

Québec, April 24, 2013

Mr. Jean-Paul Dutrisac, president  
Office des professions du Québec  
800, Place D'Youville, 10<sup>th</sup> floor  
Québec City (Québec) G1R 5Z3

**Subject: Draft Code of Ethics of chartered administrators**

Dear Mr. Dutrisac,

Part of the Québec Ombudsman's mandate is to examine all draft legislation and regulations tabled before the National Assembly or published in the *Gazette officielle du Québec*. When necessary, it intervenes under section 27.3 of its Incorporating Act, which gives it the power to call to the attention of the chief executive officer of a public body or of the Government the need for such legislative, regulatory or administrative reform as deemed to be in the public interest.

I therefore examined the draft Code of Ethics of chartered administrators (the *Code*) published on March 13, 2013. I commend the Order's desire to update the Code and to strengthen the duties and obligations of chartered administrators in order to offer better protection of the public.

My analysis does not, however, allow me to conclude that the proposed changes will achieve the target objectives. I would therefore like to share with you my comments on three issues:

- 1 Section 19, which now covers information obligations currently covered in sections 14 and 58 of the Code
- 2 The notion of reasonable time stipulated in sections 45 and 47 of the draft regulation
- 3 The omission, in the draft regulation, of the rules stipulated in section 53 of the current Code

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## 1 Section 19, which now covers information obligations currently covered in sections 14 and 58 of the Code

Section 14 of the current Code sets out the chartered administrator's obligation to inform the client as soon as possible of the cost of the intervention.

**14.** Chartered administrators shall **inform the client as soon as possible of the cost**, the extent and the terms and conditions of their intervention. The chartered administrator shall obtain the client's consent and ensure that the client understands the objectives and extent of the services involved and the billing method used.

Likewise, section 58 of the current Code obliges the administrator to ensure that the client has been advised in advance of the approximate cost of the services.

**58.** Chartered administrators **shall ensure that the client is informed in advance of the approximate cost of the services**, of the remuneration and payment methods and of the scope of the work.

Section 19 of the draft regulation, which will now cover the information obligations currently set out in sections 14 and 58, mentions only the other related requirements that are already stipulated:

- 19.** Chartered administrators must inform their client on:
- (1) the objectives of the professional services required;
  - (2) the nature and scope of the services required;
  - (3) the extent and terms for carrying out their services;
  - (4) the possible interventions by other professionals or other interveners;
  - (5) the methods and frequencies of the rendering of accounts;
  - (6) the billing method and terms of payment.

Chartered administrators must take reasonable measures to ensure that the client understands and agrees with those points.

Although the Order has informed us that it considers the information concerning cost to be included in these other requirements, in particular in sub-paragraph 6, I cannot agree with this interpretation. The billing method (hourly rate, flat rate...) and the terms of payment cannot be used on their own to establish or estimate the cost of the services.

**Consequently, the Québec Ombudsman recommends:**

**R-1** That section 19 of the draft regulation explicitly include, in sub-paragraph 6, the obligation to inform the client of the approximate cost of the services.

## 2 The notion of reasonable time stipulated in sections 45 and 47 of the draft regulation

The current sections 48 and 51 of the Code stipulate that the administrator must, within 30 days following receipt, follow up on any request made by the client to access or correct the client's file.

The new provisions (sections 45 and 47 of the draft regulation) do not specify a period of 30 days but instead mention the notion of "reasonable time." The Order has explained that the objective of this amendment is to avoid having administrators systematically use the maximum time. In my opinion, this change may mislead them, resulting in the opposite effect.

Without reference to the 30-day period stipulated in the *Act respecting the protection of personal information in the private sector*, and since the notion of "reasonable time" is open to interpretation, some administrators may believe that the standard has been relaxed. To achieve its goal, the Order could combine the two ideas and propose a provision to the effect that "Administrators must, as quickly as possible within a period of 30 days, follow up on..."

### Consequently, the Québec Ombudsman recommends:

**R-2** That sections 45 and 47 of the draft regulation impose a period of 30 days, as provided under sections 48 and 51 of the current Code.

## 3 The omission, in the draft regulation, of the rules stipulated in section 53 of the current Code

We questioned the Order on the omission, in the draft regulation, of the rules stipulated in section 53 of the current Code. The information obtained from the Order leads me to believe that these rules were omitted unintentionally.

### Consequently, the Québec Ombudsman recommends:

**R-3** That the draft regulation include the text of section 53 of the current Code, which reads as follows:

**53.** Upon written request by a client, chartered administrators shall, free of charge, send a copy of the corrected information or a certificate attesting that information has been deleted or, as the case may be, that written comments have been filed in the record to any person from whom the chartered administrator received the information involved, as well as to any person to whom the information has been transmitted.

While again commending the desire to update the Code of ethics of chartered administrators, I nevertheless contend that these recommendations will contribute to the effort to modernize and strengthen the duties and obligations of chartered administrators, for improved public protection.

Sincerely,

Québec Ombudsperson

[Signed]

Raymonde Saint-Germain

c.c. Bertrand St-Arnaud, Minister of Justice and Minister responsible for the administration of legislation respecting the professions  
Nathalie G. Drouin, Deputy Minister of Justice  
Anik Laplante, Secretary, Commission des institutions