

Regulations and other Acts

Gouvernement du Québec

O.C. 410-2017, 26 April 2017

An Act respecting the process of negotiation of collective agreements and the settlement of disputes in the municipal sector (chapter R-8.3)

Procedure for the recognition of persons qualified to act in the settlement of disputes in the municipal sector

Procedure for the recognition of persons qualified to act in the settlement of disputes in the municipal sector

WHEREAS, under section 11 of the Act respecting the process of negotiation of collective agreements and the settlement of disputes in the municipal sector (chapter R-8.3), the persons qualified to be members of dispute settlement board for police officers and firefighters are recognized by the Government on the recommendation of a selection committee formed and acting in accordance with the conditions determined by the Government;

WHEREAS, under section 46 of the Act, the persons qualified to exercise the function of disputes arbitrators for employees other than police officers and firefighters are recognized by the Government on the recommendation of a selection committee formed and acting in accordance with the conditions determined by the Government;

WHEREAS, in accordance with sections 10, 11, 12 and 13 of the Regulations Act (chapter R-18.1), a draft Procedure for the recognition of persons qualified to act in the settlement of disputes in the municipal sector was published in Part 2 of the *Gazette officielle du Québec* of 7 April 2017 with a notice that it could be made by the Government on the expiry of 10 days following that publication;

WHEREAS, under section 18 of that Act, a regulation may come into force on the date of its publication in the *Gazette officielle du Québec* where the authority that has made it is of the opinion that the urgency of the situation requires it;

WHEREAS, under section 18 of that Act, the reason justifying such coming into force must be published with the regulation;

WHEREAS, in the Government's opinion, the urgency due to the following circumstances justifies the coming into force on the date of its publication in the *Gazette officielle du Québec*:

— the Act respecting the process of negotiation of collective agreements and the settlement of disputes in the municipal sector came into force on 2 November 2016. It provides for a very stringent process for negotiating collective agreements and settling disputes. In the case of police officers and firefighters, the process involves negotiation followed by mediation for a period of 60 days that can be extended by 60 days only once on a joint application by the parties, after which the dispute is mandatorily referred to a dispute settlement board, if the parties have not reached an agreement in the meantime;

— the process for the renewal of the collective agreements of the police officers and firefighters of three major cities is at the mediation stage. If the parties do not reach an agreement or do not agree on an application for extension of mediation, the dispute will have to be referred to a dispute settlement board in May 2017. In the absence of a list of persons qualified to be part of such a board, the Minister of Municipal Affairs and Land Occupancy will not be able to apply the Act respecting the process of negotiation of collective agreements and the settlement of disputes in the municipal sector;

WHEREAS it is expedient to make the Regulation with amendments;

IT IS ORDERED, therefore, on the recommendation of the Minister of Municipal Affairs and Land Occupancy:

THAT the Procedure for the recognition of persons qualified to act in the settlement of disputes in the municipal sector, attached to this Order in Council, be made by the Government.

JUAN ROBERTO IGLESIAS,
Clerk of the Conseil exécutif

Procedure for the recognition of persons qualified to act in the settlement of disputes in the municipal sector

An Act respecting the process of negotiation of collective agreements and the settlement of disputes in the municipal sector
(chapter R-8.3, ss. 11 and 46)

CHAPTER I INTRODUCTION

1. This procedure sets out the rules and conditions for the recognition of persons qualified to be members of a dispute settlement board for police officers and firefighters and of persons qualified to exercise the function of disputes arbitrator for other municipal employees.

2. Although the two processes are separate, nothing prevents persons from sitting on the selection committee described in Chapter I and on the committee described in Chapter II. A person may also be among the persons whose recognition is recommended for both selection committees.

CHAPTER II PROVISIONS APPLICABLE TO POLICE OFFICERS AND FIREFIGHTERS

DIVISION I ESTABLISHMENT OF THE COMMITTEE FOR THE SELECTION OF PERSONS QUALIFIED TO BE MEMBERS OF A DISPUTE SETTLEMENT BOARD

§1. Establishment of the selection committee

3. Where it is expedient to establish or update a list of persons recognized as qualified to be members of a dispute settlement board, the Minister of Municipal Affairs and Land Occupancy, hereinafter called the “Minister”, constitutes a selection committee formed and acting according to the conditions described in this Division.

