

Gouvernement du Québec

**O.C. 641-2015, 7 July 2015**

Professional Code  
(chapter C-26)

**Rules of evidence and practice for the conduct of proceedings relating to complaints lodged with the disciplinary councils of professional orders**

Rules of evidence and practice for the conduct of proceedings relating to complaints lodged with the disciplinary councils of professional orders

WHEREAS, under section 184.3 of the Professional Code (chapter C-26), the Office des professions du Québec may, by regulation and after consultation with the Bureau des présidents des conseils de discipline and the Québec Interprofessional Council, adopt rules of evidence and practice for the conduct of proceedings relating to complaints lodged with the disciplinary councils;

WHEREAS, under section 35 of the Act to amend the Professional Code with respect to disciplinary justice (2013, chapter 12), the first rules of evidence and practice adopted by the Office are adopted without consulting the Bureau des présidents des conseils de discipline;

WHEREAS the Office adopted on 29 May 2015 the Rules of evidence and practice for the conduct of proceedings relating to complaints lodged with the disciplinary councils of professional orders after consulting the Québec Interprofessional Council;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), draft Rules of evidence and practice for the conduct of proceedings relating to complaints lodged with the disciplinary councils of professional orders were published in Part 2 of the *Gazette officielle du Québec* of 26 November 2014 with a notice that they could be submitted to the Government for approval on the expiry of 45 days following that publication;

WHEREAS, under section 13 of the Professional Code, every regulation adopted by the Office under the Code or under an Act constituting a professional order must be submitted to the Government, which may approve it with or without amendment;

WHEREAS it is expedient to approve the Rules of evidence and practice for the conduct of proceedings relating to complaints lodged with the disciplinary councils of professional orders with amendments;

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

THAT the Rules of evidence and practice for the conduct of proceedings relating to complaints lodged with the disciplinary councils of professional orders, attached to this Order in Council, be approved.

JUAN ROBERTO IGLESIAS,  
*Clerk of the Conseil exécutif*

**Rules of evidence and practice for the conduct of proceedings relating to complaints lodged with the disciplinary councils of professional orders**

Professional Code  
(chapter C-26, s. 184.3)

**DIVISION I  
GENERAL**

**1.** These Rules apply to the conduct of proceedings relating to complaints lodged with the disciplinary councils of professional orders to promote handling of complaints.

**2.** The following are non-judicial days:

- (1) Saturdays and Sundays;
- (2) 1 and 2 January;
- (3) Good Friday;
- (4) Easter Monday;
- (5) the Monday preceding 25 May;
- (6) 24 June;
- (7) 1 July;
- (8) the first Monday of September;
- (9) the second Monday of October;
- (10) 24, 25, 26 and 31 December;
- (11) any other holiday fixed by the Government.

**3.** If the date set for performing an act falls on a non-judicial day, the act may validly be performed on the next following judicial day.

**4.** In computing any time period, the day which marks the start of the period is not counted and, except for periods counted in clear days, the terminal day is.

Non-judicial days are counted but a period that would normally expire on such a day is extended to the next following judicial day.

**5.** Each party must inform the secretary of the disciplinary council

(1) of a change of address, telephone number and, as the case may be, electronic address and fax number; and

(2) of the name of the advocate who, where applicable, represents or assists the party, and indicate the advocate's address, telephone number, electronic address and fax number.

## **DIVISION II COMPLAINTS**

**6.** Every complaint lodged against a professional must be made in writing, supported by the oath of the complainant and, where applicable, a notice of disclosure of the exhibits invoked in its support. The complaint must set out summarily the facts on which it is based.

In addition to what is provided for in sections 127 and 129 of the Professional Code (chapter C-26), the complaint must indicate

(1) the name and address of the complainant, telephone number and, where applicable, electronic address as well as fax number; and

(2) the name, title and address of the respondent.

The complaint must be sent to the secretary of the disciplinary council at the head office of the order.

