



**LE PROTECTEUR DU CITOYEN**

Assemblée nationale  
Québec

Justice

Fairness

Respect

Impartiality

Transparency

DIRECTION DES ENQUÊTES SUR LES DIVULGATIONS  
EN MATIÈRE D'INTÉGRITÉ PUBLIQUE

**Procedure to facilitate the disclosure of  
wrongdoings relating to public bodies**

May 2017 (June 2019 update)

## Preamble

In accordance with section 13 of the *Public Protector Act*, (CQLR, c. P-32), the Québec Ombudsman exercises the functions of office attributed to it pursuant to the *Act to facilitate the disclosure of wrongdoings relating to public bodies* (CQLR, c. D-11.1).

The purpose of the *Act to facilitate the disclosure of wrongdoings relating to public bodies* is to, in the public interest, facilitate the disclosure of wrongdoings that have been or are about to be committed relating to a public body and to establish a general system for protection against reprisal.

Since May 1, 2017, Québec Ombudsman has been empowered to receive disclosures from anyone who has information suggesting that a wrongdoing relating to a public body has been or is about to be committed.

When it receives a disclosure of a wrongdoing, the Québec Ombudsman first ensures that it is within its jurisdiction, then, if need be, carries out the appropriate auditing. If when warranted by the circumstances, it conducts an investigation or designates someone to investigate on its behalf, pursuant to section 25 of the *Public Protector Act*.

Pursuant to section 10 of the *Act to facilitate the disclosure of wrongdoings relating to public bodies*, the Québec Ombudsman has established a procedure for disclosures of wrongdoing and for prompt processing of these disclosures. A distinct procedure has been established for handling disclosures concerning the Québec Ombudsman, as well as for handling reprisal complaints.

This preamble forms an integral part of this procedural document.

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# 1 Definitions and interpretation

## 1.1 Definitions

Unless otherwise indicated, the following expressions or terms mean:

**Wrongdoing:** Any act by a member of the personnel of a public body in the exercise of his or her functions, or by any person, partnership, group or other entity in the context of drafting or carrying out a contract, including the awarding of financial assistance, entered into or about to be entered into with a public body, and that constitutes:

- ▶ A contravention of a law or regulation applicable in Québec;
- ▶ A serious breach of the standards of ethics or professional conduct;
- ▶ Misuse of funds or property belonging to a public body, including those it manages or holds for a third party;
- ▶ Gross mismanagement within a public body, including abuse of authority;
- ▶ An act or omission that seriously compromises a person's health or safety or the environment;
- ▶ Directing or counselling a person to commit a wrongdoing.

Examples of how to interpret these expressions are presented in this procedural document's **Interpretation Guide (Appendix 1)**.

**Disclosure:** Communication of information—in the public interest and not for personal purposes—alleging that a wrongdoing relating to a public body has been or is about to be committed.

A disclosure is deemed to be made for personal purposes and is inadmissible notably when the subject of the disclosure concerns a personal situation or the interests of one person only, for example, when the subject of a disclosure is related to a dispute between two people or between a person and a public body. However, it is possible that a disclosure concerning a person's situation may nevertheless be considered in the public interest (e.g. serious health or safety risk).

The purpose of a disclosure must not, among other things, be to question:

- the merits of the policies and program objectives of the Government or of a public body;
- the effectiveness, efficiency or merits of strategies, policy directions and operations related to the investment activities, fund management activities or debt management activities of the Caisse de dépôt et placement du Québec or Investissement Québec;
- a contravention of a law or regulation concerning a process of adjudication or awarding of a contract that a public or municipal body may enter into, or concerning the execution of such contract, which, in such case, is subsumed under the mission of the Autorité des marchés publics pursuant to section 19 of the *Act respecting the Autorité des marchés publics* (CQLR, c. A-33.2.1);
- contracting processes and the carrying out of contracts when they fall within the inspector general's oversight mandate specified in section 57.1.8 of the *Charter of Ville de Montréal, metropolis of Québec* (CQRL, c. C-11.4);

- a violation by an elected municipal officer of his or her code of ethics and conduct provided for in Division 1 of Chapter III of the *Municipal Ethics and Good Conduct Act* (CQLR, c. E-15.1.0.1).

