

## Draft Regulation

Legal Aid Act  
(R.S.Q., c. A-14; 1996, c. 23)

### Legal aid — Amendments

Notice is hereby given, in accordance with section 10 of the Regulations Act (R.S.Q., c. R-18.1), that the Regulation to amend the Regulation respecting legal aid, the text of which appears below, may be made by the Government upon the expiry of 45 days following this publication.

The Act to amend the Legal Aid Act (1996, c. 23) and the Regulation respecting legal aid, made by Order in Council 1073-96 dated 28 August 1996, came into force on 26 September 1996, except for the provisions respecting contributory legal aid, which came into force on 1 January 1997.

The purpose of the draft Regulation is to make various amendments to the Regulation respecting legal aid.

With respect to financial eligibility for legal aid, the draft Regulation proposes that all exigible contributions be collected by legal aid centres and it regulates the collection of those contributions, which may be paid in instalments under the circumstances set out in the draft Regulation. The draft Regulation relaxes the procedure for determining financial eligibility for legal aid, with a view to accelerating the process.

The draft Regulation amends certain rules for determining the financial eligibility of minors by providing that such eligibility will be determined in all cases by taking into account only the income and liquidities of the minor where aid is required by that person or for his benefit for proceedings under the Youth Protection Act (R.S.Q., c. P-34.1) or the Young Offenders Act (R.S.C., 1985, c. Y-1).

Furthermore, the draft Regulation prescribes on what conditions groups of persons, non-profit legal persons and persons who intend to institute a class action may be declared financially eligible for legal aid.

The draft Regulation also proposes to broaden the range of legal services for which legal aid is granted in penal matters. It provides that the legal advice provided for in the Legal Aid Act may be rendered by jurists in private practice or in the employ of legal aid centres.

Finally, the draft Regulation makes other amendments, particularly with respect to an application for legal aid.

The provisions of the draft Regulation pertaining to financial eligibility will have a positive impact on the clients of legal aid, especially those which are intended to simplify the financial eligibility rules.

The new rules related to the collection of contributions by legal aid centres will have a positive impact on advocates and notaries in private practice who agree to provide legal services under the legal aid plan.

The proposed provisions concerning the financial eligibility of children and teenagers will have a positive impact, by rendering legal aid more readily accessible to those client groups. On the other hand, parents may be required to repay the costs of the legal aid obtained by their child, in certain cases and under certain conditions.

The more comprehensive coverage for services in penal matters will make legal aid more accessible to those who need such services.

Further information may be obtained by contacting Mr. Jacques Mercier, Direction des Affaires législatives, 1200, route de l'Église, 4<sup>e</sup> étage, Sainte-Foy (Québec), G1V 4M1, phone number: (418) 643-7222, fax number: (418) 643-9749.

Any interested person having comments to make on this matter is asked to send them in writing, before the expiry of the 45-day period, to the Minister of Justice, 1200, route de l'Église, 9<sup>e</sup> étage, Sainte-Foy (Québec), G1V 4M1.

PAUL BÉGIN,  
*Minister of Justice*

---

## Regulation to amend the Regulation respecting legal aid

Legal Aid Act  
(R.S.Q., c. A-14, s. 80, 1<sup>st</sup> par., subpars. a.1 to a.8, b to b.2, h to h.3, q and s, and 2<sup>nd</sup> and 3<sup>rd</sup> pars; 1996, c. 23, s. 42)

**1.** The Regulation respecting legal aid, made by Order in Council 1073-96 dated 28 August 1996, is amended in section 1

(1) by deleting at the end the words “and, if there is a recovery in accordance with Division VI.1 of that Act, the recovery expenses incurred”; and

(2) by adding the following paragraph at the end:

“Where the adverse party is condemned to pay the costs, the costs taxed against and recovered from that party shall be deducted from the costs of legal aid.”

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

“6. Financial eligibility for legal aid shall be determined by taking into consideration the income for the taxation year preceding the year of the application for legal aid. Notwithstanding the foregoing, eligibility shall be determined by taking into consideration the estimated income for the taxation year in which the application for aid is made where such income is liable to affect the applicant’s financial eligibility or to influence the amount of the contribution exigible from him.

