

For the purpose of determining whether there is physical danger to the unborn child, the child being breast-fed or the home educational childcare provider herself by reason of her pregnancy, the public health director may require from the home educational childcare provider or the coordinating office any information relating to the conditions in which the childcare is provided.

The public health director assesses the physical dangers and informs thereof the professional referred to in the first paragraph, who decides whether to issue the certificate.

**6.** The professional providing pregnancy care or, for a home educational childcare provider who is breast-feeding, the professional providing postnatal care, keeps their copy of the certificate and gives two copies to the home educational childcare provider who must keep one for herself and send the other to the coordinating office in accordance with section 7.”

**5.** Sections 7, 8 and 10 are amended by replacing the words “preventive withdrawal certificate” wherever they appear by “certificate”.

**6.** The following is inserted after section 13:

“**13.1.** The national public health director may, in the manner outlined in section 48.1 of the Act respecting occupational health and safety (chapter S-2.1), develop and update any protocols aimed at identifying dangers and the associated conditions in which home educational childcare is performed for the purposes of the exercise of the right to preventive withdrawal provided for in section 2, and at meeting, in particular, the needs the Commission communicates to the national public health director.”

**7.** Sections 14, 17 and 23 are amended by replacing the words “preventive withdrawal certificate” wherever they appear by “certificate”.

**8.** Section 25 is amended by replacing the first paragraph by the following:

“The expected date of delivery may be changed if not later than 4 weeks before the date stated in the certificate the Commission and the coordinating office are informed by the home educational childcare provider of a new expected date of delivery, as confirmed by the professional providing pregnancy care.”

**9.** Section 37 is amended

(1) by replacing “45 days” by “60 days” in the first paragraph;

(2) by inserting the following after the first paragraph:

“Moreover, a person may contest before the Administrative Labour Tribunal a decision whose review the person applied for under section 34 if the Commission did not make a decision within 90 days after receiving the application. If the person who applied for the review requested more time to present observations or produce documents, the 90-day time limit runs from the time observations are presented or documents are produced.”;

(3) by replacing “Such cases” in the second paragraph by “Cases referred to in the first or second paragraph”.

**10.** This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

106932

## Draft Regulation

Act respecting contracting by public bodies  
(chapter C-65.1)

Act mainly to promote Québec-sourced and responsible procurement by public bodies, to reinforce the integrity regime of enterprises and to increase the powers of the Autorité des marchés publics  
(2022, chapter 18)

### Prompt payments and the prompt settlement of disputes with regard to construction work

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), that the Regulation respecting prompt payments and the prompt settlement of disputes with regard to construction work, appearing below, may be made by the Government on the expiry of 45 days following this publication.

The draft Regulation completes the provisions of Chapter V.2 of the Act respecting contracting by public bodies (chapter C-65.1), enacted by the Act mainly to promote Québec-sourced and responsible procurement by

public bodies, to reinforce the integrity regime of enterprises and to increase the powers of the Autorité des marchés publics (2022, chapter 18), by determining the rules governing the payment of sums claimed by enterprises that are a party to a public contract for construction work referred to in the Act respecting contracting by public bodies or to a related public subcontract. It also determines the disputes that may be submitted to a third-person decider under the Act, the conditions for submitting a dispute, and the rules governing the dispute settlement process. In addition, the draft Regulation determines the standards with which persons, bodies and associations designated by the Minister of Justice to certify third-person deciders must comply, establishes the conditions that a person must meet to be certified to act as a third-person decider, and determines the standards with which such a person must comply when acting as a third-person decider as well as the sanctions that apply in the event of non-compliance. Last, the draft Regulation establishes the rules governing the fees and other costs that the parties to a dispute may be required to pay when the dispute is submitted to a third-person decider.

The draft Regulation will have no impact on citizens. However, it will have an impact on enterprises that carry out construction work on behalf of public bodies, which will have to comply with certain rules when requesting payment for the work completed and when paying or refusing to pay their subcontractors, if any.

Further information on the draft Regulation may be obtained by contacting Robert Villeneuve, Director General, Direction générale de l'encadrement, Sous-secrétariat aux marchés publics, Secrétariat du Conseil du trésor, 875, Grande Allée Est, Québec (Québec) G1R 5R8; telephone: 418 643-0875, extension 4938; email: robert.villeneuve@sct.gouv.qc.ca; and Mtre. Sophie Vézina, Coordinator, Direction du développement de l'accès à la justice, Sous-ministériat des orientations et de l'accès à la justice, Ministère de la Justice, 1200 route de l'Église, Québec (Québec) G1V 4M1; telephone: 418-643-1222, extension 21530; email: sophie.vezina@justice.gouv.qc.ca.

Any person wishing to comment on the draft Regulation is requested to submit written comments within the 45-day period to Robert Villeneuve and Mtre. Sophie Vézina using the contact information above.

SONIA LEBEL  
*Minister Responsible for Government  
Administration and Chair  
of the Conseil du trésor*

SIMON JOLIN-BARRETTE  
*Minister of Justice*

## Regulation respecting prompt payments and the prompt settlement of disputes with regard to construction work

Act respecting contracting by public bodies (chapter C-65.1, s. 21.48.21, 1st par., s. 21.48.23, s. 21.48.24, 1st and 2nd pars., s. 21.48.25, s. 21.48.26, 1st and 2nd pars., s. 21.48.27, 2nd and 3rd pars., and ss. 21.48.31, 21.48.32 and 24.3)).

