

Gouvernement du Québec

O.C. 646-2009, 4 June 2009

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

Bailiff

**— Practice of the profession within a partnership
or a joint-stock company**

Regulation respecting the practice of the profession
of bailiff within a partnership or a joint-stock company

WHEREAS, under paragraph *p* of section 94 of the Professional Code (R.S.Q., c. C-26, amended by chapter 11 of the Statutes of 2008), the board of directors of a professional order may make a regulation respecting the practice of the profession within a partnership or a joint-stock company;

WHEREAS, under paragraphs *g* and *h* of section 93 of the Code, amended by section 61 of chapter 11 of the Statutes of 2008, the board of directors of a professional order must, by regulation, impose on its members who carry on their professional activities within a partnership or a joint-stock company the obligation to furnish and maintain coverage, on behalf of the partnership or company, against liabilities of the partnership or company arising from fault in the practice of their profession and fix the conditions and procedure applicable to a declaration made to the Order;

WHEREAS the board of directors of the Chambre des huissiers de justice du Québec made the Regulation respecting the practice of the profession of bailiff within a partnership or a joint-stock company;

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

WHEREAS, pursuant to section 95 of the Professional Code, amended by section 63 of chapter 11 of the Statutes of 2008, and subject to section 95.2 of the Code, amended by section 65 of chapter 11 of the Statutes of 2008, every regulation made by the board of directors of a professional order under the Code or an Act constituting

a professional order must 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, pursuant to the first paragraph of section 95.2 of the Professional Code, a regulation made by the board of directors under section 65, 88, 89, 90 or 91, paragraph *a*, *b*, *d*, *e*, *f*, *g* or *h* of section 93, or paragraph *a*, *j*, *n* or *o* of section 94 of the Code must be transmitted for examination to the Office, which may approve it with or without amendment, and the same applies to any regulation under paragraph *p* of section 94 of the Code if it is not the first regulation made by the board of directors under that paragraph;

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 bailiff within a partnership or a joint-stock company was published in Part 2 of the *Gazette officielle du Québec* of 16 July 2008 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 has examined the Regulation and made its recommendation;

WHEREAS the Office approved section 9 of the Regulation, concerning the security to be furnished by a partnership or joint-stock company, and section 5 of the Regulation, concerning the declaration;

WHEREAS it is expedient to approve the Regulation with amendments;

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

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

GÉRARD BIBEAU,
Clerk of the Conseil exécutif

Regulation respecting the practice of the profession of bailiff within a partnership or a joint-stock company

Professional Code
(R.S.Q., c. C-26, ss. 93, pars. *g* and *h*, and 94, par. *p*;
2008, c. 11, ss. 1 and 61)

DIVISION I GENERAL

1. Bailiffs may, subject to the terms, conditions and restrictions established in this Regulation, carry on their 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).

Bailiffs must at all times take reasonable measures to ensure that the company or partnership allows them to comply with the Court Bailiffs Act (R.S.Q., c. H-4.1), the Professional Code and the regulations made under that Code or that Act.

2. Bailiffs may carry on their professional activities within a partnership or company referred to in the first paragraph of section 1 that holds itself out exclusively as a partnership or joint-stock company of bailiffs if at all times

(1) the majority of the voting rights attached to the company shares or partnership units are held

(a) by one or more bailiffs;

(b) by a joint-stock company where at least 90% of the voting rights attached to the shares are held by one or more bailiffs carrying on their professional activities within the partnership or joint-stock company;

(c) by a trust where all the trustees are bailiffs carrying on their professional activities within the partnership or joint-stock company; or

(d) by both persons and trusts referred to in subparagraphs *a* to *c*;

(2) a majority of the directors of the board of directors of the joint-stock company or of the partners or directors appointed by the partners to manage the affairs of the limited liability partnership are bailiffs carrying on their professional activities;

(3) no partner, director, officer or shareholder of the partnership or joint-stock company is to assume responsibilities or perform duties incompatible with

the practice of the profession of bailiff, as provided in the Code of ethics of bailiffs approved by Order in Council 550-2002 dated 7 May 2002; and

(4) to constitute a quorum at a meeting of the board of directors or, as the case may be, the internal management board of the partnership or joint-stock company, the majority of members present who may express themselves must be bailiffs.

Bailiffs who are partners, directors, officers or shareholders of the partnership or joint-stock company must ensure that the conditions listed in the first paragraph appear in the articles of the joint-stock company or in the contract of the limited liability partnership and that the documents stipulate that the partnership or joint-stock company is constituted for the purpose of carrying on professional activities.

3. If a person referred to in section 2 is struck off the roll for a period in excess of 3 months or has had his or her permit revoked, the person may not, during the period of the striking off or revocation, directly or indirectly hold any units in the partnership or shares in the joint-stock company.

During that period, the person may not hold the position of director, officer or representative of the partnership or joint-stock company.

4. A bailiff who wishes to carry on professional activities within a partnership or joint-stock company must, before starting to carry on the activities, provide the secretary of the Order with the following:

(1) a sworn declaration in compliance with section 5, accompanied by the fees payable prescribed by the board of directors of the Order;

(2) a written document from the competent authority to the effect that the partnership or joint-stock company is covered by security in compliance with Division II;

(3) in the case of a joint-stock company, a copy of the incorporating instrument issued by the competent authority, certifying the existence of the joint-stock company;

(4) a written document from the competent authority to the effect that the partnership or joint-stock company is registered in Québec;

(5) an irrevocable written undertaking from the partnership or joint-stock company within which the bailiff carries on professional activities allowing a person, committee, council or tribunal referred to in section 192

of the Professional Code to require disclosure of and obtain any document listed in section 12 from a person, or to obtain a true copy of such a document; and

(6) where applicable, a 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 has become a limited liability partnership.

