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# NATIONAL ASSEMBLY

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FIRST SESSION

THIRTY-SIXTH LEGISLATURE

## Bill 139

(2000, chapter 44)

## Notaries Act

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**Passage in principle 14 June 2000**  
**Passage 23 November 2000**  
**Assented to 5 December 2000**

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## EXPLANATORY NOTES

*This bill proposes a complete revision of the legislative framework governing notaries in order to better meet the needs of the notarial profession.*

*First, the bill provides for the organization of the Ordre des notaires du Québec and of its decision-making authorities, namely the Bureau and the Administrative Committee, which are charged with administering the professional order.*

*Next, the bill affirms the mission of notaries as public officers and participants in the administration of justice and their duty of impartiality as public officers. It provides a framework for the practice of the notarial profession and specifies the powers and functions that may be exercised by notaries, including those of a legal adviser.*

*Moreover, notaries are provided with the modern tools needed for the development of their profession. Thus, notarial acts can henceforth be executed not only on paper but on a medium derived from the new information technologies. The bill provides for the establishment of an electronic signature for notaries and assigns a role to notaries in the certification of the identity, quality and capacity of persons.*

*Furthermore, notaries are given the possibility of constituting joint notarial records held in indivision by a group of notaries for the deposit of their notarial acts en minute, or shared notarial records held by general partnerships of notaries. The Minister of Justice, who is to become the Notary General for Québec, is empowered to keep one or more sets of notarial records for the deposit of the notarial acts en minute executed by notaries in the public service.*

*A number of provisions are designed to enhance the role of the Ordre des notaires as protector of the public. For example, the notarial studies fund, made up in part of the income derived by general accounts held in trust by notaries, can serve to finance the indemnity fund which serves to repay to clients the sums of money or other securities used by a notary for purposes other than those for which they had been delivered to the notary. As well, the Bureau of*

*the Order is given authority to impose the observance of standards of professional practice. The authorities responsible for deciding applications for entry on the roll of the Order and for resumption of the right to practise are accorded the powers they need to fulfil their responsibilities effectively. Their decisions will be subject to appeal before the Professions Tribunal. The Bureau of the Order will be required to make regulations determining a mandatory tariff of fees for professional services provided by notaries in relation to certain non-contentious applications governed by the Code of Civil Procedure. The circumstances in which a notary may or must cease practising are defined as are the circumstances leading to the transfer, surrender and provisional custody of notarial records. A regulation of the Order will specify the procedure applicable to the transfer, surrender and provisional custody of notarial records.*

*Last, the bill includes rules as to content, form and formalities applicable to the execution of notarial acts and the issue of authentic copies and extracts.*

**LEGISLATION REPLACED BY THIS BILL :**

- Notarial Act (R.S.Q., chapter N-2).

**LEGISLATION AMENDED BY THIS BILL :**

- Code of Civil Procedure (R.S.Q., chapter C-25);
- Professional Code (R.S.Q., chapter C-26);
- Act respecting the Ministère de la Justice (R.S.Q., chapter M-19);
- Courts of Justice Act (R.S.Q., chapter T-16);
- Act to amend the Code of Civil Procedure and other legislative provisions in relation to notarial matters (1998, chapter 51).



## **Bill 139**

### **NOTARIES ACT**

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

#### **CHAPTER I**

#### **ORDRE DES NOTAIRES DU QUÉBEC**

##### **DIVISION I**

##### **GENERAL PROVISIONS**

1. The notaries of Québec constitute a professional order called the “Ordre professionnel des notaires du Québec”, which may also be called the “Chambre des notaires du Québec” or the “Ordre des notaires du Québec”.
2. The head office of the Order shall be at the place determined by a regulation made by the Bureau under paragraph *f* of section 93 of the Professional Code (R.S.Q., chapter C-26).

##### **DIVISION II**

##### **BUREAU**

###### *§1. — Composition*

3. The Order shall be governed by a Bureau constituted as prescribed in the Professional Code.
4. The president shall be elected by a general vote of the members of the Order.

Any notary who has been on the roll of the Order for five years preceding the date of the election to the office of president is eligible to that office.

5. In addition to the directors elected and appointed in accordance with the Professional Code and the president, the outgoing president of the Order shall form part of the Bureau and shall have the same rights as a director elected to the Bureau.

To ensure adequate regional representation on the Bureau, the territory of Québec is divided into electoral districts having the territorial boundaries determined by regulation of the Bureau by reference to the description of the judicial districts established in the Territorial Division Act (R.S.Q., chapter D-11). The regulation shall determine the number of directors to be elected by the notaries whose professional domicile is situated in the district concerned. Section 95.1 of the Professional Code applies to the regulation.

§2. — *Powers*

6. The Bureau may, by regulation,

(1) provide for professional training, determine the form the training is to take, provide the appropriate instruction and, for such purposes, establish a school of professional training ;

(2) establish a notarial studies fund, made up of the gifts and legacies made for that purpose, any sums paid into it by the Order and the income from the general accounts held in trust by notaries, to promote the quality of professional services, law reform, legal research, education and information and the establishment and maintenance of law library services, and to finance, in accordance with paragraph 5 of section 8, the indemnity fund of the Order, and establish rules governing the administration of the notarial studies fund ;

(3) establish mandatory standards of professional practice ;

(4) establish a committee to which the power to decide applications under section 12 may be delegated by resolution by the Administrative Committee, determine the manner in which such power is to be exercised as well as the number of committee members and the membership requirements, and the manner in which the committee is to operate ;

(5) determine what constitutes a vacancy on the Bureau, and establish rules governing the election or appointment of a substitute member to fill a vacancy.

Section 95.1 of the Professional Code applies to a regulation made under subparagraph 2, 4 or 5 of the first paragraph.

7. The Bureau shall establish, by regulation, a tariff of fees for professional services provided by notaries in connection with an application presented under article 863.4 of the Code of Civil Procedure (R.S.Q., chapter C-25).