Act mainly to promote Québec-sourced and responsible procurement by public bodies, to reinforce the integrity regime of enterprises and to increase the powers of the Autorité des marchés publics (2022, chapter 18, ss. 111, 113 and 151)

### CHAPTER I PROMPT PAYMENT SCHEME

#### DIVISION I REQUEST FOR PAYMENT

**1.** For the purposes of section 21.48.21 of the Act respecting contracting by public bodies, enacted by section 111 of the Act mainly to promote Québec-sourced and responsible procurement by public bodies, to reinforce the integrity regime of enterprises and to increase the powers of the Autorité des marchés publics (2022, chapter 18), a request for payment must be sent by a contractor to the debtor on the date which, out of the following dates, applies to the contractor's situation:

- (1) the 1st day of the month, in the case of a contractor that is a party to a public contract referred to in that section;
- (2) not later than the 25th day of the month, in the case of a subcontractor and in connection with a public subcontract that is directly or indirectly related to a public contract referred to in that section.

The request for payment must, in addition, include the following information:

- (1) the name and address of the contractor requesting payment;
- (2) the number of the public contract, if the claim results from a public contract;
- (3) a detailed description of the work carried out and expenses incurred and any other element for which a sum of money is claimed under the contract;

(4) the period or periods associated with each element referred to in subparagraph 3;

(5) the total sum of money claimed and a breakdown of the total for each element referred to in subparagraph 3;

(6) the name and contact information of the representative of the contractor who may be contacted.

Despite subparagraph 3 of the second paragraph, a subcontractor may include in the request for payment work yet to be carried out or expenses yet to be incurred on the date of the request, but which the subcontractor expects to carry out or incur before the end of the month covered by the request. A contractor that receives such a request for payment must, in turn, include such items in the request for payment sent to the debtor during the same month.

If the request for payment is made by a contractor party to a public contract under which the public body may make a withholding pursuant to section 17 or 18, the request must also indicate any part of the total sum claimed, expressed as a percentage, that constitutes the claim of a subcontractor of the contractor and identify the subcontractor concerned.

Last, the request must be made in writing and be dated and signed by the contractor's representative.

**2.** A public body may make the validity of a request for payment made by a contractor that is a party to a public contract conditional on the presentation of supporting documents, provided that the condition and the documents required are specified in the public contract.

Contractors that are parties to a public subcontract may agree among themselves to make the validity of a request for payment conditional on the presentation of supporting documents, provided that the agreement is recorded in writing.

A contractual clause giving effect to this section may require only the presentation of documents that are essential for an assessment of the request for payment concerned; in all other cases, the clause is without effect.

**3.** A request for payment that has been sent by a contractor to a debtor may be amended in any way on which both parties agree.

The amended request does not constitute a new request for payment. The day on which the payment deadline referred to in the second paragraph of section 5 begins to run remains the day following the day on which the initial request for payment was received.

**4.** No agreement may make the sending of a request for payment conditional on authorization from the debtor, whatever the form of the authorization.

## DIVISION II REFUSAL TO PAY

**5.** The time within which a debtor may refuse to pay all or part of a sum of money claimed by means of a valid request for payment varies as follows:

(1) in the case of a public body: 21 days;

(2) in the case of contractor: 7 days.

The time is calculated from the day following the day on which the request for payment is received. If the time expires on a holiday, it is extended to the next ensuing working day. The same applies to any other deadline for completing an action pursuant to this Regulation.

For the purposes of the second paragraph, a holiday, within the meaning of this Regulation, is any day designated as such by section 61 of the Interpretation Act (chapter I-16) as well as Saturdays, 2 January and 26 December.

**6.** A refusal to pay all or part of a sum of money the payment of which is validly claimed must be expressed in a written notice containing the following information:

(1) the part of the total amount of the request for payment that is refused, expressed as a percentage and as a sum of money;

(2) a description of the work covered by the refusal to pay;

(3) the reasons for the refusal to pay, which must be sufficiently detailed to allow them to be assessed by the creditor;

(4) if applicable, the contractual or legal provisions on which the reasons for the refusal to pay are based.

**7.** A refusal to pay may not be based on

(1) the fact that the request for payment concerns work resulting from a change to the contract or a change order the value of which has not yet been definitively established;

(2) any ground that may be invoked for a deduction or withholding in accordance with the provisions of Division IV.

**DIVISION III****DEADLINE FOR PAYMENT AND INTEREST  
APPLICABLE IN THE EVENT OF A FAILURE TO  
PAY**

**8.** For the purposes of the first paragraph of section 21.48.24 of the Act, enacted by section 111 of the Act mainly to promote Québec-sourced and responsible procurement by public bodies, to reinforce the integrity regime of enterprises and to increase the powers of the Autorité des marchés publics (2022, chapter 18), the debtor must pay the creditor by one of the following deadlines, depending on the debtor's situation:

(1) in the case of a public body: not later than the last day of the month during which the request for payment is received;

(2) in the case of a main contractor: not later than the 5th day of the second month following the month during which the request for payment is received;

(3) in the case of a subcontractor that is a party to a public subcontract directly related to a public contract: not later than the 10th day of the second month following the month during which the request for payment is received.

If the subcontracting chain has more than one subcontracting level, the deadline specified in subparagraph 3 of the first paragraph is extended by 5 days for each additional level.

**9.** For the purposes of section 21.48.25 of the Act, enacted by section 111 of the Act mainly to promote Québec-sourced and responsible procurement by public bodies, to reinforce the integrity regime of enterprises and to increase the powers of the Autorité des marchés publics (2022, chapter 18), the interest rate is the higher of the legal rate and the rate agreed by the parties, if any.

