



REGISTRAIRE DES ENTREPRISES

Administrative Recourse Offered
by the Registraire des Entreprises

This publication is provided for information purposes only. It does not constitute a legal interpretation of Québec legislation.

ISBN 978-2-550-86897-2 (PDF)

CONTENTS

Laws that provide for administrative recourse	4
Situations that justify a request for administrative recourse	4
1. Cancellation of an entry or of the deposit in the register of a declaration, document or notice	4
2. Correction or deletion of inaccurate information in the register	5
3. Request for change – Name other than the name of the legal person governed by the BCA or Part III of the QCA that is used in Québec	6
4. Request for change – Name of a legal person governed by the BCA	7
5. Request for change – Name of a legal person governed by Part III of the QCA	9
Submitting a request for administrative recourse	10
Fees	11
Sending a request	11
Processing a request for administrative recourse	11
Decision	11
For more information	11

ADMINISTRATIVE RECOURSE OFFERED BY THE REGISTRAIRE DES ENTREPRISES

This publication provides information on the administrative recourse offered by the Registraire des entreprises. Essentially, any interested person may submit a request to have the Registraire:

- order a business to change or stop using a name;
- cancel an entry or the deposit in the register of a declaration; or
- correct or delete inaccurate information in the register.

The publication specifies under which law a request for administrative recourse may be made and gives the procedure for filing such a request.

LAWS THAT PROVIDE FOR ADMINISTRATIVE RECOURSE

The following Québec statutes provide for administrative recourse:

- *Act respecting the legal publicity of enterprises* (ss. 132, 133, 134) [hereinafter "ALPE"]
- *Business Corporations Act* (s. 25) [hereinafter "BCA"]
- *Companies Act* (s. 221.1) [hereinafter "QCA"]

The information in this publication does not constitute a legal interpretation of legislation governing administrative recourse. If you are uncertain, consult a legal adviser.

SITUATIONS THAT JUSTIFY A REQUEST FOR ADMINISTRATIVE RECOURSE

The following situations justify a request for administrative recourse:

1. **Cancellation of an entry or of the deposit in the register of a declaration, document or notice**
2. **Correction or deletion of inaccurate information in the register**
3. **Request for change – Name other than the name of the legal person governed by the BCA or Part III of the QCA that is used in Québec**
4. **Request for change – Name of a legal person governed by the BCA**
5. **Request for change – Name of a legal person governed by Part III of the QCA**

Note: The Registraire will process a request on receiving payment of the applicable fee. Consult the fee chart at registreentreprises.gouv.qc.ca.

-
1. **Cancellation of an entry or of the deposit in the register of a declaration, document or notice**
-

Under **section 132** of the ALPE, an interested person may request that the Registraire cancel an entry or the deposit in the register of a declaration or certain other documents or notices filed pursuant to the ALPE, the *Civil Code of Québec* or the BCA, if the declaration, document or notice that was the basis for the entry or deposit was filed without right.

Declarations, documents and notices with regard to which a request may be filed under section 132 of the ALPE

- Any declaration filed under the ALPE.
- A document transferred by another government department or body.
- A notice of liquidation of a legal person governed by the BCA.
- A notice of dissolution, a notice of appointment of a liquidator or a notice of closure of a general partnership, limited partnership or legal person governed by the *Civil Code of Québec*.

Interested person and examples of cases in which a request is justified under section 132 of the ALPE

• An enterprise or its authorized representative

An enterprise or its authorized representative may make a request for administrative recourse to have an entry in the enterprise register that is the result of a non-compliant procedure cancelled. Such a request may also be made to have the deposit of a declaration or notice filed by mistake or by an unauthorized person cancelled.

Examples of cases

- A declaration was deposited in the register by a former director or partner that was no longer authorized to act on behalf of the enterprise.
- A person attempted to constitute a legal person governed by the BCA and deposited a declaration of registration instead of the articles of constitution.
- A representative mistakenly deposited a declaration in another enterprise's file.
- A person cancelled an entry and registered a person as a director even though that person was not elected in accordance with the law.

• Other interested person

In most cases, an interested person is a person whose name and address are in the register and who is listed as a director, shareholder, partner or officer of an enterprise without the person's consent.

