

(e) Baccalauréat en gestion des ressources humaines from Université du Québec à Montréal.”.

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

5028

Draft Regulation

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

Court bailiffs

— Conciliation and arbitration procedure for the accounts of court bailiffs

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Bureau of the Chambre des huissiers de justice du Québec has adopted the Regulation respecting the conciliation and arbitration procedure for the accounts of court bailiffs.

The Regulation, the text of which appears below, will be examined by the Office des professions du Québec pursuant to section 95 of the Professional Code. It will then be submitted, with the Office’s recommendation, to the Government which may approve it with or without amendment at the end of 45 days following this publication.

The Regulation replaces sections 12 to 17 of the Regulation respecting the application of the Bailiffs Act (R.R.Q., 1981, c. H-4, r.2), which remains in force pursuant to section 31 of the Court Bailiffs Act (R.S.Q., c. H-4.1).

The Regulation provides that a client may ask for conciliation and, if required, arbitration in the event of a dispute concerning the amount of a court bailiff’s account for fees in order to remove, by means of a flexible and speedy procedure, unnecessary irritants that may arise between the professional and the client. However, since the professional activity of court bailiffs usually centres on court-related matters, the Regulation will not replace the procedure for the taxation of bills of costs provided for in article 480 of the Code of Civil Procedure of Québec (R.S.Q., c. C-25).

The Regulation will have no impact on businesses.

Further information on the Regulation may be obtained by contacting Ronald Dubé, court bailiff, Director General and Secretary of the Chambre des huissiers de justice du Québec, 1100, boulevard Crémazie Est,

bureau 215, Montréal (Québec) H2P 2X2; telephone: (514) 721-1100; fax: (514) 721-7878; e-mail: rdube@huissiersquebec.qc.ca

Any person having comments to make on this Regulation is asked to send them, before the expiry of the abovementioned 45-day period, to the chair of the Office des professions du Québec, 800, place D’Youville, 10^e étage, Québec (Québec) G1R 5Z3. The comments will be forwarded by the Office to the Minister responsible for the administration of legislation respecting the professions and they may also be sent to the professional order that adopted the Regulation, namely the Chambre des huissiers de justice du Québec, as well as to interested persons and the interested department and bodies or agencies.

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

Regulation respecting the conciliation and arbitration procedure for the accounts of court bailiffs

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

DIVISION I GENERAL

1. This Regulation applies to any person bound to pay fees for professional services rendered by a bailiff, even if that person is not the recipient of the services charged on the account, whether or not it was paid in full or in part.

In this Regulation, “person” means a natural person or a legal person established for a private or public interest, a partnership within the meaning of the Civil Code of Québec, and a public body within the meaning of the Act respecting access to documents held by public bodies and the protection of personal information (R.S.Q., c. A-2.1).

2. A person who has a dispute with a bailiff concerning the amount of an account of fees shall, before having recourse to arbitration, apply for conciliation thereto to the conciliator unless the account has already been taxed according to article 480 of the Code of Civil Procedure of Québec (R.S.Q., c. C-25).

3. The Bureau of the Chambre des huissiers de justice du Québec shall appoint a conciliator for the account of bailiff fees.

The conciliator shall take the oath of office and discretion in the manner provided for in Schedule I.

4. The conciliator shall forward a copy of this Regulation to every person who so requests or who has applied for conciliation in respect of an account of fees.

5. The time limits in this Regulation are determined in accordance with the Code of Civil Procedure.

6. A bailiff may not institute proceedings in respect of an account before the expiry of 45 days from the date of receipt of the account by the addressee.

Notwithstanding the foregoing, the conciliator may authorize such proceedings if it is feared that, without that measure, recovery of the account would be at risk.

7. Once an application for conciliation in respect of an account of fees has been filed, a bailiff may not institute proceedings in respect of an account so long as the dispute can be settled by conciliation or arbitration.

