



LE PROTECTEUR DU CITOYEN

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

Procedure concerning the processing of reprisal complaints

May 2017

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. It also receives complaints from people who believe they have suffered reprisal or been threatened with reprisal for having, in good faith, made a disclosure or cooperated in an audit or investigation stemming from a disclosure.

When it receives a reprisal complaint within its jurisdiction, the Québec Ombudsman carries out the auditing required and, when warranted by the circumstances, investigates or designates someone to investigate on its behalf, pursuant to section 25 of the *Public Protector Act*.

Pursuant to subparagraph 6 of the first paragraph of section 10 of the *Act to facilitate the disclosure of wrongdoings relating to public bodies*, the Québec Ombudsman has established this procedure laying out the protection provided in the Act in cases of reprisal and how it processes reprisal complaints

The preamble forms an integral part of this 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 an above wrongdoing.

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.

The purpose of a disclosure must not be to question the merits of the policies and program objectives of the Government or of a public body. The same is true for a disclosure whose purpose is to 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.

Protected disclosure: A disclosure is protected against reprisal under the *Act to facilitate the disclosure of wrongdoings relating to public bodies* provided it was made in accordance with the Act, namely:

- ▶ to the Québec Ombudsman;
- ▶ to the officer responsible for dealing with disclosures within the public body;
- ▶ to the Ministère de la Famille (concerning subsidized day care services);
- ▶ publicly, in the exceptional situations provided for in section 7 of the *Act to facilitate the disclosure of wrongdoings relating to public bodies* and under the conditions contained therein:
 - ▷ the person who makes the disclosure has reasonable grounds to believe that a wrongdoing within the meaning of the Act has been or is about to be committed;
 - ▷ the alleged act poses a serious risk to a person's health or safety or to the environment;

- ▷ given the urgency of the situation, the person cannot go to any other of the three aforementioned organizations or persons;
- ▷ the person must first communicate this information to a police force or the Anti-Corruption Commissioner;
- ▷ this communication must not have the foreseeable effect of hindering intervention measures intended to avoid serious risk to a person's health or safety or to the environment.

A disclosure that does not satisfy these conditions or that is made to other persons (union, superior, colleague, family, friend) is not protected against reprisal. Anyone who discloses confidential information to third parties without legal authorization is liable to a sanction.

Public body: A 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. They are categorized as follows:

- ▶ 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 services.

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.

Prohibited practice: The fact that an employer or the employer's agent dismisses, demotes, suspends, or transfers an employee, imposes any disciplinary measure or adversely affects the employee's job or working conditions may constitute a prohibited practice within the meaning of subparagraph 11 of the first paragraph of section 122 of the *Act respecting labour standards* (c. N-1.1) if the employee, in good faith, discloses a wrongdoing that was or is about to be committed regarding a public body to the Québec Ombudsman, to the officer responsible for dealing with disclosures within the public body, or to the Ministère de la Famille, or because he or she cooperated in an audit, inspection or investigation related to a wrongdoing.

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 service 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 employees of this public body and to determine whether a wrongdoing has been or is about to be committed.

1.2 Interpretation

The expressions or terms used in this 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.

2 System for protecting against reprisal

Reprisal against a person for having, in good faith, made a disclosure or cooperated in an audit or investigation stemming from a disclosure, within the meaning of the *Act to facilitate the disclosure of wrongdoings relating to public bodies*, is prohibited.

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

Reprisal may consist of any deleterious measure against a person.

