



LE DIRECTEUR GÉNÉRAL
DES ÉLECTIONS DU QUÉBEC

Financing of municipal political parties
and independent candidates and
control of election expenses

Municipalities with a population of 5 000 or more

Act respecting elections and referendums in municipalities

Guide of the private intervenor

DGE-1051-VA (11-04)

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1. INTRODUCTION

This guide is intended to help an elector (or a group of electors) wishing to act as a “private intervenor”, to understand and abide by the relevant provisions of the Act respecting elections and referendums in municipalities. This guide, along with its constituent forms, are available on the Web site of the Chief Electoral Officer, located at <http://www.electionsquebec.qc.ca>. Clicking the symbol on the site redirects the visitor to documents that can be downloaded.

The interpretations expressed in this guide do not take precedence over the provisions of the Act, and are not intended to replace the official text of the Act. When it is necessary to interpret or apply the Act respecting elections and referendums in municipalities, reference must be made to the text published by the Éditeur officiel du Québec, which may be consulted at the following Web site: <http://www.publicationsduquebec.gouv.qc.ca>. References to the provisions of the Act, where applicable, are indicated in brackets.

The masculine gender is used in this document solely in the interest of brevity, and with no discrimination intended.

All questions regarding the applicability of the Act respecting elections and referendums in municipalities to a private intervenor can be directed to the treasurer of the municipality concerned or to the Chief Electoral Officer, by contacting:

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Should you have any comments or suggestions that could help us improve this guide, please do not hesitate to communicate with us.

 The rules described in this guide apply to municipalities with a population of 5 000 or more. They also apply to *regional county municipalities*, which must elect their warden by out universal suffrage.

2. PRIVATE INTERVENOR AUTHORIZATION

This chapter provides the information required to act as a private intervenor.

2.1 Definitions

Private intervenor

Any qualified elector in a municipality is entitled to act as a “private intervenor.” A private intervenor could also be a group not endowed with legal personality composed in the majority of natural persons who are qualified electors in the municipality concerned. The natural persons who make up such a group act together toward a common goal (s. 512.1).

 An elector or group of electors must absolutely apply for and obtain an authorization to act as a “private intervenor” if they intend to incur publicity expenses during an election period, without directly promoting or opposing a candidate or party, to publicize or obtain support for the intervenor's views on a matter of public interest or to advocate abstention or the spoiling of ballots (s. 453(9)).

Elector

The Act stipulates that an “elector” in a municipality is a person of full age who is a Canadian citizen and who is neither under curatorship nor has been found guilty of an offence constituting electoral fraud, and who meets one of the following two conditions:

1. has been domiciled in the territory of the municipality and, for at least six months, in Québec;
2. has been, for at least 12 months, the owner of an immovable or the occupant of a business establishment, as defined under the Act respecting municipal taxation, located in the territory of the municipality (s. 47).

Representative of the group

If the private intervenor is a group composed in the majority of natural persons who are qualified electors in the municipality, the members of the group must designate a representative among these electors. The representative of the group is thus the person selected to complete and submit the group's application for authorization, and to act in that capacity on behalf of the group. Only the representative of the group may incur publicity expenses on behalf of the group (s. 512.15), and may act in that capacity only for that particular group (s. 512.8).

Political party

An authorized political party that does not present candidates at a general election or a by-election and that wishes to intervene as a private intervenor shall notify the returning officer of the municipality accordingly. The party is deemed to hold an authorization as a private intervenor from the returning officer from the date its notice is received; the returning officer assigns the party an authorization number.

Sections 512.7, 512.8 and 512.12 to 512.20 apply to that party, with the necessary modifications. For the purposes of those sections, the party leader is deemed to be the elector representing the private intervenor.

An authorized political party that took advantage of the provisions of section 455 during an election period cannot obtain the status of private intervenor during that period (art. 512.1).

For more information, please contact the *Direction du financement des partis politiques* using the contact information at the introduction to this guide.

Election period

An “election period” is the period beginning 44 days before polling day and ending on polling day at the time of closing of the polling stations (s. 364).

2.2 Application for authorization – A prerequisite

 Even before publicity expenses are incurred during an election period, an application for authorization must be submitted to the returning officer of the municipality in which the person submitting the application is an elector (s. 512.4). One of the following forms must be submitted: Application for authorization of a private intervenor/Elector (DGE-1031) or Application for authorization of a private intervenor/Group (DGE-1032).