The regulation, which is not subject to section 95 of the Professional Code, shall be submitted to the Government, and the Government may, on the recommendation of the Minister of Justice, approve it with or without amendment.

If the Bureau does not comply with the provisions of the first paragraph, the Government shall make the regulation in the place and stead of the Bureau.

8. The Bureau may, by resolution,

(1) fix the procedure and intervals according to which a notary's official handwritten signature and initials must be filed in the office of the secretary of the Order;

(2) determine the model and content of the notarial seal, and the cases in which a notary is required to use a seal, subject to the right of notaries practising on 1 March 1969 to continue to use the seal in their possession at that time;

(3) determine the criteria according to which the Bureau, on the recommendation of the Administrative Committee, may confer or withdraw the title of honorary notary, and determine the terms and conditions governing the use of and rights and privileges attached to the title of honorary notary;

(4) fix the fees payable for applications for admission to professional training, entry on the roll of the Order and reinstatement to full practice after a period of limited practice;

(5) determine the sums to be taken out of the notarial studies fund and allocated to the financing of the indemnity fund.

### **DIVISION III**

#### **ADMINISTRATIVE COMMITTEE**

9. The Administrative Committee shall consist of six members, including the president and vice-president of the Order, who are *ex officio* members of the Committee.

A regulation by the Bureau under paragraph *b* of section 93 of the Professional Code shall determine the length of the term of Committee members, the election date and procedure, and the date on which Committee members enter into office.

### **CHAPTER II**

#### **THE NOTARIAL PROFESSION**

### **DIVISION I**

#### **MISSION OF NOTARY**

10. A notary is a public officer and takes part in the administration of justice. A notary is also a legal adviser.

The mission of a notary, in his or her capacity as a public officer, is to execute acts which the parties wish or are required to endow with the

authenticity attaching to acts of public authority, to provide such acts with a fixed date, and to keep all acts executed *en minute* in his or her notarial records and issue copies of or extracts from them.

11. In his or her role as a public officer, a notary is duty-bound to act impartially and to advise all parties to an act which the parties wish or are required to endow with authenticity.

## DIVISION II

### ADMISSION TO PROFESSIONAL PRACTICE AND RESUMPTION OF RIGHT TO PRACTISE

12. Every application for admission to professional training and every application for entry on the roll of the Order or for resumption of the right to practise shall be decided by the Administrative Committee. To that end, the Administrative Committee shall ascertain whether a candidate possesses the character, conduct, competence and qualifications required to practise the notarial profession.

The Administrative Committee may hear the candidate or any other person. It may not refuse to grant the candidate's application before giving the candidate an opportunity to be heard.

The Administrative Committee shall have the powers necessary to carry out its mandate; it shall, in particular, exercise the powers of the Superior Court to compel, by summons signed by a member, the candidate or any other person to appear, to answer under oath or to produce any information or document. The provisions of the Code of Civil Procedure apply, with the necessary modifications, for the purposes of this paragraph.

The Administrative Committee shall exercise the powers provided for in sections 45, 45.1, 48 to 52, 55, 55.1, 56, 159 and 161 of the Professional Code. The provisions of Chapter VIII of the Professional Code apply to the Administrative Committee and, where applicable, to the committee to which the power to decide applications under this section has been delegated pursuant to subparagraph 4 of the first paragraph of section 6, and to their members.

Entry on the roll or the authorization to resume practice may be made subject to any condition that the Administrative Committee considers necessary for the protection of the public.

13. The decision of the Administrative Committee shall be served on the applicant in accordance with the provisions of the Code of Civil Procedure; the decision is subject to appeal before the Professions Tribunal, in accordance with the provisions of Division VIII of Chapter IV of the Professional Code.

14. The secretary of the Order shall keep a notarial register in which the following information in respect of each notary shall be entered:



- (1) the notary's name ;
- (2) the notary's field of practice ;
- (3) where applicable, the name of the notary's employer ;
- (4) the address of the notary's professional domicile and, if it is different, the address of the notary's employer ;
- (5) the designation of the notarial records in which the notarial acts executed by the notary are kept and, if there are two or more sets of notarial records, an indication of the corresponding periods of practice.

The register must also indicate

- (1) the names and addresses of the notaries or general partnerships of notaries sharing notarial records and, where applicable, the name and address of the assignee, provisional custodian or other depositary of such notarial records ;
- (2) the names and addresses of honorary notaries ;
- (3) the names of the persons who have been removed from the roll of the Order, the designation of the notarial records in which their notarial acts are kept and, if there are two or more sets of notarial records, an indication of the corresponding periods of practice.

The information entered in the register pursuant to the first paragraph together with the information required under the Professional Code shall constitute the roll of the Order.

### **DIVISION III**

#### **PROFESSIONAL PRACTICE**

15. Subject to the provisions of section 16, no person other than a notary may, on behalf of another person,

- (1) execute acts which, under the Civil Code or any other legislative provisions, require execution in notarial form ;
- (2) draw up acts under private signature relating to immovables and requiring registration in the land register or the cancellation of such registration ;
- (3) prepare or draw up an agreement, motion, by-law, resolution or other similar document relating to the constitution, organization, reorganization, dissolution or voluntary winding-up of a legal person or the amalgamation of legal persons ;

(4) prepare or draw up the administrative declarations and applications prescribed by the legislative provisions relating to the legal publicity of sole proprietorships, partnerships and legal persons ;

(5) give legal advice or opinions ;

(6) send a demand letter arising from an act he or she has executed, provided there is no charge to the person to whom it is addressed ;

(7) represent clients in any non-contentious proceeding, prepare, draw up or present any related motion on their behalf or uncontested motions in adoption proceedings, for judicial recognition of the right of ownership, for the voluntary partition of property, for the acquisition of the right of ownership by prescription, for registration in the land register or in the register of personal and movable real rights, or the correction, reduction or cancellation of a registration in either of those registers, or for the cancellation of an entry or the filing of a declaration in the register instituted under the Act respecting the legal publicity of sole proprietorships, partnerships and legal persons (R.S.Q., chapter P-45) or the correction or deletion of any inaccurate information appearing in that register.

