

3. 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. 81-2003, 29 January 2003

Watercourses Act
(R.S.Q., c. R-13)

Water property in the domain of the State

Regulation respecting the water property in the domain of the State

WHEREAS, under sections 2 and 2.1 of the Watercourses Act (R.S.Q., c. R-13), the Government may make regulations on the matters mentioned therein;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1) and section 89 of the Watercourses Act, a draft Regulation was published in Part 2 of the *Gazette officielle du Québec* of 10 July 2002, with a notice that it could be made by the Government upon the expiry of 60 days following that publication;

WHEREAS it is expedient to make the Regulation with amendments to take into account the comments received following the publication in the *Gazette officielle du Québec*;

IT IS ORDERED, therefore, upon the recommendation of the Minister of State for Municipal Affairs, Greater Montréal, the Environment and Water and Minister of the Environment:

THAT the Regulation respecting the water property in the domain of the State, attached to this Order in Council, be made.

JEAN ST-GELAIS,
Clerk of the Conseil exécutif

Regulation respecting the water property in the domain of the State

Watercourses Act
(R.S.Q., c. R-13, s. 2, 4th and 5th pars. and s. 2.1)

DIVISION I
SCOPE

1. This Regulation determines the conditions under which the Minister of the Environment is authorized to grant the alienation, lease or occupation of the property referred to in the third paragraph of section 2 of the Watercourses Act (R.S.Q., c. R-13) and to agree on the limits of such property. That property is hereinafter designated as the water property.

It also authorizes the occupation of such property by certain categories of minor works.

This Regulation does not govern the granting and transfer of rights in the water property referred to in section 37, 63 or 76 of the Watercourses Act. It does not govern the granting and transfer of rights to the federal government, its departments and agencies.

DIVISION II
OCCUPATION OF WATER PROPERTY BY MINOR WORKS

2. The owner of riparian land adjacent to water property or another person authorized by the latter may, without the authorization of the Minister, occupy free of charge that part of the water property fronting the owner's land to install a platform on piles or a floating platform with a movable anchor or a boathouse on piles, provided that its area does not exceed 20 square metres and it does not occupy more than 1/10 of the width of the bed of the watercourse at that location.

DIVISION III
OCCUPATION, LEASE, ALIENATION AND AGREEMENT ON THE LIMITS OF THE WATER PROPERTY

§1. General

3. The Minister may grant or transfer rights with respect to a part of the water property only after notifying the owner of the adjacent riparian land of that intent and allowing the owner to present observations.

However, for an occupation licence, a servitude or an act of sufferance, the Minister is not required to give advance notice if no structure or work is likely to be established. The same applies if the planned structure or work is intended to remain completely buried.

4. The Minister is authorized to provide for any clause, condition or servitude necessary to protect the public or the rights of riparian owners, in any deed or any agreement governing the granting or transfer of rights in the water property.

5. Before granting rights in the water property to a person who wishes to erect a structure or work, the Minister shall ensure

(1) that a certificate of authorization, if required, has been issued for the project under the Environment Quality Act (R.S.Q., c. Q-2) and the regulations thereunder ; and

(2) that a certificate obtained from the clerk or secretary-treasurer of a local municipality or, for an unorganized territory, of a regional county municipality, certifies that the planned work complies with the applicable municipal by-laws.

§2. *Financial*

6. All the amounts payable under this Regulation, including the fees provided for in Schedule I, except the amounts expressed as percentages and the nominal values provided for in section 33 and in the fourth paragraph of section 35, shall be, as of 1 April 2003, adjusted on 1 April of each year according to the rate of increase in the general Consumer Price Index for Canada as published by Statistics Canada.

The rate of increase shall be calculated by determining the difference between the average monthly indexes for the 12-month period ending on 30 September of the preceding year and the average monthly indexes for the same period of the second preceding year. The adjusted amounts shall be rounded off to the nearest dollar, except for the rates per hectare, linear metre or square metre referred to in section 7, the second paragraph of section 12, subparagraph 1 of the second paragraph of section 24, subparagraph 3 of the first paragraph of section 28 and subparagraph *a* of paragraph 5 of section 1 of Schedule I.

The Minister shall inform the public of the annual adjustment by a notice published in the *Gazette officielle du Québec* and, if the Minister considers it appropriate, by any other means.