Examples of cases

- A person discovers that his or her name is listed as a director, officer or shareholder of a business corporation without that person's consent.
- A person discovers that his or her name is listed as a partner of a partnership without that person's consent.
- A person discovers that someone has used his or her identity to register a business without the person's consent (the person's identity was stolen and the person's name was fraudulently used by someone else).
- A person discovers that he or she deposited a declaration that should not have been published in the register.

Decision

A decision made by the Registraire comes into effect 30 days after the date of the decision, unless it is contested before the Administrative Tribunal of Québec pursuant to section 139 of the ALPE.

2. Correction or deletion of inaccurate information in the register

Under **section 133** of the ALPE, a person may request that the Registraire correct or delete information that is no longer accurate.

Interested person and examples of cases in which a request is justified under section 133 of the ALPE

Any interested person (**other than a person representing an enterprise**) may make a request.

Examples of cases

- The person resigned as a director but is still listed as such in the register.
- The person sold his or her shares in a business corporation but is still listed as a shareholder in the register.
- The person sold his or her interest in a partnership and is no longer a partner of that partnership but is still listed as such in the register.

Decision

A decision made by the Registraire comes into effect 30 days after the date of the decision, unless it is contested before the Administrative Tribunal of Québec pursuant to section 139 of the ALPE.

3. Request for change – Name other than the name of the legal person governed by the BCA or Part III of the QCA that is used in Québec

Under **section 134** of the ALPE, a person may request that the Registraire order an enterprise to replace or change the name it uses in carrying on its activities, provided the name is not the name under which the enterprise was constituted, or to cease using a name, if it is contrary to section 17 of the Act.

Note: This recourse **cannot be requested** with respect to the name of a natural person who is registered voluntarily under his or her first and last names.

Interested person and examples of cases in which a request is justified under section 134 of the ALPE

Any interested person may submit a request for administrative recourse.

Examples of cases

- A name is not in conformity with the *Charter of the French language*.
- A name includes an expression which the law reserves for another person or prohibits the enterprise from using.
- A name includes an expression that evokes an immoral, obscene or scandalous notion.
- A name incorrectly states the enterprise's legal form or fails to state its legal form when required by law, in accordance with the standards for the composition of names determined by regulation of the Government.
- A name falsely suggests that the enterprise is a non-profit group.
- A name falsely suggests that the enterprise is, or is related to, a public authority mentioned in the regulation of the Government.
- A name falsely suggests that the enterprise is related to another person, trust, partnership or group of persons, particularly in view of the criteria determined by regulation of the Government.
- A name is confusingly similar to a name used in Québec by another person, trust, partnership or group of persons, in view of the criteria determined by regulation of the Government.
- A name is misleading in any other manner.

Criteria determined by regulation of the Government

A name falsely suggests that an enterprise is related to another person, partnership or group if it suggests that the enterprise:

- controls or sponsors the other person, partnership or group;
- is controlled or sponsored by the other person, partnership or group;
- is affiliated with the other person, partnership or group; or
- carries on its activity with the support, approval or authorization of the other person, partnership or group.

In determining if a name falsely suggests that an enterprise is related to another person, partnership or group, or if it leads to confusion with a name used by that other person, partnership or group, the Registraire must take the following elements into account:

- the distinctiveness of the name, its elements, the visual or phonetic similarity and the similarity between the images conjured up by the name; and
- the way in which the name is used.

If the name is likely to suggest a relationship or lead to confusion with another name, the Registraire must take into account both the prominence of the name and the existence of competition or the likelihood of competition between the persons, partnerships or groups, with respect to:

- their objects or activities;
- the goods they produce or the services they offer, the quantity thereof or the means by which they are produced or offered; and
- the territories where they carry on their activities and the number of persons they serve.

Where, after analyzing the aforementioned criteria, the Registraire is of the opinion that a name falsely suggests that an enterprise is related to another partnership or group of persons, or that a name leads to confusion with a name used by that other person, partnership or group, the Registraire must take into account prior use of the name.

Decision

A decision made by the Registraire comes into effect 30 days after the date of the decision, unless it is contested before the Administrative Tribunal of Québec pursuant to section 139 of the ALPE.

4. Request for change – Name of a legal person governed by the BCA

Under **section 25** of the BCA, a person may request that the Registraire order a business corporation constituted under that Act to replace or change its name if the name is contrary to section 16 of the Act.

Interested person and examples of cases in which a request is justified under section 25 of the BCA

Any interested person may submit a request for administrative recourse.

