

Regulations and other acts

Gouvernement du Québec

O.C. 70-98, 21 January 1998

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

Notaries

— Conciliation and arbitration procedure for the accounts

Regulation respecting the conciliation and arbitration
procedure for the accounts of notaries

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

WHEREAS under subparagraph 3 of the second paragraph of section 93 of the Notarial Act (R.S.Q., c. N-2) and section 88 of the Code, the Bureau adopted the Regulation respecting the procedure for conciliation and arbitration of accounts of notaries (R.R.Q., 1981, c. N-2, r. 10) and amended it by the Regulation approved by Order in Council 381-92 dated 18 March 1992;

WHEREAS it is expedient to replace the Regulation;

WHEREAS under section 88 of the Code, the Bureau adopted the Regulation respecting the conciliation and arbitration procedure for the accounts of notaries;

WHEREAS in accordance with section 95.3 of the Code, a draft of the Regulation was sent to all notaries 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 10 July 1996 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 notaries, the text of which is 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 notaries

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

DIVISION I CONCILIATION

1. The time limits in this Regulation are determined in accordance with the Code of Civil Procedure (R.S.Q., c. C-25).
2. The Bureau of the Chambre des notaires du Québec shall appoint a conciliator of accounts for notaries' fees to rule on applications for conciliation.

The conciliator shall take the oath of office and discretion in the manner prescribed by the Bureau.

3. A client who has a dispute with a notary concerning an account for professional services shall apply for conciliation before applying for arbitration.

In this Regulation, "client" means a person bound to pay the notarial fees, even if that person is not the recipient of the notary's services charged on the account.

4. Once an application for conciliation in respect of an account has been filed, the notary may not institute proceedings to recover the account so long as the dispute can be settled by conciliation or arbitration.

Notwithstanding the foregoing, a notary may request provisional measures in accordance with article 940.4 of the Code of Civil Procedure.

5. An application for conciliation in respect of an account for professional services that is unpaid, or paid in full or in part, shall be sent to the conciliator within a period of 45 days following receipt of the account.

Where an amount has been withdrawn or withheld by the notary from the funds that he holds or receives for or on behalf of the client, the period runs from the date of receipt of the account or from the day the client becomes aware of the withdrawal or withholding, whichever comes last.

6. An application to the syndic for inquiry concerning a dispute with respect to an account for professional services may constitute an application for conciliation, provided that it is filed within the period prescribed in section 5.

7. A notary may not institute proceedings to recover an account for services before the expiry of a 45-day period from the date of receipt of the account by the client.

Notwithstanding the foregoing, the conciliator may authorize the notary to do so if recovery of the account may be jeopardized without such proceedings.

8. As soon as possible after receiving an application for conciliation, the conciliator shall notify the notary in writing at his office and send the client a copy of this Regulation.

9. The conciliator shall proceed with the conciliation using such procedure as he considers appropriate.

10. Where the conciliation does not lead to an agreement, the conciliator shall send a conciliation report to the parties as soon as possible, containing in particular the following information:

- (1) the amount of the account in dispute;
- (2) the amount that the client acknowledges owing.

The conciliator shall send the client the application for arbitration prescribed in Schedule I, indicating the procedure and deadline for submitting the dispute to arbitration.

DIVISION II ARBITRATION

§1. Arbitration committee

11. The Bureau shall form an arbitration committee to process applications for arbitration, composed of at

least four members appointed from among the notaries who have been on the roll of the Order for at least 10 years.

The Bureau shall designate the chairman, vice-chairman and secretary of the committee.

12. Each member and the secretary of the committee shall take the oath of office and discretion in the manner prescribed by the Bureau.

§2. Application for arbitration

13. Within 30 days of receipt of the conciliation report provided for in section 12, the client may apply for arbitration of the account by sending to the secretary of the committee the duly completed form prescribed in Schedule I.

14. As soon as possible after receiving an application for arbitration, the secretary of the committee shall notify the notary in writing.

15. A client who wishes to withdraw his application for arbitration shall do so in writing, having first obtained the notary's consent.

16. 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 committee.

§3. Council of arbitration

17. Where the amount in dispute is less than \$5 000, the application for arbitration shall be examined by a council of arbitration composed of a single arbitrator designated by the secretary of the arbitration committee from among the committee members.