2.3 Applicants

The following persons may complete, sign and submit a private intervenor application for authorization:

- the elector, if the private intervenor is an elector;
- the representative of a group, if the private intervenor is a group.

The application must be submitted to the returning officer of the municipality during the period extending from the 40th to the 20th day preceding polling day (s. 512.4).

An elector applying for an authorization must complete the form Application for authorization of a private intervenor/Elector (DGE-1031), in which he must:

1. indicate his name, date of birth, domiciliary address and telephone number;
2. declare that he is a qualified elector;
3. declare that he does not intend to directly promote or oppose any candidate or party;
4. state briefly the purpose of the application, specifying, where applicable, the matter of public interest on which he intends to express his views;
5. declare that he is not a member of any party;
6. declare that he is not acting directly or indirectly on behalf of any candidate or party;
7. declare that, to his knowledge, he does not belong to a group that has obtained an authorization as a private intervenor for a similar purpose or whose application for authorization is pending.

This application must be supported by a sworn statement by the elector, and include an undertaking by the elector to comply with all applicable legal provisions (s. 512.2).

A group applying for an authorization must complete the form Application for authorization of a private intervenor/Group (DGE-1032), in which it must:

1. indicate its name, address, telephone number, date of formation and objects;
2. indicate the name, domiciliary address and telephone number of its leaders;
3. indicate the actual or approximate number of members of the group and declare that the majority of the members are qualified electors;
4. indicate the name, date of birth, domiciliary address and telephone number of the elector who is to act as the representative of the group;
5. declare that the group does not intend to directly promote or oppose any candidate or party;
6. state briefly the purpose of the application, specifying, where applicable, the matter of public interest on which the group intends to express its views;
7. declare that the group is not acting directly or indirectly on behalf of any candidate or party;
8. declare that the representative of the group is not a member of any party;
9. declare that, to the group's knowledge, no member of the group has obtained an authorization as a private intervenor for a similar purpose or made an application for authorization that is pending.

The application for authorization must be made by the elector designated in the application to act as the representative of the group, be supported by the representative's oath and include an undertaking by the representative to comply with all applicable legal provisions (s. 512.3).

The application for authorization must be accompanied with a document indicating in detail any publicity expense made by the private intervenor, since

January 1st of the current year, in relation to the election for which the private intervenor applies for the authorization, and the name and address of any person who provided \$100 or more and the amount so provided. (s. 512.4.1).

“Publicity expense” means any expense that meets the following conditions (also see Chapter 3):

1. it is made during the period beginning on January 1 of the current year and ending on the day on which the election period begins or, in the case of a by-election, during the period beginning on the day on which the office concerned becomes vacant and ending on the day on which the election period begins;
2. its object is any publicity relating to the election, whatever the medium used (s. 512.4.1).

A private intervenor who is an elector or the representative of a group may not become a member of a party during the election period (s. 512.11).

If the representative of a group dies, resigns, is dismissed or is unable to act, the leader of the group shall appoint another representative and shall notify the treasurer in writing forthwith (s. 512.10).

2.4 Acceptance of an application for authorization

The returning officer of the municipality is responsible for issuing without delay, the requested authorization if said application is in compliance with legislative provisions. The returning officer informs the applicant that the application has been accepted, and assigns the applicant an authorization number (s. 512.5).

If the application for authorization is not in compliance with legislative provisions, the returning officer must, prior to rejecting it, allow the applicant the chance to present observations, or where applicable, make any necessary corrections. If the application must finally be rejected, the returning officer’s decision must be put in writing and contain reasons (s. 512.5).

An applicant whose application for authorization is rejected may submit a request to appeal the decision before a judge of the Court of Québec (s. 512.20).

 An elector or a group of electors may only obtain one authorization during an election period. The authorization is only valid for that period (s. 512.8).
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2.5 Accessibility of granted authorizations

During an election period, and not later than the fifteenth day preceding polling day, the returning officer shall transmit to the chief of each authorized party and to each candidate a list of the authorizations which have been granted.

The list shall indicate the name of each private intervenor, the name of the representative of the group, if any, and the number and date of the authorization. The list shall also indicate if the private intervenor intends to express views on a matter of public interest or to advocate abstention or the spoiling of ballots (s. 512.7).

