

Regulations and other acts

Gouvernement du Québec

O.C. 752-2005, 17 August 2005

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

Conseillers et conseillères d'orientation et psychoéducateurs et psychoéducatrices — Conciliation and arbitration procedure for the accounts of members of the Ordre

Regulation respecting the conciliation and arbitration procedure for the accounts of members of the Ordre des conseillers et conseillères d'orientation et des psychoéducateurs et psychoéducatrices du Québec

WHEREAS, under section 88 of the Professional Code (R.S.Q., c. C-26), the Bureau of the Ordre des conseillers et conseillères d'orientation et des psychoéducateurs et psychoéducatrices du Québec must establish, by regulation, a conciliation and arbitration procedure for the accounts of the members of the order which may be used by persons having recourse to the services of the members;

WHEREAS the Bureau of the Ordre des conseillers et conseillères d'orientation et des psychoéducateurs et psychoéducatrices du Québec made the Regulation respecting the conciliation and arbitration procedure for the accounts of members of the Ordre des conseillers et conseillères d'orientation et des psychoéducateurs et psychoéducatrices du Québec;

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 Bureau;

WHEREAS, under section 95 of the Code and 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 was published in Part 2 of the *Gazette officielle du Québec* of 13 April 2005 with a notice that it could be submitted to the Government for approval on the expiry of 45 days following that publication;

WHEREAS, in accordance with section 95 of the Professional Code, the Office des professions du Québec 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 conciliation and arbitration procedure for the accounts of members of the Ordre des conseillers et conseillères d'orientation et des psychoéducateurs et psychoéducatrices du Québec, attached to this Order in Council, be approved.

ANDRÉ DICAIRE,
Clerk of the Conseil exécutif

Regulation respecting the conciliation and arbitration procedure for the accounts of members of the Ordre des conseillers et conseillères d'orientation et des psychoéducateurs et psychoéducatrices du Québec

Professional Code
(R.S.Q., c. C-26, s. 88)

DIVISION I CONCILIATION

1. The syndic shall send a copy of this Regulation to any person who requests it.

2. A client who has a dispute with a member of the Ordre des conseillers et conseillères d'orientation et des psychoéducateurs et psychoéducatrices du Québec concerning the amount of an account for professional services must apply for conciliation by the syndic before applying for arbitration of the account.

3. A member may not institute proceedings in respect of an account before the expiry of a period of 60 days following the date of receipt of the account by the client or the date on which the client became aware that a sum

had been withdrawn or withheld by the member directly from the funds the member holds or has received for or on behalf of the client.

A member may not institute proceedings in respect of an account as of the date on which the syndic received an application for conciliation in respect of an account, so long as the dispute can be settled by conciliation or arbitration.

The member may, however, apply for provisional measures in accordance with article 940.4 of the Code of Civil Procedure (R.S.Q., c. C-25).

4. An application for conciliation in respect of an account for professional services that has been unpaid or partially paid must be sent to the syndic within the 60-day period referred to in section 3.

An application for conciliation of an account or part of an account that has not been paid may be sent to the syndic after the expiry of the 60-day period referred to in section 3, provided that it is sent before proceedings on the account are served on the client.

5. Every application for conciliation must be formulated in writing. Upon receipt of the application, the syndic shall send a copy of this Regulation and a copy of Schedule I to the client, to be completed and returned to the syndic as additional information.

6. The syndic shall notify the member in question of the application for conciliation as soon as possible.

7. The syndic shall proceed with the conciliation in the manner he or she considers most appropriate.

8. Any agreement reached by the client and the member during conciliation must be in writing. The writing may consist of a letter from the syndic to the client and the member acknowledging the agreement.

If the syndic considers it necessary, the syndic may ask that the agreement reached by the client and the member be acknowledged in terms similar to those in Schedule II.

9. If conciliation does not lead to an agreement within 45 days of receipt of the application for conciliation, the syndic shall send a report on the dispute to the client and the member by registered or certified mail.

The report must pertain to, where applicable,

- (1) the amount of the account in dispute;
- (2) the amount that the client acknowledges as owing;

(3) the amount that the member acknowledges having to refund or is willing to accept in settlement of the dispute; and

(4) the amount suggested by the syndic during conciliation as payment to the member or refund to the client.

