



Mr. Dave Tremblay
Strategic Advisor and Executive Assistant to the Director
Direction des enquêtes et des poursuites en intégrité municipale
Commission municipale

Between Proactivity And Restraint: Investigations During Election Periods

As an election deadline approaches, the Commission municipale's (CMQ) Direction des enquêtes et des poursuites en intégrité municipale (DEPIM) sees a significant spike in the number of disclosures it receives regarding alleged wrongdoing by council members. Often, these disclosures are also made public and become part of the election campaign, much to the CMQ's displeasure.

The CMQ is an independent organization of the State whose primary mission is to promote municipal integrity by reinforcing public confidence in its institutions. As such, it needs to remain above the sparring that comes with municipal politics and must not be weaponized to harm those who hold public office. Despite the force of this statement, knowledge of a municipal investigation into the integrity of an elected official can be detrimental to their appearance of probity.

While the CMQ has a legal obligation to conduct its investigations privately and make sure whistleblowers remain anonymous, whistleblowers frequently waive their anonymity and publicly disclose information they sent to the DEPIM, especially during election periods. To respond to these situations, the public body must be agile enough to reduce the impact of its activities during election periods without abdicating the crucial role it plays in upholding municipal institutions. In other words, it must strike a balance when exercising its vast powers.

Firstly, note that the DEPIM is not legally obliged to investigate every disclosure it receives. Disclosures must first be deemed admissible, a step that determines whether the submitted facts support the allegations and suggest wrongdoing that falls within the DEPIM's mandate. Otherwise, the case will not be investigated. For example, an accusation of fraud against a mayor will not be upheld if there is no evidence to reasonably support the allegation. In certain circumstances, such as when the case is picked up by the media, the DEPIM may choose to inform the subject of the allegations of its decision.

Secondly, even if the disclosure is deemed admissible, the DEPIM still has no legal obligation to investigate. Its decision is based on its assessment of the case as a whole, and it must exercise its judgment in a reasonable manner. When analyzing all the criteria that may influence its decision, it always acts in a way that will foster public confidence in its institutions. Given that, the DEPIM may apply the legal principle "*de minimis non curat lex*," i.e., the law does not concern itself with trivial matters, to avoid hampering the democratic process.

In certain situations and when possible, the DEPIM may also choose to fast-track an investigation to reach a quicker conclusion regarding the alleged conduct, in an effort to avoid undue interference during this crucial period.

Finally, note that the laws that the DEPIM enforces give whistleblowers and collaborators a certain degree of immunity, protecting them from civil liability when they are acting "in good faith." That being said, if a person passes the DEPIM information they know to be false, this immunity does not apply. They could face criminal prosecution for "obstruction" and a fine of \$5,000 to \$30,000. Furthermore, they will not be protected from reprisals.