

Regulations and other acts

Gouvernement du Québec

O.C. 106-96, 24 January 1996

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

Certified management accountants — Conciliation and arbitration procedure

Regulation respecting the conciliation and arbitration procedure for the accounts of certified management accountants

WHEREAS under section 88 of the Professional Code (R.S.Q., c. C-26; 1994, c. 40), the Bureau of the Ordre des comptables en management accrédités du Québec must establish, by regulation, a conciliation and arbitration procedure for the accounts of the members of the corporation which may be used by persons having recourse to the services of the members;

WHEREAS under section 88 of the Code, the Bureau made a Regulation respecting the procedure for conciliation and arbitration of accounts of certified management accountants (R.R.Q., 1981, c. C-26, r. 25);

WHEREAS it is expedient to replace the Regulation;

WHEREAS under that section of the Code, the Bureau made the Regulation respecting the conciliation and arbitration procedure for the accounts of certified management accountants;

WHEREAS in accordance with section 95.3 of the Code, a draft of the Regulation was sent to all the members of the professional order at least 30 days before its adoption by the Bureau;

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 16 August 1995 with a notice that it could be submitted to the Government for approval upon the expiry of 45 days following that publication;

WHEREAS in accordance with section 95 of the Code, the Office des professions du Québec made its recommendations;

WHEREAS it is expedient to approve the Regulation with amendments;

IT IS ORDERED, therefore, upon the recommendation of the Minister responsible for the administration of legislation respecting the professions:

THAT the Regulation respecting the conciliation and arbitration procedure for the accounts of certified management accountants, attached to this Order in Council, be approved.

MICHEL CARPENTIER,
Clerk of the Conseil exécutif

Regulation respecting the conciliation and arbitration procedure for the accounts of certified management accountants

Professional Code
(R.S.Q., c. C-26, s. 88)

DIVISION I CONCILIATION

1. A client who has a dispute with a member of the Ordre professionnel des comptables en management accrédités du Québec concerning the amount of an unpaid account for professional services shall, before applying for arbitration, file a written application for conciliation with the syndic, provided that a judicial proceedings to recover the account has not been served on him.

2. An application for conciliation pertaining to an account paid in whole or in part may be filed within a 45-day period from the date of receipt of the account.

Where the amount of the account has been withdrawn or withheld in whole or in part by the member from the funds that he holds or receives for or on behalf of the client, the period runs from the time when the client becomes aware of the withdrawal or withholding.

3. A member may not institute proceedings to recover an account for professional services before the expiry of a 60-day period from the date of receipt of the account by the client.

4. Within 5 days of receiving an application for conciliation, the syndic shall notify the member concerned or, where he is unable to notify the member personally within that period, shall notify the member's firm. He shall also send the client a copy of this Regulation within the same period.

Once the syndic has received the application for conciliation, the member may not institute proceedings to recover his account so long as the dispute may be settled by conciliation or arbitration. Notwithstanding the foregoing, a member may request provisional measures in accordance with article 940.4 of the Code of Civil Procedure (R.S.Q., c. C-25).

5. The syndic shall proceed with the conciliation using such procedure as he considers appropriate.

6. Any agreement reached during conciliation shall be put in writing, shall be signed by the client and the member and shall be filed with the secretary of the Order.

7. Where conciliation does not lead to an agreement within 45 days from the date of receipt of the application for conciliation, the syndic shall send his conciliation report to the parties by registered mail.

The syndic shall provide the following information in his report, where applicable:

- (1) the amount of the account in dispute;
- (2) the amount that the client acknowledges owing;
- (3) the amount that the member acknowledges having to reimburse or is willing to accept as a settlement of the dispute;
- (4) the amount suggested by the syndic during conciliation as a payment to the member or as a reimbursement to the client.

The syndic shall also send the client the form in Schedule I and shall indicate to him the procedure and deadline for submitting the dispute to arbitration.

DIVISION II ARBITRATION

§1. *Application for arbitration*

8. Within 30 days of receiving the conciliation report, the client may apply for arbitration of the account by sending the form in Schedule I to the secretary of the Order. The client's application shall be accompanied by

the conciliation report and the amount he acknowledged owing during conciliation, which is indicated in the syndic's report.

9. Within 5 days of receiving an application for arbitration, the secretary shall send the member a copy thereof by registered mail.

10. A client who wishes to withdraw his application for arbitration shall so notify the secretary in writing.

11. A member who acknowledges having to reimburse an amount to a client shall deposit that amount with the secretary.

12. The amount mentioned in section 11 shall be remitted to the client by the secretary. In such case, the arbitration shall proceed and shall pertain only to the amount still in dispute.

13. Any agreement reached by the parties after the application for arbitration has been filed shall be put in writing, shall be signed by the parties and shall be filed with the secretary of the Order. Where the parties reach an agreement after a council of arbitration has been formed, the agreement shall be recorded in the arbitration award.

§2. *Formation of the council of arbitration*

14. The council of arbitration shall be composed of 3 arbitrators where the amount in dispute is \$5 000 or more, and of a single arbitrator where the amount is less than \$5 000.

In the first case, the dispute may be heard by a single arbitrator if so requested by all parties.

15. The administrative committee shall appoint the member or members of the council from among the members of the Order and, if the council is composed of 3 arbitrators, shall designate the chairman and the secretary thereof.

16. The secretary shall send written notice to the arbitrators and to the parties informing them of the formation of the council.

