

Other activities

Whereas the previous sections relate to departments or agencies subject to detailed accountability, the “Other activities” section describes various Québec Ombudsman interventions with other departments or agencies. This section notably identifies various aspects of the Québec Ombudsman’s activities and discusses certain particular cases that are important to citizens, because of collective benefits involved, as well as to the public administration, which responded to the Québec Ombudsman’s recommendations or changed some of its administrative practices.

The Ministère des Affaires municipales et des Régions

Revision of the policy for handling complaints regarding municipalities

The Ministère des Affaires municipales et des Régions amended its administrative guide as well as its policy for handling complaints regarding municipalities in May 2007. This policy has two objectives, namely the identification of specific mechanisms for handling citizen complaints with regard to their municipality and a clear identification of those issues that fall within the department’s jurisdiction.

Municipal ombudspersons

In the fall of 2006, the Québec Ombudsman reviewed Bill 55, An Act to amend various legislative provisions concerning municipal affairs (2006, c. 60), tabled by the Minister of Municipal Affairs and Regions. This bill, now passed, specifically allows municipalities to name an individual to act as an ombudsperson for the municipality or to create an organization to act in this capacity.

During the exchanges prior to the adoption of this bill, the Québec Ombudsman heightened the department’s awareness as to the importance of the ombudsman function, recommending that it send municipalities comprehensive and relevant information in this regard. The section of the Act concerning the ombudsperson came into force on December 14, 2006.

In December 2007, the department responded to a request from the Québec Ombudsman and released a notice to municipalities specifically addressing this issue, so that those wishing to strengthen municipal democracy would have the necessary tools and information to do so.

The Québec Ombudsman helped the department draft this information document, thus ensuring that municipalities were appropriately informed of the fundamental principles which must guide the setting up of such a service as well as governing the actions of any person or body exercising the office of ombudsperson.

Handling complaints

An analysis of the complaints received by the Québec Ombudsman reveals that most of these are systematically related to a poor understanding of the Ministère des Affaires municipales et des Régions' role and its power to intervene in the municipal arena. Citizens contacting the department expect to be supported in contesting administrative decisions rendered by elected municipal officials (in accordance to the powers granted to them by law) or with regard to the application of municipal regulations passed under the legislative framework.

The department's authority, however, does not extend to such interventions. While mandated to ensure the compliance and application of the laws within its jurisdiction, it must also respect the autonomy of municipalities.

The Québec Ombudsman thus focused on the revision of the policy for handling complaints regarding municipalities. Thus, the changes made to this policy, designed to facilitate understanding of the department's role, notably consist in providing preciseness and examples pertaining to what the Ministère can and cannot look into. The Québec Ombudsman hopes, however, that the department to continue its efforts to help citizens better understand its role vis-à-vis municipalities as well as the restrictions limiting its actions.

The Ministère des Finances

The Ministère des Finances is, among other things, responsible for establishing and implementing the government's fiscal policy. In fulfilling its mandate, it must aim for a taxation process that is both simple and fair for individuals.

During the 2004 budget speech, the department announced that income replacement benefits, such as those paid to citizens by the Commission de la santé et de la sécurité du travail (CSST) and the Société de l'assurance automobile du Québec (SAAQ) would henceforth be taken into account when calculating non-refundable tax credits. This measure was designed to ensure that citizens receiving income replacement benefits would not automatically benefit from non-refundable tax credits when income replacement benefits were calculated and when their income tax returns were prepared.

A simplified calculation system was set up for citizens receiving income replacement benefits under Canadian law or pursuant to legislation from a province other than Québec, for these persons – contrary to citizens compensated by a Québec public program – must personally calculate the amount to include on their income tax return.

Complaints from citizens receiving partial income replacement benefits under legislation enacted outside of Québec allowed the Québec Ombudsman to note that this system had an unfair impact. Despite the fact that these citizens were receiving a salary for the work done to compensate for the loss of income represented by the public compensation program, the simplified system did not enable them to benefit from the non-refundable tax credits to which they were entitled, contrary to citizens compensated under a Québec program.

Subsequent to our intervention, the Ministère des Finances announced in its June 2007 information bulletin that it would correct the simplified system used for compensation programs from outside Québec. This amendment went into application retroactively to the moment, these measures were set up, that is, starting in 2004.

