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# NATIONAL ASSEMBLY

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FIRST SESSION

THIRTY-THIRD LEGISLATURE

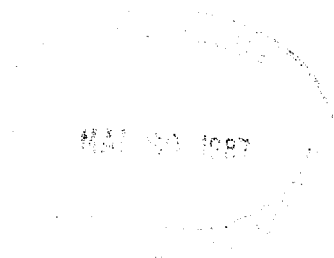
Bill 44

## **An Act respecting professional liability insurance**

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### **Introduction**

**Introduced by  
Mr Pierre Fortier  
Minister for Finance**



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## EXPLANATORY NOTES

*The object of this bill is to give every professional corporation the power to require its members to subscribe to a group insurance contract or policy entered into by the corporation and to set up, with the authorization of the Minister of Finance, a professional liability insurance fund. The bill provides rules on the apportionment of the cost of the liability insurance among all the members of the professional corporation concerned or certain classes of them, in relation to the risks they represent.*

*The Act respecting insurance is amended to become applicable to a professional corporation which undertakes to act as an insurer.*

*The Act respecting the Barreau du Québec is also amended to enable the Barreau to benefit from the amendments made in that respect to the Professional Code.*

*Finally, the Professional Code is amended to permit that the object of the bill be achieved and rules providing for the recovery of the costs of the liability insurance are introduced.*

## ACTS AMENDED BY THIS BILL:

- the Act respecting insurance (R.S.Q., chapter A-32)
- the Act respecting the Barreau du Québec (R.S.Q, chapter B-1)
- the Professional Code (R.S.Q., chapter C-26)

# Bill 44

## An Act respecting professional liability insurance

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

### ACT RESPECTING INSURANCE

**1.** Section 1 of the Act respecting insurance (R.S.Q., chapter A-32) is amended

(1) by adding, at the end of paragraph *l*, after the word “manager”, the following: “as well as the administrator of an insurance fund and, if the administrator is a corporation, its directors”;

(2) by replacing the period at the end of paragraph *l* by a semi-colon;

(3) by adding, after paragraph *l*, the following paragraph:

“(u) “insurance fund”: a professional liability insurance fund set up by a professional corporation governed by the Professional Code (R.S.Q., chapter C-26).”

**2.** The said Act is amended by inserting, after section 174, the following:

### “CHAPTER IV.1

#### “PROFESSIONAL CORPORATION

#### “DIVISION I

#### “AUTHORIZATION TO INSURE CORPORATION MEMBERS

**“174.1** A professional corporation governed by the Professional Code may, if authorized by the Minister and if the holder of a licence

issued by the Inspector General, insure its members in respect of professional liability.

**“174.2** To obtain the Minister’s authorization, the professional corporation shall transmit to the Inspector General an application signed by its president and stating

(1) that a by-law was passed to impose on its members, or certain classes of them, the obligation to contribute to a professional liability insurance fund;

(2) that it has passed a resolution for the creation of such an insurance fund;

(3) that the sums which will be payable by its members will be sufficient to provide for the financing of its insurance transactions and to maintain a surplus of assets over liabilities equal to or greater than the minimum amount required pursuant to section 275.

**“174.3** The application must be accompanied with the following documents:

(1) a development plan supported by a budgeted statement of the balance sheet, operating account and surplus account over a period of not less than, showing the calculation assumptions used;

(2) a plan of operation stating the name and address of the administrator, if any, who will be entrusted with the administration of the insurance fund;

(3) a certified true copy of the resolution of the Bureau of the professional corporation creating the insurance fund.

**“174.4** The Inspector General may require any additional information and document he deems necessary for the consideration of the application.

**“174.5** The Minister may, if he considers it expedient and after obtaining the opinion of the Inspector General, grant to the professional corporation the authorization to insure its members in respect of professional liability.

## “DIVISION II

### “ADMINISTRATION OF THE INSURANCE FUND

**“174.6** The insurance fund shall be administered by a board of directors consisting of not less than five members appointed by the Bureau of the professional corporation.

A reference to the directors of an insurer is, for the purposes of the application of this Act and the regulations thereunder to a professional corporation, a reference to the directors of its insurance fund.

