The Tribunal Administratif du Québec: Product of the Reform of the Québec Administrative Justice System

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INTRODUCTION

We live in a law-based society; our justice system is an essential public service, which must be accessible to all. While this is true for civil and criminal justice, it is all the more so in terms of administrative justice, which governs the relations between the State and its citizens. In all spheres of our lives, the various representatives of the executive branch of government regularly make decisions of a particular and individual nature that have major impacts on the lives of citizens and the civil service. Administrative justice, which was in the embryonic stages a mere 40 years ago, has never stopped defining and shaping the relations between the State and its citizens. In Québec, this administrative justice gave rise to a major reform, initiated in the 1970s, which concluded in 1998 with the creation of the Tribunal administratif du Québec, which has held an undeniable place in Québec's judicial landscape ever since. Born out of the merger of various organizations, with different vocations and modes of operation, the TAQ has managed to take on the challenge of establishing a unified, multidisciplinary, impartial and independent tribunal.

In order to fulfil its most fundamental objective, namely to offer the citizen access to quality administrative justice, the TAQ is an itinerant tribunal that is present in 69 cities throughout Québec and holds hearings in more than 400 locations. It has an operating budget of close to $31.5 million and employs 269 people, including 85 full-time administrative judges and 24 part-time administrative judges from various professional backgrounds.[1] In addition to the Code of ethics implemented under the *Act respecting administrative justice*, which applies to them, these administrative judges are also subject to the various codes of ethics established by their respective professional orders. The TAQ has, moreover, adopted a distinctive logo intended to illustrate its independence and allow the public to identify it easily.

Although there is still work to be done, our accomplishments over the past 14 years give us a positive outlook with respect to the situation of administrative justice in Québec. The Québec model is the fruit of

[1] Situation as at March 31, 2012.

several years of reflection, analysis, and in-depth research. It is constantly evolving and can certainly be a source of inspiration for other jurisdictions that also want to give their citizens an administrative justice system that is accessible, efficient and inexpensive. It is in this spirit that this text provides a brief history of the reform of the administrative justice system in Québec, describes the structure of the *Act respecting administrative justice* and the philosophy underlying it, and provides a brief presentation of the Tribunal administratif du Québec.

PART I - HISTORY

A. ADMINISTRATIVE JUSTICE REFORM

i. *DUSSAULT REPORT*[2] (1971)

The adoption of the principles of the welfare state characterized Québec in the 1960s. State interventions in numerous sectors of activity, such as education, health, labour, public services and land use planning led to the multiplication of public agencies with administrative, regulatory or adjudicative functions in addition to increasing their rote within society. Since the large majority of state interventions were based on laws, the number of legislative texts also increased significantly during that period. This evolution in the role of the State brought the issue of administrative justice into question at the beginning of the 1970s. Administrative law was supposed to ensure a balance between the powers of the State and the rights of individuals;[3] yet, the establishment of so many organizations with varied formats and vocations made it difficult to control, even qualify, government bodies.

In March 1970, Québec's Justice Department formed a working group to respond to various questions concerning the situation of Québec's "administrative tribunals." Noting that the veritable nature of this notion is difficult to define, the group, headed by Me René Dussault, limited it to the organizations whose functions were first and foremost judicial in nature. His mandate was essentially to identify, among the numerous state institutions, the "veritable" administrative tribunals,

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2 *Rapport du groupe de travail sur les tribunaux administratifs* (hereinafter *the Dussault Reporf),* Ministère de la justice, 1971, 300 pages.

3 PEPIN, Gilles and Yves OUELLETTE, *Principes de contentieux administratif,* 2nd edition, 1982, Éditions Yvon Blais Inc., Cowansville, 666 pages, page 2 et seq.

establish their mode of operation and the status of their members, examine the possibility of combining them within a single court, and determine if the Superior Court should continue to control the legality of their actions or if it would be preferable to provide for the possibility of a merit-based appeal.[4]

The *Dussault Report* contains 38 recommendations.[5] The principal recommendations were intended to halt the creation of disparate organizations, ensure the recognition of the notion of administrative justice, identify the organizations responsible for rendering the administrative justice and qualify them as administrative tribunals and also ensure that they are governed by a framework law setting out standards intended to ensure the impartial nature of the proceeding and safeguard the rights of the citizens. The working group also recommended that the members of these tribunals could be recruited from outside the Barreau and that the strictly administrative functions and discretionary, regulatory and revision powers of these tribunals should be eliminated, inasmuch as possible. The working group also recommended giving the administrative judges a status similar to that of judicial judges, along with equivalent remuneration, immunities and security of tenure. Finally, the working group recommended that the administrative tribunals should be subject to the supervision of a Conseil des tribunaux adminisitratifs, that an administrative appeal court should be established, with jurisdiction limited to matters of law, and that the Superior Court should retain its power of supervision and control.

