

Draft Regulations

Draft Regulation

An Act respecting administrative justice
(chapter J-3)

Procedure of the Administrative Tribunal of Québec — Replacement

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), that the Regulation respecting the procedure of the Administrative Tribunal of Québec, appearing below, may be submitted to the Government for approval upon the expiry of 45 days following this publication.

The Draft Regulation replaces the Rules of procedure of the Administrative Tribunal of Québec (chapter J-3).

It proposes a new structure that makes it easier to find its provisions and creates a framework for the use of a technology-based document during proceedings. It provides minimum delays for producing documents before hearings, taking into consideration the nature of the document and introduces rules regarding the principle of proportionality, the continuance of proceedings and representations before the Tribunal.

Finally, it adapts its provisions to various legislative modifications that have taken place since the coming into force in 2000 of the Rules of procedure of the Administrative Tribunal of Québec.

Further information on the Draft Regulation may be obtained by contacting Julie Baril, Director of Legal Affairs, Administrative Tribunal of Québec, 500, boul. René-Lévesque Ouest, 21^e étage, Montréal (Québec) H2Z 1W7; telephone: (514) 873-8030 extension 5010; e-mail: julie.baril@taq.gouv.qc.ca.

Should you wish to comment on the Draft Regulation, please send your comments in writing, within the next 45 days, to: Natalie Lejeune, President, Director General and Chief Administrative judge of the Administrative Tribunal of Québec, 575, rue Jacques-Parizeau, Québec (Québec) G1R 5R4.

SONIA LEBEL,
The Minister of Justice

Regulation respecting the procedure of the Administrative Tribunal of Québec

An Act respecting administrative justice
(chapter J-3, s. 109)

DIVISION I PRELIMINARY PROVISIONS

1. This Regulation applies to all proceedings brought before the Administrative Tribunal of Québec, except those within the jurisdiction of the social affairs division acting as a review board within the meaning of the Criminal Code (R.S.C., 1985, c. C-46).

Its purpose is to ensure the simple, flexible and prompt processing of applications, particularly with the cooperation of the parties and their representatives, in accordance with the rules of natural justice.

2. At any stage, the proceedings and the presentation of evidence must be proportionate to the nature and complexity of the matter.

DIVISION II OFFICE HOURS AND WORKING DAYS

3. The secretariat of the Tribunal is open to the public from Monday to Friday, on working days, from 8:30 a.m. to 4:30 p.m.

4. The following are considered holidays:

- 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 in September;

- 9° the second Monday in October;
- 10° 24, 25, 26 and 31 December;
- 11° any other day fixed by the Government.

5. If the date fixed for performing an act falls on a holiday, the act may validly be done on the next following working day.

6. In computing any time period, the day that marks the start of the period is not counted and the terminal day is. The time period expires on the last day at midnight.

Holidays are counted but a period that would normally expire on such a day must be extended to the next following working day.

DIVISION III TRANSMISSION OF APPLICATIONS AND FILING OF DOCUMENTS

7. The transmission of technology-based documents, within the meaning of the Act to establish a legal framework for information technology (chapter C-1.1), is possible if the means is compatible with the Tribunal's technological environment.

8. The date of filing of a document is the date on which it is received at the secretariat of the Tribunal or at the office of the Court of Québec, as the case may be.

A document sent by mail is presumed to be filed with the Tribunal on the date postmarked.

A document sent by fax is presumed to be filed with the Tribunal on the date and at the time appearing in the report produced by the Tribunal's fax machine that received the document.

A message sent by electronic mail is presumed to be filed with the Tribunal on the date of receipt, as recorded by the Tribunal's server.

9. If fees or other expenses are prescribed for the filing of a document, the document is validly filed only if the fees or expenses have been paid.

Despite the foregoing, in the case of the motion instituting proceedings, an applicant who has not paid all the prescribed fees or expenses in full may do so within 30 days after the date of receipt of the motion by the Tribunal.

10. A motion instituting proceedings may be filed on the form provided by the Tribunal, duly completed.

The motion may also be filed on another document that meets the requirements of section 111 of the Act respecting administrative justice (chapter J-3) and that states:

1° the decision in respect of which proceedings are brought or the facts giving rise to the proceedings;

2° a short statement of the grounds invoked in support of the proceeding;

3° the conclusions sought;

4° the representative's name, address, email address, telephone number and fax number.

The motion indicates the applicant's name, address and any other contact information.

