



## PUBLIC SERVICE

This section presents the Québec Ombudsman's findings on certain government departments and public agencies that fall within its jurisdiction. These findings are sometimes illustrated by individual, group, or business complaints. It should be noted that the complaints presented were most often selected based on how well they represent the deficiencies described and how well-founded the reasons for the complaints are.

The number of complaints about the public service has remained relatively stable since 2006. Although Québec government departments and public agencies have demonstrated a real desire to meet the public's needs, a large percentage of these complaints illustrate worrisome tendencies, including excessive inflexibility in applying rules, which also runs counter to the need for government services to be adapted to vulnerable populations.

### **ACHIEVING FAIR APPLICATION OF REGULATIONS: AN INCREASINGLY ARDUOUS PROCESS**

Among the trends observed, the Québec Ombudsman notes that more and more often, it must intervene repeatedly before obtaining a corrective measure in the interest of fairness. The notion of fairness here refers to the need, in certain cases, for rules to be interpreted more flexibly so that a fair decision can be made.

It can be assumed that this is due in part to management constraints that limit budgets and staff numbers and increase workloads. Of course, the Québec Ombudsman fully supports the desire to manage efficiently. Yet there is no justification for government departments and public agencies—particularly those that have a financial impact on citizens—to delay in making necessary corrections or to apply their own rules in unfairly restrictive ways. In such cases, files are pushed through quickly, mistakes are made, and citizens have difficulty eliciting the flexibility their situations require.

### **CONCERTED ACTION: SILOS PERSIST**

"Silo working" within the government apparatus continues to be a widespread phenomenon. Compartmentalized action is particularly problematic for those who must do business with a number of government departments and public agencies or different areas of a single organization. In order for services to improve, there must be more integrated and better coordinated action.

## ADAPTING SERVICES TO NEEDS: MORE CONSIDERATION FOR VULNERABLE POPULATIONS IS NEEDED

Population aging is putting increased pressure on the government. The same can be said of a number of social issues that aggravate vulnerability: mental illness, illiteracy, and poverty are but three examples. Public services must take these fragile populations' needs into account more fully.

This section of the annual report:

- primarily relates situations with a collective impact; the corrective measures obtained will therefore benefit anyone who might have a similar problem;
- reports new or recurring problems that are particularly worrisome.

Government departments and public agencies are presented in alphabetical order:

- Commissaire à la déontologie policière;
- Commission administrative des régimes de retraite et d'assurances;
- Curateur public;
- La Financière agricole du Québec;
- Ministère de la Culture, des Communications et de la Condition féminine;
- Ministère du Développement durable, de l'Environnement et des Parcs;
- Ministère de l'Emploi et de la Solidarité sociale;
- Ministère de la Famille et des Aînés;
- Ministère de la Justice;
- Ministère de la Sécurité publique;
- Régie de l'assurance maladie du Québec;
- Régie du logement;
- Régie des rentes du Québec;
- Revenu Québec (Agence du revenu du Québec as of April 1, 2011);
- Société de l'assurance automobile du Québec;
- Tribunal administratif du Québec.

# Commissaire à la déontologie policière

## COMPLAINTS IN 2010–2011

The number of complaints received by the Québec Ombudsman about the Commissaire à la déontologie policière (Police Ethics Commissioner) in 2010–2011 is slightly lower than in previous years. Complaints mainly concern the handling of requests, wait times, and decisions handed down by the Commissioner.

## FOLLOWING UP ON THE QUÉBEC OMBUDSMAN'S REQUESTS AND RECOMMENDATIONS

Over the past year, the Québec Ombudsman's interventions with the Commissioner have not produced the anticipated outcomes. In a number of cases, the agency's response showed a lack of cooperation with the Québec Ombudsman's mandate, as well as lapses in relation to the Commissioner's constituting legislation (the *Police Act*) and its obligations arising from the *Act respecting administrative justice*.

As of the writing of this annual report, the Québec Ombudsperson was in the process of notifying the Commissioner via letter of her dissatisfaction with the agency's lack of cooperation, in addition to proposing other ways to ensure better handling of citizens' complaints.

The following two complaints are representative of the shortcomings observed.

To provide an understanding of the facts, here are the steps in the complaint process arising from the *Police Act*:

- when a citizen wishes to complain about a police officer, he may contact the Police Ethics Commissioner;
- if the complaint is deemed admissible, it must first be submitted to a conciliation process to help the person and police officer(s) settle their dispute;
- a complainant can refuse to take part in the conciliation process if he does not believe it is the appropriate process for the case at hand: the complainant must then explain his reasons in writing to the Commissioner within one month;
- if the Commissioner rejects the reasons cited, he informs the complainant of the right to have this decision reviewed and explains the applicable procedures;
- if the conciliation process fails (e.g., the parties fail to come to an understanding), the conciliator reports the outcome to the Commissioner, and a decision is made as to whether to investigate or close the file.

### ***No—period***

*An individual who was summoned to a conciliation session by the Commissioner was opposed to taking part and explained his reasons, as stipulated by the Police Act. Following this, he learned that a conciliator had been assigned by the Commissioner to handle his file. The person assumed that his reasons for opposing the conciliation had been rejected. He contacted the Commissioner to learn the reasons for the decision. After failing to receive a response, he complained to the Québec Ombudsman. Following its investigation, the Québec Ombudsman asked the Commissioner to respond to the man in accordance with the Police Act and the Act respecting*

administrative justice, both of which stipulate that the Commissioner must provide a justified response. However, the Commissioner believed he had no obligation to respond to the man and indicated he did not intend to act on the Québec Ombudsman's request.

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#### *An agreement to disagree*

*A man complained about the following facts: after a conciliation session, he stated he was pressured to sign a "post-conciliation settlement" form. Although hesitant at first, he finally agreed to sign the form after the conciliator wrote that the parties had "divergent versions."*

*Based on the Québec Ombudsman's interpretation, the foregoing was equivalent to stating that the conciliation had not succeeded in producing the desired reconciliation between the parties. Yet rather than concluding the conciliation had failed, the man's signature was required and the exercise was considered successful. His complaint was therefore deemed to be withdrawn.*

*The Commissioner refused to provide any explanation whatsoever to the Québec Ombudsman about the required signature allegation or the "divergent versions" note. The Québec Ombudsman therefore had no choice but to observe that, after the conciliation, the conciliator settled for indicating that the parties agreed . . . to disagree, which obviously does not achieve the goals of conciliation. The conciliator's report therefore should have provided an account of the dispute and been forwarded to the Commissioner so he could decide whether there was reason to delve further into the investigation prescribed by legislation in such situations. The Québec Ombudsman submitted its conclusions and recommendations to the Commissioner, who stated he did not intend to follow up on its request.*

*In these cases and similar situations, the Québec Ombudsman sincerely regrets the types of decisions that have been made by the Commissioner. It expects the Commissioner will change its view in relation to its service mission and its recognition of the Québec Ombudsman's role and intends to pursue its initiatives to this end.*

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## Commission administrative des régimes de retraite et d'assurances

### COMPLAINTS IN 2010–2011

In one year, the number of complaints received by the Québec Ombudsman about the Commission administrative des régimes de retraite et d'assurances (CARRA) increased sharply, and substantiated complaints went from 9 in 2009–2010 to 147 in 2010–2011.

Such a change clearly indicates that problems experienced by CARRA beneficiaries are far from disappearing. Given the large number of individuals affected and how important it is for current and future pensioners to be able to obtain the services and information to which they are entitled, the Québec Ombudsman is still very concerned about the situation and expects the necessary corrective measures to be taken immediately.

Complaints mainly concern the time it takes CARRA to:

- process retirement pension applications;
- process survivor's pension applications;
- process contribution transfer applications;
- answer telephone calls;
- refund contributions;
- readjust retirement pension files;
- regularize duplication (correct contributions paid by anyone who, in a given year, had more than one job, which may cause incorrect calculations of annual contributions payable, necessitating a refund);
- produce statements of contribution;
- process complaints.

#### PROCESSING REQUESTS IN A REASONABLE AMOUNT OF TIME

Wait times, which are a cause of insecurity and stress for some, are mainly related to the modernization of computer system processes. They may cause significant hardship, including:

- difficulties meeting financial obligations;
- the need to resort to credit (family or institutional);
- the need to review financial planning.

Pending applications that had accumulated before the introduction of the new computer system in June 2010 and the implementation of new processes and systems led to a rise in inventories and processing delays for CARRA.

In the past year, the number of pending files (which was stable from 2007 to 2009) went from:

- 5,500 to 14,423 for buy-back applications;
- 3,700 to 6,720 for pension applications;
- 1,800 to 1,737 for death-related pensions;
- 2,000 to 6,844 for pension estimates.

In 2010–2011, the Québec Ombudsman paid special attention to these wait time issues and to the measures that CARRA established in response:

- in September 2010, CARRA established processing priorities for pending applications, which helped shorten certain delays. However, problems persist for many citizens;
- in February 2011, CARRA's board of directors approved an action plan to gradually reduce the file surplus and processing times by the end of 2011. The Québec Ombudsman believes the plan reflects a desire to make corrections, although it involves certain risks, particularly with regard to the computer system and staff retention.

The Québec Ombudsman also notes the concrete efforts made by CARRA to increase the amount of information provided to contributors and beneficiaries as well as the transparency of its actions. Its updated online table of processing times is a noteworthy initiative. The information disseminated will, however, need to meet employers', contributors', and beneficiaries' needs throughout the action plan implementation period.

## RECOMMENDATIONS

WHEREAS the number of complaints received by the Québec Ombudsman concerning wait times at the Commission administrative des régimes de retraite et d'assurances has increased considerably in the past year;

WHEREAS these wait times may cause significant hardship;

The Québec Ombudsman recommends that the Commission administrative des régimes de retraite et d'assurances:

- take measures to reduce the surplus of files to be processed by the end of fall 2011, by increasing processing capacity, improving proficiency with the new computer system, speeding up pending application processing, and any other pertinent measures;
- continue its efforts to regularly inform contributors and beneficiaries about wait times for various services;
- inform the Québec Ombudsman quarterly of the ongoing results of its action plan beginning on September 30, 2011.

## COMMENTS FROM CARRA

"We acknowledge the difficulties encountered since the new processes and systems were introduced. However, CARRA has taken the necessary steps to ensure its beneficiaries' income is maintained and its clients' rights are protected—from the moment an application is received.

"In addition, an action plan that specifically aims to reduce the number of pending applications and shorten processing times is underway. It is part of a comprehensive plan focused on client expectations that was set up to restore service levels by the end of 2011. A number of concrete actions were taken, including the following:

- in 2010, we established processing priorities for pending applications to ensure income continuity for beneficiaries (pensioners, survivors, etc.) and protect client rights;
- staff numbers were increased, particularly in client services, to process pending applications and shorten the time it takes to answer telephone calls;
- given that we highly value information quality, we have made improvements to client correspondence in response to comments received from clients;
- we have introduced continuing education on updated work processes and tools, as well as improvements to our computer solution that will gradually allow us to increase productivity;
- internal and external communications are planned to ensure consistency and transparency with staff, clientele, and governing bodies."

## SHORTENING TELEPHONE WAIT TIMES

Since September 2010, a number of individuals have complained about difficulties accessing CARRA's telephone system and the time it takes to reach information staff. Complaints increased in early 2011, a sign that the situation is worsening.

According to CARRA, processing times, technical telephone system problems, and the mass mailing of deposit statements in a new form have led to a significant rise in calls and overloaded telephone lines. The Québec Ombudsman notes that CARRA plans to remedy the situation, in particular by increasing the number of employees assigned to answer telephone calls.

The Québec Ombudsman encourages CARRA to bring telephone wait times as close as possible to the standard prescribed by the Centre d'expertise des grands organismes (two minutes or less, with 80% of calls answered within 20 seconds).

The Québec Ombudsman recognizes the methods CARRA has announced to fully normalize the processing and telephone wait time issues. It plans to closely monitor progress on the situation.

## RECOVERING OVERPAYMENTS IN ACCORDANCE WITH THE ESTABLISHED RULE AND RESPECTING PENSIONERS' FINANCIAL PLANS

To ensure beneficiaries receive their pension payments when they retire, CARRA may advance funds. Subsequently, when the confirmed pension is calculated, it may be lower than the first estimate. CARRA then proceeds to deduct the overpayments from the monthly payments. According to the applicable regulation, this compensation may not exceed 10% of the monthly payment amount. In the past year, the Québec Ombudsman has apprised CARRA of cases in which the recovery amount exceeded this percentage, causing real financial headaches for those affected.