A **disclosure** is **protected** against reprisal under the *Act to facilitate the disclosure of wrongdoings relating to public bodies* provided the disclosure was made in accordance with the Act, namely:

- ▶ to the Québec Ombudsman;
- ▶ to the officer responsible for dealing with disclosures within the public body;
- ▶ to the Ministère de la Famille (concerning subsidized day care services);
- ▶ publicly, in the exceptional situations provided for in section 7 of the *Act to facilitate the disclosure of wrongdoings relating to public bodies* and under the conditions contained therein:
 - ▷ the person who makes the disclosure has reasonable grounds to believe that a wrongdoing within the meaning of the Act has been or is about to be committed;
 - ▷ the alleged act poses a serious risk to a person's health or safety or to the environment;
 - ▷ given the urgency of the situation, the person cannot go to any other of the three aforementioned organizations or persons;
 - ▷ the person must first communicate this information to a police force or the Anti-Corruption Commissioner;

- ▷ this communication must not have the foreseeable effect of hindering intervention measures intended to avoid serious risk to a person's health or safety or to the environment.

Anyone who makes a disclosure that does not satisfy these conditions or that is made to other persons (union, superior, colleague, family, friend) is not protected against reprisal. Anyone who discloses confidential information to third parties without legal authorization is liable to a sanction.

The *Act to facilitate the disclosure of wrongdoings relating to public bodies* protects against reprisal those who, in good faith, disclose a wrongdoing relating to a public body within the meaning of the Act, or cooperate in an audit or investigation into a wrongdoing.

Good faith is presumed and a person who makes a disclosure should not normally be required to justify his or her intentions. In the context of a disclosure, good faith must be broadly interpreted as a sincere belief that a wrongdoing has been or is about to be committed.

Therefore, to show that a person has suffered reprisal, the investigation must establish three elements:

- ▶ detrimental measures or threats of reprisal;
- ▶ disclosure in good faith to the Québec Ombudsman, the officer responsible for dealing with disclosures, the Ministère de la Famille or publicly under the conditions provided for in the *Act to facilitate the disclosure of wrongdoings relating to public bodies*, or cooperation in an audit or investigation into such disclosure;
- ▶ a connection between the first two elements (the fact that a detrimental measure was taken as a result of disclosure or cooperation, or, in the case of threats, to prevent disclosure or cooperation).

In some cases, the *Act to facilitate the disclosure of wrongdoings relating to public bodies* facilitates the demonstration of a connection between detrimental measure and disclosure or cooperation in an audit or investigation by creating certain presumptions. These presumptions apply to employees as well as to parents with children who attend childcare:

Presumptions for the employee:

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 presumed to be reprisal.

Presumptions for the parent with a child who attends a childcare service:

A person who has parental authority in respect of a child attending a childcare service who is deprived of his or her rights or is treated differently is also presumed to have suffered reprisal. The same applies to the suspension or expulsion of the person's child.

Such legal presumptions reverse the burden of proof. For example, a government department employee who, in good faith, discloses a wrongdoing allegedly committed by a colleague and who is transferred to another section is presumed to have suffered reprisal. It is up to the employer to demonstrate, by the preponderance of evidence, that the transfer is not related to the disclosure.

2.1 Recourse in cases of reprisal

As of May 1, 2017, a person who believes he or she has suffered reprisal stemming from a protected disclosure or from cooperation in an audit or investigation because of such disclosure may make a complaint to the Québec Ombudsman **within one year** of reprisal. Considering that a reprisal complaint may give rise to prosecution, it must be filed as soon as possible and no later than one year after the offence.

► Making a reprisal complaint to the Québec Ombudsman

The parent of a child who attends a childcare service, who believes that he or she or his or her child has suffered reprisal, may make a complaint either to the Ministère de la Famille or to the Québec Ombudsman.

If the reprisal is related to a person's employment or working conditions, the prohibited practice complaint must be filed with the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) within **45 days** of the alleged reprisal that may be a prohibited practice.

Any employee may file a **complaint for a prohibited practice to the CNESST**, including senior managerial personnel and trainees.¹

A unionized employee who believes he or she has suffered reprisal may make a complaint to the CNESST within **45 days**, but will not be represented by a CNESST attorney.² The employee may also approach his or her union.

