



# THE PUBLIC SERVICE

Generally speaking, and somewhat paradoxically, complaints concerning the Public Service show that government departments and agencies are sensitive to the problems experienced by citizens and are open to improvements – but find it difficult to identify shortcomings in their own operations.

In this chapter, the Québec Ombudsman shines the spotlight on nine government departments and ten agencies. Some were selected because of the large number of complaints received, and others because of the specific nature of the problems or the scope of the issues at stake. A final group was chosen because the situations encountered by citizens were contrary to the basic principles of the Act respecting administrative justice.

At this point, it is worth remembering that the Québec Ombudsman, in its 2007-2008 Annual Report, highlighted the key importance of the principles set out in the Act respecting administrative justice, which governs tens of thousands of individual decisions made every year by government authorities. The Québec Ombudsman noted that the complaints it had received during the year clearly showed that government departments and agencies often contravened either the spirit or even the letter of the Act. It observed that several departments and agencies had made progress in this area, but much still remained to be done, in particular with regard to waiting times for decisions, information given to people on rights and recourses, compliance with the rules of law, and the grounds on which decisions were based.

This year, the percentage of substantiated complaints against the Public Service remained stable, at roughly 24%. The Québec Ombudsman notes a reduction in the number of complaints against the Société de l'assurance automobile du Québec (compensation sector) and the Commission de la santé et de la sécurité du travail, which is explained among other things by systemic corrections made by the two agencies following interventions by the Québec Ombudsman.

Interestingly, most of the situations described in this chapter of the Annual Report relate to collective gains. In other words, every individual who is in the same situation as the complainant will benefit from the resulting correction, regardless of whether or not they used the services of the Québec Ombudsman.

In the following pages, the government departments and agencies concerned are presented in alphabetical order.

# Centre de services partagés du Québec

## COMPLAINTS IN 2009-2010

Very few of the complaints received by the Québec Ombudsman relate to the Centre de services partagés. This is due to the nature of the Centre's mission, which is mainly to provide administrative services. Of those that are received, most concern the conditions of competitive entry examinations. This year, however, an intervention was required in respect of a practice that had a direct impact on the general public.

## A CHANGE OF PRACTICE THAT WILL BENEFIT EVERYONE CONCERNED

Every year, the Centre de services partagés organizes auctions of used items (vehicles and miscellaneous equipment) from government departments, agencies and municipalities.

*At one of these auctions, a citizen bought a vehicle that, shortly after the purchase, had to be repaired at a cost of more than \$1,500. According to its owner, the problem was caused by a hidden defect. He therefore complained to the Centre des services partagés.*

*The Centre replied that the sale had been concluded as part of a government auction, and was therefore not covered by the Consumer Protection Act. Moreover, the citizen was informed that warnings had been issued to participants during the activity, indicating that items were sold "as seen on site", and "with no guarantee". The citizen was dissatisfied with the outcome of his complaint, and approached the Québec Ombudsman.*

*Verification revealed that auctions organized by the Government are not in fact subject to the usual legislative provisions concerning consumer protection. The buyer was therefore responsible for paying the cost of the repair. However, the Québec Ombudsman believes that the information provided by the Centre on the rules governing this specific type of public activity – documents handed out to interested parties, and information on the Internet – is insufficient. It therefore asked the Centre des services partagés to clarify the situation in the notices of sale published in newspapers and on the Internet. The Centre agreed to do this, and has also undertaken to amend the documents given to auction participants, by clearly stipulating the limitations on its responsibility.*

This example shows that the decision as to whether or not the Québec Ombudsman should intervene in a specific situation depends not only on the number of complaints it has received, but also on the scope of the investigation and the possibility of arriving at a settlement that will benefit a group of people.

# Commission administrative des régimes de retraite et d'assurances

## COMPLAINTS IN 2009-2010

Every year, the Québec Ombudsman receives roughly 40 complaints concerning the Commission administrative des régimes de retraite et d'assurances (CARRA).

The main grounds for the complaints are:

- availability and quality of information;
- refusals to permit redemption of years of service;
- coordination of benefits;
- recovery of overpayments.

## PROVIDING CITIZENS WITH SUITABLE INFORMATION

In its last annual report, the Québec Ombudsman recommended that the CARRA should inform it of the outcome of its 2009-2010 action plan to improve information quality. Although it is aware that the action plan implementation period is not yet over, the Québec Ombudsman is still not in a position to confirm that the necessary steps have been taken to improve the quality of the information available to citizens.

The information available on the conditions for remission of debts provides a clear illustration of this problem. By law, the CARRA must waive its right to recover an overpayment if the citizen in question is able to prove that his or her total income is below a certain level. However, the Québec Ombudsman found that the CARRA did not inform existing or future pension recipients of this provision. It therefore asked the CARRA to mention the provision in the recovery letters sent to individuals who had received overpayments. The CARRA agreed to its request.

## PROVIDING FOR REMISSION OF A DEBT IF THE CITIZEN WAS UNABLE TO IDENTIFY THE ADMINISTRATIVE ERROR THAT CAUSED IT

By law, the CARRA must review the amounts of the pensions it pays within three years from the time the payments begin, in order to correct any errors that may have been made. However, as the regulations currently stand, the CARRA cannot cancel debts caused by its own mistakes. As a result, pension recipients are sometimes asked to reimburse significant amounts of money up to three years after retirement, even when the overpayment was the result of an administrative error that they could not reasonably have detected.

*In 2009, a woman who had retired in 2006 received a claim from the CARRA for roughly \$4,000. The claim followed a review of her pension. According to the woman, the CARRA admitted it had made a calculation error. Under the current legislation, the Québec Ombudsman was unable to obtain a correction, and confirmed that the woman would have to reimburse the amount claimed.*

A number of Government departments and agencies have the flexibility required to address this type of situation. For example, if the Régie des rentes du Québec pays someone an amount in excess of the amount due and the recipient cannot reasonably detect the mistake, the Régie cannot then ask the citizen to reimburse the overpayment. In other words, a citizen in good faith is not responsible for the agency's mistake.

## RECOMMENDATION

WHEREAS citizens are entitled to rely on the information provided by the Commission administrative des régimes de retraite et d'assurances;

WHEREAS citizens are not responsible for mistakes by an agency that are not easily detected;

WHEREAS in similar situations other Government departments and agencies have the means to remit the debt;

WHEREAS the current regulations do not allow the CARRA to cancel debts caused by its own mistakes;

WHEREAS delays in correcting the situation add to the risk that other individuals will suffer similar prejudice;

The Québec Ombudsman recommends that the Commission administrative des régimes de retraite et d'assurances take steps to obtain an amendment to the application regulation for the Act respecting the government and public employees retirement plan in order to include the possibility of remission of debts arising from errors that recipients cannot reasonably detect.

## COMMENTS FROM THE COMMISSION ADMINISTRATIVE DES RÉGIMES DE RETRAITE ET D'ASSURANCES

"With regard to the recommendation concerning better quality information, as you have pointed out, the action plan implementation period has not yet ended. However, as planned, the CARRA will shortly be taking steps to inform its low-income clients of the possibility for remission of debts.

In addition, following a preliminary review of the available options, I agree with your recommendation that steps should be taken to obtain an amendment to the application regulation for the Act respecting the government and public employees retirement plan in order to include the possibility of remission of debts arising from errors that recipients cannot reasonably detect.

I have already promised to act quickly in this respect, in accordance with the prescribed procedure, by taking the steps stipulated by law in order to amend the application regulation in the manner you suggest."

# Commission d'accès à l'information

## COMPLAINTS IN 2009-2010

In the last three years, the number of complaints about the Commission d'accès à l'information has increased significantly, from 18 in 2007-2008 to 52 in 2009-2010. Many of these complaints (approximately 40%) are concerned with waiting times and access problems.

## REDUCING WAITING TIMES

In the spring of 2009, an investigation revealed that the average wait for a hearing before the Commission was 18 months in the Montreal region and 10 months in the Québec City region. In the past year, the Québec Ombudsman notes that the Commission has taken a number of steps to reduce waiting times, especially in Montreal. These steps include improvements to its computer system and the introduction of measures to encourage settlements through mediation. It is also hoping to appoint new commissioners, which should gradually help to bring waiting times down to an acceptable level.

The Québec Ombudsman believes these long waits may cause real prejudice to certain individuals. For example, in cases where the Commission's decision is a prerequisite for another process, recourse or proceeding before another authority, the long wait may have a domino effect.

There are certain grounds on which citizens can avoid the wait and ask for an emergency hearing. However, the Québec Ombudsman notes that the Commission has no guidelines for approving such requests.

*A police force refused to give a lawyer access to some of the documents it had used to incriminate his client, who had been incarcerated as a result. The lawyer approached the Commission for permission to consult the documents in question, since they had been used as evidence and his client never knew what they contained. He felt the documents would eventually enable him to start proceedings to obtain his client's release. In this case, the long wait for a decision by the Commission was likely to exacerbate the prejudice suffered by the citizen if his imprisonment turned out to be unjustified. Given that the citizen's fundamental right to freedom was at stake, the Québec Ombudsman was able to obtain an earlier hearing.*

## GUIDELINES TO AVOID ARBITRARY DECISIONS

The fact that there are no guidelines concerning priority hearings may suggest that the president's decision is arbitrary. The Commission has said it is willing to consider the Québec Ombudsman's suggestion of formalizing some general decision-making criteria. The two authorities were engaged in constructive discussions to this end on March 31, 2010.

## RUSHING TO CLOSE FILES, TO THE DETRIMENT OF CITIZENS

An unwanted side-effect of the Commission's efforts to reduce waiting times is that files are sometimes closed too quickly. During mediation, for example, citizens may realize that their chances of winning the case are small, and they indicate verbally that they do not wish to continue. When this

happens, the Commission sends out a form that the citizen must sign in order to give permission for the file to be closed. However, the Québec Ombudsman identified some cases in which the Commission closed a file before the person had returned the signed withdrawal form.

The Québec Ombudsman approached the Commission regarding this practice, and the Commission intends to review its processes and submit solutions at the earliest opportunity.

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## Commission de la santé et de la sécurité du travail

### COMPLAINTS 2009-2010

The Commission de la santé et de la sécurité du travail is still one of the agencies in respect of which the Québec Ombudsman receives the most complaints. This year, the majority of the complaints related to:

- compensation amounts;
- the time taken to make decisions;
- lack of clarity in explaining the grounds for decisions.

### SHORTER PROCESSING TIMES

Half the substantiated complaints received were concerned with the time taken by the Commission to make decisions or process aspects of a case. The Québec Ombudsman regards this as a cause for concern, and approached the Commission during the year to try to identify the underlying factors and potential solutions. Given the impacts of delays on the finances of accident victims, the Québec Ombudsman feels it is extremely important for cases to receive priority treatment when worker eligibility is at stake.

### RECOVERY OF DEBTS AFTER EXPIRY OF THE LIMITATION PERIOD

In the course of 2009-2010, the Québec Ombudsman exposed the fact that, in some cases, the Commission recovers debts out of income replacement benefits paid after the limitation period has expired. For example, if the person is involved in another incident, or suffers a relapse, the Commission will deduct the amount of the prior debt from the new benefit.

*A person was involved in a workplace accident in February 2009, and was informed by the Commission that his claim for compensation had been accepted. However, the person owed money to the Commission due an overpayment of previous benefits. The Commission therefore deducted 15% of the person's income replacement benefit in order to recover the debt.*

*In this case, the Québec Ombudsman noted that the debt was barred (the limitation period was three years). In deducting the repayments, the Commission was depriving the person of benefits he desperately needed to cover his expenses during his period of disability. The Commission accepted the Québec Ombudsman's findings, terminated the recovery process and paid back the amount it had previously deducted.*

The Québec Ombudsman asked the Commission:

- to make sure the principles set out by law are upheld, and that deductions are not made to recover debts after the limitation period has expired;
- to clarify its policy concerning the recovery of overpayments and the processing of overpayments when recovery measures are unsuccessful and the limitation period has expired;
- to ensure that all its regional offices throughout Québec have the same understanding of the impacts of limitation, and apply them in the same way.

The Commission has yet to state its position in this matter.

### **BETTER PROTECTION FOR CERTAIN WORKERS OUTSIDE QUÉBEC**

Last year, the Québec Ombudsman asked the Commission to address the problem of people domiciled outside Québec but working for a Québec company, who are involved in workplace accidents outside the province. These people often find themselves in a legal vacuum, and the Québec Ombudsman felt the situation required a legislative amendment. Following its intervention, the Minister of Labour, who is responsible for the Commission, asked the Commission to increase its awareness activities for employers and workers, to make sure they fully understand the limits of the coverage provided by Québec's industrial accident insurance plan. The Commission also examined the situation to prepare scenarios for legislative amendments.

The Québec Ombudsman is satisfied by the Commission's reaction, but emphasizes the need for these amendments to be made as quickly as possible.

### **PROPER EXPLANATIONS FOR DECISIONS**

In its 2005-2006 annual report, the Québec Ombudsman reminded the Commission of its duty to explain the decisions it makes, not only at the appeal level, but right from the start. This obligation is stipulated in the Act respecting industrial accidents and occupational diseases. All decisions must include an explanation of the grounds on which they are based. It is not enough simply to state that an analysis was performed, without describing what was analyzed. At the time, the Commission told the Québec Ombudsman it had already revised its standard letters to make sure it was using clear, simple language that was easily understood in its communications with clients.

However, the Québec Ombudsman has since reviewed a number of first-instance decisions made in different administrative regions of Québec, and has found that they are not always explained properly.

Failure to explain a decision can be extremely prejudicial, since it may influence the worker's decision to exercise a given recourse at a particular time. Although the reasons for the decision may have been explained to the person or his or her representative by telephone, before the written decision was issued, the Commission still has a duty to set out the reasons clearly, in writing. Indeed, the Act respecting administrative justice requires the Government to give reasons for all its decisions.

In its response, the Commission informed the Québec Ombudsman that it shared this concern and that steps would be taken to improve explanations, as part of the action plan to improve the management and prevention of chronic disability. It is currently revising all the model letters used by its agents, and expects to have completed this task by June 2010. Personnel and managers will also be reminded of how to use these documents.

## AVOIDING REAL AND APPARENT CONFLICTS OF INTEREST

The Québec Ombudsman examined the list of members of the Bureau d'évaluation médicale, published by the Conseil consultatif du travail et de la main-d'œuvre, and the list of health professionals that may be appointed by the Commission, and noted that two physicians were on both lists. It approached the Commission with these findings.

