BRIEF
FROM THE QUEBEC BAR

Bill C-37, An Act to amend the Controlled Drugs and Substances Act and to make related amendments to other Acts

March 24, 2017

Quebec Bar

Mission of the Quebec Bar

To ensure the protection of the public, the Quebec Bar oversees professional legal practice, promotes the rule of law, enhances the image of the profession and supports members in their practice.

Acknowledgements

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Published in March 2017 by the Quebec Bar

ISBN (PDF): 978-2-923840-71-0

Legal deposit—Bibliothèque et Archives nationales du Québec, 2017
Legal deposit—Library and Archives Canada, 2017

Overview of the Quebec Bar's position

- ✓ **The Quebec Bar supports simplifying the process of applying for an exemption that would allow certain activities to take place at a supervised consumption site (SCS).**

We believe the amendments proposed in the bill to make it easier for SCSs to obtain an exemption to carry out their activities are consistent with the Supreme Court of Canada's decision in the *Insite* case. More specifically, the criteria SCSs must meet to apply for an exemption under the *Controlled Drugs and Substances Act* (CDSA) concord with the prerogatives of user and community safety and crime prevention, which underlie the Court's reasoning in *Insite*.

- ✓ **The Quebec Bar has concerns regarding the effects of the new power granted to the federal Minister of Health to amend Schedule V of the CDSA merely by order.**

We understand the government's legitimate need to give itself the means to adapt and to quickly regulate new drugs or variants of existing drugs that are available on the market.

However, the general principle that defining what conduct is to be criminally prohibited is a power of Parliament under the *Constitution Act, 1867*, not of executive branch officials, must not be forgotten. In this case, such a power must be exercised only in exceptional circumstances, and we believe the bill should be explicit in this regard.

- ✓ **The Quebec Bar has concerns regarding the effects of expanding the offence of possession, etc., for use in production or trafficking.**

The proposed amendment to section 7.1 of the CDSA would effectively eliminate the need for the proscribed consequences of the physical element of the offence to actually occur. The physical element proscribed by the proposed provision would cover a wide range of situations, as it prohibits the possession, sale, etc., of "anything", even everyday objects. The Quebec Bar questions the proportionality of the proposed measure.

- ✓ **The Quebec Bar has concerns regarding the creation of an administrative monetary penalties scheme for violations of regulations made under the CDSA.**

While the proposed new scheme does not provide for true penal consequences, it would significantly affect the rights of those who are penalized. In this context, it is important to respect the principles of natural justice. This bill respects some, but not all, of these principles. For example, the proposed scheme would reduce some protections and eliminate important defences present in the current framework that should be retained in the CDSA.

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INTRODUCTION

Bill C-37, An Act to amend the Controlled Drugs and Substances Act and to make related amendments to other Acts, was introduced at first reading on December 12, 2016, by the Honourable Jane Philpott, Minister of Health.

The bill amends the *Controlled Drugs and Substances Act* (CDSA) to, among other things:

1) simplify the process of applying for an exemption that would allow certain activities to take place at a supervised consumption site, as well as the process of applying for subsequent exemptions;

2) expand the offence of possession, production, sale or importation of anything knowing that it will be used to produce or traffic in methamphetamine so that it applies to anything that is intended to be used to produce or traffic in any controlled substance;

3) authorize the Minister to temporarily add to a schedule to that Act substances that the Minister has reasonable grounds to believe pose a significant risk to public health or safety, in order to control them;

4) replace the scheme of administrative orders for contraventions of designated regulations with an administrative monetary penalties scheme;

5) modernize the powers of the inspectors appointed by the Minister of Health to ensure compliance with the CDSA; and

6) expand certain regulation-making authorities, including in respect of the collection, use, retention, disclosure and disposal of information whose communication is the responsibility of the persons authorized by the CDSA to conduct activities in relation to controlled substances.

The bill also makes related amendments to the *Customs Act* and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to repeal provisions that prevent customs officers from opening mail that weighs 30 grams or less.

It also makes other related amendments to the *Criminal Code* and the *Seized Property Management Act*.

The Quebec Bar has reviewed the bill and hereby submits its comments.