Notwithstanding the foregoing, a bailiff may request provisional measures in accordance with article 940.4 of the Code of Civil Procedure.

8. Where a written agreement entered into between the bailiff and the person bound to pay the account of fees sets the fees or the procedure for determining them, this conciliation and arbitration procedure of accounts may be used only to ensure that the services actually rendered are in conformity with the said agreement.

DIVISION II PROCEDURE FOR CONCILIATION

9. An application for conciliation in respect of an account of fees shall be forwarded to the conciliator within a 45-day period from the date of receipt of the account.

Where an amount has been withdrawn or withheld by the bailiff from the funds held or received for or on behalf of another person, the period runs from the date of receipt of the account or from the day the person becomes aware of the withdrawal or withholding, whichever comes last.

10. An application to the syndic for inquiry concerning a dispute with respect to an account of fees may constitute an application for conciliation, provided that it is filed within the period prescribed in section 9.

11. Within five days of receiving an application for conciliation, the conciliator shall notify the bailiff in writing, at the bailiff's professional domicile.

12. The conciliator shall proceed with the conciliation using such procedure as the conciliator deems appropriate.

For that purpose, the conciliator may require that the bailiff or person who applied for conciliation provide any information or document the conciliator deems necessary.

13. Any agreement reached during conciliation shall be put in writing and signed by the person who applied for conciliation and the bailiff.

A signed copy of that agreement shall be sent to the conciliator.

14. Where conciliation does not lead to an agreement within a 60-day period from the date of receipt of the application for conciliation, the conciliator shall send a conciliation report to the parties as soon as possible, containing, where applicable, the following information:

(1) the reason why this Regulation does not apply to the application for conciliation;

(2) the amount of the account in dispute;

(3) the amount that the person acknowledges owing and the amount that the bailiff acknowledges having to reimburse or is willing to accept as a settlement of the dispute; and

(4) the amount suggested by the conciliator during conciliation as a payment to the bailiff or as a reimbursement.

The conciliator shall send to the parties, along with the conciliation report, the form provided for in Schedule II by indicating that the dispute may be submitted to arbitration within a 30-day period from the date of receipt of the conciliation report.

DIVISION III ARBITRATION

§1. Arbitration committee

15. The Bureau shall form an arbitration committee to process applications for arbitration, composed of at least four members appointed from among the bailiffs who have been on the roll of the Chambre for at least ten years and shall designate the chair of the committee from among them.

The Bureau shall also designate a secretary of the arbitration committee.

16. Each member and the secretary of the committee shall take the oath of office and discretion in the manner provided for in Schedule I.

§2. Application for arbitration

17. Within 30 days of receiving the conciliation report provided for in section 14, a person may, on pain of forfeiture, apply for arbitration of the account by sending the duly completed form provided for in Schedule II to the secretary of the committee.

The conciliation report shall accompany the person's application for arbitration together with the amount that the applicant acknowledged owing during the conciliation and that is mentioned in the conciliator's report.

18. Within five days of receiving an application for arbitration, the secretary of the committee shall give a written notice thereof to the bailiff to which shall be attached, where applicable, the amount deposited in accordance with section 17.

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

19. An application for arbitration may only be withdrawn in writing and with the consent of the bailiff.

20. Any agreement reached after the application for arbitration shall be put in writing and signed by the person who applied for arbitration and the bailiff.

A signed copy of that agreement shall be sent to the secretary of the committee.

§3. Council of arbitration

21. Where the amount in dispute is less than \$5000, the application for arbitration shall be examined by a council of arbitration composed of a single arbitrator designated by the secretary of the committee from among the committee members.

Where the amount in dispute is \$5000 or more, the application for arbitration shall be examined by a council of arbitration composed of three arbitrators designated by the secretary of the committee from among the committee members who shall choose from among themselves a chair and a secretary.

22. The secretary of the committee shall inform the parties and the council's arbitrator or arbitrators in writing that the council has been formed.

