

# The Ministère de l'Emploi et de la Solidarité sociale

The Ministère de l'Emploi et de la Solidarité sociale is responsible for promoting employment, developing the labour force and improving labour market operations. Its responsibilities also include providing financial support to economically disadvantaged persons and fighting poverty and social exclusion.

As of January 1, 2006, it also has the responsibility of administering the Québec Parental Insurance Plan offering financial support to new parents.

## Employment

### Type of complaints

#### Complaints reviewed by the Québec Ombudsman

Employment						
Under investigation at April 1, 2007	Received	Investigated*				Under investigation at March 31, 2007
		Referred	Interrupted	Unsubstantiated	Substantiated	
7	103	2	44	41	3	7

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

In 2007-2008, the Québec Ombudsman reviewed various complaints regarding the employment services provided by the department. Our analysis revealed that substantiated complaints involved the Return to Work Supplement. These complaints are examined in section "Ombudsman follow-up and actions".

### Overview of the situation

#### A positive outlook

Emploi-Québec forecasts that there will be 680,000 available jobs in Québec by the year 2010<sup>4</sup>; 240,000 of these will be new jobs, while 440,000 will become available subsequent to workers retiring. Around 120 trades or professions are offering favourable perspectives.

<sup>4</sup> Le marché du travail au Québec, Perspectives professionnelles 2006-2010, Emploi-Québec, June 2007.

Year 2007 employment data include a very low unemployment rate. The Québec labour market, moreover, is very dynamic. Numerous employment opportunities constitute new occasions for the unemployed to prove their worth and contribute to economic development.

## Ombudsman follow-up and actions

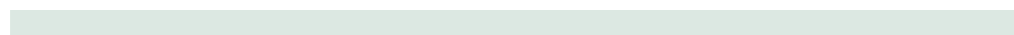
### Return to Work Supplement

This supplement is an amount of \$500 (one payment) which is granted to support and encourage financial assistance recipients who integrate or return to the job market. The procedure for receiving this supplement is extremely laborious, and eligibility conditions are very strict, varying from one region to the next. Certain of these conditions, listed below, are particularly problematic :

- The application must be filed within 30 days of the start of employment ;
- Employment must consist of a full-time job of at least 30 hours a week ;
- The full-time job may not consist of a former part-time job with the same employer which was modified ;
- Employment must be of a reasonable length, i.e. between 14 and 18 consecutive weeks, depending on each region's labour market conditions ;
- Employment may not result from the extension of a job that was initially planned to last less than 14 weeks ;
- Income must be equal to or above the minimum wage.

Persons whose application for the Return to Work Supplement is refused can request that the department conduct an administrative review. The decision rendered subsequent to such a review is final and cannot be contested in front of the Tribunal administratif du Québec. The Québec Ombudsman, in these circumstances, constitutes the ultimate recourse.

Below are three situations we encountered this year which amply illustrate that while review decisions meet the requirements of the employment services and measures guide, they are at times unreasonable given the decisiveness of the measure.



### Full- or part-time?

*On February 1, 2007, a citizen was hired part-time, on a trial basis. Her social assistance officer notified her that she had to file her application for the Return to Work Supplement once her position became full-time. In early March, she obtained a position working 20 to 25 hours a week, but in reality was working over 30 hours each week. On March 28, following her officer's directives and believing she was within the 30-day timeframe, she filed her application.*

*Her application was denied on the grounds that her employment consisted of less than 30 hours per week and her basic income was under the minimum wage. Despite the citizen's payslips indicating a salary in excess of the minimum wage and a work schedule of over 30 hours a week, the director at her local employment centre upheld this refusal.*

*Relying on an administrative review was no more successful, as the application was this time denied on the grounds that the citizen had failed to respect the timeframe of 30 days following the start of employment. The citizen then proceeded to contact the Québec Ombudsman, which communicated with the department to emphasize that the citizen's work schedule was changed to a full-time one within the requisite 30-day period and that the information provided by the officer, moreover, could have easily lead to a misunderstanding regarding eligibilities conditions. Was the measure not designed to help financial assistance recipients regain their independence?*

*The citizen, who is still working at her job, finally received the \$500 supplement.*

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## **The 14 consecutive weeks criterion**

*In January 2006, a financial assistance recipient got a job in a daycare centre as a replacement worker. She filed her application for the Return to Work Supplement in March of that same year. Her local employment centre took one year to agree to process the application, after which it was denied on the grounds that the citizen had not worked for a period of 14 consecutive weeks.*

*In reality, however, she had worked a total of 24 weeks, with one week off after an initial 10-week period. She explained that this time off was not her decision, but had occurred because the employee whom she had replaced resumed her duties. Her application was again denied for these same reasons following an administrative review conducted in April 2007.*