**Public body:** Public body within the meaning of section 2 of the *Act to facilitate the disclosure of wrongdoings relating to public bodies*. The complete list of public bodies subject to the Act is available on the Québec Ombudsman website at [divulgation.protecteurducitoyen.qc.ca/en](http://divulgation.protecteurducitoyen.qc.ca/en). These bodies are divided into the following categories:

- ▶ government departments;
- ▶ public agencies;
- ▶ government enterprises and other enterprises;
- ▶ school boards;
- ▶ cegeps;
- ▶ universities;
- ▶ public health and social services institutions;
- ▶ private health institutions under agreement;
- ▶ National Assembly appointees;
- ▶ childcare centres, subsidized daycare centres and home daycare coordinating offices;
- ▶ municipalities and municipal bodies.

**Highest ranking administrative official:** Person responsible for the everyday management of a public body, such as a deputy minister, the president or the chief executive officer.

**Reprisal:** Any harmful measure against a person for having, in good faith, made a disclosure or cooperated in an audit or investigation stemming from a disclosure.

The fact of threatening a person to prevent him or her from making a disclosure or cooperating in such audit or investigation also constitutes reprisal.

In matters of employment, dismissal, demotion, suspension or transfer, as well as any disciplinary measure or measure deleterious to employment or to work conditions, are considered reprisal. In the case of a person who has parental authority in respect of a child attending a childcare centre contemplated in paragraph 9 of section 2 of the *Act to facilitate the disclosure of wrongdoings relating to public bodies*, the fact of depriving this person of his or her rights, of treating him or her differently or suspending or expelling his or her child is also presumed to be reprisal.

**Officer responsible for dealing with disclosures:** The person designated by the highest ranking administrative official of a public body to receive and handle disclosures by personnel of this public body and to determine whether a wrongdoing has been or is about to be committed. Childcare centres, subsidized daycare centres, home daycare coordinating offices, municipalities and municipal bodies are exempted from this obligation.

## 1.2 Interpretation

The expressions or terms used in this procedural document are interpreted in accordance with the applicable provisions of the Act, in particular, those regarding the disclosure of wrongdoing, audits, investigations and protection against reprisal.

The interpretation of the expressions or terms used in this procedural document is based primarily on the **Interpretation Guide (Appendix I)**.

# 2 Access to services and assistance from the Québec Ombudsman

## 2.1 Reception

The Québec Ombudsman takes the necessary measures to facilitate access to its reception and assistance services and to guarantee the confidentiality of communications concerning disclosures of wrongdoing or reprisal complaints.

The Québec Ombudsman has established preferred means of communication in order to ensure the anonymity, confidentiality and accessibility of information through its call centre at **toll-free 1-800-463-5070** or at (418) 643-2688 in the Québec City area, **by fax at 1-844-375-5758** or at (418) 692-5758 in the Québec City area, or through its secure online forms at [divulcation.protecteurducitoyen.qc.ca/en](http://divulcation.protecteurducitoyen.qc.ca/en). Anyone may also go to the office of the Direction des enquêtes sur les divulgations en matière d'intégrité publique at:

800, place D'Youville  
18<sup>e</sup> étage  
Québec (Québec) G1R 3P4

Anyone may also go to the office of the Québec Ombudsman in Montréal, where the person can have a confidential phone conversation with the personnel of the Direction des enquêtes sur les divulgations en matière d'intégrité publique:

1080, côte du Beaver Hall  
10<sup>e</sup> étage, bureau 1000  
Montréal (Québec) H2Z 5Y4

## 2.2 Assistance, advice and information

Anyone may contact the Québec Ombudsman for:

- information about the possibility of disclosing a wrongdoing relating to a public body;
- Information about measures to protect against reprisal;
- advice about the procedure to follow for making a disclosure or a reprisal complaint;
- information about how to access legal advice.

