

5. The following is substituted for section 24:

“**24.** A subpoena must be served by the party requesting it, at its own expense, and the party is responsible for proving the date of receipt.

This section does not apply when the ethics committee sits in review.”

6. Section 27 is amended by adding the following after the first paragraph:

“This section does not apply when the ethics committee sits in review.”

7. Section 29 is amended by substituting the words “name of the committee member who presides at the hearing” for the words “names of the committee members” in paragraph 1.

8. Section 33 is amended by substituting “225” for “120”.

9. Section 35 is amended by substituting the words “to the ethics committee member who presides at the hearing” for the words “to each of the ethics committee members.”

10. The following is substituted for section 41:

“**41.** Only the member of the ethics committee who has presided at the hearing may render the decision and sign it.”

11. These Rules come into force on the fifteenth day following the date of their publication in the *Gazette officielle du Québec*.

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Draft Regulation

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

Chartered accountants — Trust accounting by chartered accountants and the Indemnity Fund of the Ordre

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 Ordre des comptables agréés du Québec has adopted the Regulation respecting trust accounting by chartered accountants and the Indemnity Fund of the Ordre des comptables agréés du Québec.

This Regulation, the text of which appears below, will be reviewed by the Office des professions du Québec in accordance with section 95 of the Professional Code. The Regulation will then be submitted, with the recommendation of the Office, to the government, which may approve it with or without amendment upon the expiry of 45 days following this publication.

This Regulation replaces the Regulation respecting the Indemnity Fund of the Ordre des comptables agréés du Québec, adopted by Decree No. 646-86 of May 14, 1986. The main purpose of this regulation is to implement measures to reduce the risk to the public and the profession when chartered accountants are called upon to hold funds or property in trust, and to propose changes to the maximum indemnity payable for all claims in respect of a chartered accountant.

The new Regulation provides that chartered accountants who hold funds entrusted to them by a third party in the practice of their profession shall immediately deposit such funds in a trust account opened in accordance with the Regulation.

Under the new Regulation, chartered accountants entrusted with funds or property and who administer property for third parties must keep accounting records in accordance with certain standards. They must also provide certain information to the Ordre each year.

Under exceptional circumstances, and where the interest of the public or the profession so requires, the Ordre may request information from the financial institution in which these funds are deposited and take the necessary steps to take possession and dispose of such funds.

The new Regulation provides for a maximum indemnity payable by the Ordre for all claims in respect of a chartered accountant; this maximum is set at \$300,000.

Updating changes were made concerning the composition of the indemnity fund and the process for filing a claim with the Ordre des comptables agréés du Québec.

This Regulation will have no impact on enterprises.

Further information may be obtained by contacting M^e Christiane Brizard, lawyer, Director of Legal Affairs, Ordre des comptables agréés du Québec, 680, rue Sherbrooke Street Ouest, 18^e étage, Montréal, Québec, H3A 2S3.

Any person having comments to make is requested to send them, before the expiry of the 45-day period, to the Chairman of the Office des professions du Québec, 800 place D’Youville, 10^e étage, Québec (Québec),

G1R 5Z3. These comments will be forwarded by the Office to the minister responsible for the administration of legislation respecting the professions. They may also be forwarded to the professional order that has adopted the regulation, as well as to the persons, departments and agencies concerned.

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

Regulation respecting trust accounting by chartered accountants and the indemnity fund of the Ordre des comptables agréés du Québec

Professional Code
(R.S.Q., c. C-26, s. 89)

DIVISION I GENERAL PROVISIONS

1. This Regulation applies to a chartered accountant who, in the practice of his profession :

(1) administers, for a remuneration, a property, group of properties or patrimony belonging to a third party, including the administration of a not-for-profit organization, without charge ;

(2) holds, even temporarily, property entrusted to him by a third party.

2. The property entrusted to a chartered accountant to be administered or held may be movable or immovable. Property may include funds such as cash, negotiable bills payable to the chartered accountant or to the chartered accountant in trust, endorsed to his order or to his order in trust or to the bearer, and all bills and valuables payable to the bearer or registered in the name of the chartered accountant or in the name of the chartered accountant in trust and entrusted as such to the chartered accountant.

3. A chartered accountant may not be entrusted with property that is not tied to the performance of a written service contract or mandate, and related to a clearly defined transaction. He shall take the necessary measures to ascertain that such transaction is also legal.

4. A chartered accountant shall not combine the property he holds or administers with his personal property.

He shall take the necessary steps and exercise strict control at all times in order to identify property he administers or holds.

All funds held by a chartered accountant in the practice of his profession shall, immediately after receipt thereof, be deposited in a trust account.

5. A chartered accountant who holds property shall use such property for the purposes for which it was entrusted to him.

A chartered accountant who administers property for a third party shall comply with the contract he has entered into and satisfy the requirements of the law.

