

The Commission de la santé et de la sécurité du travail

The Commission de la santé et de la sécurité du travail promotes health and safety in the workplace and intervenes in matters of prevention. It inspects workplaces to eliminate dangers at the source. It is responsible for compensating workers who are victims of an employment injury and sees to their rehabilitation. It is responsible for setting and collecting employer contributions.

The Commission is also responsible for administering the compensation plan for victims of crime.

The Commission sees to the application of the five laws regarding health and safety at work (prevention and inspection) and compensation for employment injuries.

AN AGENCY WITH SPECIAL STATUS

The Commission de la santé et de la sécurité du travail has special status by virtue of the fact that it is a joint organization that allows workers and employers to participate in defining and managing the workplace health and safety policy. Its board of directors is made up of 15 members: the chair, appointed by the government, seven representatives of workers and seven representatives of employers who are also appointed by the government based on recommendation from employers associations and unions. The Commission is a decentralized agency that has 21 regional directorates.

COMPENSATION AND REHABILITATION OF WORKERS

Part of the Commission's mission involves compensating workers who have suffered an employment injury. It is also responsible for their rehabilitation when they suffer permanent harm to their physical or psychological integrity because of an employment injury. The Commission compensates pregnant and breast-feeding workers and those who are subject to a preventative withdrawal of work.

Complaints Reviewed by the Québec Ombudsman

Compensation and rehabilitation of workers	Complaints*	Complaint Grounds	Unsubstantiated Grounds	Substantiated Grounds
2006-2007	240	262	180	82

* Excluding complaints whose processing was interrupted or which were referred

TYPE OF COMPLAINTS

This year, the Québec Ombudsman intervened following complaints about problems in the medical evaluation and rehabilitation process. Complaints were also filed about the suspension or calculation of the income replacement indemnity and denials of eligibility or reimbursement for certain expenses. The time required for the Commission to render decisions, to rule on a claim, to provide compensation for after-effects or to pay amounts due were also a source of dissatisfaction. A number of citizens complained that the Commission took a long time to return calls or to send them documents required for the exercise of their rights, for example in the event of an administrative review or when a case is before the Commission des lésions professionnelles.

EQUITABLE COMPENSATION FOR WORKERS WHO HAVE MORE THAN ONE JOB

Following a complaint filed by a citizen, the Québec Ombudsman intervened with the Commission to ask it to take into account the salary a worker was drawing from two jobs in establishing his income replacement indemnity, in accordance with a provision of the law. To determine the gross revenue of a worker in this situation at the moment of the injury, the Commission applied a different article of *An Act respecting industrial accidents and occupational diseases* that does not reflect the true loss he has suffered. Pointing to trend in jurisprudence that has a clear majority from the Commission des lésions professionnelles, the Québec Ombudsman intervened with the Commission de la santé et de la sécurité du travail to ask that it correct this problem.

When the calculation of the higher income of full-time jobs, as is set out in the law, does not have the effect of compensating the worker for real loss of income, the Québec Ombudsman recommends that the Commission use another provision to reach a decision that is more in keeping with the purpose of the law, which is the full compensation of the worker.

The intervention of the Ombudsperson with the Commission and the ministre du Travail helped ensure that this file received the required attention. Finally, in December 2006, the chair of the Commission followed up on the recommendation of the Québec Ombudsman.

THERE'S THE RUB

In any given year, reviewing complaints about the Commission brings to light recurrent problems. Last year, the Québec Ombudsman reminded the Commission of its responsibility to provide adequate information to citizens on the grounds for decisions about their cases. Regular problems also include situations in which files are analyzed based on incomplete or inadequate documentation. Furthermore, the Commission has a tendency not to adjust its policies and processes for trends in jurisprudence from the Commission des lésions professionnelles when this jurisprudence is not favorable to the CSST, even when that jurisprudence is clearly dominant.

Important information

The Commission de la santé et de la sécurité du travail refused the claim of a worker for tendonitis caused by her work. The citizen worked on a production line canning maple syrup. She explained to the Québec Ombudsman that the tasks she performed were previously performed by two people. After the doctor advised her to stop working, her employer assigned two men to perform her work in alternation; when one finishes a table, the other takes over for the next table.