5. The sworn declaration in paragraph 1 of section 4 is made on the form provided for that purpose by the secretary of the Order and contains

(1) the bailiff's name, member number and status within the partnership or joint-stock company;

(2) the name of the partnership or joint-stock company within which the bailiff carries on professional activities and any other names used by the partnership or joint-stock company, as well as the business number assigned to it by the enterprise registrar;

(3) the legal form of the partnership or joint-stock company;

(4) a confirmation that the conditions referred to in section 2 are met;

(5) the address of the head office or, as the case may be, of the principal establishment of the partnership or joint-stock company and the address of its other establishments;

(6) in the case of a joint-stock company, the names and home addresses of the directors and officers of the company and the order or professional group to which they belong, where applicable;

(7) in the case of a limited liability partnership, the names and home addresses of the partners and directors of the partnership and the order or professional group to which they belong, where applicable;

(8) where applicable, the date on which the general partnership is continued as a limited liability partnership; and

(9) identification, where applicable, of the respondent acting under section 6 and confirmation that the respondent accepts the mandate and undertakes to ensure the accuracy of the information provided to the Order and immediately notify the Order of the end of the mandate.

6. If more than one bailiff carries on professional activities within a partnership or joint-stock company, one representative may make a declaration for all the bailiffs in the partnership or company.

The representative's declaration is each bailiff's declaration and each bailiff remains fully responsible for the accuracy of the information provided pursuant to paragraphs 1 and 2 of section 5.

The representative must be a bailiff who is a partner, director, officer or shareholder of the partnership or company.

7. A bailiff or representative must

(1) update and provide, before 31 March of each year, the declaration prescribed in paragraph 1 of section 4, accompanied by the fees payable prescribed by the board of directors of the Order; and

(2) promptly notify the secretary of the Order of any change in the security prescribed in Division II or in the information given in the declaration prescribed in paragraph 1 of section 4 that might violate the conditions set out in section 2.

8. If a bailiff becomes aware that a condition set out in this Regulation or in Chapter VI.3 of the Professional Code is no longer met, the bailiff must, within 15 days, take the necessary measures to comply, failing which the bailiff is no longer authorized to carry on professional activities within the partnership or joint-stock company.

DIVISION II

PROFESSIONAL LIABILITY COVERAGE

9. A bailiff who carries on professional activities within a partnership or joint-stock company must furnish and maintain, for the partnership or company, security against the professional liability of the partnership or company that may arise from fault on the part of the bailiff in carrying on professional activities within the partnership or joint-stock company, by joining the professional liability group insurance plan contract entered into by the Order.

10. The security must include

(1) an undertaking by the insurer to pay in lieu of the partnership or joint-stock company, over and above the amount of the security to be furnished by the bailiff pursuant to the Règlement sur l'assurance de la responsabilité professionnelle de la Chambre des huissiers de

justice du Québec, approved by the Office des professions du Québec on 3 February 2000 (2000, *G.O.* 2, 1161) according to a notice of approval published in the *Gazette officielle du Québec* dated 23 February 2000, up to the amount of the security, any sum that the partnership or joint-stock company may be legally bound to pay to third parties on a claim filed during the coverage period and arising from fault on the part of the bailiff in the carrying on of professional activities within the partnership or joint-stock company;

(2) an undertaking by the insurer to take up the cause of the partnership or joint-stock company and defend it in any action against it and to pay, in addition to the amounts covered by the security, all legal costs of actions against the partnership or joint-stock company, including the costs of the inquiry and defence and interest on the amount of the security;

(3) an undertaking by the insurer that the security is not less than \$1,000,000 per claim and not less than \$1,000,000 for all claims per annual coverage period, regardless of the number of members in the partnership or joint-stock company;

(4) where a bailiff carries on alone all professional activities within a joint-stock company, an undertaking by the insurer that the security is not less than \$500,000 per claim and not less than \$1,000,000 for all claims per annual coverage period; and

(5) an undertaking by the insurer to give the secretary of the Order a 30-day prior notice of intent to terminate the coverage, to modify it with respect to any of the conditions set out in this section or not to renew it.

DIVISION III ADDITIONAL INFORMATION

11. Bailiffs carrying on professional activities within a general partnership that is continued as a limited liability partnership, or within a joint-stock company or a limited liability partnership that is established, must send to their clients, within 15 days of the occurrence, a notice informing them of the nature and effects of the occurrence of the partnership or joint-stock company, in particular with respect to the bailiff's professional liability and that of the partnership or joint-stock company.

12. The documents that may be required from a partnership or company pursuant to paragraph 5 of section 4 are as follows:

(1) if the bailiff carries on professional activities within a joint-stock company,

(a) an up-to-date register of the articles and by-laws of the joint-stock company;

(b) an up-to-date register of the shares of the joint-stock company;

(c) an up-to-date register of the shareholders of the joint-stock company;

(d) an up-to-date register of the directors of the joint-stock company;

(e) any shareholders' agreement or voting agreement, and amendments;

(f) any agreement concerning a stock option with voting rights or concerning any other right, even if conditional, granted to a person and enabling the person to be issued such stock;

(g) the declaration of registration of the joint-stock company and any update; and

(h) the names and home addresses of the company's principal officers;

(2) if the bailiff carries on professional activities within a limited liability partnership,

(a) the partnership contract and amendments;

(b) the declaration of registration of the partnership and any update;

(c) the names and home addresses of the partnership's principal officers;

(d) an up-to-date register of the partners; and

(e) where applicable, an up-to-date register of the directors of the partnership.

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