

Draft Regulations

Draft Regulation

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

Architects — 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 architects, made by the board of directors of the Ordre des architectes du Québec, may be submitted to the Government which may approve it, with or without amendment, on the expiry of 45 days following this publication.

The draft Regulation replaces the Code of ethics of architects in order to strengthen the general and special duties of the architect towards the public, clients and the profession. It also adapts the ethics rules to the reality of the practice of the profession of architect within a partnership or a joint-stock company, as provided for in the draft Regulation respecting the practice of the profession of architect within a partnership or a joint-stock company.

The draft Regulation is not likely to have an impact on enterprises, including small and medium-sized businesses.

Further information may be obtained by contacting Jean-Pierre Dumont, Ordre des architectes du Québec, 1825, boulevard René-Lévesque Ouest, Montréal (Québec) H3H 1R4; telephone: 514 937-6168 or 1 800 599-6168; fax: 514 933-0242.

Any person wishing to comment on the draft Regulation is requested to submit written comments within the 45-day period to the Chair of the Office des professions du Québec, 800, place D'Youville, 10^e étage, Québec (Québec) G1R 5Z3. The comments will be forwarded by the Office to the Minister of Justice and may also be sent to the Order and to interested persons, departments and bodies.

JEAN PAUL DUTRISAC,
*Chair of the Office des
professions du Québec*

Code of ethics of architects

Professional Code
(R.S.Q., c. C-26, s. 87)

CHAPTER I GENERAL

1. This Code determines, pursuant to section 87 of the Professional Code (R.S.Q., c. C-26), the duties and obligations that must be discharged by every member of the Ordre des architectes du Québec.

2. Architects may not exempt themselves, even indirectly, from a duty or obligation contained in this Code.

3. Architects must take reasonable measures to ensure that persons who collaborate with them in the practice of their profession and any partnership or joint-stock company in which they practise their profession comply with the Architects Act (R.S.Q., c. A-21), the Professional Code and their regulations.

4. Architects may not allow another person to perform an act on the architect's behalf which, if performed by the architect, would be in contravention of the Architects Act, the Professional Code or their regulations.

5. The duties and obligations under the Architects Act, the Professional Code and their regulations are not modified or reduced in any manner owing to the fact that an architect member practises within a partnership or joint-stock company.

6. Architects must ensure that their obligations towards the partnership or company of which they are directors or officers are not incompatible with their obligations towards the client.

7. Architects must respect man and man's environment, and take into account the impact of their work and interventions on the life, health and property of every person.

8. Architects must update their knowledge and maintain their competence in the fields in which they practise. They must support every measure likely to improve the quality of the professional services in those fields.

CHAPTER II DUTIES AND OBLIGATIONS TOWARDS THE CLIENT

DIVISION I GENERAL

9. Before accepting to provide professional services, architects must take into account the limits of their proficiency, knowledge and the means at their disposal. In particular, they must not

(1) offer to perform or perform professional services for which they are not sufficiently prepared or do not have the skills, knowledge or means required unless they obtain the necessary assistance;

(2) offer to perform or perform professional services without having the possibility to exercise the personal intervention required by the nature of the services and the place where they are to be carried out.

10. Architects must act with all the necessary care and discharge their professional obligations with competence. They must practise their profession in keeping with good practice and generally accepted standards.

11. Architects must refrain from practising their profession in a condition or in a state likely to compromise the quality of their services or the dignity of the profession.

12. Before providing professional services, architects must enter into an agreement with the client regarding the scope and conditions of the services required and the conditions of remuneration.

They must refrain from setting an amount of fees before knowing the important elements used to establish the fees.

13. Architects must, when the interest of their client so requires, consult another architect, a member of another professional order or another competent person, or refer the client to one of those persons.

Architects must acknowledge the right of their clients to consult another architect, a member of another professional order or any other competent person.

DIVISION II INTEGRITY AND OBJECTIVITY

14. Architects must discharge their professional obligations with integrity and objectivity.

For that purpose, they must be objective in their relations with other professionals, contractors, suppliers and collaborators on a project.

15. Architects must not, by any means nor for any purpose, make a false, misleading or incomplete representation, in particular with regard to

(1) their level of competence or the efficiency of their services or, if applicable, the level of competence or the efficiency of the services of the persons who carry on their professional activities within the same partnership of joint-stock company as them;

(2) the offices they have and the addresses of the head office and establishments of the partnership or joint-stock company in which they practise their profession; and

(3) the achievements they attribute to themselves; when a project is carried out in a consortium or when they took part in a project while practising the profession within a partnership or company, they must specify their role and participation in the project and disclose the name of the other architects or firms of architects involved.