In the explanations it provided, CARRA asserted that the new computer system had not been programmed to automatically apply the compensation limit. Recognizing its error, the agency set up a system to identify, on a monthly basis, the individuals whose payments will be subject to compensation deductions. CARRA has taken responsibility for contacting these beneficiaries by telephone to explain the overpayment recovery mechanism, inform them of the 10% rule, and offer to sign a recovery agreement of shorter duration if they would like.

## FOLLOWING UP ON THE QUÉBEC OMBUDSMAN'S RECOMMENDATION

Last year the Québec Ombudsman recommended that CARRA do what was needed to have the *Regulation respecting the application of the Act respecting the Government and Public Employees Retirement Plan* amended to include the option to forgive debts arising from errors that beneficiaries cannot reasonably detect. In response, CARRA made a commitment to diligently take the statutory steps to have the regulation amended as suggested, in accordance with the prescribed process. Although CARRA did take the necessary steps, as at March 31, 2011, the regulation had not been amended. The Québec Ombudsman therefore reiterates this recommendation and will pay special attention to how this matter progresses over the next year.

### *A late claim and an unfair calculation*

*A worker had been contributing to CARRA for a number of years. In 1995, CARRA sent him a cheque, indicating it consisted of a refund of a \$657.46 overpayment for the year 1990 (\$417.88 in overpayments and \$239.58 in interest).*

*Twelve years later, CARRA claimed the amount from him, asserting that there had never been any overpayment. The man paid the amount, but contested the amount and interest claimed through review and arbitration, emphasizing the time that had elapsed between the overpayment and the claim. The arbitrator decided in his favour and CARRA repaid him the sum. However, CARRA notified him that, for the year in question, his contribution would be cut by the same amount (\$657.46). Such a calculation would affect the total retirement pension amount and penalize the man.*

*The Québec Ombudsman asked CARRA to consider the amount it remitted following the arbitrator's decision as contributions made by the client for the year 1990. CARRA agreed but admitted no fault.*

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## Curateur public

### COMPLAINTS IN 2010–2011

A number of complaints submitted to the Québec Ombudsman in 2010–2011 about the Curateur public concern inappropriate case management. The Curateur public does not always provide its clientele with the required support, which is worrisome given the great vulnerability and dependence of those under protective supervision or for whom the agency is responsible. Moreover, the number of individuals who need protection is increasing due to population aging. The challenge is therefore to properly represent this growing clientele in spite of limited resources.

### BETTER TREATMENT FOR THOSE ELIGIBLE FOR LEGAL AID

In its 2009–2010 annual report, the Québec Ombudsman focused on the situation of persons under the Curateur public's protection who are eligible for legal aid. It emphasized the unfair nature of fees charged to their succession when protective supervision is initiated with formalities being undertaken by the Curateur public itself (there are no fees when the formalities are carried out by a third party). The Québec Ombudsman recommended that the Curateur public step in to have the *Legal Aid Regulation* amended by the Ministère de la Justice so that those concerned will not be penalized in this way. To date, the regulation has not been amended despite the Curateur public's involvement.



The Curateur public recognized that those eligible for legal aid were unfairly impoverished by this situation and agreed to pay the protective supervision initiation fees out of its budget as of September 2009. The Québec Ombudsman is satisfied with this initiative.

#### **FOLLOWING UP ON THE QUÉBEC OMBUDSMAN'S RECOMMENDATION**

Last year, the Québec Ombudsman recommended that the Curateur public cease including the Shelter Allowance amount in its calculation to determine whether fees may be charged. The Curateur public, recognizing the importance of establishing a fair fee structure, agreed to propose a new fee schedule during the year. The Québec Ombudsman notes a delay in following up on this recommendation and is still awaiting the results from the fee-review committee set up by the Curateur public.

#### **GIVING PROPER ATTENTION TO THOSE REPRESENTED**

Individuals represented by the Curateur public regularly complain about the way it handles their cases: lack of attention, unjustified refusals, errors in information sent, and wait times.

##### ***A precarious situation settled . . . some months later***

*A woman whose spouse was represented by the Curateur public tried to get reimbursed for expenses she herself incurred to support him. However, every time she spoke with the Curateur public, various reasons were given for the delays, including research into the spouse's succession or the fact that the case was not a priority.*

*The Québec Ombudsman's investigation revealed that the man had previously appointed his son as his mandatary in the event of incapacity. However, the son had failed to assume his responsibilities when it came time to provide for his father's needs. Upon revocation of the mandate, the Curateur public took responsibility for the man, clearly recognizing that his material and financial situation required urgent intervention.*

*Although it had initially deemed the situation urgent, the Curateur public subsequently treated it as though it were not a priority. The Québec Ombudsman had to repeatedly pressure the Curateur public to examine the woman's file. After 14 months, she finally received the \$62,000 she had claimed.*

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##### ***An unjustified wait due to the Curateur public's failure to follow up on a judgment***

*A man had custody of his grandson. A judgment granted him over \$12,000 in support arrears, the amount owed by a debtor who is under public curatorship. For this reason, the arrears had to be paid by the Curateur public, which was given 30 days to execute the judgment. In addition, child support was increased from \$300 to \$592 a month as of July 1, 2009. However, the Curateur public delayed acting on the judgment and the grandfather did not receive what was due, nor could he find out from the Curateur public what was happening with his file.*

*Following the Québec Ombudsman's intervention, the Curateur public complied with its obligations under the judgment and paid the Direction de la perception des pensions alimentaires the stipulated amount. It also adjusted the support amount after four months, in accordance with the judgment.*

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#### ***A young orphan's inheritance recovered after a three-year delay***

*A 24-year-old man died in September 2005 and left his one-year-old daughter a mortgaged house. He had a \$53,000 mortgage life insurance policy. Since no one claimed the amount from the insurance company and no mortgage payments were made, the house was seized and then sold by the lending bank.*

*The Curateur public became the provisional administrator of the child's property in December 2006, but the case stagnated at the Curateur public for three years.*

*The Québec Ombudsman and a member of the child's family pressured the Curateur public to reopen the young orphan's file and do what was needed to recover the life insurance proceeds. Since the insurance company did not follow up on its requests, the Curateur public had to consider taking the case to court in July 2009. Negotiations went on for another year before the insurance company agreed to pay the \$53,000 that was owed to the girl, who by this time was six years old.*

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#### ***A lack of empathy and responsibility toward a person represented by the Curateur public***

*An incarcerated man called the Curateur public to ask for a coat because he was about to be released from prison; he had been imprisoned in the summer and did not have any cold weather clothing. The Curateur public refused to grant his request, arguing that it was the detention facility's responsibility to provide one. The detainee asked the Québec Ombudsman to intervene. The Québec Ombudsman explained to the Curateur public that it was the Curateur public's responsibility to help the inmate ask the detention facility for a coat since it represented him. The Curateur public finally agreed to do so, and the request was granted.*

## **REQUESTING THE QUÉBEC OMBUDSMAN'S INTERVENTION AS NEEDED**

The Curateur public sometimes calls on the Québec Ombudsman to help those it represents. When the Québec Ombudsman sees that a government department or public agency decision is unreasonable, it recommends corrective action. This was the case when the Ministère de l'Emploi et de la Solidarité sociale repeatedly refused to pay full last-resort financial assistance to a woman represented by the Curateur public. The Québec Ombudsman's intervention resulted in payment of the amount owed to this incapacitated person (see also page 39 of this annual report, in the "Ministère de l'Emploi et de la Solidarité sociale" section). In another case, the Québec Ombudsman acted to have the health and social services network examine the case of a man under protective supervision on a priority basis. The man had been residing for four years at a health facility whose services did not suit his condition (also see page 88 of this annual report, in the "Age-related loss of independence" section).

## THE QUÉBEC OMBUDSMAN'S RESPONSE TO BILLS AND DRAFT REGULATIONS

The Québec Ombudsman commented on Bill 83, the *Act to provide a framework for mandatory state financing of certain legal services*. Its statement can be found on page 116 of this annual report, in the "Parliamentary Watch Report" section.

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# La Financière agricole du Québec

## COMPLAINTS IN 2010–2011

The number of complaints received by the Québec Ombudsman regarding La Financière agricole du Québec has been relatively stable over the years and was around 15 in 2010–2011. The main areas of dissatisfaction are as follows:

- the application of the Farm Income Stabilization Insurance Program, in particular, penalties imposed after beneficiaries refused to participate in the production cost survey;
- La Financière agricole's use of data collected by Agri-Traçabilité Québec.

## APPLYING THE RULE WITH DISCERNMENT AND UNDERSTANDING

Farmers that benefit from the Farm Income Stabilization Insurance Program are required to take part in an economic study if requested by the Centre d'étude sur les coûts de production en agriculture. A complaint received by the Québec Ombudsman revealed an unreasonable application of this rule.

### *A disproportionate penalty*

*The Québec Ombudsman received a complaint from a farmer who, due to health reasons, was unable to satisfy all the requests made by the representative from the Centre d'étude sur les coûts de production en agriculture. The representative then sent the file to La Financière agricole with a note indicating the man's refusal to participate, following which three penalties were imposed on him:*

- *he was denied compensation for 2009;*
- *he was assessed \$12,386 in administrative fees;*
- *he was excluded from the program for 2010.*

*The farmer contacted the Québec Ombudsman to contest the penalties.*

*The investigation confirmed the facts alleged by the man: documents from the Centre d'étude sur les coûts de production en agriculture and La Financière agricole revealed they had indeed been provided with the details of the man's state of health. However, this did not prevent La Financière agricole from penalizing him for his refusal to take part in the survey. In addition, there was no document from the Centre or La Financière agricole requesting he produce a medical certificate.*

The Québec Ombudsman asked *La Financière agricole* to reexamine the man's file following receipt of documents proving his medical condition. *La Financière agricole* agreed to do so and rescinded the penalties, which meant the farmer was able to recover a sum of \$24,344.94.

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## Ministère de la Culture, des Communications et de la Condition féminine

### COMPLAINTS IN 2010-2011

In 2010-2011, there was an increase in complaints to the Québec Ombudsman regarding the vagueness of Ministère de la Culture, des Communications et de la Condition féminine standards for buildings in historic districts.

### PUBLICIZE RULES IN ORDER TO PREVENT ARBITRARINESS

Although the *Cultural Property Act* grants the minister discretionary power to determine the conditions for construction or renovation projects, citizens have the right to be informed of the basis for conditions applicable to the work they carry out. The minister therefore has the duty, in all fairness and in accordance with the *Act respecting administrative justice*, to provide this information in ways other than by exercising the authority that his discretionary power gives him.

Citizens run up against various kinds of problems in undertaking construction or renovation projects in historic districts. They say that the Department imposes requirements that are not based on any official criteria accessible to them. Even though there are documents containing departmental guidelines for heritage conservation, they are neither exhaustive nor restrictive. That is why citizens undertake their project without knowing exactly what is allowed and what is not.

The Québec Ombudsman believes that this way of forcing people to proceed by trial and error is unreasonable. The changes required by the Department and the introduction of new requirements midstream oblige citizens to constantly modify their plans, with the resulting fees and delays. Furthermore, the Québec Ombudsman notes that at times the Department's requirements go against the by-laws of the regional county municipality concerned, which must also authorize the work. For example, the Department had to repeal a requirement to increase the slope of a roof because the roof exceeded the height permitted by the municipality. The citizen footed the bill for the lack of consistency between the two jurisdictions.

When the Department refuses to approve a project which, in many cases, complies with the guidelines set out in the documentation, and imposes certain conditions, it rarely states the reasons for these decisions. The Department merely invokes the discretionary power of the minister. In the opinion of the Québec Ombudsman, this contravenes the *Act respecting administrative justice*.

The Québec Ombudsman asked the Department to justify its decisions in accordance with the act. It also urged it to define its guidelines and requirements in a fuller and more coherent manner. At the end of the fiscal year, the Department informed the Québec Ombudsman that it was doing some legal checking in order to complete its position. The Québec Ombudsman is still waiting for a response from the Department.

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## Ministère du Développement durable, de l'Environnement et des Parcs

### COMPLAINTS IN 2010-2011

The number of complaints received by the Québec Ombudsman concerning the Ministère du Développement durable, de l'Environnement et des Parcs was up slightly from previous years. The main grounds were:

- the time it took for complaints to be processed by the Department;
- the difficulties experienced by citizens due to the sharing of responsibilities between the Department and municipalities in enforcing the *Environment Quality Act* and its regulations, especially with regard to shoreline protection.