In matters of employment, dismissal, demotion, suspension or transfer, as well as any disciplinary measure or measure deleterious to employment or to work conditions, may be a prohibited practice within the meaning of subparagraph 11 of the first paragraph of section 122 of the *Act respecting labour standards* when an employee, in good faith, discloses a wrongdoing that has been or is about to be committed relating to a public body, to the Québec Ombudsman, the officer responsible for dealing with disclosures within the public body or to the Ministère de la Famille, or because he or she cooperated in an audit, inspection or investigation of such wrongdoing.

► Making a prohibited practice complaint to the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST)

When, after approaching the CNESST, **a person is informed that his or her complaint does not satisfy the recourse admissibility requirements provided for in section 122 of the Act respecting labour standards**, he or she may turn to the Québec Ombudsman, which will see that the appropriate audits or investigations are carried out, within the limits of its jurisdiction. In all cases, someone who believes he or she has suffered reprisal may contact the Québec Ombudsman for information about available recourse.

¹ Section 3.1 of the *Act respecting labour standards*.

² Section 123.5 of the *Act respecting labour standards*.

Note that the Québec Ombudsman may undertake a criminal investigation regarding employment-related reprisal alongside recourse sought with the CNESST.

2.2 Criminal offences

The *Act to facilitate the disclosure of wrongdoings relating to public bodies* prohibits reprisal against anyone who, in good faith, disclosed a wrongdoing or cooperated in an audit or investigation stemming from a disclosure. This Act also prohibits threats to prevent a person from making such disclosure or cooperating in an audit or investigation.

The Act provides for severe penal provisions for anyone who exercises such reprisal. The fines range from \$2,000 to \$20,000 for a natural person and from \$10,000 to \$250,000 in all other cases.

The *Educational Childcare Act* (CQLR c. S-4.1.1) also provides for such offences, notably in connection with cooperation in an inspection or investigation conducted by the Ministère de la Famille because of a disclosure.

3 Access to services and assistance from the Québec Ombudsman

3.1 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 divulgation.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^e 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 staff of the Direction des enquêtes sur les divulgations en matière d'intégrité publique:

1080, côte du Beaver Hall
10^e étage, bureau 1000
Montréal (Québec) H2Z 5Y4

3.2 Assistance and information

Anyone may contact the Québec Ombudsman for information about the possibility of disclosing a wrongdoing relating to a public body, about measures to protect against

reprisal, for advice about the procedure to follow or to access legal advice. The Québec Ombudsman lends assistance to anyone who requires it, including especially to the officers responsible for dealing with disclosures in public bodies, for any information or for any steps regarding these matters.

When a 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*, the Québec Ombudsman refers employees to the **Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST), at 1-844-838-0808.**

In all cases, someone who believes he or she has suffered reprisal may contact the Québec Ombudsman for information about available recourse.

3.3 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, who cooperates in an audit or investigation, or who feels he or she has suffered reprisal for having, in good faith, made a disclosure or cooperated in such audit or investigation.

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](#) it releases publicly.

- ▶ Requesting access to legal advice through the Québec Ombudsman

When a 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*, those who believe they have suffered reprisal may approach the CNESST. In such cases, they are not eligible for access to legal advice through the Québec Ombudsman, but may be represented by a CNESST attorney or their union, depending on the situation.

4 Reprisal complaint formulation, reception, admissibility and follow-up

4.1 Anonymity and confidentiality

The Québec Ombudsman attributes great importance to confidentiality and sees to protecting the identity of those making a disclosure, witnesses and alleged wrongdoers to the extent possible. The Québec Ombudsman also ensures the confidentiality of the information obtained and created as part of an audit or investigation concerning a complaint. The *Act to facilitate the disclosure of wrongdoings relating to public bodies* and the *Public Protector Act* protect the confidentiality of the information obtained and created by the Québec Ombudsman in the exercise of its functions of office.

However, given that a **reprisal** complaint involves a process that directly concerns the person who is seeking redress for harm he or she allegedly suffered, the complaint **cannot be made**

anonymously, and the Québec Ombudsman **cannot guarantee that the complainant's identity will be protected**.

