

## Regulations and other Acts

Gouvernement du Québec

### O.C. 144-2014, 19 February 2014

Professional Code  
(chapter C-26)

#### Barreau du Québec — Compensation fund

Regulation respecting the compensation fund of the Barreau du Québec

WHEREAS, under section 89.1 of the Professional Code (chapter C-26), the board of directors of a professional order that authorizes the members of the order to hold funds or property must determine by regulation the compensation procedure and, if appropriate, conditions for the setting up of a compensation fund and rules for the administration and investment of the sums making up the fund;

WHEREAS the Règlement sur la comptabilité et les normes d'exercice professionnel des avocats (chapter B-1, r. 5) authorizes the members to hold funds or property;

WHEREAS the General Council of the Barreau du Québec adopted the Regulation respecting the compensation fund of the Barreau du Québec;

WHEREAS, pursuant to section 95 of the Professional Code and subject to sections 95.0.1 and 95.2, every regulation made by the board of directors of a professional order under the Code or an Act constituting a professional order must be transmitted to the Office des professions du Québec for examination and be submitted, with the recommendation of the Office, to the Government which may approve it with or without amendment;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), a draft of the Regulation respecting the indemnity fund of the Barreau du Québec was published in Part 2 of the *Gazette officielle du Québec* of 3 July 2013 with a notice that it could be submitted to the Government for approval on the expiry of 45 days following that publication;

WHEREAS the Office has examined the Regulation and submitted it to the Government with its recommendation;

WHEREAS it is expedient to approve the Regulation with amendments;

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

THAT the Regulation respecting the compensation fund of the Barreau du Québec, attached to this Order in Council, be approved.

JEAN ST-GELAIS,  
*Clerk of the Conseil exécutif*

### Regulation respecting the compensation fund of the Barreau du Québec

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

#### DIVISION I CONSTITUTION OF A COMPENSATION FUND

**1.** The General Council of the Barreau du Québec establishes a compensation fund to be used to compensate a claimant following the use by an advocate of funds or property for purposes other than those for which the claimant had entrusted them to the advocate in the practice of his or her profession.

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

It consists of

- (1) sums allocated to the fund by the General Council;
- (2) assessments fixed for that purpose by the General Council;
- (3) funds or property or sums recovered from an advocate by subrogation pursuant to section 89.1 or 159 of the Professional Code (chapter C-26) following a payment made from the fund;
- (4) income earned on the funds and property constituting the fund; and
- (5) sums which may be 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 SUMS OF**  
**THE COMPENSATION FUND**

**3.** The executive committee of the Barreau du Québec administers the compensation fund and withdraws therefrom administration fees. The committee is authorized to enter into any insurance contract for the purposes of the fund and to pay the premiums from the fund.

**4.** The accounting for the fund must be kept separate from the accounting of the other funds of the Bar.

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

(1) the portion of the sums the executive committee intends 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, c. 46), the Act respecting financial services cooperatives (chapter C-67.3) or the Trust and Loan Companies Act (S.C. 1991, c. 45);

(2) the other portion is constituted of investments presumed sound, within the meaning of article 1339 of the Civil Code, made in accordance with the investment policy of the executive committee and principles of the Civil Code applicable to such investments.

**DIVISION III**  
**COMPENSATION FUND COMMITTEE**

**5.** The compensation fund committee, formed by the General Council under paragraph 2 of section 86.0.1 of the Professional Code, examines the claims against the fund, makes recommendations to the executive committee for claims exceeding \$50,000 and decide claims not exceeding \$50,000.

**6.** The committee is composed of at least 10 members appointed by the General Council, 9 of whom are chosen from among advocates practising in accordance with the eligibility criteria of members of statutory committees established by the General Council, and 1 chosen from among the directors appointed to the General Council by the Office des professions du Québec pursuant to section 78 of the Professional Code.

The chair and the secretary of the committee are appointed by the General Council. The secretary is by virtue of office a member of the committee.

At least 7 members are a quorum of the committee.

**7.** The committee may sit in divisions consisting of 3 members, including the chair or a member of the committee designated by the chair to chair the division.

The decisions are made by a majority of members of the division.

Two members designated by the chair may sit to decide a claim not exceeding \$50,000, where the claim is not subject to representations by the parties concerned.

**DIVISION IV**  
**COMPENSATION PROCEDURE**

**8.** A claim against the compensation fund must

(1) be submitted in writing;

(2) state all facts in support of the claim and be accompanied by all relevant documents;

(3) indicate the amount claimed; and

(4) be sworn and filed with the secretary of the compensation fund committee.

