

## Draft Regulations

### Draft Regulation

Environment Quality Act  
(chapter Q-2)

#### Rules of procedure of the Bureau d'audiences publiques sur l'environnement

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1) and section 6.6 of the Environment Quality Act (chapter Q-2), that the Rules of procedure of the Bureau d'audiences publiques sur l'environnement, appearing below, may be submitted to the Government for approval on the expiry of 45 days following this publication.

The Draft Regulation replaces the Rules of procedure relating to the conduct of public hearings (chapter Q-2, r. 45) currently in force. It ensures compliance with the requirements set out in section 6.6 of the Environment Quality Act and section 309 of the Act to amend the Environment Quality Act to modernize the environmental authorization scheme and to amend other legislative provisions, in particular to reform the governance of the Green Fund (2017, chapter 4), enacted on 23 March 2017, which makes various amendments to the provisions governing environmental impact assessment and review procedure.

The purpose of the Regulation is to set rules of procedure for the conduct of targeted consultations and mediation sessions in environmental matters and to revise the current rules of procedure governing the conduct of public hearings to reflect the recent legislative amendments made to the Environment Quality Act and to the Regulation respecting environmental impact and assessment review of certain projects which is to come into force at the latest on 23 March 2018.

More specifically, the Regulation prescribes the procedure to apply to all mandates entrusted by the Minister to the Bureau under the fifth paragraph of section 31.3.5 of the Environment Quality Act, in particular with regards to formation of commissions, publication of notices, access to documents, summons, preparatory meetings, publicity of sessions, the commission's report and the terms and conditions of public participation by any appropriate technological means.

The Regulation also establishes specific procedures to apply to each public hearing, targeted consultation and mediation mandate.

The division relating to public hearings sets the terms that apply to the first part of the mandate, the filing of briefs and the presentation of briefs and opinions, those presentations being the subject of the second part of the public hearing. It also provides for the possibility of a commission holding sessions supplementary to those in the first and second parts of the public hearing.

The Regulation prescribes specific terms that apply to targeted consultation mandates and accordingly makes various references to the provisions that apply to public hearing mandates. This division allows however the commission greater discretion over the time period for the filing of briefs and over the presentation of briefs and opinions. That division also empowers the commission to consider any concern raised during a session.

Regarding mediation in environmental matters, the Regulation specifies among other things the commissioner's role and powers and sets forth a requirement for the commissioner to ensure that the parties' commitments do not adversely affect the rights of third parties or environment quality. It also determines the specific terms to apply to the holding of private meetings and the publicity of minutes, as well as the conditions that terminate a mediation mandate.

The Regulation provides that the rules of procedure, with the necessary modifications, will apply if the Bureau is required to carry out a mandate under another Act or any provision of the Environment Quality Act other than section 31.3.5.

The Regulation also provides that the public hearing provisions, with the necessary modifications, will apply if the Bureau is required to carry out a mandate under section 40 of the Natural Heritage Conservation Act (chapter C-61.01).

Lastly, the draft Regulation contains transitional provisions.

Further information on the draft Regulation may be obtained by contacting David Boisvert, legal adviser, Bureau d'audiences publiques sur l'environnement, édifice Lomer-Gouin, 2<sup>e</sup> étage, 575 rue Jacques-Parizeau, Québec (Québec) G1R 6A6, by telephone: 418 643-7447; by fax: 418 643-9474 or by e-mail at david.boisvert@bape.gouv.qc.ca

Any person wishing to comment on the draft Regulation is requested to submit written comments within the 45-day period to the above-mentioned person using the referenced contact information.

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publiques sur l'Environnement*

## Rules of procedure of the Bureau d'audiences publiques sur l'environnement

Environment Quality Act  
(chapter Q-2, s. 6.6)

Natural Heritage Conservation Act  
(chapter C-61.01, s. 40)

### DIVISION I INTERPRETATION

**1.** These Rules are to be interpreted to support the objectives of the Act, in particular, protection of the environment and living species, affirmation of the collective and public interest character of the environment, which is inseparable from its ecological, social and economic dimensions, and compliance with the principles of sustainable development as defined in the Sustainable Development Act (chapter D-8.1.1).

