

WHEREAS, under section 35 of the Act to provide a framework for mandatory state financing of certain legal services (2010, c. 12), the Regulation, provided it is made in the year 2010, is not subject to the publication requirement set out in section 8 of the Regulations Act (R.S.Q., c. R-18.1) and it comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date set in the Regulation, and its provisions may have effect from any date not prior to 4 June 2010;

WHEREAS it is expedient to make the Regulation;

WHEREAS it is advisable that the Regulation come into force on 7 September 2010;

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

THAT the Regulation respecting the application of certain provisions of Chapter III of the Act respecting legal aid and the provision of certain other legal services, attached to this Order in Council, be made.

GÉRARD BIBEAU,
Clerk of the Conseil exécutif

Regulation respecting the application of certain provisions of Chapter III of the Act respecting legal aid and the provision of certain other legal services

An Act respecting legal aid and the provision of certain other legal services (R.S.Q., c. A-14, s. 83.17; 2010, c. 12, ss. 30 and 35)

1. The cost of a legal service provided for in section 83.16 of the Act respecting legal aid and the provision of certain other legal services (R.S.Q., c. A-14) includes

(a) the fees of an advocate;

(b) the fees of any bailiff or any stenographer who acts as such on behalf of the person to whom the legal service is rendered;

(c) the fees and costs of any expert who, with the prior authorization of the director general, acts for the person to whom the legal service is rendered; and

(d) other expenses.

2. This Regulation comes into force on 7 September 2010.

Gouvernement du Québec

O.C. 702-2010, 18 August 2010

An Act respecting legal aid and the provision of certain other legal services (R.S.Q., c. A-14)

Regulation **— Amendments**

Regulation to amend the Regulation respecting the application of the Legal Aid Act

WHEREAS, under subparagraphs *c, d, e, g, i, j, k, m, n,* and *p* of the first paragraph of section 80 of the Act respecting legal aid and the provision of certain other legal services (R.S.Q., c. A-14), as amended by section 27 of chapter 12 of the Statutes of 2010, the Commission des services juridiques may make regulations on the various matters set out therein;

WHEREAS, under the second paragraph of section 83.12 of the Act, as introduced by section 30 of chapter 12 of the Statutes of 2010, the Commission may, by regulation, establish the main criteria on which a decision under the first paragraph of that section is to be based;

WHEREAS, under section 83.18 of the Act, as introduced by section 30 of chapter 12 of the Statutes of 2010, the Commission may, by regulation, determine the cases in which the fees and expenses of advocates not in the employ of a centre or the Commission, whose services are retained following a court order referred to in section 83.1 applies, are paid by a centre or by the Commission, the place where a person wishing to obtain legal services must send an application and prescribe rules in that regard, and the manner in which the list provided for in section 83.10 is drawn up and kept up to date, as well as the information it must contain;

WHEREAS, under section 36 of the Act to provide a framework for mandatory state financing of certain legal services (2010, c. 12), provided they are made in the year 2010, the first regulations made under those legislative provisions are made by the Government and are not subject to the publication requirement set out in section 8 of the Regulations Act (R.S.Q., c. R-18.1) and, despite section 17 of that Act, they come into force on the date of their publication in the *Gazette officielle du Québec* or on any later date set in the regulations and their provisions may have effect from any date not prior to 4 June 2010;

WHEREAS it is expedient to make the Regulation;

WHEREAS it is advisable that the Regulation come into force on 7 September 2010;

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

THAT the Regulation to amend the Regulation respecting the application of the Legal Aid Act, attached to this Order in Council, be made.

GÉRARD BIBEAU,
Clerk of the Conseil exécutif

Regulation to amend the Regulation respecting the application of the Legal Aid Act*

An Act respecting legal aid and the provision of certain other legal services
(R.S.Q., c. A-14, ss. 80, 83.12, 2nd par., and 83.18; 2010, c. 12, ss. 30 and 36)

1. The title of the Regulation respecting the application of the Legal Aid Act is replaced by the following:

“REGULATION RESPECTING THE APPLICATION OF THE ACT RESPECTING LEGAL AID AND THE PROVISION OF CERTAIN OTHER LEGAL SERVICES”.

