



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-NINTH LEGISLATURE

Bill 64

(2012, chapter 20)

An Act to promote access to justice in family matters

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EXPLANATORY NOTES

This Act establishes an administrative service in charge of recalculating child support within the Commission des services juridiques.

The Act respecting legal aid and the provision of certain other legal services is amended to provide persons, including persons who are not financially eligible for legal aid, with the professional services of a lawyer for the purpose of obtaining a judgment on an agreement, submitted in a joint application, for the review of a judgment, which settles all child custody matters or all matters relating to either child support alone or child and spousal support.

The Civil Code of Québec is amended to require parents to exchange information to update the level of child support and to allow a parent to claim child support for needs that existed more than one year before the date of application.

The Code of Civil Procedure is amended to require that the child support determination form that is used by the court to determine child support payments be attached to the judgment granting the support, and to provide that a certificate of participation is to be given by the Family Mediation Service to each of the parties present upon the completion of a group information session.

The Act to facilitate the payment of support is amended to authorize the Minister of Revenue to return a security provided by a debtor who is exempt, under the Act, from the collection of child support payments by Revenu Québec, provided the debtor has been exempted for at least two years, the creditor consents and no arrears or costs are owing.

Lastly, this Act contains consequential and transitional measures.

LEGISLATION AMENDED BY THIS ACT:

- Civil Code of Québec;
- Individual and Family Assistance Act (R.S.Q., chapter A-13.1.1);

- Act respecting legal aid and the provision of certain other legal services (R.S.Q., chapter A-14);
- Code of Civil Procedure (R.S.Q., chapter C-25);
- Act respecting the Ministère de la Justice (R.S.Q., chapter M-19);
- Act to facilitate the payment of support (R.S.Q., chapter P-2.2);
- Public Protector Act (R.S.Q., chapter P-32).

Bill 64

AN ACT TO PROMOTE ACCESS TO JUSTICE IN FAMILY MATTERS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

ESTABLISHMENT AND PURPOSE OF SERVICE

1. A child support recalculation service, to be known as the “Service administratif de rajustement des pensions alimentaires pour enfants” or “SARPA”, is established within the Commission des services juridiques, itself established under the Act respecting legal aid and the provision of certain other legal services (R.S.Q., chapter A-14).

SARPA is mandated to recalculate child support to the extent provided by this Act.

CHAPTER II

APPLICATION FOR RECALCULATION

2. An application for recalculation may, in the cases described in a government regulation, be made to SARPA by one or both of the child’s parents. The regulation also determines the application procedure and the information and documents needed for the recalculation that must be provided in support of the application.

The application may be withdrawn, in accordance with the procedure determined by government regulation, on the request of the parents or on the request of the parent who submitted it, so long as SARPA has not recalculated the child support.

3. SARPA must diligently examine all applications.

4. If an application for recalculation is made by only one parent, SARPA may, as part of its examination, require the other parent to provide the information and documents needed for the recalculation that are determined by government regulation.

If the context so requires, SARPA notifies its request for information or documents to the parent by any means that provides proof of sending. The

notification may be made by regular mail; in that case, the date of sending is the date on which the request is mailed.

5. If the parent fails to provide, within 30 days of the date of sending of the request referred to in the second paragraph of section 4, the information or documents that would allow SARPA to determine the parent's annual income, SARPA again notifies its request to the parent by registered or certified mail or by any other means that provides proof of the date of receipt of the request. If SARPA has such proof and the parent does not provide the information or documents within 10 days of the date of receipt of the request, the parent's annual income is determined, for the purposes of this Act, in accordance with the rules prescribed by government regulation.

If SARPA's request is notified, as provided for in the Code of Civil Procedure (R.S.Q., chapter C-25), by a bailiff who served it by leaving a copy intended for the parent on the premises, the parent is deemed to have received the request on the date indicated on the bailiff's certificate of service.

6. SARPA ceases to examine an application for recalculation if it is notified of a judicial demand between the parties that could have an impact on the child support that is the subject of the application. It does not resume its examination unless it is notified of a discontinuance of the judicial demand within one year following the date on which it was notified of the demand.

