



MUNICIPALITIES WITH A POPULATION OF 5,000 OR MORE
ACT RESPECTING ELECTIONS AND REFERENDUMS IN MUNICIPALITIES

Guide for private intervenors

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Introduction

This guide aims to help electors or groups of electors interested in acting as a “private intervenor.” It explains the relevant provisions of the *Act respecting elections and referendums in municipalities* (CQLR, c. E-2.2) (hereinafter the AERM). This guide is available on the Élections Québec website: **electionsquebec.qc.ca**.

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*. Where it becomes necessary to interpret or apply the *Act respecting elections and referendums in municipalities*, it is essential to refer to the text published by the Éditeur officiel du Québec, which is available on the following website: **publicationsduquebec.gouv.qc.ca**. Where applicable, references to the provisions of the *Act* appear in parentheses.

Any questions about how the AERM applies to private intervenors can be directed to the treasurer of the municipality or to Élections Québec as indicated below:

Direction du financement politique et des affaires juridiques

Édifice René-Lévesque
3460, rue de la Pérade
Québec City, Québec G1X 3Y5

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→ The rules presented in this guide apply to municipalities with a population of 5,000 or more. They also apply to regional county municipalities where the warden is elected by universal suffrage.

1

Authorization of a private intervenor

This chapter provides important information for persons and groups interested in acting as a private intervenor.

1.1 Definitions

Private intervenor

Any qualified elector of a municipality is eligible to act as a “private intervenor.” A private intervenor can also be a group not endowed with legal personality and composed of natural persons, the majority of whom are qualified electors of the municipality. The natural persons who make up such a group work together to achieve a common goal (AERM, s. 512.1).

→ It is imperative that an elector or group of electors apply for and obtain authorization to act as a “private intervenor” before incurring advertising expenses during an election period, whether to express views on a matter of public interest or to advocate abstention or the spoiling of ballots, and without directly promoting or opposing a candidate (AERM, s. 453[9]).

Group representative

In cases where a private intervenor is a group composed of natural persons, the majority of whom are qualified electors of the municipality, the members are required to designate a representative from among themselves. The group representative is the person responsible for completing and submitting the group’s application for authorization, as well as for acting in this capacity on behalf of the group. Only the group representative may incur advertising expenses on behalf of the group (s. 512.15), and may only act in this capacity for one group (s. 512.8).

Political party

An authorized political party that does not run any candidates in a general election or by-election and that intends to act as a private intervenor must notify the municipality's returning officer of this intention. The party is deemed to have been authorized as a private intervenor by the returning officer as of the date the notice is received and the treasurer assigns the party an authorization number.

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

An authorized political party that avails itself of the provisions of section 455 during an election period – and has therefore incurred election expenses – cannot obtain the status of private intervenor during that period (s. 512.1).

For more information on this topic, contact the Direction du financement politique et des affaires juridiques as indicated in the introduction to this guide.

Election period

"Election period" refers to the period beginning 44 days before polling day and ending on polling day at the time polling stations close (s. 364).

1.2 Filing an application for authorization – A prerequisite

→ Before any advertising expenses are incurred during an election period, an application for authorization must be filed with the returning officer of the municipality in which the applicant 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).

1.3 Applicants

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

- the elector, in cases where the private intervenor is an individual elector;
- the group representative, in cases where the private intervenor is a group.

All applications for authorization should be submitted to the returning officer of the municipality between the 40th and 20th days before polling day (s. 512.4).

Electors applying for authorization need to complete the form titled “Application for authorization of a private intervenor/Elector” (DGE-1031), on which the applicant must:

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

The application must be supported by the elector’s oath and include an undertaking by the elector to comply with all relevant provisions of the *Act* (AERM, s. 512.2).

Groups applying for authorization need to complete the form titled “Application for authorization of a private intervenor/Group” (DGE-1032), on which the applicant must:

1. provide the name of the group, as well as its address, telephone number, date of formation and objectives;
2. provide the names, domiciliary addresses and telephone numbers of its leaders;
3. provide the actual or approximate number of members of the group and declare that the majority of the members are qualified electors;

4. provide the name, date of birth, domiciliary address and telephone number of the elector who will be acting as group representative;
5. declare that the group does not intend to directly promote or oppose any candidate or party;
6. briefly state 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 group representative is not a member of any party;
9. declare that, to the group's knowledge, no member of the group has obtained 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 group representative, be supported by the representative's oath and include an undertaking by the representative to comply with all applicable statutory provisions (AERM, s. 512.3).

Where applicable, the application for authorization must also be accompanied by a document providing details on any advertising expenses incurred by the private intervenor since January 1 of the current year in relation to the election for which the private intervenor is applying for authorization, as well as the name and address of any person who provided \$100 or more to cover such expenses (AERM, s. 512.4). This requirement applies to both individual electors and groups.