A Bureau member may be required to review the conclusions of a Commission expert. It is a well-established principle that real and apparent conflicts of interest must be avoided in all situations where professional resources are required to settle medical disputes between two parties. If the Bureau is to be credible, it is essential for its members to be both autonomous and independent. This is clearly stipulated in section 4 of the conditions for entry or re-entry on the list of health professionals who are willing to act as Bureau members. The Québec Ombudsman's goal is therefore to ensure that the medical assessment process is as credible as possible.

The Commission agrees that this is a problem, and is seeking a solution. A letter was sent to the physicians whose names appear on both lists, notifying them that the situation must be normalized. The Québec Ombudsman has also asked the Commission to check on a regular basis and make sure physicians are not entered on both lists. The Commission has undertaken to do this.

## PARLIAMENTARY WATCH – FAIR COMPENSATION

The Québec Ombudsman examined Bill 35, An Act to amend the occupational health and safety regime, particularly in order to increase certain death benefits and fines and simplify the payment of the employer assessment.

Among other things, the Bill provided that the income replacement benefit payable to a person who suffers an employment injury while incarcerated would, in future, be calculated on the basis of the wage actually earned at the detention centre, which is significantly less than the minimum wage. If the worker dies as a result of an employment accident while he or she is incarcerated, the pension payable to the surviving spouse or dependents would also be calculated on the basis of the wage actually paid – in other words, it would be significantly less than if the death benefit was calculated from the minimum wage. The Québec Ombudsman was of the opinion that this would be an undesirable effect for the surviving spouse and dependents.



The Québec Ombudsman approached the ministerial authorities and the situation was remedied by an amendment to the Bill. The amendment will ensure that the benefits paid to a group of people who are often vulnerable – the spouses and dependents of prisoners – are calculated on the same basis as those paid to every other recipient; in other words, on a wage that cannot be less than the minimum wage.

## CRIME VICTIMS COMPENSATION DIRECTORATE

### SHORTER TELEPHONE WAITING TIMES

The Minister of Justice is responsible for applying the Crime Victims Compensation Act, but the Commission de la santé et de la sécurité du travail administers the compensation program.

Last year, the Québec Ombudsman found that citizens who telephoned the Crime Victims Compensation Directorate waited for an average of more than six minutes before their calls were answered. Because such a long wait can have serious consequences for a particularly vulnerable client group, the Québec Ombudsman recommended that the Directorate should take steps to reduce the waiting time. In addition, it recommended that the waiting time should be brought as close as possible to the standard recommended by the Centre d'expertise des grands organismes, i.e. 20 seconds or less for 80% of calls.

The Directorate reacted quickly to this recommendation, among other things by reorganizing the task of its reception and information personnel and introducing a continuous training program. By October 2009, the average wait had been reduced to approximately one minute. The Québec Ombudsman acknowledges the significant improvement achieved by the Commission, and encourages it to continue its efforts to answer calls even more quickly.

It should also be noted that in the section of this report pertaining to the Ministère de la Justice, the Québec Ombudsman recommends that the Crime Victims Compensation Act should be brought up to date.

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## Curateur public

### COMPLAINTS IN 2009-2010

The most common complaints against the Curateur public relate to:

- case management by curators;
- supervision of private tutors and curators;
- opening of protective supervision programs;
- delays.

Although the Curateur public has taken steps to correct some of the situations denounced by the Québec Ombudsman, it has achieved its goals only partially.

## FOLLOW-UP TO THE QUÉBEC OMBUDSMAN'S RECOMMENDATIONS

In the last year, the Québec Ombudsman made five recommendations to the Curateur public, the results of which are set out below.

### 1. Limiting delays in the opening protective supervision programs

In the process of opening protective supervision programs, the Curateur public set the delays caused by its own procedures at 90 days. In 2009-2010, slightly over 60% of all files were processed in less than 90 days, and the agency recently introduced recovery plans for regional branches that do not always achieve this target. The Québec Ombudsman continues to be concerned by the delays, but acknowledges that the average time has nevertheless been reduced by 20% since 2008-2009, from 116 days to 93 days.

### 2. Understanding its clientele to provide true protection

The Québec Ombudsman recommended that the Curateur public should submit a review of the steps taken to understand its clientele. The review revealed that in 2009-2010, out of the 11,700 people it represents, the Curateur public visited 96% of those living in public or private residences and 91% of those living in their own homes. In its comments on these figures, the Curateur public said it is impossible for it to visit all its wards. The difference between the total number of wards and the percentage visited may be due to deaths during the year, or to the fact that people leave the protection program or move outside Québec. The Curateur public also observed that it is not required to make visits when the protection program covers property only. The Québec Ombudsman would like the Curateur public to provide rigorous proof that this interpretation is a true reflection of reality, and awaits additional clarifications on this matter.

### 3. Being vigilant with regard to consent

The Québec Ombudsman recommended that the Curateur public should:

- ensure that health and social service network personnel fulfill their obligation to obtain its consent for its wards when the wards themselves are unable to give it;
- assess the results obtained in this respect.

During the year, the Curateur public carried out the appropriate research and found that requests for consent had been omitted in less than 1% of cases.

The Curateur public has introduced measures to ensure that all requests for consent are systematically sent to it. Not only has it reminded health and social service network personnel and resource people of their obligations in this respect, but it has also intervened in individual cases where consent was not requested. The Québec Ombudsman is satisfied with these measures, and asks the Curateur public to continue its efforts to ensure that the situation described below does not recur.

*An incapacitated individual represented by the Curateur public was admitted to the psychiatric unit of a hospital due to inappropriate behaviour at the residence where he lived. Once at the hospital, he was placed in isolation in his room for several days. Although his room door was not locked, he was not free to leave. A consent for care request was not sent to the Curateur public in respect of this control measure.*

*The Québec Ombudsman considers that long-term seclusion in a room – as opposed to shorter periods of seclusion – constitutes a form of isolation for which the hospital should have requested consent from the Curateur public before applying it to an incapacitated individual. Following the Québec Ombudsman's intervention, the hospital amended its policy concerning restraint and isolation. In future, periods of seclusion in similar conditions will require consent from the Curateur public if the individual concerned is one of its wards.*

#### **4. Periodic reassessment of protective programs**

The Québec Ombudsman recommended that the Curateur public should reassess protective programs within the timeframe stipulated by law, i.e. three years in the case of tutorships and five years in the case of curatorships. The agency set up an internal committee that examined processing times and proposed solutions to the problems causing delays in the reassessment process. The Québec Ombudsman is satisfied with the action plan introduced by the agency, and will monitor its implementation to ensure that the anticipated results are achieved.

#### **5. Final report and accounting**

The Québec Ombudsman recommended that the Curateur public should produce explanatory documents with a generalized version of its final report and accounts, by January 2010.

The Curateur public has informed the Québec Ombudsman that it has made an employee available to citizens who find it difficult to understand the accounting documents.

The Québec Ombudsman agrees that the decision is a reasonable one, since it allows citizens to obtain individualized service. It will continue to ensure that the measure provides citizens with the explanations they need.

**In 2007-2008, the Québec Ombudsman made two recommendations to the Curateur public. They are shown below, along with a description of the follow-up.**

##### **1. Obtaining the information it needs to fulfill its role from the Ministère de la Sécurité publique**

The Québec Ombudsman recommended that information exchange measures should be introduced with detention facilities to ensure that the Public Curator is notified immediately when a person under its supervision is detained, to ensure that the person's rights are upheld.

The collaboration agreement between the Curateur public and the Ministère de la Sécurité publique was eventually signed in July 2009. Among other things, it provides that the Curateur public must be informed whenever one of its wards is detained, and that it be given all available information on offenders under public tutorship or curatorship (information provided by the Direction des services correctionnels du Québec), so that it is able to play its role as the offenders' legal representative.

The Québec Ombudsman is satisfied with the outcome of this joint initiative.

*The parole hearing of a young man who had been imprisoned for several months was postponed three times by the Commission québécoise des libérations conditionnelles. In addition, his lawyer stepped down because the man did not have a release plan. The lawyer felt she needed a copy of the plan to represent the man properly before the Commission. The Curateur public should have been notified and should have acted in the interests of its ward. The plan would have enabled the Commission to ensure that the man was properly supervised immediately upon release, if his parole was granted. The communication agreement between the Ministère de la Sécurité publique and the Curateur public should prevent similar situations from arising in the future.*

## 2. More effective supervision of private tutors and curators

The Québec Ombudsman recommended that the Curator public should improve its supervision of private tutors and curators, so as to reduce actual or potential abuse of vulnerable people. The Curateur public has introduced a number of different policies to strengthen its control, including:

- a policy concerning minors (to be implemented gradually between now and the fall of 2011);
- a policy concerning adults, which is currently being prepared.

The Québec Ombudsman agrees that the application of these policies, along with the completion of several projects currently underway to improve the supervision of private tutors and curators, constitutes a step in the right direction.

## GIVING PROPER ATTENTION TO WARDS

Once again this year, the Québec Ombudsman noted that some wards did not always receive the attention they needed from their curator. The Curateur public often mentions budget limitations and heavy workloads as a justification for this situation.

*The sister of an incapacitated individual represented by the Curateur public asked the Québec Ombudsman for help, on the basis that her brother was a Duplessis orphan and, as such, was entitled to State compensation under the National Reconciliation Program for Duplessis Orphans who were Residents of Certain Institutions. The curator in this case had done nothing and the Québec Ombudsman, which had already been notified of the situation, decided to approach the Ministère de l'Emploi et de la Solidarité sociale (MESS). In the meantime, the incapacitated person died. Nevertheless, the MESS agreed that he was entitled to compensation in the amount of \$15,000, which was paid to his estate.*

In 2008, the Curateur public launched a process of reflection aimed at developing the protective supervision program for incapacitated individuals. Among other things, the purpose of this process was to consider socio-demographic changes and the budget constraints associated with the increase in the number of incapacitated individuals. The Curateur public and its partners were to identify the practices needed to address the needs of vulnerable people as effectively as possible.

The Québec Ombudsman would like to be informed of the direction the Curateur public intends to take to ensure that the needs of incapacitated individuals and their dependents receive the attention they deserve.

*The court ordered a residential placement for an 83-year-old man who had categorically refused care. The man was subsequently declared incapacitated, and the Curateur public was appointed as tutor to his property and person. The man had been married for nearly 50 years, and his wife was 84 years old. The couple had no children and no family in Canada. Until then, they had lived as virtual recluses in the same apartment for the last ten years. When the man was placed in a residential facility, his wife no longer had access to a portion of the couple's income, and could no longer afford to live in the apartment. She was eventually evicted and went to live in a shelter for homeless women. It was agreed that the Curateur public would pay support of \$350 per month on behalf of her husband. However, this amount was clearly insufficient to meet her needs properly.*

*The Québec Ombudsman investigated, and was told by the Curateur public that it could do nothing more to help the woman because she refused to work with its representatives and was not considered to be incapacitated. The Québec Ombudsman insisted that the local community service centre find her a place in a suitable residential facility that would meet her needs. It also took steps to ensure that she received the income to which she was entitled. The woman was extremely underprivileged, and clearly needed help to negotiate the system. In the Québec Ombudsman's opinion, the Curateur public should generally be responsible for making sure the relatives of a person placed under tutorship or curatorship are not placed in as overwhelming a situation of distress as that of the person the Curateur public is helping.*

## REVIEWING SOME OF THE FEES AND EXPENSES CHARGED TOWARDS OF THE CURATEUR PUBLIC

A number of social assistance recipients complained to the Québec Ombudsman because they felt it was not fair for them to pay certain fees and expenses for the opening of their protective supervision programs. They noted that social assistance recipients receive free legal aid services and therefore do not have to pay law stamps and bailiffs' expenses.

The Québec Ombudsman felt it was unacceptable that these people should be required to pay the amounts in question, and notified the Curateur public, which undertook to propose corrective measures.

*A man was receiving social assistance, and the Curateur public charged him a fee of \$250 to cover the legal expenses incurred for the opening of his protective supervision program. The man objected. Following an intervention by the Québec Ombudsman, the Curateur public reimbursed the amount in question. While awaiting the conclusions of its review, the Curateur public decided that it would no longer require social assistance recipients to pay these fees and expenses.*

Although the Québec Ombudsman is satisfied with the outcome for the citizen in question, the issue will remain under advisement until it is resolved for other social assistance recipients.

With regard to other expenses, the Curateur public charges an annual fee of \$73 per policy to administer its wards' insurance.

*A woman complained about the \$73 annual insurance fee when the only insurance policy she held was civil liability coverage which, according to the budget provided by her curator, cost \$1.99 per month. The Québec Ombudsman asked the Curateur public to explain the difference between the two amounts, because the woman appeared to be paying three times more than necessary. The Curateur public replied that it was currently reviewing its tariffs with a view to ensuring that they were fair. The Québec Ombudsman will examine the results of the review.*

The Shelter Allowance Program administered by the Société d'habitation du Québec grants financial assistance to low-income households that pay too large a percentage of their income for housing. The Curateur public charges a very high fee to some citizens who receive the Allowance, thereby reducing the amount substantially and even, in some cases, cancelling it out altogether.

*A senior citizen lived modestly, her only income being the Old Age Pension and the Guaranteed Income Supplement. This year, she qualified for a monthly allowance of \$58 to help her pay her rent. However, the fact of receiving the allowance meant she was no longer eligible for the Curateur public's fee exemption and therefore had to pay fees of \$45 per month, meaning that she only received an additional \$14 per month towards her rent.*

## RECOMMENDATION

WHEREAS the Shelter Allowance Program is a financial assistance program for low-income households that spend too high a percentage of their income on housing;

WHEREAS the Curateur public's fee requirements greatly diminish, and in some cases cancel out, the benefits of the Allowance;

The Québec Ombudsman recommends that the Curateur public should cease the practice of including the amount of the Shelter Allowance in its calculation to determine whether its wards should pay fees.

## COMMENTS FROM THE CURATEUR PUBLIC

"The Curateur public is aware of the problems raised by the Québec Ombudsman and the need to review its current scale of fees in order to be fair to everyone concerned. Work on this issue will continue, and a new scale of fees will be proposed during the year."

### The Québec Ombudsman's response

The Québec Ombudsman will monitor this issue closely to ensure that people who are extremely vulnerable continue to be a core concern for the Curateur public, and that their needs are fully addressed when it prepares its new scale of fees. It will also keep watch to ensure that the Curateur public's decisions do not further impoverish the incapacitated individuals it has a duty to represent and protect by acting in their best interests.

