



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 2

(2005, chapter 12)

**An Act respecting the reciprocal issue
and enforcement of support orders**

Introduced 13 June 2003
Passage in principle 20 June 2003
Passage 10 June 2005
Assented to 17 June 2005

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EXPLANATORY NOTES

The object of the bill is to facilitate the reciprocal issue and enforcement of orders providing for the payment of support, if one of the parties does not reside in Québec. The bill provides that the jurisdictions in respect of which the new legislation will apply are to be designated by order of the Government.

The bill establishes the procedure to be followed according to whether an application is for the issue or enforcement of a support order and makes a distinction between applications that originate in Québec and applications that originate in a designated jurisdiction.

Lastly, the bill allows the court, in connection with an application made under the new legislation, to rule upon the biological filiation of a child for whom support is claimed.

LEGISLATION REPLACED BY THIS BILL :

– Act respecting reciprocal enforcement of maintenance orders (R.S.Q., chapter E-19).

LEGISLATION AMENDED BY THIS BILL :

– Act respecting income support, employment assistance and social solidarity (R.S.Q., chapter S-32.001).

Bill 2

AN ACT RESPECTING THE RECIPROCAL ISSUE AND ENFORCEMENT OF SUPPORT ORDERS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

CHAPTER I

OBJECT AND SCOPE

1. The object of this Act is to facilitate the reciprocal issue and enforcement of judgments providing for the payment of support, if one of the parties does not reside in Québec.

This Act also applies to orders and agreements providing for the payment of support, that are enforceable in the place of origin.

2. The Government, on the recommendation of the Minister of Justice and the Minister of International Relations, shall designate by order the jurisdictions in respect of which this Act applies.

Jurisdictions which the Government considers to have legislation substantially similar to Québec legislation concerning the issue and enforcement of support orders may be so designated.

The order shall indicate, in respect of each designated jurisdiction, the date from which this Act applies and specify any applicable conditions. This Act shall apply in respect of a designated jurisdiction, subject to the rules on prescription, even if the support order preceded the date on which this Act became applicable in its respect.

The order shall be published in the *Gazette officielle du Québec*.

3. A minister or a public body authorized by law to act or to collect support payments on behalf of a creditor of support may make use of the provisions of this Act.

CHAPTER II

ISSUING OF A SUPPORT ORDER

DIVISION I

APPLICATIONS ORIGINATING IN QUÉBEC

4. A person who resides in Québec may submit an application to the Minister of Justice requesting the issue in a designated jurisdiction of a support order or of an order reviewing a support order if the other party resides in that jurisdiction.

If the filiation of a child for whom support is claimed is not established, the claimant may request that the court rule on the child's biological filiation for the purposes of the issue and enforcement of a support order.

5. The application must include

- (1) the claimant's name and address ;
- (2) the defendant's name and any other information known to the claimant that can be used to locate or identify the defendant ;
- (3) the defendant's financial circumstances, to the extent known by the claimant ;
- (4) the name of the person for whom support is or was claimed, the person's date of birth and details of the person's relationship with the claimant and the defendant ;
- (5) the amount and nature of the support at issue, and the date on which it becomes due ;
- (6) the juridical basis for the application ;
- (7) the grounds on which the application is based, including the needs of the person for whom support is claimed and the person's financial and other circumstances, and the evidence available to the claimant to establish filiation, where applicable ;
- (8) any other information or document required by the designated jurisdiction ; and
- (9) any other information or document required by the Minister of Justice.

6. The application must be made under oath and be accompanied by supporting documents. A certified translation of the application and accompanying documents must be attached if required by the competent authority of the designated jurisdiction.

7. On receiving the application, the Minister of Justice shall verify that the file is complete and transmit the application and accompanying documents to the competent authority of the designated jurisdiction in which the defendant resides.

8. If the competent authority of a designated jurisdiction requires additional information or documents, the claimant must provide them within the time specified by the authority.

9. On receiving a certified copy of an order issued in a designated jurisdiction, the Minister of Justice shall file it in the court records of the Superior Court in the district in which the claimant resides, if the order provides for the payment of support or revises a support order that was enforceable in Québec.

From the date it is filed in the court records, the order is equivalent to a judgment rendered by a court in Québec and has the effects thereof.

In all cases, the Minister of Justice shall transmit a copy of the order to the claimant by registered or certified mail.

DIVISION II

APPLICATIONS ORIGINATING IN A DESIGNATED JURISDICTION

10. The competent authority of a designated jurisdiction may send an application to the Minister of Justice requesting the issue in Québec of a support order or of an order reviewing a support order if either party resides in Québec.

If the filiation of a child for whom support is claimed has not been established, the claimant may request the court to rule on the child's biological filiation.

