

Draft Rules

Act respecting the regulation of the financial sector
(chapter E-6.1)

Rules of evidence and procedure of the Financial Markets Administrative Tribunal

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), that the Rules of evidence and procedure of the Financial Markets Administrative Tribunal, appearing below, may be adopted by the Financial Markets Administrative Tribunal on the expiry of 45 days following this publication.

The draft Rules, which replaces the Rules of procedure of the Financial Markets Administrative Tribunal (chapter E-6.1, r. 1), mainly

— proposes a new structure, introduces rules respecting proportionality and regulates the use of technological means;

— prescribes a minimum period for producing documents before the hearing and introduces rules pertaining to hearings before the Tribunal;

— takes into account the various legislative amendments made since the coming into force of the Rules of procedure of the Financial Markets Administrative Tribunal in 2004.

Further information on the draft Rules may be obtained by contacting Sylvain Lippé, Director, Direction des affaires juridiques et du secrétariat, Financial Markets Administrative Tribunal, 500, boulevard René-Lévesque Ouest, bureau 16.40, Montréal (Québec) H2Z 1W7; telephone: 514 873-2211; email: sylvain.lippe@tmf.gouv.qc.ca.

Any person wishing to comment on the draft Rules is requested to submit written comments within the 45-day period to Nicole Martineau, president of the Financial Markets Administrative Tribunal, 500, boulevard René-Lévesque Ouest, bureau 16.40, Montréal (Québec) H2Z 1W7; email: secretariatmf@tmf.gouv.qc.ca.

NICOLE MARTINEAU
*President of the Financial Markets
Administrative Tribunal*

Rules of evidence and procedure of the Financial Markets Administrative Tribunal

Act respecting the regulation of the financial sector
(chapter E-6.1, s. 115.15.58)

DIVISION I GENERAL

1. These Rules apply to all matters brought before the Financial Markets Administrative Tribunal.

Their purpose is to ensure the simple, flexible and prompt processing of applications submitted to the Tribunal, particularly with the cooperation of the parties and their lawyers and the use of available technological means by the parties and the Tribunal, in keeping with the rules of natural justice and the equality of parties.

2. The Tribunal's rules of evidence and procedure are intended to render effective the substantive law and to ensure that it is carried out, and, unless otherwise provided, failure to observe the rules that are not public order rules can only affect a proceeding if the failure has not been remedied when it was possible to do so. The provisions of these Rules must be interpreted the one by the other, and, so far as possible, in such a way as to facilitate rather than to delay or to end prematurely the normal advancement of matters.

3. At any stage, the pleadings and the means of proof used must be proportionate to the nature, complexity and ultimate purpose of the matter.

4. In computing any time period, the day marking the start of the period is not counted, but the last day is.

A time period expires at midnight on the last day; a time period that would normally expire on a holiday is extended to the next working day.

The following are 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 of September;
- (9) the second Monday of October;
- (10) 24, 25, 26 and 31 December;
- (11) any other day determined by the Government.

5. Written communication from a party to the Tribunal must be sent by that party to the other parties to the matter and must indicate the record number assigned by the Tribunal.

6. The parties and their lawyers must provide the Tribunal with their address, email address and telephone number and inform the Tribunal in writing, without delay, of any change in their contact information.

DIVISION II FILING OF DOCUMENTS AND NOTIFICATION

7. An originating pleading, any other pleading or any other document may be filed by any means compatible with the Tribunal's technological environment.

8. The date of filing of a document is the date on which it is received by the Tribunal.

A document filed after 4:30 p.m. is deemed to have been filed on the next working day.

9. A party who intends to produce an exhibit or other evidence at a hearing must, at least 2 days before the hearing, send a copy to the other parties and the Tribunal, except in case of urgency or unless otherwise decided to ensure the proper administration of justice.

The party must also file with the Tribunal proof of its notification to the other parties.

10. A party who wishes to remove evidence filed in the Tribunal record must obtain the permission of the Tribunal.

11. Notification may be made by any appropriate method that provides the notifier with proof that the document was delivered or sent, unless the use of a specific means of notification is required by law.

Such methods include notification by court bailiff, by registered mail, by delivery or by technological means.

Notification by technological means to a party who is not represented is permitted only with the party's consent or if ordered by the Tribunal.

Whatever the method of notification used, a person who acknowledges receipt of the document or admits having received it is deemed to have been validly notified.