## PARLIAMENTARY WATCH – ALLOWING THE CURATEUR PUBLIC’S WARDS TO RECEIVE THE SAME BENEFITS AS OTHER INCAPACITATED INDIVIDUALS

The main purpose of Bill 83, an Act to provide a framework for mandatory state financing of certain legal services, is to structure the legal services available to defendants involved in long, costly trials or in cases where an order under the Criminal Code grants the services of State-compensated counsel. The Québec Ombudsman believes other amendments could be made to the Regulation respecting legal aid, in order to correct the unfair nature of the expenses charged to the estate of a ward for the opening of a protective supervision program by the Curateur public, as described above.

The Québec Ombudsman has recommended that Parliament and the Minister of Justice should amend section 30 of the Regulation respecting legal aid, so that people who qualify for legal aid can also be exempted from the requirement to pay expenses (e.g. bailiffs and legal stamps), even when a protective supervision program is opened by the Curateur public.

The Québec Ombudsman also recommended that section 30 of the Regulation be amended to include the procedures for replacing a legal representative, procedures similar in nature to the opening of a protective supervision program, and just as important for the protection of incapacitated individuals. As of March 31, detailed consideration of the amendment had not begun.

The Québec Ombudsman’s intervention is available for consultation at [www.protecteurducitoyen.qc.ca](http://www.protecteurducitoyen.qc.ca), under “Cases and Documentation”.

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## Ministère de l’Agriculture, des Pêcheries et de l’Alimentation

### COMPLAINTS IN 2009-2010

This year, the complaints received by the Québec Ombudsman in connection with the Ministère de l’Agriculture, des Pêcheries et de l’Alimentation (MAPAQ) were mainly concerned with:

- program eligibility and application, in particular the Agricultural Real Estate Tax Credit Program;
- the MAPAQ’s food and animal health inspection task.

The number and types of complaints have remained fairly constant over the years, and 2009-2010 was no exception.

A number of steps were taken during the year as follow-up to the recommendations made in the Québec Ombudsman’s special report on the management of the listeriosis outbreak in the Québec cheese industry.

## ADJUSTMENTS TO THE MANAGEMENT AND PREVENTION OF MAJOR CRISES

In its last annual report, the Québec Ombudsman announced that it would be investigating the Government's management of the fall 2009 listeriosis outbreak in the Québec cheese industry.

Following its investigation, the Québec Ombudsman concluded that the MAPAQ had acted correctly in eliminating the recalled cheeses along with all products that may have entered into contact with them. However, it also identified a number of deficiencies in the MAPAQ's crisis management system, as well as in its management of the economic and financial impacts for the industry and its regular prevention and monitoring system for cheese retailers and processing factories.

The Québec Ombudsman made thirteen recommendations designed to correct the deficiencies. Eleven of the recommendations were aimed specifically at the MAPAQ, and one was aimed specifically at the Ministère de la Santé et des Services sociaux, which was involved in the process of identifying the listeriosis outbreak. The remaining recommendation concerned both Departments.

The MAPAQ reacted favourably to all the recommendations in the report, although it refused, at first, to pay compensation to the two cheese factories whose products had been mistakenly included in the recall.

During the course of 2009-2010, the Québec Ombudsman closely monitored the recommendation implementation plan prepared and published by the MAPAQ just a few weeks after the report had been tabled. It notes that the MAPAQ immediately followed up on all the recommendations except the one concerning compensation for losses incurred by the Société coopérative agricole de l'Île-aux-Grues and the Fromagerie Blackburn as a result of the product recall. In the end, however, the MAPAQ offered a special credit of \$25,000 and an additional limited assistance payment of \$75,000 to each company.

The Québec Ombudsman congratulates the MAPAQ on its rigorous and transparent approach in this matter. Among other things, the MAPAQ published a table on its website, showing the follow-up steps taken and adding information and documentation as they became available. In doing this, not only did it meet the Québec Ombudsman's expectations, but it also permitted the cheese manufacturers and retailers to monitor and appreciate its actions, thereby acting in the best interests of both the industry and the population.

The special investigation report was published on June 2, 2009, and is available on the Québec Ombudsman's website at [www.protecteurducitoyen.qc.ca](http://www.protecteurducitoyen.qc.ca), under "Cases and Documentation".



# Ministère de l'Éducation, du Loisir et du Sport

## COMPLAINTS IN 2009-2010

Two-thirds of the complaints regarding the Ministère de l'Éducation, du Loisir et du Sport (MELS) were concerned with problems relating to student assistance, either the allocation of assistance (calculation and payment) or the management of loans (grant overpayments, failure to reimburse).

The other complaints covered a broad spectrum of subjects across all the Department's areas of activity, including sports safety, but were concentrated mainly on the three levels of education (university, college, and preschool-elementary-secondary) and included the following topics in particular:

- organization of and access to education;
- legal action against school managers (a growing problem);
- certification of studies;
- access to school transportation and free services;
- access to the English school system.

Many of the complaints were concerned with the provision of services by school boards, including access to good quality education for handicapped students and students with learning disabilities. In general, complainants were dissatisfied with:

- the lack of a special education plan or evaluation plan for specific measures;
- the time taken to prepare, apply or evaluate plans;
- misunderstandings between staff members in different sectors regarding needs and remedial measures;
- exclusion of parents from the process of preparing, evaluating and monitoring plans;
- lack of proper information for parents concerning the financial resources granted by the MELS, or the relevance and quality of the services provided;
- access to competent human resources;
- lack of training and support to help teachers keep handicapped students and students with learning disabilities in regular classes;
- use of inappropriate methods, such as unsupervised isolation.

The wide variety of problems reflects the range of difficulties experienced by these students.

The lack of an impartial recourse was a major source of dissatisfaction at all three levels, although to different degrees and for different reasons.

## A CREDIBLE, EFFECTIVE COMPLAINT PROCESSING SYSTEM FOR THE ENTIRE EDUCATION NETWORK

In the Québec Ombudsman's opinion, the education network cannot avoid the requirement to provide good quality services and respect individual human rights. Indeed, part of the MELS' mission, as defined by the legislator, is to identify adjustments that are appropriate to the needs of the sector in general and the different levels of education in particular. The education network's governance structure has been reorganized to help it fulfill these expectations in the same way as other public services. While the Québec Ombudsman believes these efforts are noteworthy, it nevertheless reiterates two observations from previous annual reports, namely the need for an impartial and credible complaint processing system for the entire educational network, and the recurrence of complaints about the lack of such a mechanism.

The Québec Ombudsman regards the broader notion of performance in the public service as the foundation for its own evaluation of Government services. Do people have access to services that were created to meet their needs, with due respect for their rights? Does the target client group know about and understand the services? Do the services come with clear mechanisms to address complaints? In 2007-2008, it emphasized this latter aspect in its annual report and recommended that the Department should determine the most appropriate conditions for providing the school system with such a mechanism.

### SCHOOL BOARDS

In its last annual report, the Québec Ombudsman welcomed the adoption, on October 29, 2008, of Bill 88, which required all school boards to appoint a Student Ombudsman. However, it also criticized the lack of a fully independent recourse and was concerned about the impacts of this deficiency and the absence of a regulation to structure the system.

In July 2009, the MELS tabled a draft regulation to structure the Student Ombudsman nomination process. The Regulation respecting the complaint examination procedure established by a school board addresses some of the deficiencies identified by the Québec Ombudsman in the working paper submitted for private consultation, namely:

- what constitutes an admissible complaint;
- the need for confidentiality when processing complaints;
- prevention of reprisals; and
- better public accountability.

Although the Québec Ombudsman noted these improvements, it nevertheless felt the regulation did not fulfill all the conditions for credibility and effectiveness, meaning that the new recourse would not have the necessary legitimacy and impartiality. This opinion was based on the following grounds:

- The Student Ombudsman's immunity was reduced by the fact that the council of commissioners had full discretion to revoke the appointment, a situation that greatly reduced the officer's already relative independence;
- The Student Ombudsman's power to investigate was weakened by the fact that it was conditional on the collaboration of staff members and the school board, whereas the draft submitted for consultation stipulated that the staff and school board were officially required to cooperate;
- The school boards' complaint examination procedure was not standardized to demonstrate that it was consistent with the principles of natural justice set out in the Act respecting administrative justice, and that complaints would be processed fairly throughout the network.

The Québec Ombudsman recommended extensive amendments, in conformity with the basic principles already set out, to bring the procedure into line with similar measures already in existence in the health and social services network. It also recommended immunity for anyone involved in the complaint processing procedure, along with a provision to ensure that all procedures were consistent with the principles of the Act respecting administrative justice, in particular regarding explanations for rejections of complaints.

The Regulation respecting the complaint examination procedure established by a school board was adopted without amendments on December 15, 2009, and came into force on January 21, 2010.

### **THE COLLEGE NETWORK**

On June 16, 2009, the Québec Ombudsman reacted favourably to the provisions of Bill 44, the Act to amend the General and Vocational College Act with respect to governance, concerning the introduction of a dispute processing system for individual CEGEPs. Among other things, these provisions followed on from the Québec Ombudsman's recommendation to determine the most appropriate conditions for providing the school system with an impartial and credible mechanism for handling complaints. The new bill also filled a gap in the system; there had previously been no impartial alternative to court action in the college sector, meaning that citizens wishing to challenge decisions made by colleges had to go to court. This was clearly a source of hardship, particularly when the complainants were students, since the process was cumbersome, expensive and generally inaccessible. In addition, there was a significant imbalance in the resources available to the parties, given that the educational institutions were able to use public funds to pay for their defence.

Although the goal of requiring colleges to introduce an accountable dispute processing mechanism is clearly relevant, the Québec Ombudsman nevertheless issued an opinion on the proposed measure, highlighting the following elements:

- the lack of any reliable guarantee of independence, impartiality and standardization, all of which are essential to the mechanism's legitimacy and credibility;
- the lack of rules promoting compliance with the principles of confidentiality, immunity from prosecution, and accountability;
- omission of or lack of clarity in several other basic elements, such as the right to an explanation for each decision, the powers and immunity of the position holder, the requirements concerning the quality of the complaint processing procedure, and harmonization with other stakeholders, such as the Commission de l'évaluation de l'enseignement collégial;
- the fact that access to the new mechanism was limited to registered students only, thereby excluding a significant portion of administrative decisions made by colleges at the admission stage.

The Québec Ombudsman recommended that the bill should be revised on the basis of the above principles and guidelines, in order to:

- give the Ministère de l'Éducation, du Loisir et du Sport the power to regulate the standards and conditions of the system, as was the case in Bill 88, which amended the Education Act;
- bring the system into line with the rules in force for the health and social services network.

As of March 31, 2010, detailed consideration of the bill had not yet begun.

## UNIVERSITIES

The situation regarding non-judicial recourse in the universities is different, since most university members have access to an ombudsman who reports to the board of directors. However, the Québec Ombudsman notes that the bill introduced to modernize university governance – Bill 38, an Act to amend the Act respecting educational institutions at the university level and the Act respecting the Université du Québec with respect to governance – does not require all universities to adopt impartial, independent complaint mechanisms.

The Québec Ombudsman, while acknowledging the specific nature of university education, nevertheless believes the operational independence required at this level should not justify the existence of standards and requirements regarding service quality and respect for rights that are any different from those of other public bodies. It was for this reason that it asked the National Assembly's standing committee on culture and education to amend the bill by requiring university community members to introduce an independent, impartial complaint processing mechanism, and to extend university reporting requirements to include the mechanism.

As of March 31, 2010, the National Assembly had not yet adopted the Act in principle.

The Québec Ombudsman's interventions can be seen at [www.protecteurducitoyen.qc.ca](http://www.protecteurducitoyen.qc.ca), under "Cases and Documentation".

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

### COMPLAINTS IN 2009-2010

This year, the complaints concerning the Ministère de l'Emploi et de la Solidarité sociale (MESS) were related to:

- cancellation of financial assistance;
- refusals to provide assistance;
- insufficiency of assistance;
- excessive documentation requirements;
- claims (recovery);
- inadequate information.

Of all the substantiated complaints received, those relating to inadequate information were of particular concern to the Québec Ombudsman, given the large number of people who were, or may have been, penalized as a result. The following examples bear witness to this situation.

## THE QUALITY OF ELECTRONIC RECORDS ON INDIVIDUAL CITIZENS

*In the spring of 2009, a citizen informed the Québec Ombudsman that Revenu Québec still considered him to be a social assistance beneficiary even though he had not received benefits for several months. His complaint concerned Revenu Québec's refusal to pay him the Supplement to the Work Premium as a result of the confusion.*

*The Supplement to the Work Premium program has been in force since April 1st 2008, and is designed to enable former social assistance recipients to remain in employment. Under the program, Revenu Québec grants a \$200 tax credit each month for a maximum of 12 months. The MESS is responsible for confirming an individual's eligibility for the premium, and does this by means of an electronic exchange of information with Revenu Québec.*

*Some of the needs of social assistance recipients continue to be covered for several months after social assistance benefits cease, and in this particular case the Québec Ombudsman's investigation revealed that the person had in fact received a special needs benefit two months previously. When the cheque was issued, the MESS computer system changed the person's status back to "beneficiary" – hence Revenu Québec's refusal to grant the supplement.*

*Because the MESS computer system is not programmed to make immediate status changes (beneficiary or non-beneficiary), Revenu Québec sometimes receives incorrect information. This was what occurred here.*

*In October 2009, the MESS created a new monitoring activity in its applications, allowing officers to make the necessary status changes as soon as a person's file is altered. Thanks to the Québec Ombudsman's intervention, the additions to the computer system were programmed more quickly, and nearly a hundred cases are currently being settled as a result.*

## GOOD QUALITY PUBLIC INFORMATION ON THE INTERNET

*In May 2009, the Québec Ombudsman received two complaints concerning Emploi-Québec's Online Placement website. The complainants said they had been victims of a non-existent company whose details were displayed on the website, under the "Job Offers" heading. They had ordered venture start-up kits from the company, for which they had paid with postal money orders, but had never received the promised documentation and their money had simply disappeared. They said they would never have sent money if they had not seen the company's offer on a supposedly reliable government website.*

*There is a clear disclaimer on the website, stating that: "Emploi-Québec is not liable for the content of the offers and candidacies published on this site, or for any follow-up". Having said this, Emploi-Québec nevertheless has the power to remove any offer or candidacy, especially if it involves illicit, criminal or immoral behaviour.*

*The Québec Ombudsman contacted the MESS, which agreed to change its website accordingly. In November 2009, the following statement was added to the “Terms of Use” section:*

*“Emploi-Québec also reserves the right to withdraw any job offer including an unpaid formation among its conditions of employment or any offer where the employer expects the worker to make a monetary investment, for example an offer indicating that the worker will have to pay for his or her training or certification, or have to purchase a sales starter kit containing products he or she must then sell.”*

*The Québec Ombudsman is satisfied with this measure, introduced at its request to help prevent abuse.*

## GOOD QUALITY INFORMATION CONCERNING CITIZENS’ RECOURSES

Social assistance programs require the value of certain property to be taken into account when determining eligibility and calculating benefits. The effect of this is to reduce the amount of the benefit payable. However, the regulation excludes all or part of certain property from this requirement. This is the case, among other things, for the principal residence. Because of the significant increase in real estate values since 2007, however, the benefits of some recipients have been severely reduced, or even eliminated altogether. A directive was therefore issued, placing a moratorium on the inclusion of the net value of the principal residence, until the regulation could be amended. The directive reads as follows: “For new applicants, as of August 1, 2007, the real value of the residence at the time the application is made shall be entered in the file. However, the applicant may have recourse to the discretionary power for free assistance where the net value of the residence results in benefits being reduced or refused. It is important that new applicants whose benefits are reduced or refused as a result of the value of their homes should be informed that they may have recourse to the Minister’s discretionary power for the duration of the moratorium.”

