

M.O., 2010**Order number 2960 of the Minister of Justice dated 12 August 2010**

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

Regulation respecting the tariff of fees and expenses of advocates in the course of providing certain legal services and the dispute settlement procedure

THE MINISTER OF JUSTICE,

CONSIDERING the first paragraph of section 83.21 of the Act respecting legal aid and the provision of certain other legal services (R.S.Q., c. A-14), which provides that, with the approval of the Conseil du trésor, the Minister of Justice may enter into an agreement with the bodies authorized to represent advocates concerning the tariff of fees applicable for the purposes of the Act as well as a procedure for the settlement of disputes and the matters to which the procedure may apply;

CONSIDERING the second paragraph of that section 83.21, which empowers the Minister of Justice, failing an agreement under the first paragraph, to make, with the approval of the Conseil du trésor, a regulation to serve as the agreement;

CONSIDERING section 37 of the Act to provide a framework for mandatory state financing of certain legal services (S.Q. 2010, c. 12), which provides that the first regulation made under the second paragraph of section 83.21 of the Act respecting legal aid and the provision of certain other legal services may be enacted even if it is not published in the Gazette officielle du Québec despite section 8 of the Regulations Act (R.S.Q., c. R-18.1) and provided it is made in the year 2010;

CONSIDERING that the negotiations undertaken with the Barreau du Québec have not led to an agreement under the first paragraph of section 83.21 of the Act respecting legal aid and the provision of certain other legal services;

CONSIDERING that a tariff of fees payable to advocates who are not employed by a legal aid regional centre or the Commission des services juridiques, except those who have entered into a professional services contract with the Commission, and who accept to provide professional services to persons benefiting from certain legal services under Chapter III of that Act must be made for the implementation of the Act;

CONSIDERING that the Act to provide a framework for mandatory state financing of certain legal services was assented to on 4 June 2010;

ORDERS AS FOLLOWS:

The Regulation respecting the tariff of fees and expenses of advocates in the course of providing certain legal services and the dispute settlement procedure, attached to this Order, is hereby made.

JEAN-MARC FOURNIER,
Minister of Justice

Regulation respecting the tariff of fees and expenses of advocates in the course of providing certain legal services and the dispute settlement procedure

An Act respecting legal aid and the provision of certain other legal services
(R.S.Q., c. A-14; 2010, c. 12, ss. 30 and 37)

PRELIMINARY

1. This Regulation establishes the tariff of fees applicable to the services rendered by every advocate who is not employed by a legal aid regional centre or the Commission des services juridiques (Commission) or who has not entered into a professional services contract with the Commission, and who accepts to provide professional services to a person benefiting from certain legal services under Chapter III of the Act.

The Regulation also provides rules concerning expenses as well as a dispute settlement procedure.

2. Payment of fees and expenses is claimed in accordance with the reporting rules in 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.

PART I
TARIFF OF FEES**CHAPTER I**
GENERAL

3. An advocate is entitled to remuneration only for services actually rendered.

4. For the purposes of this Regulation, a day may comprise a maximum of 3 work periods, one in the morning, one in the afternoon and one in the evening. Morning ends at 1:00 p.m. and evening starts at 7:00 p.m.

A preparation period and a hearing period are considered work periods.

5. The Commission determines the fees applicable to a service not included in the tariff by taking into account the fees provided for in this Regulation for similar proceedings, if applicable.

6. Where a person receives the professional services of an advocate under Chapter III of the Act following a decision of the Commission, pursuant to section 61.1 of the Act, and those services are suspended or withdrawn, or if the person is no longer entitled to them or waives them, the advocate is remunerated according to the tariff for the services rendered until reception of the notice provided for in section 74 of the Regulation respecting the application of the Legal Aid Act and the provision of certain other legal services (R.R.Q., 1981, c. A-14, r.1), if applicable, and for the legal services rendered subsequently for the performance of conservatory acts necessary for the preservation of the rights of the person or required by the court.

