

“For the years or parts of a year of service prior to 1 January 1999, the contributions referred to in the first paragraph shall be those that would have been withheld in accordance with section 29 of the Act or with section 5 of this Regulation as it read during those years or parts thereof.”

4. The following is substituted for subparagraph 13 of the first paragraph of Schedule II:

“(13) for the health and social services sector, the non-medical executives of Class 23 and higher classes, and the medical executives of Class C and higher classes.”

5. This Order in Council has effect from 1 January 1999, except section 4, which has effect 12 months before the making of this Order in Council.

2692

Gouvernement du Québec

O.C. 153-99, 24 February 1999

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

Bailiffs — Trust accounting and indemnity fund of the Chambre

Regulation respecting trust accounting by bailiffs and the indemnity fund of the Chambre des huissiers de justice du Québec

WHEREAS under section 89 of the Professional Code (R.S.Q., c. C-26), the Bureau of the Chambre des huissiers de justice du Québec must determine, by regulation, the terms, conditions and standards for receipt, custody and disposition of the sums of money and securities that the bailiffs are called upon to hold for the account of their clients and the terms, conditions and standards relating to the keeping and auditing of trust accounts, books and registers of bailiffs;

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 bailiff 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 the same section, the Bureau made the Regulation respecting trust accounting by bailiffs and the indemnity fund of the Chambre des huissiers de justice du Québec;

WHEREAS under section 95.3 of the Professional Code, the Secretary of the Chamber sent a copy of the draft Regulation to every member of the Chamber 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 4 March 1998 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 Professional 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 trust accounts by bailiffs and the indemnity fund of the Chambre des huissiers de justice du Québec, attached to this Order in Council, be approved.

MICHEL NOËL DE TILLY,
Clerk of the Conseil exécutif

Regulation respecting trust accounting by bailiffs and the indemnity fund of the Chambre des huissiers de justice du Québec

Professional Code
(R.S.Q., c. C-26, s. 89)

CHAPTER I TRUST ACCOUNTING

DIVISION I GENERAL

1. In this Regulation, the word “bailiff” means a person entered on the roll of the Chambre des huissiers de justice du Québec, who practises alone or in partnership.

2. Nothing in this Regulation shall be interpreted as excluding the use of data processing for the keeping of trust accounting records.

3. A bailiff shall record and account for all sums of money, securities and other property entrusted to him, and use them for the purposes for which they were given to him.

4. A bailiff may not deposit or leave his personal money in a trust account.

5. A bailiff may withdraw from a trust account the amount of his fees, in accordance with the established tariff of fees, or expenses incurred on behalf of another party.

DIVISION II GENERAL TRUST ACCOUNT

6. A bailiff shall deposit as soon as possible in a general trust account opened in his name in a financial institution authorized to receive deposits all sums of money or negotiable instruments collected on behalf of another party, received as an advance, or as a guarantee when acting as a seizing officer.

The first paragraph does not apply to:

(1) a bailiff employed by or appointed exclusively as the bailiff of a municipal court, where he is not called upon to levy or collect sums of money for the municipality and he is not requested by the municipality to hold them in trust or, as the case may be, to charge fees or transportation expenses in the practice of his profession;

(2) a bailiff who surrenders the sums levied or collected to the bailiff partnership for which he carries out his duties.

The proceeds of a sale under court order are deemed to be collected on behalf of another party.

7. A bailiff shall enter on a register the following information with respect to each of the proceedings for which he receives an amount of money:

- (1) the date and number of the receipt;
- (2) the name of the client;
- (3) the case number;
- (4) the names of the parties;
- (5) the nature of the proceeding;

(6) the total amount received;

(7) the date and the amount of the withdrawal;

(8) the name of the payee; and

(9) the cheque number.

