second paragraph by the words “adapted as required, apply”.

23. Section 52 of the said Act is amended by striking out the second paragraph.

24. The said Act is amended by inserting, after section 52, the following section:

“52.1 Notwithstanding sections 51 and 52,

(1) the Government, by regulation, may determine, considering the imperatives of sound management of public legal aid funds, legal services or types of legal services that are to be provided, on a permanent basis, either exclusively by advocates or notaries in the employ of a legal aid centre or exclusively by advocates or notaries not in the employ of such a centre;

(2) the Commission, by regulation, may determine, considering the imperatives of sound management of public legal aid funds, legal services that are to be provided, on a temporary basis, exclusively by advocates or notaries in the employ of a legal aid centre. The regulation shall specify the legal services that are to be provided exclusively by advocates or notaries in the employ of a legal aid centre, and shall fix the period for which the regulation applies, which may not exceed the end of the fiscal year in which the regulation is made. The regulation may also provide that its application is restricted to the regions designated in the regulation.

Exclusivity regulations made under this section may also pertain to fields of activity.

No exclusivity regulation made under this section shall render sections 53 to 55 inoperative.”

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

“60. Where an advocate or notary not in the employ of a legal aid centre provides legal services to a recipient within the scope of this Act, he shall not receive, in respect of such services, any fees or expenses except those provided for by this Act and the regulations.

Any person who has paid a sum of money or procured any other advantage not provided for by this Act is entitled to recover it.”

26. Section 61 of the said Act is amended by replacing the words “employed full time by” in the second line of the first paragraph by the words “in the employ of”.

27. Section 62 of the said Act is amended

(1) by replacing the words “Subject to the regulations, an economically underprivileged person who wishes to receive legal aid must make his application to the local corporation” in the first paragraph by the words “To receive legal aid, a person must apply therefor, in accordance with the regulations, to the local centre”;

(2) by replacing the words “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 second paragraph by the words “The person is required to pay, for the examination of his application, a charge”.

28. Section 63 of the said Act is amended by replacing the first paragraph by the following paragraph:

“**63.** Subject to the provisions of sections 4.3 and 4.13 and of the second paragraph of section 50, the director general alone has the authority to make decisions as to the granting of legal aid.”

29. Section 64 of the said Act is replaced by the following section:

“**64.** An applicant must, in accordance with the regulations, disclose his financial condition and, to the extent prescribed by regulation, that of his family and establish the facts on which his application is based.

He must supply or arrange for the supply of all the information and documents that are prescribed by regulation and are necessary to determine and verify his eligibility for legal aid and to determine the contribution payable, if any.

The director general or a member of his personnel designated by him for such purposes may, for verification purposes, request from any person any information or document relating to an applicant’s financial eligibility for legal aid, examine such documents and make a copy thereof. Any person to whom such a request is made is required to comply therewith.”

30. Section 66 of the said Act is replaced by the following section:

“66. The director general shall issue a certificate of eligibility to each person to whom legal aid is granted. The certificate, on which the contribution payable by the recipient, if any, is indicated, must be delivered by the recipient without delay to his advocate or notary, who shall file it in the record of the court or, as the case may be, at the registry office. Such certificate is valid only for the period, dispute, proceeding or legal service determined by the director general.

A further application for legal aid must be made for each remedy exercised before an authority, including in appeal.

Where a person has been declared financially eligible for contributory legal aid, the issue at a later time of one or more certificates of eligibility to that recipient for the same matter within a 12-month period does not oblige the recipient to pay a further contribution.”

31. Section 67 of the said Act is replaced by the following section:

“67. In urgent cases, the director general may, before an applicant’s file is thoroughly examined, issue a conditional certificate of eligibility for the performance of conservatory acts necessary for the preservation of the applicant’s rights, particularly as regards his appearance in criminal or penal proceedings. The director general may subsequently issue, if the applicant is determined to be eligible for legal aid, a definitive certificate of eligibility having retroactive effect.

Where the director general does not issue a definitive certificate of eligibility having retroactive effect to the applicant,

(1) the applicant’s advocate or notary, if not in the employ of a legal aid centre, must recover the fees and expenses relating to the conservatory acts he has performed from the applicant;

(2) the applicant is required, if conservatory acts have been performed by an advocate or notary in the employ of a legal aid centre, to repay the cost of the legal aid received, in accordance with the provisions of Division VI.1.”

32. Section 68 of the said Act is amended by replacing the words “making inaccurate any information supplied by him to obtain legal aid” in the third and fourth lines by the words “or that of his family which affects his eligibility for legal aid”.