*A group of citizens approached the Québec Ombudsman to denounce the way in which the directive was being applied. They claimed that, in reality, many people were not informed of the possibility of recourse to the discretionary power, and were therefore unable to obtain the exemption.*

*Following the Québec Ombudsman’s intervention, the Ministère de la Santé et des Services sociaux added a new paragraph to its notice of acceptance or refusal, concerning the existence of the moratorium and the possibility of recourse to the Minister’s discretion.*

## PARLIAMENTARY WATCH – PAYING THE CORRECT AMOUNT OF PARENTAL INSURANCE

Since the Québec Parental Insurance Plan came into force in January 2006, benefit amounts are sometimes calculated on the basis of a single income when the worker has two jobs, or on the basis of an income replacement indemnity paid by an employer. In both cases, the benefits paid to the parents are calculated on the basis of a lower level of income.

In April 2009, the Québec Ombudsman recommended that the Ministère de la Santé et des Services sociaux should calculate the amount of benefit on the basis of all the income earned by the worker during the year preceding the application for benefits.

The changes announced in the draft regulation amending the Parental Insurance Plan regulation, published in June 2009 and now in force, are in line with this recommendation, and will enable more parents to obtain benefits calculated on the basis of all their employment income. With regard to income replacement indemnities, which are not covered by the amendments, the Ministère de la Santé et des Services sociaux has informed the Québec Ombudsman that work on this matter is continuing, in conjunction with the Conseil de gestion de l'assurance parentale.

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## Ministère de la Justice

### COMPLAINTS IN 2009-2010

Most of the complaints received in 2009-2010 concerned the collection of fines and related costs, including bailiffs' fees and legal expenses.

### NEW POWERS FOR THE DIRECTEUR DE L'ÉTAT CIVIL TO REFLECT CHANGING SOCIO-DEMOGRAPHICS

In 2007, the Québec Ombudsman recommended that the Ministère de la Justice should amend the Civil Code for the following reasons:

- 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;
- To take into account the traditions and customs of new immigrants and members of cultural communities with regard to patronymics upon registration of a birth in the register of civil status.

It also officially requested a further amendment to the Civil Code, to give the Directeur de l'état civil additional powers when registering a death.

Although lengthy discussions between the Québec Ombudsman and the Ministère de la Justice resulted in a commitment on the part of the Ministère, the Québec Ombudsman regrets the length of time taken to implement lasting solutions to these three issues. In December 2009, the Ombuds-person asked the Minister of Justice to intervene personally, underscoring the fact that several people were in difficulty because of these situations, and their rights needed to be upheld. The Minister of Justice has indicated that she will take under consideration the Québec Ombudsman's recommendations regarding certificates of change of designation of sex and declarations of death.

## RELAXING THE PROCESS OF REVIEWING CHILD SUPPORT PAYMENTS

In December 1995, Revenu Québec was given virtually exclusive responsibility for collecting support payments ordered by the courts. Its only power in doing so is the power to enforce a court decision.

Since automatic collection of support payments was first introduced, the Québec Ombudsman has received complaints every year concerning the need for a court decision to change or cancel a support payment.

Modern social issues have meant that the problems generated by the need for court decisions in family matters have grown significantly in recent years. For example, parents change jobs, become self-employed, go back to school or make shared custody arrangements for their children. Over time, children, too, become more financially independent, and this has an impact on their parents' obligations. There are therefore many grounds for revising or cancelling support payments. In 2008-2009 alone, Revenu Québec's Child Support Directorate received 31,439 variations to Superior Court orders.

The process of reviewing child support payments is costly for both the debtor and the creditor. In addition, the delays are often long. In the meantime, Revenu Québec cannot suspend, reduce or cancel the payments because the law only allows it to enforce court decisions. The rigidity of the system is clearly contrary to the objectives of the Act to facilitate the payment of support.

In view of the many problems brought to its attention, the Québec Ombudsman made a recommendation in its 2006-2007 annual report, asking that the Civil Code and the Code of Civil Procedure be modified to relax the process for reviewing child support.

In spite of ongoing discussions with the Ministère de la Justice since 2007, the Québec Ombudsman is concerned about the lack of progress on this issue, and continues to receive complaints in connection with it. The Minister of Justice is responsible for tabling bills on this subject, and the Québec Ombudsman asked her to intervene directly in order to achieve a positive outcome. The Minister has informed the Ombudsperson that she is treating this matter as a priority, and that the Ministère de la Justice is working "to develop measures aimed at facilitating the child support pension adjustment process so that it reflects the real situation of parents and makes it easier for them to obtain reviews at less cost". The Québec Ombudsman will continue to monitor this issue.

## UPDATING THE COMPENSATION SYSTEM FOR VICTIMS OF CRIME

The crime victims' compensation system came into force in 1972, and is based on compatible provisions of the Act respecting industrial accidents. However, it has changed very little in comparison with other public compensation systems, particularly the one applicable to road accident victims.

A particular feature of the crime victims' compensation system is that it falls under the responsibility of the Minister of Justice but is administered by the Commission de la santé et de la sécurité du travail.

In September 2006, the Minister of Justice set up a working group to assess the crime victims' compensation system. In February 2007, the Québec Ombudsman made a series of twelve recommendations, noting the significant discrepancies between the provisions of this system and those of other public compensation systems. For example, a person injured at work received, in addition



to the income replacement indemnity, a lump sum compensation reflecting the severity of any permanent damage to his or her physical integrity. This was not the case for victims of crime. The Québec Ombudsman's recommendations were designed mainly to ensure that the compensation received by crime victims was based on the same provisions as the compensation paid under other public systems.

In July 2009, the Minister of Justice asked the working group for some additional analyses, the results of which were presented last December. The group's report has not yet been made public.

#### **PARLIAMENTARY WATCH – RESPECTFUL TREATMENT AT COURT SECURITY CONTROLS**

In March 2009, the Québec Ombudsman intervened on the subject of Bill 15, an Act to amend the Courts of Justice Act and the Act respecting municipal courts with regard to court security, asking that a provision allowing pat-down frisks by peace officers in court buildings be amended to ensure that the frisks were performed by an officer of the same sex as the person being searched. The Minister of Justice tabled the amendment in October 2009 and the requested provision is now part of the Act, except in cases of necessity.

The Québec Ombudsman's intervention may be consulted at [www.protecteurducitoyen.qc.ca](http://www.protecteurducitoyen.qc.ca), under "Cases and Documentation".

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## **Ministère de la Sécurité publique**

### **PUBLIC SECURITY AND POLICE AFFAIRS**

#### **COMPLAINTS 2009-2010**

Citizens' complaints regarding public security were generally concerned with the administration of financial assistance programs, including eligibility and the amount of assistance granted.

The Ministère de la Sécurité publique (MSP) is also responsible for organizing and coordinating police services, and for police practices. Most people who contacted the Québec Ombudsman regarding this aspect of the MSP's operations complained about the time taken to process applications for obtaining or renewing firearms licences.

#### **PROVIDING CITIZENS WITH USEFUL INFORMATION ON PUBLIC MANAGEMENT OF MAJOR NATURAL HAZARDS**

In recent years, government management of erosion along the St. Lawrence River banks has been a major problem in which the MSP has been involved by virtue of its responsibility for public security.

In 2006, the Government announced the introduction of a prevention framework for the management of natural hazards such as ground movement, flooding and shoreline erosion. That same year, several individuals and groups approached the Québec Ombudsman because they were personally affected by shoreline erosion. The Ombudsman examined the Government's actions in connection with the

phenomenon and, in its 2006-2007 annual report, made four recommendations aimed at both the MSP and the other Government departments responsible for applying the framework. The recommendations were concerned with:

- the need to coordinate the interventions of different Government actors;
- harmonization of the methods used by the various Government departments;
- adoption of a schedule of work with known deadlines;
- the right for citizens to obtain full and timely information.

In 2007-2008, the Québec Ombudsman noted that the MSP had followed up on the first three recommendations, but had been slow to react to the one concerning appropriate information for citizens. It therefore reiterated its request for the MSP to take steps to address this problem, and as a result a Government communications strategy was brought into force in 2009. The purpose of the strategy was to support the Government departments responsible for implementing the framework. It set out a number of communication goals and methods to be achieved by means of a joint effort on the part of the Government departments concerned. A further aim was to increase the accountability of municipalities and the general public, and to raise awareness of the risks present in their own environment, with a view to creating or reinforcing a culture based on prevention and prudence. The Québec Ombudsman is satisfied with the MSP's response to all its recommendations.

## **REFORMING QUÉBEC'S INVESTIGATION PROCEDURE FOR INCIDENTS INVOLVING POLICE OFFICERS**

In February 2010, the Québec Ombudsman published a systemic analysis of the investigation procedure used in Québec for incidents involving police officers where death or serious injury occurred as a result of a police intervention, detention or the use of a firearm.

The report concluded that the procedure in question did not guarantee the necessary independence, impartiality, process objectivity, transparency or accountability. The Québec Ombudsman feels this situation is prejudicial to the general public, who do not have the elements they need to trust the system, and also to the police themselves, since even if no charges are brought against the officers concerned as a result of the investigation, the public may still doubt the objectivity and impartiality of the process.

The Québec Ombudsman's examination led to a series of eight inter-related recommendations that, if fully implemented, will help strengthen public confidence in the vital, crucial and complex work of the police force and the credibility of investigations into their conduct.

As of March 31, 2010, the MSP had not yet stated its intentions concerning follow-up to the recommendations in the report.

The Québec Ombudsman's report on the investigation procedure used in Québec for incidents involving police officers is available at [www.protecteurducitoyen.qc.ca](http://www.protecteurducitoyen.qc.ca), under "Cases and Documentation".

## DIRECTION GÉNÉRALE DES SERVICES CORRECTIONNELS

### COMPLAINTS 2009-2010

The complaints received by the Québec Ombudsman from inmates usually concern physical health-care, access to services and medication (the most frequent ground, accounting for more than 20% of all substantiated complaints), and problems relating to personal effects.

### FOLLOW-UP TO THE QUÉBEC OMBUDSMAN'S RECOMMENDATIONS

In 2008-2009, the Québec Ombudsman made five recommendations to the Ministère de la Sécurité publique. The outcome of follow-up to these recommendations is described below.

#### 1. Present the action plan for social reintegration services

The Québec Ombudsman recommended that the MSP should submit a government action plan on social reintegration no later than June 30, 2009. The proposed plan, prepared in conjunction with other Government departments, was eventually presented last February.

Despite the delay, the Québec Ombudsman is satisfied with the work done. Most of the issues it had identified are treated as priorities in the plan, including evaluation and supervision of offenders. However, the plan is not an end in itself, but a tool that should be used to guide and manage social reintegration, improve coordination of existing services, and periodically assess needs. The Québec Ombudsman expects the MSP to give official status to the plan and introduce follow-up measures to ensure that its goals are met.

#### 2. Understand the grounds for complaints, and improve services accordingly

The Québec Ombudsman recommended that the complaint processing registers maintained by detention facilities should be used by managers, and that the collected data should be examined in order to improve respect for the fundamental rights of inmates and enhance service efficiency.

In accordance with this request, the MSP has begun to produce quarterly reports that present a statistical profile of the complaints processed by all the province's detention facilities. It must now take steps to ensure that the data collected in the registers are actually used by managers to remedy problems and improve the application of the complaint processing system for inmates.

#### 3. Establish clear conditions for the use of physical restraints in health facilities

The Québec Ombudsman recommended that the MSP should review the internal directives of detention facilities to ensure that the use of physical restraints is based on the level of risk represented by the inmate and on the security context in the health facility.

Since then, the MSP has reviewed its provincial instruction on custodial methods in hospitals. The new administrative directive changes the rules applied by the detention facilities, so that the choice of restraint now depends on an objective assessment of the level of risk represented by the inmate during the period of hospitalization.

#### **4. Respect the right to confidentiality**

The Québec Ombudsman recommended that the MSP, in its directives, should emphasize the importance for employees to respect the confidentiality of consultations between medical personnel and the inmates they have escorted to medical appointments. It asked the MSP to identify the necessary material conditions to allow for confidential consultations while limiting any security risks.

However, the new provincial instruction on custodial methods for inmates still does not acknowledge the confidentiality of consultations as being a right, which would mean that it could only be limited in exceptional circumstances. The rule that officers should maintain visual contact with inmates but remain out of hearing range is not stipulated in the instruction.

At the Québec Ombudsman's request, the MSP undertook to correct the current provincial instruction by March 31, 2010. So far, however, the anticipated changes have still not been made.

#### **5. Find solutions to the chronic postponement of hearings before the Commission québécoise des libérations conditionnelles**

The Québec Ombudsman recommended an analysis of the reasons for postponing hearings before the Commission, especially those relating to parole release. The authorities involved in this process are the Ministère de la Justice, the Ministère de la Sécurité publique, the Director of Criminal and Penal Prosecutions and the Commission québécoise des libérations conditionnelles.