The contested decision or the documents relating to the facts giving rise to the proceedings must be sent to the Tribunal without delay at the time the motion is filed.

If the documents cannot be sent at the time the motion is filed, the motion must indicate:

1° if the proceedings are to contest a decision:

a) the authority that made the decision;

b) the date of the decision; and

c) the file number given by that authority; or

2° if no decision is contested, the facts giving rise to the proceedings.

11. Any other application to the Tribunal must be made in writing and sent to the secretariat of the Tribunal.

The application must indicate the name of the parties, the file number of the Tribunal, the grounds invoked in support of the application and the conclusions sought.

If the applicant is not one of the parties, the application must indicate the applicant's name, address and any other contact information. If the applicant is represented, the application must also contain the same information for the representative.

Despite the foregoing, an application may be presented otherwise if authorized by the Tribunal having regard to the circumstances.

12. Any written application or communication addressed to the Tribunal must also be sent to the other parties.

DIVISION IV REPRESENTATION

13. A party who discharges or replaces his or her representative must give notice thereof to the Tribunal and the other parties without delay.

14. A person who agrees to represent a party after the motion is filed must give notice thereof to the Tribunal and the other parties without delay.

15. Before the hearing date has been set, a lawyer who wishes to cease representing a party may do so after notifying the party, the other parties and the secretariat of the Tribunal.

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

16. Where a party is represented, the communications of the Tribunal, except the notice of hearing and the Tribunal's decision, must be addressed to the representative only.

17. In exceptional cases provided for by the Act respecting administrative justice (chapter J-3), where a person who is not a member of the Barreau is authorized to act as a representative before the Tribunal, the person must provide a mandate in paper form, signed by the person wishing to be represented.

In addition to stating the authorization for representation, the mandate indicates, if such is the case, that the representative is authorized to consult the file of the person represented or to obtain a copy thereof.

This provision does not apply to the representative of the Minister of Employment and Social Solidarity or the Minister's delegate.

DIVISION V CHANGE OF ADDRESS

18. Every party or representative must inform the secretariat of the Tribunal without delay of any change in address or other contact information.

DIVISION VI DOCUMENTS RELATING TO RECORDS

§1. Expropriation

19. Where a general plan of the immovables to be expropriated is filed with the Tribunal pursuant to section 39 of the Expropriation Act (chapter E-24), an appendix indicating the cadastre number of each immovable involved, the nature of the expropriated right and the name of the last known holder of the right must be attached to the plan.

Every related notice of expropriation filed after the general plan is filed must bear the file number of the plan.

§2. Protection of persons whose mental state presents a danger to themselves or to others

20. In matters of protection of persons whose mental state presents a danger to themselves or to others, the institution having custody of such a person must provide the Tribunal with a copy of the order for custody in an institution, a copy of the psychiatric examination reports on the basis of which the order was issued and a copy of any periodical psychiatric examination report following the issue of the order.

The documents must be provided not later than 24 hours before the date of the hearing.

DIVISION VII INTERVENTION AND CONTINUANCE OF PROCEEDING

21. The Tribunal may authorize, on the conditions it determines, including the scope of the intervention, every person who has a sufficient interest, to make representations in a proceeding before the decision on the proceeding is rendered.

For a proceeding brought pursuant to the Environment Quality Act (chapter Q-2), any person making representations must file with the Tribunal a notice to that effect at least 30 days before the date of the hearing.

22. Every party to a proceeding may, with the authorization of the Tribunal and on the conditions it determines, including the scope of the intervention, implead a third party whose presence is necessary to fully resolve the dispute.

The Tribunal may, of its own motion, order the impleading of any person whose interests could be affected by its decision.

23. To continue the proceeding of a party, an heir, a successor, the liquidator of a succession or a person who has acquired the capacity or interest to do so must send the following documents to the Tribunal:

- 1° a notice of the person's intent;
- 2° the documents evidencing the person's interest or authorizing the person to continue the proceeding; and
- 3° in the case of a deceased party, proof of the death.

24. A party may notify a formal demand on the persons referred to in section 22 requiring that they inform the Tribunal of their intention. A copy of the formal demand must be sent to the Tribunal and the parties.

If those persons do not comply within 60 days of the notification of the formal demand, any party may request the Tribunal to proceed by default or to declare the proceeding null and void, depending on the circumstances.

