

CITY OF MONTRÉAL
BY-LAW
02-146

BY-LAW CONCERNING THE OMBUDSMAN

As the administration of the new city of Montréal is committed to establishing an independent ombudsman's office, appointed by the city council;

As there was a consensus at the Sommet de Montréal 2002 to establish an independent ombudsman's office;

In view of the first paragraph of section 410 of the Cities and Towns Act (R.S.Q., chapter C-19);

At the Montréal city council meeting of August 19, 2002, it was enacted:

SECTION I
INTERPRETATION

1. In this by-law, the following words mean:

“associate”: a person associated with others in financial, commercial or common professional interests;

“city-controlled corporation”: a corporation of which the city or one of its agents holds more than 50% of shares or outstanding voting shares, or appoints more than 50% of board members;

“paramunicipal agency”: an organization referred to in sections 218 to 231 of schedule C to the Charter of the City of Montréal (R.S.Q., chapter C-11.4).

SECTION II
APPOINTMENT AND REPLACEMENT

2. The city council appoints an ombudsman and sets his salary. The ombudsman reports to the city council.

3. The ombudsman is appointed for a 4-year term. The term of office may only be renewed once. He holds office until he is reappointed or replaced.

4. The ombudsman may resign at any time by giving written notice to the city council.

He may only be dismissed by a decision of the city council.

5. The city council appoints an assistant ombudsman on the ombudsman's recommendation.

6. The assistant ombudsman replaces the ombudsman when he is temporarily unable to act.

When the ombudsman ceases to hold office, the city council appoints a new one in accordance with article 3.

7. The following may not act as ombudsman:

- (1) a city council member, a borough council member, or their political adviser;
- (2) the associate of a member referred to in paragraph 1;
- (3) a person who, himself or through an associate, has a direct or an indirect interest in a contract with the city, a paramunicipal agency or a city-controlled corporation.

SECTION III RESPONSIBILITIES

8. In the management of human, physical and financial resources as part of his duties, the ombudsman applies city policies and standards.

9. Every year, the ombudsman must file a written report with the city council on the performance of his duties. The report is public.

SECTION IV POWERS OF INVESTIGATION

10. The ombudsman intervenes every time he believes on reasonable grounds that a person or a group of persons have been adversely affected or are likely to be affected. He intervenes on his own initiative or at a person's request. Priority is given to interventions initiated at a person's request.

He may investigate any matter relating to a decision, a recommendation, an act or an omission of the city, a paramunicipal agency or a city-controlled corporation or their employees.

He may also intervene in or investigate any matter relating to an act or an omission by a person carrying out duties on the city's behalf.

He also intervenes at the request of the city council, the executive committee or a borough council.

11. The ombudsman may not investigate any decision, recommendation, act or omission whatever:

- (1) of the city council or one of its committees or commissions, of the executive committee or one of its committees, or of a borough council or one of its committees or commissions;

- (2) of any person as part of work relations with the person or group whose interests are affected by the intervention;
- (3) of an elected official or any member of the cabinet of elected officials;
- (4) of a peace officer of the Service de police de Montréal;
- (5) of the Société de transport de Montréal or one of its employees.

He may not investigate a private dispute between citizens or a decision made by a tribunal or an organization carrying out judicial duties.

12. The ombudsman may refuse to intervene or investigate, and may also interrupt an intervention or an investigation when he believes that the complaint is frivolous, vexatious or was not made in good faith, or that legal recourse is likely to correct the injurious situation.

When he decides not to intervene or investigate or interrupt an intervention or an investigation, the ombudsman must inform the complainant of his decision in writing. It must be a reasoned decision.

13. The ombudsman may not intervene or investigate when more than a year has elapsed since the person or the group whose interests affected by the intervention or investigation has learned of the facts on which it is based, unless the person or the group establish, to the ombudsman's satisfaction, exceptional circumstances that justify the delay. He must inform the complainant in writing of his refusal, as the case may be.

14. The ombudsman must refuse to intervene in or investigate any complaint likely to place him in a conflict of interest. In those circumstances, he is replaced by his assistant.

15. When he decides to intervene or investigate, the ombudsman must inform the city manager and, as the case may be, the department director concerned, the borough director, the officer of the paramunicipal agency or city-controlled corporation, or the person referred to in the third paragraph of article 10.

He must invite the author of the act or the omission or the person referred to in the first paragraph to be heard and allow him, as he sees fit, to correct the situation. All interventions of the ombudsman are conducted in private.

16. Every person requiring the intervention of the ombudsman must:

- (1) state his family name, first name, address, telephone number, and those, when known, of every person covered by the request;
- (2) state the facts in support of his request;
- (3) provide the ombudsman with any other information or document he may require to process the request.

17. At the time of an intervention or an investigation, the ombudsman or the ombudsman's office employee he designates in writing for that purpose, is entitled to

learn the facts and make copies of all files and registers and any other relevant document. He has the right to require the information, reports and explanations that he deems necessary to carry out his duties.

18. At the end of an intervention or investigation, the ombudsman must submit a written report of his findings to the complainant. He must also submit a report to the persons referred to in the first paragraph of article 15.

19. After an intervention or an investigation, the ombudsman may recommend any measure he sees fit.

20. When making a recommendation, the ombudsman may require one of the persons referred to in the first paragraph of article 15 to submit a report within a given period on the follow-up measures taken or intended to be taken.

When no favorable response is received within that period, the ombudsman may report, as the case may be, to the city council, the executive committee or the borough council. He may also outline the case in a special report or in his annual report.

21. When considered in the public interest, the ombudsman may publicly comment on a report he has submitted or an intervention he has made. He may also publicly comment an intervention already made or a pending intervention when he considers it in the best interest of the person or the group concerned.

SECTION V

CONFIDENTIALITY

22. The ombudsman, his assistant and employees must keep the information they are given in the performance of their duties strictly confidential.

SECTION VI

FINAL PROVISION

23. This by-law comes into force in accordance with the law.

The public notice relating to this by-law was posted at city hall and published in *The Gazette* on September 10, 2002.