**“174.7** A member of the board of directors of the insurance fund of a professional corporation need not be a member of that professional corporation.

**“174.8** The following persons are disqualified from office of directors of the insurance fund:

(1) an insurance agent, a claims adjuster, a director or an officer of another corporation dealing as such with the professional corporation;

(2) an undischarged bankrupt;

(3) a minor;

(4) an interdicted person or a person of unsound mind declared incapable by a court even a court of another jurisdiction.

**“174.9** The total remuneration that may be paid to the directors for a given period must be determined by the Bureau of the professional corporation. No director may receive any remuneration in his capacity as such before a resolution to that effect is passed.

**“174.10** The professional corporation shall assume the defence of its directors who are prosecuted by a third person for an act done in the performance of their duties and shall pay damages, if any, resulting from that act, unless they have committed a grievous offence or a personal offence separable from their duties.

Notwithstanding the foregoing, in a penal or criminal proceeding the professional corporation shall assume only the payment of the expenses of its directors if they had reasonable grounds to believe that their conduct was in conformity with the law or if they have been freed or acquitted.

The professional corporation shall assume the expenses of its directors if, having prosecuted them for an act done in the performance of their duties, it loses its case and the court so decides.

If the professional corporation wins its case only in part, the court may determine the amount of the expenses it shall assume.

**“174.11** The board of directors of the insurance fund may entrust an administrator with the current operations of the insurance fund of the professional corporation, which includes the collection of premiums,

the issuance of policies, the payment of indemnities, the ceded reinsurance and the investment of the assets of the insurance fund.

### “DIVISION III

#### “ASSETS OF THE INSURANCE FUND

“**174.12** The insurance fund shall be made up of the premiums and the other sums fixed pursuant to subparagraph *p* of the first paragraph of section 86 of the Professional Code, and of the income generated thereby.

“**174.13** The assets of the insurance fund shall constitute a patrimony separate from the other assets of the professional corporation and shall be appropriated exclusively to its professional liability insurance transactions.

The assets of the fund shall be reported as separate items in the books, registers and accounts of the professional corporation.

“**174.14** The fiscal year of the insurance fund is the calendar year.

“**174.15** No creditor of the professional corporation has any right in the assets of the insurance fund unless his claim results from the professional liability insurance transactions of the corporation.

Similarly, no creditor of the insurance fund has any right in the other assets of the professional corporation.

“**174.16** All costs relating to the operations of the insurance fund shall be paid out of its assets.

“**174.17** If the Inspector General is of opinion that the sums which the members or certain classes of members of a professional corporation are required to pay into its insurance fund are no longer sufficient, in view of its obligations, to maintain an excess amount of assets over liabilities equal to or greater than the minimum amount required under section 275, he may order the corporation, after giving it the opportunity to be heard, to increase such sums up to the amount and for the period he determines, so as to cover operating costs of the insurance fund.

“**174.18** If the professional corporation fails to comply with the order of the Inspector General, he may apply by motion to a judge of the Superior Court for an injunction enjoining it to comply.

The motion for injunction institutes the proceedings.

The procedure provided in the Code of Civil Procedure applies. However, the Inspector General is not required to give security”.

**3.** Section 205 of the said Act is amended

(1) by adding, after the word “by-laws” in subparagraph *f* of the first paragraph, the words “, except if it is a professional corporation”;

(2) by inserting, after the word “corporation” in the second line of subparagraph *i* of the first paragraph, the words “or, where such is the case, of its insurance fund”;

(3) by replacing the period at the end of subparagraph *l* of the first paragraph by a semi-colon;

(4) by adding, after subparagraph *l* of the first paragraph, the following subparagraph:

“(m) if it is a professional corporation, its plan of operation and, where such is the case, the name and address of the administrator to which it has entrusted the management of its insurance fund and a copy of the management contract.”

**4.** Section 210 of the said Act is amended by inserting, after the word “association” in the second line of the first paragraph, the words “or a professional corporation”.

**5.** Section 211 of the said Act is amended by inserting, after the word “corporation” in the third line of paragraph *f*, the words “or, where such is the case, its insurance fund”.

**6.** Section 219.1 of the said Act is amended by replacing the word “company” in the first line of subparagraph *b* of the first paragraph by the word “corporation”.