1. THE QUEBEC BAR SUPPORTS SIMPLIFYING THE PROCESS OF APPLYING FOR AN EXEMPTION THAT WOULD ALLOW CERTAIN ACTIVITIES TO TAKE PLACE AT A SUPERVISED CONSUMPTION SITE

Clauses 41 and 42 amending sections 56(2) and 56.1 of the CDSA

Exemption by Minister

56 (1) The Minister may, on any terms and conditions that the Minister considers necessary, exempt from the application of all or any of the provisions of this Act or the regulations any person or class of persons or any controlled substance or precursor or any class of either of them if, in the opinion of the Minister, the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest.

Exception

(2) The Minister is not authorized under subsection (1) to grant an exemption for a medical purpose that would allow activities in relation to a controlled substance or precursor that is obtained in a manner not authorized under this Act to take place at a supervised consumption site.

Exemption for medical purpose — supervised consumption site

56.1 (1) For the purpose of allowing certain activities to take place at a supervised consumption site, the Minister may, on any terms and conditions that the Minister considers necessary, exempt the following from the application of all or any of the provisions of this Act or the regulations if, in the opinion of the Minister, the exemption is necessary for a medical purpose:

(a) any person or class of persons in relation to a controlled substance or precursor that is obtained in a manner not authorized under this Act; or

(b) any controlled substance or precursor or any class of either of them that is obtained in a manner not authorized under this Act.

Application

(2) An application for an exemption under subsection (1) shall include information, submitted in the form and manner determined by the Minister, regarding the intended public health benefits of the site and information, if any, related to

(a) the impact of the site on crime rates;

(b) the local conditions indicating a need for the site;

(c) the administrative structure in place to support the site;

(d) the resources available to support the maintenance of the site; and

(e) expressions of community support or opposition.

Subsequent application

(3) An application for an exemption under subsection (1) that would allow certain activities to continue to take place at a supervised consumption site shall include any update to the information provided to the Minister since the previous exemption was granted, including any information related to the public health impacts of the activities at the site.

Notice

(4) The Minister may give notice, in the form and manner determined by the Minister, of any application for an exemption under subsection (1). The notice shall indicate the period of time — not to exceed 90 days — in which members of the public may provide the Minister with comments.

Public decision

(5) After making a decision under subsection (1), the Minister shall, in writing, make the decision public and, if the decision is a refusal, include the reasons for it.

The Insite supervised consumption site (SCS) is the very first facility of its kind approved by a North American government. It was established in Vancouver in 2003 and has been operating continuously ever since.

In 2011, after Insite challenged the constitutionality of the CDSA (on jurisdictional grounds), the Supreme Court of Canada confirmed that Insite was not exempt from the application of this legislation and that the exemption provided in section 56 of the CDSA was needed for it to continue its activities, which would otherwise be considered illegal.[1] Nonetheless, the Supreme Court concluded that the activities of this SCS were necessary to reduce the health risks associated with injection drug use. Accordingly, the refusal of the federal Minister of Health to grant injection drug users access to these services threatened their health and constituted a violation of their rights to life, liberty and security set out in section 7 of the *Canadian Charter of Rights and Freedoms*. In 2015, the government introduced Bill C-2, the *Respect for Communities Act*, to amend the CDSA to make the exemption process more onerous for applicants.[2] The bill came into force in 2015 and remains in effect today.

The amendments proposed in the bill to make the process for obtaining the exemption that SCSs need to carry out their activities seem consistent with the spirit of the Supreme Court's

[1] *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44.
[2] *An Act to amend the Controlled Drugs and Substances Act*, introduced on October 17, 2013, by the Honourable Rona Ambrose, Minister of Health.

decision in the *Insite* case. More specifically, the criteria SCSs must meet to apply for an exemption under the CDSA concord with the prerogatives of user and community safety and crime prevention, which underlie the Court's reasoning in *Insite*. On this point, the Supreme Court stated the following:

> It is a strictly regulated health facility, and its personnel are guided by strict policies and procedures. It does not provide drugs to its clients, who must check in, sign a waiver, and are closely monitored during and after injection. Its clients are provided with health care information, counselling, and referrals to various service providers or an on-site, on demand detox centre. The experiment has proven successful. Insite has saved lives and improved health without increasing the incidence of drug use and crime in the surrounding area. It is supported by the Vancouver police, the city and provincial governments.