The syndic shall also send the client the form in Schedule III and indicate to the client the procedure and deadline for submitting the dispute to arbitration.

DIVISION II ARBITRATION

§1. *Application for arbitration*

10. If conciliation does not lead to an agreement, the client may apply for arbitration of the account within 30 days of receipt of the conciliation report from the syndic.

The application for arbitration must be in the form set out in Schedule III and sent to the secretary of the Order by registered or certified mail.

11. The secretary shall, upon receipt of an application for arbitration, notify the member concerned.

12. An application for arbitration may be withdrawn only in writing and with the consent of the member.

13. A member who acknowledges having to refund an amount to a client shall deposit the amount with the secretary, who shall then remit it to the client.

In such a case, the arbitration shall pertain only to the amount still in dispute.

14. Any agreement reached by the client and the member after the application for arbitration must be in writing, in terms similar to those in Schedule II, signed by the parties, and filed with the secretary.

If the agreement is reached after the council of arbitration has been formed, the agreement shall be recorded in the arbitration award and the council shall decide the expenses as provided in the second paragraph of section 27.

§2. *Council of arbitration*

15. The council of arbitration shall be composed of three arbitrators where the amount in dispute is \$1,500 or more, and of a single arbitrator where the amount is less than \$1,500.

16. The administrative committee shall designate, from among the members of the Order, the member or members of the council of arbitration and, if the council consists of three arbitrators, the administrative committee shall designate the chair.

The secretary shall inform the member or members of the council of arbitration and the parties in writing that a council of arbitration has been formed.

17. Before acting, the arbitrators shall take the oath in Schedule II to the Professional Code (R.S.Q., c. C-26).

18. An application for the recusation of an arbitrator may be made only on one of the grounds provided for in article 234 of the Code of Civil Procedure. It must be sent in writing to the secretary, to the council of arbitration and to the parties or their advocates within 10 days of receipt of the written notice sent pursuant to the second paragraph of section 16, or 10 days after the cause for recusation becomes known.

The administrative committee shall rule on the application and, where required, the secretary shall see to the replacement of the recused arbitrator.

19. In the event of an arbitrator's death, absence or inability to act, the remaining arbitrators shall see the matter to its completion. If that arbitrator is the chair of the council of arbitration, the secretary shall designate one of the remaining two members to act as chair.

If the council of arbitration consists of a single arbitrator, that arbitrator shall be replaced by a new arbitrator appointed by the administrative committee and the dispute shall be reheard.

§3. Hearing

20. The council of arbitration shall give the parties at least 10 days' written notice of the date, time and place of the hearing.

21. The parties are entitled to be represented by an advocate.

22. The council of arbitration may require the parties to submit to it, within a specified time, a statement of their claims together with supporting documents.

23. The council of arbitration shall, with diligence, hear the parties, receive their evidence or record their failure to appear. To that end, the council shall apply the rules of evidence of courts of civil jurisdiction, follow the procedure it considers most appropriate and decide the matter according to the rules of law.

24. Each party shall bear the expenses it incurs for the arbitration and may not recover them from the adverse party.

A party requesting that the testimony be recorded shall assume the cost of the recording.

§4. Arbitration award

25. The council of arbitration shall issue its award within 30 days after completion of the hearing.

26. The award shall be rendered by a majority of the members of the council of arbitration; failing a majority, the award shall be rendered by the chair.

The award must be reasoned and signed by the single arbitrator or the concurring arbitrators. If an arbitrator refuses or is unable to sign, the award shall indicate that fact and the award shall have the same effect as though signed by all the arbitrators. However, a dissenting member may enter in the award the reasons for his or her refusal.

27. In its award, the council of arbitration may uphold or reduce the amount of the account in dispute; it may also determine, if appropriate, the refund to which a party may be entitled. To that end, it may in particular take into account the quality of the services rendered.

The council of arbitration may decide the arbitration expenses, namely the expenses incurred by the Order for the arbitration. The total amount of the expenses must not, however, exceed 15% of the amount in dispute.

When the account in dispute is maintained in whole or in part or when a refund is awarded, the council of arbitration may also add interest and an indemnity as provided in articles 1618 and 1619 of the Civil Code, calculated from the date of the application for conciliation.

28. The arbitration award is final, binds the parties and is executory in accordance with articles 946.1 to 946.6 of the Code of Civil Procedure.