16. When architects formulate an opinion, give advice or prepare a plan, specifications or any other document in the practice of their profession, they must have sufficient knowledge of the facts and be reasonably certain of the proposed solution or the accuracy of the document.

Without restricting the generality of the foregoing, architects must not lead a client to believe that the client's budget is sufficient for the proposed work without being reasonably certain themselves.

17. Architects must, in the practice of their profession, assume full civil liability. They must not evade or attempt to evade professional liability or request that a client or person renounce any recourse in a case of professional negligence on their part. They may not include in a contract for professional services a clause that directly or indirectly excludes all or part of such liability. Similarly, they may not invoke the liability of the partnership or joint-stock company within which they carry on professional activities or that of another person also carrying on activities within the partnership or joint-stock company as a ground for excluding or limiting their personal liability.

18. Architects must promptly inform their client of any event likely to have, or that has had, a significant impact on their professional services and take, where applicable, the necessary measures to remedy the situation.

19. Architects must take reasonable care of property entrusted to their care by a client and may not lend or use property for purposes other than those for which it was entrusted to them.

If they practise their profession in a partnership or joint-stock company, they must take reasonable measures to ensure that the partnership or joint-stock company complies with the requirements prescribed in the first paragraph when property is entrusted to the care of the partnership or company.

20. Unless otherwise formally agreed upon, architects must not, before obtaining their client's authorization, proceed from the sketch stage to the preliminary studies stage, or from the preliminary studies stage to that of the working drawings, detail drawings and specifications.

21. Architects must immediately interrupt their professional services where their contract is terminated.

DIVISION III AVAILABILITY AND DILIGENCE

22. In the practice of their profession, architects must show reasonable availability and diligence.

23. In addition to the opinions and advice given to the client, architects must provide the explanations required for the understanding and appreciation of the professional services provided to the client.

24. On request from the client or when circumstances or the nature of the contract so require, architects must give an account of the professional services provided.

25. Architects cannot, except for just and reasonable grounds, interrupt their professional services. Just and reasonable grounds include

- (1) the loss of trust on the part of the client;
- (2) the fact that an architect is in a situation of conflict of interest or in a context that is such that his or her professional independence could be questioned;
- (3) inducement by the client to perform illegal, unjust or fraudulent acts;
- (4) the fact that the client refuses to pay the architect's fee; and
- (5) the fact that the architect has been misled by the client or the client has failed to co-operate.

26. Before ceasing their professional activities with a client, architects must so inform the client in writing within a reasonable time and take the steps necessary to minimize any prejudice to the client.

27. Before instituting legal proceedings, architects must have exhausted all other means available to recover their fees.

DIVISION IV SEAL AND SIGNATURE

28. Architects must indicate on the documents they prepare in the practice of their profession the purposes for which they are prepared.

29. Architects must date and write their name or the name of the partnership or joint-stock company within which they practise their profession on every document they prepare in the practice of their profession.

30. In addition to the obligations referred to in section 29, architects must, where documents are prepared by a person referred to in paragraph 2 of section 31,

(1) sign the following documents: riders and change directives, payment certificates, substantial completion certificates and completion certificates;

(2) sign and affix their seal on the following documents:

(a) plans and specifications for the execution given to the client or a municipality in support of a permit application and to any authority concerned;

(b) documents issued for the purposes of the contract between the client and the contractor, and documents related to the management of the contract, such as plans and specifications issued for construction and used for performing on-site work, and addenda;

(c) certificates of progress or compliance of the work to the plans and specifications or the Construction Code, made by Order in Council 953-2000 dated 26 July 2000, and any other certificate they issue;

(d) expert reports.

31. Architects may sign and affix their seal on a document referred to in paragraph 2 of section 30 only where the following conditions are met:

(1) the document is complete and final for the purposes indicated therein;

(2) the document has been prepared

(a) by the architects personally or by a person working under their supervision; or

(b) by another architect who practises within the same partnership or joint-stock company or acts as collaborator for the same project or by a person working under the supervision of that architect; and

(3) the architects have an overall knowledge and control of the documents prepared.

32. Despite the foregoing, architects do not have to identify a document prepared for an architectural contest where anonymity is required.

33. For the purposes of identifying a document, architects may reproduce the seal given by the Order by any process allowing for the creation of a print. The print must, whatever the reproduction means used, be exactly the same as the original seal, except for the size which must however be large enough so that the elements of the seal are legible.

