

Draft Regulations

Draft Regulation

An Act respecting the distribution of financial products and services
(R.S.Q., c. D-9.2)

Claims adjusters — Code of ethics

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Code of ethics of claims adjusters, appearing below, may be submitted to the Government which may approve it, with or without amendment, on the expiry of 45 days following this publication.

The purpose of the draft Regulation is to replace the Code of ethics of claims adjusters approved by Order in Council 1040-99 dated 8 September 1999.

A further purpose is to establish a single Code of ethics for all claims adjusters, regardless of the class of sector in which they practise.

The Chamber foresees the amendments will have no impact on enterprises, including small and medium-sized businesses.

Further information on the draft Regulation may be obtained by contacting Marie-Claude Rioux, Chambre de l'assurance de dommages, 999, boulevard De Maisonneuve Ouest, 12^e étage, Montréal (Québec) H3A 3C6; telephone: 514 842-2591 or 1 800 361-7288; fax: 514 842-3138; e-mail: mcrioux@chad.qc.ca.

Any interested person having comments to make is asked to send them in writing, before the expiry of the 45-day period, to the Minister of Finance, 12, rue Saint-Louis, 1^{er} étage, Québec (Québec) G1R 5L3.

MONIQUE JÉRÔME-FORGET,
Minister of Finance

Code of ethics of claims adjusters

An Act respecting the distribution of financial products and services
(R.S.Q., c. D-9.2, s. 202.1, par. 1 and s. 312)

DIVISION I GENERAL

- 1.** The purpose of the provisions of this Code is to promote the protection of the public and the honest and competent practice of the professional activities of claims adjusters, regardless of the structure of their practice, the nature of their contractual relationship with clients or the class of the claims adjustment sector in which they practise.
- 2.** Claims adjusters must ensure that they and their mandataries and employees comply with the provisions of the Act respecting the distribution of financial products and services (R.S.Q., c. D-9.2) and its regulations.
- 3.** Claims adjusters must not, directly or indirectly, pay or promise to pay remuneration, compensation or any other benefit to a person who is not a representative in order for that person to act in that capacity or use that title.
- 4.** Claims adjusters must not, directly or indirectly, procure a promise of payment or payment of remuneration, compensation or any other benefit from a person who is not a representative and who acts or attempts to act in that capacity.
- 5.** Claims adjusters must not, directly or indirectly, procure a promise of payment or payment of remuneration, compensation or any other benefit not authorized by the Act or its regulations from a person other than the person who has retained their services.
- 6.** Claims adjusters must not pay, offer to pay or agree to pay any remuneration, compensation or benefit to a person who is not a representative, except where permitted by law.
- 7.** Claims adjusters must not pay or promise to pay any remuneration, compensation or benefit in order to have their professional services retained, except as provided by the Act or its regulations.

8. Claims adjusters must not accept, other than the remuneration or compensation to which they are entitled, any benefit relating to their professional activities, except where permitted by law.

9. Claims adjusters must avoid placing themselves, directly or indirectly, in a situation of conflict of interest. Without limiting the generality of the foregoing, a claims adjuster would be in a situation of conflict of interest where

(1) the interests involved are such that the claims adjuster may tend to favour certain interests over those of the client, or the claims adjuster's judgment and loyalty towards the client may be adversely affected; or

(2) the claims adjuster obtains a current or future personal benefit, directly or indirectly, for a particular act.

10. Claims adjusters must not neglect professional duties relating to their professional activities and must carry out such duties with integrity.

11. Claims adjusters must not

(1) have a personal interest in the settlement of a claim;

(2) derive or seek to derive personal benefit from a matter entrusted to them, other than their remuneration;

(3) ask anyone, except a client or client's representatives, to inform them of an event giving rise to a claim;

(4) obtain or attempt to obtain details concerning an insurance policy from any person other than a client or client's representatives, with a view to having the settlement of claim entrusted to them; or

(5) advise an insured, a claimant, a client or a third party against consulting another representative or another person of their choice.

DIVISION II DUTIES AND OBLIGATIONS TOWARDS THE PUBLIC

12. Claims adjusters must support any measure designed to protect the public.

13. Claims adjusters must support any measure likely to improve the quality of services in their field of professional activities.

14. Claims adjusters must promote measures to provide education and information in their field of professional activities.

15. The conduct of claims adjusters must be characterized by objectivity, discretion, moderation and dignity.

16. No claims adjuster may, in any manner whatsoever, make any representations that are false, misleading or likely to be misleading.

17. In their professional activities, claims adjusters must identify themselves clearly and, where applicable, identify their client. Claims adjusters must show their certificate upon request.

18. Claims adjusters must notify an insured of the approach of a prescription date concerning the insured.

19. Claims adjusters must notify the parties involved, as well as any person that they know has an interest in the compensation requested, of any refusals or any measures that the insurer intends to take regarding a claim.

