



LE PROTECTEUR DU CITOYEN

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Special report by the Québec Ombudsman

Application of the Act to facilitate the disclosure of wrongdoings relating to public bodies: Major violations by the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation

Québec City, June 13, 2019

Summary

Background

On May 1, 2017, in accordance with the *Act to facilitate the disclosure of wrongdoings relating to public bodies* (D-11.1), the Deputy Minister of the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation (MAPAQ) announced the appointment of a disclosure officer (officer) to all the staff. On October 30, 2017, a MAPAQ employee (the whistleblower) submitted a disclosure to this person. On January 24, 2019, the whistleblower was dismissed following news leaks. On February 1, 2019, on its own initiative and pursuant to the *Public Protector Act*, the Québec Ombudsman undertook an investigation of MAPAQ's application of D-11.1:

- ▶ Was the disclosure submitted by the whistleblower handled in compliance with D-11.1 by MAPAQ's officer?
- ▶ Does MAPAQ's procedure for handling disclosures of wrongdoing comply with D-11.1?

This report does not cover the whistleblower's dismissal by his employer because when the Québec Ombudsman acts pursuant to the *Public Protector Act*, it cannot intervene in matters of work relations. Under D-11.1, people who feel that they have suffered job-related reprisal stemming from a disclosure of wrongdoing must seek recourse in compliance with labour laws.

Within the context of this investigation, the Québec Ombudsman noted numerous breaches in MAPAQ's application of D-11.1.

Delegation of responsibilities

As soon as the officer received the disclosure, she enlisted the Department's ethics officer to assist her. Such delegation of responsibilities is prohibited and, among other things, violates the protection of confidentiality required by D-11.1.

Means of communication

MAPAQ's internal procedure provides that a disclosure must, for confidentiality purposes, be transmitted to the officer by means of a secure email address. The whistleblower used the officer's and the ethics officer's professional email address.

The whistleblower should have been informed immediately about the intended use of the secure email address and been redirected to it.

First verbal contact with the whistleblower

Knowing that a prompt response creates trust, when the Québec Ombudsman receives a disclosure, it contacts the whistleblower verbally within two work days. The Department's ethics officer talked with the whistleblower for the first time 14 work days (three weeks) after receiving the disclosure, which is too long a delay.

Information to the whistleblower and the people who cooperated in the audit

The support and guidance that the whistleblower and the people who cooperated in the audit should have received in terms of information was incomplete.

Admissibility of the disclosure

The disclosure submitted on October 30, 2017 was not only aimed at MAPAQ, but at an independent agency as well. The officer and the ethics officer felt that it was not within their jurisdiction to audit this agency.

D-11.1 covers wrongdoings committed within a public body as well as those committed with regard to that body by people who are not members of its staff. The officer therefore had jurisdiction to conduct the required audit.

Transfer of the disclosure to the Québec Ombudsman

At no time during the handling of the disclosure did the officer or the ethics officer consider transferring the file to the Québec Ombudsman, nor did they inform the whistleblower that he could contact the Québec Ombudsman at any time.

The file should have been transferred, notably because the officer and the ethics officer felt that protecting the whistleblower's identity was difficult. Furthermore, they did not believe that auditing the independent agency was within their purview.

Confidentiality of the whistleblower's identity, of the information conveyed and of the auditing procedure

The whistleblower's identity and that of the people who cooperated in the audit, as well as whole sets of information, were not protected as they should have been from the beginning to the end of the handling of the disclosure file and even beyond.

Follow-up with the whistleblower and MAPAQ's highest ranking administrative official

After being told that he would have access to the officer's analysis report concerning his disclosure, the whistleblower learned that no wrongdoing had been identified and that, on the Deputy Minister's decision, he would not be receiving the report. He was then sent the letter of conclusion. As the whistleblower specified to the Québec Ombudsman, he therefore gathered that there were people who wanted to hide certain forms of misconduct. This is how he completely lost confidence in the internal mechanism.

Furthermore, the analysis report should not have been submitted to the Deputy Minister given that, according to the officer's and the ethics officer's conclusions, no wrongdoing had occurred.

Observations by the people involved and MAPAQ's handling of the disclosure

By the time that handling of the disclosure was completed, MAPAQ's Deputy Minister felt that no staff member within an organization had the necessary distance for handling disclosures, which corroborates what the whistleblower said. The officer added that she

should never have been assigned this position given her other duties. As she said, she should have entrusted the Québec Ombudsman with the file. The whistleblower feels that the internal mechanism for handling disclosures has no credibility.

CONCLUSION

According to the Québec Ombudsman, MAPAQ did not comply with D-11.1 throughout its handling of the disclosure submitted to it, as shown in this report, and which calls for implementation of the Québec Ombudsman's recommendations. What is at stake is the confidence that such a mechanism must inspire for potential whistleblowers. Without this trust, they may very well decide not to go down that road, despite the importance of their disclosure for the public interest.

It is also important to remember that the Québec Ombudsman can handle a disclosure at any time. In such cases, it can provide complete assurance that the confidentiality of the identity of whistleblowers, of the people who cooperate in an audit or investigation, and of the people subject to the allegations is preserved. The disclosure will be handled with complete independence and impartiality in keeping with D-11.1.

RECOMMENDATIONS

Considering the preceding, the Québec Ombudsman recommends that MAPAQ:

- R-1** No later than July 30, 2019, establish and send the Québec Ombudsman an action plan for correcting the failings noted, especially regarding:
- ▶ Delegation of responsibilities;
 - ▶ Means of communication;
 - ▶ First verbal contact with the whistleblower;
 - ▶ Information to the whistleblower and the people who cooperated in the audit;
 - ▶ Admissibility of the disclosure;
 - ▶ Transfer of the disclosure to the Québec Ombudsman;
 - ▶ Confidentiality of the whistleblower's identity, of the information transmitted and of the audit procedure;
 - ▶ Follow-up with the whistleblower and MAPAQ's highest ranking administrative official;

and that no later than September 30, 2019, MAPAQ report on the measures implemented to carry out this action plan.

Considering the preceding, the Québec Ombudsman recommends that the Secrétariat du Conseil du trésor:

- R-2** Within the framework of the report on the implementation of D-11.1 which the Chair of the Conseil du trésor must table in the National Assembly no later than June 1, 2020, review the role and legislative framework for disclosure officers so that whistleblowers are ensured adequate support, complete confidentiality and handling of disclosures without fear of appearing disloyal.