7. Where reference is made in this Division to the value of the water property, that value shall be determined on the date on which the Minister agrees to grant or transfer rights in the water property or, as the case may be, when a readjustment of rent is made, by applying, for each square metre in question, the unit rate of the land concerned if it has been assessed, or failing such, the unit rate of the adjacent riparian land. The unit rate shall correspond to the standardized value of the land entered on the property assessment roll, calculated per square metre. Failing a standardized assessment, the rate shall be \$0.19 per square metre.

8. The granting and transfer of rights in the water property and applications to delimit the property are subject to the payment of the administration fees provided for in Schedule I.

Those fees shall be deductible upon conclusion of a deed to the extent provided for in that Schedule. The deduction of those fees may not, however, give rise to a refund by the Minister, or lower the amount owing below the minimum amount payable under this Regulation.

9. The fees for preparing and filing the plans and survey documents that may be required to grant or transfer rights, or to agree on limits, shall be paid by the purchaser, lessee, licence holder or the person who benefits from the right or the limits agreed on with the Minister.

The fees for registration or entry in the registry office and in the Terrier, as well as all fees and professional services required to obtain such registration or entry, including the fees for the preparation and receipt of a notarial act or the fees related to the attestation of a private writing shall also be paid by the purchaser, lessee, licence holder or the person who benefits from the right or the limits agreed on with the Minister.

§3. *Occupation, servitude and act of sufferance*

10. The Minister may authorize a person to occupy a part of the water property for non-profit purposes to install or maintain thereon any of the following works or structures by issuing a licence to that effect:

(1) a platform, either a floating platform with a movable anchor or on piles, or a boathouse on piles the area of which exceeds 20 square metres or that occupies more than 1/10 of the width of the river at that place ;

(2) works enabling water to be collected or evacuated ;

(3) works to protect the shores or banks against erosion, subsidence, landslides or floods;

(4) a bridge whose foundations on the bed of the water property do not occupy more than 1/10 of the width at that place;

(5) a cable, a pipe or works, other than a jetty, used to link the two banks or shores or to travel from one to the other; or

(6) an anchor for mooring structures.

11. The licence shall specify the conditions for the occupation and shall include the following elements:

(1) any preliminary works and structures or accessories to be erected;

(2) the terms and conditions for the erection and operation of the planned works and structures; and

(3) that such occupation may be transferred to a third party only with the written authorization of the Minister.

12. The amount required for the issue of a licence is \$50 for each work and structure concerned.

However, for an occupation described in paragraph 4 or 5 of section 10, the amount required is \$3 per linear metre of length of the work concerned on the water property, without being less than \$50 for each work or structure.

13. The term of the licence is one year, except for a licence for an occupation referred to in paragraph 4 or 5 of section 10, which may be issued for a period not exceeding 25 years.

14. At term, the licence is renewed automatically and free of charge for the same term, unless the Minister gives a notice to the contrary to its holder in the 90 days preceding the expiry date of the licence.

In addition, the Minister is authorized to revoke the licence if its holder does not comply with the conditions set out therein, with the legislative and regulatory provisions which come under the administration of the Minister of the Environment or if the holder does not comply with the provisions of any authorization issued under any of those provisions for the work or structure for which the licence was issued.

15. A licence becomes void automatically if the occupation for which it was issued ceases.

16. The Minister is authorized to grant servitudes or acts of sufferance with respect to the water property.

17. The consideration required for the granting of a servitude shall correspond, for the entire duration of the servitude, to the value of the part of the water property subject to the servitude. However, the consideration may not be less than \$250 if the area concerned is one hectare or less or \$250 per hectare if the area is greater.

18. An act of sufferance may be granted free of charge.

§4. Lease

19. The Minister is authorized to lease a part of the water property if the conditions provided for in this Subdivision are met.

20. The Minister is authorized to grant a lease of a part of the water property with the agreement of the owner of the adjacent riparian land if the land is under private ownership or, if the land is in the domain of the State and is the subject of a lease for resort purposes, with the agreement of the lessee.

The Minister is not required to obtain the agreement if the lease allows for the maintenance of a work or structure for public use.

21. The maximum term of a lease is 25 years.

22. The maximum area of the part of the water property covered by a lease is 5 hectares.

23. A part of the water property may not be leased at an annual rent lower than the following rents:

(1) if the lease allows the lessee to carry on activities for profit, the higher of

(a) 10% of the value of the part of the water property under lease; and

(b) \$250;

(2) where only non-profit activities are authorized, the higher of

(a) 5% of the value of the part of the water property already occupied or that will be occupied by a work or structure, and 2% of the value of the other parts of the water property under lease; and

(b) \$50.

Despite the first paragraph, where the lease is granted to a municipality or a body for non-profit use that facilitates public access to bodies of water, excluding a marina, the minimum annual rent is \$50 per hectare, without being lower than \$50.