33. Section 69 of the said Act is amended by replacing the word “qualification” in the first line of the first paragraph by the word “eligibility”.

34. Section 70 of the said Act is amended

(1) by replacing the part preceding paragraph *a* by the following:

“**70.** Legal aid may be refused or withdrawn, as the case may be, with regard to any person who, without sufficient cause,”;

(2) by replacing paragraph *a* by the following paragraphs:

“(a) refuses or neglects to supply the information or documents required for the examination of his application;

“(a.1) wilfully supplies information which the director general believes on reasonable grounds to be false or inaccurate;”;

(3) by adding, at the end, the following paragraphs:

“Moreover, legal aid may be refused or withdrawn if the applicant or recipient or a member of his family has disposed of property or liquidities without adequate consideration so as to render the applicant or recipient financially eligible for legal aid or as to evade payment of a contribution.

Legal aid may also be suspended or withdrawn if the recipient has failed to pay all or part of the contribution payable by him.

Legal aid may be suspended or withdrawn at any stage of the proceedings. Subject to the regulations, the centre shall pay to an advocate or notary not in the employ of the centre the fees and expenses to which he is entitled in respect of services rendered by him before he was notified of the suspension or withdrawal.”

35. Section 71 of the said Act is replaced by the following section:

“71. Where a recipient ceases to be financially eligible for legal aid, legal aid may be maintained in respect of the services covered by the certificate that was issued to him. In such a case, however, the recipient shall repay, in accordance with the provisions of Division VI.1, the cost of the legal aid received.”

36. Section 72 of the said Act is repealed.

37. Section 73 of the said Act is amended

(1) by replacing the words “le registrateur” in the fifth line of the French text by the words “l’officier de la publicité des droits”;

(2) by adding, at the end, the following sentence: “The decision of the director general shall mention, in the case of a refusal or withdrawal of legal aid, that the applicant or recipient, as the case may be, has the right to apply for a review of the decision and shall specify the time allotted for making such an application.”

38. The said Act is amended by inserting, after section 73, the following:

“DIVISION VI.1

“RECOVERY OF LEGAL AID COSTS

“73.1 A person shall, in the cases determined in the regulations and to the extent prescribed therein, repay on demand to the legal aid centre the cost of the legal aid received.

“73.2 The recovery of legal aid costs is prescribed upon the expiry of three years from the time when, according to the regulations, repayment thereof becomes exigible. In cases of bad faith, the recovery of legal aid costs is prescribed upon the expiry of three years from the date on which the recoverability of the costs becomes known to the director general, but not later than ten years after the date on which repayment would otherwise have been exigible.

“73.3 The director general shall send the debtor a demand notice stating the amount of the debt, the reasons why such debt is payable and the right of the debtor to apply for a review of the decision.

The demand notice interrupts prescription.

“73.4 The debtor must repay the debt within the time prescribed by regulation, unless the director general agrees to the debt or a part thereof being repaid by instalments.

The debt becomes payable in full if the debtor fails to comply with an agreement made with the director general.

“73.5 Where a debtor fails to repay his debt or any part thereof, the director general or a member of his personnel designated by him for such purpose may, on expiry of the time allotted for applying for a review or, if a review is conducted, from the date of the decision of the review committee confirming the director general’s decision in whole or in part, issue a certificate attesting that the debt is payable and specifying the amount owed. In the absence of any evidence to the contrary, the certificate shall be proof that the debt is of the amount specified and is payable.

“73.6 The debtor is required to pay interest in the cases and according to the terms and conditions determined in the regulations and at the rate fixed therein.”

39. Section 74 of the said Act is replaced by the following:

“DIVISION VI.2

“REVIEW

“74. Any person in respect of whom legal aid has been refused or withdrawn, from whom the repayment of legal aid costs is required or who wishes to contest the amount of the contribution payable may, within 15 days of the decision of the director general, apply for a review by the committee formed under paragraph *k* of section 22. The application shall be decided by three members, including at least one advocate. The application releases the advocate of the person applying for the review and the director general from their obligation of professional secrecy with regard to the review committee and its delegate.

Where the decision reviewed concerns a refusal or withdrawal of legal aid, the director general shall, in urgent cases, issue a conditional certificate of eligibility for the performance of conservatory acts necessary for the preservation of the rights of the person applying for the review. Where such a certificate is issued, the review shall be conducted by preference.

