

# The Société de l'assurance automobile du Québec

The mission of the Société de l'assurance automobile du Québec (SAAQ) is to protect and insure Québec citizens against risks inherent in use of the road. This mission comprises four mandates:

- road accident victims' compensation and their rehabilitation;
- road safety promotion;
- monitoring access to the Québec highway network, and the collection of driver's licence and vehicle registration fees;
- monitoring and ensuring control over the highway transportation of goods and passengers.

## A PUBLICLY ADMINISTERED MONOPOLY

Risks related to highway use in Québec have been collectively administered since 1978. The Société de l'assurance automobile du Québec was created to oversee a no-fault insurance system and manage access to the road network; it is also responsible for ensuring the safe transportation of passengers and goods.

The SAAQ single-handedly administers a plan for the compensation of road accident victims having suffered bodily injuries, as well as solely overseeing the right to make use of the road network. In this regard, its activities are twofold: enforcement of the Highway Safety Code and compensation of road accident victims. Through its duties in the area of highway safety, the SAAQ plays a role in one of the State's core missions, that of ensuring public safety.

Citizens are notably protected as a result of the SAAQ's enforcement and compensation activities. The SAAQ has significant responsibilities and duties in all of its areas of activities, and is accountable for the measures it adopts and its results with regard to the quality of services it ensures citizens. The Québec Ombudsman again observed problems in this regard in 2006-2007. While these problems are specific to each area of activity, they share a common trait, namely that of involving SAAQ services or functions that have a direct impact on citizens.

## MAINTAINING SERVICE QUALITY DESPITE CUTBACKS

The Québec Ombudsman is aware of the SAAQ's budgetary reality, and understands the targets it has set with the goal of streamlining its operating expenses. Throughout this process, which is in line with the government objective of cutting back on the number of public servants and the introduction of Services Québec, particular attention will need to be paid to the quality of the services delivered to citizens.

Given its financial situation, the SAAQ foresees, in its 2006-2010 strategic plan, having to decrease its personnel by 10% and slash its operating expenses by several tens of millions of dollars. At the same time, it anticipates an annual increase of around 160,000 vehicle registrations (2%) and 76,000 driver's licences (1.6%), as well as increased demand on the highway network.

Given this reality, the Québec Ombudsman will be particularly vigilant, and strive to ensure that the organization's unavoidable financial adjustment does not prejudice accident victims and users of the road network.

It will specifically watch the quality of the services the agency delivers to citizens, while observing the impacts of grouping together, at the same premises, SAAQ and Services Québec services, as well as those of other departments and agencies that could eventually be added. This physical gathering of entities is notably part of the government's decision to have the SAAQ's network of service centres become the hub of Services Québec's counter-based services. The Québec Ombudsman will ensure that the expertise thus transferred is maintained in the execution of Services Québec's broader mandate. As regards compensation of road accident victims, the Québec Ombudsman will ensure that the staff cutbacks do not have negative repercussions on the handling of accident victim files.

### Recommendation

#### The Québec Ombudsman recommends:

That maintaining and improving services constitute formal criteria the Société de l'assurance automobile du Québec must necessarily and systematically take into account during administrative decision-making and the implementation of measures for reducing operating costs.

## COMPENSATION OF ROAD ACCIDENT VICTIMS

### Complaints Reviewed by the Québec Ombudsman

Compensation of road accident victims	Complaints*	Complaint Grounds	Unsubstantiated Grounds	Substantiated Grounds
2006-2007	266	361	201	160

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

## TYPE OF COMPLAINTS

As regards compensation of road accident victims, the Québec Ombudsman receives, among others, complaints concerning the sometimes unacceptable delays before the SAAQ obtains medical opinions. Citizens also decry the absence of adequate explanations for decisions regarding disability which lead to the termination of income replacement indemnities. The Québec Ombudsman also intervenes when two agencies, notably the SAAQ and the Commission de la santé et de la sécurité du travail (CSST), pass the buck, and respectively claim that the other is responsible for compensating a citizen.

In our opinion, the percentage of 2006-2007 complaints with substantiated grounds is still very worrisome. This year, nearly 50% of the complaints received were again found to have substantiated grounds. In other words, nearly one in every two citizens who contacted the Québec Ombudsman was in fact prejudiced by the SAAQ's actions or lack thereof.

These figures can be partially explained by certain new or existing system deficiencies, which we will further address in upcoming pages. These data are nonetheless a clear indication that the SAAQ's performance in providing quality services to some accident victims is unsatisfactory.

