

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

Citizens' complaints fall into two main areas: compensation of road accident victims and application of the Highway Safety Code.

The Highway Safety Code

Type of complaints

Complaints reviewed by the Québec Ombudsman

Highway Safety Code						
Under investigation at April 1, 2007	Received	Investigated*				Under investigation at March 31, 2007
		Referred	Interrupted	Unsubstantiated	Substantiated	
29	373	6	82	222	39	23

* Excluding complaints whose processing was interrupted or which were referred

The requests concerning the application of the Highway Safety Code mainly involved driver's licences and driver's licence suspensions for medical reasons or subsequent to evaluations by the Fédération québécoise des centres de réadaptation pour personnes alcooliques et autres toxicomanes. Licence suspension for failure to pay fines was also the subject of a good number of complaints.

We also received questions or comments regarding road vehicle registration. Several of the issues brought up this year pertained to the SAAQ's regulation prohibiting citizens from operating dirt bikes on public roads. As was the case in past years, there continued to be problems with address changes and notices of renewal.

Overview of the situation

In 2007-2008, the Société de l'assurance automobile du Québec finalized two major projects with a significant impact on management of road network access and the quality of services delivered to citizens. More specifically, these two projects were the tabling of the Table québécoise sur la sécurité routière's first report and the introduction of new payment methods for driver's licence and vehicle registration fees as a result of increased insurance contributions.

We also noted that difficulties accessing the health care system are being increasingly felt by the SAAQ, specifically for clients whose medical condition must be evaluated to determine whether they still have the necessary skills to drive a vehicle.

The Table québécoise sur la sécurité routière

The Table québécoise sur la sécurité routière tabled its first report on July 5, 2007, and this after a year and a half of work on this project. Recommendations concerned speeding, impaired driving, cellular phone use while driving, seat belt use, vulnerable users, the road environment, the partnership with the municipal environment and heavy vehicles.

After the report was tabled, the Minister of Transport submitted a series of related measures. Divided into six priority actions, these measures consisted of the introduction of more severe sanctions for excessive speeding, repeated infractions and impaired driving, the implementation of pilot projects to test photo radar and cameras at red lights, a ban against driving while using a handheld cellular phone, gradual access to the right to drive, and speed limiters for heavy vehicles. These measures were included in two bills tabled in the National Assembly in November 2007 (Bill 42 and Bill 55).

The Ombudsperson forwarded the Institution's comments to the Commission des transports et de l'environnement. While the Québec Ombudsman agreed with most of the measures introduced, particularly photo radar and cameras at red lights (and more specifically, the proposed format), it issued recommendations for ensuring the existence of true recourses for driver tests and the review of sanctions for drivers refusing to submit to a breathalyzer test. The section "Parliamentary watch", addresses the situation following the National Assembly's adoption of Bill 42 and Bill 55.

The increase in insurance contributions and the deferred payments of driver's licence and road vehicle registration fees

Last year's hike in insurance contributions, introduced to remedy the financial situation of the Fonds d'assurance automobile, came into force in January 2008. It included new terms for the payment of fees, including deferred payments and pre-authorized debits renewed from one year to the next, measures designed to help citizens better cope with the new fees.

When the proposed regulations incorporating these new terms were tabled in 2006, the Québec Ombudsman recommended that the necessary measures be taken to avoid the automatic renewal of pre-authorized debits should citizens no longer wish to adopt this payment method. It also recommended that citizens be clearly notified of the possibility of being reimbursed any excess fees paid, for example, should they decide to store their vehicle or were their driver's licence suspended.

As indicated in its 2006-2007 annual report, the Québec Ombudsman this year continued its exchanges with the Société de l'assurance automobile du Québec in this regard. The details we were provided regarding the manner in which available payment options would be communicated to citizens as well as the possibility of changing these options at the time of renewal adequately met the Québec Ombudsman's concerns. The SAAQ also made certain commitments with regard to the dissemination of information concerning the reimbursement of any excess fees paid.

Difficulties obtaining health services

In its role as the administrator of access to the road network, the SAAQ must, in certain situations provided for under the Highway Safety Code, verify that a person's medical condition allows for driving a road vehicle. Medical reports are required in such cases. The Société de l'assurance automobile du Québec can also do such a verification whenever it has valid grounds for believing it might be necessary.

Given the current difficulty in benefiting from the services of family physicians or specialists, citizens are grappling with two problems. The first involves the difficulty in obtaining an appointment with a physician. The second, should they see a physician, consists of problems in having their medical report submitted within the specified timeframe.

The Société de l'assurance automobile du Québec must adjust to this new reality. It does however allow longer timeframes when it considers these warranted by circumstances. The Québec Ombudsman nonetheless had to intervene in a situation where the SAAQ refused to have a special report completed by a citizen's treating physician. The citizen, who was being followed for manic-depressive syndrome by his treating physician, could thus not provide the SAAQ with a medical report from a psychiatrist within the prescribed timeframe. Subsequent to the Québec Ombudsman's intervention, the SAAQ agreed that the treating physician could complete the report, so long as copies of the hospital records where the citizen had twice been admitted were included.

Ombudsman follow-up and actions

Ensuring the quality of SAAQ services subsequent to the launch of Services Québec

The deployment of Services Québec in SAAQ service centres, an initiative begun in 2006, should continue during the 2007-2008 year. In addition to last year's three modified service centres, two more centres incorporated a Services Québec window in 2007.

The Québec Ombudsman last year indicated that it would monitor the impacts of this new grouping of services on the quality of the SAAQ services offered, with the aim of ensuring that the latter's expertise was not diluted within the broader mandate of Services Québec. The Québec Ombudsman notes that thus far the result is more like a cohabitation rather than a transfer of expertise. It will nonetheless keep a careful eye on any developments in this regard over time, to ensure there is no negative impact on the services extended by the Société de l'assurance automobile du Québec

Deferred payments for driver's licence and registration fees

Last year, the Québec Ombudsman had brought to the forefront various problems experienced by citizens who did not receive their driver's licence or road vehicle registration papers as a result of SAAQ errors.

At the time these proposed regulations regarding new payment terms were tabled (the terms themselves came into force in January 2008), the Québec Ombudsman had requested that the sending of renewal notices also be governed by regulation. This measure also sought to make sure that citizens would receive in a timely fashion the information necessary to decide whether or not to renew pre-authorized debits.

The SAAQ did not follow up on this recommendation, opining that the sending of notices was already governed by an administrative practice and that it is up to see to the every citizen renewal of his fees. In so stating, the SAAQ based itself on a Supreme Court of Canada decision of April 13, 2006. This Supreme Court decision, it should be remembered, was rendered based on the legal context at the time, which is why the Québec Ombudsman recommended that the regulation be amended. Despite this allegation, the Québec Ombudsman continues to receive complaints on this very issue, as indicated by the example presented below.

Software lies behind an unwary citizens erroneous change of address

A citizen notified the Société de l'assurance automobile du Québec of an address change, at which time a SAAQ employee entered the wrong postal code entered into. The software used to send postal notices changed the address entered on the basis of the postal code in the system. As a result, the citizen failed to receive the renewal notice for his vehicle registration, as well as the notice of licence suspension due to an unpaid fine.

Stopped by the police, he quickly learned that his registration should have been renewed two months prior and that his licence had been suspended. In breach of the law, he received two fines of \$430 each and his vehicle was seized for a 30-day period.

Seeing that the citizen was indeed not aware that his licence had been suspended, the SAAQ acceded to the Québec Ombudsman's request to release the seized vehicle. It refused, however, to reimburse the fees involved in recovering it, considering that the seizure - despite the situation - was nonetheless legal. The Québec Ombudsman maintained that the citizen was not responsible for errors in the SAAQ's software and would have taken the necessary steps to correct the situation had he received his suspension notice. The same could be said for his vehicle registration fees.

The Société de l'assurance automobile du Québec finally agreed to refund the fees related to the seizure and to take the required steps to have the fines handed out to the citizen cancelled.