The Québec Ombudsman assists and advises anyone who requires it, especially the officers responsible for dealing with disclosures in public bodies, by providing any information regarding these matters.

## 2.3 Access to legal advice

The Québec Ombudsman may grant financial assistance for access to legal advice to anyone who discloses or wishes to disclose a wrongdoing relating to a public body, including a municipal body.

This assistance may also be granted to people who cooperate in an audit or investigation stemming from a disclosure, whether it is conducted by the public body concerned, the Québec Ombudsman, the Ministère de la Famille (MFA), the Ministère des Affaires municipales et de l'Habitation (MAMH), the Autorité des marchés publics (AMP) or the Commission municipale du Québec (CMQ).

This financial assistance for access to legal advice may also be granted to people who feel they have suffered reprisal because they made a disclosure in good faith or cooperated in an audit or investigation, unless reprisal was a prohibited practice within the meaning of the *Act respecting labour standards*.

To obtain access to legal advice, the person must make a request to the Québec Ombudsman, which will grant the requested assistance in accordance with the terms and conditions posted at [divulgation.protecteurducitoyen.qc.ca/en](http://divulgation.protecteurducitoyen.qc.ca/en).

# 3 Disclosure formulation, reception, admissibility and follow-up

## 3.1 Anonymity and confidentiality

The Québec Ombudsman attaches great importance to confidentiality. It therefore sees to protecting the identity of those making a disclosure, witnesses and alleged wrongdoers to the extent possible and within the confines of the law.

► **Disclosure of a wrongdoing relating to a public body may be done anonymously.**

The *Act to facilitate the disclosure of wrongdoings relating to public bodies* and the *Public Protector Act* protect, within the confines of the law, the confidentiality of the information obtained and created by the Québec Ombudsman in the exercise of its functions.

However, the Québec Ombudsman may convey information to public bodies entrusted with preventing, detecting or repressing crime or statutory offences. It may also convey information to other bodies according to the terms of section 3.6 of this procedural document.

## 3.2 Making a disclosure

### 3.2.1 In writing

Anyone may disclose a wrongdoing relating to a public body by completing the secure and confidential form at [divulgation.protecteurducitoyen.qc.ca/en](http://divulgation.protecteurducitoyen.qc.ca/en).

The use of email is also possible, but the confidentiality of communications cannot be guaranteed when this means is employed.

A person may also disclose a wrongdoing relating to a public body by **fax at toll-free 1-844-375-5758** or at (418) 692-5758 in the Québec City area, or by mail to:

Direction des enquêtes sur les divulgations en matière d'intégrité publique  
Québec Ombudsman  
800, place D'Youville  
18<sup>e</sup> étage  
Québec (Québec) G1R 3P4

### **3.2.2 By phone**

Anyone may disclose a wrongdoing relating to a public body, even anonymously, by contacting the Québec Ombudsman by phone at **toll-free 1-800-463-5070** or at (418) 643-2688 in the Québec City area.

### **3.2.3 In person**

Anyone may disclose a wrongdoing relating to a public body by going to the office of the Direction des enquêtes sur les divulgations en matière d'intégrité publique at:

800, place D'Youville  
18<sup>e</sup> étage  
Québec (Québec) G1R 3P4

Anyone may also go to the office of the Québec Ombudsman in Montréal, where the person can have a confidential phone conversation with the personnel of the Direction des enquêtes sur les divulgations en matière d'intégrité publique:

1080, côte du Beaver Hall  
10<sup>e</sup> étage, bureau 1000  
Montréal (Québec) H2Z 5Y4

## **3.3 Content of the disclosure**

To the extent possible, a disclosure must contain the information listed in this section. It is not necessary to know all this information to make a disclosure, but it will help in processing it.

Admissible disclosures will undergo an audit or, if deemed necessary, an investigation, during which the Québec Ombudsman will do what is required to arrive at the truth.

### **3.3.1 Contact information for reaching you**

Even though the Québec Ombudsman accepts anonymous disclosures, it encourages those who make a disclosure to include the contact information and other information needed for it to get in touch with them confidentially.

