

# Gazette officielle du Québec

## Part 2 Laws and Regulations

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### Summary

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## Regulations and Other Acts

Gouvernement du Québec

### O.C. 147-98, 4 February 1998

Transport Act  
(R.S.Q., c. T-12)

#### Transport of passengers by water

Regulation respecting the transport of passengers by water

WHEREAS under section 89 of the Transport Act (R.S.Q., c. T-12), the General Order respecting the transport of passengers and goods by water, passed by the Régie des transports du Québec on 1 August 1961, continues to be in force and may be amended by regulation of the Government;

WHEREAS under paragraph *d* of section 5 of the Act, the Government may, by regulation, determine the nature and classes of permits and prescribe the conditions on which a permit may be issued;

WHEREAS it is expedient to revise the regulatory provisions respecting the transport of passengers by water;

WHEREAS it is expedient to fix 1 January 1999 as the date of revocation of the General Order respecting the transport of passengers and goods by water;

WHEREAS in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), a draft of the Regulation respecting the transport of passengers by water was published in Part 2 of the *Gazette officielle du Québec* of 3 April 1996 with a notice that it could be made by the Government upon the expiry of 45 days following that publication;

WHEREAS comments were sent to the Minister of Transport;

WHEREAS it is expedient to make the Regulation with amendments;

IT IS ORDERED, therefore, on the recommendation of the Minister of Transport:

THAT the Regulation respecting the transport of passengers by water, attached to this Order in Council, be made.

MICHEL CARPENTIER,  
*Clerk of the Conseil exécutif*

#### Regulation respecting the transport of passengers by water

Transport Act  
(R.S.Q., c. T-12, s. 5, pars. *c, d, e* and *f*)

**1.** To carry on the remunerated transport of passengers by water, a person shall hold a permit for the transport of passengers by water.

A person who rents out any means of transportation to be used to transport persons by water shall also hold a permit for the transport of passengers by water, except where the lessee or charterer holds such a permit.

**2.** No permit is required to provide the following services:

(1) the rental of a pleasure craft without crew; and

(2) white-water rafting in a non-motorized craft, or any other water sport.

For the purposes of subparagraph 2 of the first paragraph, “water sport” means any physical activity involving the use of a craft on various bodies of water under the supervision of a qualified instructor and entailing some form of training, observance of certain rules, and technical skills or a period of practice.

**3.** The Commission shall issue or transfer a permit for the transport of passengers by water to a person who applies therefor on the form used by the Commission, where it considers that the person meets the following criteria:

(1) he attests that he has a crew possessing the knowledge and experience required for proficiency in the activity for which a permit is applied for;

(2) he submits to the Commission a certificate of insurance attesting that each of the ships for which he is applying for a permit is covered, for the period of valid-

ity of the permit, by a marine civil liability insurance policy (protection and indemnity coverage) with a minimum guarantee limit of \$5 000 000 for ships whose gross tonnage is greater than 5 tons or whose capacity is greater than 12 passengers or a minimum guarantee limit of \$1 000 000 in the case of other ships;

(3) he provides the Commission with a certified true copy of a rider to the insurance policies stipulating that the policies may not be cancelled and that the coverage may not be reduced except where 30 days' notice is officially given in writing to the secretariat of the Commission at its head office;

(4) he establishes that each of the ships to be used in providing the service meets the requirements of the Canadian Steamship Inspection Service. He shall do so by providing a ship inspection certificate issued by Transport Canada in the case of a ship whose gross tonnage is greater than 5 tons or whose capacity is greater than 12 passengers or, in the case of any other ship, a letter of compliance issued by a Transport Canada shipping officer or by a marine expert recognized by Transport Canada, confirming compliance with the regulations respecting small craft and including a notice in respect of the ship's capacity and the crew's ability to carry on the commercial activity in the territory in question; and

(5) he establishes the real and urgent necessity for an additional service for each of the ships to be used, if applicable, where he offers passengers a ferry service competing with another ferry service.

**4.** A permit for the transport of passengers by water authorizes the holder, in accordance with its content, to carry on the remunerated transport of passengers by water and to rent out any means of transportation to be used to transport persons by water.

A ferry service may not be offered to passengers unless it is expressly authorized by the permit.

For the purposes of paragraph 5 of section 3 and the second paragraph of this section, "ferry service" means a transportation service by water for passengers that includes the roll-on/roll-off loading of motor vehicles by the passengers.

**5.** A permit for the transport of passengers by water shall be issued for a maximum period of one year and shall expire on 31 May each year.

**6.** A permit for the transport of passengers by water may be renewed in accordance with section 37.3 of the Transport Act, in the manner in which it was issued and on the same conditions.

Where a permit has not been renewed by 15 June by reason of incomplete documentary evidence in the record, the applicant shall pay to the Commission an additional fee of \$200 and shall complete the record within the time period indicated by the Commission.

Where the documentary evidence in the record is still incomplete at the expiry of the time period indicated, the Commission shall refuse the application for renewal.

**7.** Where the Commission issues, renews or transfers a permit for the transport of passengers by water, it shall indicate the name of each ship to be used for the transport, as well as any conditions or restrictions concerning operation under the permit.

Operation under the permit is conditional on maintaining the competence of the crew, the seaworthiness of the ship and the insurance policy. Those conditions need not be stipulated on the permit.

**8.** Where a change affects the ships used for the transport of passengers by water or the conditions or restrictions concerning operation under the permit, the holder shall have his permit corrected by the Commission prior to continuing with the authorized activities.

Where a change affects the competence of the crew or the insurance policy, the holder of the permit shall so inform the Commission and shall halt his activities until such time as the documentary evidence in the record makes it possible, in the opinion of the Commission, to maintain the permit's validity.

**9.** The holder of a permit for the transport of passengers by water shall at all times have a copy of his permit posted in the boarding area in full view of the public.