Furthermore, if legal proceedings are undertaken against the person who allegedly sought reprisal, the person who suffered reprisal must report the facts enabling the prosecutor to lay charges and is likely to be a trial witness. The confidentiality of the person's identity can therefore not be protected under these circumstances. Similarly, it will not be possible to guarantee the confidentiality of the information gathered during the investigation. The rules of law require that any evidence in support of a statement of offence must be communicated to the person concerned.

4.2 Making a reprisal complaint to the Québec Ombudsman

As soon as a person believes he or she has suffered reprisal, he or she must contact the Québec Ombudsman's branch mandated to investigate public integrity disclosures. Where applicable, he or she may directly contact the investigator who is handling the disclosure or is conducting the audit or investigation in which he or she cooperated.

4.2.1 In writing

Anyone may make a reprisal complaint by completing the [secure online form](https://divulgation.protecteurducitoyen.qc.ca/en) at 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 make a reprisal complaint in writing 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^e étage
Québec (Québec) G1R 3P4

4.2.2 By phone

Anyone may make a reprisal complaint by contacting the Québec Ombudsman by phone at **toll-free 1-800-463-5070** or at (418) 643-2688 in the Québec City area.

4.2.3 In person

Anyone may make a reprisal complaint by going to the office of the Direction des enquêtes sur les divulgations en matière d'intégrité publique at:

800, place D'Youville
18^e 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 staff of the Direction des enquêtes sur les divulgations en matière d'intégrité publique:

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

4.3 Content of the complaint

To the extent possible, a reprisal complaint must contain the information listed in the following paragraphs. It is not necessary to know all this information to make a disclosure, but it will help in processing it. Admissible reprisal complaints may undergo an audit during which the people concerned will be interviewed. The investigator meets with the person presumed to have suffered reprisal to take a written statement.

4.3.1 Information for contacting us

Given that a reprisal complaint involves a process that directly concerns the person who alleges to have suffered reprisal, that person's cooperation is crucial to prosecuting the person who sought reprisal. As a result, such a complaint cannot be made anonymously.

It is therefore important that complainants provide the Québec Ombudsman with all the contact information enabling it to reach them.

4.3.2 Information about the reprisal sought or the threats made

It is advisable to provide as much information as possible about the alleged reprisals or threats. This includes in particular:

- ▶ The identity of the person who sought reprisal or made threats:
 - ▷ Full name;
 - ▷ Professional title or position;
 - ▷ Name of the public body where the person occupied this position;
 - ▷ Address of the public body;
 - ▷ Contact information for this person.
- ▶ The details concerning reprisal:
 - ▷ Describe the events;
 - ▷ Specify the reprisal sought or the threats made;
 - ▷ Explain how reprisal is connected to the disclosure of a wrongdoing to an officer responsible for dealing with disclosures, to the Ministère de la Famille or to the Québec Ombudsman, or its connection to cooperation in an audit or investigation stemming from a disclosure;
 - ▷ Explain the adverse effects or harmful consequences of reprisal.

4.3.3 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 alleged reprisal.

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

4.4 First contact

Depending on the means of communication used by the complainant, 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 complaint and explain its processing.

In cases in which the complaint was made in writing or by voice message, an employee of the Québec Ombudsman will contact the complainant within two working days using the contact information indicated in the complaint.

In all cases in which the Québec Ombudsman has the contact information enabling it to reach the complainant confidentially, it sends the person an acknowledgement of receipt of the complaint within five working days of the first contact with him or her.

4.5 Admissibility of the complaint

The first step in processing a reprisal complaint is to determine whether it is admissible and is within the Québec Ombudsman's jurisdiction.

A reprisal complaint is admissible if it meets the following criteria:

- ▶ The complaint alleges that reprisal was sought or threats were made;
- ▶ The reprisal or threatening is connected to a **protected disclosure** pursuant to the Act or to an audit or investigation stemming from disclosure of a wrongdoing within the meaning of the *Act to facilitate the disclosure of wrongdoings relating to public bodies*.