16. No provision of section 15 may be interpreted as limiting or restricting

(1) the rights specifically defined and granted to any person by any public law or private Act ;

(2) the rights conferred upon advocates by the Act respecting the Barreau du Québec (R.S.Q., chapter B-1) ;

(3) the rights of accountants recognized by the Chartered Accountants Act or by the Professional Code within the limits of the said Acts, to give advice and opinions on all questions of a financial, administrative or fiscal nature, to prepare and submit to persons entitled thereto plans of financial or fiscal administration, organization and reorganization, to prepare and submit surveys, statements, returns and declarations of the same nature, including tax returns of all kinds, to discuss with all persons having authority in the matter all tax assessments, and also to prepare and give notices of appeal to the Minister of Revenue of Québec and the Minister of National Revenue of Canada and to discuss with them and the officers of their departments the merits of assessments imposed upon their clients with respect to taxation ;

(4) the right of secretaries or assistant secretaries of legal persons to draw up the minutes of meetings.

17. A notary may attest to the identity, quality or capacity of a person to execute or pass a legal act. The notary shall draw up a certificate by notarial act.

18. A notary

(a) who acts as an arbitrator, mediator or estate planner, or

(b) who, in the exercise of his or her functions, engages in a real estate brokerage transaction within the meaning of the Real Estate Brokerage Act (R.S.Q., chapter C-73.1) or in securities activities for which the notary is exempted from registration under the Securities Act (R.S.Q., chapter V-1.1)

continues to be subject to the provisions of the Professional Code and this Act.

19. A notary may represent himself or herself as a legal adviser or as a title attorney, and use the word “Maître” or the abbreviation “Mtre” or “M<sup>e</sup>” before his or her name.

A notary may use the title of notary public for the purpose of sworn statements and affidavits intended for use outside Québec.

20. A notary shall practise under the name specified on his or her act of birth; no other name may appear in the notary’s official signature.

21. A notary’s official signature shall consist of his or her usual signature followed by the word “notary” or “notaire”.

No person may be entered on the roll unless the person has filed in the office of the secretary of the Order his or her official handwritten signature and initials executed before a notary who has verified the identity of the person.

22. If a notarial act or any other document is in a medium that requires the use of information technology, the notary’s signature may, according to the conditions provided by regulation of the Bureau, be affixed to the act by any means suited to the medium. The secretary of the Order shall assign to every notary who so requests a personal code or mark that will also constitute the notary’s official signature.

23. A notary may not change his or her official handwritten signature or initials unless the notary has filed the new signature or initials in the office of the secretary of the Order.

24. The secretary of the Order is the person authorized to certify the signatures of notaries and their membership in the Order.

25. Before being entered on the roll, a notary shall file in the office of the secretary of the Order a statement indicating the address of his or her professional domicile and the address of any other place where the notary intends to practise. The notary shall inform the secretary of the Order of any change of address within 15 days of the date of the change.

Before being entered on the roll, a notary shall take an oath.

The oath must be taken before a judge of the Superior Court, the president of the Order or a notary designated by the president.

26. In addition to the property declared by law to be exempt from seizure, the notarial records, safes, filing cabinets and law books of notaries, their books, registers and accounting documents and any media requiring the use of information technologies related to their professional practice are not subject to seizure.

Moreover, the undivided shares of joint notarial records are not subject to seizure.

However, subject to the conditions determined by regulation of the Bureau, media requiring the use of information technology related to professional practice may be seized and sold to recover the balance owing on the price of such property or seized and sold by a creditor holding a hypothec on such property.

#### **DIVISION IV**

#### **CESSATION AND LIMITATION OF RIGHT TO PRACTISE**

27. Any notary who wishes to be removed from the roll of the Order so that he or she may carry on an activity declared by a regulation made by the Bureau under the Professional Code to be incompatible with the dignity or the practice of the notarial profession shall inform the secretary of the Order without delay.

28. The secretary of the Order shall strike the name of a notary from the roll upon being informed of a judgment placing the notary under protective supervision, homologating a mandate given by the notary in anticipation of his or her inability or ordering, pursuant to article 30 of the Civil Code, the notary's confinement in a health and social services institution.

The clerk of the court shall, as soon as possible, give notice of any such judgment to the secretary of the Order.

29. A notary who makes an assignment of property under the Bankruptcy and Insolvency Act (R.S.C., 1985, chapter B-3) for the benefit of creditors, against whom a receiving order has been made, or who has made a proposal that has been refused by the creditors or the court or has been annulled by the court, shall give notice thereof to the secretary of the Order without delay, who shall strike the notary's name from the roll upon being informed of his or her bankruptcy.

On the application of the notary, the Administrative Committee may, in accordance with section 12, if it considers that protection of the public is not compromised, authorize the notary to resume practising, subject to such limitations as the Committee may impose.

30. A notary who wishes to cease practising shall so advise the secretary of the Order. The notary shall cease to practise effective on the date agreed upon by the notary and the secretary. The notary is removed from the roll as of that date.

### **CHAPTER III**

#### **ILLEGAL PRACTICE**

31. No person may, in contravention of the provisions of this Act, perform an act or use a title reserved for notaries unless the person is a member of the Order.

32. Any person other than a member of the Order who, in contravention of the provisions of this Act,

(1) usurps the functions of a notary,

(2) uses the title of notary, whether alone or with other words, verbally or in writing, directly or indirectly,

(3) represents himself or herself as a notary,

(4) acts in such a manner as to imply that he or she is authorized to perform notarial functions or to execute notarial acts, in particular by using the official signature of a notary or using the words usually used by public officers: “Before Mtre” or “Before M<sup>e</sup>”, “After due reading hereof” and “Whereof acte”, or

(5) though not on the roll, uses the word “Maître” or the abbreviation “Mtre” or “M<sup>e</sup>” before his or her name, subject to the rights conferred on advocates by the Act respecting the Barreau du Québec (R.S.Q., chapter B-1),

is considered to perform an act or use a title reserved for notaries.

