



CHAPTER 58

An Act to amend the Notarial Code

[Assented to, the 22nd of June, 1940]

HIS MAJESTY, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

1. Section 22 of the Notarial Code (Revised Statutes, 1925, chapter 211, as enacted by the act 23 George V, chapter 80), is amended by adding thereto, after the word: "consecutively", in the fourth line thereof, the words: "upon their execution,". R. S., c. 211, s. 22, am.

2. Section 24 of the said Code is amended by replacing the words: "papers of a commercial nature", in the third and fourth lines thereof, by the words: "negotiable instruments". Id., s. 24, am.

3. Section 68 of the said Code is amended by adding thereto the following paragraph: Id., s. 68, am.

"He is not bound so to do with respect to last wills and testaments which have been revoked, except upon the demand of the testator or upon an order for inspection." Exception.

4. Section 77 of the said Code is amended by replacing the second paragraph thereof by the following: R. S., c. 211, s. 77, am.

"No notary or prothonotary, the custodian of the records of a notary, shall grant communication or copies of any last will and testament, except to the testator himself or to a person vested with his authori- No communication of last will, except in certain cases.

zation executed *en brevet*, or before having obtained the proof of the testator's death.”.

R. S., c. 211, s. 88, replaced. **5.** Section 88 of the said Code is replaced by the following:

Notice of records assigned, etc.

“**88.** Every notary, to whom records are assigned or transmitted, shall, within one month from the granting of the permission of the Lieutenant-Governor in Council, give notice thereof to the secretary-treasurer, and shall transmit to the latter a duplicate of the report mentioned in paragraph 2 of section 85. (*Form 8*).”.

R. S., c. 211, s. 92, am. **6.** Section 92 of the said Code is amended by replacing the first paragraph thereof by the following:

Reassignment of records.

“**92.** Any notary, if he has the right to resume the practice of his profession, may secure the re-assignment of his records upon a declaration transmitted to the secretary-treasurer of the Board and after publication of a notice by the latter in the *Quebec Official Gazette* at the cost of the interested party.”.

R. S., c. 211, s. 95, am. **7.** Section 95 of the said Code is amended by adding thereto after the word: “becomes”, in the sixth line of the first paragraph thereof, the words: “physically incapable or”.

Id., s. 98, am. **8.** Section 98 of the said Code is amended by replacing the last paragraph thereof by the following:

Penalty.

“In default of the prothonotary discharging such duties and those imposed upon him under article 94, he shall be personally liable to a fine of fifty dollars for each month's delay.”.

R. S., c. 211, s. 108, am. **9.** Section 108 of the said Code is amended by adding thereto, after the word: “order”, in the sixth line thereof, the words: “and for the costs occasioned by the taking possession of the records”.

Id., s. 116, am.

10. Section 116 of the said Code is amended by replacing the words: “body politic”, in the first line of the first paragraph thereof, by the word: “corporation”.

Id., s. 118, am.

11. Section 118 of the said Code is amended:

a. By replacing the words: "Rimouski, and Gaspé", in the sixth line of the second paragraph thereof, by the words: "Rimouski, Gaspé and Roberval";

b. By replacing the third paragraph thereof by the following:

"The boundaries of such districts shall be those of the Boundaries. judicial districts existing on the 30th of March, 1883; save as to the districts of Roberval, Chicoutimi and Saguenay, the boundaries whereof shall be those of the judicial districts existing on the 1st of January, 1940."

c. By adding thereto after the fourth paragraph, thereof, the following paragraph:

"The changes in such districts made in the future Future changes. shall not affect this section."

12. Section 124 of the said Code is replaced by the R. S., c. 211, s. 124, re-placed. following:

"**124.** Practising notaries shall alone be entitled to Right to vote, etc. vote or preside at such meetings, to nominate candidates or to be elected members of the Board.

The Board may decide by by-law that, in the dis- Nomination for election. tricts it designates, the candidates must be nominated for election; and it determines, for such districts, the nomination procedure."

13. Section 144 of the said Code is replaced by the R. S., c. 211, s. 144, re-placed. following:

"**144.** The members of the Board are further Indemnity for meetings. entitled to an indemnity fixed by by-law. Such indemnity must not exceed ten dollars for attending a daytime meeting of the Board, nor five dollars for attending an evening meeting thereof.