Furthermore, we believe that sections 56 and 56.1 of the CDSA as amended by the bill are more consistent with the Supreme Court's reasoning in the *Insite* case than the current wording, as amended in 2015 by the *Respect for Communities Act*.

2. THE QUEBEC BAR HAS CONCERNS REGARDING THE EFFECTS OF THE NEW POWER GRANTED TO THE FEDERAL MINISTER OF HEALTH TO AMEND SCHEDULE V OF THE CDSA MERELY BY ORDER

Clause 45 amending section 60 of the CDSA

45 Section 60 of the Act is replaced by the following:

Schedules

60 The Governor in Council may, by order, amend any of Schedules I to IV and VI to IX by adding to them or deleting from them any item or portion of an item, if the Governor in Council considers the amendment to be necessary in the public interest.

Schedule V

60.1 (1) The Minister may, by order, add to Schedule V any item or portion of an item for a period of up to one year, or extend that period by up to another year, if the Minister has reasonable grounds to believe that it

(a) poses a significant risk to public health or safety; or

(b) may pose a risk to public health or safety and

(i) is being imported into Canada with no legitimate purpose, or

(ii) is being distributed in Canada with no legitimate purpose.

Deletions

(2) The Minister may, by order, delete any item or portion of an item from Schedule V.

The schedules of the CDSA currently set out the drugs, precursors and analogous substances that are associated with criminal offences. Different schedules of the CDSA are referred to depending on the alleged offence and the type of drug in question.

Under clause 45, Schedule V would become a list of substances included on a temporary basis, for at most two years, that can give rise to offences such as production[3] and trafficking[4] or

[3] Clause 5(1).
[4] Clause 3(1).

possession for the purpose of trafficking[5] that are, in every case, liable to imprisonment for a term of not more than 10 years.[6]

We understand the government's legitimate need to give itself the means to adapt and to quickly regulate new drugs or variants of existing drugs that are available on the market.

However, the general principle that defining what conduct is to be criminally prohibited is a power of Parliament under the *Constitution Act, 1867*, not of executive branch officials, must not be forgotten.[7] In this case, such a power must be exercised only in exceptional circumstances, and we believe the bill should be explicit in this regard. We also believe it essential to provide a procedure for advertising the changes made to Schedule V under this power. The procedure should be tailored to the government's needs and ensure adequate legal predictability for the public.

[5] Clause 3(1).
[6] Clauses 3(3) and 5(4).
[7] 30 & 31 Victoria, c. 3 (U.K.), s. 91(27). See also *R. v. D.L.W.*, [2016] 1 SCR 402, para. 3: "…changes to the scope of criminal liability must be made by Parliament…".

3. THE QUEBEC BAR HAS CONCERNS REGARDING THE EFFECTS OF EXPANDING THE OFFENCE OF POSSESSION, SALE, ETC., FOR USE IN PRODUCTION OR TRAFFICKING

Clause 6 amending section 7.1 of the CDSA

Possession, sale, etc., for use in production of or trafficking in substance

7.1 (1) No person shall possess, produce, sell, import or transport anything intending that it will be used

(a) to produce a controlled substance, unless the production of the controlled substance is lawfully authorized; or

(b) to traffic in a controlled substance.

Punishment

(2) Every person who contravenes subsection (1)

(a) if the subject matter of the offence is a substance included in Schedule I, II, III or V,

(i) is guilty of an indictable offence and liable to imprisonment for a term of not more than 10 years, or

(ii) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term of not more than 18 months; and

(b) if the subject matter of the offence is a substance included in Schedule IV,

(i) is guilty of an indictable offence and liable to imprisonment for a term of not more than three years, or

(ii) is guilty of an offence punishable on summary conviction and liable to imprisonment for a term of not more than one year.

The bill would expand the scope of the offence set out in section 7.1 of the CDSA by making the criterion "knowing that [the thing] will be used to produce or traffic in [methamphetamine]" broader: "intending that [the thing] will be used to produce or traffic in a controlled substance".

