

Regulations and other Acts

Gouvernement du Québec

O.C. 729-2023, 26 April 2023

Act respecting the Barreau du Québec
(chapter B-1)

Act to improve access to justice by broadening the range of legal services provided free of charge or at a moderate cost (2022, chapter 26)

Practice of the profession of advocate within a non-profit legal person

Regulation respecting the practice of the profession of advocate within a non-profit legal person

WHEREAS, under the first paragraph of section 131.1 of the Act respecting the Barreau du Québec (chapter B-1), enacted by section 5 of the Act to improve access to justice by broadening the range of legal services provided free of charge or at a moderate cost (2022, chapter 26), the board of directors of the Barreau du Québec may determine, by by-law, the terms, conditions and restrictions applicable to the practice of the profession of advocate within a non-profit legal person, such as one constituted under Part III of the Companies Act (chapter C-38) or under the Cooperatives Act (chapter C-67.2);

WHEREAS, under the second paragraph of section 131.1 of the Act respecting the Barreau du Québec, enacted by section 5 of the Act to improve access to justice by broadening the range of legal services provided free of charge or at a moderate cost, in the by-law, the board of directors of the Barreau du Québec must prescribe, among other things and with regard to the carrying on of professional activities within a legal person referred to in the first paragraph of section 131.1, standards of the same nature as those that it must prescribe under paragraphs *g* and *h* of section 93 of the Professional Code (chapter C-26) with regard to the carrying on of professional activities within a joint-stock company;

WHEREAS, under the third paragraph of section 131.1 of the Act respecting the Barreau du Québec, enacted by section 5 of the Act to improve access to justice by broadening the range of legal services provided free of charge or at a moderate cost, the regulatory standards determined under section 131.1 may vary according to the category of members to which the advocate belongs;

WHEREAS, in accordance with section 95.3 of the Professional Code and the second paragraph of section 131.3 of the Act respecting the Barreau du Québec, enacted by section 5 of the Act to improve access to justice by broadening the range of legal services provided free of charge or at a moderate cost, a draft Regulation respecting the practice of the profession of advocate within a non-profit legal person was sent to every member of the Barreau du Québec at least 30 days before its adoption by the board of directors of the Barreau du Québec on 5 December 2022;

WHEREAS, under section 12 of the Act to improve access to justice by broadening the range of legal services provided free of charge or at a moderate cost, and despite the fourth paragraph of section 131.1 of the Act respecting the Barreau du Québec, enacted by section 5 of the Act to improve access to justice by broadening the range of legal services provided free of charge or at a moderate cost, the first by-law or regulation adopted or made by the board of directors of the Barreau du Québec under section 131.1 must be transmitted, on the recommendation of the Minister of Justice, 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), the Regulation respecting the practice of the profession of advocate within a non-profit legal person was published as a draft in Part 2 of the *Gazette officielle du Québec* of 4 January 2023 with a notice that it could be examined by the Office then submitted to the Government which may approve it, with or without amendment, on the expiry of 45 days following that publication;

WHEREAS, in accordance with section 12 of the Act to improve access to justice by broadening the range of legal services provided free of charge or at a moderate cost, the Office, on the recommendation of the Minister of Justice on 13 December 2022, examined the draft Regulation on 24 March 2023 then 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 Responsible for Government Administration and Chair of the Conseil du trésor:

THAT the Regulation respecting the practice of the profession of advocate within a non-profit legal person, attached to this Order in Council, be approved.

YVES OUELLET

Clerk of the Conseil exécutif

Regulation respecting the practice of the profession of advocate within a non-profit legal person

Act respecting the Barreau du Québec
(chapter B-1, s. 131.1)

Act to improve access to justice by broadening the range of legal services provided free of charge or at a moderate cost (2022, chapter 26, s. 5)

DIVISION I GENERAL

1. A member of the Barreau du Québec may, subject to the terms, conditions and restrictions determined in this Regulation, carry on professional activities within a non-profit legal person for the purpose of providing legal services free of charge or at a moderate cost.

If any term, condition or restriction set out in Division XIII.1 of the Act respecting the Barreau du Québec (chapter B-1) or in this Regulation is no longer met, the member must, within 90 days after becoming aware of the non-compliance or within 90 days after being notified of it by the Barreau, whichever occurs first, take the necessary measures to comply, failing which the member may no longer engage in professional activities within the non-profit legal person.

