

## **CONSEIL DE LA JUSTICE ADMINISTRATIVE**

### **RULES GOVERNING COMPLAINTS PROCESSING**

**The purpose of the rules governing complaints processing is to outline the ways in which the Conseil de la justice administrative (the Council) receives and investigates the complaints referred to it.**

**The first version of the rules was adopted by the Council at its May 4, 2000 sitting, and the rules were amended on January 30, 2003.**

**These rules were adopted at the June 21, 2006 sitting of the Council and amended on June 13, 2007.**

## **RULES GOVERNING COMPLAINTS PROCESSING**

### **PRELIMINARY PROVISIONS**

#### **1. OBJECT**

The object of these rules is to ensure the diligent and careful processing of complaints while respecting the basic rights of the persons liable to be affected by the decision of the Council or of one of its committees.

#### **2. APPLICATION**

These rules apply to the processing of complaints referred to the Council. The Council or one of its committees may decide to waive these rules in the interest of justice or for the smooth management of the Council.

### **SECTION I**

#### **RECEIPT OF WRITTEN COMPLAINT**

#### **3. CREATION OF A FILE**

A file is created for each complaint brought against a member of the Tribunal administratif du Québec, a member of the Commission des lésions professionnelles, a commissioner of the Régie du logement or a commissioner of the Commission des relations du travail.

When the complaint is brought against several people at once, a file is created for each of them.

#### **4. ASSISTANCE**

Council staff members help complainants formulate their complaint, especially by providing useful information and relevant documentation.

#### **5. INCOMPLETE COMPLAINT**

If necessary, the Council can ask the complainant to provide, in writing, any additional information necessary to carry on the complaints process.

#### **6. ACKNOWLEDGEMENT OF RECEIPT**

An acknowledgement of the complaint is forwarded to the complainant, along with a copy of the *Rules governing complaints processing*.

**7. COPY OF THE COMPLAINT**

Copies of the complaint and of the acknowledgement of receipt sent to the complainant are forwarded to the person who is the subject of the complaint. The same applies to all secondary documents received subsequently.

The Council notifies the person who is the subject of the complaint that he or she can forward written observations to the Council and produce the documents he or she considers useful.

However, when a complainant's file has been taken under advisement by the person who is the subject of the complaint, the latter is not notified of the complaint brought against him or her so long as the file is under advisement, unless the Admissibility of Complaints Committee has decided otherwise.

**8. FILE PREPARED FOR THE COURT**

The documents that are available and useful in determining the admissibility of a complaint are requested. These documents may include, especially when the matter at issue concerns behaviour at a hearing, copies of the court record, of the sound recording of the hearing and of the decision rendered.

**SECTION II**

**EXAMINATION OF THE ADMISSIBILITY OF A COMPLAINT**

**9. FORMING OF A ADMISSIBILITY OF COMPLAINTS COMMITTEE**

The Council forms one or more committees to consider the admissibility of complaints, appoint members to this committee and their alternates and also appoint the committee chairperson.

**10. APPOINTMENT OF A ADMISSIBILITY OF COMPLAINTS COMMITTEE**

The members who sit on a Admissibility of Complaints Committee are selected by alternation of Council members.

**11. COMPLAINT ON THE AGENDA**

The complaint is placed on the agenda of the next Admissibility of Complaints Committee.

The committee keep the minutes of each of their hearings.

**12. IN CAMERA**

Admissibility of Complaints Committee hearings are held in camera.

### **13. INVESTIGATION OF THE COMPLAINT**

An Admissibility of Complaints Committee can appoint one of its members to:

- 1° request explanations from the complainant or from the person who is the subject of the complaint;
- 2° request from any person information which the Committee deems necessary.

### **14. COMMITTEE DECISION**

A Admissibility of Complaints Committee makes a decision to the majority of its members, and this decision is signed by the Council secretary or the committee chairperson.

In the event of an equality of votes, the committee chairperson has the deciding vote.