2. Section 1 is replaced by the following:

“1. In this Regulation, unless the context indicates otherwise,

(1) “service” means a legal aid service referred to in Division III or, as the case may be, a service referred to in Division IV;

(2) “centre” or “legal aid centre” means a regional legal aid centre or a local centre referred to in paragraph c of section 32 of the Act respecting legal aid and the provision of certain other legal services (R.S.Q., c. A-14).”.

3. Section 1.1 is revoked.

4. Section 22 is amended by replacing “and legal aid activities of” in paragraph *a* by “activities and activities relating to the services rendered by”.

5. Section 30 is amended by replacing “assigned to a legal aid proceeding” by “who provides services under the Act”.

6. Section 35 is amended by replacing “legal aid activities” by “activities relating to services rendered”.

7. Section 51 is amended by replacing “their past or current legal aid services and to enable the Commission to make an analysis of legal aid needs in Québec” in the first paragraph by “past or current services and to enable the Commission to plan the service offer”.

8. The following is inserted after section 51.1:

“51.2. The documents necessary for performing the functions and duties of the Commission and legal aid centres, including the books, registers, reports, financial reports, budget estimates, accounts and statistics which, under the Act and this Regulation, must be transmitted to the Commission by regional centres or to regional centres by local centres, may be drafted in electronic form. They must then be transmitted in that form.”.

9. Section 63 is amended by striking out “, where applicable, the date fixed for a meeting to fill out the application,”.

10. Section 74 is amended by inserting “or the Commission” after “director general”.

11. Section 77 is amended

(1) by inserting “or by the Commission” in the first paragraph after “employed by a centre”;

(2) by striking out the last three paragraphs.

12. Section 81 is amended

(1) by replacing “his statement of fees or report, in accordance with section 77, as soon as he is informed that the recipient’s file has been delegated to another advocate or notary.” by “his statement of fees, in accordance with the Regulation respecting the report relating to the services rendered by certain advocates and notaries, made by Order in Council 700-2010 dated 18 August 2010, as soon as the advocate is informed in writing that the recipient requested a replacement of advocate or notary.”;

(2) by adding the following paragraph at the end: “The centre must also inform the advocate or notary of the name of the replacement advocate or notary.”.

* The Regulation respecting the application of the Legal Aid Act (R.R.Q., 1981, c. A-14, r.1) was last amended by the regulation approved by Order in Council 1453-97 dated 5 November 1997 (1997, G.O. 2, 5475). For previous amendments, refer to the *Tableau des modifications et Index sommaire*, Québec Official Publisher, 2010, updated to 1 April 2010.

13. The following is inserted after section 81.1:

“**81.2.** An advocate or notary who, in the course of carrying out a mandate, ceases to represent a recipient must so inform in writing the recipient and the director general who entrusted him or her with the mandate.

81.3. The Commission pays for and on behalf of the legal aid centre concerned the fees and expenses of an advocate or notary who is not in the employ of that centre and whose services were retained by that centre on behalf of a recipient, after receipt of the statement provided for in section 2 of the Regulation respecting the report relating to the services rendered by certain advocates and notaries, and in accordance with the terms and conditions set out in that Regulation, as well as the fees and expenses of a stenographer or bailiff who performs duties on behalf of a recipient.”.

14. The following is added after section 92:**“DIVISION IV
PROVISION OF CERTAIN LEGAL SERVICES****§1. List of advocates and other documents**

93. For the purposes of this Division and Chapter III of the Act, only the services of an advocate are considered.

94. The Commission is to establish and maintain, for the whole territory of Québec, an up-to-date list of the advocates referred to in subparagraph 1 of the first paragraph of section 83.7 of the Act who agree in writing to provide their professional services to the persons referred to in section 61.1 or 83.1 of the Act.

In particular, that list includes the following information:

- (1) the section of the Bar to which the advocate belongs;
- (2) the advocate’s professional domicile address;
- (3) the year in which the advocate was entered on the Roll of the Order of Advocates;
- (4) every judicial district in which the advocate practises.

95. An advocate may at all times write to the Commission requesting it to withdraw his or her name from the list mentioned in section 94. The Commission must agree to such request.

96. An advocate whose name is not on the list or was withdrawn from the list provided for in section 94 may request that his or her name be entered thereon. The Commission must agree to such request. All verbal applications must be confirmed in writing.