**7.** The date of filing of a complaint is the date on which the secretary of the disciplinary council receives it.

The secretary of the disciplinary council offers a complainant whose complaint does not comply with section 6 to complete the complaint, failing which the secretary refuses the complaint.

A complaint that is refused is deemed never to have existed, unless the default has been remedied or the decision of the secretary of the disciplinary council has been reviewed following an application filed with the senior chair of the Bureau des présidents des conseils de discipline who decides on the application as soon as possible.

**8.** The secretary of the disciplinary council sends to the complainant, within 10 days from the reception of the complaint, an acknowledgement of receipt indicating the record number attributed to the complaint.

If the complainant is a person other than a syndic, the secretary also sends a copy of this Regulation to the complainant.

## **DIVISION III OTHER APPLICATIONS AND PROCEEDINGS**

**9.** Every application to the disciplinary council must be made by written motion notified to the opposite party and the secretary of the disciplinary council, not less than 5 clear days before the date of the hearing.

A motion may be presented orally during the hearing, if the disciplinary council authorizes it.

**10.** The disciplinary council proceeds with the hearing of a motion in the presence of the parties. Where the circumstances allow and with the consent of the parties, the disciplinary council may hear a motion by telephone conference call, videoconference or any other appropriate means of communication.

**11.** All proceedings must be legibly written on one side only of a sheet measuring 21.59 cm by 27.94 cm (8.5 in. x 11 in.), must indicate the names of the parties and the record number, and must state their purpose and the conclusions sought. The proceedings must be accompanied by any exhibit invoked in their support. They are notified to the other party and the secretary of the disciplinary council.

## **DIVISION IV ADJOURNMENT**

**12.** The disciplinary council may, for cause, on its own initiative or at the request of a party, adjourn the hearing on the conditions it imposes and set another date for the hearing.

**13.** As soon as the reasons to be invoked are known, the party wishing to have the hearing adjourned submits a written application to the disciplinary council. The application is sent to the secretary of the disciplinary council and notified to the other party.

An adjournment may be granted if it is based on serious grounds.

No adjournment is granted solely by the consent of the parties.

## DIVISION V CESSATION OF REPRESENTATION BY AN ADVOCATE

**14.** Before a date of hearing has been set, an advocate who wishes to cease representing a party may do so after notifying the party, the other parties and the secretary of the disciplinary council.

If a date of hearing has been set, the advocate may not cease representing the party, nor may another advocate be brought in as a substitute, without the authorization of the council.

## DIVISION VI CASE MANAGEMENT CONFERENCE

**15.** The chair of a disciplinary council that holds a case management conference in accordance with section 143.2 of the Professional Code may do so in the presence of the parties or by telephone conference call, videoconference or any other appropriate means of communication.

**16.** The minutes of a case management conference drawn up by the secretary of the disciplinary council must record the discussions held and the decisions made during the conference. The minutes state the electronic means used for conducting the conference and the specific terms and conditions of management of the hearing agreed to by the parties and, where applicable, the procedure and time limit for the disclosure of exhibits and other evidence, the list of witnesses and the subject of the testimonies.

The secretary of the disciplinary council sends a copy of the minutes to the parties, who are bound by their content.

## DIVISION VII DISCLOSURE OF EXHIBITS AND EVIDENCE

**17.** Unless the procedure and the time limit for the disclosure of exhibits and other evidence are determined during the case management conference, a party who intends to produce an exhibit in the party's possession at the hearing, whether the exhibit be real evidence or a document, must disclose it in accordance with the provisions of this Division.

**18.** A party who intends to produce an exhibit in the party's possession at the hearing must, not less than 15 days before the hearing, send a copy to the other party and to the Bureau des présidents des conseils de discipline and the secretary of the disciplinary council. The party must also file with the secretary proof of the disclosure to the other party.

The exhibit must be filed in 6 copies at the hearing, unless determined otherwise at the case management conference.

Documents written in a language other than French or English must be accompanied by a translation in French or in English. The translation must be certified to be true to the original by a translator who is a member of the Ordre des traducteurs, terminologues et interprètes agréés du Québec or, if the translator is not from Québec, by a translator recognized by the competent authority in the translator's province or country.