In addition, each time interest is charged on a sum of money payable pursuant to this Regulation, the interest rate must be determined in accordance with the rule in the first paragraph.

**DIVISION IV  
DEDUCTIONS AND WITHHOLDINGS FROM  
SUMS OWED****§1. Deductions**

**10.** A contractor may deduct from a payment owed to one of its subcontractors an amount representing the sum claimed by the subcontractor for work that is identified in a notice of refusal to pay made by another debtor in the contracting chain.

However, such a deduction may only be made if the contractor has sent the subcontractor, at least 7 days before the deadline for payment, a copy of the notice of refusal to pay on which the deduction is based and a written notice setting out the amount of the deduction, expressed as a percentage and as a sum of money.

A main contractor relying on the provisions of this section must begin an amicable dispute settlement process with the public body concerning the notice of refusal to pay issued by the public body. If, 90 days after the date on which the contractor sent its subcontractor the notice of deduction provided for in the second paragraph, no agreement has been reached with the public body, the sum deducted becomes payable and bears interest from the day following the expiry of the 90-day period at the rate provided for in section 9, unless during that period the contractor has begun a process to allow the dispute to be decided by a third-person decider, an arbitrator or a court.

When a sum deducted by a main contractor becomes payable to a subcontractor pursuant to the third paragraph, the mere lapse of the 90-day deadline for payment has the effect of causing the main contractor to be in default of payment of the sum to the subcontractor.

**11.** A public body relying on a penalty clause in a public contract may deduct the amount of the stipulated penalty from the payment owed to a main contractor that is a party to the public contract.

Similarly, a contractor relying on a penalty clause in a public subcontract may deduct the amount of the stipulated penalty from the payment owed to a subcontractor.

**12.** A public body must deduct an amount equal to the amount allocated to the payment of a fiscal debt pursuant to section 31.1.1 of the Tax Administration Act (chapter A-6.002) from the payment owed to a contractor that is a party to a public contract.

**§2. Withholdings**

**13.** A public body may, to ensure performance by a main contractor that is a party to a public contract, withhold part of a sum of money owed to the main contractor under that contract. The withholding may not exceed 10% of the sum owed.

A main contractor subject to a withholding may, in turn, withhold part of a sum it is required to pay to a subcontractor. The percentage of the withholding may not, however, exceed the percentage of the withholding applied to the main contractor by the public body. A subcontractor subject to a withholding that has also subcontracted work may rely in turn on this paragraph, adapted as required, and in the same manner until the end of the subcontracting chain.

The right to withhold payment set out in this section may only be exercised by a public body if the right and the procedure for exercising the right are specified in the public contract. The details must include the percentage of the withholding that applies and the conditions on which any sum withheld from a contractor that is a party to a public contract becomes payable.

In addition, the right may only be exercised by a contractor that is a party to a public contract or another contractor that is a party to a public subcontract if it is specified in a written agreement between the parties concerned.

**14.** A public body may withhold from any sum of money owed to a contractor that is a party to a public contract an amount sufficient to cover the reservations made as to the apparent defects or apparent poor workmanship in the work.

However, when the reservations are made at the time when the work is accepted, and if sums have already been withheld pursuant to section 13 and have yet to be paid to the contractor on the date of acceptance of the work, those sums are deemed, from that date, to have been withheld pursuant to this section. For this reason, only the sums which, in addition to those sums, are sufficient to cover the reservations may be withheld pursuant to the first paragraph.

Despite the first paragraph, the public body may not exercise the right to withhold payment if the contractor has provided sufficient security to guarantee the performance of its obligations.

A contractor from which payment is withheld may, in turn, withhold payment to a subcontractor whose work is connected to the repairs or corrections required in proportion to the share of the cost of the repairs or corrections that the main contractor attributes to each subcontractor. Any other contractor that subcontracts work may rely on this paragraph, adapted as required.

**15.** Any sum withheld by a public body pursuant to section 13 must, when the public body accepts the work without reservation, be paid to the contractor that is a party to a public contract within 30 days of that acceptance.

Any sum withheld by a public body pursuant to section 14 must be paid to the contractor that is a party to a public contract not later than 30 days following the date on which the public body states that it is satisfied with the repairs or corrections made to the work. The sum need not be paid to a contractor that has not completed the repairs or corrections required by the public body.

**16.** A main contractor from which a sum of money has been withheld pursuant to section 13 or 14 must, within 5 days of receiving the sum from the public body, pay to a subcontractor to which all or part of the withholding was applied the sum of money withheld.

The same payment deadline applies to a subcontractor that, in turn, applied a withholding to another subcontractor pursuant to one of the same sections, and in the same manner until the end of the subcontracting chain.

**17.** A public body may withhold, from any sum of money it is required to pay to a main contractor under a public contract, an amount sufficient to pay the sum owed to a subcontractor. It may also withhold an amount sufficient to pay the sums owed to persons who hold a legal hypothec over work on an immovable and who have given notice of their contract to the contractor, for work completed or materials or services supplied after the notice is given.

For the purposes of the first paragraph, the public body may assume that a subcontractor has a claim against a main contractor for any sum it has previously paid to the contractor for work completed by the subcontractor until, for that subcontractor, it has received from the contractor either a written statement that it has paid the subcontractor, or an acquittance of the subcontractor's claim, depending on what is provided for in the public contract.

Despite the first paragraph, the public body may not exercise the right to withhold payment if the contractor has provided sufficient security to guarantee payment of those claims.