In Canada, most specific intent offences can be easily identified, as Parliament generally uses phrases such as "for the purpose of", "with intent to" and "in order to" in respect of the

primary action. In such cases, the prosecution has to show intent relative to that specific purpose.[8]

The Supreme Court of Canada has ruled[9] on the appropriate interpretation of the phrases "knowing that" and "with intent"[10] in the *Criminal Code* and confirmed that the element of fault required by this phrase lies in subjective foresight of the proscribed consequences.[11]

The proposed amendment therefore would not amend the specific intent of the offence set out in section 7.1 of the CDSA, but rather eliminate the need for the proscribed consequences of the physical element of the offence to actually occur. As a result, the physical element proscribed by the proposed provision would cover a wide range of situations, as it prohibits the possession, sale, etc., of "anything", even everyday objects.

It is true that legal doctrine holds that the accused's recklessness or negligence respecting these consequences is therefore not sufficient to create criminal liability when prosecuted for a specific intent offence.[12] However, new section 7.1 of the CDSA is broadly drafted, and the Quebec Bar questions the proportionality of the new measure.

[8] Hugues PARENT, *Traité de droit criminel*, Volume II, "La culpabilité," p. 193, para. 265 [in French only].
[9] *R. v. A.D.H.*, [2013] 2 SCR 269, para. 135.
[10] *R. v. A.D.H.*, [2013] 2 SCR 269, para. 16.
[11] We did not find any relevant case law on this issue for the CDSA.
[12] PARENT, *Traité de droit criminel*, Note 8, p. 200, para. 273. By analogy with section 282(1) of the *Criminal Code* (abduction of a person under the age of 14 in contravention of a custody order).

4. THE QUEBEC BAR HAS CONCERNS REGARDING THE CREATION OF AN ADMINISTRATIVE MONETARY PENALTIES SCHEME FOR VIOLATIONS OF REGULATIONS MADE UNDER THE CDSA

Clause 28 amending Part V of the CDSA

See Appendix.

Under the CDSA, the Governor in Council may designate any regulation made under the Act as a "designated regulation".[13] Currently, contravention of a designated regulation may result in the Governor in Council making an interim order without giving prior notice.[14] This order may constrain alleged contraveners in several ways, including by prohibiting them from doing certain activities, cancelling their permits and subjecting them to conditions. The subsequent procedure is adjudication, and the decision to maintain the order or not is therefore final, until a revocation is obtained or ordered by the Minister of Health.

The bill would replace this system with a scheme of monetary penalties of up to $30,000,[15] although violations that continue for more than one day are counted as distinct violations for each day they continue.[16] The new scheme includes presumptions of liability for the alleged violator[17] and the alleged violator's employer or mandatary,[18] presumptions of being a party to the violation for the directors, officers, agents or mandataries of a legal person,[19] and the exclusion of certain defences, namely, due diligence and reasonable and honest belief in the existence of facts that would exonerate the alleged violator.[20] Taken together, these amount to absolute liability. Lastly, the scheme includes a procedure for review of the facts by the Minister of Health,[21] who must determine, on a balance of probabilities, whether the alleged violator committed the violation.[22]

While the new scheme does not provide for "true penal consequences", it would nonetheless have a significant impact on the rights of those penalized.[23] In this context, it is important to respect the principles of natural justice. This bill respects some, but not all, of these principles. For example, the proposed scheme would reduce some protections and eliminate certain

[13] Section 33 of the CDSA.
[14] Section 35 of the CDSA.
[15] Clause 28.
[16] New section 43.5 of the CDSA, set out in clause 28.
[17] See, for example, new section 38(1) of the CDSA, set out in clause 28.
[18] New section 43.4 of the CDSA, set out in clause 28.
[19] New section 43.3 of the CDSA, set out in clause 28.
[20] New section 43.1 of the CDSA, set out in clause 28.
[21] New section 41 of the CDSA, set out in clause 28.
[22] New section 43.2 of the CDSA, set out in clause 28.
[23] *R. v. Wigglesworth*, [1987] 2 SCR 541.

defences that are present in the current system. The bill should be improved, particularly in the following respects:

(a) Proposed subsection 37(1) should be more specific about the information that will be provided to the person suspected of committing a violation.

