

An Act to facilitate the payment of support (S.Q. 1995, c. 18)

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What is the origin of this automatic collection regulation?

On May 11, 1995, the National Assembly passed the *Act to facilitate the payment of support*, which was assented to on May 16, 1995. Different sections of this Act came into force at different dates.

The new regulation instituted by the Act ensures the execution of a judgment awarding support by automatic collection and payment of the awarded support.

To whom does the Act apply?

The Act applies to persons who should receive or are receiving, for the first time, support payments awarded by a judgment rendered on or after December 1, 1995 or persons in whose favour a judgment awarding support was rendered prior to this date if the two parties file a joint application for automatic collection of support.

How is one exempted from the application of the Act?

The court may exempt a debtor of support from his/her obligation to make support payments, including arrears, directly to the Minister of Revenue in the following cases:

if the debtor of support establishes a trust guaranteeing the payment of the support and sends a copy of the trust deed to the Minister of Revenue, within thirty (30) days after the judgment is rendered;

or

if the parties file a joint application therefor and the court is satisfied that they have given their free and enlightened consent,

and the debtor provides the Minister of Revenue with sufficient security to guarantee support payments for one (1) month, within ten (10) days after the judgment is rendered.

What is the term of the exemption?

The exemption thus granted by the court shall cease to have effect for the duration of the obligation of support:

1. where the Minister ascertains that the debtor of support has failed to establish a trust or provide the security;

2. where the Minister ascertains, on application by the creditor of support, that the debtor has failed to make a support payment on the due date;
3. where the parties file a joint application therefor.

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How is the automatic collection of support put into effect?

As of December 1, 1995, any judgment awarding support or revising a judgment awarding support, as well as any other relevant information, shall be entered by the clerk of the court in the support register and filed, together with sworn statements as provided for in Art.827.5 of the *Code of Civil Procedure*, with the Minister of Revenue.

The sworn statement required for each party must contain the following information:

1. file number at the Superior Court;
2. name of the applicant and name of the respondent;
3. name at birth of the applicant and of the respondent, if different from 2 above;
4. sex;
5. preferred language of communication;
6. residential address and telephone number where the party can be reached at home and/or at work;
7. date of birth;
8. social insurance number;
9. employment status: salaried employee or self-employed;
10. work address
11. salary and other income;
12. file number at the Ministère de la Solidarité sociale, if the party is receiving benefits under the *Act respecting income security* (R.S.Q., c. S-3.1.1);
13. name at birth of the declarant's mother;
14. other names used by the declarant;
15. nature and date of the application in support of which the statement is attached;

16. file number of the Superior Court judgment, or if it is an application for revision of support, date of original judgment and file number, if necessary.

How to collect support?

The Act provides for two modes of collecting support which are applicable concurrently: deduction at source and payment order.

What is collection by deduction at source?

Where an amount is paid periodically to the debtor of support by a person, a general partnership, limited partnership, joint venture or an association, the Minister may collect support payments by means of a deduction at source from the following amounts and in the following order:

1. salary, wages or other remuneration;
2. fees or advances on remuneration, fees or profits;
3. benefits granted under an Act respecting a pension plan or compensation plan;
4. other amounts provided for under regulation.

From what other amounts can support be deducted at source?

The Regulation respecting the collection of support also provides for a deduction at source from the following:

1. employment insurance benefits or benefits from a supplementary unemployment benefit plan;

2. disability benefits payable under a health or accident insurance contract;
3. benefits payable under a private pension plan;
4. amounts payable under a profit-sharing plan;
5. retirement allowances or severance pay;
6. payments of an annuity constituted by contract, judgment or will, including an annuity issued by an insurer.

However, no deduction at source may be made for the above-listed amounts if they are paid to the debtor of support less than once a month.

Note: A judgment rendered by the Superior Court on September 11, 1998 states that a physician whose salary is paid entirely by the Régie de l'Assurance-Maladie du Québec is not considered as being self-employed for the purposes of this Act. Consequently, collection of support by means of a deduction at source may be made from his/her salary, thereby discharging the debtor of support from providing a security equivalent to three (3) months support payment, as is generally the case for self-employed persons.¹

How does the deduction at source work?

Any person paying an amount periodically to a debtor of support must, upon request, provide all information concerning the amount, and enabling the portion that may be deducted at source to be determined, to the Minister of Revenue. If a person declares that the debtor of support is in his/her employ without remuneration or if the remuneration declared is clearly less than the value of the services rendered, the Minister may evaluate those services and set a fair remuneration which shall then be considered as the amount paid periodically to the debtor of support.

¹ Tran vs. Malo and RAMQ 200-05-009822-987

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What is the responsibility of the person making the deduction at source?