**7.** Section 220 of the said Act is amended by inserting, after the word “licence” in the second line of the first paragraph, the words “other than a professional corporation”.

**8.** Section 224 of the said Act is amended by inserting, after the word “association” in the first line, the words “or a professional corporation”.

**9.** Section 244 of the said Act is amended

(1) by replacing the words “the company’s” in the first line by the word “its”;

(2) by replacing the words “the insured and of the shareholders or members of the company” in the third and fourth lines by the words “its insured, shareholders or members”.

**10.** Section 245 of the said Act is amended

(1) by inserting, after the word “association” in what precedes subparagraph *a* of the first paragraph, the words “or a professional corporation”;

(2) by replacing the second paragraph by the following paragraph:

“The assets of a mutual benefit association or of an insurance fund shall be invested in accordance with the rules governing the investment of moneys belonging to other persons provided in the Civil Code of Lower Canada.”

**11.** Section 246 of the said Act is amended by inserting, after the word “association” in the first line, the words “or a professional corporation”.

**12.** Section 247 of the said Act is amended by inserting, after the word “association” in the second line of the first paragraph, the words “or a professional corporation”.

**13.** Section 247.1 of the said Act is amended by inserting, after the word “association” in the first line, the words “or a professional corporation”.

**14.** Section 259 of the said Act is amended

(1) by inserting, after the word “children” in the second line of subparagraph *a* of the first paragraph, the words “or, in the case of a professional corporation, members of its Bureau”;

(2) by inserting, after the word “insurer” in the first line of the second paragraph, the words “other than a professional corporation”.

**15.** Section 291 of the said Act is amended by replacing the second paragraph by the following paragraph:

“The auditor is appointed as follows:

(1) in the case of Lloyd’s, by such underwriter;

(2) in the case of a corporation, by the general assembly of its members or in the case of a professional corporation, by its Bureau;

(3) in the case of a company, in accordance with the laws governing it.”



**16.** Section 299 of the said Act is amended by replacing paragraph *a* by the following paragraphs:

“(a) the names and addresses of the directors;

“(a.1) the number of shareholders or members or, in the case of a professional corporation, the number of insured members;”.

**17.** Section 301 of the said Act is amended by adding, after the second paragraph, the following paragraph:

“In the case of a professional corporation, the annual report and the auditor’s report must be submitted to the Bureau of the corporation, which must make them available to the members.”

**18.** Section 319 of the said Act is amended by inserting, after the word “shareholders” in the third line of the first paragraph, the words “or, in the case of a professional corporation, one hundred of its insured members”.

**19.** Section 326 of the said Act is amended

(1) by replacing the period at the end of paragraph *c* by a semi-colon;

(2) by adding, after paragraph *c*, the following paragraph:

“(d) to the directors of an insurance fund or the employees of the professional corporation who established it;”.

**20.** Section 341 of the said Act is amended by inserting, after the word “insurer” in the first line, the words “other than a professional corporation”.

**21.** Section 378 of the said Act is amended by inserting, after the word “members” in the fifth line of the first paragraph, the words “or, in the case of a professional corporation, of one hundred insured members”.

**22.** Section 388 of the said Act is amended

(1) by inserting, after the word “members” in the third line of subparagraph *b* of the first paragraph, the words “or, in the case of a professional corporation, of the insured members”;

(2) by inserting, after the word “insurer” in the second line of subparagraph *c* of the first paragraph, the words “or, where such is the case, of its insurance fund”.

**23.** Section 392 of the said Act is amended

(1) by replacing the words “mutual associations” in the second line of the first paragraph by the words “the winding-up of a mutual association or insurance fund”;

(2) by replacing the second paragraph by the following paragraph:

“For such purpose the word “company”, in the said Act, means a mutual association or an insurance fund, the word “shareholder” means any member of the mutual association or any insured member of the professional corporation and where a provision of the said Act requires the vote of the shareholders, representing a specified proportion of the capital stock of a company, that provision is deemed to require the vote of a number of the members of the mutual association or of insured members of the professional corporation equal to the specified proportion of the value.”

**24.** The French text of section 393 of the said Act is amended by replacing the word “sociétaires” wherever it appears by the word “membres”.

