

WQSB By-Law 37 PROCEDURE TO FACILITATE THE DISCLOSURE OF WRONGDOINGS

Section 1: STATEMENT OF POLICY

The disclosure of wrongdoings is a fundamental component in ensuring integrity in the public administration. Recognizing that “people working within an organization or who work with such people are often best placed to become “whistleblowers”¹, this Procedure is intended to provide a mechanism facilitating the disclosure of wrongdoings within the school board under the *Act to facilitate the disclosure of wrongdoings relating to public bodies* (LQ 2016, c 3), hereinafter the “Act”. This Act provides for the implementation of a parallel disclosure system within public bodies allowing staff the option of reporting wrongdoings either internally or to the Ombudsman. Such disclosures may also be made directly to the Ombudsman by third parties. In all cases, the Act provides protection against reprisals for disclosers and anyone who cooperates in reviews and investigations.

Section 2: SCOPE

This Procedure covers disclosures of wrongdoings that have been committed or that are about to be committed in relation to the school board.

Section 3: REFERENCE FRAMEWORK

- *Act to facilitate the disclosure of wrongdoings relating to public bodies*, (RLRQ c. D-11.1)
- *Anti-Corruption Act*, RLRQ c. L-6.1.
- *Act respecting labour standards*, RLRQ c. N-1.1.
- *Act respecting Access to documents held by public bodies and the Protection of personal information*, RLRQ, c. A-2.1.

Section 4: DEFINITIONS

In this Procedure, the following terms are defined as follows:

“Wrongdoing”: any action which consists, depending on the specific case, in:

- A violation of a law of Quebec, of a federal law in force in Quebec or a regulation under such law;
- A serious breach of codes of ethics and professional conduct;
- Misuse of funds or property of the school board, including that being managed or held on behalf of another entity;
- Cases of gross mismanagement within the school board, including abuse of authority;
- Causing or risking serious damage to a person’s health or safety or to the environment through an action or by failing to perform an action;
- Ordering or advising a person to commit any of the wrongdoings.

¹ Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry, *Final Report, Vol. 3: Schemes, Causes, Consequences and Recommendations*, 2015, p. 109.

Such actions include those by a school board staff member exercising his roles or by a person, partnership, group or other entity in the preparation or performance of a contract, including the provision of financial assistance, that has been concluded, or that is about to be concluded, with the school board:

“Staff member”: A permanent or casual employee of the school board, who receives a wage or salary from the board.

For the purposes of this Procedure, persons participating in the school board’s mission by holding an office, performing a function, work or another task for the school board, whether paid or unpaid. These are members of the Council of Commissioners and of other committees within the school board, as well as volunteers working in its Board Office, schools or centres.

“Reprisals”: An adverse action against a person because the person has, in good faith, made a disclosure or cooperated in a review or investigation conducted because of a disclosure.

A reprisal also includes threatening a person so that the person will abstain from making a disclosure or cooperating in a review or an investigation.

In the context of employment, the following are deemed to constitute reprisals: dismissal, demotion, suspension, or transfer or any other disciplinary measure or measure that adversely affects such a person’s employment or conditions of employment. See Section 31, paragraph 1, subparagraph. 1

Section 5: FUNCTIONAL ORGANIZATION

5.1 Responsibility for implementation

The Council of Commissioners has delegated functions having to be performed by the highest administrative authority within the school board to the Director General.

- The Director General has designated the *Western Quebec Schools Board’s Secretary General* as the Officer responsible for dealing with disclosures.
- The Officer responsible for dealing with disclosures (hereafter the “Officer responsible”) oversees the implementation and dissemination of this Procedure.
- He is responsible for receiving disclosures from staff members, and following such disclosures, for performing a review to determine whether a wrongdoing has been committed or is about to be committed, and where appropriate, will provide a report to the Director General.
- He forwards to the Ombudsman disclosures the latter would best be able to follow-up on under Section 8.3.
- He is bound to discretion regarding the performance of his functions, and must protect the confidentiality of the identity of the discloser and of the information he receives. See (Section 21)
- Finally, annually, he provides the information required under Section 25 of the Act.
- He may not be prosecuted for actions performed in good faith in the performance of his duties. See (Section 27)
- Where he deems it appropriate, the Officer responsible can appoint other resource people to deal with disclosures.

