

Draft Regulations

Draft Regulation

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

Notaries

— Code of ethics
— Amendment

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 to amend the Code of ethics of notaries, made by the board of directors of the Chambre des notaires du Québec, may be submitted to the Government for approval, with or without amendment, on the expiry of 45 days following this publication.

The draft Regulation specifies the situations where a notary must cease to provide professional services to a client.

The draft Regulation has no impact on enterprises, including small and medium-sized businesses.

Further information may be obtained by contacting Michel Vermette, notary, Directeur général adjoint, Direction des services juridiques, Chambre des notaires du Québec, 600-1801, avenue McGill College, Montréal (Québec) H3A 0A7; telephone: 514 879-1793, extension 5921, or 1 800 263-1793, extension 5921; fax: 514 879-1923; email: michel.vermette@cdnq.org

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 professional order that made the Regulation and to interested persons, departments and bodies.

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

Regulation to amend the Code of ethics of notaries

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

1. The Code of ethics of notaries is amended by the replacement of section 26 by the following:

“**26.** A notary must withdraw from representing a client where he has serious cause as follows:

- (1) loss of confidence;
- (2) the notary is in a situation where his professional independence could be called into question;
- (3) he is induced by the client to perform illegal, or fraudulent acts;
- (4) he has reasonable grounds to suspect that he is assisting or may assist a client in a dishonest or fraudulent act, a crime, or illegal conduct.”

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

1591

Draft Regulation

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

Notaries

— Compensation fund

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 compensation fund of the Chambre des notaires du Québec, made by the board of directors of the Chambre des notaires du Québec, may be submitted to the Government for approval, with or without amendment, on the expiry of 45 days following this publication.

The draft Regulation determines the procedure to be followed by a claimant to receive compensation if a notary uses the claimant's funds or property for purposes other than those for which they were entrusted to the notary in the practice of the profession. It also prescribes conditions for the setting up of the compensation fund and the rules for the administration and investment of the sums making up the fund, as well as the maximum compensation payable.

The draft Regulation has no impact on enterprises, including small and medium-sized businesses.

Further information may be obtained by contacting Michel Vermette, notary, Directeur général adjoint, Direction des services juridiques, Chambre des notaires du Québec, 600-1801, avenue McGill College, Montréal (Québec) H3A 0A7; telephone: 514 879-1793, extension 5921, or 1 800 263-1793, extension 5921; fax: 514 879-1923; email: michel.vermette@cdnq.org

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 professional order that made the Regulation and to interested persons, departments and bodies.

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

Regulation respecting the compensation fund of the Chambre des notaires du Québec

Professional Code
(R.S.Q. c. C-26, s. 89.1)

DIVISION I GENERAL

§1. *Compensation Fund*

1. The Board of Directors of the Chambre des notaires du Québec shall establish a compensation fund to compensate a claimant, subject to section 18, for the use of moneys or property by a notary for purposes other than those for which they were entrusted to him in the practice of his profession pursuant to a contract for services.

2. The compensation fund must be maintained at not less than \$500,000 and shall consist of

1° moneys allocated to the fund by the Board of Directors;

2° assessments levied for that purpose;

3° moneys or property recovered from notaries by subrogation or pursuant to section 159 of the Professional Code (R.S.Q., c. C-26);

4° income earned on the moneys and property making up the fund;

5° moneys paid by an insurer under an insurance policy held by the Executive Committee.

§2. *Rules for the administration and investment of the fund*

3. The Executive Committee administers the fund and withdraws administration fees. In particular, the Executive Committee is authorized to conclude any contract of insurance or reinsurance for the purposes of the fund and to pay the premiums out of the fund.

4. The Executive Committee shall keep an accounting of the fund, separate from that of the Order.

5. The moneys making up the fund shall be invested by the Executive Committee as follows:

1° the moneys the Executive Committee expects to use in the short term shall be deposited in a financial institution governed by the Act respecting trust companies and savings companies (R.S.Q. c. S-29.01), the Bank Act (S.C. 1991, c. 46), the Act respecting financial services cooperatives (R.S.Q., c. C-67.3), or the Trust and Loan Companies Act (S.C. 1991, c. 45);

2° the other moneys shall be entrusted to an investment manager for investment in short term securities, fixed-interest securities, Canadian or foreign shares, in accordance with the investment policy adopted by the Board of Directors.

DIVISION II COMPENSATION FUND COMMITTEE

6. A compensation fund committee, hereinafter called the "Committee," shall be established by the Board of Directors to examine the claims against the fund. It shall comprise no fewer than five members appointed by the Board of Directors from among notaries entered on the roll of the Order for at least 10 years and the directors appointed to the Board of Directors by the Office des professions du Québec pursuant to section 78 of the *Professional Code*. At least one of the members must be a director.

The chairman of the Committee is designated by the members.

The quorum of the Committee is a majority of its members.

7. Where the number of Committee members so permits, the Committee may sit in divisions comprising five members, one of whom shall be the chairman or another Committee member designated by division members as chairman of the division, and another member chosen from among the directors appointed by the Office.

The quorum of a division is three members.

8. Committee members remain in office at the end of their mandates until they are reappointed or replaced by the Board of Directors.

9. The Board of Directors shall appoint the secretary of the Committee and, as needed, one or more assistant secretaries who perform the same duties as the secretary.

DIVISION III COMPENSATION PROCEDURE

10. Claims against the fund must

1° be in writing;

2° state all supporting facts and be accompanied by all relevant documents;

3° indicate the amount claimed; and

4° be sworn and filed with the secretary of the Committee.