**18.** When, pursuant to section 17, a public body withholds a sum owed to a main contractor to protect the assumed claim of a subcontractor against that contractor, it may also, if the public contract so provides, withhold any other sum owed to that contractor and resulting from the same request for payment, for work that the contractor has entrusted to other subcontractors.

**19.** Any sum withheld by a public body pursuant to section 17 or 18 must be paid to the main contractor not later than the last day of the month during which the public body receives from the contractor, as the case may be, either the statement of payment or the acquittance of the claim referred to in the second paragraph of section 17.

**20.** With respect to any sum of money withheld that has become payable to the creditor pursuant to this Division, the mere lapse of the deadline for payment has the effect of causing the debtor to be in default of payment, and the sum bears interest from the day following the deadline.

## DIVISION V EXCLUSIONS FROM THE SCHEME

**21.** A public contract entered into in an emergency because of a threat to the safety of persons or property is excluded from the provisions of Division II of Chapter V.2 of the Act, enacted by the Act mainly to promote Québec-sourced and responsible procurement by public bodies, to reinforce the integrity regime of enterprises and to increase the powers of the Autorité des marchés publics (2022, chapter 18).

A public subcontract directly or indirectly related to a public contract referred to in the first paragraph is also excluded from the provisions specified.

**22.** A request for the payment of a sum of money that a contractor considers it is owed because of the harm it claims to have suffered following a change in the obligations set out in a contract or in the conditions for the performance of a public contract or public subcontract, and for which it does not consider itself responsible, is excluded from the provisions of Division II of Chapter V.2 of the Act, enacted by the Act mainly to promote Québec-sourced and responsible procurement by public bodies, to reinforce the integrity regime of enterprises and to increase the powers of the Autorité des marchés publics (2022, chapter 18).

For the purposes of this section, “harm” means a loss of profit, productivity or business opportunity and any expenditure borne by the enterprise for items other than those referred to in Schedule 6 of the Regulation respecting construction contracts of public bodies (chapter C-65.1, r. 5).

## CHAPTER II PROMPT DISPUTE SETTLEMENT SCHEME

### DIVISION I DISPUTES COVERED AND CONDITIONS FOR THE EXERCISE OF THE RIGHT TO HAVE RECOURSE TO A THIRD-PERSON DECIDER

**23.** This Chapter applies to every dispute arising between the parties to a public contract referred to in subparagraph 2 of the first paragraph of section 3 of the Act or to a public subcontract directly or indirectly related to such a contract that they have been unable to settle amicably. Such a dispute may, in particular, concern

- (1) the validity of a request for payment;
- (2) a refusal of all or part of a request for payment;
- (3) the value of a change to the contract or subcontract;

(4) the validity of the withholding or deduction of a sum of money that is owed;

(5) the payment of a sum of money that has been withheld.

Despite the first paragraph, a dispute may not be submitted to a third-person decider if the dispute

(1) results from a monetary claim of more than \$500,000 or concerns a matter of a value that exceeds that amount;

(2) results from a monetary claim based on the harm, within the meaning of section 22, that an enterprise claims to have suffered following a change in the obligations set out in a contract or in the conditions for the performance of the contract, or concerns the existence of a change in the conditions for the performance of the contract.

**24.** In order to rely on the right to have recourse to a third-person decider provided for in section 21.48.26 of the Act, enacted by section 111 of the Act mainly to promote Québec-sourced and responsible procurement by public bodies, to reinforce the integrity regime of enterprises and to increase the powers of the Autorité des marchés publics (2022, chapter 18), a party to a dispute referred to in the first paragraph of section 23 must notify a notice of intervention to the other contracting party not later than the earlier of

(1) the date occurring 90 days after the dispute arises;

(2) in the case of a dispute arising from a public contract, the date occurring 90 days after the date on which the public body accepted the work without reservations or, if it accepted the work with reservation, the date on which it declared that it was satisfied with the repairs or corrections made to the work;

(3) in the case of a dispute arising from a public subcontract, the date occurring 90 days after the end date for the work agreed on by the parties to the subcontract.

Despite the first paragraph, the right to have recourse to a third-person decider may not be exercised if

(1) a decision about the dispute has already been rendered by a third-person decider following an intervention under the provisions of this Regulation;

(2) the difficulty giving rise to the dispute has already been decided by a third-person decider pursuant to the second paragraph of section 42;

(3) the party that intends to exercise the right previously submitted a request for intervention but withdrew it after a third-person decider was designated to conduct the intervention;

(4) the dispute is already the object of a judicial or arbitral process between the same parties.

**25.** A party to a dispute may not split a monetary claim arising from a dispute, dissociate the constituting elements of the dispute, or otherwise act to circumvent the limits on the right to have recourse to a third-person decider set out in this Division.

## DIVISION II DISPUTE SETTLEMENT PROCESS BEFORE A THIRD-PERSON DECIDER

### §1. *Request for intervention*

**26.** A party to a public contract or public subcontract referred to in section 23 that intends to submit a dispute to a third-person decider, hereinafter referred to as the “applicant”, must notify a request for intervention to the other party to the contract that includes

(1) the names and addresses of the parties to the contract or subcontract;

(2) the number of the contract or subcontract, if any;

(3) the nature and description of the dispute, including its total value;

(4) the relevant contractual provisions, if any;

(5) the grounds invoked in support of the application, the conclusion sought and the supporting documents;

(6) the information needed to establish that the parties have attempted to settle the dispute amicably and, where applicable, that the procedure set out for an amicable settlement in the contract or subcontract has been complied with;

(7) the names of three third-person deciders whose availability has been ascertained by the applicant, selected from the register of third-person deciders kept by the Minister of Justice.