In concrete terms, the Québec Ombudsman asked them to target bottlenecks in the current system and identify potential improvements.

In the wake of this recommendation, the MSP's internal verification, investigation and inspection department was asked to perform the requested analysis. A number of potential solutions were identified, and were still under consideration on March 31, 2010.

However, the Québec Ombudsman is worried by the fact that it is still receiving complaints from inmates regarding postponed hearings, and has asked the Government departments and agencies concerned to intensify their efforts and reduce the number of postponements. It feels this task is particularly important because the feasibility of the new government action plan on social reintegration will depend on the existence of a rigorous and effective parole release system.

### **TIGHTENING SUPERVISION OF INCARCERATION MANAGEMENT**

The Québec Ombudsman is currently investigating a number of administrative mistakes from the past year, which led to the premature release of inmates or the continuation of periods of incarceration beyond the stipulated release date.

### **VISITING DETENTION FACILITIES TO OBTAIN A TRUE PICTURE OF THE SITUATION**

In 2009-2010, the Québec Ombudsman visited detention facilities in Valleyfield, Hull, Rimouski, New Carlisle, Baie-Comeau, Sept-Îles, Trois-Rivières and Sherbrooke, as well as the Tanguay facility in Montreal. The visits were part of an action plan launched by the Québec Ombudsman that will encompass all the facilities in the correctional network.

The primary purpose of the visits is to gather information on the state of infrastructures, detention conditions and the organization of basic services. The visits cover the service sectors (including admission, checkroom, visiting room and health care unit), segregation and isolation cells, living areas, cells and other accommodations. Observations and material reports are completed by interviews with inmates, discussions with correctional service officers and meetings with other staff members.

The visits not only help the Québec Ombudsman to understand the reasons for inmate dissatisfaction, but also reveal a certain number of situations that are not necessarily evident in complaints, allowing for preventive steps to be taken. The Québec Ombudsman also takes advantage of the visits to ensure that its recommendations to the MSP or directly to the detention facilities themselves have been implemented.

Inspection of detention facilities by outside resources helps build a foundation for respect of inmates' rights. In addition, it helps to maintain and reinforce public trust in the facilities and in the judicial system as a whole. The Québec Ombudsman is specifically mandated to perform detailed visits of detention facilities, and has devised a number of standardized indicators to structure the data collection and analysis process. By systematically using these indicators, it is able to identify problems common to several facilities, and to consider the particular aspects of each facility's infrastructures and service organization.

Below are some of the indicators used by the Québec Ombudsman.

***For accommodation areas***

- Cleanliness of the shared living area, cells, sanitary facilities and showers;
- Living conditions and layout, in a context of prison overcrowding;
- Conditions for access to health services and distribution of medications.

***For isolation and confinement areas***

- Type of wall covering and restraint equipment;
- Suicide prevention measures;
- Cleanliness and condition of the cells;

Supervision methods and method of recording information on cell use.

***For the health care area***

- Management of medical information and medical follow-up at admission;
- Confidentiality of consultations between inmates and medical staff;
- Coordination between health service staff and the person responsible for transportation and transfers between facilities.

In many of the facilities visited, inmates, officers and managers alike all mentioned ventilation system maintenance problems.

Following its inspections of segregation and isolation blocks, the Québec Ombudsman once again deplores the fact that segregated individuals are not visited on a daily basis by health workers, even though such visits are required by a provincial instruction and international rules governing the treatment of prisoners.

The Québec Ombudsman's interviews with nursing staff have revealed a number of disparities in the treatment of inmates' requests for health services. In some cases, the process breaches the confidentiality of discussions between caregivers and inmates. For example, in one facility the correctional service officers read the written requests for service before sending them to the nursing staff, while in another, an inmate appointed to represent his sector reads requests before they are processed by the nursing staff.

Some of the Québec Ombudsman's observations relate to single detention facilities only. For example, one facility was still dealing with an infestation of vermin, while the communal showers and sanitary block in another facility were dirty and in an advanced state of dilapidation.

## **PRISON OVERCROWDING**

In its 2006-2007 annual report, the Québec Ombudsman identified a number of challenges facing the correctional services, including a severe and recurrent problem of overcrowding in the province's detention facilities. The reasons for this problem included the significant percentage of people in preventive custody, along with changes to the way absence permits were granted and the high number of parole waivers.

Prison overcrowding continues to be a problem in 2009-2010. Even the addition of places in "temporary modular buildings" at the facilities in Québec City, Trois-Rivières and Sherbrooke, combined with the re-opening of "A" Wing at the Montreal facility, have not been sufficient to meet the growing needs of Québec's correctional network.

As the Québec Ombudsman pointed out in its 2008-2009 annual report, the temporary places in modular buildings provide a limited solution only. The selection criteria for places in these buildings are restrictive, and exclude people awaiting trial, people affiliated with criminal organizations, and people with prior disciplinary records involving violent behaviour.

The Québec Ombudsman is also concerned at the high rate of parole waivers. In 2009-2010, for example, the Commission québécoise de libération conditionnelle estimated that this rate had virtually doubled from its 2004-2005 level of 24%, to nearly 47%. The Québec Ombudsman feels this matter, which is a derivative of overcrowding, needs to be examined in depth in the near future.

## **UNDERSTANDING THE SITUATION OF PEOPLE WITH MENTAL HEALTH PROBLEMS WHO ARE PROSECUTED AND INCARCERATED**

Many prison inmates suffer from mental health problems, and the Québec Ombudsman has launched an investigation into their situation on its own initiative. The purpose of the investigation is:

- to profile the situation in detention facilities;
- to see whether the conditions in detention facilities allow for access to the health services and social services required by these inmates' state of health.

The ultimate goal is to recommend potential solutions with a view to reconciling individual interests in connection with health and rehabilitation with the collective interest in public security.

# Ministère des Finances

## COMPLAINTS IN 2009-2010

The complaints received by the Québec Ombudsman relate to two situations, described below, both of which have negative consequences for many single parents. They are the childcare expense tax credit and appropriate fiscal treatment of the orphan's pension.

## CORRECTING AN INJUSTICE IN THE ALLOCATION OF A TAX CREDIT

In 2007, the Ministère des Finances made some changes to the childcare expense tax credit, which is applicable only to unsubsidized childcare services. Under the new criteria, expenses had to be incurred in order to enable one of the parents to work, go to school or actively look for a job. The ultimate goal of the measure was to help the parent find or keep a job.

The amendment, although well-intentioned, produced an unintended negative consequence for single parents on maternity or paternity leave. In this case, the parent stays at home to look after the new baby. Those who decide to send their other children to daycare are automatically not eligible for the tax credit because, unlike families with two parents, they cannot work, go to school or actively look for a job.

In October 2008, the Québec Ombudsman informed the Ministère des Finances of the unfair consequences of this measure for single parents, who are often the most underprivileged members of our society.

The Minister of Finance addressed this problem in his 2009-2010 Budget. The law now provides that every person who receives benefits under the Act respecting parental insurance is entitled to the childcare expense tax credit, meaning that single-parent families can once again benefit provided they meet the eligibility criteria.

## INTRODUCING CONSISTENT FISCAL TREATMENT

*In the spring of 2009, a person contacted the Québec Ombudsman because she was unable to obtain a satisfactory explanation from the Government authorities concerning the fiscal treatment of the benefits she received for her children. She said the Régie des rentes and the Commission de la santé et de la sécurité du travail were paying her a surviving spouse's pension and child benefits. She did not understand why these two benefits, which were similar in nature, were treated separately for taxation purposes. Each year, the Régie produced a "Relevé 2" in her name for the surviving spouse's pension, and a separate "Relevé 2" for each of her children, for the child benefit. The Commission, however, sent a single "Relevé 5" in her name for all the benefits paid.*

*The outcome of the Commission's approach was that the woman's social tax credits were reduced because her income was higher as a result of the benefits she received for her children.*

*After examining the woman's request and noting the inconsistent approaches taken by the two agencies, the Québec Ombudsman contacted the Ministère des Finances to explain its position. The Ministère des Finances asked the Commission to change its administrative practice, which had been in force since 1996.*

*The Commission agreed to bring the practice into line with that of the Régie, and to produce separate statements for the woman and her children. The Québec Ombudsman's intervention not only remedied this particular family's situation, but was also collective in scope, since more than 200 child benefit cases were regularized in 2009 as a result. In addition, from 2010 onwards, the Commission will be systematically able to produce separate "Relevé 5" statements for death benefits.*

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## Ministère des Ressources naturelles et de la Faune

### COMPLAINTS IN 2009-2010

In the last few years, the number and types of complaints concerning the Ministère des Ressources naturelles et de la Faune (MRNF) have remained fairly stable. In 2009-2010, the complaints received by the Québec Ombudsman were mainly related to the activity sectors in which the MRNF maintains closer relationships with the general public, namely:

- *wildlife (allocation of permits and licences);*
- *public land (criteria governing the sale and leasing of lands in the domain of the State);*
- *land information (cadastral renewal).*



## ASSUMING ITS ROLE IN DECISIONS

Over the last year, it became clear from some of the complaints received that the MRNF had chosen to leave the parties to their own devices or send cases before the courts, rather than take a position and resolve the dispute itself.

*A woman applied to the MRNF for a lease on a hunting camp located on land in the domain of the State, which she had occupied for several years. Under the provisions of one of its regulations, the MRNF can in fact grant a lease to a person who is able to prove that he or she has occupied land in the domain of the State continuously. In this particular case, however, the situation was somewhat more complex in that another citizen had asked for exactly the same thing, with the result that two citizens, neither of whom had a title of ownership, claimed they had occupied the same hunting camp continuously for the same period of time, and applied to the MRNF for a lease at exactly the same time. The MRNF said it was unable to make a decision and asked both citizens for legal proof of ownership of the hunting camp property (i.e. the building erected on the site), so that it could grant the lease to the building owner.*

*The woman took legal steps to obtain the requested document, in the form of a judgment acknowledging her right of ownership. The Court of Québec told her it was up to the MRNF to make a decision, pursuant to the Regulation respecting the regularization of certain kinds of occupation of lands in the domain of the State. The MRNF, after being informed of the court's ruling, examined the documents originally submitted as proof of occupation (mostly photographs and sworn statements), and decided in favour of the other citizen.*

*The woman then approached the Québec Ombudsman for help in obtaining reimbursement of the legal expenses she had incurred needlessly, given that the MRNF had eventually made its decision based on the elements in its possession prior to the Court of Québec ruling, as it should have done in the first place. Following the Québec Ombudsman's intervention, the MRNF agreed to reimburse the expenses, which totalled approximately \$9,000.*

## PREVENTING LEGAL ACTION BY PROVIDING AN ADMINISTRATIVE MECHANISM

In August 2008, the MRNF invited the Québec Ombudsman to take part, as an observer, in a pilot project to set up a cadastral plan review committee (the current cadastral review was launched in 1994 throughout Québec, with the principal goal of constituting a complete and accurate image of land division in the province).

The committee's purpose will be to provide landowners with an objective, impartial, non-judicial recourse if they disagree with the outcome of the cadastral renewal or with the conclusion of their request for a cadastral amendment. In addition, it will help ensure that the general public has a better understanding of the scope of the cadastral renewal.

The Québec Ombudsman observed a committee simulation exercise and took part in the focus group discussion on the simulation experience. In addition, it informed the MRNF of certain principles that should be included in this type of review mechanism. Among other things, the Québec Ombudsman made sure the committee will respect the right of individual citizens to be heard, and the obligation to give reasons for its decisions. The MRNF produced a report in July 2009, presenting the Québec Ombudsman's observations.

# Ministère des Transports

## COMPLAINTS IN 2009-2010

The number of complaints against the Ministère des Transports has remained fairly stable over the years, at around 40.

Generally speaking, citizens are dissatisfied with:

- expropriation compensation;
- road works;
- damage to vehicles due to poorly maintained roads.

## PARLIAMENTARY WATCH – PRIORITY TO AN ADMINISTRATIVE PROCESS RATHER THAN LEGAL ACTION

Bill 41, An Act to amend the Act respecting transport infrastructure partnerships and other legislative provisions, was tabled in the National Assembly on May 14, 2009. It introduced new rules for the recovery of unpaid tolls, clarified the powers that the Ministère des Transports may delegate to a partner, and structured the use of devices used to photograph the registration plates of road vehicles.

After examining the bill, the Québec Ombudsman felt it would be appropriate to submit comments to the Committee on Transportation and the Environment.

Its analysis focused mainly on the following two elements:

- The bill changed the process used to recover unpaid tolls by replacing the current administrative process with a penal process. The Québec Ombudsman felt the administrative mechanism was more flexible and less costly for citizens, and also helped avoid legal action;
- The scope of the Department's exemption from liability in disputes between citizens and the private partner was too great.

The Québec Ombudsman recommended that the administrative process used to recover unpaid tolls should remain in place, and that the general public should have access to a simple, effective and independent complaint mechanism.

The bill was adopted on November 26, 2009, with an amendment addressing the second element raised by the Québec Ombudsman; it now provides that the private partner must introduce a complaint examination policy. Anyone who is not satisfied with the partner's response to the complaint may now contact the Ministère des Transports, which has the power to make recommendations to the partner in this respect.

The recommendation concerning maintenance of the administrative process to recover unpaid tolls was not retained.

The Québec Ombudsman's intervention may be consulted at [www.protecteurducitoyen.qc.ca](http://www.protecteurducitoyen.qc.ca), under "Cases and Documentation".

# Ministère du revenu

## TAXATION

### COMPLAINTS IN 2009-2010

The Ombudsman received tax-related complaints that fell mostly into the following categories:

- processing delays;
- recovery methods; and
- quality and consistency of the information provided.

### IMPROVING THE INFORMATION AVAILABLE TO CLIENT SERVICE CENTRE OFFICIALS SO THEY CAN ADVISE THE PUBLIC PROPERLY

During peak periods, the Revenu Québec personnel who handle requests for advance payments of the Tax Credit for Home-Support Services for Seniors are assigned on a priority basis to the evaluation of initial requests. As a result, the processing time for other types of requests exceeds the standard 30-day deadline. The Québec Ombudsman observed that Revenu Québec client service officials were not being informed about the actual processing time for requests and that they were therefore giving incorrect information to the public. As a result of the Québec Ombudsman's intervention, Revenu Québec has modified its Intranet site to ensure that customer service officials have access to all the data they need to provide accurate information to the public.