24. A part of the water property may not be leased for marina purposes at an annual rent lower than

(1) 5% of the value of the part of the water property where a work or structure is located or will be located, and 2% of the value of the other parts of the water property; or

(2) \$250.

For the purposes of subparagraph 1 of the first paragraph,

(1) the unit rate used to calculate the value of the water property may not exceed \$15.25 per square metre; and

(2) a platform, whether on piles or a floating platform with a movable anchor, and a boathouse on piles are not considered to be works or structures.

25. Where a lease provides for more than one type of use, the annual rent is established in proportion to the areas of the water property allocated to each type of use.

26. In addition to the adjustment provided for in section 6, a lease must stipulate that the Minister is authorized to revise the annual rent to take into account any changes in the land value.

However, such a revision may not be made more than once per three-year period with respect to the same lessee.

A written notice indicating the revised value of the land and the new rent shall be sent to the lessee within 90 days before the new rent becomes effective. The lessee may, within 30 days following receipt of the notice, terminate the lease by sending a notice to that effect to the Minister.

27. In addition to the amount of the rent, its adjustment and the terms and conditions for its payment, the lease must specify its term and, where applicable, the preliminary works and structures or accessories that will be erected, as well as the terms and conditions for the erection and operation of the works and structures.

The lease shall also provide that the Minister has the right

(1) to cancel the lease at any time if the lessee does not comply with the conditions of use set out in the lease, the legislative and regulatory provisions which come under the administration of the Minister of the Environment or if the lessee does not comply with the conditions of an authorization issued under any of those provisions for the work or structure under lease; and

(2) to accept or refuse an application for sublease or for assignment of the lease and to benefit from a 45-day period, after receiving an application to that effect, to forward the decision.

In addition, a lease granted for the maintenance of a private beach must contain a clause according to which the lessee undertakes not to restrict the right of any person to travel on the lands in the domain of the State.

28. The Minister is authorized to grant a lease of a part of the water property for aquaculture purposes on the following conditions:

(1) the maximum term of the lease is 20 years;

(2) the lessee must, throughout the term of the lease, hold the licence required, where applicable, under the Act respecting commercial fisheries and aquaculture (R.S.Q., c. P-9.01) to operate a fish-breeding plant or to cultivate or harvest aquatic plants; and

(3) the annual rent payable, without being less than \$250, is

(a) \$2.50 per hectare for the first five years, then \$5 per hectare for subsequent years, if facilities are present; or

(b) \$0.50 per hectare for the first ten years, then \$1 per hectare for subsequent years, if no facilities are present.

Sections 20 to 26 do not apply to such a lease for aquaculture purposes.

29. The Minister is authorized to lease a part of the water property with a promise to sell, if the planned sale is authorized under section 34.

The term of a promise to sell contained in a lease may not exceed five years. The land value is determined, in accordance with the provisions of this Regulation, at the time the promise is included in the lease. The value must be specified in the lease.

30. The Minister is authorized to lease a part of the water property required for the purposes of the operation of a regional park; the lease shall be made on the conditions provided for within the framework of an agreement made with a regional county municipality in accordance with article 688 of the Municipal Code of Québec (R.S.Q., c. C-27.1).

§5. *Alienation*

31. The Minister is authorized to alienate a part of the water property free of charge or by onerous title only if the conditions set out in this Subdivision are met.

32. The Minister may transfer free of charge a part of the water property that could or should have been included in the previous sale of a backfilled portion of the water property, or that should have been included within the limits of the water property at the time of a previous determination of the limits, to take into account alterations to the limits of the water property.

33. In order to facilitate the delimitation of the water property on which water retaining works were erected in 1849, the Minister is authorized to sell the ownership of a part of the property around Lac Saint-François in the St. Lawrence River to the owner of the adjacent land for \$1.

34. The Minister is authorized to sell a part of the water property that has been backfilled. However, if the backfilling started after 1993, the Minister is authorized to sell only if the purchaser provides the Minister with the documents attesting that the backfilling work was authorized.

35. The sale price of a part of the water property is 50% of its value.

However, if the land is not bounded by water, the sale price is 25% of the value of the transferred part.

The sale price is 100% of the value of the part of the water property transferred if the backfilling of the property started after 1993.

Despite the preceding paragraphs, if the purchaser is a municipality, the Minister is authorized to sell a part of the public domain for \$1 to the municipality if the latter undertakes, under a resolutive condition, to preserve the premises for public, non-profit purposes.