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The SAAQ reviewed its notices to ensure that they were adapted to the new methods of payment. As such, an explanatory brochure on pre-authorized debits was and will be included with all licence or registration renewal notices sent to citizens throughout 2008. Citizens who opt for pre-authorized debits receive a schedule of the payment dates and are notified that they can stop these pre-authorized debits at any time, simply by providing the SAAQ advance notice at least seven days prior to the date of the next payment. Each year, moreover, citizens will receive a new notice advising them of the amounts of the pre-authorized debits for the coming year. Those who so desire may then renounce to the automate renewal of pre-authorized debit payments.

The Québec Ombudsman notes that the Société de l'assurance automobile du Québec has made considerable efforts to ensure that citizens are adequately informed as regards payment terms. Because this does not resolve the issue of notices that are not received, the Québec Ombudsman will continue to intervene in all of the cases brought to its attention where citizens fail to receive their renewal notice because of a SAAQ error. Given that the fees imposed by the SAAQ can vary from one year to the next, we consider it normal that citizens wait to receive the applicable documents before paying the fees for their driver's licence and road vehicle registration, or for opting for a particular payment method.

Information regarding the reimbursement of overpaid amounts

The Société de l'assurance automobile du Québec had also agreed to consider another of the Québec Ombudsman's suggestions, namely taking the necessary measures to advise citizens who were subject to an interdiction - licence or registration suspension - of the possibility of being refunded any excess fees paid. The SAAQ was to study the feasibility of such a project, seeing as it involved changes to its computer programs.

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However, after reviewing various solutions, the SAAQ opted not to include information as to the possibility of a refund in letters on licence suspensions or licence recocation, since these letters already included key information for obtaining a new valid licence as well other details. And any additional information would only render their communications more difficult to understand. It did, however, indicate that it was planning to include this information on its Web site. It also indicated that it would be reviewing any relevant documents as each one came to term. In the interim, it ensured us that citizens who carry out cancellation transactions at SAAQ service counters are always offered any applicable refunds by agents. The Québec Ombudsman will continue to monitor this commitment of the Société de l'assurance automobile du Québec.

Jointly owned vehicles

The Québec Ombudsman last year noted a problem with address changes in the SAAQ's register of jointly owned vehicles. Whenever a citizen makes an address change with the SAAQ, the agent must check whether the person has a jointly owned vehicle, given that the register for the latter is not the same as that for individual files. The address must then be changed in both registers. If this is not done, the co-owners will not receive the renewal notices for their jointly owned vehicle, with all the major consequences we know this can entail.

This problem still exists, despite our interventions and in spite of the Société de l'assurance automobile du Québec's various attempts to correct its administrative practices over the last few years. Faced with this reality and subsequent to the comments proffered by the Québec Ombudsman last year, it mandated its Direction générale des technologies de l'information to analyze this problem. Various options should be considered in 2007-2008, after which a decision will be taken in this regard.

The agency concluded that in time and money involved, such an operation could not be justified. This being said, the SAAQ has committed to reminding the front-line staff, each spring, of the address change procedure applicable to jointly owned vehicles.

At this stage, the Québec Ombudsman will take the measures introduced thus far into consideration and will advise the SAAQ depending on the number of complaints received.

Suspension of all licence categories

As attested to in last year's annual report, the SAAQ in 2006 indicated that it would follow up on the Québec Ombudsman's recommendation with regard to this particular issue.

Lets recall that previously, when a citizen holding a professional licence category forgot to submit the medical report required for the renewal of his or her licence to the Société de l'assurance automobile du Québec, the licence was suspended. Following a review, the Québec Ombudsman had concluded that this constituted a faulty interpretation of the applicable provisions of the Highway Safety Code, as only the professional licence categories should be suspended in such an instance.

In order to abide by this new interpretation, the SAAQ needed to review its administrative and computer processes throughout 2007. It proceeded to an analysis of the costs of such an initiative. However, it does not anticipate initiating the project this year, because of its other priorities, resulting from the new payment modes in force since January 1, 2008 and the amendments made to the Highway Safety Code by Bill 42.

In the meantime, Bill 55, tabled in Parliament in November 2007, proposes amendments to the Highway Safety Code that are line with the Québec Ombudsman's recommendations. It would indeed amend section 190 of the Code so as to specify that only the licence categories concerned by a medical report would be suspended should such a report not be submitted.

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While the bill has not been ratified, the amendment, according to the SAAQ, is still being considered. As necessary, the funds for modifying the SAAQ's processes accordingly will be made available. We would like to note that at present, and this since 2006, any citizen who complains to the Société de l'assurance automobile du Québec is entitled to a correction vis-à-vis his or her licence.

The Québec Ombudsman must again intervene this year

The complaints received this year concerning road safety mainly contend a lack of flexibility with regard to the SAAQ's requirements, some of which are even labelled unjustified by some.

Furthermore, despite last year's improvements to the Service de l'évaluation médicale, there are still delays in the processing of applications for review, which in and of themselves further set back the lifting of licence suspensions. Again this year, numerous complaints attest to the SAAQ's refusal to assume the consequences of its errors.

In another vein, the Québec Ombudsman continued its involvement with the SAAQ regarding its driver evaluation program, an initiative implemented by the Fédération québécoise des centres de réadaptation pour personnes alcooliques et autres toxicomanes, in conjunction with the SAAQ, to apply Highway Safety Code requirements with regard to impaired driving due to drugs or alcohol. The Québec Ombudsman's actions also included services provided to citizens who were not necessarily prejudiced per se by the SAAQ.

Lack of flexibility and unjustified requirements

A citizen requesting a service from the SAAQ can sometimes be faced with a refusal or requirements whose grounds are lost on him, be it with regard to registration or the obtaining or renewal of a licence. The following cases provide examples of such situations :

Toronto - Gatineau : all it took was a phone call...

A citizen moved to Ontario in June 2007. Prior to leaving, she signed a power of attorney authorizing a friend to sell her vehicle and do the necessary transfer of ownership. The SAAQ service outlet refused to accept the power of attorney, requesting a document with a photograph of the car's owner (health insurance card, passport or Québec driver's licence). Because she had replaced her former driver's licence for one from Ontario, the woman in question could not meet the SAAQ's requirement. The only option remaining to her was drive back to Québec, an eight-hour ride, to provide other documentation.

As a result of the Québec Ombudsman's intervention the SAAQ's technical support staff directly checked with the Ontario Driver & Motor Vehicle Licensing Bureau, which allowed them to confirm the facts. The woman was thus prevented from having to undertake a costly and useless trip. The transaction was subsequently completed at a service centre by the person holding the power of attorney.

A standard is a standard is a standard

A citizen adhered to the requirements of the sanction received under the Highway Safety Code with regard to impaired driving, as a result of which he was obligated to make use of an alcohol-ignition interlock device for a 12-month period. His sanction ending on April 6, 2007, the citizen made an appointment with the automobile center to have the device removed on that day. And asked the Société de l'assurance automobile du Québec to deliver a regular licence as of April 5, seeing as the service centre would be closed from April 6 to 10 inclusively for the Easter break.

The SAAQ refused, maintaining that the sentence was in force until April 6. This decision meant that the citizen would have to pay for the alcohol-ignition interlock device for an additional four days, or refrain from driving for the four days in question. The Québec Ombudsman is of the opinion that the SAAQ should have attempted to accommodate the citizen, as the 12-month delay stipulated under the Highway Safety Code should equally apply to the SAAQ and the citizen and given that the SAAQ's centres are closed for several days in succession only twice a year. We thus requested that the citizen's regular licence be exceptionally delivered one day prior to his sanction's termination, a request that the SAAQ granted.

Whenever it has reasonable grounds, the Société de l'assurance automobile du Québec can require a medical report or road test allowing it to check a citizen's driving ability. This notion of reasonable grounds, however, is open to each agent's interpretation and can result in excessive checking, oftentimes causing useless interventions, financial outlays and worry to citizens. This is attested to by several of the cases brought to the Québec Ombudsman's attention this year, a few examples of which are given below.

Sometimes it's just too much...