Section 6: DISCLOSURES OF WRONGDOINGS

6.1 Disclosure to Officer responsible for dealing with disclosures

At any time, school board staff may disclose information to the Officer responsible, indicating that a wrongdoing has been committed or is about to be committed in relation to the school board.

Such disclosure is carried out according to the terms and conditions laid out in this Procedure. See (Section 6)

6.2 Disclosure to Ombudsman

At any time, anyone may make a disclosure to the Ombudsman in relation to a wrongdoing that has been committed or is about to be committed in relation to the school board. A school board staff member wishing to make a disclosure can choose to forward the disclosure either to the Officer responsible for dealing with disclosures under this Procedure or to the Ombudsman. See (Section 6)

The following is the contact information for the Officer responsible for dealing with disclosures:

Terry Kharyati

Director of Human Resources

Western Quebec School Board,

15 Katimavik, Aylmer, Quebec

Telephone: 819-684-1313 Extension 520001

Email: tkharyati@wqsb.qc.ca

The following contact information should be used for disclosures to the Ombudsman:

**Direction des enquêtes sur les divulgations en matière
d'intégrité publique Protecteur du citoyen**

800, place D'Youville, 18^e

étage Québec (Québec) G1R

3P4

Telephone: 1 844 580-7993 (toll-free in Quebec)

Fax: 1 844 580-7993 (toll-free in Quebec)

Secure online form: <https://divulgation.protecteurducitoyen.qc.ca/en>

6.3 Disclosure of confidential information

As part of a disclosure or when cooperating in a review following a disclosure, an individual may communicate information to the Officer responsible or to the Ombudsman:

- notwithstanding the provisions pertaining to the communication of information under the *Act respecting Access to documents held by public bodies and the Protection of personal information* (RLRQ, chap. A-2.1); See (Section 8)
- notwithstanding any other communication restriction provided by law and any duty of confidentiality or of loyalty under which a person may be bound, namely in relation to his employers or his client, as applicable. This involves lifting the obligation of professional secrecy, except for the attorney-client or notary-client obligation.

Section 6: FILING A DISCLOSURE

6.4 Terms and conditions for filing disclosures

The Officer responsible shall take the necessary steps to facilitate the disclosure of wrongdoings, while ensuring that all communications remain confidential.

He determines the preferred methods of communication allowing completely confidential disclosures and communication with him, which he disseminates to staff members. *These methods of communication are provided in Appendix 1.*

6.5 Anonymous disclosure

A person making a disclosure to the Officer responsible must identify himself and indicate how he received the information being disclosed.

A person wishing to make an anonymous disclosure shall contact the Ombudsman in accordance with Section 6.2.

Upon receiving an anonymous disclosure, the Officer responsible forwards it to the Ombudsman, unless it is clearly inadmissible under Section 8.2.

6.6 Contents of disclosure

A disclosure to the Officer responsible must contain the following information:

- **About the discloser:**
 - Contact information allowing confidential written communication;
- **About those involved in the alleged wrongdoing:**
 - Full name;
 - Professional title or position held;
 - The operating unit in which the person works;
 - Contact information
- **About the alleged wrongdoing:**
 - Description of the facts, event or act;
 - What makes it a wrongdoing;
 - Place and date of the act;
 - Repeatability of the act, where applicable;
 - Other persons involved or who witnessed the act;
 - Last name, first name, title or function, contact information;
 - Any document or evidence relating to the wrongdoing;
 - Possible impacts of the wrongdoing on the school board, on the health or safety of people, or on the environment;
 - Information needed to prevent the wrongdoing if it has not yet been committed;
 - Information if other steps have been taken with a manager, the union or other school board staff members.
- Mention of fears or threats of reprisals.
- Where needed, the Officer responsible shall carry out proper reviews to bridge any missing information.

Section 7: PROCESSING DISCLOSURES

Processing times

7.1.1 Acknowledgement of receipt

The Officer responsible shall send a written acknowledgement of receipt to the discloser within a maximum of *10 working days following receipt of the disclosure*.

The Officer responsible shall not send an acknowledgement if he does not have the contact information needed to communicate with the discloser confidentially.