**10.** The General Order respecting the transport of passengers and goods by water (R.R.Q., 1981, c. T-12, r. 17) is amended

(1) by striking out the words "passengers and" in the title and sections 1 and 2;

(2) by striking out the words "passengers or" in sections 3, 4, 5, 9, 14, 26 and 33;

(3) by deleting Classes 1-A and 1-B in section 26; and

(4) by deleting paragraph *b* of section 27 and sections 28 and 31.

That Order shall be revoked on 1 January 1999.

**11.** The Commission may issue a permit authorizing an applicant to continue offering a service for transport by water in respect of which he has applied for a permit, and may do so without publication or formality pending its decision on the application, where

(1) the application for a permit pertains to a transport service for which no permit was prescribed before the coming into force of this Regulation;

(2) the applicant provided the service during the summer season preceding the coming into force of this Regulation; and

(3) the application was filed with the Commission within 90 days following the date of coming into force of this Regulation.

**12.** The holder of a Class 1-A or 1-B permit referred to in the General Order respecting the transport of passengers and goods by water may

(1) continue, up to the anticipated date of renewal of the permit, to provide the authorized transport without being required to hold a permit for the transport of passengers by water; or

(2) obtain, upon proof of operation, a new permit for the transport of passengers by water at the time of renewal of the former permit on the conditions set forth in paragraphs 1 to 4 of section 3.

**13.** This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

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Gouvernement du Québec

## O.C. 148-98, 4 February 1998

Transport Act  
(R.S.Q., c. T-12)

### Commission des transports du Québec — Rules of practice and rules for the internal management — Amendments

Regulation to amend the Rules of practice and rules for the internal management of the Commission des transports du Québec

WHEREAS under paragraph *k* of section 5 of the Transport Act (R.S.Q., c. T-12), the Government may, by

regulation, make the rules of practice and the rules for the internal management of the Commission, after consulting it;

WHEREAS in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), the text of the Regulation attached to this Order in Council was published in Part 2 of the *Gazette officielle du Québec* of 3 April 1996 with a notice that it could be made by the Government upon the expiry of 45 days following that publication;

WHEREAS it is expedient to make the Regulation without amendment;

WHEREAS the Commission des transports du Québec was consulted;

IT IS ORDERED, therefore, upon the recommendation of the Minister of Transport:

THAT the Regulation to amend the Rules of practice and rules for the internal management of the Commission des transports du Québec, attached to this Order in Council, be made.

MICHEL CARPENTIER,  
*Clerk of the Conseil exécutif*

## Regulation to amend the Rules of practice and rules for the internal management of the Commission des transports du Québec

Transport Act  
(R.S.Q., c. T-12, s. 5, par. *k*, and s. 48)

**1.** The Rules of practice and rules for the internal management of the Commission des transports du Québec, made by Order in Council 147-82 dated 20 January 1982 (Suppl., p. 1254) and amended by the Regulations made by Orders in Council 1394-83 dated 22 June 1983, 1801-83 dated 1 September 1983, 2347-83 dated 16 November 1983, 2722-83 dated 21 December 1983, 1153-84 dated 16 May 1984, 833-85 dated 1 May 1985, 1543-85 dated 24 July 1985, 2006-85 dated 25 September 1985, 2157-85 dated 16 October 1985, 1325-86 dated 27 August 1986, 48-88 dated 13 January 1988, 847-88 dated 1 June 1988, 140-89 dated 8 February 1989, 1295-90 dated 5 September 1990, 238-92 dated 19 February 1992, 294-92 dated 26 February 1992 and 1078-95 dated 9 August 1995, are further amended by inserting the following after section 40.7:

“L. Application for a permit for the transport of passengers by water

**40.8** An application for a permit for the transport of passengers by water, whether it concerns the obtaining of a permit or its renewal, may be introduced in the same manner as an application for a temporary permit.”

**2.** Schedule 1 to the Regulation is amended by inserting the following after section 1:

“1.1 For any application respecting the obtaining or renewal of a permit for the transport of passengers by water: \$200.00.”

**3.** This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

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Gouvernement du Québec

### **O.C. 149-98**, 4 February 1998

Transport Act  
(R.S.Q., c. T-12)

#### **Tariffs, rates and costs** — **Amendments**

Regulation to amend the Regulation respecting tariffs, rates and costs

WHEREAS under paragraph *h* of section 5 of the Transport Act (R.S.Q., c. T-12), the Government may, by regulation, prescribe standards for the tariffs, rates or costs of transport;

WHEREAS under paragraph *i* of section 5 of the Act, the Government may, by regulation, prescribe, in respect of any activity, service or territorial division, that the rates and tariffs are governed by a procedure of filing with the Commission;

WHEREAS in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), the text of the Regulation attached to this Order in Council was published in Part 2 of the *Gazette officielle du Québec* of 3 April 1996 with a notice that it could be made by the Government upon the expiry of 45 days following that publication;

WHEREAS it is expedient to make the Regulation without amendments;

IT IS ORDERED, therefore, upon the recommendation of the Minister of Transport:

THAT the Regulation to amend the Regulation respecting tariffs, rates and costs, attached to this Order in Council, be made.

MICHEL CARPENTIER,  
*Clerk of the Conseil exécutif*

### **Regulation to amend the Regulation respecting tariffs, rates and costs**

Transport Act  
(R.S.Q., c. T-12, s. 5, par. *i*)

**1.** The Regulation respecting tariffs, rates and costs, made by Order in Council 148-82 dated 20 January 1982 and amended by the Regulations made by Orders in Council 1265-83 dated 15 June 1983 (Suppl., p. 1265), 969-85 dated 22 May 1985, 2005-85 dated 25 September 1985, 2155-85 dated 16 October 1985, 50-88 dated 13 January 1988, 139-89 dated 8 February 1989, 295-92 dated 26 February 1992 and 342-95 dated 15 March 1995, is further amended, in section 1, by substituting the following for paragraph *b*:

“(b) transport by water;”

**2.** Section 4 is amended by striking out paragraph *a*.

**3.** This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

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Gouvernement du Québec

### **O.C. 199-98**, 17 February 1998

Highway Safety Code  
(R.S.Q., c. C-24.2)

