PUBLIC SERVICE

This section presents the Québec Ombudsman's findings on the failings of government departments and public agencies in interacting with the citizens they must serve. It bears mentioning that these flaws should not be construed as indicative of the public service's overall performance. Obviously, the government departments and public agencies that have the most to do with citizens are more likely to be the subject of complaints and intervention by the Québec Ombudsman. That said, certain defects remain worrisome and warrant being pointed out so that they can be corrected and their recurrence prevented.

The number of complaints and the proportion of substantiated complaints (25.4%) in 2011-2012 are in keeping with trends in recent years. Again this year, unreasonable wait times and administrative inflexibility were frequently cited as reasons for citizens' dissatisfaction and harmful treatment. Given the fact that this is a phenomenon that resurfaces frequently, the Québec Ombudsman wants to remind the public service of the importance of acting with openness and earnestness, in accordance with its primary mission and the Act respecting administrative justice. It is worthwhile repeating that this act stipulates that decisions made by the government with respect to citizens must be based on the principles of diligence, flexibility, accessibility, clarity of information and explained decisions.

Furthermore, the Québec Ombudsman has seen a rise in the tendency towards a shrinking slate of services that differs from region to region, resulting in inequality and an insufficient response to needs. This erosion of services crops up time and again in investigations that also show that these restrictions on services are not officially or clearly indicated.

WAIT TIMES: STILL THE NUMBER ONE PROBLEM

Accounting for more than one third of all substantiated complaints concerning government departments and public agencies, the wait times for obtaining services continue to be the primary reason why citizens turn to the Québec Ombudsman. The unduly long wait for a decision about, for example, an indemnity, a retirement pension or a tax credit, may be hard on citizens, especially those in precarious situations. The time it takes before citizens get a hearing with an administrative tribunal, notably the Régie du logement and the Tribunal administratif du Québec, is a particular cause for concern. In other cases, it is simply a matter of citizens being put on hold for an unreasonable amount of time when they make a phone call.

ADMINISTRATIVE INFLEXIBILITY: STILL TOO MUCH OF IT

Since the sound management of public monies requires rigour, government departments and public agencies have been instructed to set performance-improvement objectives. However, the goal of efficiency must not be sought at the expense of service to citizens and to the community—the very reason for government. At times citizens are penalized even before the situation and potential impact of the sanction are examined, and that includes determining whether their action was reasonable under the circumstances. When this occurred, the Québec Ombudsman intervened with respect to La Financière agricole du Québec, the Ministère de l'Emploi et de la Solidarité sociale and Revenu Québec, among others.

BEWARE! SERVICE EROSION IN VARIOUS GOVERNMENT DEPARTMENTS AND PUBLIC AGENCIES

Given the pressure on public finances, the government frequently indexes the fees charged for numerous services, if it does not increase them outright. However, the Québec Ombudsman has noticed that there is not always the same enthusiasm when it comes to indexing citizens' benefits. Cases in point are the benefits granted last-resort financial assistance recipients for medically necessary items, and certain costs and expenses reimbursed to accident victims by the Commission de la santé et de la sécurité du travail and the Société de l'assurance automobile du Québec. This increasingly prevalent erosion of the slate of services in the health and social services sector is spreading to programs and services in the public service sector, and this alarms the Québec Ombudsman.

This chapter covers the deficiencies that best represent substantiated complaints about the public service brought to the Québec Ombudsman's attention. It provides brief descriptions of the problems observed and the corrections made. Firmer resolve to rectify these situations should contribute to improving public services.

Government departments and public agencies are presented in alphabetical order:

- Commissaire à la déontologie policière
- Commission administrative des régimes de retraite et d'assurances (CARRA)
- Commission de la santé et de la sécurité du travail (CSST)
- Curateur public
- La Financière agricole du Québec
- Ministère du Développement durable, de l'Environnement et des Parcs
- Ministère de l'Éducation, du Loisir et du Sport
- 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 - Direction générale des services correctionnels
- Office de la protection du consommateur
- Régie de l'assurance maladie du Québec (RAMQ)
- Régie du logement
- Revenu Québec
- Services Québec - Directeur de l'état civil
- Société de l'assurance automobile du Québec (SAAQ)
- Tribunal administratif du Québec

Commissaire à la déontologie policière

The Commissaire à la déontologie policière (Police Ethics Commissioner) is an agency that reports to the Minister of Public Security. In its 2010-2011 Annual Report, the Québec Ombudsman decried its lack of cooperation. Since then, there have been numerous discussions, and communication has been restored. The Québec Ombudsman is pleased to say that from now on, the Commissioner will be taking the required measures so that the Québec Ombudsman can properly conduct any investigations that involve the agency.

Commission administrative des régimes de retraite et d'assurances (CARRA)

COMPLAINTS IN 2011-2012

The Québec Ombudsman observed a significant decrease from 2010-2011 figures in the number of complaints it received concerning the Commission administrative des régimes de retraite et d'assurances (CARRA). However, it remains that in the past two years the number of complaints has been abnormally high.

There has also been a drop in the number of substantiated complaints.

The complaints have to do mainly with the time it takes to:

- confirm retirement pension amounts;
- process applications for buying back years of service.

The problem has persisted since 2010 and recurrent wait times:

- are often more than a year long;
- were denounced in the Québec Ombudsman's 2010-2011 Annual Report and were the subject of recommendations.

IMPROVEMENT NOTED: SHORTER TELEPHONE HOLD TIMES

In its last annual report, the Québec Ombudsman indicated that it regularly received complaints about the telephone hold times before talking to CARRA information staff. The agency took various measures to improve the situation, including hiring extra staff and establishing a new call intake system that does not shut down at lunch hour. The Québec Ombudsman was able to ascertain based on statistics that at the end of 2011, the average hold time was generally under two minutes. This hold time was within recognized standards. However, the figures for the first three months of 2012 point to a sizable increase in average hold times which were nonetheless markedly below those for the same period in 2011. CARRA explained that this seasonal spike is caused by the mass mailing of information to citizens. The Québec Ombudsman no longer receives complaints about this, which is a sign that service has improved.

EFFORTS TO REDUCE PROCESSING WAIT TIME MUST CONTINUE

In most cases, the abnormally long processing times were due to updating of CARRA's computer systems and, more specifically, delivery of the RISE[1] system in June 2010. Aware of this situation, CARRA established an action plan specifically designed to reduce wait times.

In the past year, CARRA has reported the results of its efforts to reduce application overload and processing wait times to the Québec Ombudsman on a quarterly basis. In early 2012, the Québec Ombudsman noted that the pension estimate backlog had been absorbed but that the overload of requests for confirmations of retirement pension amounts and applications to buy back years of service had not. The Québec Ombudsman has also noticed that this year CARRA received more applications than foreseen and processed fewer pending applications than planned. CARRA must therefore bring its inventory back to normal, in other words, back to the levels that existed before the new processes and computer systems were put in place. It plans to achieve this by June 2012. The Québec Ombudsman will monitor this matter very closely.

The following is an example of the kinds of problems that citizens encountered. A person came to the Québec Ombudsman after a 14-month wait for confirmation of her retirement pension amount. In all, it took 17 months for her to get an answer from CARRA. She did, however, receive monthly advance payments during this period.

The Québec Ombudsman would nonetheless underscore CARRA's efforts to reset the service application inventory back to zero. It invites CARRA to continue along the same lines in order to solve the problem definitively. It also insists on the importance of regularly informing contributors and beneficiaries about processing times. The table of processing times on CARRA's website must continue to be user-friendly and updated regularly. This was not always the case at the time this annual report was written.

FORGIVING DEBTS ARISING FROM ADMINISTRATIVE ERRORS THAT CITIZENS CANNOT REASONABLY DETECT

In its 2009-2010 Annual Report, the Québec Ombudsman recommended that CARRA take steps to be able to forgive debts arising from its errors that beneficiaries cannot reasonably detect. This would have required a regulatory amendment, and CARRA pledged to take prompt action to get it. However, the criteria and conditions governing how CARRA forgives debts could not be determined without feedback from the authorities responsible.

Two years have gone by since the Québec Ombudsman recommended that the regulation be amended. While the Québec Ombudsman is aware of the number of players and the stages of the process, it nonetheless considers that this amendment is taking too long. CARRA informed it that analysis is proceeding normally. The Québec Ombudsman therefore expects the required changes to be made no later than December 31, 2012, so that there are no adverse effects for the citizens concerned.

1 RISE is the acronym for the project to renew and integrate CARRA's essential systems. The project involves a complete overhaul of administrative and computer systems in order to improve customer service and client-staff communications.

CLEAR AND ACCURATE INFORMATION IS A MUST

In its 2008-2009 Annual Report, the Québec Ombudsman recommended that CARRA inform it of the results of the steps taken to improve the quality of the information provided when it would implement its 2009-2010 action plan. CARRA informed the Québec Ombudsman that it had undertaken a project to modernize how it communicates with citizens.

In early 2012, CARRA confirmed that all written communications had been reviewed since the introduction of the new computer system in June 2010. The agency also said it was open to taking a look at any communications that are the subject of new complaints by citizens.

The Québec Ombudsman will continue to pay special attention to CARRA's written communications.

Commission de la santé et de la sécurité du travail (CSST)

COMPLAINTS IN 2011-2012

The number of complaints that the Quebec Ombudsman received this year regarding the Commission de la santé et de la sécurité du travail (CSST) was practically identical to that in 2010-2011. However, substantiated complaints increased.

Complaints about the CSST this year generally concern:

- non-compliance with certain provisions of the Act respecting industrial accidents and occupational diseases;
- the time it takes to process applications.

ENSURING FAIR APPLICATION OF THE LAW

In the past year, the Québec Ombudsman noted that the CSST ignored certain provisions of the Act respecting industrial accidents and occupational diseases, thus depriving injured workers of the benefits stemming from the act or subjecting them to heavier requirements than necessary.

(. . . CARRYING DECISIONS TO THEIR LOGICAL CONCLUSION

A citizen who was reimbursed by the CSST for the cost of having her vehicle adapted complained about the agency's refusal to reimburse her for the cost of an assessment of her ability to drive required by the Société de l'assurance automobile du Québec (SAAQ). These are the facts:

- *The citizen sustained an industrial accident resulting in a permanently impaired right hand.*
- *The report by the occupational therapist mandated by the CSST recommended that a steering wheel knob be added to the citizen's vehicle for safety reasons.*
- *The SAAQ required an assessment precisely because the vehicle had been modified.*

Intervention and results

The Act respecting industrial accidents and occupational diseases states that "the principal vehicle of a worker may be adapted if the worker has sustained severe permanent physical impairment and if the adaptation is necessary, owing to his employment injury, to enable him to drive the vehicle or get into it."

Even though the citizen did not sustain a severe physical impairment, the occupational therapist mandated by the CSST recommended that the vehicle be adapted for safety reasons and the CSST accepted the recommendation. Under the Highway Safety Code, when a vehicle is adapted by the CSST, the SAAQ may ask for an assessment of the person's ability to drive. The CSST felt that the assessment required by the SAAQ was not related to the citizen's industrial accident and it therefore did not have to foot the bill for it.

According to the Québec Ombudsman, an assessment would not have been required if the citizen's vehicle had not been adapted following her industrial accident, so it asked the CSST to reconsider its decision to refuse to authorize reimbursement. The CSST agreed to act on the Québec Ombudsman's request and the citizen was reimbursed.

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(. . . CANCELLING AN UNJUSTIFIED CLAIM

A citizen claimed that the CSST had unjustly suspended his income replacement indemnity. These are the facts:

- *The Commission des lésions professionnelles rendered a decision on the citizen's case instructing the CSST to grant the citizen the assistance provided for in the Act respecting industrial accidents and occupational diseases.*
- *The assistance consisted of an indemnity plus authorization for five physiotherapy sessions per week.*
- *The citizen stopped going to physiotherapy in August.*
- *The following month, the CSST informed him that his indemnity would be suspended as of the end of September.*
- *In October, he received a $933.30 claim for the indemnity issued in August, before the suspension should have been applied.*

Intervention and results

Under the above act, suspension of payment of an income replacement indemnity cannot be retroactive. Consequently, the Québec Ombudsman asked the CSST to cancel the debt and refund the citizen for the amounts already paid on the claim. The CSST agreed to do so.

...

REDUCING WAIT TIMES

More than half of the Québec Ombudsman's interventions with regard to substantiated complaints about the CSST had to do with wait times, primarily the time it took to:

- decide on eligibility;
- reimburse fees;
- return a phone call;
- process an application for review.

(. . . EXAMINING FILES EFFICIENTLY AND PROMPTLY

In late August 2011, a citizen complained that the CSST had yet to decide on her application filed on June 6 that year. These are the facts:

- *The citizen's job required her to wear gloves to handle special equipment.*
- *During the past months, the citizen had an allergic reaction on her hands that forced her to take sick leave (two months and one week).*
- *After the last sick leave, she applied to the CSST for an indemnity.*
- *She tried to return to work, but she could not do her job.*
- *Her physician prescribed a third period of sick leave, this time for slightly over two months. He diagnosed an allergy to either something in the gloves or to the instruments she worked with.*

Intervention and results

The Act respecting administrative justice stipulates that agencies must make decisions with diligence. Furthermore, the Act respecting industrial accidents and occupational diseases specifies that the CSST may pay an income replacement indemnity before rendering its decision on the right to it if it is of the opinion that the application initially appears to be founded and it considers it appropriate in the interest of the beneficiary or if the beneficiary is urgently in need of the indemnity. The results of the medical exams required by the CSST showed a causal link between the citizen's job and her allergies. The CSST wanted to know what the allergen was before deciding on the citizen's eligibility. However, the wait time to see an allergist is between six to 12 months.

Since the assessment conducted by the CSST and the medical opinions sought provided a clear diagnosis and established the likelihood that the lesion was work-related, the Québec Ombudsman asked the CSST to grant the citizen income replacement indemnities for the three periods of sick leave. At the end of October 2011, the CSST agreed to act on the Québec Ombudsman's request. Even though the final decision regarding eligibility had not yet been rendered, the citizen received the indemnity pending receipt of the allergy test results confirming her eligibility.

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Commission de la santé et de la sécurité du travail (CSST)

DIRECTION DE L'INDEMNISATION DES VICTIMES D'ACTES CRIMINELS (IVAC)

COMPLAINTS IN 2011-2012

This year, complaints about the Direction de l'indemnisation des victimes d'actes criminels (IVAC) were up from last year. Substantiated complaints mainly concerned the long wait before a decision was rendered on a claimant's eligibility for the compensation plan. The fact that crime victims had to wait many months before receiving an indemnity or certain services was especially harmful.

After analyzing the complaints received, we found that the delays were generally due to:

- the time it takes before a file reaches the investigation section when the agent does not have all the information needed to make a decision (between two to six months);
- the time it takes for investigations to get underway (six months or more);
- the time it takes for agents to receive documents they have requested, police reports in particular (often two months or more).

(. . . PROCESSING APPLICATIONS PROMPTLY (1)

One crime victim was particularly affected by the time it took for IVAC to handle her application for benefits. These are the facts:

- *The citizen, a sexual assault victim, applied to IVAC for benefits in February 2011.*
- *In September of the same year, she still had not heard from IVAC and needed its financial support for the therapy she wanted.*

Intervention and results

In investigating the case, the Québec Ombudsman was able to establish the timeline of the events. In the month after the application was submitted, no one contacted the citizen about her needs further to her assault. In mid-March, while assessing the claimant's eligibility, the agent in charge of the case left a message for the citizen and contacted the social worker for the extra information needed to make a decision. At the end of May, the agent had not heard back from the social worker, so he followed up and left her another message requesting the number of the police report. In other words, the file sat idle for 70 days. A month later, another unsuccessful attempt was made to contact the social worker.

In October, at the time of the Québec Ombudsman's intervention, the citizen's file had not been touched for four months. The compensation agent was still waiting to hear back from the social worker and for medical records from the citizen.

The Québec Ombudsman considered that the delay in processing the file was unreasonable and contravened section 4 of the Act respecting administrative justice, which stipulates that it is the Administration's duty to act promptly. It therefore proposed ways of speeding up the decision process, by, among other things, suggesting a list of documents to obtain from the hospital and the local service quality and complaints commissioner, and getting the number of the police report so that IVAC could have access to it sooner.

Finally, at the end of November, nine months after the crime victim filed her application, IVAC rendered a decision on her eligibility based on the steps recommended by the Québec Ombudsman.

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(... PROCESSING APPLICATIONS PROMPTLY (2)

A citizen was assaulted in early January 2011 and applied to IVAC for benefits a month later. These are the facts:

- *The agent did not have enough information to make a decision as to the citizen's eligibility, so he transmitted the application to the investigation section in mid-March 2011. However, no one can explain why it took three months for the file to show up on the investigator's desk.*
- *The investigation wrapped up at the end of January 2012, more than ten months after the compensation agent forwarded the application to the investigation section.*
- *The citizen was deemed eligible for the compensation plan in February 2012 and her needs were assessed in late February 2012. The agent authorized issuance of the indemnity payment in early March, and it was mid-March before the citizen was able to cash her first cheque.*

Intervention and results

The analysis showed that although the investigator had trouble obtaining the information he needed, notably because of lack of cooperation by the people involved, it remains that the investigation took more than ten months. More than a year elapsed between the time the citizen filed her application and the eligibility decision was made and her needs were assessed. It took 13 months before the citizen received income replacement indemnities. The Québec Ombudsman considered this an unreasonable amount of time and one which put the crime victim in an unacceptable financial situation.

On the strength of these and other cases, the Québec Ombudsman let IVAC know that it is concerned about the time it takes to process certain files and is keeping a close eye on the situation.

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Curateur public

COMPLAINTS IN 2011-2012

This year, the number of complaints received concerning the Curateur public was basically the same as last year. There are three main categories of complaints: management of property, care and lodging.

TAILORING INTERVENTION TO THE SITUATION OF THE PERSONS REPRESENTED

By definition, people under protective supervision or for whom the Curateur public is responsible are particularly vulnerable and dependent on the services meant for them. When the Curateur public takes these people in charge, it must act so that all of their needs—which often extend far beyond administrative considerations—are taken into account.

This year, the Québec Ombudsman was made aware of the importance of stability for people for whom remaining in a given living environment is crucial, as the three following situations illustrate. In one case, the Curateur public had decided to move two individuals to another living environment for financial reasons, and in the second, because the family had requested the move. These moves were disruptive for the people under protective supervision, and, more importantly, were carried out against their will. In the third case, the tension between the family, caregivers and the Curateur public exacerbated the difficulties of a user living in a psychiatric care facility. The action taken by the Protecteur du citoyen in examining these complaints:

- enabled the parties to communicate better and better understand each other's viewpoint;
- broke what seemed to be an impasse and enabled a settlement to be reached in the incapacitated person's best interests.

(. . . ALLOWING A SENIOR TO REMAIN IN HER HOME

The sons of an elderly woman placed under public protective supervision considered that the Curateur public was not doing all it could to enable their mother to continue living in the family home. These are the facts:

- *The citizen had given her house to her four sons of her own free will, but had usufruct of the property.*
- *She had made a huge loan to one of the sons but he had defaulted.*
- *The citizen could not meet all of her financial obligations because of this shortfall.*
- *The Curateur public informed the sons that because their mother did not have the financial means, she would have to move into an intermediate resource.*
- *The woman did not agree with the move.*
- *The sons felt that, given its role, it was up to the Curateur public to recover the money that their mother had loaned to their brother.*

Intervention and results

The Québec Ombudsman gave the complainants a clear picture of their mother's financial situation by separating her needs into two categories: one for the needs related to her loss of independence and one related to housing. After seeing the analysis, one of the sons suggested that he buy the house, cover any costs, and rent the house to his mother and charge her according to her means. The members of the family and the Curateur public felt that this was an acceptable solution. The Curateur public committed to doing what was needed to recover the money owed to the mother. Their respective efforts made it possible for the woman to continue living at home.

...

(... GIVING PRIORITY TO THE NEED FOR STABILITY

A worker at a private intermediate resource contacted the Québec Ombudsman to express her concerns when the family of a resident under protective supervision requested to have him transferred to a resource closer to where the family lived (lower costs for visiting him). According to the worker:

- *it had taken the resident a long time to adjust to the residential resource but now he had ties and seemed to like living there;*
- *the resident's relationship with his family was difficult;*
- *all of the health and social services network staff connected with the resource said that the resident would be better off staying where he was rather than moving closer to his family.*

Intervention and results

During the investigation, the Québec Ombudsman began by establishing that the worker was indeed acting in the resident's best interests and not because the residential resource would stand to gain financially if the resident remained there.

