

Draft Regulations

Draft Regulation

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

Advocates

— Practice of the profession within a partnership or company and in a multidisciplinary firm

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the General Council of the Barreau du Québec has adopted the Regulation respecting the practice of the profession of advocate within a partnership or company and in a multidisciplinary firm.

This regulation, the text whereof is reproduced herein below, will be examined by the Office des professions du Québec in accordance with section 95 of the Professional Code. Thereafter, it will be submitted, with the recommendation of the Office, to the Government which may approve it with or without amendment, upon the expiry of a period of 45 days following the present publication.

The purpose of the regulation is to establish the terms, conditions and restrictions under which members of the order may practise their profession within a limited liability partnership or joint-stock company. The regulation also authorizes a member of the order to engage in his professional activities in association with other professionals, under the conditions set forth in the regulation.

The regulation contains specific provisions regarding the administration of the partnership or company and who may hold its shares.

In accordance with Chapter VI.3 of the Professional Code, provisions will be introduced so that the partnership or company in which the member of the order works will hold security against the liability the partnership or company may incur by reason of the fault or negligence of the members in the practice of their profession within the partnership or company.

The regulation has no impact upon businesses.

Additional information may be obtained by contacting M^e Dominique Launay, lawyer, Service de recherche et de législation, Barreau du Québec, 445, boulevard Saint-Laurent, Montréal (Québec) H2Y 3T8, telephone: (514) 954-3400, poste 3145, e-mail: dlaunay@barreau.qc.ca

All interested persons wishing to provide comments are requested to send such comments, prior to the expiry of the 45-day deadline, 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 having adopted the regulation as well as to interested persons, departments or bodies.

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

Regulation respecting the practice of the profession of advocate within a partnership or company and in a multidisciplinary firm

Professional Code
(R.S.Q., c. C-26, s. 93, par. g and h and s. 94, par. p)

DIVISION I GENERAL PROVISIONS

1. A member of the Barreau du Québec may, subject to the terms, conditions and restrictions established in this Regulation, practise his profession within a joint-stock company or a limited liability partnership within the meaning of Chapter VI.3 of the Professional Code (R.S.Q., c. C-26).

The partnership or company shall be constituted for the purpose of having a member of the Barreau du Québec offer and provide his services alone or with other persons who are governed by the Professional Code or with a person listed in Schedule A.

If any term, condition or restriction provided for in this Regulation is no longer satisfied, the member shall, within 15 days after he has been notified of the non-compliance, take the necessary measures to comply with this Regulation, failing which the member shall no longer be authorized to practise his profession within that partnership or company.

2. A member may practise his profession within a joint-stock company if the following terms, conditions and restrictions are satisfied:

(a) the company must be constituted for the purpose of offering and providing professional services governed by the Professional Code (R.S.Q., c. C-26) or services rendered by one of the persons listed in Schedule A;

(b) the name shall include the words “authorized professional company” or the abbreviation “A.P.C.”; and

(c) a member of the Barreau du Québec or of a professional order or a person listed in Schedule A who has been struck off the roll for a period of more than 3 months may not, during that period, directly or indirectly hold any voting shares of the said company;

Such member or person may not, during the period of striking off the roll, be a director, officer or representative of the company.

3. A member of the Barreau du Québec may practise his profession within a partnership or company contemplated in section 1 of this Regulation which is constituted under any Act other than an Act of Québec if the following conditions are met:

(a) the State in which the partnership or company was constituted authorizes the practice of the profession within a limited liability vehicle or a joint-stock company, as the case may be;

(b) the partnership or company has an establishment in Québec; and

(c) as regards professional services rendered in Québec, the terms and conditions provided for in this Regulation shall apply mutatis mutandis to a member who wishes to practise his profession within such a partnership or company.

4. A member of the Barreau du Québec may practise his profession within a company or partnership contemplated in section 1 of this Regulation provided that the undertaking of the limited liability partnership or the joint-stock company prescribed by Schedule B with respect to that member is received by the executive director of the Barreau du Québec before the member begins to practise his profession. Receipt of the undertaking shall serve in lieu of the declaration under section 187.11 of the Professional Code.

Any amendment to the content of the undertaking of the limited liability partnership or the joint-stock company, or to any of the documents filed in support thereof, shall be sent to the executive director of the Barreau du Québec within 15 days following the date on which the amendment takes place.