§2. Composition of the selection committee

4. Subject to section 7, the selection committee is composed of 5 persons, including 3 having no links with the employer or the union, 1 person proposed by the associations that are most representative of the municipalities, listed in the list attached to Décret 199-2003 dated 19 February 2003, and 1 person proposed by the associations that are most representative of the police officers and firefighters listed in that list.

5. A person is considered to not have links with the employer or the union where, in the year preceding the person’s appointment, the person

(1) was not an employee, an officer or otherwise a representative of an employer, an employees’ association or a group of employers or of employees’ associations in the municipal sector; and

(2) has not exercised an employer or union function as part of labour relations in a sector other than the municipal sector.

Those persons may come from

(1) the Québec public service or government bodies, in particular the Ministère du Travail, de l’Emploi et de la Solidarité sociale and the Ministère de la Justice;

(2) the university community, in particular in the fields of labour relations, law, administration or economy; or

(3) research organizations in labour relations, remuneration or public administration, or organizations in the fields of economy, taxation, auditing, or in any other relevant field.

§3. Choice of members of the selection committee

6. The Ministère des Affaires municipales et de l’Occupation du territoire, hereinafter called “the department”, identifies the persons who meet the criteria listed in section 5, verifies their interest and availability, and makes a recommendation to the Minister.

7. The associations representing municipalities are invited to propose to the Minister a person who will participate in the selection committee. The associations representing the police officers and firefighters are also invited to propose a person.

If the Minister does not receive such proposals, the Minister may

(1) designate a person on the Minister’s own initiative; or

(2) abstain from designating a person.

8. The Minister appoints the members of the selection committee.

The Minister designates, among the 3 members meeting the criteria listed in section 5, the member who will chair the selection committee.

§4. Swearing-in of the members of the selection committee

9. Before taking office, the members of the selection committee take an oath by solemnly affirming the following: “I, (family name and first name), swear that I will not reveal or disclose, unless expressly authorized, anything that may come to my knowledge by reason of my office.”

That requirement is carried out before a person authorized to receive the oath and is recorded in writing.

§5. Remuneration and costs

10. The members of the selection committee holding employment in the Québec public service or a government body are not remunerated. The members appointed following a proposal from the associations representing municipalities or employees are not remunerated.

The other members are entitled to the fees provided for in the contract entered into between the Minister and each member.

Those fees are borne by the department.

11. The transportation costs and meal and accommodation expenses, and other travel costs of a member of a selection committee are reimbursed according to the Directive concernant les frais de déplacement des personnes engagées à honoraires par des organismes publics.

Those costs and expenses are borne by the department.

DIVISION II
CONDUCT OF THE SELECTION ACTIVITIES

§1. Invitation for applications

12. The invitation for applications is public and is held at the time determined by the Minister.

The Minister may, in addition, invite persons to apply where their name already appears on a previous list of persons recognized as qualified to exercise the function of disputes arbitrator in the municipal sector.

13. The information that must appear in the invitation for applications and the information required from the persons who wish to apply are listed in Schedule I.

14. The department carries out the invitation for applications, receives the applicants' files and gives the selection committee five copies of the list of applicants and of the documents received from the applicants.

§2. Work of the selection committee

15. The chair of the selection committee calls the sittings, coordinates the work, sees to the preparation of files and the convocation of eligible applicants.

16. A member of the selection committee whose impartiality could be questioned must withdraw with respect to an applicant, including in the following situations:

(1) the member is or was the applicant's spouse;

(2) the member is related to the applicant by birth, marriage or civil union, up to the degree of first cousin inclusively;

(3) the member is or was an employer, employee or partner of the applicant in the last 10 years; despite the foregoing, a member who is in the public service must withdraw with respect to an applicant only if the member is or was under the direct supervision of the applicant or the applicant's immediate superior.

If a committee member withdraws or is absent or unable to act, the decision is made by the other members.

17. The sittings of the selection committee require the presence of at least 3 members.

18. The decisions of the selection committee are made by a majority of the members. In the case of a tie vote, the chair has a casting vote.