29. The council of arbitration shall file its award with the secretary, who shall send a copy of the award to the parties or their advocates and to the syndic.

The council of arbitration shall also send to the secretary the complete arbitration record, copies of which may be sent solely to the parties or their advocates and the syndic.

30. This Regulation replaces the Regulation respecting the conciliation and arbitration procedure for the accounts of members of the Ordre des conseillers et

conseillères d'orientation et des psychoéducateurs et psychoéducatrices du Québec, approved by Order in Council 47-94 dated 10 January 1994. The latter Regulation continues, however, to govern the conciliation and arbitration procedure for the accounts for which conciliation by the syndic or an application for arbitration was made before the date of coming into force of this Regulation.

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

SCHEDULE I

(s. 5)

APPLICATION FOR CONCILIATION

I, the undersigned _____, declare that:
(name and address of client)

1. _____ is
(name and address of member)

claiming from me the sum of \$ _____
for professional services rendered between _____
_____ and _____ as evidenced by:
(date) (date)

the account a copy of which is attached hereto

or

the document a copy of which is attached hereto,
indicating that the amount has been withdrawn
or withheld.

I am contesting the account for the following reasons:

3. I acknowledge owing the sum of \$ _____
for the professional services mentioned in the account.

4. (a) I have not paid the account

or

(b) I have paid the account in full

or

(c) I have paid a portion of the account,
in the amount of \$ _____

or

(d) The sum of \$ _____ has been
withdrawn or withheld directly from the funds
the member holds or has received for or
on my behalf.

5. I am applying for conciliation by the syndic under the Regulation respecting the procedure for the conciliation and arbitration of accounts of members of the Ordre des conseillers et conseillères d'orientation et des psychoéducateurs et psychoéducatrices du Québec.

And I have signed on _____
(date)

(client's signature)

SCHEDULE II

(ss. 8 and 14)

AGREEMENT RESPECTING A DISPUTE
SUBMITTED TO CONCILIATION
OR
TO ARBITRATION

Entered into between:

(name and address of client)

hereinafter referred to as "the client",

and

(name and address of member)

who state and agree as follows:

An agreement has been entered into
between the client and the member
concerning the dispute submitted
to conciliation

or

to arbitration

applied for on _____
(date)

The agreement provides for the following terms and conditions:

The client and the member request that the

conciliation

or

arbitration

proceedings be stayed.

 (client's signature)

Signed at _____
 (place)

on _____
 (date)

 (member's signature)

Signed at _____
 (place)

on _____
 (date)

SCHEDULE III

(ss. 9 and 10)

APPLICATION FOR ARBITRATION OF AN ACCOUNT

I, the undersigned _____,
 (name and address of client)

declare under oath that:

1. _____
 (name and address of member)

is claiming from me (or refuses to refund to me) a sum of money for professional services.

2. I have attached a copy of the conciliation report.

3. I am applying for arbitration of the account under the Regulation respecting the conciliation and arbitration procedure for the accounts of members of the Ordre des conseillers et conseillères d'orientation et des psychoéducateurs et psychoéducatrices du Québec, a copy of which I have received and have taken cognizance.

4. I agree to abide by the procedure provided for in the Regulation and, where required, to pay to the member concerned the amount of the arbitration award.

And I have signed on _____
 (date)

 (client's signature)

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Gouvernement du Québec

O.C. 757-2005, 17 August 2005

An Act respecting threatened or vulnerable species (R.S.Q., c. E-12.01 ; 2004, c.11)

Threatened or vulnerable plant species and their habitats

Regulation respecting threatened or vulnerable plant species and their habitats

WHEREAS section 10, amended by section 70 of chapter 11 of the Statutes of 2004, and sections 16, 17 and 39 of the Act respecting threatened or vulnerable species (R.S.Q., c. E-12.01) confer on the Government the power to make regulations on the matters set forth therein;

WHEREAS the Government made the Regulation respecting threatened or vulnerable plant species and their habitats by Order in Council 489-98 dated 8 April 1998;

WHEREAS it is expedient to replace the Regulation;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), a draft regulation was published in the *Gazette officielle du Québec* of 11 August 2004 with a notice that it could be made by the Government on the expiry of 45 days following that publication;