



LE PROTECTEUR DU CITOYEN

Assemblée nationale
Québec

Justice

Équité

Respect

Impartialité

Transparence

Intervention procedure with ministries and public bodies under the jurisdiction of the Québec Ombudsman

November 2011

Mission of the Québec Ombudsman

Under section 13 of its enacting legislation,¹ the Québec Ombudsman intervenes whenever it has reasonable ground to believe that a person, legal entity, or group of persons has suffered or is likely to suffer harm by an act or omission of a public body, its director, or its staff.

It may intervene in response to an application for intervention or on its own initiative.

A person, group of persons, association, company, or other organization “suffers prejudice” or is at risk of doing so, whenever its interests are, or are threatened to be, harmed, whether or not this involves a right guaranteed by law.

Although not required to do so under its enacting legislation, the Québec Ombudsman is establishing this intervention procedure in accordance with its duty to act fairly and in order to provide guidance in analyzing the intervention applications it receives and in conducting its interventions.

The priority assigned to the Québec Ombudsman’s interventions shall be based on the probability that harm will occur during its intervention and the seriousness of that harm, in consideration of the integrity, safety, and security of persons, the financial impacts, and the wait times for services.

¹ Public Protector Act (R.S.Q., c. P-32).

Table of contents

1	Definitions and interpretation	3
1.1	Definitions.....	3
1.2	Interpretation	3
2	Access to services and assistance from the Québec Ombudsman.....	3
2.1	Access and referral	3
2.2	Assistance	4
3	Applying to the Québec Ombudsman for an intervention	4
3.1	Verbal or written application.....	4
3.2	Contents of applications for intervention	4
3.3	Initial contact	4
3.4	Admissibility of applications for intervention.....	5
3.5	Reasons for rejecting an application.....	6
4	Processing applications for intervention	6
4.1	Commitments and deadlines	6
4.2	Interruption of processing.....	6
4.3	Representations by the parties involved	7
4.4	Privacy of Interventions and powers of investigation.....	7
5	Intervention instigated by the Québec Ombudsman	7
6	Notices, recommendation, results and followup	7
6.1	Notice of no prejudicial situation or of remedy.....	7
6.2	Notice of non-compliance and recommendation to the director of a public body	7
6.3	Results of the intervention.....	8
6.4	Notice or report to government or the National Assembly.....	8
6.5	Public comment	8

1 Definitions and interpretation

1.1 Definitions

In this procedure and unless the context indicates otherwise, the following expressions and terms have the following meanings:

Application for intervention:

Information sent to the Québec Ombudsman by an individual or by the representative of a legal entity that relates facts, events, or situations that provide reasonable grounds for the Québec Ombudsman to believe that a person, group of persons, association, company, or organization has been harmed or is likely to be harmed by an act or omission by a public body.

Public body:

A ministry constituted under the Government Departments Act² or any public body whose staff is appointed under the Public Administration Act³, with the exception of Conseil exécutif and Conseil du trésor.

The following are also held to be public bodies:

- ▶ A person or body indicated in section 15 of the Public Protector Act.
- ▶ A body or person performing by delegation the duties of a public body or the duties of the chief executive officer of such a body, its members or any person holding an office, employment, or position accountable to its chief executive officer.

Québec Ombudsman:

Depending on the context and subject to specific provisions of the Public Protector Act, the individual designated as Québec Ombudsperson, a Deputy Ombudsperson, or any staff member to whom the Québec Ombudsman has delegated the administration of certain of its powers to receive and examine applications for intervention or to intervene on its own initiative.

1.2 Interpretation

The expressions and terms used in this procedure are to be interpreted in accordance with the provisions of the Public Protector Act.

The preamble forms an integral part of this procedure.

2 Access to services and assistance from the Québec Ombudsman

2.1 Access and referral

The Québec Ombudsman takes steps to facilitate access to its reception and referral services through its call center, which serves Québec as a whole and may be reached by phone at

² R.S.Q., C. M-34.

³ R.S.Q., c. F-3.2.2.

1 800 463-5070, by fax at 1 866 902-7130, by email at protecteur@protecteurducitoyen.qc.ca, or at its Montréal and Québec City offices at the following addresses:

800, place D'Youville
19^e étage
Québec (Québec) G1R 3P4

1080 côte du Beaver Hall
10^e étage, bureau 100
Montréal (Québec) H2Z 1S8

For correctional services, the Québec Ombudsman provides a direct line for inmates, accessible from detention centers.