## IMPLEMENTATION OF THE SAAQ'S 2006-2008 ACTION PLAN

In its 2005-2006 annual report, the Québec Ombudsman once again castigated the SAAQ with regard to the delays involved in rendering decisions under review and in obtaining medical opinions. The Québec Ombudsman considered it important to take action, for unacceptable response times were having a direct impact on citizens. In this regard, it noted that the SAAQ had introduced a three-year action plan and undertaken to closely monitor the impact of its new orientation on services to accident victims.

### RESPONSE TIMES FOR REVIEW DECISIONS

The Québec Ombudsman observed a significant decrease in response times for review decisions this past year. In December 2005, a road accident victim would on average wait 9.2 months before the SAAQ's review branch reached a decision. One year later, in December, this time period was 4 months. The backlog of files being processed also decreased, dropping from 8,667 in December 2005 to 3,950 in December 2006.

Based on the information received, the improvement is due to the hiring of personnel for a set time period. The Québec Ombudsman will continue to monitor the situation, with the aim of ensuring that processing times will not suffer once temporary employees are let go. The Québec Ombudsman feels that the decreased waiting time is a positive development for all road accident victims and must continue to be a focus in the future.

### DELAYS IN OBTAINING MEDICAL OPINIONS

The Québec Ombudsman has not observed any major improvement, compared to the last two years, in the time frames for obtaining opinions with a direct impact on accident victims. It has even noted a slight increase in the average response time for all medical opinions, compared to the previous year. Road accident victims are prejudiced when the SAAQ cannot obtain medical opinions within a reasonable time frame. In such cases, the prejudice is concretely translated into delays in receiving compensation, which citizens who are victims of road accidents need to meet their financial obligations.

In this regard, an analysis of existing statistics indicates that prejudice is most likely to occur for two specific types of medical opinions, namely those which attempt to draw a link between an accident and a disability prohibiting work, and those involving later after-effects. These opinions are requested in an effort to determine whether a disability prohibiting work and/or after-effects are caused by a road accident. In 2006, for example, accident victims who were workers at the time of their accident or when they filed a claim after having suffered after-effects respectively had to wait an average of 73 and 96 days before obtaining a medical opinion that would enable the SAAQ to render a decision on whether or not to authorize an income replacement indemnity. During this waiting period, accident victims had to personally compensate for their lost income. For example, a road accident victim who suffered after-effects and was waiting for the SAAQ to decide whether or not it would compensate him or her for a work-prohibiting disability may have had to dip into savings, go into debt or sell off assets. The impact was thus considerable. Who can financially support such a waiting time? And why should anyone be expected to do so?

While the Société de l'assurance automobile undertook to prioritize files involving workers, the information obtained does not allow us to ascertain that delays in these cases were less than the average for all other requests.

For other road accident victims, long response times for obtaining medical opinions delay the payment of lump-sum indemnities, and can also delay citizens receiving medical or rehabilitation care or treatment made necessary as a result of their accident. In some cases, these delays have a negative impact on their recovery.

To better depict the overall impact of this problem on accident victims, we will recap two situations involving people who had to contact the Québec Ombudsman to ultimately have their case settled.

#### **A one-year delay impedes an already lengthy process**

On April 18, 2005, the Tribunal administratif du Québec rendered a decision under which the SAAQ was required to acknowledge the link between a citizen's dorsolumbar pain and a road accident she had had in 1997. The SAAQ's compensation branch had to reassess the situation and render a decision as to the payment of indemnities related to acknowledging this link. Subsequent to the Tribunal's decision, the compensation officer responsible for the accident victim's file requested an opinion from a consultant physician for the SAAQ on April 27, 2005. In April 2006, the citizen complained about the lengthy response time to the Québec Ombudsman.

The Québec Ombudsman, given that the initial review process in front of the Tribunal had been initiated a while back and that a year had gone by since the Tribunal's decision, asked the SAAQ to grant priority treatment to the file. On May 25, 2006, the consultant physician responded to the April 27, 2005 request for an opinion, recommending that a 2% deficit be acknowledged with regard to the dorsolumbar region. The accident victim consequently received an amount of \$3,239.91, after having waited an additional year after the review process and the Tribunal administratif du Québec hearings.