Subject to the provisions of this Subdivision that expressly authorize the Minister to sell at a lower price, the sale price may not be lower than \$350.

36. The rents that a purchaser other than a legal person has previously paid as lessee of the part of the water property being sold shall be deducted from the sale price.

However, the deduction of the amounts referred to in the first paragraph may not give rise to a refund by the Minister, or lower the amount payable below the minimum sale price.

37. The Minister is authorized to agree on an instalment sale with the purchaser to allow the sale price to be paid in instalments. In addition, the Minister is authorized to agree that a hypothec be granted in favour of the State to secure the payment of the sale price if the hypothec covers, in addition to the transferred lot, an adjacent lot belonging to the purchaser.

All the fees payable and costs of professional services required to set up such a hypothec, to register it at the registry office or to cancel it shall be charged to the purchaser.

§6. *Agreement on limits*

38. The Minister is authorized to agree on the limits of the water property with the owner of adjacent riparian land.

The limits may be determined either when rights in the water property are granted or transferred or at the time of a transaction to prevent or resolve a dispute regarding the location of the dividing line between the water property and the adjacent riparian land.

Without limiting the scope of section 9, all fees payable and costs of professional services incurred to determine the limits or for registration with the registry office are to be paid by the owner of the adjacent riparian land.

DIVISION IV
TRANSITIONAL AND FINAL

39. Applications for the granting or transfer of rights still under examination on the date of coming into force of this Regulation shall continue to be governed by the provisions applicable at the time the applications were filed, unless the applicant chooses to have the application processed in accordance with the provisions of this Regulation by sending a written notice to that effect to the Minister.

Where, on that same date, an authorization of the Government has not yet given rise to the issue of title by the Minister to a person, the person may choose to have the provisions of this Regulation apply by sending a written notice to that effect to the Minister.

40. For leases existing on the date of coming into force of this Regulation, the minimum rates of rents apply only on the date on which they are renewed in the year following the year of the coming into force.

41. This Regulation replaces the Public Water Regulation made by Order in Council 9-89 dated 11 January 1989.

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

SCHEDULE I

(s. 8)

ADMINISTRATION FEES

1. The fees payable for examining applications for the granting or transfer of rights or applications related to the delimitation of the water property are

(1) \$35 for an application for the assignment of a lease or sublease for profit, marina or aquaculture purposes;

(2) \$35 for an application to modify the leased area of a lease for profit, marina or aquaculture purposes;

(3) \$250 for a servitude;

(4) \$250 for an agreement on limits;

(5) \$350 for a sale, subject to the following:

(a) the fee is \$500, to which \$1 per linear metre of bank or shore is added, if the sale is made to a municipality for public, non-profit purposes;

(b) no fee is payable for the sale of a part of the water property around Lac Saint-François in the St. Lawrence River if fees have already been paid in connection with an agreement on limits pursuant to paragraph 4; and

(c) a fee of \$150 is added to the amount of the fees payable if the sale is made by the issue of letters patent or if payment of the sale price is secured by a hypothec.

2. The fee of \$350 provided for in paragraph 5 of section 1 and the fee of \$250 provided for in paragraph 3 of that section are deductible from the amount payable when the deed is made.

Gouvernement du Québec

O.C. 90-2003, 29 January 2003

An Act respecting the lands in the domain of the State (R.S.Q., c. T-8.1)

Lands in the public domain

— Regularization of certain kinds of occupation

— Amendments

Regulation to amend the Regulation respecting the regularization of certain kinds of occupation of lands in the public domain

WHEREAS, under subparagraph 3 of the first paragraph of section 71 of the Act respecting the lands in the domain of the State (R.S.Q., c. T-8.1), the Government may, by regulation, determine the general conditions and the rules for computing the prices, rentals, fees or other costs regarding sales, leases, exchanges, gratuitous transfers, occupation licences and the granting of any other right;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), the Regulation to amend the Regulation respecting the regularization of certain kinds of occupation of lands in the public domain was published in Part 2 of the *Gazette officielle du Québec* of 4 September 2002 with a notice that it could be made by the Government upon the expiry of 45 days following that publication;

WHEREAS no comments were received following that consultation;

WHEREAS it is expedient to make the Regulation without amendments;

IT IS ORDERED, therefore, on the recommendation of the Minister of Natural Resources:

THAT the Regulation to amend the Regulation respecting the regularization of certain kinds of occupation of lands in the public domain, attached to this Order in Council, be made.

JEAN ST-GELAIS,
Clerk of the Conseil exécutif