### MAKE THE TIME FRAME FOR ORDERS IN COUNCIL LESS OPEN-ENDED AND ENVIRONMENTAL ASSESSMENT MORE TRANSPARENT

On March 19, 2009, a group of citizens opposed to the Rabaska project in Lévis asked the Québec Ombudsman to intervene. The group argued that the environmental authorization procedure provided for in the *Environment Quality Act* was breached, and, consequently, the final decision by the government to green-light the project was invalid. The complainants also brought it to the Québec Ombudsman's attention that the order in council enacting issuance of the certificate of authorization (918-2007) dated back to October 2007 and that the project had yet to get off the ground. They considered this unacceptable. The owners of residences within 1.5 km of the planned Rabaska facilities deplored being kept dangling this way, with the fear that the project might be carried out hanging over them. According to them, the authorization to construct the natural gas terminal had lowered the market value of their property.

The Québec Ombudsman examined the various questions raised without, however, repeating the environmental assessment procedure and without calling into question the opinions of the experts heard during this procedure, regardless of their position on the project.

At the end of the investigation, the Québec Ombudsman concluded that the environmental authorization procedure prescribed in the *Environment Quality Act* had not been breached.

Despite the legality of the procedure, two points remain worrisome, namely:

- the unlimited duration of the order in council enacting authorization;
- limited accessibility to documents produced after the Bureau des audiences publiques sur l'environnement hearings.

The duration of an order in council arising from environmental authorization and ordering issuance of a certificate of authorization is unlimited. The resulting perpetuity enables the proponent to begin implementing the project several years after the environmental impact assessment and review procedure as well as after the consultations held by the Bureau des audiences publiques sur l'environnement. That is why the Québec Ombudsman stressed that even though the order in council complied with the issuance procedure, it was concerned that the project, authorized in 2007, could be carried out several years later. It therefore recommended that the Department limit the duration of the order in council and, if need be, ensure that when it comes into force, environmental assessment results still hold. Its recommendations in this regard were as follows:

- that Order in council 918-2007 be replaced so as to limit its duration and introduce a review date;
- that orders in councils issued further to any environmental impact assessment and review procedure have a limited duration and include a date for reviewing the project's compliance with the environmental assessment.

The Québec Ombudsman also notes that documents produced by the Department or other government departments and public agencies after Bureau des audiences publiques sur l'environnement hearings begin are not made public. The *Regulation respecting environmental impact assessment and review* limits dissemination of the documents produced in the course of the impact assessment and review process to those produced before Bureau des audiences publiques sur l'environnement hearings begin.

Department representatives assured the Québec Ombudsman that all documents and notices are taken into account during environmental assessment. That being the case, the Department's integrity is not the issue here, but rather, management of public perception: some documents are released while others are not. Why? The public has the right to ask the question.

The opinion of the Québec Ombudsman is that for the sake of transparency and complete disclosure, all documents produced in the course of environmental assessment should be released to the public right up until final approval of the project.

The Québec Ombudsman therefore made the following recommendation:

- that the Ministère du Développement durable, de l'Environnement et des Parcs amend the provisions of the *Regulation respecting environmental impact assessment and review* to allow the dissemination of any information concerning an environmental assessment until such time as a final decision is made on the project under consideration.

## THE QUÉBEC OMBUDSMAN'S RESPONSE TO BILLS AND DRAFT REGULATIONS

The Québec Ombudsman commented on the draft regulation amending the activities permitted within the proposed Samuel-De Champlain biodiversity reserve. Its intervention concerning the provisions of the draft regulation authorizing oil and gas exploration can be found on page 113 of this report, in the "Parliamentary Watch Report" section.

# Ministère de l'Emploi et de la Solidarité sociale

## COMPLAINTS IN 2010-2011

Once again this year, the Québec Ombudsman had to insistently intervene on a number of occasions to obtain corrective action and find solutions to problems experienced by citizens. It notes the Ministère de l'Emploi et de la Solidarité sociale's inflexibility with regard to worrisome situations.

### RESTRICTIVE APPLICATION OF THE MINISTER OF EMPLOYMENT AND SOCIAL SOLIDARITY'S DISCRETIONARY POWER

Since 2000, the Québec Ombudsman has often stepped in to ask the Department to consider special circumstances in applying the minister's discretionary power. The law does give the minister such power, which allows him to suspend the recovery of amounts due or grant total or partial remissions in exceptional circumstances. A number of cases recently brought to the Québec Ombudsman's attention demonstrate that this discretionary power is applied too rigidly.

#### *A penalty leading to extreme poverty*

*A woman received an \$887 monthly benefit, including the QST adjustment, for her severely limited capacity for employment. Her monthly benefit was cut by \$224 following the discovery of undeclared income from several years back. However, given her monthly expenses of \$812, her budget was in the red. The Department nevertheless refused to decrease the amount withheld.*

*The Québec Ombudsman's investigation revealed that the woman had chronic physical and mental problems due to a severely underprivileged childhood and multiple instances of physical abuse throughout her life. Her caseworker also noted that the woman's personal condition and financial situation were having an adverse effect on her social reintegration. Given her vulnerable situation and in order to foster her reintegration, the Québec Ombudsman appealed to the minister's discretionary power and recommended the debt be forgiven. In response, the Department reduced the \$224 deduction to \$56 for only eight months, and suspended the interest. The Department justified its refusal to cancel the debt with a lack of any exceptional circumstances.*

While recognizing that people must bear the consequences of their failings and that the Department is responsible for recovering overpayments, the Québec Ombudsman believes this must be done with consideration for individual debtors' basic needs. It notes that the committee charged with applying the discretionary power has sometimes unreasonable requirements when it comes to changing debt recovery measures for persons who are fragile and vulnerable due to their age, a dysfunctional family situation, or their physical or mental state of health. In addition, the committee's examination of cases is too often limited to assessing whether the person is currently living in a state of total destitution: unpaid rent, heat, and electricity; no money for food; or inability to pay for medications. In other cases, the committee reduces the deduction by too little or allows it for too short a period for the person's situation to truly improve.

The committee in question should establish criteria allowing it to intervene when people—although not totally destitute—may be jeopardizing their health or safety. The committee's inflexibility is currently a source of distress for those whose debt is so heavy they cannot foresee the end of repayments (they often can pay only the interest on their debt). Their social reintegration and progress toward independence are therefore compromised.

## RECOMMENDATIONS

WHEREAS the objective of the discretionary power should be to correct a situation when the penalty is too severe so as to not exacerbate poverty;

WHEREAS the discretionary power is often exercised on behalf of those with low income or who receive social assistance;

WHEREAS application of the discretionary power also concerns vulnerable persons who have mental health problems, are psychologically fragile, or suffer from cognitive loss due to age or disease;

WHEREAS a penalty should be of reasonable length so as to foster the person's social reintegration;

The Québec Ombudsman recommends that:

- the Ministère de l'Emploi et de la Solidarité sociale establish criteria allowing it to expand the scope of application of the minister's discretionary power;
- the application of the minister's discretionary power allow debtors to stabilize their situation over a reasonable period of time.

## COMMENTS FROM THE DEPARTMENT

"The Department accepts the Québec Ombudsperson's recommendation to ensure that the criteria for exercising the discretionary power be applied so as to allow debtors to stabilize their situation over a reasonable period of time."

## REASONABLE INTERPRETATION OF THE NOTION OF SPOUSES

The Department has also shown inflexibility in the determination of benefits not involving recovery measures.

This has been the case when establishing whether an individual who is eligible for last-resort financial assistance must be considered an adult living alone or another person's spouse. It is in fact difficult to determine whether a de facto union exists when two adults cohabit, are not joined by marriage or civil union, and have no dependent children. The issue is important because the benefit granted to a family composed of two adults is lower than what would be paid to two single adults.



For the purposes of applying the Individual and Family Assistance Act<sup>1</sup>, the recognition of de facto union status for common law spouses is based on three criteria:

- at a given time, the two people have cohabited for a period of at least twelve consecutive months;
- they give each other mutual aid as two spouses would;
- they are reputed to be common law spouses.

Now, according to Department standards, two people may cohabit and provide mutual aid without the existence of a de facto union. The main goal of cohabitation may therefore be to allow one person to act as an informal caregiver to the other who has an obvious need for care and assistance. In such caregiver/care receiver relationships, the recipient of the assistance could receive the full benefit amount as though he were living alone.

Recognition of a caregiver/care receiver relationship makes it easier for those who would otherwise be institutionalized to stay at home. It reduces the assistance required from local community services centres while fostering the social integration of those being helped. However, the Québec Ombudsman has noted that the Department is sometimes hesitant to recognize caregiver/care receiver relationships considering that cohabitation is enough to demonstrate spousal status.

#### ***An unfair reduction of last-resort financial assistance***

*A person represented by the Curateur public was institutionalized for 12 years, eight of which were in secure custody. Diagnosed with a serious psychiatric condition and a number of other mental and physical disorders, she was not independent enough to live alone. She now lives with a co-tenant. Since the Department considered her to be in a de facto union with this man who supports her financially, it decreased her monthly social assistance from \$890 to \$150.*

*Before turning to the Québec Ombudsman, the Curateur public unsuccessfully requested that the Department review its decision.*

*The Québec Ombudsman's investigation confirmed the facts raised by the Curateur public. It also demonstrated that the woman's co-tenant never intended to support her and that, if the precarious financial situation continued, he would end the cohabitation. Without cohabitation, though, institutionalization would be inevitable. The Department agreed to amend its original decision and reinstate the full benefit amount. The Curateur public and the Department then agreed to review the prior three years of benefits as a result.*

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## **Ministère de la Famille et des Aînés**

### **COMPLAINTS IN 2010–2011**

The number of complaints received by the Québec Ombudsman concerning the Ministère de la Famille et des Aînés or childcare services increased considerably this year compared to last year. It should be noted that the vast majority were about the instruction on payment of subsidies to home childcare service providers, which will be addressed further below. These complaints, received at the end of the year, were still in process as at March 31, 2011.

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<sup>1</sup> Individual and Family Assistance Act, R.S.Q., c. A-13.1.1.

The number of substantiated complaints remained stable and mainly concerned the following:

- contract terminations or the expulsion of children by childcare services;
- the issuance of permits and recognition;
- inspection.

The Department is responsible for the organization and quality of childcare services in Québec. The *Educational Childcare Act* grants the Minister of Families the power and duty to monitor application of the act and the regulations under his responsibility. The Québec Ombudsman only has jurisdiction over the Department—not childcare services. It does, however, ensure citizens are not wronged by an act or omission by the Department.

### CREATING OFFICIAL INTERVENTION PLANS

The Québec Ombudsman is concerned about the intervention plans that must be set up between parents and childcare services to meet the particular needs of children—plans which may sometimes be vague. Based on what is stipulated in reduced-contribution childcare service agreements, childcare service facilities may terminate agreements under certain conditions—for example, when parents do not cooperate in implementing the intervention plan. However, the Québec Ombudsman has noted that there are no official requirements for such plans with regard to content or form. The Department is even satisfied with meetings between parents and childcare providers. Yet without any written documentation, it can be difficult to rule on whether parents have complied with an intervention plan.

The Québec Ombudsman believes children with special needs may be adversely affected by this situation, particularly when use of a childcare facility is terminated prematurely on the sole basis of lack of compliance with the intervention plan. The Québec Ombudsman therefore asked the Department to:

- amend Article 9 of the reduced-contribution childcare service agreement to specify that intervention plans must be in writing;
- provide a model intervention plan as a schedule to the agreement.

The Department still had not followed up on these requests as at March 31, 2011. However, it had begun revising the service agreements to indicate that intervention plans must be written up and that a guide for drafting intervention plans will be provided. The Department intends to complete this project in 2011–2012.

### MAKING THE SPACES ANNOUNCED IN THE 2008 DEVELOPMENT PLAN AVAILABLE TO PARENTS

Since access to childcare services is a major issue for parents, the Québec Ombudsman is concerned about the pace at which the 18,000 spaces announced in 2008 are being approved. The objective was supposed to have been met in 2010, but the completion timeline was postponed. As at March 31, 2011, 24% of the spaces announced were still not available.

## ABIDING BY APPROVAL DEADLINES

The *Educational Childcare Act* stipulates that a permit is required to operate a childcare or day care centre. Permit applicants must submit to the minister for approval the plans of any facility in which they propose to provide childcare services. In accordance with this same act, the minister must hand down a decision within 60 days of receipt of the plans. However, the Department is not abiding by these approval deadlines.

The Québec Ombudsman notes that three regional branches are not meeting the requirements of the *Educational Childcare Act*. At the time of its investigation, the wait time for approval at one of the branches was around four months.

Given all the steps required of applicants and the costs they must bear for months before they can begin operating their childcare services, a situation like this can complicate loan arrangements and the completion of plans. Moreover, any delay in opening a childcare facility penalizes parents.