Where the review committee decides that the person having applied for the review is not eligible for legal aid,

(1) the advocate or notary of the person having applied for the review, if not in the employ of a legal aid centre, must recover the fees and expenses relating to the conservatory acts he has performed from that person;

(2) the person having applied for the review is required, if conservatory acts have been performed by an advocate or notary in the employ of a legal aid centre, to repay the cost of the legal aid received, in accordance with the provisions of Division VI.1.”

40. Section 75 of the said Act is amended

(1) by replacing the words “right of a person to” in the first and second lines of the first paragraph by the words “financial eligibility of a person for”;

(2) by striking out the second paragraph.

41. Section 77 of the said Act is amended by replacing the words “the right to” in the third and fourth lines by the words “his financial eligibility for”.

42. Section 80 of the said Act is amended

(1) by replacing subparagraph *a* of the first paragraph by the following subparagraphs:

“(a) determine, for the purpose of determining financial eligibility for legal aid, in what case a family is composed of a person, other than the father or mother, and children, designate that person and prescribe in what cases or circumstances and, where applicable, on what conditions a person remains, becomes or ceases to be a member of a family and define, for the purposes of section 1.2, what constitutes attendance of an educational institution;

“(a.1) determine the period for which income, liquidities and other assets are to be considered for the purpose of determining financial eligibility for legal aid and prescribe the conditions in which such determination is made;

“(a.2) determine, for the purpose of determining financial eligibility for legal aid, in what cases and, if expedient, on what conditions and to what extent

(1) the income, liquidities and other assets of the applicant and of his family are to be considered;

(2) the income, liquidities and other assets of the applicant and of his spouse are to be considered;

(3) the income, liquidities and other assets of the applicant, of his spouse and of a child are to be considered;

(4) the only income, liquidities and other assets to be considered are those of a minor child;

(5) the income, liquidities and other assets of the spouse of the applicant are not to be considered;

“(a.3) determine what constitutes net income, liquidities and other net assets for the purpose of determining financial eligibility for legal aid and, to that end, determine what income, liquidities and other assets are to be considered or excluded, indicate the amounts deductible from income, prescribe calculation methods for determining income or the value of property and determine what is included in liquidities;

“(a.4) fix the level of net income and the value of liquidities and other net assets below which a person is financially eligible for gratuitous legal aid under section 4.1;

“(a.5) fix the level of net income below which a person is financially eligible for contributory legal aid under section 4.2 and, to that end, prescribe to what extent liquidities are deemed to constitute net income and to what extent and in what proportion, expressed as a percentage, the value of net assets other than liquidities is deemed to constitute net income, determine the contribution payable and fix the maximum amount of such contribution;

“(a.6) determine the contribution payable by a person declared financially eligible for legal aid under section 4.3 and fix the maximum amount of such contribution;

“(a.7) determine, for the purposes of the contribution referred to in subparagraph a.5 or a.6, what legal aid costs consist of, fix the time when the contribution becomes payable by the recipient and determine standards for the payment of the contribution and, to

that end, prescribe the time allotted for and the terms and conditions of payment, determine in what cases the recipient is required to pay interest and fix the rate of interest;

“(a.8) adjust the rules governing financial eligibility for gratuitous legal aid or for contributory legal aid in respect of persons residing in remote regions and, for such purpose, fix the minimum period of residence in a remote region and determine what a remote region is;”;

(2) by replacing subparagraphs *b* and *b.1* of the first paragraph by the following subparagraphs:

“(b) designate the benefit or compensation programs in respect of which legal aid may be granted, to the extent determined by paragraph 7 of section 4.7 and by paragraph 2 of section 4.10, or designate the legislative provisions establishing such programs;

“(b.1) determine, in addition to those already specified in this Act, the legal services for which legal aid may be granted and, if expedient, specify on what conditions it may be granted therefor, and determine, in addition to those already excluded, the legal services for which legal aid may not be granted and specify, if expedient, in what cases and on what conditions legal aid may not be granted for such services;

“(b.2) define the terms and expressions used in this Act or the scope thereof;”;

(3) by replacing subparagraphs *e* and *f* of the first paragraph by the following subparagraphs:

“(e) determine the form and content of all certificates of eligibility issued under this Act;

“(f) determine, after consultation with the Barreau du Québec or the Chambre des notaires du Québec, as the case may be, the legal services, other than legal services that are within the exclusive competence of an advocate or notary, which an articulated student or a law student in the employ of a legal aid centre is authorized to render and specify the fields of activity in which and the conditions on which legal services may so be rendered;”;

