

Draft Regulation

Professional Code
(chapter C-26)

Advocates**— Indemnity fund**

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), that the Regulation respecting the indemnity fund of the Barreau du Québec, made by the General Council of the Barreau 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 indemnity procedure for a claimant following the use by an advocate of sums or property for purposes other than those for which the claimant entrusted them to the advocate in the practice of the advocate's profession. It also provides terms and conditions for establishing the indemnity fund and rules for the administration and investment of the amounts in the fund. It also provides for the maximum indemnities.

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

Further information may be obtained by contacting Chantal Perreault, advocate, Service de recherche et de législation, Barreau du Québec, 445, boulevard Saint-Laurent, Montréal (Québec) H2Y 3T8; telephone: 514 954-3400, extension 3163 or 1 800 361-8495; fax: 514 954-3463; email: cperreault@barreau.qc.ca

Any person wishing to comment on the draft Regulation is requested to submit written comments before the expiry of 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 Barreau du Québec and to interested persons, departments and bodies.

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

Regulation respecting the indemnity fund of the Barreau du Québec

Professional Code
(chapter C-26, s. 89.1)

DIVISION I**ESTABLISHMENT OF THE INDEMNITY FUND**

1. The General Council of the Barreau du Québec establishes an indemnity fund to be used to indemnify a claimant following the use by an advocate of sums or property for purposes other than those for which they were entrusted by the claimant to the advocate in the practice of his or her profession.

2. The fund is maintained at a minimum amount of \$1,000,000.

It must consist of

- (1) sums allocated to the fund by the General Council;
- (2) assessments fixed for such purpose by the General Council;
- (3) sums or property recovered from an advocate by subrogation under section 89.1 or section 159 of the Professional Code (chapter C-26) pursuant to a payment made from the indemnity fund;
- (4) income earned on the sums and property comprising the fund; and
- (5) sums paid by an insurer under a group insurance policy subscribed by the Bar for all its members.

DIVISION II**RULES FOR THE ADMINISTRATION AND INVESTMENT OF THE FUND**

3. The executive committee of the Barreau du Québec administers the fund and withdraws therefrom costs related to its administration. To this end, the executive committee is authorized, in particular, to conclude any contract of insurance for purposes of the fund and pay the premiums from the fund.

4. Accounting records for the fund must be kept separate from accounting records for the Bar's other funds.

The sums constituting the fund are invested by the executive committee as follows:

(1) the portion of the sums the executive committee expects to use on a short-term basis is deposited in a financial institution governed by the Act respecting trust companies and savings companies (chapter S-29.01), the Bank Act (S.C. 1991, chapter 46), the Act respecting financial services cooperatives (chapter C-67.3) or the Trust and Loan Companies Act (S.C. 1991, chapter 45);

(2) the other portion is invested in accordance with the investment policy adopted by the executive committee in compliance with the management principles set forth in article 1339 of the Civil Code of Québec regarding presumed sound investments.

DIVISION III

INDEMNITY FUND COMMITTEE

5. The General Council establishes an indemnity fund committee. The committee examines and investigates claims filed with the fund and makes recommendations to the executive committee or, if applicable, rules on the claims.

It is composed of at least 10 members appointed by the General Council from among practising advocates entered on the roll of the Order in accordance with the eligibility criteria for members of statutory committees established by the General Council.

The chair and secretary of the committee are designated by the General Council. The secretary is an *ex officio* member of the committee.

Quorum for the committee is at least 7 members.

6. Where the number of committee members permits, the committee may sit as divisions of 3 members, one of whom is the committee chair or another committee member designated as chair of the division by the committee chair.

Division decisions are made by majority vote.

Quorum may be reduced to 1 member designated by the chair when the claim is for \$50,000 or less and does not require a hearing or representations by the parties.

DIVISION IV

INDEMNIFICATION PROCEDURE

7. The indemnity fund committee, formed by the General Council pursuant to paragraph 2 of section 86.0.1 of the Professional Code, investigates claims filed with the fund, makes recommendations to the executive committee and, to the extent it is authorized to do so by this Regulation or a resolution of the executive committee, rules on a claim.

8. Claims against the fund must

- (1) be submitted in writing;
- (2) state the facts in support thereof and be accompanied by all relevant documents;
- (3) indicate the amount claimed;
- (4) attest that no acquittance has been given to the advocate in question; and
- (5) be sworn and filed with the secretary of the committee.