It also established that:

- *the Curateur public had not questioned the health and social services centre (CSSS) or the resource in order to assess the impact the move would have on the resident;*
- *the CSSS and the resource had not told the Curateur public about what they feared would happen if the move occurred;*
- *even though the CSSS team agreed that the resident liked his living environment and that he had not asked to be moved, it was loath to interfere in family matters;*
- *the Curateur public thought it was doing the right thing by granting the family's request.*

The first thing the Québec Ombudsman noticed was that the CSSS and the Curateur public had not worked in tandem and jointly assessed the impact the move would have on the resident. It therefore brought them together to adopt a common position and establish that the citizen's well-being would be compromised by a move. The Curateur public went on to contact the health and social services agency's regional admissions system and had the transfer cancelled.

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(. . . RE-ESTABLISHING COMMUNICATION WITHIN A FAMILY

The complainant's son, who had been placed under the protective supervision of the Curateur public, had been living at a psychiatric hospital for several years. The father had not been able to visit his son for nearly a year because of his many run-ins with the healthcare team and the representative of the Curateur public.

Intervention and results

After hearing the viewpoints of each of the parties, the Québec Ombudsman:

- *first made the point that the father had an important role to play in implementing his son's intervention plan, a fact that was corroborated by the representative of the Curateur public and by the healthcare team;*
- *explained to the father that his presence was of value to his son; this revelation astonished the father and calmed him;*
- *made it possible for the father, the healthcare workers and the Curateur public to meet to define their respective expectations and how best to act for the son's well-being;*
- *created a climate of openness conducive to solutions;*
- *re-established relations and made it possible to change the dynamics of intervention.*

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La Financière agricole du Québec

COMPLAINTS IN 2011-2012

The Québec Ombudsman receives very few complaints about La Financière agricole du Québec and complaint levels are relatively stable from year to year.

IMPROVING THE QUALITY AND TRANSMISSION OF INFORMATION

In its 2010-2011 Annual Report, the Québec Ombudsman described how it had gotten La Financière agricole to cancel a sanction it had imposed on a farmer who, for health reasons, had been unable to answer a survey from the Centre d'études sur les coûts de production en agriculture. Under the Farm Income Stabilization Insurance Program (ASRA), farmers must participate in the study if requested to do so by the Centre. The farmer's failure to do so led to hefty penalties which were lifted in the end.

Over the past year, the Québec Ombudsman intervened when similar difficulties arose. The problems thus identified, coupled with those noted before, prompted the Québec Ombudsman to ask La Financière agricole to improve how it handles the participations of citizens—farmers and their creditors—in the Centre d'études sur les coûts de production en agriculture study. Its intervention generated concrete results that will benefit many citizens:

- Any citizen penalized by La Financière agricole for refusing to participate in a production-cost study will henceforth have the right to a review and be informed of the review decision.

- Now the document outlining how to apply a penalty for refusing to participate in production-cost studies and the letters sent to participants refer more specifically to the terms of the Farm Income Stabilization Insurance Program, and the conditions governing its application are better explained.
- From now on, financial institutions (or any other creditors) are informed when an insured farmer has received a final notice regarding his or her refusal to participate. That way, creditors can urge their client to participate and point out the consequences of refusing. This new practice enables the government to always act with respect and prudence in its dealings with the people concerned by the decisions it makes regarding them, in keeping with section 4 of the Act respecting administrative justice.

(. . . RESPECTING CITIZENS' RIGHT TO CONTEST A DECISION

Because a farmer did not participate in a Centre d'études sur les coûts de production cost study, he lost his eligibility for the Farm Income Stabilization Insurance Program (ASRA) and had to pay a fine of $19,000. The citizen argued that La Financière agricole had never told him about the consequences of not participating in the study in question.

Intervention and results

The Québec Ombudsman's investigation revealed that the farmer had received a letter from the Centre d'études informing him that participation was mandatory and containing references to La Financière agricole. However, the consequences of refusing to participate were not spelled out. The banking institution that held the mortgage on the citizen's property had not been advised that the client might no longer qualify for ASRA. If the institution had been told ahead of time, it could have warned the citizen about what might happen.

La Financière agricole, considering that the farmer was contesting a program requirement, which is a matter that cannot be reviewed, did not allow him to explain how he came to have a penalty.

The Québec Ombudsman argued instead that the farmer wanted to explain what prevented him from complying with the requirement but was not contesting the requirement per se. It therefore asked that the citizen be allowed a review. La Financière agricole finally agreed, in fulfilment of the government's obligations under the Act respecting administrative justice to give citizens the opportunity to provide any information useful for its making of the decision to be heard (section 4).

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

COMPLAINTS IN 2011-2012

The number of complaints about the Ministère du Développement durable, de l'Environnement et des Parcs (Department) is about the same every year. The main grounds for complaints in the past year were:

- the sharing of responsibilities between the Department and municipalities in enforcing the Protection Policy for Lakeshores, Riverbanks, Littoral Zones and Floodplains;
- enforcement of the Act respecting the boundaries of water property in the domain of the State and the protection of wetlands along part of the Rivière Richelieu;
- shale gas exploration wells.

PROTECTING RIVERBANKS, LITTORAL ZONES AND FLOODPLAINS: APPLYING THE POLICY RIGOROUSLY

In the opinion of the Québec Ombudsman, the Protection Policy for Lakeshores, Riverbanks, Littoral Zones and Floodplains is not clear with regard to the Department's role in deploying and enforcing it. The Québec Ombudsman has noted that it is not uncommon for the Department to refuse to intervene even when there is no municipal permit for a project or when the project does not comply with the permit. In such cases, the Department maintains that these are municipal matters and it is up to the municipality to enforce its bylaws. Recently, the Department provided the Québec Ombudsman with the following explanations regarding application of this policy:

- Pursuant to the Regulation respecting the application of the Environment Quality Act, private projects for which a municipal permit has been issued are exempt from having the certificate of authorization prescribed in section 22 of the Environment Quality Act. Also, citizens who file a complaint with the Department about a private project must first be referred to their municipality.
- Projects carried out without a municipal permit contravene the Environment Quality Act because the regulatory exemption does not apply to them. In such cases, if the municipality does not act, the Department may step in to enforce compliance.
- When a municipal permit has been issued and the Department sees that the project does not comply with municipal bylaws, either because the permit should not have been granted or because the work that was carried out does not comply with the permit, the Department may, if the municipality does not act, intervene under the Act respecting land use planning and development. The Department and municipalities therefore have concurrent jurisdictions as sources of recourse with respect to the projects prohibited by the Protection Policy for Lakeshores, Riverbanks, Littoral Zones and Floodplains.

The Department assured the Québec Ombudsman that it intervenes when the municipality has failed to act and if there are adverse effects for the environment, in which case, those responsible may be instructed to restore the area to its original state.

The explanations provided by the Department somewhat allayed the Québec Ombudsman's concerns. In expressing its position, the Department provided some useful clarifications on how shoreline protection responsibilities are shared between it and municipalities. However, the Québec Ombudsman believes that the Department must intervene not only when projects do not comply with the requirements stipulated in the municipal permit, but also when projects for which municipal authorization has not been obtained are carried out.

(. . . MAKING SURE THAT THERE IS NO DOUBLE STANDARD WHEN RULES ARE ENFORCED

Two citizens complained that the Department was unreasonable in dealing with them. These are the facts:

- *In the late 1990s, a contractor did backfill work on some lakeshore lots. The lots were then sold separately as construction sites for secondary residences. The required municipal permits in hand, the new owners began work on their lots.*
- *In the fall of 1999, a Department inspector visited the sites. The inspection showed that the backfill work contravened the applicable municipal bylaw. The Department did not contact the citizens about it subsequently or take any steps whatsoever.*
- *In 2002, the Department registered a declaration that the riparian strips formed part of the domain of the State. The Department had resorted to this exceptional measure—whereby it declared itself owner of the land concerned— because it considered that it could not issue a notice of offence to the real offender (the contractor) and, by extension, not instruct that the land be restored to its original condition.*
- *In November 2010, eight years later, the citizens were served a formal demand by a bailiff instructing them to take all necessary measures to remove the backfill and restore the sites, "on pain of prosecution to the full extent of the law." [Translation]*

Intervention and results

After investigating, the Québec Ombudsman concluded that the Department had acted unfairly and unreasonably towards these citizens, mainly because:

- *the citizens had acted in good faith at all times and with all due diligence, by, among other things, consulting professionals and municipal services;*
- *between 2002 and 2010, the Department never instructed the citizens to remove the backfill deemed illegal;*
- *in its exchanges with the Québec Ombudsman, the Department admitted that it had served formal notice on these people to have the backfill removed because it felt that any legal proceedings against the real offender had no chance of succeeding;*
- *the declaration registered in 2002 concerning these lots was a de facto sanction;*
- *the Department targeted these two citizens only even though it knew that many neighbouring owners were contravening the applicable standards.*

In the case at hand, the Québec Ombudsman approved of the Department's measures to protect the environment, but disapproved of the way it had treated the citizens. It therefore asked the Department to rescind the order to remove the backfills. The Department responded that it would hold to its position. The Québec Ombudsman deplores that the Department did not act on its request to treat the citizens fairly and reasonably. The Department must go beyond strict application of the law and take into account the specific circumstances involved, as called for in the above examples.

...

(. . . DOING THE REQUIRING TESTING IN ORDER TO REASSURE CITIZENS

A person filed a complaint because the Department refused to test the quality of her drinking water. These are the facts:

- *The person lived 600 metres from a shale gas well.*
- *She was worried when she saw signs of gas leakage and so she asked the Department to test for methane in her drinking water.*
- *The Department refused to conduct the tests.*

Intervention and results

The Department carried out several inspections to measure gas emissions from surface and production casing vents, but it said that it could not test for methane in the drinking water itself. After the Québec Ombudsman intervened, the Department finally tested for ambient air quality. Since the instruments did not detect any gas in or around the well, the citizen was reassured.

...

THE QUÉBEC OMBUDSMAN'S RESPONSE TO BILLS AND DRAFT REGULATIONS

On June 3, 2011, the Québec Ombudsman conveyed its comments concerning the Regulation respecting the filing of information on certain drilling and fracturing work on gas or petroleum wells to the Minister of Sustainable Development, Environment and Parks. These comments are summarized on page 150 of this annual report, in the "Parliamentary Watch Report" section.

Ministère de l'Éducation, du Loisir et du Sport

COMPLAINTS IN 2011-2012

The number of education-related complaints filed with the Québec Ombudsman in 2011-2012 was up slightly over the previous year. Roughly half of them concerned decisions by bodies in the education network, which does not fall within the Québec Ombudsman's purview. Other complaints relating to responsibilities of the Ministère de l'Éducation, du Loisir et du Sport (Department) often focused on the Department's refusal to take action with respect to educational services provided by school boards and private elementary and secondary schools.

The majority of the grounds for complaints revolved around:

- the non-compliance of services with applicable standards and laws;
- violation of school transportation rights and passenger safety deficiencies;
- some school boards' non-compliance with the Department's policy on special education;
- ineffectiveness or lack of recourse available to the target population within school boards and private institutions;
- unlawful expulsion or suspension of students.

Complaints dealing more specifically with direct services provided to citizens by the Department mainly concerned:

- certification of studies;
- operation of the Bureau des plaintes et des droits de recours (processing times and procedure, baseless decisions).

Complaints relating to the Loans and Bursaries Program primarily concerned two aspects of Aide financière aux études (student financial assistance): the awarding of financial assistance and the repayment of student loans. With regard to awarding of financial assistance, students complained about the time it took to process their application, the eligibility criteria and the amount of financial assistance granted to them. Complaints relating to the management of student loans, i.e. loan repayment, dealt with repayment terms and conditions, legal compensation applicable to income tax refunds and legal procedure (formal demand for repayment, legal hypothec, judgment ordering the garnishment of wages). It should be noted that very few of these complaints were substantiated.

ASSUMING ONE'S RESPONSIBILITIES

The Québec Ombudsman regularly receives complaints illustrating the Department's tendency to make other bodies or citizens shoulder the burden of situations that, normally, should be its responsibility, whether it be taking corrective action or finding solutions. The Department initially declined jurisdiction and refused to intervene in at least six complaints received and deemed substantiated by the Québec Ombudsman during the past year.

School boards and educational institutions are required to comply with the basic school regulations and rules made by the Department, in particular those governing the certification of studies. In the event of non-compliance, the Department often invokes the autonomy of school boards and private educational institutions and the existence of internal legal recourse as grounds to decline jurisdiction, in particular with respect to validation and verification of the rules governing certification of studies. And when verifications are done, it is usually after the fact and tends to penalize students who must pay fees and contend with waiting times. The following cases are perfect examples.

(. . . UNDERTAKING TO UNDERSTAND FILES AND MAKE THE RULES UNDERSTOOD

A student complained that the Department refused to award her a Secondary School Diploma (SSD). These are the facts:

- *In 1992, the student received credit for various Secondary V classes, which were recorded on her official transcript. However, she was missing elective course credits necessary to obtain her SSD.*
- *In 2009, she was admitted to a vocational training program that required her to have Secondary IV credits in primary language instruction. This was not an issue for the student since the school board had awarded her Secondary V class credits after she had completed a placement test.*
- *Through the vocational training program, the student was able to earn the credits needed to obtain her SSD, so she applied for it.*
- *However, she received conflicting information. Both the school board and Department, for different reasons, lowered the equivalency credits that she had already received and refused to award her the diploma.*
- *The student was confused by the conflicting interpretations. She was redirected by the Department to the school board, which asked her to register for a course that was not necessary for her to obtain her diploma.*

Intervention and results

The Québec Ombudsman's investigation revealed that there was clearly confusion in the information the citizen received from the Department and the school board. The Department refused to recognize the credits previously awarded in its own official transcripts and to speak with the school board to clarify the situation.

Under the Act respecting administrative justice, the Department should have at least ensured that the student had the right information and that she was not subject to an unnecessary requirement, i.e. a course she did not have to take. The Québec Ombudsman put these arguments to the Department, which, after considering the degree of confusion and the student's academic record, agreed to award her a Secondary School Diploma.

. . .

(. . . NOT MAKING A PERSON RESPONSIBLE FOR SOMEONE ELSE'S MISTAKE

A foreign student filed a complaint with the Québec Ombudsman regarding a tax claim he considered unjustified stemming from his participation in a measure. It was the Department's responsibility to determine his eligibility. These are the facts:

- *The student had done postdoctoral training in Québec from September 2006 to August 2007 under a program that entitled him to a tax exemption.*
- *Four years later, when he was back in his home country, he received a claim from Revenu Québec for the training period in 2007, as if the exemption had not applied to this period.*

Intervention and results

Québec has introduced financial incentives, including tax exemptions, enabling employers to recruit foreign experts (university professors and postdoctoral trainees) in fields where there is a shortage of specialists or resource persons at the local level. In the education sector, only employers are allowed to apply for an eligibility certificate for their employees. The Department determines whether a candidate qualifies for the tax measure and then issues the employer a certificate valid for one fiscal year. The certificate must be renewed each year. The Department never contacts candidates directly; it is up to employers to inform the trainees that they must apply for the exemption when they file their annual tax return.

This is the context in which the postdoctoral trainee in question came to Québec. Upon his arrival, he received an eligibility certificate and thought it was valid for the duration of his training period, i.e. one school year. Back in his country in September 2007 and having no contact with his ex-employer, he claimed a tax deduction in his 2007 income tax return. However, the employer was supposed to ask the Department to renew the certificate for the training period in 2007.

An examination of the claim issued by Revenu Québec in 2011 for the 2007 tax deduction showed that the employer had been late in submitting the application for renewing the eligibility certificate for 2007. The student appealed to the Department, but it refused to issue him a certificate. As a result, the student had to repay the amount of the tax deduction in 2007 in addition to fines, including one for failing to file an income tax return in 2008. The total amount of the claim was $4,000.

The Québec Ombudsman intervened, calling on the Department and Revenu Québec to remedy the situation given that:

- *according to the rules, only the employer may apply for a certificate;*
- *in the case at hand, the employer failed to fulfil all of its obligations;*
- *the citizen had not been informed about how the program worked and had no reason to suspect that his ex-employer had been negligent and, therefore, had no way of rectifying the situation;*
- *the Department acknowledged that the candidate would have been eligible if the application had been filed on time.*

The Québec Ombudsman asked the Department to issue a written notice confirming the citizen's eligibility in 2007. As soon as Revenu Québec received the notice, it agreed to cancel the claim.

...

(... AVOID MAKING STUDENTS PAY THE PRICE WHEN THE RULES OF THE GAME ARE CHANGED MID-COURSE

An immigrant student complained to the Québec Ombudsman about problems she was having getting certain equivalencies recognized by the Department. These are the facts:

- *In 2008, the student applied for a vocational training program with limited enrolment. A high school diploma was required for entry.*
- *Since she met all of the requirements, she was accepted into the program but had to drop out for personal reasons.*

- *She reapplied for the following fall term and the vocational centre accepted her into the program based on the same admission requirements.*
- *However, come September, the centre informed her that it had cancelled her enrolment due to recently introduced departmental directives for the new school year.*
- *Since virtually all of the students in the class were affected by the new requirements, the centre appealed to the Department in the fall to allow the students to remain in their program of study on the grounds of acquired rights. The Department refused, arguing that the only thing that was important was the date courses start and that rules were known prior to the new directives.*
- *The directive required that student knowledge now be demonstrated by other tests and attestations than what was previously required.*
- *The consequences for the student in question and her fellow students? Suspension from the program, the need to take prerequisite courses or tests, and loss of priority readmission into the program (because it was a limited enrolment program, they might have to wait 18 months).*

Intervention and results

In the Québec Ombudsman's opinion, the Department's refusal was not justified for two reasons. First, the Department had changed the rules of the game mid-course by deciding after the program had started that it would no longer tolerate a situation that it had accepted for years. Its decision was unreasonable, as the students ended up paying the price for the Department's permissiveness and the vocational centre's error. Furthermore, in previous years, the student in question had more than accumulated the qualifications and attestations previously recognized for satisfying the Department's requirements.

...

Besides this individual case, the facts showed that the Department was too rigid in recognizing equivalencies and was inconsistent in applying its own rules and those of its partners in the management of complex files. The Québec Ombudsman recommended, in particular, that the Department make the necessary changes to its directives. When this annual report was being written, the Department and the other departments and agencies concerned were reviewing evaluations. The Department expects significant developments from these discussions before reviewing the admission requirements for vocational programs. The Québec Ombudsman expects progress to be made in 2012.

CALLING MEANS OF RECOURSE INTO QUESTION

The majority of complaints filed with the Québec Ombudsman in relation to the Department deal with problems that are a shared responsibility. Consequently, roughly one in two complaints was referred to the available recourses within school boards, in particular the Student Ombudsman, so decisions could be reviewed. The handling (or lack thereof) of certain requests referred to the Québec Ombudsman is worrisome. Problems with access to recourse, conformance of school board regulations, the Student Ombudsman's credibility, and respecting the rights set out in the Education Act and the basic school regulations are often raised. Given the nature of the complaints received and the importance of ensuring access to independent, unbiased recourse within the school system, the Québec Ombudsman is taking the matter up with the Department so that the appropriate follow-up action occurs.

Ministère de l'Emploi et de la Solidarité sociale

COMPLAINTS IN 2011-2012

The complaints against the Ministère de l'Emploi et de la Solidarité sociale (Department) filed with the Québec Ombudsman in 2011-2012 fall into three categories: social solidarity, employment and the Québec Parental Insurance Plan.

Following a marked decrease last year, the volume of complaints regarding social solidarity rose in 2011-2012 to the levels recorded in previous years. The principal grounds for the complaints were the conditions of eligibility for financial assistance and the recovery of amounts owed the Department.

Conversely, the number of complaints regarding training programs administered by the Department, i.e. complaints in the "employment" category, decreased this year. They primarily dealt with refusals of requests for training. Moreover, some citizens complained about not being informed in writing of the refusal.

The number of complaints regarding the Québec Parental Insurance Plan remained stable in comparison to last year, but has dropped steadily since the plan's inception in 2006. However, handling these complaints is more complex than in the early years of the plan, because now they concern the Regulation under the Act respecting parental insurance itself. A number of complaints also concerned the quality of information provided to applicants.

ADAPTING THE PROCEDURE TO APPLICANTS

In 2008, the Department streamlined the procedure for processing last-resort financial assistance applications so that not all applicants are required to come in for an interview. Financial assistance applications are now reviewed based on the information contained in the person's file.

While the new procedure has reduced processing times and saves some applicants from having to come into the office, it has also led to dissatisfaction and the resulting complaints to the Québec Ombudsman. The grounds for dissatisfaction were:

- not enough time to provide certain documents requested by the assistance officers handling the applications;
- the type of documents requested (unnecessary or impossible to obtain);
- difficulties getting hold of assistance officers in order to request more time to provide documents or ask for explanations regarding requested documents;
- failure of assistance officers to help applicants obtain certain documents;
- refusal of financial assistance applications on the grounds that the applicant did not provide documents within the prescribed time.

The Québec Ombudsman communicated its findings to the Department. Having come to the same conclusions, the Department informed the Québec Ombudsman of the improvements made to the processing procedure. In July 2010, the Department reviewed its requirements regarding the time allotted to submit documents, taking into account mail delivery times and the availability of requested documents.