The Société de l'assurance automobile du Québec requested that a citizen who had suffered a cerebral stroke provide it with two medical reports, one completed by his attending physician and the other by an ophthalmologist. Neither physician found any indication that the citizen suffered from a problem likely to impact his ability to drive a road vehicle. The SAAQ nonetheless requested a road test monitored by an occupational therapist to ensure that he had no cognitive sequelae. An appointment for this test was scheduled at the end of July. Meanwhile, the SAAQ sent the citizen another medical form to be completed, this one by a neurologist.

The Québec Ombudsman considered this request hasty, since the occupational therapist would be determining whether there existed a problem requiring a neurological exam. The Société de l'assurance automobile du Québec agreed to have the citizen first complete a road test before determining whether another medical report was necessary.

Another citizen suffered a nervous depression in 2005. As requested by the Service de l'évaluation médicale, he submitted a psychiatric report in 2006 and a second one in 2007, both of them including a statement from his attending physician that his condition was

well in control. The SAAQ's Service de l'évaluation médicale nonetheless required that he submit to another psychiatric evaluation. Subsequent to the Québec Ombudsman's intervention, the Service de l'évaluation médicale agreed that this request was not essential.

Conversely, a citizen with a medical report indicating no driving-related problems had to complete a road test to ascertain whether permanent sequelae to his left arm as the result of a road accident in 2004 affected his ability to drive a regular vehicle.

The Québec Ombudsman felt that this requirement was premature, as an additional report from the attending physician would have been sufficient to clarify the citizen's medical condition and determine whether a road test was in fact necessary. The Service de l'évaluation médicale concurred with our estimation, and the citizen submitted another report indicating that the sequelae to his left arm did not have any effect on his ability to drive. He was thus not required to take a road test.

Delays affecting the lifting of a driver's licence suspension

In 2006, the SAAQ's Service de l'évaluation médicale made efforts to attempt to limit the delay for processing medical notices required for obtaining or maintaining a driver's license : increased personnel, more qualified employees, improved customer communications²¹. Despite these measures, the Québec Ombudsman nonetheless received a few complaints this year regarding the time required to process applications for review. Our analysis of these problems resulted in the Service de l'évaluation médicale making new corrections, as exemplified by the following case.

A useless delay

A citizen's driver's license was suspended after she suffered an epileptic seizure in August 2006. Under the Regulation respecting access to driving a road vehicle in connection with the health of drivers, a suspension can be lifted after three months with no recurring attack, if the citizen has resumed taking his or her medication. In January, the citizen transmitted a medical report attesting that her seizure in the month of August had occurred because she had ceased taking her medication but had suffered no other attacks since then.

She was advised that her medical report would not be reviewed for another 40 days, the current delay for processing applications for review. While this timeframe was an improvement over the previous 57 days a few months earlier, it was nonetheless too long for the citizen, who was the sole driver in her family and had been without a licence for five months already.

Seeing that this was a simple situation meeting the criteria of the Regulation, the Québec Ombudsman questioned the relevance of processing it alongside more complicated applications. The Service de l'évaluation médicale, which reached the same conclusion, assigned a priority to the citizen's application, authorizing the lifting of her licence suspension. The Service, in light of this situation, decided to review its procedure.

21 *Rapports annuels de gestion 2006*, Société de l'assurance automobile du Québec, Fonds d'assurance automobile du Québec, Contrôle routier Québec, Québec, May 2007, pp. 51, 81 and 85.

Medical reports are now sorted as soon as they come in. Simpler cases are given priority treatment, if possible the same day they are received. Cases requiring a more in-depth analysis are examined in parallel depending on the order in which they are submitted.

Assuming the consequences of one's mistakes

The Québec Ombudsman last year had emphasized the Société de l'assurance automobile du Québec's refusal to accept responsibility for a series of errors with unfortunate consequences to citizens, notably during the transmission of licence and registration renewal notices. Complaints received this year indicate that this standpoint has not changed, as evidenced by the situation described below.

No citizen should have to pay for an error by the administration

A citizen found herself with a diagnosis of schizophrenia in her medical report due to a coding mistake by a SAAQ employee. The mistake was subsequently corrected, but the citizen fears that the erroneous information may have been transmitted to other agencies having requested access to information, as enabled by law²². The agency required the citizen to pay \$500 for carrying out a search and providing her with a list of other agencies, as the case may be.

In the Québec Ombudsman's opinion, the citizen should not have had to pay for the Société de l'assurance automobile du Québec's mistake. Subsequent to the Québec Ombudsman's intervention, the SAAQ took the necessary steps and confirmed to the citizen - at no cost to her - that no information regarding her medical record had been transmitted to any third parties.

Evaluation of drivers by the Fédération québécoise des centres de réadaptation pour personnes alcooliques et autres toxicomanes

Drivers who commit a first offence for impaired driving lose their right to drive for one year. Since 2002, Québec drivers wanting a new driver's license must, furthermore, submit to a brief evaluation seeking to establish that their relationship with alcohol or drugs does not compromise their ability to safely drive a road vehicle.

This evaluation is carried out by an institution that is a member of the Fédération québécoise des centres de réadaptation pour personnes alcooliques et autres toxicomanes, with whom the SAAQ reached an exclusive agreement in 1997.

Following the brief evaluation, lasting around an hour, the evaluator submits his or her conclusions to the Société de l'assurance automobile du Québec. If the recommendation is positive, the SAAQ authorizes the issuing of a new regular driver's license. If not, the citizen must be comprehensively evaluated over a period of six months or so for an additional fee. At the end of this in-depth evaluation, the citizen must, at his or her own expense, have an alcohol-ignition interlock device installed in his vehicle for a one-year period²³.

²² Act respecting access to documents held by public agencies and the protection of personal information.

²³ Between 1997 and 2002, only drivers with a diagnosis of alcoholism or drug use had to submit to a summary evaluation, called "initial" by the Fédération. This first evaluation was followed by a comprehensive evaluation in the case of a failure. Drivers found guilty of impaired driving were not required to abide by the Fédération's protocols unless they were found guilty of subsequent offences.

Under the agreement with the Fédération, the latter is responsible for developing evaluation protocols and coordinating their application.

In light of the consequences of an ill-founded recommendation, be it for the general population, for example were a potential repeat offender allowed to drive, or for the citizen, who might not be an actual risk but would nonetheless be subject to other conditions to obtain a new license, following appropriate protocols is critical.

In two past annual reports²⁴, the Québec Ombudsman reported on the complaints received with regard to this program, on its interventions with the SAAQ and on the changes made to the program since it first came into effect.

The Québec Ombudsman did observe that the evaluation reports provided to citizens had been improved over time. Originally far from transparent and failing to allow citizens to understand the reasons for a negative recommendation, these reports are now better supported. Furthermore, since 2004, citizens can contest a decision rendered by the Société de l'assurance automobile du Québec on the basis of an unfavourable recommendation. They can also submit an application for review to the Tribunal administratif du Québec.

The Québec Ombudsman nonetheless continues to receive numerous complaints regarding this program, most of them concerning the structure and process of summary evaluations, the supervision involved in comprehensive evaluations, the limitations of recourse to the Tribunal administratif, and the difficulties citizens living in remote regions have accessing Fédération member centres.

Below are examples of the types of complaints investigated by the Québec Ombudsman over the course of the year :

SAAQ unable to partner with private enterprises

A citizen was required to undergo a comprehensive evaluation under the Fédération's protocol, including a supervision program for a six-month period. During the initial interview, the citizen and evaluator agreed on the objectives of the supervision program. The evaluator then proposed various methods, culled from the Fédération's protocol, for achieving the identified objectives. One of these methods consisted of working with a profit-oriented enterprise that offered a service for accompanying citizens, notably quoted in the Fédération's protocol.

Despite being uncomfortable with this means, since it involved registration costs and fees for each instance where he was accompanied, the citizen dared not refuse, for fear that this would have an effect on the evaluator's final recommendation and delay his obtaining his driver's license. Nonetheless he submitted the issue to the Québec Ombudsman.

