

Gouvernement du Québec

O.C. 1256-96, 2 October 1996

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

Notaries

— **Trust accounting**
— **Amendments**

Regulation to amend the Regulation respecting trust accounting by notaries

WHEREAS under section 89 of the Professional Code (R.S.Q., c. C-26) and subparagraph 2 of the second paragraph of section 93 of the Notarial Act (R.S.Q., c. N-2), as they read before 15 October 1994, the Bureau of the Chambre des notaires du Québec was required to set up, by regulation, an indemnity fund to be used to repay the amounts of money or other securities used by a notary for purposes other than those for which they had been delivered to him in the practice of his profession;

WHEREAS under those sections, the Bureau made the Regulation respecting the indemnity fund of the Chambre des notaires du Québec (R.R.Q., 1981, c. N-2, r. 8);

WHEREAS it is expedient to replace that Regulation;

WHEREAS under section 89 of the Professional Code, amended by section 77 of Chapter 40 of the Statutes of 1994, the Bureau of the Chambre des notaires du Québec shall determine, by regulation, the terms, conditions and standards for receipt, custody and disposition of the sums of money and securities that the notaries are called upon to hold for their clients, and the terms, conditions and standards relating to the keeping and auditing of trust accounts, books and registers of notaries;

WHEREAS under that section, the Bureau shall also establish an indemnity fund to be used to repay the amounts of money or other securities used by a notary for purposes other than those for which they had been delivered to him in the practice of his profession and it shall fix the rules of administration and of investment of the sums of money making up the fund;

WHEREAS under that section, the Bureau made the Regulation respecting trust accounting by notaries, approved by Order in Council 823-95 dated 14 June 1995;

WHEREAS it is expedient to amend that Regulation;

WHEREAS under the same section, the Bureau made the Regulation to amend the Regulation respecting trust accounting by notaries;

WHEREAS under section 95.3 of the Professional Code, amended by section 84 of Chapter 40 of the Statutes of 1994, the secretary of the Chamber sent a draft of the Regulation to every member of the 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), a draft of the Regulation attached to this Order in Council was published in Part 2 of the *Gazette officielle du Québec* of 31 January 1996 with a notice that it could be submitted to the Government for approval upon the expiry of 45 days following the date of that publication;

WHEREAS under section 95 of the Professional Code, amended by section 83 of Chapter 40 of the Statutes of 1994, the Office des professions du Québec has 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 to amend the Regulation respecting trust accounting by notaries, attached to this Order in Council, be approved.

MICHEL CARPENTIER,
Clerk of the Conseil exécutif

Regulation to amend the Regulation respecting trust accounting by notaries

Professional Code
(R.S.Q., c. C-26, s. 89; 1994, c. 40, s. 77)

1. The Regulation respecting trust accounting by notaries, approved by Order in Council 823-95 dated 14 June 1995, is amended by adding the following after paragraph 4 of section 9:

“(5) an irrevocable authorization entitling the Administrative Committee or the president of the Order, upon recommendation by the syndic, an assistant syndic or the professional inspection committee of the Chamber, to require that the notary obtain, at his expense, the cosignature of another notary designated by the Committee to draw cheques and other payment authorizations on the account.”

2. The Regulation is amended by adding the following after paragraph 5 of section 14:

“(6) an irrevocable authorization entitling the Administrative Committee or the president of the Order, upon recommendation by the syndic, an assistant syndic or the professional inspection committee of the Chamber, to require that the notary obtain, at his expense, the cosignature of another notary designated by the Committee to draw cheques and other payment authorizations on the account.”.

3. The Regulation is amended by inserting the following divisions after section 37:

“DIVISION VIII.1 ESTABLISHMENT OF THE FUND

37.1 The Bureau shall establish an indemnity fund for the purpose of reimbursing sums of money or other securities used by a notary for purposes other than those for which they were entrusted to him in the practice of his profession.

37.2 The fund shall consist of

(1) the sums of money already allocated for that purpose as of 31 October 1996;

(2) the 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 notaries by subrogation or under section 159 of the Professional Code (R.S.Q., c. C-26);

(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 Administrative Committee for all the members of the Order.

