

CHAP. 35

An Act to amend the Notarial Code

[Assented to 25th April, 1903]

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

R. S., 3680,
amended.

1. Article 3680 of the Revised Statutes, as amended by the act 57 Victoria, chapter 36, section 1, is further amended by adding, after the word : " original " in the third line, the words : " or, to the notary empowered by a special mandate, in the cases provided for by article 3680*a*."

Art. added
after R. S.,
3680.

2. The following article is added after article 3680 of the Revised Statutes :

Notary un-
able to certify
copies, &c.,
of deeds, may
empower an-
other notary
so to do.

" 3680*a*. Every notary, who absents himself from the province, or who is unable to certify copies of or extracts from his deeds or the deeds whereof he is the custodian under the law, may, by a notarial mandate *en minute* and for a special period, empower a notary residing in his district, to certify copies of or extracts from such deeds, after having compared them with the original.

Contents of
certificate in
such case.

In his certificate, the notary so empowered shall mention the date and duration of his mandate, the name of the notary before whom it was passed, the fact of the absence or incapacity, as the case may be, of the notary who gave it, and the date when the copy or extract was made.

Entry to be
made on the
original deed.
Authentici-
ties of such
copies, &c.

Mention of the date when such copy or extract was given is also made on the original.

Such copies or extracts so certified are authentic, notwithstanding any provisions to the contrary in article 1215 of the Civil Code."

R. S., 3685,
amended.

3. Article 3685 of the Revised Statutes is amended by adding, after the words : " transferring notary ", in the fourth lines, the words : " or of his curator in case of interdiction."

R. S., 3707,
replaced.

4. Article 3707 of the Revised Statutes is replaced by the following :

Board of
notaries.

" 3707. The notaries of the Province of Quebec are represented and governed by " The Board of Notaries."

R. S., 3709,
amended.

5. Article 3709 of the Revised Statutes is amended by adding the words : " of notaries or upon its council," after the word : " Board," in the first line.

6. Article 3738 of the Revised Statutes is amended by adding, after the word : " Board ", in the third line, the words :
" or of the council."
R. S., 3738, amended.

7. Article 3739 of the Revised Statutes is amended by adding after the word : " Board ", in the fourth line, the words :
" the council."
R. S., 3739, amended.

8. Article 3740 of the Revised Statutes is amended :
R. S., 3740, amended.

(a) By adding, after the words : " In the case of," in the first line of the second paragraph, the words : " the council or ",

(b) By adding, after the word : " secretary," in the second line of the same paragraph, the words : " of the council or of ".

9. Article 3751 of the Revised Statutes is amended by replacing the words : " Committee on Discipline," in the third line, by the words : " the council."
R. S., 3751, amended.

10. Article 3753 of the Revised Statutes is amended by adding, after the word : " Board," in the last line thereof, the words : " if in session or to the president during vacation."
R. S., 3753, amended.

11. Article 3754 of the Revised Statutes is amended by adding, after the word : " deputy," in the first line, the words :
" from among the practising notaries."
R. S., 3754, amended.

12. Article 3758 of the Revised Statutes is replaced by the following :
R. S., 3758, replaced.

" 3758. The treasurer deposits in the name of the Board, in some monetary institution approved by it, the moneys received by him."
Deposit of moneys.

13. Article 3767 of the Revised Statutes is amended by replacing, in the second and third lines, the words : " through the committee on discipline, it " by the words : " the Board itself or through its council."
R. S., 3767, amended.

14. Article 3768 of the Revised Statutes is replaced by the following :
R. S., 3768, replaced.

" 3768. It maintains discipline among notaries and, when necessary, censures or enforces other disciplinary penalties."
Maintenance of discipline, &c.

15. Article 3775 of the Revised Statutes is amended by replacing, in the second and third lines, the words : " in the first instance before the committee on discipline," by the words : " before the council."
R. S., 3775, amended.

Par. added
after R. S.,
3786.