#### **Road vehicle registration** — **Amendments**

CONCERNING the Regulation to amend the Regulation respecting road vehicle registration

WHEREAS under paragraph 12 of section 618 of the Highway Safety Code (R.S.Q., c. C-24.2), the Government may by regulation define, with respect to registration, classes and sub-classes of road vehicles other than those established under this Code;



WHEREAS under section 619.1, the Government may fix, by regulation, the duties exigible for obtaining the registration of a road vehicle and of the duties exigible under section 31.1 on the basis of the class or sub-class of road vehicles to which the vehicle belongs;

WHEREAS by Order in Council 1420-91 dated 16 October 1991, the Government made the Regulation respecting road vehicle registration;

WHEREAS in accordance with section 12 of the Regulations Act (R.S.Q., c. R-18.1), a proposed regulation may be made notwithstanding the prior publication requirement in section 8 of that Act where the authority making it is of the opinion that the urgency of the situation requires it;

WHEREAS under section 18 of that Act, a regulation may come into force on the date of its publication in the *Gazette officielle du Québec* where the authority making it is of the opinion that the urgency of the situation requires it;

WHEREAS under sections 13 and 18 of that Act, the reason justifying the absence of prior publication and such coming into force shall be published with the regulation;

WHEREAS, in the view of the Government, the urgency due to the following circumstances justifies the absence of prior publication and such coming into force:

— the Act respecting off-highway vehicles (1996, c. 60) imposes the obligation on clubs of all-terrain vehicle users to make the trails under their responsibility safe; the proposed Regulation increases registration fees by \$6 for these vehicles to allow the setting up of a program of financial assistance for the benefit of the Fédération québécoise des clubs motocyclistes associés and its member clubs;

— since registration renewal must take place between January 1st and March 31st of each year and the vast majority of such vehicle owners expect to have received the payment notice for those fees from the Société de l'assurance automobile du Québec, it has become a matter of urgency, in order to meet the financial requirements resulting from the obligation to ensure the safety of trails, and taking into account the approaching end of the renewal period, that the Regulation be made without prior publication and that it come into force on the date of its publication in the *Gazette officielle du Québec*;

IT IS ORDERED, therefore, on the recommendation of the Minister of Transport:

THAT the “Regulation to amend the Regulation respecting road vehicle registration”, attached hereto, be made.

MICHEL CARPENTIER,  
*Clerk of the Conseil exécutif*

## Regulation to amend the Regulation respecting road vehicle registration\*

Highway Safety Code  
(R.S.Q., c. C-24.2, s. 618, par. 12 and s. 619.1)

**1.** Section 2 of the Regulation respecting road vehicle registration is amended by inserting the definition of “all-terrain vehicle”:

““all-terrain vehicle” means a motorized off-road vehicle equipped with handlebars and at least two wheels, that is designed to be straddled and whose net weight does not exceed 600 kilograms; (*véhicule tout terrain*)”.

**2.** Section 139 is amended by adding the following at the end of the second paragraph:

“However, in the case of an all-terrain vehicle, the fees payable are \$50.”.

**3.** This regulation comes into force on the date of its publication in the *Gazette officielle du Québec*.

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Gouvernement du Québec

### O.C. 200-98, 17 February 1998

Automobile Insurance Act  
(R.S.Q., c. A-25)

#### Determination of income and employment and the payment of the indemnity in section 83.30 of the Act — Amendments

Regulation to amend the Regulation respecting the determination of income and employment and the payment of the indemnity in section 83.30 of the Act

WHEREAS under paragraphs 6 to 10 of section 195 of the Automobile Insurance Act (R.S.Q., c. A-25), la

\* The latest amendments to the Regulation respecting road vehicle registration, made by Order in Council 1420-91 dated 16 October 1991 (1991, *G.O.* 2, 4111) were made by the regulation approved under O.C. 55-98 dated 14 January 1998 (1998, *G.O.* 2, 503). For prior amendments, see the *Tableau des modifications et Index sommaire*, Éditeur officiel du Québec, 1997, updated to 1 September 1997.

Société de l'assurance automobile du Québec may make regulations on the matters mentioned therein;

WHEREAS the Société made the Regulation to amend the Regulation respecting the determination of income and employment and the payment of the indemnity in section 83.30 of the Act;

WHEREAS in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), the text of the Regulation was published in Part 2 of the *Gazette officielle du Québec* of 24 December 1997 with a notice that it could be approved by the Government upon the expiry of 45 days following that publication;

WHEREAS it is expedient to approve the Regulation without amendment;

IT IS ORDERED therefore, upon the recommendation of the Minister of Transport:

THAT the Regulation to amend the Regulation respecting the determination of income and employment and the payment of the indemnity in section 83.30 of the Act, attached to this Order in Council, be approved.

MICHEL CARPENTIER,  
*Clerk of the Conseil exécutif*

## **Regulation to amend the Regulation respecting the determination of income and employment and the payment of the indemnity in section 83.30 of the Act\***

Automobile Insurance Act  
(R.S.Q., c. A-25, s. 195, pars. 6 to 11)

**1.** Section 3 of the Regulation respecting the determination of income and employment and the payment of the indemnity in section 83.30 of the Act is amended by adding the following to section 3:

“However, notwithstanding section 6, the gross income indicated in Schedule III is that in force on the day of the accident.”

**2.** The following is substituted for section 6:

“6. The gross income of a victim who, at the time of the accident, does not hold employment corresponding to employment determined for him or her by the Société and who, in the five years preceding the day of the accident, never held such employment is that indicated in Schedule III in force on the day when the Société determines employment and readjusted using all the adjustment factors provided for in Schedule I.”

**3.** The following is substituted for section 7:

“7. For the purposes of sections 15, 20, and 31 of the Act, the employment categories and corresponding gross incomes are those prescribed in Schedule III. Gross income is that in force on the day of the accident.