**2.** In these Rules, unless the context indicates otherwise,

(1) “Act” means the Environment Quality Act (chapter Q-2);

(2) “Minister” means the Minister responsible for administration of the Act;

(3) “project” means a project identified in the mandate entrusted by the Minister to the Bureau d'audiences publiques sur l'environnement;

(4) “Regulation” means the Regulation respecting environmental impact assessment and review procedure of certain projects (chapter Q-2, r. 23);

(5) “applicant” means a person, group or municipality whose application has been sent to the Minister in accordance with section 15 of the Regulation.

### DIVISION II PROCEDURE APPLICABLE TO ALL MANDATES

#### §1. *Scope*

**3.** This Division applies to all mandates entrusted by the Minister to the Bureau, except for sections 15 to 17 which do not apply to mediation mandates.

#### §2. *Commission*

**4.** When a mandate is entrusted by the Minister to the Bureau, the president of the Bureau forms a commission composed of one or more members of the Bureau, and designates the commissioner who is to head the commission.

**5.** Should a commissioner withdraw or be unable to act, the president of the Bureau may designate another member of the Bureau as a replacement.

**6.** The commission coordinates the activities of the Bureau related to the carrying out of the mandate entrusted to it.

#### §3. *Notice to the Minister*

**7.** Once a commission has been formed and the commissioner heading the commission has been designated, the secretary of the Bureau gives notice to the Minister, to the project proponent and to the applicants.

#### §4. *Public notice*

**8.** The secretary of the Bureau publishes a notice describing the mandate entrusted to the Bureau in a daily or weekly newspaper distributed in the region where the project is likely to be carried out or, if there is no such newspaper in the region, in the region or regions closest to the project.

The notice must give address details of the centres where the documentation is accessible and, in the case of a mandate for a public hearing or targeted consultation, the notice must also give address details of the first session, if known.

**9.** The information in the notice is published in a press release issued by the Bureau and posted on its website. The same applies for any modification, correction or clarification made to the information.

**10.** There must be a minimum 5-day interval between publication of the notice and the commission's first session.

### §5. Access to documents

**11.** The following documents are filed in the Québec documentation centre and in a consultation centre in the region where the project is likely to be carried out:

(1) the Minister's directive to be sent pursuant to section 31.3 of the Act;

(2) the impact assessment statement made public in accordance with section 31.3.2 of the Act and the summary made of it in accordance with section 12 of the Regulation;

(3) any additional information referred to in the second paragraph of section 6 of the Regulation; and

(4) the opinions referred to in paragraph 5 of section 18 of the Regulation.

The documents are to remain available to the public for consultation up to the thirtieth day following the day on which the Minister makes the report public pursuant to section 6.7 of the Act.

### §6. Summons

**12.** The Bureau summons the project proponent and the applicants to the sessions.

**13.** The Bureau may also at any time summon any person whose testimony is considered by the commission to be relevant or any person having documents whose filing is deemed relevant by the commission for its work.

**14.** If the Bureau wishes to hear a government department on the project, the deputy minister of the department concerned is summoned. For a public body, its chief executive is summoned.

### §7. Preparatory meeting

**15.** Before the holding of the first public session, the commission holds a preparatory meeting with the applicants to identify the main issues in the mandate and to inform them of the procedure.

**16.** After the meeting with the applicants, the commission holds a preparatory meeting with the project proponent for the same purposes. It may also hold such a meeting with any other person.

### §8. Public sessions

**17.** Barring exceptional circumstances, the commission holds its sessions in the region in which the project is likely to be carried out.

### §9. Report

**18.** The report is drafted by the commission and constitutes the Bureau's report. It is signed by the commissioner or commissioners who participated in all the hearing sessions, barring exceptional circumstances.

**19.** A commissioner may dissent from all or part of the contents of the report, in which case the commissioner must append to the report a document justifying his dissenting position.