7. The following fees apply to the services rendered by an advocate:

(1) for any motion to cease representing: \$60;

(2) if the court refuses or is unable to proceed in the presence of the parties on the day fixed for the hearing: \$100;

(3) all professional services related to an application for an extension concerning the execution of a sentence or order of the court: \$80;

(4) to participate in a penal facilitation conference, per work period: \$215.

CHAPTER II SPECIAL RULES

DIVISION I FEES APPLICABLE FOLLOWING A DESIGNATION ORDER PROVIDED FOR IN THE ACT OR DETER- MINATION BY THE COMMISSION

§1. General

8. The provisions of this Division apply where the Commission determines, under section 83.12 of the Act, that the fees provided for therein are those that apply and where a court designation order has been issued pursuant to the Criminal Code.

9. Where a flat-rate remuneration is prescribed for all services and more than one advocate is acting in the case, each advocate, if in private practice, is entitled, subject to section 104 of the Regulation respecting the

application of the Legal Aid Act and the provision of certain other legal services and section 10 of the Regulation respecting the report relating to the services rendered by certain advocates and notaries, to the part of the flat rate corresponding to the services rendered by the advocate.

10. Where a flat-rate remuneration is prescribed for services, the advocate who receives the mandate during the proceedings and who sees the case through is entitled to the full remuneration in that case, if no other service was rendered pursuant to the Act to the person receiving the service.

Where a mandate is entrusted following an order issued pursuant to section 486.3 of the Criminal Code, the advocate is entitled to the full flat-rate remuneration upon completion of the mandate.

11. Services rendered by an advocate on a finding or a plea of guilty to a less and included offence are remunerated according to the tariff applicable in respect of the offence charged.

12. Where an advocate represents a client indicted by more than one information and the trial or a hearing during which the accused pleads guilty to the various charges is held in the same court and on the same day, the advocate is entitled to the full remuneration for the best paid information and to one-half of the prescribed tariff for each other information.

13. Where an advocate represents 2 or more persons charged with the same offence or with a like offence arising from the same course of events, and where the proceedings are held in the same court at or about the same time, the advocate is entitled to a total remuneration equivalent to the remuneration payable to represent 1 person, increased by the following percentage according to the number of represented persons:

(1) 2 persons: 50%;

(2) 3 persons: 100%;

(3) 4 persons: 150%;

(4) 5 persons or more: 200%.

14. Where the mandate is of an exceptional nature owing to the circumstances of the work or the complexity of the case, the advocate may submit an application for special consideration so that the Commission determines the excess fees.

15. Where the court requests or authorizes to plead in writing, additional fees of \$160 are payable.

§2. Indictable offences within the exclusive jurisdiction of the Superior Court of criminal jurisdiction under section 469 of the Criminal Code

16. This subdivision provides the fees that an advocate may claim for services rendered to a person charged with an indictable offence within the exclusive jurisdiction of the Superior Court of criminal jurisdiction under section 469 of the Criminal Code.

17. Appearance and any other proceeding completed on the same day, including preparation: \$75.

18. Bail hearing actually held when the prosecution objects to release: \$160.

19. Preparation of the preliminary inquiry, including interviews with the accused and witnesses, visits to the scene of the crime and legal research: \$270.

20. All services rendered on a preliminary objection presented aside from the preliminary inquiry or the trial, where the judgment granting it terminates the prosecution: \$800.

21. Waiver of preliminary inquiry under section 549(1) or 549(1.1) of the Criminal Code: \$100.

22. Preliminary inquiry, per hearing period: \$215.

23. Attendance for order on preliminary inquiry or for voluntary examination, where no witnesses are heard: \$60.

24. Preparation of trial actually held for which judgment is rendered, including interviews with the accused and witnesses, visits to the scene of the crime and legal research: \$800.

25. Trial, per hearing period: \$400.

26. The services of a junior counsel may be authorized by the director general or the Commission only in cases of first-degree or second-degree murder.

Such counsel is entitled to \$100 per hearing period and is not entitled to preparation fees.