Examples of cases

- A name is not in conformity with the *Charter of the French language*.
- A name includes an expression which the law reserves for another person or prohibits the business corporation from using.
- A name includes an expression that evokes an immoral, obscene or scandalous notion.
- A name incorrectly indicates the business corporation's legal form or fails to state its legal form when required by law.

- A name falsely suggests that the business corporation is a non-profit group.
- A name falsely suggests that the business corporation is, or is related to, a public authority determined by government regulation.
- A name falsely suggests that the business corporation is related to another person or group of persons, particularly in view of the criteria determined by government regulation.
- A name is identical to a name reserved for or used by another person or group of persons in Québec, particularly in view of the criteria determined by government regulation.
- A name is confusingly similar to a name reserved for or used by another person or group of persons in Québec, particularly in view of the criteria determined by government regulation.
- A name is misleading in any other manner.

Criteria determined by regulation of the Government

A name falsely suggests that a business corporation is related to another person, partnership or group if it suggests that the business corporation:

- controls or sponsors the other person, partnership or group;
- is controlled or sponsored by the other person, partnership or group;
- is affiliated with the other person, partnership or group; or
- carries on its activity with the support, approval or authorization of the other person, partnership or group.

In determining if a name falsely suggests that a business corporation is related to another person, partnership or group, or if it leads to confusion with a name used by that other person, partnership or group, the Registraire must take the following elements into account:

- the distinctiveness of the name, its elements, the visual or phonetic similarity and the similarity between the images conjured up by the name; and
- the way in which the name is used.

If the name is likely to suggest a relationship or lead to confusion with another name, the Registraire must take into account both the prominence of the name and the existence of competition or the likelihood of competition between the persons, partnerships or groups, with respect to:

- their objects or activities;
- the goods they produce or the services they offer, the quantity thereof or the means by which they are produced or offered; and
- the territories where they carry on their activities and the number of persons they serve.

Where, after analyzing the aforementioned criteria, the Registraire is of the opinion that a name falsely suggests that a business corporation is related to another partnership or group of persons, or that a name leads to confusion with a name used by that other person, partnership or group, the Registraire must take into account prior use of the name.

Decision

A decision made by the Registraire comes into effect 30 days after the date of the decision, unless it is contested before the Administrative Tribunal of Québec pursuant to section 485 of the BCA.

5. Request for change – Name of a legal person governed by Part III of the QCA

Under **section 221.1** of the QCA, a person may petition the Registraire to have a legal person constituted under Part III of the QCA replace or change a name that is not in conformity with section 9.1 of the Act.

Interested person and examples of cases in which a request is justified under section 221.1 of the QCA

Any interested person may submit a petition under section 221.1 of the QCA.

Examples of cases

- A name is not in conformity with the *Charter of the French language*.
- A name includes an expression which the law or the regulations reserve for another person or prohibit the legal person from using.
- A name includes an expression that evokes an immoral, obscene or offensive notion.
- A name incorrectly indicates the legal person's legal form or fails to state its legal form where so required by law.
- A name falsely suggests that the legal person is a non-profit group.
- A name falsely suggests that the legal person is, or is related to, a public authority mentioned in the regulation.
- A name falsely suggests that the legal person is related to another person, partnership or group, particularly in view of the criteria determined by government regulation.
- A name is identical to a name used by another person, partnership or group in Québec, particularly in view of the criteria determined by regulation.
- A name leads to confusion with a name used by another person, partnership or group in Québec, particularly in view of the criteria determined by regulation.
- A name is misleading in any other manner.

Criteria determined by regulation of the Government

A name falsely suggests that a legal person is related to another person, partnership or group if it suggests that the legal person:

- controls or sponsors the other person, partnership or group;
- is controlled or sponsored by the other person, partnership or group;
- is affiliated with the other person, partnership or group; or
- carries on its activity with the support, approval or authorization of the other person, partnership or group.

In determining if a name falsely suggests that a legal person is related to another person, partnership or group, or if it leads to confusion with a name used by that other person, partnership or group, the Registraire must take the following elements into account:

- the distinctiveness of the name, its elements, the visual or phonetic similarity and the similarity between the images conjured up by the name; and
- the way in which the name is used.

If the name is likely to suggest a relationship or lead to confusion with another name, the Registraire must take into account both the prominence of the name and the existence of competition or the likelihood of competition between the persons, partnerships or groups, with respect to:

- their objects or activities;
- the goods they produce or the services they offer, the quantity thereof or the means by which they are produced or offered; and
- the territories where they carry on their activities and the number of persons they serve.