ii. *OUELLETTE REPORT*[6] (1987)

To follow up on the initiative started in 1970 to improve administrative justice[7] the government established a second working group, in 1986, chaired by Me Yves Ouellette. The purpose of the group was essentially to rationalize the entire sector of administrative tribunals so that the decision-making process, adapted to resolving disputes of this

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4 *Rapport Dussault,* cited in Note 1, foreword, pages 1-111.

5 *Ibid,* page 287.

6 Rapport du Groupe de travail sur les tribunaux administratifs (Mandat du Groupe Ouellette) 1987, 385 pages.

7 In addition to the *Dussault Report,* the *Ouellette Report* followed the *Livre blanc sur la justice contemporaine* (1975), the *Document Atkinson-Lévesque* (1983) and the *Gobeil Report* (1986).

nature, would be simpler and less expensive. The group also had a mandate to verity the feasibility of grouping organizations together in order to increase the accessibility of justice. In addition to ensuring easier access for citizens, this regrouping could also serve to "*form stronger institutions, providing more guarantees of expertise and credibility"*[8] [unofficial translation]. The status of the members and the procedure and framework of the administrative tribunals were also to be evaluated.

At the outset, the *Ouellette Report* pointed out that the importance of non-judicial justice was recognized by the Supreme Court of Canada in the decision concerning *Attorney General of Québec v Blaikie*.[9] In that matter, the highest court in the country interpreted the expression "any of the courts of Quebec" in section 133 of the *Constitution Act, 1867* concerning the use of French and English before the courts as applying not only to the courts covered by section 96 of that Act (superior courts), but also to courts whose judges are appointed by the province and to *"non-judicial organisms empowered to render justice"*[10] [unofficial translation].

As in the case of the *Dussault Report*, the *Ouellette Report* deemed the regrouping of administrative courts to be beneficial, opted for an improved framework, and proposed a status for the members and a more flexible and modern procedure; it contained 74 recommendations. It proposed the creation of four administrative tribunals with a multidisciplinary composition, namely: the Tribunal des affaires sociales, the Tribunal des affaires immobilières, the Tribunal des recours administratifs and the Tribunal du logement.[11] It also recommended the adoption of an *Act respecting administrative tribunals* specifically instituting a Conseil des tribunaux administratifs, the elimination of privative clauses and, as needed, the creation of a right to appeal to the Superior Court, solely in matters of law and jurisdiction. It established a seven-year mandate for the members, whose working conditions would be governed by regulation. The *Ouellette Report* recommended the adoption of a *Code of ethics* for the administrative tribunal judges.

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8 *Rapport Ouellette*, cited in Note 5, page 2.

9 (1979) 2 SCR 1016.

10 *Rapport Ouellette*, cited in Note 5, page 7.

11 *Ibid*, list of the recommendations in the *Ouellette Report*, pages 303 to 312.

As a result, a first draft of a bill concerning administrative justice was introduced, in 1993, by the Justice Minister, Gil Rémillard.[12] This bill proposed the regrouping of certain administrative tribunals and identified the organizations exercising a judicial function. It was also intended to provide a better definition of the status of the members of these organizations, their duties and powers and instituted a Conseil de la justice administrative. Finally, it stipulated a set of rules of evidence and procedure applicable to the exercise of judicial functions. The bill did not go beyond the stage of being adopted in principle. As a result of certain comments, the Justice Minister requested a complementary report, to evaluate the opportunity for subjecting the organizations responsible for exercising a judicial function and those responsible for an administrative function to the same rules. This opportunity was to be analyzed in terms of accessibility, cost savings, and the flexibility and efficiency of the government decision-making process.

iii. *GARANT REPORT*[13] (1994)

Barely two days before Bill 105 was introduced, the Conseil des ministres approved the principle of establishing a third working group responsible for a complementary report on certain issues concerning administrative justice. The mandate of the third group, presided by Me Patrice Garant, was essentially to rationalize jurisdictions within the network of administrative organizations as well as between that network and the judicial courts. To do that, the group was to analyze the decision-making power of the administrative organizations so as to identify the elements of an adjudicative, administrative and regulator nature and their links with the public administration, to analyze their organization in terms of structures and access for citizens and to make the necessary recommendations.