11. The application must include

- (1) the claimant's name and address;
- (2) the defendant's name and any other information known to the claimant that can be used to locate or identify the defendant;
- (3) the defendant's financial circumstances, to the extent known by the claimant;
- (4) the name of the person for whom support is or was claimed, the person's date of birth and details of the person's relationship with the claimant and the defendant;
- (5) the amount and nature of the support at issue, and the date on which it becomes due;

(6) the juridical basis for the application;

(7) the grounds on which the application is based, including the needs of the person for whom support is claimed and the person's financial and other circumstances, and the evidence available to the claimant to establish filiation, where applicable; and

(8) any other information or document required by the Minister of Justice.

12. The application must be made under oath and be accompanied by supporting documents. A certified French translation of the application and accompanying documents must be attached if the original language is neither French nor English.

The application shall stand in lieu of the claimant's sworn statement required under article 827.5 of the Code of Civil Procedure (R.S.Q., chapter C-25).

13. Where support is claimed for a child, the application must also contain the information required pursuant to the rules for the determination of child support payments adopted under the Code of Civil Procedure and, in particular, information concerning the claimant's income, the custody arrangements and the expenses relating to the child.

The application shall stand in lieu of the form prescribed under article 825.9 of that Code in respect of the claimant.

14. On receiving the application, the Minister of Justice shall file it and the accompanying documents in the court records of the Superior Court in the district in which the defendant resides.

The Minister of Justice shall serve a copy on the defendant, together with a notice indicating the date of presentation of the application to the Superior Court and requiring the defendant to provide the information and documents required by law.

15. If the defendant does not reside in Québec, but resides elsewhere in Canada, the Minister of Justice may, rather than returning the application to the originating jurisdiction, send it to the competent authority of the designated jurisdiction in which the defendant resides. In that case, the Minister of Justice shall so notify the competent authority of the originating jurisdiction.

16. At any stage of the proceeding, the court may require additional information or documents from the claimant. The Minister of Justice shall send the request to the competent authority of the originating designated jurisdiction and the proceeding shall be suspended.

17. If the court does not receive the information or documents within six months after requesting them, it may dismiss the application.

18. If the filiation of a child for whom support is claimed has not been established, the court may rule on the child's biological filiation and may, to that end, order the analysis of a sample of a bodily substance so that the genetic profile of a person involved in the application may be established, in accordance with article 535.1 of the Civil Code. In that case, the defence is presented orally.

The decision of the court produces effects only for the purposes of the issue and enforcement of support orders and ceases to have effect if the filiation of the child is subsequently established in respect of a person other than the defendant.

19. The court may grant the application for support, in whole or in part, or dismiss it. The decision must, in all cases, contain reasons.

20. The clerk shall send a certified copy of the decision to the defendant and the Minister of Justice. The Minister of Justice shall also send a certified copy by registered or certified mail to the competent authority of the originating designated jurisdiction.

21. The time limit for appealing an order issued pursuant to this division is 90 days from the date of the order.

The court may extend that time limit if special circumstances so warrant.

22. The claimant is not required to give security for the costs which may be incurred in consequence of an application made under this division.

CHAPTER III

ENFORCEMENT OF A SUPPORT ORDER

DIVISION I

APPLICATIONS ORIGINATING IN QUÉBEC

23. An application requesting the enforcement in a designated jurisdiction of a support order that is enforceable in Québec shall be submitted to the Minister of Justice by the Minister of Revenue or, if the latter fails to do so, by the creditor.

In the case of a support order that is not enforceable in Québec, the application requesting its enforcement in a designated jurisdiction shall be submitted to the Minister of Justice by the creditor, if the creditor resides in Québec, or pursuant to the Act respecting income support, employment assistance and social solidarity (R.S.Q., chapter S-32.001), by the Minister of Employment and Social Solidarity.

24. The application must be accompanied by a certified copy of the support order and include

- (1) the creditor's name ;
- (2) the debtor's name and, if known, the debtor's address, the name and address of the debtor's employer and a description of the debtor's movable and immovable property ;
- (3) the amount of the support payments, the description of payments to become due and the applicable basis of indexation and, where applicable, the date of default and the amount of arrears ;
- (4) any other information or document required by the designated jurisdiction ; and
- (5) any other information or document required by the Minister of Justice.

A certified translation of the application and accompanying documents must be attached if required by the competent authority of the designated jurisdiction.

25. The Minister of Justice shall send the application and accompanying documents to the competent authority of the designated jurisdiction so that the order referred to in the application may be enforced according to the laws in effect in that jurisdiction.

DIVISION II

APPLICATIONS ORIGINATING IN A DESIGNATED JURISDICTION

26. The competent authority of a designated jurisdiction may send an application requesting the enforcement of a support order to the Minister of Justice.

27. The application must be accompanied by a certified copy of the support order and include

- (1) the creditor's name ;
- (2) the debtor's name and, if known, the debtor's address, the name and address of the debtor's employer and a description of the debtor's movable and immovable property ;
- (3) the amount of the support payments, the description of payments to become due and the applicable basis of indexation and, where applicable, the date of default and the amount of arrears ; and
- (4) any other information or document required by the Minister of Justice.