In September 2011, the Department issued new directives requiring assistance officers who process the initial applications to call applicants in the following cases:

- if it is the first time the person is applying for benefits;
- if the complexity of the person's file or application warrants a telephone call;
- if a document must be provided within five days.

Additional directives took effect in April 2012 with a view to eliminating irritants caused by multiple requests for documents. Accordingly, a number of documents that were systematically required in the past must now be provided only where warranted.

The Québec Ombudsman took note of the steps taken by the Department to improve the procedure and make it easier for applicants and intends to pay close attention to their impact on the number of complaints it receives.

(. . . REQUIRING CITIZENS TO PROVIDE ONLY DOCUMENTS THAT ARE NECESSARY TO STUDYING THEIR FILE

A citizen complained about a formality in ascertaining her eligibility for last-resort financial assistance. These are the facts:

- *When she submitted her financial assistance application at the local employment centre, the citizen was informed that she had to provide a number of documents, including her birth certificate, a lease and a photocopy of her life insurance policy and will.*
- *The woman said she was prepared to provide the requested documents, but would not be able to provide a copy of her will within the time given her by the assistance officer (fewer than three weeks).*
- *Moreover, the woman questioned this requirement, finding it excessive.*

Intervention and results

In studying an application for financial assistance, a will can be useful for verifying whether a spousal relationship exists. However, since the Department did not presume that such a relationship existed in this citizen's case, a copy of her will should not have been requested. Furthermore, it was not even the assistance officer in charge of the citizen's file who requested the will, but rather the person at the reception desk.

At the Québec Ombudsman's request, the Department rendered its decision regarding the woman's eligibility without the will. To ensure that this type of situation does not happen again, the Québec Ombudsman also recommended that the Department inform its personnel about the importance of requesting only the documents needed to study a person's application. The Department accepted this recommendation as well.

. . .

FULFILLING COMMITMENTS WITH RESPECT TO THE MINISTER'S POWER TO CANCEL A DEBT OR EASE RECOVERY CONDITIONS

The Individual and Family Assistance Act gives the Minister of Employment and Social Solidarity discretionary power to suspend, in whole or in part, the recovery of an amount owed or grant a full or partial discharge to the debtor in exceptional circumstances, subject to the conditions determined by the Minister.

In its 2010-2011 Annual Report, the Québec Ombudsman drew the Department's attention to the fact that this discretionary power is applied too rigidly, in some cases compromising the debtor's social reintegration and progress toward independence. The Québec Ombudsman recommended 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.

The Department accepted the Québec Ombudsman's recommendations. Concretely, it pledged to review the amounts used to determine the needs of debtors who request application of this discretionary power so that these people do not end up destitute. It also assured the Québec Ombudsman that it would see to it that the committee responsible for studying requests for application of discretionary power has all the elements needed to ensure a fair assessment of the debtor's circumstances. Among other things, it reviewed and amended the request form for application of discretionary power to make sure it contains all of the information needed to study a request.

The Québec Ombudsman is satisfied with the commitments made by the Department.

RECOGNIZING EXCEPTIONAL CIRCUMSTANCES

Under the Individual and Family Assistance Act, a temporarily limited capacity allowance of $123 may be added to the basic benefit of $589. To receive this allowance, a person must produce a medical report establishing that, due to the person's physical or mental condition, he or she will be unable, for a period of at least one month, to engage in a job preparation, integration or retention activity. However, it sometimes happens that a social assistance recipient is unable to produce the medical report within the prescribed time and, consequently, is not granted the additional allowance even though the person genuinely has a temporarily limited capacity for employment. The Québec Ombudsman intervened in cases where, after examining the facts, it concluded that exceptional circumstances existed and the Department had to make a retroactive payment of the special allowance even though the medical report was not produced within the prescribed time.

(. . . TAKING INTO ACCOUNT DIFFICULTIES ACCESSING A FAMILY DOCTOR

A citizen filed a complaint with the Québec Ombudsman because she did not receive the amount of financial assistance to which she felt she was entitled. These are the facts:

- *The Department refused to retroactively grant the woman, who has mental health problems, the temporarily limited capacity allowance.*
- *The woman had been unable to provide the required medical report for a few months.*
- *The woman explained the situation to the Department, but the latter failed to consider her explanations in its decision.*

Intervention and results

The Québec Ombudsman's investigation revealed that the woman had been receiving benefits under the Social Assistance Program without interruption since September 2008. Her file already contained numerous medical reports confirming her mental health problems and, on the basis of those reports, she had received the temporarily limited capacity allowance several times before. The difficulties arose when she moved and could not get a doctor's appointment in her new region of residence.

Even though it was aware of the problem, the Department still refused the woman's request to be granted the allowance retroactively for the months she was unable to get a doctor's appointment. She was granted the allowance for four months as of the date she finally submitted the medical report following numerous attempts to get it.

The departmental directives stipulate the exceptional circumstances under which the rule can be relaxed, including when a recipient is unable to see a doctor. The Québec Ombudsman argued that the documents in the woman's file clearly established that she had been diagnosed with mental health problems repeatedly since 2008 and, as a result, had a temporarily limited capacity for employment. Consequently, the Department should have granted the woman's request for retroactive payment of the allowance. The Department accepted the Québec Ombudsman's recommendation and paid the recipient $1,460.

...

PROPERLY INFORMING CITIZENS ABOUT THE QUÉBEC PARENTAL INSURANCE PLAN

It is hard, nay impossible, for officers to go into detail on all of the particulars of the Québec Parental Insurance Plan (QPIP) when a person contacts QPIP's customer service centre seeking general information. It is another matter, however, when a person has already applied for parental benefits—if the person has decisions to make and wants to know if they will affect his or her benefits, the person is entitled to expect to receive information based on his or her specific circumstances, as recorded in the person's file. When people are not properly informed, they risk making decisions likely to reduce their benefits and compromise their parental leave.

In 2011-2012, the Québec Ombudsman had to intervene in the cases of three citizens who found themselves in financial difficulty after receiving insufficient information from the customer service centre. Following the Québec Ombudsman's intervention, the Department agreed in all three cases, given the citizens' financial difficulties, not to reduce the benefits.

(... MAKING SURE TO PROVIDE ALL USEFUL INFORMATION

A pregnant teacher who was eligible for preventive withdrawal from work considered that the Department failed to fully inform her about benefits in the case of closely spaced pregnancies and that, as a result, she was unfairly penalized. These are the facts:

- *During her first parental leave, the woman was told by an officer at the QPIP's customer service centre that she could work during her leave without it affecting her benefits provided her earnings were not equal to more than 25% of her benefits.*
- *Based on that information, the woman took a job that paid her no more than 25% of her benefits (her weekly earnings were $108).*
- *When she got pregnant again at the end of her parental leave, the woman contacted the customer service centre to inquire about the impact of her next preventive withdrawal on the parental benefits she would receive.*
- *The officer told her that her preventive withdrawal would not affect her benefits during her next parental leave provided she did not accumulate more than 15 weeks of work between the end of her first parental leave and the beginning of her second preventive withdrawal.*
- *Based on those explanations, the woman continued working for four weeks, earning $108 a week, before starting another preventive withdrawal period.*
- *When her second parental leave began, the woman was dismayed to find that her benefits had been cut by $275 per week.*

Intervention and results

The Québec Ombudsman's investigation revealed that it was indeed on the basis of the information received from officers at the Department that the woman had decided to work under the permitted conditions. However, one of the officers neglected to check the woman's file; if he had, he would have seen that she had already accumulated more than 15 weeks of work during her first parental leave, earning $108 per week. From a strictly financial point of view, it was in the woman's best interest to increase her earnings—her regular job or any other job that did not present a danger during pregnancy—before taking her second parental leave. The weeks worked during the first parental leave also had to be taken into account, something the officer did not deem worth telling the woman because he assumed that she had not worked during that time.

The fact that the woman was not given this information had serious consequences because her children's father was on extended sick leave.

The Québec Ombudsman recommended that the Department pay the woman the same amount of benefits she received during her first parental leave, which the Department agreed to do.

...

In the Québec Ombudsman's opinion, corrective action must be taken to improve the quality of information provided with regard to the Québec Parental Insurance Plan. A satisfaction survey of recipients of QPIP benefits conducted in 2010 revealed that, despite a high satisfaction rate, respondents said that there were irritants in terms of the information they received about the plan and decisions rendered under it. These did not go away in 2011-2012.

The Québec Ombudsman agreed that customer service centre officers, the front line for customer information, must limit themselves to general information. However, they should always encourage people to verify the conditions that will apply to their particular circumstances at the time they apply for benefits. In addition, when a person contacts the customer service centre before making a decision that is likely to affect his or her benefits, the officer should systematically consult the person's file to ensure the person receives information based on his or her specific circumstances. That way, the customer service centre would be fulfilling the Department's commitment regarding accessible services and information set out in its *Statement of Services to Citizens*.

CALCULATING PARENTAL INSURANCE BENEFITS IN A MANNER THAT IS EQUITABLE FOR ALL

Pregnant workers whose working conditions may be physically dangerous to them or their unborn child may avail themselves of the preventive withdrawal measures under the Act respecting occupational health and safety, in which case they are entitled to receive income replacement indemnities equal to 90% of their usual earnings. These indemnities are not considered insurable earnings within the meaning of the Act respecting parental insurance. To ensure that pregnant workers are not penalized under the Québec Parental Insurance Plan, the Regulation under the Act respecting parental insurance provides that the amount of the benefits to which they are entitled is established on the basis of their regular insurable earnings during the 52 weeks preceding the interruption of earnings.

However, women who have to stop working due to a high-risk pregnancy or illness unrelated to their job are not eligible for income replacement indemnities under the preventive withdrawal program because they are entitled to receive salary insurance benefits from their employer as per their employment contract. These benefits are equal to between 66% and 80% of their wages, which is less than the income replacement indemnities paid under the preventive withdrawal program. Since salary insurance benefits are treated as insurable earnings for the purposes of the Act respecting parental insurance, they are taken into consideration in calculating the average weekly earnings used to establish the amount of parental insurance benefits payable to a person. As a result, not only do these workers receive a lower amount of benefits than if they had taken preventive withdrawal during their pregnancy, but they also receive a lower amount of benefits during parental leave than they would have under the preventive withdrawal program.

In fact, as far as the Québec Ombudsman can tell, workers who receive salary insurance benefits from their employer in the weeks preceding the commencement of parental insurance benefits are the only workers who are penalized because they stopped working during that period. Indeed, in accordance with the Regulation under the Act respecting parental insurance, the amount of parental insurance benefits payable may be established on the basis of a person's earnings prior to work stoppage in several cases except a preventive withdrawal (e.g. if a person is ill or injured in an accident and receives benefits under a private insurance plan, if a person is injured in an industrial or road accident, or if work stoppage stems from a period of unemployment, strike, lock-out or detention in a prison, penitentiary or other similar institution). For the same reasons, a person's insurable earnings during the weeks preceding the commencement of parental insurance benefits will not be taken into consideration if they are less than the person's usual income. The Québec Ombudsman intervened on several occasions to put a stop to this unfair practice.

After receiving more complaints this year, the Québec Ombudsman made another plea in December 2011, recommending that the Regulation under the Act respecting parental insurance be amended so that parental insurance benefits are established on the basis of a person's usual work income rather than salary insurance benefits. The Conseil de gestion de l'assurance parentale, which manages the Québec Parental Insurance Plan, accepted its recommendation. A draft regulation implementing the recommendation was published in the *Gazette officielle du Québec* on April 18, 2012.

ENSURING CONSISTENT APPLICATION OF RULES

Under the Individual and Family Assistance Act and Regulation, the amount of last-resort financial assistance granted to an individual is increased if the person has a dependent child attending an educational institution. For example, for a dependent child of full age attending a secondary-level educational institution in general education, the basic monthly benefit is increased by $264.75. Complaints filed with the Québec Ombudsman reveal that the assistance officers themselves do not always apply the notion of "child of full age attending an educational institution" properly, with the result that citizens do not always receive the amount of benefits to which they are entitled. Thanks to the Québec Ombudsman's intervention, citizens receive the amount of benefits provided for in the legislation.

(. . . CLARIFYING CERTAIN ELIGIBILITY CONDITIONS

The Québec Ombudsman examined the case of a citizen whose benefits were unfairly reduced. These are the facts:

- *The woman informed the Department of what she believed was a change in her dependent daughter's status. Because the girl, who was of full age, was moving out of the house, the woman thought she would no longer be deemed a dependent child.*
- *As a result, the woman's benefits were reduced but should not have been.*

Intervention and results

The Department took the woman's word that her daughter was no longer her dependent, even though it knew that the girl would still be attending an educational institution on a full-time basis. In fact, the woman provided that information in the same monthly statement. However, attending an educational institution is also a condition used to determine if a child is dependent on his or her parents. In other words, just because a child moves out of his or her parent's house does not mean that he or she is no longer dependent on the parent. Faced with conflicting information (the woman's interpretation of her daughter's status and the daughter's continuation as a full-time student), the assistance officer should have asked the woman for clarifications. Under the legislation, the girl was still dependent on her mother even though she was a student.

The Québec Ombudsman's intervention revealed and corrected the Department's error. The woman received a retroactive payment of $3,898.15 and the necessary corrections were made to her file.

...

INDEXING FINANCIAL ASSISTANCE GRANTED FOR ITEMS REQUIRED FOR MEDICAL PURPOSES

A disability advocacy organization drew the Québec Ombudsman's attention to the fact that the amount of financial assistance granted by the Department to cover the cost of items required for medical purposes is insufficient. It also complained about the form in which recipients are reimbursed for these costs.

The organization argued that:

- the amount of the financial assistance, i.e. special benefits paid in addition to the basic benefit granted by the Department or another income source such as benefits paid by the Régie des rentes du Québec, has not reflected the actual cost of the items in question for a long time;
- its members who receive special benefits are no longer reimbursed for medically necessary items that were previously reimbursed, either fully or partially;
- the Department makes a total payment when reimbursing invoices for medical items, without breaking down the reimbursement rate for each item.

The Québec Ombudsman thus examined the applicable provisions of the Individual and Family Assistance Regulation and concluded that, indeed, almost all of the rates listed in Schedule III have not been indexed for over 10 years. Consequently, several amounts are well below the current price level.

The expenses referred to in this case are incurred by people who receive last-resort financial assistance benefits or a low income from a public source. In addition, these people have a disability that constitutes a handicap, which means that they are already physically vulnerable and living with considerable social and economic instability, which is made worse by an outdated rate schedule. Consequently, they have to cover an increasing portion of the cost of items they need to compensate for a health condition or functional limitation. This situation is worrisome, because owing to these costs, some people end up going without all or some supplies that are vital to them. The Québec Ombudsman is still waiting to hear how the Department intends to address this problem, which is not unlike a decrease in services.

As for the lack of details with regard to reimbursements, the Department informed the Québec Ombudsman that a project is underway to change the computer system so that notices of decision provide more details: type of special benefit, date on which services were provided and the amount granted. The Department did not say, however, when the new notices would take effect.

RECOMMENDATIONS

WHEREAS a special benefit is an amount granted to reimburse or help cover certain expenses incurred for a special need;

WHEREAS the fact that special benefits have not been indexed for over a decade is tantamount to not ensuring effective reimbursement at the current price level;

WHEREAS the fees for several public goods and services supplied by the government are reviewed on a regular basis and indexed annually according to government costs or the current price level;

The Québec Ombudsman recommends that the Ministère de l'Emploi et de la Solidarité sociale:

- ensure that the rates fixed in Schedule III of the *Individual and Family Assistance Regulation* are adjusted to reflect the actual cost paid by disabled recipients for medically necessary items;
- ensure that all special benefits provided for in the regulation are updated and subject to annual indexation;
- allow for greater flexibility in enforcing the regulation when it comes to medical items that are reimbursed.

WHEREAS citizens are entitled to know how much of the cost of each item is reimbursed by the Department;

The Québec Ombudsman recommends that the Ministère de l'Emploi et de la Solidarité sociale:

- specify, in notices of decision, the type of special benefit in question, the date on which the service was provided and the amount granted.

COMMENTS FROM THE DEPARTMENT

This was the Department's response to the Québec Ombudsman's recommendations:

> The Department, in conjunction with its partners from the Ministère de la Santé et des Services sociaux, will soon be deliberating on how to provide better coverage to people with special health needs. Priority review will be given to medical items required by recipients with disabilities.
>
> Given the large number of special benefits and their varying features and cost increases, the Department does not think that indexing these benefits all at the same rate is a good idea.
>
> With regard to the recommendation to specify, in notices of decision, the type of special benefit, the date on which the service was provided and the amount granted, it is important to note, as the Québec Ombudsman was told, that the project is moving forward but involves major work. [Translation]

APPLYING PROGRAMS WHILE RESPECTING CLIENT POPULATIONS AND THE SPIRIT OF THE LEGISLATION

This year again, the Québec Ombudsman noted from the complaints received that the Ministère de l'Emploi et de la Solidarité sociale, in its actions, failed to respect recipients or went against the very spirit of its programs. The Québec Ombudsman intervened in the following cases to remind the Department of the importance of complying with its own legislation and respecting its different client populations.

(. . . USING COMMON SENSE RATHER THAN FOLLOWING REGULATIONS TO THE LETTER

The Department informed a last-resort financial assistance recipient that she would no longer receive a reimbursement hitherto granted to her. The woman filed a complaint with the Québec Ombudsman. These are the facts:

- *The Department refused to reimburse the woman, who is incontinent and has other physical limitations, for sanitary protection items prescribed for her condition.*

Intervention and results

The Québec Ombudsman's investigation showed that while the Department admitted that the woman's condition was permanent and that the items in question were necessary, it refused to reimburse her for the particular sanitary protection item she wanted because it was not listed in the Individual and Family Assistance Regulation. This decision was the result of stricter application of the regulation following the centralization of services for last-resort financial assistance recipients. Furthermore, the Department offered to reimburse another item prescribed by the woman's physician that was listed in the regulation. However, this item was much more expensive, plus the woman did not find it comfortable.

Where is the logic in refusing to reimburse an item just because it is not listed in the regulation, when it is less expensive than the listed item and better suited to the user? The Department accepted the Québec Ombudsman's argument and agreed to reimburse the woman for the item she wanted.

. . .

(. . . EXERCISING THE NECESSARY CONTROL WITHOUT GOING TOO FAR

A citizen complained to the Québec Ombudsman about what she felt was excessive intrusion on the Department's part. These are the facts:

- *The citizen had contracted a debt while she was receiving last-resort financial assistance.*
- *She informed the Department that she would repay the debt by making deposits on a voluntary basis. Voluntary deposit is a protective measure contained in the Code of Civil Procedure that allows people to repay their debts by depositing a portion of their earnings, determined by law, with the Court. It also protects them from seizure of their salary or property by creditors.*
- *This citizen paid back her creditors, including the Department, by regularly depositing a portion of her earnings with the clerk of the Court of Québec.*
- *When the Department decided to verify if the portion deposited with the clerk was based on the citizen's actual earnings, it asked the employer to confirm the citizen's earnings, unbeknownst to the citizen.*

- *The citizen happened to learn that the Department had contacted her employer, which she considered excessive intrusion on the Department's part. She called on the Québec Ombudsman to prevent further communication between the Department and her employer.*

Intervention and results

The Individual and Family Assistance Act confers the powers of verification and investigation that allowed the Department to contact the citizen's employer. The Department therefore acted legally. However, the Québec Ombudsman argued that the Department's verifications were unreasonable and could be prejudicial to the citizen. It therefore asked if the citizen herself could submit reliable evidence that the portion withheld from her earnings was calculated properly. The Department granted the Québec Ombudsman's request and an agreement was entered into allowing the citizen to provide her pay slips as proof of her earnings. Communication between the Department and the employer ceased following this arrangement.

...

(... ENSURING ALL USEFUL INFORMATION IS PROVIDED IN A TIMELY MANNER

A citizen filed a complaint with the Québec Ombudsman after being refused participation in an Emploi-Québec measure. These are the facts:

- *After receiving last-resort financial assistance benefits, the citizen got a job and then found out that the Department refused to grant her the $500 Return to Work Supplement. On what grounds? She was late filing the application form with the Department.*

Intervention and results

The Québec Ombudsman's investigation revealed that the former social assistance recipient had started working at the beginning of the summer and applied for the Return to Work Supplement nearly two months later. The administrative deadline for submitting the application form is 45 days from the start date of employment, which is why the Department refused the application.

The Québec Ombudsman expressed its disagreement with this decision, for various reasons. First, the objective of this Emploi-Québec measure is to "encourage the target client population (people in low income) to get a job by providing them with financial assistance for going back to work and helping them financially to overcome potential obstacles encountered when they start a job." [Translation]

Even though the citizen informed Emploi-Québec as early as June that she had gone back to work, the agency did not notify her regarding the Return to Work Supplement, and the fact that she may be eligible for it, until the beginning of August. Thus, by the time she received this information, the 45-day deadline for applying for the supplement had already lapsed. The notice informing her about the Return to Work Supplement was not sent until August because the computer system is designed to generate these notices after work income has been entered in the file of a person who has gone back to work (in this case, work income was entered in the citizen's file at the beginning of August).

