

Draft Regulation

An Act respecting industrial accidents
and occupational diseases
(R.S.Q., c. A-3.001)

Commission des lésions professionnelles — Rules of evidence, procedure and practice

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Rules of evidence, procedure and practice of the Commission des lésions professionnelles, agreed to by the Commissioners and whose text appears below, may be approved by the Government upon the expiry of 45 days following this publication.

The proposed Rules specify the conditions governing the application of the rules of evidence and procedure established by the Act respecting industrial accidents and occupational diseases.

More particularly, those Rules deal with:

- the scope and purpose of the Regulation;
- the institution of proceedings;
- the representation of the parties;
- the communication of procedures and exhibits;
- the presence of a witness at the hearing;
- the hearing;
- the recusation;
- the notification and computation of delays.

Those Rules are intended to ensure the simple, flexible and rapid processing of the applications submitted to the Commission des lésions professionnelles, particularly by encouraging cooperation by the parties and their representatives and by the use of new information and communication technologies, in accordance with the rules of natural justice and the equality of parties.

Further information may be obtained by contacting Mr. Claude Verge, Commission des lésions professionnelles, 900, place D'Youville, bureau 800, Québec (Québec) G1R 3P7; tel. (418) 643-7129, fax: (418) 528-6063.

Any person having comments to make on the matter is asked to send them in writing, before the expiry of the 45-day period, to the undersigned, Commission des

lésions professionnelles, 900, place D'Youville, bureau 800, Québec (Québec) G1R 3P7.

JEAN-PIERRE ARSENAULT,
*President of the Commission des lésions
professionnelles*

Rules of evidence, procedure and practice of the Commission des lésions professionnelles

An Act respecting industrial accidents
and occupational diseases
(R.S.Q., c. A-3.001, s. 429.21)

DIVISION I SCOPE AND PURPOSE

1. This Regulation applies to the proceedings on which the Commission des lésions professionnelles makes determinations under section 369 of the Act respecting industrial accidents and occupational diseases (R.S.Q., c. A-3.001).

Its purpose is to ensure the simple, flexible and quick processing of applications, particularly by favouring cooperation between the parties or their representatives and by allowing the use of new information and communication technologies, in the respect of the rules of natural justice and the equality of parties.

2. The Board is not bound to apply the civil rules of procedure and evidence; it may for instance receive any evidence that it deems useful.

DIVISION II APPLICATION

3. In addition to the information required by section 429.23 of the Act, the application instituting the proceeding shall contain the following particulars:

(1) the name and address of the applicant party, his telephone number and, where applicable, his electronic mail address and his fax number;

(2) if the applicant party is represented, the representative's name and address, his telephone number and, where applicable, his electronic mail address and his fax number;

(3) the names and addresses of the other parties to the application, their telephone numbers and, where applicable, their electronic mail addresses and fax numbers; and

(4) any other useful information that the Board may require.

The application shall be signed by the party or his representative and a copy of the contested decision shall be attached thereto.

4. Any application other than one instituting the proceeding shall indicate the number assigned by the Board to each of the records to which it is related.

5. A party may withdraw his application by means of a notice in writing, signed and produced by the party or his representative. A party may also withdraw verbally at the hearing.

6. Any change in the address or telephone or fax number of a party or his representative shall be notified to the Board.

7. A form to state one's income and expenditures shall be forwarded to a party who, for an economical reason, applies for the issuance of the postponement order provided for in section 380 of the Act.

The application shall be processed upon receipt of the required information.

DIVISION III REPRESENTATION

8. A person who accepts to represent a party after the application instituting the proceeding has been filed shall so inform the Board in writing. That representation is valid for the whole case.

A party or his representative shall inform the Board in writing of the end of the representation.

DIVISION IV COMMUNICATION OF PROCEEDINGS AND EXHIBITS

9. The Board shall communicate to the party the notices, exhibits and other information necessary for the progress of the case. If a party is represented, the Board shall communicate with the party's representative for that purpose.

Notwithstanding the foregoing, the application instituting the proceeding, the notice of proof and hearing and the decision rendered by the Board shall be communicated to both the party and his representative.

10. A party who wants to file an exhibit in the record shall send it to the Board as soon as possible so that it may reproduce it and send it to the other parties before the hearing.

Notwithstanding the foregoing, a party who wants to file a writing in the record less than 15 days before the date of the hearing shall file five copies thereof with the Board and send a copy to the other parties.

11. If the reproduction of an exhibit by the Board involves technical difficulties, it may require from the party who filed it that he reproduce it and send it to the other parties within the time and on the conditions determined by the Board.

For filing an object, the Board may, on the conditions determined by it, demand that a similar object be sent to the other parties.

12. An expert's report shall be filed in the record of the Board at least 15 days before the date fixed for the hearing.

A commissioner may however authorize the late filing of such a report on the conditions he determines.

13. A party authorized to produce a writing at the hearing shall provide copies to the other parties present, the assessor and each member of the Board.

14. A party may not, in the course of the proceeding, take back an exhibit that he has filed in the record, except upon leave from the Board and on the conditions determined by it.

DIVISION V PRESENCE OF A WITNESS AT THE HEARING

15. A party may require the presence of a person who will testify or produce an exhibit at the hearing by using the form provided by the Board for that purpose.

The form signed by a commissioner shall be completed and notified by the party at his own expenses, and it is incumbent on the party to prove the date of notification.

16. A subpoena issued upon request by a party shall be notified at least five clear days before the date of appearance.

However, in cases of urgency, a commissioner may, by special order entered on the form, reduce that period, provided that it is not less than 12 hours before the time fixed for appearance.