**20.** Once the Minister has made the report public, the Bureau posts it on its website. In exceptional circumstances, a paper version may be sent to any person to meet specific needs.

### §10. Technological support

**21.** The commission may allow the filing of all or any part of some documents on a technological support that meets the Bureau's specifications.

### §11. Terms and conditions of participation by technological means

**22.** The commission may hold a session using any appropriate technological means.

It may also allow any person to intervene as part of his work using an appropriate technological means.

The use of specific technology depends on the efficiency, quality and availability of the equipment used.

**23.** The commission is to ensure that all interventions or sessions held using technological means observe proper decorum and take place in conditions that are as close as possible as those of a session in the presence of the commissioners.

The commission also ensures that the sessions are accessible to the public, subject to the provisions relating to mediation.

## DIVISION III SPECIFIC PROCEDURE APPLICABLE TO PUBLIC HEARING MANDATES

### §1. Public hearing

**24.** A public hearing has two parts, except if no notice of intent to present a brief has been filed within the time period allowed by the second paragraph of section 37, and subject to the discretionary power of the commission under section 38.

**25.** Each part of a public hearing may involve several sessions, either consecutive or not.

**26.** Each session is public and must be accessible to the public.

**27.** The person heading the commission chairs the public hearing and sets the order in which the intervention will be heard and the speaking time of the speakers.

**28.** In exceptional circumstances where the person heading the commission is absent, another commissioner may chair the hearing.

**29.** The public hearing may be adjourned for any reason deemed valid by the commission; the resumption date is then posted on the Bureau's website, announced in a press release and posted on the door of the room where the session was to take place.

**30.** There must be a minimum 25-day interval between the date of publication of the mandate in the public register pursuant to section 118.5.0.1 of the Act and the beginning of the public hearing.

#### *§2. First part of the public hearing*

**31.** At the outset of the first session of the first part, the person heading the commission reads the mandate entrusted to the Bureau and explains the commission's role, its jurisdiction and how the public hearing is to be conducted.

**32.** The commission then requests:

(1) the applicants to summarize the reasons for their application; and

(2) the project proponent to summarize and explain the impact assessment statement and other documents filed in support of the project.

**33.** The commission may also hear any other person summoned pursuant to section 13.

**34.** The commission then invites persons to ask the commission questions relevant to clarifying or completing the information pertaining to the project.

**35.** The commission is to allow any person to file a brief.

For that purpose, the commission grants a minimum time period of 21 days after the end of the first part to allow persons wishing to file a brief to do so.

#### *§3. Second part of the public hearing*

**36.** During the second part of the public hearing, any person may present a brief or an oral opinion and suggestions.

**37.** If a person indicates to the commission his intention to present a written brief or an oral opinion and suggestions regarding the project, the commission must hold the second part of the public hearing.

The application must be made orally at a session of the first part of the public hearing. It may also be sent in writing within ten days after the end of the last session of the first part or within any additional time period granted by the commission.

**38.** In the absence of any such application, the commission may hold the second part of the public hearing if it is considered to be in the interest of the inquiry.

**39.** A person wishing to present a brief must send it to the commission at least four days before the beginning of the second part of the public hearing or, if that part is not being held, within the time period the commission determines.

**40.** At the end of each session of the second part or after a brief has been presented during the session, the commission may hear any person, including the project proponent and the applicants, to allow the person to rectify any of the facts raised.

#### *§4. Additional sessions*

**41.** In addition to the sessions of the first and second parts of the public hearing, the commission may, at any time, hold additional sessions and summon any person whose presence the commission considers relevant.

#### **DIVISION IV SPECIFIC PROCEDURE APPLICABLE TO TARGETED CONSULTATION MANDATES**

**42.** Sections 25 to 33 of the specific procedure applicable to public hearing mandates apply to this Division, with the necessary modifications.

**43.** In addition to the targets identified by the Minister in the mandate, the commission may consider any other concern raised during a session.