When a chartered accountant is entrusted with property other than funds, he shall take appropriate steps to preserve it.

6. This Regulation does not exempt a chartered accountant from a more compelling obligation imposed by provincial or federal legislation or by regulation adopted under such legislation.

DIVISION II GENERAL TRUST ACCOUNT AND SPECIAL TRUST ACCOUNT

7. A chartered accountant may not deposit or leave his personal funds in a trust account.

All funds held by a chartered accountant in the practice of his profession shall, immediately after receipt thereof, be deposited in a general trust account.

All general trust accounts shall be opened in the name of the chartered accountant entrusted with the funds. They may also be opened in the name of the partnership or company in which the chartered accountant practices his profession, provided a chartered accountant in that partnership or company assumes direct control over the account.

Neither these funds nor the interest earned thereon belong to the chartered accountant.

8. A general trust account includes all accounts opened in the name of a chartered accountant, made up of deposits covered by deposit insurance pursuant to the Canada Deposit Insurance Corporation Act (R.S., 1985, c. C-3) or guaranteed pursuant to the Deposit Insurance Act (R.S.Q., c. A-26) in which such chartered accountant deposits funds in Canadian or foreign currencies entrusted to him and which he alone is able to withdraw, subject to sections 7 and 24. The trust account shall be opened in Quebec in a financial institution governed by the Act respecting trust companies and savings companies (R.S.Q., c. S-29.01), the Bank Act (1991, c. 46), the Savings and Credit Unions Act (R.S.Q., c. C-4.1) or by the Trust and Loan Companies Act (1991, c. 45).

9. Where provincial or federal legislation or the client's interest so requires, or where the client expressly demands that the income of the funds entrusted to the chartered accountant be remitted to him, the chartered accountant shall deposit such funds in a special trust account separate from his general account and have the name of the client for whom such account is thus opened indicated therein.

10. A chartered accountant may deposit the funds contemplated in the section above in a special consolidated trust account. For this purpose, the chartered accountant shall:

(1) maintain in good order, a bank account and an accounting system allocating fairly for each client on a monthly basis all interest and expenses generated by the consolidated trust account;

(2) make accessible to such clients and to the persons and committees contemplated in section 24, the computation method and the amount of any attribution of expenses to the consolidated account and its allocation, if any, to each client;

(3) make accessible to such clients and to the persons and committees contemplated in section 12(3), the computation method and the amount of any attribution of interest to each client.

11. A special trust account includes all accounts that meet the conditions set out in section 8 of this Regulation or any investment that is presumed sound under article 1339, paragraphs 2 and 3 of the Civil Code.

In the case of an investment, the account may also be opened with an unrestricted practice securities broker, member of the Investment Dealers Association of Canada.

12. Upon opening a general trust account, a chartered accountant shall immediately complete the form prescribed by the Ordre. Such form shall contain a sworn statement attesting to the truth of the facts documented by the chartered accountant, and shall include, in particular,

(1) the name, address, postal code and transit number of the depository financial institution, as well as the account number and the date of its opening;

(2) an irrevocable waiver in favour of the Ordre des comptables agréés du Québec of the interest or other income from such account and authorization for the financial institution to directly transfer to the Ordre des comptables agréés du Québec the interest and other income from such account, less administration costs, if any, which are paid into the indemnity fund;

(3) an irrevocable authorization entitling the Bureau, the Administrative Committee, the chair of the Ordre, the secretary general, the Professional Inspection Committee or an inspector, the syndic or an assistant syndic, to take any action contemplated in section 24;

(4) an irrevocable authorization entitling the Bureau, the Administrative Committee or the chair of the Ordre, upon recommendation by the syndic, an assistant syndic or the Professional Inspection Committee, or a person in charge of professional inspection appointed in accordance with section 90 of the Professional Code, to require that the chartered accountant obtain, at his expense, the cosignature of another chartered accountant designated by the inspection committee, the syndic or assistant syndic, to draw cheques and other payment authorizations on the account.

13. Upon opening a special trust account, the chartered accountant shall immediately complete the form prescribed by the Ordre. In addition to the information required under section 12, the form shall contain a sworn statement by the chartered accountant that the interest and other income derived from the account are the property of the client. In the case of an investment, the chartered accountant shall, unless he holds a general power of attorney, also obtain written authorization from the client specifying the type of investment, its maturity and the terms and conditions.

14. The chartered accountant shall immediately forward a duly completed copy of the form contemplated in sections 12 and 13 to the financial institution where the general trust account or the special trust account was opened as well as to the person in charge of professional inspection at the Ordre; the chartered accountant shall retain a copy thereof.