8. Upon opening a general trust account, a bailiff shall complete and forward to the financial institution where the account was opened, as well as to the secretary of the Chamber, the form prescribed in Schedule 1. The form shall contain a declaration of trust and include an irrevocable authorization entitling the syndic, the administrative committee or the professional inspection committee:

(1) to request and obtain at any time from the depository institution all the information and explanations deemed necessary or useful for the purposes of this Regulation;

(2) if required, to block the sums of money on deposit; and

(3) to dispose of the sums of money on deposit, for the purposes for which the bailiff practising alone had received them, in the event of the bailiff's death, bankruptcy or incapacity, temporary or permanent striking off the roll, the revocation of his permit or the limitation or suspension of his right to practise in accordance with the Professional Code (R.S.Q., c. C-26).

9. A bailiff shall not withdraw from a general trust account sums of money other than those to be given to one of the parties or transferred directly into a special trust account in accordance with section 11.

10. Upon closing a general trust account, the bailiff shall without delay so notify the secretary of the Chamber by means of the form prescribed in Schedule 2.

DIVISION III SPECIAL TRUST ACCOUNT

11. Where the parties so require, or pursuant to a court order, the sums of money may be deposited or transferred into a special trust account, and the names of the parties for which the account has been opened shall be shown. Section 8 of this Regulation also applies to the opening of such account.

The bailiff may also hold in trust all investments, securities or guarantees as agreed upon by the parties.

DIVISION IV RECORDKEEPING FOR TRUST ACCOUNTS

12. A bailiff shall keep separate, up-to-date accounting records for each trust account.

13. Upon receipt of a sum of money to be deposited in a trust account, a bailiff shall issue an official receipt drawn up in accordance with the form prescribed in Schedule 3 to the person who gave him that sum.

14. The official receipt shall indicate whether the sum of money was collected on behalf of another party, received as an advance or as a guarantee when acting as a seizing officer.

15. Official receipts shall be consecutively numbered and made out in at least 2 identical copies.

16. Cheques or other payment authorizations drawn on a general or special trust account shall bear the indication: "trust account". Cheques shall be numbered.

17. A bailiff may not make cash withdrawals from the general or special trust account.

18. Trust accounting records shall be kept up-to-date and the reconciliation of the account done monthly in accordance with generally accepted accounting procedures.

DIVISION V AUDITING OF TRUST ACCOUNTING RECORDS

19. Before 31 March of each year, a bailiff shall forward to the secretary of the Chamber in accordance with the form prescribed in Schedule 4, a declaration under his oath of office attesting that all sums of money, securities and other property entrusted to him during the preceding year have been deposited, accounted for and used in accordance with the Court Bailiffs Act (R.S.Q., c. H-4.1) and the regulations of the Chamber.

20. The declaration prescribed by section 19 shall contain, in particular,

(1) the balance of all the trust accounts at 31 December;

(2) a list of all special trust accounts opened and closed during the year.

A single declaration shall be sufficient for bailiffs who have a common trust account, provided that it shows the names of all the bailiffs.

CHAPTER II INDEMNITY FUND

DIVISION I ESTABLISHMENT OF THE FUND

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

22. The fund, to be maintained at a minimum of \$100 000, shall consist of

(1) sums of money already allocated for that purpose;

(2) 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 bailiffs by subrogation or under section 159 of the Professional Code;

(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 Chamber for all its members.

DIVISION II MANAGEMENT OF THE FUND

23. The administrative committee is authorized to enter into any group insurance contract for the purposes of the fund and to pay the premiums using money from the fund.

24. The accounting for the fund shall be kept separate from the accounting of the Chamber.

25. The administrative committee shall administer the fund.

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 a financial institution;

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

DIVISION III CLAIMS AGAINST THE FUND

26. A claim against the fund shall be filed with the secretary of the Chamber at its head office.

27. The secretary shall enter the claim on the agenda of the first meeting of the Bureau and administrative committee following the filing of the claim.

28. A claim shall

- (1) be in writing and sworn;
- (2) state the supporting facts; and

(3) show the amounts claimed and be accompanied by supporting documents.

29. A claim against a bailiff may be filed whether or not there is a decision by the disciplinary committee, the Professions Tribunal or any other competent tribunal in respect of the bailiff in question.

30. 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 were used for purposes other than those for which they had been given to the bailiff in the practice of his profession.

31. The administrative committee may extend the time period prescribed in section 30 if the claimant shows that he was unable to file the claim within the required time due to reasons beyond his control.