2.6 Withdrawal of authorization

Only the Chief Electoral Officer may on his own initiative, or upon request, withdraw the authorization granted to a private intervenor, if the Chief Electoral Officer ascertains that:

- the application for authorization contains false or inaccurate information;
- the private intervenor, or where applicable, his representative, no longer qualifies for such authorization;
- the private intervenor, or where applicable, his representative, contravenes a relevant provision of the Act respecting elections and referendums in municipalities.

However, before withdrawing the authorization, the chief electoral officer must allow the private intervenor to present observations or make any necessary corrections. The decision to withdraw the authorization must be in writing and contain reasons (s. 512.19).

Any person whose application for authorization is rejected may, by way of a motion, appeal the decision before a judge of the Court of Quebec (s. 512.20).

2.7 Resignation of the representative of a group

The representative of a group may resign at any time. However, he must inform the leader of the group and the returning officer in writing. Afterward, he shall submit to the leader of the group, within five days of his resignation, a report of the expenses incurred, with vouchers (s. 512.9).

3. PUBLICITY EXPENSES

3.1 Definitions

Publicity

The “publicity” made by a private intervenor may be defined as being the dissemination of a message, through any medium, aimed at publicizing or obtaining support for the intervenor's views on a matter of public interest stated in its authorization or advocating abstention or the spoiling of ballots without directly promoting or opposing a candidate or party.

Publicity expenses

“Publicity Expenses” may be defined as the cost of any goods or services used in the production of an advertisement and to acquire the means by which the advertisement is broadcast. The cost of acquiring air time, space in a newspaper or periodical or any other form of publicity is therefore a publicity expense.

 A private intervenor may not incur expenses that are not related to the purpose stated in the application for authorization or that directly promote or oppose a candidate or party (s. 512.12).
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It is important to note that no person may claim or accept, for goods or services the total or a portion of the cost of which constitutes an election expense, a price different from the regular price for similar goods or services outside the election period nor may he refuse to be paid for them except it is for volunteer work. Volunteer work refers to work that is done personally, voluntarily and without a reward as well as the fruit of this labour (s. 428(1), 450 and 461).

If a publicity expense is used both during and before an election period, portion of its cost that constitutes an election expense shall be established according to a method based on the frequency of use during the election period compared to the frequency of use before and during the election period. The determining criteria is the moment when the advertisement has been broadcast, whichever may be the period when the cost of production or means of acquisition of broadcast of such publicity has been incurred and paid (s. 450 and 452).

It is understood that the following expenses, which under certain conditions are not election expenses and are also not considered as publicity expenses of a private intervenor:

- The cost of publishing articles, editorials, news, reports or letters to the editor in a newspaper, periodical or other publication, provided that they are published in the same manner and under the same rules as outside the election period, without payment, reward or promise of payment or reward, that the newspaper, periodical or other publication is not established for the

purposes or in view of the election and that the circulation and frequency of publication are as what obtains outside the election period (s. 453(1)).

- The cost of broadcasting by a radio or television station of a public affairs, news or public opinion program, provided that the program is broadcast in the same manner and under the same rules as outside the election period, without payment, reward or promise of payment or reward (s. 453(2)).

3.2 Cap on publicity expense

The law prescribes a cap on the publicity expenses of private intervenors. For the entire election period, the private intervenor may not spend more than \$300 to publicize his opinion on a subject of public interest or to advocate abstention or the spoiling of ballots, without directly promoting or opposing a candidate or a party.

No person may accept or execute an order for a publicity expense that is not made or authorized by a private intervenor (s. 450, 453(9) and 460).

When the cost of a good or service used in the production of publicity messages and the acquisition of publicity media by a private intervenor exceeds \$300, only an official agent of an authorized independent candidate or an authorized party can incur such an expense.

It is forbidden for a private intervenor to circumvent the cap on publicity expense notably by spending or incurring an expense jointly with any person or incur an expense individually but in agreement, collusion or association, with any person (s. 512.13).

3.3 Identification of the publicity

The law requires that all advertisements made by the private intervenor be identified.

Therefore, any advertising copy, object or material relating to an election shall bear the name of the printer or manufacturer and the name and title "private intervenor" or the name of the group representative who caused it to be printed or manufactured as well as the authorization number that was issued by the returning officer.