DIVISION VIII.2 ADMINISTRATION OF THE FUND

§1. *Administrative Committee*

37.3 The Administrative Committee shall administer the fund. In particular, it is authorized to enter into any insurance or reinsurance contract for the purposes of the fund and to pay the premiums using money from the fund.

37.4 The accounting of the Administrative Committee for the fund shall be kept separate from the accounting of the Chamber.

37.5 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 an institution governed by the Act respecting trust companies and savings companies (R.S.Q., c. S-29.01), the Trust and Loan Companies Act (S.C., 1991, c. 45), the Bank Act (S.C., 1991, c. 46) or the Savings and Credit Unions Act (R.S.Q., c. C-4.1); and

(2) the balance shall be invested in accordance with article 1339 of the Civil Code of Québec.

§2. *Indemnity fund committee*

37.6 An indemnity fund committee, hereinafter called “the committee”, shall be formed comprising at least 5 members appointed by the Bureau from among the notaries entered on the roll of the Order for at least 10 years and the directors appointed to the Bureau by the Office des professions du Québec under section 78 of the Code; at least one of those directors shall be appointed to the committee.

The chairman of the committee shall be designated by its members.

The quorum of the committee shall be an absolute majority of its members.

37.7 Where the number of committee members so permits, it may sit in divisions composed of 5 members, one of whom shall be the chairman or another committee member designated by the division members as chairman of the division, and another member chosen from among the directors appointed by the Office. The quorum of a division shall be 3 members.

37.8 The Bureau shall appoint the secretary of the committee and, as needed, one or more assistant secretaries, who shall perform the same duties as the secretary.

37.9 The secretary of the committee, the assistant secretaries, if any, and each committee member shall be required to take an oath of discretion. The same applies to all persons who participate in the work of the committee.

37.10 Committee members shall remain in office at the end of their mandate until they have been reappointed or replaced by the Bureau.

37.11 It shall be the responsibility of the committee to study each claim filed against the fund.

For the purposes of this section, the committee is deemed to be a committee of inquiry established by the Bureau in accordance with subparagraph 6 of the first paragraph of section 192 of the Code.

The Administrative Committee may appoint a person to assist the committee or any of its members in its inquiry.

DIVISION VIII.3 **CLAIMS AGAINST THE FUND**

37.12 A claim against the fund shall

- (1) be in writing;
- (2) state all supporting facts and be accompanied by all relevant documents;
- (3) indicate the amount claimed; and
- (4) be filed with the secretary of the committee.

37.13 The secretary of the committee shall inform the members of such claim at the first meeting following the filing of the claim.

If the committee has not finished examining the case within 90 days following the filing of the claim, the secretary shall, upon the expiry of that period, so inform the claimant in writing and report to him on the committee's progress in examining the claim. As long as the committee has not finished examining the claim, the secretary shall, every 60 days following the expiry of the 90-day period, so inform the claimant in writing and report to him on the committee's progress.

The obligation to notify the claimant prescribed in the second paragraph does not apply to a situation governed by section 37.23.

37.14 A claim against the fund may be filed regardless of any decision by the committee on discipline, the Professions Tribunal or any other competent tribunal in respect of the notary in question.

37.15 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 have been used for purposes other than those for which they were entrusted to the notary in the practice of his profession.

Subject to section 37.16, a claim which is not filed within the time period prescribed is not receivable.

37.16 Where a claim against the fund does not exceed the sum of \$10 000, the committee may extend the time period prescribed in section 37.15 if the claimant shows that he was unable to file the claim within the required time due to reasons beyond his control.

Where the claim against the fund exceeds the sum of \$10 000, the Administrative Committee may, upon the recommendation of the committee, extend the time period prescribed in section 37.15 if the claimant shows that he was unable to file the claim within the required time due to reasons beyond his control.

37.17 A request by any person to the syndic for an investigation with regard to facts likely to give rise to a claim against the fund is deemed to be a claim within the meaning of section 37.12, so long as the request for an investigation is filed within the time period prescribed in section 37.15.

37.18 Upon request by the committee, the notary in question shall provide all information and all evidence judged relevant by the committee.