The members of committees sitting in vacation are Id., in vacation. entitled to the indemnity fixed for the council in section 182.

The Board may fix by by-law an indemnity for an Id., for long trips. exceptional lengthy trip of certain of its members to and from the meetings."

14. Section 160 of the said Code is amended as R. S., c. 211, s. 160, am. follows:

a. By replacing the first two paragraphs thereof by the following:

Appointing
of substitute
for sec.-treas.

“**160.** The secretary-treasurer may appoint a practising notary or an officer of the Board as his substitute in case of illness, absence or other impediment.

How ap-
pointment
made.

Such appointment shall be made under the signature of the secretary-treasurer, be ratified by the Board or the council, and be entered in the register of the minutes of the Board or of the council.”;

b. By adding in the fourth line of the last paragraph thereof, after the words: “practising notary”, the words: “or an officer of the Board”.

R. S., c. 211
s. 171, am.

15. Section 171 of the said Code is amended by adding thereto, after the last paragraph thereof, the following paragraph:

Making
inquiries.

“It may, of its own accord or through the intermediary of its council, make such inquiries as it may deem necessary upon any matter relating to the professional conduct of the members of the Order and the unlawful practising of the notarial profession. It may delegate the power to make such inquiries to committees specially appointed.”.

R. S., c. 211,
s. 186, re-
placed.

16. Section 186 of the said Code is replaced by the following:

Hearing, etc.,
of com-
plaints.

“**186.** The council shall receive every accusation or complaint against any notary for breach of his professional duties, or for any act derogatory to the honour of the profession. It shall inquire into and decide same finally, and to the exclusion of every court, saving recourse to the appeal committee of the Board.”

Appeal.

R. S., c. 211,
s. 189, am.

17. Section 189 of the said Code is amended by replacing the words: “appeal to the Board”, in the third line thereof by the words: “recourse to the appeal committee of the Board”.

Id., sub-
division 5a,
added to
Division VII.

18. The following subdivision is added to Division VII of the said Code, after section 189:

“§ 5a. *Appeal Committee*

Appeal com-
mittee.

“**189a.** An appeal committee, composed of seven members shall decide every appeal from a decision of the council pronouncing suspension or destitution of a notary, or determining an act derogatory to the honour of the profession.

The members of this committee shall be appointed by the Board and be chosen amongst its members at the first session of every triennial term; but neither the president of the Board nor the members of the council may form part of such committee.

Appointment of members.

189b. The members of such committee shall elect a chairman and a vice-chairman.

Chairman, etc., elected.

The chairman shall preside over the deliberations and maintain order.

Duties of chairman.

The vice-chairman shall replace the chairman in case of the latter's absence or of any other impediment.

Duties of vice-chairman.

In the absence of both, the chairman of the meeting shall be chosen amongst the members present.

Absence of chairman, etc.

The secretary-treasurer of the Board shall be *ex officio* the secretary of the committee.

Secretary.

189c. Every member who dies or resigns shall be replaced, for the remainder of the term, by the committee itself, or, if there be no quorum, by the Board or the council.

Replacement of members.

189d. Five members shall form a quorum of the appeal committee. If at the time of proceeding with a case there are only four members present, the latter shall complete the committee by appointing a practising notary acting member.

Quorum.

Appointment of acting member.

Every acting member so appointed shall accept such office, but his functions shall come to an end as soon as the decision is rendered in the case.

Office of acting member obligatory.

189e. The members who have heard an appeal shall render their decision even though their term of office has expired.

Decisions.

189f. The appeal committee shall sit in Montreal or in Quebec."

Where committee sits.

19. Section 261 of the said Code is amended by replacing the second paragraph thereof by the following:

R. S., c. 211, s. 261, am.

"For the inspection contemplated by section 256, the notice shall be forty-eight hours. (*Form 21*).

Notice in certain case.

"In all cases the president may eliminate the inspection notice."

Notice eliminated.

20. Section 264 of the said Code is amended by replacing the first paragraph by the following:

R. S., c. 211, s. 264, am.

Extent of inspection.

