

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), the draft Regulation was published in Part 2 of the *Gazette officielle du Québec* of 14 February 2001 with a notice that it could be submitted to the Government for approval upon the expiry of 45 days following that publication;

WHEREAS, in accordance with section 95 of the Professional Code, the Office des professions du Québec made its recommendations;

WHEREAS it is expedient to approve the Regulation;

IT IS ORDERED, therefore, upon the recommendation of the Minister responsible for the administration of legislation respecting the professions:

THAT the Regulation respecting other terms and conditions for permits to be issued by the Ordre des ingénieurs du Québec, attached to this Order in Council, be approved.

JEAN ST-GELAIS,
Clerk of the Conseil exécutif

Regulation amending the Regulation respecting other terms and conditions for the issuance of permits by the Ordre des ingénieurs du Québec*

Professional Code
(R.S.Q., c. C-26, s. 94 i)

1. Section 47 of the Regulation respecting other terms and conditions for the issuance of permits by the Ordre des ingénieurs du Québec is replaced by the following:

“**47.** Nothing in this Regulation shall affect the rights of a person who, as at March 27, 2002:

1° is entered on the roll as an engineer-in-training or a junior engineer;

2° was previously entered on the roll as a junior engineer;

3° holds a junior engineer’s permit or has been declared eligible in this capacity;

4° would have been eligible for issuance of a junior engineer’s permit or an engineer-in-training permit if he/she had demonstrated that he/she had appropriate knowledge of the official language of Québec for practising the profession of engineer in accordance with the provisions of the Charter of the French Language (R.S.Q., c. C-11);

5° is a candidate at the examinations prescribed by the committee of examiners and whose file remains open until he/she obtains the engineer-in-training permit.”.

2. This Regulation comes into force 15 days following its publication in the *Gazette officielle du Québec*.

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Gouvernement du Québec

O.C. 1348-2002, 20 November 2002

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

Notaries — Conciliation and arbitration procedure for the accounts

Regulation respecting the conciliation and arbitration procedure for the accounts of notaries

WHEREAS, under section 88 of the Professional Code (R.S.Q., c. C-26), the Bureau of the Chambre des notaires du Québec must establish, by regulation, a conciliation and arbitration procedure for the accounts of the members of the order which may be used by persons having recourse to the services of the members;

WHEREAS the Bureau of the Chambre des notaires du Québec adopted the Regulation respecting the conciliation and arbitration procedure for the accounts of notaries to replace the Regulation respecting the procedure for conciliation and arbitration of accounts of notaries, approved by Order in Council 70-98 dated 21 January 1998;

WHEREAS, under section 95.3 of the Professional Code, amended by section 8 of chapter 34 of the Statutes of 2001, a draft Regulation was sent to every member of the Chambre at least 30 days before its adoption by the Bureau;

* The Regulation respecting other terms and conditions for the issuance of permits by the Ordre des ingénieurs du Québec was approved par Order in Council 1510-2001, 12 December 2001 (2001, G.O. 2, 6863). This regulation has not been amended since.

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), the draft Regulation was published in Part 2 of the *Gazette officielle du Québec* of 30 January 2002 with a notice that it could be submitted to the Government for approval upon the expiry of a 45-day period following that publication;

WHEREAS, in accordance with section 95 of the Professional Code, the Office des professions du Québec made its recommendations;

WHEREAS it is expedient to approve the Regulation, with amendments;

IT IS ORDERED, therefore, upon the recommendation of the Minister responsible for the administration of legislation respecting the professions:

THAT the Regulation respecting the conciliation and arbitration procedure for the accounts of notaries, attached to this Order in Council, be approved.

JEAN ST-GELAIS,
Clerk of the Conseil exécutif

Regulation respecting the conciliation and arbitration procedure for the accounts of notaries

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

DIVISION I CONCILIATION

1. The Bureau of the Ordre des notaires du Québec shall appoint a conciliator of accounts to rule on applications for the conciliation of notaries' accounts.

The conciliator shall take the oath of discretion in the manner set forth in Schedule II of the Professional Code (R.S.Q. c. C-26).

2. A client who has a dispute with a notary concerning the amount of an account for professional services may apply for conciliation.

“Client” means the person who must pay the notary’s account, even if that person is not the recipient of the services charged on the account.

3. An application for conciliation in respect of an unpaid or partially or fully paid account for professional services must be sent to the conciliator within 45 days following receipt of the account.

Where a sum has been withdrawn or withheld by the notary from funds that he holds or receives for or on behalf of the client, the 45-day period shall run from the date of receipt of the account by the client or from the time the client becomes aware that such sums have been withdrawn or withheld, whichever is later.

4. Any application in writing received by the Order concerning a dispute over the amount of an account for professional services may constitute an application for conciliation if it is filed within the period prescribed in section 3.

5. No notary may institute an action on account until expiry of the 45-day period following receipt of the account by the client.

Similarly, no notary may institute an action on account where an application for conciliation is made within the 45-day period and the dispute can be settled by conciliation or arbitration.

However, the conciliator may authorize the notary to proceed with the action where there is reason to believe that failure to institute an action will jeopardize recovery of the claim. The notary may also apply for provisional measures in accordance with article 940.4 of the Code of Civil Procedure.

6. Upon receipt of an application for conciliation, the conciliator shall notify the notary in writing at his professional domicile and send the client a copy of this Regulation.

7. The conciliator shall proceed with conciliation in the manner he considers most appropriate. He shall take into account any contract for services concluded between the notary and the client.

