

# ARBITRATION OF LAWYERS' ACCOUNTS

Information on the arbitration process



This document is an information tool to help those involved in arbitration understand the main steps of the arbitration process. It should not be considered to be a legal opinion.

## **Mission of the Barreau du Québec**

**To ensure the protection of the public, the Barreau du Québec oversees professional legal practice, promotes the rule of law, enhances the image of the profession and supports members in their practice.**

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# Procedure for the arbitration of lawyers' accounts before the Arbitration Council of the Barreau du Québec

Application filed with the Arbitration Registry of the Barreau du Québec

Application received and file opened

Name of the arbitrator or arbitrators and documents pertaining to the arbitration, including the form entitled *Hearing management form*, provided to the parties

If the conciliation between the parties is unsuccessful, an application for arbitration can be filed (within 30 days following the sending of the conciliation report).

An acknowledgement of receipt is sent to the parties indicating the file number assigned.

Each party must fill out the form entitled *Hearing management form* and send it to the Arbitration Registry and the other party.

*Note: Each party is responsible for sending to the other party a copy of any document sent to the Arbitration Registry, because the Arbitration Registry does not forward documents from one party to another.*

The hearing is not public. In general, only the applicant and the lawyer are present before the Arbitration Council, unless they are represented by a lawyer.

*\*The parties can agree to settle the dispute amicably at any time, even after an application for arbitration has been filed.*

Hearing scheduled

Notice of hearing sent to the parties and, where applicable, witnesses summoned

Hearing\* before the Arbitration Council

Decision (arbitration award)

Deliberations

Sent to the Arbitration Registry

Decision sent to the parties (arbitration award)

The decision (arbitration award) of the Arbitration Council is final and binding on the parties and is executory in accordance with the *Code of Civil Procedure*.

### Expenses to be paid

*The Arbitration Council can decide to order one or both of the parties to pay the expenses incurred by the Barreau for the arbitration, up to an amount equal to 15% of the disputed amount.*

# GENERAL INFORMATION



In general, the arbitration process involves two parties: the client<sup>1</sup> who is contesting the lawyer's account for fees and the lawyer whose account is being contested. At all times, **the parties are entitled to be represented by a lawyer** who is a member in good standing of the Barreau du Québec.

## Role of the Arbitration Registry of the Barreau du Québec

The Arbitration Registry serves an administrative function in the management of the arbitration process. It provides information on the arbitration process and acts as liaison between the parties and the Arbitration Council for purposes of coordinating the arbitration process, **but the parties must exchange among themselves any information or documents sent to the Arbitration Registry of the Barreau du Québec or to the Arbitration Council of the Barreau du Québec.**

## Role of the Arbitration Council of the Barreau du Québec

The Arbitration Council hears the parties' representations on the contestation of one or more accounts for fees and renders a decision. Throughout the arbitration process and until the final decision has been rendered, it is the Arbitration Council that makes all decisions.

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1 The arbitration process can also involve a person who has a dispute with a lawyer concerning the amount of the lawyer's account.

# SUBMITTING THE APPLICATION FOR ARBITRATION

If the conciliation between the parties is unsuccessful, the client can file an application for arbitration with the Arbitration Registry of the Barreau du Québec to contest the lawyer's account.

To do so, the client must send the following documents to the Arbitration Registry:

1. The form entitled *Application for arbitration of an account* duly completed, dated and signed in one of the two official languages. In general, the arbitration process will take place in the language used by the client in the form, i.e., French or English.
2. A copy of the conciliation report.



## IMPORTANT!

### *Application for arbitration of an account*

In order not to delay the arbitration process, it is important to fill out all the sections of the *Application for arbitration of an account*, date it and sign it. You must provide a complete home address, because P.O. boxes are not accepted. If your contact information changes, you must inform the Arbitration Registry of the Barreau du Québec.

If you want to submit documents to the Arbitration Council in support of your application for arbitration, you must bring them with you on the day of the hearing. We cannot keep these documents on your behalf.