34. Where architects sign and affix a seal on a document, they must do so according to one of the following methods:

(1) sign the document by hand and seal it with the original seal received from the Order;

(2) sign the document by hand and seal it with a print produced in accordance with section 33;

(3) sign and affix their seal on the document using a technological means that guarantees the document's integrity, within the meaning of the Act to establish a legal framework for information technology (R.S.Q., c. C-1.1).

35. Architects must take reasonable steps to prevent any person from using their seal or seal print without their authorization.

36. Architects sending a document must take reasonable steps so that the information contained in the document may not be used for purposes other than those indicated, or modified without their consent.

DIVISION V INDEPENDENCE AND IMPARTIALITY

37. Architects must subordinate their personal interest and, if applicable, the interest of the partnership or joint-stock company in which they practise their profession, or in which they have interests, and the interest of any other person practising in that partnership or joint-stock company, to that of their client.

38. Architects must ignore any intervention by a third party that could influence the performance of their professional services to the detriment of their client.

39. Architects must safeguard their professional independence at all times and avoid any situation in which they would be in a conflict of interest. Without restricting the generality of the foregoing, architects

(1) are not independent if they derive a direct or indirect, real or possible personal benefit in the performance of a given act;

(2) are in a conflict of interest where they might tend to favour certain interests over those of their client or their judgment and loyalty towards their client might be adversely affected.

As soon as architects become aware that they are in a conflict of interest, they must disclose the conflict in writing to the persons involved and ask them if they allow the architects to act or continue to act. They must obtain, if applicable, written authorization from the persons involved.

40. Architects must take the necessary measures to ensure that information and documents relevant to professional secrecy are not disclosed to a partner, shareholder, director, manager, officer or employee of a partnership or joint-stock company within which they carry on professional activities or in which they have an interest, as soon as they become aware that the partner, shareholder, director, manager, officer or employee has a conflict of interest.

The following factors must be considered in assessing the effectiveness of such measures:

(1) size of the partnership or company;

(2) precautions taken to prevent access to the architect's file by the person having a conflict of interest;

(3) instructions given to protect confidential information or documents related to the conflict of interest; and

(4) isolation, from the architect, of the person having a conflict of interest.

41. Architects must enter into an agreement for their professional services in their exclusive area of practice directly with the client or the client's representative.

However, architects may enter into an agreement concerning their professional services with

(1) any person for whom they prepare plans or specifications for buildings intended for the use of that person or that will be owned by the person;

(2) any architect or partnership or joint-stock company within which an architect is authorized by regulation to practise the profession;

(3) any person offering a building or structure upon completion of a turnkey agreement, offering elements of buildings or structures or systems for the construction of buildings or structures;

(4) any person providing services for carrying out constructions that are accessory to engineering works and intended to shelter such works;

(5) any person using an architect's competence for services other than those in their exclusive area of practice.

42. Architects must refrain from receiving any gratuity, rebate or commission relating to the practice of their profession other than customary tokens of appreciation or gifts of small value. No architect may pay, offer to pay or undertake to pay such gratuity, rebate or commission.

DIVISION VI **PROFESSIONAL SECRECY**

43. Architects must preserve the secrecy of all confidential information obtained in the practice of their profession. Architects must take reasonable means with respect to the persons with whom they work or who are under their supervision to ensure that professional secrecy is maintained.

44. Architects may be released from professional secrecy only where so ordered by law or with the authorization of their client.

45. Architects must not use confidential information to the detriment of a client to obtain directly or indirectly a benefit for themselves or for third parties.

46. Architects must avoid any indiscreet conversation about a client and the professional services provided to a client.

47. Architects must not accept to provide professional services when the performance of the services involve or may involve disclosure or use of confidential information or documents obtained from another client, unless they obtain that client's consent.

48. Architects who, pursuant to the third paragraph of section 60.4 of the Professional Code, communicate, verbally or in writing, information that is protected by professional secrecy to prevent an act of violence, must

(1) communicate the information immediately to the person exposed to the danger or that person's representative, or to the persons who can come to that person's aid;

(2) use a means of communication that ensures, given the circumstances, the confidentiality of the communication;

(3) enter in the client's record as soon as possible

(a) the name of the person or group of persons exposed to the danger;

(b) the name of the person who caused the architect to communicate the information;

(c) the reasons supporting the decision to communicate the information;

(d) the name of the person to whom the information was given;

(e) the date and time the information was communicated;

(f) the mode of communication; and

(g) the content of the communication; and

(4) send the syndic of the Order, within 5 days of the communication, a notice of the communication indicating the reasons supporting the decision to communicate the information and the date and time the information was communicated.