33. Every person who contravenes section 31 is guilty of an offence and is liable to the penalties provided for in section 188 of the Professional Code.

### **CHAPTER IV**

#### **NOTARIAL ACTS**

##### **DIVISION I**

#### **EXECUTION OF NOTARIAL ACTS**

34. A notarial act is executed *en minute* or *en brevet*.

35. An act *en minute* is an act that a notary must deposit and preserve in his or her notarial records, and from which authentic copies or extracts may be issued.

Acts *en minute* must be executed and preserved in any medium approved by regulation of the Bureau that ensures the integrity of the acts. The draft act and the closed act need not be in the same medium. Entries made in such acts must, upon the closing of the act, be permanent and complete and be protected against alterations.

An act of deposit drawn up by a notary for the purpose of depositing a document other than an act executed *en minute* or a copy of such an act in the notarial records must be executed *en minute*.

36. Acts *en minute* forming part of notarial records must be executed separately and numbered consecutively beginning with the number one.

37. If the same number is given to more than one minute or if any other mistake is made in numbering, the act remains authentic, but as soon as the error is discovered, the notary or, in the case of joint or shared notarial records, one of the notaries or partners shall make a declaration under his or her oath of office below the signatures on any minute that contains such an error, describing the nature of the error, and shall enter in the repertory the number as it appears on the minute. A copy of the declaration must be sent to the secretary of the Order without delay.

If a number has been omitted, as soon as the mistake is discovered, a declaration recording the omission of the number shall be inserted in the notarial records, at the place where the act bearing the omitted number should have been. The omitted number shall be entered in the repertory with a note to the effect that no act corresponds to the number. A copy of the declaration must be sent to the secretary of the Order without delay.

The obligations imposed on notaries under this section are also incumbent on any person who, in particular as provisional custodian or assignee, is the depository of the notarial records.

38. An act *en brevet* is an act, in the form of one or more originals, that a notary executes and may deliver to the parties. No authentic copy of or extract from an act *en brevet* may be issued.

Powers of attorney, authorizations, acquittances and other ordinary acts may be executed *en brevet*.

39. Acts *en brevet* may be executed in any medium approved by a regulation of the Bureau that ensures the integrity of the acts.

Entries made in such acts must, upon the closing of the act, be permanent and complete and be protected against alterations.

40. The choice of an officiating notary to execute a notarial act is determined by agreement between the parties.

If there is no agreement, the choice falls to

(1) the creditor, for acts of obligation, surety bonds or acts of a similar nature;

(2) the debtor, for a simple discharge;

(3) the new creditor, for a discharge with subrogation or a discharge following the payment of a debt with the proceeds of a hypothecary loan, despite any agreement or stipulation to the contrary between the former creditor and the debtor;

(4) the purchaser or transferee, for the sale of movable or immovable property or rights where

(a) the purchaser or transferee pays the purchase price in full; or

(b) the purchaser or transferee pays all or part of the purchase price to the seller or transferor with the proceeds of a hypothecary loan contracted for that purpose;

(5) the seller or transferor, for the sale of movable or immovable property or rights, where the purchaser or transferee undertakes to pay a balance of the sale price to the seller or transferor or to assume a pre-existing obligation of the seller or transferor.

Despite any agreement to the contrary, the choice of a notary falls to the party entitled to choose the notary pursuant to subparagraph 4 or 5 of the second paragraph for a discharge resulting from the payment of a claim secured by a real right encumbering property sold or transferred where the payment is made out of the proceeds from the sale or transfer of the property.

41. No notary may execute an act if the notary or the notary's spouse is or represents one of the parties to the act.

42. Subject to the provisions of section 41 and the provisions of the Civil Code with respect to wills, an act executed by a notary who is related or connected by marriage to one of the parties in any degree is authentic. An act executed by a notary who is a senior executive or employee of a legal person that is a party to the act is also authentic.

43. A notary shall, by all reasonable means, verify the identity, quality and capacity of each party to a notarial act to be signed before the notary.

Where one of the parties signs before a notary other than the officiating notary pursuant to the second paragraph of section 50, it is incumbent upon that other notary to verify the identity, quality and capacity of the party concerned.

44. Parties to acts executed by a notary or to documents drawn up by the notary at their request are solidarily liable for the notary's disbursements and fees.

## **DIVISION II**

### **FORM OF NOTARIAL ACTS**

45. Notarial acts shall be written in ink of good quality, typewritten or printed, legibly and permanently. The use of forms reproduced by any technical means is authorized provided that the forms have the same characteristics as typewritten or printed acts. Notarial acts may not contain, other than the usual spaces, any blanks or intervening spaces that are not crossed out.

Notarial acts shall contain no abbreviations. Amounts, dates, numbers and other figures, other than simple references that are not absolutely essential, shall be written out in full and entries written out in full shall take precedence over figures, should there be a difference.

46. No words written over, interlineations or additions shall appear in the body of an act or in the marginal notes or footnotes; any words, letters, figures or signs written over, interlined or added are deemed unwritten.

If words, letters or figures are crossed out, they shall be crossed out in such manner that they may be counted.

47. Inserts and additions to inserts may only be written in the margin or at the end of the act; they must be initialled by the signatories to the act, under pain of nullity.

48. If the length of an insert requires that it be continued at the end of the act, the continuation shall be initialled by all the signatories to the act in the same manner as inserts in the margin, under pain of nullity. The same applies to inserts at the end of the act and to other inserts which cannot be fully contained in the margin.

49. The number of inserts and additions and the number of words, letters or figures crossed out and the fact that they are null must be mentioned at the end of the act, above the signatures.

