

Application for review / Application for examination of a disagreement

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INTRODUCTION

You have applied to a public body or an enterprise to request access to certain information or rectification of your personal information. You have received a refusal or obtained an unsatisfactory reason, or you have obtained no response. You may apply to the Commission d'accès à l'information to enforce your rights against such a refusal or lack of response.

APPLYING TO THE COMMISSION

Your recourse is to address an application to the Commission within 30 days after the public body or the enterprise refuses the request or after the time limit to respond to it expires.

THE COMMISSION D'ACCÈS À L'INFORMATION ACTS AS A TRIBUNAL

One of the Commission's mandates is to act as an administrative tribunal by ruling on the applications brought before it. This means that in most contested cases, the Commission will hear the representations and the evidence of the parties involved and will render a written decision that will settle the dispute.

MEDIATION

When the Commission receives an application, the parties may be called before the hearing to participate in a mediation process. In about 65% of the cases this allows a solution to be found without it being necessary to bring the case before the tribunal.

THE HEARING

Notice

Any application that necessitates a hearing before the Commission is inscribed on the roll. For this purpose, the clerk sets a hearing date and sends a notice of hearing to the parties concerned. This notice informs you of the date, time and place of the hearing, in particular. The parties receive the notice about six to eight weeks before the scheduled date of the hearing. An applicant's failure to appear on the specified date may result in dismissal of his application.

Postponement

Sometimes one of the parties has a major reason preventing him from appearing on the date set for the hearing before the Commission. To have a case postponed, a timely written request must be addressed to the President of the Commission, setting out the reasons that justify the request for postponement. When this request is granted, the clerk subsequently issues a new notice of hearing with a new hearing date. It should be noted that not all requests for postponement are accepted automatically.

Summoning witnesses

The parties to a case that must be heard by the Commission must ensure that all the witnesses they want to produce will be present on the scheduled date. In some cases, the witnesses the parties want to call will appear simply by asking them to do so. In other cases, in order to attend the hearing (a subpoena) is sent to the persons asked to testify. These subpoenas are issued and served by the Commission. It is therefore essential to notify the Commission in a timely manner of the names and addresses of the persons you want to summon to appear before the Commission as witnesses. It should be noted that the commissioners hearing the cases will issue the orders to appear before them and thus have the privilege of refusing to summon a witness when it is not clear that his testimony will be relevant. The parties therefore must only summon persons whose testimony really has direct relevance to the dispute to be decided.

Documents to bring

The parties must bring all the documents to which they wish to refer and which they intend to file in evidence or which are relevant to resolving the dispute submitted to the Commission. Public bodies and enterprises must bring the documents in dispute. The established practice is for public bodies and enterprises to submit the documents in dispute confidentially to the commissioner who hears the case, for the purposes of examination and resolution of the dispute.

Representation

Natural persons, as they choose, may act alone before the tribunal or be represented by a lawyer. Legal persons (particularly bodies, associations, companies and unions) are represented by a lawyer, in accordance with the *Bar Act*.

Hearing procedure

Since most of the applications heard by the Commission result from a refusal by the body or the enterprise to furnish documents or rectify information, it thus will be up to the body or enterprise to justify this refusal at the hearing. In more legal terms, they bear the burden of proof. For this purpose, they may produce witnesses, deposit documents and make representations.

According to the rules prevailing before all courts and tribunals, when one party presents a witness, the other party will have the right to cross-examine that witness. It is up to the commissioner hearing the case to rule on the relevance and admissibility of the various evidence, including the testimony. For the purposes of the hearing, parties and the persons attending the hearing must conduct themselves respectfully and be dressed appropriately. At the beginning of the hearing, the parties will have to identify themselves and, if they wish to testify, make a commitment, by solemn declaration, to tell the truth.

The parties, and specially the applicants, must bear in mind that the hearing only deals with the contents of the application and on the response provided by the body or the enterprise. The commissioner will not allow anyone to go into considerations that deviate from the application.

After presentation of the evidence of the body or the enterprise, the applicant will be called to present his evidence. After this, the parties may make representations concerning the entire case. At any step of this process, the commissioner may interrogate the parties on the questions of fact or law related to the case.

AGREEMENT

At any time after the filing of the application for review or the application for examination of a disagreement, the parties obviously have the possibility of agreeing to avoid a hearing before the tribunal.

If there is an agreement prior to the hearing, the parties are urged to inform the Commission diligently in writing, confirming their intention to close the case. This writing may take the form of a discontinuance on the part of the applicant or a declaration of out-of-court settlement signed by both parties.

When the Commission is thus given timely notice of settlement of a case, this allows it to try to inscribe other cases on the roll.

THE DECISION

The commissioner who hears a case is bound by law to render a written decision within three months of taking it under advisement. The parties thus cannot expect to obtain an oral decision on the day of the hearing. The decision is transmitted to the parties by the Secretary of the Commission.

When the decision orders the delivery of documents, it must be specified that it will be up to the body or the enterprise covered by the order to execute the decision, and not up to the Commission.

Once its decision is rendered, the Commission no longer has any power to intervene in the case, except to rectify a manifest error. It is possible to contest the decision rendered, because the Acts allow the possibility of an appeal to the Court of Québec.

Updated: August 2006