16. The following paragraph is added to section VI of chapter third of title X of the Revised Statutes, after article 3786 :

“ § 5.—*Council of the Board of Notaries*

Council and
its composi-
tion.

“ **3786a.** For the purpose of representing the Board and administering and carrying out urgent business respecting discipline and other matters of interest to the profession, a council of five members is created, called “ Council of the Board of Notaries.”

President of
council.

The president of the Board is *de jure* member and president of the council, of which the four other members are appointed by the Board at the first session of each triennial meeting.

Election of
members.

Vacancies
how filled.

Any vacancy arising in the council between the sessions may be filled by the council.

Delegation of
powers to
council.

“ **3786b.** The Board of Notaries is authorized to make and pass by-laws to delegate to the council all and every the powers possessed by it under the laws which constitute and govern it, excepting in so far as examinations and admissions to study and practice are concerned, and the council has power to make by-laws for its government and the proceedings to be had before it.

Quorum and
secretary.

“ **3786c.** The quorum of the council is three, and either secretary of the Board or his deputy, as the case may be, acts as secretary.

Term of office.

“ **3786d.** The members of the council remain in office until replaced.

Decision of
cases after
retiring from
office.

However, the members of the council, or the majority thereof, who have taken cognizance of any matter submitted to them shall render their decision, notwithstanding the expiration of the triennial period for which they were elected, whether they have or have not been reelected as members of the Board.

Replacing of
councillor
failing to
attend meet-
ings after
notice.

3786e. Every member of the council duly notified to attend a session thereof who makes default may be replaced by the council, and his successor shall remain in office until the renewal of the council.”

R. S., 3835,
amended.

17. Article 3835 of the Revised Statutes is amended :

(a) By adding, after the word : “ exempted,” in the last line of paragraph 1, the words : “ and by a notary who refuses to discharge the duty of inspector of *greffes*.”

- (b) By adding, after the words : “ one hundred dollars,” at the end of paragraph 4, the words : “ and, in default of payment, an imprisonment not exceeding six months.”

18. Article 3836 of the Revised Statutes is amended by R. S., 3836, adding thereto the following paragraph : amended.

“ If it concerns a prosecution for a penalty incurred under the authority of paragraph 4 of article 3835, the court, if the proof is sufficient, condemns the defendant to pay the penalty, in addition to the costs, within a delay not exceeding thirty days, and to an imprisonment not exceeding six months in the common goal of the district in which he has his domicile, upon default to satisfy the condemnation within such delay. Condemnation to penalty and costs with imprisonment in default of payment.

The warrant of imprisonment is issued under the signature of the clerk of the court which rendered the judgment, upon the written application of the attorney of the prosecutor.” Issue of warrant of imprisonment.

19. Article 3844 of the Revised Statutes is replaced by the following : R. S., 3844, replaced.

“ **3844.** The Board, as often as it deems it advisable, may, of its own accord, order the inspection of one, several or all notarial *greffes*.” Inspection of greffes.

20. The first clause of article 3845 of the Revised Statutes is replaced by the following : R. S., 3845, amended.

“ **3845.** The Board must order the inspection of a notary’s *greffe*, if a sworn complaint is lodged with the syndic, alleging that the complainant has reason to believe and suspect and does in fact believe and suspect that a notary : ” Inspection of greffe upon complaint.

21. The following articles are added, after article 3845 of the Revised Statutes : Arts. added after R. S., 3845.

“ **3845a.** When the Board is not in session, its president or the vice-president in case of the sickness or absence of the president, has all the powers conferred upon the Board by article 3845.” Powers of Board out of session how exercised.

“ **3845b.** The Syndic without delay delivers a copy of the complaint certified by him to the president of the Board. The latter lays it before the Board, if in session ; and if not, he orders the inspection of the *greffe*.” Proceedings on complaint for inspection of greffe.

