

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 were modified on January 30, 2003.

New modifications to the rules were adopted at the June 21, 2006 sitting of the Council.

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 persons liable to be affected by the decision of the Council or 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 A 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 the complainant formulate his or her 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 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 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 Complaints Review 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, a copy 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 COMPLAINTS REVIEW 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 COMPLAINTS REVIEW COMMITTEE

The members who sit on a review committee are selected by alternation of Council members.

11. COMPLAINT ON THE AGENDA

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

Review committees keep the minutes of each of their hearings.

12. IN CAMERA

Complaints Review Committee hearings are held in camera.

13. INVESTIGATION OF THE COMPLAINT

A Review 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 Review Committee deems necessary.

14. COMMITTEE DECISION

A Review 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*, the Review 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 Review Committee are filed at the next sitting of the Council, which acknowledges the decisions.

16. ADMISSIBILITY OF COMPLAINTS

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

Decisions of a Review Committee are filed at the next Council sitting.

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

17. APPOINTMENT OF AN INQUIRY COMMITTEE

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

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

This decision is communicated in writing to the complainant, the person who is the subject of the complaint and 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 hearing date of the Inquiry Committee 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 this 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 chairman of the Inquiry Committee may, for cause, decide that the Inquiry Committee hearing will take place in another city.

The hearing of the Inquiry Committee cannot 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 chairperson of the Inquiry Committee. He or she indicates the subject-matter of the notice as well as 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 the latter are represented, as well as to the appointed counsel.

A copy of the notice of meeting is forwarded to persons and groups which 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 this person if he or she is not represented, to allow for 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 appointed 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 freedom and bring the administration of justice into disrepute.

The Inquiry Committee may, by its own motion or on request, forbid or restrict the disclosure, publication or dissemination of the information or documents it specifies if necessary to preserve public order, or if required by their confidential nature to ensure the good administration of justice.

32. SUMMONS

The Inquiry Committee may, by its own motion or on request, 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 are under the responsibility of the person who requests 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 in the circumstances. This committee member mentions this 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 appointed 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, the conclusions and the recommendations to the Council.

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

At the Council sitting, the Inquiry Committee chairperson submits the report, the conclusions and the 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 member of the Inquiry Committee 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 this person be suspended or removed from office.

37. FORWARDING OF THE INQUIRY REPORT

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

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

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

ADOPTED AT THE JUNE 21, 2006 SITTING OF THE COUNCIL.