20. Claims adjusters must act in a manner that does not mislead or abuse the good faith of the parties involved.

21. Claims adjusters must provide the insured with the explanations necessary for them to understand the settlement of the claim and services rendered to them.

22. Claims adjusters must respect the confidentiality of all personal information obtained about a client and use the information for the purposes for which it was obtained, unless relieved of that obligation by a provision of a law or an order of a competent court.

23. Claims adjusters must not disclose, other than in accordance with the law, personal or confidential information obtained nor use such information to the detriment of one of the parties involved or with a view to obtaining a benefit for themselves or another person.

24. Claims adjusters must not accept or continue a mandate if it involves or may involve disclosing or using confidential information or documents obtained from another claimant, unless that claimant consents thereto.

25. Claims adjusters must avoid any misrepresentations as to their level of competence or the effectiveness of their services or those of their firm or independent partnership.

DIVISION III DUTIES AND OBLIGATIONS TOWARDS CLIENTS

26. Before accepting a mandate, claims adjusters must take into account the limits of their abilities and knowledge and the means available to them. They must not undertake or continue a mandate for which they are not sufficiently prepared, without obtaining the necessary assistance.

27. Claims adjusters must act promptly, honestly and fairly in providing their professional services under the mandates entrusted to them.

28. Claims adjusters may not be the mandatary of both the insurer and the insured at the same time.

29. Claims adjusters may not represent opposing interests, except with the consent of their clients.

30. Claims adjusters must not under any circumstances undertake appraisal work before receiving a mandate to that effect.

31. Claims adjusters must notify the client promptly of any information in their possession that could affect decisions regarding the settlement of a claim or reduce or compromise an entitlement to compensation, such as breaches of contract, fraud, misrepresentations and the forging of evidence.

32. Claims adjusters must, without delay, act on the instructions received from a client or notify the client that they are unable to comply with them.

33. Claims adjusters must, upon request, report to the client and show diligence in submitting reports, rendering accounts and making remittances.

34. Claims adjusters must submit every offer of settlement to the client.

35. In carrying out a mandate, claims adjusters must avoid multiplying professional acts.

36. Claims adjusters may, for good and reasonable cause, cease to act on behalf of a client after taking the necessary measures to prevent prejudice to the client.

37. Claims adjusters must cease to represent a client if their mandate is revoked.

38. Claims adjusters must not, through fraud, trickery or other deceitful means, avoid or attempt to avoid their professional civil liability or that of the firm or independent partnership within which they carry on their professional activities.

39. Claims adjusters who have been given a mandate must not require advances that are disproportionate to the nature and circumstances of the claim and the state of the parties. In addition, they must charge fair and reasonable remuneration, justified by the circumstances and proportionate to the services rendered. In setting remuneration, claims adjusters must take particular account of the following factors:

(1) their experience;

(2) the time devoted to the matter;

(3) the difficulty of the problem submitted;

(4) the importance of the matter;

(5) the responsibility assumed;

(6) the provision of unusual services or services requiring exceptional competence or speed; and

(7) the result obtained.

40. Claims adjusters must ensure that a client is informed of the approximate and foreseeable cost for their services.

41. Claims adjusters who have entered into a contract with a client providing for hourly remuneration must provide all explanations necessary for the client to understand the statement of remuneration and the terms and conditions of payment.

42. Claims adjusters may not charge interest on overdue accounts unless they have an agreement to that effect with the client. If there is such an agreement, the interest must be charged at a reasonable rate, which does not exceed the rate determined pursuant to section 28 of the Act respecting the Ministère du Revenu (R.S.Q., c. M-31).

43. Upon completion of their mandate, claims adjusters must repay any part of an advance on their remuneration for which no work was performed.

DIVISION IV DUTIES AND OBLIGATIONS TOWARDS THE CLAIMANT

44. Claims adjusters must not withhold a claimant's money, securities, documents or property unless permitted under a legislative or regulatory provision.

45. Claims adjusters must take reasonable care of property entrusted to their care during their mandate.

46. Claims adjusters must not borrow from a claimant sums of money they have collected for the claimant. Claims adjusters must not endorse a cheque made out to a claimant or to a client unless authorized by the claimant or client and provided that the cheque is endorsed for deposit only into a separate account.

DIVISION V DUTIES AND OBLIGATIONS TOWARDS INSURERS

47. Claims adjusters must notify the insurer of any ties or interests third parties may have in property that is the subject of a claim.

48. Claims adjusters must not mislead an insurer, abuse its good faith or use unfair practices in their dealings with the insurer.

49. Claims adjusters must not misrepresent to an insurer that they are responsible for settling a claim.

DIVISION VI DUTIES AND OBLIGATIONS TOWARDS REPRESENTATIVES

50. Claims adjusters must not denigrate, depreciate or discredit other representatives.

51. Claims adjusters must not mislead other representatives, abuse their good faith or use unfair practices in their dealings with them.