Furthermore, prior to that date, the citizen never responded to the Department's requests as to the amount of her income because the Department never explained why it wanted to know. Without an explanation, the citizen could not be expected to see why the requested information would be useful. The fact remains, however, that information on the measure and how to receive it is not generated until after the administrative deadline for submitting an application. In the Québec Ombudsman's opinion, under the circumstances, entitlement to the measure was merely theoretical and it was impossible for the citizen to exercise it.

...

Furthermore, according to departmental directives, the measure is supposed to be explained and suggested to eligible individuals before and while they are actively looking for work so that it serves as an incentive. The current way in which information is made available is not consistent with this otherwise laudable aim.

As soon as a person plans on re-entering the workforce, the Department should inform him or her promptly about the existence of the measure, since it is generally when a person starts a new job that the financial assistance is most helpful. Whether or not a person is eligible for the measure should not affect his or her basic right to be informed. Lastly, the computer system should be aligned with the purposes of the measure.

RECOMMENDATIONS

WHEREAS the Department does not fully inform citizens who might be eligible for the Return to Work Supplement, or does not provide the information on time;

WHEREAS the Department's computer system does not automatically generate a notice informing a person of the existence and terms and conditions of the Return to Work Supplement as soon as the person has re-entered the workforce if the system does not contain information on the person's work income;

WHEREAS this situation has a collective impact;

The Québec Ombudsman recommends that the Ministère de l'Emploi et de la Solidarité sociale:

- take the necessary steps to ensure that a missive regarding the existence and terms and conditions of the Return to Work Supplement is automatically generated as soon as a person informs the Department that he or she has re-entered the workforce;
- ensure that citizens are informed about the Return to Work Supplement in time to preserve and exercise their rights.

COMMENTS FROM THE DEPARTMENT

This was the Department's response to the Québec Ombudsman's recommendations:

> The Department pledges to explore possible computer solutions so that an information notice about the Return to Work Supplement is sent as soon as possible to a recipient who informs the Department that he or she has gone back to work.
>
> Furthermore, the Department will remind all those in charge of public employment services to ensure that:
>
> - there are always enough fact sheets on the Return to Work Supplement in the display stands in multiservice rooms;
> - employment-assistance officers inform people about the measure's existence and how to receive it as soon as they start looking for a job;
> - pertinent information is communicated during group sessions, in particular to new last-resort financial assistance recipients.
>
> Information on the Return to Work Supplement is also available on the Emploi-Québec website. [Translation]

Ministère de la Famille et des Aînés

COMPLAINTS IN 2011-2012

The Québec Ombudsman received 192 complaints against the Ministère de la Famille et des Aînés in 2011-2012. A significant number of the complaints (68.2%) denounced the Department's decision to exclude non-subsidized day care centres from the invitation for proposals for allocating 15,000 new reduced-contribution spaces.

Other grounds for complaints included:

- the Department's failure to intervene with respect to illegal day care operations;
- the unavailability of measures for integrating disabled children into all types of childcare services;
- the deadline for approving architectural plans;
- the lack of follow-up by the Bureau des plaintes.

INVITING PROPOSALS FOR ALLOCATING 15,000 NEW REDUCED-CONTRIBUTION SPACES

The Québec Ombudsman received 131 complaints denouncing the exclusion of non-subsidized private day care centres from the invitation for proposals for allocating 15,000 new reduced-contribution spaces. The Department stated that the intent behind this decision was to create "real" new spaces, which automatically excluded existing day care centres. Even though it includes non-subsidized day care spaces in its numbers, the Department does not know how many of them are filled.

While the Québec Ombudsman acknowledges that creating new childcare spaces meets a need, the complaints it receives show that, when a subsidized childcare service opens in an area where there is a non-subsidized childcare service, parents take their children out of the latter to put them in the former. The same holds true for qualified childcare workers, who enjoy better employment conditions in subsidized childcare services. The result: some private day care centres experience serious financial difficulty or, due to the shortage of workers, end up not having the legally required number of qualified educators. Thus, a number of private day care centres may be forced to close.

The Department's goal of creating "real" new spaces therefore would not be achieved. This situation is unfair for existing non-subsidized private day care centres. The Department informed the Québec Ombudsman that it would determine the impact of the invitation for proposals on the attainment of its priorities. The Québec Ombudsman will pay close attention to the Department's findings.

EFFECTIVELY COMBATTING ILLEGAL DAY CARE OPERATIONS

When the Act to tighten the regulation of educational childcare was passed in the fall of 2010, the Minister of Families announced measures to protect the health, safety and well-being of children, including:

- conferral of new powers on the Department and its inspectors to combat illegal childcare services, i.e. day care providers that do not hold a permit;
- tripling of the number of inspectors to ensure better compliance with the act.

In addition, the Department states in its policy on illegal childcare that it must do everything it can to combat illegal childcare.

However, despite the increase in the number of illegal day care operations on which the Department has clamped down, the Québec Ombudsman found deficiencies in how the Department goes about this. Indeed, following complaints and inspections, it can take months before an illegal day care service receives a non-compliance notice. If the offender continues providing services illegally, another few months go by before the Department takes more action. Yet, one of the values advocated under the inspection policy is expeditious reporting of breaches and follow-up of remedial action.

By way of illustration, two illegal day care centres were still operating on March 1, 2012, although they had been reported in August 2011 and inspected in September. One of them provides childcare to nearly 100 children, even though the act prohibits any person from providing childcare to more than six children unless the person has a permit and prohibits permit holders from providing childcare to more than 80 children. To make matters worse, it siphons clients away from a nearby non-subsidized day care centre.

In another case, a day care centre that had been operating illegally finally obtained a permit in January 2012, even though it had been inspected in the summer of 2006. This means it operated illegally for over five years with the full knowledge of the Department.

The Québec Ombudsman also found that the Department gives priority to permit applications submitted by illegal day care operations. While this practice may minimize the impact on parents, it penalizes applicants who follow the normal permit application procedure. Furthermore, under the act, the minister may refuse to issue a permit if the applicant has been convicted of running an illegal day care operation. It makes no sense that an applicant can obtain a permit faster by violating the rules than by following them to the letter.

EXTENDING INTEGRATION MEASURES TO ALL CHILDCARE SERVICES, WHETHER SUBSIDIZED OR NOT

The Québec Ombudsman received complaints from parents that the Department's measures for integrating disabled children are not available to non-subsidized childcare services.

Since not all parents are eligible for the reduced contribution for childcare, some are forced to put their children in a non-subsidized day care centre. However, by refusing to grant these parents the measures for integrating disabled children into childcare services, the Department is making it even harder for them to find childcare. This sometimes means that one of the parents has to quit his or her job in order to look after the child. The problem is even worse in the case of a single-parent family.

The Department bases its position on the fact that non-subsidized day care centres are for-profit organizations and, therefore, can charge parents of disabled children higher fees in order to provide the necessary supportive care. In return, these parents can claim a childcare deduction of up to $10,000 per disabled child in their income tax return. The maximum childcare deduction for non-disabled children is $9,000. Parents of disabled children are therefore entitled to $1,000 more in expenses. By way of comparison, note that the integration measures funded by the Department are equal to $2,200, plus $38.35 per day, in addition to the basic subsidy. An exceptional measure of up to $5,400 is also available in some cases. Of course, these sums represent only a portion of the additional costs related to the integration of a disabled child.

The difference between the integration measures funded by the Department and the additional deduction of $1,000 that parents of a disabled child can claim is considerable. The Québec Ombudsman also found that some non-subsidized day care centres that integrated a disabled child suffered financial losses by reducing the number of children supervised by educators.

Given that even subsidized childcare services are not required to integrate disabled children, the Québec Ombudsman believes that the integration measures should be extended to all childcare services, whether subsidized or not. Parents would then have a greater chance of finding a childcare service willing to take their disabled child. In the Québec Ombudsman's opinion, the fact that the Department does not enter into subsidy agreements with non-subsidized childcare providers is not an administrative barrier that justifies its position.

The Department informed the Québec Ombudsman that it will continue examining the issue and transmit the results to the Québec Ombudsman by April 1, 2013. The Québec Ombudsman deplores the Department's slowness in addressing this matter of crucial importance to many parents. It will pay close attention to developments in this regard.

CLARIFYING THE RULE REGARDING SERVICE PROVISION PERIODS

On March 15, 2011, the Department released the latest version of Instruction 9 relating to the granting and payment of subsidies to childcare providers. The purpose of Instruction 9 is basically to make subsidy periods the same for all childcare providers and give childcare providers and coordinating offices more time to complete and verify documents. Instruction 9 entered into force on April 1, 2011.

Instruction 9 resulted in a week's delay in the payment of subsidies to childcare providers. Even if the instruction allowed all childcare providers to receive a temporary cash advance, the Québec Ombudsman noted problems of communication between the Department and coordinating offices in terms of the attendant obligations.

The Québec Ombudsman therefore asked the Department to remind coordinating office managers, in writing, of the obligations attached to temporary cash advances, which the Department did.

However, Instruction 9 had a major impact on childcare providers' monthly, and even annual, budgets. First, cash advances were supposed to be paid back using subsequent subsidies, but this was

sometimes difficult since childcare providers have monthly bills to pay. The Québec Ombudsman heard from several childcare providers in this regard. Second, again because of Instruction 9, some will have received just 25 subsidy payments, instead of 26, for the fiscal year from January 1 to December 31, 2011.

Despite Instruction 9, the Québec Ombudsman continued calling on the Department to clarify the meaning of "provision period" in the instruction. Since this period is not defined in either the Educational Childcare Act or attendant regulations, it was important to make sure that its meaning would not change.

The Department finally agreed to clarify the matter in future amendments to the act. The Québec Ombudsman will monitor the situation as part of its legislative and regulatory oversight.

FOLLOWING UP ON THE QUÉBEC OMBUDSMAN'S RECOMMENDATIONS

In its 2010-2011 Annual Report, the Québec Ombudsman recommended that the Department:

- make public and update—on its website in particular—schedules for implementing childcare projects as well as changes to the schedule;
- establish means of abiding by the legislatively stipulated deadlines for approving plans;
- inform citizens about anticipated wait times for the approval of plans.

The Department has partially acted on these recommendations.

It informed the Québec Ombudsman that childcare project schedules would be made public and updated in time for the allocation of childcare spaces in 2012.

In its 2010-2011 Annual Report, the Québec Ombudsman also remarked that the 60-day deadline for approval of plans of any childcare facilities was not being met for three of four regional branches across Québec. The Department informed the Québec Ombudsman that as at March 15, 2012, the deadlines for reviewing plans for new facilities were being met thanks to special measures, in particular overtime. The Québec Ombudsman will monitor the situation in the coming year.

Ministère de la Justice

COMPLAINTS IN 2011-2012

The nature of the complaints the Québec Ombudsman receives regarding the Ministère de la Justice are diverse because of the many responsibilities entrusted to this Department, particularly with respect to legislative reforms. The grounds for complaints received in 2011-2012 can be grouped under three main subjects:

- legislative review of the support-payment collection system;
- information and services provided by courthouses (offices of the clerk);
- legislative amendments respecting the issuing of certificates of death and certificates of change of designation of sex.

SIMPLIFYING THE JUDICIAL PROCESS

Whether it is dealing with the complaints it has received or the publication of a bill or regulation, the Québec Ombudsman regularly questions the Department to draw its attention to legislative or regulatory reforms that it deems to be in the public interest.

On the latter point, the Québec Ombudsman has a positive assessment of the cooperation it has received from the Department in the last year. It welcomed the various bills brought forward to ensure implementation of the Justice Access Plan with a view to simplifying judicial procedures, cutting costs and wait times and increasing the courts' capacity to hear cases and render judgments. These bills contribute concretely to increasing citizens' access to the justice system.

ENDING THE OBLIGATION OF RECOURSE TO THE COURT TO MODIFY OR CANCEL CHILD SUPPORT

In the matter of collecting child support, the Québec Ombudsman regularly receives complaints regarding the need for citizens to systematically turn to the courts to have their child support modified or cancelled. The main causes for dissatisfaction are wait times and procedural costs. These complaints have arisen since the introduction of automatic child support collection, a service administered by Revenu Quebec. In past years, the Québec Ombudsman has made specific recommendations in this regard urging the Department to review its procedure in order to streamline it and facilitate the changes parents seek.

In November 2011, the Minister of Justice announced that a bill instituting a service to assist in reviewing child support would be tabled that winter. Bill 64, An Act to promote access to justice in family matters, was introduced on April 4, 2012. The Québec Ombudsman welcomed the tabling of the bill.

In the first part, the service that the bill institutes within the Commission des services juridiques will have jurisdiction to proceed with the administrative updating of child support granted by judgment. Only cases where a court has not exercised its discretion will be eligible for this service. The procedure announced and the fees charged ($275) will allow for more accessible updating that is better adapted to the needs of citizens.

The second part of the bill will enable parents who are not financially eligible for legal aid to obtain, at reduced cost ($524), the professional services of a lawyer for the purpose of obtaining a judgment on an agreement, submitted in a joint application, which settles all child custody and child support matters. In short, the bill proposes solutions to make the current system less rigid. The Québec Ombudsman is satisfied with this progress for citizens.

Further information regarding the support-payment collection program is presented on page 85 of this annual report, in the "Revenu Quebec" section.

FOLLOWING UP ON THE QUÉBEC OMBUDSMAN'S RECOMMENDATIONS

In its recent annual reports, the Québec Ombudsman reiterated its desire to see the Department make legislative changes regarding the following two elements:

- Issuing of death certificates: This request followed a complaint received from the family of a deceased person whose body was never recovered, but whose murderer was convicted in Québec Superior Court (criminal division). The family had to return to civil court to seek a declaratory judgment of death. The Civil Code of Québec does not allow the Directeur de l'état civil to issue death certificates in such situations.
- Issuing of certificates of change of designation of sex: A person born in Québec but no longer residing there cannot ask the Directeur de l'état civil to modify the gender that appears on his or her birth certificate, even with the required medical documents. The Civil Code of Québec provides that such an individual must be domiciled in Québec for at least a year before applying for the certificate.

The same person could face other difficulties outside Québec. In most Canadian provinces, a person must have been born in that province to obtain a certificate attesting to his or her change of designation of sex. If, to obtain the certificate, citizens must be domiciled in Québec while they no longer live there, and have to have been born in the province where they now live rather than in Québec, there is no way out. Administrative refusals are apt to put these individuals in an awkward situation every time they have to provide proof of identity (for example, applying for a passport, opening an account or completing a registration).

In late 2011, at the request of the Department, the Québec Ombudsman commented on two possible proposals for legislative amendments. The Québec Ombudsman was pleased to acknowledge Bill 70, An Act to facilitate civil proceedings by victims of crime and the exercise of certain other rights. Sections 1, 2 and 9 of the bill speak to the letter and spirit of two of the Quebec Ombudsman's recommendations.

Further information regarding the Directeur de l'état civil is presented on page 88 of this annual report, in the "Services Quebec" section.

DRAFT BILL ON THE CODE OF CIVIL PROCEDURE

This year, the Québec Ombudsman intervened in support of the Draft Bill to enact the new Code of Civil Procedure, introduced in the National Assembly in September 2011 by the Minister of Justice. The draft bill falls within the purview of the Justice Access Plan.

On this occasion, the Québec Ombudsman pointed out that, by definition, it is one of the mechanisms aimed at offering a non-judicial alternative to those who believe they have been wronged in their dealings with government.

The Québec Ombudsman also indicated that, in interacting with citizens and public agencies, it has noted time and again the difficulties citizens experience due to the complexity, wait times, procedures and costs inherent in the judicial system.

Lastly, the Québec Ombudsman emphasized that genuine accessibility of justice requires, first and foremost, that citizens be familiar with and understand the rights, recourse, and resources available to them. In this regard, establishing local justice centres should make it even easier for citizens to do this. It also indicated that it felt it was indispensable that the centres inform citizens about non-judicial recourses available to them, including the Québec Ombudsman.

ACKNOWLEDGING AN ADMINISTRATIVE ERROR

The Québec Ombudsman intervened to request that the Department grant fair financial compensation to a citizen.

(. . . CORRECTING CERTAIN MALFUNCTIONS AND OFFERING COMPENSATION

A citizen complained of having been unlawfully detained. These are the facts:

- *The citizen was sentenced to serve 24 hours in a detention facility.*
- *In fact, he was incarcerated for four days.*

Intervention and results

The Québec Ombudsman's investigation revealed that the detention in fact extended beyond the sentence brought down. The error was caused by the office of the clerk of the courthouse, which, following a series of administrative irregularities, failed to send the required order for discharge to the detention facility.

The Québec Ombudsman first ensured that the necessary measures had been put in place at the courthouse in question to avoid repetition of the same error. It then recommended that the Department offer fair financial compensation to the citizen for the wrong he suffered, which it ultimately agreed to do. The citizen received $2,000.

...

Ministère de la Sécurité publique

DIRECTION GÉNÉRALE DES SERVICES CORRECTIONNELS

In its capacity as the correctional ombudsman, the Québec Ombudsman witnessed sizable shortcomings this year in the application of penal legislation and administrative rules. The following pages provide a portrait of the situation.

COMPLAINTS IN 2011-2012

The number of complaints that the Québec Ombudsman received concerning the Direction générale des services correctionnels decreased slightly from 2011-2012. The Ministère de la Sécurité publique (Department) must by and large deal with operational logistics that call for a balance between the need for security and upholding of detainees' rights. Aware of the challenges this entails, the Québec Ombudsman is nonetheless concerned to see the current system's gaps, flaws and weaknesses.

This year, the Québec Ombudsman sent the authorities at detention facilities in Québec (male sector), Sorel, Saint-Jérôme and Trois-Rivières reports of the visits it had conducted. Discussions are underway to correct the deficiencies uncovered. Visits also took place in Amos and facilities for female detainees in Québec City. The reports on these visits were being prepared when this annual report was being drafted.

Discussions and meetings with the directors of the various facilities and the Direction générale des services correctionnels were held regarding follow-up to the Québec Ombudsman's visits and complex individual problems or generalized problems.

DEFICIENT IMPLEMENTATION OF THE GOVERNMENT ACTION PLAN

The 2010-2013 government action plan entitled *La réinsertion sociale des personnes contrevenantes*: *une sécurité durable* and the report on the implementation of the measures as at March 31, 2011, were analyzed and the measures monitored by the Québec Ombudsman. In December 2011, the Ombudsperson issued comments to Department authorities. Her main point was that one of the major goals of the 2008-2012 strategic plan had not been achieved. Recent data showed that nearly 40% of detainees had not been assessed within the prescribed time frame due to a shortage of resources despite the obligation set out in the Act respecting the Québec correctional system. Note that the Québec Ombudsman drew attention to this problem in its 2006-2007 Annual Report. This situation has serious consequences and it must be corrected as soon as possible.

Detainees may decline release on parole and choose to remain incarcerated longer so that they will not be subject to supervision once released. The Québec Ombudsman saw that the rate of decline of this option was nearly 51% on March 31, 2012. This proportion is very high and the phenomenon, on the rise in recent years, is great cause for concern. Release on parole is a way of protecting the public, notably because each offender's ability to re-enter society is assessed and the required supervision based on his or her own specific situation is determined prior to release.

In another vein, the Québec Ombudsman has witnessed pronounced disparities in terms of programs and services from one institution to the next. Due to the shortage of space and resources for safe supervision of detainees, programs have had to be suspended. A case in point is the Parcours program, an important means of intervention for detainees at risk for re-offending. Similarly, many institutions do not offer specialized services for inmates convicted of spousal violence or who have a drug addiction. These programs and services were created because there was a real need for them. The Québec Ombudsman has also noted that, frequently, services for inmates with mental disorders are scarce in some institutions when, in fact, it is particularly important that they be medically supervised during their incarceration.

TOWARDS SERVICES THAT ARE BETTER ADJUSTED TO DETAINEES WITH MENTAL DISORDERS

In May 2011, the Québec Ombudsman released a special report entitled *Towards Services that are Better Adjusted to Detainees with Mental Disorders*.

The recommendations contained in the report concern improved intake of these people and preventive, curative and social integration services adjusted to their condition, notably, support for police interventions prior to incarceration, service integration and continuity during detention, and development of measures that foster the social reintegration of detainees who have mental disorders.

On March 31, 2012, the Ministère de la Santé et des Services sociaux and the Ministère de la Justice briefed the Québec Ombudsman on the actions it intended to undertake as follow-up to its recommendations. The Ministère de la Sécurité publique followed suit in April.

