

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.

A second version of the rules were adopted at the June 21, 2006 sitting of the Council.

A third version of the rules was adopted by the Council at its December 3, 2014 sitting and were modified on March 30, 2016 and June 13, 2017.

RULES GOVERNING COMPLAINTS PROCESSING

PRELIMINARY PROVISIONS

1. OBJECT

The object of these rules is to ensure the processing of complaints and, if applicable, the proper conduct of the inquiries in a diligent and careful manner, while respecting the basic rights of those who could be affected by the decision of the Council or of one of its committees.

2. APPLICATION

In the absence of provisions applicable to a particular case, the Council can make up for it with any procedure compliant with the law or its rules regarding the processing of a complaint.

SECTION I

RECEIPT OF A WRITTEN COMPLAINT

3. FILE CREATION

A file is created for each written complaint brought against a member of the Tribunal administratif du Québec, a member of the Tribunal administratif du travail and a commissioner or a special clerk of the Régie du logement.

4. ASSISTANCE

Council staff members lend assistance to the complainant if necessary and provide him or her with all 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 acknowledgment of receipt sent to the complainant are forwarded to the person who is the subject of the complaint. It is the same for all the 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 deems useful.

However, when a complainant's file has been adjourned to pursue the hearing later or taken under advisement by the person who is the subject of the complaint, this person is not notified of the complaint against him or her as long as the file is adjourned or under advisement, unless the Admissibility of Complaints Review Committee decides otherwise.

When the complaint is clearly unfounded, a copy of the complaint, with the decision dismissing it, is forwarded simultaneously to the person affected, whether or not the file has been taken under advisement.

8. PREPARING A FILE CASE THE COURT

The available documents useful in assessing the admissibility of the complaint can be requested. These may include, when the matter at issue concerns behaviour at the 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. FORMING AN ADMISSIBILITY OF COMPLAINTS REVIEW COMMITTEE

The selection of the members who will sit on the Admissibility of Complaints Review Committee is made by alternation of Council members.

11. COMPLAINT ON THE AGENDA

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

A review committee keeps the minutes of each of its 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^o 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. CLEARLY UNFOUNDED COMPLAINT

When the complaint is dismissed in pursuance of section 185 of the *Act respecting administrative justice*, the Admissibility of Complaints Review Committee makes a reasoned decision and forwards it to the complainant, the person who is the subject of the complaint, and the Council.

Decisions made by the Admissibility of Complaints Review Committee are filed at the next sitting of the Council, which takes note of the decisions.

16. ADMISSIBLE COMPLAINT

After a review committee has deemed the complaint admissible, it makes a decision specifying the allegations made against the person who is the subject of the complaint and the breach referred to in the complaint.

Review committee decisions are filed at the next sitting of the Council.

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 Minister, if the need arises.

17. FORMING AN INQUIRY COMMITTEE

When the complaint has been found admissible, the Council forms an inquiry committee and appoints the members and chairperson of the committee.

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, the president of the court in question, 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. CASE CONFERENCE

The members of the inquiry committee can summon to a case conference the complainant, the person who is the subject of the complaint and, if the need arises, the Minister.

The purpose of this case conference includes:

1. Defining the elements that will be discussed during the inquiry;
2. Becoming acquainted with the complainant's claims and, where applicable, obtaining clarification and further information;
3. Ensuring the exchange of all documentary evidence;
4. Planning the conduct of the evidence and the procedure during the hearing;
5. Examining the possibility that the person who is the subject of the complaint may admit certain facts;
6. Examining any other matter that could simplify or accelerate the conduct of the inquiry;
7. Specifying the schedule.

If the need arises, the case conference is recorded and minutes are taken. These minutes are signed by the inquiry committee chairperson.

23. HEARING DATE

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

24. 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.

25. NOTICE OF MEETING

The notice of meeting is signed by the chairperson of the inquiry committee or the chairperson of the Council. It indicates the subject-matter of the notice as well as the place, date and time of the case conference or hearing.

Barring an emergency, the notice of meeting is forwarded within a reasonable time prior to the case conference or the inquiry committee hearing. It is sent to the person who is the subject of the complaint, the Minister concerned and their respective counsels, if applicable.

26. 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.

27. 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.

28. APPLICATIONS

The documents or applications submitted to the inquiry committee are forwarded to the seat of the Council, where they are handled through the proper administrative process. However, in the case of special applications or requests incidental to the complaint, the Council Secretariat notifies the inquiry committee chairperson who ensures their proper processing

29. SOUND RECORDINGS OF HEARINGS

Hearing proceedings are collected by means of sound recording, shorthand or any other means the inquiry committee deems appropriate.

No other recording is allowed.

If a person requests a transcript of the proceedings and uses it during the inquiry, he or she must provide a copy of this transcript to the members of the inquiry committee and the appointed counsel free of charge.

30. HEARING

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

31. PRESIDING MEMBER

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

32. EVIDENCE AND PROCEDURE

Under the law, the inquiry committee is master of the evidence and procedure. It may, of its own initiative or on request, prohibit or restrict the disclosure, publication or dissemination of the information or documents it specifies.

33. SUMMONS

The inquiry committee may, of its own initiative 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 or by the Council chairperson. The person requesting the presence of the witness is responsible for the service, summons and payment of the related costs.

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 when circumstances so warrant. The reasons are then recorded on the order for summons.

34. FILING OF DOCUMENTS AT HEARING

A person who files a new document at the inquiry committee hearing must provide a copy to the members of the inquiry committee, to the person who is the subject of the complaint or his or her counsel when they are represented, and to the appointed counsel, if applicable.

The inquiry committee can make the document available to the complainant and to the Minister, if it deems it appropriate.

No document can be produced after the hearing except by prior authorization of the inquiry committee chairperson.

34.1 OBSERVATIONS FROM THE COMPLAINANT

At the end of its inquiry, the inquiry committee allows the complainant to submit his or her observations before taking the matter under advisement.

**SECTION IV
INQUIRY REPORT AND RECOMMENDATION**

35. 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.

36. RECEIPT OF THE REPORT

The Council receives and takes note of the report.

When the inquiry committee has deemed the complaint well-founded, the Council takes note of the recommendation of the inquiry committee regarding the penalty and considers the matter, if applicable. The member of the inquiry committee who is not a member of the Council takes part in the proceedings of the Council, if the need arises.

37. 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.

38. 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 13, 2017 SITTING OF THE COUNCIL.