A request for intervention may only concern a single disputed matter. However, an applicant that considers that the conditions set out in the second paragraph of section 34 for the combination of several disputed matters are met and wishes to submit a single request must mention this fact in the request for intervention and detail, for each matter, the elements mentioned in subparagraphs 3 to 5 of the first paragraph.

The notification of the request for intervention, and the notification required by any other provision of this Chapter, must be made in compliance with the Code of Civil Procedure (chapter C-25.01).

**27.** The other party to the contract has 5 days following notification to respond to the request for intervention. For that purpose, the other party to the contract must send the applicant a written notice including the following information:

(1) either the name of the third-person decider chosen by the other party to the contract from among those proposed by the applicant, or mention of the fact that it has chosen none of the third-person deciders proposed;

(2) for each matter in dispute that the applicant wishes to combine in the request for intervention, mention of whether the other party to the contract accepts or rejects the combination;

(3) if the other party to the contract considers that the conditions set out in the second paragraph of section 34 for the combination of several matters in dispute are met and wishes to submit a request for that purpose, mention of that fact and, for each matter, the elements mentioned in subparagraphs 3 to 5 of the first paragraph of section 26.

**28.** An applicant that receives a response in which the other party to the contract expresses a wish to submit a request to combine several disputed matters in a single request has 5 days to inform the other party to the contract, in writing, for each matter that the other party wishes to combine in the request for intervention, whether it accepts or rejects the request.

### §2. *Designation of the third-person decider, inability to act and recusation*

**29.** Within 5 days of receiving a request for intervention, the other party to the contract must, if choosing none of the third-person deciders proposed by the applicant, propose the names of three other third-person deciders, after ascertaining their availability, selected from the register of third-person deciders kept by the Minister of Justice.

If the parties are unable to agree on the choice of a third-person decider from among those proposed by the other party to the contract, they must designate a third-person decider by way of a random draw of the six candidates proposed, using the method they determine, not later than 5 days after the expiry of the deadline in the first paragraph.

If the other party to the contract fails to propose the name of three third-person deciders within the deadline set in the first paragraph or to participate in the random draw referred to in the second paragraph, the applicant, in the first case, must designate the third-person decider responsible for deciding the dispute and, in the second case, must conduct the random draw of the six candidates. In both cases, the applicant must act within 2 days following the expiry of the deadline set in the first or second paragraph.

**30.** The third-person decider may be recused if there are serious grounds to doubt his or her impartiality or if the third-person decider is not qualified to decide the dispute.

The third-person decider is required to inform the parties of any fact that could call his or her impartiality into question and justify a recusation.

**31.** A party may request the recusation of a third-person decider by setting out the grounds for recusation in a document notified to the other party and to the third-person decider within 2 days of becoming aware either of the designation of the third-person decider or of the grounds for recusation.

A party may request the recusation of a third-person decider it has proposed or designated itself only on grounds that occur or are discovered after the proposal or designation.

The third-person decider is required to rule on the request for recusation within 2 days after receiving the request, except if he or she decides to withdraw or is required to withdraw after the other party supports the request.

If recusation cannot be obtained in this manner, a party may, within 5 days after being notified of the decision of the third-person decider or after the expiry of the deadline in the third paragraph, apply to the Court of Québec or the Superior Court, depending on their respective jurisdictions, to rule on the disputed matter submitted to the third-person decider, to rule on the recusation. The third-person decider may, nevertheless, continue the dispute settlement process and render a decision for as long as the court has not made a ruling, except if ordered otherwise by the court. A decision made by the court pursuant to this paragraph cannot be appealed.

**32.** The third-person decider must inform the parties, as soon as possible, of any situation preventing him or her from continuing an intervention.

**33.** Within 5 days following the date on which the parties are informed of the recusation of the third-person decider or of the fact that he or she is unable to continue the intervention, each party must propose the name of a third-person decider, after ascertaining his or her availability, from the register of third-person deciders kept by the Minister of Justice.

If the parties cannot agree on the choice of a third-person decider, they must designate a third-person decider by way of a random draw of the two candidates proposed, using the method they determine, not later than 2 days after the expiry of the deadline in the first paragraph.

If one of the parties fails to propose the name of a third-person decider within the deadline set in the first paragraph or to participate in the random draw referred to in the second paragraph, the other party, in the first case, must designate the third-person decider responsible for deciding the dispute or, in the second case, must conduct the random draw of the two candidates. In both cases, the party must act within 2 days following the expiry of the deadline set in the first or second paragraph, as the case may be.

### *§3. Procedure for the intervention*

**34.** Once the parties have agreed on the matters to be combined in the intervention, the third-person decider must rule on the request for combination within 2 days of the date on which he or she was designated to conduct the intervention.

Only disputed matters resulting from contemporaneous events that are connected in such a way as to make it necessary to deal with them simultaneously to settle the dispute, or that can be dealt with simultaneously to avoid an undue multiplication of requests for intervention and the risk that the parties obtain contradictory decisions, may be combined in a single intervention.

**35.** The party that requested the intervention has 5 days from the date on which the third-person decider is appointed or, if a request to combine several disputed matters has been submitted, from the date on which the third-person decider rules on the request, to forward an outline of its claims and the documents mentioned to the third-person decider and, unless this has already been done, the other party. It must, in addition, forward a copy of the request for intervention to the third-person decider.

On the expiry of the deadline in the first paragraph, the other party has 15 days to respond in writing to the claims of the party requesting the intervention and to produce the documents mentioned.