Likewise, SARPA ceases to examine an application for recalculation if the parent who made the application or, where both parents made the application, one of them informs SARPA that he or she has entered into family mediation that could have an impact on the child support that is the subject of the application. It does not resume its examination unless one of the parents so requests within three months following the date on which it was informed of the mediation.

7. The parents must promptly inform SARPA of any change in their situation or that of their child that could have an impact on the child support recalculation.

8. SARPA may, without the parent's consent, verify with the persons, departments and organizations determined by government regulation the accuracy of the information or documents that parent provided for the purposes of child support recalculation.

9. SARPA cannot recalculate child support if, after having examined the information and documents provided, it finds that the recalculation applied for requires a judicial assessment, unless there is an agreement between the parents in the cases and in accordance with the terms determined by government regulation.

If it cannot recalculate child support, SARPA notifies the parent who applied for the recalculation, or both parents where the application was submitted by the two of them. Where the application for recalculation was submitted by only

one of the parents, SARPA also sends a copy of the notice to the other parent if it previously notified a request for information or documents to that parent under section 4.

Upon being notified that SARPA cannot recalculate the child support, the parent who applied for the recalculation or, where the application was submitted by both parents, one of them may apply in writing for a re-examination of the application. The application is re-examined by the chair of the Commission des services juridiques or by the person appointed by the chair for that purpose.

CHAPTER III

RECALCULATION

10. SARPA recalculates child support in accordance with the rules for the determination of child support prescribed under the Code of Civil Procedure and in accordance with the terms prescribed by government regulation.

The child support is recalculated as of the date of the application for recalculation, taking into account the changes in the income of either parent that was used to determine the support being recalculated. However, if the income increased before the date of the application, SARPA recalculates the child support as of a date not earlier than one year prior to the date of the application; regardless of the number of increases, the child support is recalculated for each period in which the income increased, only taking into account the increase relating to that period.

11. SARPA notifies the parents in writing of the child support recalculation and sends a copy to the office of the court in the district where the last support order concerning the child was made.

The form of the recalculation notice and the documents that must be attached are prescribed by government regulation.

12. So long as the recalculation has not come into effect, SARPA may, on its own initiative or upon request, correct the recalculation notice if it contains a clerical error or calculation error.

In such a case, SARPA sends a corrected recalculation notice to the parents and to the office of the court in the district where the last support order concerning the child was made.

13. Before the recalculation takes effect, the recalculation notice can constitute a circumstance that warrants the review of the last support order concerning a child.

14. The child support recalculation takes effect upon expiry of a 30-day period following the date of the recalculation notice or, if a corrected recalculation notice was issued and has an impact on the child support, upon

expiry of a 30-day period following the date of the corrected notice. The recalculated child support is payable as of the effective date of the recalculation and is deemed, for all purposes, to be the amount determined in the last child support order.

However, if, before the expiry of the periods referred to in the first paragraph, SARPA is notified of a judicial demand between the parties that could have an impact on the child support that is the subject of the recalculation notice, the recalculation will not take effect as provided in that paragraph unless SARPA is notified of a discontinuance of the demand.

15. As soon as the recalculation takes effect, SARPA sends a copy of the recalculation notice to the Minister of Revenue.

If one or both of the child's parents are recipients under a last resort program established under the Individual and Family Assistance Act (R.S.Q., chapter A-13.1.1) or received benefits under such a program during a period covered by the recalculation, SARPA also sends a copy of the recalculation notice to the minister responsible for the administration of that program.

CHAPTER IV

ELIGIBLE EXPENSES, EXEMPTIONS AND REIMBURSEMENTS

16. Any parent who makes an application for recalculation of child support must pay the fees set by regulation, in the proportion and according to the terms prescribed.

However, any parent who is financially eligible for legal aid under section 4.1 of the Act respecting legal aid and the provision of certain other legal services is exempted from the payment of those fees, subject to section 17. In addition, any parent who is financially eligible for contributory legal aid under section 4.2 of that Act is only required to pay fees up to the amount of the contribution that would otherwise be payable by the parent under that Act.