Financial eligibility shall be determined by also taking into consideration the value of the assets, including property and liquidities, owned on the date of the application.

**6.1** For the purposes of determining financial eligibility, the income and assets of the applicant and those of his spouse shall be taken into consideration.

Notwithstanding the foregoing, where the legal services are applied for in respect of a child or for his benefit, the following shall be taken into consideration:

- (1) the child’s income and liquidities; and
- (2) the income and the value of the assets, including property and liquidities, of the father or mother who has custody of the child or, as the case may be, those of the person referred to in section 2.”

**3.** Section 7 is amended

(1) by substituting “section 6.1” for “section 6” in the part preceding paragraph 1; and

(2) by substituting the following for paragraph 2:

“(2) by taking into consideration only the income and the value of the liquidities of the minor where legal aid is required by that person or for his benefit:

(a) for proceedings under the Youth Protection Act (R.S.Q., c. P-34.1) or the Young Offenders Act (R.S.C., 1985, c. Y-1); or

(b) in the context of any other case or recourse, if the interests of the minor are opposed to those of his father or mother or, as the case may be, those of the persons referred to in section 2.”

**4.** The words “income from business” are substituted for the words “income from self-employment” in the first and second paragraphs of section 9.

**5.** The words “this Regulation” are substituted for “section 6” wherever that reference appears in paragraphs 1, 2 and 3 of section 18.

**6.** The words “this Regulation” are substituted for “section 6” wherever that reference appears in clauses *a* and *b* of subparagraph 1 of the second paragraph of section 19.

**7.** The words “this Regulation” are substituted for “section 6” in section 20.

**8.** The words “the income considered for eligibility purposes pursuant to section 20” are substituted for the words “his income within the meaning of section 20” in section 21.

**9.** The following is inserted after section 21:

“**21.1** An applicant who is a group of persons or a non-profit legal person is financially eligible for gratuitous legal aid if the annual income of that group or legal person, within the meaning of section 9, does not exceed the level established in section 18 for a single person, if the value of its assets, including property and liquidities, does not exceed \$90 000 and if at least 50 % of its members are financially eligible for gratuitous legal aid.

**21.2** A group of persons or a non-profit legal person who is financially ineligible for gratuitous legal aid under section 21.1 is financially eligible for contributory legal aid if the following 2 conditions are met:

(1) the group or the legal person meets the conditions of eligibility for gratuitous legal aid under section 21.1 or the conditions of eligibility for contributory legal aid applicable to a single person under section 20; and

(2) at least 50 % of its members are financially eligible for gratuitous or contributory legal aid.

**21.3** For the purposes of the second paragraph of section 63 of the Legal Aid Act, an applicant who institutes or intends to institute a class action is financially eligible for gratuitous legal aid if the following 3 conditions are met:

(1) the applicant is financially eligible for gratuitous legal aid or, in the cases referred to in article 1048 of the Code of Civil Procedure (R.S.Q., c. C-25), he meets the conditions of eligibility for gratuitous legal aid applicable to a single person under section 18;

(2) at least 50 % of the members in the group that the applicant represents or intends to represent have made themselves known; and

(3) at least 50 % of the members in the group who have made themselves known are financially eligible for gratuitous legal aid.

**21.4** An applicant who institutes or intends to institute a class action and who does not meet the conditions of eligibility for gratuitous legal aid is financially eligible for contributory legal aid if the following 3 conditions are met:

(1) the applicant is financially eligible for gratuitous or contributory legal aid or, in the cases referred to in article 1048 of the Code of Civil Procedure, he meets the conditions of eligibility for gratuitous or contributory legal aid applicable to a single person under section 18 or section 20;

(2) at least 50 % of the members in the group that the applicant represents or intends to represent have made themselves known; and

(3) at least 50 % of the members in the group who have made themselves known are financially eligible for gratuitous or contributory legal aid.

**21.5** The financial eligibility of the members of a group or of a non-profit legal person and that of the members of a group for which a class action is instituted shall be determined by taking into consideration the financial condition of the members of their families whose income and assets are considered under this Regulation.