(b) Proposed paragraph 38(2)(b) enables the alleged violator to request a review of the alleged violation. However, unlike the current system in which an adjudicator holds a hearing (section 36 of the CDSA), new subsection 41(1) establishes a "file review" system. Moreover, new subsection 41(7) specifies that the "Minister shall consider only written evidence and written submissions". While the right to be heard in administrative matters does not necessarily call for an in-person hearing, such a hearing should be required in order to be consistent with procedural fairness when the alleged violator's credibility is at stake.

(c) Furthermore, it is not clear that the Minister has the desired institutional independence. Even though this is not a criminal matter, the fact remains that the prospect of serious penalties requires that there be a perception of independence and impartiality. In this sense, the current system—which provides that an adjudicator intervene—is more consistent with procedural fairness.

(d) The bill does not specify whether the alleged violator has the right to be represented by a lawyer during these proceedings. This issue is relevant even assuming that the "file review" approach is retained.

(e) The bill does not specify any deadlines for requesting a review or for a making a determination on such a review or on penalties.

(f) The bill should specify that the decision-maker, in making a determination, must provide the reasons for it. Whether it is the Minister or an adjudicator, this role constitutes a "federal board, commission or other tribunal" that is subject to the remedy of judicial review, including by the Federal Court.[24] As a result, decisions must be accompanied by reasons to enable the Court to carry out its review, as the case may be.

(g) Lastly, all forms of absolute liability offences should be removed from the bill by reintroducing the due diligence and reasonable and honest belief defences.[25]

[24] *Federal Courts Act*, R.S.C., 1985, c. F-7, ss. 2(1) and 18(1).
[25] New section 43.1 of the CDSA, set out in clause 28.

APPENDIX

Clause 28 amending Part V of the CDSA

28 Part V of the Act is replaced by the following:

PART V

Administrative Monetary Penalties

Violation

Commission of violation

33 Every person who contravenes a provision designated by regulations made under paragraph 34(1)(a), or contravenes an order made under section 45.1 or 45.2 or reviewed under section 45.4, commits a violation and is liable to the penalty established in accordance with the provisions of this Act and the regulations.

Powers of the Governor in Council and the Minister

Regulations

34 (1) The Governor in Council may make regulations

(a) designating as a violation that may be proceeded with in accordance with this Act the contravention of any specified provision of this Act — except a provision of Part I — or the regulations;

(b) fixing a penalty, or a range of penalties, in respect of each violation;

(c) classifying each violation as a minor violation, a serious violation or a very serious violation; and

(d) respecting the circumstances under which, the criteria by which and the manner in which a penalty may be increased or reduced, including a reduction in the amount that is provided for in a compliance agreement.

Maximum penalty

(2) The maximum penalty for a violation is $30,000.

Criteria for penalty

35 Unless a penalty is fixed under paragraph 34(1)(b), the amount of a penalty shall, in each case, be determined taking into account

(a) the history of compliance with the provisions of this Act or the regulations by the person who committed the violation;

(b) the harm to public health or safety that resulted or could have resulted from the violation;

(c) whether the person made reasonable efforts to mitigate or reverse the violation's effects;

(d) whether the person derived any competitive or economic benefit from the violation; and

(e) any other prescribed criteria.

Notices of violation

36 The Minister may

(a) designate individuals, or classes of individuals, who are authorized to issue notices of violation; and

(b) establish, in respect of each violation, a short-form description to be used in notices of violation.

Proceedings

Issuance of notice of violation

37 (1) If a person who is designated under paragraph 36(a) believes on reasonable grounds that a person has committed a violation, the designated person may issue, and shall provide the person with, a notice of violation that

(a) sets out the person's name;

(b) identifies the alleged violation;

(c) sets out the penalty for the violation that the person is liable to pay; and

(d) sets out the particulars concerning the time and manner of payment.

Summary of rights

(2) A notice of violation shall clearly summarize, in plain language, the named person's rights and obligations under this section and sections 38 to 43.7, including the right to have the acts or omissions that constitute the alleged violation or the amount of the penalty reviewed and the procedure for requesting that review.

Penalties

Payment

38 (1) If the person named in the notice pays, in the prescribed time and manner, the amount of the penalty,

(a) they are deemed to have committed the violation in respect of which the amount is paid;

(b) the Minister shall accept that amount as complete satisfaction of the penalty; and

(c) the proceedings commenced in respect of the violation under section 37 are ended.

