

1995, chapter 41 COURT BAILIFFS ACT

Bill 80

Introduced by Mr Paul Bégin, Minister of Justice and Minister responsible for the administration of legislation respecting the professions

Introduced 4 April 1995

Passage in principle 3 May 1995

Passage 22 June 1995

Assented to 22 June 1995

Coming into force: on the date or dates to be fixed by the Government

- 1 October 1995: ss. 1-37
G.O., 1995, Part 2, p. 2849

Legislation amended:

Code of Civil Procedure (R.S.Q., chapter C-25)

Professional Code (R.S.Q., chapter C-26)

Act respecting municipal courts (R.S.Q., chapter C-72.01)

Legislation replaced:

Bailiffs Act (R.S.Q., chapter H-4)



CHAPTER 41

Court Bailiffs Act

[Assented to 22 June 1995]

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

DIVISION I

INTERPRETATION

Interpreta-
tion

1. In this Act and in any Act or regulation, unless the context indicates a different meaning, the term “bailiff” means “court bailiff”.

DIVISION II

ORDRE PROFESSIONNEL DES HUISSIERS DE JUSTICE DU QUÉBEC

Professional
order

2. All the persons qualified to practise the profession of bailiff in Québec constitute a professional order called “Ordre professionnel des huissiers de justice du Québec” or “Chambre des huissiers de justice du Québec”.

Governing
Act

3. Subject to this Act, the Order and its members shall be governed by the Professional Code (R.S.Q, chapter C-26).

Head office

4. The head office of the Order shall be within the territory of the Communauté urbaine de Montréal or at such other location in Québec as may be determined by regulation of the Bureau under paragraph *f* of section 93 of the Professional Code.

DIVISION III

BUREAU

Bureau

5. The Order shall be governed by a Bureau constituted as prescribed in the Professional Code.

Research
and devel-
opment
fund

6. In addition to the powers conferred by section 94 of the Professional Code, the Bureau, by regulation, may establish and administer a research and development fund made up of sums paid into it by the Order, gifts and legacies made for such purpose and the proceeds of the general accounts held in trust by bailiffs in the practice of their profession, in order to promote the quality of professional services, professional training, continuing education and research and information related to the practice of the profession of bailiff.

Provisions
applicable

7. Section 95.1 of the Professional Code applies to a regulation made under section 6.

DIVISION IV

PRACTICE OF THE PROFESSION

Practice

8. The practice of the profession of bailiff consists of any act the object of which is to serve written proceedings issuing out of any court, to execute judicial decisions that are executory and to perform any other duty assigned to a bailiff by law or by a court.

Power of
bailiffs

9. A bailiff may make purely material ascertainments, excluding any opinion on the factual or legal consequences that may result therefrom; such ascertainments have merely informative value.

Name

10. No bailiff may practise his profession under a name other than his own.

Firm name

Nevertheless, bailiffs are allowed to practise their profession under a firm name which may be the name of one, several or all of the partners. The firm name may also continue to include, for a period not exceeding three years, the name of a partner who has ceased to practise his profession provided the firm name included his name for at least one year before he ceased to practise.

Reference

11. No bailiff may, in the practice of his profession, refer to himself otherwise than as a court bailiff or bailiff.

Partiality

12. A bailiff must perform his duties without partiality. The giving of information to any person who is a party to legal proceedings does not constitute an act of partiality.

Fees or
costs

13. A bailiff shall not charge, for acts described in section 8, fees or costs other than those fixed in the tariff established by regulation of the Government.

DIVISION V

ILLEGAL PRACTICE OF THE PROFESSION

Restriction **14.** Subject to the rights and privileges granted by law or by regulation to other persons, particularly where it is provided that a proceeding may be served or a decision executed by another person or by way of another mode of service or execution, no person may perform any of the acts described in section 8 unless he is a bailiff.

Provisions not applicable The first paragraph does not apply to acts performed by a person in accordance with the provisions of a regulation made under paragraph *h* of section 94 of the Professional Code.

Restriction **15.** No person may act as the bailiff of a municipal court unless he is a member of the Order.

Offence and penalty **16.** Every person who contravenes a provision of section 14 or 15 is liable, for each offence, to the penalties prescribed in section 188 of the Professional Code.

DIVISION VI

AMENDING PROVISIONS

CODE OF CIVIL PROCEDURE

c. C-25, a. 15, am. **17.** Article 15 of the Code of Civil Procedure (R.S.Q., chapter C-25) is amended by striking out the words “, except in the case of a bailiff, who may be suspended only by the Minister of Justice in accordance with the formalities provided in the Bailiffs Act (chapter H-4)” in the second, third and fourth lines of the second paragraph.

c. C-25, a. 120, am. **18.** Article 120 of the said Code is amended by replacing the second paragraph by the following paragraph:

“The taxable costs of service are the costs chargeable by a bailiff pursuant to the regulation made under section 13 of the Court Bailiffs Act (1995, chapter 41).”

c. C-25, a. 554, am. **19.** Article 554 of the said Code is amended by replacing the third paragraph by the following paragraph:

“The taxable costs of execution are the costs chargeable by a bailiff pursuant to the regulation made under section 13 of the Court Bailiffs Act (1995, chapter 41).”