The Québec Ombudsman, considering that the SAAQ cannot in any way promote, even unintentionally, a private enterprise, asked it to remove this means from the Fédération's protocol. It suggested replacing it by a more general undertaking from the citizen to call upon third parties (friends, family members, public transportation, taxis or other means) whenever necessary. Concurring with this position, the SAAQ made the necessary amendments to its protocol.

Who wins loses

A young man contested the unfavourable conclusions of his summary evaluation in front of the Tribunal administratif du Québec. Given that more than a year had passed before his complaint was heard, and in light of the ambiguous evaluation results, the Tribunal authorized that it be done over.

The citizen immediately sent his payment to the Fédération, but no date was fixed for his new evaluation, and this despite his numerous calls to the Société de l'assurance automobile du Québec. As time went on, the citizen feared he would also have to retake the driving exam, in accordance with the law's provision making this mandatory after three years without a licence.

In considering this complaint, the Québec Ombudsman learned that the SAAQ does not feel obliged to act on the Tribunal's decision, given the lack of an order compelling it to action. The Québec Ombudsman also noted that both the SAAQ and Fédération had no idea how to follow up on this decision.

According to both agencies, a citizen cannot undergo the evaluation a second time, for he knows now what the questions are the second time around. Yet under the agreement entered into with the Fédération, its evaluations are the only ones acknowledged for the application of Highway Safety Code provisions regarding driving while under the influence of drugs or alcohol.

Considering this deadlock, the Québec Ombudsman queried the usefulness of a recourse process when nothing could be done to implement the decisions taken. The SAAQ was finally obliged to allow the citizen to have an evaluation done in an independent clinic. With a favourable second evaluation, the young man was able to receive his driver's license immediately, without having to take another the driving test.

A "mere" 1,000 kilometres

A resident of Nunavik had to undergo a comprehensive evaluation in a Fédération member centre. In order to participate in the initial interview for establishing his supervision program, the citizen was told to go to the nearest centre. This facility, where an interview in French would take place, was in Val-d'Or, 1,000 km from his home. The citizen could not afford to fly to Val-d'Or. Moreover, since he spoke only Inuktitut and English, he could not take the necessary steps to undergo his rehabilitation and obtain a new driver's licence.

Subsequent to the Québec Ombudsman's intervention, the SAAQ contacted the Fédération to find a means of adapting the evaluation requirements to the citizen's reality. The Fédération accepted to hold the interview over the phone. An Anglophone was assigned to administer the interview and a social worker in the citizen's municipality was certified to adapt the supervision plan to the reality of this resident of Québec's Far North.

Still with regard to the same program, the Québec Ombudsman in 2007-2008 mandated an outside researcher to assess the summary evaluation protocol in use at the Fédération. This mandate aimed to specifically determine whether the existing protocol is the appropriate screening tool. A report is expected before the end of 2008.

Help from the Québec Ombudsman

At numerous times the Québec Ombudsman has helped out citizens - who had not necessarily been prejudiced - in their exchanges with the Société de l'assurance automobile du Québec. This assistance at times consisted of providing information as well as taking steps to ensure that special circumstances will be taken by the SAAQ into account. Below are three examples of the type of help the Québec Ombudsman proffered to citizens in 2007-2008:

Don't take any chances, just in case...

A citizen had to pass a road test in order to maintain his driver's license. The only appointment he could obtain was for May 7. Given the risk that he might lose his licence, the citizen wondered whether or not to renew his road vehicle registration, which would expire on April 30. The Québec Ombudsman explained to the citizen that renewing his registration was important. Failure to do so for more than 12 months would result in his vehicle being automatically subject to a mechanical verification before he could drive it. Should his licence be revoked, he could always store his vehicle and request a reimbursement for the fees paid in excess.

Reasonable accommodation

A citizen who only speaks Cree and English underwent a summary evaluation as provided for by the Highway Safety Code subsequent to a sanction for impaired driving. The resulting recommendation was negative, meaning that he would have to undergo a comprehensive evaluation. The citizen complained that the evaluator only spoke French, that the entire interview was held in French, and that the final report was drafted in French. Despite being accompanied by his spouse, who spoke a bit of French, he was not sure he had properly understood the interview questions or the evaluator's explanations regarding the computerized tests.

The Québec Ombudsman's investigation revealed that the interview score was in the citizen's favour, in spite of the interview having been held in French. The problem lay with the test responses (the tests were in English), which were ultimately the grounds for the unfavourable recommendation. The Québec Ombudsman therefore opined that the final recommendation was in fact fair. It nonetheless made sure that the SAAQ would provide an English version of the final report to the citizen, as well as enable him to undergo his comprehensive evaluation in English, as per the general principle in the SAAQ's language policy.

Help in better understanding

Following an application for review contesting an erroneous epilepsy diagnosis, another citizen was authorized to receive his professional driver's license classes. To do so, he had to undergo theory and practical tests, for his license classes had been suspended for more than three years. The citizen contested this requirement. Because he had lost these classes due to an erroneous diagnosis, he failed to understand why he should have to pass the tests again.

The Québec Ombudsman could unfortunately only reiterate his obligation to pass the tests again. We observed, however, that the citizen was dyslexic and had a problem understanding written instructions as well as writing, which explained his refusal to undergo a written test. The Québec Ombudsman ensured that the SAAQ would take his problem into consideration and have someone on hand to help him fully understand the test questions.

Comments from the agency

The comments of Société de l'assurance automobile du Québec chair and CEO :

“Please rest assured that SAAQ welcomes the Québec Ombudsman's recommendations and has already rectified the problems you raised. We are also in the process of implementing a number of other recommendations to ensure we continue to improve the services we provide to citizens.”

Parliamentary watch

Bills tabled on the basis of the Table québécoise de la sécurité routière recommendations

The Minister of Transport tabled Bill 42 and Bill 55 on November 14 and 15, 2007, in part to follow up on the recommendations made by the Table québécoise de la sécurité routière.

Bill 42, which amends the Highway Safety Code and the Regulation respecting demerit points, introduces stricter sanctions for excessive speeding and impaired driving. It notably incorporates an immediate 24-hour driver's licence suspension for drivers with a blood-alcohol level between 0.05 and 0.8 per cent. It also includes a number of other requirements, such as speed limiters on heavy vehicles set to 105 km/h and a ban on the use of handheld cellular phones while driving. The Bill also introduces pilot projects for setting up photo radar and cameras at red lights, as well as adding new conditions

for gradually obtaining the right to drive, among them mandatory driving courses and probationary licences for everyone.

Bill 55, in turn, also amends the Highway Safety Code as well as other legislative provisions. Among others it provides peace officers with the authority to administer physical coordination tests if they have reason to suspect that a driver may be impaired, and laid down an additional condition for drivers to obtain a road vehicle seized subsequent to an offence.

On November 28, the Ombudsperson submitted its recommendations on these two Bills to the Chair of the Commission des transports et de l'environnement. Its observations focused on three elements of Bill 42 and one element of Bill 55.

Bill 42

Pilot project for the introduction of photo radar and cameras at red lights

The provisions of Bill 42 in this regard essentially revisit, albeit with major adjustments, those proposed in 2001 under Bill 17, which never got any further than the order paper stage. In 2001, the Québec Ombudsman had objected to photo radar because the bill did not provide sufficient avenues of defence for vehicle owners who received a sanction generated by such a device when they were not the ones driving their vehicle. Their only alternative would have been to prove that the offence had occurred following the theft of their vehicle.

Bill 42 provides vehicle owners with additional avenues of defence, notably enabling them to submit a statement identifying the driver of the vehicle (signed by both the owner and the driver) within ten days of receiving a ticket. Should the driver refuse to sign this statement, the owner may submit it with only his or her signature, but must notify the driver. This has the effect of limiting the burden of proof for the owner of the vehicle.

The Bill plans, moreover, to run pilot projects for the introduction of the new devices, with the Minister reporting back to the National Assembly one year after their installation.

Given the changes to the former Bill in 2001 and in light of the growing number of road accidents over the past six years, the Ombudsperson agrees with the provisions of Bill 42 regarding the introduction of pilot projects for photo radar and cameras at red lights.