You must submit the *Application for arbitration of an account* to the Arbitration Registry by mail, e-mail or fax, as follows:

#### GREFFE D'ARBITRAGE DES COMPTES DES AVOCATS

Barreau du Québec  
445 Saint-Laurent Boulevard  
Montreal, Québec H2Y 3T8  
greffe.arbitrage@barreau.qc.ca  
Fax: 514 954-3457

You can also file your application in person at the same address between 8:15 a.m. and 5 p.m.

# REPRESENTATION BY A LAWYER DURING THE ARBITRATION PROCESS

In certain situations, you must be represented by a lawyer during the arbitration process, in particular, if you are not a lawyer and you are acting as:

- mandatary of the client;
- representative of a legal person (e.g.: a company);
- liquidator of a succession.

**It is your responsibility to check whether your situation requires that you be represented by a lawyer during the arbitration process and to provide the name and contact information of your lawyer to the Arbitration Registry of the Barreau du Québec.**



## IMPORTANT!

### Representation by a lawyer during the arbitration process

It is up to you to take the necessary steps to find a lawyer, because the Arbitration Registry cannot help you in this regard.

**At no time are the employees of the Barreau du Québec authorized to give you legal advice during the arbitration process.**

**If you need advice from a lawyer, please contact a referral service:**

- Montreal: 514 866-2490  
reference@barreaudemontreal.qc.ca
- Québec City, Beauce and Montmagny: 418 529-0301
- Other Québec regions: 1 866 954-3528  
www.avocatsdeprovince.qc.ca
- A service is also available in the Longueuil area: 450 468-2609  
barreau.longueuil@bellnet.ca
- JurisRéférence: www.jurisreference.ca

**Please note that these references do not constitute a recommendation from the Barreau du Québec. Approximately 2,000 of the nearly 25,500 members of the Barreau du Québec voluntarily register for these various referral services.**

# RECEIPT OF THE APPLICATION

In the days following receipt of the *Application for arbitration of an account* by the Arbitration Registry of the Barreau du Québec, an acknowledgement of receipt is sent to the parties indicating the number assigned to the file. This file number must be indicated on all documents sent in connection with your arbitration file.



## IMPORTANT!

### Documents sent to the Arbitration Registry and to the Arbitration Council of the Barreau du Québec

Each party is responsible for sending to the other party a copy of any document sent to the Arbitration Registry, because the Arbitration Registry does not forward documents from one party to another.

Documents intended for the Arbitration Council must be sent to the Arbitration Registry, which will forward them to the Arbitration Council.

# NAME OF THE ARBITRATOR OR ARBITRATORS COMPRISING THE ARBITRATION COUNCIL

The Arbitration Registry sends a letter to the parties informing them of the name of the arbitrator or arbitrators comprising the Arbitration Council.

If the disputed amount is less than \$7,000, the Arbitration Council will be composed of a single arbitrator. If the disputed amount is equal to or greater than \$7,000, the Arbitration Council will be composed of three arbitrators. The arbitrators are lawyers who are members in good standing of the Barreau du Québec.

The letter informing the parties of the composition of the Arbitration Council is accompanied by the following documents:

1. The *Hearing management form*;
2. A copy of the *Regulation respecting the conciliation and arbitration procedure for the accounts of advocates*;
3. Excerpts from the *Code of Civil Procedure*;
4. A copy of the *Application for arbitration of an account* duly completed by the client (only sent to the lawyer).



## IMPORTANT!

### Requests in connection with the disputed account

Once the *Application for arbitration of an account* has been filed, any request in connection with the disputed account must be sent to the Arbitration Registry, which will follow up with the Arbitration Council and forward the documents to it. **It is up to the Arbitration Council, not the Arbitration Registry, to rule on requests made by the parties during the arbitration process, until an arbitration award is issued.**

The role of the Arbitration Registry is to inform the parties about the arbitration process and to act as liaison between the Arbitration Council and the parties.

