

April 10, 2014

The Honorable Stéphane Bédard
Minister responsible for Government Administration
Chair of the Conseil du trésor
875, Grande Allée Est
4^e étage, secteur 100
Québec (Québec) G1R 5R8

Subject: *Draft Regulation respecting the qualification process and qualified persons*

Mr. Minister:

Within the framework of its mandate, the Québec Ombudsman reviews all bills and draft regulations introduced in the National Assembly or published in the *Gazette officielle*. When it deems necessary, it intervenes under section 27.3 of its constituting act, which empowers it to call the attention of the government or a chief executive officer of a public body to legislative, regulatory or administrative reforms it deems to be in the public interest.

I therefore analyzed the draft regulation respecting the qualification process and qualified persons, published in the *Gazette officielle* last March 12.

I would begin by stressing the relevance and quality of the Secrétariat du Conseil du trésor's efforts to streamline access to public service jobs by making it possible for candidates to apply at any time as part of the qualification process.

That being said, I would like to bring to your attention certain issues related to compliance with the provisions of the *Act respecting administrative justice*.

There are no provisions in the draft regulation for the obligation to provide all candidates who are not selected during the qualification process with a substantiated decision in writing, even though this is current practice. I consider it crucial that candidates be informed of the decision in writing, and that sufficient explanation be provided if the candidate is not chosen during the qualification process, even more so since the decision is " an individual decision ... made by the Administration ... with respect to a citizen" within the meaning of section 2 of the *Act respecting administrative justice*. The obligations prescribed in this Act should be enforced from now on.

I therefore consider that the Secrétariat du Conseil du trésor must see to compliance with sections 4 and 8 of the *Act respecting administrative justice*, in particular, the obligation to justify any unfavourable decision.

Consequently, the Québec Ombudsman recommends that:

R-1 A provision in the draft regulation prescribe that the Administration provide a substantiated decision in writing informing candidates of the outcome of the qualification process.

In the same vein, candidates should be informed that they can file an appeal with the Commission de la fonction publique, pursuant to section 115 of the *Public Service Act*. Furthermore, section 8 of the *Act respecting administrative justice* prescribes that an administrative authority give reasons for all unfavourable decisions it makes, and indicate any non-judicial proceeding available under the law and the time limits applicable.

Consequently, the Québec Ombudsman recommends that:

R-2 A provision in the draft regulation prescribe that the Administration inform candidates who are not selected of the existence of recourse through the Commission de la fonction publique and of the time limits for exercising it.

The draft regulation provides that the name of a qualified candidate be removed from a bank of qualified persons five years after registration in it. However, in certain circumstances addressed in the draft regulation, a bank may terminate before these five years are up. Now, there is no provision in the draft regulation that imposes the obligation to notify the qualified persons who have been registered in a bank for fewer than five years that the bank will be abolished. This information could be important for a candidate's career plans.

Consequently, the Québec Ombudsman recommends that:

R-3 A provision of the draft regulation prescribe that qualified candidates be informed promptly that a bank of qualified persons in which they are registered will terminate before their five years of registration is up.

In closing, as I reiterate that I think highly of the intention of the Secrétariat du Conseil du trésor to streamline access to public service jobs, I respectfully submit that these recommendations will contribute to the transparency of the process chosen and to citizens' view of the process as fair.

Sincerely,

[French original signed by]

Raymonde Saint-Germain
Ombudsperson

c.c.: Yves Ouellet, Secretary, Conseil du trésor
Christiane Barbe, Chair, Commission de la fonction publique
Valérie Roy, Secretary, Committee on Public Finance
Anik Laplante, Secretary, Committee on Institutions