### **3.3.2 Information about the alleged wrongdoing**

It is advisable to provide as much information as possible about the wrongdoing to be disclosed. This includes in particular:

- For every person who allegedly committed or participated in wrongdoing:
  - ▶ Full name;

- ▶ Professional title or position;
  - ▶ Name of the public body where the person occupied this position and the branch or administrative unit;
  - ▶ Contact information for reaching this person.
- Details concerning the alleged wrongdoing:
- ▶ Description of the facts, the event or the act;
  - ▶ Name of the public body concerned, and the branch or administrative unit;
  - ▶ Why is it a wrongdoing?
  - ▶ When, how or where was this wrongdoing committed?
  - ▶ If anyone else was involved in the wrongdoing or witnessed it, their name, title or function and their contact information;
  - ▶ Any document or proof related to the wrongdoing;
  - ▶ The possible consequences of the wrongdoing for the public body concerned, for human health and safety and for the environment;
  - ▶ If the wrongdoing has not yet been committed, but is about to be, the information needed to prevent it.

### **3.3.3 Information about the steps taken and fear of reprisal**

Where applicable, it is advisable to indicate any communication already made with the officer responsible for dealing with disclosures within the public body or with anyone else regarding the wrongdoing.

Furthermore, in order to ensure that processing is properly prioritized, it is important for those making a disclosure to indicate whether they fear reprisal against them and why.

## **3.4 Receipt of the disclosure**

The personnel of the Québec Ombudsman's Direction des enquêtes sur les divulgations en matière d'intégrité publique acknowledges receipt of the disclosure by contacting the person who made the disclosure directly by phone at the number indicated in the disclosure, if it was not made anonymously, or meets with the person if necessary. This contact occurs as soon as possible, or no later than within two working days if the disclosure was transmitted in writing or by voice mail. The personnel of the Direction des enquêtes sur les divulgations en matière d'intégrité publique take down the details of the disclosure and explain the ensuing follow-up.

In all cases in which the Québec Ombudsman knows the identity of the person who made the disclosure and has the contact information enabling it to get in touch with him or her confidentially, it sends the person a written notice of receipt of the disclosure within five working days of receiving it.

## **3.5 Admissibility of the disclosure**

The first step in processing a disclosure of wrongdoing is to determine whether it is admissible, in other words, whether it is within the Québec Ombudsman's jurisdiction.

A disclosure is admissible if:

- ▶ It alleges that a wrongdoing as defined in section 4 of the *Act to facilitate the disclosure of wrongdoings relating to public bodies* has been or is about to be committed;
- ▶ The alleged wrongdoing was or is about to be committed regarding a public body within the meaning of section 2 of the *Act to facilitate the disclosure of wrongdoings relating to public bodies*;
- ▶ It was made in the public interest and not solely for personal purposes;
- ▶ It does not question the merit of the policies and program objectives of the Government or of a public body;
- ▶ It does not question the effectiveness, efficiency or merits of strategies, policy directions and operations related to the investment activities, fund management activities or debt management activities of the Caisse de dépôt et placement du Québec or Investissement Québec;
- ▶ It does not question a contravention of a law or regulation concerning a process of adjudication or awarding of a contract that a public or municipal body may enter into, or concerning the execution of such contract, which, in such case, is subsumed under the mission of the Autorité des marchés publics pursuant to section 19 of the *Act respecting the Autorité des marchés publics* (CQLR, c. A-33.2.1);
- ▶ It does not question contracting processes and the carrying out of contracts when they fall within the inspector general's oversight mandate specified in section 57.1.8 of the *Charter of Ville de Montréal, metropolis of Québec* (CQLR, c. C-11.4);
- ▶ It does not question a violation by an elected municipal officer of his or her code of ethics and conduct provided for in Division 1 of Chapter III of the *Municipal Ethics and Good Conduct Act* (CQLR, c. E-15.1.0.1).
- ▶ It is not deemed frivolous.
- ▶ The alleged wrongdoing is not the subject of court proceedings or does not relate to a decision rendered by a court.