(4) by replacing subparagraph *h* of the first paragraph by the following subparagraphs:

“(*h*) determine the form and content of applications for legal aid as well as the tenor of the undertakings to be made by applicants;

“(*h.1*) determine the documents and information to be supplied by persons applying for legal aid and designate the classes of persons who are dispensed from supplying certain documents or information;

“(*h.2*) define what is an applicant for legal aid and designate the persons or bodies that are not authorized to make an application for legal aid on behalf of another person;

“(*h.3*) determine the documents and information relating to an application for legal aid that may be submitted to verification and the persons or bodies that may be contacted for the purpose of such verification and determine the authorizations which may be required to that effect;”;

(5) by adding, at the end of subparagraph *k* of the first paragraph, the words “, particularly as regards the operation of the committee entrusted with conducting reviews under Division VI.2”;

(6) by replacing subparagraph *l* of the first paragraph by the following subparagraph:

“(*l*) provide, if expedient, for measures to ensure the carrying out of an agreement made under section 94, in particular as regards the granting of legal aid pursuant to the agreement;”;

(7) by striking out subparagraph *o* of the first paragraph;

(8) by replacing subparagraph *s* of the first paragraph by the following subparagraph:

“(*s*) determine, for the purposes of the recovery of legal aid costs, in what cases and to what extent a person is required to repay such costs, determine what such costs consist of, prescribe the method for determining the amount payable, determine the sums, or the portion of any sum, which the debtor is not required to repay, and the cases in which there is to be no recovery of costs, fix the time when repayment of the costs becomes exigible, prescribe the time allotted for and the terms and conditions of repayment, determine

the cases in which the debtor is required to pay interest and fix the rate of interest;”;

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

“(t) regulate the permanent exclusivity of services provided for in section 52.1;

“(u) regulate the temporary exclusivity of services provided for in section 52.1.”;

(10) by replacing the last two paragraphs by the following paragraphs:

“The provisions of regulations under subparagraphs *a* to *a.8* of the first paragraph may vary according to whether a person alone or a family is concerned, according to the composition of the family, according to the condition of the applicant or of a member of his family, according to the number of children or, in the case of subparagraph *a.2*, according to the legal service provided or, in the case of subparagraph *a.4*, according to the type of net assets or according to whether or not the applicant or his spouse owns their residence or, in the case of subparagraph *h.1*, according to whether the applicant is a natural person, a group of persons or a legal person. The calculation method for determining income or the value of property referred to subparagraph *a.3* may vary according to the type of income or the assets being considered. The provisions of a regulation under subparagraph *a.5* or *a.6* which pertain to the determination of the contribution may provide that the contribution varies according to whether a person alone or a family is concerned and according to the net income level of the recipient. The standards for the payment of the contribution by the recipient referred to in subparagraph *a.7* may vary according to whether the services were rendered by an advocate or notary in the employ of a legal aid centre or by an advocate or notary not in the employ of a legal aid centre. The provisions of a regulation under subparagraph *f* may vary according to the legal services rendered or the fields of activity in which the services are rendered or according to whether the services are rendered by an articulated student or a law student. The method referred to in subparagraph *s* for determining the amount exigible from a person required to repay legal aid costs may vary according to the different cases specified in the regulation. The provisions of a regulation under subparagraph *t* or *u* may vary according to the legal services provided or the fields of activity in which legal services

are provided and, in the case of subparagraph *u*, according to the regions in which and the period for which the provisions are applicable.

Regulations under subparagraphs *a* to *a.8*, *b* to *b.2*, *h* to *h.3*, *l*, *q*, *r*, *s* and *t* of the first paragraph are made by the Government.

All other regulations are made by the Commission and are subject to the approval of the Government, except a regulation under subparagraph *u* of the first paragraph, which is subject to the approval of the Minister of Justice. A regulation may be approved with or without amendment. As soon as a regulation is made under subparagraph *u* of the first paragraph, the Commission shall send a copy to the Barreau du Québec and to the Chambre des notaires du Québec.

Notwithstanding section 11 of the Regulations Act (chapter R-18.1), a regulation made by the Commission under subparagraph *u* of the first paragraph may be submitted for approval to the Minister of Justice on the expiry of 15 days after the date of its publication in the *Gazette officielle du Québec*. Notwithstanding section 17 of the said Act, the regulation, once approved, shall come into force 10 days after the date of its publication in the *Gazette officielle du Québec*.

Once approved, a regulation made by the Commission under subparagraph *k* of the first paragraph shall be published in the *Gazette officielle du Québec*. It shall come into force on the date of publication or on any later date indicated therein.”