7.1.2 Determination of the admissibility of a disclosure

The Officer responsible determines whether the disclosure is clearly admissible under Section 8.2 within *20 working days following receipt of the disclosure*.

The Officer responsible can always end the processing or review of the disclosure if subsequent reviews provide reasons why it should be inadmissible.

7.1.3 Reviews

The Officer responsible carries out reviews in accordance with Section 9. The Officer responsible shall notify the discloser if the reviews extend beyond *60 days following receipt of the disclosure*. Following that, and until the process is complete, he provides the discloser with updates on the status of the reviews every 90 days. Such notifications are sent in writing.

7.1.4 Inadmissible disclosures

The Officer responsible shall end the processing of a disclosure at any time if the alleged wrongdoing is being addressed in a court or relates to a court ruling. See (Section 12)

Furthermore, he shall end his review if he believes, namely:

- 1° that the subject of the disclosure falls outside his mandate;
- 2° that the disclosure is being made for personal reasons, and not for the public good; for example, if it only concerns the working conditions of the discloser;
- 3° that the subject of the disclosure questions the soundness of a policy or program of the government, of the school board or of another public body;
- 4° that the disclosure is frivolous.

The Officer responsible can also end the review of a disclosure if it was made more than one year after the alleged act was committed.

When the Officer responsible ends the processing or review of a disclosure, he forwards a reasoned opinion to the person who made the disclosure.

7.2 Transfer of disclosure to Ombudsman

If the Officer responsible deems that, given the circumstances, the Ombudsman is better able to deal with a disclosure, the Officer responsible forwards it to the Ombudsman by communicating with the Direction des enquêtes en matière d'intégrité publique du Protecteur du citoyen to agree on the terms of the transfer. See (Section 22)

The Ombudsman may be better able to deal with a disclosure where the disclosure of a wrongdoing requires a thorough investigation or the power to subpoena a person to provide information or produce documents.

The Officer responsible notifies the discloser of the transfer.

7.3 Forwarding information to a body responsible for the prevention, detection or

repression of crime or statutory offences

Where the Officer responsible estimates that information provided to him has already been the subject of whistleblowing under Section 26 of the *Anti-Corruption Act*, he forwards it to the Anti-Corruption Commissioner as soon as possible.

The Officer responsible also forwards information required for the prosecution of an offence to all bodies responsible for the prevention, detection or repression of crime or statutory offences, including a police force or a professional order. See (Section 23)

After forwarding information to such bodies, the Officer responsible may end the processing of the disclosure or choose to continue with it, according to the terms agreed to with the body.

The Officer responsible notifies the discloser if he deems it appropriate.

Section 8: REVIEWS BY THE OFFICER RESPONSIBLE

8.1 Reviews by the Officer responsible

Upon receiving an admissible disclosure, the Officer responsible carries out a review to determine whether a wrongdoing has been committed or is about to be committed in relation to the school board.

8.2 Follow-up with Director General

The Officer responsible keeps the Director General of the school board abreast of steps he is taking in his reviews of a wrongdoing, except for where he deems that such disclosure may be detrimental. See (Section 24)

The Officer responsible must nevertheless do everything to protect the confidentiality of the identity of the discloser and of information provided to him. See (Section 21)

8.3 Rights of the person involved in the disclosure

While reviews are ongoing, the Officer responsible must protect the confidentiality of the identity of the person involved in the disclosure and provide him with the opportunity to state his own version of the facts. See (Section 10, paragraph 4)

The Officer responsible must provide the person involved in the disclosure with information allowing him to know the nature of the allegations against him and to respond to such allegations. See (Section 10, paragraph 5) However, such communication must not reveal the identity of the discloser or of any person cooperating in the reviews, or any information allowing the identification of such persons.

The person involved in the disclosure may be accompanied by another person of his choice when meeting with the Officer responsible, as applicable.