*In response to the citizen's complaint, the Québec Ombudsman stressed to the Ministère de l'Emploi et de la Solidarité sociale that such a strict application of this measure is at odds with its objectives, notably promoting and supporting the return to employment. The citizen, who still works in a daycare centre and has not received any financial assistance benefits since January 2006, finally received her Return to Work Supplement in the summer of 2007.*

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## Extension of an initial employment contract

*A social assistance recipient returned to the labour market in May 2007 after having received benefits for a few years. She obtained a job in the civil service, with an initial contract lasting 17 weeks, during which time she received training. It was understood that her contract would be renewed if budget funding was available. This is in fact what occurred, with her contract extended to February 2008.*

*Her application for the Return to Work Supplement was initially denied, a decision that was upheld following an administrative review. The problem: despite having a job in Montréal, the citizen was a resident of Longueuil. This meant that the applicable criteria were those for the Montérégie region, which included a stipulation whereby the job had to last a minimum of 18 consecutive weeks. The extension of her contract was not considered, as only the initial contract duration was taken into account.*

*Given these refusals, the citizen contacted the Québec Ombudsman, which reviewed the case and proceeded to intervene with the department, believing that the situation merited consideration from another perspective. Firstly, the citizen's employment was in Montréal, where the criterion was only 14 weeks. Secondly, by the end of January 2008, she would have worked a total of 39 consecutive weeks. Why exclude those weeks included in a planned extension of employment, particularly when the duration of the work is outside of the citizen's control?*

*It bears noting that a study by the Secrétariat du Conseil du trésor<sup>5</sup> revealed that 18% of Québec civil servants were casual employees, with the study's authors stating that: "[...] some employees retain their status throughout their career, either because their status as casual employees is renewed or as a result of occupying various positions as casual employees." By excluding the extension of an original contract when determining work weeks, the department is essentially excluding all workers with a casual employee status. The citizen received the supplement to which she was entitled in September 2007.*

*To improve the processing of these cases, the Québec Ombudsman recommended that the Ministère de l'Emploi et de la Solidarité sociale review the eligibility criteria for the Return to Work Supplement. This is particularly important given that 60.9% of the applications for administrative review submitted to the department in 2006-2007 concerned this measure.*

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5 L'effectif de la fonction publique du Québec 2005-200, Secrétariat du Conseil du trésor.

## Comments from the department

The following statement from the Ministère de l'Emploi et de la Solidarité sociale was issued by its Deputy Minister :

“You alluded to the certain problems citizens are having with the process that must be adhered to before obtaining the Return to Work Supplement. We are not only aware that this is an important measure to facilitate and promote the return to employment of the greatest possible number of job market applicants, but I can assure you that the streamlining of administrative processes is one of the department’s priorities and that we are looking at ways to simplify the procedure surrounding the Return to Work supplement. ”

## Financial assistance programs

The Individual and Family Assistance Act, which came into effect on January 1, 2007, includes the creation of two last-resort financial assistance programs: the Social Assistance Program and the Support Solidarity Program.

The Social Assistance Program was designed to grant last-resort financial assistance to people with no severely limited capacity for employment. The Social Solidarity Program, in turn, grants last-resort financial assistance to people with a severely limited capacity for employment. In the case of a family comprised of two adults, only one adult must prove his or her severely limited capacity for employment in order for the family to be eligible for the program.

## Type of complaints

### Complaints reviewed by the Québec Ombudsman

Social Solidarity						
Under investigation at April 1, 2007	Received	Investigated*				Under investigation at March 31, 2007
		Referred	Interrupted	Unsubstantiated	Substantiated	
47	997	9	374	361	32	54

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

## Overview of the situation

### A growing complexity and difficulty processing files

The Québec Ombudsman, like the department, has seen a surge in its main clientele with regard to this program.

Numerous complaints address the issue of eligibility to financial assistance programs. A significant percentage of them concern the Social Solidarity Program and the department's failure to immediately acknowledge physical or psychological impairment.

Citizens also decry the insufficiency of the amounts paid. Note that there has been no comprehensive indexation of Social Assistance Program benefits since 2005. The Québec Ombudsman is preoccupied by this, particularly in light of several price increases for essential needs (such as electricity and transportation), each of which has the effect of diluting the buying power of people with an already diminished quality of life.

In this regard, the government has opted to focus on programs to help financial assistance recipients return to the job market. The release of the Employment Pact in March 2008 attests to this desire to help a large number of citizens develop the skills they need to get a job. This being said, access to these measures is for many not immediate, yet the cost of living keeps rising. In our opinion, the department should continue considering this issue.

## Ombudsman follow-up and actions

The Québec Ombudsman must at times step in not because the Ministère de l'Emploi et de la Solidarité sociale made an error but to come to the assistance of a distressed citizen. The following situation is an example of such a situation.