Alternatives to payment

(2) Instead of paying the penalty set out in a notice of violation, the person named in the notice may, in the prescribed time and manner,

(a) if the penalty is $5,000 or more, request to enter into a compliance agreement with the Minister that ensures the person's compliance with the order or the provision to which the violation relates; or

(b) request a review by the Minister of the acts or omissions that constitute the alleged violation or the amount of the penalty.

Deeming

(3) If the person named in the notice of violation does not pay the penalty in the prescribed time and manner and does not exercise any right referred to in subsection (2) in the prescribed time and manner, they are deemed to have committed the violation identified in the notice.

Compliance Agreements

Compliance agreements

39 (1) After considering a request under paragraph 38(2)(a), the Minister may enter into a compliance agreement, as described in that paragraph, with the person making the request on any terms and conditions that are satisfactory to the Minister. The terms and conditions may

(a) include a provision for the giving of reasonable security, in a form and in an amount satisfactory to the Minister, as a guarantee that the person will comply with the compliance agreement; and

(b) provide for the reduction, in whole or in part, of the penalty for the violation.

Deeming

(2) A person who enters into a compliance agreement with the Minister is, on doing so, deemed to have committed the violation in respect of which the compliance agreement was entered into.

Notice of compliance

(3) If the Minister is satisfied that a person who has entered into a compliance agreement has complied with it, the Minister shall cause a notice to that effect to be provided to the person, at which time

(a) the proceedings commenced in respect of the violation under section 37 are ended; and

(b) any security given by the person under the compliance agreement shall be returned to the person.

Notice of default

(4) If the Minister is of the opinion that a person who has entered into a compliance agreement has not complied with it, the Minister shall cause a notice of default to be provided to the person to the effect that

(a) instead of the penalty set out in the notice of violation in respect of which the compliance agreement was entered into, the person is liable to pay, in the prescribed time and manner, twice the amount of that penalty, and, for greater certainty, subsection 34(2) does not apply in respect of that amount; or

(b) the security, if any, given by the person under the compliance agreement shall be forfeited to Her Majesty in right of Canada.

Effect of notice of default

(5) Once provided with the notice of default, the person may not deduct from the amount set out in the notice any amount that they spent under the compliance agreement and

(a) the person is liable to pay the amount set out in the notice; or

(b) if the notice provides for the forfeiture of the security given under the compliance agreement, that security is forfeited to Her Majesty in right of Canada and the proceedings commenced in respect of the violation under section 37 are ended.

Effect of payment

(6) If a person pays the amount set out in the notice of default in the prescribed time and manner,

(a) the Minister shall accept the amount as complete satisfaction of the amount owing; and

(b) the proceedings commenced in respect of the violation under section 37 are ended.

Refusal to enter into compliance agreement

40 (1) If the Minister refuses to enter into a compliance agreement requested under paragraph 38(2)(a), the person who made the request is liable to pay the amount of the penalty in the prescribed time and manner.

Effect of payment

(2) If a person pays the amount referred to in subsection (1),

(a) they are deemed to have committed the violation in respect of which the payment is made;

(b) the Minister shall accept the amount as complete satisfaction of the penalty; and

(c) the proceedings commenced in respect of the violation under section 37 are ended.

Deeming
(3) If a person does not pay the amount referred to in subsection (1) in the prescribed time and manner, they are deemed to have committed the violation identified in the notice of violation.

Review by the Minister

Review — facts

41 (1) On completion of a review requested under paragraph 38(2)(b) with respect to the acts or omissions that constitute the alleged violation, the Minister shall determine whether the person who requested the review committed the violation. If the Minister determines that the person committed the violation but that the amount of the penalty was not established in accordance with the provisions of this Act and the regulations, the Minister shall correct the amount.

Violation not committed — effect

(2) If the Minister determines under subsection (1) that the person who requested the review did not commit the violation, the proceedings commenced in respect of it under section 37 are ended.

Review — penalty

(3) On completion of a review requested under paragraph 38(2)(b) with respect to the amount of the penalty, the Minister shall determine whether the amount of the penalty was established in accordance with the provisions of this Act and the regulations and, if not, the Minister shall correct the amount.