The worker's tendonitis started during the Christmas season, a time of year when work hours are longer and production is higher. The worker explained to the Québec Ombudsman that her tasks were made even more difficult because of her small size. She had to perform a rotation motion continuously with her arms extended above the shoulders to take down cans from shelves several rows high located beside her. Upon reading the Commission's file, the Québec Ombudsman reviewed the progressive notes of the agent who had handled the file. There was no mention of her work station. The any modification to Québec Ombudsman asked the Commission to reconsider its decision in light of the facts reported by the worker and suggested inspecting her work station. As a result, the Commission decided to pay an income replacement indemnity to the worker.

The Commission changes its point of view

A worker who had an arm seriously twisted by a heavy load was found unfit for employment by the Commission. He claimed a reimbursement for a therapeutic mattress. His request was denied. The Québec Ombudsman reviewed the file and noted that the medical reports point to a problem of chronic fatigue due to the inability to get a restful sleep. The citizen could only sleep for short periods because of constant pain. His condition remained unchanged after many treatments, including physiotherapy.

The Québec Ombudsman pointed out to the Commission that the purchase of such a mattress is something to be considered, because it would allow the worker to recuperate, if only through one extra hour of sleep per night.

Since rehabilitation measures are not subject to the same conditions and monetary limits as those of the Règlement sur l'assistance médicale, the Québec Ombudsman encouraged the Commission to consider the purchase as a means of rehabilitation. The Commission granted the request and reimbursed the worker for the therapeutic mattress.

Delay in acting: the worker is the one who pays

- During a Commission des lésions professionnelles hearing, the Commission de la santé et de la sécurité du travail (CSST) asked for an extension to produce documents from the file of an injured worker. Two weeks later, the Commission des lésions professionnelles contacted the worker to tell him that it had still not received the documents. The citizen asked the Commission what was going on. He learned that the person responsible for the file was absent for an indeterminate period. The agent told him that he would have to wait for his return. Following the intervention of the Québec Ombudsman, the regional directorate of the Commission agreed to prevent unreasonable delays for the worker by assigning another person to the file.
- A worker sent his agent his application for administrative review. When he checked back one month later with the Direction de la révision administrative, he found out that his agent had never sent in the document. He contacted the Québec Ombudsman who intervened with the agent to correct this error and to ensure that the file was quickly assigned to a reviewer, given the serious consequences for the worker.

Openness from the Direction de la révision administrative

An Act respecting industrial accidents and occupational diseases provides two different measures to deliver assistance to workers who have difficulty performing household tasks because of an employment injury: reimbursement of routine housekeeping expenses and personal home assistance.

A worker received \$1,265 in 2004 and \$994 in 2005 as reimbursement for routine housekeeping expenses. In July 2005, following her objection, the Commission des lésions professionnelles granted her the right to an allowance for personal home assistance. To execute this decision, the Commission (the CSST) mandated an occupational therapist to assess the worker's needs using a grid provided for the purpose. The result of the assessment made it possible to award the worker \$28.09 every two weeks, or around \$730 a year, which was not enough to cover actual housekeeping expenses comparable to those assessed in 2004 and 2005.

At the same time it granted her the right to personal home assistance, the Commission suspended her right to reimbursement for housekeeping expenses on the grounds that both measures were intended for housekeeping.

The Québec Ombudsman agrees that the Commission should not have to pay twice for a service covered by two different programs. However, it believes that the resulting situation is illogical because the worker has sustained a loss even though the Commission des lésions professionnelles is granting her an additional right.

The regional directorate refused to correct the situation. As a result, the Québec Ombudsman went to the Direction de la révision administrative for a solution. The administrative review proposed modifying the calculation of points that entitled the worker to personal home assistance. With the new calculation, the worker receives \$2,208 per year, or enough to pay for housekeeping expenses. Her right to additional personal home assistance granted by the Commission des lésions professionnelles is thereby recognized. The Québec Ombudsman was satisfied with the openness the Direction de la révision administrative showed in its flexible handling of a unique situation.

A directive that limits rights

A regional directorate of the Commission de la santé et de la sécurité du travail has a directive limiting the time allowed to claim a reimbursement for medication to six months. However, neither *An Act respecting industrial accidents and occupational diseases* nor the *Règlement sur l'assistance médicale* provides a time frame for claims for reimbursement for medication. The Québec Ombudsman asked for this directive to be cancelled because it overstepped the law. The CSST agreed.

