

Draft Regulations

Draft Regulation

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

Certified human resources professionals and certified industrial relations counsellors of Québec — Procedure for conciliation and arbitration of accounts

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Regulation respecting the conciliation and arbitration procedure for the accounts of members of the Ordre professionnel des conseillers en ressources humaines et en relations industrielles agréés du Québec, adopted by the Bureau of the Ordre professionnel des conseillers en ressources humaines et en relations industrielles agréés du Québec, will be submitted to the Government which may approve it, with or without amendment, upon the expiry of 45 days following this publication.

According to the Ordre professionnel des conseillers en ressources humaines et en relations industrielles agréés du Québec, the purpose of the Regulation is to replace the Regulation respecting the procedure for conciliation and arbitration of accounts of industrial relations counsellors (R.R.Q., 1981, c. C-26, r. 57) and to establish a procedure for conciliation and arbitration of accounts of certified human resources professionals and certified industrial relations counsellors in accordance with the provisions of the Professional Code. It prescribes provisions that allow clients to take advantage of the procedure whether or not the account has been paid and provisions indicating that the arbitration will be heard before an arbitration council of three arbitrators, if the amount in dispute is \$3000 or more and before a sole arbitrator in the other cases. The Regulation also prescribes that a member of the Order may not institute proceedings to recover the account so long as the dispute may be resolved by conciliation or arbitration. Notwithstanding the foregoing, it enables the arbitration council, as permitted by the Professional Code, to add to an arbitration award interest as well as an indemnity calculated according to the Civil Code of Québec.

The Order is of the opinion that those measures will primarily ensure the client of a certified human resources professional or of a certified industrial relations counsellor better protection by providing a procedure for

conciliation and arbitration of an account. This procedure offers a more flexible and less costly method of resolving disputes.

The Regulation has no impact on businesses.

Further information may be obtained by contacting Marie-Josée Dufour, Coordinator, Admissions et réglementation de l'Ordre des conseillers en ressources humaines et en relations industrielles agréés du Québec, 1253, avenue McGill College, bureau 820, Montréal (Québec) H3B 2Y5; tel.: (514) 879-1636, extension 225; fax: (514) 879-1722.

Any interested person having comments to make is asked to send them, before the expiry of the 45-day period, to the Chairman of the Office des professions du Québec, 800, place D'Youville, 10^e étage, Québec (Québec) G1R 5Z3. The Office will convey those comments to the Minister responsible for the administration of legislation respecting the professions; they may also be conveyed to the professional order that adopted the Regulation as well as to any interested persons, departments or agencies.

JEAN-K. SAMSON,
*Chairman of the Office
des professions du Québec*

Regulation respecting the conciliation and arbitration procedure for the accounts of members of the Ordre professionnel des conseillers en ressources humaines et en relations industrielles agréés du Québec

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

DIVISION I CONCILIATION

1. A client who has a dispute with a member of the Ordre des conseillers en ressources humaines et en relations industrielles agréés du Québec regarding the amount of an unpaid account for professional services may file a written application for conciliation with the syndic, provided that the member has not instituted proceedings to recover the account.

2. A client who has a dispute with a member regarding the amount of an account for professional services that he has already paid in whole or in part may also file a written application for conciliation with the syndic within 45 days of the date of receipt of the account.

Where an amount has been withdrawn or withheld by the member from the funds that he holds or receives for or on behalf of the client, the 45-day time limit runs from the day on which the client becomes aware of that such sums have been withdrawn or withheld.

3. A member may not institute proceedings to recover an account for professional services before the expiry of 45 days after the date of receipt of the account by the client.

4. Within three days of receiving an application for conciliation, the syndic shall notify the member concerned by registered mail; he shall also send the client a copy of this Regulation.

Once the syndic has received the application for conciliation, the member may not institute proceedings to recover his account so long as the dispute is capable of being settled by conciliation or arbitration.

Notwithstanding the foregoing, a member may seek provisional measures in accordance with article 940.4 of the Code of Civil Procedure (R.S.Q., c. C-25).

5. The syndic shall proceed with the conciliation in accordance with such procedure as he considers appropriate.

6. If an agreement is reached during conciliation, such agreement shall be put in writing, signed by the client and the member, and filed with the secretary of the Order.

7. Where conciliation does not lead to an agreement within 45 days of the date of receipt of the application for conciliation, the syndic shall send a report on the dispute to the client and to the member by registered mail.

The report shall contain the following information, where applicable:

- (1) the amount of the account in dispute;
- (2) the amount that the client acknowledges owing;
- (3) the amount that the member acknowledges having to reimburse or the amount that the member is willing to accept in settlement of the dispute; and

(4) the amount suggested by the syndic during conciliation as payment to the member or as reimbursement to the client.

The syndic shall send the client the form contained in Schedule I and shall indicate the procedure and deadline for submitting the dispute to arbitration.

DIVISION II ARBITRATION

§1. *Application for arbitration*

8. Within 30 days of receiving the conciliation report referred to in section 7, the client may apply for arbitration of the account by sending the form in Schedule I to the secretary of the Order.

A copy of the conciliation report shall accompany the client's application for arbitration. The client shall also deposit with the secretary of the Order the amount referred to in the conciliation report that the client acknowledges as owing.