### RECOMMENDATIONS

WHEREAS there are delays in developing childcare spaces, which affects parents;

WHEREAS delays in getting plans approved affect how long it takes applicants to obtain permits;

The Québec Ombudsman recommends that the Ministère de la Famille et des Aînés:

- make public and update—on its website in particular—project dates and date changes;
- establish means of abiding by the legislatively stipulated deadlines for approving plans;
- inform citizens about anticipated wait times for the approval of plans.

## COMMENTS FROM THE DEPARTMENT

“We have carefully noted your remarks and recommendations to the Department. The Department is making every effort to ensure children develop in a safe environment and to support childcare developers and providers in their activities to this end.”

## WEIGHING THE IMPACT OF A COMPULSORY ADMINISTRATIVE MEASURE ON CHILDCARE SERVICES

In November 2010, the Department announced that Instruction 9 on the payment of subsidies to home childcare service providers would take effect on April 1, 2011. The effect of implementing this instruction was notably to postpone subsidy payments by one week in order to standardize the procedure, according to the Department.

Associations of home childcare service providers denounced the financial repercussions of the new instruction (difficulty managing their financial obligations). In March 2011, the Department then presented an amended version of the instruction that provides for the option of temporary cash advances to any childcare providers that request it. Advances will have to be repaid in four equal consecutive installments out of the subsidies.

The new provisions clearly do not satisfy childcare service providers. As at March 31, 2011, the Québec Ombudsman had received 355 complaints about the issue, mainly reflecting the fact that those affected do not understand the merits of the Department's decision. They feel it was inappropriate to change a mechanism that had been in place since 2007 and fear significant financial problems.

The Québec Ombudsman undertook an analysis of the issue. In reviewing the complaints received, it also noted that the information sent to the coordinating offices regarding the instruction's coming into force may have been understood or reported differently throughout the network: the cash advance payment terms, in particular, were nebulous for a number of people. The Québec Ombudsman therefore requested that the Department send a note to coordinating office managers to remind them of their obligations under the new instruction, which the Department did.

#### THE QUÉBEC OMBUDSMAN'S RESPONSE TO BILLS AND DRAFT REGULATIONS

The Québec Ombudsman commented on Bill 126, the *Act to tighten the regulation of educational childcare*, during the Committee on Citizen Relations hearings. Its response can be found on page 108 of this annual report, in the "Parliamentary Watch Report" section.

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## Ministère de la Justice

#### COMPLAINTS IN 2010–2011

The number of complaints received by the Québec Ombudsman, which remained stable in 2010–2011 compared to the previous year, had to do primarily with the way cases are handled by the offices of court clerks:

- turnaround times;
- information in the clerk of the court's minute book;
- information provided by court clerks.

#### PICKING UP THE PACE OF REQUIRED LEGISLATIVE CHANGE

During recent years, the Québec Ombudsman has presented the Department with numerous recommendations for legislative amendments, primarily pertaining to the Directeur de l'état civil and the process for reviewing support payments. The Department appeared amenable to acting on these recommendations. In actuality, however, no attempt was made to amend legislation or, if efforts were made, they did not reach the executive level.

The 2009–2010 annual report of the Québec Ombudsman took the Department to task for the length of time required to implement required changes. One year later, there has still been no progress, inaction that the Québec Ombudsman deems deplorable. Here are four brief examples showing that it is indeed time for the Department to act so corrective measures can be taken.

#### **RELAX THE PROCESS OF REVIEWING CHILD SUPPORT PAYMENTS**

Since automatic collection of support payments was introduced in 1995, the Québec Ombudsman has received complaints each year about the need for court decisions to change or cancel such payments, with the resulting delays and costs.

The original recommendation to streamline the support payment review process appeared in the Québec Ombudsman's 2006–2007 annual report.

#### **ALLOW THE MODIFICATION OF PATRONYMICS, IN KEEPING WITH THE TRADITIONS AND CUSTOMS OF CULTURAL COMMUNITIES OF ORIGIN**

For many years, the Québec Ombudsman has received complaints from parents who, in keeping with the traditions and customs of their communities of origin, wish to masculinize or feminize the surnames under which their children's births are recorded.

However, under the Québec Civil Code, this cannot be done. It is only after a child's birth has been registered that a parent may file an administrative request for a name change with the Directeur de l'état civil, incurring on average over \$300 in fees, charged primarily for reviewing the request and publishing a name-change notification. These fees are fully justified when adults wish to change their surnames, but, in this case, the Québec Ombudsman mainly recommends reducing the formalities and fees charged to families for changing the name of their newborns.

The Québec Ombudsman first recommended that the Civil Code be amended in this regard in 2006.

#### **ISSUE DEATH CERTIFICATES WITHOUT REQUIRING COURT INVOLVEMENT**

The Québec Ombudsman took up the case of a family with a deceased member whose body was never recovered, although a murder conviction was made in the criminal division of the Superior Court. The family had to return to civil court to seek a declaratory judgment of death because the Civil Code of Québec does not allow the Directeur de l'état civil to issue death certificates in such situations.

The Québec Ombudsman first recommended that the Civil Code and Code of Civil Procedure be amended in this regard in 2006.

#### ISSUE CERTIFICATES OF CHANGE OF DESIGNATION OF SEX FOR PERSONS BORN IN BUT NO LONGER RESIDING IN QUÉBEC

Individuals who were born in but no longer reside in Québec cannot ask the Directeur de l'état civil to modify the genders that appear on their birth certificates, even with the required medical documents. The Civil Code of Québec essentially stipulates that persons making such requests be domiciled in Québec for at least one year. This refusal puts such individuals in difficult situations any time they must provide proof of identity (when applying for passports, establishing accounts, completing registrations, and so forth).

The Québec Ombudsman's intervention in this area dates back to 2004.

#### CLARIFICATION OF THE PROCEDURE FOR COMPENSATING PERSONS WRONGLY CONVICTED

The Québec Ombudsman interceded with the Department on the issue of compensating wrongly convicted persons, specifically those who have served prison time for crimes they did not commit.

While such cases are few in number, the substantial impact that these errors have on those who are wrongly convicted fully justifies this intervention. After citing the applicable legal framework, including the obligations recognized by the International Covenant on Civil and Political Rights, the Québec Ombudsman recommended the adoption of legislation spelling out the terms and conditions governing compensation of wrongly convicted persons. The Québec Ombudsman pointed out the importance of ensuring impartial decisions and equal treatment of all involved parties. In this sense, a neutral and impartial jurisdiction (which could act on an *ad hoc* basis given the low incidence of cases) should be charged with determining the party's factual innocence (a more rigorous process than arriving at a simple acquittal) and, if applicable, a reasonable amount of compensation to be awarded in view of the damages the individual has suffered.

In responding to the Québec Ombudsman, the Department:

- stated that many of the Québec Ombudsman's concerns in this matter were shared by the government and had been taken into consideration by the federal and provincial governments as they reviewed the *Guidelines on Compensation for Wrongfully Convicted and Imprisoned Persons*;
- was reluctant, however, to legally back the compensation process;
- agreed upon the need to clarify the process for requesting compensation from the Attorney General, so as to ensure uniform administrative treatment.

The Québec Ombudsman therefore recommended making the compensation mechanism, at a minimum, the subject of a public decree explaining the administrative process. Awaiting the new developments that are expected in this case, the Québec Ombudsman notes that the Department has reservations about the suitability of legal formalization.

#### THE QUÉBEC OMBUDSMAN'S RESPONSE TO BILLS AND DRAFT REGULATIONS

The Québec Ombudsman has commented on the *Draft regulation amending the Tariff of duties respecting the acts of civil status and change of name or of designation of sex*. A statement concerning increases in duties payable can be found on page 112 of this annual report, in the "Parliamentary Watch Report" section.

# Ministère de la Sécurité publique

## PUBLIC SECURITY AND POLICE AFFAIRS

### COMPLAINTS IN 2010–2011

The number of complaints received by the Québec Ombudsman in 2010–2011 about the Ministère de la Sécurité publique's Public Security and Police Affairs section was relatively stable compared to prior years. Complaints mainly concerned the following:

- the time it takes to process applications for issuance or renewal of firearms licenses;
- the time it takes the Department to follow up on complaints submitted to it.

### THE QUÉBEC OMBUDSMAN'S SPECIAL REPORT ON POLICE INVESTIGATIVE METHODS: THE PROBLEMS RAISED ARE STILL UNRESOLVED

On February 18, 2010, the Québec Ombudsman published its special report on the Québec investigative procedure for incidents involving police officers. Over one year later, on March 31, 2011, the Department was still silent as to how it intended to follow up—or not—on the report recommendations. This situation appears worrisome given that other incidents involving police officers have occurred since the report was published and the problems raised have not yet been resolved.

On this subject, the Québec Ombudsman notes that aspects of the following case illustrate the main findings of its report, reinforce the appropriateness of the various recommendations made in the report, and remind the Department of its obligations with regard to following up on official requests submitted to it.

The Québec Ombudsman's special report is posted on its website [www.protecteurducitoyen.qc.ca](http://www.protecteurducitoyen.qc.ca), under the "Cases and Documentation" tab.

#### *A two-year wait with no Department response*

*A woman asked the Québec Ombudsman to intervene in order to have a public investigation conducted into the death of a member of her family who had been hit by three bullets from a firearm during a police intervention in June 2008. Two years after her request to the Minister of Public Security, the woman had still not received an answer.*

*The Québec Ombudsman informed the woman that in this situation, only the Minister of Public Security had the authority to decide whether to hold a public investigation. However, considering the unreasonable delay, it asked the Department to give the woman an answer, in accordance with the principles of the Act respecting administrative justice, which was done. The decision not to hold an investigation was officially sent to the woman by the Office of the Minister.*

# Ministère de la Sécurité publique

## CORRECTIONAL SERVICES

### COMPLAINTS IN 2010–2011

After a significant increase in 2009–2010, the number of complaints received by the Québec Ombudsman regarding the Direction générale des services correctionnels (correctional services) at the Ministère de la Sécurité publique in 2010–2011 declined to 2007–2008 levels.

In the course of the year, the Québec Ombudsman visited two detention centres, one in Québec City and the other in Sorel. Discussions with management at facilities in Baie-Comeau, Sept-Îles, Sherbrooke, Montréal (Maison Tanguay), New-Carlisle, Rimouski, Trois-Rivières, and Hull were needed to follow up on previous visits. Reports on those visits were forwarded to the relevant authorities. The Québec Ombudsman had good cooperation on these matters. Other draft or final versions of reports are underway.

Collective and individual problems were brought to the attention of facility authorities during these visits or at the time complaints were being processed. Some of these complaints are presented below.

### RESPECTING PROVINCIAL INSTRUCTIONS

The Québec Ombudsman notes that in several cases, provincial and even internal (local) instructions were not applied, were ignored, or were unknown to staff and certain managers at the detention centres. As a result, major drawbacks and inconsistencies arose that the Québec Ombudsman brought to the attention of authorities. This lack of awareness of instructions is due principally to lack of staff training, particularly among the staff members hired in large numbers over the past several years.

This is the case with the provincial instruction concerning the complaint-processing system for accused and convicted offenders, be it with regard to access to the complaint form or the need to rule on the merits of a complaint. The same goes for the provincial instruction concerning inmate mail. The opening of privileged mail between lawyer and client is subject to certain rules that facility staff do not always follow. Furthermore, the *Public Protector Act* prohibits the opening of inmate mail addressed to or received from the Québec Ombudsman.

### REDUCING EVALUATION TIME AND AVOIDING POSTPONEMENT OF COMMISSION DES LIBÉRATIONS CONDITIONNELLES HEARINGS

Hearings before the Commission québécoise des libérations conditionnelles frequently pose two problems, namely:

- delays in the evaluation and preparation of inmate correctional intervention plans. These delays have the effect of holding up consideration of applications for temporary absence or conditional release;



- documents missing from inmate files submitted to the Commission québécoise des libérations conditionnelles. In addition to the correctional services responsible for compiling these files, the Ministère de la Justice and the Directeur des poursuites criminelles et pénales have a responsibility for this problem which results in postponed hearings.

Monthly data from the Commission québécoise des libérations conditionnelles on these postponements indicates a slight improvement in December 2010. The Québec Ombudsman continues to be involved in cases of individual complaints with a view to ensuring the proper handling of conditional releases, which is of the utmost importance.

