



NATIONAL ASSEMBLY OF QUÉBEC

SECOND SESSION

FORTY-SECOND LEGISLATURE

Bill 34

**An Act to improve access to justice
by broadening the range of legal
services provided free of charge or
at a moderate cost**

Introduction

**Introduced by
Mr. Simon Jolin-Barrette
Minister of Justice**

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EXPLANATORY NOTES

This bill allows the board of directors of the Barreau du Québec and that of the Ordre des notaires du Québec to determine by by-law or regulation the conditions on which an advocate or a notary, as applicable, may practise their profession within a non-profit legal person and those on which a retired advocate may carry on certain professional activities within such a legal person.

The bill specifies that only professional fees or costs that, together, do not exceed a moderate cost may be charged in consideration of professional activities carried on within a non-profit legal person.

LEGISLATION AMENDED BY THIS BILL:

- Insurers Act (chapter A-32.1);
- Act respecting the Barreau du Québec (chapter B-1);
- Notaries Act (chapter N-3).

Bill 34

AN ACT TO IMPROVE ACCESS TO JUSTICE BY BROADENING THE RANGE OF LEGAL SERVICES PROVIDED FREE OF CHARGE OR AT A MODERATE COST

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

ACT RESPECTING THE BARREAU DU QUÉBEC

1. Section 54.1 of the Act respecting the Barreau du Québec (chapter B-1) is amended

(1) by striking out “who does not practise” in the first paragraph;

(2) by replacing “, in particular perform the acts described in section 128, including pleading or acting before a tribunal referred to in subparagraphs 1 to 7 of paragraph *a* of subsection 2 of that section” in the second paragraph by “. Nevertheless, he may perform the acts referred to in subsection 1 of section 128 within a legal person referred to in section 131.1 in accordance with the by-law adopted under that section”.

2. Section 123.1 of the Act is repealed.

3. Section 125 of the Act is amended by replacing “, the company” in subsection 1 by “or within a non-profit legal person in accordance with the by-law adopted by the board of directors under section 131.1 of this Act, the company or legal person”.

4. Section 129 of the Act is amended by adding the following paragraph at the end:

“(f) the right of a retired advocate to perform the acts referred to in subsection 1 of section 128 within a legal person referred to in section 131.1 in accordance with the by-law adopted under that section.”

5. The Act is amended by inserting the following division after section 131:

“DIVISION XIII.1

**“PRACTICE OF THE PROFESSION OF ADVOCATE WITHIN A
NON-PROFIT LEGAL PERSON**

“131.1. The board of directors 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).

In the by-law, the board 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, 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.

The regulatory standards determined under this section may vary according to the category of members to which the advocate belongs.

Section 95.2 of the Professional Code applies to any by-law adopted under this section. However, such a by-law shall be transmitted to the Office des professions du Québec for examination, on the recommendation of the Minister of Justice.

“131.2. An advocate must not allow, in consideration of the professional activities that he carries on within a legal person referred to in section 131.1 or in the course of such activities, professional fees or costs to be charged that, together, exceed a moderate cost. The client may, however, be required to reimburse disbursements.

“131.3. Subject to the provisions of this division, a legal person referred to in section 131.1 of this Act is considered, for the purposes of the Professional Code (chapter C-26), to be a joint-stock company referred to in section 187.11 of that Code.

Similarly, a by-law adopted under section 131.1 of this Act is considered, for the purposes of the Professional Code, to be a regulation adopted under subparagraph *p* of the first paragraph of section 94 of that Code, with the exception of the provisions adopted under the second paragraph of section 131.1 of this Act, which are considered to be a regulation adopted under paragraph *g* or *h* of section 93 of that Code, as the case may be.

“131.4. No director, officer or representative of a legal person referred to in section 131.1 may help or, by encouragement, advice or consent, or by an authorization or order, induce an advocate carrying on his professional activities within the legal person to contravene a provision of this Act, the Professional Code (chapter C-26) or the by-laws or regulations made under this Act or that Code.

Whoever contravenes the first paragraph is guilty of an offence and is liable to the penalties provided for in section 188 of the Professional Code. The second, third and fourth paragraphs of section 189.1 and sections 190 and 191 of that Code apply to such an offence, with the necessary modifications.”

6. Section 134 of the Act is amended by replacing “the company or partnership within which” in the third paragraph by “, as the case may be, the company, partnership or legal person within which”.

