

Agencies

The Commission de la santé et de la sécurité du travail

The Commission de la santé et de la sécurité du travail (CSST) promotes health and safety in the workplace and intervenes in matters of prevention. It also inspects workplaces to eliminate dangers to workers and is responsible for compensating workers who are victims of an employment injury and seeing to their rehabilitation.

The agency is also responsible for administering the compensation plan for victims of crime (IVAC), as well as the plans established under the Crime Victims Compensation Act and the Act to promote good citizenship. These plans are in fact based on the compensation principles provided for under the Workers' Compensation Act. The Minister of Justice remains, however, responsible for the application of the first two of these Acts.

Type of complaints

Complaints reviewed by the Québec Ombudsman

Compensation plan for workers						
Under investigation at April 1, 2007	Received	Investigated*				Under investigation at March 31, 2007
		Referred	Interrupted	Unsubstantiated	Substantiated	
97	702	10	344	220	60	84

* Excluding complaints whose processing was interrupted or which were referred

Subsequent to complaints, the Québec Ombudsman consistently intervenes to investigate problems concerning decisions as to eligibility or the reimbursement of certain expenses, delays in rendering decisions or reaching a determination regarding claims or the payment of amounts owing, and the suspension or calculation of income replacement benefits.

Overview of the situation

There are few specific items to report with regard to the CSST in 2007-2008. This being said, the Québec Ombudsman continues to receive a significant number of complaints. Below we discuss some of the problems considered particularly noteworthy over the past year.

Ombudsman follow-up and actions

CSST-SAAQ agreement

In its 2006-2007 annual report, the Québec Ombudsman reviewed problems related to the implementation of the agreement entered into by the Commission de la santé et de la sécurité du travail and the Société de l'assurance automobile du Québec (SAAQ). This agreement aims to facilitate the processing of files of victims who are already receiving income replacement benefits from either the CSST or the SAAQ when another event occurs which is not covered by the agency currently compensating them.

Over the past few years, the Québec Ombudsman has observed that this agreement does not cover all of the situations citizens must face, with the result that certain standardization problems emerge regarding the analysis of files and transmission of decisions between the Commission de la santé et de la sécurité du travail and the Société de l'assurance automobile du Québec. This lack of standardization generates delays and quite often, prejudices.

The Québec Ombudsman consequently made the following joint recommendation to the CSST and the SAAQ in last year's report :

2006-2007 RECOMMENDATION :

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.

On January 31, 2008, the Commission de la santé et de la sécurité du travail notified the Québec Ombudsman that the two agencies had agreed to introduce concrete measures to improve services to the clientele impacted by the CSST-SAAQ agreement. A joint working committee will be set up to identify solutions for the issues in question. Processing of files not covered by this agreement will also be discussed. The CSST notified us that a formal procedures project had been established subsequent to a working committee meeting and was now in the process of being approved. Its introduction is slated for mid-May 2008.

The Québec Ombudsman acknowledges the commitments made by the Commission de la santé et de la sécurité du travail to standardize, in conjunction with the Société de l'assurance automobile du Québec, the services offered citizens. This being said, it would like to receive a precise schedule enabling it to ascertain the implementation, over the next year, of corrective measures addressing citizens' problems, as well as to follow up on results. The CSST has thus far not set a schedule for correcting the issues identified. The Québec Ombudsman can only reiterate the importance of quickly taking action to correct this sustained situation.

Other problems

The Québec Ombudsman intervened in numerous other CSST files in addition to the shared SAAQ - CSST issues discussed previously. The examples below offer a good example of what these files entailed.

The CSST admits its error but does not accept responsibility

Last year, the Québec Ombudsman recounted an issue involving a worker who in 1986 suffered an occupational injury where the employer was personally held responsible for the payment of benefits. Because of this incident and the eight relapses, recurrences or aggravations that followed, the worker is permanently impaired, suffering functional limitations that prevent him from resuming his job. He was thus assigned to an acceptable position as a security guard.

Yet in 2001, following another relapse, the Commission de la santé et de la sécurité du travail concluded that the citizen could still continue performing his employment duties. It notably changed its opinion at a later date, deeming that the worker should be considered unemployable. The CSST forgot, however, to notify the first employer of its change of heart. As a result of the CSST's error in this regard, the Commission des lésions professionnelles cancelled the decision without rendering an opinion on the worker's ability, basing itself on the fact that the first employer had not been notified of the Commission's intention to reconsider its decision. The CSST upheld this decision and, in spite of admitting to its mistake, refused to assume the consequences for the worker, who had been deprived since 2002 of full income replacement benefits.

