

## Regulations and other acts

Gouvernement du Québec

### O.C. 350-2004, 7 April 2004

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

#### Advocate

#### — Practice of the profession within a limited liability partnership or joint-stock company and in multidisciplinary

Regulation respecting the practice of the profession of advocate within a limited liability partnership or joint-stock company and in multidisciplinary

WHEREAS, under paragraph *p* of section 94 of the Professional Code (R.S.Q., c. C-26), the General Council of the Barreau du Québec may make a regulation respecting the practice of the profession of advocate within a partnership or company and, under paragraphs *g* and *h* of section 93 of the Code, it must, by regulation, impose on its members the obligation to furnish and maintain security, on behalf of the partnership or company, against liabilities of the partnership or company arising from fault or negligence in the practice of their profession and fix the conditions and procedure and, as appropriate, any fees applicable to a declaration made to the Order;

WHEREAS the General Council made the Regulation respecting the practice of the profession of advocate within a limited liability partnership or joint-stock company and in multidisciplinary at its meeting of 11 November 2002;

WHEREAS, under section 95.3 of the Professional Code, a draft Regulation was sent to every member of the Order at least 30 days before being made by the General Council;

WHEREAS, under section 95 of the Professional Code, subject to sections 95.1 and 95.2 of the Code, every regulation made by the Bureau of a professional order under the Code or an Act constituting a professional order shall be transmitted to the Office des professions du Québec for examination and be submitted, with the recommendation of the Office, to the Government which may approve it with or without amendment;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), a draft of the Regulation respecting the practice of the profession of advocate within a partnership or company and in a multidisciplinary firm was published in Part 2 of the *Gazette officielle du Québec* of 5 February 2003 with a notice that it could be submitted to the Government for approval on the expiry of 45 days following that publication;

WHEREAS the Chair of the Office has received no comment following the publication of the Regulation;

WHEREAS the Office has examined the Regulation and made its recommendation;

WHEREAS it is expedient to approve the Regulation with amendments;

IT IS ORDERED, therefore, on the recommendation of the Minister responsible for the administration of legislation respecting the professions:

THAT the Regulation respecting the practice of the profession of advocate within a limited liability partnership or joint-stock company and in multidisciplinary, attached to this Order in Council, be approved.

ANDRÉ DICAIRE,  
*Clerk of the Conseil exécutif*

### Regulation respecting the practice of the profession of advocate within a limited liability partnership or joint-stock company and in multidisciplinary

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

#### DIVISION 1 GENERAL PROVISIONS

**1.** A member of the Barreau du Québec may, subject to the terms, conditions and restrictions established in this Regulation, engage in his professional activities 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), alone or with persons:

- (1) governed by the Professional Code ;
- (2) contemplated in Schedule A ; or
- (3) governed by the Professional Code and persons contemplated 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 by the executive director, take the necessary measures to comply therewith, failing which the member shall no longer be authorized to practise his profession within that partnership or company.

**2.** If one of the persons contemplated in section 1 is struck off the roll for a period of more than three months or if that person's professional licence is revoked, that person may not, during the period of striking off the roll or revocation, directly or indirectly hold any voting shares of the company or voting partnership units.

Furthermore, such person may not, during the said period, be a director, officer or representative of the company or partnership.

**3.** A member may engage in his professional activities within a partnership or company only if the executive director has received the undertaking of the partnership or company provided for in Schedule B with respect to that member.

**4.** A member shall send to the Barreau du Québec, on the form prescribed by the latter, a declaration stating that he is henceforth engaging in his professional activities within a partnership or company or that he has ceased to engage in his professional activities within such partnership or company, as the case may be ; he shall pay a fee of \$50.00 with respect to such declaration.

The declaration shall be sent within 15 days following the date he starts or ceases to engage in his professional activities within the partnership or company.