**36.** Subject to the rules set out in the Act and in this Regulation, the third-person decider conducts the intervention using the procedure he or she determines; however, he or she is required to comply with the adversarial principle and the principle of proportionality.

The third-person decider is also required to conduct the intervention in the manner he or she considers to be the most efficient and least costly for the parties.

**37.** A party may be advised by a lawyer, whose role is to provide assistance but who cannot make representations to the third-person decider on behalf of the client.

**38.** The proceedings are conducted orally at a hearing, unless the third-person decider has agreed, at the request of the parties, to render a decision on the face of the record.

The third-person decider must notify the parties of the date of the hearing, if applicable. The hearing is held at the place chosen by the third-person decider or, with the agreement of the parties, is held remotely using technological means.

**39.** Testimony is given by way of written affidavit. The third-person decider may, however, allow oral testimony at the request of a party.

**40.** If one party fails to set out its claims, attend the hearing or provide evidence in support of its claims, the third-person decider must, after noting the default, continue the intervention without that party.

However, if the defaulting party is the party that submitted the request for intervention, it is deemed to have withdrawn its request from the date on which its default is noted and the intervention continues only if, in accordance with the second paragraph of section 42, the other party so requests.

**41.** A party may, at any time before the end of the intervention, withdraw all or some of the conclusions sought against the other party. For that purpose, it must send a written notice to the other party and, where applicable, to the third-person decider designated to conduct the intervention.

**42.** The third-person decider must record any withdrawal in the record.

The party against which a conclusion sought by the other party is withdrawn has 2 days from the date on which the withdrawal is recorded to inform the third-person decider of its wish to see a decision rendered to resolve the difficulty for which the conclusion was sought. The intervention continues even if the other party has withdrawn.

A decision rendered pursuant to the second paragraph may rule on a question of fact or law, and in particular on the interpretation of a contractual clause, but cannot find against either of the parties.

**43.** The third-person decider must decide the dispute in accordance with the rules of law and the stipulations of the contract binding the parties. The third-person decider must also take into account any applicable usages.

#### *§4. Decision*

**44.** The third-person decider must render a decision and notify it to the parties within 50 days of being designated. If needed, the third-person decider may extend the deadline by up to 15 days, provided he or she informs the parties before the expiry of the initial deadline, or by a longer period if the parties consent.

The decision of the third-person decider must give reasons, be in writing and be signed by the third-person decider.

If the parties settle the dispute, their agreement must be recorded in the decision. If each party has withdrawn all the conclusions sought against the other party, the complete withdrawal of the request for intervention is recorded in the decision.

The notification of the decision to the parties brings the intervention to an end.

**45.** Within 5 days after the decision is notified to the parties, the third-person decider may, on his or her own initiative or at the request of a party, make the necessary changes to correct a clerical or calculation error or any other material error.

**46.** A party required to pay a sum of money as the result of a decision has 20 days, from the date on which the decision was sent to the party, to comply.

When a payment as the result of a decision concerns all or part of the work subcontracted by the creditor, the creditor must, in turn, pay the subcontractor or subcontractors concerned in proportion to their respective claims within 5 days after receiving the payment. The mere lapse of the deadline for payment has the effect of causing the debtor to be in default of payment.

An amount that remains unpaid at the expiry of the deadline set in the first or second paragraph bears interest from the day following the expiry of the deadline.

### §5. Confidentiality of documents

**47.** The parties to the dispute and the third-person decider must ensure that everything said, written or done during the intervention remains confidential, except if the parties agree otherwise.

**48.** The third-person decider is not in breach of the confidentiality requirement if he or she provides the chair of the Conseil du trésor or the Minister of Justice with information for statistical purposes or a general assessment of the process for preventing and settling disputes and the results achieved, provided that no personal information is disclosed.

**49.** The decision rendered by the third-person decider following an intervention may be filed in later proceedings before a court of common law or an

arbitrator, if the intervention and the proceedings concern the same matter and involve the same parties.

The decision may also be communicated to a third-person decider by a party against which a conclusion is sought in a dispute settlement process before the third-person decider, if the party considers that one of subparagraphs 1 to 3 of the second paragraph of section 24 applies and that, as a result, the right of the other party to have recourse to a third-person decider is extinguished.

### §6. Intervention fees and costs

**50.** The fees of the third-person decider and the costs for the conduct of an intervention are divided equally between the parties to the dispute.

However, the third-person decider may, at the request of one of the parties, depart from the equal division of the fees and costs if he or she considers that the actions of the other party during the intervention were harmful, in particular because the other party's conduct was abusive or because it failed to comply with deadlines.

**51.** Each party to the dispute bears all the costs it incurs itself pursuant to the provisions of this Chapter.

### DIVISION III STANDARDS CONCERNING THE PERSONS, BODIES AND ASSOCIATIONS ABLE TO CERTIFY THIRD-PERSON DECIDERS

**52.** The Minister of Justice must publish, on the Minister's website, a list of the persons, bodies or associations the Minister has designated to certify third-person deciders.

**53.** A person, body or association that certifies a third-person decider must communicate the following information about the third-person decider to the Minister without delay:

- (1) the name of the third-person decider;
- (2) the address of the third-person decider's professional domicile;
- (3) the third-person decider's phone numbers and, if applicable, fax number;
- (4) the third-person decider's electronic address;
- (5) the third-person decider's membership number in a professional order;
- (6) the date of the third-person decider's certification;
- (7) the ability of the third-person decider to intervene remotely using technological means, where applicable.

Any change in the information must be communicated to the Minister of Justice without delay by the person, body or association.