### COMMUNICATING WITH THE PUBLIC IN CLEAR AND SIMPLE LANGUAGE

Under certain conditions, home renovations may entitle a taxpayer to a GST and QST refund for the costs of materials and labour.

Revenu Québec and the Canadian Revenue Agency (CRA) use the same criteria to determine if someone is entitled to these refunds. However, while reviewing a complaint, the Ombudsman noted that term "major addition" is defined more clearly and accurately on the CRA form than on the Revenu Québec form. At the Québec Ombudsman's request, Revenu Québec provided an improved form that has been available since September 2009.

### IMPROVING ELECTRONIC FORMS TO REDUCE PROCESSING DELAYS

To obtain a QST refund, non-profit and charitable organizations, municipalities, school authorities, hospital authorities, public colleges and universities must fill out the "Application for QST Rebate for Public Service Bodies" form.

Prior to the Québec Ombudsman's intervention, this form indicated that the organization needed to enter the end date of its fiscal year if it was not registered for the QST. It was therefore clearly implied that a registered organization did not need to provide this information. However, the Québec Ombudsman noted that the computer system systematically rejected all forms where this information was not provided. Those forms then had to be processed manually, which could delay refunds by about four months. Organizations which met the Revenu Québec requirement were therefore being penalized.

At the request of the Québec Ombudsman, Revenu Québec now requires that all organizations enter this information on the form, allowing requests to be processed correctly by the computer system.

## **GIVING UP-TO-DATE INFORMATION TO THE PUBLIC**

After the publication of a pamphlet designed to inform the public of the right to contest a notice of assessment, the offices of the Direction des oppositions in Montreal and Québec City moved to new locations. While an insert was added to the pamphlets available at Revenu Québec service points, no change was made to the document available on the Web site.

Given the 80-day deadline to exercise the right to contest, taxpayers ran the risk of being penalized because the notice of contestation had been sent to the wrong address. At the Québec's Ombudsman's request, Revenu Québec agreed to modify the document on its Web site.

## **ADAPTING PROCEDURES TO THE NEEDS OF THE PUBLIC**

The procedure to replace lost or stolen cheques in effect at Revenu Québec stipulates that a stop payment request for a cheque cannot be made until 35 days after the date on which the cheque was issued. After this period, if the cheque has been cashed, Revenu Québec and the Ministère des finances contact the financial institutions to identify the person who received the funds. It may then take some time before a new cheque can be issued, due to the steps that must be taken.

To reduce the chances of cheques being cashed, the Québec Ombudsman has asked Revenu Québec to reduce this 35-day period. Revenu Québec agreed to this request and has modified its replacement policy for lost or stolen cheques, so that a file may now be opened fifteen days after the date on which the cheque was mailed.

## **COLLECTION OF SUPPORT PAYMENTS**

### **COMPLAINTS IN 2009-2010**

Complaints concerning the Support Payment Collection Program fell mostly into the following categories:

- failure to pay support or irregular support payments to the creditor;
- failure by Revenu Québec to collect support when the debtor does not make the payments provided for in the judgement;
- the amount of collection deemed by the debtor to be excessive in relation to his or her capacity to pay;
- the need for creditors and debtors to obtain a new judgement every time they wish to change or end support payments;
- poor understanding of the statements of account;
- interpretation or application of judgements.

## BROADENING THE NOTION OF COMPASSIONATE GROUNDS

The Act to facilitate the payment of support allows Revenu Québec to make support payments owing to a creditor even if payment has not been made by the debtor. The intent of the Act is to allow Revenu Québec to pay these advances to ensure regular support payments for children.

In 2004, Revenu Québec adopted a work instruction defining a framework for the payment of this type of advance. However, since it is not possible to foresee all situations, the work instruction made it possible for managers to make an exception to the standard policy based on “compassionate grounds”. In 2008, Revenu Québec confirmed to the Québec Ombudsman that it had made its managers aware of this issue and that they in turn had reminded their employees.

As a result, the Québec Ombudsman has been able to allow people to receive advances even when the instruction did not allow it, for example if there was a real risk of loss. In 2009, however, a similar request from the Ombudsman was rejected.

*A citizen, unable to understand the reasons for the cessation of regular support payments, contacted the Québec Ombudsman. Upon investigation, it was found that the problem originated at Revenu Québec. The receipt period by the Department was actually 18 to 20 days, whereas the standard period is defined as 48 hours.*

*Based on the exception allowed by the work instruction, the Québec Ombudsman asked that the support payments be resumed through the use of advances. Revenu Québec rejected this request. The Québec Ombudsman’s intervention is still underway.*

*The investigation revealed a more general problem affecting receipts at the Direction de la perception des pensions alimentaires de Montréal, which was corrected by Revenu Québec. In addition, the Ministère will broaden the definition of “compassionate grounds” to include the concept of particular situations.*

## SIMPLIFYING THE STATEMENTS OF ACCOUNT

All too often, the Québec Ombudsman has had to highlight gaps in and the complexity of the statements of account. In 2008, after a series of consultations conducted by an external expert, the Ministère ended its study to identify needs and find solutions designed to simplify and clarify the statements of account.

As promised in 2008, Revenu Québec has made several changes to the statements of account, including the following:

- *a clearer visual presentation;*
- *customized highlight forms for the creditor and the debtor;*
- *improvements to the transaction details listed on the statement;*
- *an improved pamphlet to help the recipient understand the information presented in the statement.*

Work remains to be done, however, since the statements contain no information about advances. The Québec Ombudsman emphasizes the importance of this information when recipients appear in court to ask for cancellation of arrears or for a change to support payments. Without this information, the judge and the parties may not have a full picture of the situation.

In 2010-2011, Revenu Québec will work on improving documentation of the changes made to the statement of account for complex cases.

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## Régie de l'assurance maladie du Québec

### COMPLAINTS IN 2009-2010

Most of the complaints received were concerned with eligibility for the plans and programs administered by the Régie, including:

- health insurance and prescription drug insurance;
- insured services such as dental and optometric services, devices that compensate for physical deficiencies, hearing aids and visual aids;
- other programs, including the financial contribution for accommodated adults and financial assistance for domestic help services.

### SOLVING VARIOUS RECURRENT PROBLEMS WITH THE PRESCRIPTION DRUG INSURANCE PLAN

Since the Prescription Drug Insurance Plan was first introduced in 1997, the Québec Ombudsman has received several requests for intervention from citizens each year, highlighting the complex nature of the Plan.

#### Eligibility rules and conditions that are easier to understand

Despite the information circulated by the Régie, many people are still confused by the requirement to join a private group insurance plan, and find themselves in one of the following situations:

- They are unaware of the requirement to join a plan.
- They think they have a choice between a private plan and the public plan.
- They do not know they must insure their spouse and children if they have access to a private group insurance plan.
- If they are self-employed, they have different employers and their professional status changes frequently, thereby affecting their eligibility for the public plan.
- They are members of a professional order and are unaware of the conditions governing access to the order's insurance plan.

*A person contacted the Québec Ombudsman because the Régie de l'assurance maladie du Québec had claimed a large amount of money from her, on the grounds that she would have had access to a group insurance plan for a number of years, as a member of a professional order. The woman suffered from a chronic, incurable disease and was worried because the medication she had to take was very expensive. She said her professional order had not told her about the requirement to join a group insurance plan. The Québec Ombudsman verified her case and found that she should in fact have taken out the insurance offered by the order. The Régie was claiming an amount of \$28,500. After requesting a review of her file, the woman was fortunately able to reach a payment agreement with the Régie.*

### **Providing citizens with appropriate and fair access to medication**

It sometimes happens that people register for the Prescription Drug Insurance Plan when they are not eligible, due to changes in their professional or other status.

When the Régie verifies their status, their registration is cancelled if they are not eligible. However, if they have consumed medication paid for by the Plan, the Régie claims a reimbursement, which in some cases may total tens of thousands of dollars. High claims such as these may occur, for example, if the person concerned needed to take expensive drugs over a long period of time (e.g. some cancer and HIV drugs).

The situation in which these people find themselves is illegal, in that for a certain period they are not insured by either the public plan or a private plan, contrary to the provisions of the Act respecting prescription drug insurance.

In addition to their temporary illegal status and their obligation to repay the debt, these same people are also treated unfairly, since the premiums they have paid to the Ministère du Revenu for the Prescription Drug Insurance Plan are not reimbursed when their registration is cancelled.

As a result, they have no insurance protection, must repay debts that are considerable in some cases, and are not reimbursed for the premiums they have paid.

In the Québec Ombudsman's opinion, the Régie's approach in this matter is not consistent with the objectives of the Act respecting prescription drug insurance, which stipulates that the purpose of the general plan is to provide the entire population of Québec with reasonable and fair access to the medication they need.

### **More interactions with third parties involved in administering the Plan**

A number of third parties play an important role in administering the Prescription Drug Insurance Plan, including insurance companies, contract givers and employers (human resources departments).

To what extent can the Régie intervene with these stakeholders to ensure that they understand the Plan, its application and their obligations under its provisions? Is there a reporting mechanism? What powers and means does the Régie have to ensure that they understand both the Plan and how it should be implemented?

The Québec Ombudsman was informed that the Régie has launched a process of reflection and analysis aimed at improving the compliance of registrations for the Plan, and has submitted its concerns to the Régie. In the course of 2010-2011, it expects the Régie to inform it of the solutions proposed to improve public understanding of the Plan's registration conditions.

# Régie des rentes

## COMPLAINTS IN 2009-2010

Complaints concerning the Régie des rentes du Québec related mainly to the following aspects:

- the Child Support Program (eligibility, recovery of overpayments);
- eligibility for the disability pension;
- eligibility for the surviving spouse's pension;
- lack of harmonization with other government plans.

## ENDING PROBLEMS OF HARMONIZATION BETWEEN THE RÉGIE DES RENTES AND THE SOCIÉTÉ DE L'ASSURANCE AUTOMOBILE

In its last annual report, the Québec Ombudsman recommended that, as part of the pension plan review that would take place in the fall of 2009, steps should be taken to ensure that the rules applicable to benefit combinations paid to citizens receiving compensation from the Société de l'assurance automobile du Québec should not have the effect of reducing their income from its initial level.

The Régie des rentes has said that administrative measures have been introduced to minimize the negative impacts of the current rules governing benefit combinations, and legislative amendments will be proposed in the coming month.

In examining this issue, the Québec Ombudsman also identified a second anomaly in the interactions between the two agencies, stemming from the fact that when the Régie des rentes considers an application for a disability pension, it sometimes establishes a connection between a disabling condition and a car accident, even if the Société de l'assurance automobile has not done so, or has not yet done so, in its own file. Once it has established such a connection, the Régie is bound by law to pay the disability pension to the Société de l'assurance automobile instead of to the beneficiary. As a result of this, some beneficiaries find themselves trapped between two contradictory decisions, and the Société d'assurance automobile receives disability benefit payments for victims it considers fit for work.

The Québec Ombudsman intervened to inform the Régie that it could not establish a connection with an injury that is not recognized by the Société d'assurance automobile, and that it was bound to pay its disability pension directly to the beneficiary. The Régie said it was willing to review its practices and propose a solution in the coming months.

The Québec Ombudsman expects the Régie to find ways of solving these harmonization problems and submit an implementation timeframe by the end of 2010.



*The law stipulates that a person may not receive a retirement pension from the Régie des rentes du Québec if he or she is eligible for a disability pension as a result of an automobile accident. In this particular case, the person who complained to the Québec Ombudsman had been receiving income replacement benefits from the Société de l'assurance automobile du Québec. Upon turning 60, the person applied to the Régie des rentes for a retirement pension, and shortly afterwards received confirmation from the Régie that the pension had been granted. The person received payments for a few months, but following an intervention by the Société de l'assurance automobile, the Régie re-contacted her, stating that the retirement pension had been granted by mistake because she was eligible for a disability pension as a result of a previous car accident. The person therefore owed more than \$8,000 to the Régie des rentes.*

*When examining the person's eligibility for the retirement pension, the Régie des rentes should have checked to make sure she was not entitled to a disability pension as a result of a car accident. Where this is the case, the disability pension is paid directly to the Société de l'assurance automobile and the person receives only the portion of the pension that exceeds the amount of the income replacement benefit. The Québec Ombudsman's investigation revealed that, in the case of this particular citizen, the initial verification had not established any link, and the retirement pension had therefore been granted. In the Québec Ombudsman's opinion, the Régie could not then change its mind and force the citizen to suffer the consequences.*

*Accordingly, the Québec Ombudsman intervened with the Régie des rentes. The person's debt was cancelled, and she was awarded a disability pension from the Régie des rentes – unconnected with a road accident – to which was added her income replacement benefit from the Société de l'assurance automobile du Québec.*

## RESPECTING THE PRESUMPTION OF INNOCENCE

The Québec Ombudsman observed that the Régie des rentes immediately suspended payment of the surviving spouse's pension in cases where the surviving spouse was accused of murdering the deceased spouse, and did not wait for the outcome of the trial. In doing so, it was effectively presuming that the surviving spouse was guilty, even though the presumption of innocence is a fundamental principle of our legal system. A person who pleaded not guilty prior to trial was therefore deprived of benefits even if he or she met the eligibility criteria prescribed by law.

The Québec Ombudsman intervened with the Régie des rentes, asking it to wait for the outcome of the trial and terminate the pension only if the court finds the person guilty. The Régie agreed to review its position, and will no longer suspend pension payments until a guilty verdict is handed down.

# Régie du logement

## COMPLAINTS IN 2009-2010

Once again this year, the wait for a decision by the Régie du logement was the main ground for complaints and, in one-third of cases, the Québec Ombudsman found that the complaints were substantiated. Clearly, it cannot interfere with the Régie du logement's legal processes, but it is nevertheless concerned about the Régie's ability to dispense justice within a reasonable time, given the constraints imposed on it by its legal framework.

## REDUCING THE WAITING TIME FOR DECISIONS

The waiting time for a hearing can have a considerable impact on citizens, who have the burden of proving the validity of their claims. In some cases, delays may compromise the applicant's evidence by making it difficult to trace witnesses. In addition, they may prevent a defendant from presenting a complete defence to the commissioner.

Delays may also affect the enforcement of a decision, for example when the winning party no longer lives in the dwelling concerned, or when the landlord can no longer find a former tenant to claim the money he is owed. In other cases, citizens are forced to move when they realize that the condition of their dwelling constitutes a threat to the health of its occupants, even though they have asked the landlord to comply with his or her duty to provide a habitable dwelling.