9. To be admissible, a claim against the fund must be filed within 1 year of the claimant becoming aware that sums or property have been used for purposes other than those for which they were entrusted to the advocate in the practice of his or her profession.

The period prescribed by the first paragraph may be extended by the executive committee or, if applicable, by the indemnity fund committee if the claimant demonstrates that he or she was unable to file the claim within the prescribed period for reasons beyond the claimant's control.

10. A request made by any person to the Bar 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 8 if the request is sent within the period prescribed by section 9.

11. A decision of a disciplinary council which imposes the obligation on an advocate to remit a sum of money in accordance with subparagraph *d* of the first paragraph of section 156 of the Professional Code constitutes a claim within the meaning of section 8 as long as the request for an inquiry pursuant to section 122 of the Professional Code was filed with the office of the syndic within the period mentioned in section 9.

12. Where, following an inquiry, the committee has reasonable grounds to believe that other persons are likely to have been harmed through the use by an advocate of sums or property for purposes other than those for which they were entrusted to the advocate in the practice of his or her profession, and the advocate has been disqualified pursuant to section 122 of the Act respecting the Barreau du Québec, is deceased, has withdrawn from the Bar or has been disbarred, provisionally disbarred or administratively disbarred, the committee may cause a notice to be published in a newspaper distributed in the district in which the advocate practised in order to find the persons who entrusted sums or property to the advocate and inform them about the mechanisms available to them through the Bar.

13. The maximum indemnity payable from the fund is \$500,000 for all claimants in respect of an advocate and \$100,000 per claimant in respect of such advocate.

14. The secretary of the indemnity fund committee informs the members of the indemnity fund committee about any claim against the fund at the first meeting after the claim is filed. The secretary also informs the executive committee if the amount of the claim exceeds \$50,000.

15. The indemnity fund committee decides, in respect of any claim against the fund not exceeding \$50,000, whether the claim should be allowed, in whole or in part, and if so, it determines the amount of the indemnity.

Its substantiated decision is final.

16. The executive committee, upon the substantiated recommendation of the indemnity fund committee, decides, in respect of any claim against the fund exceeding \$50,000, whether the claim should be allowed, in whole or in part, and if so, it determines the amount of the indemnity.

Its substantiated decision is final.

17. When there are several claims exceeding and not exceeding \$50,000 in respect of an advocate and the claims are connected, the indemnity fund committee suspends its decision or decisions until the executive committee has ruled on the claim or claims exceeding \$50,000, unless the executive committee delegates such claim or claims by resolution to the indemnity fund committee.

18. Upon the recommendation of the executive committee, the General Council may pay an indemnity in excess of the amount prescribed by section 13 under exceptional circumstances justified by humanitarian considerations.

19. Before receiving the indemnity set by the executive committee or, if applicable, by the indemnity fund committee, the claimant must sign a subrogatory acquittance in favour of the Bar.

DIVISION VI TRANSITIONAL AND FINAL

20. This Regulation replaces the Regulation respecting the indemnity fund of the Barreau du Québec (chapter B-1, r. 11).

Despite the foregoing, that Regulation continues to govern claims filed against the fund before (*insert the date of coming into force of the Regulation*).

21. The indemnity fund referred to in section 1 consists of the sums and property already allocated for that purpose as of (*insert the date of coming into force of the Regulation*).

22. 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
(chapter C-26)

Psychoeducators

—Professional activities that may be engaged in by persons other than psychoeducators

—Amendments

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), that the Regulation to amend the Regulation respecting certain professional activities that may be engaged in by persons other than psychoeducators, made by the board of directors of the Ordre des psychoéducateurs et psychoéducatrices du Québec, appearing below, may be submitted to the Government for approval with or without amendment on the expiry of 45 days following this publication.

The draft Regulation amends the current Regulation to allow persons other than psychoeducators already authorized to engage in, among the professional activities reserved to psychoeducators and on the conditions and terms determined by regulation, the activities that are required to complete a program of studies leading to a diploma giving access to a permit of the Order or for the purposes of completing a training period or training to obtain equivalence of the diploma or training, to engage in the activities during employment held by those persons.

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

Further information may be obtained by contacting Renée Verville, Director General and Secretary, Ordre des psychoéducateurs et psychoéducatrices du Québec, 1600, boulevard Henri-Bourassa Ouest, bureau 510, Montréal (Québec) H3M 3E2; telephone: 514 333-6601 or 1 877 913-6601; fax: 514 333-7502; email: rverville@ordrepsed.qc.ca