28. A certified French translation of the application and accompanying documents must be attached if the original language is neither French nor English.

29. On receiving the application, the Minister of Justice shall file the certified copy of the support order and accompanying documents in the court records of the Superior Court in the district in which the debtor resides.

From the date it is filed in the court records, the support order is equivalent to a judgment rendered by a court in Québec and has the effects thereof.

The clerk shall notify the debtor, by registered or certified mail, that the support order was filed in the court records and send the debtor a copy of the application and accompanying documents.

30. Within 30 days after receiving the clerk's notice, the debtor may, by motion, oppose the enforcement of the support order on any of the grounds provided in Book Ten of the Civil Code.

The motion to oppose shall be served on any person whose presence is necessary for the complete resolution of the matter, and on the competent authority of the designated jurisdiction, together with a request that the authority notify the support creditor. The motion shall be heard and decided by preference.

The filing of the motion in the court records does not suspend the enforcement of the support order, unless a judge orders otherwise.

31. The court may grant the motion and terminate the enforcement of the support order, or dismiss the motion. The decision must, in all cases, contain reasons.

32. If, pursuant to section 4, the debtor has submitted an application to the Minister of Justice for the issue of an order reviewing the support order filed in the court records, a judge may, at the debtor's request, suspend the enforcement of the support order, for the time and on the conditions determined by the judge, if it is shown that serious harm to the debtor would likely result.

33. The clerk shall transmit a certified copy of the decision to the debtor, the Minister of Revenue and the Minister of Justice. The Minister of Justice shall also send a certified copy by registered or certified mail to the competent authority of the originating designated jurisdiction.

CHAPTER IV

MISCELLANEOUS, TRANSITIONAL AND FINAL PROVISIONS

34. The Government may, by regulation, prescribe any measure necessary for the carrying out of this Act, and such measures may vary according to the designated jurisdiction.

35. The Minister of Justice may, in accordance with the applicable legislative provisions, enter into agreements with the government of a jurisdiction or any of its departments or organizations

(1) for the carrying out of this Act ;

(2) to facilitate the issue and enforcement of support orders in respect of a party who resides in a non-designated jurisdiction.

36. This Act replaces the Act respecting reciprocal enforcement of maintenance orders (R.S.Q., chapter E-19).

37. The provisions of this Act apply to applications made under the Act respecting reciprocal enforcement of maintenance orders, with the necessary modifications.

38. Designations made under section 10 of the Act respecting reciprocal enforcement of maintenance orders remain valid and are deemed to have been made under this Act.

39. The list of jurisdictions designated under this Act is provided in a schedule to this Act, indicating in respect of each designated jurisdiction the date from which this Act applies.

The schedule shall be updated on the basis of the orders made by the Government under section 2.

40. Section 43 of the Act respecting income support, employment assistance and social solidarity (R.S.Q., chapter S-32.001) is amended by inserting the following sentence at the end of the first paragraph : “The recipient must also inform the Minister of the submission or receipt of an application regarding support under the Act respecting the reciprocal issue and enforcement of support orders (2005, chapter 12), at least five days before the submission or not later than five days after the receipt of such an application, as the case may be.”

41. The Minister of Justice is responsible for the administration of this Act.

42. This Act comes into force on the date to be fixed by the Government.

SCHEDULE

DESIGNATED JURISDICTIONS FOR THE PURPOSES OF THIS ACT
(*section 39*)**CANADA****Date from which this Act applies**

Alberta	<i>(insert the date of coming into force of this Act)</i>
British Columbia	<i>(insert the date of coming into force of this Act)</i>
Manitoba	<i>(insert the date of coming into force of this Act)</i>
New Brunswick	<i>(insert the date of coming into force of this Act)</i>
Newfoundland	<i>(insert the date of coming into force of this Act)</i>
Northwest Territories	<i>(insert the date of coming into force of this Act)</i>
Nova Scotia	<i>(insert the date of coming into force of this Act)</i>
Nunavut	<i>(insert the date of coming into force of this Act)</i>
Ontario	<i>(insert the date of coming into force of this Act)</i>
Prince Edward Island	<i>(insert the date of coming into force of this Act)</i>
Saskatchewan	<i>(insert the date of coming into force of this Act)</i>
Yukon	<i>(insert the date of coming into force of this Act)</i>

UNITED STATES

California	<i>(insert the date of coming into force of this Act)</i>
Florida	<i>(insert the date of coming into force of this Act)</i>
Maine	<i>(insert the date of coming into force of this Act)</i>
Massachusetts	<i>(insert the date of coming into force of this Act)</i>
New Jersey	<i>(insert the date of coming into force of this Act)</i>
New York	<i>(insert the date of coming into force of this Act)</i>
Pennsylvania	<i>(insert the date of coming into force of this Act)</i>