8. Where conciliation does not result in an agreement, the conciliator shall send a conciliation report to the parties containing, in particular, the following information:

- (1) the amount of the account in dispute;
- (2) the amount the client acknowledges owing.

The conciliator shall also indicate to the client the procedure and deadline for submitting the dispute to arbitration.

DIVISION II ARBITRATION

§1. Arbitration committee

9. The Bureau shall establish an arbitration committee to process applications for arbitration.

The committee shall comprise at least four members appointed from among notaries who have been on the roll of the Order for at least 10 years.

The Bureau shall designate the chairman, vice-chairman, and secretary of the committee.

10. Each member of the committee shall take the oath of discretion in the manner set forth in Schedule II of the Professional Code.

§2. Application for arbitration

11. A client who wishes to apply for arbitration of an account where conciliation has not resulted in agreement must do so in writing to the secretary of the committee within 30 days of receipt of the conciliation report provided for in section 10.

12. Upon receipt of an application for arbitration, the secretary of the committee shall notify the notary thereof in writing at the notary's domicile.

13. A client may not withdraw his application for arbitration unless he does so in writing and with the notary's consent.

14. Any agreement reached by the client and the notary following an application for arbitration must be in writing, signed by them, and filed with the secretary of the committee.

Where a council of arbitration has been established, it shall record the agreement in the arbitration award and determine costs as provided for in the first paragraph of section 27.

§3. Council of arbitration

15. Where the amount in dispute is less than \$5,000, the application for arbitration shall be heard by a council of arbitration composed of a single arbitrator designated from among arbitration committee members by the secretary of the committee.

Where the amount in dispute is \$5,000 or more, the application for arbitration shall be heard by a council of arbitration comprising three arbitrators designated from among arbitration committee members by the secretary of the committee. The three arbitrators shall designate a chairman and a secretary from among themselves.

The amount in dispute corresponds to the difference between the amount of the account for professional services and the amount acknowledged by the client as being due to the notary.

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

17. In the event of the death, absence, or inability to act of an arbitrator, the other arbitrators shall see the matter through and their decision shall be valid.

Where the council of arbitration consists of a single arbitrator or where two of the arbitrators are in a situation referred to in the first paragraph, the secretary of the committee shall replace the arbitrator or arbitrators as provided for under section 15, and, if necessary, the dispute shall be reheard.

18. An application for the recusation of an arbitrator may be made only for a cause set out in article 234 of the Code of Civil Procedure. The application must be sent in writing to the secretary of the committee, the council of arbitration, and the parties within 10 days after the later of the date of receipt of the notice provided for in section 16 and the day on which the reason for the application becomes known to the party invoking it.

The administrative committee shall rule on the application and, as the case may be, the secretary of the committee shall see to the replacement of the recused arbitrator as provided for in section 15.

§4. Hearing

19. The secretary of the committee shall fix the date, time, and place of the hearing, and shall give the council of arbitration and the parties at least 10 days' written notice thereof.

20. The council of arbitration may require each party to submit to the secretary of the committee, within a given time limit, a statement of their claims together with supporting documents. The secretary of the committee shall forward copies of the statements to the council and the parties as soon as possible after receiving them.

The council of arbitration may also require any record, document, or information it deems necessary to settle the dispute. The parties must comply with such requirement.

21. The council of arbitration shall hear the parties with due diligence. It shall receive their evidence or record any failure to appear, produce evidence, or state claims.

To this end, it shall follow the procedure and apply the rules of evidence it considers appropriate.

The council of arbitration shall render an award that is fair and in accordance with the law.

22. A party requesting that testimony be recorded or transcribed shall assume the organization and costs thereof.

23. The secretary of the council of arbitration or the single arbitrator shall draw up and sign the minutes of the hearing.

§5. Arbitration award

24. The council of arbitration shall render its award within 30 days after completion of the hearing.

25. The arbitration award shall be rendered by a majority of the members of the council of arbitration.

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

It may authorize the notary to collect the payment to which he is entitled out of the funds remitted to him in trust for and on behalf of the client.

The arbitration award shall be reasoned and signed by the single arbitrator or the majority arbitrators. Where an arbitrator refuses or is unable to sign, the others shall mention the fact and the award shall have the same effect as though signed by all.

26. The costs incurred by a party for arbitration shall be borne by that party alone and shall not be recoverable from the adverse party.

27. In its award, the council of arbitration has full discretion to determine arbitration costs, namely the expenses incurred by the Order for arbitration. The total amount of arbitration costs shall not exceed 15% of the amount in dispute, whether attributed to one party or to both. Where payment thereof is ordered, the minimum amount shall be \$50.

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

28. The arbitration award is binding on the parties and is final, without appeal, and enforceable in accordance with articles 946 to 946.6 of the Code of Civil Procedure.

29. The arbitration award shall be filed with the committee secretary, who shall then forward it to the parties.

30. As soon as the arbitration award is rendered, the secretary of the council of arbitration or the single arbitrator, as the case may be, shall transmit the complete arbitration record, including the minutes of the hearing, to the secretary of the committee. The secretary of the committee may issue true copies thereof to interested parties only.

DIVISION III **FINAL PROVISIONS**

31. This Regulation replaces the Regulation respecting the procedure for conciliation and arbitration of accounts of notaries, approved by Order in Council 70-98 dated January 21, 1998.

The latter Regulation nevertheless continues to govern the procedure for conciliation and arbitration of any dispute that is the subject of an application for conciliation filed before the coming into force of this Regulation.

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