The Québec Ombudsman this year again interceded with the CSST on behalf of the citizen, decrying the fact that the CSST maintains its position and refuses to lift the slightest finger to correct the prejudice to which the worker has been subjected. The Québec Ombudsman deplores the fact that this unfair situation has not been resolved, reiterating that the worker should not bear the consequences of an admitted error by a public agency. We will continue to make efforts in regard to this particular case.

Medical evaluation process not followed

A worker suffered a lumbar sprain, acknowledged as an occupational injury by the Commission de la santé et de la sécurité du travail. After several months of rest, the worker's attending physician provided him a final medical report stating that while the injury had stabilized, the worker still had functional limitations. This same physician, however, failed to complete the medical evaluation report in which these limitations could have been identified. Nor did he refer the citizen to another physician. The worker then saw another physician, who prepared the medical evaluation report that the CSST needed. In this report, the physician indicated that the worker no longer had any functional limitations.

Upon reading this report, the CSST deemed that the worker was able to resume his employment, rendering a decision along these lines and therefore ending payment of the income replacement indemnity. The worker then proceeded to contact the Québec Ombudsman.

Our analysis of this file illustrates that the Commission de la santé et de la sécurité du travail failed to adhere to the medical evaluation process provided for under the Act respecting industrial accidents and occupational diseases. The CSST is notably bound by the opinion of the worker's attending physician until such time as a member of the Bureau d'évaluation médicale declares null his conclusions regarding the five points in section 212, namely the diagnostic, the nature and necessity of treatment, the date of stabilization, permanent injury and functional limitations.

Hence, a medical evaluation report prepared by any physician other than the worker's attending physician cannot bind the CSST unless consent is obtained from the attending physician or the Bureau d'évaluation médicale's physician. The CSST's decision whereby the worker is able to resume his employment fails to comply with the legal process.

COLLECTIVE benefit

Subsequent to the Québec Ombudsman's intervention, the decision was reviewed and the worker received retroactive income replacement benefits. A new decree regarding ability to work will be reached based on the results of a medical evaluation that complies with the process and rules provided for by law. A new Commission de la santé et de la sécurité du travail directive notably confirms the Québec Ombudsman's position with regard to such situations.

Dual employment status, one single method of establishing the base salary

A worker who held a position that included both a fixed salary and a salary when on call began receiving an income replacement indemnity subsequent to a preventive withdrawal. As her employer had initially stated she earned an annual salary of around \$33,000, the Commission de la santé et de la sécurité du travail paid her benefits on this basis. Several weeks into her payments, the CSST received a form from her employer declaring her salary to be just over \$16,000, for a period of 35 weeks only.

The CSST notified the worker of the changes to her base salary, now established at \$16,431, adding that she must reimburse the excess amount received, which amounted to over \$4,800. The worker then proceeded to contact the Québec Ombudsman.

The Québec Ombudsman notably concluded that both of the base salaries established were incorrect. The CSST, in fact, had failed to calculate the base salary as per its own policy, neglecting to take into consideration that the worker had a dual employment status (fixed salary and salary when on call). Under this policy, the base salary must be determined according to the average annualized number of hours worked by the person in question (or by another institution worker in the same employment category) over a significant period. Given the employer's declaration that the citizen had earned around \$16,000 over a 35-week period, her annual income should have been extrapolated using this figure.

The Québec Ombudsman thus intervened with the CSST, who agreed to revise the base salary to nearly \$24,500, a move which had the effect of lowering the reimbursement requested by over \$2,300.

Analysis of ability: an unavoidable step

A worker suffered a lumbar sprain, an injury acknowledged as constituting an employment injury and as such, eligible for compensation by the Commission de la santé et de la sécurité du travail. Subsequent to this disability, the employer insisted that her condition be re-evaluated. The designated physician was of the opinion that the injury had stabilized, but that the worker still suffered sequelae, namely permanent impairment of 2% and functional limitations.

The file, in accordance with the evaluation process provided for under the Act respecting industrial accidents and occupational diseases, was forwarded to the Bureau d'évaluation médicale. In the interim, the attending physician stated that the worker's injury had stabilized, but failed to mention functional limitations. The worker thus resumed her employment, but complained that she found it extremely difficult to complete her work days. The Bureau d'évaluation médicale finally rendered an opinion, upholding the conclusions of the designated physician: the worker will continue to have functional limitations. Upon receiving this report, the CSST did not analyze the citizen's ability to work based on the established functional limitations, concluding instead that she was able to perform her job, seeing as she had returned to work.