DIVISION VIII SUMMONING OF PARTIES

25. A notice of hearing, in order to be valid, must be sent to a party, within reasonable time, at the last address filed in the record.

The notice must also be sent to the party's representative at the representative's last address filed in the record.

DIVISION IX PRACTICE ROLL

26. In addition to the roll comprising the motions instituting proceedings, the Tribunal may also prepare a practice roll for the incidental proceedings that may be heard prior to the hearing on the merits.

Except with the parties' consent, in a case of urgency or if the Tribunal decides otherwise to ensure the proper administration of justice, an incidental proceeding entered on the practice roll may not be heard unless the parties have been notified at least 10 days before the date of the hearing.

DIVISION X POSTPONEMENT

27. A party requesting postponement of the hearing must apply to the Tribunal as soon as the grounds invoked become known.

The postponement is granted only if it is based on serious grounds and the interests of justice will be better served as a result. No postponement may be granted solely on agreement of the parties.

DIVISION XI CALLING OF A WITNESS AT THE HEARING

28. A party who wishes to have a witness summoned to appear to testify, to produce a document or both, must use the form provided by Tribunal.

The party is responsible for having the subpoena issued by the party's advocate or, failing that, by a member of the Tribunal served at least 10 days before the hearing.

In a case of emergency, a member of the Tribunal may shorten the time limit for service, but it may not be less than 24 hours. That decision must be specified in the subpoena.

A person in prison may only be summoned on an order from a member of the Tribunal commanding the warden or gaoler, as the case may be, to make the person appear according to the instructions in the order so that the person may testify.

29. The Tribunal may order the exclusion of witnesses.

30. A person called to testify must swear to tell the truth. The person must then state his or her name, address and occupation.

A person who does not understand the nature of the oath is exempted from taking it, but must be informed of the obligation to tell the truth.

31. An expert witness must also swear that his or her testimony will respect the primary duty to enlighten the Tribunal and that the opinion provided will be objective, impartial, thorough and based on the most current knowledge on the questions on which the expert's opinion is required.

32. Where the services of an interpreter are needed for a hearing, the interpreter must swear that the translation will be faithful.

DIVISION XII PRODUCTION OF DOCUMENTS AT THE HEARING

33. A party who intends to produce a document as evidence at the hearing must, not later than 15 days before the hearing, send a copy of the document to the other

parties and to each member of the Tribunal composing the panel hearing the matter. An additional copy is produced in the case of proceedings before the immovable property division. The copies for the Tribunal must be filed with the secretariat of the Tribunal.

In the case of an expert's report or a technology-based document within the meaning of the Act to establish a legal framework for information technology (chapter c-1.1), the report or document must be sent not later than 30 days before the date of the hearing. A written notice must be attached to the technology-based document, indicating to each party that it is not required to accept the document other than in paper form and that it has 5 days following its receipt to ask that the document in paper form be sent. If so required, the paper form document must be delivered within 10 days following the receipt of the request.

No expert witness may be heard if the expert's report has not been filed within the time period, except with the leave of the Tribunal.

The Tribunal may determine different time periods to ensure the proper administration of justice, if no party suffers serious harm as a result.

34. Where a party wishes to file a technology-based document within the meaning of the Act to establish a legal framework for information technology (chapter C-1.1), the party makes sure that, at the time of filing of the document, the Tribunal has at its disposal the required material to allow the presentation at the hearing.

If the Tribunal does not have at its disposal the required material, the party must transfer the document to a medium adapted to the material the Tribunal could have at its disposal at the hearing or provide the material required for the presentation of the technology-based document.

The Tribunal may agree on different measures to ensure the proper administration of justice, considering the available material.

DIVISION XIII HEARING

35. Every person attending the hearing must be dressed appropriately and behave with dignity and in a manner that shows respect towards justice. The person must refrain from doing anything that could disrupt the hearing.

36. Representations made at the hearing must be recorded, unless a party has them recorded at its own expense by a stenographer or stenotypist or by any other

means provided for in the Regulation respecting the taking of witnesses' depositions in civil matters (chapter C-25.01, r. 3).

A party who requests a transcription of the hearing must provide a copy to the Tribunal free of charge.

In the cases where the Tribunal may award costs, the recording and transcription expenses are included in the legal costs.