**21.6** Subject to the provisions of section 23, any contribution exigible from a group of persons, a non-profit legal person or a person who institutes or intends to institute a class action is \$800.”.

**10.** The following is substituted for section 22:

“**22.** Subject to the provisions of section 23, the contribution exigible from an applicant financially eligible for legal aid under section 4.3 of the Legal Aid Act is \$800.”.

**11.** The words “An exigible contribution” are substituted for the words “The contribution exigible under section 21 or 22” in section 23.

**12.** The words “or, in the case of a legal person, has had its head office,” are inserted after the words “has resided” in the second paragraph of section 24.

**13.** The following is substituted for section 27:

“**27.** The recipient is required to pay the contribution indicated on the certificate of eligibility to the legal aid centre that issued the certificate.”.

**14.** Section 28 is revoked.

**15.** The following is substituted for section 29:

“**29.** Not later than 15 days following the date of issuance of the certificate of eligibility, the recipient shall pay to the legal aid centre an amount equal to the actual foreseeable costs of legal aid for the legal services covered by the certificate of eligibility, up to the amount of the maximum contribution exigible from the recipient.

Notwithstanding the foregoing, the director general may, within that period, agree with the debtor to such amount being paid in instalments. Such agreement may be concluded only if the legal services must be rendered without delay and if the debtor has no liquidities, other than those required to support himself and meet his basic needs and those of his family, to pay the exigible contribution in one instalment but is financially able to pay it in regular instalments.

The agreement shall state the terms and conditions for repaying the contribution and the total period over which the instalments will be spread. That period may not exceed 6 months from the date on which the agreement is concluded.

**29.1** Where a recipient fails to pay all or part of the exigible contribution, the director general shall without delay so notify him and shall inform him that, in accordance with the third paragraph of section 70 of the Legal Aid Act, the default may entail the suspension or withdrawal of the legal aid. A copy of that notice and, where applicable, of any notice of suspension or withdrawal of legal aid, as well as of any demand notice, shall be forwarded to the advocate or notary in charge of the recipient’s record.”.

**16.** The following is substituted for the heading of Division V:

“APPLICATION FOR LEGAL AID AND CERTIFICATE OF ELIGIBILITY”.

**17.** Section 30 is amended

(1) by inserting the words “or review” after the word “institution” and the words “or revocation” after the word “homologation” in the second paragraph; and

(2) by striking out the third paragraph.

**18.** Section 31 is amended

(1) by substituting the words “An applicant shall, in the manner prescribed in sections 34 to 34.2, describe” for the words “An applicant shall describe” in the first paragraph; and

(2) by substituting the following for subparagraph 6 of the second paragraph:

“(6) establish his income, assets and liabilities, as well as those of the members of his family whose financial condition is considered under this Regulation.”.

**19.** The following is substituted for section 32:

“**32.** An applicant that is a group of persons or a non-profit legal person shall, in the manner prescribed in sections 34 to 34.2, give an account of the financial statement of the group or non-profit legal person and of at least 50 % of its members who are financially eligible for legal aid. The person making the application on behalf of the group or legal person shall

(1) provide its instrument of incorporation in the case of a legal person or, in the case of a group, demonstrate that it is not a profit-seeking group and describe the objectives of the group or legal person and the territory served or to be served;

(2) indicate the number of members and the accounting system used;

(3) establish the income, assets and liabilities of the group or legal person, as well as those of at least 50 % of its members who are financially eligible for legal aid; and

(4) describe the facts justifying the application for legal aid.

**32.1** Where the applicant institutes or intends to institute a class action, he shall, in the manner prescribed in sections 34 to 34.2, describe his financial condition and that of at least 50 % of the members who, among the group that the applicant represents or intends to represent, have made themselves known and are financially eligible for legal aid.

For that purpose, the applicant shall

(1) indicate the number of members who have made themselves known and the estimated number of members likely to be represented;

(2) establish

(a) his income, assets and liabilities, as well as those of the members of his family whose financial condition is considered under this Regulation;

(b) the income, assets and liabilities of at least 50 % of the members of the group that he represents or intends to represent, who have made themselves known and are financially eligible for legal aid; and

(3) describe the facts justifying the application for legal aid.”.