23. Should an arbitrator die or be unable to act, the other arbitrators shall see the matter through.

Where the council of arbitration consists of a single arbitrator or if two of the arbitrators are in one of the situations referred to in the first paragraph, they shall be replaced by the secretary of the committee in accordance with section 21 and the dispute shall be reheard, if necessary.

24. 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 committee, to the council and to the parties within ten days of receiving the notice provided for in section 22 or of the day on which the reason for the request becomes known to the party referring to it, whichever comes last.

The administrative committee of the Chambre shall rule on the request and, where applicable, the secretary of the committee shall see that the recused arbitrator is replaced in accordance with section 21.

25. Any agreement reached by the parties after the council of arbitration has been formed but before the hearing shall be put in writing, shall be signed by the parties and shall be filed with the secretary of the committee. In such case, the parties are jointly responsible for the arbitration expenses, as fixed by the secretary of the committee in accordance with section 38.

§4. Hearing

26. The secretary of the committee shall set the date, time and place of the hearing and shall give the council and the parties at least ten days' written notice thereof.

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

28. The council may ask each party to submit to the secretary of the committee, within a given time limit, a statement of their claims accompanied by supporting documents. The secretary of the committee shall forward a copy of the statements to the council and the parties as soon as possible after their receipt.

The council may also ask for any record, document or information it deems necessary for settling the dispute. The parties are bound to comply with any order to that effect.

29. The council 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 and apply the rules of evidence that it deems most appropriate.

The council's decision shall be in accordance with the rules of law and equity.

30. A party requesting that the testimony be recorded shall assume the organization and cost thereof.

31. The secretary of the council or the single arbitrator shall draw up the minutes of the hearing, which shall be signed by the arbitrator or arbitrators.

32. Any agreement reached by the parties after the hearing shall be recorded in the arbitration award.

§5. Arbitration award

33. The council shall issue its award within 60 days of the end of the hearing.

34. Where applicable, the award shall be a majority award of the members of the council; failing a majority, it shall be rendered by the chair of the council.

35. The award shall give reasons and shall be signed by the single arbitrator or all the arbitrators. Where an arbitrator refuses or is unable to sign, the others shall mention that fact and the award shall have the same effect as though it were signed by all.

36. In its award, the council of arbitration may uphold or reduce the account in dispute. It may also, if expedient, determine the reimbursement or payment to which a party may be entitled.

37. The costs incurred by the parties for the arbitration shall be borne by each of the parties and may not be recovered by the adverse party.

38. In its award, the council has full discretion to rule on the arbitration expenses, which are the expenses incurred by the Chambre for the arbitration. The total expenses to be borne by a party may not exceed 15% of the amount to which the arbitration pertains. Notwithstanding the foregoing, in every case where expenses are awarded, those expenses shall be of a minimum of \$50.

Where the account in dispute is upheld in full or in part, or where a reimbursement is granted, the council may also add interest and an indemnity thereto, calculated in accordance with articles 1618 and 1619 of the Civil Code of Québec from the date of the application for conciliation.

39. The award binds the parties, is final, without appeal, and is executory in accordance with articles 946 to 946.6 of the Code of Civil Procedure.

Articles 945, 945.3, 945.5 to 945.8 and 947 to 947.4 of the Code of Civil Procedure shall apply adapted as required to the arbitration held pursuant to this Regulation.

40. The arbitration award shall be filed with the secretary of the committee, who shall send it to the parties or their advocates within ten days of the filing.

41. Once the arbitration award is issued, the secretary of the council or the single arbitrator, as the case may be, shall send to the secretary of the committee the complete arbitration record, including the minutes of the hearing duly signed by the arbitrator or arbitrators. The secretary of the committee may issue true copies thereof.

DIVISION IV
FINAL

42. This Regulation replaces sections 12 to 17 of the Regulation respecting the application of the Bailiffs Act (R.R.Q., 1981, c. H-4, r.2), which continues to apply as provided for in section 31 of the Court Bailiffs Act (R.S.Q., c. H-4.1).

