

SCHOOL ELECTIONS

Political financing for school elections



Guide for the private intervenor

*Act respecting school elections to elect certain members
of the boards of directors of English school boards*

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Introduction

This guide is for individual electors or groups of electors who want to act as a private intervenor. It will help them understand and comply with the relevant provisions of the *Act respecting school elections to elect certain members of the boards of directors of English school boards* (ASEESSC). This guide is available on the Élections Québec website at the following address: 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*. When it becomes necessary to interpret or apply the ASEESSC, it is essential to refer to the text published by the Éditeur officiel du Québec, which is available on the following website: <http://legisquebec.gouv.qc.ca>. Where applicable, references to the provisions of the *Act* are presented in parentheses.

Please note that following the ruling made on August 10, 2020 by the Superior Court of Québec, all references to the ASEESSC refer to provisions of the *Act respecting school elections* in force before the passage of bill 40.

If you have any questions on how the ASEESSC applies to a private intervenor, you can contact either the director general of your English school board or a coordinator at Élections Québec.

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1 Authorization of a private intervenor

1.1 Definitions

Private intervenor

(Sec. 206.36 [8] and 209.9)

Any qualified elector of an English school board may act as a private intervenor. A private intervenor may also be an unincorporated group of natural persons, the majority of whom are qualified electors of an English school board. The natural persons who make up such a group work together to achieve a common goal.

→ It is imperative that an elector or a group of electors apply for and obtain an authorization to act as a private intervenor if they intend to incur advertising expenses during an election period, whether to express views on a matter of public interest, to obtain support for its views on a matter of public interest or to advocate abstention or the spoiling of ballots, all without directly promoting or opposing a candidate.

Elector

(Sec. 12)

To be an elector of an English school board, a person must be of full age, a Canadian citizen, be domiciled in the territory of the English school board and have resided in Québec for at least six months. In addition, the elector must not have been convicted of an offence that is a corrupt electoral practice within the meaning of the *Election Act*, the *Referendum Act*, the *Act respecting elections and referendums in municipalities* or the *Act respecting school elections* (sections 1 and 568).

Person representing a group

(Sec. 209.15 and 209.21)

If the private intervenor is a group of natural persons, the majority of whom are qualified as electors for the English school board, the members of the group must designate one person among themselves to represent them. This person is responsible for submitting the group's application for authorization and is the only person who can pay or incur advertising expenses on behalf of the group. In addition, he or she may only act in this capacity for one such group.

Election period

(Sec. 206.1)

The election period begins 44 days before polling day and ends at the polling stations' closing time on polling day.

1.2 Before submitting an application for authorization

(Sec. 209.12)

→ Before incurring any advertising expenses during an election period, electors must apply for authorization from the returning officer of the English school board. Depending on the circumstances, one of the following two forms must be submitted: *Application for authorization of a private intervenor: elector* (DGE-5831) or *Application for authorization of a private intervenor: group* (DGE-5832).

1.3 Applicants

(Sec. 209.10, 209.11, 209.12 and 209.17)

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

- The elector, if the private intervenor is an individual elector;
- The person representing the group, if the private intervenor is a group.

Applications for authorization must be submitted to the returning officer of the English school board between the 44th and 20th days before polling day.

Individual electors applying for authorization must complete the form titled *Application for authorization of a private intervenor: elector* (DGE-5831), on which the applicant must:

1. Indicate 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;
4. State briefly 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 acting directly or indirectly on behalf of any candidate;
6. Declare that, to his or her knowledge, he or she 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.

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*.

Groups applying for authorization must complete the form titled *Application for authorization of a private intervenor: group* (DGE-5832), on which they must:

1. Indicate the group's name, address, telephone number, date of formation and objects;
2. Indicate the name, domiciliary address and telephone number of the group's leaders;
3. Indicate the actual or approximate number of members of the group and declare that the majority of them 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;
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;
8. 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 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 relevant provisions of the *Act*.

If the representative of a group of electors dies, resigns, is dismissed or is unable to act, the leader of the group is responsible for appointing another representative and for immediately notifying, in writing, the returning officer of the change.