**19.** A party that is unable to deliver a copy of an exhibit, because of circumstances or the nature of the exhibit, is required to provide access to the exhibit by some other means not less than 15 days before the hearing.

**20.** A party may, before a hearing, request the other party to file an exhibit in that party's possession for examination, whether the exhibit be real evidence or a document.

If the party refuses or disagrees, the chair of the disciplinary council issues any appropriate orders.

**21.** If it is relevant and offers reasonable safeguards of reliability, hearsay evidence is admissible, including at the hearing of a request for immediate provisional striking off the roll or immediate provisional restriction of the right to engage in professional activities.

**22.** A party who intends to adduce an expert's report as evidence must disclose it according to the terms provided for in section 18 and must attach to it the expert's résumé.

**23.** In the absence of a report and unless different terms and time limit for the disclosure have been determined at the case management conference, an expert witness may be heard provided that, not less than 15 days before the hearing, the party who intends to have the expert witness testify sends to the other party a sufficiently reasoned and detailed summary of the expert's testimony and the expert's résumé. The party must also file with the secretary of the disciplinary council proof of the disclosure to the other party.

## DIVISION VIII SUMMONING WITNESSES

**24.** Witnesses are called to appear before the disciplinary council by subpoena issued by the secretary of the disciplinary council acting at the request of the disciplinary council or a party.

They must be called at least 10 days before the time at which they are scheduled to appear, unless there are urgent circumstances and the chair of the disciplinary council shortens the notification period. However, the notification period cannot be shortened to less than 24 hours; the decision to shorten the notification period must be recorded on the subpoena.

The application for summons of witnesses by a party must be made in writing to the secretary of the disciplinary council and indicate the contact information of the witnesses.

#### **DIVISION IX** **HEARING ROLL**

**25.** A hearing roll kept by the secretary of the disciplinary council in accordance with section 120.1 of the Professional Code must mention

- (1) the names of the members of the disciplinary council, indicating the member who is the chair;
- (2) the record number;
- (3) the names of the parties and, where applicable, the names of their advocates;
- (4) the object of the complaint;
- (5) the object of the hearing;
- (6) the date and time of the hearing; and
- (7) the place of the hearing, indicating the room, where applicable.

#### **DIVISION X** **HEARING AND DECISION**

**26.** The chair of the disciplinary council sees to the orderly conduct of the hearing.

**27.** Persons attending the hearing must behave with dignity and respect. They must not interfere with the conduct of the hearing or do anything that would adversely affect the decorum and good order.

The following, among other things, are prohibited: taking photographs, making audio or video recordings and using pagers and cellular telephones in a resonant mode.

**28.** The secretary of the disciplinary council draws up the minutes of the hearing.

In addition to what is set out in section 153 of the Professional Code, the minutes include

- (1) the names of the members of the disciplinary council, indicating the member who is the chair;
- (2) the record number;
- (3) the name of the person who draws up the minutes;
- (4) the name of the person who makes the recording and the means of recording;
- (5) the names and addresses of the parties and an indication that they swore an oath;
- (6) the names and addresses of the parties' advocates, where applicable;
- (7) the names and addresses of the witnesses heard and an indication that they swore an oath;
- (8) the date, place and time of the beginning and the end of the hearing;
- (9) the date and time of any stay or resumption of the hearings;
- (10) the name of any interpreter and an indication that the interpreter swore an oath;
- (11) the presence or absence of the parties;
- (12) a plea of guilty, where applicable;
- (13) the various steps of the hearing;
- (14) the code and a description of the exhibits filed;
- (15) the incidental proceedings and objections;
- (16) the orders and decisions rendered at the hearing;
- (17) the admissions, agreements and undertakings of the parties; and
- (18) the date the matter is taken under advisement.

#### **DIVISION XI** **FINAL**

**29.** These Rules come into force on the fifteenth day following the date of their publication in the *Gazette officielle du Québec*.