The Québec Ombudsman has noted that on March 31, 2012, the Department was still responsible for delivering social and health services to inmates. A decision by the Conseil du trésor and Cabinet regarding an application for the appropriations needed for this responsibility to be transferred to the Ministère de la Santé et des Services sociaux is pending. The Québec Ombudsman wishes to acknowledge the openness and efforts of the government departments concerned. It intends to organize meetings with them and to pay close attention to the action taken to ensure that its recommendations are implemented.

The Québec Ombudsman's special report is posted on its website www.protecteurducitoyen.qc.ca, under the "Cases and Documentation" tab, "Investigation Reports and Special Reports" section.

BETTER SUPERVISION OF DETAINEE TRANSFERS

Depending on the time of year, prison overcrowding and management of the problem continue to be issues for some facilities, for example, in Amos, Saint-Jérôme and Rivière-des-Prairies. Will the renovations and construction slated to occur before 2015 in the Montérégie, Saguenay–Lac-Saint-Jean, Abitibi-Témiscamingue and Côte-Nord regions suffice? Will these measures be enough to cushion the impact of federal Bill C-10, passed into law in March 2012? The omnibus bill encompasses nine bills governing various aspects of the Criminal Code. For instance, it establishes new mandatory minimum penalties for certain offences, limits conditional sentencing and clamps down on young offenders.

One of the direct effects of prison overcrowding is the inter-facility transfer of inmates, for which there are yet to be any clearly defined guidelines or any effective coordination. Going as far back as its 2006-2007 Annual Report, the Québec Ombudsman underscored the importance of establishing transfer criteria so that nothing occurs randomly and the consequences on inmates are minimal, especially in terms of their medical needs (for example, the transfer of inmates on a methadone treatment regime) and on social-reintegration programs.

Recently, the Department informed the Québec Ombudsman about a draft provincial instruction on transfer criteria which has, once again, been delayed because of other priorities such as:

- establishing measures for distinct forms of custody for remanded detainees as opposed to sentenced offenders;
- improving the form on security classifications and its implementation.

As these questions are related to the draft instruction on dynamic security (means for the active surveillance of inmates) and that all of these issues (classification, security clearance, transfer criteria) are, as far as the Direction générale des services correctionnels is concerned, interconnected, it has said it cannot go ahead with the draft instruction in the coming fiscal year. In the Québec Ombudsman's opinion, this situation must not be allowed to continue. The draft instruction must be tabled as soon as possible.

In 2006-2007, the Department announced the creation of a task force on the distribution of medication and continuous medical treatment when transfers occur. There were major delays, so the task force report was only tabled in November 2010. The Québec Ombudsman has noted the fact that as at March 7, 2012, nothing had yet been done to implement the recommendations made in the report. The Québec Ombudsman sees this as indicative of the low priority the Department ascribes to this matter.

Given the difficulties in implementing transfer criteria, the Québec Ombudsman has called for transitional measures to deal with the most glaring deficiencies in the meantime.

(. . . UNACCEPTABLE SHORTCOMING IN TERMS OF ACCESS TO REQUIRED MEDICATION

A detainee complained to the Québec Ombudsman about not getting his medication soon enough. These are the facts:

- *The citizen, whose cancer had relapsed, needed strong daily doses of painkillers.*
- *While incarcerated, he had to be transferred to a facility in another region for a court appearance.*
- *When he got to the detention facility on a Friday evening, he told the officers about the medication he had to take.*

- *Since the facility had no evening or night nursing staff, he had to wait until the next day.*
- *Since the next day was a Saturday, he sent the health service several urgent messages informing it that he needed the medication.*
- *The medication was ordered from the dispensary on Monday and when it arrived, he was in court.*

...

Such a wait time cannot be attributed solely to staff shortages, but also to lack of attentiveness on the part of the staff on duty. However, it also sheds light on the need for a mechanism to cut down wait times. In this type of case, the medication must be sent over 48 hours before the inmate is transferred, as the Québec Ombudsman has already suggested.

RECOMMENDATIONS

WHEREAS the provincial instruction on the healthcare provided to detainees is not applied uniformly;

WHEREAS it is important that detainees have access to required medication;

The Québec Ombudsman recommends that the Ministère de la Sécurité publique:

- implement transitional measures regarding transfer criteria as soon as possible;
- begin work to implement the recommendations stemming from the task force report without delay and complete the work by December 31, 2012;
- submit a progress report to the Québec Ombudsman no later than September 15, 2012.

COMMENTS FROM THE DEPARTMENT

This was the Department's response to the Québec Ombudsman's recommendations:

> Work to implement the recommendations of the task force on the distribution of medication and continuous medical treatment is ongoing […] The Direction générale des services correctionnels pledges to submit a progress report on the implementation of the task force recommendations to the Québec Ombudsman no later than September 15, 2012. The Direction générale des services correctionnels will then be in a position to assess whether the work can be completed by the end of December 2012 based on the findings of the report and the strategic decisions taken as a result. [Translation]

LITTLE-KNOWN AND OUTDATED RULES

In the corrections field, the Act respecting the Québec correctional system is applied by means of administrative instructions and policies from the Direction générale des services correctionnels. These instruments spell out the activities of and the rules governing detention facilities and detainees, while upholding detainees' rights. It therefore stands to reason that updating of these provincial instructions is crucial in order to correct any dysfunctions and to set out the rules that are in force. Here are a few examples.

Health care

The instruction on health care to detainees must be updated and fine-tuned for a rigorous response to the needs of individuals and to bring it in line with best practices. Currently, the Québec Ombudsman sees differences in the way facilities interpret the instruction.

Classification

An update of the instruction on classification would make it possible to more clearly define how access to programs and privileges works based on the assessment carried out by detention staff.

The Québec Ombudsman has noted that updating of provincial instructions is sorely behind schedule (months and even years). It reminds the Department that the provincial instruction on dynamic security has yet to see the light of day even though it is the cornerstone of all security instructions. This delays other new instructions in any way related to security.

In its 2010-2011 Annual Report, the Québec Ombudsman pointed out that all too often provincial instructions are not applied, are ignored or are unknown to staff and certain managers at the detention facilities. This is the case with the instruction on classification, which makes a significant difference for detainees, since classification determines their daily schedule and access to various programs and certain privileges. In the past year, the Québec Ombudsman noted that certain deficiencies it had already drawn attention to persist. It therefore intervened to insist to managers on the importance of the following, among other actions:

- adequate documentation of files when inmates apply for reclassification;
- provision in writing of decisions regarding reclassification, with reasons;
- regular and prompt reassessment of restrictive classifications.

After the Québec Ombudsman intervened, the appropriate corrections were made at the detention facilities concerned. It continues to keep an eye on developments in this area. In a similar vein, some facilities breach the very spirit of the instruction because classification committees have not yet been formed. In some cases, these committees are in place but there are serious flaws in the way they operate. The Québec Ombudsman received confirmation from the authorities at facilities that do not have a classification committee that these structures should be up and running by the summer of 2012 at the latest. In the meantime, unit managers are responsible for adjusting classifications.

(. . . COMPLYING WITH THE INSTRUCTION ON CLASSIFICATION

Detainees with restrictive custody classifications complained about the time it took for their classification to be reviewed. These are the facts:

- *When the situation so requires (problem with behaviour or attitude, etc.), a detainee may be assigned a restrictive custody classification governed by stricter rules.*
- *At one detention facility in particular, classifications were reviewed every 28 days in wards with more restrictions, that is, not that much more often than in regular wards.*

Intervention and results

In the Québec Ombudsman's opinion, the wait time for reviewing custody classifications runs counter to the spirit of the instruction which requires that, by definition, these classifications be reviewed more frequently than regular classifications. The consequences of being assigned to a restrictive ward are major—inmates are confined to their cell for up to 20 hours a day and they lose almost all their privileges. It is therefore crucial that their status be reassessed frequently.

In investigating, the Québec Ombudsman also found that classification committee decisions were not sufficiently documented. It bears repeating that these decisions affect detainees' residual liberty.

As a result of the Québec Ombudsman's numerous interventions with the facility's authorities, now restrictive custody classifications are systematically reviewed every 14 days. In particular, this new measure enables detainees' efforts to improve their attitude and behaviour to be taken into account in determining their classification and living conditions. Since the frequency of review before the Québec Ombudsman stepped in was 28 days, this new standard is a substantial advance.

As for the file on which the committee bases its decisions, the facility authorities said they would see to it that at every shift a note would be entered in the file of each detainee in restrictive wards. That way, when the classification committee meets at the end of the 14-day period, it can base its decision on the facts or observations on file rather than on subjective interpretations.

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COMPLYING WITH ORDERS OF ASSESSMENT

A judge may require that a person awaiting trial undergo a psychiatric assessment in a hospital centre designated by order in council. However, it often happens that, due to lack of space, hospital centres refuse to take remanded detainees and therefore send them back to the detention facility. In so doing, hospital centres contravene the order in council which expressly indicates where the detainee will be housed during the assessment, namely, the hospital centre. This problem is one that the Québec Ombudsman raised in its 2010-2011 Annual Report, in which it decried the lack of coordination among the various sectors of intervention, notably, the judiciary, correctional facilities and hospital centres. The interdepartmental working committee on the provision of forensic psychiatry services set up pursuant to the Criminal Code published a report that contained various recommendations for correcting the problem. However, so far, nothing has really been done.

In December 2011, talks were held between the Ministère de la Sécurité publique and the Ministère de la Justice to produce an adapted order model that complies with the Criminal Code. The Québec Ombudsman has noted this initiative and will be kept informed as to follow-up. Also, analyses of current disparities in facilities' compliance with court orders are being conducted.

SUPERVISING ISOLATION MEASURES

In its 2007-2008 Annual Report, the Québec Ombudsman recommended that the Direction générale des services correctionnels introduce a register of the use of isolation cells, employed for the purpose of disciplinary and administrative segregation. The recommendation was intended to enable recording of information on the use of isolation and segregation measures in Québec detention facilities, the frequency of use and their duration. For example, detainees confined to isolation cells can spend up to 22½ hours a day there.

Since then, the Québec Ombudsman has asked a few detention facilities for a copy of the register. Based on the data obtained, it appears that the isolation for reasons of suicide risk or psychological disorganization may last several consecutive days.

Currently, neither the Act respecting the Québec correctional system nor the Regulation under the Act respecting the Québec correctional system contain legal provisions on this subject. Furthermore, neither the Direction générale des services correctionnels' directives nor provincial instructions mention standards or requirements on how to handle isolation. By "requirements" we mean rules regarding:

- who is empowered to proceed with isolation;
- the mechanisms needed to carry out surveillance of isolation cells (rounds, visual surveillance with or without the cell door closed, camera surveillance);
- intervention frequency;
- re-assessment of the isolation measure;
- proper record-keeping.

For several months, the Direction générale des services correctionnels has been announcing the introduction of an instruction on dynamic security. However, the deadline has been repeatedly pushed back.

In terms of infrastructure, in visiting detention facilities, the Québec Ombudsman noted that many of them did not have padded isolation cells, even though they are on the blueprints for penal infrastructure projects. Detention facilities must ensure that the vulnerable inmates placed in isolation because they have a psychiatric disorder or are at risk for suicide be kept from harming themselves. In its reports on these visits, the Québec Ombudsman suggested to several facility directors that arrangements be made to have a cell padded.

The instruction on detainee healthcare stipulates that segregated detainees be seen by nursing staff every day. When the Québec Ombudsman visited the facilities, it found that this was not done. It therefore intervened to have the facility authorities require its nursing staff to comply with the instruction.

(. . . RESORTING TO THE USE OF RESTRAINTS WHILE UPHOLDING RIGHTS AND COMPLYING WITH RULES

The investigation conducted by the Québec Ombudsman concerning the use of restraints brought to light a number of failings. These are the facts:

- *A young man with Asperger's syndrome was incarcerated when a court ordered a psychiatric assessment.*
- *The unit manager instructed that the citizen be restrained because of his behaviour with the staff and his psychological disorganization.*
- *It was found that in this particular case, the use of restraints had not been authorized as required and had not been duly recorded in the citizen's file.*

Intervention and results

Detention facilities must comply with a provincial instruction concerning the use of restraints. The instruction, which dates back to 1996, provides that a manager must "insofar as possible, obtain a recommendation from the facility's medical staff, which is issued after the detainee's medical condition has been assessed." [Translation] However, the Québec Ombudsman's investigation revealed that the inmate had been put in restraints without the manager having obtained the required medical recommendation or opinion, or if he had, it had not been recorded in the person's file.

The Medical Act authorizes a physician to make decisions as to the use of restraint measures, as does the Nurses Act, as a professional activity reserved to the members of the professional order. Under the Professional Code, certain categories of professionals, namely, occupational therapists and physiotherapists, also have this power. Based on these provisions, the Québec Ombudsman questions the legality of the use of restraint measures without the authorization of one of these professionals. It made its position known to the detention facility in question and to the Direction générale des services correctionnels, and asked that the provincial instruction on healthcare and practices be reassessed in light of its comments.

In terms of the information on record, the Québec Ombudsman noted that there was nothing in the person's file to indicate how frequently his medical condition had been assessed or to determine whether the restraints were still needed. In order to ensure that relevant information is recorded without fail, the Québec Ombudsman drew the attention to this weakness to those in charge at the facility and suggested that the Direction générale des services correctionnels follow the lead of the reference guide for drafting protocols for the use of restraint measures (2011) of the Ministère de la Santé et des Services sociaux (2011) in monitoring this practice.

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THE IMPACT OF A SHORTAGE OF RESOURCES ON DETAINEES' RIGHT TO BE REPRESENTED

In recent years, correctional officers have been increasingly required to escort detainees outside the facility, for instance, to medical appointments. At the same time, some facilities constantly grapple with staff shortages, which make day-to-day operations that much more complicated.

For example, one institution had to suspend certain activities, including access to visiting rooms on weekends and weekday nights. Such a decision limits the opportunity for visits from relatives and defense attorneys. This has a direct effect on the right of detainees to legal counsel. The Québec Ombudsman intervened with the authorities concerned to resolve this situation. They agreed to act on the recommendations and they went ahead with the requested evaluation.

IMPROVING CLEANLINESS IN DETENTION FACILITIES

Further to recommendations by the Québec Ombudsman, in 2009 and again in 2010, the Direction générale des services correctionnels promised to introduce measures to improve cleanliness in detention facilities, especially washroom facilities. Even though every institution has a cleanliness action plan, the Québec Ombudsman has seen that lack of sanitation, pointed out repeatedly, persists and is very worrisome.

First of all, it is imperative that external firms be hired to give isolation cells, some of which are particularly unsanitary, a thorough cleaning at least once a year. Secondly, in the reports on the visits it conducted, the Québec Ombudsman asked certain institutions to keep daily cleaning logs to make sure that these cells are cleaned as part of standard practice and to assign someone to their upkeep. The Québec Ombudsman will continue to intervene in this matter.

In its 2006-2007 Annual Report, the Québec Ombudsman asked the Ministère de la Sécurité publique to implement a plan for improving the cleanliness of detention facilities without delay. After the action plan was produced, a Department directorate was supposed to carry out compliance checks, but these inspections have not even begun yet. The Québec Ombudsman is asking that the inspections be carried out as soon as possible.

USING RESTRAINTS (FOOT SHACKLES) WITH DISCERNMENT

In the case of one courthouse in particular, the Québec Ombudsman had cause to wonder why detainees had to be kept in foot shackles all day when they are in the cell block. When the detainees arrive, only their handcuffs are removed. The reason given in the local directive is that due to a shortage of day staff, the shackles are needed for reasons of security.

By way of comparison, the Québec Ombudsman contacted authorities at another courthouse, who showed that despite a generally heavier docket, it opted instead for removing the foot shackles. The Québec Ombudsman considers that abusive use may occur and has told the authorities in question that this measure should always be the exception to the rule. Only high-risk detainees may need to have their feet shackled for extended periods.

The Québec Ombudsman intervened with the authorities of the detention facility in charge of the courthouse cell block and was assured that the situation would be reassessed.

BETTER MANAGING REQUESTS FOR RELIGIOUS DIETS

Having noted certain problems with how detention facilities managed requests for religious diets, the Québec Ombudsman joined forces with the Advisory Service Regarding Reasonable Accommodations of the Commission des droits de la personne et des droits de la jeunesse to co-produce a document providing concrete guidelines to enable decision-makers within the correctional system to manage these requests in compliance with the obligations prescribed by the Charter of Human Rights and Freedoms, taking into account the specificities of detention facilities. The document was given a favourable reception by the Department.

This document is posted on the Québec Ombudsman's website www.protecteurducitoyen.qc.ca, under the "Cases and Documentation" tab, "Other Documents" section.

Office de la protection du consommateur

COMPLAINTS IN 2011-2012

The number of complaints about the Office de la Protection du consommateur is up from 2010-2011. Most of them concern the lack of telephone access.

REDUCING HOLD TIMES

In the past year, people who phoned the Office de la protection du consommateur for information were put on hold for a long time. While the Office reports an average hold time of ten minutes, the Québec Ombudsman found that, depending on the period, it could reach 40 minutes.

When citizens call the Office de la protection du consommateur, sometimes they get a recorded message informing them that the wait time is more than 30 minutes. Some people try several times and, when see that they are getting nowhere, they eventually give up. In 2010-2011, the hang-up rate was 41% and 31% in 2011-2012. Other times, the message asks them to call back later because there are too many inbound calls.

Admitting to the situation, the Office said that it was caused by:

- heavy phone traffic that could not be foreseen, especially when specific consumer issues are in the news;
- staff shortages since 2006;
- longer call times, due in particular to increasingly complex consumer issues and the number of laws governed by the Office.

The Québec Ombudsman considers that anyone who calls the Office de la protection du consommateur is entitled to a reply within a reasonable amount of time. It goes without saying that current hold times must be reduced.

(. . . NOT PENALIZING CLIENTS BECAUSE STAFF ARE IN TRAINING

A citizen had been trying to reach the Office for four days, but the hold time was never under 30 minutes. The greeting message said that staff was down to half and that, exceptionally, the phone service would not be available between noon and 1 p.m.

Intervention and results

The Office confirmed that such hold times can occur, and that because half the staff was attending training, hold times were even longer. Further to the Québec Ombudsman's intervention, the Office contacted the citizen.

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RECOMMENDATION

WHEREAS anyone who calls the Office de la protection du consommateur is entitled to a reply within an acceptable amount of time;

WHEREAS the Office's hold times have a considerable impact on hang-up rates;

WHEREAS the situation has persisted for some time and there is no cause to believe that it will improve by itself;

The Québec Ombudsman recommends that the Office de la protection du consommateur:

- take measures to ensure reasonable handle times for phone calls.

COMMENTS FROM THE OFFICE

The Office has noted the Québec Ombudsman's recommendation and is keeping a very watchful eye on consumers' accessibility to our services. We are working to, as far as our means allow, deploy measures likely to improve our intake of citizens' complaints and requests for information.

The results observed further to the measures implemented in the past year attest to noticeable improvement and are a step in the right direction. Other strategies are being devised. [Translation]

MAKING THE "PUNISHMENT" FIT THE "CRIME"

Further to a complaint, the Québec Ombudsman recommended that the Office de la protection du consommateur review the punitive action it took so that it would be more in keeping with the nature of the facts and take better account of the state of law and the citizen's cooperation. The Office followed the recommendation.

(. . . REVIEWING A PENALTY

When the Office issued a formal order that an entrepreneur felt was unfair to him, he brought it to the Québec Ombudsman's attention. These are the facts:

- *The citizen had used the Office de la protection du consommateur logo on his business' website so that consumers could see his profile on the Office website. At the time, his record was unblemished.*
- *After he posted the logo, the Office sent him a formal order forbidding him to use its logo without permission, which it said violated its property rights. Furthermore, the order quoted from the section of the Consumer Protection Act stipulating that "no person may invoke in any advertisement that he has a permit" issued by the Office.*
- *The entrepreneur removed the logo from his website.*
- *Even so, the agency went ahead and entered a notice of penal offence in the entrepreneur's profile. The notice, accessible to the public, would have remained posted on the Office website for three years.*

Intervention and results

The Québec Ombudsman's investigation showed that the entrepreneur complied with the formal order immediately. While it might have been logical to conclude that use of the logo violated intellectual property rights, there was no reference to a permit on the entrepreneur's website. The Québec Ombudsman believes that the formal order issued by the Office should have been limited to the use of its logo, which is not a penal offence within the meaning of the Consumer Protection Act.

Furthermore, the Québec Ombudsman considered that the Office was too quick to assume that the merchant was in fault. By prematurely mentioning a notice or statement of offence in the profile of the entrepreneur before he was actually found guilty, the Office provided misleading information about him.

On a broader level, the Québec Ombudsman had reservations about merchants being prohibited from having a hyperlink to the Office de la protection du consommateur website and from indicating that they hold a permit to operate. On the contrary, these practices enable consumers to know more about the companies they are thinking of doing business with. In fact, there are a number of legislative provisions that make it mandatory for merchants to display their permits.