8.4 Hindering a review

Hindering or attempting to hinder the actions of the Officer responsible in the performance of his duties constitutes a violation of the Act, as is refusing to provide him with information or a document requested to be submitted or to be made available, or hiding or destroying a document required for a review. Such a violation is subject to a fine ranging from \$4,000 to \$20,000. For repeat offenders, the fine is doubled. See (Section 34)

The Officer responsible can transfer the file to the Ombudsman if he perceives or fears that his review of a wrongdoing is being hindered. He may end the processing of the disclosure or continue with it, according to the terms agreed to with the Ombudsman, as

applicable. See (Section 22, paragraph 2)

8.5 End of a review

Where the Officer responsible notices that a wrongdoing has been committed, or is about to be committed, he reports it to the Director General, who then takes the appropriate corrective measures, as applicable. See (Section 24, paragraph 2)

The Officer responsible notifies the discloser that the processing of his disclosure is complete, and where the Officer deems it appropriate, may inform the discloser of what has been done in response to his disclosure. See (Section 24, paragraph 3)

Section 9: MEASURES TO PROTECT THE IDENTITY OF THE DISCLOSER AND CONFIDENTIALITY OF THE DISCLOSURE

9.1 Confidentiality

In performing his duties, the Officer responsible must protect the confidentiality of the identity of the discloser, of persons who cooperate in the process, and of the information provided to him, even from the alleged perpetrator of a wrongdoing, subject to Section 9.3. See (Section 10, paragraphs 4 and 21)

To that end, *he is responsible for using the appropriate means to ensure:*

- That all documents pertaining to a disclosure or to reviews, whatever medium is used, are preserved and that access to them is restricted to the Officer responsible and to staff he appoints, where applicable. To that end, physical documents must be kept under lock and key, and are never to be left unattended. Electronic documents are stored in directories with access limited to authorized persons only;
- That all discussions between the Officer responsible and disclosers, persons cooperating in the process, and respondents take place at a private location, where their discussions cannot be overheard by a third party;
- That all discussions between the Officer responsible and disclosers, persons cooperating in the process, and respondents be protected through the signing of confidentiality agreements;
- That the mode of transmission selected for communicating documents containing information relating to a disclosure or reviews must consider the highly confidential nature of said documents; and
- That all documents relating to a disclosure or reviews be destroyed using confidential redaction techniques according to the retention schedule.

The files of the Officer responsible are confidential. Notwithstanding Sections 9, 83 and 89 of the *Act respecting Access to documents held by public bodies and the Protection of personal information* (See Section 21, paragraph 2), no-one has access or edit rights to any information provided to him.

9.2 Confidentiality obligations of school board staff

Both the Director General and all persons he appoints to deal with disclosures are subject to the same confidentiality obligations, and must exercise the same discretion as the Officer responsible to protect the confidentiality of information they may receive in relation to the disclosure process, to the processing of disclosures, and most particularly,

to the identity of persons involved in the process.

Section 10: PROTECTION AGAINST REPRISALS (See Section 30)

10.1 Prohibition against reprisals

The Act prohibits reprisals or threats of reprisals against a person who makes a disclosure or cooperates in good faith in a review or investigation conducted based on a disclosure. The Act creates an offence punishable by a fine ranging from \$2000 to \$20,000 for a natural person, or a fine ranging from \$10,000 to \$250,000 in all other cases. For repeat offenders, the fine is doubled. (See Sections 33 and 34)

10.2 Protection against reprisals

Any person who fears or believes he has been a victim of reprisals may contact the Ombudsman, who will handle the case appropriately. (See Section 32)

The Officer responsible refers the person who believes a reprisal has been taken against him to the Ombudsman.

Where the reprisal is in relation to employment or working conditions, he refers the person to the Commission des normes, de l'équité, de la santé et de la sécurité du travail ("**CNESST**"). (See Section 32, paragraph 3).

10.3 Recourse against prohibited labour practices

Labour-related reprisals or threats of such reprisals are prohibited under Section 122 of the *Act respecting labour standards*.

A staff member subject to the *Act respecting labour standards* who believes he has been the victim of a reprisal under Section 122 of this Act must seek recourse with the CNESST within 45 days of the incident that is the subject of his complaint. See Section 123, Act respecting labour standards

10.4 Information for disclosers and persons cooperating in the disclosure process

The Officer responsible must notify disclosers and persons cooperating in a review that they are protected should they be subjected to reprisals, and inform them of the time limits for exercising recourse, where applicable.