11. The secretary of the Committee shall inform members of any claim against the fund at the first meeting after the claim is filed.

If the Committee has not completed its inquiry into the claim within 90 days after the claim is filed, the secretary of the Committee shall, upon expiry of that period, notify the claimant in writing and report to him on the Committee's progress. Until the Committee has completed its inquiry, the secretary of the Committee shall, every 60 days following expiry of the 90-day period, notify the claimant in writing that the inquiry is continuing and report on the Committee's progress.

The obligation to notify the claimant as set out in the second paragraph does not apply to the situation contemplated in section 20.

12. To be admissible, a claim against the fund must be filed within one year of the claimant's knowledge that moneys or property have been used for purposes other than those for which they were entrusted to the notary in the practice of his profession.

Subject to section 13, a claim that is not filed within the prescribed period is inadmissible.

13. The period prescribed in section 12 may be extended if the claimant demonstrates that he was unable to file the claim within the prescribed period for reasons beyond his control.

14. An application by any person to the Order in respect of facts likely to give rise to a claim against the fund is deemed to be a claim within the meaning of section 10 if the application is sent within the period prescribed in section 12.

15. The Committee shall decide, in respect of any claim not exceeding \$30,000 against the fund, whether the claim should be allowed, in whole or in part, and if so, shall determine the amount of compensation. The decision of the Committee is final.

16. The Executive Committee, upon the recommendation of the Committee, shall decide, in respect of any claim exceeding \$30,000 against the fund, whether the claim should be allowed, in whole or in part, and if so, shall determine the amount of compensation. The Executive Committee may, if it deems necessary, consult with the syndic. The decision of the Executive Committee is final.

17. A decision may be rendered in respect of a claim regardless of any action filed by the claimant in a civil court, any judgment rendered by such court, or any decision of the disciplinary council or the Professions Tribunal in respect of the notary in question.

18. The maximum indemnity payable out of the fund is \$100,000 per claim arising from a notary's use, in connection with a contract for services, of moneys or property for purposes other than those for which they were entrusted to him in the practice of his profession.

The maximum indemnity payable out of the fund is \$100,000 for the aggregate of claims addressed to the fund arising from a notary's use, in connection with one or more contracts for services concluded with several persons for the same service, of moneys or property for purposes other than those for which they were entrusted to him in the practice of his profession. Where the total of the claims allowed in a case contemplated in this paragraph exceeds the maximum indemnity, the indemnity is distributed in proportion to the amount of each claim.

For the purposes of this section, service includes the performance of professional services by a notary pursuant to a contract for services for the benefit of two or more persons, in particular but without limiting the foregoing, the acquisition or sale of a family residence or an undivided co-ownership, the settlement of a succession, the creation of a patrimony by appropriation or of the constitution of a legal person, and any investment of a movable or immovable nature.

19. The maximum compensation payable shall be reviewed every five years after this regulation comes into force.

20. The balance of a notary's general trust account shall, subject to section 42 of the Regulation respecting trust accounting by notaries approved by the Office des professions du Québec on (*specify date of approval*), be distributed by the secretary of the Committee among the claimants in respect of the notary, in proportion and up to the amount of each claim allowed, less the sum paid pursuant to section 18, at the expiry of 60 days following publication of a notice to that effect in a newspaper circulating in the place where the notary has or had his professional domicile.

The secretary of the Committee shall cause the notice to be published after one year has elapsed without any new claim exceeding \$100,000 against the fund in respect of that notary.

21. The claimant shall sign an acquittance in favour of the Order upon payment of the compensation.

DIVISION IV **TRANSITIONAL AND FINAL**

22. This regulation replaces the Regulation respecting trust accounting by notaries approved by order in council 995-2002 dated September 11, 2002.

However the Regulation respecting trust accounting by notaries shall continue to govern claims filed against the fund before (*specify date on which regulation comes into force*).

23. The compensation fund contemplated in section 2 shall consist of the moneys and property already allocated for this purpose as at (*specify date on which regulation comes into force*).

24. This regulation comes into force on the fifteenth day following its publication in the *Gazette officielle du Québec*.

Draft Regulation

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

Physicians **— Professional activities that could be engaged in during clinical perfusion**

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 professional activities that could be engaged in during clinical perfusion", adopted by the Board of Directors of the Collège des médecins du Québec, may be submitted to the Government, which may approve it with or without amendment, upon the expiry of 45 days following this publication.

The purpose of this Regulation is to update the "Regulation respecting the professional activities which may be performed by a clinical perfusionist" and to impose the obligation of refresher courses to the perfusionist by the necessity to be certified by the Canadian Society of Clinical Perfusion.

This Regulation has no impact on enterprises, including small and medium-sized businesses.

Further information may be obtained by contacting Mre Linda Bélanger, Legal Advisor, Collège des médecins du Québec, 2170, boulevard René-Lévesque Ouest, Montréal (Québec) H3H 2T8; telephone number: 514 933-4441, extension 5362, facsimile number: 514 933-5374, email: lbelanger@cmq.org

Any person having comments to make on the following text is asked to send them, before the expiry of the 45day period, to the Chair of the Office des professions du Québec, 800, place D'Youville, 10th floor, Québec (Québec) G1R 5Z3. Comments will be forwarded by the Office to the Minister of Justice; they may also be sent to the professional order that has adopted the Regulation, namely the Collège des médecins du Québec, as well as to interested persons, ministries and organizations.

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