DIVISION VIII.4 **INDEMNITY**

37.19 The committee shall decide, in respect of any claim against the fund which does not exceed the sum of \$10 000, whether it is expedient to allow the claim, in whole or in part, and if so, shall determine the indemnity. The decision of the committee shall be final.

37.20 The Administrative Committee, upon recommendation of the committee, shall decide, in respect of any claim against the fund which exceeds the sum of \$10 000, whether it is expedient to allow the claim, in whole or in part, and if so, shall determine the indemnity. The decision of the Administrative Committee shall be final.

37.21 The committee may exercise the powers granted to it under sections 37.19 and 37.20, regardless of any suit filed by the claimant in a civil court, any judgment rendered by such court or any decision rendered by the committee on discipline or the Professions Tribunal in respect of the notary in question.

37.22 The maximum indemnity payable from the fund shall be fixed at \$100 000 per claim against the fund arising from a notary's having used, in connection with a contract for professional services, sums of money or

other securities for purposes other than those for which they were entrusted to him in the practice of his profession.

The maximum indemnity payable from the fund shall be fixed at \$100 000 for all claims against the fund arising from a notary's having used, in connection with one or more contracts for professional services entered into with two or more persons for the same service, sums of money or other securities for purposes other than those for which they were entrusted to him in the practice of his profession. Where the total of the claims allowed in a case referred to in this paragraph exceeds the maximum indemnity, the indemnity shall be allocated on a prorata basis according to the amounts of the claims.

For the purposes of this section, "service" means the performance of professional services by a notary with a view to carrying out the mandate given to him on behalf of two or more persons, in particular but without limiting the scope of the foregoing, the acquisition or sale of a family residence or of an immovable held in undivided co-ownership, the settlement of a succession, the creation of a patrimony by appropriation or of a legal person, and any investment of a movable or immovable nature.

37.23 The balance of a notary's general trust account the funds of which have been blocked or otherwise disposed of in accordance with section 36 shall be distributed, at the expiry of 60 days following the publication of a notice to that effect in a newspaper circulating in the place where the notary has or had his professional domicile, among the claimants against the fund in respect of that notary on a prorata basis according to the amounts of their claims allowed, up to the amount of the claim for each claimant, less the sum paid under section 37.22. The secretary of the committee shall cause the notice to be published after one year has elapsed with no new claim having been filed against the fund in respect of that notary.

37.24 Before receiving the indemnity fixed by the committee or the Administrative Committee, as the case may be, the claimant shall sign an acquittance in favour of the Chamber with subrogation in all his rights in respect of his claim up to the amount of the indemnity against the offending notary, his successors, and any individual, partnership or legal person that is or might be held liable for such payment."

4. The Regulation is amended by inserting the words "TRANSITIONAL AND" before the word "FINAL" in the title of Division IX.

5. The Regulation is amended by inserting the following after section 38:

"**38.1** The Regulation respecting the indemnity fund of the Chambre des notaires du Québec (R.R.Q., 1981, c. N-2, r. 8) is replaced by this Regulation, but it continues to govern claims filed against the fund before 31 October 1996, as well as claims filed against the fund after that date but which relate to facts prior to that date and concerning a notary in respect of whom one or more other claims have already been filed against the fund."

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

1007

Gouvernement du Québec

O.C. 1257-96, 2 October 1996

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

Physiotherapists
— **Equivalence of diplomas and training**

Regulation respecting the standards for equivalence of diplomas and training for the issue of a physiotherapist's permit

WHEREAS under paragraph *c* of section 93 of the Professional Code (R.S.Q., c. C-26; 1994, c. 40), the Bureau of the Ordre des physiothérapeutes du Québec must, by regulation, prescribe standards for equivalence of diplomas issued by educational establishments situated outside Québec, for the purposes of issuing a permit and standards of equivalence of the training of a person who does not hold a diploma required for such purposes;

WHEREAS under that provision, the Bureau made the Regulation respecting the standards for equivalence of diplomas and training for the issue of a physiotherapist's permit;

WHEREAS in accordance with the Regulations Act (R.S.Q., c. R-18.1), a draft of that Regulation was published in Part 2 of the *Gazette officielle du Québec* of 28 February 1996, in French and English;

WHEREAS that Regulation was attached to a notice mentioning that it could be submitted to the Government which could approve it with or without amendment upon