



## CHECKLIST

### ADDITIONAL INFORMATION

## It's Time to Settle My Debts

### You're drowning under a mountain of debt

- **Prepare a budget to identify your essential expenses. Check whether you are eligible for government financial aid (housing allowance, work premium, child assistance, etc.). Stop using your credit cards.**

There are many resources to help you learn how to make a budget and properly manage your expenses. Among others, your local Association coopérative d'économie familiale (ACEF) can lend a hand.

The Government of Québec offers financial assistance programs of which you may be able to take advantage.

The use of credit cards may bring with it nasty surprises, especially when you are unable to pay the entire balance at the end of the month. No longer buying things on credit is an effective means to restore your financial situation and slowly stop the spiral of indebtedness. The magic formula Buy today and pay later can lead to impoverishment.

- **If you are unable to pay the full balance on your credit cards, you can group your debts together by consolidating them with one financial institution. In this way, you will only have to make one payment a month and the interest rate will be lower than the interest rate under your various credit cards.**

Choosing to consolidate your debts is a good solution to indebtedness. However, not all debts can be grouped together under a consolidation loan. For example, a mortgage cannot be included. Check with your financial institution

In order to get a consolidation loan, you must have an acceptable credit rating as well as sufficient income to prove that you will be able to manage the loan (this means you must prove your ability to make the monthly payments on the consolidation loan in addition to paying your regular expenses and monthly bills).

If you have a bad credit rating, this will reduce your ability to obtain a consolidation loan. It is therefore advisable to act as soon as possible.

It costs nothing to apply for a loan aimed at consolidating all your debts into one. However, you may be asked to pay a fee to open your file. Ask the financial institution you have chosen about this.

Visit the website of Canada's Office of Consumer Affairs to find out more about debt consolidation: <http://www.ic.gc.ca/eic/site/oca-bc.nsf/eng/ca02156.html>

- **If you apply for a loan and you have a poor credit file, your lender may insist that another individual act as guarantor and thereby agree to pay in your place if you do not repay your loan or if you go bankrupt.**

It is important to know that an individual who agrees to act as a guarantor for a loan undertakes to repay the creditor even if the borrower declares bankruptcy. When the guarantor is a spouse, separation or divorce will not put an end to the guarantee.

- **You can request a copy of your credit file from a credit agency and, if applicable, have any inaccurate information contained in your file corrected.**

When they grant credit or issue credit cards, banks, credit unions and businesses send credit agencies documented information about the financial transactions they are carrying out with you. This information constitutes your credit file which is used by lenders to assess your financial health.

Firms that collect, hold, use or communicate personal information about you to banks, credit unions and businesses are governed by the **Act respecting the protection of personal information in the private sector** (R.S.Q., c. P-39.1).

The purpose of this statute is to establish particular rules with respect to personal information relating to other persons which a person collects, holds, uses or communicates to third persons in the course of carrying on an enterprise.

The statute imposes obligations on these persons in order to protect your privacy and guarantee your right to access your credit file.

A credit agency must, at your request, confirm that it holds a file about you and communicate to you any personal information concerning you. You can request a copy of your credit file.

If applicable, you can have any inaccurate information corrected. However, a poor credit rating will not be removed if it has been attributed in an objective manner and is justified by the content of the file. Only the factual information in your file may be corrected. Your request for access or rectification must be in writing and you must prove that you are the person concerned. Access to the personal information contained in your file is free of charge. However, a reasonable charge may be required for the transcription, reproduction or transmission of the information. An agency that intends to impose such a charge must inform you of the approximate amount before proceeding with the transcription, reproduction or transmission of the information. If the credit agency grants your request for rectification, it

must issue to you, free of charge, a copy of any personal information that has been modified or added or, as the case may be, confirm to you that personal information has been deleted.

In the event of a disagreement between you and a credit agency, you can contact the Commission d'accès à l'information. Among other things, this organization ensures the protection of personal information about you held by private firms and it protects your right to access your file as well as your right to request the rectification of information contained in the file.

## **One of your creditors is hounding you**

A creditor is a person to whom you owe money. Creditors routinely use collection agencies to collect the amounts owed to them. These agencies are paid by the creditors. The collection agent contacts the debtor, the person who owes the debt, in order to obtain payment.

The *Act respecting the collection of certain debts* was adopted in order to regulate the activities of collection agents and creditors so as to prohibit practices considered to constitute intimidation or harassment. In general, it prohibits collection agents and creditors from making any false or misleading representations.