Continued access to the Tribunal administratif du Québec for contesting SAAQ decisions subsequent to driver evaluations performed by the Fédération québécoise des centres de réadaptation pour personnes alcooliques et autres toxicomanes

Under Bill 42 as tabled, the Fédération québécoise des centres de réadaptation pour personnes alcooliques et autres toxicomanes would be the only legally acknowledged organization governing the evaluation of drivers with a licence with an "interlock device" restriction as well as drivers who receive sanctions for impaired driving.

This provision negates the possible recourse to the Tribunal administratif du Québec to contest SAAQ decisions subsequent to unfavourable evaluations, given the impossibility of obtaining evaluations from organizations other than the Fédération. This essentially constitutes a setback from the progress made by the Québec Ombudsman in this regard. The Ombudsperson therefore recommends that this provision be struck from the Bill.

Lifelong alcohol-ignition interlock devices for repeat offenders with a blood alcohol level twice the legal limit

Under Bill 42, sanctions for impaired driving are significantly more severe. With the amendments introduced by the Bill, Criminal Code offences for refusing to submit to a breathalyzer test or for blood alcohol levels in excess of 0.16 will now be considered repeat offences.

While in agreement with the objectives of these provisions, the Ombudsperson questions a measure concerning repeat offenders that if adopted as is, would have the effect of inciting drivers to refuse to submit to a breathalyzer test. In fact, the worst case scenario with such a refusal would have a driver obliged to install an alcohol-ignition interlock device for a maximum of three years following a sanction. On the other hand, a driver submitting to a breathalyzer test showing for a second time or more a blood alcohol level in excess of 0.16 would be permanently subject to the interlock device requirement.

Fearing that these provisions have the opposite effect of that intended, the Ombudsperson suggested that parliamentarians carefully evaluate its scope.

Bill 42 was ratified on December 21, 2007. The Québec Ombudsman's recommendations regarding impaired driving were acted on. Institutions other than Fédération member centres will, following agreements with the SAAQ, henceforth be able to evaluate drivers for the purposes of the Highway Safety Code. This ensures that citizens can be subjected to protocols other than those of the Fédération, notably when contesting a SAAQ decision subsequent to an unfavourable recommendation. This ensures that recourse to the TAQ is not merely an illusion. In addition, the Bill's provisions regarding repeat offences for refusing to submit to a breathalyzer test or driving with a blood alcohol level twice the legal limit have been revised so as not to incite some drivers to refuse to provide a breath sample with the intent of receiving a lesser sanction. A similar sanction now applies in both cases.

Bill 55

The Ombudsperson also issued a recommendation with regard to Bill 55, specifically addressing the conditions for lifting a seizure of a road vehicle.

Under a SAAQ administrative requirement, owners wanting to lift the seizure of their road vehicle must demonstrate that they took the necessary steps to ensure that the driver to whom they loaned the vehicle had a valid driver's licence. Should the SAAQ refuse, the vehicle owner can turn to the Tribunal, who enjoys discretion in this regard.

Under Bill 55, this SAAQ requirement would become a legal obligation. Had it been adopted, this provision would have subjected drivers to an additional burden of proof that could not have been met in certain circumstances.

Of the opinion that the courts' discretionary power must be maintained so as to give due consideration to situations justifying the lifting of a road vehicle seizure, the Ombudsperson recommended that the amendment introduced by Bill 55 include an option whereby a vehicle owner can demonstrate his or her inability to proceed with the verification required by the SAAQ.

Given that there has not yet been enough time to conduct a detailed review of Bill 55 and it has subsequently not yet been ratified, the amendment concerning the conditions for lifting a seizure on a road vehicle is not in force at this time. We will study the parliamentary schedule to learn more about the Minister of Transport's intentions in this regard.

Compensation of road accident victims

In Québec, the State automobile insurance program was designed to protect all users of the road network. This program, administered by the SAAQ, provides protection to all Québec citizens against bodily injuries sustained as the result of an automobile accident anywhere in the world, regardless of fault.

Type of complaints

Complaints reviewed by the Québec Ombudsman

Compensation of road accident victims						
Under investigation at April 1, 2007	Received	Investigated*				Under investigation at March 31, 2007
		Referred	Interrupted	Unsubstantiated	Substantiated	
186	888	6	215	414	206	155

* Excluding complaints whose processing was interrupted or which were referred

The complaints received with regard to the compensation of road accident victims attest to significant dissatisfaction vis-à-vis the delays in processing certain claims. This often involves, among others, unreasonable delays in issuing medical reports and processing requests for personal home assistance when an occupational therapist report is necessary.

Road accident victims also contacted the Québec Ombudsman to decry the Société de l'assurance automobile du Québec's failure to comply with the timeframes provided for by the Act respecting administrative justice with regard to the transmission of administrative files to them as well as to the Tribunal administratif du Québec. Citizens also condemned interruptions in benefit payments which were not based on formal decision or grounds provided for in the Automobile Insurance Act, thus practically depriving them of an opportunity to contest SAAQ decisions.

Overview of the situation

In 2007-2008, the Québec Ombudsman was contacted by road accident victims who suffered bodily injuries and experienced problems with the Société de l'assurance automobile du Québec's handling of their compensation file.

Our analysis of these complaints unearthed numerous systemic problems inherent to various aspects of the compensation process. The growing number of such problems increases the likelihood that road accident victims will be prejudiced by the manner in which their claims are handled.

The Québec Ombudsman, concerned by this situation, had numerous discussions with the Société de l'assurance automobile du Québec. Some of these systemic problems were resolved during the course of the year, thereby improving the quality of the services provided to road accident victims by the SAAQ.

Fiscal 2007-2008 also saw the continued implementation of the agency's three-year action plan (2006-2008). The SAAQ made major changes to its process for handling compensation claims from road accident victims, seeking, among others, to better adapt its services to the reality of these victims. The Québec Ombudsman had a number of exchanges with the SAAQ concerning this restructuring, and intends to pay particular attention to the impacts of the changes on the quality of services offered road accident victims.

Ombudsman follow-up and actions

Delays issuing medical reports

The Québec Ombudsman has for many years denounced the time it takes the Société de l'assurance automobile du Québec to issue medical reports. In many cases, the delays are unreasonable, particularly since they can generate lengthy waiting periods before accident victims receive any compensation.

The Québec Ombudsman in its 2006-2007 annual report addressed the Société de l'assurance automobile du Québec's follow-up of the three-year action plan's implementation, bearing in mind the plan's objective of reducing delays through a change in SAAQ processes. Given the lack of any real progress and the negative impact on road accident victims, the Québec Ombudsman felt that this situation was still of concern and undertook to closely follow up with the SAAQ in this regard.

Our exchanges with the Société de l'assurance automobile du Québec made it possible to document the concrete actions for reducing delays in issuing medical reports taken to date and planned by 2008.

On January 1, 2007, the SAAQ began adding medical resources and reorganizing its human resources responsible for handling medical reports. It also, informed us of a number of changes to its operating processes since November 2007. According to the

SAAQ, these changes should help reduce the delays in issuing medical reports. Other changes to the operational process are planned for the remainder of the year.

Improvements

After comparing the data gathered with that of the previous year, the Québec Ombudsman observed a drop in the average response time for all report requests. This delay, in fact, went from 105 days to 85 days. Furthermore, we noted a decrease in the average delay for those medical reports with a particularly high risk of prejudice to citizens. For example, the average delay in the category where a link is drawn between the accident and the resulting disability or injury went from 73 days in 2006 to 48 days in 2007. For the category where a link is drawn between the accident and any future relapse, the average delay went from 96 days in 2006 to 78 days in 2007. Despite the observed downward trend, delays have not decreased to the point where there is an impact on citizens and additional efforts must thus be made. A road accident victim who files a claim due to a relapse of his condition must still wait an average of two months before learning whether or not his request has been approved. It should be remembered that during this period, the accident victim may have to dip into his savings or go into debt.

The case below, that of a citizen who contacted the Québec Ombudsman because he felt that the timeframe for obtaining a response to his claim was unreasonable, is a good example of the problems that can result from this situation.