Thirty-eight organizations were studied by the Garant working group.

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[12] Bill on administrative justice, PL 105, introduced to the Assemblée nationale on June 18, 1993 adopted in principle on November 17, 1993. This bill lapsed according to section 47 of the *Standing orders of the Assembly.*

[13] *Une justice administrative pour le citoyen*, Rapport du groupe de travail sur certaines questions relatives à la réforme administrative, 7 octobre 1994, hereinafter called the *Garant Report.*

The final report, entitled *"La justice administrative pour le citoyen,"* also known as the *Garant Report* (1994), proposed:

- the dejudicialization of the administrative function;
- the creation of a Tribunal administratif du Québec with five divisions: social affaires, employment injuries, real estate evaluation, territory and environment and a general division;
- that this tribunal should exercise its functions in keeping with the rules of evidence and procedure adapted to the characteristics of administrative justice, namely specialization and multidisciplinarity, accessibility and cost savings, simplicity, flexibility and expeditiousness;
- that it should be possible to appeal the decisions of the Tribunal to the Québec Court of Appeal, with permission and in matters of law;
- the creation of an omnibus law on administrative justice, based on Bill 105.

The *Garant Report* also suggested that, considering the distinction between an administrative decision and an adjudicative decision, the organizations whose functions are purely administrative should be required to act equitably and that the adjudicative functions of mixed organizations (those exercising administrative and adjudicative functions) should be transferred to a court. The *Garant Report* also proposed the dejudicialization of several organizations, including certain commissions, offices and boards.

This report resulted in *Bill 130*, concerning administrative justice, introduced by Minister Paul Bégin in December 1995.

B. THE ADOPTION OF THE ACT RESPECTING ADMINISTRATIVE JUSTICE - ESTABLISHING THE TRIBUNAL ADMINISTRATIF DU QUÉBEC

In 1996, after close to 30 years of findings, analysis and reflection, the *Act respecting administrative justice* (LJA)[14] was finally adopted; it was intended to *"to affirm the specific character of administrative justice, to ensure its quality, promptness and accessibility and to safeguard the fundamental*

[14] Act respecting administrative justice (RSQ, c J-3).

rights of citizens."[15] This act established the Tribunal administratif du Québec, a multidisciplinary tribunal responsible for hearing disputes between the government and its citizens.

The Tribunal administratif du Québec (TAQ) was created through the merger of various entities with different vocations and modes of operation:

- the Commission des affaires sociales;
- the Bureau de révision de l'évaluation foncière;
- the Commission d'examen des troubles mentaux;
- the Bureau de révision en immigration;
- the Tribunal d'appel en matière de protection du territoire agricole;
- the chambre d'expropriation of the Court of Québec.

Obviously, given the disparity of the entities merged, the harmonious implementation of the Tribunal was a major challenge given that they came under the jurisdiction of distinct government departments and had different organizational cultures and their own rules of procedure.

Moreover, once the LJA was adopted, several other means of recourse were attributed to the TAQ, particularly in terms of economic matters and specifically with respect to issuing permits and licences. Its areas of jurisdiction were later expanded, over the years, to matters as diverse as childcare services, infractions concerning drinking and driving, nursing homes for seniors, hospital privileges, assisted procreation, private security, etc. To date, a hundred or so sectoral laws have been added to the various jurisdictions of the TAQ.

PART II - STRUCTURE OF THE ACT RESPECTING ADMINISTRATIVE JUSTICE (LJA)

A. TITLE I: GENERAL RULES GOVERNING INDIVIDUAL DECISIONS MADE IN RESPECT OF A CITIZEN

As highlighted in the *Garant Report*, the Administration must ensure that its particular and personal decisions are of high quality, justified and likely to be understood by the citizen. This is the

[15] *Ibid*, section 1.

context in which the LJA redefined the administrative order in Québec; it provided for two distinct systems, one for administrative functions and the other for adjudicative functions. Thus, in the first place, the hundred or so government bodies that interact on a daily base with the citizens and render individual decisions, concerning such matters as compensation, a permit or authorization, must be as flexible as possible and ensure the quality of the service to be provided in an expeditious manner to the citizen. In this context, the mechanisms implemented by the LJA were intended to ensure that the process leading to an administrative decision by an administrative decision-maker respects the duty to act fairly, specifically requiring the administrative authority to inform the citizen of its intent to render an unfavourable decision and giving that citizen an opportunity to present his observations.[16]