Where, after analyzing the aforementioned criteria, the Registraire is of the opinion that a name falsely suggests that a legal person is related to another partnership or group of persons, or that a name leads to confusion with a name used by that other person, partnership or group, the Registraire must take into account prior use of the name.

Decision

A decision rendered by the Registraire pursuant to section 221.1 of the QCA is final and cannot be appealed, as Part III of the Act does not provide for a right of appeal.

SUBMITTING A REQUEST FOR ADMINISTRATIVE RECOURSE

You can file a request using the **Présenter une demande de recours administratif** online service at registreentreprises.gouv.qc.ca. The service is easy to use and provides instructions on how to prepare the request (for example, by indicating the information and documents you must provide). Note that the service is available in French only.

You can also file your request with the Registraire by email. If you file by email, make sure that you **also send all the original documents by mail** and enclose your **payment** of the fees payable. For our address, see the **Contact Us** page of our website.

In your request, you must specify the Québec enterprise number and name of each party, the reason for the request and the section of the act pursuant to which you are filing the request.

You must include with your request a copy of any document to which you refer. Such documentation may be a director's or partner's letter of resignation or even a share purchase contract.

If you are filing a request under **section 132** of the ALPE, you must state the reasons that justify the cancellation of an entry of information in the register or of the deposit of a declaration or a document transferred by another government department or body. In other words, you must describe the circumstances that lead you to the conclusion that a declaration or other document was filed without right or that an entry was made in the register without your consent.

If you are filing a request under **section 133** of the ALPE, you must state the reasons that justify the correction or deletion of information in the enterprise register. In other words, you must describe the circumstances that lead you to the conclusion that the information in the register is no longer accurate. Be sure to specify in the request the date on which the information became inaccurate.

Other document to be provided with the request for administrative recourse

You must submit a sworn declaration or solemn affirmation, signed by a commissioner for oaths, with your request. A commissioner for oaths is usually available at a courthouse, a notary's or lawyer's office or a city hall (the mayor, a council member, a clerk or the secretary-treasurer of any municipality will be able to help you), or at one of the two Services Québec offices (the one in Québec City and the one in Montréal) that provide services related to the

Registraire des entreprises. To find a commissioner for oaths in your area, go to the Ministère de la Justice website at assermentation.justice.gouv.qc.ca, and click the Search for a Commissioner for Oaths link.

Note: All paper requests must be signed by hand. A request for administrative recourse must concern one section of the law only. The Registraire de l'entreprise can, however, upon request or ex officio, group together a request made under section 134 with a request made under section 221.1 of the *Companies Act* (c. C-38) or under section 25 of the *Business Corporations Act* (c. S-31.1) under certain circumstances.

FEES

Fees apply to all requests for administrative recourse. For more information, refer to chart RE-101, *Tarifs et modalités de paiement*, which is available on our website at registreentreprises.gouv.qc.ca.

SENDING A REQUEST

Mail the original of the request to the following address:

Registraire des entreprises
Services Québec
Secteur des recours administratifs
C. P. 1364, succ. Terminus
Québec (Québec) G1K 9B3

PROCESSING A REQUEST FOR ADMINISTRATIVE RECOURSE

In all cases, the Registraire gives the parties involved (applicant and respondent) an opportunity to submit additional information that will help in making a decision, and to complete their case. The parties therefore have the opportunity to produce all relevant evidence and respond to the allegations of the opposing party in the prescribed time, and to exchange information and evidence until all relevant evidence has been filed.

The Registraire may convene an informal meeting with the parties, if deemed necessary. Such a meeting is intended to give the parties an opportunity to directly present their observations with regard to the evidence submitted. The parties may be accompanied by any interested persons. Evidence by witness is not admitted at the meeting. The meeting is the final step in the process before the Registraire makes a decision.

It should be mentioned that no further documentary evidence may be submitted to the Registraire once a meeting has been scheduled, or once a meeting has been proposed or a meeting invitation declined by the parties.

DECISION

Once the case is complete, the Registraire has six months to render its decision. The Registraire's decision is deposited in the enterprise register, and a copy is sent to the persons concerned. Please note that there is no priority service for requests for administrative recourse.

FOR MORE INFORMATION

Please contact us. You will find our contact information in the **Contact Us** section of our website at registreentreprises.gouv.qc.ca.