Overly long delays

On September 19, 2006, a citizen sent his physician's clinical follow-up report to the Société de l'assurance automobile du Québec. The document indicated a worsening of his psychological condition, related to an automobile accident in February 2004. In following up on the citizen's request, the SAAQ on September 26, 2006 requested that one of its medical examiners produce a medical report to establish the link between this aggravation and the automobile accident.

In January of the following year, with no response from the SAAQ to his request regarding his aggravated psychological condition, the citizen communicated with the Québec Ombudsman. In reviewing the file, the Québec Ombudsman noted that the medical report requested by the compensation officer had still not been provided, and this after close to four months.

Given the citizen's vulnerable condition and the fact that he had no income, the Québec Ombudsman intervened with the Société de l'assurance automobile du Québec, asking that the medical report be submitted as quickly as possible. It was not until February 2007, five months after the citizen's initial request, that the SAAQ physician finally recommended that he undergo a psychiatric evaluation.

The psychiatric report was received by the Société de l'assurance automobile du Québec on May 29, 2007. The SAAQ's medical examiner acknowledged the citizen's aggravated psychological condition the following day, recommending payment of the appropriate medication and attesting to sequelae entitling the citizen to an amount of \$4,115.50.

The Québec Ombudsman is committed to closely monitoring the last year of the SAAQ's three-year action plan, and this with the specific objective of preventing prejudice to road accident victims who must wait extremely long periods of time before the Société de l'assurance automobile du Québec responds to claims filed.

Preliminary medical opinion and grounds for decisions

In its last annual report, the Québec Ombudsman addressed the issue that road accident victims could have problems understanding decisions as to the termination of their disability, and this because of insufficient grounds. Indeed, medical conclusions serving as the foundation for decisions are often not included in the documentation attesting to the decisions reached.

The Québec Ombudsman also observed that when a decision to terminate disability and the related compensation is communicated, the comprehensive medical report is not yet included in the file. This has the effect of preventing accident victims from accessing all of the evidence related to their situation. The Québec Ombudsman reminded the Société de l'assurance automobile du Québec that in this particular regard, section 83.43 of the Automobile Insurance Act and section 8 of the Act respecting administrative justice require that a decision be reasoned and communicated in writing to the person involved.

COLLECTIVE benefit

Effective May 1, 2007, decisions terminating disability are only rendered once a comprehensive medical report has been received. The Société de l'assurance automobile du Québec hence decided to stop using preliminary expert's reports. It also changed the mandatory information regarding decisions to which road accident victims are privy. Compensation officers must now explain the grounds for their decision.

We find these solutions encouraging, for they provide road accident victims the opportunity of understanding the rationale behind decisions to terminate income replacement benefits. This understanding in turn enables them to evaluate a potential recourse where they would have access to comprehensive details of the decision's grounds. Having read over some recent decisions terminating disability, the Québec Ombudsman is of the opinion that the measures introduced by the SAAQ to resolve the problem appear adequate.

Reluctance to accept responsibility for compensation

The Québec Ombudsman's 2006-2007 annual report included a joint recommendation to the Société de l'assurance automobile du Québec and the Commission de la santé et de la sécurité du travail.

These centred on standardization problems between the two agencies when analyzing files of citizens who had previously been compensated by one agency prior to suffering a new event. In this regard, the Québec Ombudsman recommended :

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.

Subsequent to this recommendation, the Société de l'assurance automobile du Québec acknowledged that the problem identified did in fact exist. In January 2008, it went on to establish means of identifying the files of citizens likely to be affected by the problem, and expressed its desire to introduce concrete measures to resolve the situation before the end of March 2008. The SAAQ notably advised the Québec Ombudsman that it would have to discuss the implementation conditions of these measures with the Commission de la santé et de la sécurité du travail so that both parties could agree on a mutually acceptable approach.

The Québec Ombudsman salutes the efforts of the Société de l'assurance automobile du Québec and will closely monitor progress with regard to this issue.

Illegal interruption of compensation on an administrative basis

Over the past year, the Québec Ombudsman reviewed complaints from road accident victims whose compensation had been interrupted by the Société de l'assurance automobile du Québec on a purely administrative basis. An analysis of these complaints allowed us to determine that the SAAQ had interrupted compensation for reasons that are not provided for under the Automobile Insurance Act.

The SAAQ had acted in this manner because it was either waiting to receive medical or other information enabling it to continue processing a claim, or because of a concern that certain road accident victims who had previously dealt with a company suspected of carrying out fraudulent activities at the SAAQ's expense had submitted false or inaccurate information. Moreover, when interrupting compensation on such grounds, the SAAQ did not render a formal decision, i.e. a reasoned decision submitted in writing. It also bears reiterating that only section 83.29 of the Automobile Insurance Act allows the SAAQ to refuse, reduce, suspend or terminate the payment of compensation, and this for the grounds therein specified. Yet the two above reasons are not alluded to in this section of the Act.

As such, the Société de l'assurance automobile du Québec failed to comply with the legislative framework, primarily decreed in sections 83.29 and 83.43 of the Automobile Insurance Act, the administrative rules it personally established, as well as the principles enacted in the Act respecting administrative justice. In so doing, it caused great prejudice to road accident victims. Essentially, these prejudices consisted of the immediate termination, with no advance notice, of compensation that generally constituted the subsistence income of these victims. Moreover, because of the lack of a formal decision, accident victims were quasi prevented from exercising the recourses guaranteed to them under the Automobile Insurance Act.

In light of the illegal nature of the practice adopted by the Société de l'assurance automobile du Québec in analyzing its files, as well as the scope of the prejudice observed and the fact that the agency cannot unilaterally decide to circumvent the laws governing it and add at its sole convenience conditions restricting the right to compensation, the Québec Ombudsman submitted a report to the SAAQ in October 2007 which included the following recommendations :

“That the Société de l'assurance automobile du Québec immediately stop the administrative interruption of compensation in the absence of a formal decision and for reasons that are not provided for under the Automobile Insurance Act.

That the Société de l'assurance automobile du Québec immediately modify its own directive to explicitly specify, on the one hand, that no interruption can be decreed for reasons other than those provided for in section 83.29 of the Automobile Insurance Act and on the other hand, that a written report completed under the established conditions must in all cases be sent to the accident victim prior to any decision regarding the refusal, suspension, decrease or termination of compensation under section 83.29 (except in cases where the SAAQ has overwhelming objective evidence that the accident victim has voluntarily submitted false or inaccurate information).

That the Société de l'assurance automobile du Québec quickly identify all accident victim files that are currently interrupted on an administrative basis and resume compensation in compliance with the legal and administrative framework, and that it adequately inform the citizens concerned.

That the Société de l'assurance automobile du Québec report back, in writing, on the follow-up executed with regard to this report and its recommendations, and this within 30 days of its reporting, hence no later than November 8, 2007.”

On November 8, 2007, the Société de l'assurance automobile du Québec's President and CEO apprised the Québec Ombudsman of the actions that would be implemented in the coming months to ensure adherence to the law governing interruptions to compensation. These include the sending of a memo to managers to remind all personnel of the procedure to follow in applying section 83.29 of the Automobile Insurance Act, training for managers and other actors regarding the application of section 83.29 of the Act, an update of the manual for compensating victims with bodily injuries, and the introduction of a directory of administrative authorizations to so that all files are authorized by managers before the provisions of section 83.29 are applied.

The Québec Ombudsman took note of the measures introduced by the Société de l'assurance automobile du Québec in response to its four recommendations. While they are all designed to ensure that its personnel will be more vigilant with regard to administrative interruptions, the Québec Ombudsman feels that these measures only partly address its concerns.

In fact, for files where a link to the organized system of fraudulent claims is suspected, the SAAQ advised us that using the principles protecting the trust estate, it had decided to interrupt the compensation paid in cases, where it believed that false or inaccurate information had been submitted, and this, in order to limit the great number of recovery payments for amounts having been paid in excess to suspicious individuals.

In spite of this explanation, the Québec Ombudsman believes that the SAAQ has neglected to acknowledge the illegal nature of its actions and instead, considers that their approach to handling files was legitimate, for financial reasons.