Upon closing a trust account, the chartered accountant shall immediately notify the person in charge of professional inspection of such closing by means of the form approved for such purpose by the Ordre, indicating the name, address, postal code and transit number of the financial institution, as well as the account number, the date of its opening and the date on which the closing became effective.

DIVISION III **KEEPING OF TRUST ACCOUNTS**

15. Trust accounting records shall be kept up-to-date and a reconciliation of accounts shall be made each month and shall comply with the standards adopted by the Ordre whether such accounting is on paper or in electronic format.

Trust accounting shall comply with the following standards; it shall, among others:

- (1) ensure data confidentiality;
- (2) ensure data security;
- (3) ensure data integrity;
- (4) allow the chartered accountant and the Ordre access at all times to readable data;
- (5) include all information relevant for control and for the administration of the funds received.

16. In all cases, the chartered accountant shall comply with the generally accepted standards and principles respecting bookkeeping and trust accounting, with current scientific knowledge and, if applicable, with standards established by the Ordre.

17. All trust account inflows and outflows, including electronic transfers, are subject to this Regulation.

18. The chartered accountant shall transfer to the Public Curator any property that, in the three years following its becoming payable or claimable, was not the subject, on the part of any successor, of a claim, transaction or written instruction as to its use, unless another provincial or federal act provides otherwise.

DIVISION IV ADMINISTRATION OF THE PROPERTY OF THIRD PARTIES

19. For each mandate entrusting him with the administration of property of third parties, the chartered accountant shall keep up-to-date accounting records in accordance with generally accepted accounting standards and principles, with current scientific knowledge and, if applicable, with standards established by the Ordre.

20. Each year, on or before March 31, a chartered accountant shall forward to the person in charge of professional inspection, using the form prescribed by the Ordre, a sworn statement attesting that all property entrusted to him in the year ending December 31 has been deposited, accounted for and used in accordance with the Professional Code and its Regulation.

DIVISION V REPORT TO THE ORDRE

21. A single report is sufficient for chartered accountants who have a joint trust account or who administer jointly property belonging to third parties, provided they

practice in a partnership or company and that one chartered accountant in the partnership, or a director and shareholder with voting rights in the company, was designated as the representative for the chartered accountants in that partnership or company and that the Ordre was informed in advance.

22. A chartered accountant who has not been entrusted with any property shall forward to the person in charge of professional inspection, on or before March 31 and on the form described in section 20, a sworn statement to that effect.

23. A chartered accountant shall keep up-to-date and provide upon request to the person in charge of professional inspection the following information in a readable format:

— With respect to trust accounting:

(1) the list of the sums owing to the clients;

(2) the list of the general and special trust accounts kept during the year, disclosing for each the name of the depository financial institution, the number of the account and the balance at the end of the year.

— With respect to the administration of property belonging to third parties:

(1) the nature of the administration mandate;

(2) the date on which the mandate was awarded and, if applicable, the date on which it ended;

(3) a brief description of the property administered, its value, the location of such property and the responsibility of the chartered accountant.

A chartered accountant shall keep the accounting books, records and statements of account of the financial institution or securities broker, or any other document required, in accordance with the Regulation adopted under section 91 of the Professional Code.

DIVISION POWERS OF THE ORDRE

24. The Bureau, the Administrative Committee, the chair of the Ordre, the secretary general, the Professional Inspection Committee, an inspector, the syndic or assistant syndic may:

(1) request and obtain at any time from the depository financial institution of any general or special trust account all the information and explanations deemed necessary or useful for the purposes of this Regulation;

(2) require and obtain from the financial institution in which are deposited funds belonging to the client that should have been deposited in a trust account, all the information and explanations deemed necessary for the purposes of this Regulation;

(3) block the funds deposited;

(4) take possession of any funds or property entrusted to the chartered accountant, revoke the signature of the chartered accountant or close the account;

(5) dispose of the property, for the purposes for which the chartered accountant had received it, in cases of permit revocation, provisional, temporary or permanent striking off the roll, limitation of the right to practise, or any other reason why the chartered accountant is no longer entered on the Roll of the Ordre, or in any situation where a provisional guardian or an assignee may be appointed, or when the public interest so requires.

25. Should a chartered accountant fail to comply with any of the obligations imposed by this Regulation, the Bureau, the Administrative Committee, the chair of the Ordre, the secretary general, the Professional Inspection Committee, an inspector, the syndic or assistant syndic may, at any time in the year, appoint a chartered accountant of its or his choice to conduct an audit of the trust accounting records of the chartered accountant, at his expense, and, in particular, of the information described in second paragraph of section 23 or, in the case of the administration of third-party property, to provide the information contemplated in third paragraph of section 23, if the chartered accountant is no longer entered on the roll of the Ordre.

DIVISION VII

ESTABLISHMENT OF THE INDEMNITY FUND

26. The Bureau shall establish an indemnity fund for the purpose of reimbursing funds or other property used by a chartered accountant for purposes other than those for which they were entrusted to him in the practice of his profession.