The statistics on waiting times presented by the Régie du logement in its annual report only reflect the average wait for an initial hearing. However, the Québec Ombudsman notes, from the complaints it has received, that some cases require more than one hearing, and that the wait for a second or subsequent hearing is also very long. These delays can needlessly complicate the legal process and postpone the settlement of disputes for unduly long periods.

*A tenant who had several problems with his landlady submitted an application to the Régie du logement on May 23, 2006. A hearing was finally held on June 18, 2008, but lasted only eight minutes because the liquidator had taken over the property a few weeks earlier, following the landlady's death. The case was postponed for a second time to allow the liquidator to become familiar with the file.*

*It was now more than three years after submitting his application to the Régie du logement, and the citizen was extremely worried because he had still not received notice of a new date, and the facts and evidence he wished to present had not begun to be heard. He contacted the Régie du logement on several occasions, but the officers merely told him he would have to wait his turn.*

*When the Régie du logement was informed by the Québec Ombudsman that the delay was considered unreasonable, it told the citizen that his new hearing would not take place until the spring of 2010 because only 510 days had elapsed since his first hearing, and priority was currently being given to cases that had been waiting for more than 585 days. In following up on this case, the Québec Ombudsman found that the notices of hearing had finally been sent out on January 27, 2010, and that the hearing had taken place on February 26, 2010. In other words, 618 days had elapsed between the two hearings, and 1,375 days since the tenant's application was first made.*

In March 2009, the Minister who was responsible at that time for the Régie du logement informed the Québec Ombudsman that she wished to consider the possibility of permanently renewing the relief plan for commissioners. In addition, she confirmed that two potential legislative amendment scenarios were under consideration, since she, too, was concerned about the delays in processing legal files. Unfortunately, no follow-up action was taken.

Despite a very small improvement in the waiting time for a hearing in 2008-2009, the Québec Ombudsman is still worried about the significant delays, since they deprive individuals of the possibility of obtaining justice within a reasonable time. The average waiting time for a first hearing in a general civil case is still too high, at nearly 16 months. Although the Régie was supposed to reduce the number of civil cases to 7,400 in 2008-2009, it was clearly unable to achieve this goal because there were still 18,715 civil cases waiting for hearings on March 31, 2009. With regard to other types of cases (urgent and priority civil cases, cases involving non-payment and requests to set or revise rents), the Régie du logement has not been able to fulfill the goals it set for itself in its strategic plan.

It was for this reason that, in December 2009, the Québec Ombudsman informed the Minister of Municipal Affairs, the Regions and Land Occupancy about the problem of delays in the Régie du logement. It reminded the Minister of the recommendations made in 2007-2008, concerning legislative amendments, and also expressed its concern regarding the lack of any real results in finding a permanent solution to the problem.

## ELIMINATING ABUSE

The Act respecting the Régie du logement provides that citizens may, in exceptional circumstances, ask for revocation of a decision made by the Régie du logement. When an application for revocation is filed, enforcement of the decision is immediately suspended, so that the applicant can be heard and a ruling made by a commissioner. The Act does not place a limit on the number of applications for revocation that a person may make.

Prior to September 3, 2009, when a citizen applied for revocation of a decision without valid reason, the commissioner could prevent any subsequent applications in the same case. After that date, however, a ruling by the Superior Court invalidated this procedure, on the grounds that an administrative tribunal only has the powers conferred upon it by its constituting Act, and the Act respecting the Régie du logement did not contain a provision expressly granting this power.

As a result, it is now possible for individual citizens to file successive applications for revocation, thereby suspending the enforcement of a decision indefinitely. The victims of this type of abuse must go before the Superior Court if they wish to terminate it – an onerous and costly process. Moreover, procedural abuse increases the number of hearings before the Régie du logement, at a time when the delays are already unreasonable.

*The landlord of a single apartment complained to the Québec Ombudsman that he was unable to enforce a decision by the Régie ordering the eviction of his tenant for having failed to pay the rent. At the time of the hearing, the tenant owed more than \$13,000 in unpaid rent arrears. When the landlord contacted the Québec Ombudsman, the tenant had just filed his third application for revocation with the Régie du logement, without ever having appeared before a commissioner for a hearing. The tenant finally left the apartment six months later, but the landlord had very little hope of ever being able to recover the money he was owed, which by then amounted to nearly \$23,000.*

In March 2010, the Ombudsperson intervened with the Deputy Minister for Municipal Affairs, the Regions and Land Occupancy, informing him of the need to amend the Act respecting the Régie du logement in order to confirm its power to ensure proper administration of justice.

## RECOMMENDATION

WHEREAS a legislative amendment is needed to confirm the power of the Régie du logement to ensure the proper administration of justice;

WHEREAS an administrative tribunal has only the powers granted by its constituting Act;

WHEREAS a citizen should be able to enforce a decision when he or she has won the case;

The Québec Ombudsman makes the following recommendation to the Minister of Municipal Affairs, the Regions and Land Occupancy:

That the Act respecting the Régie du logement be amended to explicitly stipulate that commissioners have the power to declare debarment<sup>1</sup> for citizens who abuse its procedures.

## Société de l'assurance automobile du Québec

Every year, the Société de l'assurance automobile du Québec (SAAQ) is one of the authorities that generates the largest number complaints for the Québec Ombudsman. Most of these complaints relate to the two main components of the SAAQ's mission, namely compensation for road accident victims and application of the Highway Safety Code.

Generally speaking, the Québec Ombudsman notes that the SAAQ is cooperative and open to resolving problems when notified of their existence. In 2009-2010, for example, a number of significant problems were settled to the Québec Ombudsman's satisfaction, improving the quality of the services available to citizens. Among other things, the positive results obtained in the following areas are worthy of note: delays in issuing medical reports, application of the Act to multiple accidents, recovery of overpayments, difficulties when accessing the SAAQ's telephone system, and recognition of proficiency examinations passed more than three years previously.

However, the Québec Ombudsman is currently examining certain other problems that are of concern to it, and which are likely to be prejudicial to citizens. They are described in the following pages.

## ROAD ACCIDENT COMPENSATION

### COMPLAINTS IN 2009-2010

Many complaints involved decisions to terminate income replacement benefits and the time taken by compensation officers to process applications from road accident victims.

<sup>1</sup> A procedure by which a citizen is prevented from re-applying for revocation of a decision by the Régie.

This year, some of the complaints highlighted a number of new, systemic problems requiring interventions from the Québec Ombudsman, including:

- inadequate programming of the computer system for recovery of monies owed;
- difficulties when accessing the automatic telephone system; and
- medical opinions issued by the SAAQ's own health professionals contrary to the opinions of medical experts commissioned by the SAAQ.

## **REDUCING THE TIME TAKEN TO ISSUE MEDICAL REPORTS**

The Québec Ombudsman has been monitoring the preparation and implementation of the SAAQ's three-year action plan to change its compensation application processing methods since 2006. Ultimately, these changes are expected to shorten the time taken to issue medical reports.

Following a recommendation by the Québec Ombudsman in its 2008-2009 annual report, the SAAQ set a number of improvement targets that will enable it to assess the impacts of its reorganization on the time taken to issue medical reports:

- As of December 31, 2009, the SAAQ has undertaken to respond within 30 days to all requests for medical reports with financial impacts for road accident victims, except those that require an assessment of after-effects.
- As of December 31, 2010, it will also respond within 30 days to requests for reports requiring an assessment of after-effects and all other types of medical reports with no financial impacts for road accident victims.

The Québec Ombudsman considers these targets to be reasonable and is satisfied with the follow-up to its recommendation. However, it will continue to monitor the situation closely, although it is confident that the SAAQ will respect its commitments.

## **APPLYING THE AUTOMOBILE INSURANCE ACT TO MULTIPLE ACCIDENTS**

In its 2008-2009 annual report, the Québec Ombudsman recommended that the SAAQ should wait until the state of health of a victim involved in multiple accidents stabilizes before making a determination concerning employment. The recommendation was applied from July 30, 2009, to cases in which decisions had not yet been made, and will be applied to all new cases.

## **ADJUSTING MECHANISMS TO THE REGULATION, TO AVOID PREJUDICE TO CITIZENS**

Except in certain specific circumstances, the Automobile Insurance Act provides that a person who receives compensation to which he or she is not entitled, or who receives too much compensation, must reimburse the surplus amount to the SAAQ. The SAAQ is permitted by regulation to recover overpayments out of monies still owing to the person concerned. If the money owed to the person is a reimbursement of expenses, the full amount of the overpayment may be held back. However, income replacement benefits may not be reduced by more than 50% (with some exceptions). Unfortunately, the SAAQ's computer system is set by default to seize the full amount of income replacement benefits, contrary to the regulation. This means that the compensation officer must enter a recovery percentage when programming the system to recover an overpayment.

*During the year, a road accident victim complained to the Québec Ombudsman that he was no longer receiving his income replacement benefit following a decision to recover an overpayment. As a result, he had no income and found himself in a difficult situation.*

*The Québec Ombudsman noted that the SAAQ had seized the full amount of the citizen's income replacement benefit because the compensation officer had failed to enter a percentage into the computer system. The SAAQ remedied the situation and resumed the citizen's income replacement benefit payments, reduced by 30% in accordance with the regulation. A lump sum amount of \$2,400 was also paid to him for the period during which he had not received benefits.*

Given that other victims were also likely to suffer similar prejudice and be harmed as a result, the Québec Ombudsman recommended that the SAAQ should introduce a mechanism to ensure that overpayment amounts recovered out of income replacement benefits were in compliance with current regulations. The SAAQ said it would make the necessary changes to its computer system in 2010. In the meantime, it has reminded staff of the need to enter a percentage in the computer system when recovering overpayments from income replacement benefits. It also undertook to carry out weekly checks, to ensure that all recovery procedures were in compliance with the regulations.

## **IMPROVING TELEPHONE ACCESS**

At the beginning of the year, a number of people complained of difficulties when accessing the SAAQ's automatic telephone system, and the time taken to speak to an information officer.

The SAAQ explained that changes to the processing of calls from Personalized Care Program clients had overloaded the telephone lines. In the period January to April 2009, the average response time when a caller pressed "0" was six minutes, or double the time of three minutes or less stipulated in the SAAQ's Service Statement.

On 19 January 2010, the SAAQ informed the Québec Ombudsman that it had hired additional information officers, and that during the period September to December 2009, it had answered 79% of all incoming calls within the time stipulated in its Service Statement (compared to 29% for the period January to April 2009). The Québec Ombudsman has periodically checked the SAAQ's telephone service, and has observed that victims now have much faster access to staff members able to answer their questions. It nevertheless invites the SAAQ to continue its efforts to ensure that all incoming calls are answered within the time stipulated in its Service Statement.

## **OVERSEEING MEDICAL OPINIONS ISSUED BY PROFESSIONALS FROM THE SERVICE DE L'EXPERTISE-CONSEIL EN SANTÉ**

The Québec Ombudsman is concerned about medical opinions issued by professionals from the Service de l'expert-conseil en santé that are contrary to the opinions of medical experts commissioned by the SAAQ. It notes a lack of transparency and fairness in the decision-making process as a result, and observes that the balance of evidence rule is not applied in many cases. For example, decisions are often made to terminate periods of disability, and hence income replacement benefits, despite opinions to the contrary from experts commissioned by the SAAQ. Moreover, the contradictory opinions can also have an impact on reimbursement of treatment expenses and the amount of compensation paid for non-pecuniary damage. Clearly, this situation leads to misunderstandings, frustration and injustices for road accident victims.

*At the SAAQ's request, an orthopedic surgeon examined a road accident victim and concluded that he was suffering from temporary functional limitations that prevented him from holding down the job he had before the accident. A physiotherapist from the SAAQ's Service d'expertise-conseil en santé consulted the expert's report but felt the victim's functional limitations were not incompatible with his employment, and that he was in fact fit for work. The SAAQ issued a decision terminating the victim's period of disability and hence his income replacement benefits.*

*The Québec Ombudsman intervened, asking the SAAQ to review the case on the basis that the decision did not consider the balance of evidence. Following the review, the SAAQ acknowledged that the victim was in fact unfit for his pre-accident employment and resumed payment of the income replacement benefits. The victim had been without benefits for a month.*

The Québec Ombudsman feels the SAAQ should be more stringent in overseeing the medical opinions issued by its health professionals when they disagree with the opinions of commissioned expert physicians, and has recommended the introduction of a written procedure that provides for discussion between the SAAQ physician and the outside expert when the two do not agree. If the disagreement persists after the discussion, the Québec Ombudsman would like the SAAQ to obtain a medical assessment from a second expert. In all cases, if a health professional who is not a physician disagrees with the opinion of the commissioned expert, the case should be handed over to a physician from the Service de l'expertise-conseil and the above procedure should be applied.

Based on this recommendation, the SAAQ has introduced a medical assessment process. The Québec Ombudsman will be examining this new process during the summer of 2010, to see whether it provides an adequate structure and prevents prejudice such as that observed in the case described above.

## **QUESTIONING THE USE OF TAILING AND VIDEO SURVEILLANCE OF ROAD ACCIDENT VICTIMS**

In the last two years, the Québec Ombudsman has received a number of complaints from road accident victims whose benefits were terminated following an investigation in which the SAAQ used tailing and video surveillance. The sudden appearance of this type of complaint, along with the observations that emerged from our analysis and the significant impact on the victims concerned, led the Québec Ombudsman to launch a systemic investigation. The investigation began in the winter of 2010, and will focus on the SAAQ's investigatory and decision-making powers in connection with the practice of tailing.

## PROPER PROCESSING OF CITIZENS' FILES

The Québec Ombudsman intervened with the SAAQ in a number of situations in which road accident victims suffered prejudice as a result of the way in which their files were processed.