For the purposes of sections 45 and 48 of the Act, the employment categories and corresponding gross incomes are those prescribed in Schedule III. Gross income is that in force on the day when the Société determines employment.”

**4.** The following is substituted for Schedule III:

### **“SCHEDULE III** (ss. 3, 6 and 7)

#### **EMPLOYMENT CATEGORIES AND CORRESPONDING GROSS INCOMES**

1. The employment categories are the occupational titles contained in the “Professions” file of the computerized data listing on educational and occupational training “Répertoire informatisé des données en information scolaire et professionnelle» (Repères) by the Société de gestion du réseau informatique des commissions scolaires (Société GRICS).

2. Gross income corresponding to each employment category is the amount that represents the median on the scale of the annual average minimum earnings indicated in the listing for each occupation. Where the lower limit on the scale is absent or equal to zero, gross income is the amount that represents the upper limit of the average minimum earnings.

Where the average minimum earnings shown is the hourly wage, it shall be calculated on an annual basis by multiplying it by 2000.

3. Changes made to the listing during a year become an integral part of the Regulation from the next January first.

4. Notwithstanding section 2, the gross income of a victim for whom the Société determines employment

\* The Regulation respecting the determination of income and employment and the payment of the indemnity in section 83.30 of the Act, approved by Order in Council 1923-89 dated 13 December 1989 (1989, *G.O.* 2, 4652), has not been amended since it was made.

under section 48 of the Act cannot be lower than gross income determined on the basis of the minimum wage as defined in section 3 of the Regulation respecting labour standards (R.R.Q., 1981, c. N-1.1, r. 3), as it reads on the day when it must be applied, calculated on an annual basis by multiplying it by 2000.

Where employment determined under this section is part-time employment, gross income is established on the basis of the minimum wage prescribed in the preceding paragraph and calculated on an annual basis by multiplying it by the number of hours for which the victim is considered fit to hold employment.

5. Notwithstanding section 2, gross income cannot be higher than the Maximum Yearly Insurable Earnings set by section 54 of the Automobile Insurance Act (R.S.Q., c. A-25).”.

**5.** This regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.



## Draft Regulations

### Draft Regulation

Professional Code  
(R.S.Q., c. C-26)

#### Bailiffs

##### — Terms and conditions for the issue of permits

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the “Regulation respecting the terms and conditions for the issue of a permit by the Chambre des huissiers de justice du Québec”, adopted by the Bureau of the Chambre des huissiers de justice du Québec, the text of which appears below, may be submitted to the government for approval upon the expiry of forty-five days following this publication. The government may approve it with or without amendment.

The Chambre des huissiers de justice du Québec believes that this regulation refers mainly to a candidate’s obligation to take the training course, to sit the professional examination and to complete a training period in order to obtain a permit from the Chambre des huissiers de justice du Québec. The training shall be carried out as full time employment, performing duties the nature of which is compatible with the activities related to the practice of the profession.

The impact of these obligations are to guarantee citizens that the holders of permits to practise the profession of bailiff have the necessary training to practise their profession. In addition to that guarantee, the Chambre des huissiers de Justice du Québec has not foreseen any impact on business and in particular, on small and medium-sized businesses.

Additional information may be obtained by contacting Mr. Ronald Dubé, Secretary of the Chambre des huissiers de justice du Québec, 1100, boulevard Crémazie Est, Suite 215, Montréal (Québec) H2P 2X2; telephone no.: (514) 721-1100; fax no.: (514) 721-7878.

Any person having comments to make is asked to transmit them, before the expiry of the 45-day period, to the Chairman of the Office des professions du Québec, 800, Place d’Youville, 10<sup>e</sup> étage, Québec (Québec) G1R 5Z3. These comments will be forwarded by the Office to the Minister responsible for the administration of legislation concerning the professions; they may be also forwarded to the professional association that made

the Regulation as well as to the persons, departments and agencies concerned.

ROBERT DIAMANT,  
*Chairman of the Office des  
professions du Québec*

### Regulation respecting the terms and conditions for the issue of a permit by the Chambre des huissiers de justice du Québec

Professional Code  
(R.S.Q., c. C-26, s. 94, pars. *h, i*)

#### DIVISION I

##### ISSUE OF A PERMIT

**1.** The Bureau of the Chambre des huissiers de justice du Québec shall issue a permit to practise the profession of court bailiff to a person who meets the following requirements:

(1) subject to section 20, he is the holder of a diploma that gives access to the permit issued by the Chambre and is recognized by the Government under the first paragraph of section 184 of the Professional Code (R.S.Q., c. C-26) or an equivalent to that diploma and recognized by the Bureau under subparagraph *g* of the first paragraph of section 86 of the Code or has received an equivalent training recognized by the Bureau under that paragraph;

(2) he has taken the training course in accordance with Division II;

(3) he has passed the professional examination in accordance with Division III;

(4) he has successfully completed the professional training period in accordance with Division IV;

(5) he has completed an application for a permit and paid the fees fixed for the granting of a permit in accordance with paragraph 8 of section 86.0.1 of the Code;

(6) he has attached, with the permit application, a certificate attesting that he has no criminal record and has authorized the Bureau to inquire about his integrity and financial situation.

## DIVISION II TRAINING COURSE

**2.** The Secretary of the Chambre shall administer the training course under the authority of the Administrative Committee.

