

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.

Overview of the situation

The Act to amend the Act respecting labour standards with regard to absences and leave (Bill 58) came into force on December 18, 2007. This legislation, the only one of its kind in the world, provides employees with the right to take a leave of absence from their job for up to two years if they or their dependent child suffers a serious bodily injury as the result of a crime or if their spouse or child dies subsequent to a crime. It also gives employees the right to take a leave of absence from their job for up to one year should their child of minor age disappear.

Ombudsman follow-up and actions

Modernizing services to better respond to demand

The Québec Ombudsman in its 2006-2007 annual report noted that the Direction de l'indemnisation des victimes d'actes criminels had implemented a project to modernize its services. The objectives targeted by this initiative were, among others, to decrease delays in the processing of files and to increasingly focus interventions according to specific client needs. The Québec Ombudsman met with IVAC management in February 2008 to monitor progress with regard to this modernization initiative, introduced in May 2007. The IVAC provided the Québec Ombudsman its promising preliminary results on the speed at which files were processed and increases in the eligibility ratio. The core of the project involves improved customer service, more efficient risk management, optimal use of the organization's human resources, and the introduction of a quality assurance program.

During its interventions, the Québec Ombudsman obviously aimed to amend for the prejudice caused a citizen due to the inadequate processing of his file. Oftentimes, resolving such a problem will have an impact on all citizens who find themselves in a similar situation. The two examples below illustrate this :

Decision taken without overwhelming evidence

A citizen was the victim of a crime in December 2005, at a time when he was unemployed. To receive compensation for temporary total disability, the citizen must demonstrate that he is unable to perform the majority of his daily and domestic activities.

It bears noting that this crime victim underwent psychological treatment that was recorded in follow-up reports. These reports attest to the evolution of his condition, as well as to his inability to continue doing his daily activities subsequent to the crime that occurred in December 2005.

In July 2006, he was examined by a psychiatrist mandated by the Direction de l'indemnisation des victimes d'actes criminels. This expert concluded, among other things, that there was a link between the citizen's post traumatic stress and the event of December 2005. In his opinion, the victim's current condition is around 50% of what his normal condition should be.

In August 2006, the Direction de l'indemnisation des victimes d'actes criminels reached a decision that the citizen was not entitled to receive temporary total disability benefits. In November of the same year, this decision was upheld by the Bureau de la révision administrative.

These two decisions had a significant impact on the victim's life, as no benefit for temporary total disability could be paid him. Hence, the citizen found himself in a precarious financial situation because of his disability ensuing from a crime. The citizen contacted the Québec Ombudsman, feeling prejudiced by the Direction de l'indemnisation des victimes d'actes criminels' decision, which he believed failed to take into account the elements of proof in his file attesting to his inability to carry out his daily activities.

The Québec Ombudsman analyzed the file prior to concluding that it contained no evidence that the victim was in a position to keep up his normal activities. To the contrary, the psychological follow-up reports documented his disability subsequent to the event of December 2005. Consequently, with no medical evidence to the contrary, the Québec Ombudsman believes that these reports should have been considered and accepted by the Bureau de la révision administrative.

Seeing as the Bureau de la révision administrative could not reconsider its decision and in light of the citizen's precarious situation and desire to resume psychotherapy treatment, the Québec Ombudsman identified a corrective measure. It recommended that the Direction de l'indemnisation des victimes d'actes criminels refund the costs of the citizen's psychotherapy treatment and award him a retroactive amount of \$2,450, corresponding to the 35 psychotherapy treatments he could have benefited from during the previous months. The Direction de l'indemnisation des victimes d'actes criminels agreed to proceed with these measures.

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The Québec Ombudsman also put forth recommendations with a view to prevention. These primarily involved having the Direction de l'indemnisation des victimes d'actes criminels ensure that all of the decisions it rendered were supported by the existence of overwhelming proof in a crime victim's file. The Direction de l'indemnisation des victimes d'actes criminels concurred with these recommendations, confirming that all decisions regarding a victim's disability would henceforth be supported by overwhelming proof in the file and that each case would be studied on its merits, in compliance with applicable rules.

Delays due to the absence of useful measures for obtaining evidence

A citizen submitted a claim to the Direction de l'indemnisation des victimes d'actes criminels for the funeral expenses she incurred when the father of her children died. The directorate responded that it could not reach a decision because it was unable to obtain police reports. She then proceeded to contact the Québec Ombudsman.

During its investigation, the Québec Ombudsman learned that the Direction de l'indemnisation des victimes d'actes criminels generally has a problem obtaining police reports for murder cases, despite the fact that these reports are critical in equitably determining whether the victim had been guilty of a serious fault. Without this information, the Direction de l'indemnisation des victimes d'actes criminels cannot reach a decision. Claimants are thus subjected to undue delays, which goes against the provisions of the Act respecting administrative justice.

The Québec Ombudsman's intervention made it possible to determine that unreasonable delays had occurred in numerous files because of this same issue. The Québec Ombudsman, in its exchanges with the Direction de l'indemnisation des victimes d'actes criminels, insisted on the need for a quick solution, notably considering whether the directorate could use its authority as an investigation commissioner to obtain the information required to make decisions.

In December of 2007, the Québec Ombudsman was apprised that the solution preferred by the Direction de l'indemnisation des victimes d'actes criminels and the police force where the problems originated consisted of obtaining police reports by means of a subpoena. It was agreed, moreover, that this procedure would apply to homicide cases as well as other crimes.

The Québec Ombudsman was satisfied with this solution, and hopes it will help ensure that similar situations are not repeated, particularly within the context of a time period that can only be characterized as highly emotional for the crime victim's loved ones. With regard to the original complaint, the Québec Ombudsman's intervention resulted in the citizen being refunded the funeral costs and her two children receiving an annuity retroactive to the date of her request (2004).

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