43. Section 81 of the said Act is amended

- (1) by striking out the last sentence of the second paragraph;
- (2) by inserting, after the second paragraph, the following paragraph:

“A tariff established under this section may fix, to the extent prescribed therein, an all-inclusive fee for all services provided within the scope of a single mandate. It may also determine the maximum amount of fees that may be paid under this Act to one professional in the course of a period specified by the tariff and beyond which fees paid to the professional are to be reduced, in respect of each mandate, in the proportion specified by the tariff. The provisions of the tariff pertaining to the maximum amount of

fees that may be paid to one professional may vary according to the class of professionals to which they apply.”

44. Section 82 of the said Act is replaced by the following sections:

“82. Every person who

(1) knowingly makes a statement containing false or misleading information or knowingly transmits a document containing such information so as to

(a) make himself eligible or so as to remain eligible for legal aid;

(b) make a member of his family eligible for legal aid or remain eligible for legal aid;

(c) help another person to obtain legal aid to which he is not entitled,

(2) being an advocate or a notary to whom section 60 or the second paragraph of section 61 applies, receives a sum of money or any other advantage not provided for by this Act, or

(3) being an advocate or a notary to whom the first paragraph of section 61 applies, fails to remit to the centre which employs him the fees and expenses collected by him pursuant to a judgment or transaction,

is guilty of an offence and is liable to a fine of not less than \$500 and not more than \$1 400 in the case of a natural person, and of not less than \$1 000 and not more than \$7 000 in the case of a legal person.

“82.1 Every person who refuses or neglects to supply any information or document requested under the third paragraph of section 64 is guilty of an offence and is liable to a fine of not less than \$250 and not more than \$1 000.”

45. Section 84 of the said Act is amended by replacing the words “l’année financière subséquente” in the French text by the words “l’exercice financier subséquent”.

46. Section 85 of the said Act is replaced by the following sections:

“85. The Commission and the legal aid centres shall not make expenditures or assume obligations the amount of which exceeds, in a fiscal year, the sums at their disposal for that fiscal year.

The Commission shall not, in a fiscal year, make financial commitments, other than the contracting of loans, in excess of the amount authorized for such purpose by the Minister of Justice for that fiscal year. Nor shall legal aid centres make commitments, in a fiscal year, in excess of the amount authorized for such purpose by the Commission for that fiscal year.

This section shall not operate so as to prevent the Commission or a centre from making a financial commitment for more than one fiscal year in respect of the lease of movable or immovable property, a collective agreement or the remuneration and conditions of employment of employees not governed by a collective agreement. Nor shall it operate so as to prevent the Commission from contracting a loan repayable over a period exceeding one fiscal year.

“85.1 The Commission may not contract a loan, evidenced by a note or other instrument, except with the authorization of the Government and at the rate of interest and on the other conditions determined by the Government.”

47. Section 86 of the said Act is amended by inserting the word “particularly” after the figure “52” in the fifth line.

48. Section 87 of the said Act is amended

(1) by replacing the words “année financière” in the second line of the French text by the words “exercice financier”;

(2) by inserting the word “particularly” after the figure “52” in the fifth line;

(3) by adding, at the end, the words “and of any revenue at its disposal, including the sums collected by legal aid centres”.

49. Section 87.2 of the said Act is amended by replacing the word “registrateur” in the second line of the French text by the words “officier de la publicité des droits”.

50. Section 92 of the said Act is replaced by the following section:

“92. The Commission, a legal aid centre or a legal aid bureau may avail itself of the provisions of section 88 of the Professional Code (chapter C-26). For such purposes, they shall be regarded as persons having recourse to the services of a member of a professional order.”

51. Section 94 of the said Act is replaced by the following section:

“94. The Minister of Justice may, according to law, make agreements concerning legal aid with any other government or with one of its departments or bodies, or with any another authority outside Québec which is responsible for granting legal aid.

Moreover, the Minister may, according to law, make agreements with the Government of Canada or with one of its departments or bodies concerning the payment by Canada to Québec of that part of the expenses necessary for the carrying out of this Act which is determined by such agreements.