Generally, the Québec Ombudsman processes reprisal complaints as promptly as possible.

Given the term of limitation for criminal proceedings, the complaint must be filed **no later than one year** after the date at which reprisal or threatening occurred.

However, the Québec Ombudsman may consider reprisal complaints that predate this if there is serious cause to do so. Nevertheless, in these cases, no criminal proceedings may be undertaken. The Québec Ombudsman cannot process complaints about reprisal that occurred before May 1, 2017, the date at which the *Act to facilitate the disclosure of wrongdoings relating to public bodies* came into force.

In all cases, the Québec Ombudsman may cease examining a complaint if too much time has elapsed for an audit or investigation to be effective.

The Québec Ombudsman also ceases examining a complaint if the subject is not within its jurisdiction.

The Québec Ombudsman does its utmost to complete the analysis of complaint admissibility within 15 working days of the first contact with the complainant.

When the Québec Ombudsman refuses to examine a complaint deemed inadmissible or ceases its examination for one of the above reasons, it sends the complainant a notice explaining why.

4.6 Follow-up to the complainant

The Québec Ombudsman notifies the complainant if processing must continue beyond 60 days after the date on which the complaint was received.

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

4.7 Referral to the CNESST in matters of prohibited practices

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 presumed to be reprisal.

Such measures carried out in connection with disclosure of wrongdoing or cooperation in an audit or investigation stemming from such disclosure may constitute a prohibited practice within the meaning of section 122 of the *Act respecting labour standards*.³

The Québec Ombudsman refers to the CNESST those who believe they have suffered reprisal that may constitute a prohibited practice within the meaning of section 122 of the *Act respecting labour standards* and terminates examination of the complaint.

Any employee may file a **complaint for a prohibited practice to the CNESST**, including senior managerial personnel and trainees.⁴ The complaint must be filed with the CNESST within **45 days** of the alleged reprisal that may be a prohibited practice.

A unionized employee who believes he or she has suffered reprisal may make a complaint to the CNESST within **45 days**, but will not be represented by a CNESST attorney.⁵ The employee may also approach his or her union.

- ▶ Making a prohibited practice complaint to the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST)

When, after approaching the CNESST, a **person is informed that his or her complaint does not satisfy the recourse admissibility requirements provided for in section 122 of the *Act respecting***

³ Section 44 of the *Act to facilitate the disclosure of wrongdoings relating to public bodies* amends section 122 of the *Act respecting labour standards* by adding subparagraph 11, which has been in force since May 1, 2017.

⁴ Section 3.1 of the *Act respecting labour standards*.

⁵ Section 123.5 of the *Act respecting labour standards*.

labour standards, he or she may turn to the Québec Ombudsman, which will see that the appropriate audits or investigations are carried out, within the limits of its jurisdiction.

5 Reprisal complaint processing by the Québec Ombudsman

5.1 Prioritization

The priority given to an audit or investigation of a reprisal complaint is based on the following factors in particular:

- ▶ the gravity of reprisal;
- ▶ the seriousness of the threats of reprisal made and their immanence;
- ▶ the consequences of reprisal for the complainant;
- ▶ the possible consequences for an audit or investigation stemming from a disclosure of wrongdoing;
- ▶ the term of limitation for criminal investigations.

5.2 Audits

When the Québec Ombudsman deems the complaint admissible, it conducts the audits it considers appropriate.

The Québec Ombudsman does its utmost to complete the required audits within 60 days of determining the complaint's admissibility.

The Québec Ombudsman may interrupt or terminate processing of a complaint when it deems it inadmissible or it is not within its jurisdiction. In such case, it sends a notice, with reasons, to the complainant.

At the end of the audits, the Québec Ombudsman decides whether an investigation of the reprisal sought or the threats made is called for. The decision to launch an investigation is based on an analysis of the information available at that point and on the cooperation of the presumed victim.