27. Attendance for the purpose of entering a plea of guilty: \$150.

28. Withdrawal of a plea of guilty: \$250.

29. Sentencing hearing:

(1) for the judgment or the judgment and the sentence: \$165;

(2) for the sentence only: \$80.

Those amounts apply only if attendance takes place on a day other than the day on which the client was found guilty or entered a plea of guilty.

30. Attendance for adjournment: \$25.

An advocate may claim no more than twice the adjournment fees obtained at the advocate's request.

§3. Indictable offences other than those within the exclusive jurisdiction of the Superior Court of criminal jurisdiction, under section 469 of the Criminal Code, or within the absolute jurisdiction of a provincial court judge, under section 553 of the Criminal Code

31. This subdivision provides the fees that an advocate may claim for services rendered to a person charged with an indictable offence other than those within the exclusive jurisdiction of the Superior Court of criminal jurisdiction, under section 469 of the Criminal Code, or within the absolute jurisdiction of a provincial court judge, under section 553 of the Criminal Code.

32. Bail hearing actually held when the prosecution objects to release: \$150.

33. All services rendered until the final judgment in first instance, including two hearing periods for the preliminary inquiry and two hearing periods at trial: \$550.

If the duration of the hearing exceeds the duration in the first paragraph, the following additional fees are payable:

(1) for the preliminary inquiry, per hearing period: \$215;

(2) for the trial, per hearing period:

i. trial before judge and jury: \$400;

ii. trial before judge only: \$215.

§4. Indictable offences under section 553 of the Criminal Code or summary conviction offences under Part XXVII of the Criminal Code

34. This subdivision provides the fees that an advocate may claim for services rendered to a person charged with an indictable offence under section 553 of the Criminal Code or with a summary conviction offence under Part XXVII of the Criminal Code.

35. Bail hearing actually held when the prosecution objects to release: \$150.

36. All other services rendered until the final judgment in first instance, including 2 hearing periods: \$330.

If the trial requires more than 2 hearing periods, per additional hearing period: \$215.

§5. Services rendered in appeal

37. This subdivision provides the fees that an advocate may claim for services rendered in appeal.

38. Appeal by way of case stated:

(1) drafting and preparation of an application for a case stated: \$210;

(2) attendance necessary before the trial court judge for the preparation of a case stated: \$110;

(3) preparation of all other proceedings including attendance: \$110;

(4) preparation and drafting of notice of appeal: \$100

(5) hearing of appeal: \$430.

39. Appeal to the Court of Appeal on questions of law in summary conviction proceedings:

(1) preparation of all proceedings preliminary to the hearing (including drafting, filing of notice of appeal, preparation of joint record) and necessary attendances: \$110;

(2) motion for extension of the time to appeal: \$200;

(3) hearing of application for leave to appeal: \$220;

(4) preparation of argument and factum: \$325;

(5) hearing of appeal: \$325.

40. Appeal to Court of Appeal after verdict by jury:

(1) preparation of all proceedings preliminary to the hearing (including drafting, filing of notice of appeal, preparation of joint record) and necessary attendances: \$600;

(2) hearing of application for leave to appeal: \$220;

(3) motion for extension of the time to appeal: \$200;

(4) preparation of argument and, if applicable, factum: \$800;

(5) hearing of appeal: \$800.

41. Appeal to the Court of Appeal from a judgment delivered by a judge without jury, a judge of the Court of Québec, Criminal Division or Youth Division:

(1) preparation of all proceedings preliminary to the hearing (including drafting, filing of notice of appeal, preparation of joint record) and necessary attendances: \$220;

(2) hearing of application for leave to appeal: \$220;

(3) motion for extension of the time to appeal: \$200;

(4) preparation of argument and, if applicable, factum: \$335;

(5) hearing of appeal: \$335.

42. Appeal to the Court of Appeal from the sentence only:

(1) preparation of all proceedings preliminary to the hearing (including drafting, filing of notice of appeal, preparation of joint record) and necessary attendances: \$220;

(2) hearing of application for leave to appeal: \$220;

(3) motion for extension of the time to appeal: \$200;

(4) preparation of argument and, if applicable, factum: \$200;

(5) hearing of appeal: \$220.