**3.** The training course shall have a duration of at least 4 weeks and include the following:

(1) practical work relevant to the particular skills to meet the following objectives:

— serve written proceedings, establish time limits and proof of service;

— enforce judicial decisions that are executory, in particular, writs of seizure of movables and immovables, produce minutes, assess movable assets, refer to the appropriate registers, carry out sales by court order, and produce a statement of collocation and distribution of the assets realized;

— execute writs of expulsion;

— execute warrants for witness, or for committal;

— carry out sales by court order;

— make material ascertainties;

— perform any other duties assigned to a bailiff by law or by a court;

— serve written proceedings to a party domiciled or residing in another province in Canada or another country, or issued by a foreign court or tribunal;

(2) the rights and the regulations related to the practice of the profession of court bailiff, in particular the Professional Code, the Court Bailiffs Act (R.S.Q., c. H-4.1), the regulations made under those Acts, as well as bookkeeping, registers and trust accounts;

(3) professional behaviour in the exercise of judicial restrictions, in particular, in emergency situations, and the social behaviour of a court officer;

(4) knowledge related to the charters of rights and freedoms, the Act respecting the Régie du logement (R.S.Q., c. R-8.1), the Act respecting the collection of certain debts (R.S.Q., c. R-2.2) and the Consumer Protection Act (R.S.Q., c. P-40.1);

**4.** Upon recommendation of the Secretary, the Administrative Committee shall determine the dates of the

training course each year, where it will be held and the number of sessions required. The Secretary shall advise each candidate of the beginning of a session at least 30 days in advance.

## DIVISION III PROFESSIONAL EXAMINATIONS

**5.** The professional examination is in writing and shall be held once a year, on the date, at the time and at the place determined by the Administrative Committee.

**6.** The purpose of the professional examination relating to the knowledge and skills acquired by the candidate shall be to evaluate the candidate's behaviour and practical judgment in concrete situations.

The examination shall evaluate the candidate, more specifically with respect to the service of proceedings, the enforcement of judicial decisions that are executory, the performance of any other duties assigned to a bailiff by law, the production of minutes and professional law.

**7.** The candidate shall be notified at least 45 days prior to the holding of the examination.

**8.** The minimum pass mark for the examination is 60 %. Failing that, the candidate shall take the examination again at the following sitting.

The mark obtained at the examination, with the indication "Pass" or "Fail", shall be sent to the candidate by mail as soon as possible.

**9.** The candidate may sit for the examination a maximum of three times, unless he demonstrates to the Administrative Committee's satisfaction that he has successfully completed an additional training period to acquire the required knowledge.

**10.** Registration for the examination under false pretences, plagiarizing, being an accomplice to it or attempting to plagiarize during the examination, shall result in a "Fail" mark for that examination.

## DIVISION IV TRAINING PERIOD

**11.** The purpose of the training period is threefold: to enable the candidate to acquire the appropriate maturity, autonomy and experience for the practice of the profession of bailiff in Québec, to incorporate his knowledge and skills into concrete work situations and to apply them to real decision-making contexts.

**12.** To be eligible for the training period, the candidate shall complete an application on the form prescribed by the Bureau, meet the condition prescribed in paragraph 1 of section 1, register for the training program prescribed in paragraph 2 of section 1 and pay the fees fixed by the Bureau in accordance with paragraph 8 of section 86.0.1 of the Code.

However, the candidate may not act as a trainee before having obtained a trainee's certificate from the Bureau at his training director's request.

**13.** The trainee is qualified, under the authority and responsibility of the training director, to serve written proceedings issued by any court if he states that he is a trainee, and to perform any duty prescribed in section 8 of the Court Bailiffs Act.

However, he may not enforce judicial decisions that are executory and may not perform any other duty assigned to a bailiff by law or by a court unless he does so under the immediate supervision of his training director who shall co-sign the minutes.

**14.** The training period shall last 12 months and shall be carried out as full time employment, performing duties the nature of which is compatible with the activities related to the practice of the profession.

**15.** The training director shall meet the following criteria:

- (1) have been entered on the roll for at least two years;
- (2) not have been the object of a disciplinary decision within the last five years;
- (3) not carry out his duties, exclusively with a municipal court;

The training director shall not supervise or be responsible for more than one trainee at a time.

**16.** Upon the written request of a trainee, the Bureau may decide to:

- (1) authorize a change in training directors;
- (2) authorize the interruption of a training period, to be resumed at a later time.

**17.** At the end of the training period, an evaluation report shall be prepared by the candidate and the training director.

**18.** The Administrative Committee shall examine the evaluation report and give its opinion to the Bureau concerning the validity of the training period in light of the objectives contemplated in section 11.

At the first meeting following the date of receipt of the notice prescribed in the first paragraph, the Bureau shall decide whether or not the candidate has met the objectives of the training period. Within 30 days, the Secretary shall send a written notice of the decision to the candidate by issuing an attestation of his passing or failing.

Where the candidate has failed the training period, the Secretary shall notify the candidate of the reasons supporting the Bureau's decision. However, it may not issue an attestation of that decision without giving the training director and the trainee the chance to be heard.

**19.** The trainee who has failed the training period shall complete another training period of six months in accordance with the conditions given in this Division.

The certificate of trainee may not be renewed for more than two periods not exceeding 6 months each.

## DIVISION V TRANSITIONAL AND FINAL

**20.** Until the date of coming into force of a regulation made by the Government for the purposes of the first paragraph of section 184 of the Code, a candidate is deemed to have met the condition prescribed in paragraph 1 of section 1, if he is the holder of a diploma of college studies in legal technology awarded by the Minister of Education.

**21.** This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

2073

## Draft Regulation

Professional Code  
(R.S.Q., c. C-26)

### Bailiffs

#### — Trust accounting and indemnity fund

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the "Regulation respecting trust accounting by bailiffs and the indemnity fund of the Chambre des huissiers de justice du Québec", adopted by the Bureau of the

Chambre des huissiers de justice du Québec, the text of which appears below, may be submitted to the government for approval upon the expiry of forty-five days following this publication. The government may approve it with or without amendment.

The Chambre des huissiers de justice du Québec believes that this regulation has a dual-purpose. On the one hand, it aims at laying down a complete regulation on trust accounting for the bailiffs, in conformity with the section 89 of the Professional Code. On the other hand, this regulation aims at establishing an indemnity fund for the purpose of reimbursing sums of money and other securities that may be used by a bailiff for purposes other than those for which they were given to him in the practice of his profession.

The Chambre des huissiers de justice du Québec believes that the provisions of the regulation concerning keeping of trust accounts by bailiffs will impose on them a few administrative constraints. Nevertheless, in return, these provisions will have the effect of increasing the protection of the public. Finally, this regulation will have positive impacts towards citizens by giving them a better indemnity and a quicker settlement of claims.

