



Mrs. Kim Rivard
Lawyer

Interference: Prevention is Better than Cure

Interference or not? In the heat of the moment, elected officials may sometimes misstep. While it may seem inconsequential at the time, it could eventually lead to the commission of a wrongdoing against their municipality.¹ It is also likely to constitute a breach of the municipality's code of ethics and conduct.²

While they don't have to report every instance of interference to the Commission municipale du Québec (CMQ),³ it is best—and could even be considered essential—for the director general to serve as a strong bulwark between administration and politics. By acting quickly and judiciously to address interference by elected officials, they can minimize the potential for misconduct and protect the municipality from wrongdoing. They also help to prevent breaches and avoid the consequences they may entail.

Case studies

Directors general need a solid understanding of the roles and responsibilities granted to each party by law,⁴ as well as an ability to identify infringements, to target their actions effectively. We have prepared a handful of scenarios, inspired by disclosures that the CMQ has handled, to help you confirm or hone your instincts. Which ones constitute interference? Naturally, these are only general scenarios; interference can take many forms, and each situation is unique. In real life, you must carefully consider each situation case by case before taking action

The mayor: is it interference?

The mayor asks the finance director to submit a statement of costs for an ongoing project.

No. Although the mayor should ideally make their requests to the director general, their powers of superintendence, investigation, and control⁵ give them the right to approach a member of management directly for this type of information and follow-up.

The mayor asks the public works director to move ahead with certain projects, in accordance with the schedule duly established by the council.

Yes. Even if the mayor notices a discrepancy between the council's guidelines and their implementation, it is the director general who has authority over the municipality's officers.⁶

The mayor asks the director general to give them an employee's file.

No. The mayor can legitimately access employee files as part of their powers of control and investigation.⁷ However, in certain exceptional situations, the director general may restrict access to certain documents. For example, they could do so if the mayor was looking for a psychological harassment complaint against them.

The mayor, newly retired after an excellent career as a manager, takes over the finance director's files during her sick leave. The municipality could not find a replacement because of the labour shortage.

Yes. The mayor cannot usurp an employee's duties, regardless of their skills. The law does not give them this power.⁸

The council is dissatisfied with the performance of a particular employee. The mayor instructs the director general not to offer him a salary increase, going against the remuneration policy adopted by council resolution.

Yes. The mayor cannot give such instructions to the director general, who has authority over the municipality's officers and implements the salary policy.⁹

¹ Interference by an elected municipal official may, in certain cases, qualify as a wrongdoing within the meaning of the *Act to facilitate the disclosure of wrongdoings relating to public bodies*, chapter D-11.1.

² Insofar as the code contains provisions on interference.

³ The director general of a municipality is required to send the Commission municipale du Québec any information brought to their attention that may show that a wrongdoing has been or will be committed in relation to the municipality, in accordance with sections 212(7) of the *Municipal Code* (CQLR, c. C-27.1; the "MC") and 114.1(9) of the *Cities and Towns Act* (CQLR, c. C-19; the "CTA").

⁴ Roles and responsibilities are found mainly in the following sections. Municipal council: MC s. 79 and CTA s. 47. Mayor: MC ss. 142(1) and 937, CTA ss. 52 and 573.2, and *Act respecting the remuneration of elected municipal officers* s. 25. Director general: MC ss. 210, 211, and 212.1 and CTA ss. 113, 114, and 114.1.

⁵ MC s. 142(1) and CTA s. 52.

⁶ MC s. 211 and CTA s. 114.

⁷ MC s. 142(1) and CTA s. 52.

⁸ MC ss. 142(1) and 937, CTA ss. 52 and 573.2, and *Act respecting the remuneration of elected municipal officers* s. 25.

⁹ MC s. 211 and CTA s. 114.

Councillors: is it interference?

A councillor on the recreation committee expresses his dissatisfaction to the recreation director. According to him, the activities she organized were not in line with the resolution adopted by the council.

Yes. Even if a councillor notices a discrepancy between the council’s guidelines and their implementation, it is the director general who has authority over the municipality’s officers. Individual councillors do not have this power; they make decisions collectively at council sittings.¹⁰

A councillor on the public works committee asks the public works director for a follow-up on a project.

Yes. Councillors do not individually have this power, even if they sit on a committee.¹¹

Conclusion

We hope these examples will help you identify conduct that could lead to interference and take action to prevent it. We recognize that addressing this matter with elected officials can be uncomfortable, and all too often creates polarizing conflicts and tensions. However, we have found that clear, open, and transparent communication between the director general and elected officials, as well as policies to guide interactions between officers and elected officials, help facilitate a mutual understanding of and respect for everyone’s roles and responsibilities. Training on roles and responsibilities is also helpful.

Learn more about interference (resources in French only)

Webinar: *Quand l’ingérence devient un acte répréhensible* (When Interference Becomes Wrongdoing)

Article: *Quand l’ingérence devient-elle répréhensible?* (When Does Interference Become Wrongdoing?)

Article: *Rôles et responsabilités des élus et gestionnaires municipaux : à quel moment peut-on parler d’ingérence dans l’administration municipale?* (Roles and Responsibilities of Municipal Managers and Elected Officials: What Constitutes Interference in Municipal Management?)



VOX
AVOCAT[E]S INC.

MONTRÉAL



BROMONT



Communiquer
le droit

MUNICIPAL
ÉTHIQUE
TRAVAIL