43. In the case of an appeal from verdict or judgment and sentence, the fees provided for in section 40 or 41 are added to those provided for in section 42.

44. All services rendered in relation to an application for bail pending appeal: \$270.

§6. Services rendered before a Review Board

45. For services rendered before a Review Board under sections 672.38 et seq. of the Criminal Code: \$500.

If the hearing lasts more than 1 day, per additional hearing period: \$165.

DIVISION II
FEES APPLICABLE FOLLOWING
DETERMINATION BY THE COMMISSION

46. The provisions of this Division apply where the Commission determined, under section 83.12 of the Act, that the fees provided for therein are those applicable.

§1. Rules related to proceedings before the beginning of the trial

47. The provisions of sections 48 and 49 provide the fees that an advocate may claim for proceedings before the beginning of the trial.

48. Appearance and any other proceeding completed on the same day: \$75.

49. Hearings held before the beginning of the trial, in particular bail hearing where the prosecution objects to release, disclosure of evidence, preliminary inquiry, pre-trial conference or motions before the beginning of the trial, per hearing period: \$250.

§2. Rules related to the preparation of the trial

50. This subdivision establishes the maximum number of work periods to which an advocate may be entitled to prepare the trial.

Each preparation period is paid \$250.

51. For the general preparation of the trial, an advocate has a bank of preparation periods that may be used throughout the proceedings, in particular before the beginning of the trial or while the trial is interrupted.

The maximum number of preparation periods to which an advocate may be entitled is 3 preparation periods for each day of hearing scheduled for the presentation of the prosecution's evidence as established during the pre-trial conference or as indicated in the court's record.

52. While the trial is being heard, including motions in the course of the trial, an advocate is entitled to a maximum of 1 preparation period per day of hearing.

53. If the trial is interrupted for more than 3 consecutive weeks, an advocate is entitled to a maximum of 8 preparation periods to be used during the interruption.

54. The Commission may, at the end of the trial and upon request by the advocate, reconsider the number of preparation periods to which the advocate was entitled

under the second paragraph of section 51 where the number of hearing days actually held for the trial is greater than one and a half the number of hearing days scheduled for the presentation of the prosecution's evidence.

55. When an advocate replaces an advocate who represented a person under this Division or where an advocate's remuneration becomes governed by this Division during the proceedings, the advocate must submit to the Commission an application containing a detailed estimate of the preparation time needed to represent that person.

The Commission examines the application by taking into account the circumstances of the case and determines the maximum number of preparation periods to which the advocate is entitled instead of the preparation periods provided for in section 51.

§3. Rules related to the hearing of the trial

56. The following fees apply to the hearing of the trial, including motions during the trial:

(1) before judge only, from the beginning of the presentation of the prosecutor's evidence: \$250 per hearing period;

(2) before jury, from the beginning of the jury selection: \$400 per hearing period.

57. Where the Court requests or authorizes to plead in writing, the advocate is entitled to a maximum of 8 work periods. Each work period is paid \$250.

58. Where an advocate represents a client accused in more than 1 information, the advocate is entitled to the full remuneration for a single information.

59. Where, in a single trial, an advocate represents several persons under this Regulation, the advocate is entitled to a total remuneration equivalent to the remuneration payable to represent 1 person, increased by the following percentage according to the number of represented persons:

(1) 2 persons: 25%;

(2) 3 persons: 35%;

(3) 4 persons: 45%;

(4) 5 persons or more: 50%.

§4. Rules applicable to an appeal

60. Subdivision 5 of Division I of this Chapter applies to this Division, with the necessary modifications.

PART II EXPENSES

61. Expenses include fees for expert reports and travel allowances.

The Commission determines the eligible expenses that are not otherwise provided for.

62. Expenses may not exceed the actual expenses actually incurred by the advocate and are paid on presentation of supporting documents.

63. An advocate is entitled to a travel allowance only if the destination is farther than a radius of 25 km from his or her office.

