

Regulations and other acts

Gouvernement du Québec

O.C. 319-2004, 31 March 2004

Legal Aid Act
(R.S.Q., c. A-14)

Notaries

— Conditions of practice, procedure for the settlement of disputes and tariff of fees for services rendered under the Act

— Ratification of agreement

Regulation to ratify the agreement entered into on 11 October 2003 between the Minister of Justice and the Chambre des notaires du Québec respecting the conditions of practice, the procedure for the settlement of disputes and the tariff of fees of notaries for services rendered under the Legal Aid Act

WHEREAS, under the first paragraph of section 81 of the Legal Aid Act (R.S.Q., c. A-14), the Minister shall negotiate with the bodies authorized to represent the notaries, advocates, bailiffs or stenographers, the tariffs of fees applicable for the purposes of that Act as well as a procedure for the settlement of disputes, and to what matters the procedure may apply;

WHEREAS, under the second paragraph of that section, the Government may make regulations to ratify such an agreement on the tariff of fees applicable for the purposes of that Act;

WHEREAS the Minister of Justice negotiated with the Chambre des notaires du Québec an agreement respecting the conditions of practice, the procedure for the settlement of disputes and the tariff of fees of notaries for services rendered under the Legal Aid Act and whereas an agreement was entered into on 11 October 2003;

WHEREAS it is expedient to replace the Tariff of fees of notaries for the purposes of the Legal Aid Act, made by Order in Council 1343-77 dated 27 April 1977 and renewed by Order in Council 2254-78 dated 12 July 1978;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1) a draft of the Regulation to ratify the agreement entered into on 11 October 2003 between the Minister of Justice and the Chambre des notaires du Québec respecting the conditions of practice, the procedure for the settlement of disputes and the tariff of fees of notaries for services

rendered under the Legal Aid Act was published in Part 2 of the *Gazette officielle du Québec* of 3 December 2003 with a notice that it could be made by the Government on the expiry of 45 days following that publication and asking any interested person having comments to make on the matter to send them in writing, before the expiry of that period, to the Minister of Justice;

WHEREAS no comments were sent to the Minister of Justice;

WHEREAS the 45-day period has expired;

WHEREAS it is expedient to make the Regulation attached to this Order in Council without amendment;

IT IS ORDERED, therefore, on the recommendation of the Minister of Justice:

THAT the Regulation to ratify the agreement entered into on 11 October 2003 between the Minister of Justice and the Chambre des notaires du Québec respecting the conditions of practice, the procedure for the settlement of disputes and the tariff of fees of notaries for services rendered under the Legal Aid Act, attached to this Order in Council, be made.

ANDRÉ DICAIRE,
Clerk of the Conseil exécutif

Regulation to ratify the agreement entered into on 11 October 2003 between the Minister of Justice and the Chambre des notaires du Québec respecting the conditions of practice, the procedure for the settlement of disputes and the tariff of fees of notaries for services rendered under the Legal Aid Act

Legal Aid Act
(R.S.Q., c. A-14, s. 81)

1. The Agreement attached hereto entered into on 11 October 2003 between the Minister of Justice and the Chambre des notaires du Québec respecting the conditions of practice, the procedure for the settlement of disputes and the tariff of fees of notaries applicable for the purposes of the Legal Aid Act, which replaces the Agreement entered into on 15 April 1977, is hereby ratified.

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

AGREEMENT

BETWEEN

THE MINISTER OF JUSTICE

AND

LA CHAMBRE DES NOTAIRES DU QUÉBEC

WHEREAS, under section 81 of the Legal Aid Act:

“**81.** The Minister shall negotiate with the bodies authorized to represent the notaries, advocates, bailiffs or stenographers, the tariffs of fees applicable for the purposes of this Act as well as a procedure for the settlement of disputes, and to what matters the procedure may apply.

Notwithstanding any general law or special Act, the Government may make regulations to ratify an agreement contemplated in the first paragraph or, failing such an agreement, to establish such tariffs for the purposes of this Act. Such regulations may also prescribe which person may determine the fees applicable to services for which no tariff is fixed. Moreover, they may provide a procedure for the settlement of dispute and to what matters the procedure may apply.

A tariff established under this section may fix, to the extent prescribed therein, an all-inclusive fee for all services provided within the scope of a single mandate. It may also determine the maximum amount of fees that may be paid under this Act to one professional in the course of a period specified by the tariff and beyond which fees paid to the professional are to be reduced, in respect of each mandate, in the proportion specified by the tariff. The provisions of the tariff pertaining to the maximum amount of fees that may be paid to one professional may vary according to the class of professionals to which they apply.

