

Draft Regulations

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An Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., c. R-20)

Construction industry commissioner — Rules of procedure and practice

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the rules of procedure and practice of the construction industry commissioner to which the commissioner and the deputy-commissioners have agreed, the text of which appears below, may be approved by the Government upon the expiry of 45 days following this publication.

The proposed rules relate to the proceedings made before the construction industry commissioner.

More chiefly, the rules deal with:

— the division of jurisdiction between the offices of Québec and Montréal of the construction industry commissioner;

— the computation of time to accomplish an act and relevant questions: non-judicial days;

— the proceedings before the construction industry commissioner;

— the communications between the parties and the construction industry commissioner;

the various incidents that may occur: intervention, postponement of a hearing, discontinuance, dismissal or substitution of the representative;

— the pre-hearing conference;

— the subpoena of a witness;

— the hearing and minutes of the hearing; and

— the discontinuance and settlement.

The rules impose minimum obligations on the parties to better define the scope of the dispute and at the same time to protect the rights of the parties to be heard.

Any interested person having comments to make on the matter is asked to send them in writing, before the expiry of the 45-day period, to the undersigned, Construction industry commissioner, 200, chemin Sainte-Foy, 7^e étage, Québec (Québec) G1R 1T3.

JOSETTE BÉLIVEAU,
Construction industry commissioner

Regulation respecting the rules of procedure and practice of the construction industry commissioner

An Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., c. R-20, s. 23.4)

DIVISION I SCOPE AND PURPOSE

1. This Regulation applies to matters, applications and proceedings submitted to the construction industry commissioner.

Its purpose is to ensure that procedure is dealt with simply and quickly, in the respect of the rules of natural justice and the equality of the parties.

2. For the purposes of this Regulation, the expression “construction industry commissioner” means the commissioner appointed under section 21.1 of the Act respecting labour relations, vocational training and manpower management in the construction industry (R.S.Q., c. R-20) and the expression “commissioner” means that commissioner or a deputy-commissioner seized with a matter, an application or a proceeding.

DIVISION II GENERAL

§1. Office

3. The construction industry commissioner’s offices in Québec and Montréal serve respectively the judicial districts listed in Schedule I.

4. Hearings shall be held at the chief place or another place corresponding to the judicial district of the applicant or the district in which the cause of action has arisen.

The construction industry commissioner may determine another place in the interest of justice, as provided for in Schedule I.

§2. Procedure

5. A motion introducing a matter, an application or a proceeding shall be made in writing and shall contain the following information :

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

(2) where the applicant is represented, the name and address of the representative, his telephone number and, where applicable, his e-mail address and his fax number ;

(3) the name and address of any other party to the motion, his telephone number and, where applicable, his e-mail address and his fax number ;

(4) a summary statement of the grounds invoked in support of the matter, application or proceeding ; and

(5) the conclusions sought.

6. The introductory motion for proceedings provided for in the third paragraph of section 21, 80.1 or 80.3 of the Act respecting labour relations, vocational training and manpower management in the construction industry may be made on a form proposed by the construction industry commissioner.

7. The disputed decision or the documents related to the facts that give rise to the matter, application or proceeding shall be attached to the motion.

Failing that, the motion shall indicate

(1) if the subject of the matter, application or proceeding is a decision :

(a) the name of the authority that has made the decision ;

(b) the date of the decision ; and

(c) the record number attributed by the authority ;

(2) if the subject of the matter, application or proceeding is not a decision, the facts that give rise to it.

The motion shall be signed by the applicant or his representative.

8. Any other party identified by the applicant in the introductory motion, shall appear in writing within 30 days of making the motion. Notwithstanding the preceding, for a proceeding made under section 7.7 of the Act respecting labour relations, vocational training and manpower management in the construction industry, the deadline is of 48 hours.

The motion shall contain the following information :

(1) The name and address of the party, his telephone number and, where applicable, e-mail address and his fax number ;

(2) if the party is represented, the name and address of the representative, phone number, and, if applicable, e-mail address or fax number ;

(3) a summary statement of the grounds invoked in support of the matter, application or proceeding ;

(4) the conclusions sought.

9. Any person may intervene, in writing, in a matter, an application or a proceeding to which he is not a party, at any time before the decision is rendered.

The intervention shall contain the following information :

(1) the name and address of the intervening party, his telephone number and, if applicable, his e-mail address and his fax number ;

(2) if the intervening party is represented, the name and address of the representative, his telephone number and, if applicable, his e-mail address and his fax number ;

(3) a summary statement of his particular interest as well as the grounds involved in support of the matter, application or proceeding ; and

(4) the conclusions sought.

10. Any party may object to an intervention as soon as it is received, on the ground of lack of interest from the intervening party ; notwithstanding the preceding, the intervention is received if the intervening party demonstrates his interest.