#### ***A delay due to lack of staff***

*An inmate who had already served one third of his sentence complained that his correctional intervention plan had not been completed by the time he had served one sixth of his sentence, a violation of the law.*

*The Québec Ombudsman's investigation showed that the delay was due to a shortage of probation officers available to handle these matters. The detention centre therefore enlisted the assistance of open custody probation officers in preparing evaluations at the centre. The addition of an extra position dedicated to this task had been pending for some time and was finally authorized. The intervention of the Québec Ombudsman also led to the inmate being evaluated as required.*

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#### ***Postponement of a hearing because of an incomplete file***

*An inmate complained about three hearing postponements by the Commission québécoise des libérations conditionnelles. The Québec Ombudsman's inquiry indicated that two postponements were related to the absence of required documents, i.e., the summary of events and the disciplinary records of the institution where the inmate had previously been incarcerated. Following the intervention of the Québec Ombudsman, the Commission was able to proceed with the review of the individual's application.*

## **ELIMINATING ERRONEOUS RELEASES**

In its 2009–2010 annual report, the Québec Ombudsman commented on administrative errors that had led to the premature release of inmates or extension of their incarceration beyond the stipulated release date. An inquiry by the Department led to a series of recommendations. A provincial instruction also came into effect to:

- establish the circumstances justifying the release of inmates;
- ensure compliance with the release process;
- define and standardize the steps in the process according to the grounds and location of the release.

The Québec Ombudsman commented on the instruction and it appears to meet the objective of improving the release management process. Its implementation will be closely monitored.

## CLARIFYING ROLES AND RESPONSIBILITIES WITH RESPECT TO FORENSIC PSYCHIATRY

The Québec Ombudsman identified issues that might lead to problem situations. While some institutions within the health and social services network have a forensic psychiatry mandate, they are habitually unable to follow up on court-ordered psychiatric evaluations due to shortage of space. Thus, inmates who are ordered to be evaluated in a hospital are held in detention facilities for long periods of time while awaiting evaluation. In such cases, the recourse consists of the health and social services network complaints process, which gives the local complaints commissioner up to 45 days to examine a complaint (the commissioner may, however, give a complaint emergency priority), whereas the court order stipulates that processing take no longer than five days.

In the most common scenario, the judge orders a person awaiting trial to have a psychiatric evaluation. This is an evaluation of the person's fitness to stand trial or an evaluation of his criminal liability at the time of committing an offense. This order stipulates the deadline for a psychiatrist to carry out the evaluation (e.g., five to 60 days) and the place of detention for the evaluation. When a hospital with a forensic psychiatry mandate refuses a defendant due to lack of space, the latter is returned to the detention facility and at times the evaluation will take place at the centre. This does not fulfill the terms of the court order.

Resolving this problem requires coordination between the different stakeholders in the judiciary, prisons, and hospitals. The Québec Ombudsman takes note of the recently published report by the Comité de travail interministériel sur la prestation des services de psychiatrie légale relevant du Code criminel. This report examines the problems identified above, provides a clear picture of the principal challenges, and articulates relevant recommendations to help improve the situation. The Québec Ombudsman will carefully monitor how the various departments targeted in the report follow up on its recommendations.

## TRANSFERRING RESPONSIBILITY FOR HEALTH AND SOCIAL SERVICES FOR INMATES WITH MENTAL HEALTH ISSUES

This year the Québec Ombudsman published a special report on inmates with mental health issues. The report concentrated mainly on their care needs and how services were adapted to their conditions. Covering the gamut from police intervention to social reintegration, the report details the findings and possible solutions that the Québec Ombudsman recommends to the relevant departments in order to implement effective interventions that promote successful social reintegration, a key factor in reducing recidivism.

For the period preceding incarceration, the report stresses the need to properly support the police and improve their initial and ongoing training on intervening with persons with mental health problems.

With regard to incarceration, the Québec Ombudsman strongly recommends the transfer of responsibility for the delivery of social and health services in detention centres from the Ministère de la Sécurité publique to the Ministère de la Santé et des Services sociaux. The latter already manages a network with all the tools necessary to deliver preventive, curative, and social integration services. To make this work, the Ministère de la Santé et des Services sociaux must take into account the needs of the prison population and clarify the services to be provided.

As for the social reintegration of inmates with mental health problems, the Québec Ombudsman advocates the use of intensive community monitoring programs throughout Québec. Intervention continuity between the detention centre and the community remains a key factor in success.

To learn more, see the Québec Ombudsman's special report [www.protecteurducitoyen.qc.ca](http://www.protecteurducitoyen.qc.ca), under the "Cases and Documentation" tab.

## ENSURING FOLLOW-UP ON EXTERNAL ADMINISTRATIVE FORMALITIES

A provincial instruction mandates that detention facilities follow the proscribed procedure for taking photos for the purpose of renewing or replacing inmate health insurance cards. These rules apply when the card expires or is about to expire at the time the inmate arrives at the centre or during his incarceration. In particular, this prevents the problem that arises when an inmate on medication is granted conditional release, holds an expired card, and must incur out-of-pocket expenses to see a doctor for the purpose of renewing a prescription.

The Québec Ombudsman learned that a detention facility's authorities did not follow up on health insurance card renewal requests. It therefore intervened and those responsible agreed to correct the situation. Noting similar problems in another detention facility, the Québec Ombudsman alerted the authorities concerned. At first they claimed compliance with the provincial instruction and said that their services handled health card renewal for inmates who requested it. After another complaint was filed, the Québec Ombudsman investigated and found that the instruction existed only on paper. Following several exchanges, the authorities admitted to mistakes and communication gaps among facility stakeholders. The Direction des services professionnels is committed to implementing the new procedure in March 2011.

Another example of the same problem is seen among persons who, prior to incarceration, were victims of a work or road accident or in certain cases, a criminal act. In accordance with their respective laws, the agencies that process claims must then evaluate the person, either to extend coverage, authorize treatment, terminate the claim, or evaluate permanent disability. In preparation for an evaluation, these agencies send a notice to him. It often happens that detention facilities are not able to escort offenders, most often due to staff shortages or transfers due to overcrowding.

### *Medical appointment postponements—a continuing saga*

*An individual was in a car accident in September 2007. In April 2009 he was incarcerated and upon his arrival at the detention centre, he informed the correctional service he had a Société de l'assurance automobile du Québec (SAAQ) medical examination scheduled on July 15. He was not brought to the appointment. The detention facility told him the doctor who was to evaluate him was on vacation at the time.*

*A new appointment was scheduled for October 2009. A few days before this appointment, the individual was transferred to another detention facility. However, the health service of the first detention facility neglected to inform the second facility of the impending appointment. The individual was not taken to his second appointment. A third scheduled appointment also did not take place due to another transfer.*

*After a series of interventions by the Québec Ombudsman with the health services of the detention facilities concerned and a SAAQ claims agent, an appointment was scheduled for June 2010.*

# Régie de l'assurance maladie du Québec

## COMPLAINTS IN 2010–2011

Complaints against the Régie de l'assurance maladie du Québec (RAMQ) were down about 20% compared to last year, especially with regard to health insurance and prescription drug insurance plans. There were also complaints about the 40 additional programs administered by RAMQ, including those covering devices that compensate for physical disabilities, hearing and visual aids, dental and optometric services, financial contributions for adults in long-term care, and financial assistance for domestic help services.

On several occasions, the Québec Ombudsman has pointed out people's difficulty in understanding all the requirements contained in the Prescription Drug Insurance Plan since its inception in 1997. As for the Health Insurance Plan, the cases presented below illustrate that errors can arise in the processing of applications for eligibility.

## IMPROVING THE MANAGEMENT OF PRESCRIPTION DRUG INSURANCE ELIGIBILITY

The Prescription Drug Insurance Plan (the Plan) is complicated and the requirement to join a private employer's group insurance is not always understood. Sometimes citizens enroll in the public system when they are not entitled to do so. RAMQ then cancels their enrollment and claims a reimbursement for the amount spent on prescription drugs during the "enrolled" period. These people then find themselves without insurance, contrary to the provisions of the *Act respecting prescription drug insurance*.

In 2009, RAMQ launched a process of analysis and reflection aimed at improving registration compliance for the Plan. The Québec Ombudsman made its concerns known in this regard.

In June 2010, RAMQ issued an administrative policy on managing eligibility for the public component of the Plan. This policy outlines the guiding principles and directions for those administering the Plan. To this end, three action plans were implemented relating to:

- required changes in procedures and systems;
- actions to improve handling of client files;
- staff engagement.

In December 2010, the Québec Ombudsman met with RAMQ for a progress update. In pursuing its 2009–2013 strategic plan, RAMQ intends to implement various measures to increase registration compliance for the Plan. In 2010–2011 it focused on the following matters:

- review of the telephone protocol used to obtain information required to determine eligibility for the public plan, convey relevant information during a phone interview, and make people aware of their rights and obligations regarding prescription drug insurance;
- the online (Internet) registration and cancellation service available since October 2010 (in February 2011 this service was used by 11,960 people);

- a letter to students enrolled in the public plan a few months prior to their 26<sup>th</sup> birthday informing them that they will soon lose their student-status benefits and must thereafter be covered by either public or private prescription drug insurance;
- discussions with groups, associations, and professional orders to ensure they understand the information concerning the Plan;
- dissemination of information to different populations, especially through social media.

In the next year, the Québec Ombudsman intends to closely monitor the work of RAMQ concerning the management of prescription drug insurance eligibility.

## PROVIDING THE CORRECT ANSWER

Complaints addressed to the Québec Ombudsman revealed situations where RAMQ erred in applying its own rules, thereby delaying access to the public plan for eligible people.

### *When obtaining a health insurance card becomes an obstacle course*

*A citizen lost her health insurance card and contacted RAMQ to obtain a replacement form. The procedure required her to send RAMQ various documents to confirm her eligibility (including proof of residence). These can be submitted directly to RAMQ or sent through a local community services centre (CLSC). She chose the latter option and received an attestation from the CLSC that the paperwork had been properly completed.*

*Several weeks later, she had still not received her card. She contacted RAMQ, which had no record of her documents. She sent RAMQ the CLSC confirmation proving the paperwork was properly completed and asked to receive a new temporary eligibility attestation to serve as an insurance card while waiting to receive her new card. Such documents are valid for 45 days but the one she possessed had already expired. RAMQ refused to do so, arguing that it had already issued her two temporary attestations during the time elapsed. The fact remains that without this document, the citizen could be required to pay for health services. She then complained to the Québec Ombudsman.*

*The Québec Ombudsman's investigation showed that the citizen met the criteria for obtaining a temporary enrollment document by having completed the necessary steps and furnished the necessary proof to replace her lost card. The loss of the documents was not her fault and she should not have been made to suffer the consequences. RAMQ agreed to follow through on the Québec Ombudsman's intervention and provide the citizen with the requested temporary attestation.*

### *An unreasonable waiting period*

*While applying to have her health insurance card renewed, a citizen was obliged to wait for a three-month qualifying period before becoming eligible for health insurance again. According to RAMQ, this person had returned to Québec after living elsewhere, which justified the delay.*

*The citizen had planned to move to France and had advised RAMQ by completing a form to this effect. However, her plans did not materialize. The Québec Ombudsman pointed out this detail to RAMQ and concluded that since the person had not actually lived outside Québec, there was no reason to impose the three-month qualifying period. RAMQ concurred.*

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## Régie du logement

### COMPLAINTS IN 2010–2011

Once again this year, wait times for a hearing and, consequently, a decision by the Régie du logement were the main grounds for complaints brought to the attention of the Québec Ombudsman. In half these cases the complaints were substantiated. Although the Québec Ombudsman does not have a mandate to intervene in the legal processes of the Régie, it is nonetheless concerned with the Régie's ability to dispense justice within a reasonable time frame given constraints imposed on it by its legal framework. Previously, in 2007–2008, the Québec Ombudsman recommended that this framework be amended to decrease wait times. So particular attention will be paid to the major reform of the *Act respecting the Régie du logement* that was announced by the Minister of Municipal Affairs, Regions, and Land Occupancy during public hearings on Bill 131 in November 2010.

### AVOIDING PROCEDURAL ABUSES

In September 2009, the Superior Court ruled that the Régie could not declare debarment (preclusion) because no section of its enacting legislation explicitly grants it this power. Debarment is a procedure by which an individual is prevented from filing successive proceedings with the Régie in the same case. Recourse to debarment makes it possible to prevent procedural abuse by people seeking to suspend enforcement of an unfavourable decision. On December 10, 2010, the proposed legislative amendment in Bill 131 officially granted the Régie the authority to declare debarment as per the recommendation formulated by the Québec Ombudsman in its 2009–2010 annual report. The Québec Ombudsman supported Bill 131 and emphasized its relevance in strengthening the legal framework of the Régie, particularly by reducing delays detrimental to the parties. The details of this intervention can be found on page 111 of this annual report, in the "Parliamentary Watch Report" section.

In the interval between the Superior Court decision and implementation of the legislation, the Régie made use of its power of debarment in some decisions, although it had been previously invalidated. In this regard, the bill that was adopted gave the power of debarment an unusual retroactive effect.