- **To put a stop to repeated telephone calls from a collection agent, send him a letter asking him to contact you only in writing.**

It prohibits a collection agent from communicating verbally with a debtor who has sent the collection agent a written notice asking him to communicate with the debtor only in writing. However, your creditor can communicate directly with you unless you have notified him in writing to contact your legal advisor, who may be a legal aid lawyer.

- **A creditor is not allowed to harass or intimidate you (e.g. : threaten a lawsuit or arrest). If your creditor harasses you, you can sue him. He is not allowed to intimidate your family, your circle of friends or your employer.**

A collection agent who threatens to seize a debtor's house or property unless he receives full payment of the debt is in violation of the law.

A collection agent or creditor who violates the *Act respecting the collection of certain debts* or one of its regulations may be fined. He may also be ordered to pay you damages.

- **If you have signed a guarantee on behalf of another person, that person's creditor is allowed to contact you since you have assumed a financial commitment in favour of the creditor.**

Given that the guarantor, also referred to as the surety, may be called upon to pay the debt, the creditor can contact the guarantor.

➤ **Never pay a greater amount than what you owe.**

The *Act respecting the collection of certain debts* prohibits collection agents and creditors from collecting or claiming from a debtor a sum of money greater than that which is due, particularly as a collection fee or in consideration for giving the debtor additional time to make the payment.

➤ **As soon as you receive a formal demand, contact a legal aid lawyer to find out what recourses are available to you.**

The lawyer will discuss solutions to put your financial situation back on track or avoid proceedings before the courts. Quick action is generally advisable and allows you to determine if the claim is well founded.

➤ **There are several ways to put your financial situation back on track and avoid legal proceedings: voluntary deposit, consumer proposal, negotiations with creditors, bankruptcy, etc. The lawyers at legal aid can advise you. Do not hesitate to consult them.**

Voluntary deposit, a measure provided for in the *Code of Civil Procedure*, allows you to pay your debts by voluntarily depositing in court the seizable portion of your wages which is then distributed to your various creditors in proportion to the amount of the debts. If you respect this commitment, your creditors will not be able to seize your wages or your income as a self-employed worker. However, if a garnishment (seizure of wages) already exists, the provisions of voluntary deposit will not apply.

Voluntary deposit also protects you from the seizure of the moveable property that furnishes your main residence and is used by and necessary for the life of your household, such as your refrigerator, stove, table, chairs, bed, etc. Furthermore, by using voluntary deposit to settle your debts, you will only pay 5% interest on those debts, regardless of who your creditors are.

A consumer proposal is another option. This is an arrangement with your creditors in which you propose to pay back part of your debts or to extend the period of time for repayment. You must use the services of a trustee to file the proposal.

Finally, the solution may be bankruptcy. In a bankruptcy, a trustee sells your property and distributes the money to your creditors. However, certain debts are not erased by a bankruptcy, such as arrears of support, student loans if the bankruptcy occurs less than 7 years after the end of the studies and debts incurred for property obtained through fraud or misrepresentation.

## **Your creditor has your back up against a wall**

- **You will receive a formal demand from your creditor before any legal proceedings are initiated.**

A formal demand is an official request for payment and an attempt by a creditor or collection agency to receive what is owed before legal proceedings are initiated. It is not obligatory and its absence will not deprive a creditor from his right to initiate proceedings.

- **As soon as you receive legal proceedings, consult a legal aid lawyer or go to the courthouse in order to find out what steps you must take. Make sure you act in time so as not to lose your rights (appearance, attendance in court, etc.).**

In principle, the proceedings will be served on you by a bailiff who will indicate on the minutes that you have received the document. Upon permission from an officer of the court, the proceedings may be delivered by other means, such as by mail.

All legal proceedings must contain a notice informing the individual being sued of the deadline for responding. Read the *Notice to the defendant* carefully, because it may indicate several deadlines that must be met.

It is very important to act within the deadlines mentioned in the notice, otherwise the judge hearing the case will assume that you agree with the claim. The notice also states that a party may request the transfer of the case to the Small Claims Court.

- **If the value of the contract or the amount claimed is \$7,000 or less, ask for your case to be transferred to the Small Claims Court that serves your domicile. This is a court where people represent themselves, without a lawyer, and where the costs are much lower.**

It is preferable to settle your differences in Small Claims Court given that the costs of a case there are significantly lower. The website of the Ministère de la Justice contains complete information on how a case progresses through Small Claims Court:

<http://www.justice.gouv.qc.ca/english/publications/generale/creance-a.htm>.