50. A notarial act shall be closed by the signatures affixed in the presence of the officiating notary by the parties and the witnesses required in the matter, and by the signature of the officiating notary, which must be affixed on the day and at the place of signing by the last of the parties to do so.

Any party to a notarial act may sign it in the presence of a notary other than the officiating notary, provided that the last signature is affixed before the officiating notary. A signature may also be affixed before a notary designated by a resolution of the Bureau and authorized to practise in a State which has a



professional order belonging to the Union internationale du notariat latin, provided that the signature is affixed within the territorial boundaries of that State. In such cases, after the party signs, the notary must enter and sign an attestation, immediately below the party's signature, that the signature was affixed before him or her, indicating the date on which it was affixed.

Within the limits and subject to the conditions determined by regulation of the Bureau, an act executed in a medium other than paper may be signed by the parties and the witnesses in the notary's absence and the notary, in such a case, is not required to sign the act at the place of signing by the last party to do so.

51. Before it is signed, a notarial act must be read aloud to each of the parties by the notary or by a third person appointed by the notary. The act need not be read to parties who have themselves read the act or where the parties declare to the notary that they have taken cognizance of it and exempt the notary from reading it. Mention of the declarations and exemption must be made in the act, above the signatures.

The inclusion in the act of the words "After due reading hereof" constitutes a simple presumption that the act has been read in accordance with the provisions of this Act.

52. A notarial act shall specify the date of the act, the name, official quality and place of the professional domicile of the notary who executes the act, the name, quality and address of each party and a designation of the powers of attorney or mandates produced, the presence, name, quality and address of any witness required, the place where the act is executed, the number of the minute given to the act, the notarial records in which the act will be deposited or the fact that the act is executed *en brevet*, and the fact that the act has been read or, where applicable, the mention required by section 51.

53. A notarial act must contain the signatures of the parties or their declaration that they are unable to sign, the signatures of the witnesses and the official signature of the notary or notaries.

The official signature of any notary, other than the officiating notary, before whom a party signs shall constitute a sufficient designation.

Where a party signs a notarial act in the presence of a notary other than the officiating notary, and the notary signs an attestation entered in the act pursuant to the second paragraph of section 50, the party is deemed for the purposes of the act to have appeared before the officiating notary.

54. A notarial act shall be declared to be executed at the place where it is closed. That place is sufficiently described if the name of the municipality is specified. In the case described in article 3110 of the Civil Code, the name of the State must be specified in addition to the name of the municipality.

55. Where an act between several parties is signed or consented to by the parties on different days or at different places, the notary may express the plurality of dates or places by mentioning the day on which and the place where each party signed the act or consented thereto.

56. A notarial act *en minute* under the authority of which an act is executed must be sufficiently described in that act by the nature and date of the notarial act, the name of the notary who executed it, the minute number given to it and the designation of the notarial records in which it is kept and, where applicable, its registration number in the appropriate register for the publication of rights. No copy of a notarial act *en minute* is to be annexed to the act.

All other acts and documents under the authority of which an act is executed must be annexed and sufficiently described, acknowledged as true and signed in the presence of the notary by the party or parties who produce them and countersigned by the notary.

Any other document which the parties wish to annex to an act may be so annexed by complying with the formalities prescribed in the second paragraph.

57. All acts and documents, other than notarial acts *en minute*, under the authority of which an act is executed in a medium other than paper may be annexed to the act by any means approved by a regulation of the Bureau that ensures the integrity of the acts and documents and maintains their relation to the act to which they are annexed.

Where a notarial act *en minute* is executed in a medium other than paper, any annexes in paper form must, before being annexed in accordance with section 56, be reproduced in the same medium as the act to which they are to be annexed.

58. A notary may not alter or change the content of a notarial act after a party signs it, unless the party agrees to the alteration or change by affixing his or her initials in the margin opposite any changes made.

Nor may a notary suppress, destroy or alter a notarial act after it is closed. Should it be necessary to make changes to the act, the parties may do so only by means of another act.

59. Notaries who deposit their acts in the same joint or shared notarial records may not execute acts under the name of the partnership or under the name designating the notarial records in which their acts are deposited.

They may, however, use the name of the partnership in advertisements, notices, petitions and other documents that are not notarial acts.

60. Any act executed and signed by a notary that does not bear the official signature of the notary filed with the secretary of the Order shall nevertheless

be authentic and have effect as if it had been signed with the notary's official signature.

61. The first paragraph of section 45 and sections 46 to 49 apply only to notarial acts executed on paper.

The other provisions of this Act apply to all notarial acts, whatever the medium in which they are executed.

### **DIVISION III**

#### **PRESERVATION OF NOTARIAL ACTS *EN MINUTE***

##### *§1. — Keeping of notarial records*

62. Notarial acts executed *en minute* must be deposited in notarial records kept in Québec or in any place suitable for the preservation of the records determined by resolution of the Bureau.

Notarial records may be individual, joint or shared.

63. Joint notarial records are notarial records constituted by two or more notaries and held by them in indivision. If indivision is terminated, the notarial records may not be partitioned.

The undivided share held by a notary in joint notarial records may only be alienated in favour of one or more notaries.

64. Shared notarial records are notarial records constituted by notaries practising in a general partnership. Shared notarial records form part of the property of the partnership and may not be partitioned.

65. A notary shall, upon being sworn in, provide to the secretary of the Order a statement designating the notarial records in which his or her notarial acts will be deposited and specifying whether they are individual, joint or shared notarial records. Any change relating to the notarial records must be notified to the secretary of the Order at least 15 days prior to the change.

66. Notarial records must include a repertory of the notarial acts executed *en minute* and an index to the repertory, in which the information prescribed by regulation of the Bureau must be entered. The repertory and the index form part of the notarial records.

67. Possession of acts kept in notarial records and the documents annexed thereto may not be surrendered except in the cases provided by law.