DIVISION VIII

COMPOSITION OF FUND

27. The fund shall be maintained at an amount of \$300,000. The fund may consist of the following, less any administrative expenses relating to it:

(1) the sums of money already allocated for this purpose on June 14, 1986;

(2) the sums of money allocated therefor by the Bureau;

(3) The assessments fixed for that purpose;

(4) the sums of money recovered from the offending chartered accountant under a subrogation or pursuant to section 159 of the Professional Code (R.S.Q., c. C-26);

(5) the revenue and the growth of the assets of the fund;

(6) the sums of money that may be paid by an insurance company under an insurance policy taken out by the Ordre;

(7) any sum of money received by the Ordre for the fund; and

(8) the interest or other income generated by the chartered accountants' general trust accounts.

DIVISION IX

ADMINISTRATION OF THE FUND

28. The Bureau manages the fund and is authorized to enter into an insurance or reinsurance contract for the purposes of the fund and to pay the premiums thereof out of the fund.

29. The Ordre shall keep a separate accounting in respect of the fund.

30. The sums of money constituting the fund shall be invested in accordance with the investment policy adopted by the Bureau.

DIVISION X

CLAIMS

31. A claim shall be addressed to the president and chief executive officer at the Ordre's corporate seat.

32. The president and chief executive officer shall enter the claim on the agenda for the first meeting of the Bureau following its receipt.

33. A claim must:

(1) be submitted in writing;

(2) state all supporting facts and be accompanied by all relevant documents;

(3) indicate the amount claimed;

(4) be made under oath.

34. A claim in respect of a chartered accountant may be filed whether or not a decision of the Committee on Discipline, of the Professions Tribunal or of any other competent tribunal has been rendered.

35. A claim shall be filed within 12 months from the time the claimant becomes aware that property has been used for purposes other than those for which it was entrusted to the chartered accountant in the practice of his profession.

36. Subject to section 37, a claim which is not filed within the time period prescribed is not receivable.

37. The Bureau may extend the time period contemplated in section 35 if the claimant demonstrates that he was unable to file the claim within the required time due to reasons beyond his control.

38. A request made to the Ordre by any person for an inquiry with regard to facts likely to give rise to a claim against the fund is deemed to be a claim within the meaning of section 32, insofar as the request for an inquiry is filed within the time period contemplated in section 35.

DIVISION XI INDEMNITY

39. The Bureau may designate a person or a committee to hold an inquiry and submit a report to it in respect of a claim.

40. Upon the request of the person or of the committee designated to hold an inquiry in accordance with section 192 of the Professional Code, the claimant or the chartered accountant concerned shall:

(1) furnish all details and documents relative to the claim;

(2) produce any relevant proof.

41. The syndic, assistant syndic, Professional Inspection Committee or person in charge of professional inspection shall also provide all information and all evidence deemed relevant by the Bureau, the Committee or the person appointed to conduct the inquiry.

42. The Bureau shall decide at its discretion whether it is expedient to accept a claim in whole or in part and, where applicable, shall fix the indemnity. Its decision is final.

43. The maximum indemnity payable from the fund shall be \$300,000 for all claims in respect of a chartered accountant and \$50,000 per claimant.

44. The balance of a chartered accountant's general trust account, the funds of which have been blocked or otherwise disposed of in accordance with section 24, shall be distributed at the expiry of 60 days following the publication of a notice to that effect in a newspaper circulating in the place where the chartered accountant has or had his professional domicile, among the claimants against the fund in respect of that chartered accountant on a prorata basis according to the amounts of their claims allowed, up to the amount of the claim for each claimant, less the sum paid under section 42. The secretary general shall cause the notice to be published after one year has elapsed with no new claim having been filed against the fund in respect of the chartered accountant.

45. Before receiving the indemnity fixed by the Bureau, the claimant shall sign an acquittance in favour of the Ordre with subrogation to all his rights in respect of his claim up to the amount of the indemnity, against the offending chartered accountant, his successors and any individual, partnership, company or legal person that is or might be held liable for such payment.

46. Nothing in this Regulation shall be interpreted as creating, in respect of the Ordre, in favour of any person whatsoever, a right to any sum whatsoever.

DIVISION XII TRANSITIONAL AND FINAL PROVISIONS

47. This Regulation replaces the Regulation respecting the Indemnity Fund of the Ordre des comptables agréés du Québec (R.S.Q., 1981, c. C-48, r.6).

48. However, the aforementioned Regulation shall continue to govern claims filed against the fund before the effective date of this Regulation, as well as claims filed against the fund after that date but which relate to events that took place prior to the coming into force of this Regulation and concerning a chartered accountant in respect of whom one or more other claims have already been filed against the fund.

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