#### **A medical opinion for a student long in coming**

A student was injured during a road accident on April 29, 2003. Given the *Automobile Insurance Act* provision regarding a setback in one's studies, on October 18, 2004, she sent the SAAQ the completed form for this purpose. The SAAQ asked for a number of medical documents before it would process her request. On April 19, 2005, the compensation officer requested an opinion from a consultant physician for the SAAQ. On March 15, 2006, with no news from the SAAQ, the citizen got in touch with the Québec Ombudsman, which reviewed her complaint and asked the SAAQ to award it priority treatment, given the lengthy delays thus far. On July 3, 2006, the consultant physician issued an opinion in support of the citizen's right to compensation for the setback in her studies, after which she was paid \$4,014. Given that it took the SAAQ nearly 15 months to produce an opinion.

### THE SITUATION REMAINS TROUBLING

As promised, the Québec Ombudsman monitored the implementation of the SAAQ's action plan. Numerous discussions were held with representatives, as a result of which the Québec Ombudsman concluded that various actions would be taken between 2006 and 2008 to modify the SAAQ's ways of working, including but not limited to its process for obtaining medical opinions. These changes should eventually have a positive impact on such delays.

Documents obtained from the SAAQ over the last few months clearly indicate that it is aware of the problem and is attempting to find a solution. The Québec Ombudsman, in turn, is aware that given the scope of the operational changes required, the issue of delays cannot be fully resolved during the plan's first year. This being said, the Québec Ombudsman remains concerned about this situation, specifically in light of the negative impact on accident victims and the lack of true progress thus far. It therefore expects the 2006-2008 action plan to significantly impact processing time frames, and plans on closely monitoring the SAAQ's progress in this regard.

### METHODS OF COLLECTING ON A STATUTORY CERTIFICATE OF DEFAULT

The Québec Ombudsman communicated with the SAAQ after receiving a complaint from a citizen who claimed to have been prejudiced by recovery activities with regard to a statutory certificate of default. In fact, after the victim had suffered a second accident, the SAAQ was holding back indemnities to apply them to the certificate, which is a document for attesting to the amount of a debt and the fact that it is due. After an analysis of the legislative provisions governing the prescription of judgments and compensation, the Québec Ombudsman concluded that the collection measures adopted with regard to a statutory certificate of default did not adhere to the rules provided for under the Civil Code of Québec. In view of the illegal nature of the collection measures, the Québec Ombudsman recommended that the SAAQ review its applicable internal procedure to ensure that it comply with Civil Code of Québec provisions. Subsequent to this intervention, the SAAQ amended its debt collection policy on December 4, 2006. The revised policy, a copy of which was forwarded to the Québec Ombudsman, included a debt cancellation clause to ensure that collection measures would not be initiated for those cases where the certificate of default was prescribed.

## ACCESS TO TELEPHONE INFORMATION AGENTS FOR EVERYONE

A road accident victim communicated with the Québec Ombudsman to complain that her compensation officer was not returning her calls, despite the numerous voice mail messages she had left. Furthermore, she was unable to speak to anyone else, not even an information agent.

Through its investigation, the Québec Ombudsman learned that the citizen belonged to a personal treatment program for muscular strains and injuries. Under this program, accident victims had direct access to compensation officers. In this case, however, the accident victim was provided a telephone number that did not provide immediate access in the event of the compensation officer's absence.

The Québec Ombudsman is of the opinion that road accident victims must be able to reach competent resource persons at all times. It also asked the SAAQ why some road accident victims were unable to speak with information agents. The SAAQ maintained that it strove to offer all citizens fast and courteous access to required services, and furthermore committed to verifying the information submitted by the Québec Ombudsman. It effectively discovered that some telephone messages do not include an option for receiving immediate support and proceeded to take the necessary measures to correct the situation as soon as possible.

## PRELIMINARY MEDICAL OPINION AND GROUNDS FOR DECISIONS

For some compensation cases, the SAAQ can require that a road accident victim be seen by a health professional of its choosing. It can, for example, ask an expert for his or her opinion as to the accident victim's capacity to resume working. Once this medical evaluation is completed, the SAAQ receives a preliminary medical opinion. This is a concise form on which the expert has indicated, by checking the appropriate boxes, whether or not a person is fit to work. The form also includes a space for any necessary comments. Once this preliminary medical opinion is received, the compensation officer reaches a decision for termination of disability if the expert has noted that the accident victim is fit to resume working.

