

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 professional acts than persons other than midwives may engage in on certain terms and conditions, attached to this Order in Council, be approved.

JEAN ST-GELAIS,  
*Clerk of the Conseil exécutif*

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## **Regulation respecting professional acts that persons other than midwives may engage in on certain terms and conditions**

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

### **1.** In this Regulation,

“diploma meeting permit requirements” means a diploma recognized by regulation of the Government made under the first paragraph of section 184 of the Professional Code (R.S.Q., c. C-26) as meeting the requirements for the permit issued by the Ordre des sages-femmes du Québec or, until the coming into force of such a regulation the purpose of which is to determine for the first time the diplomas which meet permit requirements, the diploma of university studies in midwifery awarded by Université du Québec à Trois-Rivières ; and

“midwifery program” means the theoretical and clinical training unit leading to a diploma meeting permit requirements.

**2.** A person enrolled in the midwifery program may, for the purposes of the program, engage in any professional act that a midwife may engage in on the same conditions but only under the supervision of a midwife.

**3.** A person may, during a course, a training period or any other training activity recommended by the Bureau for the purposes of the recognition of a diploma equivalence or training, engage in any professional act that a midwife may engage in on the same conditions but only under the supervision of a midwife.

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

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Gouvernement du Québec

**O.C. 1468-2002, 11 December 2002**

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

### **Court bailiffs — Conciliation and arbitration procedure for the accounts**

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

WHEREAS, under section 88 of the Professional Code (R.S.Q., c. C-26), the Bureau of the Chambre des huissiers de justice 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 huissiers de justice du Québec adopted the Regulation respecting the conciliation and arbitration procedure for the accounts of court bailiffs ;

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 ;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), a draft Regulation was published in Part 2 of the *Gazette officielle du Québec* of 22 May 2002 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 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 court bailiffs, 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 court bailiffs

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

### DIVISION I GENERAL

**1.** This Regulation applies to any person required to pay a bailiff's account for fees, whether or not the account has already been paid in full or in part.

However, this Regulation does not apply to an account that has been taxed pursuant to article 480 of the Code of Civil Procedure (R.S.Q., c. C-25).

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.** The Bureau of the Chambre des huissiers de justice du Québec shall appoint a conciliator for the accounts of bailiffs.

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

**3.** The conciliator shall provide a copy of this Regulation to every person who requests one or who has applied for conciliation in respect of an account for fees.

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

**5.** No bailiff may institute proceedings in respect of an account until the expiry of the 45-day period following receipt of the account by the addressee.

However, the conciliator may authorize the bailiff to institute proceedings if there is reason to believe that failure to do so will jeopardize recovery of the fees.

**6.** No bailiff may, as of receipt by the conciliator of an application for conciliation in respect of an account for fees, institute proceedings in respect of the account so long as the dispute can be settled by conciliation or arbitration.

However, the bailiff may apply for provisional measures in accordance with article 940.4 of the Code of Civil Procedure.

**7.** Where the fees or the procedure for determining them are set out in a written agreement between the bailiff and the person liable for the payment of the account, this conciliation and arbitration procedure may be used only to ensure that the services rendered are in conformity with the said agreement.

### DIVISION II CONCILIATION

**8.** An application for conciliation in respect of an account for fees must be sent to the conciliator within 45 days following 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 45-day period runs from the date of receipt of the account or from the time the person becomes aware of the withdrawal or withholding, whichever occurs later.

**9.** An application to the syndic to inquire into a dispute over the amount of an account for fees may constitute an application for conciliation, provided that it is filed within the period prescribed in section 8.

**10.** Within five days of receiving an application for conciliation, the conciliator must notify the bailiff thereof in writing at the bailiff's professional domicile.

**11.** The conciliator shall proceed with the conciliation in the manner he or she considers most appropriate.

To that end, the conciliator may require that the bailiff or the applicant for conciliation provide any information or document the conciliator considers necessary.

**12.** Any agreement reached during conciliation must be in writing and signed by the applicant for conciliation and the bailiff.

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

**13.** If conciliation does not lead to an agreement within 60 days following 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 applicant for conciliation acknowledges owing and the amount that the bailiff acknowledges having to refund or is willing to accept in settlement of the dispute; and

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

The conciliator shall also send to the applicant for conciliation the form provided for in Schedule II and indicate to the applicant that the dispute may be submitted to arbitration within 30 days of receipt of the conciliation report.

### **DIVISION III** **ARBITRATION**

#### *§1. Arbitration committee*

**14.** 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.

**15.** 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*

**16.** The applicant may apply for arbitration of the account, on pain of forfeiture, within 30 days of receipt of the conciliation report provided for in section 13, by sending the duly completed form provided for in Schedule II to the secretary of the committee.