7. Section 139 of the Act is amended by replacing “practises the profession of advocate, in particular who does anything described in sections 133 to 136” by “contravenes the second paragraph of section 54.1”.

NOTARIES ACT

8. The Notaries Act (chapter N-3) is amended by inserting the following division after section 26:

“DIVISION III.1

“PROFESSIONAL PRACTICE WITHIN A NON-PROFIT LEGAL PERSON

“26.1. The board of directors 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).

In the regulation, the board 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, 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.

Section 95.2 of the Professional Code applies to any regulation made under this section. However, such a regulation shall be transmitted to the Office des professions du Québec for examination, on the recommendation of the Minister of Justice.

“26.2. A notary must not allow, in consideration of the professional activities that he or she carries on within a legal person referred to in section 26.1 or in the course of such activities, professional fees or costs to be charged that, together, exceed a moderate cost. The client may, however, be required to reimburse disbursements.

“26.3. Subject to the provisions of this division, a legal person referred to in section 26.1 of this Act is considered, for the purposes of the Professional Code (chapter C-26), to be a joint-stock company referred to in section 187.11 of that Code.

Similarly, a regulation made under section 26.1 of this Act is considered, for the purposes of the Professional Code, to be a regulation made under subparagraph *p* of the first paragraph of section 94 of that Code, with the exception of the provisions made under the second paragraph of section 26.1 of this Act, which are considered to be a regulation made under paragraph *g* or *h* of section 93 of that Code, as the case may be.

“26.4. No director, officer or representative of a legal person referred to in section 26.1 may help or, by encouragement, advice or consent, or by an authorization or order, induce a notary carrying on his or her professional activities within the legal person to contravene a provision of this Act, the Professional Code (chapter C-26) or the regulations made under this Act or that Code.

Every person who contravenes the first paragraph is guilty of an offence and is liable to the penalties provided for in section 188 of the Professional Code. Sections 189.1, 190 and 191 of that Code apply to such an offence, with the necessary modifications.”

INSURERS ACT

9. Section 35 of the Insurers Act (chapter A-32.1) is amended by adding the following sentence at the end of the second paragraph: “A legal person referred to in section 131.1 of the Act respecting the Barreau du Québec (chapter B-1) or section 26.1 of the Notaries Act (chapter N-3) is considered such a partnership or company for the purposes of this section.”

10. Section 41 of the Act is amended by adding the following sentence at the end of the second paragraph: “A legal person referred to in section 131.1 of the Act respecting the Barreau du Québec (chapter B-1) or section 26.1 of the Notaries Act (chapter N-3) is considered such a partnership or company for the purposes of this section.”

FINAL PROVISIONS

11. Despite the fourth paragraph of section 131.1 of the Act respecting the Barreau du Québec (chapter B-1), enacted by section 5, and the third paragraph of section 26.1 of the Notaries Act (chapter N-3), enacted by section 8, the first by-law or regulation adopted or made by a professional order's board of directors under those sections must be transmitted, on the recommendation of the Minister of Justice, to the Office des professions du Québec for examination; it must be submitted, with the recommendation of the Office, to the Government, which may approve it with or without amendment.

12. Not later than (*insert the date that is 180 days after the date of assent to this Act*), the board of directors of the Barreau du Québec and the board of directors of the Ordre des notaires du Québec must transmit for examination to the Office des professions du Québec, on the recommendation of the Minister of Justice, a by-law or regulation adopted or made under, as applicable, section 131.1 of the Act respecting the Barreau du Québec, enacted by section 5, or section 26.1 of the Notaries Act, enacted by section 8.

At the expiry of the time limit specified in the first paragraph, the Minister of Justice may adopt a by-law or regulation referred to in that paragraph in the place and stead of the professional order that failed to do so, and may transmit it for examination to the Office des professions du Québec in accordance with section 95 of the Professional Code (chapter C-26).

13. This Act comes into force on (*insert the date of assent to this Act*), except

(1) sections 1 to 7, which come into force on the date of coming into force of the first by-law adopted under section 131.1 of the Act respecting the Barreau du Québec, enacted by section 5;

(2) section 8, which comes into force on the date of coming into force of the first regulation made under section 26.1 of the Notaries Act, enacted by section 8; and

(3) sections 9 and 10, which come into force on the date of coming into force of the first by-law adopted under section 131.1 of the Act respecting the Barreau du Québec, enacted by section 5, or on the date of coming into force of the first regulation made under section 26.1 of the Notaries Act, enacted by section 8, whichever comes first.