**20.** Section 33 is amended:

(1) by substituting the words “, or that of the other persons whose financial condition is considered,” for the words “or that of his family” in paragraph 1;

(2) by inserting the following after paragraph 2:

“(2.1) to inform without delay the director general who issues the certificate of eligibility for legal aid of any change in his place of residence;

(2.2) if legal aid is granted to him in respect of a claim to refugee status, to inform without delay the director general who issues the certificate of eligibility to him of the date on which he will be heard by the Convention Refugee Determination Division of the Immigration and Refugee Board instituted under the Immigration Act (R.S.C., 1985, c. I-2).”.

**21.** The following is substituted for sections 34 and 35:

“**34.** The income of the applicant and of the other persons whose financial condition is considered under this Regulation shall be established, for the taxation year preceding the date of the application for legal aid, by means of the fiscal return, for that year, of the persons concerned and the notice of assessment related thereto. If those documents are not filed, the applicant shall provide a statement of that income.

Where eligibility is established by considering the estimated income for the taxation year in which the application for aid is filed, that income shall be established by filing a statement of the income of the applicant and of the other persons whose financial condition is considered.

**34.1** An applicant shall, to the extent prescribed by this Regulation, file with his application a statement of the assets, including property and liquidities, he owns

on the date of the application, as well as a statement of his liabilities.

The applicant shall also file a statement of the assets, including property and liquidities owned, on the date of the application for legal aid by the other persons whose financial condition is considered, as well as a statement of their liabilities.

**34.2** An applicant shall provide documentary evidence of his income, assets and liabilities and shall attach to his application his authorization in writing for the legal aid centre to verify that data with the taxation authorities concerned, a financial institution, an agency, an educational institution, a government department or an employer.

The applicant shall also provide documentary evidence of the income, assets and liabilities of the other persons whose financial condition is considered. Failing that, those other persons shall attach to the application their authorization in writing for the legal aid centre to verify that data with the taxation authorities concerned, a financial institution, an agency, an educational institution, a government department or an employer.

**35.** When requested to do so by the legal aid centre, an applicant shall file or arrange for the filing of any other document necessary for determining whether he is eligible for legal aid or, in the case provided for in the fifth paragraph of section 38, for re-examining his eligibility.”

**22.** The following is substituted for the second paragraph of section 36:

“Where the other persons whose financial condition is considered cannot file documentary evidence of their income, assets and liabilities, they shall attach to the application a declaration, duly signed by them, indicating that the information provided by them is accurate.”

**23.** The following section is inserted after section 37:

“**37.1** The period for which a certificate of eligibility is issued under section 66 of the Legal Aid Act begins on the date of the application for legal aid.

For the purposes of this section, an application for legal aid is supposed to be made on the earliest of the following dates:

— the date on which the application, duly completed and signed, is received by the local legal aid centre or bureau; or

— the date on which an appointment is arranged with the local legal aid centre or bureau, either by the applicant or the advocate or notary acting for him, for the purpose of completing the application.”

**24.** The following is inserted before Division VI:

#### “DIVISION V.1

#### SUSPENSION AND WITHDRAWAL OF LEGAL AID AND CESSATION OF FINANCIAL ELIGIBILITY

**37.2** Suspension or withdrawal of legal aid entails the cessation of the legal services covered by the certificate of eligibility, from the receipt by the recipient or the advocate or notary in charge of the record of a notice informing them of the suspension or withdrawal, as the case may be.

Notwithstanding the suspension or withdrawal of legal aid, the advocate or notary in charge of the record shall render any legal services required to perform conservatory acts necessary for preserving the rights of the person subject to the suspension or withdrawal.

**37.3** Subject to section 71 of the Legal Aid Act, cessation of the recipient’s financial eligibility terminates the legal aid *pleno jure*.

The provisions of section 37.2 apply, adapted as required, where the recipient ceases to be financially eligible.”