Moreover, the LJA stipulates that the TAQ and the administrative tribunals called on to make a decision concerning a dispute between a citizen and a government authority following a decision made by the latter use a procedure that is more flexible than those of the judicial tribunals, while providing guarantees of impartiality and independence. They must give the parties the opportunity to be heard, in hearings which are generally public. The government body has full authority over the conduct of the hearing, must assist the parties in a fair and impartial manner, and must give them a written decision that is clear and concise including the reasons on which it is based.[17] It should be noted that, although the LJA uses the notion of "members" of the Administrative Tribunal of Québec, the expression "administrative judges" is commonly used to designate the members of the TAQ, in order to avoid any confusion between the role of the administrative judges and that of the administrative decision-makers who render decisions on behalf of an administrative authority.

B. TITLE II: ADMINISTRATIVE TRIBUNAL OF QUÉBEC

Established on April 1, 1998, the TAQ is a specialized, independent and impartial tribunal that allows the citizen, in cases

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[16] *Ibid*, sections 2 to 8.

[17] *Ibid*, sections 9 to 13.

specifically identified in the Act, to exercise his rights with respect to a decision made by a government department, public body or a municipality in matters concerning social affairs, immovable property, economic affairs, territory and environment or when his freedom is limited as a result of his mental condition. The TAQ plays a privileged role in administrative justice, different from that of the government and the judicial tribunals; the provisions concerning its composition, jurisdictions and mode of operation form the heart of the LJA.

C. TITLE III: CONSEIL DE LA JUSTICE ADMINISTRATIVE AND ETHICS

The LJA established the *Conseil de la justice administrative*, made up of a chair and a member of the TAQ, the Commission des lésions professionnelles, the Commission des relations de travail and the Régie du logement, as well as nine other individuals who are not members of these bodies.

The principal mandate of the Conseil is to examine ethics complaints lodged against the administrative judges of the TAQ and the government bodies whose chairs are members of the Conseil. It is also responsible for conducting investigations, at the request of the Minister, to determine if an administrative judge is affected by a permanent disability or if a lapse justifies the removal of the president or the vice-president from his administrative office.[18] The complaints are submitted in writing and, when they are admissible, they are submitted to an investigation committee formed of three members of the Conseil, which may recommend reprimanding, suspending or dismissing the member concerned by the complaint.[19]

In keeping with the LJA, the Conseil drafted a Code of ethics that applies to the administrative judges of the TAQ, which was approved by the government in March 2006.[20] It should be noted that, since the LJA was silent in this respect, the administrative judges continue to be subject to the codes that govern the members of the professional orders to which they belong and consequently a large variety of ethical and deontological standards apply to them.

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[18] *Ibid*, section 177.

[19] *Ibid*, sections 182 to 192.

[20] *Ibid*, section 180.

PART III - TRIBUNAL ADMINISTRATIF DU QUÉBEC

A. STRUCTURE AND COMPOSITION

The Tribunal administratif du Québec is responsible for adjudicating, with respect to the cases provided for in the LJA, recourse exercised against an administrative body. It exercises its jurisdiction, with certain exceptions, to the exclusion of any other tribunal or adjudicative body.[21]

It is made up of administrative judges who, since 2005, are appointed by the government during good conduct; the government determines the numbers based on the needs. Their term in office ends only through retirement, resignation or dismissal. They are subject to a Code of ethics and are, with certain exceptions, restricted to the exclusive exercise of their functions.[22]

The Tribunal is divided into four sections: the social affairs section, which includes the mental health division, the immovable property section, the economic affairs section and the territory and environment section.

- **SOCIAL AFFAIRS SECTION**

The social affairs section primarily adjudicates with respect to cases concerning income security or support, assistance and social aid and welfare benefits, protection of individuals whose mental condition presents a danger, health and social services, pension plans, compensation and immigration. The social affairs section is designated as the Commission d'examen des troubles mentaux (Mental Health Board) in keeping with sections 672.38 et seq of the *Criminal Code*; it is also responsible for rendering decisions with respect to accused individuals who are declared not criminally responsible or are declared unfit to stand trial.

The Tribunal's responsibilities in matters of mental health include two components: its responsibilities under sections 672.38 et seq of the

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[21] *Ibid*, section 14.

[22] *Ibid*, sections 38 et seq.

Criminal Code and its responsibilities with respect to all proceedings submitted in keeping with section 21 of the *Act respecting the protection of persons whose mental state presents a danger to themselves or others* (RSQ, c P-38.001). Considering the importance of the volume of work in this area and the specificity of the Tribunal's responsibilities in the field, a mental health division was established within the social affairs section.