“**264.** The inspection shall cover everything which may constitute an infringement of the provisions of this Code, of the by-laws of the Board or of any other law imposing duties on notaries. It covers especially everything which concerns a notary’s record: minutes, repertory and index; copies and extracts; regular accounts; vault or safe; material upkeep of the office; books, documents or documentary evidence relating to the object of the inspection and necessary for its purpose.”.

R. S., c. 211, ss. 291 to 295, replaced.

21. Subdivision 6 of Division X of the said Code, comprising the sub-title and sections 291 to 295 inclusive, is replaced by the following:

“§ 6. *Procedure on Appeal*

Appeal to committee.

“**291.** An appeal shall lie to the committee constituted by sections 189*a* and following, from the decisions of the council, pronouncing suspension or destitution of a notary or determining an act derogatory to the honour of the profession.

Notice and deposit.

Under penalty of forfeiting his right to appeal, the appellant shall serve the notice thereof through a bailiff, and shall deposit the sum of three hundred dollars, at the office of the secretary-treasurer, within fifteen days after the service of the decision.

Meeting of appeal committee called.

“**292.** Within two days after receiving the notice and the deposit, the secretary-treasurer shall call a meeting of the appeal committee for the third Tuesday following the receipt of the notice of appeal, or for the first juridical day following if such Tuesday be a holiday.

Summons.

This summons shall fix the place, date and time of the meeting of the committee. It shall be sent by registered mail to each member of the committee, as well as to the appellant, to the place indicated in his notice of appeal, or, in default, to his last known address.

Decision of committee.

“**293.** The appeal committee shall decide summarily and upon deliberation and vote. If the votes are equally divided, the chairman shall have a casting vote. A certified copy of the decision of the committee shall be sent by registered mail, within eight days from its date, to the appellant, to the address indicated in the notice of appeal, or, in default, to his last known address.

Certified copy of decision sent to appellant.

“294. If the appellant fails to proceed, the appeal shall be dismissed and the deposit confiscated, unless the committee, at its discretion, adjourns to a later date. The committee shall not grant an adjournment unless the appellant shall have paid all costs thereof, which in any case shall belong to the Board.

Default to proceed with appeal.

Adjournment.

If the appeal be maintained the deposit shall be returned to the appellant, after deducting all dues owed to the Board. If the appellant fail, the deposit shall go towards the costs of the proceedings and of the appeal.

Return of deposit.

Costs.

“295. There shall be no appeal to the Board from the decisions of the council or of the appeal committee. There shall be no appeal to the courts from the decisions of the Board, of the council or of the appeal committee.”.

No appeal.

22. Section 296 of the said Code is amended by replacing the fourth paragraph thereof by the following:

R.S., c. 211, s. 296, am.

“The notary may present his petition once only, either to the Board or to the council; the decision rendered on such petition is without appeal.”.

No appeal of decision on petition.

23. Section 297 of the said Code is replaced by the following:

R. S., c. 211, s. 297, replaced.

“297. A certified copy of the decision of the Board or of the council, as the case may be, shall be served by bailiff, within thirty days from its date, upon the notary who is suspended or removed from office or upon any other losing party, at his domicile or, in default, at his last known address.”.

Service of copy of decision.

24. Section 298 of the said Code is amended:

R. S., c. 211, s. 298, am.

a. By replacing, in the third and fourth lines thereof, the words: “of the Board or of the council”, by the words: “of the Board, of the council or of the appeal committee”;

b. By replacing, in the fifth and sixth lines thereof, the words: “the council or the Board”, by the words: “the Board, the council or the appeal committee”.

25. Section 299 of the said Code is replaced by the following:

Id., s. 299, replaced.

“299. The practising notary who is condemned to the payment of costs or of a fine to the Board, and who

Suspension.

has not paid same within ten days after the mailing of a notice from the secretary-treasurer, by registered mail, to his last known address, shall be suspended *pleno jure*."

R. S., c. 211,
s. 300, am.

26. Section 300 of the said Code is amended by replacing, in the first and second lines thereof, the words: "of the Board or of the council", by the words: "of the Board, of the council or of the appeal committee".

Appointing of
first mem-
bers of
appeal com-
mittee.

27. The Board shall, at its 1940 session, appoint the members of the appeal committee constituted by this act, who shall remain in office until the end of the present triennial term.

Coming into
force.

28. This act shall come into force on the day of its sanction.