### **15. COMPLAINT DISMISSED**

When the complaint is dismissed for the purpose of section 185 of the *Act respecting administrative justice*, a Admissibility of Complaints Committee makes a decision with reasons therefor and forwards it to the complainant, to the person who is the subject of the complaint and to the Council.

Decisions made by a Committee are filed at the next sitting of the Council, which acknowledges the decisions.

### **16. ADMISSIBILITY OF COMPLAINTS**

When a Admissibility of Complaints Committee deems the complaint admissible, it makes a decision outlining the allegations against the person who is the subject of the complaint and the violation referred to in the complaint.

Admissibility of Complaints Committee decisions are filed at the next Council sitting.

The decision is communicated in writing to the complainant, to the person who is the subject of the complaint and to the Minister. A copy of the complaint is also forwarded to the Minister.

When circumstances permit, a committee can offer an alternative means of complaint resolution to the complainant, as well as to the person who is the subject of the complaint.

### **17. APPOINTMENT OF AN INQUIRY COMMITTEE**

When the complaint has been found admissible, the Council forms an Inquiry Committee, and appoints its members and the committee's chairperson.

The Council may designate alternate members to be part of the Inquiry Committee.

This decision is communicated in writing to the complainant, to the person who is the subject of the complaint and to the Minister.

## **18. APPOINTMENT REFUSAL**

A member appointed to the Inquiry Committee from lists drawn up by the chairperson of each agency, can refuse this appointment. The member's refusal is communicated in writing.

The alternate members are called in the order already indicated by the Council. The Council forwards a document confirming the appointment to the person who has accepted it.

## **SECTION III**

### **EVIDENCE AND PROCEDURE BEFORE THE INQUIRY COMMITTEE**

## **19. SUSPENSION DURING INQUIRY**

When the Council requests the advice of the Inquiry Committee on the advisability of suspending the person who is the subject of the complaint for the period of the inquiry, the provisions of this section apply, with the necessary adjustments.

## **20. ATTORNEY APPOINTED**

The Council can retain counsel to assist the committee in conducting its inquiry.

## **21. COURT APPEARANCE**

Counsel for the person who is the subject of the complaint, for the complainant and for the Minister, as the case may be, must appear in writing. From the counsels' appearance in court, all communications are forwarded to them.

## **22. HEARING DATE**

The date of the Inquiry Committee hearing is set within a reasonable time.

## **23. PLACE OF HEARING**

When the complaint concerns a breach having allegedly occurred during a hearing, the Inquiry Committee summons the persons concerned in the city where the hearing was held. In other cases, the persons concerned are summoned in the city where the person who is the subject of the complaint has ties. The Inquiry Committee chairperson may, for cause, decide that the Inquiry Committee hearing will be held in another city.

The Inquiry Committee hearing may not be held in the offices of the tribunal to which the person who is the subject of the complaint belongs.

## **24. NOTICE OF MEETING**

The notice of meeting is signed by the Inquiry Committee chairperson. He or she indicates the subject-matter of the notice, and the place, date and time of the hearing.

Barring an emergency, the notice of meeting is forwarded within a reasonable time prior to the Inquiry Committee hearing. It is sent to the person who is the subject of the complaint and to the complainant, even if they are represented, and to the designated counsel.

A copy of the notice of meeting is forwarded to the persons and groups that supported the complaint.

A notice of hearing is forwarded to the Minister concerned.

## **25. DISCLOSURE**

The Inquiry Committee discloses the evidence, within a reasonable time, to the counsel of the person who is the subject of the complaint or to the person if the latter is not represented, to allow for a full answer and defence with due regard for the person's fundamental rights.

## **26. REQUEST FOR POSTPONEMENT**

Requests for postponement are decided by the Inquiry Committee chairperson or, in the absence of the chairperson, by another member of the Inquiry Committee appointed by the chairperson.

## **27. APPLICATIONS**

The documents or applications submitted to the Inquiry Committee are forwarded to the Council seat. An employee ensures its administrative processing, i.e. the creation, transmission of an acknowledgement of receipt, sending of a copy to the persons involved, filing in the Council record and transmission of a copy to the members of the Inquiry Committee.