### A wretched existence

*In 1991, an 18-year old girl left her family to go live with a man who quickly proved to be possessive and manipulative. After bearing him a child and living with him for three years, she decided to leave her abusive spouse, taking her child with her.*

*She was offered shelter by friends, during which time she met a young gentleman who suffered from epilepsy and was partially paralyzed. In 1995, they moved into an apartment together, after which they got married and had four other children. The entire family lived off of social assistance. In 2005, her spouse was suddenly afflicted by flesh-eating bacteria and passed away.*

Several months following his death, the children told their mother that they had been sexually abused by her now deceased spouse, a revelation which threw the entire family into a psychological tailspin. Things also deteriorated financially, as the family's total social assistance benefit dropped from \$1,211 (two adults) to \$680 (one adult). This amount is not much for a single mother raising five children aged 10, 8, 7, 5 and 2 years.

The Direction de la protection de la jeunesse (DPJ) subsequently intervened, placing three of the children in foster care. The citizen at this point began having health problems, suffering from a degenerative disease that affected her psychomotility. She became depressed and was hospitalized for a while.

The Québec Ombudsman intervened, apprising the department of this citizen's particular situation, which had notably resulted in her not taking any steps to obtain the benefit to which she was entitled. With the supporting medical evidence, the Québec Ombudsman obtained a higher benefit than that provided for under the Social Solidarity Program, namely \$870 a month.

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## Computer processing errors

Computer errors also sometimes have unexpected consequences, as a result of which citizens are penalized. The following case is a good example of just such a situation.

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### The consequences of ill-defined processing

A citizen received a letter from the Ministère de l'Emploi et de la Solidarité sociale notifying her that according to information obtained from the Directeur de l'état civil, she was married. Being single, this information had the result of modifying the amount of her benefits. She quickly prepared a statement under oath denying this allegation. The department deemed this statement insufficient, and requested that she submit an attestation of celibacy, delivered by the Directeur de l'État civil at a cost of \$20.

The Québec Ombudsman's investigation into the Directeur de l'État civil's electronic exchanges revealed the existence of a woman - with the same name and date of birth - who was effectively married. Despite the fact that one of her first names was "Marie", like many women in Québec, she did not go by this name.

At the Québec Ombudsman's request, the department checked this information with the Directeur de l'état civil directly, and learned that there had indeed been a mix-up. Taking its intervention one step further, the Québec Ombudsman recommended that changes be made to the computer system to include adequate space in the fields for the last and first names to include all data, for example "Marie-Marthe" rather than simply "Marie" in the case of a first name, or "Côté-Tremblay" instead of just "Côté" for a last name. This change would make it easier to properly identify citizens and hence limit the risk of errors being committed.

COLLECTIVE  
benefit

The department made the recommended changes to the computer system in the fall of 2007.

## Comments from the department

The following statement from the Ministère de l'Emploi et de la Solidarité sociale was issued by its Deputy Minister :

“As regards the amounts paid under financial assistance programs, you referred to the partial indexing of social assistance benefits since 2005. While aware that we could still make certain improvements in this area, we would like to underscore that the available income of families with children which benefit from assistance has significantly risen between 2003 and 2008. In the everyday world, this amounts to a growth in excess income that is greater than the increase in the cost of living.”

## Parental insurance

The Québec Parental Insurance Plan includes the payment of benefits to all eligible salaried and self-employed workers who take maternity leave, parental leave or adoption leave.

## Type of complaints

### Complaints reviewed by the Québec Ombudsman

Parental Insurance						
Under investigation at April 1, 2007	Received	Investigated*				Under investigation at March 31, 2007
		Referred	Interrupted	Unsubstantiated	Substantiated	
5	53	1	18	26	5	3

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

The number of complaints received by the Québec Ombudsman has been steadily dropping since the new plan's introduction in January 2006. The department has made the necessary efforts to introduce solutions to the difficulties observed by the Québec Ombudsman during the first few months, such as access to services and delays in processing applications.

The complaints received this year are nonetheless more complex, often addressing specific elements of the program, among these the reference period (52 weeks or 104 weeks), the calculation of average monthly income over a 26 or 16 week period, simultaneous events or income insurance and insurable income.



## Overview of the situation

### Regulation amendment

Pay equity enabled numerous women to finally enjoy a salary equal to that of a man for performing the same job. This improvement in their working conditions, however, has had repercussions on the Parental Insurance Plan. In many cases, women saw their past salary increased, with the result that if these retroactive amounts are collected during their parental leave, the weekly benefit is reduced or even cancelled for the week, and this in compliance with the Regulation under the Act respecting parental insurance.