The Commission and the centres are bound by every regulation contemplated in the second paragraph.”;

WHEREAS an agreement was entered into to replace the Tariff of fees of notaries for the purposes of the Legal Aid Act, made by Order in Council 2254-78 dated 12 July 1978;

THE PARTIES DECLARE AND AGREE THAT the text attached hereto constitutes the agreement respecting the conditions of practice, the procedure for the settlement of disputes and the tariff of fees of notaries within the framework of the legal aid plan.

IN WITNESS WHEREOF, the parties have signed at Québec this 11th day of October 2003.

DENIS MARSOLAIS,
*President of the
Chambre des notaires
du Québec*

MARC BELLEMARE,
Minister of Justice

AGREEMENT ENTERED INTO BETWEEN THE MINISTER OF JUSTICE AND THE CHAMBRE DES NOTAIRES DU QUÉBEC RESPECTING THE CONDITIONS OF PRACTICE, THE PROCEDURE FOR THE SETTLEMENT OF DISPUTES AND THE TARIFF OF FEES OF NOTARIES FOR SERVICES RENDERED UNDER THE LEGAL AID ACT

CHAPTER I

OBJECT AND SCOPE OF THE AGREEMENT

1. The object of this Agreement is the determination of the conditions of practice, the procedure for the settlement of disputes and the fees payable for professional services rendered by notaries within the framework of the legal aid plan.

2. The Agreement governs every notary who agrees to render professional services to a legal aid recipient pursuant to the Legal Aid Act (R.S.Q., c. A-14), other than a notary who is employed by a legal aid centre.

CHAPTER II

CONDITIONS OF PRACTICE

DIVISION I

FREE CHOICE OF NOTARY

3. A person who is financially eligible for legal aid may consult a notary in private practice before submitting an application for legal aid under section 62 of the Legal Aid Act.

4. An application for legal aid may be submitted by the notary on behalf of a person in favour of whom a conditional certificate of eligibility may be issued under the Act. In such a case, the application is verbal.

5. A legal aid body must distribute equitably among notaries, according to the criteria established by the Act, the mandates in respect of which legal aid recipients wish to avail themselves of services provided by a notary registered under the legal aid plan, without a notary in particular having been chosen.

6. Where there is a replacement of notary to which section 81 of the Regulation respecting the application of the Legal Aid Act applies, the legal aid centre must notify the notary of record in writing that the recipient has requested a replacement and inform the notary of the name of the new notary.

The first paragraph also applies if one of the notaries concerned is employed by a legal aid body.

7. A notary who provides a legal service to a person who, for the service, becomes a legal aid recipient, shall retain the mandate subject to the provisions of the Act.

In such a case, the legal aid body issuing the certificate of eligibility must so inform the notary and request the notary's consent to continue the mandate on the terms set out in the Legal Aid Act and the regulations thereunder.

DIVISION II PROFESSIONAL FREEDOM

8. The legal aid plan must respect a notary's professional freedom; in particular, the plan shall recognize the notary's professional autonomy and preserve the personal and privileged nature of the notary's relationship with the recipient.

9. A notary shall, within the framework of the legal aid plan, maintain professional autonomy. It is the notary's responsibility to determine which services are to be rendered within the framework of a legal aid mandate, while seeking to act in the best interests of the recipient.

A notary shall comply with the mandate received from a legal aid body on behalf of the recipient; the conditions of the mandate are intended to identify the type of legal aid service required by the recipient.

10. A legal aid body shall refrain from intervening in the performance of a notary's mandate; it may, however, satisfy itself that the mandate is performed.

11. A notary may refuse a legal aid mandate.

12. A notary may terminate a mandate in accordance with recognized standards of practice; in such a case, the notary shall so notify the legal aid body and the recipient in writing.

13. A notary shall render an account to the recipient on the performance of the mandate and shall report to the legal aid body having assigned the mandate on the professional services rendered.

In all communications with the Commission des services juridiques or a legal aid body, the notary must respect professional secrecy.

DIVISION III FEES APPLICABLE AND BILLING AND PAYMENT PARTICULARS

14. Every legal service rendered by a notary in accordance with the provisions of the Legal Aid Act and this Agreement or, to the extent provided for in section 52 of the Act, by an articling student under the notary's supervision, shall be remunerated according to the tariff appearing in Schedule I.

A professional service related to the exercise of a right conferred by a statute or a regulation for which no fees or payment of special consideration are provided for in this Agreement is subject to remuneration. In such a case, the legal aid body shall assess the notary's statement of fees and fix the amount of remuneration. The decision may be the subject of a dispute which may be settled under the settlement procedure provided for in Division IV.

