

Draft Regulations

Draft Regulation

Professional Code
(chapter C-26)

Board of directors of a professional order — Standards of ethics and professional conduct of directors on the board of directors of a professional order

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), that the Regulation respecting the standards of ethics and professional conduct of directors on the board of directors of a professional order, made by the Office des professions du Québec on 23 February 2018, 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 determines the standards of ethics and professional conduct applicable to directors on the board of directors of a professional order, whether they are elected by the members of the order or appointed by the Office des professions du Québec, in accordance with the Professional Code (chapter C-26).

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

Further information may be obtained by contacting Ariane Imreh, Direction des affaires juridiques, Office des professions du Québec, 800, place D'Youville, 10^e étage, Québec (Québec) G1R 5Z3; telephone: 418 643-6912, extension 369 or 1 800 643-6912; email: ariane.imreh@opq.gouv.qc.ca

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 interested persons, departments and bodies.

DIANE LEGAULT,
*Chair of the Office des
professions du Québec*

Regulation respecting the standards of ethics and professional conduct of directors on the board of directors of a professional order

Professional Code
(chapter C-26, ss. 12.0.1 and 12, 4th par., subpar. 6,
subpar. b)

CHAPTER I PURPOSE AND SCOPE

1. The purpose of this Regulation is to preserve and enhance the confidence of the public and the members of professional orders in the management of the orders, to promote transparency within the orders, to make the members of their board of directors aware of their responsibilities regarding ethics and professional conduct and to raise the awareness of the senior management of the order about those issues.

2. The standards of ethics and professional conduct determined in this Regulation are applicable to the directors on the board of directors of an order, whether they are elected by members or appointed by the Office des professions du Québec in accordance with the Professional Code (chapter C-26).

The standards apply in particular where the director performs his or her duties within the board of directors or with any committee created by the board of directors.

CHAPTER II ETHICS AND INTEGRITY

3. A director must, in the performance of his or her duties and in determining the standards of ethics applicable to the director, take into consideration the following values and principles embraced by the director:

(1) the primacy of the order's mission to ensure public protection and the director's commitment to contribute to the carrying out of that mission;

(2) rigour, effectiveness, fairness and transparency in the management of the order;

(3) the commitment to maintain the confidence of the public, members of the order and various participants of the professional system towards mechanisms of public protection;

(4) respect towards the public, members of the order, other directors and employees of the order;

(5) gender equality, recognition and inclusion of ethno-cultural diversity and intergenerational equity, including the contribution of members 35 years of age or under.

CHAPTER III DUTIES AND OBLIGATIONS

DIVISION I GENERAL

4. A director acts with honesty, integrity, rigour, objectivity and moderation. A director must act with probity.

A director performs his or her duties with competence. To that end, a director develops and maintains his or her knowledge on the role of a professional order's board of directors in particular as regards such matters as governance and ethics, gender equality as well as ethnocultural diversity management.

A director performs his or her duties in good faith, with prudence and diligence and shows loyalty towards the order.

A director acts in the interest of the order, in particular so that the latter may guide his or her actions and direct his or her activities towards protecting the public. The director may not, in any case, favour his or her personal interest, the special interest of members of an electoral region or in a sector of professional activities that elected the director.

5. In the performance of his or her duties, a director is bound to comply with the ethical principles and the rules of professional conduct prescribed by this Regulation and by the code of ethics and professional conduct established by the board of directors under Chapter IV. In case of discrepancy, the more stringent principles and rules apply.

6. A director must know and understand the standards of ethics and professional conduct that apply to him or her, undertake to comply with them and to promote compliance with them. An administrator must, at the beginning of his or her term of office and once a year thereafter, sign a declaration to that effect.

The president of the order ensures that the secretary of the order collects and records the declaration of the director.

DIVISION II SITTINGS

7. A director is required to be present, unless he or she has a valid excuse, at the sittings of the board of directors or of a committee, to be prepared for it and to take an active part in it. The director contributes to the progress of the work of the order by providing a constructive contribution to the deliberations.

8. A director must address any issue with an open mind.

9. A director must debate any issue in an objective and independent manner as well as in a clear and informed manner.

10. A director must act with courtesy and respect so as to encourage mutual trust and cohesive action within the board of directors or a committee of which the director is a member.

11. A director is in solidarity with the decisions made by the board of directors.

12. A director is required to vote, except if there is an impediment determined by the board of directors or a ground considered sufficient by the president of the order or, where the president is concerned, by the director designated to perform the duties of the president in the case of an impediment or absence of the latter.

DIVISION III CONFLICT OF INTEREST

13. A director must refrain from placing himself or herself in a situation entailing a conflict between the interest of the order or the public and his or her personal interest or that of a person related to the director, such as the director's spouse, a blood relative, a person living under the same roof or a partner or a legal person that the director manages or controls.

A director preserves at all times his or her ability to perform duties impartially, objectively and independently.