Additional information may be obtained by contacting Mr. Ronald Dubé, Secretary of the Chambre des huissiers de justice du Québec, 1100, boulevard Crémazie Est, suite 215, Montréal (Québec) H2P 2X2; telephone no.: (514) 721-1100; fax no.: (514) 721-7878.

Any person having comments to make is asked to transmit them, before the expiry of the 45-day period, to the Chairman of the Office des professions du Québec, 800, place d'Youville, 10<sup>e</sup> étage, Québec (Québec) G1R 5Z3. These comments will be forwarded by the Office to the Minister responsible for the administration of legislation concerning the professions; they may be also forwarded to the professional association that made the Regulation as well as to the persons, departments and agencies concerned.

ROBERT DIAMANT,  
*Chairman of the Office des  
professions du Québec*

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## **Regulation respecting trust accounting by court bailiffs and the indemnity fund of the Chambre des huissiers de justice du Québec**

Professional Code  
(R.S.Q., c. C-26, s. 89)

### **CHAPTER I TRUST ACCOUNTING**

#### **DIVISION I GENERAL**

**1.** In this Regulation, the word “bailiff” means a person entered on the roll of the Chambre des huissiers de justice du Québec, who practises alone or in partnership.

**2.** Nothing in this Regulation shall be interpreted as excluding the use of data processing for the keeping of trust accounting records.

**3.** A bailiff shall record and account for all sums of money, securities and other property entrusted to him, and use them for the purposes for which they were given to him.

**4.** A bailiff may not deposit or leave his personal money in a trust account.

**5.** A bailiff may withdraw from a trust account the amount of his fees, in accordance with the established tariff of fees, or expenses incurred on behalf of another party.

#### **DIVISION II GENERAL TRUST ACCOUNT**

**6.** A bailiff shall deposit as soon as possible in a general trust account opened in his name in a financial institution authorized to receive deposits all sums of money or negotiable instruments collected on behalf of another party, received as an advance, or as a guarantee when acting as a seizing officer.

The first paragraph does not apply to a bailiff employed by or appointed exclusively as the bailiff of a municipal court, except where the bailiff is called upon to levy or collect sums of money for the municipality and is requested by the municipality to hold them in trust or, as the case may be, to charge fees or transportation expenses in the practice of his profession.

The proceeds of a sale under court order are deemed to be collected on behalf of another party.



**7.** A bailiff shall enter on a register the following information with respect to each of the proceedings for which he receives an amount of money:

- (1) the date and number of the receipt;
- (2) the name of the client;
- (3) the case number;
- (4) the names of the parties;
- (5) the nature of the proceeding;
- (6) the total amount received;
- (7) the date and the amount of the withdrawal;
- (8) the name of the payee; and
- (9) the cheque number.

**8.** Upon opening a general trust account, a bailiff shall complete and forward to the institution where the account was opened, as well as to the secretary of the Order, the form prescribed in Schedule 1. The form shall contain a declaration of trust and include an irrevocable authorization entitling the syndic, the administrative committee or the professional inspection committee:

- (1) to request and obtain at any time from the depository institution all the information and explanations deemed necessary or useful for the purposes of this Regulation;
- (2) if required, to block the sums of money on deposit; and
- (3) to dispose of the sums of money on deposit, for the purposes for which the bailiff practising alone had received them, in the event of the bailiff's death, bankruptcy or incapacity, temporary or permanent striking off the roll, the revocation of his permit or the limitation or suspension of his right to practise in accordance with the Professional Code (R.S.Q., c. C-26).

**9.** A bailiff shall not withdraw from a general trust account sums of money other than those to be given to one of the parties or transferred directly into a special trust account in accordance with section 11.

**10.** Upon closing a general trust account, the bailiff shall without delay so notify the secretary of the Order by means of the form prescribed in Schedule 2.

### **DIVISION III** **SPECIAL TRUST ACCOUNT**

**11.** Where the parties so require, or pursuant to a court order, the sums of money may be deposited or transferred into a special trust account, and the names of the parties for which the account has been opened shall be shown. Section 8 of this Regulation also applies to the opening of such account.

The bailiff may also hold in trust all investments, securities or guarantees as agreed upon by the parties.

### **DIVISION IV** **RECORDKEEPING FOR TRUST ACCOUNTS**

**12.** A bailiff shall keep separate, up-to-date accounting records for each trust account.

**13.** Upon receipt of a sum of money to be deposited in a trust account, a bailiff shall issue an official receipt drawn up in accordance with the form prescribed in Schedule 3.

**14.** The official receipt shall indicate whether the sum of money was collected on behalf of another party, received as an advance or as a guarantee when acting as a seizing officer.

**15.** Official receipts shall be consecutively numbered and made out in at least 2 identical copies.

**16.** Cheques or other payment authorizations drawn on a general or special trust account shall bear the indication: "trust account". Cheques shall be numbered.

**17.** A bailiff may not make cash withdrawals from the general or special trust account.

**18.** Trust accounting records shall be kept up-to-date and the reconciliation of the account done monthly in accordance with generally accepted accounting procedures.

### **DIVISION V** **AUDITING OF TRUST ACCOUNTING RECORDS**

**19.** Before 31 March of each year, a bailiff shall forward to the secretary of the Order in accordance with the form prescribed in Schedule 4 a declaration under his oath of office attesting that all sums of money, securities and other property entrusted to him during the preceding year have been deposited, accounted for and used in accordance with the Court Bailiffs Act and the regulations of the Order.

**20.** The declaration prescribed by section 19 shall contain, in particular,

- (1) the balance of all the trust accounts at 31 December;
- (2) a list of all special trust accounts opened and closed during the year.

A single declaration shall be sufficient for bailiffs who have a common trust account, provided that it shows the names of all the bailiffs.