15. A notary shall forward a statement of fees and disbursements within three years after a mandate has terminated to the legal aid body having assigned the mandate. The three-year period is peremptory. Payment shall be made within 30 days of receipt of the statement.

In the cases determined by regulation, the statement of fees shall be forwarded to the Commission des services juridiques and payment shall be made by the Commission within the same period.

In the case of a replacement of notary under section 81.1 of the Regulation respecting the application of the Legal Aid Act, the statement of fees shall be forwarded by the notary to whom the mandate was assigned and payment of fees and disbursements shall be made as if there had been no replacement.

16. Any amount due and unpaid on a statement of fees drawn up in accordance with the Act and this Agreement shall commence to bear interest 30 days after receipt by the legal aid body or the Commission, as the case may be.

The interest is calculated on an annual basis and is equal to the Bank of Canada discount rate in effect on 1 April and 1 October each year, plus one and one-half percent (1.5%). The rate thus fixed shall remain in effect for the ensuing six (6) months.

17. A statement of fees is complete when it mentions the services rendered according to the nomenclature and terms in the Schedule or the mandate, where applicable.

18. Disbursements include service by bailiff or by registered or certified mail.

19. A notary shall receive no reimbursement for travel or parking expense incurred within a radius of 25 km from the notary's office.

A notary is entitled to the maximum reimbursement for travel expense for the use of a personal vehicle fixed by the Conseil du trésor in its Directive sur les frais remboursables lors d'un déplacement et autres frais inhérents,

(1) according to the distance actually travelled, in the case of travel farther than the 25-km radius from the notary's office within the boundaries of the registration division in which the office is situated;

(2) according to the distance actually travelled up to a maximum of 200 km, in the case of travel farther than the 25-km radius from the notary's office outside the boundaries of the registration division in which the office is situated; or

(3) according to the distance actually travelled by the notary, in the case of travel authorized by the director general of the legal aid centre, outside the boundaries of the registration division in which the notary's office is situated, where the nature or complexity of the matter requires that the mandate be assigned to the notary.

A notary who is entitled to reimbursement under this section is also entitled to be reimbursed for parking expense incurred.

The amount to be reimbursed as travel and parking expense may not, however, exceed the actual amount of expense incurred by the notary.

20. A notary representing a recipient in respect of whom legal aid is suspended or withdrawn, or a recipient who ceases to be eligible for legal aid, shall be remunerated according to the provisions of this Agreement for the services rendered before receipt of a notice from the legal aid body, sent by mail or telecommunications, informing the notary of the cessation of legal aid and the reasons for the decision.

The first paragraph also applies where the recipient chooses to dispense with legal aid during the mandate.

21. In the event that a legal aid body refuses to pay a statement of fees, the legal aid body must, within 30 days of receipt of the statement, so notify the notary in writing and state the reasons for the refusal.

The first paragraph also applies to the Commission in cases where the Commission assumes the payment of fees.

22. A refusal to pay fees must be founded on the inconsistency of the fees claimed with the provisions of the Act or this Agreement.

DIVISION IV PROCEDURE FOR THE SETTLEMENT OF DISPUTES

23. A dispute means any disagreement over the interpretation or application of this Agreement, including any disagreement over a statement of fees.

24. A dispute is submitted to the Commission by a notary by means of a notice addressed to the regional centre or, as the case may be, the Commission. The notice must contain a summary statement of the facts and the relief sought.

A dispute concerning contested fees must be submitted within six months of receipt of a notice of refusal to pay or of a claim for reimbursement.

25. On receipt of a notice of dispute, the regional centre or the Commission, as the case may be, shall answer in writing.

If the notary is dissatisfied with the answer, or if no answer is forwarded to the notary within 30 days after the notice of dispute is submitted, the notary may refer the dispute to arbitration by means of a letter addressed to the chief judge of the Court of Québec within six months of receipt of the answer obtained or of the expiry of the 30-day period after the notice of dispute is submitted, as the case may be. A copy of the letter shall be sent by the notary to the regional centre or the Commission, as the case may be.

26. Every dispute referred to arbitration under this Agreement shall be decided by an arbitrator designated by the chief judge or, where applicable, the associate chief judge of the Court of Québec, from among the judges of the Court.

27. The arbitrator is competent, to the exclusion of any court or tribunal, to decide a dispute within the meaning of this Agreement. The arbitrator may uphold, modify or reject the decision in dispute and according to the terms of the award, order payment or reimbursement, fix compensation, reinstate a right or make any other order the arbitrator considers equitable in the circumstances. The arbitrator may not, however, amend the provisions of this Agreement.