**9.** To be admissible, a claim against the fund must be filed within 12 months of the claimant becoming aware that the funds 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 provided for in the first paragraph may be extended by the executive committee or, where applicable, by the compensation fund committee if the claimant shows that, for a reason beyond the claimant's control, he or she was unable to fill the claim within the prescribed period.

**10.** A request made by any person to the Bar with regard to facts likely to give rise to a claim against the fund is deemed to be a claim against the fund if the request is submitted within the period referred to in section 9.

The examination of the claim begins only when the terms and conditions provided for in section 8 are met.

**11.** A decision of the disciplinary council which obliges an advocate to remit a sum of money under the first paragraph of subparagraph *d* of section 156 of the Professional Code is deemed to be a claim against the fund, if the request for an inquiry under section 122 of the Professional Code was filed with the office of the syndic within the period prescribed in section 9.

**12.** The compensation fund committee, when making an inquiry regarding a claim, must allow the parties concerned to make representations when so requested.

**13.** The maximum compensation payable from the fund is established to \$500,000 for all claims concerning an advocate and \$100,000 by claimant in respect of such advocate.

Where the total of the claims filed against an advocate and accepted by the executive committee or the compensation fund committee exceeds the maximum compensation provided for in the first paragraph, the maximum compensation is paid to the claimants in proportion to the amount of the claims accepted.

**14.** Where the executive committee believes that claims in excess of \$500,000 may be filed against an advocate, it must suspend the payment of compensations until it has reviewed all claims concerning the advocate. The executive committee must

(1) publish, in a newspaper of the region where the professional domicile of the advocate is or was located, a notice in which the Bar invites any persons to inform the Bar of claims for which a compensation is likely to be paid in accordance with this Regulation; or

(2) draw an inventory of the funds or property entrusted to the advocate and notify in writing the persons likely to file a claim.

**15.** The secretary of the compensation fund committee informs members of the compensation fund committee of any claim against the fund at the first meeting after a claim is filed. The secretary also informs the executive committee when the amount of the claim exceeds \$50,000.

**16.** The compensation fund committee decides, with regard to any claim against the fund not exceeding \$50,000, whether it is expedient to accept the claim, in whole or in part, and, where applicable, it determines the compensation.

Its substantiated decision is final.

**17.** The executive committee, upon the duly motivated recommendation of the compensation fund committee, decides, with regard to any claim against the fund exceeding \$50,000, whether it is expedient to accept the claim, in whole or in part, and, where applicable, it determines the compensation.

Its substantiated decision is final.

**18.** Where the compensation fund committee and the executive committee are each seized of one or more claims against the same advocate and that the claims are related, the compensation fund committee reserves its decision until the executive committee decides which claim or claims it is seized, unless the executive committee delegates the claim or claims to the compensation fund committee for decision.

**19.** Upon recommendation of the executive committee, the General Council may pay compensation in excess of the amount prescribed in section 13 under special circumstances justified by humanitarian considerations.

**20.** To receive the compensation determined by the executive committee or, where applicable, by the compensation fund committee, the claimant must sign an acquittance in favour of the Barreau du Québec with subrogation of all rights in respect of the claim against the offending member, the member's successors, or any person, partnership or company or legal person that is bound or may be bound to make the payment, up to the amount of the compensation.

#### DIVISION V TRANSITORY AND FINAL

**21.** This Regulation replaces the Regulation respecting the indemnity fund of the Barreau du Québec (chapter B-1, r. 11), which continues to apply to claims filed before 20 March 2014.

**22.** The compensation fund referred to in section 1 consists of the funds and property allocated to the fund on 20 March 2014.

**23.** 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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Gouvernement du Québec

### O.C. 146-2014, 19 February 2014

An Act to promote access to justice in family matters (2012, chapter 20)

#### Regulation

Regulation respecting the application of the Act to promote access to justice in family matters

WHEREAS the Act to promote access to justice in family matters (2012, chapter 20) was assented to on 15 June 2012;

WHEREAS sections 2, 4, 5, 8 to 11, 16 and 19 of the Act confer on the Government the power to make regulations on the matters set forth therein;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), a draft of the Regulation respecting the application of the Act to promote access to justice in family matters was published in Part 2 of the *Gazette officielle du Québec* of 13 November 2013 with a notice that it could be made by the Government on the expiry of 45 days following that publication;