5. A member of the Barreau du Québec may practise his profession within a limited liability partnership or joint-stock company if the following conditions are met:

(1) at all times, more than 50% of the voting rights attaching to the company or partnership shares are held:

(a) by members of the Barreau du Québec, by persons governed by the Professional Code or by persons listed in Schedule A;

(b) by legal persons, trusts or any other firm whose voting rights or shares are held entirely by one or more of the persons referred to in subparagraph *a*;

(c) at the same time by persons referred to in subparagraphs *a* and *b*;

(2) the majority of the directors sitting on the board of directors of the joint-stock company or the majority of the partners or directors of the limited liability partnership are persons referred to in subparagraph *a* of paragraph 1 of this section;

(3) quorum at meetings of the directors of a company or partnership contemplated in section 1 of this Regulation shall require attendance by a majority of members who are persons referred to in subparagraph *a* of paragraph (1) of this section;

(4) the conditions set forth in this article shall be set forth in the articles of the joint-stock company or in the partnership agreement of the limited liability partnership; and

(5) the member has paid the fees fixed by resolution of the General Council.

6. A member who is a partner, shareholder, officer, director or employee of a partnership or company contemplated in section 1 of this Regulation shall continue to be bound by the obligations arising from the Professional Code, the Act respecting the Barreau du Québec and the regulations made under the said Code or Act.

7. The name of a partnership or company contemplated in section 1 of this Regulation shall include only the names of members of a professional order governed by the Professional Code, persons listed in Schedule A, or retired or deceased members who practised their profession or carried on their activities within the partnership or company.

DIVISION II REPRESENTATIVE

8. If a member practises his profession within a partnership or company contemplated in section 1 of this Regulation, the partnership or company shall designate at least one representative to the Barreau du Québec and at most two or, if applicable, one replacement, from among its partners, shareholders, directors and officers.

The representative or the replacement, as the case may be, shall be a member of the Barreau du Québec and practise his profession within the partnership or company.

9. The representative shall be mandated by the partnership or company to provide information and documents and to reply to requests made to the partnership or company by the syndic, an inspector, an investigator or another representative of the Barreau du Québec.

The representative shall also be mandated to receive all correspondence from the Barreau du Québec, including every notice of non-compliance addressed to the partnership or company or to a member.

DIVISION III PUBLICITY AND ADVERTISING

10. Members of a general partnership continued as a limited liability partnership shall, within 15 days following the continuation, publish a notice to that effect in a newspaper circulated in the localities in which they have a place of business.

Such notice shall specify the change of status of the partnership and explain in general terms the effect of such change on the liability of the partners.

11. Only a partnership or company which offers only services which are the exclusive prerogative of an advocate or a law firm may advertise itself by using only the titles reserved under section 136 of the Act respecting the Barreau du Québec (R.S.Q., c. B-1).

DIVISION IV TRANSITIONAL AND FINAL PROVISION

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

SCHEDULE A

- Member in good standing of the Chambre de l'assurance de dommages;
- Member in good standing of the Chambre de la sécurité financière;
- Member in good standing of a law society constituted outside Québec;
- Patent agent registered with the Commissioner of Patents under the Patent Act;
- Trade-mark agent registered with the Registrar of Trade-marks under the Trade-marks Act;
- Member in good standing of the Canadian Institute of Actuaries.

SCHEDULE B

UNDERTAKING OF THE LIMITED LIABILITY PARTNERSHIP OR THE JOINT-STOCK COMPANY

The partnership or company _____ (name and other registration details), having its head office at _____ and represented by _____ (officer or director), its _____, duly authorized,

hereinafter referred to as the "Firm",

pursuant to the Regulation respecting the practice of the profession of advocate within a partnership or company and in a multidisciplinary firm, hereby gives notice to:

the Ordre professionnel des avocats, the Barreau du Québec, a legal person established in the public interest and having its head office at 445, boulevard Saint-Laurent, Montréal, H2Y 3T8, herein represented by its executive director,

hereinafter referred to as the "Bar",

of the following facts and undertakings as regards the practice by members of the Bar of the profession of advocate in a partnership or company contemplated in section 1 of the Regulation.

1. The business of the Firm consists in offering and rendering services to the public, which services constitute the practice of the profession of advocate and, in this regard, the members of the Barreau du Québec named hereinafter practise their profession within the Firm:

M^e _____ member no.:

M^e _____ member no.:

2. The business of the Firm also includes activities constituting the practice of professional activities by persons governed by the Professional Code or persons listed in Schedule A of the Regulation. These persons are the following individuals or members of the following orders:

Name and professional activities:

3. The Firm hereby confirms to the Bar that it has undertaken in favour of each advocate practising his profession within the Firm to provide him with a working environment allowing him to comply with the rules of law applicable to the practice of his profession, particularly as regards the following:

a. attorney-client privilege, the confidentiality of information contained in client files and the preservation thereof;

b. professional independence;

c. the prevention of situations of conflict of interests;

d. the acts reserved for advocates under the law;

e. liability insurance;

f. professional inspection;

g. advertising;

h. billing and trust accounts; and;

i. access by the syndic of the Barreau du Québec to this Undertaking and, if applicable, to every contract or agreement regarding an advocate.