According to the information the Régie provided to the Québec Ombudsman, some 40 debarment decisions handed down by administrators in the period following the Superior Court ruling were potentially affected by the retroactive effect of the bill at the time it was tabled in the National Assembly. Some of these decisions were likely to have been overturned by the Court of Québec or the Superior Court and the cases returned to the Régie because it lacked the authority to make such decisions at the time. Going forward however, the Régie will have the legally sanctioned power to declare debarment.

## REDUCING WAIT TIMES FOR HEARINGS

Bill 131 appeared inadequate in certain respects because it does nothing to unburden administrators and thereby reduce wait times for hearing civil cases. In 2009–2010 these delays were the reason for 48.5% of the complaints received by the Régie's Bureau des plaintes and 22.9% of those received by the Québec Ombudsman about the Régie. The Québec Ombudsman is eager to see the legal framework changed in a way that will allow applications for lease termination for non-payment of rent (51.4% of Régie requests in 2009-2010), which are generally simple to deal with, to be handled by special clerks. Relying on these clerks rather than on administrators could free up 15% to 20% of the latter's time to focus on civil cases, which are generally more complex.

At the hearings of the Committee on Planning and the Public Domain on Bill 131, the Minister of Municipal Affairs, Regions, and Land Occupancy committed to proposing a comprehensive reform of the Régie.

For its part, the Québec Ombudsman remains very concerned about issues of procedural fairness and administrative management of measures to reduce delays by the Régie, and will carefully follow up on these issues.

## FAIRNESS AND JUSTICE IN THE SCHEDULING OF CASES

The Québec Ombudsman received complaints raising questions about compliance with prioritization criteria when cases are placed on the roll. The facts reveal that more recent cases filed with the Régie had been scheduled for hearings prior to similar requests that pre-dated them by several months. If appears that there have been wait times of 30 days or less, a wide deviation from current average wait times of between eight to 17 months. Considering the importance of processing all cases fairly, and taking into account the problems of delays, the Québec Ombudsman has asked the Régie for clarification. As of March 31, 2011, discussions were ongoing on this matter.

# Régie des rentes du Québec

## COMPLAINTS IN 2010–2011

Substantiated complaints against the Régie des rentes du Québec (RRQ) in 2010–2011 were down by half compared to the previous year. They mainly concerned delays incurred awaiting RRQ decisions.

## EXPLAINING DECISIONS

In one of its investigations, the Québec Ombudsman found that, contrary to the principles of the *Act respecting administrative justice* and the *Act respecting the Québec Pension Plan*, RRQ does not explain its decisions denying disability pensions. The acts state that decisions should be:

- communicated in clear and concise terms;
- given in writing together with the reasons, even if it was communicated orally to the parties involved.

Following the intervention by the Québec Ombudsman, RRQ acknowledged the problem and pledged to change its computer system by the fall of 2011 to ensure that denials of disability pensions are accompanied by explanatory letters. In the meantime, individuals who so request will receive a letter explaining RRQ decisions.

## PAYING ITS FAIR SHARE OF THE COSTS

RRQ does not fully reimburse the costs incurred for medical reports it requests when re-evaluating an individual's eligibility for a disability pension.

On this issue, the Québec Ombudsman found discrepancies in the information provided in two documents:

- according to the *Medical eligibility directives for disability pensions*, the cost of the report is RRQ's responsibility;
- according to the *Guide du médecin traitant – L'invalidité dans le Régime des rentes du Québec*, workers are reimbursed up to \$49 for the cost of a medical report requested by RRQ for the purpose of a re-evaluation.

When individuals wish to obtain a disability pension from RRQ, they are responsible for demonstrating that they meet the criteria provided by law to receive a pension. Accordingly, they pay the full cost of the application. On the other hand, once individuals are deemed eligible, the Québec Ombudsman considers it RRQ's responsibility, when re-evaluating eligibility, to demonstrate that beneficiaries no longer meet the criteria provided by law. In such cases, RRQ should pay the full costs of re-evaluation. In May 2010, the Québec Ombudsman made a recommendation to that effect to RRQ, which has accepted and implemented retroactive to April 1, 2010.



## FOLLOWING UP ON THE QUÉBEC OMBUDSMAN'S RECOMMENDATION

In its 2008–2009 annual report, the Québec Ombudsman requested that RRQ take steps to ensure that the rules applicable to combined benefits paid to individuals also receiving compensation from the Société de l'assurance automobile du Québec (SAAQ) not have the effect of reducing their income from its initial level.

On November 10, 2010, RRQ notified the Québec Ombudsman of the following:

- it is aware of situations regarding combinations of surviving spouse's pensions or disability pensions with compensation paid by SAAQ;
- a complete and definitive solution cannot be found in the short term;
- RRQ will work to develop an acceptable alternative to redress the inequity experienced by certain individuals.

The Québec Ombudsman will continue to monitor this situation.

## THE QUÉBEC OMBUDSMAN'S RESPONSE TO BILLS AND DRAFT REGULATIONS

The Québec Ombudsman commented on the Regulation to amend the Regulation respecting benefits. Its intervention concerned the need for individuals to provide proof of the steps they have taken when applying to RRQ for benefits by phone (required procedures). A summary of this intervention can be found on page 117 of this annual report, in the "Parliamentary Watch Report" section.

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# Revenu Québec<sup>1</sup>

## TAXATION

### COMPLAINTS IN 2010–2011

In 2010–2011, the Québec Ombudsman received tax-related complaints about Revenu Québec that included the following:

- missing or incorrect information;
- delays in processing requests;
- delays in paying refunds due;
- restrictive application of the law.

### CORRECTING ERRORS FASTER

In June 2009, Revenu Québec changed its work instruction for processing payroll deductions, which limited the options for granting refunds for employer overpayments. The agents responsible for applying it had been told to interpret it strictly.

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<sup>1</sup> Agence du revenu du Québec as of April 1, 2011.

The Québec Ombudsman received calls from people who had accidentally paid double the amount due for a given period. Despite their requests, Revenu Québec refused to correct their file before getting an opinion from the Direction des affaires juridiques, even though the instruction provided for the option of granting refunds in certain situations.

Given that the people had been awaiting the legal opinion for four months, the Québec Ombudsman requested that:

- a reminder be sent to the Direction des affaires juridiques to obtain its position as quickly as possible;
- the work instruction be clarified to allow refunds in such cases.

Following the Québec Ombudsman's intervention, legal services' opinion was published. Taxpayers received the overpayment refund and the work instruction was amended to facilitate the making of this type of decision in the future.

### **ABIDING BY CURRENT DIRECTIVES AT THE CENTRE DE PERCEPTION FISCALE**

Revenu Québec's Centre de perception fiscale is responsible for collecting sums owed the government. Directives govern tax collection agents' activities and ensure compliance with current legislation and regulations. For the past several years, the Québec Ombudsman has received complaints from individuals who have been subjected to inappropriate measures taken by agents:

- seizure of bank accounts, even though Revenu Québec knows the amount in question is unseizable;
- maintaining seizure of an account, even though the account holder informed Revenu Québec that the money it contained was unseizable.

It is important to know that unseizable monies must not be remitted to Revenu Québec by individuals or financial institutions.

The Québec Ombudsman also had to intervene to stop collection measures consisting of seizure of the entire wage amount, contrary to the Code of Civil Procedure.

The Québec Ombudsman met with the administrators of the Centre de perception fiscale, which is responsible for developing directives. Its intervention led to the following corrective measures:

- modifications to internal documents clarifying which monies are unseizable;
- clarification of the obligation to provide a release (attestation that the process has been terminated) when Revenu Québec is informed of the unseizability of monies in an account;
- a ban on initiating a new seizure in an account when a release for unseizability was granted;
- reminders regarding these provisions to the agents responsible for applying the rules;
- a note added to letters sent to financial institutions and individuals following a seizure to ask that they notify Revenu Québec in the event the monies are unseizable.

## ENSURING RELIABLE ONLINE INFORMATION

Following a Federal Court decision in 2007, anyone making a proposal or consumer proposal<sup>2</sup> must file a single tax return for the fiscal year. Despite the fact that the income tax return guide includes this information, the Québec Ombudsman noticed that the Revenu Québec website mentioned that taxpayers could opt to file two income tax returns even without having declared bankruptcy. This information was inaccurate and could lead to processing delays for taxpayers. The Québec Ombudsman succeeded in getting Revenu Québec to correct the information.

## ENSURING THE ACCESSIBILITY OF THE NEW SOLIDARITY TAX CREDIT

In his 2010–2011 Budget Speech, the Minister of Finance announced the introduction of a new solidarity tax credit to take effect in July 2011. This measure will replace three existing credits (QST, property tax, and northern villages) and will make it possible to earmark over \$500 million more for the support of low-income persons. The solidarity tax credit will benefit around 2.7 million households. Unlike the credits it replaces, which taxpayers could collect by monthly cheque or request when filing income taxes, the amount will be paid by direct deposit. It was this payment method that the Québec Ombudsman brought to Revenu Québec's and the Ministère des Finances' attention.

Although the Québec Ombudsman believes in encouraging people to sign up for direct deposit (secure for users, saves administrative expenses), it is concerned about the accessibility of this new credit for the most disadvantaged individuals who are often poorly educated or even functionally illiterate, or socially isolated. Around 10% of social assistance beneficiaries—or 50,000 individuals—have no account at a financial institution. There are at least 20,000 more households in the same situation. Although the tax credit does not take effect until July, the Québec Ombudsman had already received 404 complaints as at March 31, 2011.

The Minister of Finance and the President and Chief Executive Officer of Revenu Québec indicated to the Québec Ombudsman that they believe it is important for everyone who is eligible for the new credit to receive it and that an alternative must be found for those who cannot open an account at a financial institution. As of the writing of this report, the Québec Ombudsman is in communication with the Ministère des Finances and Revenu Québec on this matter.

## APPLYING THE LAW FAIRLY AND EQUITABLY

Two situations in particular led the Québec Ombudsman to recommend that Revenu Québec base its decisions on a fair and equitable interpretation of the relevant legislative provisions.

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<sup>2</sup> A proposal or consumer proposal is an offer made by a bankrupt person to his or her creditors to reduce the amount of debt owed, to extend the repayment deadline, or a combination of both. It allows such persons to pay a part of their debts and keep their property without having to declare bankruptcy. The main purpose of the proposal is to promote the discharge of insolvent companies, while the consumer proposal allows for more flexible application for individuals.

### *Unjustified double taxation*

*A woman passed away in October 2008. She received disability insurance benefits from her insurer for the last three months of her life while awaiting a decision from the Régie des rentes du Québec. Unfortunately, she died before the response was issued. Further to the decision, the succession had to repay the insurer in 2009. Revenu Québec nevertheless determined that the succession could not receive any deduction related to the repayment of benefits since the woman had declared the income and not the succession.*

*Revenu Québec deemed that the law prevented it from rendering a different decision, even with the knowledge that this income was therefore being double taxed.*

*Following its investigation, the Québec Ombudsman deemed that an interpretation allowing legislators to double tax an individual's income—even if the individual is deceased—was unjustified, and this opinion was shared by Ministère des Finances tax services personnel. According to them, Revenu Québec could have adopted a much less restrictive approach here. The Québec Ombudsman's intervention helped correct this situation for the future.*

*The Québec Ombudsman is surprised to note that, although Revenu Québec understood the situation, it did not take any steps with the Ministère des Finances to ensure the interpretation of the tax provision did not penalize those affected by the measure.*

*The Québec Ombudsman's intervention, which encompassed most situations, also allowed the Ministère des Finances to see that relaxing the interpretation of current rules was not enough to handle all cases in which income received after a death is used to repay money received while the person was alive. An amendment to the Taxation Act was announced in December 2010 to correct this inequity.*

## RECOMMENDATIONS

WHEREAS Revenu Québec's position has a detrimental effect on certain persons in the event of succession;

WHEREAS it is unfair to double tax individuals' income;

WHEREAS Revenu Québec can agree to act on a change request entailing a decrease of the balance due when this decrease is related to a tax year ending during one of the ten calendar years preceding the request (*Dossier Équité*);

The Québec Ombudsman recommends that:

- Revenu Québec identify the files for which its restrictive interpretation of the *Taxation Act* led to double taxation of a deceased person's income due to reimbursements owed by the succession;
- the process encompass the past ten years;
- Revenu Québec process these files based on its new interpretation;
- the process allow the necessary corrective measures to be taken when taxpayers have paid more than what was due during the past ten years, as the *Dossier Équité* allows.

## COMMENTS FROM REVENU QUÉBEC

“Revenu Québec looked into identifying these exceptional files and must conclude that it is not in a position to act on this recommendation. However, taxpayers may submit a request under the *Dossier Équité* to have the required changes made.”