The Québec Ombudsman learned that Revenu Québec in order to ensure that concerned tax payers may benefit from these changes would inform citizens of the changes made in the 2007 income tax filing guide and would help citizens, upon request fill out the new form used to determine the amount to be entered in the tax declarations.

Below is an example of the impact this change had on the citizens involved :

Income replacement indemnities

Subsequent to an industrial accident in 1996, a citizen was deemed unable to perform his regular duties by the Ontario Workplace Safety and Insurance Board, the counterpart to Québec's CSST. Because of his incapacity, he could now only hold a position that offered 40% of the salary he earned prior to his accident. The Ontario Workplace Safety and Insurance Board therefore will then pay him an income replacement indemnity equal to 60% of his former salary.

Upon completing his 2004 income tax return, the citizen noted that while his total income had not changed, his tax refund had dropped by \$1,840. He contacted Revenu Québec, which explained to him that subsequent to the 2004 legislative amendment, income replacement benefits are taken into account in the calculation of non-refundable income tax credits. Unhappy with this situation, namely that he was no longer entitled to non-refundable income tax credits despite being actively employed, the citizen complained to the Québec Ombudsman.

COLLECTIVE benefit

The Québec Ombudsman's intervention led the department to correct the system used by citizens receiving income replacement benefits under legislation passed outside of Québec. The citizen will now be entitled to non-refundable income tax credits when preparing his income tax return and can request an adjustment for the non-refundable income tax credits he should have been eligible for from 2004 to 2006.

The Ministère de l'Immigration et des Communautés culturelles

An Act respecting administrative justice

The Act respecting administrative justice applies to the Ministère de l'Immigration et des Communautés culturelles' decisions regarding applications for immigration, since they are "citizen" according to this law thus entitling them to procedural equity. Below is an example of a Québec Ombudsman intervention that allowed for clearing up this issue.

Right to review impossible due to the lack of a decision

A candidate for immigration in the Investor Immigrant category had his file closed by the department when he failed to produce certain requested documents. The application for an administrative review which he subsequently submitted, within the applicable timeframe, was denied by the Ministère de l'Immigration et des Communautés culturelles.

Because the closing of a file does not constitute a notice of refusal, which encompasses the right to a review, the gentleman found himself with no available recourse, in spite of possibly having an explanation for why the required documents had not been produced.

Finally, the Québec Ombudsman invoked the principles of the Act respecting administrative justice, as a result of which the candidate received a notice of refusal and was subsequently able to file an application for review with the applicable directorate.

COLLECTIVE
benefit

The Québec Ombudsman's intervention in this case not only helped the candidate, but also had the added benefit of clearing up the notion of procedural equity and its application in the examination process of immigration candidates.

The Directeur de l'État civil

In its 2006-2007 annual report, the Québec Ombudsman issued the following recommendations :

2006-2007 RECOMMENDATIONS :

That the Civil Code of Québec be amended so that a person born in Québec can ask the Directeur de l'État civil for a certificate of change of designation of sex even if he or she is no longer domiciled in Québec.

That it also be amended to take into account the traditions and customs of new immigrants and members of cultural communities with regard to surnames upon registration of a birth in the register of civil status.

The Directeur de l'État civil responded that it would request legislative amendments in this regard, and a brief was tabled with the Ministère de la Justice in the fall of 2007. The Québec Ombudsman is thereby following up on these recommendations with the department.

Declaration of services to the public

In its 2006-2007 report, the Québec Ombudsman also underscored the lack of a declaration of services for the Directeur de l'État civil's clientele. While waiting for the update to the declaration of services from the Ministère de la Justice, the Directeur de l'État civil kept its promise and released a declaration of its commitments.

The Québec Ombudsman was pleased to note the Directeur de l'État civil's initiative in establishing the values it planned to prioritize with regard to the quality of the services it is mandated to deliver to citizens. These values are respect, diligence, justice and equity. Despite the transfer of Directeur de l'État civil activities to Services Québec, the Québec Ombudsman is of the opinion that the setting in place of the declaration of services must not be delayed. This declaration of services to the public should also take into account the commitments made.

The right to obtain a death certificate

The Directeur de l'État civil, as provided for by law, only delivers certificates and copies of acts to the persons mentioned in the act or certificate or to persons manifesting an interest, and this because the papers delivered are usually authentic documents.