Income recognition during a benefit period is an acceptable standard in most instances, and provided for in numerous regulations. However, the recognition of income that should have been paid during the period prior to the benefit period constitutes an unjust situation that should be corrected, all the more so when pay equity is an issue.

#### COLLECTIVE benefit

Concerned, the Québec Ombudsman inquired as to the Minister's willingness to settle this issue in an equitable manner. In June 2007, the Québec Ombudsman was notified of the tabling of a draft regulation for excluding retroactive salary increases from benefit calculations. The regulation was passed and the applicable exclusion has been in force since October 18, 2007.<sup>6</sup>

## Ombudsman follow-up and actions

### Calculating parental insurance benefits

Some women with a risky pregnancy must stop working and rely on the income insurance plan included in their employment contract. Under the Act respecting parental insurance, income replacement indemnities paid or determined by an employer constitute insurable income. This reduced income then serves as the basis for calculating parental insurance benefits.

In the Québec Ombudsman's opinion, this method of acknowledging income is not in sync with the characteristics of the new Québec Parental Insurance Plan described at the time of the plan's introduction: a more bountiful, flexible and accessible plan. In March 2007, the Ministère de l'Emploi et de la Solidarité sociale advised us that a committee had been created to study the overall problem of lower income during the reference period.

In following up on this issue in 2007-2008, the Québec Ombudsman learned that a brief had been tabled in front of the department's executive committee in October 2007. This brief notably emphasized the need to amend the Regulation under the Act respecting parental insurance. The example below depicts the limitations of the current regulation with regard to the recognition of all employment income.

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<sup>6</sup> Regulation amending the Regulation under the Act respecting parental insurance, p. 841, September 26, 2007 (2007, G.O. 2, 3951).

## When employment income recognition becomes truly problematic

*While receiving parental benefits for a second child, a worker learned that she was again expecting. Because these are in fact consecutive pregnancies, she met a first condition (section 31.1 of the Regulation). A special educator, she holds two jobs, one with a school board, the other in a rehabilitation centre for children. The second issue targets women with more than one job (section 31.2 of the Regulation).*

*There are currently special regulatory provisions for handling such cases. Hence, in the case of consecutive pregnancies, the amount of the parental benefit is the same as that granted for the first pregnancy, subject to certain conditions.*

*Eligibility for this flexible interpretation notably requires that a recipient has received benefits for the previous pregnancy. Another condition that often poses a problem: the requirement that a woman have been unable to earn insurable income for more than 15 weeks during the reference period (the one used for benefit calculations). Because the citizen held one of these jobs for more than 15 weeks during this period (she was in preventive withdrawal for the other job), the regulatory flexibility provided for cannot apply.*

*The flexible component of the regulation concerns women who hold more than one job and are in preventive withdrawal from one of them.<sup>7</sup> To avoid penalizing workers, the Regulation allows for creating a new reference period for taking the salary normally earned into consideration, and this even if the woman only held one of her jobs during the reference period (in this case 52 weeks). The only condition: that the worker has earned income during the preventive withdrawal (vis-à-vis the other job).*

*Here again, the citizen cannot benefit from the Regulation's flexibility. During this period, she was in preventive withdrawal from both jobs, her employers having failed to transfer her within her work environment. In fact, her functions are such that there would be risks regardless of where she worked. Because she had received Québec Parental Insurance Plan benefits from April 1, 2006 to April 1, 2007, section 32 of the Regulation was the one that applied. This section notably provides for an extension of the reference period. Despite this extension, her benefit (\$250 a week) continued to be calculated on the basis of one income only.*

*The citizen contested her inability to benefit from any aspects of the flexibility provided for in the Regulation, and this despite the fact that her circumstances corresponded to exceptions identified by the legislature. In one scenario, she worked too much while in the other, she did not work enough. Regardless of what she does, she is penalized.*

The Québec Ombudsman is of the opinion that the Regulation should be amended to enable this citizen and others in similar situations to receive parental benefits calculated on the basis of their total employment income. Such an amendment, we feel, would be in line with the spirit of the Act respecting parental insurance. This issue is still being reviewed.

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<sup>7</sup> The Québec Ombudsman intervened in this regard with the Deputy Minister.

## Comments from the department

The following statement from the Ministère de l'Emploi et de la Solidarité sociale was issued by its Deputy Minister :

“You were pleased to observe a regular decrease in the number of complaints regarding the Québec Parental Insurance Plan. You also specified that an amendment of the Regulation had made it possible to exclude retroactive amounts granted under pay equity from the calculation of benefits.

You underscored, however, continued problems with the calculation of parental benefits, particularly when income replacement benefits are paid by the employer and there is a drop in income during the reference period. Let me again assure you that the department is currently striving to find a solution that respects the plan's decisiveness while ensuring that no applicants are penalized.”