## THE QUÉBEC OMBUDSMAN'S RESPONSE

The Québec Ombudsman understands it is not possible to identify all these exceptional files. However, it believes that Revenu Québec must at the very least inform the Ordre des comptables agréés du Québec and the Chambre des notaires, among others, that taxpayers may apply for it to make the required changes.

### *A company that paid the price of Revenu Québec's inflexibility*

*A company called on the Québec Ombudsman following Revenu Québec's refusal to grant it a refund of the tax on business inputs (taxes already paid by the company when goods are purchased). Revenu Québec based its decision on incomplete entries on the invoices submitted to it and the fact that two companies had the same name within the business structure.*

*However, the current regulation and interpretation bulletin used by Revenu Québec stipulate that it is possible to receive such a refund when the invoice contains the “name under which the person is doing business.”*

*In its investigation, the Québec Ombudsman observed that the sister company with a similar name was not in operation and that the name written on the invoices was the name under which the company did business for its suppliers.*

*Higher-level interventions were required for Revenu Québec to accept the merit of the Québec Ombudsman's position that, despite similar names, there was no confusion possible as to which company the invoices were intended for. Revenu Québec then had to review these invoices keeping in mind the regulatory notion of the name under which this company was doing business. All the invoices submitted by the person in support of the claims were finally accepted, for a total of over \$300,000.*

## THE QUÉBEC OMBUDSMAN'S RESPONSE TO BILLS AND DRAFT REGULATIONS

In a letter sent to the Minister of Finance, the Québec Ombudsperson commented on Bill 117, the *Act giving effect to the Budget Speech delivered on 30 March 2010 and to certain other budget statements*. Her statement concerning the obligatory direct deposit of the new solidarity tax credit can be found on page 106 of this annual report, in the “Parliamentary Watch Report” section.

# Revenu Québec<sup>1</sup>

## SUPPORT-PAYMENT COLLECTION

### COMPLAINTS IN 2010–2011

The number of complaints received by the Québec Ombudsman concerning the Support-Payment Collection Program remained stable in 2010–2011 compared to the previous year. These complaints mainly concern the following:

- failure to pay support or irregular support payments to the creditor;
- failure by Revenu Québec to collect support when the debtor defaults on the payments stipulated in the judgment;
- the requirement for creditors and debtors to obtain a new judgment every time they wish to change or cancel support payments;
- interpretation or application of judgments;
- claimed amounts deemed disproportionate by debtors in relation to their ability to pay.

### STREAMLINING THE CHILD SUPPORT REVIEW PROCESS

Since automatic collection of support payments was introduced, the Québec Ombudsman has received complaints every year concerning the need for court decisions to change or cancel support payments. The inflexibility of the system runs counter to the objectives of the *Act to facilitate the payment of support*.

The Québec Ombudsman believes the support review process must be simplified. Despite repeated requests to the Ministère de la Justice (see the “Ministère de la Justice” section), the Québec Ombudsman is still receiving complaints from those who, even in simple situations, must go to the Superior Court to have a support order changed or cancelled.

#### *Unnecessary court involvement in agreements where there is consensus*

*A Revenu Québec agent refused a student of legal age the right to directly receive the support the Department currently pays his mother.*

*The judgment was rendered while the student was a minor and stipulated that the support was payable by the father to the student’s mother. However all parties involved—the child, mother, and father—agreed to have the support paid directly to the child. Given current legislation, the Québec Ombudsman believes the Direction de la perception des pensions alimentaires had no other choice but to refer the parties to the courts but it suggested that the child of legal age verify his eligibility for legal assistance so that he might obtain the desired judgment at the lowest cost.*

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<sup>1</sup> Agence du revenu du Québec as of April 1, 2011.

Still in connection with streamlining the process, the Québec Ombudsman learned of a Superior Court judgment<sup>2</sup> that now allows Revenu Québec to terminate execution of support orders under certain circumstances. According to the Court, Revenu Québec may terminate a support obligation arising from a judgment when it is solely a question of establishing a factual situation that is accepted by the parents, and no evaluation or application of the law is being used to determine support. The most likely situation in which Revenu Québec could use such a power is when a child receiving support reaches legal age and is fully independent. The Québec Ombudsman is pleased to note that Revenu Québec applied the principles of this judgment in 2010–2011.

***Involvement of the courts can be avoided under certain circumstances***

*For nearly a year, a father residing abroad had been requesting that the seizure of his Régie des rentes du Québec benefits be stopped and the support he was required to pay his son be cancelled. The son had completed his university studies and the father was contesting the requirement to obtain a Superior Court judgment in order to cancel the support. He asserted he could not bring proceedings due to a lack of financial resources and an inability to return to the country. Given the law, Revenu Québec had no other choice but to require a new judgment to end support-payment collection.*

*Several months later, the Québec Ombudsman learned from the debtor that the son, to whom support payments were being made, was in all likelihood financially independent. Given these special circumstances, the Québec Ombudsman requested that Revenu Québec notify the parties involved of the new provisions allowing Revenu Québec to terminate support-payment collection without court involvement. Revenu Québec agreed to the Québec Ombudsman's proposal.*

## ENSURING FULL EXECUTION OF SUPPORT JUDGMENTS

A right stemming from a judgment generally lapses ten years after the judgment is pronounced. This rule applies to support payments but may occasionally lead to a loss of rights.

There are legal acts that interrupt the limitation period and allow the “counters to be reset to zero” in a manner of speaking. The effect of such “interruptions of prescription” is to preserve the right to collect support payments.

In 2008–2009, the Québec Ombudsman noted the absence of a written directive concerning interruption of the limitation period, both for judgments rendered in favour of creditors and for overpayment claims from debtors. It therefore called Revenu Québec's attention to this detrimental situation to prevent those who should have received support through the Direction de la perception des pensions alimentaires from being unfairly penalized due to expiration of the limitation period: agents had to be aware of this situation when necessary so that legal acts to interrupt the limitation period could be carried out.

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<sup>2</sup> P.S. c. M.D., 2010 QCCS 1582.

Revenu Québec immediately identified the cases for which urgent action was required. Moreover, in February 2011, it confirmed to the Québec Ombudsman that at the end of 2010, all Direction principale des pensions alimentaires agents had received training allowing them to:

- establish any interrupting act;
- apply the directive requiring them to notify their superiors when their intervention is needed to interrupt the limitation period.

Advanced training on the same subject was also given to certain teams that are particularly involved with this type of case. Despite this progress, the Québec Ombudsman considers the issue unsettled.

Based on existing legislation,<sup>3</sup> the Québec Ombudsman recommended that Direction de la perception des pensions alimentaires representatives request that the *Act to facilitate the payment of support* be amended so that certain administrative acts could more automatically interrupt the limitation period. This measure would better protect against “premature” limitation of rights.

The introduction on May 4, 2011, of a new section in the *Act to facilitate the payment of support* through Bill 5, the *Act to amend the Taxation Act, the Act respecting the Québec sales tax and other legislative provisions*, will allow the limitation period to be interrupted through administrative channels, which fully satisfies the Québec Ombudsman’s request.

## STOPPING ILLEGAL SUSPENSION OF PASSPORTS

Under the federal *Family Orders and Agreements Enforcement Assistance Act*, Revenu Québec can request that Canadian debtors’ passports be suspended if they fail or refuse to pay court-ordered support.

### *The end of passport suspension for non-payment of support*

*Due to lack of income, an individual stopped paying support in March 2010. As a result, Revenu Québec invoked federal legislation to request and obtain suspension of the individual’s passport. However, despite two subsequent judgments in November and December 2010 that temporarily ended any form of collection, the Revenu Québec collector refused to lift the passport suspension. He argued that these were temporary judgments and the judge’s decision could not be assumed. Proceeding otherwise would force Revenu Québec to repeat all the procedural steps in the event enforcement of the support payments were resumed.*

*The Québec Ombudsman emphasized that, under such circumstances, the Family Orders and Agreements Enforcement Assistance Act requires Revenu Québec to promptly request that the person’s passport suspension be lifted. A written legal opinion from the Department confirmed the Québec Ombudsman’s position. Following this, Revenu Québec quickly applied the procedure to have the suspension lifted.*

*Going forward, the legal opinion will allow Revenu Québec’s Centre de perception fiscale agents to correctly apply the law in similar cases.*

<sup>3</sup> This is currently the case for the recovery of State-owed amounts in matters of taxation (the *Act respecting the Ministère du Revenu*, R.S.Q., c. M-31) or employment and social solidarity (*Individual and Family Assistance Act*, R.S.Q., c. A-13.1.1).



# Société de l'assurance automobile du Québec

## HIGHWAY SAFETY CODE

### COMPLAINTS IN 2010–2011

In the area of highway safety, complaints about the Société de l'assurance automobile du Québec (SAAQ) once again mainly concern the conditions for obtaining and keeping a driver's license:

- suspension;
- the requirement to produce a medical report or evaluation by a drug rehabilitation centre;
- failing the practical exam;
- gradual driver qualification.

It should, however, be noted that a new type of complaint appeared in 2010–2011. A number of individuals requested the Québec Ombudsman's assistance with problems related to direct debits.

### PROVIDING APPROPRIATE INFORMATION TO THOSE WHO MAKE ELECTRONIC TRANSACTIONS

In its 2006–2010 strategic plan, SAAQ set an objective of adapting its services to the public's needs, expectations, and ability to pay. To meet this objective, it aimed to increase the relative percentage of transactional electronic services related to driver's licenses and registrations to 28.1% from the beginning of 2007 to the end of 2010. As at December 31, 2009, this objective seemed well on its way to being achieved as electronic transactions already represented 25.6% of service delivery channels for licenses and registration. For the same reason, in 2008 SAAQ implemented the pre-authorized debit payment method for licenses and vehicle registrations, as well as the ability to spread payments over six or 12 months.

Despite the advantages offered by these transaction methods, users are sometimes subject to unexpected and undesirable consequences. The Québec Ombudsman intervened to ensure SAAQ improved the quality of the information on its website and changed certain practices related to electronic transactions and pre-authorized debits.

When users select this transaction method, it goes without saying that they must be aware that once the transaction has been completed, it cannot be undone, and they must bear the consequences of any errors they have made. Asking SAAQ to process every correction or change request after the fact would negate the intended benefit of faster service.

In return, SAAQ is responsible for fully informing users of the consequences of the choices they make when completing an electronic transaction. To this end, SAAQ added warning messages to the vehicle discarding overview page of its website to clarify the distinction between vehicle discarding and storage. To put a discarded vehicle back on the road, the owner is required by regulation to have it mechanically inspected, which is not the case for a 12-month storage period.

This year, further to a complaint, the Québec Ombudsman asked SAAQ to add clarifications to the “Licensing of a Stored Vehicle for Road Use” overview page of its website.

#### *The Internet and automatic billing*

*Every spring, a man licensed his stored convertible car for road use during the warmer months. This year, he decided to do it a few days early to avoid the heavy online traffic and slow service in early April, which is the month in which he wanted to resume using his car. He therefore completed the transaction on March 29. At the end of the transaction, he was surprised that he had not been able to indicate the date he wanted to license his stored vehicle for road use. SAAQ then informed him that it was impossible to make this transaction in advance since the system automatically generates a bill for the month in which the transaction is completed. As a result, the man had to pay registration fees for the month of March. At the Québec Ombudsman's request, SAAQ added explanations to the “Licensing of a Stored Vehicle for Road Use” overview page of SAAQclik Online Services.*

## LISTENING TO THE NEEDS OF PRE-AUTHORIZED DEBIT USERS

The pre-authorized debit payment method for driver's license and vehicle registration fees was implemented in 2008 to help users deal with the large insurance contribution increase. It gives them the option of paying the amount due in a single payment or spreading payments over six or 12 months. If payments are spread out, interest on the license and registration fees is added to each payment. Since it is generally the most financially vulnerable individuals who select the pre-authorized debit and installment options, the Québec Ombudsman believes it is all the more important to ensure they are not forced to bear the financial consequences of the limits of this payment method.

Since the system was implemented, a number of problems have been brought to light through complaints submitted to the Québec Ombudsman:

- users are unable to postpone payments to a later date even if they have requested it, with the knowledge they will not have sufficient funds on the scheduled date. The debit therefore occurs on the statutory date, with the result that the user gets charged for insufficient funds, and additional interest is added to subsequent payments. After two rejections, pre-authorized debits are no longer allowed;
- SAAQ clerks are unable to consult the record of pre-authorized debit payments when someone has requested a transaction likely to have an impact on the current payment, such as changes in banking information or storing, discarding, or sale of a vehicle. As a result, users are unaware of the consequences their transactions may have on current and future pre-authorized debits;
- although no annual payment notice is sent when a person's rights are suspended, rollover notices for pre-authorized debits are issued. In the absence of any notification to the contrary from the customer, SAAQ then rolls over the pre-authorized debits to the following year, in accordance with the *Regulation respecting road vehicle registration* and the *Regulation respecting licenses*. The result is that the account being debited may not contain sufficient funds since the account holder may not have anticipated the debits, with the above-mentioned consequences. Following a complaint, the Québec Ombudsman requested that SAAQ stop sending rollover notices when rights have been suspended. As of January 2010, no notices have been sent in these circumstances.