17. Before acting, the members of the council shall make the solemn affirmation in Schedule II to this Regulation.

18. A request that an arbitrator be recused may be filed only for a reason provided for in article 234 of the Code of Civil Procedure (R.S.Q., c. C-25). The request shall be sent to the secretary, to the council and to the

parties or their advocates within 10 days of receipt of the notice mentioned in section 16 or of the day on which the reason for the request becomes known.

19. The administrative committee shall decide the request and, where applicable, shall designate a new arbitrator.

§3. *Hearing*

20. The secretary shall give the parties or their advocates at least 10 days' written notice of the date of the hearing and shall indicate therein the time and place.

21. The parties are entitled to be represented or assisted by an advocate.

22. The council shall, as soon as possible, hear the parties, receive their evidence or record any failure on their part. For those purposes, it shall follow such rules of procedure and rules of evidence as it considers appropriate.

23. The council may issue any order it deems useful for the disposal of the deposit mentioned in section 11.

24. The council may order the parties to give it, within an allotted time, a statement of their claims with the supporting documents.

25. A party requesting that the testimony be recorded shall assume the cost thereof.

26. Should an arbitrator die or be unable to act, the other arbitrators shall see the matter through. If the chairman dies or is unable to act, the administrative committee shall designate a chairman from among the other 2 arbitrators.

If the council of a single arbitrator, he shall be replaced in accordance with section 15 and the dispute shall be reheard.

§4. *Arbitration award*

27. The council shall issue its award within 60 days of the end of the hearing, unless the parties agree in writing, before the expiry of that period, to grant an extension to the council, equal to a specific number of days.

28. The award shall be a majority award of the members of the council. It shall give reasons and shall be signed by all the members of the council who concurred in it.

Where section 26 applies, the chairman shall have a casting vote.

29. In its award, the council may uphold or reduce the amount of the account in dispute and, where applicable, determine the reimbursement or payment to which a party may be entitled.

30. Where the account in dispute is upheld in whole or in part, or where a reimbursement is granted, the council may add thereto interest and an indemnity calculated in accordance with articles 1618 and 1619 of the Civil Code of Québec from the date of the application for conciliation.

The council may also decide the arbitration expenses, which are the expenses incurred by the Order for the arbitration. The total expenses may not exceed 15 % of the amount to which the arbitration pertains.

31. The arbitration award is final, without appeal, binding on the parties and subject to compulsory execution in accordance with articles 946.1 to 946.6 of the Code of Civil Procedure.

32. The arbitration award shall be filed with the secretary of the Order, who shall send it to each party or to their advocates and to the syndic within 10 days after it is filed.

33. This Regulation replaces the Regulation respecting the procedure for conciliation and arbitration of accounts of certified management accountants (R.R.Q., 1981, c. C-26, r. 25), but the latter Regulation continues to govern the procedure for conciliation and arbitration of accounts for which conciliation is applied for prior to the date of coming into force of this Regulation.

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

SCHEDULE I
(s. 9)

APPLICATION FOR ARBITRATION OF AN ACCOUNT

I, the undersigned,
(client's name)

.....
(domicile)

declare that:

(1)
(member's name)
is claiming from me (or refuses to reimburse to me) a sum of money for professional services.

(2) I have enclosed a copy of the conciliation report and a certified cheque of _____, which is the amount I acknowledge owing and which is mentioned in the conciliation report.

(3) I am applying for arbitration of the account under the Regulation respecting the conciliation and arbitration procedure for the accounts of certified management accountants.

(4) I have received a copy of the Regulation mentioned above and have taken cognizance thereof.

(5) I agree to submit to the procedure provided for in the Regulation and, where required, to pay to.....
.....
(member's name)
the amount of the arbitration award.

.....
Signature

SCHEDULE II
(s. 15)

OATH

I solemnly affirm that I will perform all my duties and exercise all my powers as an arbitrator faithfully, impartially and honestly, to the best of my ability and knowledge.

I also solemnly affirm that I will not, without being so authorized by law, disclose or make known anything whatsoever of which I may take cognizance in the performance of my duties.

.....
Signature

Oath taken before
(name and position, profession or quality)
at on
(municipality)

.....
(signature of the person administering oath)

Gouvernement du Québec

O.C. 107-96, 24 January 1996

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

**Certified general accountants
— Conciliation and arbitration procedure for the accounts**

Regulation respecting the conciliation and arbitration procedure for the accounts of certified general accountants of Québec

WHEREAS under section 88 of the Professional Code (R.S.Q., c. C-26), the Bureau of the Ordre des comptables généraux licenciés du Québec must establish, by regulation, a conciliation and arbitration procedure for the accounts of the members of the order which may be used by persons having recourse to the services of the members;

WHEREAS under section 88 of the Code, the Bureau made the Regulation respecting the procedure for conciliation and arbitration of accounts of certified general accountants (R.R.Q., 1981, c. C-26, r. 35);

WHEREAS it is expedient to replace that Regulation;

WHEREAS under that section of the Code, the Bureau made the Regulation respecting the conciliation and arbitration procedure for the accounts of certified general accountants of Québec;

WHEREAS in accordance with the third paragraph of section 95 of the Code, as it read in June 1994, a draft regulation was sent to all the members of the professional order at least thirty days before its making by the Bureau;

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* dated 26 July 1995 with a notice that it could be submitted to the Government for approval upon the expiry of 45 days following that publication;

WHEREAS in accordance with section 95 of the Code, the Office des professions du Québec made its recommendations;

WHEREAS it is expedient to approve the Regulation with amendments;