PROFESSIONAL CODE

c. C-26,
s. 31, am. **20.** Section 31 of the Professional Code (R.S.Q., chapter C-26), amended by section 16 of chapter 37 of the statutes of 1994 and by section 27 of chapter 40 of the statutes of 1994, is again amended by replacing the figure “21.1” in the third line by the figure “21.2”.

c. C-26,
s. 32, am. **21.** Section 32 of the said Code, amended by section 17 of chapter 37 of the statutes of 1994 and by section 28 of chapter 40 of the statutes of 1994, is again amended by replacing the words “or acupuncturist” in the fifth line by the words “, acupuncturist or bailiff”.

c. C-26,
Sched. I,
am. **22.** Schedule I to the said Code, amended by section 18 of chapter 37 of the statutes of 1994 and by section 181 of chapter 40 of the statutes of 1994, is again amended by inserting, after paragraph 21.1, the following paragraph:

“21.2 The Ordre professionnel des huissiers de justice du Québec;”.

ACT RESPECTING MUNICIPAL COURTS

c. C-72.01,
s. 68, am. **23.** Section 68 of the Act respecting municipal courts (R.S.Q., chapter C-72.01) is amended by replacing the words “holders of permits issued under the Bailiffs Act (chapter H-4)” in the third and fourth lines of the first paragraph by the words “members of the Ordre professionnel des huissiers de justice du Québec”.

DIVISION VII

TRANSITIONAL AND FINAL PROVISIONS

Roll of
Order **24.** Every person who, on 1 October 1995, is the holder of a bailiff’s permit issued by the Minister of Justice under section 5 or 6 of the Bailiffs Act (R.S.Q., chapter H-4) shall be entered on the roll of the Order by operation of law and shall be issued a permit by the Bureau.

Judicial
district A person holding a bailiff’s permit issued under section 6 of the said Act may act as a bailiff only in the judicial district indicated on the permit issued by the Minister of Justice.

Conditions **25.** Every person who, on 1 October 1995, is the holder of a trainee’s permit issued by the Minister of Justice is entitled to be issued a bailiff’s permit if he complies with the provisions of

subparagraph *f* of the first paragraph of section 4 of the Bailiffs Act (R.S.Q., chapter H-4) or if he meets the requirements of a regulation made by the Order under paragraph *i* of section 94 of the Professional Code.

Means of
identi-
fication

26. A member of the Order who is the holder of a permit, badge or other means of identification issued by the Minister of Justice may continue to use it until it is replaced in his respect by a permit, badge or other means of identification issued by the Order.

Diploma

27. The diploma of college studies in legal technology awarded by the Minister of Education to a person enrolled in that program before the date of coming into force of a government regulation, made under the first paragraph of section 184 of the Professional Code, determining for the first time the diplomas which give access to the permit issued by the Order shall give access to the bailiff's permit.

First
Bureau

28. Notwithstanding section 5 of this Act, the first Bureau shall be composed of the president and directors elected at the last general meeting of the members of the *Chambre des huissiers de justice du Québec*, a body incorporated under Part III of the Companies Act (R.S.Q., chapter C-38), and of three directors appointed by the *Office des professions du Québec* pursuant to section 78 of the Professional Code.

Term of
office

The elected president and directors shall remain in office until the first election of the members of the Bureau held in accordance with the Professional Code.

Provisions
applicable

29. Sections 95.2 and 95.3 of the Professional Code apply to the first regulation made by the Bureau of the Order under section 65 of the said Code.

First
resolution

30. Notwithstanding section 86 of the Professional Code, the first resolution passed by the Bureau for the purpose of fixing the first annual assessment need not, to come into force, be approved by a majority of the members of the Order, and may take into account the sums already paid by the members as members of the *Chambre des huissiers de justice du Québec*.

Provisions
applicable

31. The provisions of the Regulation respecting the application of the Bailiffs Act (R.R.Q., 1981, c. H-4, r.2) and the Code of ethics of bailiffs (R.R.Q., 1981, c. H-4, r.1), made under section 25 of the Bailiffs Act (R.S.Q., chapter H-4) continue to have effect until they are amended, replaced or repealed by regulation of the Bureau of the Order in accordance with the Professional Code.

Provisions
applicable

32. The provisions of the Tariff of fees and transportation expenses of bailiffs (R.R.Q., 1981, c. H-4, r.3) established under subparagraph *k* of the first paragraph of section 25 of the Bailiffs Act (R.S.Q., chapter H-4) apply until they are amended, replaced or repealed by regulation of the Government.

Examina-
tion of
complaints

33. The examination of complaints received before 1 October 1995 by the committee on discipline established under section 12.1 of the Bailiffs Act (R.S.Q., chapter H-4) shall be continued by that committee, which shall retain its competence and powers for such purpose.

Decision

A decision of the committee is executory from the date specified therein and notified to the Bureau of the Order.

Appeals

34. Appeals brought before 1 October 1995 under Division II.2 of the Bailiffs Act (R.S.Q., chapter H-4) shall be continued and decided in accordance with the provisions of that Act.

Penal
proceedings

35. Penal proceedings for offences under the Bailiffs Act (R.S.Q., chapter H-4) committed before 1 October 1995 shall be continued and decided in accordance with the provisions of that Act.

Rights and
obligations

36. The Order succeeds to the rights and obligations of the *Chambre des huissiers de justice du Québec*.

Letters
patent

The original letters patent and supplementary letters patent granted to the *Chambre des huissiers de justice du Québec* are cancelled.

c. H-4,
replaced

37. This Act replaces the Bailiffs Act (R.S.Q., chapter H-4).

Coming into
force

38. The provisions of this Act will come into force on the date or dates to be fixed by the Government.