However, in the case of special requests or applications incidental to the complaint, upon receiving these, the Inquiry Committee chairperson decides how they should be processed.

## **28. SOUND RECORDINGS OF HEARINGS**

Hearing proceedings are collected by means of sound recordings, shorthand or any other means deemed appropriate by the Inquiry Committee.

A party may also provide for it at its own expense if this is authorized by the Inquiry Committee and under the terms and conditions determined by the committee.

If a person requests a transcript of the proceedings, he or she must provide free copies of the transcript to members of the Inquiry Committee and to the designated counsel.

## **29. HEARING**

Inquiry Committee hearings are public unless the hearing is ordered held in camera to preserve good order.

## **30. PRESIDING MEMBER**

The Inquiry Committee chairperson presides the hearing and ensures its proper conduct.

### **31. EVIDENCE AND PROCEDURE**

The law provides that the Inquiry Committee is master of the evidence and procedure. The committee automatically rejects any evidence obtained under conditions likely to undermine fundamental rights and freedoms and to bring the administration of justice into disrepute.

The Inquiry Committee may, by its own motion or on demand, forbid or restrict the disclosure, publication or dissemination of the information or documents it indicates, when it is necessary to preserve public order, or when their confidential nature requires it, to ensure the good administration of justice.

### **32. SUMMONS**

The Inquiry Committee may, by its own motion or on demand, summon a person to testify or produce a document at the Inquiry Committee hearing. The summons is issued by one of the members of the Inquiry Committee.

The notification, summons and payment of related costs fall under the responsibility of the person requesting the presence of the witness.

The order for summons must be issued at least five clear days before the date of hearing. This period can be reduced by decision of a member of the Inquiry Committee, where appropriate under the circumstances. This committee member mentions the fact on the summons.

### **33. FILING OF DOCUMENTS AT HEARING**

A person who files a new document at the Inquiry Committee hearing must give a copy of this document to the following persons:

- 1° the members of the Inquiry Committee;
- 2° the complainant or his or her counsel if this person is represented;
- 3° the person who is the subject of the complaint or his or her counsel, if this person is represented;
- 4° the designated counsel, where applicable; and
- 5° the Minister or his counsel, where applicable.

## **SECTION IV INQUIRY REPORT AND RECOMMENDATION**

### **34. INQUIRY REPORT**

Within a three-month period from the time the matter is taken under advisement, the Inquiry Committee draws up its investigation report and conclusions with reasons therefor, and its recommendation regarding the penalty, if any. The chairperson forwards the report, conclusions and recommendations to the Council.

The Council secretary places the filing of the Inquiry Committee report on the next Council hearing's agenda.

At the Council sitting, the Inquiry Committee chairperson submits the report, conclusions and recommendations of the Inquiry Committee, if any.

**35. RECEIPT OF THE REPORT**

The Council receives the report and acknowledges it.

When the Inquiry Committee has deemed the complaint well-founded, the Council studies the Inquiry Committee's recommendation regarding the penalty and discusses the matter, if necessary. The Inquiry Committee member who is not a Council member participates in the Council's deliberations, if necessary

**36. PENALTY**

If necessary, the Council will either issue a reprimand to the person who is the subject of the complaint and inform the complainant and the Minister of the fact, or recommend to the Minister that he or she be suspended or removed from office.

**37. FORWARDING OF INQUIRY REPORT**

The Council forwards copies of the inquiry report and of the committee's conclusions to the person who is the subject of the complaint, to the complainant, to the Minister concerned and to the counsels.

The Council notifies the person who is the subject of the complaint, the complainant and the Minister, as well as their counsels, of its conclusions regarding the penalty it has determined.

The report is made public, except where there is a no-publication order.

ADOPTED BY THE COUNCIL AT ITS JUNE 21, 2006 SITTING AND AMENDED ON JUNE 13, 2007.