22. Article 3846 of the Revised Statutes is replaced by the following : R. S., 3846, replaced.

“ **3846.** At the first session of each triennial meeting, Appointment of inspectors.

the Board appoints one or more inspectors from among the practising notaries who do not form part of the Board.

Inspection by whom made.

Every inspection is made by that one of the inspectors who is selected by the president.

Appointment by president.

If the president cannot cause such inspection to be made by any one of the inspectors appointed by the Board, by reason of their inability or refusal to act, he may appoint the necessary inspectors himself."

R. S., 3848, amended.

23. Article 3848 of the Revised Statutes is amended by adding, at the end thereof, the following words: "accompanied by a copy of the complaint certified by the syndic or a copy of the resolution ordering the inspection, as the case may be."

R. S., 3849, amended.

24. Article 3849 of the Revised Statutes is amended by replacing, in the third line, the words: "an official notice to that effect from the syndic," by the words: "a certified copy of the order under which he is acting".

Art. added after R. S., 3849.

25. The following article is added after article 3849 of the Revised Statutes:

Presence of notary whose *greffe* is being inspected.

"**3849a.** The notary whose *greffe* is being inspected has the right to be present at such inspection and to be assisted or represented thereat by a mandatary."

R. S., 3850, amended.

26. Article 3850 of the Revised Statutes is amended by striking out of the first line of the second paragraph the words "at the time of the inspection, and".

R. S., 3851, amended.

27. Article 3851 of the Revised Statutes is amended by adding thereto the following paragraph:

Contents of deeds not to be divulged.

"But nothing in such report shall reveal the name of the parties or the nature or contents of the deed."

Art. added after R. S., 3858.

28. The following article is added after article 3858 of the Revised Statutes:

By-laws respecting inspection of *greffes*, &c.

"**3858a.** The Board is authorized to make all the by-laws which it shall deem necessary respecting the selection, government and direction of the inspectors of *greffes*."

Title to paragraph replaced.

29. The title to paragraph 4 of section IX of chapter third of title X of the Revised Statutes is replaced by the following: "§ 4.—*Infringement of discipline*".

R. S., 3859 to 3870 re-placed.

30. Article 3859 of the Revised Statutes, as amended by the acts 55-56 Victoria, chapter 31, section 6, and 62 Victoria, chapter 35, section 13, and articles 3860, 3861, 3862, 3863,

3864, 3865, 3866, 3867, 3868, 3869 and 3870 of the Revised Statutes, are replaced by the following :

“ **3859.** In addition to its other attributions, the council is charged with inquiring into, hearing and deciding in a definitive manner, and to the exclusion of every court, saving appeal to the Board, every accusation or complaint against any notary for the infringement of his professional duties, or for all acts derogatory to the honor of the profession, or which may be declared to be such. Hearing, &c., of complaints.

“ **3860.** The Board may, by by-law, fix the time and place for the sessions of the council and the manner of convening the same, and enact that the council may hold general or special sessions. Time and place for sessions of council.

“ **3861.** In the exercise of the powers conferred upon it, the council proceeds as a deliberative body, and may have recourse to all means which it deems expedient to become acquainted with the facts to be proved, and to permit the accused to defend himself. How council proceeds on complaints.

“ **3862.** The council has power, in default of a by-law applicable to any special case, to decide in a definitive manner, and to the exclusion of any court, saving appeal to the Board, if any act of which a notary is accused is derogatory to the honor, dignity or discipline of the profession. Decision in unprovided cases.

“ **3863.** The commission of a criminal offence legally proved, and followed by a definitive punishment by a competent court ordering the imprisonment in a penitentiary, carries with it *pleno jure* removal from the office of notary. Certain conviction entails removal from office.

“ **3864.** The clerk of any court of criminal jurisdiction in this province, before which a case is tried against a notary of this province, shall, without delay, inform one of the secretaries of the Board of the sentence pronounced upon such notary, and transmit to him a certified copy of such sentence, and the said secretary is obliged immediately to notify the president of the Board thereof. Secretary to be notified of convictions.