## CHAPTER II INDEMNITY FUND

### DIVISION I ESTABLISHMENT OF THE FUND

**21.** The Bureau shall establish an indemnity fund for the purpose of reimbursing sums of money and other securities used by a bailiff for purposes other than those for which they were given to him in the practice of his profession.

**22.** The fund, to be maintained at a minimum of \$100 000, shall consist of

- (1) sums of money already allocated for that purpose;
- (2) sums of money which the Bureau allocates to the fund as needed;
- (3) the assessments levied for that purpose;
- (4) the sums of money recovered from offending bailiffs by subrogation or under section 159 of the Professional Code;
- (5) the interest accrued on the sums of money constituting the fund; and
- (6) the sums of money which may be paid by an insurance company under a group insurance policy subscribed to by the Order for all its members.

### DIVISION II MANAGEMENT OF THE FUND

**23.** The administrative committee is authorized to enter into any group insurance contract for the purposes of the fund and to pay the premiums using money from the fund.

**24.** The accounting for the fund shall be kept separate from the accounting of the Order.

**25.** The administrative committee shall administer the fund.

The sums of money constituting the fund shall be invested by the administrative committee as follows:

- (1) the portion of those sums which the administrative committee intends to use on a short-term basis shall be deposited in a financial institution;
- (2) the balance shall be invested in accordance with article 1339 of the Civil Code of Québec.

### DIVISION III CLAIMS AGAINST THE FUND

**26.** A claim against the fund shall be filed with the secretary of the Order at its head office.

**27.** The secretary shall enter the claim on the agenda of the first meeting of the Bureau and administrative committee following the filing of the claim.

**28.** A claim shall

- (1) be in writing and sworn;
- (2) state all supporting facts; and
- (3) show the amount claimed and be accompanied with supporting documents.

**29.** A claim against a bailiff may be filed whether or not there is a decision by the disciplinary committee, the Professions Tribunal or any other competent tribunal in respect of the bailiff in question.

**30.** To be receivable, a claim against the fund shall be filed within one year of the time at which the claimant becomes aware that sums of money or other securities were used for purposes other than those for which they had been given to the bailiff in the practice of his profession.

**31.** The administrative committee may extend the time period prescribed in section 30 if the claimant shows that he was unable to file the claim within the required time due to reasons beyond his control.

**32.** The administrative committee may designate a person to conduct an inquiry and file a report with respect to a claim.

**33.** Upon written request from the administrative committee or the designated person, the claimant or bailiff concerned shall

- (1) provide all the details and documents in regard to the claim; and
- (2) adduce all relevant evidence.

**DIVISION IV  
INDEMNITIES**

**34.** The Bureau, upon recommendation of the administrative committee, shall determine whether it is expedient to allow the claim, in whole or in part, and if so, shall determine the indemnity. Its decision shall be final.

**35.** The maximum indemnity payable from the fund for all claims against a bailiff shall be fixed at \$25 000 for the whole of a fiscal year of the Order.

Where the administrative committee has reason to believe that the total of the claims filed against one bailiff could exceed that amount, the Committee shall, if circumstances permit, have an inventory drawn up of the sums of money entrusted to the bailiff and notify in writing all possible claimants.

Where the total of the claims allowed by the Bureau exceeds the maximum indemnity provided for in this section, the indemnity shall be allocated on a prorata basis according to the amounts of the claims.

**36.** Before receiving the indemnity fixed by the Bureau, the claimant shall sign an acquittance in favour of the Order with subrogation in all his rights in respect of his claim up to the amount of the indemnity.

**37.** This Regulation replaces Divisions IV, V and VI of the Regulation respecting the application of the Bailiffs Act (R.S.Q., c. H-4, s. 25) which continues to apply as provided for in section 31 of the Court Bailiffs Act (1995, c. 41).

**38.** This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

**SCHEDULE 1**

(s. 8)

**DECLARATION RELATIVE TO THE OPENING  
OF A GENERAL TRUST ACCOUNT**

TO:

\_\_\_\_\_  
(Name and address of financial institution)

I, the undersigned, \_\_\_\_\_, a court bailiff and a member of the Chambre des huissiers de justice du Québec, holder of permit number \_\_\_\_\_ and having my office at the following address:

\_\_\_\_\_  
\_\_\_\_\_

declare the following:

(1) the general trust account No. \_\_\_\_\_ has been opened at your institution in the name of: \_\_\_\_\_ "in trust";

(2) the account referred to above is constituted of funds or negotiable instruments that were collected on behalf of another party, received as an advance, or as a guarantee when acting as seizing officer;

(3) the account is governed by the Court Bailiffs Act (1995, c. 41), the Professional Code (R.S.Q., c. C-26) and by the Regulation respecting trust accounting by court bailiffs and the indemnity fund of the Chambre des huissiers de justice du Québec (hereinafter called the "Regulation");

(4) according to your registers, the person(s) authorized to sign documents with respect to current transactions in the account are those listed below:

Name	Signature
------	-----------

Name	Signature
------	-----------

(5) in accordance with paragraphs 1 and 2 of section 8 of the Regulation, I grant an irrevocable authorization to the syndic, the administrative committee or the professional inspection committee to request and obtain at any time from your institution all the information and explanations deemed necessary or useful for trust accounting audit purposes or, if required, to block the sums of money on deposit;

(6) in accordance with paragraph 3 of section 8 of the Regulation, if I practise the profession of bailiff alone, I grant an irrevocable authorization to the syndic, the administrative committee or the professional inspection committee of the Chambre des huissiers de justice du Québec to dispose of the sums of money on deposit, in the event of my death, bankruptcy or incapacity, temporary or permanent striking off the roll, or the limitation or suspension of my right to practise in accordance with the Professional Code.

\_\_\_\_\_  
(Place)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Court bailiff

Solemnly affirmed before me

at \_\_\_\_\_

on \_\_\_\_\_

\_\_\_\_\_  
Commissioner for oaths for

Note: A copy of this form shall be forwarded to the secretary of the Order upon opening the trust account.