- **IMMOVABLE PROPERTY SECTION**

The immovable property section adjudicates disputes specifically concerning immovable property or rental assessments, property or business tax exemptions, compensation resulting from the imposition of reserves for public purposes, expropriation or damage caused by public works.

- **TERRITORY AND ENVIRONMENT SECTION**

The territory and environment section is responsible for proceedings pertaining to decisions or orders rendered concerning the use, subdivision or disposal of a lot, its inclusion in or exclusion from an agricultural zone, the release of contaminants into the environment, and the exercise of an activity that could modify the quality of the environment and the installation of certain advertisements along roads.

- **ECONOMIC AFFAIRS SECTION**

The economic affairs section hears proceedings about decisions concerning specifically the permits, certificates or authorizations needed to practise a trade or a professional activity.

B. POWERS OF THE TRIBUNAL AND THE ADMINISTRATIVE JUDGES

The provisions of the LJA define the nature and the scope of the powers attributed to the Tribunal and the administrative judges.

Section 15 of the LJA states that the Tribunal can confirm, vary or quash the contested decision and, if appropriate, make the decision that should have been made initially. It has the power to decide any question of law or fact necessary for the exercise of its jurisdiction. Therefore, the

TAQ has broad powers that allow it to quash a decision that is illegal, even unconstitutional, to the extent that such a determination is necessary to determine the outcome of a proceeding brought before it. As a result, the dispute brought before the TAQ generally constitutes a veritable *de novo* appeal that serves not only to provide a new examination of the evidence submitted to the authority whose decision is contested, but also to provide new evidence: *The fact that the Tribunal administratif du Québec can quash or vary the contested decision confirms that it is a de novo proceeding*.[23] However, all of the matters brought before the TAQ are not necessarily of the same nature and they can vary in keeping with the administrative entity that rendered the decision that is disputed; the powers of the TAQ are occasionally limited by specific legislative provisions. These limitations take different forms. They can, for example, restrict the possibility for the TAQ to substitute its assessment of certain factors for that of the administrative authority or prevent it from re-examining considerations of opportunity, such as public interest, or reforming the disputed decision so that it can only confirm it or overrule it.[24]

In keeping with section 74 of the LJA, the Tribunal and the administrative judges are vested with the powers and immunity of commissioners appointed under the Act *respecting public inquity commissions* (RSQ, C-37) and have all the powers necessary for the performance of their duties: they may, in particular, make any order they consider appropriate to safeguard the rights of the parties.

In March 2005, the Supreme Court of Canada, in the *Okwuobi* case concerning the right to instruction in the language of the minority, when rendering a decision concerning the powers of the TAQ, unequivocally defined the scope of its jurisdiction, its capacity to adjudicate incident constitutional issues and its powers of reparation:

> [34] (...) *Even more revealing in this respect, the overall structure of the ATQ, that of a highly sophisticated, quasi-judicial body, indicates that the legislature intended to have the ATQ deal with all legal issues, big and small. Finally, s 112 explicitly provides*

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[23] *Justice administrative*, Loi commentée, Denis Lemieux, 3rd edition, pp 121–122.

[24] See for example, section 21.4 of the *Act respecting the preservation of agricultural land and agricultural activities* (RSQ, c P-41.1), section 40.2 of the *Act respecting the Régie des alcools, des courses et des jeux* (RSQ, c R-6.1) and section 307 of the *Act respecting insurance* (RSQ, c A-32). See also *Municipalité de St-Pie* c. *CPTAQ 2009 QCCA 2397*.

> *for the proper procedure to follow when raising a constitutional ground before the ATQ. Based on the revised approach from Martin, the only conclusion that can be drawn is that the ATQ has the capacity to consider and decide constitutional questions, including the conformity of s 73 of the Charter of the French language with s 23 of the Canadian Charter.*
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> (...)
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> *[46] It should also be noted on the topic of remedies that, while it is true that only the Superior Court or a judge thereof may issue an injunction (this will be discussed further below), the ATQ has nevertheless been granted a broad remedial power under ss 74 and 107 of the Act respecting administrative justice. The broad wording of s 74 indicates an intention on the part of the Quebec legislature to grant the ATQ the remedial authority needed to safeguard the rights of the parties. The appellants, or any other claimants before the ATQ, should attempt to exhaust the remedies available from the ATO rather than arguing that the absence of a particular remedy requires them to circumvent the administrative process entirely.*[25]