2. The member must at all times ensure that the non-profit legal person within which the member engages in professional activities permits the member to comply with the Act respecting the Barreau du Québec (chapter B-1), the Professional Code (chapter C-26) and the regulations made for their application.

3. If a member is struck off the roll or has had his or her right to engage in professional activities suspended or limited for a period of more than 3 months, the member may not, during that period, act as director, officer or representative of the non-profit legal person. The same applies if a member has had his or her permit revoked.

DIVISION II TERMS, CONDITIONS AND RESTRICTIONS

4. A member may engage in professional activities within a non-profit legal person only if the Barreau has received the undertaking and the documents provided for in section 7 and the fees payable prescribed by the board of directors have been paid.

5. A member who begins to engage in professional activities within a non-profit legal person must send the Barreau a declaration, on the form prescribed by the Barreau, and pay the fees payable prescribed by the board of directors. The same applies to a member who ceases to engage in professional activities within a non-profit legal person.

The declaration must be sent within 15 days following the date on which the member begins or ceases to practise, as the case may be.

6. A member may engage in professional activities within a non-profit legal person if

(1) the non-profit legal person is constituted in particular under the following statutes:

(a) Part III of the Companies Act (chapter C-38);

(b) the Cooperatives Act (chapter C-67.2);

(c) the Canada Not-for-profit Corporations Act (S.C. 2009, c. 23);

(d) the Canada Cooperatives Act (S.C. 1998, c. 1);

(2) at least one of the directors of the board of directors is a practising advocate or a notary, and that condition is set out in the constituting documents of the legal person; and

(3) the constituting documents of the non-profit legal person stipulate that it is constituted for the purpose of providing, mainly or in part, legal services.

7. The undertaking of the non-profit legal person, required under section 4 and provided using the document prescribed by the Barreau, contains

(1) the names and membership numbers of all members who engage in professional activities within the non-profit legal person and, for each of them, an indication whether they practice within it exclusively;

(2) all the names used in Québec by the non-profit legal person as well as the Québec business number assigned by the enterprise registrar;

(3) the juridical form of the non-profit legal person and whether it complies with the conditions set out in section 6;

(4) the address of the head office of the non-profit legal person and the addresses of its establishments;

(5) the names and residential addresses of all directors, officers and representatives of the non-profit legal person and, if applicable, the professional order or similar organization to which they belong and their membership or permit numbers; and

(6) the names of the respondent or respondents and, if applicable, the substitute appointed under section 9.

The undertaking must also be accompanied with the following documents:

(1) an up-to-date copy of the constituting documents of the non-profit legal person issued by the competent authority attesting that the non-profit legal person exists;

(2) an up-to-date copy of all the by-laws of the non-profit legal person;

(3) written confirmation by the competent authority attesting that the non-profit legal person is duly registered in Québec;

(4) written confirmation by the competent authority attesting that the non-profit legal person is exempt, if applicable, from paying income tax or has registered charity status;

(5) written confirmation by the competent authority attesting that the non-profit legal person is covered by security in compliance with Division IV; and

(6) an undertaking by the non-profit legal person within which the member engages in professional activities to allow the Barreau and the committees, persons, council or tribunal mentioned in section 192 of the Professional Code (chapter C-26), in the exercise of their functions, to require any person to produce information or a document mentioned in this section, or a true copy thereof.

8. A retired advocate who engages in professional activities within a non-profit legal person may receive no remuneration, except for the reimbursement of any expenses and costs related to the carrying on of his or her activities.

DIVISION III RESPONDENT

9. A member may engage in professional activities within a non-profit legal person if the legal person designates one or two respondents or, if applicable, one respondent and one substitute.

A respondent or the substitute, as the case may be, must be a practising advocate who engages in professional activities in Québec within the non-profit legal person.

10. The respondent is mandated by the non-profit legal person to provide any record, document or information required by the Barreau or by any committee, person, council or tribunal mentioned in section 192 of the Professional Code (chapter C-26) and to reply to their requests.

The respondent is also mandated to receive all communications from the Barreau intended for the non-profit legal person, including any notice of non-compliance notified to the legal person or to a member who engages in professional activities within it.