The Government may by regulation determine other cases in which a parent may be dispensed from the payment of those fees.

17. To be exempted from the payment of fees, a parent must obtain a certificate of financial eligibility issued by a regional legal aid centre or by the director of a designated legal aid centre. The certificate is issued in accordance with Divisions VI and VI.2 of Chapter II of the Act respecting legal aid and the provision of certain other legal services, with the necessary modifications.

18. If a parent is exempted from the payment of fees, the fees payable may be recovered under sections 73.1 to 73.6 of the Act respecting legal aid and the provision of certain other legal services, with the necessary modifications.

19. The Government may by regulation determine the cases in which and the extent to which the Commission des services juridiques may reimburse a fee paid by a parent.

CHAPTER V

ADMINISTRATION AND MANAGEMENT

20. In the administration and management of SARPA, the Commission des services juridiques ensures that SARPA exercises its responsibilities in cooperation, if applicable, with the regional legal aid centres referred to in section 1 of the Act respecting legal aid and the provision of certain other legal services.

21. The members of the personnel of SARPA and the employees of a regional legal aid centre performing SARPA-related duties may not be prosecuted by reason of acts performed in good faith in the performance of their duties.

22. The Commission des services juridiques may, for the purposes of this Act, provide information concerning a parent to the other parent without the former's consent if child support could be recalculated on the basis of that information.

23. Upon request, the Commission des services juridiques must provide to the Minister any statistics, reports or other information which do not allow a person to be identified that the Minister requires regarding SARPA.

CHAPTER VI

PENAL PROVISIONS

24. Any person who, under this Act or the regulations,

(1) makes a declaration that he or she knows or should have known is false or misleading, or

(2) sends a document that he or she knows or should have known contains false or misleading information,

is guilty of an offence and liable to a fine of not less than \$500 and not more than \$5,000.

25. Any person who, by an act or an omission, helps or, by encouragement, advice, consent, authorization or command, induces another person to commit an offence under this Act is guilty of an offence and liable to the same fine as that prescribed in section 24.

26. In the case of a subsequent offence, the minimum and maximum fines prescribed by this Act are doubled.

CHAPTER VII

MISCELLANEOUS PROVISIONS

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

28. The Minister may, in accordance with the applicable legislative provisions, enter into an agreement with a government other than the Gouvernement du Québec, a department of such a government, an international organization, or a body of such a government or organization with a view to facilitating the recalculation of child support.

CHAPTER VIII

AMENDING PROVISIONS

ACT RESPECTING LEGAL AID AND THE PROVISION OF CERTAIN OTHER LEGAL SERVICES

29. Section 3.1 of the Act respecting legal aid and the provision of certain other legal services (R.S.Q., chapter A-14) is amended by striking out “financially”.

30. Section 3.2 of the Act is amended by striking out “financially” in paragraph 1.

31. Section 4 of the Act is amended

(1) by striking out “, on application,” and “and to the extent provided for therein”;

(2) by adding the following paragraph at the end:

“It shall also be granted, for the legal services provided for in paragraph 1.1 of section 4.7, to a person who is not so financially eligible.”

32. Section 4.7 of the Act is amended

(1) by adding “, subject to paragraph 1.1” at the end of paragraph 1;

(2) by inserting the following paragraph after paragraph 1:

“(1.1) to provide parties with the professional services of an advocate for the purpose of obtaining a judgment on an agreement, submitted in a joint application for the review of a judgment, which settles all matters relating to

child custody or all matters relating to either child support alone or child and spousal support;”.

33. The Act is amended by inserting the following section after section 4.11:

“**4.11.1.** Legal aid granted for the legal services described in paragraph 1.1 of section 4.7 may be withdrawn if the advocate notes that an agreement is no longer possible between the parties.

In such a case, an advocate who is not employed by a centre or by the Commission is entitled to the payment of the professional fees set under section 83.21, and the parties are entitled to the reimbursement of the amount determined by regulation upon notification of the withdrawal of the legal aid.”