**SCHEDULE 2**

(s. 10)

**NOTICE OF CLOSING OF  
A GENERAL TRUST ACCOUNT**

Secretary of the Chambre des huissiers  
de justice du Québec

\_\_\_\_\_  
(Address of the secretary)

I, the undersigned, \_\_\_\_\_,  
a court bailiff, hereby notify you under my oath of  
office, in accordance with section 10 of the Regulation  
respecting trust accounting by court bailiffs and the  
indemnity fund of the Chambre des huissiers de justice  
du Québec, that the general trust account

Number \_\_\_\_\_,  
opened on \_\_\_\_\_,  
at \_\_\_\_\_,  
(financial institution)  
was closed on \_\_\_\_\_.

Signed at \_\_\_\_\_, on \_\_\_\_\_

\_\_\_\_\_  
Court bailiff

Name of practice:  
\_\_\_\_\_  
\_\_\_\_\_

Address:  
\_\_\_\_\_  
\_\_\_\_\_

Telephone:  
\_\_\_\_\_  
\_\_\_\_\_

Fax:  
\_\_\_\_\_  
\_\_\_\_\_

Solemnly affirmed before me

at \_\_\_\_\_

on \_\_\_\_\_

\_\_\_\_\_  
Commissioner for oaths for

**SCHEDULE 3**

(s. 13)

**OFFICIAL RECEIPT**

**LOGO, NAME AND ADDRESS OF  
THE PRACTICE  
OR: LOGO OF THE C.H.J.Q., NAME  
AND ADDRESS OF THE PRACTICE**

**OFFICIAL RECEIPT**

No. \_\_\_\_\_

Received from \_\_\_\_\_

the sum of \_\_\_\_\_

cash                     certified cheque     non-certified  
cheque

postal money    bank draft             other  
order

down payment    final payment

With respect to file \_\_\_\_\_

sum of money collected on behalf of another party

sum of money received as an advance

sum of money received as a guarantee when acting  
as a seizing officer

\_\_\_\_\_  
Court bailiff

**SCHEDULE 4**

(s. 19)

**ANNUAL DECLARATION  
RESPECTING BOOKS, REGISTERS  
AND ACCOUNTS**

YEAR \_\_\_\_\_

Note: All members entered on the roll of the Chambre des huissiers de justice du Québec must fill in this annual declaration. Additional sheets may be attached, if necessary.

I, \_\_\_\_\_,  
a court bailiff entered on the roll of the Chambre des huissiers de justice du Québec since 19\_\_\_\_, declare the following:

**1.1** the Regulation respecting trust accounting by court bailiffs and the indemnity fund of the Chambre des huissiers de justice du Québec does not require that I keep or administer a trust account because

I turn over the sums of money collected or levied to the partnership of bailiffs with whom I practise;

I am in the exclusive employ of the municipal court of \_\_\_\_\_ and the municipality does not require that I hold sums of money in trust or charge fees or transportation expenses in the practice of my profession;

the Regulation respecting trust accounting by court bailiffs and the indemnity fund of the Chambre des huissiers de justice du Québec allows for bailiffs who have a common trust account to file a single declaration, provided that it lists the names of all the bailiffs; the declaration prescribed by section 19 shall be completed by the following bailiff:

\_\_\_\_\_; or  
Name of bailiff

other reasons: \_\_\_\_\_.

**1.2** Since my last declaration, I have not been responsible for sums of money or securities in trust.

**1.3** Should the practice of my profession change, I undertake to open a trust account in accordance with the Regulation, if need be, and to notify the secretary of the Order immediately.

**If you have checked one of the boxes above, go directly to 3.1, 3.2 and the signature section.**

**2.1** I practice

alone under my own name;

under the name of \_\_\_\_\_,  
in nominal partnership with the following bailiffs:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_;

under the name of \_\_\_\_\_,  
in real partnership with the following bailiffs:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_;

for several partnerships, that is,

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**2.2** I (we) keep separate accounts for sums of money or negotiable instruments collected on behalf of another party, received as an advance, or as a guarantee while acting as a seizing officer.

**2.3** These books, registers and accounts are  are not audited by a chartered accountant.

**2.4** From 1 January, \_\_\_\_\_ to 31 December, \_\_\_\_\_, my (our) general trust account was held at this financial institution:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: ( ) \_\_\_\_\_

**2.5** The account was held under the **NAME** of

\_\_\_\_\_.

2.6 The account NUMBER was: \_\_\_\_\_.

2.7 As of 31 December \_\_\_\_\_,  
the balance of \_\_\_\_\_  
the account was: \$ \_\_\_\_\_.

**LIST OF SPECIAL TRUST ACCOUNTS OPENED  
AND CLOSED DURING THE YEAR  
(s. 20, par. 2)**

Account No.	Financial institution	Date	
		opening	closing
_____	_____	_____	_____
_____	_____	_____	_____

2.8 During the same period, I (we) held in trust the following securities: (Describe the securities: e.g. term deposits, bonds.)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2.9 During the same period, I (we) held other property in trust: (Describe the property: e.g. jewellery.)  
\_\_\_\_\_  
\_\_\_\_\_

2.10 Since my last declaration, I have at all times complied with the Act and the Regulation respecting trust accounting by court bailiffs and the indemnity fund of the Chambre des huissiers de justice du Québec.

2.11 I authorize the syndic of the Chambre des huissiers de justice du Québec, the professional inspection committee or any person it designates to examine this (these) account(s) and to obtain any information required from the financial institution.

2.12 Should I change my practice, address or financial institutions, or open a new trust account, I undertake to notify the secretary of the Order immediately.

3.1 Office address and telephone number:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3.2 Home address and telephone number:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of bailiff<sup>(\*)</sup>

\* If applicable, list the names of the bailiffs who have a common general trust account.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Solemnly affirmed before me  
at \_\_\_\_\_  
on \_\_\_\_\_

\_\_\_\_\_  
Commissioner for oaths for  
2074

## Index Statutory Instruments

Abbreviations: **A**: Abrogated, **N**: New, **M**: Modified

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