The debtor and his/her employer or any person paying an amount periodically to the debtor of support is jointly and severally responsible for the deduction at source, as for income taxes. A deduction at source is binding for as long as the amount from which it is made is paid periodically to the debtor.

For example, an employer or an insurance company failing to remit the amount deducted at source to the Minister of Revenue may be seized of the portion payable as support.

Moreover, any person who receives a deduction notice shall notify the Minister of Revenue of any seizure or garnishment that is binding with respect to the debtor of support or any other seizure or garnishment served on him/her after receipt of the deduction notice.

What is collection by payment order?

The Minister of Revenue shall collect support by means of payment order:

1. in the absence of an amount from which a deduction at source may be made;
2. for the balance owing, if the amount deducted at source is less than the amount of support;
3. at the request of the debtor of support receiving an amount periodically, provided that there are no arrears.

In all cases, support payments shall be paid by the debtor of support into the *Fonds des pensions alimentaires* (the Fund) established at the Ministère du Revenu, and the debtor shall provide and maintain a security guaranteeing support payments or payment of the balance owing, as the case may be, for three (3) months.

What does the security consist of?

The Regulation respecting the collection of support stipulates that the security may be provided in the form of:

1. a sum of money;
2. a security contract issued by a financial institution having its head office or a place of business in the province of Québec;
3. a certificate of deposit with a financial institution having its head office or a place of business in the province of Québec;
4. a bond, note or other similar title issued or guaranteed by the State, by another government in Canada or by a legal person established in the public interest;
5. a written pledge, authorized by a financial institution having its head office or a place of business in the province of Québec, to pay the amount of the security to the Minister of Revenue, upon request;
6. a written pledge from a lawyer or notary to pay the amount of the security irrevocably held in trust to the Minister of Revenue, upon request.

The securities provided for in 3 and 4 above shall be free of any encumbrance or charge with respect to a third party.

A debtor of support who fails to provide or maintain the required security shall be deemed not to have made a support payment on the due date, and shall be subject to a deduction at source, where possible.

When will the creditor of support receive support payments?

The Minister of Revenue shall pay the creditor of support amounts of support twice (2) a month from the Fund established at the Ministère.

Until the mechanism is fully in force, the Minister may, however, in the cases and on the conditions provided for by regulation, pay the creditor of support amounts up to a maximum of \$1,500 in lieu of support payments for a period not exceeding three (3) months.

Who is responsible for recovering support amounts and arrears?

Any person owing an amount under this Act shall pay the amount within ten (10) days after receiving a request for payment from the Minister.

The recovery measures available to the Minister are quite extensive. The Minister may serve written notice requiring a person who, within one (1) year after the date of said notice, is bound to make a payment to a debtor of support to pay all or part of the amount payable to the creditor of support at the time when the amount becomes due.

The same applies in the case of a payment to be made to a secured creditor of the debtor of support or to the transferee of a debt transferred by the debtor of support where the payment would be made to the debtor, if the security or transfer did not exist.

This means that the Minister of Revenue may require a financial institution to which the debtor of support has provided a security for his/her debt, and which has not yet paid its consideration of the debt to pay all or part of the consideration to the Minister, upon written request.

The Minister may also serve written notice requiring a person other than a financial institution who, within one (1) year after the date of the said notice, must lend or advance an amount to a debtor of support or pay an amount for the debtor to pay all or part of the amount to the Minister.

Also, in order to recover an amount owing by the debtor of support, the Minister may acquire and alienate any property belonging to the debtor and offer it for sale or charge it with a legal hypothec with respect to the creditor of support, in accordance with the provisions of Art. 2730 of the *Civil Code of Québec*.

Moreover, where the debtor of support is also the creditor or recipient of an amount payable by a public body, the Minister may appropriate all or part of the amount to pay the support debt of the debtor.

Can the application of these collection measures be contested?

In fact, the debtor of support, the person (employer, insurance company or other) who is presumed to be paying him/her a remuneration or any person to whom a request for payment is transmitted may contest the application of these measures by means of a motion filed with the Superior

Court. However, the exercise of such recourse for contestation shall not prevent the Minister from collecting and making support payments, unless a judge orders otherwise.

It should also be noted that the *Act respecting labour standards* has been amended to include the provision that no one, under penalty of damages with interest, shall refuse to employ a debtor of support on the ground that he/she is subject to the provisions of the *Act to facilitate the payment of support*.

Indeed, this Act has important ramifications not only for debtors of support, but for any employer, financial institution, lender or any person owing an amount to a debtor of support.

In conclusion, it is worth mentioning that this Act was not only the subject of controversy when it was passed, but it has also been discredited for numerous errors and failings in its application.

It has been noted, however, that the delay for processing new applications has improved considerably: from 144 days last year to 30 days in June this year.

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