



Publication and granting of access to inspection or investigation reports

QUÉBEC LOBBYISTS COMMISSIONER PRESENTATION

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PUBLICATION AND GRANTING OF ACCESS TO INSPECTION OR INVESTIGATION REPORTS

RESPONSIBILITY OF THE LOBBYISTS COMMISSIONER

The Lobbyists commissioner is responsible for monitoring and controlling the lobbying with public office holders

He holds powers of:

- Inspection
- Investigation

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DIFFERENCES BETWEEN INSPECTION AND INVESTIGATION

The objectives are not the same

- An inspection is to determine whether the legislative provisions or the provisions of Code of Conduct for Lobbyists are being complied with
- An investigation is to establish whether there was a breach of the Act or the Code

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DIFFERENCES BETWEEN INSPECTION AND INVESTIGATION

- inspectors: Lobbyists Commissioner's general authorization to act as an inspector
- investigators: Lobbyists Commissioner's specific authorization to conduct an investigation if there are reasonable grounds that there has been a breach of any provision of the Act or the Code

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INSPECTION: POWERS OF INSPECTORS

Inspectors may:

- enter, at any reasonable time, the establishment of a lobbyist or a public office holder
- require any information or document concerning the activities engaged in or the functions exercised by the lobbyist or the public office holder
- examine and take copies of documents

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INSPECTION: DUTIES OF INSPECTORS

Inspectors must:

- identify themselves
- produce, on request, a certificate of their authorization

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INSPECTION: PROTECTION GRANT TO INSPECTORS

Inspectors may not be prosecuted for anything done in good faith in the exercise of their functions

Except on a question of jurisdiction

- no remedy or extraordinary recourse may be pursued
- no injunction may be granted to impede an inspection

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INSPECTION: DUTIES OF THE PUBLIC OFFICE HOLDERS AND LOBBYISTS

Public office holders and lobbyists must:

- give access to documents required
- facilitate the examination of these documents
- help and assist inspectors in the execution of their functions

Note: Hinder the work of inspectors is liable to a fin of \$ 500 to \$ 5,000

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INSPECTION: INTERVENTIONS

Monitoring and inspection activities result from:

- situations highlighted in the news
- target groups identified in function of issues and risks
- verification of registered lobbyists (non-renewal or expiration of a mandate)
- complaints or denunciations (citizens, public office holders, lobbyists)

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TRANSITION FROM INSPECTION TO INVESTIGATION

When, in the course of a verification, inspectors have reasonable grounds to believe that a breach of the Act or the Code, they shall notify the Commissioner and stop inspection

After examination the grounds, the Commissioner may authorize the holding of an inquiry by the inspectors designated

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INVESTIGATION: POWERS OF THE INVESTIGATORS

Investigators have the powers and immunity conferred on commissioners appointed under the Act respecting public inquiry commissions

They may:

- use all lawful means to inquire into the matters referred to them for investigation
- require the attendance of any person whose evidence may be material to the subject of
- require and administer the oath from any person assigned before them
- order any person to bring before them such books, papers, deeds and writings as appear necessary for arriving at the truth

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INVESTIGATION: DUTIES OF INVESTIGATORS

Investigators must:

- identify themselves
- produce, on request, a certificate of their authorization

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INVESTIGATION: PROTECTION GRANT TO INVESTIGATORS

Inspectors may not be forced to testify or to produce a document obtained in exercise of their functions

Except on a question of jurisdiction

- no remedy or extraordinary recourse may be pursued
- no injunction may be granted to impede an inspection

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INVESTIGATION: DUTIES AND RIGHTS OF PUBLIC OFFICE HOLDERS AND LOBBYISTS

Duties:

- appear before investigators
- provide the informations required
- produce the document requested

Rights:

- right to be assisted by a lawyer
- right to an expense allowance (only if the distance is greater than 16 KM)

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INVESTIGATION: CONSEQUENCES OF FAILURE OR REFUSAL

Failure to appear

- a warrant of arrest

Refusal to be sworn or to testify

- contempt of court (fine of up to \$ 5,000)

Refusal to produce any document deemed necessary

- contempt of court (fine of up to \$ 5,000)

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INVESTIGATION: IMMUNITY OF THE PERSON FORCED TO TESTIFY

When a person is forced to testify or produce documents, his testimony and documents produced may not be used against this person (except for perjury or for the giving of contradictory evidence)

Note : According to the usual practice, the person is notified by the investigator of his right to remain silent and refuse to answer questions. If the person decides to respond, his testimony could be used against him

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INVESTIGATION: REPORT OF INVESTIGATORS

Investigators submit to the Commissioner an inquiry report which usually contains:

- the investigation's origin
- its scope, extent and sequence
- the facts and analysis, together with all relevant documents
- the conclusions and recommendations

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INFORMATION REGARDING AN INSPECTION AND INVESTIGATION

Lobbyists Commissioner:

- does not disclose the details of a case
- does not provide information contained in a document obtained during the inspection or investigation
- may confirm, on request, if an inspection or an investigation is ongoing or completed

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FOLLOWING OF AN INVESTIGATION

The Lobbyists Commissioner

- transmits to the Director of Criminal and Penal Prosecutions and Attorney General every investigation report in which he ascertains a breach of the Act or the Code
- does not comment a report submitted
- he may, if he deems appropriate, communicate the number of breaches, the number of people involved, the public institutions involved and the purpose of influence communications

Note: The report is not tabled to the National Assembly

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INFORMATION RELATED TO A STATEMENT OF OFFENSE

Following the communication of a statement of offense, the Lobbyists Commissioner may:

- confirm the service of the statement of offense
- indicate the name of the offense and the nature of the offense
- disclose the name and function of public office holders concerned

In the case of a plea of guilty or a conviction, the Commissioner may:

- confirm the plea or conviction
- Inform about the amount of the fine and costs

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ACCESS TO INSPECTION OR INVESTIGATION REPORT

A report is accessible to the public only if the disclosure is not likely:

- impede the progress of proceedings before a person or body carrying and adjudicative functions
- hamper a future or current investigation or an investigation that may be reopened
- reveal a method of investigation, a confidential source of information, a program or plan of action to prevent, detect or repress crime or statutory offenses
- cause a prejudice the person who is the source or the subject of the information.¹

¹ Loi sur l'accès aux documents des organismes publics et sur la protection des renseignements personnels, article 28.

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DISCIPLINARY MEASURES AND PENALTIES

- application cases : major or repeated breach
- loss of the right to engage in lobbying activities for a period up to 12 months
 - cancellation of all entries in the registry of lobbyists
 - prohibition to register in the registry of lobbyists
- fine of \$ 5 000 to \$ 25 000 if the lobbyist engages in activities during the prohibition period

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DISCIPLINARY MEASURE: MAJOR OR REAPETED BREACH

- **proceedings:**
 - prior notice of intent is given to the lobbyist informing him of the reasons therefore and the content of the breach
 - reasonable period is given to the lobbyist to present observations and produce documents
 - decision by the Commissioner to impose or not disciplinary measures
 - transmission of the decision to the lobbyist and, if measures imposed, to the registrar
- **decision is enforceable according to the terms and conditions stated**
- **appeal is possible to the Court of Quebec, but does not suspend the decision**

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PROPOSED LEGISLATIVE AMENDMENTS

Lobbyists Commissioner proposes the following legislative amendments:

- ability to make recommendations and to make them public:
- transmission to the National Assembly by the Commissioner a report concerning:
 - any breach of the Act, the Code or application notices
 - his recommendations
 - any comment it deems appropriate to make
- prior to transmission of a report, provide the possibility for a person to present his observations, the report shall state this