The Québec Ombudsman's investigation illustrated that the Commission de la santé et de la sécurité du travail acted in a negligent manner. In fact, it must evaluate workers' abilities on the basis of functional limitations in order to determine their right to the rehabilitation provided for by law. The mere resumption of employment by workers is not a guarantee of their ability to perform their duties. Workers may have to resume their employment for economic reasons, and this despite having functional limitations. The Québec Ombudsman's review allowed for ensuring an analysis of ability based on the functional limitations acknowledged by the Bureau d'évaluation médicale.

When moving is the best solution...

On August 1, 2005, a worker suffered an industrial accident recognized and indemnified by the CSST. Despite care and treatment, the worker retained major physical and psychological sequelae and had to use a wheelchair to move around.

In September 2007, more than two years after his accident, the worker wrote to the CSST to denounce the delay in adapting his residence, notably with regard to indoor and outdoor access ramps and accessibility inside his home. He stated that his needs were urgent, for his own well-being as well as that of his family, which included 6 children. He contacted the Québec Ombudsman at this same time.

The CSST had an architect evaluate the worker's home to determine how the residence could be adapted. The architect concluded in November 2007 that the residence could not be adapted, and that attempting to do so would be extremely costly for the CSST. While the only solution would have been for the worker to move, the CSST refused to pay the expenses such a move would entail. The citizen was at an impasse.

Shortly after the Québec Ombudsman's intervention, the CSST authorized the worker to begin looking for a new home, accepting to compensate him the difference between the cost of his new house and the value of his current residence. The worker found a house and will be moving in July. The CSST also agreed to pay the moving expenses, notary fees and any necessary adaptations to the new residence.

Confusion as to family situation

A worker suffered an industrial accident in March 1987, after which he submitted a claim specifying that he had a dependent spouse and three dependent children. In October 1988, the worker communicated with the Commission de la santé et de la sécurité du travail to have rectifications made to the information concerning his family situation, which had up to this point been inaccurate. He reiterated that he should be compensated under the category including four dependents, one of which was his spouse.

The CSST made a mistake at this point, indicating that the citizen had "no spouse or no dependent spouse, four dependent children". The worker, however, was certain that there was no mistake, seeing as he in fact had four dependents. What he failed to realize was that the inaccurate entry resulted in his receiving a lower income replacement indemnity than that to which he was entitled. Had his spouse been accurately indicated as a dependent, his benefit would have been higher. In October 2006, the worker realized that his family situation was still erroneous, his spouse having never been considered as a dependent. He therefore contacted the CSST and asked that his family situation be corrected retroactively to 1988 and that he begin receiving amended benefits.

In October 2006, the CSST issued a cheque in the worker's name for \$13,704.81, this amount corresponding to the additional income replacement indemnity the worker would have received since his industrial accident. A few days later, the CSST changed its mind and put a stop payment on the cheque, stating that in 1988, the citizen had 90 days to request an adjustment to his benefits, which he failed to do. It claimed that it was impossible to return that far back in time.

The Québec Ombudsman intervened to emphasize that the worker had been of good faith since 1988 and that since the mistake had been made by the Commission de la santé et de la sécurité du travail, he should not be unduly penalized. The worker had, in fact, provided the CSST with all the information it needed to accurately establish his family situation. The CSST finally acknowledged its error and paid the agreed upon amounts to the worker.

Compensation for victims of crime (IVAC)

The CSST's Direction de l'indemnisation des victimes d'actes criminels (IVAC) is responsible for analyzing the eligibility of requests submitted by victims of crime and determining their right to the benefits provided for by law.

Type of complaints

Complaints reviewed by the Québec Ombudsman

IVAC						
Under investigation at April 1, 2007	Received	Investigated*				Under investigation at March 31, 2007
		Referred	Interrupted	Unsubstantiated	Substantiated	
45	119	4	56	57	20	25

* Excluding complaints whose processing was interrupted or which were referred

The complaints brought to the Québec Ombudsman's attention this year by victims of crime included problems stemming from delays in the execution of decisions rendered by the Tribunal administratif du Québec, the delays in reaching a decision with regard to a request for benefits, and decisions taken in the absence of overwhelming proof.