DIVISION VI HEARING

17. The Board shall prepare a roll for ordinary, urgent and priority proceedings; it shall also prepare a practice roll for the cases that must, in the opinion of the Board, be heard prior to the hearing on their merits.

The Board may also prepare a provisional roll for late proceedings that it would like to see ready to be heard as soon as possible.

18. The hearing shall take place in the region where the worker's domicile is located.

The Board may choose another place in the interest of justice.

19. A party who is obliged to request the postponement of a hearing shall, as soon as he becomes aware of the reasons he wants to invoke, submit a written application to the Board with the said reasons and give notice thereof to the other parties; the application shall include vouchers, if required.

Furthermore, in order to make its processing easier, an application for postponement shall indicate whether it has been contested or agreed to by the other parties, the probable duration of the hearing, the presence of experts and possible dates of hearing selected after consulting the Board and the other parties.

The hearing shall be postponed only if the reasons invoked are serious and if required for justice to be carried out.

20. The Board may receive testimonies and pleas by an audio recording, by stenography or by any other appropriate means.

A party may also provide such testimonies and pleas, at his own expenses, if so authorized by the Board and on the conditions determined by it.

21. The Commission may, *ex officio* or upon request from a party, prohibit or restrict the disclosure, publication or broadcasting of information or documents identified by it, where required to protect public order or if the protection of their confidential nature so requires to ensure the proper administration of justice.

22. The minutes of the hearing shall contain

- (1) the names of the members and, where applicable, that of the assessor;
- (2) the date and place of the hearing and the time at which it begins and ends;

(3) the name and address of each party and, where applicable, those of his representative and witnesses;

(4) the name and address of the interpreter, where applicable;

(5) the identification and code number of the exhibits;

(6) mention that the hearing is recorded;

(7) any decision rendered forthwith;

(8) any admission and full or partial settlement;

(9) the date on which the case will be taken under advisement; and

(10) any other mention useful for the follow-up of the record.

23. All persons attending a hearing shall behave with dignity and respect toward justice. They shall refrain from doing anything that could disrupt the hearing.

24. A witness may be examined by each of the parties and by the members and the assessor, to the extent necessary to ensure a fair procedure.

25. Before being examined, a witness shall swear that he will tell the truth.

He shall be exempted from that formality if he does not understand the nature of the oath; if so, he shall nonetheless be informed of his obligation to tell the truth.

The witness shall then state his name, address and date of birth.

26. The commissioner may order that witnesses testify outside each other's presence.

27. Where the services of an interpreter are needed for the fair progress of the hearing, the Board shall make sure that the person proposed for that purpose is capable of doing the translation required; the interpreter shall swear that he will translate the testimony of the witness faithfully.

28. The Board shall take judicial notice of generally recognized facts and of opinions and information in its field of specialization.

29. The commissioner shall give the parties present or represented at the hearing an opportunity to comment on any evidence of which he has taken judicial notice and that he believes must be considered in making the decision.

30. The commissioner may refuse to receive evidence that is irrelevant, unnecessarily redundant or of such a nature as to not serve the interests of justice.

31. Evidence provided in relation to a record may also be filed in another record of the Board with the authorization of the Board and on the conditions determined by it.

32. Where a visit of the premises is ordered, the parties shall be informed of the place, date and time of the visit in advance so that they may be present.

The commissioner shall determine the rules applicable to the visit.

DIVISION VII RECUSATION

33. If a member other than the commissioner or if an assessor removes himself at the hearing, the hearing shall resume if that member or assessor is replaced or, in the case of the assessor, if the commissioner considers that the hearing may resume in his absence.

If the commissioner removes himself, the hearing shall be suspended until another commissioner is appointed or until a new group is formed.

34. An application for the recusation of a member addressed to the president in accordance with section 429.43 of the Act shall give a written account of the facts and grounds on which it is based.

Such an application suspends the proceeding as soon as it is notified to the Board.

35. The member designated in an application for recusation shall file in the record a statement indicating his position on the truthfulness of the facts alleged in support of the application.

36. The decision of the president or member designated by him shall be rendered on the record.

37. A party may, at any time before the decision and provided he acts with dispatch, apply to the commissioner seized of the case for the recusation of an assessor sitting with him if the party has good reason to believe that a cause for recusation exists.

An application for recusation suspends the proceeding.

38. The facts and grounds on which the application for recusation is based and the position of the assessor on the truthfulness of the alleged facts shall be recorded in the minutes.

39. Unless the assessor removes himself, the commissioner shall decide the application on the record.

DIVISION VIII NOTIFICATION AND TIME LIMITS

40. The notice of proof and hearing shall be sent to the last address of the party mentioned in the record of the Board. If the notice is returned to the Board, the Board may give notice thereof by posting it in one of its offices.

41. A writing sent by mail is presumed to be filed with the Board on the day indicated by the postmark.

A writing sent by fax is presumed to be filed with the Board on the date appearing on the transmission slip.

A message sent by electronic mail shall be materialized by the Board. Electronic mail is presumed filed with the Board on the date of receipt indicated by the Board.

42. In computing a time period prescribed by these Rules, the day marking the start of the period is not counted and, except for a period in clear days, the terminal day is counted. Non-judicial days shall also be counted.

The non-judicial days are

- (1) Saturdays and Sundays;
- (2) 1 and 2 January;
- (3) Good Friday;
- (4) Easter Monday;
- (5) the Monday preceding 25 May;
- (6) 24 June;
- (7) 1 July;
- (8) the first Monday of September;
- (9) the second Monday of October;
- (10) 24, 25, 26 and 31 December;
- (11) any other day fixed by the Government.

43. Where the date fixed to perform an act falls on a non-judicial day, that act may validly be done on the next judicial day.

3039