**54.** A person, body or association that certifies third-person deciders must notify the Minister of Justice without delay if the certification is withdrawn.

The person, body or association must also notify the Minister of Justice without delay when a third-person decider is temporarily or permanently struck off the roll of a professional order, has a permit revoked, or has a limitation that is incompatible with the functions of a third-person decider.

### DIVISION IV CONDITIONS FOR THE CERTIFICATION OF THIRD-PERSON DECIDERS

**55.** A person may be certified as a third-person decider if he or she

- (1) has been a member of the Barreau du Québec, the Chambre des notaires du Québec, the Ordre des architectes du Québec or the Ordre des ingénieurs du Québec for at least 5 years;
- (2) has taken out the professional liability insurance available through the person's professional order;
- (3) has work-related experience in the construction field;

(4) has completed a minimum of 40 hours of training on arbitration under the responsibility of a person, body or association able to provide certification or by a higher education institution, focused on the following topics:

- (a) the conduct of a dispute settlement process;
- (b) the rules of evidence and procedure;
- (c) the drafting of a decision;
- (d) information technologies;

(5) has completed a minimum of 28 days of training on the dispute settlement process provided for in the Act respecting contracting by public bodies (chapter C-65.1);

(6) has completed a minimum of 10 hours of refresher training for third-person deciders every two years, the content of which is determined by the person, body or association that provided certification;

(7) has not received an administrative, ethics-related, penal or criminal sanction that is incompatible with the function of third-person decider.

The person, body or association that certifies a third-person decider must ensure that the conditions are met at all times. If the person fails to meet the conditions the person, body or association must withdraw the certification.

**56.** The Minister of Justice must keep a register of third-person deciders and make it available on the Minister's website.

#### **DIVISION V** STANDARDS TO BE MET WHEN PERFORMING THE FUNCTION OF A THIRD-PERSON DECIDER AND SANCTIONS FOR FAILING TO MEET THOSE STANDARDS

**57.** An intervention mandate is awarded personally to a third-person decider who may not, in any case, transfer it to another third-person decider.

**58.** Any person having reason to believe that a third-person decider has failed to comply with the rules of the dispute settlement process may file a complaint with the Secrétariat du Conseil du trésor, which must inform the complainant of the outcome of the complaint.

**59.** The Secrétariat du Conseil du trésor may, on serious grounds, ask the Minister of Justice to remove the name of a third-person decider from the register.

Before doing so, the Secrétariat du Conseil du trésor must notify the third-person decider in advance, in writing, of its intention and of the grounds on which its action is based, giving the third-person adviser 10 days to present observations.

The Secrétariat du Conseil du trésor must then inform the third-person decider and the person, body or association that provided certification, of the request to remove the name from the register of third-person deciders.

**60.** A third-person decider who ceases to exercise the function of a third-person decider or to exercise his or her profession must inform the person, body or association that provided certification without delay, and that person, body or association must then inform the Minister of Justice without delay.

**61.** A third-person decider may ask the person, body or association that provided certification to withdraw his or her name, temporarily or permanently, from the register.

#### **DIVISION VI** COSTS AND FEES OF THIRD-PERSON DECIDERS

**62.** The fees payable to a third-person decider to perform a mandate, including work performed outside the hearing for the purposes of the intervention, the intervention hearing and the drafting of the decision, is billed at the hourly rate set by the third-person decider up to the following maximum amounts:

Value of the dispute	Maximum amount
\$10,000 or less	\$2,500
from \$10,001 to \$20,000	\$4,000
from \$20,001 to \$40,000	\$6,500
from \$40,001 to \$75,000	\$9,000
from \$75,001 to \$120,000	\$12,500
from \$120,001 to \$180,000	\$18,000
from \$180,001 to \$250,000	\$25,000
from \$250,001 to \$335,000	\$27,000
from \$335,001 to \$430,000	\$30,500
from \$430,001 to \$500,000	\$33,000

The fees are \$500 if, for a serious reason, the third-person decider is unable to render a decision.

**63.** Travel, research and communications costs and all other fees, costs and expenses of whatever kind are borne by the third-person decider, who may not claim payment or reimbursement from the parties either directly or indirectly.

**64.** The third-person decider may ask each party to advance a portion of the fees, in an amount of up to 25% of the maximum amount of fees provided for in section 62 depending on the value of the dispute.

### CHAPTER III AMENDING PROVISIONS

**65.** Section 42.1 of the Regulation respecting service contracts of public bodies (chapter C-65.1, r. 4) is amended by inserting “, person to act as a third-person decider for the purposes of Division III of Chapter V.2 of the Act,” after “physician”.

**66.** Section 4 of the Regulation respecting construction contracts of public bodies (chapter C-65.1, r. 5) is amended by inserting, the following after subparagraph 4 of the second paragraph:

“(4.1) whether or not the provisions of Division II of Chapter V.2 of the Act concerning payment for work and the provisions of Division III of that Chapter concerning dispute settlement apply;”

**67.** Section 45 is amended by inserting the following sentence at the end of the second paragraph: “In addition, the work is deemed to have been performed by the contractor if it is performed by another person or entity that shares, with the contractor, a director, partner, officer or shareholder who has direct or indirect legal or *de facto* control over both the person or entity and the contractor.”

**68.** The following is inserted after section 58:

#### “DIVISION IV “PROVISIONS SPECIFIC TO CERTAIN DISPUTES

“**58.0.1.** Sections 47 and 50 to 54 do not apply to the disputes determined by a regulation made pursuant to the first paragraph of section 21.48.26 of the Act.