Further to the Québec Ombudsman's recommendation, the Office removed the notice of penal offence from the merchant's profile. It also informed the Québec Ombudsman that it would examine its general recommendations to the effect that it review its interpretation of the provisions of the act and information distribution policy. In order to do this, the Office formed a committee, chaired by its president, to analyze its public information policy that governs the kind of information included in the merchant profiles posted on its website. The policy had not been updated since July 2006. The Office will keep the Québec Ombudsman informed of the committee's results.

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Régie de l'assurance maladie du Québec (RAMQ)

COMPLAINTS IN 2011-2012

The Régie de l'assurance maladie du Québec (RAMQ) primarily administers two plans, namely, Health Insurance and Prescription Drug Insurance, in addition to some forty other programs, including those covering devices that compensate for physical disabilities, hearing and visual aids, dental and optometric services, the financial contribution of adults in long-term care and financial assistance for domestic help services. The number of complaints in 2011-2012 was more or less the same as it was last year. The Québec Ombudsman intervened mostly with regard to wait times to become eligible for either of the two main plans and the renewal of health insurance cards.

IMPROVEMENT NOTED: BETTER MANAGEMENT OF PRESCRIPTION DRUG INSURANCE ELIGIBILITY

In recent years, the Québec Ombudsman has regularly intervened to make RAMQ aware of the difficulty citizens have complying with Prescription Drug Insurance Plan requirements, in particular because they do not know what they are.

Since 2009, RAMQ has been working on how it processes applications for the Prescription Drug Insurance Plan. In early 2012, it informed the Québec Ombudsman of the measures taken so that citizens never go without coverage. This means that they must:

- be aware that they are required to join their employer's group insurance plan;
- enroll in the public plan if their employer does not have group insurance;
- not find themselves without insurance (which contravenes the provisions of the Act respecting prescription drug insurance).

RAMQ now has a new protocol for telephone information and interviews with citizens so that they sign up for the right plan (private or public). RAMQ also checks changes in the situations of target client populations such as last-resort financial assistance recipients and people who receive a Guaranteed Income Supplement. Reminders are sent out to people who have not replied to RAMQ's requests for the information needed to update their file, especially students and people who receive the Guaranteed Income Supplement. Furthermore, approximately 80 form letters were modified to simplify content.

In the past, the Québec Ombudsman has drawn RAMQ's attention to cases in which citizens were insured under the public plan for a certain period when, in fact, they were not eligible because they had access to their employer's group insurance plan. People who were unduly reimbursed for medication had to remit the amounts to RAMQ. Even if they were no longer insured under the public plan, Revenu Québec continued to collect the premium when the citizens filed their income tax return. RAMQ and Revenu Québec responded with measures concerning the reimbursement of premiums that should not have been paid.

RAMQ also instituted compliance reviews of private plans in cooperation with various partners, in particular, unions, associations and professional orders. In late 2011, five plans had been deemed not to comply and 13 were still under review.

The Québec Ombudsman considers the above measures were appropriate responses, but that RAMQ should remain attentive to changes related to aging, employment status (new job, loss of a job) and marital status (union, separation). These changes can directly affect eligibility, hence the importance of effective and ongoing action by the Régie.

CLARIFYING INFORMATION CONCERNING SERVICE FEES THAT ARE NOT COVERED

The question of accessory costs for services that are not insured under the public plan worries the Québec Ombudsman. This year, complaints had to do mainly with fees for the treatment of macular degeneration in private clinics.

The provisions for helping or informing citizens include the following:

- Citizens can ask RAMQ about the kind of fees they can be charged.
- They can apply to be reimbursed if the health professional or other provider has required payment for a government-insured service. However, RAMQ refers citizens to the Collège des médecins when they contest fee amounts (uninsured services, accessory costs or care provided by non-participating physicians).
- Under the Health Insurance Act, a physician must post in public view, in the waiting room of the facility or centre where he or she practices, the tariff of fees for services, supplies or accessory costs that he or she may charge an insured person, prescribed or provided for in an agreement, and the tariff of fees for medical services rendered by the physician that are non-insured services or services not considered insured services.
- An insured person from whom payment is demanded must be given an itemized invoice.

In its last annual report, the Québec Ombudsman called for "strengthening transparency with regard to covered services and means of access" and quoted the Act respecting health services and social services, which states that "every citizen is entitled to be informed of the existence of the health and social services and resources available in his community and of the conditions governing access to such services and resources."

At the end of 2011, RAMQ announced the formation of a prevention and education unit to inspect billing practices. By visiting physicians and their administrative staff, RAMQ intends to create awareness of the legal provisions governing the fees billed to insured persons and the posting of tariffs. RAMQ announced that all medical clinics and health cooperatives would be visited and also pointed out that the establishment of the inspection unit fits into its action plan to foster compliance with billing rules by ensuring that health professionals know them. The Québec Ombudsman welcomes this decision even though it was late in coming. It invites the Régie to be even more vigilant and proactive and it intends to keep a close eye on how the project is faring and on the work of the committee.

(. . . AVOIDING ADMINISTRATIVE INFLEXIBILITY

A citizen could not get RAMQ to change the name on her health insurance card. These are the facts:

- *The complainant, a Japanese citizen with permanent resident status in Canada, lived in Québec.*
- *Shortly before, she had had her name changed in Japan, and had asked RAMQ to change the name indicated on her health insurance card.*
- *RAMQ said it would not do so without a document from the Directeur de l'état civil confirming the name change.*

Intervention and results

The Québec Ombudsman's investigation showed that the woman had taken the necessary steps with the appropriate Japanese authorities to have her new name put on her official papers (Japanese passport, various attestations, official English translations of the Japanese documents), which were provided to RAMQ. Considering that RAMQ had all the relevant paperwork, the Québec Ombudsman asked it to make the name change, which it did.

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Régie du logement

COMPLAINTS IN 2011-2012

In 2011-2012, complaints regarding the Régie du logement were up considerably from the previous year. Again, the wait times for handing down decisions were the main grounds for complaints within the Québec Ombudsman's jurisdiction.

DISPENSING JUSTICE WITHIN A REASONABLE TIME FRAME

Even though the Québec Ombudsman is not empowered to intervene in commissioners' decisions, it remains concerned about the Régie's ability to dispense justice within a reasonable time frame given constraints imposed on the Régie by its legal framework.

In processing the complaints it received this year, the Québec Ombudsman repeatedly noted longer wait times than before. For example, the Régie informed the Québec Ombudsman that the wait time for hearings for cases deemed priorities was one year, yet the average wait time the Régie declared in its 2010-2011 annual report for this kind of case was ten months. For general civil law cases, citizens have to wait more than 24 months before getting a first hearing, but the average wait time declared in 2010-2011 for this type of case was 15.1 months.

On December 9, 2011, the Minister of Municipal Affairs, Regions and Land Occupancy announced that eight commissioners would be added to the Régie du logement, bringing the total to 42. The Québec Ombudsman welcomes this initiative aimed at reducing wait times for a first hearing and the docket of pending cases. However, it remains convinced that the Régie's legal framework must be amended—as recommended in 2007-2008—to decrease wait times and improve the Régie's efficiency.

(. . . A DECISION SEVEN YEARS AFTER FILING AN APPLICATION

Under the Civil Code of Québec, lessees who have been evicted illegally may apply to the Régie du logement for payment of damages. The following case showed that the wait time to obtain a decision can be very long. These are the facts:

- *The tenant had applied for damages at the beginning of May 2004.*
- *After two postponements, the citizen was still waiting when he contacted the Québec Ombudsman in July 2011.*

Intervention and results

The Québec Ombudsman asked that a hearing be scheduled as quickly as possible. The Régie agreed and the hearing was finally held in late September 2011. The decision was rendered in October 2011, more than seven years after the citizen filed an application.

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DECLARING THE TIME THAT REALLY ELAPSES BETWEEN FILING AN APPLICATION AND OBTAINING A DECISION

The Québec Ombudsman continues to have questions about real wait times at the Régie du logement. In its annual report, the Régie only indicates the wait time between filing of an application and the first hearing. Frequently, this is not the only wait time because many first hearings are postponed. There is no way of knowing what the average wait time is between filing an application and handing down a decision because of the reporting method used by the Régie. In the course of processing complaints concerning the Régie, the Québec Ombudsman has found that wait times after the first hearing can also be very lengthy.

(. . . DECLARING REAL WAIT TIMES (1)

A citizen filed an application at the end of February 2006 and the parties were summoned for a first hearing at the end of January 2007. This 11-month wait was the only one that the Régie du logement declared in its annual report, but the real wait time was much longer. The parties obtained a decision on January 19, 2012, nearly six years after the application was submitted.

(. . . DECLARING REAL WAIT TIMES (2)

In its method of reporting its activities, the Régie uses the first hearing as a marker, no matter what happens afterwards. These are the facts:

- *A citizen submitted an application to the Régie in mid-June 2008.*
- *She was summoned to a first hearing 22 months later, but the commissioner decided to postpone it due to lack of time.*
- *Even though the hearing never occurred and it was the commissioner who decided to postpone it, the cancelled hearing was the one reported.*

As at March 31, 2012, this case was still working its way through the Régie system and the parties are still waiting…

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ENSURING EQUITY AND JUSTICE IN SCHEDULING

In 2011-2012, the Québec Ombudsman submitted to the minister responsible an investigation report on the management of the scheduling of Régie du logement hearings in the fourth quarter of 2010-2011. The report confirmed that the Régie had processed numbers of very recent priority and general cases ahead of earlier similar cases that were still on hold.

The Régie admitted that it used this strategy to report shorter average wait times in order to go on record as having reached the objectives set in its 2009-2013 strategic plan. The Québec Ombudsman recommended that the Minister of Municipal Affairs, Regions and Land Occupancy instruct the Conseil de la justice administrative to conduct an inquiry into this practice. The minister accepted the recommendation and the Conseil's work is underway.

This document is posted on the Québec Ombudsman's website www.protecteurducitoyen.qc.ca, under the "Cases and Documentation" tab, "Other Documents" section.

THE QUÉBEC OMBUDSMAN'S RESPONSE TO BILLS AND DRAFT REGULATIONS

On July 12, 2011, the Québec Ombudsman submitted to the Minister responsible for Seniors its comments on Bill 22, an Act to amend the Civil Code as regards the resiliation of a dwelling lease in certain situations. These comments are summarized on page 147 of this annual report, in the "Parliamentary Watch Report" section.

Revenu Québec

TAXATION

COMPLAINTS IN 2011-2012

The number of tax-related complaints that the Québec Ombudsman received about Revenu Québec in 2011-2012 spiked sharply.

The Québec Ombudsman intervened with respect to Revenu Québec to ask for corrections concerning:

- the solidarity tax credit;
- delays in processing personal income tax returns;
- administrative errors leading to illegal recovery measures;
- interest added for no good reason.

MAKING THE SOLIDARITY TAX CREDIT TRULY AVAILABLE TO EVERY CITIZEN ENTITLED TO IT

The solidarity tax credit, which took effect in July 2011, is deposited directly into the bank account of eligible applicants. Revenu Québec has invested considerably in promoting this far-reaching program since its introduction. From the outset, the Québec Ombudsman:

- subscribed to the principle of encouraging beneficiaries to register for direct deposit, which is a safe way for citizens to receive payments and a cost-saving device for the government;
- pointed out, however, that some people entitled to the credit did not have a bank account and therefore would not be able to receive the amounts granted;
- asked that the required corrections be made;
- stated its intention to pay particular attention to this issue.

Since then, the Québec Ombudsman has been in regular contact with Revenu Québec concerning the conditions for access to the tax credit. It wishes to underscore Revenu Québec's cooperation in striving to resolve the problems brought to its attention.

Revenu Québec says it is not able to accurately evaluate the number of eligible citizens who do not receive the credit, but the agency has committed to releasing an implementation report in the fall of 2012.

Both Revenu Québec and the Ministère de l'Emploi et de la Solidarité sociale have assigned sizable resources to reaching vulnerable client populations who are eligible for the credit. Even though access to the credit is a primary concern of theirs, the truth is that many citizens are not getting the credit because they do not have direct deposit.

An estimated 40,000 social assistance recipients are not receiving the solidarity tax credit simply because they do not file an income tax return. Previously, these same people received the QST credit even if they did not file an income tax return, which they are not legally required to do because they do not pay income tax.

DIFFICULTIES IN IMPLEMENTING THE SOLIDARITY TAX CREDIT

The notices of determination issued to citizens do not itemize the components of the credit received, the corresponding amounts or the reasons for their issuance. Citizens therefore have no way of knowing how their situation is taken into account in the amounts they are granted. One of the consequences is that they must complete a notice of change of situation form even if it makes no difference in terms of the solidarity tax credit they receive.

The time it may take to process these notices has considerable consequences—in certain circumstances, citizens are overpaid for months on end. When Revenu Québec claims these amounts, the files of people who cannot pay are forwarded to the Centre de perception ($95 fee). If recovery measures ensue, 10% of the amount due (with a $50 minimum) is added to their debt.

The Québec Ombudsman has known cases in which Revenu Québec lost the notices of change of situation sent by citizens and, hence, extra delays and, possibly, more overpayments.

The Québec Ombudsman is aware of and pleased that there have been numerous initiatives to encourage citizens to file an income tax return and to register for direct deposit. However, the fact remains that all too many citizens who, in principle, are eligible for the credit are deprived of it. Furthermore, in certain circumstances, the monthly obligation to notify Revenu Québec of changes in situation may result in fees being charged to citizens.

RECOMMENDATIONS

WHEREAS some of the people eligible for the solidarity tax credit are particularly vulnerable;

WHEREAS administration of the solidarity tax credit may result in fees being charged to the people for whom it is intended because amounts are determined monthly;

The Québec Ombudsman recommends that Revenu Québec:

- not charge applicants interest during the period needed to process notices of change of situation;
- modify the notices of determination issued to citizens so that they understand what the amounts refer to that make up the credit they receive.

COMMENTS FROM REVENU QUÉBEC

Revenu Québec told the Québec Ombudsman that "it had not charged citizens interest during the period needed to process notices of change of situation."

It went on to say that it "already had plans for next year to review notices of determination so that citizens understand them more easily." [Translation]

(. . . PROCESSING APPLICATIONS WITHIN A REASONABLE TIME FRAME

A citizen felt that Revenu Québec had taken an unreasonable amount of time to process the adjustment of her solidarity tax credit. These are the facts:

- *The citizen did as required and completed Schedule D to claim the solidarity tax credit when she filed her income tax return.*
- *Towards mid-June, she received a notice of determination from Revenu Québec specifying the amount she would be granted. It was then that she realized that she had made a mistake (wrong number of eligible persons entered) when she completed the Schedule appended to her income tax return.*
- *At the beginning of July, she informed Revenu Québec, which then sent her the form (notice of change of situation) she needed to have the information corrected.*
- *She filled out and returned the form immediately.*
- *In August, she contacted Revenu Québec, which informed her that her application would be processed in September.*
- *When the citizen approached the Québec Ombudsman in October, she had yet to receive the payment she was entitled to.*

Intervention and results

After the Québec Ombudsman phoned Revenu Québec to find out was happening with the citizen's notice of change of situation, the agency made the required adjustments to the solidarity tax credit. She finally received the payment she had been expecting for four months. Revenu Québec informed the Québec Ombudsman that it had taken measures to reduce the processing times for notices of change of situation. Staff have been given training and are better equipped to carry out this task.

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ADAPTING PROGRAMS TO CLIENT POPULATIONS

The Société d'habitation du Québec has entrusted Revenu Québec with the issuance of its Shelter Allowance cheques. At first the agency issued the cheques on the first day of the month. However, there is a problem when the first of the month falls on a Saturday, Sunday or statutory holiday because most rents come due the first. Given that, as a rule, the citizens who are eligible for the program have low incomes, the Québec Ombudsman asked Revenu Québec to review its initial payment calendar so that citizens receive their cheque the day before the statutory holiday or weekend. Revenu Québec agreed to act on this request. However, there is still a problem because the cheques are dated for the first of the month.

RECOMMENDATION

WHEREAS the purpose of the Shelter Allowance program is to "provide supplementary financial assistance for low-income households that must spend too much of their income on housing;"

WHEREAS rents usually come due the first of the month;

The Québec Ombudsman recommends that Revenu Québec:

- make arrangements with the Société d'habitation du Québec to have the agreement under which cheques are dated for the first of the month amended by adding the following: "when the first of the month falls on a statutory holiday, a Saturday or a Sunday, that the cheque be dated for the preceding business day." This must also apply to Shelter Allowance payments made by direct deposit.

COMMENTS BY REVENU QUÉBEC

Revenu Québec informed the Québec Ombudsman that it would "initiate discussions with the Société d'habitation du Québec about the date of payments." [Translation]

NOT PENALIZING CITIZENS FOR THE AGENCY'S LATENESS IN PROCESSING THEIR FILES

Complaints made to the Québec Ombudsman showed that Revenu Québec had charged citizens interest stemming from the Direction du contrôle fiscal's lateness in processing their files. These people had tried unsuccessfully to have the interest cancelled and the Québec Ombudsman had to intervene to have Revenu Québec admit it was at fault. This kind of situation brings into focus the importance of providing prompt service in order to prevent any unreasonable delays and seeing to it that citizens are not charged interest when the agency is responsible for delays.

RECOMMENDATION

WHEREAS Revenu Québec must promptly process files that contain the information that citizens are asked to provide;

WHEREAS citizens must not be penalized for Revenu Québec's processing times;

The Québec Ombudsman recommends that Revenu Québec:

- change its work instructions so that audit officers do not charge interest to citizens who have provided all the documents needed for the study of their file beforehand and when Revenu Québec is late in issuing the notice of assessment.

COMMENTS FROM REVENU QUÉBEC

This was Revenu Québec's response to the Québec Ombudsman's recommendation:

> Existing work instructions already enable undue processing delays to be taken into account. Revenu Québec has made staff aware that they do not have to charge interest when they see that there is no good reason why processing time was so long. It will ensure that its work instructions are improved if necessary. [Translation]

(. . . CANCELLING INTEREST CHARGED FOR NO GOOD REASON (1)

A citizen contested the fact that Revenu Québec had claimed interest from him. These are the facts:

- *In November 2009, Revenu Québec asked the citizen to provide various documents for a tax audit covering 2006 to 2008.*
- *In May 2010, he received a notice of assessment for 2006 and was told that he would be getting the notices of assessment for 2007 and 2008 shortly.*
- *In March 2011, the citizen inquired about how his file was going and the agent informed him that he had not had time to process it.*
- *The citizen received his notice of assessment in May 2011 and because of the time that had elapsed, it bore interest.*

Intervention and results

After it verified the facts with Revenu Québec, the Québec Ombudsman found the citizen's file had gathered dust from May 2010 to March 2011. The explanations given had to do with the agents' workloads. Québec Ombudsman therefore asked that the interest charged for this period be cancelled, which Revenu Québec agreed to do.

(. . . CANCELLING INTEREST CHARGED FOR NO GOOD REASON (2)

A citizen claimed that Revenu Québec had charged her interest when it should not have. These are the facts:

- *The citizen filed her 2007 income tax return at same time her spouse did.*
- *As provided by law, the spouses transferred retirement income between themselves.*
- *In April 2008, the citizen received the refund she was expecting.*
- *A few months later, Revenu Québec made changes in the spouse's income tax return concerning the transferred retirement income without entering the same changes in the other spouse's return.*
- *The citizen received the notice of assessment pertaining to the change two years later, in July 2010, and it included interest. She contested it because she felt that she was not responsible for the long processing time.*

Intervention and results

By way of explanation to the Québec Ombudsman, Revenu Québec argued that it had been up to the citizen to correct her return without waiting for the notice of assessment. It went on to say that under the Taxation Act, Revenu Québec had the right to make an assessment within three years, which it had done. However, the Québec Ombudsman considered that nothing that had happened justified two years of the file sitting idle and that the citizen, who was in no way responsible for the time the process had taken, should not have to pay the cost. Revenu Québec cancelled the interest claimed.

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APPLYING RULES FAIRLY AND ENSURING QUALITY SERVICES

In the past year, the Québec Ombudsman had to remind Revenu Québec more than once of the need to ensure fair, respectful and prompt processing of citizens' applications and cases. A restrictive approach to applicable rules, excessive seizure, uncalled for penalties, refusal to acknowledge its mistakes, insufficient information—the complaints received revealed a variety of deficiencies on the part of Revenu Québec. Here are a few examples.

(. . . ABIDING BY AN EXISTING AGREEMENT

A citizen considered that the seizure of an amount from her bank account ordered by Revenu Québec was unjustified. These are the facts:

- *Although the citizen had a payment agreement with Revenu Québec and she had complied with the terms, Revenu Québec had gone ahead and seized money in her bank account.*
- *Revenu Québec maintained that it had no record of the agreement.*

Intervention and results

When Québec Ombudsman looked into the situation, it found that there was an agreement between Revenu Québec and the citizen and that she had met all requirements. Considering that it was in fact Revenu Québec that had not fulfilled its commitments, the Québec Ombudsman asked it to release the citizen from seizure arrangements, which it did.