"Advertising expense" refers to any expense meeting the following criteria (see also 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 seat in question becomes vacant and ending on the day on which the election period begins;
2. It involves an advertisement related to the election, regardless of the medium used (AERM, s. 512.4.1).

It should be noted that, during the election period, neither an individual elector acting as a private intervenor nor a group representative may become a member of a party (AERM, art. 512.11).

Also, if a group representative dies, resigns, is dismissed or is unable to act, the leader of the group is responsible for appointing another representative and for immediately notifying the returning officer of the change in writing (AERM, s. 512.10).

1.4 Acceptance of an application for authorization

The returning officer of the municipality is responsible for issuing, without delay, the requested authorization if the application is in compliance with the *Act*. The returning officer should inform the applicant that the application has been accepted and assign an authorization number (AERM, s. 512.5).

If an application for authorization is not compliant with the provisions of the *Act*, the returning officer should, before rejecting it, allow the applicant to present observations or, where applicable, to make any necessary corrections. If an application ultimately has to be rejected, the returning officer's decision should be in writing and contain reasons (AERM, s. 512.5).

Any person whose application for authorization is rejected may, by way of an application, appeal the decision before a judge of the Court of Québec (AERM, 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 (AERM, s. 512.8).

1.5 Disclosure of authorizations granted

During an election period, and no later than the 15th day before polling day, the returning officer of the municipality is responsible for sending each candidate and the leader of each authorized party a list of the authorizations he or she has granted.

The list should provide the name of each private intervenor, the name of the group representative, where applicable, and the number and date of the authorization. The list should also specify whether an intervenor intends to express views on a matter of public interest or to advocate abstention or the spoiling of ballots (AERM, s. 512.7).

1.6 Withdrawal of authorization

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

- the application for authorization contained false or inaccurate information;
- the private intervenor or, where applicable, the group representative, no longer qualifies for such authorization;
- the private intervenor or, where applicable, the group representative, has contravened any applicable provision of the AERM;

However, before withdrawing authorization, the Chief Electoral Officer must allow the private intervenor to present observations or, where applicable, to make any necessary corrections. In cases where authorization is withdrawn, the decision should be in writing and contain reasons (AERM, s. 512.19).

Any person whose application is withdrawn may, by way of an application, appeal the decision before a judge of the Court of Québec (AERM, s. 512.20).

1.7 Resignation of a group representative

A group representative may resign at any time. However, he or she must notify, in writing, both the leader of the group and the returning officer. Within five days of resigning, he or she also needs to provide the leader of the group with a report of expenses incurred, with supporting documents (AERM, s. 512.9).



2 Advertising expenses

2.1 Definitions

Advertising

When carried out by a private intervenor, “advertising” can be defined as the dissemination of a message, through any medium, with the aim of sharing the private intervenor’s views on the matter of public interest specified in the application for authorization or with the aim of advocating abstention or the spoiling of ballots, without directly promoting or opposing any candidate or party.

Advertising expenses

“Advertising expenses” can be defined as the cost of all goods or services used to produce an advertising message and to acquire the means to disseminate such a message. The cost of acquiring airtime, space in a newspaper or periodical, or any other form of advertising therefore constitutes an advertising expense.

→ A private intervenor may not incur advertising expenses that are not related to the purpose stated in the application for authorization or that directly promote or oppose a candidate or party (AERM, s. 512.12).

It is important to note that in cases where all or part of the cost of any goods or services constitutes an advertising expense, no person may claim or accept a price other than the regular market price for such goods or services outside of the election period. Likewise, no person may forgo payment of such a price, except in the case of volunteer work. “Volunteer work” refers to work performed personally, voluntarily and without consideration, as well as the results of such work (AERM, ss. 428[1], 450 and 461).

Where an advertising expense covers the time both before and during an election period, that portion of the cost that constitutes an advertising expense must be determined using a formula based on the frequency of use before and during the election period. The determining factor is the time when the advertising message is broadcast, regardless of when the costs associated with producing the message or acquiring the means of dissemination were incurred or paid (AERM, ss. 450, 452 and 512.4.1 para. 3).

The following costs – which, under certain conditions, are not considered election expenses – are not considered advertising expenses when incurred by 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 the same as outside the election period (AERM, 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 (AERM, s. 453[2]).

2.2 Advertising expense limit

The *Act* limits the advertising expenses that a private intervenor may incur. Over the entire election period, a private intervenor may not incur a total of more than \$300 in advertising expenses to express views on a matter of public interest or to advocate abstention or the spoiling of ballots, and without directly promoting or opposing a candidate or party.

No person may accept or execute an order for advertising expenses that is not made or authorized by a private intervenor (AERM, ss. 450, 453[9] and 460).

Where the cost of goods or services used by a private intervenor to produce an advertising message and of acquiring the means of disseminating such a message exceeds \$300, only the official agent of an authorized independent candidate or an authorized party may incur such expenses.

Private intervenors are forbidden from circumventing the advertising expense limit, such as by incurring an expense jointly with any person or by incurring an expense individually but in agreement, collusion or association with another person (AERM, s. 512.13).