1.4 Acceptance of an application for authorization

(Sec. 209.13, 209.15 and 209.26)

The returning officer of the English school board is responsible for issuing, without delay, the authorization if the application complies with the *Act*. The returning officer informs the applicant that the application has been accepted and assigns an authorization number to the private intervenor.

If the application for authorization does not comply with the provisions of the *Act*, the returning officer must, prior to rejecting it, allow the applicant to present observations or, where applicable, to make any necessary corrections. If the application ultimately has to be rejected, the returning officer's decision must be in writing and be justified.

Any person whose application for authorization is rejected may, upon request, appeal the decision before a judge of the Court of Québec.

→ An elector or a group of electors may only obtain one authorization during an election period. The authorization is only valid for that election period.

1.5 Accessibility of granted authorizations

(Sec. 209.14)

During an election period, and no later than the 15th day before polling day, the returning officer must provide each candidate with a list of the authorizations that have been granted.

This list provides the name of each private intervenor, that of the representative of the group, where applicable, as well as the number and date of the authorization. The list also specifies whether the private intervenor intends to express views on a matter of public interest, or to advocate abstention or the spoiling of ballots.

1.6 Withdrawal of authorization

(Sec. 209.25 and 209.26)

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 contains false or inaccurate information;
- The private intervenor or, where applicable, the representative of the private intervenor, no longer qualifies for such an authorization;
- The private intervenor or, where applicable, the representative of the private intervenor, has contravened to any relevant provision of the *Act*.

However, before withdrawing the authorization, the Chief Electoral Officer must allow the private intervenor to present observations or, where applicable, to make any necessary corrections. A decision by the Chief Electoral Officer to withdraw the authorization must be in writing and contain reasons.

Any person whose authorization is withdrawn may, upon request, appeal the decision before a judge of the Court of Québec.

1.7 Resignation of the representative of a group

(Sec. 209.16)

The person representing a group 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 after resigning, the representative must submit a report of all expenses incurred, including supporting documents, to the leader of the group.

2 Advertising expenses

2.1 Definitions

Advertising

Advertising, as carried out by a private intervenor, is defined as the dissemination, through any medium, of a message expressing its views on the matter of public interest specified in the application for authorization or advocating abstention or the spoiling of ballots, but without directly promoting or opposing a candidate.

Advertising expenses

(Sec. 206.18 [1], 209.18, 206.33, 206.35, 206.36 [1 and 2] and 206.43)

Advertising expenses include the cost of all goods and services used to produce an advertising message and to acquire the means of distributing 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 pay or incur expenses that are not related to the purpose stated in the application for authorization, or that directly promote or oppose a candidate.

When all or part of the cost of a good or service constitutes an advertising expense, no person may claim or accept a price other than the regular market price for such a good or service outside of the election period. Likewise, no person may forgo payment of such a price, except in the case of volunteer work. In this context, volunteer work means work that is performed personally, voluntarily and without compensation.

If an advertising expense covers the time both before and during an election period, what portion of its cost constitutes an election expense must be determined using a formula based on comparing the frequency of use before and during the election period. The determining criteria is the time when the advertising message is broadcast, regardless of when the costs associated with producing the message or acquiring the means of distribution were incurred or paid.

The following costs are not considered advertising expenses for 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 of or with a view to the election; and that the distribution and frequency of publication are established in a similar manner as outside the election period;
- The cost of broadcasting by a radio or television station of a program of public affairs, news or commentary, 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.

2.2 Advertising spending limit

(Sec. 206.33 and 206.36 [8], 206.42, 206.45 and 209.19)

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

No person can accept or fulfil an order for advertising expenses that are not made or authorized by a private intervenor.

Only an authorized candidate can incur expenses of more than \$300 related to the cost of a good or service used in producing advertising messages and acquiring the means of broadcasting such messages.

Private intervenors are forbidden from circumventing the advertising expense limit, including by paying or incurring an expense jointly with any person, or by incurring an expense individually but in agreement, collusion or association with any person.

2.3 Identification of advertising

(Sec. 206.44 and 206.45)

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

Any advertising copy, object or material must therefore mention the name of the printer or manufacturer and either the name and title of the private intervenor or the name of the representative of the group that produced it, as well as the authorization number assigned to the private intervenor by the returning officer.