37. The minutes of the hearing must be drawn up in the form established by the Tribunal and must contain in particular the following information:

- 1° the date and time of the beginning and end of the hearing, and where it takes place;
- 2° the names of the members of the Tribunal;
- 3° the names and addresses of the parties and, where applicable, those of their representatives and witnesses;
- 4° the name and address of the stenographer;
- 5° the name and address of the interpreter;
- 6° the form of the hearing;
- 7° the exhibits adduced;
- 8° incidental proceedings and objections;
- 9° the date on which an act or action must be carried out;
- 10° the Tribunal's orders and decisions; and
- 11° the date on which the matter is taken under advisement.

DIVISION XIV DISCONTINUANCE

38. Unless otherwise provided for by law, the filing of a discontinuance declaration or of a notice from the parties indicating that the matter has been settled or that the dispute no longer exists terminates the proceedings.

DIVISION XV DECISION

39. A copy of the Tribunal's decision must be sent to the parties and to their representatives.

DIVISION XVI TRANSITIONAL AND FINAL

40. Section 33 applies to proceedings for which a notice of hearing has not been sent by the Tribunal on the date of coming into force of this Regulation.

Sections 26, 28 and 29 of the Rules of procedure of the Administrative Tribunal of Québec (chapter J-3, r. 3) continue to apply to the other pending proceedings.

41. This Regulation replaces the Rules of procedure of the Administrative Tribunal of Québec (chapter J-3, r. 3).

42. This Regulation comes into force on the ninetieth day following the date of its publication in the *Gazette officielle du Québec*.

103890

Draft Regulation

Environment Quality Act
(chapter Q-2)

Traceability of excavated contaminated soils Land protection and rehabilitation Contaminated soil storage and contaminated soil transfer stations — Amendment

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), that the Regulation respecting traceability of excavated contaminated soils, the Regulation to amend the Land Protection and Rehabilitation Regulation and the Regulation to amend the Regulation respecting contaminated soil storage and contaminated soil transfer stations, appearing below, may be made by the Government on the expiry of 45 days following this publication.

The draft Regulation respecting traceability of excavated contaminated soils is a new regulation that provides for the necessary measures implementing a system ensuring traceability of excavated contaminated soils so that the soils may be unloaded on a site that is permitted to receive them. Under that system, each transportation of excavated contaminated soils must be tracked in real time from their land of origin to the site where their unloading was agreed in advance between the owner of the soils and the person responsible for the receiving site. Thence, the owner of contaminated soils, their carrier and the person responsible for the receiving site will each have to send, using a computer system prescribed by the Minister, different information that will be entered on a tracking slip for contaminated soils, which will track the soils for the duration of their transportation to the site where they will

be unloaded. Documents will also have to be sent to the Minister using the same means. Every person required to send information or documents under the Regulation will first have to be registered in the computer system prescribed by the Minister. The carrier will also have to use a device that sends in real time to that computer system the geographical position of the carrier's load.

The draft Regulation also provides for monetary administrative penalties in cases of failure and penal provisions in cases of offences.

The draft Regulation to amend the Land Protection and Rehabilitation Regulation provides for, in particular, the following elements:

— Activities respecting the reclamation of certain contaminated soils, subject to sections 22 and 30 of the Environment Quality Act (chapter Q-2), eligible for a declaration of compliance under section 31.0.6 of the Act and the conditions, restrictions and prohibitions applicable to those activities;

— Activities respecting the reclamation of certain contaminated soils exempted from the application of all or part of section 22 of the Environment Quality Act and the conditions, restrictions and prohibitions applicable to those activities;

— The time required to send the notice of cessation of an industrial or commercial activity provided for in section 31.51 of the Environment Quality Act and the content of that notice;

— The contaminated land rehabilitation measures that are eligible for a declaration of compliance under section 31.68.1 of the Environment Quality Act to replace the transmission, for approval, of a rehabilitation plan required under section 31.51 or 31.54 of the Act, and the conditions to comply with so that a rehabilitation measure is eligible for such a declaration, the prohibitions applicable to those measures and the information required in the declaration of compliance;

— A provision similar to that provided for in section 66 of the Environment Quality Act, so that, on the one hand, no person may dispose of contaminated soils in a site where it is prohibited to receive contaminated soils whose concentration of contaminants present therein is greater than the values listed in Schedule I to the Regulation and, on the other hand, if such situation occurs, the person responsible for the site is required to ship them to another site where it is permitted to receive them;

— Additions to the list of industrial or commercial activity categories for the purposes of sections 31.51, 31.52 and 31.53 of the Environment Quality Act.