The public body and the contractor must attempt to settle the dispute amicably in compliance, where applicable, with the terms and conditions specified in the contract to remedy the situation.

If the difficulty cannot be resolved, it may be submitted to a court of law or a jurisdictional body, as the case may be, or to an arbitrator. It may also be submitted to a third-person decider, as provided for in section 21.48.26 of the Act.

The public bodies referred to in subparagraph 1 or subparagraph 2 of the first paragraph of section 4 of the Act must obtain general or special authorization from the Minister of Justice in order to submit a difficulty to an arbitrator.”

### CHAPTER IV TRANSITIONAL AND FINAL PROVISIONS

**69.** The provisions of Chapter I do not apply to public contracts under way on the date on which this Regulation becomes applicable to the category of contracts to which they belong. The same applies to any related public subcontracts.

The provisions also do not apply to public contracts resulting from calls for tenders issued before the date on which this Regulation becomes applicable to the category of contracts to which they belong. The same applies to any related public subcontracts.

**70.** The provisions of Chapter II do not apply to disputes that have arisen or will arise between the parties to a public contract or public subcontract referred to in section 69.

**71.** Subject to sections 69 and 70, the public contracts resulting from the infrastructure projects listed in Schedule I of the Act respecting the acceleration of certain infrastructure projects (chapter A-2.001) and related public subcontracts are subject to the provisions of this Regulation rather than to those of the Pilot project to facilitate payment to enterprises that are parties to public construction work contracts and related public subcontracts (chapter C-65.1, r. 8.01), despite section 71 of the Act.

Where sections 69 and 70 apply, the public contract, public subcontract or dispute concerned remains subject to the provisions of the pilot project mentioned in the first paragraph.

**72.** A lawyer, architect or engineer certified to act as an adjudicator for the purposes of the Pilot project to facilitate payment to enterprises that are parties to public construction work contracts and related public subcontracts (chapter C-65.1, r. 8.01) on the date of coming into force of this Regulation is deemed to be certified to act as a third-person decider within the meaning of this Regulation for a period of one year beginning on that date.

The condition set out in subparagraph 4 of the first paragraph of section 55 does not apply to a person referred to in the first paragraph who wishes to be certified as a third-person decider once the one-year period has expired.

**73.** This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

However, this Regulation applies to a contract in one of the above-mentioned categories only from the date applicable to that category in the following list of dates:

(1) where the contract concerns work on a building:

(a) (insert here the date occurring one year after the date of coming into force of this Regulation), if it involves expenditure of less than \$750,000 but equal to or more than \$75,000;

(b) (insert here the date occurring two years after the date of coming into force of this Regulation), if it involves expenditure of less than \$75,000;

(2) where the contract concerns civil engineering work other than work on a building:

(a) (insert here the date occurring one year after the date of coming into force of this Regulation), if it involves expenditure of less than \$2,500,000 but equal to or more than \$675,000;

(b) (insert here the date occurring two years after the date of coming into force of this Regulation), if it involves expenditure of less than \$675,000.

For the purposes of the second paragraph, the expenditure for a contract includes expenditure resulting from a contract option.

This Regulation becomes applicable to a subcontract on the same date as it becomes applicable to the contract to which the subcontract is related.

106930

## Draft Regulation

Act respecting occupational health and safety  
(chapter S-2.1)

### Safety Code for the construction industry — Amendment

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), that the Regulation to amend the Safety Code for the construction industry, appearing below, may be made by the Commission des normes, de l'équité, de la santé et de la sécurité du travail and submitted to the Government for approval, in accordance with section 224 of the Act respecting occupational health and safety (chapter S-2.1), on the expiry of 45 days following this publication.

The draft Regulation, which amends the Safety Code for the construction industry (chapter S-2.1, r. 4), updates the standards pertaining to fall protection and working at heights, and takes into account related technical and technological advancements. The draft Regulation also promotes the control of fall hazards by establishing a hierarchy of prevention measures. Lastly, the draft Regulation sets out the rescue procedures for an employee who is suspended in a safety harness or retained in a safety net after a fall.

Study of the matter to date shows an impact of \$17.3M on enterprises for the implementation of the regulatory measures and recurring annual costs of \$6.7M thereafter.

Further information on the draft Regulation may be obtained by contacting Jérémie Filion, engineer, Commission des normes, de l'équité, de la santé et de la sécurité du travail; telephone: 514 515-3994; email: jeremie.filion@cnesst.gouv.qc.ca.

Any person wishing to comment on the draft Regulation is requested to submit written comments within the 45-day period to Mohamed Aiyar, Vice President, prevention, Commission des normes, de l'équité, de la santé et de la sécurité du travail, 1600, avenue D'Estimaerville, Québec (Québec) G1J 0H7.

MARIE-HÉLÈNE MARCHAND  
*Acting Secretary General Commission des normes,  
de l'équité et de la sécurité du travail*

## Regulation to amend the Safety Code for the construction industry

Act respecting occupational health and safety  
(chapter S-2.1, s. 223, 1st par., subpars. 7, 9, 19 and 42,  
and 3rd par.)

**1.** The Safety Code for the construction industry (chapter S-2.1, r. 4) is amended in section 1.1.

(1) by inserting the following after paragraph 32:

“32.1. “fragile surface” means a surface not intended to support the weight of a worker, in particular a skylight, an awning, an overhang or a drywall ceiling;”;

(2) by replacing “liaison antichute” wherever it appears in the French text by “liaison d'arrêt de chute”.

**2.** Section 2.4.4 is amended by replacing “and rescue on water” by “, rescue on water, rescue following a fall”.