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(. . . ACKNOWLEDGING AND CORRECTING ADMINISTRATIVE ERRORS (1)

When Revenu Québec claimed overpayment from a senior, the citizen complained to the Québec Ombudsman. These are the facts:

- *In July 2008, the citizen, who could no longer afford to live in a seniors' residence, moved into an apartment.*
- *While living at the residence, she received a home-support tax credit which is adjusted according to the situation (notably, the place where beneficiaries live), so when she moved out, she notified Revenu Québec of the change.*
- *Revenu Québec continued to grant her the initial amount and a year later, it informed her that she had been overpaid $583 in 2008, that the credit she would be receiving henceforth would be severely slashed, and that she would be getting another claim ($550) shortly.*
- *The citizen could not understand why this decision had been made; she had provided all the required information on time and did not have the financial means to pay the claim.*

Intervention and results

The Québec Ombudsman's investigation revealed that further to changes to the Tax Credit for Home-Support Services for Seniors, Revenu Québec had temporarily stopped updating files involving lease renewal or a change of address, which is why the citizen's file had not been touched. However, she should not have been penalized because of Revenu Québec's failure to follow up. The Québec Ombudsman had to insist that the claim be cancelled because Revenu Québec would not accept the fact that the citizen had not been the one who had made a mistake. Revenu Québec ended up agreeing to act on the Québec Ombudsman's request.

(. . . ACKNOWLEDGING AND CORRECTING ADMINISTRATIVE ERRORS (2)

A citizen argued that the notice of assessment he had gotten from Revenu Québec took into account a salary he had not received. These are the facts:

- *In order to file his income tax return, the citizen had received the RL-1 slip from his employee, but he had not been paid the full salary amount indicated because the business had closed. No source deductions had been sent in to Revenu Québec for the portion of the salary that the citizen had not been paid.*
- *When the citizen filed his income tax return, he entered the real salary amount for the year in question.*
- *Since Revenu Québec sent the citizen a notice of assessment based on his R-1 slip, the salary amount was too high.*
- *The citizen contacted Revenu Québec so he could send it the documents from the Commission des normes du travail proving that he had not been paid part of the salary because the business had ceased operations and that the Commission had not been able to recover the amounts (business bankruptcy).*
- *Despite all of this, Revenu Québec maintained its first notice of assessment.*

Intervention and results

The Québec Ombudsman's investigation showed that Revenu Québec refused to accept the Commission des normes du travail documents that the citizen wanted to provide by way of proof of his real income. Further to the Québec Ombudsman's intervention, Revenu Québec agreed to examine the documents and modified its notice of assessment.

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PROVIDING THE REQUIRED EXPLANATIONS

An entrepreneur could not get Revenu Québec to explain a decision it had made in his file. These are the facts:

- *Revenu Québec refused to grant the entrepreneur the deduction for certain equipment (tax credit for investment).*
- *He contacted Revenu Québec to find out why certain items were inadmissible.*
- *The agent he dealt with refused to provide any explanations and would only say that the entrepreneur had the right to contest the decision.*
- *The citizen said he was prepared to contest but in order to go ahead with it he needed to know why Revenu Québec refused to recognize certain items.*

Intervention and results

After investigating, the Québec Ombudsman came to the conclusion that the Revenu Québec agent should have referred the citizen to someone who could have answered his questions. It therefore asked to have a Revenu Québec employee contact the citizen to explain the refusal. Revenu Québec concurred. As it happens, Revenu Québec had put equipment deemed essential by the entrepreneur into a category that did not match that definition. Subsequently, the citizen contested the notice of assessment and he was granted the deduction for eligible property.

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In 2004, the Taxation Act was amended to close the loophole enabling citizens who receive income replacement indemnities to be granted certain credits twice under the act. The amendment also provided that the correction be applied for past years in cases where income replacement indemnities are issued retroactively by the Commission de la santé et de la sécurité du travail or the Société de l'assurance automobile du Québec.

The complaints received from citizens made it clear that this measure had adverse tax effects on people receiving provisional financial assistance pending a decision on an agency's refusal to grant such an indemnity. In such cases, the assistance is repaid out of the indemnities issued retroactively. The Québec Ombudsman intervened to ask Revenu Québec to take the repaid conditional assistance into account so that citizens are not required to pay more income tax than they should. Adjustments were made in these files. However, in the Québec Ombudsman's opinion, there must be measures so that other citizens who do not turn to the Québec Ombudsman or are unaware of arcane tax rules are not deprived of the credits to which they are entitled.

RECOMMENDATION

WHEREAS the amounts claimed by Revenu Québec can be substantial (up to $1,915 a year);

WHEREAS the rules in force and the forms to complete to apply for cancellation of income tax claimed by Revenu Québec are very difficult to understand for citizens, who, generally speaking, are not familiar with tax notions;

WHEREAS the adjustments made by Revenu Québec concerning past years and unbeknownst to citizens have adverse tax effects;

The Québec Ombudsman recommends that:

- the Minister of Finance recommend that the government amend the Regulation respecting the Taxation Act to oblige agencies that grant provisional assistance to issue citizens and Revenu Québec a RL-5 slip itemizing the amounts repaid for each of the years concerned; this way, Revenu Québec would be able to proceed with the required adjustments to the income tax returns of the citizens in question.

COMMENTS FROM REVENU QUÉBEC AND THE MINISTÈRE DES FINANCES

This was Revenu Québec's and the Ministère des Finances' response to the Québec Ombudsman's recommendation:

> The Ministère des Finances and Revenu Québec have agreed to establish a procedure for carrying over losses other than capital losses for individuals who must reimburse benefits received pending a decision on their right to an income replacement indemnity, in particular, further to an industrial accident or automobile accident. Revenu Québec has already implemented a new work procedure, so that cases involving those who retroactively received indemnities in 2011 will received customized processing. [Translation]

THE QUÉBEC OMBUDSMAN'S RESPONSE

Even though there has been no regulatory amendment, the Québec Ombudsman is satisfied with the follow-up to this recommendation. It will remain attentive as to its implementation so that these problems are completely resolved.

THE QUÉBEC OMBUDSMAN'S RESPONSE TO BILLS AND DRAFT REGULATIONS

On November 29, 2011, the Québec Ombudsman conveyed its comments concerning Bill 32, Act giving effect to the Budget Speech delivered on 17 March 2011 and amending various legislative provisions, to the Chair of the Committee on Public Finance. These comments are summarized on page 147 of this annual report, in the "Parliamentary Watch Report" section.

Revenu Québec

SUPPORT-PAYMENT COLLECTION

COMPLAINTS IN 2011-2012

The number of complaints received by the Québec Ombudsman concerning the support-payment collection program remained stable in 2011–2012 compared to the previous year. These complaints mainly concern the following:

- failure to pay support or irregular support payments to the creditor;
- Revenu Québec's failure 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.

RESPECTING APPLICABLE RULES AND CITIZENS' RIGHTS

In 2011-2012, complaints concerning support-payment collection prompted the Québec Ombudsman to recommend that Revenu Québec change some of its initial decisions. In one case, a settlement that factored in exceptional circumstances was reached. In another, Revenu Québec modified its interpretation of a court order.

(. . . ACKNOWLEDGING AN ADMINISTRATIVE ERROR

A citizen felt that she had been the subject of an unjust claim by Revenu Québec. These are the facts:

- *In 2011, the citizen received a claim for $3,855.30 in support overpayments.*
- *Revenu Québec based the claim on two incorrectly applied judgments rendered in 2005.*

Intervention and results

The Québec Ombudsman's investigation showed that the first judgment with respect to interim measures ordered the citizen's ex-spouse to pay child support to the mother for the couple's two minors. The measures were valid pending further court proceedings. Subsequently, Revenu Québec began collecting support, as prescribed.

The second judgment, rendered nine months later, formalized the divorce but did not include arrangements for child support. Since no mention was made of child support, the payments, which should have been cancelled, were not. Revenu Québec kept the file open. Amounts were billed, source deductions were made on the debtor's salary, and the citizen in question received the payments.

In 2010, the debtor died. When Revenu Québec reviewed the file, it noticed what had happened, six years after the fact. The citizen was ordered to repay the amounts overpaid to her.

The Québec Ombudsman considers that the claim was unfair. The support payments continued to be issued because of an administrative error that the citizen could not reasonably detect. She had acted in good faith. Furthermore, had the judgment been applied correctly she could have done what was needed to obtain a judgment that established child support.

Throughout this period, the debtor never contested the payment of support. When the error was detected, and he personally could not benefit from possible repayment, no one had begun to settle the succession. This means that any amount recovered would be put into the Consolidated Revenue Fund as unclaimed property. In the meantime, the citizen still had two young dependents and could not afford to make the repayments.

Given the exceptional circumstances that prevailed and despite the legality of the payment order, the Québec Ombudsman recommended that Revenu Québec cancel its claim, which it finally agreed to do.

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(. . . PROVIDING THE REQUIRED COLLECTION SERVICES

The complaint had to do with Revenu Québec's refusal to collect support. These are the facts:

- *At the end of 2010, Québec Superior Court ordered the retroactive (2007-2010) payment of support to a citizen for her two minors.*
- *The amount, $28,170 dollars, was defined by the court as a "lump sum."*
- *Revenu Québec considered that, in its capacity as collector, it was not incumbent on it to act with respect to a judgment that established lump-sum support retroactively; according to its interpretation, it was empowered to intervene only with regard to the portion of the judgment establishing future support.*
- *The citizen in question wanted Revenu Québec to use all possible means to collect the support, especially given that any legal action to have the judgment executed would be complex and costly to her.*

Intervention and results

The Québec Ombudsman's investigation showed that, in this particular case, the lump sum should have been considered an arrear in support payment. Under the Act to facilitate payment of support, it was Revenu Québec's jurisdiction to recover these amounts.

Revenu Québec accepted the Québec Ombudsman's interpretation and acted to have the retroactive payment collected.

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FACILITATING THE REVIEW OF SUPPORT

The Québec Ombudsman regularly receives complaints concerning the need for court decisions to change or cancel support payments. Citizens' dissatisfactions centre on the time this process takes and the costs involved. These complaints have arisen since introduction of the automatic collection of support payments administered by Revenu Québec. In recent years, the Québec Ombudsman has made recommendations in this respect urging the Ministère de la Justice to streamline the child support review process and facilitate the changes that parents seek. In November 2011, the Minister of Justice announced the tabling that winter of a bill establishing the Service administratif de rajustement des pensions alimentaires. The bill was introduced on April 4, 2012. The Québec Ombudsman applauds this initiative.

Under a Québec Superior Court judgment, Revenu Québec was now allowed to terminate a support obligation arising from a judgment under certain circumstances, namely, when it is solely a question of establishing a factual situation accepted by the parents and there is no room for interpretation. In its 2010-2011 Annual Report, the Québec Ombudsman was pleased to note that Revenu Québec applied the principles of this judgment. However, this came to an end in January 2012, when Revenu Québec decided to take into account certain reservations by the legal community regarding application of the judgment. Instead, the agency intends to work with the Ministère de la Justice to establish a streamlined process.

(... *SIMPLIFYING PROCEDURES*

A citizen complained about Revenu Québec's inaction with regard to an application concerning child support. These are the facts:

- *Since 1999, the citizen had been paying child support, taken directly from his salary by Revenu Québec's collection section, to his ex-spouse for their son.*
- *When the son became financially independent at age 21, he and both his parents agreed to have the support payments terminated, so they filled in a form to prove that this is what all of them wanted. Revenu Québec received the form and returned it to the citizen.*
- *Despite its court-sanctioned power to cease collecting support without a new judgment, Revenu Québec refused to process the application.*

Intervention and results

The Québec Ombudsman's investigation confirmed the position shared by the parents and their son with regard to the termination of support. The file now met all the requirements for eligibility for processing in accordance with the terms of the Québec Superior Court judgment authorizing Revenu Québec to have a stop put on support payments.

However, the Québec Ombudsman learned that Revenu Québec was no longing applying the principle of the judgment in question and therefore was not processing the very forms it had sent out, so it recommended that pending cases be processed nonetheless while waiting for a definitive mechanism to be put in place.

Revenu Québec agreed to act on the Québec Ombudsman's recommendation and some 370 pending cases have been processed since May 2011.

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Services Québec

DIRECTEUR DE L'ÉTAT CIVIL

COMPLAINTS IN 2011-2012

The volume of complaints the Quebec Ombudsman received in 2011-2012 regarding the Directeur de l'état civil was unchanged from recent years. Complaints refer mainly to:

- difficulty obtaining a birth certificate;
- the spelling of names registered in acts of birth issued by the Directeur de l'état civil;
- refusal to accept the surname requested at the time of registering a birth;
- fees for issuing certificates according to the type of application (by mail, by Internet, at a service counter).

TAKING CULTURAL SPECIFICITIES INTO ACCOUNT WITH REGARD TO SURNAMES

The Québec Ombudsman has dealt several times in its recent annual reports with situations where, in light of the specificities of certain cultural communities, giving the parents' surname to a newborn has been a problem.

In 2011-2012, complaints regarding the Directeur de l'état civil involved the issue of women married outside Québec using their surname in the exercise of their civil rights. In these specific cases, the Directeur de l'état civil refused to grant the mother's surname to her newborn when registering the child in the Québec register of civil status.

In Québec, as we know, spouses keep their surname and exercise their civil rights using that surname. By contrast, married women in several countries take their husband's surname. In some cultures, the surname of the husband that the wife takes is feminized; the languages of these cultures provide for different endings to family names depending on whether the bearer is male or female. Complaints filed with the Québec Ombudsman have shown that the Directeur de l'état civil upholds decisions that run counter to cultural specificities that are significant to the communities in question.

The Québec Ombudsman is of the opinion that the Directeur de l'état civil should be more flexible in adapting its practices to the international mobility that impacts real life in Québec.

(. . . ADAPTING PRACTICES TO REALITY

Two families had recourse to the Québec Ombudsman because they were unable to register the surname they wanted for their child. These are the facts of one of the complaints:

- *In 2002, following her marriage in Bulgaria, a citizen took her husband's surname but in its feminized form under the law in force where she was domiciled.*
- *The couple settled in Québec the following year.*
- *The wife gave birth to a first daughter in 2009.*
- *The Directeur de l'état civil accepted the mother's already feminized surname, as the parents requested.*
- *In 2011, the mother gave birth to the couple's second daughter.*
- *In accordance with the traditions of their country of origin, the couple again chose a feminized surname for their child.*
- *At the time the application was examined, the Directeur de l'état civil had in its possession the couple's marriage certificate, translated by a certified translator, with details regarding the surnames of both spouses.*
- *It also had the child's declaration of birth indicating the parents' choice of surname.*
- *Despite these documents, the Directeur de l'état civil refused to process the registration according to the parents' request.*

Intervention and results

The Québec Ombudsman's investigation confirmed first of all that the Directeur de l'état civil had changed the child's surname to the father's surname, a masculine form, which, in the tradition of their country of origin, was nonsensical for a girl. From the standpoint of the Directeur de l'état civil, it was impossible to change its registers to satisfy the parents' request unless they had recourse to the administrative procedure for a change of name. This procedure involved fees of over $350 which the couple did not want to pay.

In the Québec Ombudsman's view, the problem here calls for a simple solution: the Directeur de l'état civil should comply with the Civil Code of Québec (article 51) which provides as follows: "A child is given, as his mother and father choose, one or more given names and a surname composed of not more than two of the surnames composing his parents' surnames."

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RECOMMENDATION

WHEREAS the Civil Code of Québec provides that parents give their child a simple surname or a surname composed of not more than two of the surnames composing the parents' surnames;

WHEREAS pursuant to marriage in their country of origin, the women in question acquired their husband's surname in a feminized form in accordance with the law in force in these countries;

WHEREAS acquiring this surname is an effect of marriage that should be recognized in Québec;

WHEREAS the women in question exercise their civil rights using this surname;

WHEREAS the parents clearly entered in the declarations of birth their choice for their daughters of the surname their mothers took pursuant to marriage;

WHEREAS the children's surnames were entered in the register of civil status in a masculine form;

WHEREAS there is reason, in respect of the law, to take cultural specificities regarding surnames into account, as the Québec Ombudsman has indicated several times in its recent annual reports and as the courts have recognized;

WHEREAS the procedure for changing a name—and the relevant fees—is not an acceptable solution in the circumstances;

The Québec Ombudsman recommends that the Directeur de l'état civil:

- apply the Civil Code and change its procedure to allow the children in question to bear their mother's legal surname and to change its registers accordingly.

COMMENTS FROM SERVICES QUÉBEC

Services Québec advised the Québec Ombudsman that it would act on its recommendation and that "the necessary changes to its work processes would be completed in the coming days." [Translation]

(. . . ***ASSISTING CITIZENS IN CERTAIN ADMINISTRATIVE PROCEDURES***

After changing her name, a citizen was unable to have her new surname entered on her driver's license. The Directeur de l'état civil could have made the procedure easier for her. These are the facts:

- *Born in a Mahgrebian country, this person arrived in Québec in 2004.*
- *Four years later, a judgment rendered in her country of origin changed her family name as well as that of her entire family.*
- *When she went to the Société de l'assurance automobile du Québec (SAAQ) with the judgment to get a new driver's license, she was sent to the Directeur de l'état civil, which is the expert in acts of civil status made outside Québec.*
- *After analyzing the file, the Directeur de l'état civil proposed inserting the judgment in the register of civil status, which she did and which enabled her to receive a birth certificate with her new surname shortly thereafter.*
- *With this document, the citizen was able to change her family name at the Régie de l'assurance maladie du Québec (RAMQ), but the SAAQ refused to change her family name. According to the SAAQ, a birth certificate was not sufficient to prove the citizen's change of name.*

Intervention and results

This citizen's problems with the SAAQ could have been resolved easily if she had had a letter from the Directeur de l'état civil explaining the steps she had taken to register, steps that led to issuance of a birth certificate. The document would have confirmed that the citizen had indeed been subject to a change of name by a judgment in her country of origin.

The Québec Ombudsman asked the Directeur de l'état civil to send such a letter to the person in question, which it did and which ultimately resulted in the SAAQ issuing a driver's license using the new family name. The same letter enabled the citizen to normalize her situation with federal authorities: authority responsible for social insurance numbers, Passport Canada, Citizenship and Immigration Canada, etc.

Since the Québec Ombudsman had already had to intervene with the Directeur de l'état civil several times for similar cases but without much obvious improvement, it brought representatives of the agency and of the SAAQ together to discuss matters. Further to the meeting, the Directeur de l'état civil agreed to provide a letter to citizens born outside Québec, explaining the situation each time it inserted a change of name obtained abroad. This way of proceeding will enable the SAAQ to process name changes requested by the citizens in question. The Québec Ombudsman is satisfied with the instruction the Directeur de l'état civil has put in place and looks to the SAAQ to develop a written directive in this regard.

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LEGISLATIVE AMENDMENTS

The subject of legislative amendments regarding issuance of a death certificate in certain circumstances and of a certificate of change of designation of sex for a person born in Québec but no longer domiciled here is covered on page 60 of this annual report, in the "Ministère de la Justice" section.

Société de l'assurance automobile du Québec (SAAQ)

HIGHWAY SAFETY CODE

COMPLAINTS IN 2011-2012

The number of complaints received in 2011-2012 by the Québec Ombudsman about the Société de l'assurance automobile du Québec (SAAQ) in connection with road safety matters increased slightly compared to the previous year. Complaints related mainly to driver licensing and concerned in particular:

- licence suspension for medical reasons or conditions for keeping a licence in force;
- lowering of the demerit point threshold linked to the licence holder's age that triggers licence revocation, effective June 19, 2011;
- driver's licence exchange for new residents of Québec.

Other complaints related to road vehicle registration, especially:

- refusal by the SAAQ to register certain vehicles;
- vehicle storage or discarding.

This past year, payment by pre-authorized debits gave rise to fewer complaints than they had the previous year, although some irksome aspects remained, such as having debit payments unduly stopped and difficulty in understanding the amounts collected.

ATTACHING STRICT YET REALISTIC REQUIREMENTS TO DRIVER'S LICENCE ISSUE OR RENEWAL

Whether it be medical check-ups required for maintaining a driver's licence in force or identity checks for driver's licence access, the SAAQ sometimes sets requirements that are impossible to meet or which, after study, prove to be pointless. Yet, failure to meet those requirements means that citizens cannot get a driver's licence (refusal to issue a licence, or non-renewal or suspension of a licence). The Québec Ombudsman had such requirements cancelled in several instances.

In medical matters, the Québec Ombudsman intervened on behalf of citizens who could not submit medical reports from specialists or assessments by occupational therapists that were demanded by the SAAQ. The reason why they could not was because they did not have access to specialist physicians.

The Québec Ombudsman fully agrees with the need to make sure that the health condition of driver's licence holders is compatible with safe driving. However, examination of individuals' medical records failed to show that their condition justified the SAAQ's imposition of such requirements. The Québec Ombudsman succeeded in having these cancelled and the driver's licence suspensions lifted.