12. Proof of notification is filed with the Tribunal.

13. Pleadings must be notified to the other parties or their lawyers, unless the application is filed in the absence of a party under the second paragraph of section 115.1 of the Act respecting the regulation of the financial sector (chapter E-6.1), unless otherwise provided, or unless the Tribunal decides otherwise to ensure the proper administration of justice.

An originating pleading must be notified to the parties by bailiff or by registered mail.

Pleadings must be notified to the Autorité des marchés financiers.

14. If required by the circumstances, the Tribunal, on an informal request, authorizes notification of a pleading otherwise, such as by a notice published on a website, or at such hours the Tribunal determines.

DIVISION III APPLICATION

15. An originating pleading, and an application made in the course of the proceeding, is submitted to the Tribunal's Practice Chamber to determine the date of hearing, unless the application is filed on an urgent basis or in the absence of a party under the second paragraph of section 115.1 of the Act respecting the regulation of the financial sector (chapter E-6.1), unless otherwise provided, or unless the Tribunal decides otherwise to ensure the proper administration of justice.

The pleading, notice of presentation and proof of notification must be filed at least 2 days before the date of presentation, except in case of urgency, unless otherwise provided, or unless the Tribunal decides otherwise to ensure the proper administration of justice.

All applicable fees must have been paid in accordance with the Tariff of duties and fees related to applications heard by the Financial Markets Administrative Tribunal (chapter E-6.1, r. 2).

16. A pleading must be in writing and must permit to identify the author by the author's signature.

17. Any application made in the course of the proceeding may be presented orally if authorized by the Tribunal to ensure the proper administration of justice.

18. An originating pleading contains

(1) the name, address, email address and telephone number of the applicant, the applicant's lawyer, where applicable;

(2) the name, address the other parties;

(3) a statement of the facts and reasons for the application, including the alleged violation or alleged acts;

(4) a reference to the exhibits and the other evidence in support of the application;

(5) the applicable statutory and regulatory provisions;

(6) the conclusions sought.

An originating pleading is accompanied by a list of the exhibits in support thereof.

An application for the review of a decision rendered by a body must be filed within the time limit prescribed by law and accompanied by a copy of the decision.

19. A party requesting to be heard by preference must substantiate the request.

20. An application submitted by a self-regulating organization under section 62.4 of the Act respecting the regulation of the financial sector (chapter E-6.1) is filed without further formality, according to the form prescribed by the Tribunal and published on its website.

The application is accompanied by a copy of the request for a document or information, or by a copy of the subpoena and proof of notification of the subpoena.

A copy of the minutes of the disciplinary hearing must be enclosed with the application, where applicable.

21. On receipt of the notice of contestation referred to in section 115.1 of the Act respecting the regulation of the financial sector (chapter E-6.1) and on expiry of the 15-day period provided for therein, the Tribunal enters the case on the roll for the Practice Chamber and sends a notice of presentation to all parties.

22. An application filed in the absence of a party under the second paragraph of section 115.1 of the Act respecting the regulation of the financial sector (chapter E-6.1) must be accompanied by an affidavit in support of the facts alleged in the application.

23. Within 30 days of receipt of an application for review, the body whose decision is contested must file with the Tribunal a copy of that decision and of all documents related to the matter.

DIVISION IV
DETERMINATION OF HEARING DATE,
PRE-HEARING CONFERENCE
AND POSTPONEMENT

24. The Tribunal determines the date of the hearing when the record is ready to proceed.

25. The parties called to a pre-hearing conference must file with the Tribunal, at least 2 days before the pre-hearing conference, the form prescribed by the Tribunal and published on its website.

The form must be completed jointly and signed by the parties or their lawyers, as applicable.

26. The Tribunal may require a party to provide a list of the witnesses the party intends to call at the hearing, as well as a summary of their testimony.

27. Applications for postponement of a hearing must be filed in writing as soon as possible and notified to the other parties.

The Tribunal may proceed on the record or require that a hearing be held to rule on the application.

The Tribunal may however allow applications to be made orally where circumstances warrant it.

28. A hearing is postponed only if the grounds invoked are serious and if required for the interests of justice.

The parties' consent is not in itself sufficient ground to grant a postponement.

The Tribunal may, on its own initiative, postpone or adjourn a hearing where circumstances require it.

DIVISION V
REPRESENTATION

29. A party is entitled to be represented by a lawyer.

30. A lawyer who agrees to represent a party must confirm it to the Tribunal in writing and indicate the number of the record for which the lawyer is authorized to act, as well as the lawyer's name, address, email address and telephone number.