- **If your creditor obtains a judgment ordering you to pay him the amounts claimed, he could seize your property, your car, your wages or even your house, in certain cases. If you are summoned to court, you will also have to answer the creditor's questions regarding your property and sources of income.**

A creditor may send you a *subpoena* in order to examine you at the courthouse. At the examination, you will have to provide information on your property, your income and, in particular, your bank accounts.

If you fail to pay the sums owed under the judgment, your creditor will have the right to seize your property and have it sold, up to the amount of the judgment and the costs awarded. However, certain property cannot be seized.

- **You should know that the property required for everyday life is protected by law and cannot be seized to pay back your debts (furniture, food, clothing, support payments, the unseizable portion of your wages, etc.). If your property or income is seized, you can contest the seizure. Consult a legal aid lawyer without delay.**

The movable property which furnishes your main residence and is used by and necessary for the life of your household is exempt from seizure, up to a value of \$6,000. It is up to you, as the person whose property is being seized, to choose from among this movable property which items you wish to keep. However, an unpaid vendor of moveable property purchased on credit who has obtained a judgment may have the moveable property sold.

If you think the bailiff has seized moveable property that is used for the household and satisfies the need criterion, you can oppose the seizure. Such oppositions are frequent before the courts. In determining what moveable property is a necessity of life, judges generally do not limit such property to the bare minimum; rather, they consider that such property includes all the basic elements required for a normal life at a given period in time. The court will consider whether the item is necessary not just for the person's survival, but to satisfy the requirements of a normal life similar to the lives led by other citizens.

For example, in 1994 a judge ruled that a television set as well as a modest stereo set were items necessary to satisfy the need for information, culture and recreation. As for the VCR, the judge concluded that it was part of modern-day life and constituted a necessity of life. However, the microwave oven was not considered to be a necessity of life

In 2004, however, a microwave oven was considered to be an item which it is difficult to do without in one's daily life. Furthermore, a computer and its accessories as well as a photocopier were ruled unseizable, because their use was essential for the debtor's two children who lived with him and attended university.

## **Other facts about seizures**

**The instruments of work needed for the personal exercise of a professional activity are exempt from seizure.**

For example, the courts have decided that:

- a taxi and taxi permit are unseizable because they are essential for the exercise of the profession;
- the tools of a handyman are unseizable;

- the automobile of a delivery person is unseizable because it is necessary for the personal exercise of a professional activity;
- the automobile of a lawyer who practises criminal law is seizable. It is useful for meeting with clients in police stations and in prisons, but it is not necessary for the exercise of the profession. Public transport, taxis and short-term car rentals can be used even if they are not as practical;
- the work instruments necessary for a person who works as a hairdresser and makeup artist, namely products, accessories, case goods, waiting room chairs and a reception desk and chair, are unseizable.

**Property required to compensate for a handicap is exempt from seizure.**

For example, the courts have held that a specially adapted vehicle used to transport a debtor to the hospital, to the doctor and to a rehabilitation centre and used for his everyday needs is unseizable.

**The family residence is protected and cannot be sold for a claim of less than \$10,000.**

However, there are certain exceptions to this unseizability. Your principal residence may be seized for certain debts of less than \$10,000. For example, a hypothecary creditor, a municipality, a school commission and a creditor of support may seize your residence and demand its sale even if the debt is less than \$10,000.

Any interest that accrues after the date of a judgment is not included in determining the value of the debt.

**Government benefits paid to compensate for a lack or absence of income are generally declared to be unseizable.**

When an individual receives a government benefit, the law may provide that the amount received is unseizable. For example, the *Individual and Family Assistance Act* provides that benefits are unseizable. Several other statutes have similar provisions, such as the *Automobile Insurance Act*, the *Employment Insurance Act*, the *Act respecting the Québec Pension Plan* and the *Old Age Security Act*.

**Unseizable benefits that are deposited in a bank may remain unseizable.**

Creditors often try to get paid by seizing the sums deposited in their debtor's bank account. The widespread use of direct deposits has resulted in unseizable sums being deposited in bank accounts and being seized even if they are unseizable. These sums continue to be unseizable if it is possible to identify them accurately. It is often possible to obtain the release of these sums by filing an opposition to seizure in court.

Just like creditors, financial institutions cannot pay themselves from the unseizable sums of money entrusted to them.