11. The respondent must send to the Barreau, before 1 April each year and on the form prescribed by the Barreau, a declaration indicating any changes made to the undertaking or to the documents provided for in section 7. The declaration must be accompanied with the fees payable prescribed by the board of directors.

If any condition set out in section 6 is no longer met, the respondent must, within 15 days, notify the Barreau, except if the situation has been remedied.

DIVISION IV SECURITY AGAINST PROFESSIONAL LIABILITY

12. A member who engages in professional activities within a non-profit legal person must furnish and maintain security to cover professional liability for the non-profit legal person by subscribing to the professional liability insurance fund of the Barreau du Québec for professional liability that the non-profit legal person may incur through the fault of the member in the practice of the profession.

13. The security under the insurance fund must be at least \$5,000,000 per claim filed against the non-profit legal person, subject to a limit of that same amount for all claims filed within a coverage period not exceeding 12 months, regardless of the number of members who engage in professional activities within the non-profit legal person.

Despite the first paragraph, the minimum amount of the security must be at least \$1,000,000 in cases where a member who holds a special permit or a solicitor engages in professional activities within a non-profit legal person.

14. The rules governing the conduct of the professional liability insurance decision-making committee's affairs provided for in the regulation made under section 86.3 and paragraph *d* of section 93 of the Professional Code (chapter C-26) apply when the committee is addressing the security provided for in this Division.

DIVISION V FINAL

15. 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. 730-2023, 26 April 2023

Notaries Act
(chapter N-3)

Act to improve access to justice by broadening the range of legal services provided free of charge or at a moderate cost
(2022, chapter 26)

Practice of the notarial profession within a non-profit legal person

Regulation respecting the practice of the notarial profession within a non-profit legal person

WHEREAS, under the first paragraph of section 26.1 of the Notaries Act (chapter N-3), enacted by section 8 of the Act to improve access to justice by broadening the range of legal services provided free of charge or at a moderate cost (2022, chapter 26), the board of directors of the Chambre des notaires du Québec may determine, by regulation, the terms, conditions and restrictions applicable to the practice of the notarial profession within a non-profit legal person, such as one constituted under Part III of the Companies Act (chapter C-38) or the Cooperatives Act (chapter C-67.2);

WHEREAS, under the second paragraph of section 26.1 of the Notaries Act, enacted by section 8 of the Act to improve access to justice by broadening the range of

legal services provided free of charge or at a moderate cost, in the regulation, the board of directors of the Chambre des notaires du Québec must prescribe, among other things and with regard to the carrying on of professional activities within a legal person referred to in the first paragraph of section 26.1, standards of the same nature as those that it must prescribe under paragraphs *g* and *h* of section 93 of the Professional Code (chapter C-26) with regard to the carrying on of professional activities within a joint-stock company;

WHEREAS, in accordance with section 95.3 of the Professional Code and the second paragraph of section 26.3 of the Notaries Act, enacted by section 8 of the Act to improve access to justice by broadening the range of legal services provided free of charge or at a moderate cost, a draft Regulation respecting the practice of the notarial profession within a non-profit legal person was sent to every member of the Chambre des notaires du Québec at least 30 days before its adoption by the board of directors of the Chambre des notaires du Québec on 7 December 2022;

WHEREAS, under section 12 of the Act to improve access to justice by broadening the range of legal services provided free of charge or at a moderate cost, and despite the third paragraph of section 26.1 of the Notaries Act, enacted by section 8 of the Act to improve access to justice by broadening the range of legal services provided free of charge or at a moderate cost, the first by-law or regulation adopted or made by the board of directors of the Chambre des notaires du Québec under section 26.1 must be transmitted, on the recommendation of the Minister of Justice, 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), the Regulation respecting the practice of the notarial profession within a non-profit legal person was published as a draft in Part 2 of the *Gazette officielle du Québec* of 4 January 2023 with a notice that it could be examined by the Office then submitted to the Government which may approve it, with or without amendment, on the expiry of 45 days following that publication;

WHEREAS, in accordance with section 12 of the Act to improve access to justice by broadening the range of legal services provided free of charge or at a moderate cost, the Office, on the recommendation of the Minister of Justice on 13 December 2022, examined the draft Regulation on 24 March 2023 then submitted it to the Government with its recommendation;