# HEARING MANAGEMENT FORM

Each party receives an identical copy of the *Hearing management form*. This document facilitates the efficient handling of your file, particularly the preparation for the hearing.

The sections entitled “Applicant” must be filled out by the client, while the sections entitled “Lawyer” must be filled out by the lawyer.



## IMPORTANT!

### *The Hearing management form and forwarding to the other party*

Each party must answer all the questions on the form, including the section entitled “Conflict of interest/Grounds of recusation”.

Each party must send the completed, dated and signed *Hearing management form* to the Arbitration Registry of the Barreau du Québec within five days after receipt of the form, and each party must send a copy of the form to the other party. **The Arbitration Registry does not forward documents from one party to another.**

# WITHDRAWAL OF THE APPLICATION FOR ARBITRATION

A client who wishes to withdraw the application for arbitration after it has been filed must send the following to the Arbitration Registry:

1. A document stating the client's desire to withdraw the application for arbitration;
2. A document signed by the lawyer in which the lawyer consents to the withdrawal of the application for arbitration.

The Arbitration Registry will forward the documents to the Arbitration Council which will review them and make a decision on the withdrawal of the application.

# SETTLEMENT AGREEMENT BETWEEN THE PARTIES

If the parties arrive at an amicable settlement of the dispute after the application for arbitration has been filed, each party must confirm its consent **in writing** and send all documents to the Arbitration Registry, which will forward the documents to the Arbitration Council which will review them and make a decision on the settlement agreement.

**THE PARTIES CAN AGREE TO SETTLE THE DISPUTE AMICABLY AT ANY TIME, EVEN AFTER AN APPLICATION FOR ARBITRATION HAS BEEN FILED.**



## IMPORTANT!

### Hearing and settlement agreement

If an amicable settlement is reached after a hearing has been scheduled, only the Arbitration Council can decide to cancel the hearing. If the consent of both parties to the **settlement agreement is not received before the scheduled hearing date, the hearing will not be cancelled, unless the Arbitration Council gives notice to the contrary.**

## NOTICE OF HEARING

Each party will receive a notice of hearing by Xpresspost at least 10 days before the hearing. The notice indicates, among other things, the date, time and place of the hearing.



## IMPORTANT!

### Notice of hearing and absence of a party at the hearing

The Arbitration Registry sends the notice of hearing by Xpresspost for addresses within Canada and by FedEx for addresses abroad. Each party is responsible for acknowledging receipt of the notice of hearing.

If a party is absent at the hearing after having been duly informed of the hearing, **the Arbitration Council could decide to proceed in the party's absence and issue an arbitration award.**

# REQUEST FOR A POSTPONEMENT

If a party cannot be present on the hearing date set by the Arbitration Council, it must send the Arbitration Registry a **written** request for a postponement addressed to the attention of the Arbitration Council. It must also send a copy of it to the other party.

The Arbitration Council can make the following decisions, among others:

1. Grant the request for a postponement and postpone the hearing to a later date.
2. Require the party to present the request for a postponement in person on the date of the hearing, so that it can rule after having heard the parties on this matter.
3. Refuse the request for a postponement, in which case the parties must be present in person on the date of the hearing.



## IMPORTANT!

### Deadline for requesting a postponement and decision of the Arbitration Council

A party who requests a postponement of the hearing must do so as soon as possible. If the Arbitration Council does not make a decision before the date of the hearing (because the request is not made soon enough, for example), the parties must be present at the hearing and make the request in person to the Arbitration Council.

# SUMMONING OF WITNESSES

The parties will receive a form entitled *Application for summons* with the notice of hearing. If a party wants a witness to testify at the hearing, there are two options:

1. The witness voluntarily agrees to be present at the hearing (at the verbal request of the party, for example): The party does not have to fill out or return the *Application for summons* to the Arbitration Registry.
2. The witness does not voluntarily agree to be present at the hearing: The party who wishes to summon the witness must fill out and return the *Application for summons* to the Arbitration Registry.