The designation of a lawyer in a pleading from a party constitutes a representation statement for the entire matter.

31. The notification or transmission of a document to a represented party must be made to the party's lawyer, and communications addressed to that party must be sent to the party's lawyer.

32. A party who revokes the mandate of his or her lawyer must notify the Tribunal and the other parties in writing without delay and, where applicable, indicate that the lawyer has been replaced.

33. 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 Tribunal.

The notice must contain the party's last known contact information, that is, the party's email address and telephone number.

If the hearing date has been set, the lawyer cannot cease representing the party or be replaced without the authorization of the Tribunal.

DIVISION VI INCIDENTS

§1. *Amendment of a pleading*

34. At any time before the hearing, the parties may amend their pleading to

- (1) replace, correct, complete or remove allegations or conclusions;
- (2) invoke new facts; or
- (3) assert a right accrued since the notification of the originating pleading.

The party must notify the amended pleading to the other parties and file it with the Tribunal.

35. During a hearing, a pleading may be amended with the authorization of the Tribunal.

The Tribunal may also, on its own initiative, order the correction of any clerical error or error of form, expression or calculation in a pleading, subject to the conditions it sees fit.

36. Where a pleading is amended to add a party, the original pleading must also be notified to the party. The original pleading in respect of that party is considered to be filed only on the date of notification.

37. No amendment of a pleading must be permitted if it is contrary to the interests of justice, delays the proceeding or results in an entirely new application unrelated to the original application.

§2. *Splitting*

38. The Tribunal may, on its own initiative or at the request of a party, split a matter if it considers it advisable in order to protect the parties' rights.

§3. *Intervention and impleading*

39. On written request, the Tribunal may authorize any person to intervene if the person shows sufficient interest in a matter.

40. The Tribunal may, on its own initiative or at the request of a party, order the impleading of any person whose interests may be affected by its decision.

§4. *Recusation*

41. If a member of the Tribunal recuses himself or herself, the hearing must be suspended until another member is appointed.

If a matter is heard by more than one member and a member recuses himself or herself, the hearing is continued by the remaining members.

42. An application for the recusation of a member of the Tribunal must give a written account of the facts and grounds on which it is based.

As soon as the application is filed with the Tribunal, the application suspends the hearing until the president or the member designated by the president rules on the application.

§5. *Discontinuance and withdrawal*

43. An application instituting a proceeding may be discontinued or any other proceeding may be withdrawn, where those proceedings have been notified, by the filing with the Tribunal of a written notice that must be notified to the other parties.

A discontinuance or a withdrawal may also be made orally at the hearing.

44. A pleading amended further to a discontinuance in respect of one of the parties must be notified to all the parties and filed with the Tribunal.

The pleading must clearly indicate the amendments resulting from the discontinuance.

DIVISION VII HEARING

45. The Tribunal must hold its hearings at its head office, except for hearings held using technological means.

The hearings of the Tribunal's Practice Chamber are held using technological means.

46. The Tribunal may hold any hearing and receive testimonies and arguments using any appropriate technological means.

The technological means used must allow the witness to be identified, heard and seen live. The Tribunal may however decide, after giving the parties the opportunity to make representations, to hear a witness without the witness being seen.

47. Except with the permission of the Tribunal or during a hearing held using technological means, every person addressing the Tribunal or a witness must rise and remain standing.

48. Persons attending a hearing must be suitably dressed, behave with dignity and respect and refrain from disrupting the hearing.

This rule applies to all hearings, whether they are held in a courtroom or using technological means.

49. The Tribunal may record hearings by any appropriate means.

Only persons who prove their status as journalists may make a sound recording of the hearings, unless the Tribunal prohibits them from doing so where circumstances require it. In no case may images be recorded or sound or image recordings be broadcast.

50. A party may have an official stenographer transcribe the hearing, at the party's own expense, in which case the party must provide a reproduction in a technological medium to the Tribunal free of charge.

51. Where the services of a certified interpreter are needed for a hearing, the interpreter certifies under oath that the translation will be correct.

52. A party who files a document at a hearing must send the document to the other parties and to the Tribunal.

53. The Tribunal may require a party to explain or clarify the party's contentions in writing within the time period it determines.

It may also require a party to provide in writing a summary, a transcription, an index, or any other document that may be useful for analyzing evidence.

54. The Tribunal may require the parties to produce a Plan of Argument, a book of authorities, or any other document of the same nature.

The Plan of Argument summarizes the arguments raised with references to the evidence and authorities.