52. Claims adjusters must collaborate with other representatives insofar as they cause no prejudice to their client or to the parties involved in a claim.

53. Claims adjusters must not bring a malicious complaint or make a malicious accusation against other representatives.

DIVISION VII DUTIES AND OBLIGATIONS TOWARDS THE AUTORITÉ DES MARCHÉS FINANCIERS AND THE CHAMBRE DE L'ASSURANCE DE DOMMAGES

54. Claims adjusters must answer without delay any correspondence from the syndic, the co-syndic or an assistant to the syndic of the Chamber in the performance of the duties devolved upon them by the Act respecting the distribution of financial products and services and its regulations.

55. Claims adjusters must attend any meeting as required by the syndic, the co-syndic, an assistant to the syndic or a member of their personnel.

56. Claims adjusters must not, directly or indirectly, obstruct the work of the Autorité des marchés financiers, the Chamber or one of its committees, the syndic, the co-syndic, an assistant to the syndic or a member of their personnel.

57. Claims adjusters who have been informed that they are the subject of an inquiry or a complaint must not communicate with the complainant or the person who requested the holding of the inquiry, unless required to do so in the performance of their mandate.

DIVISION VIII BREACHES OF THE CODE OF ETHICS

58. Acts by claims adjusters that are contrary to the honour and dignity of the profession constitute a breach of the Code of ethics, including

(1) carrying on their professional activities dishonestly or negligently;

(2) carrying on their professional activities under conditions or in situations likely to compromise the quality of services;

(3) taking into account any intervention by a third party that could affect the performance of their professional duties to the detriment of the client or the insured;

(4) knowingly deriving benefit from perjury or false evidence;

(5) knowingly making a statement that is false, misleading or likely to be misleading;

(6) participating in the preparation or preservation of evidence that they know is false;

(7) paying or offering to pay a witness compensation conditional on the content of the witness's testimony or on the outcome of a case;

(8) unduly withholding, concealing, harbouring, falsifying, mutilating or destroying evidence, whether directly or indirectly;

(9) suppressing evidence that they have or a client has a legal obligation to preserve, disclose or produce;

(10) concealing or knowingly withholding that which a legislative or regulatory provision requires them to disclose;

(11) advising or encouraging a client to commit an act that they know is illegal or fraudulent;

(12) not informing the client, the insured or the opposing party of any impediment to the continuation of their mandate;

(13) insistently or repeatedly urging a person to use their professional services;

(14) carrying on their activities with persons not authorized by the Act or its regulations to carry on such activities or using their services to do so;

(15) charging for professional services not rendered or falsely described; and

(16) using or appropriating, for personal purposes, money or securities entrusted to them in the performance of any mandate, whether the activities carried on by them are in the sector of claims adjustment or in another sector governed by the Act.

59. This Regulation replaces the Code of ethics of claims adjusters approved by Order in Council 1040-99 dated 8 September 1999.

60. 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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Draft Regulation

Cinema Act
(R.S.Q., c. C-18.1)

Fees for examination and duties payable — Amendment

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1) and section 170 of the Cinema Act (R.S.Q., c. C-18.1), that the Regulation to amend the Regulation respecting the fees for examination and duties payable under the Cinema Act, made by the Régie du cinéma and appearing below, may be submitted to the Government for approval on the expiry of 60 days following this publication.

The draft Regulation proposes to amend certain provisions concerning the duties for filing certificates issued by the Régie du cinéma so that costs are reduced when several film titles form part of a compilation.

Any interested person having comments to make on the draft Regulation is asked to send them in writing, before the expiry of the 60-day period, to Christine Bolduc, Secretary of the Régie, 390, rue Notre-Dame Ouest, bureau 100, Montréal (Québec) H2Y 1T9; telephone: 514 873-2371, extension 229 or fax: 514 864-3229.

CHRISTINE SAINT-PIERRE,
*Minister of Culture, Communications
and the Status of Women*

Regulation to amend the Regulation respecting the fees for examination and duties payable under the Cinema Act*

Cinema Act
(R.S.Q., c. C-18.1, s. 167, par. 6.2)

1. Section 6 of the Regulation respecting the fees for examination and duties payable under the Cinema Act is amended by inserting the following after the first paragraph:

“Where several films are put together on a single medium or on several media in a single package, case, box or other container, the duties are \$55 for one film title of a compilation and \$3 for the other titles.”.

2. 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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* The Regulation respecting the fees for examination and duties payable under the Cinema Act, approved by Order in Council 744-92 dated 20 May 1992 (1992, *G.O.* 2, 2750), was last amended by the regulation approved by Order in Council 1498-2002 dated 18 December 2002 (2003, *G.O.* 2, 59). For previous amendments, refer to the *Tableau des modifications et Index sommaire*, Québec Official Publisher, 2007, updated to 1 March 2007