32. The administrative committee may designate a person to conduct an inquiry and file a report with respect to a claim.

33. Upon written request from the administrative committee or the designated person, the claimant or bailiff concerned shall

- (1) provide all the details and documents in regard to the claim; and
- (2) adduce all relevant evidence.

DIVISION IV INDEMNITIES

34. The Bureau, upon recommendation of the administrative committee, shall determine whether it is expedient to allow the claim, in whole or in part, and if so, shall determine the indemnity. Its decision shall be final.

35. The maximum indemnity payable from the fund for all claims against a bailiff shall be fixed at \$25 000 for the whole of a fiscal year of the Chamber.

Where the administrative committee has reason to believe that the total of the claims filed against one bailiff could exceed that amount, the Committee shall, if circumstances permit, have an inventory drawn up of the sums of money entrusted to the bailiff and notify in writing all possible claimants.

Where the total of the claims allowed by the Bureau exceeds the maximum indemnity provided for in this section, the indemnity shall be allocated on a prorata basis according to the amount of the claims.

36. Before receiving the indemnity fixed by the Bureau, 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.

37. This Regulation replaces Divisions IV, V and VI of the Regulation respecting the application of the Bailiffs Act (R.R.Q., 1981, c. H-4, r. 2) which continues to apply as provided for in section 31 of the Court Bailiffs Act (R.S.Q., c. H-4.1).

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

MICHEL NOËL DE TILLY,
Clerk of the Conseil exécutif

SCHEDULE 1

(s. 8)

DECLARATION RELATIVE TO THE OPENING OF A GENERAL TRUST ACCOUNT

TO:

(Name and address of financial institution)

I, the undersigned, _____, a bailiff and a member of the Chambre des huissiers de justice du Québec, holder of permit number _____ and having my office at the following address:

declare the following:

(1) the general trust account No. _____
has been opened at your institution in the name of:
_____ "in trust";

(2) the account referred to above is constituted of funds or negotiable instruments that were collected on behalf of another party, received as an advance, or as a guarantee when acting as seizing officer;

(3) the account is governed by the Court Bailiffs Act (R.S.Q., c. H-4.1), the Professional Code (R.S.Q., c. C-26) and by the Regulation respecting trust accounting by bailiffs and the indemnity fund of the Chambre des huissiers de justice du Québec (hereinafter called the "Regulation");

(4) according to your registers, the person(s) authorized to sign documents with respect to current transactions in the account are those listed below:

Name	Signature
_____	_____
Name	Signature

(5) in accordance with paragraphs 1 and 2 of section 8 of the Regulation, I grant an irrevocable authorization to the syndic, the administrative committee or the professional inspection committee to request and obtain at any time from your institution all the information and explanations deemed necessary or useful for trust accounting audit purposes or, if required, to block the sums of money on deposit;

(6) in accordance with paragraph 3 of section 8 of the Regulation, if I practise the profession of bailiff alone, I grant an irrevocable authorization to the syndic, the administrative committee or the professional inspection committee of the Chambre des huissiers de justice du Québec to dispose of the sums of money on deposit, in the event of my death, bankruptcy or incapacity, temporary or permanent striking off the roll, or the limitation or suspension of my right to practise in accordance with the Professional Code.

(Place) (Date)

Bailiff

Solemnly affirmed before me

at _____

on _____

Commissioner for oaths for

Note: A copy of this form shall be forwarded to the secretary of the Chambre des huissiers de justice du Québec upon opening the trust account.

SCHEDULE 2

(s. 10)

NOTICE OF CLOSING OF A GENERAL TRUST ACCOUNT

Secretary of the Chambre des huissiers de justice du Québec

(Address of the secretary)

I, the undersigned, _____,
a bailiff, hereby notify you under my oath of office, in accordance with section 10 of the Regulation respecting trust accounting by bailiffs and the indemnity fund of the Chambre des huissiers de justice du Québec, that the general trust account

Number _____,

opened on _____,

at _____,

(financial institution)

was closed on _____.