55. The minutes of a hearing must indicate

- (1) the record number;
- (2) the date and time of the beginning and end of the hearing;
- (3) the names of the members of the Tribunal or of the assessors, as applicable;
- (4) the names of the parties and their lawyers, where applicable;
- (5) the name of the clerk;
- (6) the name of the certified interpreter;
- (7) the names of the witnesses;
- (8) the use of videoconference or any other technological means;
- (9) the various steps of the hearing;
- (10) the exhibits and the other evidence adduced;
- (11) incidental proceedings and objections;
- (12) the undertakings and the date on which an act or action must be carried out;
- (13) the admissions and agreements;
- (14) the Tribunal's orders and decisions;
- (15) the date on which the matter is taken under advisement; and
- (16) any other information useful for the purposes of the matter.

DIVISION VIII WITNESSES

56. A party who wishes to summon a witness must do so by means of a subpoena signed by a member of the Tribunal or the lawyer representing the party.

The subpoena must, at the party's own expense, be notified to the witness at least 10 days before the time at which the witness is scheduled to appear, except in case of urgency and the Tribunal shortens the notification period.

The decision to shorten the notification period must be enclosed with the subpoena.

57. A person called on to testify may be assisted by a lawyer of the person's choice.

58. A person called on to testify must swear under oath to tell the truth, then state his or her name and address.

59. Every person present at a hearing may be required to testify and the person is required to answer as if the person had been duly summoned.

60. The Tribunal may order the exclusion of witnesses to ensure the proper administration of justice.

61. A party who intends to have an expert witness testify must notify the expert witness's report, along with the expert witness's résumé, to the other parties, and file it with the Tribunal on the date it sets or, if no such date is set, at least 30 days before the date set for the hearing.

In the case of joint expert evidence, the parties determine together what parameters must be covered, what expert is to be appointed, what fee is to be paid and how it is to be paid. If the parties fail to agree on any of those points, the matter is decided by the Tribunal.

62. An expert witness must swear under oath that his or her testimony will respect the primary duty to enlighten the Tribunal and the opinion provided will be objective, impartial and thorough.

DIVISION IX EVIDENCE

63. The applicant must be given the first opportunity to present evidence and examine witnesses.

In the case of an application for the review of a decision rendered by a body, the Tribunal must determine the order of presentation of the evidence, taking into account the following factors in particular:

(1) the nature and conduct of the decision-making process of the body whose decision is contested;

(2) the applicant's opportunity to be heard and to contest the evidence;

(3) the degree of adherence to the rules of natural justice and the equitable nature of the proceedings of the body whose decision is contested;

(4) the existence of a record allowing the Tribunal to recreate the full conduct of the proceedings of the body whose decision is contested.

64. The Tribunal may make the admission of evidence subject to rules on prior communication.

To ensure the proper administration of justice, the Tribunal may also determine the procedure and the rules on the communication of evidence among the parties before the hearing of the matter.

65. Subject to the rules of natural justice, hearsay evidence is admissible provided that it offers reasonable guarantees of reliability.

66. The Tribunal is not required to follow the ordinary rules of evidence in civil matters.

67. The Tribunal must take judicial notice of the law in force in Québec.

Statutory instruments not published in the *Gazette officielle du Québec* or in any other manner provided for by law must be pleaded.

The Tribunal may take judicial notice of the law in the other provinces or in the territories of Canada and of the law of a foreign state in the fields within its jurisdiction.

68. The Tribunal may take notice of generally recognized facts, opinions and information within the scope of the Tribunal's speciality.

69. The Tribunal may authorize evidence adduced in a record to be transferred to another record.

DIVISION X DECISION

70. The decision is sent to the parties or, where applicable, to their lawyers.

The decision must be sent to the last known address indicated in the Tribunal's record or to the email address indicated therein.

71. When a decision rendered further to a hearing in the absence of a party under the second paragraph of section 115.1 of the Act respecting the regulation of the financial sector (chapter E-6.1) is notified or sent, it must be accompanied by the pleading.

A party who notifies such a decision at the request of the Tribunal must file proof of notification with the Tribunal without delay.

DIVISION XI TRANSITIONAL AND FINAL

72. These Rules apply to proceedings pending on the date of its coming into force.

73. These Rules replace the Rules of procedure of the Financial Markets Administrative Tribunal (chapter E-6.1, r. 1).

74. These Rules come into force on (*insert the date of coming into force of these Rules*).

106044