Notwithstanding the foregoing, the Regulation continues to govern the procedure for conciliation and arbitration of disputes for which an application for conciliation was filed before the date of coming into force of this Regulation.

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

SCHEDULE I
(ss. 3 and 16)

I declare under oath that I will faithfully, impartially and honestly perform, to the best of my ability and knowledge, all the duties of the office of conciliator (or arbitrator, as the case may be) and that I will so exercise all the powers thereof.

I declare under oath that I will not reveal or disclose, unless authorized by law, anything that may come to my knowledge in the discharge of my duties.

(Signature of the conciliator or arbitrator)

Declaration under oath before

(Name and position, profession or capacity)

at _____ on _____
(municipality) (date)

(Signature of the person administering oath)

SCHEDULE II

(ss. 14 and 17)

APPLICATION FOR ARBITRATION

I, the undersigned, declare the following :

Identification of applicant

IF APPLICABLE,
represented by :

Name of applicant

Name of attorney

Number Street Apartment

Number Street

Town or city Province Postal Code

Town or city Province Postal Code

Tel. (office) Fax

Tel. Fax

Tel. (residence)

Identification of bailiff

Name of bailiff

Number Street

Town or city Province Postal Code

Tel. Fax

(Fill in one of the three following boxes: fees paid in full, fees paid in part or fees unpaid. In the box selected, fill in Part 1 that applies to your situation and Part 2.)

Fees paid in full

1. On _____, I received an account for bailiff fees in the amount of
(date of receipt of account)

\$ _____ for professional services rendered, a copy of which is attached hereto.

OR

1. On _____, I took cognizance that the amount of \$ _____
(date)

had been deducted as payment of the bailiff fees from the funds held in trust on my behalf by the bailiff.

(Check and fill in, if applicable)

- I received the account for bailiff fees on _____.
- To date, I have received no account for bailiff fees.

2. Since the account has been paid, I hereby request a refund of \$_____, considering that the amount of \$_____ constitutes a just and reasonable fee for the professional services rendered.

Fees paid in part

1. On _____, I received an account for bailiff fees in the amount of _____
(date of receipt of account)

\$_____ for professional services rendered, a copy of which is attached hereto.

OR

1. On _____, I took cognizance that the amount of \$_____
(date)

had been deducted as payment of the bailiff fees from the funds held in trust on my behalf by the bailiff.

(Check and fill in, if applicable)

- I received the account for bailiff fees on _____.
- To date, I have received no account for bailiff fees.

2. Since the account has been paid in part, I acknowledge owing \$_____ considering that the amount of \$_____ constitutes a just and reasonable fee for the professional services rendered.

Fees unpaid

1. On _____, I received an account for bailiff fees in the amount of _____
(date of receipt of account)

\$_____ for professional services rendered, a copy of which is attached hereto.

OR

1. To date, I have received no account for bailiff fees listing the professional services rendered.
2. Since the account has not been paid, I acknowledge owing the amount of \$ _____ that constitutes a just and reasonable fee for the professional services rendered.

3. Reasons for the application for arbitration : _____

(An explanatory letter may be attached if additional space is required.)

- For prescription purposes, I hereby waive my benefit with respect to time elapsed.
- The application for arbitration was filed because the conciliation procedure did not lead to an agreement between the parties as attested to by the copy of the conciliation report I have enclosed in this application.
- Object of the dispute

The amount of \$ _____ that represents the difference between the account and the amount of \$ _____ that I acknowledge as constituting a just and reasonable fee for the professional services rendered.

➤ I hereby request that the dispute be settled by arbitration conducted in accordance with the Regulation respecting the conciliation and arbitration procedure for the accounts of bailiffs a copy of which I declare having received and taken cognizance of.

➤ I hereby agree to comply with the decision of the council of arbitration that will be formed in accordance with this Regulation.

Signed at _____,

 (Signature of applicant or applicant's attorney)