Generally, the Québec Ombudsman processes disclosure files if the wrongdoing occurred within the past year. However, it may consider wrongdoings that predate this if there is serious cause to do so. In all cases, the Québec Ombudsman may cease examining a disclosure if too much time has elapsed for an audit or investigation to be effective.

The Québec Ombudsman does its utmost to finish the analysis of disclosure admissibility within 10 working days of receiving the disclosure.

When a disclosure is deemed inadmissible or if more than one year has elapsed since the wrongdoing was allegedly committed, the Québec Ombudsman ceases its examination and sends the person who made the disclosure, if his or her identity is known, a notice explaining the reasons for its decision.

### **3.6 Forwarding of information to another public body**

If, at any point while processing a disclosure, the Québec Ombudsman feels that the information brought to its attention may be disclosed pursuant to section 26 of the *Anti-Corruption Act* (CQLR, c. L-6.1), it forwards this information to the Anti-Corruption Commissioner as soon as possible.

The Québec Ombudsman may also forward the information necessary to prosecute an offence under an Act to any body responsible for preventing, detecting or repressing crime or statutory offences, notably, a police force or a professional order.

When it considers that the information brought to its attention may be matter for communication to the Bureau de l'inspecteur général de la Ville de Montréal (BIG), the Commission municipale du Québec (CMQ) or the Autorité des marchés publics (AMP), it forwards the information to these bodies as soon as possible.

Furthermore, if the Québec Ombudsman receives a disclosure that concerns a municipality or a municipal body exclusively, it must forward it to MAMH, which will ensure that the disclosure is processed. However, if MAMH determines that the subject of the disclosure does not pertain to the responsibilities incumbent on it pursuant to its incorporating act, the Québec Ombudsman will process the disclosure.

A disclosure concerning both a municipality or municipal body and a public body within the Québec Ombudsman's jurisdiction is processed according to the terms to which the Québec Ombudsman and MAMH have agreed.

In all of the above cases, the Québec Ombudsman may, after forwarding the information to the other body, cease examining or continue processing the disclosure, according to the terms and conditions agreed upon with the public body to which it forwarded the information.

### **3.7 Follow-up to the person who made the disclosure**

If processing must continue beyond 60 days after the date on the disclosure was received, the Québec Ombudsman notifies the person in writing who made the disclosure, if the person's identity is known.

It also subsequently notifies the person, every 90 days, that the processing of the disclosure is ongoing, until the Québec Ombudsman ceases it.

## **4 Processing the disclosure**

### **4.1 Prioritization**

The priority given to the processing of a disclosure of wrongdoing is based on the following factors in particular:

- ▶ the gravity of the alleged wrongdoing;
- ▶ the fact that the alleged wrongdoing persists;
- ▶ its imminence;
- ▶ the potential human consequences or the impact on the public body's ability to carry out its mandate, and the possibility of minimizing these consequences;
- ▶ the probability of reprisal;
- ▶ the risks to human health and safety or to the environment.

## 4.2 Audits

When the Québec Ombudsman deems the disclosure admissible or has reasonable cause to believe that a wrongdoing has been or is about to be committed, it conducts the audits it considers appropriate.

The Québec Ombudsman takes all necessary measures to ensure that the identity of those who make the disclosure, of the people who cooperate in audits or of the alleged wrongdoers remain confidential during the audits.

The Québec Ombudsman does its utmost to complete the required audits within 60 days of receiving the disclosure.

Where appropriate, the Québec Ombudsman may interrupt or terminate processing of a disclosure for any of the reasons indicated in section 3.5 or 3.6 of this procedural document. In such case, it sends a notice to the person who made the disclosure, if his or her identity is known, explaining the reasons for its decision.

At the end of an audit, the Québec Ombudsman decides whether to investigate the alleged wrongdoing. The decision to launch an investigation is based on an analysis of the information available at that point. If the Québec Ombudsman ceases the processing of a disclosure, it sends the person who made the disclosure, if his or her identity is known, a written notice, with reasons.