This procedure has been in force since 2002. The purpose of this opinion, which is prepared well before the expert's final, detailed report, is to allow the SAAQ to reach a decision regarding an accident victim's ability to resume working and, when applicable, quickly cease paying income replacement benefits.

In 2004, the Québec Ombudsman reached two conclusions that prompted it to intervene with the SAAQ.

Firstly, it observed that road accident victims found it difficult to understand the decision that led to the termination of their disability, because the grounds were not disclosed to them. In fact, such decisions do not normally include any information on the specific medical findings of the expert or the SAAQ.

Secondly, it concluded that when a decision to terminate disability and, as a result, indemnities is communicated, the comprehensive medical report is not yet included in the file. At this stage, the road accident victim does not have access to all of the evidence, as it is not in the file or in the SAAQ's physical possession.

The Québec Ombudsman reiterated to the SAAQ that under section 83.43 of the *Automobile Insurance Act* and section 8 of *An Act respecting administrative justice*, a decision must have substantiated grounds and must be communicated in writing to the person in question. This aims to help ensure that decisions are based on adequate grounds, and that the latter are clearly expressed.

The grounds for a decision rendered on the basis of a preliminary medical opinion are very important, as this is the only decision taken with regard to termination of disability. Furthermore, even when the comprehensive medical report is included in the accident victim's file, no additional information is provided him or her with regard to the grounds underlying the SAAQ's decision.

The Québec Ombudsman held numerous exchanges with the SAAQ to attempt to shed some light on this problem. The SAAQ announced that it planned to stop relying on preliminary medical opinions, but without specifying a date. In the interim, it proposed implementing various transitional measures, about which the Québec Ombudsman was somewhat unsure. The SAAQ promised that it would review these.

While it appeared, as of March 31, 2007, that this issue would be settled, the Québec Ombudsman decries the amount of time it took the SAAQ to seriously investigate the matter and seek alternative solutions. The Québec Ombudsman has been critical of this practice since 2004, and the problem is still not resolved.



## UNCERTAINTY AS TO WHICH AGENCY IS RESPONSIBLE FOR COMPENSATION

The Québec Ombudsman is often called upon for help in situations where accident victims are at the mercy of two agencies, both of which claim the other is responsible for compensation. It first apprised the Société de l'assurance automobile and the Commission de la santé et de la sécurité du travail of this problem in 1995.

Yet still today, citizens contact it to resolve an impasse related to uncertainty over jurisdiction, as illustrated by the following example.

### **A citizen caught between two agencies busy passing the buck**

A citizen had a road accident on April 6, 2000, as a result of which he suffered long-lasting functional disability in the neck area. On January 25, 2002, the SAAQ rendered a decision whereby he was capable of reintegrating his job as of December 4, 2001.

On October 27, 2004, the citizen was experiencing intense pain in his neck and upper back, and left work to see his doctor. His physician recommended that he stop working and prepared a report for the SAAQ, indicating that the citizen had a cervical-dorsal sprain, a relapse from his accident injuries. The citizen filed a request with the SAAQ in this regard. On January 26, 2005, the SAAQ compensation officer refused his request, claiming that the citizen's condition ensued from a new event and did not constitute a relapse from the original road accident of April 6, 2000. He then referred the citizen to the Commission de la santé et de la sécurité du travail. This decision was thereafter confirmed by the SAAQ's Bureau de révision.

The citizen subsequently filed a claim with the Commission de la santé et de la sécurité du travail, which was accepted on March 24, 2005 but later contested by the citizen's employer. On August 9, 2005, the CSST's administrative review body denied the citizen's claim, noting the antecedents of his cervical-dorsal conditions and the initial opinions of the attending physicians at the time of the event, which did not attest to the injury having occurred while the citizen was on the job. This decision hinted that the citizen's injury was instead caused by his road accident.

The citizen then contacted the Québec Ombudsman, complaining that he was dealing with two agencies who were busy passing the buck with regard to who would be responsible for compensating him for his deteriorating medical condition. He was at this time without income and had been forced to request employment assistance benefits.

The Québec Ombudsman is of the opinion that a joint investigation should be conducted in all cases where one of the two agencies has reason to believe that an injury for which a claim is submitted to it may be related to an event under the other's jurisdiction. It consequently asked the SAAQ to analyze the file once more, and to contact the CSST if it felt that the citizen had suffered an industrial accident.

After having reviewed the file a second time, the SAAQ finally decreed that the injury was in fact a relapse of the original road accident of April 6, 2000 and proceeded to compensate the citizen. Overall, the file took 17 months to be resolved.