19. The selection committee reviews the applicants' files and selects for interview the applicants who, in its opinion, best meet the eligibility requirements listed in Schedule II.

The selection committee informs the persons whose application has not been selected at this stage.

20. The eligible persons are called for an interview in order to select the applicants by applying the selection criteria listed in Schedule III.

The selection committee may, however, decide to select an applicant without an interview if the applicant meets with the committee's unanimous approval, in particular where the applicant's name already appears on a previous list of persons recognized as qualified to exercise the function of disputes arbitrator in the municipal sector.

21. The selection committee prepares the list of applicants it recommends for the purposes of recognition of the persons qualified to be members of a dispute settlement board.

The list contains the expertise recognized for each applicant with respect to the fields of competence required under the Act in matters of labour relations or in the municipal field or the field of economy, and identifies those who have the status of advocate required to chair a dispute settlement board.

§3. Directives and support to the selection committee

22. The Minister may give directives to the selection committee regarding the number of applicants to be recommended and the time period for sending its recommendations to the Minister.

23. The department provides logistics support and pays the costs related to the work of the selection committee, in particular the invitation for applications, the preparation and sending of the applicants' files, communication with the applicants, provision of premises for the meetings of the committee and for the interviews. It may also propose to the selection committee technical tools to assist the committee in its work.

§4. Recommendation of applicants to the Government

24. The chair of the selection committee sends to the Minister the list of applicants for whom the committee recommends the recognition as persons qualified to be members of a dispute settlement board.

25. The Minister submits the list to the Government for approval.

In addition to its publication in the *Gazette officielle du Québec*, the list of persons recognized as qualified to be members of a dispute settlement board is published on the department's website.

§5. List duration

26. The recognition, by the Government, of the persons qualified to be members of a dispute settlement board is valid for a period of 5 years as of the date of the recognition.

In the event that it is necessary to add persons to the list during its validity period, the procedure described in this Division applies again. The validity period of the recognition of persons added to the list in force ends at the same time as for the other persons already on the list.

CHAPTER III
PROVISIONS APPLICABLE TO EMPLOYEES
OTHER THAN POLICE OFFICERS
AND FIREFIGHTERS

DIVISION I
ESTABLISHMENT OF THE COMMITTEE FOR
THE SELECTION OF PERSONS QUALIFIED
TO EXERCISE THE FUNCTION OF DISPUTES
ARBITRATORS FOR OTHER EMPLOYEES

§1. Establishment of the selection committee

27. Where it is expedient to establish or update a list of persons recognized as qualified to exercise the function of disputes arbitrators for employees other than police officers and firefighters, the Minister of Municipal Affairs and Land Occupancy, hereinafter called "the Minister", constitutes a selection committee formed and acting in accordance with the conditions described in this Division.

§2. Composition of the selection committee

28. Subject to section 31, the selection committee is composed of 5 persons, including 3 having no links with the employer or the union, 1 person proposed by the associations that are most representative of the municipalities and another person proposed by the associations that are most representative of employees other than police officers and firefighters.

The associations that are most representative of the municipalities are

- (1) the Union des municipalités du Québec; and
- (2) the Fédération québécoise des municipalités locales et régionales (FQM).

The associations that are most representative of employees other than police officers and firefighters are the following:

- (1) the Fédération des travailleurs et travailleuses du Québec (FTQ);
- (2) the Canadian Union of Public Employees;
- (3) the Confédération des syndicats nationaux (C.S.N.);
- (4) the Fédération des employées et employés de services publics inc. (CSN);
- (5) the Fédération indépendante des syndicats autonomes (FISA);
- (6) the Centrale des syndicats démocratiques.

29. A person is considered to not have links with the employer or the union where, in the year preceding the person's appointment, the person

(1) was not an employee, an officer or otherwise a representative of an employer, an employees' association or a group of employers or of employees' associations in the municipal sector; and

(2) has not exercised an employer or union function as part of labour relations in a sector other than the municipal sector.