The CSST admits its error but does not accept responsibility for it

A worker was victim of an employment injury on November 24, 1986. His employer was personally liable to pay the benefit, in other words, he had to pay compensation directly to the worker. Because of this incident and the eight relapses, recurrences or aggravations that would follow, the worker would be permanently impaired and suffer functional limitations that would prevent him from resuming his job. In January 1996, the Commission des lésions professionnelles and the first employer ratified an agreement that determined that a job as a security guard at a third-party employer was suitable.

On November 14, 2001, the worker suffered another relapse. On February 15, 2002, the Commission (the CSST) decided that he was nevertheless able to continue to work as a security guard. On May 3, the Commission reconsidered its decision based on new information provided by the third-party employer and the attending physician. It neglected, however, to inform the first employer of the decision as provided in article 365 of *An Act respecting industrial accidents and occupational diseases*. On July 3, 2002, the Commission (the CSST) declared the worker unemployable and paid him an income replacement indemnity in accordance with article 47 of the Act. The first employer contested these two decisions and took the matter before the Commission des lésions professionnelles.

On October 26, 2004, noting that there were new critical factors that merited that the Commission (the CSST) reconsider, the Commission des lésions professionnelles ruled the CSST's decision of July 3, 2002 defective on the grounds that the first employer had not been informed of it. Because of this omission on the part of the Commission (the CSST), the February 15, 2002 decision regarding the worker's abilities was therefore restored and his income replacement indemnity was reduced. The citizen complained to the Québec Ombudsman that this error was seriously prejudicial to him.

Following its analysis of the file, the Québec Ombudsman shared its concerns with the interim chair of the Commission (the CSST). It believed that it was an exceptional situation that was not handled reasonably, equitably and in accordance with the spirit of *An Act respecting industrial accidents and occupational diseases*. The Québec Ombudsman concluded that the worker was effectively denied his full income replacement indemnity because of an error committed and even admitted to by the Commission (the CSST).

The CSST acknowledges not having informed the first employer of its intention to review its decision about the worker's ability. It also admits that the worker should be considered unemployable, as it had decided on July 3, 2002. However, the Commission (the CSST) believes it is still bound by the decision of the Commission des lésions professionnelles and as a result has referred the citizen to the courts.

The Québec Ombudsman finds it unfair that the worker bears the burden of should bear correcting an error made by a public agency. In such circumstances, it is up to the Commission (the CSST) to take responsibility for its errors; the victim should not have to invest time and money to obtain justice. Furthermore, the Québec Ombudsman believes that the decision of the Commission des lésions professionnelles, the effect of which is to present the rights of the employer following an error made by the Commission (the CSST), cannot be interpreted as having the intent of infringing the rights of the worker.

On March 31, 2007, the Commission (the CSST) refused to take responsibility for its error and to correct the citizen's situation out of concern for equity. The Québec Ombudsman is continuing its intervention to have the situation addressed as quickly as possible.

RELUCTANCE TO ACCEPT RESPONSIBILITY FOR COMPENSATION

The Québec Ombudsman is asked to intervene in situations in which victims of injury are caught between the Commission de la santé et de la sécurité du travail and the Société de l'assurance automobile du Québec, with each claiming that the other agency is responsible for compensation. The section of this report on the Société de l'assurance automobile du Québec details this situation and contains the following recommendation for both agencies.

Recommandation

Given that under article 83.66 of the *Automobile Insurance Act* and article 449 of *An Act respecting industrial accidents and occupational diseases*, the Société de l'assurance automobile du Québec (SAAQ) and the Commission de la santé et de la sécurité du travail (CSST) have reached an agreement regarding processing files of injured parties who, while receiving an income replacement indemnity from the Société or the Commission experience a new incident that is not within the scope of responsibility of the agency providing compensation;

Given that the agreement between the Société and the Commission does not cover all cases of citizens who have already received an income replacement indemnity from the SAAQ or the CSST and who experience a new incident within the scope of responsibility of the other system;

Given that harmonization problems arise between the Société and Commission in the review of files and on decisions rendered;

Given that there can be unfair consequences of these situations for victims of injury;

■ **The Québec Ombudsman recommends:**

That the Société de l'assurance automobile du Québec and the Commission de la santé et de la sécurité du travail identify and implement appropriate short-term solutions to harmonize their activities with regards to a single citizen.

COMPENSATION FOR VICTIMS OF CRIME

Within the Commission de la santé et de la sécurité du travail, the Direction de l'indemnisation des victimes d'actes criminels has the mandate of assessing the eligibility of victims of crime for benefits and determining their right to benefits provided for in the law. It offers appropriate medical assistance services and psychotherapeutic rehabilitation services to victims in an effort to lessen the effects of a crime.