34. Section 5 of the Act is amended by replacing the introductory clause of the first paragraph by the following clause:

“**5.** Subject to the contribution that may be required under the regulations, a person eligible under the first paragraph of section 4 to whom legal aid is granted is dispensed from payment of:”.

35. The Act is amended by inserting the following section after section 5:

“**5.1.** A person eligible under the second paragraph of section 4 to whom legal aid is granted is required to pay only the professional fees of an advocate for the legal services described in paragraph 1.1 of section 4.7 and the court fees payable under the tariff applicable in civil matters, and only to the extent and according to the terms prescribed by regulation.

The professional fees referred to in the first paragraph are those set under section 83.21.”

36. Section 22 of the Act is amended by striking out “financially” in paragraphs *a* and *f*.

37. Section 32.1 of the Act is amended by striking out “financially” in the first paragraph.

38. Section 62 of the Act is replaced by the following section:

“**62.** A person must make an application in order to be granted legal aid.

As regards the legal services described in paragraph 1.1 of section 4.7, each of the parties to the agreement must make an application in order to be granted legal aid.

Applications must be submitted in the manner prescribed by regulation.

A person who is financially eligible for contributory legal aid must pay, for the examination of his or her application, a fee set by regulation, unless the person is granted legal aid for the legal services described in paragraph 1.1 of section 4.7.”

39. Section 64 of the Act is amended by replacing the first paragraph by the following paragraphs:

“**64.** An applicant must, in accordance with the regulations, disclose his financial situation and, if applicable, that of his family, unless he is eligible under the second paragraph of section 4 and declares, in the manner prescribed by regulation, that he is not financially eligible.

The applicant must also establish the facts on which the application is based, in accordance with the regulations.”

40. Section 66 of the Act is amended by replacing the first paragraph by the following paragraphs:

“**66.** The director general shall issue a certificate of eligibility to each person to whom legal aid is granted.

However, he shall issue only one certificate to the parties to an agreement who are granted legal aid for the legal services described in paragraph 1.1 of section 4.7.

The form and content of the certificate is determined by regulation.

The certificate 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.

The certificate is valid only for the period, dispute, proceeding or legal service determined by the director general.”

41. Section 80 of the Act is amended

(1) by inserting the following subparagraph after subparagraph *a.8* of the first paragraph:

“(a.9) determine what the legal aid costs of the services described in paragraph 1.1 of section 4.7 are, determine when such costs are payable by a person eligible for legal aid under the second paragraph of section 4 who has been granted legal aid, determine in what cases the person is required to pay interest and fix the rate of interest, and determine all other terms relating to the payment of those costs;”;

(2) by inserting “and of declarations made under the first paragraph of section 64,” after “legal aid” in subparagraph *h* of the first paragraph;

(3) by inserting the following subparagraph after subparagraph *s* of the first paragraph:

“(s.1) determine the amount and the terms of the reimbursement to which the parties are entitled in the case of a withdrawal of legal aid under section 4.11.1;”;

(4) by replacing “*a.8*” in the third paragraph by “*a.9*”.

CIVIL CODE OF QUÉBEC

42. Article 594 of the Civil Code of Québec is amended by replacing “whether it is indexed or not” in the first paragraph by “whether or not the support is indexed or recalculated”.

43. Article 595 of the Code is replaced by the following article :

“**595.** Child support may be claimed for needs that existed before the application; however, child support cannot be claimed for needs that existed more than three years before the application, unless the debtor parent behaved in a reprehensible manner toward the other parent or the child.

If the support is not claimed for a child, it may nevertheless be claimed for needs that existed before the application, but not for needs that existed more than one year before the application; the creditor must prove that it was in fact impossible to act sooner, unless a formal demand was made to the debtor within one year before the application, in which case support is awarded from the date of the demand.”

44. The Code is amended by inserting the following article after article 596:

“**596.1.** In order to update the amount of support payable to their child, parents must, on the request of one of them and no more than once a year, or as required by the court, keep each other mutually informed of the state of their respective incomes and provide, to that end, the documents determined by the rules for the determination of child support payments adopted under the Code of Civil Procedure (chapter C-25).