Those persons may come from

(1) the Québec public service or government bodies, in particular the Ministère du Travail, de l'Emploi et de la Solidarité sociale and the Ministère de la Justice;

(2) the university community, in particular in the fields of labour relations, law, administration or economy; or

(3) research organizations in labour relations, remuneration or public administration, or organizations in the fields of economy, auditing, or in any other relevant field.

§3. Choice of members of the selection committee

30. The department identifies the persons who meet the criteria listed in section 29, verifies their interest and availability, and makes a recommendation to the Minister.

31. The associations representing municipalities are invited to propose to the Minister a person who will participate in the selection committee. The associations representing employees other than police officers and firefighters are also invited to propose a person.

If the Minister does not receive such proposals, the Minister may

(1) designate a person on the Minister's own initiative; or

(2) abstain from designating a person.

32. The Minister appoints the members of the selection committee.

The Minister designates, among the 3 members meeting the criteria listed in section 29, the member who will chair the selection committee.

§4. Swearing-in of the members of the selection committee

33. Before taking office, the members of the selection committee take an oath by solemnly affirming the following: "I, (family name and first name), swear that I will not reveal or disclose, unless expressly authorized, anything that may come to my knowledge by reason of my office."

That requirement is carried out before a person authorized to receive the oath and is recorded in writing.

§5. Remuneration and costs

34. The members of the selection committee holding employment in the Québec public service or a government body are not remunerated. The members appointed following a proposal from the associations representing municipalities or employees other than police officers and firefighters are not remunerated.

The other members are entitled to the fees provided for in the contract entered into between the Minister and each member.

Those fees are borne by the department.

35. The transportation costs and meal and accommodation expenses, and other travel costs of a member of a selection committee are reimbursed according to the Directive concernant les frais de déplacement des personnes engagées à honoraires par des organismes publics.

Those costs and expenses are borne by the department.

DIVISION II **CONDUCT OF THE SELECTION ACTIVITIES**

§1. Invitation for applications

36. The invitation for applications is public and is held at the time determined by the Minister.

The Minister may, in addition, invite persons to apply where their name already appears on a previous list of persons recognized as qualified to exercise the function of disputes arbitrator in the municipal sector.

37. The information that must appear in the invitation for applications and the information required from the persons who wish to apply are provided for in Schedule I.

38. The department carries out the invitation for applications, receives the applicants' files and gives the selection committee 5 copies of the list of applicants and of the documents received from the applicants.

§2. *Work of the selection committee*

39. The chair of the selection committee calls the sittings, coordinates the work, sees to the preparation of files and the convocation of eligible applicants.

40. A member of the selection committee whose impartiality could be questioned must withdraw with respect to an applicant, including in the following situations:

- (1) the member is or was the applicant's spouse;
- (2) the member is related to the applicant by birth, marriage or civil union, up to the degree of first cousin inclusively;
- (3) the member is or was an employer, employee or partner of the applicant in the last 10 years; despite the foregoing, a member who is in the public service must withdraw with respect to an applicant only if the member is or was under the direct supervision of the applicant or the applicant's immediate superior.

If a committee member withdraws or is absent or unable to act, the decision is made by the other members.

41. The sittings require the presence of at least 3 members.

42. The decisions of the selection committee are made by a majority of the members. In the case of a tie vote, the chair has a casting vote.

43. The selection committee reviews the applicants' files and selects for interview the applicants who, in its opinion, best meet the eligibility requirements listed in Schedule II.

The selection committee informs the persons whose application has not been selected at this stage.

44. The eligible persons are called for an interview in order to select the applicants by applying the selection criteria listed in Schedule III.

The selection committee may, however, decide to select an applicant without an interview if the applicant meets with the committee's unanimous approval, in particular where the applicant's name already appears on a previous list of persons recognized as qualified to exercise the function of disputes arbitrator in the municipal sector.

45. The selection committee prepares the list of applicants it recommends for the purposes of recognition of the persons qualified to exercise the function of disputes arbitrator.

The list contains the expertise recognized for each applicant with respect to the fields of competence required under the Act in matters of labour relations or in the municipal field.

§3. *Directives and support to the selection committee*

46. The Minister may give directives to the selection committee regarding the number of applicants to be recommended and the time period for sending its recommendations to the Minister.