Any advertisement published in a newspaper or another publication must mention the name and title "private intervenor" or that of his representative who caused it to be published and the authorization number that was issued.

In the case of an advertisement on radio, television or by any other medium or information technology, then the name and title of "private intervenor" or of his representative and his authorization number that were issued to him, must be mentioned at the beginning or at the end of the advertisement (s. 463 and 463.1).

We recommend the following information:

Authorized by _____ Name of elector
Private intervenor – MUN- _____
Name of printer or producer (if any)

OR

Authorized by _____ Name of the representative of the group
For grouping _____ ,
Private intervenor – MUN- _____
Name of printer or producer (if any)

3.4 Payment of expenses

The private intervenor who is an elector must defray the cost of any expense out of his own funds. If it is a group of electors, it must defray the cost of any election expense out of the funds of the members of the group who are electors.

The private intervenor has to acquit all expenses by the means of a cheque or order of payment drawn on the private intervenor's account in a bank, trust company or financial services cooperative having an office in the province of Québec. The cheque or order of payment must be signed by the private intervenor if the private intervenor is an elector, or by the representative if the private intervenor is a group of electors (s. 512.14).

A private intervenor who is an elector or the representative of a group may not pay an expense of \$25 or more without a voucher in the form of an itemized invoice indicating the goods and services provided, the rate and price per unit (s. 512.16).

4. EXPENSE RETURN

 The private intervenor who is an elector or the representative of a group has to submit to the treasurer of the municipality, within 30 days after polling day, a report of all expenses incurred by filing the form Report of expenses of a private intervenor (DGE-1034) (s. 512.17).

Invoices, vouchers and other supporting documents or certified copies of these documents must accompany the expense return (s. 512.17).

The private intervenor, who is an elector or the representative of a group, has to sign the report (s. 512.17).

Nevertheless, if no publicity expense was incurred, the report of expenses has to be filed by indicating a "0" in the appropriate boxes and submitting it to the treasurer.

Within 30 days after the expiry of the time prescribed for filing an Expense return for a private intervenor (DGE-1034), the treasurer shall publish, in a newspaper having general circulation in the municipality, a summary of all reports of expenses received indicating their date of reception and accompanying documents and also mentioning that these documents are available for public consultation (s. 499 and 512.18).

The reports, along with the declarations, invoices, vouchers and supporting documents, are kept permanently on file by the treasurer for five years after they are received. During this period he must make these documents available for consultation and copying by the public. After the expiry of this period, the treasurer may, on request, return the invoices, receipts and other vouchers to the private intervenor. In default of such request, the treasurer can then destroy them (s. 512.18 and 501).

5. OFFENCES, PENAL PROCEEDINGS AND PENALTIES

The Chief Electoral Officer shall ensure that the legal provisions outlined in Chapter XIII of the first part of the Act respecting elections and referendums in municipalities, which contains the provisions relating to private intervenors, are respected and applied (s. 367).

5.1 Penal proceedings

 The Chief Electoral Officer may institute proceedings for any offence outlined in Title III of the Act respecting elections and referendums in municipalities (s. 647).

Penal proceedings for an offence referred to in section 647 shall be prescribed by five years from the date on which the prosecutor became aware of the commission of the offence. However, no proceedings may be instituted where more than ten years have elapsed from the commission of the offence (s. 648).

5.2 Offences and penalties

The private intervenor is liable to a fine of \$1,000 to \$10,000 upon making false declarations, submitting false or incomplete reports and producing falsified invoices, vouchers or fabricating false supporting documents. This offense constitutes corrupt electoral practice (s. 595, 640 and 645).

Furthermore, he is liable to a fine of \$50 for each late day if he omits to file his Report of expenses of a private intervenor (DGE-1034) (s. 626.1 and 642).

Finally, the private intervenor is liable to a fine of \$500 to \$10,000 if he fails to respect sections 463.1, 512.8 and 512.10 to 512.16 of the Act respecting elections and referendums in municipalities (s. 624.1 and 641).

6. FORMS

Application for authorization of a private intervenor/Elector (DGE-1031)

Application for authorization of a private intervenor/Group (DGE-1032)

Appendix to the application for authorization of a private intervenor (DGE-1039)

Report of expenses of a private intervenor (DGE-1034)

These forms are available on the Web site of the Chief Electoral Officer, at the address indicated in the introduction of this guide.