Such issues between the Société de l'assurance automobile du Québec and the Commission de la santé et de la sécurité du travail can have nefarious impacts on the citizens involved, as shown in the previous example. Problems can also surface when a citizen is receiving an income replacement indemnity from either the SAAQ or the CSST, and a new event occurs that is not under the authority of the agency currently compensating him. Such situations often occur, and the Québec Ombudsman each year exchanges with the SAAQ and CSST in order to seek solutions. In 2007-2008, the Québec Ombudsman intends to readdress this issue with the Société de l'assurance automobile du Québec and the Commission de la santé et de la sécurité du travail, with the aim of conducting a global review of the problem and thereby preventing such prejudices from reoccurring. The Québec Ombudsman expects that the agencies will actively cooperate in the identification and implementation of appropriate mechanisms.

### Recommendations

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 SAAQ or the CSST experience a new incident that is not within the scope of responsibility of the agency providing compensation;

Given that the agreement between the SAAQ and the CSST 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 that is within the scope of responsibility of the other system;

Given that harmonization problems arise between the SAAQ and CSST 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 regard to a single citizen.

## THE HIGHWAY SAFETY CODE

### Complaints Reviewed by the Québec Ombudsman

Highway Safety Code	Complaints*	Complaint Grounds	Unsubstantiated Grounds	Substantiated Grounds
2006-2007	161	167	147	20

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

## TYPE OF COMPLAINTS

In terms of highway safety, the Québec Ombudsman observes problems related to the SAAQ's refusal to acknowledge and assume certain responsibilities vis-à-vis its clientele. This stance is mostly obvious when renewal notices are sent, as well as in the quality of the information disseminated in service centres to citizens making transactions regarding their driver's licence or vehicle registration. The Québec Ombudsman also got involved in cases where the information provided citizens was inadequate. These, it should be noted, are in the process of being corrected.

## SENDING OUT RENEWAL NOTICES

### NO OBLIGATION, YET...

The Société de l'assurance automobile enjoys a monopoly over the management of driver's licences and vehicle registration in Québec. It has adopted an administrative process whereby it sends citizens written notices of certain obligations they have, and of the methods they must adopt to comply with the Highway Safety Code. It sends out, for example, notices of driver's licence or vehicle registration renewal which tell users how much they need to pay in order to continue driving a vehicle after the set expiry date provided for in the regulation.

The Highway Safety Code does not require that the SAAQ send such notices, a fact that was confirmed in April 2006 when the Supreme Court decreed that the responsibility for renewal rested on holders of driver's licences or vehicle registrations. The SAAQ consequently does not feel it is responsible in a case where a citizen fails to receive the usual notice and is subsequently late in paying the renewal fees for his licence or registration. There are notably instances where citizens do not receive these notices because of an error committed by SAAQ personnel.

### A hefty fine

A problem caused by changes to the SAAQ's computer system resulted in a retired couple not receiving their renewal notices. Because of this mistake, the citizens drove without a valid driver's licence and had to pay \$430 in fines and fees. Despite concurring that the problem was essentially its fault, the SAAQ refused to apologize and failed to consider the citizens' request for restitution. It explained its position by referring to the provisions of the Highway Safety Code and the Supreme Court decision.

This particular complaint was beneficial, however, for the SAAQ proceeded to make the corrections necessary to fix its computer problem. It also sent notices to 721 other drivers who were in the same circumstances as the complainant, i.e. driving illegally.

### VEHICLE CO-OWNERSHIP

The SAAQ also refuses to assume responsibility when the joint owners of a vehicle do not receive renewal notices, even if its employees are at fault. When a vehicle is jointly owned, the SAAQ agent must make a change of address, for example, in two separate registers, one for the licence and another for the registration. In so doing, he must ask every person who notifies the SAAQ of a change of address whether he or she has a vehicle that is jointly owned. Despite being included in the procedures manual, each year various agents forget to check this information. As a result, the registration renewal notice for the jointly owned vehicle is sent to the former address. For vehicles with a single owner, a change of address is automatically applied to both the licence and registration. A citizen with a jointly owned vehicle, however, will find himself driving illegally if he fails to renew his registration, even if the SAAQ sent the renewal notice to his former address. Such a situation could end up costing citizens \$430 in fines and fees.

