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What is the Extent of the Director General's Duty of Loyalty to the Municipal Council?

As the municipality's highest administrative authority and chief officer,¹ the director general has the power to control other employees and, as such, a certain degree of stewardship. They must remain diligent and neutral in their work.

¹ See sections 210 and 211 of the *Municipal Code of Québec* (CQLR, c. C-27.1) and sections 113 to 114.1 of the *Cities and Towns Act* (RLRQ, c. C-19), which are to the same effect.

Furthermore, section 2088 of the *Civil Code of Québec*² stipulates that all employees are bound to perform their work with prudence, diligence, loyalty, and honesty. However, this is a variable obligation that applies more stringently when the employee in question is in a higher position in the hierarchy. As such, the duty of loyalty is even greater for the director general of the municipality.

When it comes to public services, the duty of loyalty to the employer has an added dimension, given the political aspects of most decisions.³ As such, the director general has a duty of loyalty not only to their employer, the municipal council, but also to the public institution of the municipality itself. The duty of loyalty implies an obligation to exercise restraint.⁴

The municipal council must therefore be able to count on the competence, loyalty, integrity, and exceptional dedication of its chief officer, in order to have all the information needed to manage municipal affairs,⁵ among other things.

That being said, the duty of loyalty does not involve:

- Agreeing with everything the council decides
- Agreeing to break the law because it is an order from the council (or a council member)
- Accepting a citizen's disrespect because they pay the employees' salaries through taxes

The Superior Court has already made the following comments on the role of the director general:

"[119] The director general's duties include acting as an intermediary between the municipal council, other officers, and the public. Their role is twofold: they are both an employee with many responsibilities who reports directly to the municipal council, and the employer's representative to other municipal employees.

[120] [...] This duty is not without limits, however, since the employee is not obliged to comply with a request that is unreasonable or involves an abuse of power from their superior." (Translated from French)

The duty of loyalty does involve:

- Informing elected officials of the options available to them
- Avoiding playing politics and favouring one councillor over others
- Providing elected officials with all documentation required for decision-making in a timely manner
- **Privately** reminding elected officials of their obligations, particularly with regard to ethics
- Agreeing to execute council decisions
- Avoiding any conflict of interest or appearance thereof
- Maintaining a high level of restraint and impartiality

Recently, the Commission municipale du Québec (CMQ) had to consider these principles as part of investigations carried out by the Direction des enquêtes et des poursuites en intégrité municipale (DEPIM).⁶ Here are two examples:

In the Municipality of Waltham:⁷ The investigation revealed that the director general had contravened multiple provisions of the *Municipal Code of Québec*, as well as the rules of ethics and conduct that were applicable to him. Among other things, the director general, who owns his own business, did the majority of his work for the municipality from home. He expressed the need to work from home so as not to be disrupted by the public. He "personally" issued handwritten invoices, without supporting documents, for expenses he claimed to incur in the performance of his municipal duties (internet, telephone, etc.), even though these services were also used for his business.

He was obliged to perform his duties and organize his professional activities in a way that preserved and maintained the public's trust in the municipality.

The CMQ also criticized the director general for unilaterally granting himself these benefits when they were not justified, justifiable, imposed by the council, or provided for in the terms and conditions of his remote work.

² CQLR, c. CCQ-1991.

³ *Labrecque v. Ville de Montréal*, 2009 QCCRT 0283.

⁴ *Ville de Granby v. Fraternité des policiers-pompiers de Granby*, AZ-03142118, arbitrator Claude Fabien, July 9, 2003.

⁵ See, in particular, *Dubois v. Municipalité de Sainte-Françoise*, 2021 QCTAT 4299, para. 46; *Gravel v. Municipalité de Saint-Alphonse-Rodriguez*, 2024 QCTAT 574, para. 84; *Laflamme v. Municipalité du Canton de Hatley*, 2021 QCTAT 1504.

⁶ Under the *Act to facilitate the disclosure of wrongdoings relating to public bodies* (CQLR, c. D-11.1).

⁷ August 2024. [Online] <https://www.cmq.gouv.qc.ca/contentFiles/files/enquetes-et-poursuites/rapports-d-enquetes/Conclusions%20et%20recommandations%20%C3%A0%20la%20suite%20d'une%20divulgateur%20d'actes%20r%C3%A9prim%C3%A9s%20%C3%A0%20l'égard%20de%20la%20Municipalité%20de%20Waltham%20-%20Copie.pdf>.



In the Municipality of Sainte-Pétronille:⁸ In the course of communications between the Municipality and volunteers at the municipal library, some of the latter harshly criticized the director general for her lack of competence and integrity. This was because she had decided, without a prior council resolution, to put an end to the practice of paying for a meal (food and drink) for the volunteers, which had been going on for years. The council, having been informed of its legal obligation, began to make changes to the way the library was managed, further dismaying the volunteers, who saw the new system as “an excessive, demotivating, and infantilizing regime of controls and disapprovals.” They apprised the public of the situation. An escalation of high-profile events followed, which culminated in the CMQ investigation!

However, based on the facts submitted for investigation, it appears that the director general performed her duties as required by reminding the council of its legal obligations and then executing the council’s decisions, despite the public’s discontent. In this case, the duty of loyalty was recognized.

The director general must therefore carry out their work with care. Being transparent with the municipal council and wanting to work in the best interests of the municipality are usually key to success!

⁸ May 2024. [Online] https://www.cmq.gouv.qc.ca/contentFiles/files/enquetes-et-poursuites/rapports-d-enquetes/Rapport_Sainte_Petronille.pdf.

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