“ **3865.** Any notary found guilty of forgery before a civil or criminal court, and who does not come within one of the cases provided for by article 3863, may be suspended or removed by the council upon the production of a certified copy of the judgment without other evidence. Suspension, &c., of notary found guilty of forgery.

“ **3866.** Any notary found guilty of a criminal offence, followed by a final condemnation of a competent court, but Suspension, &c., of notary sen-

tenced but
not to the
penitentiary.

not condemned to the penitentiary, may be suspended or removed by the council upon production of a certified copy of the judgment without other evidence.

Suspension,
&c, of notary
in certain
other cases.

"3867. If it be proved by the final judgment of a court from which there is no appeal, that a notary has committed forgery, or a serious infringement of his professional duties, or has committed an act derogatory to the honor of the profession, or one which may be declared to be such, the council may suspend or remove such notary, without other inquiry, upon the production of a certified copy of such judgment.

Clerks of
courts to send
copies of sen-
tences to sec-
retary of
Board.

"3868. In the above three cases, the clerks of the courts which pronounced the sentences are bound to transmit, without delay, a certified copy of such sentences to one of the secretaries of the Board, who shall at once notify the president of the Board thereof.

When com-
plaints to be
heard.
Deposit for
costs.

"3869. Any complaint against a notary may be heard by the council at a general or special session.

Every complaint made to the syndic shall be accompanied by a deposit of twenty-five dollars to contribute towards the costs; but, if such complaint must be heard by the council at a special session upon the application of the complainant, the deposit is one hundred dollars. But, in both cases, the complainant and the accused shall further pay, upon demand, during the course of the proceedings, the costs and fees fixed by the tariff.

Condemna-
tion to costs.

"3870. The council has power, in rendering its decision, to place the costs incurred upon either of the parties or to divide them and to tax the costs which are not provided for by the tariff."

R. S., 3871,
amended.

31. Article 3871 of the Revised Statutes is amended:

(a) By replacing the words: "the committee on discipline," in the first and second lines, by the words: "its council";

(b) By replacing the words: "the committee on discipline," in the third line of paragraph 3, by the words: "the council";

(c) By striking out paragraph 8.

R. S., 3872,
amended.

32. Article 3872 of the Revised Statutes is amended by replacing, in the first line, the words: "the committee on discipline," by the words: "the council of the Board."

33. Article 3873 of the Revised Statutes is amended by R. S., 3873, adding, after the word : "imposed," in the first line, the amended. words : " by the Board or the council."

34. Articles 3875, 3876, 3877, 3878 and 3879 of the Revised Statutes are repealed. R. S., 3875 to 3879, repealed.

35. Article 3880 of the Revised Statutes is replaced by the following : R. S., 3880, replaced.

"3880. Every complaint against a notary must be in writing, under oath, taken before the syndic or a practising notary, and addressed to the syndic. Form of complaint.

The Board has power to make by-laws to determine the manner in which and the delay within which such complaint shall be disposed of, and to summon the accused and the witnesses, and, generally, to establish the whole procedure in the case of a complaint brought against a notary." By-laws respecting.

36. Article 3881 of the Revised Statutes is replaced by the following : R. S., 3881, replaced.

"3881. The complaint shall indicate, in a summary manner, the nature, time, place and circumstances attending the offence, and be accompanied by a list containing the names, surnames, occupations and residence of the principal witnesses whom the complainant desires to have examined." Contents of complaint.

37. Articles 3882 to 3920, both inclusively, of the Revised Statutes, and the amendments thereto, are replaced by the following : R. S., 3882 to 3920, replaced.

"3882. In the exercise of its functions, the council may summon witnesses, and has, to compel them to appear and answer and to punish them in case of refusal, all the powers of the Superior Court. Any member of the council has the right to administer the oath to the parties and witnesses, and to make them declare and affirm the truth. Power of council as to witnesses. Swearing of witnesses.