### REVOKED OR SUSPENDED LICENCES

The SAAQ adopts the same stance with regard to its responsibilities vis-à-vis citizens whose licence or registration is suspended, revoked or not renewed. In a case submitted to the Québec Ombudsman, the SAAQ failed to acknowledge its responsibility when an agent neglected to advise a citizen of such a suspension or revocation. The citizen in question had to pass her driving test anew, given that it had not been valid for over three years. Yet, during this three-year period, the citizen had been to a SAAQ service centre at least twice to make transactions regarding vehicle registrations. During these visits, counter personnel never mentioned the invalid status of her licence or suggested she check her file.

The Québec Ombudsman feels that the SAAQ should be increasingly conscientious with regard to citizens who are prejudiced as a result of errors made by members of its staff. In sending out notices, the SAAQ engenders a certain degree of habit among citizens, who become used to receiving timely information that specifically concerns the costs of renewal, which notably vary based on their circumstances. The fees related to a driver's licence vary depending on the number of demerit points accumulated, while that for registration is based, among others, on the vehicle's weight, its planned use and the place of residence of the owner. Furthermore, administration fees vary depending on whether the citizen pays his renewal at a service counter or by mail.

### THE SAAQ AGREES TO REVIEW SOME OF ITS METHODS

#### CHANGE IN A CITIZEN'S HABITUAL FIRST NAME

Last year, subsequent to a complaint received, the Québec Ombudsman asked the SAAQ to clarify how it issued a new driver's licence when a citizen changed his or her first name to another one included on his or her birth certificate. The agency at the time had advised the citizen that he needed to first submit a change of name certificate. In this case, however, obtaining such a certificate is impossible, because the change in question is not a change of name per se, but simply a case of opting to use another name already included on a citizen's birth certificate.

The Québec Ombudsman received a copy of the new procedure in July 2006 and concluded that it seemed to abide by the legal provisions in this regard. Henceforth, a citizen in such a situation need only produce a copy of his or her birth certificate indicating the first name now used in order to change the name appearing on the driver's licence.

### SUSPENSION OF ALL LICENCE CLASSES

In 2000, the Québec Ombudsman contacted the SAAQ after having received a number of complaints from citizens whose driver's licence had been suspended because they had failed to submit a medical report to maintain a professional class. Because they did not wish to renew the class in question, the citizens had not felt it necessary to respond to the SAAQ's request. Unaware that their licence had been fully suspended, they had then received fines for driving a vehicle that only required a regular driver's licence. The Québec Ombudsman feels that the provisions of the Highway Safety Code concerning requests for medical reports and the right to suspend a licence failing compliance do not entitle the SAAQ to suspend all licence classes, but rather, should only impact those classes for which said reports are necessary.

Following the Québec Ombudsman's involvement, the SAAQ had reviewed the letters it sent citizens in such cases, to make sure they clearly outlined the repercussions of not responding to its request. It did not, however, budge from its original position regarding licence suspensions, and continued suspending all licence classes whenever the holder of a professional class licence failed to submit the required medical report.

Seeing as it continued to receive complaints in this regard, the Québec Ombudsman once again communicated with the SAAQ on this issue. The agency initially refused to change how it applied the Code, claiming that a licence holder's refusal to submit a medical report, even if it only concerned professional classes, created reasonable doubt as to the citizen's overall health condition. The SAAQ also claimed that suspending only certain licence classes would be complex for citizens, who would have to go to a service centre to have their licence updated.

The Québec Ombudsman analyzed SAAQ statistics, concluding that the doubt regarding the overall health condition of citizens was unfounded in all but a few exceptional cases. Reasonable doubt could thus not be invoked as a rationale. Furthermore, the Québec Ombudsman is of the opinion that a licence suspension has greater repercussions for citizens than does the requirement of returning to a service centre for a licence update.

In 2006, the SAAQ complied with the Québec Ombudsman's requests, and reviewed its administrative procedures and computerized operations so that a missing medical report would only result in the suspension of professional licence classes. The provisions of the Highway Safety Code will also be made clearer in this regard. Until this review is completed, any citizen who files a complaint with the SAAQ or Québec Ombudsman will have his situation corrected.

## DISSEMINATION OF INFORMATION

### COMPENSATORY ABILITIES

Sections 83.1 and 191.1 of the Highway Safety Code grant the SAAQ the necessary authority to choose to deliver, or to not suspend, a driver's licence, even if a person has a medical condition that is incompatible with driving. This person may, however, prove that he or she has developed compensatory abilities that enable him or her to drive.