14. Except for the goods and services offered by the order to its members, no director may enter into a contract with the order, except with an authorization of the board of directors warranted, in particular, by a special competence necessary to the order.

15. A director who has a direct or indirect interest in property, a body, an enterprise, association or a legal entity likely to place the director in a situation of conflict of interest must declare, without delay and in writing, that interest to the president of the order or, where the president is concerned, to the director designated to perform the duties of the president in the case of an impediment or absence of the latter. Such a declaration may be made at the sitting and is then recorded in the minutes of the sitting of the board of directors.

The director must refrain from taking part in any deliberation or any decision that comes into conflict with his or her personal interest.

A director must file a declaration of interest at the beginning of his or her term of office and on an annual basis thereafter, and when a change in his or her situation requires it.

The president of the order ensures that the secretary of the order collects and records the declaration of the director.

16. A director may not give any undertaking to third parties nor grant them any guarantee with regard to a vote that the director may be called upon to make or a decision that the board of directors may be called upon to make.

17. A director may not treat the property of the order as if it were his or her own and may not use it for his or her own benefit or for the benefit of a third party, unless an authorization from the board of directors is obtained.

18. A director may not, directly or indirectly, grant, solicit or accept a favour, gift, hospitality or other advantage offered or given because of the director's duties, except what is customary and of modest value.

DIVISION IV CONFIDENTIALITY AND DISCRETION

19. A director is bound to discretion in regard to anything that comes to his or her knowledge in the performance of duties and is at all times bound to maintain the confidentiality of discussions and documents at the director's disposal or that have come to his or her knowledge.

A director must take reasonable security measures to preserve the confidentiality of information obtained in the performance of his or her duties.

20. A director must, except to the extent determined by the board of directors, refrain from commenting the decisions made by the board of directors, in particular on a website, blog or social network.

21. A director may not use for his or her own benefit or for the benefit of a third party information obtained in the performance of his or her duties.

DIVISION V RELATIONS WITH EMPLOYEES OF THE ORDER

22. A director must act with courtesy and respect in his or her relations with employees of the order.

A director may not contact an employee of the order to give him or her instructions, interfere in the employee's work or obtain confidential information, unless the director is acting within the mandate of a committee of which he or she is the president and is expressly authorized by the board of directors to do so.

The first paragraph does not prevent the president of the order from requiring information to the extent provided for in the fourth paragraph of section 80 of the Professional Code (chapter C-26).

DIVISION VI POST-TERM RULES

23. Upon completion of his or her term, a former director may not disclose confidential information obtained in the performance of his or her duties as director or use for his or her own benefit or for the benefit of a third party information not available to the public obtained in the same conditions.

24. A former director must refrain from commenting the decisions made by the board of directors during his or her term of office, in particular on a website, blog or social network, unless the director is expressly authorized by the board of directors to do so, and must demonstrate reserve regarding his or her comments.

25. A former director must conduct himself or herself in such a manner as not to derive undue advantages from his or her duties within the order.

26. A former director may not enter into a contract with the order in the 12 months following the end of his or her term of office, except under the conditions provided for in section 14.

DIVISION VII REMUNERATION

27. A director is entitled, for the performance of his or her duties, solely to the remuneration determined in accordance with the Professional Code (chapter C-26).

28. An appointed director may receive additional remuneration from the order, which reports it in its annual report.

The additional remuneration may not exceed the difference between the allowance paid by the Office and the allowance received by a director elected by the members of the order.

CHAPTER IV CODE OF ETHICS AND PROFESSIONAL CONDUCT

29. The board of directors must establish, in compliance with the standards made by this Regulation, a code of ethics and professional conduct applicable to its directors.

30. The code establishes the ethical and professional conduct standards which reflects the order's mission, the values underlying its operations and its general principles of sound management and specificities of the profession.

The standards of ethics pertain to the duties and obligations of directors of the order. The standards explain and illustrate those duties and obligations in a concrete manner. They must in particular cover

- (1) preventive measures, specifically, rules concerning the declaration of interests made by directors; and
- (2) real and potential situations of conflict of interest.

CHAPTER V CONTROL

31. The president of the order sees that the directors comply with the standards of ethics and professional conduct applicable to them.

32. A committee of inquiry in ethics and professional conduct is formed within the order for the purpose of examining and inquiring into any information received relatively to a violation of the standards of ethics and professional conduct by a director.

The committee is composed of 3 members appointed by the board of directors:

- (1) a person whose name appears on a list from which the directors are appointed by the Office, in accordance with the Professional Code (chapter C-26), and who is not a director of the order;
- (2) a former director of the order or another person referred to in subparagraph 1; and

(3) a member of the order having notable experience and expertise in, sensitivity to and interest for matters of ethics and professional conduct and who is not a director of the order or an employee of the order or a person related to them.

The committee may designate experts to assist the committee.

The duration of the term of office of the members of the committee is determined by the board of directors. On the expiry of their term of office, they remain in office until they are replaced or reappointed.