"3883. The council has the right to cause to be produced all the originals and copies of notarial deeds, repositories, indexes, and generally all papers or documents deemed necessary for the decision of any complaint. It possesses, for the purpose of compelling the production of such documents, the powers of the Superior Court. Production of original deeds.

Every notary, before surrendering an original, the production whereof is required by the council, draws up and signs an exact copy, which, after having been certified by the president of the council, is substituted for the original which it replaces until it is restored. Proceedings before original is parted with.

Prosecutions
by syndic.

“3884. In exceptional cases, the Board may order the syndic to bring in his own name before the council any complaint which is sufficiently drawn up.”

R. S., 3921 to
3939, re-
placed.

38. Articles 3921 to 3939 of the Revised Statutes, both inclusively, are replaced by the following :

“ § 6.—*Appeals to the Board of Notaries*

Appeals to
Board, and
notice, how
and when
served.

“3885. Every decision of the council which entails suspension or dismissal is subject to appeal to the Board. Notice of such appeal is served by a bailiff upon the secretary of the Board, who reported the decision to the notary who is suspended or dismissed, during the fifteen days following that of the service. Such appeal cannot be taken into consideration except at a regular session of the Board.

When to be
heard.

Deposit for
costs.

“3886. The appellant shall deposit with his notice of appeal a sum of fifty dollars to contribute towards the costs occasioned by the appeal.

Costs in
appeal.

“3887. If he succeeds in his appeal, this sum is returned to him, and the unsuccessful party is condemned to pay it to the Board of Notaries with the other costs occasioned by the appeal.

Decision of
Board, and
copy thereof
to the appel-
lant.

“3888. The Board decides the appeal summarily, and the secretary forwards within eight days a certified copy thereof to the appellant by registered letter.

No appeal to
courts.

“3889. There is no appeal to the courts from the decisions of the Board or the council, either upon questions of discipline, or in connection with inspections of *greffes*, or for suspension for non-payment of contributions.”

Title to para-
graph 7 re-
placed.

39. The title to paragraph 7 of section ix of chapter third of title X of the Revised Statutes is replaced by the following : **“§ 7.—*Execution of the decisions of the Board and of the Council and recovery of costs.*”**

R. S., 3940,
replaced.

40. Article 3940 of the Revised Statutes is replaced by the following :

Service of
copy of deci-
sion, if no ap-
peal taken,
&c.

“3940. After the expiration of the delay to appeal or upon the final decision, as the case may be, a copy of the decision of the Board or the council, certified by one of the secretaries of the Board, is served by a bailiff, within thirty

days, upon the notary who is suspended or dismissed or upon any other unsuccessful party, and upon the prothonotary of the Superior Court of the district in which such notary or party resides."

41. Article 3941 of the Revised Statutes is replaced by R. S., 3941, the following : replaced.

"**3941.** The prothonotary of the Superior Court of the district in which the party condemned resides shall, upon production of a certified copy of the decision of the Board or of the council, issue a writ of execution for the recovery of the costs and penalties fixed by the tariffs or taxed by the council or the Board, as well before as after the decision, as for a judgment of the Superior Court." Execution for recovery of costs and penalties.

42. The following article is added after article 3941 of the Revised Statutes : Art. added after R. S., 3941.

"**3941a.** If the party who is unsuccessful is a notary, he is incapacitated from exercising his profession and is suspended *pleno jure*, until he has paid the costs and penalties to which he is condemned." Suspension of notary until costs, &c., are paid.

43. Article 3942 of the Revised Statutes is amended by R. S., 3942, replacing the words : "the final judgment, either of the Board or of the committee on discipline," in the first and second lines, by the words : "a decision of the Board or of the council." amended.

44. Article 3943 of the Revised Statutes is amended by R. S., 3943, replacing the words : "of judgment," in the second line, by the words : "of the decision." amended.

45. Article 3946 of the Revised Statutes is amended by R. S., 3946, replacing the word : "judgment," in the fourth line, by the word : "decision." amended.

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