**5.** A member is authorized to engage in his professional activities within a partnership or company if the following conditions are met :

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

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

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

(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 company or the majority of the partners or directors appointed by the partners, as the case may be, are persons contemplated in subparagraph *a* of paragraph 1 ;

(3) the board of directors or the internal management board, as the case may be, is comprised, in the majority, of persons contemplated in subparagraph *a* of paragraph 1 and such persons, at all times, constitute the majority of the quorum on such board ;

(4) the conditions set forth in paragraphs 1 to 3 are set forth in the articles or stipulated in the partnership agreement, as the case may be ; and

(5) to his knowledge, no partner, director or officer of the partnership or company and no member or shareholder holding a voting right in the partnership or company has been the subject of :

(a) a decision of a Canadian court, for which he has not obtained a pardon, finding him guilty of a criminal offence which, in the reasoned opinion of the Executive Committee of the Barreau, is related to the practice of the profession or jeopardizes the integrity of the circumstances in which the member engages in his professional activities ; or

(b) a decision of a foreign court, for which he has not obtained a pardon, finding him guilty of a criminal offence which, had it been committed in Canada, could have made him guilty of an offence contemplated in subparagraph *a*.

## DIVISION II REPRESENTATIVE

**6.** When a member engages in his professional activities within a partnership or company, the partnership or company shall designate at least one representative and at most two or, if applicable, one representative and one replacement.

The representative or the replacement, as the case may be, shall be a member of the Barreau du Québec and engage in his professional activities in Québec within the partnership or company.

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

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

**8.** The representative shall, in particular, send to the executive director of the Barreau du Québec, within 15 days following the occurrence thereof, any change to the declarations set forth in the undertaking of the partnership or company or to one of the documents filed in support thereof.

### DIVISION III NOTICES

**9.** When a member who engages in his professional activities other than within a partnership or company forms such a partnership or company or joins such a partnership or company, or when the general partnership within which the member engages in his professional activities is continued as a limited liability partnership, he shall ensure that, within 15 days following such occurrence, the partnership or company within which he henceforth engages in his professional activities publishes a notice in the locality in which the partnership or company has a place of business indicating that the partnership or company has been formed or continued or that the member has joined same.

Such notice shall specify, in general terms, the effects of the change of status on the member's professional liability.

### DIVISION IV PROFESSIONAL LIABILITY COVERAGE

**10.** Each member who engages in his professional activities within a partnership or company shall, in order to be authorized to engage in such activities in accordance with this Regulation, furnish and maintain coverage on behalf of such partnership or company for the professional liability the partnership or company may incur by reason of the fault or negligence of the member in the practice of his profession within the partnership or company, which coverage shall be furnished and maintained by subscribing to the Professional Liability Insurance Fund of the Barreau du Québec.

**11.** The coverage shall contain the following minimum conditions as regards any and all claims and damages covered thereby:

(1) an undertaking by the insurer to pay on behalf of the partnership or company, over and above the amount of the insurance coverage the member must take out, any amount that the partnership or company may be legally bound to pay to injured third parties on a claim made during a period of coverage and arising from the member's fault or negligence in the practice of his profession within the partnership or company; for purposes of this paragraph, the amount of coverage that a member must furnish shall be at least \$1,000,000 per claim made against him, subject to a limit in the same amount applicable to all claims filed against the member during a coverage period not exceeding 12 months as well as to all claims made against members of a partnership or company with respect to a loss;

(2) an undertaking by the insurer to take up the cause of the partnership or company and defend it in any lawsuit to which the insurance coverage applies and to pay, in addition to the amounts covered by the liability insurance, all costs and expenses of any lawsuit to which the insurance coverage applies, including the costs and expenses of the investigation and defence and interest on the amount of the coverage; and

(3) an amount of at least \$1,000,000 per claim filed against the partnership or company, subject to a limit in the same amount for all claims filed during a coverage period not exceeding 12 months, regardless of the number of members in the partnership or company.

