



LE PROTECTEUR DU CITOYEN

Assemblée nationale
Québec

Justice

Équité

Respect

Impartialité

Transparence

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

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

May 2017

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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, inspection or investigation stemming from 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*.

Access to legal advice through the Québec Ombudsman consists of financial assistance used to provide reimbursement for a legal consultation.

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 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*;

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 to be reimbursed for assistance unduly received.

3 Eligibility requirements

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

- ▶ discloses or wishes to disclose a wrongdoing to the Québec Ombudsman, to an officer responsible for dealing with disclosures or to the Ministère de la Famille;
- ▶ cooperates in an audit, inspection or investigation by the Québec Ombudsman, an officer responsible for dealing with disclosures, or the Ministère de la Famille, including the alleged wrongdoer;
- ▶ believes that he or she has suffered reprisal for having, in good faith, made a disclosure or cooperated in such audit or investigation, unless reprisal may constitute a prohibited practice within the meaning of subparagraph 11 of the first paragraph of section 122 of the *Act respecting labour standards*.

Financial assistance is granted for access to legal advice solely in connection with the disclosure or cooperation in an audit or investigation conducted pursuant to the *Act to facilitate the disclosure of wrongdoings relating to public bodies* or to provisions of Chapter VII.2 of the *Educational Childcare Act*, and must not be used for other purposes;

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 made or intended;
- ▶ the person's degree of participation in an audit, inspection or investigation stemming from 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* or 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.

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

Generally, the Québec Ombudsman authorizes financial assistance for a total of three hours of legal counsel, at a reasonable hourly rate. However, the Québec Ombudsman may, at its discretion, 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

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

By email:

dedip.PC@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 working 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 him or her the documents or forms required for issuing payment to the legal counsel retained.