Where the amount in dispute is \$5 000 or more, the application for arbitration shall be examined by a council composed of three arbitrators designated by the secretary of the committee from among the committee members who shall designate the chairman and secretary of the council.

18. The secretary of the committee shall inform the parties and the council's arbitrator or arbitrators in writing that the council has been formed.

19. Should an arbitrator die or be unable to act, the other arbitrators shall see the matter through and their decision shall be valid.

Where the council of arbitration consists of a single arbitrator or if two of the arbitrators are in one of the situations referred to in the first paragraph, they shall be replaced by the secretary of the committee in accordance with section 17 and the dispute shall be reheard, if necessary.

20. 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. The request shall be sent in writing to the secretary of the committee, to the council and to the parties within 10 days of receipt of the notice provided for in section 18 or of the day on which the reason for the request becomes known to the party referring to it, whichever comes last.

The administrative committee shall decide the request and, where applicable, the secretary of the committee shall see that the recused arbitrator is replaced in accordance with section 17.

21. Any agreement reached by the parties after the council of arbitration has been formed but before the hearing shall be put in writing, shall be signed by the parties and shall be filed with the secretary of the committee. In such case, the parties are solidarily responsible for the arbitration expenses, as fixed by the secretary of the committee in accordance with section 31.

§4. Hearing

22. The secretary of the committee shall fix the date, time and place of the hearing and shall give the council and the parties at least 10 days' written notice thereof.

23. The council may ask each party to submit to the secretary of the committee, within a given time limit, a statement of their claims accompanied with supporting documents. The secretary of the committee shall forward a copy of the statements to the council and the parties as soon as possible after their receipt.

The council may also ask for any record, document or information it deems necessary for settling the dispute. The parties are bound to comply with any order to that effect.

24. The council of arbitration 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 procedure and apply the rules of evidence as it considers most appropriate.

The council's decision shall be in accordance with the rules of law and equity.

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

26. The secretary of the council or the single arbitrator shall draw up the minutes of the hearing, which shall be signed by the arbitrator or arbitrators.

27. Any agreement reached by the parties after the hearing shall be recorded in the arbitration award.

§5. Arbitration award

28. The council shall issue its award within 30 days of the end of the hearing.

29. Where applicable, the award shall be a majority award of the members of the council.

In its award, the council of arbitration may uphold, reduce or cancel the account in dispute and may also, if expedient, determine the reimbursement or payment to which a party may be entitled.

The award shall give reasons and shall be signed by the single arbitrator or all the arbitrators. Where an arbitrator refuses or is unable to sign, the others shall mention that fact and the award shall have the same effect as though it were signed by all.

30. The costs incurred by the parties for the arbitration shall be borne by each of the parties and may not be recovered by the adverse party.

31. In its award, the council has full discretion to rule on the arbitration expenses, which are the expenses incurred by the Order for the arbitration. The total expenses to be borne by a party may not exceed 15 % of the amount to which the arbitration pertains. Notwithstanding the foregoing, those expenses shall be at least \$50.

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

32. The arbitration award is final, without appeal, and is executory in accordance with articles 946 to 946.6 of the Code of Civil Procedure.

The parties shall comply with the award.

33. The arbitration award shall be filed with the secretary of the committee, who shall send it to the parties as soon as possible.

34. Once the arbitration award is issued, the chairman of the council or the single arbitrator, as the case may be, shall send to the secretary of the committee the complete arbitration record, including the minutes of the hearing duly signed by the arbitrator or arbitrators. The secretary of the committee may issue true copies thereof to the interested parties only.

DIVISION IV FINAL

35. This Regulation replaces the Regulation respecting the procedure for conciliation and arbitration of accounts of notaries (R.R.Q., 1981, c. N-2, r. 10); however, the latter Regulation continues to govern the procedure for conciliation and arbitration of disputes for which an application for conciliation was filed before the coming into force of this Regulation.

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

SCHEDULE I (ss. 10 and 13)

APPLICATION FOR ARBITRATION

I, the undersigned, declare the following:

Identification of applicant

_____			If applicable, represented by:		
Name of applicant			Name of attorney		
_____			_____		
Number	Street	Apartment	Number	Street	
_____			_____		
Town or city	Province	Postal code	Town or city	Province	Postal code
_____			_____		
Tel. (office)	Fax		Tel.	Fax	
_____			_____		
Tel. (residence)					

Identification of notary

Name of notary

Number Street

Town or city Province Postal code

Telephone Fax

(Complete one of the following boxes: fees paid in full, fees paid in part or fees unpaid. In the box selected, complete Part 1 that applies to your situation and Part 2.)