Signed at _____, on _____

Bailiff

Name of practice: _____

Address: _____

Telephone: _____

Fax: _____

Solemnly affirmed before me

at _____

on _____

Commissioner for oaths for

SCHEDULE 3

(s. 13)

OFFICIAL RECEIPT

**LOGO, NAME AND ADDRESS OF THE PRACTICE
OR: LOGO OF THE C.H.J.Q., NAME AND
ADDRESS OF THE PRACTICE**

OFFICIAL RECEIPT

No. _____

Received from _____

the sum of _____

cash certified cheque non-certified cheque

postal money bank draft other
order

down payment final payment

With respect to file _____

sum of money collected on behalf of another party

sum of money received as an advance

sum of money received as a guarantee when acting as
a seizing officer

Bailiff

SCHEDULE 4

(s. 19)

ANNUAL DECLARATION RESPECTING BOOKS,
REGISTERS AND ACCOUNTS

YEAR _____

Note: All members entered on the roll of the Chambre
des huissiers de justice du Québec must fill in this
annual declaration. Additional sheets may be attached,
if necessary.

I, _____,
a bailiff entered on the roll of the Chambre des huissiers
de justice du Québec since _____, declare the following:

1.1 the Regulation respecting trust accounting by bai-
liffs and the indemnity fund of the Chambre des huissiers
de justice du Québec does not require that I keep or
administer a trust account because

I turn over the sums of money collected or levied to
the partnership of bailiffs with whom I practise;

I am in the exclusive employ of the municipal court
of _____ and the
municipality does not require that I hold sums of money
in trust or charge fees or transportation expenses in the
practice of my profession;

the Regulation respecting trust accounting by bailiffs
and the indemnity fund of the Chambre des huissiers de
justice du Québec allows for bailiffs who have a com-
mon trust account to file a single declaration, provided
that it lists the names of all the bailiffs; the declaration
prescribed by section 19 shall be completed by the fol-
lowing bailiff:

_____; or
Name of bailiff

other reasons: _____.

1.2 Since my last declaration, I have not been respon-
sible for sums of money or securities in trust.

1.3 Should the practice of my profession change, I un-
dertake to open a trust account in accordance with the
Regulation, if need be, and to notify the secretary of the
Chamber immediately.

If you have checked one of the boxes above, go directly to 3.1, 3.2 and the signature section.

2.1 I practice

- alone under my own name;
- under the name of _____, in a general partnership with the following bailiffs:

_____;

- for several partnerships, that is,

_____.

2.2 I (we) keep separate accounts for sums of money or negotiable instruments collected on behalf of another party, received as an advance, or as a guarantee while acting as a seizing officer.

2.3 These books, registers and accounts are are not audited by a chartered accountant.

2.4 From 1 January, _____ to 31 December, _____, my (our) general trust account was held at this financial institution:

Name: _____

Address: _____

Telephone: () _____

2.5 The account was held under the **NAME** of: _____.

2.6 The account **NUMBER** was: _____.

2.7 As of 31 December _____, the balance of the account was: \$ _____.

LIST OF SPECIAL TRUST ACCOUNTS OPENED AND CLOSED DURING THE YEAR
(s. 20, par. 2)

Account No.	Financial institution	Date opening	Date closing
_____	_____	_____	_____
_____	_____	_____	_____

2.8 During the same period, I (we) held in trust the following securities: (Describe the securities: e.g. term deposits, bonds)

2.9 During the same period, I (we) held other property in trust: (Describe the property: e.g. jewellery)

2.10 Since my last declaration, I have at all times complied with the Act and the Regulation respecting trust accounting by bailiffs and the indemnity fund of the Chambre des huissiers de justice du Québec.

2.11 I authorize the syndic of the Chambre des huissiers de justice du Québec, the professional inspection committee or any person it designates to examine this (these) account(s) and to obtain any information required from the financial institution.

2.12 Should I change my practice, address or financial institutions, or open a new trust account, I undertake to notify the secretary of the Chamber immediately.

3.1 Office address and telephone number:

3.2 Home address and telephone number:

Signature of bailiff^(*)

* If applicable, list the names of the bailiffs who have a common general trust account.

Solemnly affirmed before me

at _____

on _____

Commissioner for oaths for