Before possession may be surrendered, the notary or, in the case of joint or shared notarial records, one of the notaries or partners shall make a true copy

of the act and documents which, after being signed by the judge ordering the filing of the act and documents or, where section 192 of the Professional Code applies, by the person requiring the production of the act and documents in the exercise of his or her functions, is substituted for and stands in lieu of the minute until the act *en minute* is re-deposited in the notarial records.

Where an act was received in a medium other than paper, it shall be reproduced and delivered to the judge ordering the filing of the act or, where section 192 of the Professional Code applies, to the person requiring the production of the act in the exercise of his or her functions.

The same obligation applies to any person who, in particular as provisional custodian or assignee, is the depositary of the notarial records.

68. The Minister of Justice, in his or her capacity as Notary General for Québec, shall keep the notarial records in which notarial acts executed *en minute* by notaries to whom the Public Service Act (R.S.Q., chapter F-3.1.1) applies are deposited.

The Minister may, by order, establish two or more sets of notarial records. The Minister shall give notice thereof to the secretary of the Order.

§ 2. — *Assignment, surrender and provisional custody of notarial records*

69. Notarial records may, subject to the conditions determined by regulation of the Bureau and with the authorization of the Administrative Committee, be assigned, in whole or in part, to another notary or a general partnership of notaries. Notarial records may also, subject to the conditions determined by regulation of the Bureau and with the authorization of the secretary of the Order, be surrendered, in whole or in part, to the Superior Court.

70. The heirs of a notary must, subject to the conditions determined by regulation of the Bureau, assign the notary's notarial records or surrender them to the Superior Court.

71. As soon as a notary who keeps individual notarial records is removed from the roll, the notary shall, subject to the conditions determined by regulation of the Bureau, assign the notarial records or surrender them to the Superior Court.

Joint or shared notarial records must, subject to the conditions determined by regulation of the Bureau, be assigned or surrendered if all the notaries who deposit their notarial acts in the records have been removed from the roll or if the general partnership is dissolved. The person in charge of liquidating the partnership is responsible for effecting the assignment or surrender.

Except in circumstances described in the second paragraph, the Administrative Committee or, in urgent cases, the president may prohibit access by a notary who has been removed from the roll to joint or shared notarial records, and enjoin the other notaries using the notarial records

concerned to take every necessary measure to prevent the notary from having access to the notarial records.

72. The assignee of notarial records shall surrender the records to the Superior Court at the expiry of the maximum period, determined by regulation of the Bureau, for which the records were assigned.

73. The surrender of notarial records, where it is mandatory, must be made within 15 days from the event that gives rise to it. However, if the Administrative Committee considers it warranted by the circumstances, the Committee may grant any extension it deems appropriate.

74. The clerk of the Superior Court shall notify the secretary of the Order without delay of every surrender of notarial records. The fees collected for searches, copies or extracts belong to the State.

75. Notarial records surrendered to the Superior Court form part of its archives.

76. Any notary whose notarial records have been surrendered may recover them subject to the conditions determined by regulation of the Bureau.

77. The Administrative Committee or, in urgent cases, the president may, subject to the conditions determined by regulation of the Bureau, appoint a provisional custodian for the individual notarial records of a notary where

(1) the notary's right to practise is limited;

(2) the notary is under investigation by the syndic of the Order or the subject of a complaint filed with the committee on discipline or is being prosecuted for a criminal offence which, in the reasoned opinion of the Administrative Committee or, as the case may be, the president, is closely related to the notary's professional practice;

(3) the notary is the subject of a judicial application for the institution of protective supervision, for homologation of a mandate given in anticipation of his or her inability or for confinement in an institution pursuant to article 30 of the Civil Code;

(4) a medical report issued in the circumstances described in sections 48 to 51 of the Professional Code shows that the notary cannot practise for health reasons;

(5) the notary has failed to comply with the requirements of section 89; or

(6) the preservation of the notarial records is compromised, in the opinion of the Administrative Committee or, as the case may be, the president.

The provisional custodian must be a practising notary.

Provisional custody extends to all files relating to the notarial records and to every register or trust accounting document as well as to all funds, securities or other instruments delivered to the notary in trust.

The clerk of the court shall, as soon as possible, notify the secretary of the Order of any proceeding referred to in subparagraph 3 of the first paragraph.

78. The Administrative Committee, or in urgent cases, the president may, subject to the conditions determined by regulation of the Bureau, appoint a provisional custodian in respect of joint or shared notarial records if all the notaries who deposit their acts in the notarial records are in a situation described in subparagraphs 1 to 5 of the first paragraph of section 77. If the conditions for the appointment of a provisional custodian do not exist, the Administrative Committee or, as the case may be, the president may prohibit access to the notarial records by any notary that is in any of those situations, and enjoin the other notaries who deposit their acts in the notarial records to take every necessary measure to prevent the notary from having access to the notarial records.

As well, the Administrative Committee, or in urgent cases, the president may, subject to the conditions determined by regulation of the Bureau, appoint a provisional custodian in respect of joint or shared notarial records if, in the opinion of the Committee or president, the preservation of the notarial records is compromised.

The provisions of the second, third and fourth paragraphs of section 77 apply.

79. The Administrative Committee or the president may require that all files relating to notarial records that may be placed under provisional custody be sealed until a provisional custodian is appointed or until the notarial records are transferred or surrendered. The application shall be made by motion to the Superior Court of the judicial district in which the notary or notaries who deposited their acts in the notarial records last practised or, in the case of shared notarial records, the district where the general partnership concerned is established. The judge or, in the judge's absence, the clerk has full and complete jurisdiction in the matter.

80. Any person in possession of the notarial records or any other document referred to in section 77 for which a provisional custodian has been appointed shall deliver the notarial records or document to the provisional custodian on being served a notice of the latter's appointment in accordance with the Code of Civil Procedure. The person is liable to a fine of \$100 for each day's delay, beginning from service of the notice. Every person required to surrender notarial records who refuses or neglects to do so is liable to the same fine upon the expiry of the time given to surrender the notarial records. A notary who contravenes the provisions of this section is liable, in addition, to the disciplinary penalties prescribed by the Professional Code.