**25.** The following is inserted in Division VI, before section 38:

“**37.4** Where the costs of legal aid are recovered, those costs include, in addition to what is listed in section 1, the costs of the demand notice provided for in section 73.3 of the Legal Aid Act and incurred by the legal aid centre.”

**26.** Section 38 is amended

(1) by deleting subparagraph 3 of the third paragraph; and

(2) by adding the following paragraph at the end:

“The recipient’s financial eligibility shall also be re-examined within 15 days following receipt by the recipient of a notice of hearing before the Convention Refugee Determination Division of the Immigration and Refugee Board.”

**27.** The following is substituted for subparagraph 2 of the second paragraph of section 39:

“(2) legal aid was granted, in proceedings under the Youth Protection Act, in order to ensure representation of or assistance to a minor;

(3) legal aid was granted, in proceedings under the Young Offenders Act, in order to ensure the defense of a young person prosecuted for an offence against persons who, under the first paragraph, would otherwise be required to make such repayment.”.

**28.** The words “to the legal aid centre in the same matter” are substituted for the words “and including, in the case provided for in section 26, the administrative expenses collected by the legal aid centre” in section 40.

**29.** Paragraph 4 of section 41 is deleted.

**30.** The following section is inserted in Division VII, before section 44:

“**43.1** In addition to the legal services for which legal aid is granted under section 4.5 of the Legal Aid Act, that aid shall be granted, in first instance, in any of the following cases:

(1) to ensure the defense of a person who, being the subject of a conditional sentence order under section 742.1 of the Criminal Code (R.S.C., 1985, c. C-46), appears before the court under section 742.6 of that Code for a breach of a condition of that order; or

(2) to ensure the defense of a person who, in any of the following cases, is prosecuted before a court for an offence described in paragraph 3 of section 4.5 of the Legal Aid Act:

(a) the person is detained at the time of his appearance, unless the detention results from his failure to be present in court when required to appear;

(b) the person is prosecuted for sexual assault or for an offence that consists in having mistreated his spouse or children;

(c) the person will be brought before the court in the presence of a child under 14 years of age.

Section 4.6 of the Legal Aid Act applies, adapted as required, to appeals lodged and extraordinary recourses exercised in a matter referred to in this section.”.

**31.** The word “suppléent” is substituted for the words “suppléent à” in the French version of paragraph 5 of the statutes of Québec listed in section 44.

**32.** The following is inserted at the end of Division VII:

“**45.1** Legal advice for which legal aid may be granted under section 4.4 and the second paragraph of section 32.1 of the Legal Aid Act shall be given either by advocates or notaries in the employ of a legal aid centre, or by advocates or notaries in private practice.”.

**33.** The provisions of this Regulation will come into force on (*enter here the date of the 15<sup>th</sup> day following the date of its publication in the Gazette officielle du Québec*).

1609

## Draft Regulation

Legal Aid Act  
(R.S.Q., c. A-14; 1996, c. 23)

### Legal aid plan — Conditions of practice, procedure for the settlement of disputes and tariff of fees of advocates

Notice is hereby given, in accordance with section 10 of the Regulations Act (R.S.Q., c. R-18.1), that the Regulation to ratify the Agreement between the Minister of Justice and the Barreau du Québec entered into on 4 April 1997 respecting the conditions of practice, the procedure for the settlement of disputes and the tariff of fees of advocates under the legal aid plan, the text of which appears below, may be made by the Government upon the expiry of 45 days following this publication.

The purpose of the Draft Regulation is to replace the Regulation respecting the conditions of practice, the procedure for the settlement of disputes and the tariff of fees of advocates under the legal aid plan, made by Order in Council 1171-96 dated 18 September 1996.

In accordance with the first paragraph of section 81 of the Legal Aid Act, the Minister of Justice has negotiated with the Barreau du Québec an Agreement respecting the Tariff of fees of advocates in private practice under the legal aid plan. An Agreement to that effect was entered into on 4 April 1997.

The aim of the Draft Regulation is to ratify that Agreement.

The Draft Regulation has an impact on advocates in private practice who agree to provide services under the legal aid plan, since the Agreement fixes the fees payable to them and some of the conditions for the fulfilment of the mandates they receive.