11. Any introductory motion, as well as any notice, any intervention, any other motion or document shall be filed with, produced or sent to the office of the construction industry commissioner. In each case, a copy shall also be sent to the other party and, where applicable, to his representative.

In addition, in the case provided for in the second paragraph of section 21 of the Act respecting labour relations, vocational training and manpower management in the construction industry, the introductory motion shall be sent to the owner of every construction site involved in the dispute, to the contractor involved in the dispute, to every contractors' association listed in subparagraph c.1 of the first paragraph of section 1 of the Act, as well as to every association of employees having a certificate of representativeness under section 34 of the Act. Any other notice, motion or document shall be sent to the associations that appeared.

12. The date of filing of a document is the date on which it was received at the office.

13. Upon receipt of an introductory motion, the construction industry commissioner shall send an acknowledgement of receipt to the applicant, to the other party or, as the case may be, to their representatives.

14. The administrative authority whose decision is disputed shall, within 30 days from the receipt of the copy of the introductory motion, send to the construction industry commissioner a copy of the record in its possession relating to the disputed decision. Notwithstanding the foregoing, for a proceeding made under section 7.7 of the Act respecting labour relations, vocational training and manpower management in the construction industry, the time period is 48 hours.

15. The commissioner may accept a proceeding despite a defect of form or an irregularity.

16. The following are non-judicial days:

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

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

18. In computing any time period, the day which marks the start of the period is not counted but, except in the case of clear days, the terminal day is counted.

§3. Representation

19. The parties may be represented by a person of their choice.

20. A representative shall notify in writing the construction industry commissioner and the other parties of his mandate.

The designation of a representative in a motion or another written document constitutes a notice of representation for the whole case to which it relates to.

21. A person shall immediately notify in writing the construction industry commissioner and the other parties

(1) that he has agreed to represent a party after the motion is filed;

(2) that he has ceased to represent a party; or

(3) that he has dismissed his representative or has substituted a new one for him.

22. Any party and any representative shall immediately inform the construction industry commissioner of any change in his address or telephone number.

23. Where a party is represented, communications from the construction industry commissioner, except the notice of hearing and the commissioner's decision, shall be addressed to the representative only.

DIVISION III

ENTRY ON THE ROLL AND NOTICE OF HEARING

24. A notice of proof and hearing shall be sent to the parties within a reasonable time before the hearing, indicating

(1) the subject, date, time and place of the hearing;

(2) the right of the parties to be assisted or represented; and

(3) the power of the commissioner to proceed, without further notice or delay, notwithstanding the failure of a party to be present at the time and place fixed, if the party has not given a good reason for his absence.

25. A party is validly called for the hearing by a notice sent to his last address indicated in the record of the construction industry commissioner. The notice is also sent to the representative at his last address.

26. The commissioner may, with the consent of the parties, replace the hearing with a meeting with the parties in an attempt to bring them to settle the dispute, by means of conciliation as provided for in section 21.0.3 of the Act respecting labour relations, vocational training and manpower management in the construction industry, arguments in writing, a telephone conference, a study of the record or any other means.

27. The filing of a notice of discontinuance, or of a notice indicating that the dispute no longer exists or is settled, other than a settlement obtained through the conciliation provided for in section 21.0.3 of the Act respecting labour relations, vocational training and manpower management in the construction industry, shall terminate the proceedings.

DIVISION IV PRE-HEARING CONFERENCE

28. If the commissioner considers it useful and if the circumstances of a matter, application or proceeding allow it, the commissioner shall convene the parties to a pre-hearing conference. The pre-hearing conference may be held by means of any method of communication.

29. The purpose of the pre-hearing conference is

- (1) to define the issues to be dealt with at the hearing;
- (2) to assess the advisability of clarifying and specifying the allegations of the parties and the conclusions sought;
- (3) to ensure that all documentary evidence is exchanged by the parties;
- (4) to plan how the procedure and evidence will be dealt with at the hearing;
- (5) to examine the possibility for the parties of admitting certain facts or proving them by means of sworn statements;
- (6) to examine any other issue likely to simplify or accelerate the conduct of the hearing;
- (7) to examine the possibility to convene a meeting between the parties in an attempt to bring them to settle the dispute; and

(8) to examine the possibility of designating a person who will meet the parties for conciliation purposes pursuant to section 21.0.3 of the Act respecting labour relations, vocational training and manpower management in the construction industry.

30. Where applicable, minutes of the pre-hearing conference shall be taken and signed by the commissioner who convened the parties. The text of any admission written and signed by the parties shall be attached thereto.

The agreements and decisions reported in the minutes shall govern the conduct of the hearing, unless the commissioner, when he hears the matter, allows a departure in order to prevent an injustice.