As well, the Minister may make an agreement concerning legal aid with the Barreau du Québec or the Chambre des notaires du Québec. The agreement may provide for the participation of the professional order concerned in the legal aid system established by this Act. To that end, the agreement may set out the functions and powers which the professional order which is a party to the agreement may exercise in the place and stead of the legal aid centres. The agreement may also provide that the expenses incurred for the carrying out of the agreement are to be borne, to the extent specified in the agreement, by the professional order which is a party thereto. The agreement is subject to the approval of the Government and shall be published in the *Gazette officielle du Québec*. Notwithstanding the provisions of this Act, from the coming into force of the agreement, legal aid cannot be granted for professional services otherwise than in accordance with the provisions of the agreement or with the provisions of a regulation made for the carrying out of the provisions of the agreement. The agreement or the regulation shall specify, where applicable, the provisions of this Act which cease to have effect or the modifications to the provisions of this Act which are required for the carrying out of the agreement. Legal services rendered by an advocate or a notary within the scope of an agreement shall be deemed to be rendered within the scope of this Act.”

52. Unless the context indicates otherwise, in all Acts and statutory instruments and in all contracts and documents, the terms “regional legal aid corporation” and “regional corporation”, where they refer to a regional legal aid corporation, are replaced by the terms “regional legal aid centre” and “regional centre”, respectively, with such modifications as are required.

53. Unless the context indicates otherwise, in all Acts and statutory instruments and in all contracts and documents, the terms “local legal aid corporation” and “local corporation”, where they refer to a local legal aid corporation, are replaced by the terms “local legal aid centre” and “local centre”, respectively, with such modifications as are required.

54. Unless the context indicates otherwise, in all Acts and statutory instruments and in all contracts and documents, the terms “legal aid corporation” and “corporation”, where they refer to a regional legal aid corporation or local legal aid corporation, are replaced by the terms “legal aid centre” and “centre”, respectively, with such modifications as are required.

55. In the English text of the said Act,

(1) the words “general manager” wherever they appear in paragraph *h* of section 1 and in sections 35, 40, 42, 44, 46, 47, 49 to 58, 63, 65, 69, 73 and 75, in subparagraph *q* of the first paragraph of section 80 and in sections 90 and 91 are replaced by the words “director general”;

(2) the words “attestations to qualify” in section 50 are replaced by the words “certificates of eligibility”;

(3) the words “qualification” and “qualified to receive” in section 63 are replaced by the words “eligibility” and “eligible for”, respectively;

(4) the words “entitled to” in section 65 are replaced by the words “eligible for”;

(5) the word “qualified” in subparagraph *q* of the first paragraph of section 80 is replaced by the word “eligible”.

56. Agreements made with another government or with one of its departments or bodies and in force in Québec on *(insert here the date preceding the date of coming into force of section 51 of this Act)*

are deemed, as far as the provisions pertaining to legal aid contained therein are concerned, to have been made pursuant to section 94 of the Legal Aid Act, as replaced by section 51 of this Act.

57. Section 5 of the Regulation respecting eligibility for legal aid, made by Order in Council 941-83 dated 11 May 1983, shall continue to apply to persons domiciled or having their principal residence in another province or in a territory of Canada until it is amended or repealed by the Government.

58. Applications for legal aid received by a local legal aid corporation or a legal aid bureau before (*insert here the date preceding the date of coming into force of this section*) shall continue to be governed by the provisions applicable to them on that date.

59. Notwithstanding section 11 of the Regulations Act,

(1) the first regulation made by the Government on or before (*insert here the date of coming into force of section 42 of this Act*) under subparagraphs *a* to *a.8*, *b* to *b.2*, *h* to *h.3*, *l*, *q* and *s* of the first paragraph of section 80 of the Legal Aid Act, as amended by section 42 of this Act, may be made on the expiry of 15 days after the date of its publication in the *Gazette officielle du Québec*;

(2) the first regulation amending or replacing the Regulation respecting the application of the Legal Aid Act (R.R.Q., 1981, c. A-14, r.1) made by the Commission des services juridiques on or before (*insert here the date of coming into force of section 42 of this Act*) under subparagraphs *c*, *d*, *e*, *f*, *g*, *i*, *j*, *m*, *n* and *p* of the first paragraph of section 80 of the Legal Aid Act, as amended by section 42 of this Act, may be submitted to the Government for approval on the expiry of 15 days after the date of its publication in the *Gazette officielle du Québec*;

(3) each first regulation respecting a tariff of fees applicable for the purposes of the Legal Aid Act made by the Government on or before (*insert here the date of coming into force of section 43 of this Act*) under section 81 of the Legal Aid Act, as amended by section 43 of this Act, may be made on the expiry of 15 days after the date of its publication in the *Gazette officielle du Québec*.

60. The provisions of this Act will come into force on the date or dates to be fixed by the Government.