The remuneration and reimbursement of the expenses of members of the committee are determined by the board of directors of the order, except for the members appointed from the list referred to in subparagraph 1 of the first paragraph. Those members are entitled, at the Office's expense, to an attendance allowance and to the reimbursement of their expenses to the same extent and under the same conditions as those determined by the Government pursuant to the fifth paragraph of section 78 of the Professional Code (chapter C-26).

The committee adopts an internal by-law that the order makes available to the public, in particular on its website, and publishes it in its annual report.

33. The director must disclose without delay to the committee any violation of the standards of ethics and professional conduct applicable to the directors that has come to his or her knowledge or of which the director suspects the existence.

34. The committee receives the disclosure from any person who becomes aware that a director has violated the standards of ethics and professional conduct applicable to the director.

35. The committee may, upon summary examination, dismiss any disclosure if, in the committee's opinion, it is abusive, frivolous or clearly unfounded.

The committee so informs the informant and the member of the board of directors covered by the disclosure.

36. The committee conducts the inquiry in such manner as to preserve its confidentiality, diligently and in keeping with the duty to act fairly. It must allow the director to submit observations after the director has been informed of the violations of which the director is accused.

Each member of the committee takes the oath contained in Schedule II to the Professional Code (chapter C-26).

37. Where the committee comes to the conclusion that the director under inquiry has not violated the standards of ethics and professional conduct applicable to the director, the committee so informs the informant and the director.

Where the committee comes to the conclusion that the director under inquiry has violated the standards of ethics and professional conduct applicable to the director, the committee sends without delay a written report to the board of directors containing a summary of the inquiry and a substantiated recommendation for penalty and the entire record and documents.

Those documents are confidential and a copy is sent to the director under inquiry, in such a manner as to protect the identity of the informant.

38. The board of directors meets, without delay and in camera, to decide, by a two-thirds vote of its members, whether the director under inquiry has violated a standard of ethics or professional conduct and determines, where applicable, the appropriate penalty. The director may not take part in the deliberations or decision.

A director may, however, submit his or her observations to the board of directors and be heard on the facts in support of his or her claims, before the decision of the board of directors is taken.

39. Depending on the nature, gravity and persistence of the violation or misconduct, one or more of the following penalties may be imposed on the director: a reprimand, a suspension with or without remuneration or dismissal.

A director may also be compelled to reimburse or remit to the order, donor or charity that is not related to the order, any sum of money or any gift, hospitality or other advantage received in contravention of the standards of ethics and professional conduct applicable to the director.

40. A director is informed, without delay and in writing, of the substantiated and final decision of the board of directors and, where applicable, of the grounds in support of the penalty imposed on him or her. The board of directors so informs the informant in writing.

The board of directors informs the Office of any penalty imposed on an appointed director.

CHAPTER VI PROVISIONAL SUSPENSION

41. A director against whom proceedings concerning an act involving collusion, corruption, malfeasance, breach of trust or influence peddling and any proceedings concerning improper gestures or remarks of a sexual

nature are instituted or a director prosecuted for an offence punishable by a term of imprisonment of 5 years or more must, within 10 days from the day on which the director is so informed, notify the secretary of the order.

42. On the recommendation of the committee, a director accused of a violation of the standards of ethics or professional conduct applicable to the director may be temporarily relieved of his or her duties by the board of directors, in an urgent situation requiring rapid action or in a presumed case of serious misconduct.

On the recommendation of the committee, a director against whom proceedings concerning an act involving collusion, corruption, malfeasance, breach of trust or influence peddling or proceedings concerning improper gestures or remarks of a sexual nature are instituted may be temporarily relieved of his or her duties.

The board of directors meets, without delay and *in camera*, to decide, by a two-thirds vote of its members, whether the director under inquiry must be temporarily relieved of his or her duties.

The director concerned by that measure may submit observations to the board of directors and be heard on the facts in support of his or her claims, before the decision of the board of directors is taken.

The board of directors informs the Office of its decision to temporarily relieve an appointed director of his or her duties.

43. A director is relieved of his or her duties until the board of directors renders a decision referred to in section 38 or, in the cases referred to in the second paragraph of section 42, until the prosecutor decides to stay or withdraw all charges in the proceedings on which the board of directors' decision was based to relieve the director of his or her duties or until the decision to acquit the director or to stay all charges in the proceedings.

44. A director against whom a complaint has been filed before the disciplinary council of the order or who is the subject of an inquiry brought before the disciplinary council in accordance with section 122.0.1 of the Professional Code (chapter C-26) is temporarily relieved of his or her duties.

45. The director is relieved of his or her duties until the final and enforceable decision of the disciplinary council or the Professions Tribunal or, if an order is made by the disciplinary council under section 122.0.3 of the Professional Code (chapter C-26), until it is no longer into force.

46. A director is informed without delay, in writing, of the decision to temporarily relieve the director of his or her duties and the reasons justifying it.

CHAPTER VII
FINAL

47. 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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