When using his or her personal motor vehicle, an advocate is entitled to the travel allowance per kilometre provided for in section 8 of the Directive sur les frais remboursables lors d'un déplacement et autres frais inhérents (TB 202754 dated 30 August 2005) as established under the Public Administration Act (R.S.Q., c. A-6.01), subject to the following special rules:

(1) according to the distance actually travelled, in the case of a trip beyond a 25-km radius from his or her office and within the boundaries of the judicial district where the advocate has his or her office;

(2) according to the distance actually travelled up to a maximum of 200 km, in the case of a trip beyond a 25-km radius from his or her office and within the boundaries of the judicial district where the advocate has his or her office;

(3) according to the distance actually travelled, in the case of an attendance at the Supreme Court of Canada, at the Court of Appeal of Québec or at the Federal Court, made outside the boundaries of the judicial district where the advocate has his or her office, or of an attendance at a court or body which carries out its jurisdiction outside the boundaries of the judicial district where the advocate has his or her office; notwithstanding the preceding, where the advocate has his office in a judicial district other than the district where the legal aid centre which issued the mandate is located, the advocates elects to receive either the reimbursement established in subparagraph 2 or a reimbursement established according to the distance between the place where the mandate was issued and that where the court in question sits;

(4) according to the distance actually travelled, in the case of a trip made with the authorization of the Commission or the director general of the regional centre of the location where the proceeding or trial is to take place or continues, outside the boundaries of the judicial district where the advocate has his or her office, where the nature or complexity of the matter requires that the mandate be given to that advocate.

The advocate who is entitled to a transportation allowance is also entitled to the reimbursement of the parking expenses incurred.

64. An advocate acting in proceedings taking place at the Centre de services judiciaires Gouin is entitled to the reimbursement of parking expenses, regardless of the distance between the office and the Centre.

PART III DISPUTE SETTLEMENT PROCEDURE

CHAPTER I CONCILIATION

65. A dispute means any disagreement concerning the interpretation or application of this Regulation, including any disagreement concerning a statement of fees or expenses submitted pursuant to the Regulation respecting the report relating to the services rendered by certain advocates and notaries.

A dispute must be submitted within 6 months of receiving the notice provided for in section 8 of the Regulation respecting the report relating to the services rendered by certain advocates and notaries

66. Before submitting a dispute, an advocate may resort to conciliation by a written notice to the Commission and to the section of the Barreau du Québec to which the advocate belongs.

67. Resorting to conciliation interrupts the 6-month prescription.

68. Within 15 days of receiving an application for conciliation, the chair of the Commission and the bâtonnier of the section each designate an advocate.

69. Within 30 days of their designation, the advocates so appointed and the advocate who made the application for conciliation meet and endeavour to reach a settlement.

70. An advocate submits a dispute by means of a notice addressed to the Commission. The notice must contain a summary of the facts and the relief sought.

71. The Commission answers in writing to any notice of dispute it receives.

CHAPTER II ARBITRATION

72. An advocate who submitted a notice of dispute may, if no answer is received within 30 days or if the advocate is dissatisfied with the answer, submit the dispute to arbitration. Resorting to arbitration is prescribed by 6 months.

The application is made by a letter addressed to the Chief Justice of the Court of Québec, with copies to the Commission and the Barreau du Québec.

The Chief Justice designates one of the judges of that court to act as arbitrator.

73. The arbitrator has jurisdiction, to the exclusion of any court, to rule on a dispute within the meaning of this Regulation. The arbitrator may uphold, modify or rescind the disputed decision and, by the terms of the arbitration award, order a payment or assess compensation, restore a right or make any other order the arbitrator considers fair in the circumstances.

The arbitrator may not modify the provisions of this Regulation.

The arbitration award is final and binding on the parties.

74. The arbitrator may issue an interim award at any time.

75. Any stenography fees and fees to reproduce a recording of the arguments are borne by the Commission.

76. The arbitrator sends every arbitration award to the parties and the Barreau du Québec.

FINAL

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

78. This Regulation ceases to have effect on 7 September 2015.