

# The Ministère de l'Agriculture, des Pêcheries et de l'Alimentation

The Ministère de l'Agriculture, des Pêcheries et de l'Alimentation supports and affects the overall growth of the Québec bio-food industry within a framework of sustainable development. The department contributes to the advancement of agriculture through the various programs it manages, which notably concern stock and plant production, fishing, farming, food transformation and distribution, restoration and retailing activities.

## Complaints Reviewed by the Québec Ombudsman

Ministère de l'Agriculture, des Pêcheries et de l'Alimentation	Complaints*	Complaint Grounds	Unsubstantiated Grounds	Substantiated Grounds
2006-2007	12	12	7	5

\* Excluding complaints whose processing was interrupted or which were referred

## TYPE OF COMPLAINTS

The complaints reviewed mostly concerned two specific programs. These are the *property tax refund program* and the *Prime-Vert* program, which offers subsidies for the incorporation of environmental protection measures in agricultural processes. Citizens also call upon the Québec Ombudsman with regard to the department's negotiations with Hydro-Québec in situations where farms suffer damage due to stray voltage from power structures. Others contest the department's refusal to approve the reforestation of farming land or decry the problems involved in acquiring agricultural property from the State. Some complaints are also received regarding food inspection requirements.

The two files described herein are representative of the Québec Ombudsman's interventions in terms of equity. The first file was initially described in the Québec Ombudsman's 2003-2004 annual report. It is meanwhile appropriate to now consider its the outcome, given that the Québec Ombudsman's proceedings resulted in a collective impact.

### Justice for one, justice for all

In this regard, we need to reiterate that the Québec Ombudsman had originally intervened on behalf of a maple syrup producer who was contesting a departmental decision with regard to a compensation program introduced in 2001 to assist producers who had incurred losses subsequent to a 1999 wind storm. The maple syrup producer felt that he had been treated unfairly as a result of his having submitted, in 2000, the "voluntary statement" requested by the department to seek compensation for his loss of 3,600 tap holes. In his official claim submitted in 2001, which included the results of an expertise

performed by a Financière agricole du Québec agronomist, he noted an additional loss of 1,900 tap holes. He explained that the storm had impacted the tree density in the sector where these maple trees grew, leaving 1,600 top holes non-profitable. The loss of the other 300 tap holes was only ascertained after he had submitted his voluntary statement in 2000. In 2003, the maple syrup producer won his claim in part, for the department had revised its 2001 decision subsequent to the Québec Ombudsman's involvement, and compensated him for the loss of 1,600 of the additional 1,900 tap holes for which he had filed an additional claim.

Of the opinion that the claim had still not been handled in an equitable manner, the Québec Ombudsman in 2004-2005 continued its actions to help maple syrup producers with official claims that were higher than their voluntary statements receive the entire compensation to which they were entitled. The Québec Ombudsman had in fact noted that numerous producers were penalized because they had completed the said voluntary statement as of 2000. The department had indeed refused to accept the losses indicated in their official claim, yet had accepted to do so for those who had solely submitted an official claim in 2001.

The voluntary statement form asserted that failing to complete the document would not impact or affect a producer's future request for compensation. Paradoxically, completing that form had caused prejudice to several of them, as in actual fact, the department was considering the voluntary statement as an official claim. Yet it couldn't be considered as such since the right to compensation had only been officially recognized when the compensation program was adopted in 2001.

The Québec Ombudsman consequently asked the department to not take the voluntary statement into account and to instead award maple syrup producers the compensation provided for under the program as per the losses indicated in their official claim. The department agreed to pay the producer who had originally contacted the Québec Ombudsman in this regard the compensation it had initially refused, i.e. for the loss of 300 tap holes. It also agreed to compensate the ten other maple syrup producers in a similar situation, sharing some \$36,000 each other.

### Making an effort to act fairly

An investigation of complaints regarding the Prime-Vert program unveiled a program that was being enforced solely according to set standards. In relying on such a rigid application, the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation fails to act fairly. Yet this fundamental rule of justice, enshrined in *An Act respecting administrative justice*, must serve as a guideline for any Public Administration decision concerning citizens. To avoid being hindered by an overly judicial interpretation, departments must adopt methods of ensuring fairness in their actions, specifically when implanting programs and preparing instructions for the public servants responsible for implementing them.

In 2002, four veal producers each built a structure for storing manure over a period of 250 days, to avoid having to empty their stables when they wintered their livestock. Such structures eliminated potential sources of pollution as there were now no more heaps of manure in the fields from October to May, a period when spreading manure is prohibited. In order to achieve their project, the producers received a subsidy from the department, within the framework of the Prime-Vert programme.

In the spring of 2003, the producers realized that their structures would be insufficient for storing the volume of manure needed during the planned period. Between January and April 2004, department engineers and agronomists verified the manure volume to be stored and the related management, comparing the initial measurements to those from a database used by professionals and other actors in the agricultural sector. This database was published by the Centre de référence économique en agriculture et agroalimentaire du Québec, a private organization to which the department belongs, which it subsidizes, and which it recognizes as a source of official agricultural data. Department professionals concluded that the volume of manure to be stored was nearly twice that calculated using the database information.

Despite this observation, the department continued to hold the professionals hired to draw up the structures' plans by the producers responsible for the fact that the space was insufficient. According to the department, the duties of these professionals included adjusting the database information, based on each of their client's activities, to properly calculate the volume of manure generated by the respective herds. In support of its conclusion, the department cited the Prime-Vert program provision concerning a waiver of responsibility for execution of the work. It added that responsibility for use of the database was to be borne by users, in this case the engineer and the agronomist. While the department did offer financial assistance to producers, it was not significant enough to allow them to make the necessary changes to their warehousing installations.

The Québec Ombudsman saw this situation in an entirely different light. First, it noted that the data on animal waste from the Centre de référence was the only such information available to the agronomist and the engineer. This information was also the one used by agronomists from the department. Second, the department had incorporated these data into the administrative procedures it relied upon to calculate the subsidies granted, surely a testimony to its belief that it was accurate. Third, the Ministère de l'Environnement<sup>1</sup> also relied on this data to check whether the dimensions of warehousing structures were compliant prior to issuing the authorizations necessary for construction.

In the Québec Ombudsman's opinion, the combination of these factors led to the same conclusion: all industry professionals, including those in the Public Administration, considered these data to be reliable and exact. The department's application of the clause regarding waiver of responsibility was therefore inappropriate and inherently unfair, for it failed to take into consideration all of the underlying administrative factors related to the Prime-Vert program.

Bearing in mind that the producers trusted the Administration and that the situation had a significant financial impact on the management of their farms, the Québec Ombudsman asked the department to come up with a fair solution that would help them render their structures compliant.

The department was forthcoming vis-à-vis the arguments put forth by the Québec Ombudsman and reviewed its decision. It then obtained from the Conseil du trésor the necessary credits to assist the producers who had taken up the issue with the Québec Ombudsman. In December 2006, it was thus able to provide them with additional financial support, covering 90% of the costs of expanding their structures, up to the \$100,000 maximum provided for under the Prime-Vert program of each farmer.

1/ Now the Ministère du Développement durable, de l'Environnement et des Parcs