*A road accident victim contacted the Québec Ombudsman because he had not heard from the SAAQ since submitting medical reports demonstrating that he was unfit for work and that his physical condition had worsened. The Québec Ombudsman's review revealed that the compensation officer, after reading all the medical reports, felt the victim's physical condition had not worsened and that he was in fact fit for work. The officer did not request an opinion from one of the SAAQ's consulting physicians, and did not contact the citizen to inform him of these findings.*

*The Québec Ombudsman intervened with the SAAQ after consulting the various medical reports and observing that they included a new diagnosis. It asked for the file to be submitted to a consulting physician for an opinion, and the SAAQ agreed to do this. Based on the physician's opinion, it acknowledged that the victim's condition had in fact worsened and he was unfit for work as a result. Accordingly, it paid income replacement benefits along with lump-sum compensation of nearly \$105,000 for non-pecuniary damage.*

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*A man was involved in a road accident on August 15, 2003. On October 24, 2005, the SAAQ issued a decision stating that he had been fit to return to work since August 14, 2005, and terminated his income replacement benefits. The after-effects from the accident had not been assessed at that time.*

*In 2009, an orthopedic surgeon commissioned by the SAAQ examined the victim to assess his permanent after-effects, and concluded that they were significant. The compensation officer authorized payment of compensation for non-pecuniary damage, but did not reassess the victim's fitness for work, established by the SAAQ in 2005.*

*The Québec Ombudsman intervened with the SAAQ, asking for a new assessment of the victim's fitness for work. The assessment concluded that the victim was in fact unfit for work, and the SAAQ authorized resumption of his income replacement benefits retroactively to August 15, 2005, with interest. The victim received a retroactive payment of \$77,250 plus interest covering the period August 15, 2005 to October 15, 2009. The SAAQ also resumed payment of income replacement benefits on October 16, 2009.*



## HIGHWAY SAFETY CODE

### COMPLAINTS IN 2009-2010

The complaints received in 2009-2010 in connection with the Highway Safety Code were concerned mainly with the conditions for obtaining and keeping a driver's licence:

- suspension;
- the requirement to produce a medical report or evaluation from an addiction rehabilitation centre;
- failing the practical portion of the proficiency examination;
- gradual access to driving.

### CHANGING THE COMPUTER SYSTEM TO REMOVE REQUIREMENTS NOT STIPULATED BY LAW

For a number of years, the Québec Ombudsman has observed that complaints concerning the application of the Highway Safety Code often relate to the programming or limitations of the SAAQ's computer systems. Among other things, the problems encountered by complainants include:

- the requirement, before taking the practical portion of the proficiency examination, to redo the theoretical portion if it was passed more than three years previously, even where the candidate has a valid learner's licence;
- retroactive billing of driver's licence fees for periods during which the licence was suspended.

In 2008-2009, following interventions by the Québec Ombudsman, the SAAQ undertook to make a number of changes to its computer systems. However, the scope of these changes, along with the many amendments to the Highway Safety Code in recent years, delayed the implementation of the modifications. The Québec Ombudsman, concerned by the impacts of the delay, reiterated its request.

In December 2009, it received confirmation that the procedure leading to the practical portion of the proficiency examination had been reviewed, with the result that learner's licence holders will no longer need to redo the theoretical portion of the examination even if it was passed more than three years previously. With regard to retroactive billing, the SAAQ has allocated the budgets required to make the necessary changes to the computer system. Accordingly, from the fall of 2010 onwards, the system will require service centre employees who process driver's licence renewals after the expiry date to check whether the licence was in fact suspended during the period in question. If so, options will be available to ensure that the holder does not pay the fee for the period during which the licence was suspended.

The Québec Ombudsman is satisfied with these corrections, since they have removed requirements that were not stipulated by law. However, because they are piecemeal changes only, they may, in some cases, make certain administrative procedures more complicated. In its last annual report, the Québec Ombudsman noted that the SAAQ's computer systems need a complete overhaul if the agency is to provide good quality services in accordance with its Service Statement. The SAAQ says

it is aware of the need for an overhaul, and plans to perform one in 2011. In the meantime, the Québec Ombudsman will continue to intervene whenever programming issues or system limitations cause problems for SAAQ clients.

## THE DRIVERS' EVALUATION PROGRAM

In past years, the Québec Ombudsman has reported complaints concerning the Drivers' Evaluation Program<sup>1</sup>. The Program was introduced in 1997 by the Société de l'assurance automobile du Québec and the Association des centres de réadaptation en dépendance du Québec<sup>2</sup> to evaluate drivers found guilty of offences involving impaired driving and drivers with alcohol or drug addiction problems or prescription medication abuse problems. When examining these complaints, the Québec Ombudsman discovered a number of difficulties that led it to undertake an analysis of the entire Program.

The purpose of the analysis was to see whether the Program's evaluation protocols were appropriate for identifying the potential risk posed by drivers and:

- changing their behaviour if necessary;
- ensuring that the SAAQ is in a position to make informed decisions following unfavourable evaluations;
- ensuring that citizens have access to proper channels to object to the decisions where necessary.

Accordingly, in 2007, the Québec Ombudsman commissioned an outside researcher to determine whether the summary evaluation protocol used to identify potential repeat offenders was in fact the appropriate screening tool<sup>3</sup>.

Although the Québec Ombudsman notes that real progress has been made since the beginning of its intervention, mainly with regard to the grounds for decisions and the recourses available to citizens, much still remains to be done. At the end of the analysis, and based on the findings of the outside researcher, the Québec Ombudsman made seven recommendations to the SAAQ, concerning:

- the need to conduct quality control of evaluators;
- the urgent need for a review of the entire Program;
- the importance of providing alternative evaluation methods for citizens who wish to contest an unfavourable summary evaluation.

The SAAQ welcomed all the Québec Ombudsman's recommendations and prepared a follow-up plan and timeframe. The Québec Ombudsman will be paying particular attention to the implementation of the various measures contained in the follow-up plan.

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<sup>1</sup> Québec Ombudsman's Annual Reports: 2003-2004, p. 56-57; 2004-2005, p. 63-64; 2007-2008, p. 154-155 and 158-159.

<sup>2</sup> Before 2008, the Association was known as the Fédération québécoise des centres de réadaptation pour personnes alcooliques et autres toxicomanes.

<sup>3</sup> Québec Ombudsman's 2007-2008 Annual Report, p. 154.

## PARLIAMENTARY WATCH - STRUCTURING THE FEES FOR DRIVING COURSES

Bill 42, An Act to amend the Highway Safety Code and the Regulation respecting demerit points, was assented to in December 2007. Among other things, it required all new drivers to take a driving course in order to obtain a licence to drive a passenger vehicle, in accordance with the terms and conditions set by Government regulation.

In 2009-2010, the Québec Ombudsman intervened in respect of a draft regulation and a new bill following on from Bill 42.

Published in the Gazette officielle du Québec on June 30, 2009, the draft regulation amending the Regulation respecting licences requires candidates who apply for their first driver's licence to take 39 hours of theoretical and practical courses. This is significantly more than the previous requirement for 12 hours of courses after eight months of holding a learner's licence. The course content has been revised accordingly.

Given these new conditions, the Québec Ombudsman was surprised that the draft regulation had nothing to say about fees. Would course fees be increased substantially as a result? If so, the increase was likely to prevent some people from obtaining a driver's licence, especially young people from underprivileged communities. This would be contrary to the goal of gradual access to driving, which targets young drivers who are over-represented in offence and accident statistics. On August 10, 2009, the Ombudsperson wrote to the Minister of Transport, requesting a regulation to structure the fees payable for the new courses.

On November 11, 2009, the Minister of Transport tabled Bill 69, an Act to amend the Highway Safety Code as regards driving schools, in which she confirmed her intention to set minimum and maximum course fees by regulation. The bill granted the Government the power to make such a regulation.

However, it also limited the Government's regulatory power to courses required for a licence to drive a passenger vehicle, and excluded courses for motorcycles and, eventually, mopeds. It also exempted the first regulation from the requirement to pre-publish the minimum and maximum course fees, as stipulated in the Regulation respecting licences. As a result, the fees would come into force immediately upon publication, with no opportunity for MNAs or members of the general public to give their opinions on the proposed amounts.

The Ombudsperson asked for the exclusion concerning motorcycle and moped courses to be removed from the draft bill, along with the pre-publication exemption. In addition, she recommended that the Minister make known her intentions regarding the proposed amounts of course fees, so that MNAs would be able to make an informed decision concerning Bill 69.

The Québec Ombudsman was successful in respect of the regulation concerning fees for motorcycle and moped courses. The pre-publication exemption for driving course fees was maintained, but MNAs were able to discuss the amounts proposed by the Minister, and after the bill was adopted, a ceiling of \$825 was set in the regulation enacted pursuant to the amended bill.

## DEMONSTRATING FLEXIBILITY IN RESPECT OF A SPECIFIC CATEGORY OF CANDIDATES FOR THE LEARNER'S LICENCE

New conditions for access to driving came into force on January 17, 2010. Since then, everyone who applies for their first passenger vehicle driver's licence must take 39 hours of theoretical and practical courses. However, this requirement does not apply to people who obtained their learner's licences before January 17, 2010, pursuant to the regulation.

Shortly after the new conditions came into force, the Québec Ombudsman received complaints from candidates who had passed the theoretical portion of the proficiency examination before January 17, 2010, but had not paid their licence fees before that date. In many cases, the complainants were young people who did not know they needed to pay the \$60 fee for their licence on the same day as their proficiency examination. It was only when they tried to pay the fee in the following weeks that they learned they would have to take the obligatory courses as a result of the delay. The Québec Ombudsman felt the impact on this group was prejudicial because they would not necessarily be able to afford the \$825 fee for the driving course.

In March 2010, the Québec Ombudsman therefore recommended that the SAAQ should demonstrate a certain amount of flexibility by granting this group the right to obtain their learner's licence in exchange for immediate payment of the fee, with no obligation to take the course. In response to this recommendation, the SAAQ decided to issue learner's licences to 744 drivers, giving them until June 30, 2010, to pay the fee and waiving the obligation to take the driving course.

## STRUCTURING CERTAIN PROVISIONS CONCERNING PUBLIC SAFETY

In March 2010, the Québec Ombudsman submitted comments on Bill 71, an Act to again amend the Highway Safety Code and other legislative provisions.

The bill introduces temporary licence suspensions for drivers with a blood alcohol concentration of 50 mg of alcohol in 100 ml of blood. It also gives the Government the power to make a regulation requiring cyclists 12 years of age or under to wear a protective helmet. Clearly, the Québec Ombudsman is aware of the benefits of this latter measure in ensuring the safety of cyclists. However, it also drew the legislator's attention to the applicability of such a regulation, since the bill does not contain any penal provisions or regulatory powers to impose penalties on parents whose children fail to comply with the requirement. It also questioned the age limit stipulated in the bill, on the grounds that the provision would be beneficial to all cyclists.

Under the provisions of the bill, municipalities may waive the requirement for a pedestrian supervisor to walk in front of any snow removal equipment weighing more than 900 kilograms during snow removal operations in residential areas where the speed limit is 50 kilometres per hour or less. The Ombudsperson recommended that if this new regulatory power could not be structured, it should at least be subject to the power of disallowance by the Ministère des Transports – in other words, the power to prevent the implementation of a by-law if it does not uphold the spirit of the law in certain specific circumstances – as is the case for other municipal by-laws respecting speed limits and the use of off-road vehicles.

The Minister of Transport accepted the recommendation, and intends to submit an appropriate amendment when the bill is reviewed by the parliamentary standing committee. According to the Ministère des Transports – a view which the Québec Ombudsman shares – such an amendment will provide better support for municipalities in exercising their regulatory power. Detailed examination of the bill had not begun as of March 31, 2010.

The Québec Ombudsman's interventions are available on the Website at [www.protecteurducitoyen.qc.ca](http://www.protecteurducitoyen.qc.ca), under "Cases and Documentation".

## Tribunal administratif du Québec

### COMPLAINTS IN 2009-2010

The Tribunal administratif du Québec is the authority responsible for ruling on cases brought by citizens against decisions made by the public service. Although the Québec Ombudsman does not have jurisdiction over the Tribunal's decisions, it can intervene on issues relating to administrative operations and is concerned by one problem in particular, namely the significant increase in the number of automobile insurance cases brought before the Tribunal.

### DEALING WITH THE GROWING NUMBER OF APPLICATIONS

In its 2008-2009 annual report, the Québec Ombudsman noted that the solutions proposed by the Société de l'assurance automobile du Québec for two major problems, namely the delays in forwarding administrative records of road accident victims to the Tribunal and delays in processing applications for administrative reviews, had led to a considerable increase in the number of automobile insurance cases before the Tribunal administratif du Québec. It felt the Tribunal needed to take steps to avoid delays in processing cases and maintain its ability to achieve the goals of accessibility, diligence and quality set by the Act respecting administrative justice.

The Québec Ombudsman continued to monitor this situation in 2009-2010. It found that the Tribunal was aware of the problem caused by the increase in its inventory of automobile insurance cases and, in 2008, had introduced measures to address this increase. However, despite all these efforts, indicators such as the average processing time and the inventory of cases clearly showed that the situation had deteriorated:

- the inventory of cases increased by 20%, from 7,161 on March 31, 2007 to 8,618 two years later;
- the average processing time was extended by two months during the same period (from 19 to 21 months).

In 2009, the Tribunal continued its efforts and introduced a series of measures to reduce the size of its automobile insurance inventory (e.g. characterisation of cases, systematic conciliation for different types of cases, and the appointment of coordinating judges). The impact of these measures will not be known for several months. However, we note that, as of March 31, 2010, the number of cases in the inventory and the average processing time had both still increased.

This matter is a cause for concern because citizens who approach the Tribunal often find themselves in precarious situations. In many cases they are facing financial difficulties following a decision to refuse or terminate their income replacement benefit, and they are hoping for a favourable ruling from the Tribunal. The Tribunal should therefore be in a position to process and resolve applications as quickly as possible.

The following elements are of particular concern to the Québec Ombudsman.

Although the Québec Ombudsman is well aware that the situation is not entirely the Tribunal's fault – especially in the case of requests for postponement made by the parties – it nevertheless deplores the fact that the Tribunal is not able to identify the delays for which it is directly responsible due to the fact that its computer system does not allow it to break down the average processing delay. In addition, the Québec Ombudsman is confused by the absence of annual targets for reducing the inventory of automobile insurance cases, and notes that the Tribunal has also failed to set annual and medium-term goals for reducing its processing times.

The Tribunal needs sufficient resources if it is to deal with the increase in its inventory of cases. However, the Québec Ombudsman notes that the number of administrative judges assigned to the social affairs section has remained virtually unchanged since 2003, even though the inventory of automobile insurance cases has more than doubled, from 4,399 cases in 2003 to 9,359 cases as of March 31, 2010. In addition, fifteen administrative judge positions were vacant on March 31, 2010.

In view of the foregoing, the Québec Ombudsman will continue its investigation in order to review the situation in depth and, where applicable, will make recommendations for improvements.