**25.** The said Act is amended by inserting, after section 393, the following section:

**“393.1** The winding-up of the insurance fund is decided by resolution of the Bureau of the professional corporation having established it.

For the purposes of the application of this Act to the winding-up of an insurance fund, any reference to the general meeting of a corporation is a reference to a meeting of the Bureau of the professional corporation having established the insurance fund.”

**26.** Section 397 of the said Act is amended by inserting, after the word “corporation” in the first line, the words “or, where such is the case, of its insurance fund”.

**27.** Section 398 of the said Act is amended by inserting, after the word “corporation” in the first line, the words “or, where such is the case, of its insurance fund”.

**28.** Section 402 of the said Act is amended by replacing the word “company” in the last line by the words “corporation other than a professional corporation”.

**29.** Section 404 of the said Act is amended

(1) by inserting, after the word “corporation” in the first line of paragraph *b*, the words “other than a professional corporation”;

(2) by replacing the words “employees pension plan” in the fourth line of paragraph *d*, by the words “pension plan of the employees of a corporation other than a professional corporation”.

**30.** The said Act is amended by inserting, after section 404, the following section:

**“404.1** The members who are insured by a professional corporation in any of the three years preceding the commencement of the winding-up of its insurance fund shall share any balance remaining in the insurance fund once its obligations have been discharged, in proportion to the sums paid by them in the course of those years.”

**31.** Section 420 of the said Act is amended by inserting, after the word “insurer” in the second line of paragraph *l*, the words “or, where such is the case, of their insurance funds,”.

#### ACT RESPECTING THE BARREAU DU QUÉBEC

**32.** Section 15 of the Act respecting the Barreau du Québec (R.S.Q., chapter B-1) is amended by striking out paragraph *f* of subsection 2.

#### PROFESSIONAL CODE

**33.** Section 86 of the Professional Code (R.S.Q., chapter C-26) is amended

(1) by replacing, in paragraph ii of subparagraph *l* of the first paragraph, that part which follows the word “or” by the words “who have not paid the amount fixed in accordance with subparagraph *p* of the first paragraph of this section”;

(2) by adding, after subparagraph *o* of the first paragraph, the following subparagraph:

“(p) establish the amount required to defray the operating cost of the group plan or of the professional liability insurance fund, apportion the prescribed amount among all the members of the corporation or certain classes of them, and determine when and where that amount must be paid, the whole in accordance with the terms and conditions it determines; for that purpose, the Bureau may, in particular, fix the amount payable by a member in relation to the risk represented by

the class to which he belongs, with regard to the claims filed under the group plan or the professional liability insurance fund from (*insert here the date of coming into force of this paragraph*) for any fault or negligence committed by that member in the practise of his profession.

That amount includes premiums, administration costs, contributions to the group plan or professional liability insurance fund and any other expenses inherent to the operation of such a plan.

Notwithstanding section 96, the administrative committee is not authorized to exercise the powers provided for in the first paragraph.”

**34.** The said Code is amended by inserting, after section 86, the following section:

**“86.1** The Bureau may, by resolution, set up a professional liability insurance fund and administer that fund in accordance with the Act respecting insurance (R.S.Q., chapter A-32).

The resolution is effective only if the Minister of Finance authorizes the professional corporation to act as insurer to insure its members in respect of professional liability pursuant to a regulation made under paragraph *l* of section 94.

Nothing in this Code prevents a professional corporation from setting up, acquiring or managing an insurance company to insure its members in respect of professional liability.

Notwithstanding section 96, the administrative committee is not authorized to exercise the powers provided for in the first paragraph.”

**35.** Section 94 of the said Code is amended by replacing paragraph *l* by the following paragraph:

**“(l)** impose upon the members of the corporation or certain classes of them, in relation to the risk they represent, particularly on those who practise for their own account, the obligation to furnish, by means of an insurance policy, a surety bond or by any other means determined by regulation, a guarantee against any liability they may incur owing to fault or negligence committed in the practise of their profession or the obligation to join a group plan contract entered into by the corporation or to contribute to a professional liability insurance fund established for such purposes in accordance with section 86.1.”

**36.** This Act comes into force on (*insert here the date of assent to this Act*).