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

### SCHEDULE A

(s. 1)

#### OTHER PERSONS AUTHORIZED TO ENGAGE IN PROFESSIONAL ACTIVITIES WITHIN A PARTNERSHIP OR COMPANY

— Contributor of the Chambre de l'assurance de dommages;

— Contributor 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 (R.S. 1985, c. P-4);

— Member in good standing of the Canadian Institute of Actuaries.

**SCHEDULE B**

(s. 3)

**UNDERTAKING OF THE PARTNERSHIP OR COMPANY****UNDERTAKING BY:**

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".

**IN FAVOUR OF:**

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 "Barreau".

Pursuant to the Regulation respecting the practice of the profession of advocate within a limited liability partnership or joint-stock company and in multidisciplinary, the Firm hereby:

(1) confirms that the following member(s) of the Barreau du Québec and the following persons engage in their professional activities within the Firm:

Name, membership or licence number and professional activities:

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(2) confirms to the Barreau that it has undertaken in favour of each member engaging in his professional activities within the Firm to provide him with a working environment allowing him to comply with the rules of law applicable to the carrying on of his professional activities, particularly as regards the following:

(a) professional secrecy, 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) activities reserved for advocates;

(e) liability insurance;

(f) professional inspections;

(g) advertising;

(h) billing and trust accounts; and

(i) access by the syndic of the Barreau to this undertaking and, if applicable, to every contract or agreement regarding a member;

(3) undertakes as follows in favour of the Barreau:

(a) it shall ensure that the members who engage in their professional activities within the Firm have a working environment allowing them to comply with any law applicable to the carrying on of their professional activities;

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

(c) it shall cause the partnership or company as well as all persons comprising same or working therein to take cognizance of the Code of ethics of advocates;

(d) it shall ensure that the partnership or company as well as all persons comprising same or working therein comply, to the fullest extent applicable, with the Professional Code and An Act respecting the Barreau du Québec (R.S.Q., c. B-1) as well as with the regulations adopted thereunder;

(e) within 15 days following the occurrence of any change to the declarations set forth in the undertaking or to one of the documents filed in support thereof, it shall give written notice thereof to the executive director of the Barreau and pay a fee of \$20.00;

(f) it shall inform all persons who form part of the Firm, other than the members who engage in their professional activities 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;

(g) 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 Barreau as those assumed by the Firm and it shall inform the Barreau of the measures taken in this regard within 15 days following a request to that effect from the Barreau; and

(h) it shall make available to the syndic of the Barreau, 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 Barreau within the context of a professional inspection;

(4) agrees to provide the following information to the Barreau:

(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 contemplated hereinbelow, the professional order to which he belongs or the name of the organization to which he belongs, and his member or licence number:

- i. every director or officer of the Firm;
- ii. every partner of the Firm, if the Firm is a limited liability partnership; and
- iii. every shareholder of the Firm, if the Firm is a joint-stock company;

(5) agrees to provide the following documents to the Barreau:

(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 (R.S.Q., c. P-45) 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 voting shares or units of the Firm are held in accordance with paragraph 1 of section 5 of the Regulation;

(6) agrees to pay a fee of \$75.00 when filing this undertaking;

(7) agrees that, in the event the undertakings so given in favour of the Barreau are not respected, the Barreau may, in addition to exercising civil recourses, take the appropriate remedial measures to ensure the protection of the public;

(8) gives a mandate to the following persons, in accordance with section 6 of the Regulation:

(a) to act as a representative (at least one and at most two):

Me \_\_\_\_\_  
Member no.: \_\_\_\_\_

Me \_\_\_\_\_  
Member no.: \_\_\_\_\_

(b) to act as a replacement (if there is only one representative):

Me \_\_\_\_\_  
Member no.: \_\_\_\_\_

(9) gives this undertaking 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 enterprise carried by the Firm.

Signed in \_\_\_\_\_, on the \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Name of the Firm

\_\_\_\_\_  
Per: (name and title of the representative)

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