Any advertisement published in a newspaper or other publication must mention either the name and title “private intervenor” or the name of the representative who had it published, along with its assigned authorization number.

In the case of an advertisement broadcast on radio, television or any other information medium or technology, either the name and title “private intervenor” or the name of the person representing the private intervenor must be mentioned at the beginning or at the end of the advertisement, along with its assigned authorization number.

We recommend using one of the following templates:

Authorized by _____ Name of the elector
Private intervenor – SCOL- _____
Name of the printer or manufacturer (where applicable)

OR

Authorized by _____ Name of the person representing the group
for the group _____ Name of the group
Private intervenor – SCOL- _____
Name of the printer or manufacturer (where applicable)

2.4 Payment of expenses

(Sec. 209.20 and 209.22)

An individual elector authorized as a private intervenor must defray the cost of any expenses out of his or her own funds. A group of electors authorized as a private intervenor must defray the cost of any election expenses out of the funds of its member that are electors.

Private intervenors must pay all expenses by means of a cheque or payment order 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 payment order must be signed by the private intervenor himself or herself, in the case of an individual elector, or by representative of the group, in the case of a group of electors.

Any expense of \$25 or more paid by a private intervenor who is an individual elector or the person representing a group must be justified by a detailed invoice. The invoice must list the goods or services provided, as well as the corresponding rate or unit price.

3

Return of expenses

(Sec. 209.7, 209.8, 209.23, 209.24 and 282)

→ A private intervenor who is an individual elector or the person representing a group must, within 30 days after polling day, file with the returning officer of the English school board a return of all expenses, using the form titled *Return of expenses of a private intervenor* (DGE-5834).

The return of expenses must be accompanied by invoices, receipts, proofs of payment and other supporting documents, or by certified copies of these documents.

The private intervenor who is an individual elector or the representative of a group must sign the return and have it signed by a person authorized to administer oaths (lawyer, notary, mayor, a commissioner of oaths, etc.).

Even if no advertising expenses were incurred, the private intervenor must still file a return of expenses with the returning officer. In such a case, “zero” should be entered in the appropriate boxes.

The director general of the English school board **permanently** keeps these returns of expenses. In addition, he or she keeps declarations, invoices, receipts and other supporting documents for **five years** following their filing. During this period, he or she must make these documents publicly available for consultation and copying. At the end of the retention period, the director general must return the invoices, receipts and other supporting documents to the private intervenor upon the latter’s request. In the absence of such a request, the director general may destroy the documents.

4 Proceedings, offences and penalties

(Sec. 206.2)

The Chief Electoral Officer is responsible for enforcing the legal provisions pertaining to private intervenors outlined in chapter XI of the *Act respecting school elections to elect certain members of the boards of directors of English school boards*.

4.1 Proceedings

(Sec. 223.3 and 223.4)

→ The Chief Electoral Officer may institute proceedings for any offence under Chapter XI of the *Act respecting school elections to elect certain members of the boards of directors of English school boards*.

Proceedings for the offences referred to in section 223.3 are prescribed for **five years** after the date on which the prosecutor becomes aware of the commission of the offence. However, in the case of certain offences, section 223.4 provides for proceedings to be prescribed for a period of **ten years**.

4.2 Offences and penalties

(Sec. 219.2, 219.16, 219.18, 221.1, 221.2 and 223.1)

A private intervenor who files a false statement, who files a false or incomplete report or return, or who produces a false or falsified invoice, receipt or supporting document is liable to receive a fine of \$1,000 to \$10,000. Such offences constitute corrupt electoral practices.

Furthermore, a private intervenor is liable to a fine of \$50 for each day that the *Return of expenses of a private intervenor* (DGE-5834) is overdue.

Finally, a private intervenor is liable to a fine of between \$1000 and \$10,000 for offences such as those under sections 206.45, 209.15 and 209.17 to 209.22 of the *Act respecting school elections to elect certain members of the boards of directors of English school boards*.

5

Forms to use

Application for authorization of a private intervenor: elector (DGE-5831)

Application for authorization of a private intervenor: group (DGE-5832)

Return of expenses of a private intervenor (DGE-5834)

These forms are available on Élections Québec's website, at the address provided in the introduction of this guide.