47. The department provides logistics support and pays the costs related to the work of the selection committee, in particular the invitation for applications, the preparation and sending of the applicants' files, communication with the applicants, provision of premises for the meetings of the committee and for the interviews. It may also propose to the selection committee technical tools to assist the committee in its work.

§4. *Recommendation of applicants to the Government*

48. The chair of the selection committee sends to the Minister the list of applicants for whom the committee recommends the recognition as persons qualified to exercise the function of disputes arbitrator.

49. The Minister submits the list to the Government for approval.

In addition to its publication in the *Gazette officielle du Québec*, the list of persons recognized as qualified to exercise the function of disputes arbitrator is published on the department's website.

§5. *List duration*

50. The recognition, by the Government, of the persons qualified to exercise the function of disputes arbitrator is valid for a period of 5 years as of the date of the recognition.

In the event that it is necessary to add persons to the list during its validity period, the procedure described in this Division applies again. The validity period of the recognition of persons added to the list in force ends at the same time as for the other persons already on the list.

CHAPTER IV COMING INTO FORCE

51. This Regulation comes into force on the date of its publication in the *Gazette officielle du Québec*.

SCHEDULE I (ss. 13 and 37)

INVITATION FOR APPLICATIONS

1. The invitation for applications includes

(1) a summary description of the functions of the member of the dispute settlement board or of the disputes arbitrator;

(2) the eligibility requirements for a person to be recognized as qualified to act as a member of a dispute settlement board or as an arbitrator;

(3) the minimum qualifications required of the applicants and the selection criteria;

(4) an indication of the applicable remuneration; and

(5) the date before which an application must be filed and the address to which it must be sent.

2. A person who wishes to apply sends his or her résumé and the following information:

(1) name and address, telephone number, email and, if applicable, place of work and function;

(2) the nature of the activities the person exercised and that the person considers have allowed the person to acquire relevant experience;

(3) the number of years during which the person exercised each of those activities;

(4) the names of his or her employers or partners in the last 10 years;

(5) a summary showing the person's interest in exercising the functions of a member of a dispute settlement board or of an arbitrator;

(6) a written statement agreeing to inquiries made of a disciplinary body, a professional order of which the person is or was a member, an employer or police authorities.

SCHEDULE II (ss. 19 and 43)

ELIGIBILITY REQUIREMENTS

To be recognized as eligible for an interview, an applicant must

(1) not be or have been, in the year preceding the recognition, an employee, officer or otherwise representative of an employer in the municipal sector, an association representing employees in that sector or a group of those employers or associations;

(2) be a member of the Barreau, to be qualified to be appointed arbitrator; and

(3) meet the minimum conditions for schooling and professional experience indicated in the invitation for applications.

SCHEDULE III (ss. 20 and 44)

SELECTION CRITERIA

1. The selection committee must, for the purposes of identifying the persons it intends to recommend, favour persons that have recognized experience in labour relations or in the municipal field, or, in the case of members of a dispute settlement board, in the field of economy.

Experience in labour relations may be acquired in particular in

— human resources management;

— labour law (professor, arbitrator, assessor, prosecutor, etc.);

— pension plans;

— employee benefits plans;

— work organization;

— job evaluation;

— pay equity; and

— remuneration.

Experience in the municipal field may be acquired in particular in

- municipal administration;
- municipal representation (elected member);
- auditing;
- municipal finances; and
- teaching or research in management, financing or labour relations in the municipal sector.

Experience in the field of economy may be acquired in

- remuneration and salary comparisons; and
- taxation.

2. To assess the competence of an applicant in law, the selection committee reviews

- judgment and knowledge of the rules of evidence;
- the ability to manage hearings and write a decision;
- the knowledge of the rules of natural justice; and
- the knowledge of the Labour Code, related legislation and theories developed in common law applicable to Québec labour law.

3. The selection committee also reviews

- the professional motivations of the applicant and the applicant's availability;
- the applicant's personal and intellectual qualities;
- the applicant's degree of knowledge and skills considering the professional, training or specific experience requirements indicated in the invitation for applications; and
- the applicant's perception of the functions of a member of a dispute settlement board or of an arbitrator.