DIVISION V HEARING

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

32. The minutes of the hearing shall be taken according to the model established by the construction industry commissioner. They shall contain

- (1) the date and place of the hearing;
- (2) the name of the commissioner;
- (3) the names and addresses of the parties and, where applicable, of their representatives and witnesses;
- (4) the name and address of the interpreter, where applicable, and mention that he took an oath;
- (5) mention that the hearing was recorded;
- (6) a list of the exhibits that were produced;
- (7) the incidental proceedings, objections and any decision rendered at the hearing, where applicable;
- (8) any admission and full or partial settlement;
- (9) the date on which the matter was taken under advisement, where applicable.

33. The commissioner may, for cause, *ex officio* or upon request from a party, postpone the hearing to another date or adjourn it.

He may subject the postponement or adjournment to certain conditions.

34. A party who wishes to have the hearing postponed shall file an application therefor with the construction industry commissioner as soon as the grounds invoked in support thereof are known.

The postponement shall be granted only if it is based on serious grounds and if the interests of justice are thus better served. No postponement shall be granted only by the consent of the parties.

35. All persons attending a hearing shall behave with dignity and show respect due to justice. They shall refrain from doing anything that could disrupt the hearing.

DIVISION VI PROCEDURE

36. The construction industry commissioner is not bound to apply the rules of civil procedure except those relating to the time for summoning witnesses.

37. A party who wishes that a witness be summoned to appear shall complete the subpoena.

The party must serve the subpoena issued by a commissioner at least five clear days before the hearing or at least ten clear days before that moment, in the case of a subpoena served on a minister or a deputy minister of the Government.

In cases of urgency, a commissioner may reduce the time for serving the subpoena; however, the time may not be less than 12 hours. He shall indicate that such is the case on the subpoena.

38. The person who is heard as a witness shall swear that he will tell the truth.

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

39. Any party may examine and cross-examine a witness insofar as necessary to ensure an equitable procedure.

40. The commissioner may order that witnesses testify without each other's presence.

41. A party who intends to produce an expert's report as evidence shall file it with the office of the construction industry commissioner and send a copy to the other parties on the date fixed by the commissioner or, failing such date, at least 15 days before the date fixed for the hearing.

42. A party who intends to produce documents at the hearing shall provide a sufficient number of copies for the commissioner and the other parties.

43. A party may, at his expense, have the hearing of the matter, application or proceeding recorded mechanically or by shorthand or stenotype.

A party who has the debates transcribed shall provide, free of charge, a copy of that transcription to the construction industry commissioner.

DIVISION VII DECISION

44. The commissioner who has taken a case under advisement may, *ex officio* or upon request by a party and as long as he has not rendered his decision, order the reopening of the case for the purposes and on the conditions he determines.

45. The original of the decision shall be kept in the record and a true copy shall be sent to each party and to his representative.

DIVISION VIII COMING INTO FORCE

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

SCHEDULE I

(ss. 3 and 4)

1. The construction industry commissioner's office in Québec serves the following judicial districts and chief places:

DISTRICT	CHIEF PLACE	OTHER PLACE
Alma	Alma	—
Arthabaska	Arthabaska	—
Beauce	Saint-Joseph-de-Beauce	—
Bonaventure	New-Carlisle	—
Charlevoix	La Malbaie	—
Chicoutimi	Chicoutimi	—
Frontenac	Thetford-Mines	—
Gaspé	Percé	Sainte-Anne-des-Monts Cap-aux-Meules
Hauterive	Baie-Comeau	—
Kamouraska	Rivière-du-Loup	—
Mingan	Sept-Îles	—
Montmagny	Montmagny	—
Québec	Québec	—
Rimouski	Rimouski	Matane
Roberval	Roberval	Dolbeau
Saint-Maurice	Shawinigan	La Tuque
Trois-Rivières	Trois-Rivières	—

2. The construction industry commissioner's office in Montréal serves the following judicial districts and chief places:

DISTRICT	CHIEF PLACE	OTHER PLACE
Abitibi	Amos	Chibougamau, La Sarre, Val d'Or
Beauharnois	Salaberry-de-Valleyfield	—
Bedford	Cowansville	Granby
Drummond	Drummondville	—
Hull	Hull	—
Iberville	Saint-Jean	—
Joliette	Joliette	—
Labelle	Mont-Laurier	Maniwaki
Laval	Laval	—
Longueuil	Longueuil	—
Mégantic	Lac Mégantic	—
Montréal	Montréal	—
Pontiac	Campbell's Bay	—
Richelieu	Sorel	—
Rouyn-Noranda	Rouyn	—
Saint-François	Sherbrooke	—
Saint-Hyacinthe	Saint-Hyacinthe	—
Témiscamingue	Ville-Marie	—
Terrebonne	Saint-Jérôme	—