2.2 Assistance

Any person seeking general information on the Québec Ombudsman's mission or its mechanisms for intervening with public bodies may contact the Québec Ombudsman.

The Québec Ombudsman provides assistance to anyone who needs information or help in applying for an intervention, including the formulation of such an application.

3 Applying to the Québec Ombudsman for an intervention

3.1 Verbal or written application

The Québec Ombudsman accepts verbal and written (mail, email, Internet or fax) applications for intervention at its Québec City or Montréal offices. Applications are treated as confidential.

3.2 Contents of applications for intervention

Anyone who addresses an application for intervention to the Québec Ombudsman must, if requested by the Ombudsman:

- ▶ Provide the name, telephone number, address, and social insurance number of all persons whose interests are concerned by the application.
- ▶ State the facts justifying the application.
- ▶ Provide the Québec Ombudsman with any other information or document that the Ombudsman deems necessary for a clear understanding of the facts.

The Québec Ombudsman may if necessary require that the application be made in writing, in which case it will provide assistance to anyone who needs it.

3.3 Initial contact

Within two business days, the Québec Ombudsman will verbally notify the applicant of the date on which the application was received. If the Ombudsman is unable to reach the applicant by telephone, it will do so in writing. If the applicant cannot be contacted after three attempts

over two business days (two attempts if messages have been left on an answering machine), the file is automatically closed. However, a new file can be opened if the applicant contacts the Ombudsman again.

Within two business days of receiving the application, the Québec Ombudsman also decides if the application is admissible as specified in section 3.4.

3.4 Admissibility of applications for intervention

All interventions are presumed admissible. Under its enacting legislation, however, the Québec Ombudsman cannot intervene due to an act or omission by:

- ▶ a public body or a person, where the person or group whose interests would be concerned by the intervention has a legal remedy that can adequately correct the prejudicial situation within a reasonable time;
- ▶ a public body or a person, where the person or the group whose interests would be concerned by the intervention has omitted or failed, without any reasonable excuse, to pursue a remedy contemplated in the previous paragraph within the proper time;
- ▶ a public body or person if this body or person was obliged to act in a judicial capacity (e.g., an administrative judge, arbitrator, or rental officer);
- ▶ a person referred to in sections 49, 106, or 268 of the Police Act⁴, when that person is acting as a peace officer (e.g., a police officer or special constable);
- ▶ a body or person when the application concerns labor relations with the person or group whose interests are at stake in the intervention;
- ▶ a member of the office staff of a minister.

The Québec Ombudsman must refuse to intervene:

- ▶ When more than one year has elapsed since the person or group whose interests are at stake in the intervention had knowledge of the facts on which the intervention is based, unless the Ombudsman deems the circumstances brought forward by the person or group to be exceptional.
- ▶ When the facts on which the application is based pertain to a remedy being pursued before the Supreme Court of Canada or any court designated in section 1 of the Courts of Justice Act⁵ (the small claims court, municipal courts, Court of Québec, Superior Court, or Court of Appeal) by the person or group whose interests are at stake.

The Québec Ombudsman may also refuse to intervene if it considers that:

- ▶ The person or group requesting its intervention refuses or neglects to provide the information or documents designated in section 3.2 of this procedure.
- ▶ The application for intervention is frivolous, vexatious, or made in bad faith.
- ▶ The intervention would serve no useful purpose in view of the circumstances.

⁴ R.S.Q., c. P-13.1.

⁵ R.S.Q., c. T-16.

Applicants who are unsure whether their application is admissible are encouraged to contact the Québec Ombudsman for information.

3.5 Reasons for rejecting an application

In all cases where the Québec Ombudsman rejects an application, it must notify the interested person or group and provide reasons.

It must do so even if it has no jurisdiction over the public body or object of the intervention application and, if applicable, refer the person or group to the appropriate resource.

In the event it refuses to intervene because it deems the person or group whose interests would be concerned by the intervention has a legal remedy that can adequately correct the prejudicial situation within a reasonable time, the Québec Ombudsman must inform the person or group of the remedy to exercise.

4 Processing applications for intervention

4.1 Commitments and deadlines

Applications for intervention are examined by the Québec Ombudsman diligently, objectively, and impartially in light of the applicable laws and the Québec Ombudsman's values, while seeking as far as possible to reconcile the interests involved.