If, when the auditing is completed, Québec Ombudsman ceases processing the complaint, where applicable, it reports its conclusions 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.

The Québec Ombudsman notifies the complainant in writing that processing of the disclosure has been completed. It may also, if it deems it appropriate, inform him or her of the ensuing follow-up.

5.3 Investigations

The Québec Ombudsman may, further to the audit carried out regarding a complaint from a citizen, decide to conduct an investigation into the reprisal or threats against the complainant,

for having, in good faith, made a disclosure protected under the Act or cooperated in an audit or investigation stemming from a disclosure.

For conducting a reprisal investigation, the Québec Ombudsman uses all legal means at its disposal to obtain documents and interview anyone with information it deems necessary for the investigation.

Given that Québec Ombudsman's reprisal investigation may lead to a criminal prosecution, it ensures that the investigation is conducted in keeping with the constitutional rights of the person who allegedly sought reprisal. The investigators therefore caution them before asking questions.

The Québec Ombudsman does its utmost to complete the investigation within six months of deciding to investigate.

The Québec Ombudsman may interrupt or terminate the investigation of a complaint if it deems the complaint inadmissible or if it is not within its jurisdiction. In such case, it sends a notice, with reasons, to the complainant.

Note that the Québec Ombudsman may decide to undertake a criminal investigation regarding employment-related reprisal alongside recourse sought with the CNESST.

5.3.1 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.

5.3.2 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 document they are required to provide or refuses to make it available, or conceals or destroys any 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.

5.3.3 Rights of the person who allegedly sought reprisal

Within the framework of a reprisal investigation, the person who allegedly sought reprisal enjoys protection guaranteed under the charters of rights and freedoms, notably those against self-incrimination and unreasonable search.

The Québec Ombudsman contacts those who allegedly sought reprisal, cautions them and gives them the opportunity to present their version of the events, either during a face-to-face interview or through any appropriate means of communication.

The Québec Ombudsman uses all legal means at its disposal to obtain documents and interview anyone with information it deems necessary for the investigation.

5.3.4 End of the investigation

At the end of the investigation, the Québec Ombudsman submits the investigation file to the Director of Criminal and Penal Prosecution (DPCP), which determines whether there is sufficient evidence to undertake prosecution and evaluates the advisability of authorizing the presentation of a statement of offence based on section 33 of the *Act to facilitate the disclosure of wrongdoings relating to public bodies*, or on any other relevant provision prohibiting reprisal.

In cases in which the file is not forwarded to the DPCP or the DPCP does not authorize prosecution, the Québec Ombudsman reports its conclusions 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. It may make the recommendations it deems appropriate.

The Québec Ombudsman notifies the complainant that processing of the complaint is completed. It also notifies him or her of whether or not criminal prosecution has been authorized. If no prosecution is undertaken, it may also, if it deems it appropriate, inform him or her of the ensuing follow-up.

At the end of the investigation, the Québec Ombudsman also notifies the person who allegedly sought reprisal of its conclusions when no prosecution is authorized.

In the case of a reprisal complaint concerning a childcare centre, subsidized day care 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.

When no prosecution is undertaken but the Québec Ombudsman nonetheless concludes at the end of the investigation and based on the preponderance of evidence, that reprisal was sought or threats were made, it sends its draft conclusions for comment to the people concerned by the investigation. These comments must be sent to the Québec Ombudsman within the deadline it determines.

5.4 Recommendations and follow-up

At the end of the 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 day care 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.

6 Appendix I: the Québec Ombudsman's target wait times for processing reprisal complaints

STAGE	TARGET WAIT TIME
First contact with the complainant	Within 2 working days of receiving the complaint
Written acknowledgement of receipt	Within 5 working days of the first contact with the complainant
Decision as to the complaint's admissibility	Within 15 working days of the first contact with the complainant
Audits and decision to investigate the complaint	Within 60 days of the admissibility decision
End of the investigation	Within 6 months of the decision to investigate