Fees paid in full

1. On _____, I received an account for
(date of receipt of account)
notarial fees in the amount of \$..... for professional services rendered, a copy of which is attached hereto.

OR

1. On _____, I took cognizance that the amount of \$..... had been deducted as payment of notarial fees from the funds held in trust on my behalf by the notary.

(Check and complete, if applicable)

- I received the account for notarial fees on _____.
- To date, I have received no account for notarial fees.

2. Since the account has been paid, I hereby request a refund of \$....., considering that the amount of \$..... constitutes a just and reasonable fee for the professional services rendered.

Fees paid in part

1. On _____, I received an account for
(date of receipt of account)
notarial fees in the amount of \$..... for professional services rendered, a copy of which is attached hereto.

OR

1. On _____, I took cognizance that the amount of \$..... had been deducted as payment of notarial fees from the funds held in trust on my behalf by the notary.

(Check and complete, if applicable)

- I received the account for notarial fees on _____.
- To date, I have received no account for notarial fees.

2. Since the account has been paid in part, I acknowledge owing \$....., considering that the amount of \$..... constitutes a just and reasonable fee for the professional services rendered.

Fees unpaid

1. On _____, I received an account for
(date of receipt of account)
notarial fees in the amount of \$..... for professional services rendered, a
copy of which is attached hereto.

OR

1. To date, I have received no account for notarial fees listing the profes-
sional services rendered.

2. Since the account has not been paid, I acknowledge owing the amount
of \$..... that constitutes a just and reasonable fee for the professional
services rendered.

3. Reasons for the application for arbitration _____

(An explanatory letter may be attached if additional space is required.)

◆ For prescription purposes, I hereby waive my benefit
with respect to time elapsed.

◆ The application for arbitration was filed because the
conciliation procedure did not lead to an agreement
between the parties.

◆ Object of the dispute
The amount of \$..... that represents the difference be-
tween the account and the amount of \$..... that I ac-
knowledge as constituting a just and reasonable fee for
the professional services rendered.

◆ I hereby request that the dispute be settled by arbitra-
tion conducted in accordance with the Regulation re-
specting the conciliation and arbitration procedure for
the accounts of notaries a copy of which I declare having
received and taken cognizance of.

◆ I hereby agree to comply with the decision of the
council of arbitration that will be formed in accordance
with this Regulation.

Signed at _____, on _____

Signature of applicant or applicant's attorney

Gouvernement du Québec

O.C. 75-98, 21 January 1998

An Act respecting liquor permits
(R.S.Q., c. P-9.1)

**Penalties applicable to contraventions of section 72.1
of the Act**

Regulation respecting the penalties applicable to con-
traventions of section 72.1 of the Act respecting li-
quor permits

WHEREAS in June 1997, the National Assembly
adopted Chapter 51 of the Statutes of 1997, in particular
to increase the powers of the Régie des alcools, des
courses et des jeux to take action for the purpose of
fighting criminality and ensuring public security;

WHEREAS under paragraph 14.1 of section 114 of the
Act respecting liquor permits (R.S.Q., c. P-9.1), enacted
by section 52 of that Chapter 51, the Régie des alcools,
des courses et des jeux may make regulations establish-
ing, for any contravention of section 72.1 of the Act
respecting liquor permits, the suspensions and cancella-
tions of permits applicable;

WHEREAS at a plenary session held on 19 December
1997, the Régie des alcools, des courses et des jeux
made a regulation respecting penalties applicable to li-
quor permit holders for the unlawful presence of alco-
holic beverages or video lottery machines on their pre-
mises;

WHEREAS under section 116 of the Act respecting
liquor permits, any regulation made by the Board must
be submitted to the approval of the Government, which
may then amend it;

WHEREAS under section 12 of the Regulations Act
(R.S.Q., c. R-18.1), a proposed regulation may be ap-
proved without having been published where the author-
ity approving 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 that
has approved 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 regu-
lation;