The Québec Ombudsman contacts the interested person or group as soon as possible and provides them with the name of the individual in charge of the file.

In keeping with the commitment set forth in its *Declaration of Services to the Public*, the Québec Ombudsman does everything in its power to process applications for intervention within ten business days of receiving the documents required to do so. If this deadline cannot be met, due for example of the complexity of the case, the Québec Ombudsman notifies the interested person or group and provides an estimate of the time it will take.

4.2 Interruption of processing

The Québec Ombudsman must cease processing an application if the facts on which it is based pertain to a remedy being sought before the Supreme Court of Canada or any court designated in section one of the *Courts of Justice Act* (the small claims court, municipal courts, Court of Québec, Superior Court, or Court of Appeal) by the person or group whose interests are at stake in the intervention.

The Ombudsman may also terminate the application process if, in its opinion:

- ▶ The person or group applying for the intervention refuses or neglects to provide the information or documents stated in section 3.2 of this procedure.
- ▶ The application is frivolous, vexatious, or made in bad faith
- ▶ Processing the application would serve no useful purpose in view of the circumstances.

In all cases where the Québec Ombudsman decides that there are grounds to terminate the application process, it must notify the interested person or group and provide the reasons for this decision.

4.3 Representations by the parties involved

The Québec Ombudsman allows the interested person or group to present their observations at any time during the application process.

It must also invite the author of the alleged act or omission to present their observations and, if possible, remedy the situation. It may also call on the author's superiors or any person it deems expedient to be heard in the course of its intervention.

If these steps fail to remedy the prejudicial situation, the Québec Ombudsman shall give the chief executive of the public body the opportunity to be heard, and, where appropriate, remedy the situation.

4.4 Privacy of Interventions and powers of investigation

Interventions conducted by the Québec Ombudsman in response to applications for intervention or on its own initiative are conducted in private, meaning that any information collected from applicants and public bodies is treated as confidential. If the Québec Ombudsman deems it expedient, its intervention may involve an investigation. The Ombudsperson and vice ombudspersons as well as staff designated for this purpose shall have the powers and immunity of the commissioners appointed under the *Act respecting public inquiry commissions*, except for the power to imprison.

5 Intervention instigated by the Québec Ombudsman

The Québec Ombudsman can also instigate its own interventions in light of facts, events, or other circumstances brought before it in the performance of its duties or which come to its attention through any other source.

6 Notices, recommendation, results and followup

6.1 Notice of no prejudicial situation or of remedy

If the Québec Ombudsman is of the opinion that no prejudicial situation exists or that the situation has been remedied to the satisfaction of the applicant, it must promptly notify the interested parties.

6.2 Notice of non-compliance and recommendation to the director of a public body

The Québec Ombudsman shall notify the chief executive officer of a public body in writing whenever it finds that the public body or a person accountable to the chief executive officer:

- ▶ Has not complied with the law.
- ▶ Has acted in an unreasonable, unjust, arbitrary, or discriminatory manner.
- ▶ Has failed in its duty or has been guilty of misconduct or negligence.
- ▶ Has committed an error of law or of fact.

- ▶ in the exercise of a discretionary power, has acted for an unjust purpose, has been actuated by irrelevant motives or has failed to give reasons for his or her discretionary act when he or she should have done so.

The Québec Ombudsman may add to this notice any recommendation it deems useful and ask to be informed within a period of its choosing of the measures taken to remedy the prejudicial situation.

6.3 Results of the intervention

The Québec Ombudsman shall promptly inform the person or group whose interests are at stake of the results of its intervention.

6.4 Notice or report to government or the National Assembly

Where, after making a recommendation to the chief executive officer of a public body, the Québec Ombudsman is of the opinion that no satisfactory measure has been taken within a reasonable time by the chief executive officer to remedy the situation appropriately, it may notify the Government in writing and, if it deems expedient, relate the case in a special report or in its annual report to the National Assembly.

6.5 Public comment

If the Québec Ombudsman deems it to be in the public interest, it may comment publicly on an intervention it has made or a report it has tabled in the National Assembly.

It may also comment publicly, within the limits of confidentiality, on any past or ongoing intervention if it is deemed to be in the interest of the person, group, public body, chief executive officer, public servant, employee, or officer involved.

Procedure adopted on November 4, 2011