The LJA also gives the Tribunal the power to dismiss a proceeding it deems improper or dilatory and, if necessary, combine several proceedings.[26]

The TAQ may, upon request, review or revoke any decision it has made when a new fact is discovered, when a party could not be heard, or if a substantive or procedural defect is of a nature likely to invalidate the decision.[27] It benefits from a privative[28] « air-tight » clause, which means that its decisions are exempt from judicial control, except in matters regarding jurisdiction, violation of procedural guarantees or errors in law or fact which give rise to judicial review. In the case of errors in law or in fact, the legality of the decisions rendered by the TAQ is controlled by the instructions stated by the Supreme Court of Canada in the *Dunsmuir*[29] case: considering the privative clause and the tribunal's degree of specialization, the upper courts will defer to the TAQ's decision and will

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[25] *Okwuobi v Lester B. Pearson School Board* [2005] 1 SCR 257, par [34] and [46].

[26] Cited in Note 14, articles 115 and 118.

[27] *Ibid*, section 154.

[28] *Ibid*, section 158.

[29] *Dunsmuir v New Brunswick* [2008], 1 SCR 190.

only intervene in the case of a decision that cannot reasonably be based on the evidence or on a reasonable interpretation of the laws and regulations under its specialized jurisdiction. The decisions rendered by the immovable property section and in matters concerning the preservation of agricultural land may, moreover, be appealed to the Court of Québec whereas the decisions of the Commission d'examen des troubles mentaux can be appealed to the Québec Court of Appeal.

C. EVIDENCE, PROCEDURE AND MANAGEMENT TOOLS

The TAQ controls its evidence and its procedure, which are adapted to its mode of operation, intended to be simple, flexible and efficient. For example, it can accept a proceeding despite an irregularity, relieve a portion of the failure to respect a deadline or make up for the absence of provisions that apply to a particular case, by means of any compatible proceeding.[30] In keeping with section 109 of the LJA, the TAQ has also enacted its rules of procedure in a regulation.[31]

An appeal to the TAQ involves filing a proceeding within 30 days after receiving notice of the contested decision. This time frame is 60 days when the appeal concerns a matter handled by the social affairs section. In order to satisfy the objective of expeditiousness which governs its mission, the administrative authority whose decision is contested must then transmit to the Tribunal and the petitioner, within 30 days of receiving the proceeding, a copy of the file in question. The decision should be rendered within three months of the deliberations; it is made by a majority decision and the grounds for disagreement must be indicated.[32]

Any party can examine and re-examine the witnesses inasmuch as this is necessary to ensure a fair process and may present any pertinent means of law and fact. The Tribunal may refuse to receive any evidence that is not pertinent or does not serve the interests of justice.[33]

Still in keeping with the fundamental principles of the LJA, namely to offer administrative justice that is efficient, accessible and high

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[30] Cited in Note 14, sections 105, 106 and 108.

[31] *Règles de procédure du Tribunal administratif du Québec* (Decree 1217-99) GOQ 1999, No 47, p 5615.

[32] Cited in Note 14, sections 110, 114, 145 and 146.

[33] *Ibid*, sections 132, 137 and 139.

quality, the law makes various management tools available to the parties and the administrative judges so as to facilitate, inasmuch as possible, the manner in which the hearing proceeds.

Thus, if the circumstances justify it, the parties can, since 2002, be convened to a case management conference so as to reach an agreement as to the manner in which the hearing will proceed by, for example, establishing a timetable, specifying the issues of the dispute or admitting a fact or a document. The conference may be particularly useful in a case that requires the presence of experts or in one in which a large number of witnesses is expected; it serves to plan the duration of the hearing and see that the cases that are actually prepared to proceed are placed on the hearing schedule. The role of the administrative judge who conducts the case management conference is broad; he can, for example, in the case of parties who cannot reach an agreement, impose a timetable and make appropriate decisions if one party fails to participate. In the event that the parties do not respect the deadlines set, he can also make the appropriate decisions, including forclusion, or relieve the defaulting party of its default if this is required for the interests of justice.[34]

The LJA also provides for the possibility that the parties can be convened to a pre-hearing conference[35] when this is justified by the circumstances. The purpose is generally to define the issues to be discussed, specify the claims of the parties and the conclusions sought, and plan the way in which evidence will be submitted and the hearing will proceed.

