



LE PROTECTEUR DU CITOYEN

Assemblée nationale
Québec

Justice

Fairness

Respect

Impartiality

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

**Terms and conditions regarding
access to legal advice**

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Acronyms

AMP

Autorité des marchés publics

CIME

Commissaire à l'intégrité municipale et aux enquêtes

CMQ

Commission municipale du Québec

MAMH

Ministère des Affaires municipales et de l'Habitation

MF

Ministère de la Famille

ORD

Officer responsible for dealing with disclosures

1. Access to legal advice through the Québec Ombudsman

Section 26 of the *Act to facilitate the disclosure of wrongdoings relating to public bodies* (CQLR, c. D-11.1) provides that the Québec Ombudsman make access to legal advice available to anyone who:

- ▶ discloses or wishes to disclose a wrongdoing;
- ▶ cooperates in an audit, inspection¹ or investigation on the grounds of a disclosure;
- ▶ believes he or she has suffered reprisal for having, in good faith, made a disclosure or cooperated in such audit or investigation, unless the reprisal may be a prohibited practice within the meaning of subparagraph 11 of the first paragraph of section 122 of the *Act respecting labour standards* (CQLR, c. N-1.1)

This service is therefore offered to anyone who wishes to make or makes a disclosure within the meaning of the *Act to facilitate the disclosure of wrongdoings relating to public bodies* to:

- ▶ the Québec Ombudsman;
- ▶ a public body's officer responsible for dealing with disclosures (ORD);
- ▶ the Ministère de la Famille (MF);
- ▶ the Commissaire à l'intégrité municipale et aux enquêtes (CIME) of the Ministère des Affaires municipales et de l'Habitation (MAMH).

This service is also offered to anyone who cooperates in an audit or investigation conducted by these individuals or public bodies.

Furthermore, section 58 of the *Act respecting the Autorité des marchés publics* (CQLR, c. A-33.2.1) provides that a person may contact the Québec Ombudsman for access to legal advice when he or she:

- ▶ communicates or wishes to communicate information to the Autorité des marchés publics (AMP);
- ▶ cooperates in an audit conducted on the grounds of such a communication;
- ▶ believes himself or herself to be a victim of a reprisal for having communicated information to the AMP in good faith or who cooperated in an audit on the grounds of such a communication, or believes himself or herself to be a victim of a reprisal to dissuade him or her from communicating such information or cooperating in an audit.

¹ The Ministère de la Famille may conduct an inspection or investigation concerning a disclosure pursuant to the provisions of Chapter VII.2 of the *Educational Childcare Act* (CQLR, c. S-4.1.1).

Section 36.4 of the *Municipal Ethics and Good Conduct Act* (CQLR, c. E- 15.1.0.1) provides that a person may contact the Québec Ombudsman for access to legal advice when he or she:

- ▶ communicates or wishes to communicate information to the Commission municipale du Québec (CMQ);
- ▶ collaborates in a search for information or an investigation conducted by the CMQ;
- ▶ believes himself or herself to be a victim of a reprisal for having communicated information to the CMQ or for cooperating in an audit on the grounds of such a communication, or believes himself or herself to be a victim of a reprisal to dissuade him or her from communicating such information or cooperating in an audit.

Access to legal advice through the Québec Ombudsman consists of financial assistance used to provide reimbursement for retaining legal counsel of the requester's choosing.

To obtain this financial assistance, a person must request it from the Québec Ombudsman before seeking legal counsel.

Assistance is granted if the person's specific situation warrants legal assistance, for example, due to the nature of the disclosure or because he or she cooperated in an audit, inspection or investigation.

In each case, the Québec Ombudsman determines how access to legal advice is delivered and its duration.

To provide a framework for awarding and managing access to legal advice, the Québec Ombudsman has established the following guiding principles, eligibility requirements, and terms and conditions for the awarding of financial assistance.

2. Guiding principles

The awarding of financial assistance in the context of access to legal advice must comply with the objectives and conditions of the *Act to facilitate the disclosure of wrongdoings relating to public bodies* and other applicable laws.

The Québec Ombudsman assesses each person's specific situation case by case based on the guidelines and principles it has established.

Each person is responsible for requesting financial assistance prior to seeking legal counsel and for explaining why financial assistance should be granted.

The financial assistance granted is subject to the terms and conditions determined by the Québec Ombudsman. Assistance obtained in breach of these conditions may be suspended or revoked. Where applicable, the Québec Ombudsman may also require reimbursement for unduly received assistance.

3. Eligibility requirements

Financial assistance for access to legal advice may be granted to anyone who:

- ▶ discloses or has disclosed a wrongdoing concerning a public body within the meaning of the *Act to facilitate the disclosure of wrongdoings relating to public bodies* to the Québec Ombudsman, an ORD, MF or CIME;
- ▶ cooperates or has cooperated in an audit, inspection or investigation on the grounds of a disclosure within the meaning of the *Act to facilitate the disclosure of wrongdoings relating to public bodies* to the Québec Ombudsman, an ORD, MF or CIME;
- ▶ believes that he or she has suffered reprisal for having, in good faith, made a disclosure or cooperated in an audit or investigation conducted by the Québec Ombudsman, an ORD, MF or CIME;
- ▶ communicates or wishes to communicate to CMQ information concerning a breach of the code of ethics and good conduct applicable to a member of a municipal council;
- ▶ cooperates or has cooperated in a search for information or an investigation on the grounds of such a communication to the CMQ;
- ▶ has communicated or wishes to communicate to the AMP information concerning the adjudication process or the awarding of a public contract, or the execution of such contract, when the public body concerned appears not to act or not to have acted with respect to this process or this contract in accordance with the normative framework;
- ▶ cooperates or has cooperated in an audit on the grounds of such a communication to the AMQ;
- ▶ believes that he or she has suffered reprisal for communicating information to the CMQ or to the AMP, or in connection with a search for information, or with cooperation in an audit or investigation conducted by these bodies.