However, this legal requirement must not be interpreted so rigidly as to prevent citizens from obtaining the documents to which they are entitled, and even more so in the case of death certificates. Yet this year, the Québec Ombudsman was called upon to intervene in cases where persons were denied copies of death certificates for no

valid reason. Below are a few examples of instances where the Québec Ombudsman intervened to enable citizens to win their cases.

Knowing the why of a refusal

Following his godmother's death in 2006, a citizen who thought he would receive an inheritance was denied by a government official – with no explanation – a copy of her death certificate. Yet the citizen had made it clear in his request that he wanted to check whether he should have inherited anything from his godmother. Without the death certificate, he could not ask a notary to conduct a search for a will.

Yes I do

The Québec Ombudsman also intervened on behalf of a citizen who was refused a copy of the death certificate of his former spouse because a divorce had been granted to him a few years back. Yet, the citizen had insisted that he needed the death certificate in order to celebrate a second religious marriage.

Impossible to deny a maternal tie

A citizen wanting to do a search for a will was refused a copy of her mother's death certificate. The employee justified his refusal by claiming that the mother's death had been declared by a person other than the citizen.

COLLECTIVE benefit

In addition to resolving these specific cases, the Québec Ombudsman requested that all personnel be reminded of citizens' possible reasons for wishing to obtain a copy of a certificate or an act. Written guidelines were issued and a directive is being prepared to set parameters so that Direction de l'État civil employees may make decisions that are more respectful of citizens' rights.

Openness to cultural communities

In its 2006-2007 annual report, the Québec Ombudsman recorded the case of a citizen who had been denied the right to make masculine one of the patronymics he wished to give his son out of respect for the traditions of his native community. While within its legal rights to refuse the request, the Directeur de l'État civil neglected to inform the citizen of the administrative option of receiving the desired patronymic once the child had been registered.

The Directeur de l'État civil had agreed in addition to recommending a legislative amendment to change its practices so that parents would henceforth be appropriately notified of the administrative option under which they could change their child's patronymic.

In 2007-2008, the Québec Ombudsman was apprised of a similar situation by a mother who was denied the right to make feminine the patronymic of her daughter. Her complaint led the Québec Ombudsman to believe that the Directeur de l'État civil's written refusal failed to inform her of the administrative option for obtaining the desired name change. The ensuing investigation confirmed that the letter sent to the citizen did not in fact include this information.

COLLECTIVE
benefit

The Directeur de l'État civil agreed to our request that it once again review its practices in this regard. It undertook to meet with the employees in question to ensure that parents would henceforth be informed, at the first appropriate opportunity, of the option of obtaining an administrative name change should their request for the modification of their child's patronymic be denied upon registration of his or her birth. In order to make up for the inconvenience to which the citizen had been subjected, the Québec Ombudsman was successful in requesting that the administrative modification to the daughter's name be done free of charge.

The Régie des rentes du Québec

Below is a case among others involving the Régie des rentes du Québec's child assistance program dealt with this year whose resolution represented a collective benefit for all parents likely to find themselves in a similar situation.

Refusal to make payments

In late 1999, a citizen's four children were placed by the Direction de la protection de la jeunesse (DPJ). As per the applicable legislation, the Régie ceased making family allowance payments to the mother, given that she was no longer making the necessary parental contributions. In July 2006, one of the children returned to live with his mother.

The DPJ wanted the mother to regularize the payment of her contributions and assured her that the Régie des rentes would make all of the retroactive family allowance payments if she paid all amounts owing for past years. In January 2007, the citizen paid the amounts asked of her. When she attempted to recover the family allowance payments she had been deprived of due to her failure to pay parental contribution amounts, the Régie, in spite of the citizen's retroactive contribution payments, claimed that the law prohibited it from making allowance payments for a period in excess of 12 months from the date of the request.

Subsequent to the Québec Ombudsman's intervention, the Régie des rentes du Québec agreed to pay retroactive amounts since 2004, given that the claim was not prescribed within the meaning of the Civil Code of Québec. This situation was representative of a lack of synergy between two government agencies and therefore called for a flexible interpretation of the law.

COLLECTIVE
benefit

The Régie began discussions with youth centres to ensure that such situations would not be repeated. They should refrain from claiming that the Régie will make retroactive family allowance payments when attempting to recover owing parental contributions. On the other hand, the Régie will henceforth be providing parents in such situations with information on how retroactivity applies to parental contributions in the case of late payments.