9. Within three days of receiving an application for arbitration, the secretary of the Order shall notify the member concerned by registered mail.

10. A client who wishes to withdraw his application for arbitration shall so notify the secretary of the Order in writing.

11. A member who acknowledges having to reimburse an amount to a client shall deposit that amount with the secretary of the Order, who shall then remit it to the client.

In such a case, the arbitration shall proceed and shall pertain only to the amount still in dispute.

12. If an agreement is reached by the parties after the application for arbitration has been filed, such agreement shall be in writing, signed by the parties and filed with the secretary of the Order. Where the parties reach an agreement after a council of arbitration has been formed, the agreement shall be recorded in the arbitration award.

§2. *Council of arbitration*

13. The council of arbitration shall be composed of three arbitrators where the amount in dispute is \$3,000 or more, and of a single arbitrator where the amount is less than \$3,000.

14. The Bureau shall appoint the member or members of the council of arbitration from among the members of the Order and, if the council is composed of three arbitrators, shall designate the chairman and the secretary thereof.

If the Bureau requests a member to sit on an arbitration council, the member may decline but for exceptional reasons only.

15. Before acting, the members of the council of arbitration shall take the oath contained in Schedule II.

16. The secretary of the Order shall send written notice to the arbitrators and to the parties informing them of the formation of the council of arbitration.

17. 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 Order, to the council of arbitration and to the parties or their advocates within 10 days of receipt of the notice provided for in section 16 or the day on which the grounds for the recusal become known.

The Bureau shall decide the request and, where applicable, shall ensure that the arbitrator is replaced.

§3. *Hearing*

18. The secretary of the Order shall give the parties or their advocate and the arbitrators at least 10 days written notice of the date, time and place of the hearing.

19. The parties are entitled to be represented or assisted by an advocate.

20. 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 as it considers appropriate.

21. A party requesting that testimony be recorded shall assume the cost thereof.

22. In the event of death or incapacity of an arbitrator, the remaining arbitrators shall see the matter through to termination.

If the council of arbitration consist of a single arbitrator, he shall be replaced by a new arbitrator and the dispute shall be reheard.

§4. *Arbitration award*

23. The council of arbitration shall issue its award within 45 days of the end of the hearing.

24. The award shall be a majority award of the members of the council.

The award shall give reasons and be signed by all the members. Where a member refuses or is unable to sign, the other members shall note that fact and the award has the same effect as if it had been signed by all the members.

25. The costs incurred by a party in respect of the arbitration shall be borne by that party.

26. In its award, the council of arbitration may uphold or reduce the amount of the account in dispute, determine the reimbursement or payment to which a party may be entitled, and rule on the amount that the client acknowledges owing and that was enclosed with his application for arbitration.

27. In its award, the council of arbitration may rule on the arbitration costs, namely the expenses incurred by the Order for the arbitration. The total costs may not exceed 10% of the amount which is the subject of the arbitration.

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

28. The arbitration award is binding on the parties but is subject to compulsory execution only after homologation in accordance with the procedure set out in articles 946.1 to 946.5 of the Code of Civil Procedure.

29. The arbitration award shall be filed with the secretary of the Order, who shall send to each party or to their advocates a copy of the award within 10 days of being filed.

30. This Regulation replaces the Regulation respecting the conciliation and arbitration procedure for the accounts of members of the Ordre professionnel des conseillers en relations industrielles du Québec, (R.R.Q., 1981, c. C-26, r. 57). The aforementioned regulation applies to an application for conciliation filed with the syndic before this Regulation comes into force.

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

SCHEDULE I

(ss. 7 and 8)

APPLICATION FOR ARBITRATION OF AN ACCOUNT

I, the undersigned,
(client's first and last names)
.....
(address and occupation)

declare that:

(1) On,
(date) (name of the certified human resources professional or the certified industrial relations counsellor member)
sent
(name of client applying for arbitration)
an account in the amount of \$..... for professional services.

(2) I have enclosed a copy of the conciliation report.

(3) Circle *a* or *b*, whichever applies:

- a*) I am the client applying for arbitration;
- b*) I am the representative of the client applying for arbitration and I am duly authorized to sign this document, as per the authorization, a copy of which is enclosed herewith.

(4) Circle *a* or *b*, whichever applies:

- a*) I refuse to pay the account;
- b*) I seek reimbursement of \$.....

Reasons

.....
.....

During conciliation I acknowledged that I owe \$....., and accordingly deposit herewith a certified cheque, made payable to the Ordre des conseillers en ressources humaines et en relations industrielles agréés du Québec.

I agree to submit to the procedure provided for in the Regulation respecting the conciliation and arbitration procedure for the accounts of members of the Ordre des conseillers en ressources humaines et en relations industrielles agréés du Québec and to respect the arbitration decision rendered thereunder.

.....
Signature

Date

SCHEDULE II

(s. 16)

OATH

I solemnly affirm that I will perform all my duties and exercise all my powers as an arbitrator faithfully, impartially and honestly, to the best of my ability and knowledge.

I also solemnly affirm that I will not, without being so authorized by law, disclose or make known anything whatsoever that I may learn in the performance of my duties.

.....
Signature

Oath given before me

.....
(name and position, profession or quality)

in on
(municipality) (date)

.....
Signature

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