

Gouvernement du Québec

**O.C. 217-2000, 1 March 2000**

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**

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

WHEREAS section 429.21 of the Act respecting industrial accidents and occupational diseases (R.S.Q., c. A-3.001) provides that the Commission des lésions professionnelles may, by by-law passed by a majority of the commissioners, make rules of evidence, procedure and practice specifying the manner in which the rules established under Division XV are to be applied;

WHEREAS in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), the Rules of evidence, procedure and practice of the Commission des lésions professionnelles were published in the *Gazette officielle du Québec* of 18 August 1999 with a notice that they could be submitted to the Government for approval upon the expiry of 45 days following the publication;

WHEREAS the Commission made the Rules of evidence, procedure and practice of the Commission des lésions professionnelles with amendments at its sitting of 3 December 1999;

WHEREAS it is expedient to approve the Rules;

IT IS ORDERED, therefore, upon the recommendation of the Minister of State for Labour and Employment and Minister of Labour:

THAT the Rules of evidence, procedure and practice of the Commission des lésions professionnelles, the text of which is attached to this Order in Council, be approved.

MICHEL NOËL DE TILLY,  
*Clerk of the Conseil exécutif*

**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 rapid processing of applications, 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 before the board.

2. The board is not bound to apply the rules of civil evidence and procedure; it may for instance accept 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:

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

(2) if the applicant 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 necessary 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 change of address, telephone, fax number or electronic mail address of a party or his representative shall be notified to the board.

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

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

7. An income and expenditures' form shall be forwarded to a party who, for a financial reason, applies for the issuance of an order to suspend 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. The 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 PROCEDURES AND EXHIBITS**

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

However, the application instituting the proceeding, the notice of 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.

However, a party who wants to file a written document 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.

As to the filing of a physical 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 as well as to the assessor and to each member of the board.

14. A party may not, in the course of the proceedings, withdraw an exhibit that he has filed in the record, except with the permission of the board and upon the conditions it determines.

### **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 expense, and it is incumbent on the party to prove the date of notification.

16. A subpoena issued at the request of a party shall be notified at least five clear days prior to 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 its opinion, be heard prior to the hearing on the merits.

The board may also prepare a provisional roll for delayed proceedings that it would like to see heard as soon as possible.

18. The hearing shall take place in the region of the worker's domicile.

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 grounds he wants to invoke, submit a written application to the board stating the grounds and give notice thereof to the other parties; the application shall include supporting evidence, 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 chosen after consulting the board and the other parties.

The hearing shall be postponed only if the grounds invoked are serious and if required for the ends of justice.

20. The board may record testimonies and pleas on audio tape, by stenography or by any other appropriate means.

A party may also record such testimonies and pleas, at his own expense, if so authorized by the board and on the conditions it determines.

21. The board may, of his own authority or upon request from a party, prohibit or restrict the disclosure, publication or broadcasting of information or documents identified by it, where required to preserve public order or if the respect 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 during the hearing;

(8) any admission and full or partial settlement;

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

(10) any other mention useful for the purposes of the file.

23. All persons attending a hearing shall behave with dignity and in a manner that shows respect for the judicial process. They shall refrain from doing anything that could disrupt the hearing.

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

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

He shall be exempted from this formality if he does not understand the nature of the oath; in such a case, he shall nevertheless 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 a witness testify in the absence of other witnesses.

27. Where the services of an interpreter are needed for a fair 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 his translation shall be faithful.

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

29. No evidence may be relied on by the commissioner in making its decision unless the parties have been given an opportunity to comment on the substance of the evidence or to rebut it.

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 case may also be filed in another case of the Board with the authorization of the board and on the conditions it determines.

32. When 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 can 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 recuses himself at the hearing, the hearing shall resume if that member or that 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 recuses himself, the hearing shall be suspended until another commissioner is appointed or until a new bench 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 proceedings as soon as it is notified to the board.