2.3 Identifying advertising

The Act requires that all advertising by a private intervenor be identified.

Any advertising copy, object or material produced by a private intervenor should therefore mention the name and title of the private intervenor (in the case of an individual elector) or of the group representative (in the case of a group), as well as the authorization number issued by the returning officer.

Likewise, any advertisement published in a newspaper or other publication should mention the name and title of the private intervenor or the group representative, as well as the authorization number.

In the case of an advertisement broadcast on radio, television or using any other medium or information technology, the name and title of the private intervenor or the group representative, as well as the authorization number, should be mentioned at the beginning or end of the advertisement (AERM, ss. 463 and 463.1).

We recommend using one of the following templates:

| |
|--|
| <p>Authorized by _____ .</p> <p style="text-align: center;">Name of the elector</p> <p>Private intervenor – MUN- _____</p> <p>Name of the printer or manufacturer (where applicable)</p> |
|--|

OR

| |
|---|
| <p>Authorized by _____</p> <p style="text-align: center;">Name of the group representative</p> <p>for the group _____ ,</p> <p>Private intervenor – MUN- _____</p> <p>Name of the printer or manufacturer (where applicable)</p> |
|---|

2.4 Paying expenses

An individual elector acting as a private intervenor must pay any expenses out of his or her own funds. In the case of a group, the cost of any expense must be paid out of the funds of group members who are electors.

Private intervenors must pay all expenses by means of a cheque or other order of payment drawn on the private intervenor's account in a bank, trust company or financial services cooperative with an office in Québec. The cheque or order of payment must be signed by the private intervenor, in the case of an individual elector, or by the group representative, in the case of a group (AERM, s. 512.14).

An individual elector acting as a private intervenor or a group representative may not pay an expense of \$25 or more without acquiring a supporting document, namely an itemized invoice. Such an invoice should list the goods or services provided, as well as their rate or unit price (AERM, 512.16).



3 Return of expenses

→ Within 30 days after polling day, electors acting as private intervenors and group representatives are required to provide the treasurer of the municipality with a return of all expenses incurred using the form titled “Return of expenses of a private intervenor” (DGE-1034) (AERM, s. 512.17).

The return of expenses must be accompanied by invoices, receipts and other supporting documents, or by certified copies of such documents (AERM, s. 512.17).

The report must be signed by the elector acting as a private intervenor or the group representative.

A return of expenses needs to be filed with the treasurer even in cases where no advertising expenses have been incurred. In such cases, “zero” should be entered in the appropriate fields.

Within 30 days after the deadline for filing a “Return of expenses of a private intervenor” (DGE-1034), the treasurer is responsible for publishing, in a newspaper whose circulation covers the municipality, a summary of all expense returns he or she has received. The summary should be accompanied by a notice specifying the date when each return was received, as well as the fact that all returns and supporting documents can be consulted by the public (AERM, ss. 499 and 512.18).

The treasurer is responsible for retaining all returns, declarations, invoices, receipts and other supporting documents for seven years from their date of receipt. During this time, he or she must make the documents available for consultation and copying by the public. At the end of the retention period, the treasurer is required to return the invoices, receipts and other supporting documents to the private intervenor upon the latter’s request. Failing such a request, the treasurer may destroy the documents (AERM, ss. 512.18 and 501).



4 Proceedings, offences and penalties

The Chief Electoral Officer is responsible for ensuring compliance with the statutory provisions applicable to private intervenors, as laid out in Chapter XIII of Title I of the AERM (AERM, s. 367).

4.1 Proceedings

→ The Chief Electoral Officer may institute proceedings for any offence described in Title III of the AERM (a. 647).

In most cases, penal proceedings for an offence referred to in section 647 of the AERM are prescribed seven years after the date the offence was committed. However, no proceedings may be instituted if more than ten years have elapsed since the offence was committed (AERM, s. 648).

4.2 Offences and penalties

A private intervenor making a false declaration, filing a false or incomplete report, or producing a false or falsified invoice, receipt or supporting document is liable to a fine of not less than \$1,000 nor more than \$10,000. Such offences constitute corrupt electoral practices (AERM, s. 595 para. 2, 640 and 645).

Furthermore, in cases where the “Return of expenses of a private intervenor” (DGE-1034) is not filed on time, private intervenors are liable to a fine of \$50 for each day of delay (AERM, ss. 626.1 and 642).

Finally, any person, including a private intervenor, is liable to a fine of not less than \$500 nor more than \$10,000 for contravening sections 463.1, 512.8 and 512.10 to 512.16 of the AERM, among others (ss. 624.1 and 641).



5 Forms to use

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

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

**Schedule to the application for authorization of a private intervenor/Group
(DGE-1039)**

**Return of expenses of a private intervenor
(DGE-1034)**

These forms are available on the Élections Québec website, the address of which is provided in the introduction to this guide.