### **A digital tangle**

*A woman registered for pre-authorized debits, occurring on the fifth of every month. On November 4, she went to a service centre to change her bank information for the debits as of the following month, but, in fact, a debit was made the next day from the new account that did not yet contain sufficient funds. Two additional attempts were made at the end of November and the beginning of December despite a letter from the woman requesting SAAQ to stop the pre-authorized debits, with the result that she was charged \$35 for insufficient funds. Further to the Québec Ombudsman's intervention, these fees were cancelled. SAAQ also started requiring its clerks and agents to consult the record of pre-authorized debit payments every time users need to make transactions that affect their payments so that they can inform the users if requested to do so. Although this is an improvement, the Québec Ombudsman thinks clerks should systematically offer to provide this information rather than waiting for users to request it.*

In 2010, SAAQ, aware of the pre-authorized debit issues, began contemplating potential solutions to avoid penalizing this often-vulnerable clientele. Further to this exercise, in 2010–2011, it undertook a series of corrective measures to reduce rejections, improve written customer communication, provide refresher training to its clerks, and modify the computer system. Other measures are planned for 2011–2012.

### **FOLLOWING UP ON THE QUÉBEC OMBUDSMAN'S RECOMMENDATION**

In its 2008–2009 annual report, the Québec Ombudsman recommended that SAAQ update its computer systems so that the complete file of anyone making a transaction in a service centre can be quickly checked with regard to licenses and registration and any requirements contrary to the law can be avoided.

Further to this recommendation, SAAQ conducted an analysis for the redesign of its computer systems in order to provide service consistent with Highway Safety Code requirements. The Québec Ombudsman will monitor progress on this work over the next year.

### **THE QUÉBEC OMBUDSMAN'S RESPONSE TO BILLS AND DRAFT REGULATIONS**

The Québec Ombudsman commented on Bill 71, the *Act to amend the Highway Safety Code and other legislative provisions*. Its statement concerned obligatory helmet wearing for cyclists age 12 and under and certain safety procedures during snow removal operations. A summary can be found on page 116 of this annual report, in the "Parliamentary Watch Report" section.

# Société de l'assurance automobile du Québec

## COMPENSATION FOR ROAD ACCIDENT VICTIMS

### COMPLAINTS IN 2010–2011

Complaints received by the Québec Ombudsman about the Société de l'assurance automobile du Québec (SAAQ) in 2010–2011 were down compared to the previous year. These mainly concerned delays in processing files and the failure to render decisions or provide them in writing.

### UNLAWFUL DISCONTINUATION OF AN INDEMNITY FOR CHILDCARE EXPENSES

SAAQ may pay compensation for expenses incurred by victims unable to care for their children after a car accident. The Québec Ombudsman found that SAAQ ceases to pay this indemnity in cases where a medical opinion is requested at its own initiative. SAAQ confirmed this is standard operating procedure. There is even a form letter notifying accident victims about this policy. No right of review is mentioned.

The *Automobile Insurance Act* provides that the indemnity for expenses related to the care of another person must be paid as long as the victim is unable to care for that person according to the criteria set out in the act. When SAAQ ceases to pay the indemnity it does not know if the victim is able to care for the person in question. This is precisely why a medical evaluation is performed. Moreover, under the act, discontinuation of the indemnity is effective at the end of the week in which the victim ceases to be incapacitated. The act also describes the grounds on which the indemnity may be denied, suspended, terminated, or reduced.

The Québec Ombudsman found that the practice of discontinuing an indemnity when requesting a medical opinion was illegal. It therefore recommended that SAAQ stop this practice, which it has agreed to do. If SAAQ pays out too much money, it can recover the overage under the powers conferred on it by law.

#### *The obligation to deliver a reasoned decision in writing*

*To comply with a ruling by the Tribunal administratif du Québec, SAAQ had to pay an income replacement indemnity to a victim who it previously determined was unable to work. Since the Tribunal did not rule on the disability end date, SAAQ had to continue to pay compensation until the person could return to work.*

*Subsequently, SAAQ discontinued the indemnity on the basis of a medical opinion, without notifying the individual concerned in writing of its decision. The individual appealed to the Québec Ombudsman, arguing that, in the absence of a written decision, he could not exercise his right of review.*

*In this particular case, SAAQ, having failed to render a decision as to the end of disability, could not halt income replacement indemnity payments. Under the Automobile Insurance Act, SAAQ must continue paying the indemnity until the date of the decision, which must be substantiated and issued in writing to the victim. The Québec Ombudsman reminded SAAQ of this obligation and SAAQ agreed to act on the victim's request.*

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***A decision concerning the inability to work—and a ten-year retroactive adjustment***

*On May 3, 1996, an individual was the victim of an automobile accident that caused severe brain injury. In 1998, SAAQ issued a decision stating she was able to work as a telemarketing agent. In 2005, the woman suffered a relapse and in 2009, SAAQ declared that she had been unable to work since then.*

*Being of the opinion that the medical examinations conducted at SAAQ's request following her relapse actually indicated that she had never been fit to work since the 1996 accident, the individual requested that SAAQ recognize her as being unfit since that time. However, SAAQ turned down her request.*

*The Québec Ombudsman found that the information in the file should have led SAAQ to conclude that despite the individual's attempts to remain in school and training since the car accident in 1996, she had never been able to hold a job that conformed to real labour market requirements. The Québec Ombudsman therefore asked SAAQ to review her ability to work since the accident. This, however, required several interventions with various SAAQ sections. SAAQ finally agreed to act upon the recommendation, which led to a \$250 increase in the woman's income replacement indemnity every two weeks and a retroactive payment of \$125,229 plus \$26,779 in interest.*

## THE QUÉBEC OMBUDSMAN'S RESPONSE TO BILLS AND DRAFT REGULATIONS

The Québec Ombudsman commented on the *Regulation to amend the Regulation respecting the reimbursement of certain expenses*. The Québec Ombudsman's intervention concerning amounts paid out by an accident victim to obtain a medical report can be found on page 117 of this annual report, in the "Parliamentary Watch Report" section.

# Tribunal administratif du Québec

The Québec Ombudsman attaches considerable importance to application of the *Act respecting administrative justice*. Among other things, this act establishes the Tribunal administratif du Québec whose function, according to the cases provided, is to rule on appeals of decisions rendered by the various public authorities.

## REDUCE PROCESSING TIMES FOR AUTOMOBILE INSURANCE CASES—A PRIORITY

The significant increase in the number of automobile insurance cases brought before the Tribunal since 2006 is a source of concern for the Québec Ombudsman and was reported in its last two annual reports. This increase is mainly due to efforts by the Société de l'assurance automobile du Québec (SAAQ) to more expeditiously transfer accident victims' cases to the Tribunal and to process applications for administrative review within the 90-day deadline prescribed by the act.

The Tribunal's increased case inventory inevitably results in significant delays in processing accident victim cases and deprives victims of their right to obtain justice within a reasonable time frame. In numerous cases there is a serious impact on individuals' quality of life when, for example, SAAQ refuses to grant them an income replacement indemnity or decides to terminate their indemnity. The Tribunal must be able to process their cases within a reasonable amount of time.

In developing its 2008–2012 strategic plan, the Tribunal addressed this issue. It designed an action plan and, since 2008, has instituted several measures to achieve the long-term goal of reducing the automobile insurance case inventory. The Québec Ombudsman acknowledges that the Tribunal has:

- increased the number of hearings and conciliation sessions;
- invested significant efforts in conciliation, its preferred dispute resolution method;
- revised work processes to ensure personalized case management;
- conducted an analysis of files to ensure better inventory management and identification of particular difficulties;
- appointed coordinating administrative judges.

## ENSURING PROMPT DECISIONS

Despite the measures in place, the Québec Ombudsman found that:

- since 2006 the Tribunal has consistently opened more cases than it has closed;
- from 2009 to 2010, there was an increase in case inventory and average processing time, while both the number of cases closed and the number of hearings held declined.

## IMPACT OF CONCILIATION SESSIONS

As previously mentioned, conciliation is the Tribunal's preferred method for reducing automobile insurance case inventory.

The Québec Ombudsman notes that the Tribunal has achieved its goal of holding more conciliation sessions. Although this is a positive development, the Québec Ombudsman believes it falls far short of enabling the Tribunal to reach its goal of reducing case inventory.

## REDUCING INVENTORY AND PROCESSING TIMES

The Québec Ombudsman questions the Tribunal's case inventory target. We note that this target has varied considerably in recent years:

- in 2007–2008, the Tribunal set the goal of reducing inventory to fewer than 5,000 cases by 2011;
- in 2008–2009, the target was changed to 4,500 cases by March 31, 2012;
- in 2009–2010, no target appeared in the Tribunal's operational plan;
- according to the 2010–2011 operational plan, the current target consists of restoring inventory to the March 31, 2007 level, or 7,161 cases.

The Québec Ombudsman considers the current two-year average processing time for automobile insurance cases unacceptable and not in keeping with the principles of administrative justice. These results are worrisome. They clearly show that the steps taken by the Tribunal since 2008 have failed to prevent the rise in case inventory and are not adequate to bring about a reduction. The Tribunal must set reasonable goals to guide it in its attempt to reduce average processing time.

## THE NEED FOR SUFFICIENT RESOURCES

To deal with the increased inventory, the Tribunal must have sufficient human resources. In this regard:

- compared to the total number of administrative judges authorized at its creation in 1998, the Tribunal has seen a 17% reduction in the number of administrative judge positions; as at August 31, 2010, 18 full-time and 5 part-time positions remained vacant;
- the number of administrative judge positions assigned to the social affairs section has remained virtually unchanged despite a significant increase in the automobile assurance case inventory. The Québec Ombudsman also notes some delays in appointing administrative judges.

In early 2010, the Tribunal informed the Québec Ombudsman that the Secrétariat du Conseil du trésor had refused to temporarily exempt it from any further reductions to its support staff and would maintain the rule of replacing only four out of ten departures due to retirement. The Québec Ombudsman will continue to closely monitor developments in the coming months.

The Québec Ombudsman also took note of the March 16, 2011 appointment of eight full-time and five part-time administrative judges in the social affairs section. Their contribution should be decisive in improving the Tribunal's responsiveness in the coming year.

## RECOMMENDATIONS

WHEREAS section 1 of the *Act respecting administrative justice* defines the specificity of this area of justice and aims to ensure the quality, promptness, and accessibility of public services, as well as to guarantee respect for citizens' fundamental rights;

WHEREAS the Tribunal must take steps to ensure prompt decision-making;

WHEREAS the Tribunal pursues the goal of reducing the automobile insurance case inventory;

WHEREAS the automobile insurance case inventory has increased significantly since 2006;

WHEREAS average automobile insurance case processing time has increased to nearly two years;

WHEREAS the average automobile insurance case processing time is unreasonable and can be injurious to individuals;

WHEREAS the results observed as at March 31, 2010, clearly demonstrate that the measures implemented by the Tribunal over the past two years did not achieve the objective and that the situation continues to deteriorate;

The Québec Ombudsman recommends that with respect to the administrative responsibilities of the Tribunal administratif du Québec, it:

- take appropriate action to handle case volume and reduce the automobile insurance case inventory;
- implement mitigation measures, such as a temporary mechanism to systematically prioritize cases based on their seriousness and urgency, that would minimize processing times for the most critical road accident victim cases. This temporary mechanism, administered by the Tribunal, would make it possible to proactively examine all cases at the time of registration, unlike counter motions, which are exceptional measures;
- set short- and medium-term targets, particularly for the purposes of reducing inventory and average processing delays.

The Québec Ombudsman would like to be notified of the follow-up to its recommendations by September 30, 2011.

## TRIBUNAL COMMENTS

"It is imperative to take into account that, in addition to the items mentioned, additional efforts have been undertaken to reduce the SAAQ case inventory, i.e., the development of computer tools to classify inventory cases. This will figure into new planning as of October 3, 2011, with the addition of ten new positions in conciliation and 48 new positions in adjudication.

"Steps have already been taken with the Conseil du trésor to review the replacement rate of four out of ten departures due to retirement.

"Lastly, as provided in the Tribunal's constituting order, 97 administrative judge positions were deemed necessary to carry out its mission. It is highly desirable to appoint new administrative judges to help meet this target and enable the Tribunal to fulfill its mission."