The *Application for summons* must, without fail, contain the name, address and telephone number of the witness or witnesses. If the party who wishes to summon a witness wants the witness to bring documents when he or she testifies, the party must fill out the section entitled “*duces tecum*”(documents to be brought).

Upon receipt of the completed form, the Arbitration Registry will send the summons to appear to a bailiff who will serve it on the witness.



## IMPORTANT!

### Deadline for summoning witnesses and management of witnesses

Since witnesses have to be summoned at least 10 days before the date on which they are to appear before the Arbitration Council, you must send the required information to the Arbitration Registry at least 15 days before the hearing, so that the Arbitration Registry can prepare the summons to appear and ensure it is served on the witness within the prescribed time limit.

**It is the responsibility of the parties to make arrangements with their witnesses, such as notifying them not to present themselves at the hearing if the Arbitration Council has granted a postponement of the hearing.**

# DAY OF THE HEARING

On the day of the hearing, each party must bring **FOUR COPIES** of the documents that make up the evidence in support of its allegations, **so that three copies can be filed with the Arbitration Council and one copy can be provided to the other party.**



## IMPORTANT!

### Do not send your documents to the Arbitration Registry

Do not send the Arbitration Registry the documents you intend to file as evidence before the Arbitration Council, because the Arbitration Registry cannot keep those documents on your behalf. It will return any such document to the sender.

During the hearing, the parties and their lawyers, if any, must act in a respectful manner.

**The hearing is not public.** In general, only the applicant and the lawyer are present before the Arbitration Council, unless they are represented by a lawyer. If one of the parties wants a person who is not involved in the dispute, such as a family member, to be at the hearing, the party must mention this to the Arbitration Council and the other party before the hearing. The Arbitration Council will decide whether or not this person can be present at the hearing.

As regards witnesses, the Arbitration Council oversees the rules related to their testimony. It is therefore important to inform the Arbitration Council about their presence and relevance as soon as the hearing begins, if this has not already been done in the *Hearing management form*.

# DELIBERATIONS

At the end of the hearing, the Arbitration Council generally takes the file under advisement. During this period, the Arbitration Council deliberates on the decision to be made regarding the application for arbitration. Also during this period (i.e., as long as a decision has not been rendered) no information on the matter will be disclosed.

Moreover, during this time, **no information or documents** can be submitted to the Arbitration Council.

If a party wants to intervene during the deliberations, it must do so by means of a *Motion to reopen the proof and hearing during the deliberations* addressed to the attention of the Arbitration Council, but sent to the Arbitration Registry, which will forward it to the Arbitration Council. Moreover, it must send a copy of the motion to the other party. The Arbitration Council will examine the motion and inform the parties of its decision.



## IMPORTANT!

### Change of contact information

**Each party is responsible for ensuring that its contact information, as provided to the Barreau du Québec, is up to date.** The parties must inform the Arbitration Registry of a change in their contact information, be it a change of address, telephone number, fax number or e-mail.

# DECISION

## Decision regarding the disputed account

The decision of the Arbitration Council is rendered in writing in an “arbitration award” which is issued within 45 days after the hearing. The Arbitration Registry forwards the decision of the Arbitration Council to the parties.

In its award, the Arbitration Council can, among other things, uphold or reduce the disputed account and determine the reimbursement to which a party may be entitled.

## Decision on expenses related to the application for arbitration

The Arbitration Council can decide to order one or both of the parties to **pay the expenses incurred by the Barreau for the arbitration, up to an amount equal to 15% of the disputed amount.**

These expenses include the cost of reserving rooms for the hearing, bailiff’s fees for serving summons on witnesses and serving notices of hearing, as well as the indemnities payable to the witnesses who testify before the Arbitration Council.

The Arbitration Council can also decide to order either party to pay interest at the legal rate as well as the additional indemnity, as provided for in the *Civil Code of Québec*, as of the date of the application for conciliation.

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The decision of the Arbitration Council is final and binding on the parties and is executory in accordance with the *Code of Civil Procedure*.



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