## 4.3 Investigations

The Québec Ombudsman may decide to investigate a disclosure of wrongdoing if it has reasonable cause to believe that a wrongdoing has been or is about to be committed.

For the conducting of such investigation, the Québec Ombudsman, as well as the personnel it designates for this purpose, is invested with the same powers and immunity as commissioners appointed under the *Act respecting public inquiry commissions* (CQLR, c. C-37), except the power to impose imprisonment.

Within the framework of such investigation, and with the goal of protecting cooperators from pressure from their superiors or from the body concerned, the Québec Ombudsman may summon anyone whose testimony may be related to the subject of the investigation to appear. It may also compel anyone to provide the documents it deems necessary for the purpose of the investigation.

A person summoned by the Québec Ombudsman for an investigation may be accompanied to the interview by a person of his or her choice. This person must not be directly or indirectly involved in the investigation underway. Furthermore, the accompanying person must not interfere with the conducting of the interview.

The Québec Ombudsman takes all necessary measures to ensure that the identity of those who make a disclosure and of the people who cooperate in the investigation remain confidential during the investigation, notably by means of confidentiality agreements.

The Québec Ombudsman does its utmost to finish the investigation within 12 months of receiving the disclosure.

Where appropriate, the Québec Ombudsman may interrupt or terminate processing of a disclosure for any of the reasons indicated in section 3.5 or 3.6 of this procedural document. In

such case, it sends a notice to the person who made the disclosure, if his or her identity is known, explaining the reasons for its decision.

#### **4.3.1 Notice to the highest ranking official**

When it decides to investigate, the Québec Ombudsman, may, if it deems it fitting, inform the highest ranking administrative official within the public body concerned or, if the circumstances warrant it, the minister responsible for the public body, that an investigation is underway and inform him or her of the subject thereof, while protecting the identity of the person who made the disclosure.

#### **4.3.2 Obligation for the public bodies concerned to cooperate**

The public body concerned is obliged to cooperate with the Québec Ombudsman.

Anyone who hinders or attempts to hinder the Québec Ombudsman in the exercise of the functions of office, refuses to provide any information or a procedural document they are required to provide or refuses to make it available, or conceals or destroys any procedural document relevant to an audit or investigation is guilty of an offence and is liable to a fine of \$4,000 to \$20,000. The amounts are doubled for a subsequent offence.

#### **4.3.3 Rights of the alleged wrongdoer**

Within the framework of an investigation, the alleged wrongdoer must have the opportunity to provide his or her version of the events, either during an interview in person or through any other appropriate means of communication.

In the case of an interview, unless exceptional or urgent circumstances prevail, the alleged wrongdoer is summoned in a written notice specifying the date and time of the interview, his or her right to be accompanied by the person of his or her choice, and the terms and conditions of the interview. The accompanying person must not be directly or indirectly involved in the investigation underway. Furthermore, he or she must not interfere with the conducting of the interview.

Beforehand, the Québec Ombudsman informs the alleged wrongdoer of the subjects that will be discussed during the interview or of any other means of communication.

#### **4.3.4 End of the investigation**

At the end of an investigation, the Québec Ombudsman determines whether a wrongdoing has been or is about to be committed based on the information collected, after giving the alleged wrongdoer the opportunity to provide his or her version of the events.

Determination of a wrongdoing is based on the principles set out in the **Interpretation Guide** (Appendix I of this procedural document). This conclusion is reached based on the preponderance of evidence.

If the Québec Ombudsman concludes that a wrongdoing has been committed or is about to be committed, it sends the alleged wrongdoers a preliminary report for comment, if allowed by the circumstances. The comments must be transmitted to the Québec Ombudsman within the established deadline. Subsequently, the Québec Ombudsman transmits for comment a draft report that includes its conclusions and any recommendations to the highest

administrative official within the public body concerned, or, if the circumstances warrant it, to the minister responsible for the public body. The comments must be transmitted to the Québec Ombudsman within the established deadline.