81. Where a person required to comply with the provisions of section 80 refuses or neglects to do so or where it is impossible to serve the notice of appointment of the provisional custodian, any person designated by the president may, with the authorization of a judge of the Superior Court, take possession of the notarial records or of any other document subject to provisional custody or of the notarial records to be surrendered and either deliver them to the provisional custodian or surrender them to the office of the Superior Court.

The application, which is made by motion, may not be presented to the judge unless it has been served on the party concerned at least one clear day beforehand. The judge may, by way of exception, exempt the applicant from serving the application on the party concerned where the judge considers that it would compromise the preservation of the notarial records and other documents, or in urgent cases. The application is heard and decided by preference.

The judge may, subject to the specified conditions, authorize the applicant to enter, in the presence of a bailiff, any premises where the notarial records or other documents concerned are kept and, if necessary, cause any locked door, filing cabinet or safe to be opened by any necessary means.

82. The provisional custodian is, for the duration of the provisional custody, the legal depositary of the notarial records under provisional custody, and the custodian of all files and documents relating to the notarial records.

83. In addition to disbursements, the provisional custodian is entitled to the fees fixed by the Administrative Committee, which shall be charged to the person whose records are under provisional custody. However, in the case of provisional custody ordered in the circumstances described in subparagraph 2 or 3 of the first paragraph of section 77, the Administrative Committee shall, after a decision is rendered by the court or by the committee on discipline, determine which of the notary or notaries, the general partnership involved or the Order is to pay the costs.

The provisional custodian is also entitled to fees for making searches and for issuing copies or extracts.

The costs incurred for the surrender of the notarial records shall be charged, where the surrender is voluntary, to the person who surrenders them. Where the surrender of the notarial records is mandatory, the costs shall be charged to the person required to surrender them.

#### **DIVISION IV**

##### **COPIES OF OR EXTRACTS FROM NOTARIAL ACTS *EN MINUTE***

84. The right to issue copies of or extracts from a notarial act *en minute* or its annexes belongs exclusively, in the case of individual notarial records, to

the notary who deposits his or her notarial acts therein and, in the case of joint or shared notarial records, to the notaries who deposit their notarial acts therein, to the mandatary referred to in section 89, the assignee of the notarial records and to the clerk of the Superior Court who is the depositary of the notarial records. The Notary General for Québec or the notaries designated by the Notary General shall issue copies of or extracts from the notarial acts deposited in notarial records kept by the Notary General.

The provisional custodian of notarial records, alone and to the exclusion of any other person referred to in the first paragraph, may issue copies of or extracts from the minutes and annexes in the notarial records that are under provisional custody.

85. Copies of or extracts from acts executed in any medium other than paper may be issued in any medium determined by a regulation of the Bureau that ensures the integrity of the copies or extracts.

86. The persons referred to in section 84 may not issue a copy of or communicate the content of a will or codicil except to the testator or a person vested with the testator's authorization executed *en brevet* or before two witnesses, or before obtaining proof of the testator's death and a certificate of search in the registers of wills maintained by the Order and by the Barreau du Québec.

87. Copies of notarial acts executed *en minute* or of annexes to such acts that a person referred to in section 84 certifies as true copies must be faithful reproductions of the text of the minutes or annexes.

It is not necessary to mention in the copies the number of inserts approved or words crossed out in the minute or annex.

It is necessary, however, to mention the number of inserts approved and words crossed out which appear in the copies.

88. Copies of and extracts from notarial acts *en minute* or annexes to such acts, certified as true by a person referred to in section 84, are authentic and constitute proof of what is contained in the minute and annexes provided, as regards annexed documents, that they were annexed pursuant to an Act or that they were acknowledged as true in accordance with section 56.

89. Where a notary expects to be absent for a period of more than 15 days, the notary shall, subject to the conditions determined by regulation of the Bureau, by notarial act *en minute* and for the time of his or her absence, give a mandate to another notary to issue copies of or extracts from the notarial acts in the notary's individual notarial records or in the notarial records assigned to or under the provisional custody of the notary. A notary may also, at any time, appoint a mandatary for the time of his or her absence in accordance with this paragraph.



The same obligation is incumbent on notaries who deposit their acts in joint notarial records and on partners in a general partnership having constituted shared notarial records if all of them expect to be absent for the same period.

An authentic copy of the mandate shall be filed immediately at the office of the secretary of the Order.

The copies or extracts issued under this section are authentic, notwithstanding the provisions of articles 2815 and 2817 of the Civil Code.

90. The copies or extracts signed by a notary with a signature other than the notary's official signature are authentic and have effect as if they had been signed with the notary's official signature.

91. A notary is not required to issue a copy of or an extract from, or communicate the content of, a notarial act, except for the purpose of its registration in the appropriate register for the publication of rights, until the fees and disbursements for the preparation and execution of the notarial act and, where applicable, the registration of the act, have been paid.

A notary may withhold files and other documents pertaining to a matter which has been entrusted to the notary until all disbursements and fees have been paid.

92. The delivery of copies, extracts, title-deeds or acts of any nature does not constitute a presumption that the notary's disbursements and fees have been paid.

## **DIVISION V**

### **REGISTERS OF NOTARIAL ACTS KEPT BY THE ORDRE DES NOTAIRES**

93. The Bureau shall establish and maintain registers for the recording, attestation, certification, deposit, retrieval and consultation of information relating to testamentary dispositions and mandates given in anticipation of the mandator's inability, executed *en minute* by or deposited with notaries, or information relating to the amendment or revocation thereof.

94. A notary shall periodically report to the registrar of the Order the notarial acts executed or received for deposit in his or her notarial records for which a mention must be made in the register of testamentary dispositions or in the register of mandates given in anticipation of the mandator's inability. The report may be signed by the notary, the notary's attorney, another notary depositing acts in the same joint notarial records, a partner in a general partnership having constituted shared notarial records or, where applicable, the provisional custodian or assignee of the records.