97. The Commission keeps a register indicating, in particular, the names of the persons who receive services under Chapter III of the Act, the date of the order or of the Commission’s decision, if any, how the application was disposed of and the date on which it was received, as well as the nature of the services.

98. The Commission keeps a register indicating, in particular, the nature of the mandates entrusted to advocates, the date on which the mandate was entrusted, how the mandate was disposed of and the date on which the mandate was terminated.

§2. Application for legal services

99. An application for legal services may be made with any regional centre provided that the applicant gives reasons if not applying to the regional centre nearest his or her place of residence.

100. The following are deemed to be applications for legal services and constitute a description of the nature of the services required:

- (1) a decision of the Commission to allow a recipient to receive the professional services of an advocate in accordance with Chapter III of the Act;
- (2) a court order recognizing a person’s entitlement to the services of an advocate paid by the State, to protect the person’s constitutional right to a fair trial in penal or criminal matters;
- (3) a court order designating an advocate pursuant to a provision of the Criminal Code (Revised Statutes of Canada, 1985, c. C-46).

101. Where the applicant has chosen a particular advocate who is not in the employ of a regional legal aid centre or the Commission, the director general gives that advocate a mandate describing the nature of the services required, the tariff applicable and any contribution that must be paid to the advocate by the person receiving the services.

Where the Commission provides a person with the professional services of an advocate who is not in the employ of a regional centre or the Commission, the Commission entrusts to that advocate a mandate con-

taining the same information as in the first paragraph, the tariff applicable and any contribution that must be paid to the advocate by the person receiving the services.

102. The document confirming the right of a person to legal services under Chapter III of the Act is issued in duplicate and contains the following information:

- (1) the name and address of the person in question;
- (2) where applicable, the name of the legal aid centre or bureau that issued a certificate of eligibility under Chapter II of the Act for the same legal services and the number of that certificate;
- (3) a description of the nature of the services required;
- (4) the court record number;
- (5) if a contribution is to be paid under either Chapter II of the Act or a court order, the contribution amount and any terms and conditions of payment;
- (6) if property is furnished as security, a description of the property;
- (7) the date on which the application for services is accepted; and
- (8) the tariff applicable.

103. Subject to section 104, a person who has already received the services of an advocate who still has not completed the mandate entrusted may obtain from the director general the services of another advocate if the person gives reasonable reasons. The advocate, if not in the employ of a centre or the Commission, must send a statement of fees and expenses, in accordance with the second paragraph of section 10 of the Regulation respecting the report relating to the services rendered by certain advocates and notaries, made by Order in Council 700-2010 dated 18 August 2010, as soon as the advocate is informed in writing that the case was entrusted to another advocate.

104. An advocate who is not in the employ of a regional centre or the Commission may, at any time, replace, within the scope of the same mandate, another advocate from the same firm to whom the mandate was entrusted. Such replacement is effected by means of a notice signed by the person receiving the services and sent to the director general or the Commission, as the

case may be, that entrusted the mandate. The notice indicates the legal services for which the replacement is made and the duration of the replacement. The director general and the Commission are bound by such notice.

105. An advocate who, in the course of carrying out a mandate, ceases to represent a person referred to in section 61.1 or 83.1 of the Act must inform in writing that person and the director general or the Commission, as the case may be, that entrusted the mandate.

106. The Commission pays the fees and expenses of an advocate, who is not in the employ of a regional centre or the Commission and who represents a person referred to in section 83.1 or section 61.1 of the Act, whose services are covered by the fees set in Division II of Chapter II of Part I of the Regulation respecting the tariff of fees and expenses of advocates in the course of providing certain legal services and the dispute settlement procedure, made by Order 2960 of the Minister of Justice dated 12 August 2010, after receipt of the statement provided for in section 2 of the Regulation respecting the report relating to the services rendered by certain advocates and notaries, made by Order in Council 700-2010 dated 18 August 2010 and in accordance with the terms and conditions set out in that Regulation.

107. For the purposes of the first paragraph of section 83.12 of the Act, the Commission is to take the following criteria into account:

- (1) the number of accused in a trial;
- (2) the number of accusations;
- (3) the nature of the offences;
- (4) the scope and complexity of the evidence;
- (5) the complexity of applicable rules of law;
- (6) the anticipated length of the trial; and
- (7) the public interest.”.

15. This Regulation comes into force on 7 September 2010.