49. If the well-being of the person exposed to the imminent danger of death or serious bodily injury requires it, architects who are on the verge of disclosing information protected by professional secrecy consult another architect, a member of another professional order or any other competent person provided the consultation does not cause harmful delay in the communication of the information.

DIVISION VII **ACCESS TO AND CORRECTION OF RECORDS** **AND RELEASE OF DOCUMENTS**

50. Architects must respond promptly to any request made by a client to consult documents that concern the client in any record made in his or her respect.

Architects must also respond promptly to any request made by a client to obtain a copy of documents referred to in the first paragraph.

51. Architects who grant a request made under section 50 must give the client access to the documents in their presence or in the presence of a person they authorized.

Architects may, with respect to a request made under the second paragraph of section 50, charge the client a reasonable fee not exceeding the cost of preparing, transmitting, transcribing or reproducing documents.

Architects charging such fees must, before they are incurred, inform the client of the approximate amount to be paid before incurring them.

52. Architects must respond promptly to any request made by a client

(1) to have information that is inaccurate, incomplete or ambiguous corrected in a document concerning the client and included in any record made in his or her respect;

(2) to have information that is outdated or unjustified deleted in any document concerning the client; and

(3) to have the client's written comments filed in the record.

53. Architects must respond promptly to any written request from a client to have a document or object returned to the client.

Architects may, with respect to that request, charge the client reasonable fees not exceeding the cost of searching, preparing and transmitting the document or object requested.

DIVISION VIII DETERMINATION AND PAYMENT OF FEES

54. Architects must charge and accept fair and reasonable fees warranted under the circumstances, and proportional to the professional services provided.

To determine their fees, architects must consider the following factors:

(1) the time devoted to the performance of the professional services;

(2) the complexity and scope of the professional services;

(3) the performance of professional services that are unusual or require exceptional competence or celerity;

(4) the importance of the responsibility assumed; and

(5) the existence of a decree or recognized rate.

55. Architects must provide their client with all the explanations required for the understanding of their statement of fees and must ensure that the statement is explicit enough to identify the professional services provided and the progress of the record.

56. Where architects practise their profession within a joint-stock company, the fees relating to the professional services they provided within or on behalf of the company belong to the company, unless agreed otherwise.

CHAPTER III DEROGATORY ACTS

57. In addition to the acts referred to in sections 57, 58, 58.1, 59.1 of the Professional Code and those that may be determined pursuant to the second paragraph of section 152 of the Code, the following acts are derogatory to the profession of architect:

(1) to certify the progress or compliance of the work to the plans and specifications or to the Construction Code without having performed the necessary monitoring personally or through the architect's personnel or another architect;

(2) to participate or contribute to the illegal practice of the profession of architect;

(3) to announce or designate, or allow to be announced or designated, as architect a person who is not a member of the Order;

(4) to exercise the profession within a partnership or joint-stock company holding itself out to be or giving the impression that it is a partnership or joint-stock company of architects if the partnership or joint-stock company does not comply with the Professional Code or the Regulation respecting the practice of the profession of architect within a partnership or a joint-stock company;

(5) to enter into an agreement or permit an agreement to be entered into within a partnership or joint-stock company in which the architect practises, including a unanimous agreement between shareholders, that operates to impair the independence, objectivity and integrity required for the practice of the profession or compliance with the Professional Code, the Architects Act and the regulations made thereunder;

(6) when practising the profession within a partnership or joint-stock company, failing to take reasonable measures to put an end to, or prevent the repeated performance of, an act derogatory to the dignity of the profession performed by another architect also practising within the partnership or joint-stock company, and that was brought to the architect's attention more than 30 days earlier;

(7) communicating with the complainant without the prior written permission of the syndic or the assistant syndic when the architect is informed by the syndic or assistant syndic that an investigation into his or her professional conduct or competence will be held or when the architect has been served a complaint against him or her;

(8) offering professional services to a third person towards whom the architect's employer has contractual obligations.

CHAPTER IV INCOMPATIBLE DUTIES AND RESPONSIBILITIES

58. The fact for an architect to supervise the carrying out of work for the account of a client for whom the architect acts, personally or through a partnership or joint-stock company, as contractor is incompatible with the practice of the profession.

CHAPTER V DUTIES AND OBLIGATIONS TOWARDS THE ORDER, THE PROFESSION AND OTHER ARCHITECTS

59. Architects must respond as soon as possible to any correspondence from the admission service, the professional inspection service, the office of the syndic or the Fonds d'assurance-responsabilité professionnelle of the Ordre des architectes du Québec.