Moreover, the Québec Ombudsman is not convinced that the announced measures will be sufficient to prevent new illegal interruptions unless senior management makes a formal commitment to adhere to legislative provisions with regard to interruption of compensation.

A letter to this effect was sent to the Société de l'assurance automobile du Québec in December 2007. This was followed by a meeting between the Ombudsperson and the President and CEO of the SAAQ in February 2008. Subsequent to this meeting, the Québec Ombudsman was pleased to observe that he appeared determined to bring this practice to an end. In this respect, he will provide us with follow-up details on the implementation of the measures included in his action plan. The Québec Ombudsman is nonetheless still concerned by this situation, and intends to remain watchful, all the more so since other citizens have contacted it with regard to this same problem since the introduction of the measures announced in November 2007.

The interruption of compensation payments directly affects road accident victims, particularly when this interruption occurs outside of the provisions of the Act. Such as exemplified in the case discussed below :

Unjustified interruption of compensation

A citizen had a road accident in January 2005, as a result of which the Société de l'assurance automobile du Québec compensated her for her condition. This required compensation included income replacement benefits. In early September 2006, the payment of all of her compensation was interrupted on a purely administrative basis, i.e. with no formal decision. In explaining its actions, the SAAQ cited the launch of an investigation into a company suspected of committing fraud at its expense. Seeing as the victim had a signed agreement with this organization, the SAAQ decided to request that her file also be investigated. The investigator assigned to her case was mandated to check the veracity of the accident. The citizen ceased receiving compensation for the duration of the investigation, and the handling of her file was suspended.

The investigation report completed in mid-January 2007 concluded that she had in fact been the victim of an accident while driving her automobile in January 2005. Her income replacement benefits were reinstated a few days later. The SAAQ also paid her the retroactive income replacement benefits she should have received since early September 2006.

In February 2007, the citizen's compensation was again interrupted by the SAAQ, which this time claimed that it needed to obtain medical documentation illustrating that she was still unable to work. She was verbally notified of this new interruption at the end of March 2007,

as well as of the need for her to produce the required medical documents. The Société de l'assurance automobile du Québec had set no formal deadline by which this requirement had to be met. Here again, the decision to interrupt benefits was for purely administrative reasons, with no decision made as per the provisions of the Automobile Insurance Act.

It should be remembered that the interruption of her compensation in 2006 came about because of an investigation into the activities of a company suspected of engaging in fraudulent activities at the Société de l'assurance automobile du Québec's expense and with which the citizen had signed a contract. The SAAQ was in this instance not legally entitled to interrupt the payment of compensation, as it had no objective evidence that the citizen had submitted false or inaccurate information. The SAAQ, by acting in this manner, made an assumption as to the investigation's findings and as a result of its hasty and illegal actions, caused a major prejudice to the citizen, who was left without any compensation - and thus no income - for a period of nearly five months. The existence of this prejudice was confirmed by the SAAQ's decision to retroactively pay income replacement benefits subsequent to having read the investigation report in question.

During this period, payments were again interrupted on an administrative basis, on the grounds that the citizen was supposed to provide evidence that she was still unable to work. Yet, once again we noticed that this interruption had also been decreed with no consideration to the applicable regulations. There exists no legal provision authorizing the Société de l'assurance automobile du Québec to interrupt compensation because it is waiting to receive medical information on the condition of an accident victim. The citizen was not given an opportunity to complete her file, as provided for by the regulations. She had not received any verbal or written notice prior to the interruption of compensation, nor was she told of the consequences of failing to provide the required information.

During exchanges with the Société de l'assurance automobile du Québec, the Québec Ombudsman was informed that the decision to act in this manner was based on the particular history of this file, which it felt called for vigilance. In the Québec Ombudsman's opinion, this file's history shows that the citizen was treated unfairly.

We thus find it extremely difficult to understand why the SAAQ continued to act in a manner that failed to comply with the regulations established to govern its actions, why it took decisions with no legal foundation, and why it failed to offer the citizen guarantees regarding the procedural fairness to which she was entitled. These notably include the possibility of submitting her observations, completing her file and receiving a reasoned decision in writing.

Following the Québec Ombudsman's intervention and the receipt of medical information indicating that the citizen was still unable to work, compensation payments were reinstated retroactive to February 2007.

Delays when an occupational therapist's report is required

A road accident victim suffering from injuries in an automobile accident having left him unable to care for himself or do his daily tasks without assistance is entitled to a reimbursement of the costs of personal home assistance services. The accident victim's requirements as regards personal home assistance are evaluated on the basis of the daily activities for which the citizen may need total or partial support, among which personal hygiene, meals, medication and weekly housekeeping. The amount of reimbursement that a victim can obtain is based on the results of the evaluation, up to a maximum amount.

The Regulation respecting the reimbursement of certain expenses gives the criteria used for evaluating personal home assistance needs and as such, the compensation to be paid by the Société de l'assurance automobile du Québec. Under these criteria, some requests for personal home assistance must be evaluated by a SAAQ occupational therapist.

The Québec Ombudsman received this year complaints from road accident victims with regard to the delays in processing their requests for personal home assistance when an occupational therapist's report is necessary. According to the data gathered: in January 2007 a road accident victim had to wait an average of 152 days (around five months) before a SAAQ occupational therapist could prepare a report for a request for personal home assistance.

Road accident victims are therefore significantly prejudiced by the SAAQ's inability to process their requests for personal home assistance services in a more timely fashion. In fact, accident victims are often required to personally pay for the services received while waiting for a decision from the Société de l'assurance automobile du Québec. Such expenses are literally prohibitive for those victims with inadequate financial resources. This creates a major risk of road accident victims ending up in a vulnerable condition, for the financial and human impacts involved are considerable. To better illustrate the possible effects of this problem, a citizen's special situation is explained below :

Unacceptable processing delays

A citizen contacted the Québec Ombudsman in June 2007 to complain about the Société de l'assurance automobile du Québec's delay in processing her requests for the reimbursement of personal home assistance expenses. Ever since November 2006 she received no reimbursement for expenses incurred between September 2006 and June 2007. This delay in processing reimbursement requests is financially taxing, given that she spent a great deal on this service and now finds herself unable to keep paying for personal home assistance.

The Québec Ombudsman notes that the citizen submitted in early December 2006 a request for reimbursement of expenses for the period from the end of September 2006 to the end of December 2006. In late January 2007, the compensation officer requested a report from a Société de l'assurance automobile du Québec occupational therapist so as to understand the citizen's personal assistance needs and thus determine the compensation to be paid. The citizen sent in new requests for reimbursement of personal home assistance expenses in February, March and lastly in, June 2007.

When the Québec Ombudsman was contacted by the citizen, six months had elapsed since she had sent in her first request, and no report had yet been submitted by the occupational therapist.

Given the significant amount of time already passed, the Québec Ombudsman intervened with the Société de l'assurance automobile du Québec in an effort to have the processing of these requests expedited. The SAAQ responded that the report had been issued the day prior to our communication. The citizen received compensation in the amount of \$ 1,620.

The Québec Ombudsman proceeded to discuss this systemic problem with the Société de l'assurance automobile du Québec. According to the progress report received subsequent to our request to the SAAQ, a significant drop in the average delay for processing such requests was observed. Currently, the timeframe for meeting requests for personal home assistance services is around 30 days, compared to 152 days a year ago. This is a concrete improvement benefiting road accident victims.

Delays in forwarding a road accident victim's administrative file to the Tribunal administratif du Québec

Road accident victims contacted the Québec Ombudsman with regard to the Société de l'assurance automobile du Québec's unreasonable delays in sending them their administrative file, as well as in sending this same file to the Tribunal administratif du Québec when applicable. The SAAQ fails in such cases to abide by section 114 of the Act respecting administrative justice, which prescribes the mandatory transmission of this file within a thirty-day period (from the moment the request is received).