95. The Bureau may, by regulation, establish and maintain registers for the recording, attestation, certification, deposit, retrieval and consultation of information relating to powers of attorney or delegations of authority, or to the amendment or revocation thereof, or information relating to other documents or data concerning the certification of a person's identity, quality or capacity, executed by or deposited with notaries.

96. The Bureau shall, by regulation, determine the form, content and medium of the registers kept by the Order, the manner in which entries are to be made in registers, the form, tenor and frequency of the reporting by notaries of the acts to be recorded in a register, exemptions, and the formalities and terms and conditions applicable to the issue of attestations and certifications.

The Bureau may, by regulation, fix the fees for registration and searches in the registers established under this Act or the regulations, and the fees relating to the attestation or certification of information.

The frequency with which the notaries must submit reports shall be determined by resolution of the Bureau.

97. Section 95.1 of the Professional Code applies to regulations made under sections 95 and 96.

## **CHAPTER V**

### **REGULATIONS**

98. The Bureau shall make regulations

(1) determining the conditions and procedure according to which a personal code or mark is assigned to a notary by the secretary of the Order to stand in lieu of the notary's signature pursuant to section 22, and according to which such a code or mark is revoked;

(2) determining the form and content of the indexes and repertories and prescribe standards applicable to the manner in which they are to be kept, safeguarded and preserved;

(3) establishing standards relating to the custody, preservation and communication of the content of notarial acts *en minute* and to the issue of authentic copies of or extracts from such notarial acts;

(4) establishing standards relating to the form, nature and quality of the medium used for notarial acts and copies of or extracts from notarial acts and the documents annexed thereto and for repertories and indexes;

(5) establishing security standards relating to the use of information technologies for the execution of notarial acts, including the affixing of signatures in the presence or absence of the officiating notary;

(6) establishing the procedure, conditions and formalities applicable to the constitution and designation of notarial records;

(7) determining the place, duration and content of, and the manner, conditions and formalities applicable to, the custody, assignment, surrender, reinstatement and disposal of notarial records and the files relating thereto and of registers and trust accounting documents and determining the cases in which an undivided share of joint notarial records must be alienated and the applicable procedure and conditions; and

(8) determining the conditions subject to which a seizure or taking in payment may be effected pursuant to the third paragraph of section 26.

Regulations under subparagraphs 1 to 6 and 8 of the first paragraph, to the extent that they concern a medium other than paper in which notarial acts are executed, shall be submitted to the Government for approval, with or without amendment, on the recommendation of the Minister of Justice made after consultation with the Office des professions.

## CHAPTER VI

### AMENDING AND FINAL PROVISIONS

99. Article 62 of the Code of Civil Procedure (R.S.Q., chapter C-25) is amended by replacing “*e* of section 9 of the Notarial Act (chapter N-2)” by “7 of section 15 of the Notaries Act (2000, chapter 44)”.

100. Section 182.1 of the Professional Code (R.S.Q., chapter C-26), amended by section 1 of chapter 18 of the statutes of 1998 and by section 38 of chapter 13 of the statutes of 2000, is again amended by replacing subparagraph 5 of the first paragraph by the following subparagraph:

“(5) a decision of the Administrative Committee under section 12 of the Notaries Act (2000, chapter 44);”.

101. Section 182.2 of the said Code, amended by section 2 of chapter 18 of the statutes of 1998 and by section 39 of chapter 13 of the statutes of 2000, is again amended by replacing “subsection 3 of section 121, subsection 1 of section 122 or section 162 of the Notarial Act (chapter N-2)” in the fifth paragraph by “or section 12 of the Notaries Act (2000, chapter 44)”.

102. Section 2 of the Act respecting the Ministère de la Justice (R.S.Q., chapter M-19), amended by section 184 of chapter 40 of the statutes of 1999, is again amended by adding the following sentence at the end of the first paragraph: “The Minister is also *ex officio* Notary General for Québec.”

103. Section 219 of the Courts of Justice Act (R.S.Q., chapter T-16) is amended by replacing subparagraph *f* of the first paragraph by the following subparagraph:

“(f) notaries entered on the roll of the Ordre des notaires du Québec, throughout Québec as well as outside Québec where the oath is taken in relation to a legal act having a connection with Québec;”.

104. Section 29 of the Act to amend the Code of Civil Procedure and other legislative provisions in relation to notarial matters (1998, chapter 51) is repealed.

105. The Minister of Justice and the Ordre des notaires may agree that all notarial records, or a category of notarial records specified in the agreement, the surrender of which is required by this Act will, from the date fixed in the agreement, be surrendered to the secretary of the Order rather than to the Superior Court.

The agreement may provide that all notarial records, or a category of notarial records specified in the agreement, surrendered to the Superior Court before (*insert here the date of coming into force of this section*) will be transferred to the Order, in the manner and subject to the conditions indicated in the agreement.

If such an agreement is made, the regulations made by the Bureau under subparagraph 7 of the first paragraph of section 98 concerning the surrender of notarial records shall apply to the Order. The Bureau may make a regulation determining the fees applicable to the surrender of notarial records to the secretary of the Order. Section 95.1 of the Professional Code shall apply to such a regulation.

From the coming into force of the agreement, the secretary of the Order, as the depositary of notarial records, shall exercise the powers conferred by this Act on the clerk of the Superior Court. The fees charged by the secretary for making searches and for issuing copies and extracts of acts shall belong to the Order.

106. This Act replaces the Notarial Act (R.S.Q., chapter N-2).

107. Every marriage contract executed *en minute* by a notary outside Québec, before notaries were so authorized by section 1 of chapter 53 of the statutes of 1923-24, is authentic provided that it contains no other cause of nullity.

108. The provisions of this Act come into force on the date or dates to be fixed by the Government.