Financial assistance is granted for access to legal advice solely in connection with the situations described above and cannot be used for other purposes. Financial assistance is granted for obtaining legal advice and cannot be used for legal representation by an attorney.

In cases of reprisal, a person who has filed a recourse against prohibited practices within the meaning of subparagraphs 11, 14 or 15 of the first paragraph of section 122 of the *Act respecting labour standards* to the Commission des normes, de l'équité, de la santé et de la sécurité (CNESST), or who for whom the person's union filed a grievance, cannot be granted access to legal advice.

The person requesting financial assistance must, in the opinion of the Québec Ombudsman, be in a special situation that warrants legal assistance;

To determine whether the person's special situation warrants legal assistance, the Québec Ombudsman takes the following factors into account on presentation of the appropriate supporting documents:

- ▶ the nature of the disclosure or communication made or intended;
- ▶ the person's degree of participation in an audit, inspection, investigation or a communication on the grounds of a disclosure;
- ▶ the fact that the person is in a financial situation that makes it difficult for him or her, because of his or her employment and personal situation, to pay for the legal consultation he or she requires;
- ▶ the advice sought is different in nature from the information the Québec Ombudsman is able to provide to the person;
- ▶ the legal advice requested is consistent with the goals of the *Act to facilitate the disclosure of wrongdoings relating to public bodies*, the *Act respecting the Autorité des marchés publics* or the *Municipal Ethics and Good Conduct Act* and will help protect the person against reprisal;
- ▶ the high level of sensitivity of the audit, inspection or investigation involved;
- ▶ the extent of the potential consequences of disclosure and cooperation in an audit, inspection or investigation on the person requesting legal assistance.

4. Terms and conditions for awarding financial assistance for access to legal advice

The financial assistance granted by the Québec Ombudsman covers the provision of legal advice but does not include representation by an attorney in the context of legal proceedings or other kinds of legal services.

The person who requests access to legal advice must provide the Québec Ombudsman with information showing that assistance is warranted. He or she must authorize the Québec Ombudsman to contact legal counsel to verify compliance with eligibility requirements and the terms and conditions for awarding of financial assistance.

Financial assistance is not issued to the person who receives legal advice, but is issued directly to the legal counsel who delivered the authorized legal advice, on presentation of an invoice or other adequate supporting documents or of the duly completed required form.

The person granted financial assistance may retain legal counsel of his or her choosing.

Generally, the Québec Ombudsman authorizes initial financial assistance for a total of three hours of legal advice, at a reasonable hourly rate. This rate ranges from \$135 to \$300 an hour based on the years of experience of the legal adviser according to the *Regulation respecting the fees for certain legal services rendered to bodies of the Government* (CQLR, c. C-65.1, r. 7.3).

However, at its discretion, the Québec Ombudsman may increase the length of assistance or the authorized amounts if it considers that the file is special or complex in nature.

When the financial assistance for access to legal advice is authorized, the assistance must be used within six months at most, unless a longer period is warranted by exceptional circumstances.

5. Requesting financial assistance for access to legal advice

Anyone who would like to request financial assistance for access to legal advice may do so at the Québec Ombudsman's branch mandated to investigate public integrity disclosures.

Direction des enquêtes sur les divulgations en matière d'intégrité publique

Protecteur du citoyen
800, place D'Youville, 18^e étage
Québec (Québec) G1R 3P4

By internet:

Secure and confidential form on the Québec Ombudsman's website:
divulcation.protecteurducitoyen.qc.ca

By phone:

At toll-free 1-800-463-5070 or at (418) 643-2688 in the Québec City area

By fax:

At toll-free 1-844-375-5758 or at (418) 692-5758 in the Québec City area

6. Processing a request for access to legal advice through the Québec Ombudsman

Depending on the means of communication used by the person requesting financial assistance, an employee of the Québec Ombudsman will speak directly to him or her by phone or in person, will take down the details of the request and explain its processing. In cases in which the disclosure was transmitted in writing or by voice message, an employee of the Québec Ombudsman will contact the person within two business days.

An employee of the Québec Ombudsman will then examine the eligibility of the request and, if necessary, contact the person who made the request to complete the file or obtain the documents required for analyzing the request.

The Québec Ombudsman does all it can to complete the analysis of the request and to deliver its decision within 30 days of receiving the request.

When the request for financial assistance is refused, the Québec Ombudsman informs the person who made the request of the decision and explains the reasons for the refusal.

When financial assistance is granted, the Québec Ombudsman confirms the terms and conditions of the awarding of the assistance in writing and sends the requester the documents or forms required for issuing payment to the legal counsel retained.