In 2004, subsequent to complaints from citizens whose licences had been suspended for medical reasons, the Québec Ombudsman had noted that the SAAQ did not notify all of the licence holders concerned of this discretionary power. The Québec Ombudsman had subsequently intervened, and the SAAQ had changed its policy for informing citizens of their right to request that their compensatory abilities be recognized when requesting a review of their licence.

Despite this seeming willingness to comply, complaints received in 2005 indicated that certain citizens likely to develop compensatory abilities had not been informed of the SAAQ's discretionary power in this regard. In 2004-2005, out of 5,000 suspended licences for medical reasons, only 350 licence holders had been informed of this option by the SAAQ. According to the agency, many of these suspensions involved persons with irreparable cognitive deficiencies or degenerative conditions for which it was impossible to develop compensatory skills. They had subsequently opted to not create false hope for these persons.



Following new action by the Québec Ombudsman in 2005, the SAAQ acknowledged that such an approach could prejudice certain persons who, against all expectations, could be apt to develop said compensatory abilities. It therefore decided to communicate its discretionary power in this area by producing a general brochure that it would include with notices of licence suspension for medical reasons. This brochure is nearly completed and should be available for distribution in late 2007.

### DRIVING TESTS NECESSARY AFTER THREE OR MORE YEARS WITHOUT A LICENCE

Under the Highway Safety Code, a person who has not held a driver's licence for three or more years must pass a driving test and pay the related fees if he or she wishes to enjoy a licence. The SAAQ, however, was failing to advise citizens of this fact when their licences were suspended. Odd, given that a reminder in this regard could prove a powerful incentive for people to quickly settle any such matters, given that they could thus exert a certain control over the length of the suspension. The SAAQ agreed to further advertise this information. It also changed the message on its Web site in this regard and will consider the option of sending out payment notices.

## THE QUÉBEC OMBUDSMAN GIVES ITS OPINION OF FOUR DRAFT REGULATIONS

### THE INCREASE IN INSURANCE PREMIUMS: A DRAFT REGULATION THAT IS OVERLY VAGUE

The draft regulation amending *A Regulation respecting insurance contributions* mainly seeks to increase insurance contributions so as to improve the Fonds d'assurance automobile's financial situation. This fund, financed by insurance contributions, is destined to compensate road accident victims, and to promote highway safety and prevention.

At the time of the draft regulation's publication in March 2006, the Ombudsperson underscored the lack of precision of the document mentioned in the preamble. This document seeks to explain why increased contributions are necessary, while outlining the eventual effect of this fee hike on the financial situation of the Fonds d'assurance automobile. The Ombudsperson noted that citizens are entitled to information that is both detailed and accessible, given that they will be financially impacted by the proposed increase. In this regard, the Ombudsperson alluded to the lack of information on insurance contribution hikes after 2008, as well as the absence of details regarding how the mentioned deficit would be cleared.

The panel of experts mandated to analyze the draft regulation heard the arguments of citizens and various interest groups during a series of public hearings prior to filing its conclusions in June 2006. Among others, the panel of experts noted the lack of information regarding the two elements raised by the Québec Ombudsman. It did not, however, issue any recommendations in this regard. It did recommend that the deficit should become a priority as of 2007, adding that the proposed increase should be further spread out over time, and that citizens should have an option of paying licence and registration fees in six or twelve instalments.

### SPREADING OUT OF PAYMENTS BENEFICIAL TO CITIZENS

Reiterating the recommendations of the panel of experts, the Minister of Transport in October 2006 tabled three draft regulations aiming to spread out the payments of licence and registration fees. These were the draft regulation amending the *Regulation respecting licences*, that amending the *Regulation respecting road vehicle registration*, and that amending the *Regulation respecting fees exigible under the Highway Safety Code and the return of confiscated objects* (draft regulation concerning fees).

In a letter to the Minister, the Ombudsperson stated her agreement with the principle of the announced measures, as these would allow for more equitably distributing the financial burden on citizens. She nonetheless made recommendations on two other aspects of the draft regulations, requesting:

- That the issuing of renewal notices be guaranteed under the regulation. In fact, the renewal of withdrawals will be automatic, and the SAAQ should thus be obliged to so notify citizens;
- That measures be developed to appropriately inform citizens subject to an interdiction that they are entitled to a refund of excess fees paid for their licence or registration.

The Québec Ombudsperson is continuing to exchange with the SAAQ on these matters.