Once again, in keeping with the objectives of the LJA, conciliation has been offered to the parties since the Act went into affect in 1998.[36] The process is intended to give them the opportunity to take part in discussions in a flexible and informal setting in order to settle their dispute. It does not suspend the conduct of the hearing. Although these sessions do not always end with a conciliation agreement, they generally give each party an opportunity to better understand the objects of dispute. In the event that the parties reach an agreement, it is put into writing, binds the parties and is as enforceable as a decision of the Tribunal.

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[34] *Ibid*, sections 119.1 et seq.

[35] *Ibid*, sections 125 to 127.

[36] *Ibid*, sections 119.6 to 124.

Therefore, the LJA makes various mechanisms available to the administrative judges, in terms of procedure, administering the evidence and managing the hearing, so as to enable them to contribute to attaining one of its fundamental objectives: for the citizen to receive a decision as soon as possible. In this respect, the TAQ is different from the judicial courts where, except in the case of abuse justifying the court's intervention, the conduct of the hearing and the determination of the deadlines depends more on the wishes of the parties. It should be noted that the draft bill instituting the new *Code of Civil Procedure*, introduced on September 29, 2011 by Québec's Justice Minister and in which the objective to ensure the accessibility, quality and expeditiousness of civil justice is clearly stated in the foreword, proposes management tools that are based on those implemented within the administrative tribunals.

Moreover, since March 31, 2010, coordinator judges have been designated in order to ensure that the cases handled by the Tribunal, in the fields and regions under its responsibility, are processed quickly and efficiently. They support the vice-presidents in order to see that some of the more complex files progress to the hearing schedule. They help to untangle problematic situations by accompanying the parties. They make sure that the Tribunal uses appropriate means, depending on the nature and the particulars of the files in question, in order to find satisfactory and optimal solutions.

As of March 31, 2012, 11 (eleven) administrative judges were exercising coordination functions, including six with the social affairs section, two with the mental health division, two with the immovable property section, and one with the economic affairs and territory and environment sections.

Various means, whether they result from the LJA or the administration of the Tribunal, have, as a result, been implemented to ensure the expeditiousness of administrative justice: attaining this objective does not, however, depend solely on the administrative judges, the legislative provisions or the manner in which the Tribunal functions. Various factors external to the TAQ can, occasionally, cause delays and, for example, delay a case from being placed on the hearing schedule. Specifically, these include a serious shortage of specialized resources that are essential for the preparation of the expert evaluations required for making decisions.

D. ACCOUNTABILITY

Although the TAQ enjoys an administrative autonomy[37] specific to administrative tribunals and has certain attributes of an independent tribunal, it is considered as a department or institution in keeping with the *Public Administration Act*[38] and is, as a result, subject to various control mechanisms. Thus, the LJA provides various measures controlling its operations and activities, including an annual audit of its accounting books by the Vérificateur général du Québec and the presentation of its annual management report to the Assemblée nationale by the Justice Minister. The TAQ's president must also submit the organization's annual budget previsions to the Justice Minister.[39]

Moreover, as a governmental body, the TAQ is also subject to the provisions of the *Public Administration Act* which provides a management framework which it must respect. In concrete terms, this means that the TAQ must make a public declaration of the services provided to the citizens, develop a strategic plan and prepare an annual management report.[40] This also means that it must set objectives to be attained and prepare a report on its results and that it is accountable to the Assemblée nationale.[41]

Moreover, as in the case of other government bodies, the TAQ, is governed by the *Financial Administration Act*[42] and must report on its management. As a result, the TAQ must deal with budgetary cuts required by the government, unlike the judicial courts where the judges are sheltered from the compression policies. It is interesting to note that in the *Rapport de la Commission d'enquête sur le processus de nomination des juges*, Commissioner Michel Bastarache stated as follows:

> *Despite its status as a tribunal with an exclusive function to adjudicate disputes between the government administration and*

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[37] In keeping with this autonomy, which enables it to implement pilot projects, the TAQ, for example, decided to digitize the files of the Commission d'examen des troubles mentaux.

[38] *Public Administration Act* (RSQ, c A-6.01).

[39] *Ibid*, sections 94 to 96.

[40] *Ibid*, sections 24 to 29.

[41] *Ibid*, section 2.

[42] *Financial Administration Act*, (RSQ, c A-6.001).