Section 11: FINAL PROVISIONS

11.1 Interpretation in accordance with the Act

This Procedure covers the implementation of the applicable provisions of the *Act to facilitate the disclosure of wrongdoings relating to public bodies* in the school board, and shall be interpreted accordingly. Where there is a conflict between this Procedure and the Act, the latter shall prevail.

11.2 Use of masculine

The generic masculine form is used in this Procedure solely for purposes of brevity. In all cases, it refers to both males and females, where appropriate.

11.3 Effective date

This Procedure comes into effect on March 1st, 2018.

APPENDIX 1: PREFERRED MODES OF COMMUNICATION

The following are the preferred modes of communication which allow fully confidential disclosures and communications with the Officer responsible in accordance Section 7.1 by using the disclosure form provided in Appendix 2 which is:

- Available on the school board Website;
- To be completed and printed, providing all the information available to the discloser; and,
- To be sent to the Officer responsible in a sealed envelope marked “Confidential” by postal mail or internal mail addressed to:

Officer responsible for dealing with disclosures

Terry Kharyati

Director of Human Resources

Western Quebec School Board,

15 Katimavik, Aylmer, Quebec

Telephone: 819-684-1313 Extension 520001

Email: tkharyati@wqsbc.qc.ca

APPENDIX 2: DISCLOSURE FORM

Western Quebec School Board: Disclosure of a Wrongdoing Form

In accordance with the *Procedure to facilitate the disclosure of wrongdoings*

Complete and print the form, providing all information available. Send it to the Officer responsible in a sealed envelope marked **“Confidential”** by postal mail or internal mail, addressed to “Officer responsible for dealing with disclosures, **Director of Human Resources, Terry Kharyati**”

IDENTIFICATION	
First name	Last name
Are you a staff member of the school board? <input type="checkbox"/> Yes <input type="checkbox"/> No If not, please contact the Ombudsman directly.	
<small>A staff member is a permanent or casual employee of the school board, who receives a wage or salary from the board. For the purposes of this Procedure, persons participating in the school board’s mission by holding an office, performing a function, work or another task for the school board, whether paid or unpaid, are also included. These could be members of the Council of Commissioners and of other committees in place within the school board, as well as volunteers working in its institutions.</small>	

CONTACT INFORMATION FOR CONFIDENTIAL COMMUNICATION	
Choose at least one (1) of the ways listed below for us to contact you confidentially. If you fail to indicate a method, we will consider your disclosure to be anonymous, and forward it to the Ombudsman.	
Telephone	Permission to leave a message? <input type="checkbox"/> Yes <input type="checkbox"/> No
Email	
Mailing address	

PARTICIPANTS IN THE WRONGDOING			
First name	Last name	Title	
Contact information			<input type="checkbox"/> School board employee
First name	Last name	Title	
Contact information			<input type="checkbox"/> School board employee
First name	Last name	Title	
Contact information			<input type="checkbox"/> School board employee

DESCRIPTION OF FACTS	
Describe the facts observed:	

What makes it a wrongdoing: _____	

DESCRIPTION OF FACTS (cont'd)	
Possible impacts on the school board, on the health or safety of people or on the environment;	
If the act has not yet been committed, is it possible to prevent it?	

DATE(S) AND PLACE	
<input type="checkbox"/> Date: _____	
<input type="checkbox"/> From: _____ to: _____	
<input type="checkbox"/> Repeatability. Specify: _____	
Place	

OTHER PERSONS INVOLVED OR WITNESSES			
First name	Last name	Title	
Contact information			<input type="checkbox"/> Employee of school board
Role (witness, participant, etc.)			
First name	Last name	Title	
Contact information			<input type="checkbox"/> Employee of school board
Role (witness, participant, etc.)			
First name	Last name	Title	
Contact information			<input type="checkbox"/> Employee of school board
Role (witness, participant, etc.)			

ADDITIONAL INFORMATION	
Pieces of evidence or documents in your possession, where applicable:	
Steps taken (manager, union, staff member):	
Fear or threats of reprisals:	
Any other information that can be used to process the disclosure:	

This information can only be accessed by the Officer responsible for dealing with disclosures at the school board and by staff he appoints, where applicable. This information shall be stored confidentially, and can only be used and communicated in accordance with the *Procedure to facilitate the disclosure of wrongdoings*.