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

The declaration of the member whose recusation is sought can only be contradicted by written proof.

36. The decision of the president or member designated by him shall be rendered on the record unless the president or the member designated by him deems it necessary to hold a hearing.

If there is a hearing, it shall be held in the absence of the member whose recusation is sought.

37. A party may, at any time before the decision has been rendered, provided he acts with diligence, apply to the commissioner assigned to the case regarding 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 proceedings.

38. The facts and grounds on which the application for recusation is based and the declaration of the assessor as to the truthfulness of the alleged facts shall be recorded in the file.

The declaration of the assessor can only be contradicted by written proof.

39. Unless the assessor recuses himself, the commissioner shall decide the application on the record unless the commissioner deems it necessary to hold a hearing.

If there is a hearing, it shall be held in the absence of the assessor.

#### **DIVISION VIII NOTIFICATION AND DELAYS**

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 date postmarked.

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 is presumed to be filed with the board on the date of receipt, as recorded by the board's server.

42. In computing a delay prescribed by this regulation, the day marking the start of the delay is not counted and, except for a delay in clear days, the last day is counted. The non-judicial days are also counted.

The non-judicial days are:

- (1) Saturdays and Sundays;

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

43. When the date fixed for doing anything falls on a non-juridical day, such thing may be validly done on the next juridical day.

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Gouvernement du Québec

### O.C. 218-2000, 1 March 2000

Regulation to amend the Regulation respecting the register, monthly report, notices from employers and the designation of a representative

WHEREAS under subparagraph *b* of the first paragraph of section 82 of the Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., c. R-20), amended by section 115 of Chapter 46 of the Statutes of 1998, the Commission de la construction du Québec may, by regulation approved by the Government and published in the *Gazette officielle du Québec* oblige any employer to transmit to it a monthly report in the form prescribed by the Commission;

WHEREAS the Commission made the Regulation respecting the register, monthly report, notices from employers and the designation of a representative approved by Order in Council 1528-96 dated 4 December 1996;

WHEREAS the Commission de la construction du Québec, after consultation with the Joint Committee on Construction following section 123.3 of the Act, made the Regulation to amend the Regulation respecting the register, monthly report, notices from employers and the designation of a representative;

WHEREAS in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), the text of the draft Regulation was published in Part 2 of the *Gazette officielle du Québec* of 27 October 1999 with a notice that it could be approved by the Government upon the expiry of 45 days following that publication;

WHEREAS following that publication, no comments were received and it is expedient to approve the Regulation without amendment;

IT IS ORDERED, therefore, upon the recommendation of the Minister of State for Labour and Employment and Minister of Labour:

THAT the Regulation to amend the Regulation respecting the register, monthly report, notices from employers and the designation of a representative, attached to this Order in Council, be approved.

MICHEL NOËL DE TILLY,  
*Clerk of the Conseil exécutif*

### Regulation to amend the Regulation respecting the register, monthly report, notices from employers and the designation of a representative<sup>(\*)</sup>

An Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., c. R-20, s. 82, 1<sup>st</sup> par., subpar. *b*; 1998, c.46, s. 115)

1. The Regulation respecting the register, monthly report, notices from employers and the designation of a representative is amended by substituting the following for section 11:

11. Every employer must send to the Commission a monthly report giving the necessary information allowing to identify each of his employees and indicating, for each of them and for each week, his competency including, as the case may be, the apprenticeship period, the regular and extra hours done each week and the nature of such work, the designation of the sector in which the work was performed, the wage paid including, as the case may be, the presentation hours, the paid holidays, the levy and the applicable contributions, assessments and dues. The independent contractor must indicate that information concerning the hours he worked himself.

<sup>(\*)</sup> The Regulation respecting the register, monthly report, notices from employers and the designation of a representative, approved by Order in Council 1528-96 dated 4 December 1996 (1996, *G.O.* 2, 5328), has not been amended since.