4. The Firm shall cause its shareholders who have the right to vote in the Firm, its partners, its directors and its officers as well as members of its personnel who are not members of the Bar to take cognizance of, and comply with, the Guide to Professional Conduct.

5. The Firm undertakes as follows in favour of the Bar:

(1) it shall ensure that the advocates who practise their profession within the Firm have a working environment allowing them to comply with the rules of law applicable to the practice of their profession;

(2) it shall refrain from taking any steps preventing an advocate from complying with a law or regulation respecting the practice of a profession or leading an advocate to violate such law or regulation;

(3) it shall inform the executive director of the Barreau in writing within fifteen (15) days after any of the following changes takes place:

– the addition of a new advocate to the Firm; or;
– the addition of a person or a member of an order not specifically mentioned in section 2;

(4) it shall inform all persons who form part of the Firm, other than the advocates practising their profession within the Firm, of the nature and scope of the obligations imposed upon it by reason of the undertakings entered into with the advocates or pursuant to this Undertaking;

(5) in the case of a joint-stock company, it shall cause and ensure that the persons who form part of the Firm and who are its shareholders, directors or officers abide by the same undertakings towards the Bar as those assumed by the Firm and it shall inform the Bar of the measures taken in this regard within thirty (30) days following a request to that effect from the Bar;

(6) it shall make available to the syndic of the Bar, if applicable, any information or document (including a copy of the share register, the register of shareholders, the register of directors, every shareholders' agreement, every contract or agreement between the Firm and any other partnership, company or individual concerning the practice of the profession and every contract or agreement between a member and the Firm) that the syndic considers relevant for purposes of carrying out an investigation, and it shall do the same for the authorized representative of the Bar within the context of a professional inspection;

(7) it shall provide the following information:

(*a.*) the name of the Firm and all other names used in Québec by the Firm as well as the registration number issued by the Inspector General of Financial Institutions;

(*b.*) the juridical form of the Firm and, if applicable, the date on which the general partnership was continued as a limited liability partnership;

(c) the address of the head office of the Firm and its establishments;

(d) the name and residential address of each person listed hereinbelow, the professional order to which he belongs or the name of the organization to which he belongs, and his member or licence number:

a. every director or officer of the Firm, if the Firm is a joint-stock company;

b. every partner of the Firm who is a member of the Barreau du Québec or a professional order governed by the Professional Code or who is a person listed in Schedule A, if the Firm is a limited liability partnership; and

c. every shareholder having the right to vote in the Firm, if the Firm is a joint-stock company;

(8) it shall provide the following documents:

(a) a certificate issued by the authority under which the Firm was constituted evidencing that the Firm exists;

(b) if applicable, a certified true copy of the declaration required under the Act respecting the legal publicity of sole proprietorships, partnerships and legal persons stating that the general partnership was continued as a limited liability partnership; and

(c) written confirmation attesting that, at all times, more than 50% of the voting rights attaching to the shares of the Firm are held (1) by members of Barreau du Québec, by persons governed by the Professional Code or by persons listed in Schedule A; (2) by legal persons, trusts or any other firm whose voting rights or units are held entirely by one or more of the persons referred to in clause (1) of this paragraph; or (3) at the same time by persons referred to in clauses (1) and (2) of this paragraph;

(9) it shall pay the fees fixed by resolution of the General Council.

The Firm agrees that upon a breach of the undertakings so given in favour of the Bar, the Bar may, in addition to common law remedies, take appropriate remedial measures to ensure the protection of the public, as the circumstances require, including, without limitation, suspending or terminating the effect of this notice with respect to any advocate mentioned in section 1 and publishing an announcement warning the public as regards services which are rendered within the Firm and constitute the practice of the profession of advocate.

6. In accordance with section 8 of the Regulation, the Firm mandates the following person(s) to act as its representative:

M^e _____

Member no.: _____

The Firm mandates the following person to act as the replacement of the representative:

Me _____

Member no.: _____

The Firm is giving these undertakings in order to facilitate the fulfillment by the Barreau du Québec of its mission to protect the public with respect to advocates practising their profession within the business operated by the Firm. It recognizes the legal capacity of the Barreau du Québec to enter into a contract with it as evidenced in this duly given and accepted notice and it renounces the right to contest the validity of any provision of this contract before the courts.

Signed in _____, on the _____ day of _____, 20 _____.

Name of the Firm

Per: (name and title
of the representative)

Witness

5569

Draft Regulation

Professional Code
(R.S.Q., c. C-26; 2001, c. 78)

Bailiffs

— Code of ethics

— Amendment

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Regulation to amend the Code of ethics of bailiffs, made by the Bureau of the Chambre des huissiers de justice du Québec, may be submitted to the Government for approval, with or without amendment, upon the expiry of 45 days following this publication.