The Commission is responsible for the application of the *Crime Victims Compensation Act* and *An Act to promote good citizenship*, which use the same principles of compensation as the *Workers' Compensation Act*. The Minister of Justice is responsible for the execution of these two laws.

MODERNIZING SERVICES TO BETTER RESPOND TO DEMAND

According to the 2005 annual report of the Direction de l'indemnisation des victimes d'actes criminels, requests have increased in recent years. From 1972, the year it was created, to December 31, 2005, the Direction received 78,000 requests for benefits and paid \$750 million in compensation. Requests for benefits grew from 148 in 1972 to 3,463 in 2005.¹

At the beginning of 2006, the Direction began modernizing its services. One of the expected effects of this effort is faster processing of files. The Direction is also reviewing its processes to better target its interventions according to the specific needs of its client groups. It will attempt to process simpler cases faster to be able to devote more time to cases in which a person's condition could become chronic.

At a meeting with the director and representatives of the agency in January 2007, the Québec Ombudsman was briefed on the modernization project and will follow its progress over the next year.

The Québec Ombudsman also submitted its comments to the Minister of Justice regarding Bill 25, *An Act to amend the Crime Victims Compensation Act and other legislative provisions*. This bill gave the Québec Ombudsman the opportunity to reiterate some of its 2002 recommendations from a document entitled *Rapport spécial sur le régime d'indemnisation des victimes d'actes criminels*. The Québec Ombudsman also presented its comments to the taskforce created by the Minister to review the compensation plan for victims of crime. The Québec Ombudsman again reiterated its positions from 2002 and made new recommendations for the modernization of the compensation plan. These are presented in the section of this report on the Ministère de la Justice.

1/ Rapport annuel d'activité, Direction de l'indemnisation des victimes d'actes criminels, 2005, page 9.

Complaints Reviewed by the Québec Ombudsman

Compensation for victims of crime	Complaints*	Complaint Grounds	Unsubstantiated Grounds	Substantiated Grounds
2006-2007	40	50	40	10

* Excluding complaints whose processing was interrupted or which were referred

TYPE OF COMPLAINTS

Once again this year, a wide variety of complaints were made to the Québec Ombudsman. Long waiting times for the Direction to make a first instance or review decision, to pay compensation, to reimburse expenses, to process a file after an expert opinion and to perform an investigation were raised many times. The situations brought to the attention of the Québec Ombudsman also had to do with eligibility for the plan and the base salary used to determine compensation. Finally, citizens sometimes complained about lost mail and interpersonal difficulties with agents and expressed dissatisfaction with how their cases were handled in general.

The Québec Ombudsman believes that the modernization plan presented by the Direction includes measures that could correct certain problems and respond more appropriately to the needs of its client groups. It will watch the results of its implementation carefully.

A broken promise

One of the complaints received was regarding a citizen who was a victim of a crime in 2003. The Direction refused to accept her claim, so she exercised her recourse before the Tribunal administratif du Québec. Following a conciliation signed in March 2006, the claim was accepted and the file returned to the Direction de l'indemnisation des victimes d'actes criminels so that it could decide on her compensation.

In June 2006, the social worker helping the victim contacted Québec Ombudsman because she had been unsuccessful in having the Tribunal's decision enforced. She said that upon the signing of the conciliation agreement, the representative of the Québec's Attorney General had promised the victim to ask the agency to process her file as a priority, given the severe post-traumatic shock the victim was suffering from. Unfortunately, the file was not processed, in spite of the commitment made by the compensation agent.

In the beginning of July, the Québec Ombudsman intervened with the Direction de l'indemnisation des victimes d'actes criminels to ask that the victim be evaluated as soon as possible in accordance with the decision of the Tribunal.

In August 2006, the Québec Ombudsman learned that the appointment with the psychiatrist who should assess the psychological injuries was set for November 2006. Following another intervention on the part of the Québec Ombudsman, the appointment was moved forward two months to September 2006.

In the interim, the social worker contacted the Québec Ombudsman again. The victim had just learned that her physical injuries would be assessed a few weeks later and received no further details, postponing the decision once again.

The Québec Ombudsman intervened again to ask that the assessments be done in close succession to allow the victim to move on. This request was granted.