In all cases, at the end of the investigation, the Québec Ombudsman reports its conclusion and any recommendations to the highest administrative official within the public body concerned, or, if the circumstances warrant it, to the minister responsible for the public body. It also notifies the alleged wrongdoer.

The Québec Ombudsman also notifies the person who made the disclosure that processing of the disclosure has ended and, if it deems it appropriate, informs him or her of the ensuing follow-up.

In the case of a disclosure concerning a childcare centre, subsidized daycare centre or a home childcare coordinating office, the Québec Ombudsman reports its conclusions to the Ministère de la Famille and, if the circumstances warrant it, to the board of directors of the public body concerned or to the holder of the day care permit. In the case of a municipality or municipal body, the Québec Ombudsman submits a report to the municipal council or to the board of the municipal body as well as to all local municipalities with links to this body if the body is not a local municipality.

#### **4.3.5 4.3.5 Recommendations and follow-up**

At the end of an investigation, the Québec Ombudsman makes the recommendations it deems useful to the highest ranking administrative official within the public body concerned, or if the circumstances warrant it, to the minister responsible for the public body.

In the case of childcare centres, subsidized daycare centres or home childcare coordinating offices, the Québec Ombudsman makes its recommendations to the Ministère de la Famille and, if the circumstances warrant it, to the board of directors of the public body concerned or to the holder of the day care permit.

The Québec Ombudsman may require the public body to inform it of the corrective measures further to its recommendations, by the deadline indicated.

If, after making recommendations, the Québec Ombudsman feels that no satisfactory measure was undertaken by the public body within a reasonable time frame, it may notify the minister responsible for the public body in writing. It may subsequently report the situation in its annual report or in a special report tabled in the National Assembly.

#### **4.4 Civil immunity**

A person who, in good faith, discloses a wrongdoing or cooperates in an audit or investigation stemming from such disclosure incurs no civil liability as a result. This immunity covers defamation suits.

However, people who knowingly disclose false or misleading information are subject to prosecution and a fine.

## 5 Appendix I: interpretation guide

### 5.1 Definition of a wrongdoing

#### **"Serious breach of the standards of ethics and professional conduct"**

*Act, omission or behaviour that deviates markedly from generally accepted practices or standards of conduct within public bodies, or from the ethical standards or obligations that apply.*

Factors to consider in assessing the gravity of the act:

**Intention:** The intentional or deliberate nature of the act, which includes bad faith, malicious purpose, abuse of power, or pursuit of personal gain.

**Gravity:** The degree of gravity of the conduct or its marked departure from normally recognized and accepted standards of conduct and practices or the ethical obligations that apply.

**The position of the alleged wrongdoer:** The position, function or level of responsibility of the alleged wrongdoer. Higher standards of integrity are applied to persons in a position of trust or authority within the public body.

**Recurrence:** The frequency or recurrence of the conduct. Conduct that points to a trend or that is systematic is more likely than isolated incidents to be a serious breach of the standards of ethics and professional conduct.

**Consequences:** The act or omission could have adverse consequences for:

- ▷ the public body's ability to carry out its mission;
- ▷ its personnel or those who use its services;
- ▷ public trust in the body.

#### Examples:

- ▶ A director repeatedly puts himself or herself in situations of conflict of interest by using public assets for his or her personal commercial activities.
- ▶ The decision to grant excessive severance pay to executives which deviates markedly from accepted general practice within the public service in similar circumstances.
- ▶ Selection or appointment of personnel members by the director of a public body without sufficient justification in writing, without a competition and without it being shown that the appointments were based on the principle of merit or that the public interest was considered.
- ▶ The fact that the vice-president of a public body has displayed inappropriate behaviour or acted inappropriately in the workplace for an extended period, has unjustly criticized colleagues in his or her interaction with those who are not personnel or has disclosed information without authorization.
- ▶ The fact that a public servant has failed to carry out his or her duties or responsibilities regarding application of the law, has shirked these responsibilities, or has ties with known organized crime figures.