The arbitrator's award is final and binding on the parties.

28. The arbitrator may issue an interim award at any time.

29. Fees for the recording of proceedings before the arbitrator, if any, shall be borne by the regional centre or the Commission, as the case may be.

30. The arbitrator shall forward the award to the regional centre, the Commission, the notary and the Chambre des notaires.

DIVISION V

SCOPE AND TERM OF THE AGREEMENT

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

It applies to mandates assigned as of 1 April 2002.

The Agreement terminates on 31 March 2005. Notwithstanding its expiry, the Agreement shall continue to apply until replaced.

SCHEDULE I

(s. 14)

CHAPTER I

GENERAL RULES OF APPLICATION

T1. The services listed herein are lump-sum services. The fees set entail all that is necessary to perform the mandate received. No other remuneration shall be paid to a notary by a centre or by the Commission, as the case may be, unless this Tariff provides otherwise.

T2. For each copy or extract of acts or attached exhibits furnished by a notary at the request of a third party within the framework of legal aid, except copies or extracts already included in the remuneration under this Agreement\$40.

The fees include remuneration for the signing and sending of the copy.

T3. For the reimbursement of photocopy, fax, courier and postage costs, the notary shall receive a fixed amount of \$10.

CHAPTER II

ACTS RELATING TO MOVABLE OR IMMOVABLE PROPERTY

T4. For the preparation and receipt of every act pertaining to movable or immovable property\$225 per act.

The fees include, in addition to the fees for the act itself, the fees for all that is necessary to complete the performance of the mandate received. They include fees for the appearance, the preparation of the notice of address, the verification and adjustment of taxes, the transfer of insurance, attendances, the documents attached and the certificate they include, the assumption of a previous obligation, the necessary copies and the fees for the inclusion in the act of the usual warranty clauses for the payment of the remainder of the sale price or for the performance of the obligations of one of the parties.

T5. For any indivision agreement relating to every act pertaining to movable or immovable property.....\$225 per act.

T6. Full examination of titles.....\$225 per act.

A full examination of titles includes what is required in that respect by generally accepted practice. The fees for a full examination of titles may be billed only once per transaction, regardless of whether the transaction involves one or more acts.

If the notary makes only a summary examination of the titles or carries out only one search at the registry office\$80.

CHAPTER III

ACTS OF SERVITUDE

T7. For the preparation and receipt of any act of servitude\$225.

The fees include fees for describing the servient land, the land to which the servitude is due, the necessary interventions, the reference to titles of indebtedness, as well as 2 copies.

CHAPTER IV DISCHARGES AND RELEASES

T8. For every discharge, release of hypothec and other acts entailing cancellation\$150.

The fees include any verification of the amount or accounts, any attendance at the registry office as well as 2 copies.

CHAPTER V CONTRACTS OF MARRIAGE, CIVIL UNION AND DE FACTO SPOUSES

T9. For every contract of marriage or civil union.....\$175.

The fees include the preparation and drawing up of the contract (including *inter vivos* gifts or gifts *mortis causa*). Two or three copies, the preparation of the notice of entry in the register of personal and movable rights in three copies, the signing and sending of the notice, and the receipt of the notice and annexing to the minutes of the contract.

T10. For every contract of de facto spouses\$275.

CHAPTER VI WILLS

T11. For the preparation and receipt of:

(a) every will\$125

(b) every will between spouses\$240.

The fees include a copy to the testator but do not include disbursements for entry in the register of testamentary dispositions and mandates.

CHAPTER VII POWER OF ATTORNEY, MANDATES AND CONSENTS

T12. For every power of attorney, authorization, concurrence and consent by separate act, and for their revocation\$100.

T13. For every preparation of a mandate given in anticipation of incapacity\$135.

The fees include the sending, correspondence and other attendances, as well as the necessary copies.

CHAPTER VIII INVENTORY

T14. For every inventory (article 1326 of the Civil Code of Québec) in the case of a curatorship.....\$225.

CHAPTER IX SETTLEMENT OF A SUCCESSION

T15. Settlement of a succession:

1. For the drawing up of a statement of assets and liabilities of the succession (establishment of the devolution)\$225

2. For renunciation of the succession.....\$225

3. For the notice of transmission:

— Immovable.....\$340

— Movable.....\$225

4. All services entailed to designate the liquidator\$225

The fees include the designation, the notice of designation and the publication of the notice.

5. For the notice of closure of the succession\$90

6. Request for a will search\$45.

The fees include the production of a certificate of search from one of the registers of wills.

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