60. Architects must ensure the accuracy of the information provided to the Order.

61. Architects who are requested by the Order to sit on a council of arbitration, disciplinary council or professional inspection committee or to act as a tutor, in the course of a training period prescribed under the Regulation respecting refresher training periods for architects (R.R.Q., c. A-21, r.12), are required to accept that function unless they have valid reasons to refuse.

62. Architects must, to the extent possible, participate in the development of their profession by sharing their knowledge and experience with the public, other architects and architect trainees. They must, where circumstances so allow, promote the hiring of trainees.

63. Architects must not abuse the good faith or trust of another architect or be disloyal toward another architect.

64. Nothing in this Code should be interpreted as restricting the right of architects to express critical judgment on a building, within the limits allowed by law.

65. Architects acting as professional consultants for an architecture contest approved by the Order must inform the Order if the organization and the holding of the contest breach the terms and conditions adopted by the Order's board of directors.

CHAPTER VI ADVERTISEMENT AND USE OF THE GRAPHIC SYMBOL OF THE ORDER

66. Architects may not make or allow to be made, by any means whatsoever, false or misleading advertisement or advertisement likely to mislead or go against the dignity of the profession.

67. When architects or a partnership or joint-stock company within which they practise their profession use the graphic symbol of the Order in their advertisement and documents, they must ensure that the symbol conforms to the original and is not represented in such a manner as to imply that the advertisement or documents come from the Ordre des architectes du Québec or are approved by the Order.

68. When architects use their name in an advertisement, the name must be followed by "architect".

The first paragraph does not apply when the name or part of the name of the architect is used to designate the partnership or joint-stock company in which the architect practises the profession.

69. In any statement or advertisement, architects may not, by any means whatsoever, give more importance to the professional fees than to the services offered.

CHAPTER VII NAME

70. Architects must not carry on their profession within a partnership or joint-stock company under a firm name or any other designation which is misleading, deceptive or derogatory to the dignity of the profession or is a number name.

71. When an architect dies, retires or withdraws from a partnership or company, the architect's name must be removed from the name or corporate name of the partnership or company.

72. Despite section 71, the name of a partnership or company within which architects practise their profession may include the name of a deceased or retired architect provided that the architect was a member of that partnership or company during the 3 years preceding the architect's death or retirement and provided that the architect or, as the case may be, the architect's heirs or successors have concluded an agreement to that effect.

CHAPTER VIII FINAL

73. This Regulation replaces the Code of ethics of architects (R.R.Q., 1981, c. A-21, r.3).

74. 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

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

Architects

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

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Regulation respecting the practice of the profession of architect within a partnership or a joint-stock company, made by the board of directors of the Ordre des architectes du Québec, may be submitted to the Government which may approve it, with or without amendment, on the expiry of 45 days following this publication.

The draft Regulation sets out terms and conditions under which the members of the Order are authorized to carry on professional activities within a partnership or a joint-stock company, particularly regarding the administration of the partnership or joint-stock company and the holding of the shares or units.

The conditions also include the obligation to contribute to an insurance fund covering the liability of the partnership or joint-stock company arising from fault or negligence on the part of a member in carrying on professional activities within the partnership or joint-stock company, as well as the obligation to provide the Order with the necessary information on the partnership or joint-stock company and update that information.

The draft Regulation is not likely to have an impact on enterprises, including small and medium-sized businesses.

Further information may be obtained by contacting Jean-Pierre Dumont, Ordre des architectes du Québec, 1825, boulevard René-Lévesque Ouest, Montréal (Québec) H3H 1R4; telephone: 514 937-6168 or 1 800 599-6168; fax: 514 933-0242.

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JEAN PAUL DUTRISAC,
*Chair of the Office des
professions du Québec*

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

Professional Code
(R.S.Q., c. C-26, s. 93, pars. *g* and *h*, and s. 94, par. *p*)

DIVISION I

TERMS AND CONDITIONS FOR THE PRACTICE

1. Architects may 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) if

(1) 100% of the voting rights attached to the company shares or partnership units are held

(a) by architects;

(b) by legal persons, trusts or any other enterprise if the voting rights attached to the shares or units are held exclusively by architects; or

(c) in any combination by persons, trusts or any other enterprise referred to in subparagraphs *a* and *b*;

(2) in the case of a joint-stock company, 100% of the shares that have no voting rights are held

(a) by architects;