> *the citizens, the TAQ is considered part of the executive branch. With respect to nominating and training its members, it comes under the jurisdiction of the Secrétaire aux emplois supérieurs of the Ministère du Conseil exécutife (testimony of Me André Brochu, transcription of September 29, 2010, pages 33 and 30). Now, although administrative tribunals are generally associated with the executive branch, it cannot be said that the status of the TAQ "straddles" the constitutional line shared by the executive branch and the judiciary, considering its exclusive role to adjudicate disputes. Since the TAQ does not have a mission to apply government policy, it is positioned much closer to the judiciary than the executive branch (Ocean Port Hotel Ltd vs. British Columbia (General Manager, Liquor Control and Licensing Branch, (2001) SCR 2, 781).*[43] [unofficial translation]

E. MAJOR MODIFICATIONS MADE SINCE 1998

NOMINATION DURING GOOD BEHAVIOUR

Further to the decision rendered in the *Barreau de Montréal*[44] case, which specifically invalidated the provisions of the LJA concerning the renewal of the five-year terms of the TAQ's administrative judges, the Government of Québec adopted amendments to that law in 2005. Thus, since January 1, 2006, these nominations are made during good behaviour and specific provisions acknowledge their independence and impartiality.

This guarantee of independence contributes to maintaining the confidence of the public in the Tribunal in the context in which it is generally called on to resolve a dispute between a public body and a citizen; the actions of the government, which initially appointed them, are generally the same as those the administrative judges have to judge.

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[43] BASTARACHE, Michel, *Rapport de la Commission d'enquête sur le processus de nomination des juges de la Cour du Québec, des cours municipales et des membres du Tribunal administratif du Québec*, 2011, Québec, Publications du Québec, page 222.

[44] *Québec v Barreau de Mtl*, 2001 CanLII 20651 (QC CA).

CONCILIATION CHAIRED BY AN ADMINISTRATIVE JUDGE

In keeping with the conciliation process implemented in 1998, the conciliator was designated from among the members of TAQ's personnel. In 2002, the legislator, as part of its efforts to reform the *Code of Civil Procedure*, specifically to implement new mechanisms for resolving conflicts in an amicable manner, provided for the possibility that conciliation sessions could also be chaired by an administrative judge and modified the LJA accordingly. Since then, the conciliation process has continued to evolve within the TAQ and has become a systematic process offered to the parties before a hearing is conducted, in matters that are suitable for conciliation. Today, although the law still provides for a conciliator to be a member of the TAQ's personnel, all the conciliators are, in fact, administrative judges.

This has the advantage of allowing the parties to benefit from the supervision of an administrative judge who, as a result of the moral authority that stems from his role as an adjudicator, will oversee the respective interests of the parties and make sure the rules of law are respected. In this context, he can ask questions and guide the discussions so that essential and occasionally sensitive topics are handled efficiently. In the event that an agreement is reached, the parties will be convened to a hearing before a judge other than the one who took part in the conciliation session in order to respect the confidential nature of these sessions. If an agreement is reached following a conciliation session presided by an administrative judge, that agreement is as enforceable as a TAQ decision and does not have to be otherwise ratified.[45]

Conciliation is a process that is faster, less costly and more creative than proceeding with a formal, contradictory hearing; the modifications made to the LJA since 1998 have without a doubt contributed to make conciliation at the TAQ an increasingly serious, credible and efficient process. There is no doubt that this process will continue to evolve, to the great benefit of the parties.

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[45] Cited in Note 14, section 124.

CONCLUSION

The administrative justice reform was essentially intended to promote accessibility to justice for the citizen in matters that lie at the heart of his daily life. The very purpose of the Tribunal administratif du Québec is intrinsically linked to this objective; it was implemented to promote a decision-making process that is accessible, rapid and inexpensive, while ensuring rigour, expertise and multidisciplinarity. Its daring and innovative structure and means of operating have, without a doubt, contributed to its success. Looking back on the 14 years this specialized tribunal has existed, we can be proud of what has been implemented and of the continuous improvements made over the years in order to fulfil its objective to give citizens high quality, expeditious and impartial administrative justice. Nevertheless, since society is constantly evolving, new challenges await the TAQ, which must continually adapt, innovate and seize all opportunities in order to fulfil its mission in a manner that is constantly more efficient and remain its status as a modern and dynamic tribunal.

In order to re-affirm the "specificity" of the TAQ, which initially took up the challenge of merging various entities with different vocations and modes of operation in a harmonious manner, we believe that now is a convenient time to review some of the guidelines retrained during the reform of 1998, including the maintenance, in certain matters, of the multiplicity of the decision-making levels, a heritage from before the reform. Likewise, in order to make the TAQ a veritable appeal tribunal in administrative matters, it is important to use appropriate means to ensure that its independence and impartiality are maintained so as to consolidate the citizens' trust in this institution.