**44.** A targeted consultation has only one part.

**45.** The commission has to allow any person to file a brief within the time period the commission determines.

**46.** The commission also has to also to allow any person to present a brief or an oral opinion using to the procedure the commission determines.

**47.** At the end of each session or after a brief has been presented during the session, the commission may hear any person, including the project proponent and the applicants, to allow the person to rectify any of the facts raised during the targeted consultation.

## DIVISION V SPECIFIC PROCEDURE APPLICABLE TO MEDIATION MANDATES

### §1. *Initial meetings*

**48.** Before the first mediation session is held, the commission holds an initial meeting with the applicants to explain its role and the procedure under which the mandate will be carried out, and gather all the relevant facts for the purpose of identifying the issues to be discussed.

**49.** The commission also verifies the applicants' consent to participating in the mediation and, if applicable, their authority to bind their mandator.

**50.** Following the meeting with the applicants, the commission holds an initial meeting with the project proponent for the same purposes.

**51.** The absence of an applicant's consent or the absence of the project proponent's consent with regards to an applicant terminates the mediation mandate between the project proponent and that applicant.

### §2. *Sessions*

**52.** If the parties agree to participate in the mediation, they are bound to do so in good faith, to be transparent and to cooperate actively in the quest for solutions. They also commit to participating in any session to which they may be summoned by the commission.

**53.** The mediation may take place over several days, whether consecutive or not. The commission sets the date, time and place for the sessions.

**54.** The sessions may be held in the presence of all or only some of the parties.

**55.** The commission may at any time propose holding a private meeting with a party. It may also hold a private meeting with a party at the latter's request.

All information shared at such a meeting is public, unless the participants agree otherwise.

**56.** The commission is to prepare minutes for each session and make them available to the public for consultation within the five following working days.

The parties to the mediation may determine that some information will not be publicly disclosed.

### §3. *Commissioner's role*

**57.** The commissioner acts as a mediator and presides over the sessions. The commissioner's role consists in facilitating communication among the participants, clarifying their points of view, identifying their disagreements, their needs and their interests, and exploring mutually satisfactory solutions with them.

**58.** The commissioner may communicate with the parties separately, but in such case, he is required to inform the other parties.

**59.** The commissioner may invite any person he considers concerned by or that is likely to be affected by the results of the mediation.

**60.** The commissioner must ensure that the parties' commitments do not adversely affect the rights of any third parties or the quality of the environment.

### §4. *End of mediation*

**61.** When the project proponent accepts conditions of implementation or modifications to the project, he must file with the commission a written commitment to that effect.

**62.** When an applicant is satisfied with the project proponent's commitments, he must inform the Minister in a letter to his attention, which is filed with the commission.

**63.** Any commitment the applicant has agreed to with the project proponent pertaining to specific actions to be taken is also included in the letter.

**64.** The filing with the commission of the project proponent's written commitment and of the applicant's letter terminates the mediation between the parties.

**65.** The project proponent's written commitment and the applicants' letters are appended to the report, if applicable.

**66.** The commissioner may at any time put an end to the mediation if he is convinced that the mediation process is doomed to failure or is likely to cause serious prejudice to a party, a third party or environment quality.

**DIVISION VI****OTHER MANDATES**

**67.** The provisions applicable to public hearing mandates apply, with the necessary modifications, when the Bureau is required to carry out a mandate entrusted under section 40 of the Natural Heritage Conservation Act (chapter 61.01).

**68.** These Rules apply, with the necessary modifications, when the Bureau is required to carry out a mandate entrusted under a provision other than section 31.3.5 of the Act.

**69.** These Rules also apply, with the necessary modifications, when the Bureau is required to carry out a mandate entrusted under any other Act.

**DIVISION VII****TRANSITIONAL AND FINAL**

**70.** These Rules replace the Rules of procedure relating to the conduct of public hearings (chapter Q-2, r. 45). However, those rules continue to govern mandates in progress on 23 March 2018.

**71.** The Rules of procedure governing public consultation on proposed protected areas (chapter 61.01, r. 1) are revoked.

**72.** These Rules come into force on 23 March 2018.

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