The conciliation report must be enclosed with the application for arbitration, together with any amount that the applicant acknowledged owing in conciliation and that is indicated in the conciliator's report.

**17.** Within five days of receiving an application for arbitration, the secretary of the committee must give a written notice thereof to the bailiff and enclose, where applicable, the amount deposited in accordance with section 16.

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

**18.** An application for arbitration may not be withdrawn unless it is in writing and with the consent of the bailiff.

**19.** Any agreement reached after the application for arbitration must be in writing and signed by the applicant for arbitration and the bailiff.

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

#### *§3. Council of arbitration*

**20.** When the amount in dispute is less than \$1500, 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.

When the amount in dispute is \$1500 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.

**21.** The secretary of the committee shall inform the parties and the council's arbitrator or arbitrators in writing that a council has been appointed.

**22.** In the event of an arbitrator's death or inability to act, the remaining arbitrators shall see the matter through and, where applicable, determine which of them will act as chair.

If 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, the secretary of the committee shall see to the replacement of the arbitrator or arbitrators in accordance with section 20, and if necessary, the dispute shall be reheard.

**23.** An application for the recusation of an arbitrator may be made only on one of the grounds provided for 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 ten days after receipt of the notice provided for in section 21 or ten days after the grounds for the recusation become known to the party invoking it, whichever occurs later.

The administrative committee of the Chambre shall rule on the request and, as the case may be, the secretary of the committee shall see to the replacement of the recused arbitrator in accordance with section 20.

**24.** Any agreement reached by the parties after the council of arbitration has been appointed, but before the hearing, must be in writing, signed by the parties and filed with the secretary of the committee. In such case, the parties are jointly liable for the arbitration expenses, as fixed by the secretary of the committee in accordance with section 37.

#### *§4. Hearing*

**25.** 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.

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

**27.** The council 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 a copy of the statements to the council and the parties as soon as possible after receiving them.

The council may also require any record, document or information it considers necessary to settle the dispute. The parties must comply with any order to that effect.

**28.** The council shall, with diligence, hear the parties, receive their evidence or record any failure on their part.

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

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

**29.** A party that requests that testimony be recorded shall assume the organization and cost thereof.

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

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

#### *§5. Arbitration award*

**32.** The council shall render its award within 60 days after the end of the hearing.

**33.** 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.

**34.** The award must be reasoned and signed by the single arbitrator or the majority arbitrators. If an arbitrator refuses or is unable to sign, the others shall indicate that fact and the award shall have the same effect as though signed by all the arbitrators.

**35.** In its award, the council of arbitration may confirm or reduce the account in dispute. It may also, as required, determine the refund or payment to which a party may be entitled.

**36.** Each party shall bear its own costs incurred for the arbitration and may not recover them from the adverse party.

**37.** In its award, the council has full discretion to rule on the arbitration expenses, namely the expenses incurred by the Chambre for the arbitration. The total expenses to be borne by the parties shall not exceed 15% of the amount in dispute. However, in every case where expenses are awarded, they shall not be less than \$50.

When the account in dispute is confirmed in full or in part, or when a refund is awarded, the council may also add interest and an indemnity in accordance with articles 1618 and 1619 of the Civil Code of Québec, computed from the date of the application for conciliation.

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

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

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

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

## DIVISION IV FINAL

**41.** 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).

The latter Regulation nevertheless continues to govern the procedure for conciliation and arbitration of disputes in respect of which an application for conciliation was filed before the date of coming into force of this Regulation.

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

## SCHEDULE I (ss. 2 and 15)

### OATH OF OFFICE AND DISCRETION

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

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 the oath)

## SCHEDULE II (ss. 13 and 16)

### 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 following three 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 became aware that the amount  
(date)  
of \$ \_\_\_\_\_

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  
(date of receipt of account)  
bailiff fees in the amount of \$ \_\_\_\_\_ for profes-  
sional services rendered, a copy of which is attached  
hereto.

OR

1. On \_\_\_\_\_, I became aware that the amount  
(date)  
of \$ \_\_\_\_\_

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 acknowl-  
edge 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  
(date of receipt of account)  
bailiff fees in the amount of \$ \_\_\_\_\_ for profes-  
sional services rendered, a copy of which is attached  
hereto.

OR

1. To date, I have received no account for bailiff fees  
detailing 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 \$ \_\_\_\_\_, which represents  
the difference between the account and the amount of  
\$ \_\_\_\_\_ that I acknowledge as constitut-  
ing a just and reasonable fee for the professional serv-  
ices rendered.

I hereby request that the dispute be settled by arbitration  
held 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)