Notice of decision

(4) The Minister shall cause a notice of any decision made under subsection (1) or (3) to be provided to the person who requested the review.

Payment

(5) The person is liable to pay, in the prescribed time and manner, the amount of the penalty that is confirmed or corrected in the Minister's decision made under subsection (1) or (3).

Effect of payment

(6) If a person pays the amount referred to in subsection (5),

(a) the Minister shall accept the amount as complete satisfaction of the penalty; and

(b) the proceedings commenced in respect of the violation under section 37 are ended.

Written evidence and submissions

(7) The Minister shall consider only written evidence and written submissions in determining whether a person committed a violation or whether the amount of a penalty was established in accordance with the provisions of this Act and the regulations.

Enforcement

Debts to Her Majesty

42 (1) The following amounts constitute debts due to Her Majesty in right of Canada that may be recovered in the Federal Court:

(a) the amount of a penalty, from the time the notice of violation setting out the penalty is provided;

(b) every amount set out in a compliance agreement entered into with the Minister under subsection 39(1), from the time the compliance agreement is entered into;

(c) the amount set out in a notice of default referred to in subsection 39(4), from the time the notice is provided; and

(d) the amount of a penalty as set out in a decision of the Minister made under subsection 41(1) or (3), from the time the notice of that decision is provided.

Time limit

(2) No proceedings to recover a debt referred to in subsection (1) may be commenced later than five years after the debt became payable.

Debt final

(3) A debt referred to in subsection (1) is final and not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by sections 38 to 41.

Certificate of default

43 (1) Any debt referred to in subsection 42(1) in respect of which there is a default of payment, or the part of any such debt that has not been paid, may be certified by the Minister.

Judgments

(2) On production to the Federal Court, the certificate shall be registered in that Court and, when registered, has the same force and effect, and all proceedings may be taken on the certificate, as if it were a judgment obtained in that Court for a debt of the amount specified in it and all reasonable costs and charges associated with the registration of the certificate.

Rules About Violations

Certain defences not available

43.1 (1) A person named in a notice of violation does not have a defence by reason that the person

(a) exercised due diligence to prevent the violation; or

(b) reasonably and honestly believed in the existence of facts that, if true, would exonerate the person.

Common law principles

(2) Every rule and principle of the common law that renders any circumstance a justification or excuse in relation to a charge for an offence under this Act applies in respect of a violation to the extent that it is not inconsistent with this Act.

Burden of proof

43.2 In every case when the facts of a violation are reviewed by the Minister, he or she shall determine, on a balance of probabilities, whether the person named in the notice of violation committed the violation identified in the notice.

Violation by corporate officers, etc.

43.3 If a person other than an individual commits a violation under this Act, any of the person's directors, officers, agents or mandataries who directed, authorized, assented to, acquiesced in or participated in the commission of the violation is a party to and liable for the violation whether or not the person who actually committed the violation is proceeded against under this Act.

Vicarious liability — acts of employees and agents

43.4 A person is liable for a violation that is committed by any employee, agent or mandatary of the person acting in the course of the employee's employment or the scope of the agent or mandatary's authority, whether or not the employee, agent or mandatary who actually committed the violation is identified or proceeded against under this Act.

Continuing violation

43.5 A violation that is continued on more than one day constitutes a separate violation in respect of each day on which it is continued.

Other Provisions

Evidence

43.6 In any proceeding in respect of a violation or a prosecution for an offence, a notice of violation purporting to be issued under this Act is admissible in evidence without proof of the signature or official character of the person appearing to have signed the notice of violation.

Time limit

43.7 Proceedings in respect of a violation shall not be commenced later than six months after the Minister becomes aware of the acts or omissions that constitute the alleged violation.

How act or omission may be proceeded with

43.8 If an act or omission may be proceeded with either as a violation or as an offence, proceeding in one manner precludes proceeding in the other.

Certification by Minister

43.9 A document appearing to have been issued by the Minister, certifying the day on which the acts or omissions that constitute the alleged violation became known to the Minister, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the document and, in the absence of evidence to the contrary, is proof that the Minister became aware of the acts or omissions on that day.

Publication of information

43.91 The Minister may, for the purpose of encouraging compliance with the provisions of this Act and the regulations, publish information about any violation after proceedings in respect of it are ended.