Failure by one parent to fulfill that obligation confers on the other parent the right to demand, in addition to the specific performance of the obligation and payment of the costs, damages in reparation for the prejudice suffered, including the professional fees and extrajudicial costs incurred.”

INDIVIDUAL AND FAMILY ASSISTANCE ACT

45. Section 93 of the Individual and Family Assistance Act (R.S.Q., chapter A-13.1.1) is replaced by the following section:

“93. Where a creditor of support is the subject of a court decision that retroactively varies support payable for a period in which he or she received a benefit under a last resort financial assistance program or is the subject of a notice that retroactively recalculates support for such a period in accordance with the Act to promote access to justice in family matters (2012, chapter 20), the Minister may, on application by the creditor of support or, as applicable, on a request by the Minister of Revenue under the Act to facilitate the payment of support (chapter P-2.2), recalculate the benefit granted for the months covered by such a variance or recalculation.

If, as a result, a benefit is owed to the creditor of support and the amount exceeds the amount owed to the Minister under section 92, the Minister remits the excess amount to the creditor of support or the Minister of Revenue, as the case may be.

For the purposes of this section, the application or request must be submitted to the Minister within a reasonable time after the judgment is rendered or the recalculation takes effect. The Minister may require new statements for the months covered by such a variance or recalculation, which must be filed within the next 30 days.”

CODE OF CIVIL PROCEDURE

46. Article 331.9 of the Code of Civil Procedure (R.S.Q., chapter C-25) is amended by replacing the last paragraph by the following paragraph:

“The child support determination forms attached to the judgment under article 825.13 are excepted from the above rules.”

47. Article 814.3 of the Code is amended by inserting “or, if applicable, a certificate of participation” after “a copy of the mediator’s report”.

48. Article 814.6 of the Code is amended by replacing the last sentence of the last paragraph by the following sentence: “At the end of the session, the Service gives a certificate of participation to each of the parties present.”

49. Article 814.13 of the Code is amended by inserting “or the certificate of participation in a group information session” after “The mediator’s report”.

50. Article 825.13 of the Code is amended by adding the following paragraph after the second paragraph:

“The child support determination form used by the court to determine child support payments must be attached to the judgment granting the support.”

ACT RESPECTING THE MINISTÈRE DE LA JUSTICE

51. Section 32.0.3 of the Act respecting the Ministère de la Justice (R.S.Q., chapter M-19) is amended by inserting the following paragraph after paragraph 2:

“(2.1) the amount of the fines paid under sections 24 to 26 of the Act to promote access to justice in family matters (2012, chapter 20);”.

ACT TO FACILITATE THE PAYMENT OF SUPPORT

52. Section 34 of the Act to facilitate the payment of support (R.S.Q., chapter P-2.2) is amended by inserting the following paragraph after the second paragraph:

“As well, where an exemption has been granted for at least two years, the Minister shall return the security to the debtor upon request if the creditor consents and no arrears or fees are owing.”

PUBLIC PROTECTOR ACT

53. Section 15 of the Public Protector Act (R.S.Q., chapter P-32) is amended by adding the following paragraph after paragraph 8:

“(9) SARPA, established under the Act to promote access to justice in family matters (2012, chapter 20).”

CHAPTER IX

TRANSITIONAL AND FINAL PROVISIONS

54. The child support determination forms produced by the parties in a proceeding that ended before section 46 came into force are kept in the court records in accordance with article 331.9 of the Code of Civil Procedure (R.S.Q., chapter C-25) as it read before being amended by section 46.

55. Despite the fourth paragraph of section 80, the first regulation made after the coming into force of sections 29 to 41 under subparagraphs *e* and *n* of the first paragraph of section 80 of the Act respecting legal aid and the provision of certain other legal services (R.S.Q., chapter A-14) must be made by the Government.

56. This Act may be cited as the Act to promote access to justice through the establishment of the Service administratif de rajustement des pensions alimentaires pour enfants.

57. The provisions of this Act come into force on the date or dates set by the Government, except sections 43, 44, 52 and 55, which come into force on 15 June 2012.