This situation concerns the Québec Ombudsman, for delays in the transmission of information are likely to delay the scheduling of a review and as such, a dispute's resolution. According to the information received, as of November 6, 2007, a total of 1,307 files to be transmitted to the Tribunal had already exceeded the prescribed timeframe of thirty days. This number was 1,791 as of January 28, 2008. Between April 1, 2007 and December 31, 2007, the average delay for SAAQ administrative files to be submitted to the Tribunal administratif du Québec was 149 days.

The documents obtained from the SAAQ clearly illustrate that the agency acknowledges the problem raised by the Québec Ombudsman and is attempting to resolve it by implementing various measures. It notably approved an IT project for establishing standard work methods and acquiring a new computer system for data preparation and transmission. The SAAQ anticipates that it will be able to meet the timeframes provided for under the Act respecting administrative justice in 2008. Hence, it plans to process all new transmission requests within the prescribed timeframes while clearing up the backlog of files whose transmission is still pending.

The Société de l'assurance automobile du Québec has undertaken to provide the Québec Ombudsman with a progress report on the measures it has implemented as of June 30, 2008. The Québec Ombudsman acknowledges the SAAQ's efforts with regard to this issue and will closely monitor future events.

Delays in the payment of lump-sum compensation for non-pecuniary damage

As regards compensation for bodily injury, the Automobile Insurance Act provides mechanisms for indemnifying road accident victims for the inconvenience caused by injuries and sequelae. In this respect a road accident victim who suffered an automobile accident prior to January 1, 1990 and has a relapse of his condition two years after his last disability period and starting January 1, 2000 will receive compensation for the sequelae from his relapse under the Regulation respecting lump-sum compensation for non-pecuniary damage.

Subsequent to a number of citizen complaints, the Québec Ombudsman in 2006 noted a problem with regard to compensation for the aggravation of bodily injuries. Indeed, problems with the Société de l'assurance automobile du Québec's computer systems were making it impossible to pay compensation for aggravation of this prejudice, nor to render a final decision with regard to sequelae. This inevitably generated significant delays for road accident victims wishing to contest SAAQ evaluations regarding the aggravation of bodily injuries in front of the Direction de la révision administrative.

Deeming that this situation was causing a prejudice to road accident victims who had suffered an accident prior to January 1, 1990 and had a relapse more than two years after January 1, 2000, we felt it was urgent that the SAAQ quickly resolve the matter.

The Société de l'assurance automobile du Québec in April 2006 notified the Québec Ombudsman that a first wave of changes had been made to its computer system. As a result, and this since March 21, 2006, the problem had been resolved as regards new road accident victims requesting compensation for aggravation of their bodily injuries due to a relapse.

As for other road accident victims whose compensation was pending, the SAAQ took an inventory of all their files and planned a second wave of changes to its computer system in the fall of 2006. The SAAQ remitted an advance to accident victims in the interim.

After contacting the SAAQ on a number of occasions, the Québec Ombudsman learned in 2007 that 279 road accident victims were still waiting to receive their final lump-sum compensation and a decision enabling them to contest the evaluation of sequelae. In this regard, the Société de l'assurance automobile du Québec indicated that the last modifications to its computer system had been made. The final step, which would be executed by SAAQ medical examiners, consisted of transferring data regarding the injuries in the initial automobile accident and any subsequent aggravation to the relapse file.

In October 2007, the Société de l'assurance automobile du Québec submitted the solution selected for finalizing all of the applicable files to the Québec Ombudsman. On November 15, 2007, a team (under the supervision of a physician) began assessing all of the files to ensure that all accident victims impacted by this problem would be notified of the final decision and receive their compensation payment by January 31, 2008. The SAAQ advised the Québec Ombudsman, in February 2008, that it had respected its commitment and that all of the files impacted by this problem had been processed.

The Québec Ombudsman is satisfied with the Société de l'assurance automobile du Québec's efforts over the past few months to resolve all of the road accident victim files impacted. This being said, it deplores the close to two-year period that went by before this problem was ultimately corrected. It is of the opinion that despite the advance paid to the accident victims involved, these delays may have had significant impacts on those citizens wishing to contest the evaluation of the aggravation of their bodily injuries.

Other examples of situations affecting road accident victims

In addition to the systemic problems exposed, the Québec Ombudsman also intervened with the SAAQ in a number of other cases where road accident victims were prejudiced as the result of the inadequate handling of their file. Below are two examples of such instances.

Overly restrictive interpretation

In July 2006, a 16-year old citizen had a serious road accident. After being in a coma for 45 days, he was transferred to a rehabilitation centre. His mother, who sat at his bedside each and every day since the accident, filed a claim with the Société de l'assurance automobile du Québec to receive the availability allowance provided for under the Automobile Insurance Act. This allowance was granted to her for the period running from the end of July 2006 to early October of the same year. Her claim was thereafter refused, with the exception of three days.

The mother immediately wrote two letters to the Société de l'assurance automobile du Québec indicating that her presence was critical to her son's rehabilitation. She appended letters from the attending physician and rehabilitation centre social worker, both of whom reported on the condition of her son and recommended the presence of a family member to keep him motivated to fully participate in various therapy sessions. Without such a presence, the treatment team felt that the accident victim's potential for rehabilitation would be compromised.

In spite of this documentation, the Société de l'assurance automobile du Québec upheld its refusal, at which point the citizen contacted the Québec Ombudsman. The Québec Ombudsman believes that each case should be considered on its own merits as well as in the widest and most accommodating perspective possible, and this to favour compensation of victims or as in this case, the family member who is present.

Subsequent to its review, the Québec Ombudsman concluded that the availability allowance should be extended to the family member supporting this young accident victim, as per the provisions of section 83.5 of the Automobile Insurance Act. It intervened with the Société de l'assurance automobile du Québec in this regard. On March 6, 2007, the Direction de la révision administrative rendered a decision, concluding that the family member of the young victim should receive the availability allowance.

On April 17, 2007, the SAAQ notified us that it would take all aspects of this claim into consideration when rendering decisions on future requests for the availability allowance in conjunction with this accident.

A mistake that could have proved costly

In June 2007, the Société de l'assurance automobile du Québec asked one of its medical examiners for an opinion on possible aggravation with regard to a citizen's locomotion. According to a March 2007 medical report, a citizen's physical condition had worsened. In 2004, the SAAQ had acknowledged that the citizen had sequelae with an intensity of 3 in the area of locomotion. In 2007, the expert physician opined that his condition had deteriorated and that the sequelae are of an intensity of 6.

That same day, the SAAQ medical examiner rendered his opinion, recommending that the aggravation be denied. He noted that the expert had evaluated the citizen according to the scale provided in the Regulation respecting lump-sum compensation for non-pecuniary damage whereas he believed that he should have relied on the scale provided in the Regulation respecting permanent impairments. Sequelae are notably not evaluated in the same manner in this second regulation, hence leading the medical examiner to conclude that aggravation should not be acknowledged. At the end of June 2007, the Société de l'assurance automobile du Québec rendered a decision in support of this stance.

The accident victim at this point contacted the Québec Ombudsman. His condition had by then deteriorated and he was no longer able to work. After reviewing the file, the Québec Ombudsman believes that the expert had indeed used the proper scale, contrary to the opinion of the SAAQ's medical examiner. The Québec Ombudsman thus proceeded to intervene with the SAAQ to have the medical examiner review the file.

The Société de l'assurance automobile du Québec, sharing the Québec Ombudsman's opinion, contacted the medical examiner so that the medical evaluation would be conducted using the scale provided in the Regulation respecting lump-sum compensation for non-pecuniary damage. The aggravation was acknowledged and a new report issued. The citizen was declared unable to perform any type of employment, and this since August 2006; this decision was transmitted to the victim in August 2007. The SAAQ subsequently granted him income replacement benefits, in addition to paying the retroactive amount of \$8,361.41, representing income replacement benefits for the period from August 2006 to August 2007.

Comments from the agency

The comments of Société de l'assurance automobile du Québec chair and CEO :

“ Please rest assured that SAAQ welcomes the Québec Ombudsman's recommendations and has already rectified the problems you raised. We are also in the process of implementing a number of other recommendations to ensure we continue to improve the services we provide to citizens.”