### **"Misuse of funds or property belonging to a public body"**

Understood to mean in particular unauthorized expenses which are illegal or contrary to applicable laws, regulations, policies or procedures, including expenses related to funds or property that the public body manages for a third party.

Misuse of funds or property may consist of:

- ▶ unauthorized expenses, purchase or use of property;
- ▶ expenses or purchase of property in violation of applicable laws, regulations, policies or procedures;
- ▶ needless purchases that amount to the squandering of public funds or that are inconsistent with the public body's organizational or operational needs;
- ▶ inappropriate use of funds or their use for unauthorized purposes;
- ▶ failure to protect a public body's property due to gross negligence or indifference.

Examples:

- ▶ Use of a vehicle belonging to a public body or of taxi coupons for personal purposes.
- ▶ Reimbursement for unauthorized or frivolous travel expenses or for absence from work for unauthorized travel.
- ▶ Use of earmarked funds for other purposes.
- ▶ Giving executives excessive severance pay for no justifiable reason.

### **"Gross mismanagement"**

An intentional or unintentional act or omission which indicates substantial indifference, negligence or disregard for the sound management of public resources.

Factors to consider in assessing the gravity of the act:

**Intention:** The intentional or deliberate nature of the conduct, which includes bad faith, malicious purpose, abuse of power, or pursuit of personal gain.

**Gravity:** The degree of gravity of the conduct or its marked departure from a simple mistake and from normally recognized and accepted standards of conduct and practices.

**The position of the alleged wrongdoer:** The position, function or level of responsibility of the alleged wrongdoer. Higher standards of integrity are applied to persons in a position of trust or authority within the public body.

**Recurrence:** The frequency or recurrence of the conduct. Conduct that points to a trend or that is systematic is more likely than isolated incidents to be a serious breach of the standards of ethics and professional conduct.

**Consequences:** The act or omission could have adverse consequences for:

- ▷ the public body's ability to carry out its mission;
- ▷ its personnel or those who use its services;
- ▷ public trust in the body.

Examples:

- ▶ Knowingly tolerating the falsifying of documents with a view to year-end spending in order to circumvent a Secrétariat du Conseil du Trésor policy.
- ▶ Use of earmarked funds for other purposes.
- ▶ Inappropriate and aggressive behaviour with several personnel members by the director of a public body, the director's systematic refusal to take advice from his or her team, and repeated use of derogatory remarks in the workplace.
- ▶ The director's repeated and constant use of the public body's property and personnel during work hours for the director's personal commercial activities.

**"Abuse of authority"**

Arbitrary decision aimed at harming a person or at advancing one's own interests, which includes bad faith and favoritism. Act committed by a person in a position of real authority or by operation of law, and that exceeds his or her powers, notably by exercising discretionary power:

- ▶ for improper purposes or purposes unauthorized under the law, in bad faith or for irrelevant considerations;
- ▶ based on irrelevant facts or insufficient or no evidence;
- ▶ that has unreasonable or discriminatory consequences or that is retroactive in scope, when retroactivity is prohibited under the law;
- ▶ based on an erroneous interpretation of the law, resulting in an excess of jurisdiction by the person in a position of authority.

Examples:

- ▶ Influence peddling or abuse of power by a director with his or her personnel so as to hire a family member or a friend.
- ▶ Refusal to grant a permit to a business on grounds that are not stipulated in the law and that stem from inappropriate personal considerations in applying the law.

## 6 Appendix II: Target wait times for processing disclosures

STAGE	TARGET WAIT TIME
Receipt of the disclosure*	Within 2 working days
Written notice conforming receipt of the disclosure, if required	Within 5 working days of receiving the disclosure
Decision as to the admissibility of the disclosure	Within 10 working days of receiving the disclosure
Audits and decision as to whether to investigate the disclosure	Within 60 days of receiving the disclosure
End of the investigation	Within one year of receiving the disclosure

\* Institutional commitments regarding service wait times are specified in the Québec Ombudsman's Service Statement.