(. . . REQUIRING PROPER CONFIRMATION OF A MEDICAL CONDITION

A citizen sought the help of the Québec Ombudsman because she was unable to meet the conditions set by the SAAQ for lifting the suspension of her driver's licence. These are the facts:

- *This citizen had lost consciousness. Based on examination results and according to her physician, this did not put her at any danger for operating a motor vehicle.*
- *The SAAQ nevertheless demanded that she submit a report from a neurologist. In the meantime, her driver's licence was suspended.*
- *As she did not know any neurologist, there was a lengthy wait for an appointment, and she needed to drive her car for her work.*

Intervention and results

Further to investigating, the Québec Ombudsman asked that the SAAQ require a complementary report from the citizen's attending physician. Her doctor confirmed that the problem was benign and that his patient had not sustained any other loss of consciousness in the previous three months. Following receipt of this medical opinion, the SAAQ lifted the suspension of her driver's licence, while notifying her that she would have to undergo a medical examination in six months. The Québec Ombudsman deemed this to be a reasonable requirement that would allow the SAAQ to verify whether this person was still fit to drive.

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(. . . REQUIRING PROPER CONFIRMATION OF FITNESS TO DRIVE

In one case, the SAAQ demanded medical certification rather than proof of driving fitness. These are the facts:

- *A citizen suffered a permanent eye injury in a car accident in 2003, an impairment that was, however, compensated with the use of an apparatus allowing him to drive safely in compliance with applicable rules.*

- *In 2011, the SAAQ notified this individual that it required a report from an ophthalmologist and an assessment of driving skills done by a SAAQ examiner to determine his fitness to drive, not by reason of his medical condition.*
- *The individual failed the driving skills test because of poor driving habits, according to the examiner.*
- *The SAAQ suspended the citizen's driver's licence and advised him of its new requirement: an on-road assessment with an occupational therapist rather than retaking the driving test.*

Intervention and results

The Québec Ombudsman's investigation revealed that there was nothing in the individual's medical reports to indicate that his condition—permanent eye impairment with a compensatory apparatus—had changed since 2003. It therefore considered that further verification should concern driving ability rather than the individual's medical condition. As a result of the Québec Ombudsman's intervention, the SAAQ had the driver retake the test, which he passed, so the suspension of his driver's licence was lifted.

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(. . . REQUIRING REASONABLE PROOF

A citizen was instructed to provide proof of not being someone else... but did not know how to go about it. These are the facts:

- *A citizen from Ontario applied to the SAAQ for a learner's licence.*
- *The SAAQ refused to issue the licence to him because of identity confusion with the holder of a Saskatchewan driver's licence (same name and date of birth).*
- *The SAAQ demanded that this citizen prove he was not the other person but it could not specify how it must be done.*

Intervention and results

Following the Québec Ombudsman's intervention, the SAAQ had the other driver's record sent from Saskatchewan. The photo on record showed that the driver and the applicant were two different people. The SAAQ was then able to process the application and explain the procedure, allowing the applicant to obtain a learner's licence.

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NEED FOR OPENNESS IN HANDLING UNUSUAL SITUATIONS

Before the SAAQ will register a used vehicle purchased from an individual, it requires that identification be submitted by the seller and the buyer as well as the registration certificate bearing the seller's signature. When the vehicle is bought from a dealer, the buyer must produce identification, the registration certificate bearing the signatures of both the dealer and the former owner, as well as the transaction record duly filled out by the dealer.

It may happen that a purchaser in good faith winds up with a vehicle that cannot be registered because the former owner cannot be identified. This usually occurs for a vehicle that was never registered by the former owner, or when the vehicle was rebuilt from parts whose origin cannot be established. Rather than try to find a way out of the impasse with the buyer, the SAAQ refuses to register the vehicle. The Québec Ombudsman had to intervene on three occasions on behalf of buyers facing this situation. In one case, the SAAQ agreed to proceed with vehicle registration. It also assigned a staff member specifically to the processing of unusual registration cases. This

facilitated the settlement of the cases of two other vehicle owners who called on the help of the Québec Ombudsman.

In the course of its investigations into the issue, the Québec Ombudsman found that the SAAQ demonstrated true openness to finding fair solutions in complex cases, to the satisfaction of its client population.

(. . . CONSIDERING ATTESTATIONS PROVIDED BEFORE RESPONDING WITH A REFUSAL

A vehicle owner called upon the help of the Québec Ombudsman after the SAAQ rejected his registration application. These are the facts:

- *The citizen purchased a used car from a dealer.*
- *Subsequently, this vehicle was shown to have been rebuilt from stolen parts and it was confiscated by the Sûreté du Québec.*
- *Having entered into the transaction in good faith, this individual was issued a court order enabling him to recover his vehicle.*
- *The SAAQ nonetheless refused to register the vehicle in question.*

Intervention and results

The Québec Ombudsman's investigation revealed that the SAAQ's refusal was based on the following reasons:

- *The SAAQ considered that the vehicle remained the property of the insurer because of the theft component.*
- *The car came under the class of severely damaged road vehicles, which meant that its owner should have submitted certain reconstruction documents, which he did not have in his possession.*

In light of the facts, the Québec Ombudsman considered that the car owner, by submitting the court order and the sales contract signed by the dealer, was reasonably fulfilling his registration-related obligations in the circumstances. Following the Québec Ombudsman's intervention, the SAAQ agreed to have the vehicle undergo a technical inspection and to have it registered in the buyer's name even though there was no rebuilding record. The SAAQ also assigned staff to deal with this type of case in the future.

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SHOULDERING THE CONSEQUENCES OF ITS OWN MISTAKES

In 2011-2012, the complaints handled by the Québec Ombudsman brought to light the SAAQ's inflexibility in refusing to bear the consequences of some of its mistakes. The Québec Ombudsman had to intervene before fair settlements favourable to the individuals concerned were reached.

(. . . RECOGNIZING THE UNFAIRNESS OF AN INITIAL CALCULATION

In the view of a vehicle owner, the SAAQ did not give him the refund to which he was entitled. These are the facts:

- *This person had an all-terrain vehicle that, unbeknownst to him, had been mistakenly registered as a road-use motorcycle since 2000.*
- *The registration fees charged had therefore been higher than they should have been, a fact the owner had not noticed.*

- *It was the sudden rise in the insurance contribution for his motorcycle registration in 2008 that alerted the owner to the mistake, so he contacted the SAAQ, which gave him incorrect information.*

Intervention and results

Although the citizen had not done anything wrong and the SAAQ was fully to blame, at first it refused to refund the owner from the initial registration year (2000), alleging that it was required to do so only for the last three years. The Québec Ombudsman emphasized the unfairness of the situation, arguing that a public agency should not be growing richer at the expense of a citizen. In the end, the vehicle owner was refunded the full retroactive amount of $1,897.

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(... ADMITTING THAT NO OFFENCE HAD BEEN COMMITTED

A citizen sought the help of the Québec Ombudsman regarding a fine of $400 for an offence that in her opinion someone else was responsible for. These are the facts:

- *In September 2010, the SAAQ instructed the citizen to submit an insurance certificate, as required under the Automobile Insurance Act.*
- *This citizen complied with the requirement, following receipt in November 2010 of a second notice in this regard. The notice specified that failure to provide proof of insurance would mean that her vehicle could not be put back use into until December 14, 2010.*
- *She went to an SAAQ service outlet on December 7 and submitted the required certificate.*
- *Despite the steps she took, the citizen was unable to have her vehicle registered and was subsequently ticketed for having operated a vehicle without valid registration.*

Intervention and results

The Québec Ombudsman's investigation showed that automated registration of the vehicle in question had not occurred. The vehicle owner had indeed received a payment notice with an automatic debit option in October for the renewal of her vehicle's registration due November 30. As she did not submit the insurance certificate until after November 30, the vehicle's registration was not renewed. Once the proof of insurance requirement is flagged, the registration process is interrupted until the situation is straightened out.

The citizen had never been made aware of the impact of not settling the matter by November 30. The only deadline she knew about was December 14, after which the operation of her vehicle would be prohibited if she did not submit proof of insurance coverage. As the certificate was presented by the citizen on December 7, nothing authorized the SAAQ to suspend the vehicle's registration.

The Québec Ombudsman succeeded in getting a letter from the SAAQ explaining its error so that the citizen concerned could challenge the ticket. This letter allowed her to have the city's legal department withdraw the charge, without her being forced to appear in municipal court. The Québec Ombudsman also got the SAAQ to correct its computerized registration system so similar situations would not occur.

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GOING FORWARD WITH THE ASSESSMENT OF A KEY PROGRAM

The Québec Ombudsman's 2009-2010 Annual Report described an intervention at the SAAQ concerning its Drivers' Evaluation Program administered by the Association des centres de réadaptation en dépendance du Québec. The recommendations made following its analysis concerned the following aspects:

- the need to conduct quality control of driving proficiency evaluators;
- the urgent need for a review of the entire Program, which had not been done since it was implemented in 1997;
- the importance of providing alternative evaluation methods for citizens who wish to contest an unfavourable summary evaluation.

The recommendations received a favourable reception from the SAAQ, which produced an action plan to follow through on them. Since the Association's tabling of the plan in March 2010, the Québec Ombudsman has monitored its implementation with the SAAQ. The Québec Ombudsman notes that several of the commitments have been carried out, especially as concerns quality control of evaluators. Its requirements in this matter are now written into its agreement with the Association des centres de réadaptation en dépendance du Québec.

However, the Program's assessment and the development of alternative evaluation methods for citizens who want to challenge an unfavourable summary evaluation do not seem to be on schedule. The SAAQ was banking on the results of a collaborative project with the Association des centres de réadaptation en dépendance du Québec conducted by external researchers. The research report tabled in 2011 found that there is a need to improve evaluator data entry during summary evaluations in order to base the validation study on reliable retrospective data. This means that it will be a long time before the results from the validation study are known. Furthermore, the study only concerns the summary evaluation of drivers. No step seems to have been taken regarding other Program agreements, nor has any decision yet been made about alternative evaluation methods to summary evaluations. Meanwhile, drivers who disagree with an evaluator's recommendation have no appropriate recourse.

Not only has the Drivers' Evaluation Program still not been assessed, but new evaluation protocols are currently being developed. To follow up on Bill 71, assented to in December 2010, two new protocols must be put into place by July 2012. The first concerns risk assessment and will be administered in the event a driver is intercepted for the second time with a blood-alcohol reading of 0.08% or on an initial interception with a reading of 0.16%, based on reasonable doubt if there is no court verdict. The second protocol, maintenance assessment, will be used at the end of the penalty period that follows a conviction.

The Québec Ombudsman is astonished to see that the Program has been extended without being assessed or its effectiveness demonstrated, even though the impact on road safety and on the individual drivers evaluated is considerable.

THE QUÉBEC OMBUDSMAN'S RESPONSE TO BILLS AND DRAFT REGULATIONS

Passage in 2007 of the Act to amend the Highway Safety Code and the Regulation respecting demerit points (Bill 42) lowered the number of demerit points resulting in driver's licence revocation for drivers under age 25. Whereas formerly revocation of a driver's licence occurred once the holder reached 15 demerit points, the act now puts the threshold at 8 points for drivers under age 23 and at 12 points for those 23 and 24 years old. These amendments came into force on June 19, 2011.

There are transitional provisions in the case of someone who already had eight or 12 demerit points on record on June 19, 2011, depending on the licence holder's age, so the driver's licence would not be automatically revoked. Only the entry of demerit points after that date could lead to licence revocation.

A particular situation was brought to the Québec Ombudsman's attention—what would happen to a driver convicted before June 19 of an offence, for example following a challenge, but about which the SAAQ only learned the facts after that date? As the entry of demerit points would take place after June 19, this person would be subject to the new rules and have his or her licence revoked. If, however, there had been no challenge and the points were entered prior to the date of coming into force, the licence would remain valid. Exercise of a legal challenge could in fact penalize certain citizens.

After studying the situation, the Québec Ombudsman concluded that while application of the rule is legally justified, it is nonetheless unfair. Accordingly, it was agreed that the SAAQ would consider the demerit points to have been entered before June 19, 2011 should this issue be brought to its attention by the licence holder concerned. So, where an offence occurred prior to that date, but the SAAQ was not advised of the fact or was informed of it only after a challenge, the licence would not be revoked.

Société de l'assurance automobile du Québec (SAAQ)

COMPENSATION OF ROAD ACCIDENT VICTIMS

COMPLAINTS IN 2011-2012

As it did last year, the Québec Ombudsman again noted a decrease in the number of complaints concerning the Société de l'assurance automobile du Québec (SAAQ) and its compensation of road accident victims. Complaints were made because the SAAQ:

- rendered decisions without having all the relevant information;
- took a long time to process claims;
- refused to reimburse certain expenses;
- stopped compensation payments without valid reason.

IMPROVEMENT SEEN: SPEEDIER IMPLEMENTATION OF DECISIONS BY THE TRIBUNAL ADMINISTRATIF DU QUÉBEC

Citizens complained about the length of time taken by the SAAQ to implement decisions by the Tribunal administratif du Québec upholding claimants' right to compensation. The Québec Ombudsman observed that several weeks could go by before the SAAQ's legal department conveyed the Tribunal's decision to a compensation officer for implementation.

In June 2010, the Québec Ombudsman informed the SAAQ of concerns in this area. In May 2011, the SAAQ took steps to institute a new process with a time limit of 14 days for carrying out a decision by the Tribunal administratif du Québec. Wait times have thereby been shortened to the satisfaction of the Québec Ombudsman.

ENSURING A DECISION IS BASED ON A COMPLETE FILE

Complaints brought to light a new phenomenon this past year—in several instances, the SAAQ rendered a decision without informing citizens about necessary documents and without having on hand all useful information or attestations, contrary to what is clearly required under section 6 of the Act respecting administrative justice.

(. . . CONSULTING THE HOSPITAL RECORD TO DETERMINE IF AN ACCIDENT OCCURRED

A citizen who stated that she had been involved in a motorcycle accident filed a claim with the SAAQ, only to have it rejected. These are the facts:

- *Following the accident, the citizen failed to contact the police and was taken by an acquaintance to the hospital for treatment.*
- *There was no witness to the accident.*
- *The SAAQ rejected the claim for compensation, arguing that an accident had not occurred.*

Intervention and results

The Québec Ombudsman's investigation revealed that the SAAQ had not requested a copy of the record from the hospital that had treated the injured citizen, whereas she had stated on her claim for compensation that she had been seen by a health care professional in a hospital centre on the day of the accident. The SAAQ did not have all the information needed to make a decision when it rejected the claim. The Québec Ombudsman asked the SAAQ to consult the record and then make a ruling on the citizen's eligibility for compensation. The SAAQ rendered a new decision on the basis of the accident victim's file and accepted her claim.

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(. . . BASING A DECISION ON ALL THE DATA REQUIRED

A citizen complained that the SAAQ had rejected her claim for reimbursement. These are the facts:

- *The citizen had to undergo a neurological assessment at the SAAQ's request, in order to establish a relation between her condition and the road accident.*
- *The citizen was receiving ongoing medical attention in her region and because of her limitations had to have someone accompany her for travel.*
- *The citizen was claiming the reimbursement of travel expenses for herself and the person accompanying her.*

Intervention and results

The Québec Ombudsman's investigation revealed the SAAQ had refused to reimburse the travel expenses of the accompanying person. Since it did not recognize a causal link between her neurological condition and the accident, the SAAQ considered her file closed.

The Automobile Insurance Act provides for the payment of an availability allowance and the reimbursement of the travel expenses of an accompanying person where required because of the physical or mental condition of a road accident victim who must undergo an examination. This provision applies at all times, whether or not the injury is accident-related.

First of all, the Québec Ombudsman holds the view that the SAAQ was not justified in rejecting the claim for reimbursement of expenses by maintaining that the file was closed since it had made the request for a further medical assessment. Furthermore, the SAAQ should have reviewed the information contained in the compensation file. Seeing that there was no medical certificate to show that the citizen's condition would not allow her to travel alone, the SAAQ should have told her that proof of this had to be submitted in order to rule on her claim for the reimbursement of expenses.

At the Québec Ombudsman's request, the SAAQ informed the citizen of its requirements, and she submitted a medical certificate indicating that her physical condition required her to have someone accompany her.

The Québec Ombudsman asked the SAAQ to grant the citizen the reimbursement claimed, which it agreed to do.

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SHOWING RESPECT FOR INDIVIDUAL RIGHTS IN THE USE OF VIDEO SURVEILLANCE

Given its power to investigate any matter within the scope of its authority, the SAAQ sometimes conducts video surveillance of road accident victims. From a few hours to several days, an accident victim's movements are monitored and recorded. This measure enables the SAAQ to uncover cases of fraud, among other things, but it is mostly used to show that an accident victim has the functional capability of returning to work. If this is the case, the accident victim no longer qualifies for income compensation under the Automobile Insurance Act.

Over the last few years, the Québec Ombudsman has received complaints from claimants whose income compensation payments were stopped following video surveillance. These citizens complain that:

- their privacy has been violated;
- they were not given the opportunity to express their viewpoint before the SAAQ made its decision.

The emergence of this type of complaint and the issues observed in analyzing these complaints prompted the Québec Ombudsman to further document the use of this monitoring technique by the SAAQ. A sampling of cases was requested to this effect.

Study of those cases has led the Québec Ombudsman to conclude that the SAAQ does not always use its investigative and decisional authority in accordance with the applicable legal and administrative framework, nor with the principles established through case law. This results in considerable harm to road accident victims who qualify for compensation.

In summary, the SAAQ uses video surveillance where other less intrusive means are available. Moreover, decisions that end income compensation are based on surveillance videos that do not provide preponderant evidence. The right to procedural fairness is, in a word, disregarded, and unsubstantiated decisions are rendered.

Aware of the need for sound management of the Fonds d'assurance automobile by the SAAQ, the Québec Ombudsman does not challenge the need for monitoring claimants with video surveillance. The process must, however, respect individual rights and the results must be put to proper use.

Respect for individuals' privacy demands that they can reasonably expect to not be systematically observed and monitored, even when in public view. The Québec Ombudsman believes that road accident victims do not have this assurance from the SAAQ. Quite the contrary, some of them are the subject of monitoring whereas they should not be.

The Québec Ombudsman considers that the investigative method of video surveillance and the evidence thereby gathered, as used by the SAAQ, generate a series of problems leading to the official recommendation in a report that the SAAQ:

- correct the harmful situation as quickly as possible and comply with the law and criteria established through case law with regard to monitoring using video surveillance;
- better define and explain the key criteria to its staff before resorting to video surveillance, and more generally, better control the exercise of its investigative and decisional authority;
- establish quality control to ensure that the processing of claims made by accident victims who are monitored using video surveillance complies with the SAAQ's legal and administrative framework;
- evaluate the conditions for the efficiency and usefulness of monitoring with video surveillance in light of its results and costs;
- analyze the efficiency of resorting to video surveillance to monitor the actual health of a road accident victim whose disability is due to a psychological condition;
- make a written report to the Québec Ombudsman of the follow-up on these recommendations by February 20, 2012.

In February 2012, the SAAQ advised the Québec Ombudsman that it had accepted all of the report's recommendations and submitted an action plan for their implementation. The Québec Ombudsman is satisfied with the action plan and the measures announced and is keeping an eye on implementation.

Tribunal administratif du Québec

COMPLAINTS IN 2011-2012

The number of complaints that the Québec Ombudsman received about the Tribunal administratif du Québec (TAQ) this year was stable with last year's figures. Nearly 50% of the complaints concerned Québec automobile insurance indemnity cases.

Citizens approached the Québec Ombudsman mainly to:

- contest a decision that had been made;
- complain about wait times;
- get information about TAQ.

REDUCING AUTOMOBILE INSURANCE INVENTORY AND PROCESSING TIMES...

In its last annual report, the Québec Ombudsman recommended that TAQ:

- take appropriate action to handle case volume and reduce the automobile insurance 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.

In response to these recommendations, in February 2012, TAQ established an action plan to reduce its case backlog. The action plan includes the following:

- reviewing a certain number of cases with the collaboration of the Société de l'assurance automobile du Québec in order to see whether out-of-court settlements are possible;
- creating mixed roles for judges in cases in outlying regions (the same judge conducts conciliation and hears cases);
- establishing management conferences (procedural mechanism whereby a judge summons the parties to discuss the deadline for obtaining or preparing certain documents or to agree on how the hearing will be conducted) and a docket schedule for the most critical road accident victim cases;
- shortlisting cases for hearings;
- grouping cases (this formula entails filling any holes in the automobile insurance case docket with other Tribunal cases);
- reducing the number of judges presiding over hearings when the law permits.

These measures have interesting potential. The importance of the action plan comes into full focus when you consider the constant increase in case overload and average processing time that the Québec Ombudsman has observed in the last five years.

… AND SETTING SPECIFIC GOALS FOR GETTING THERE

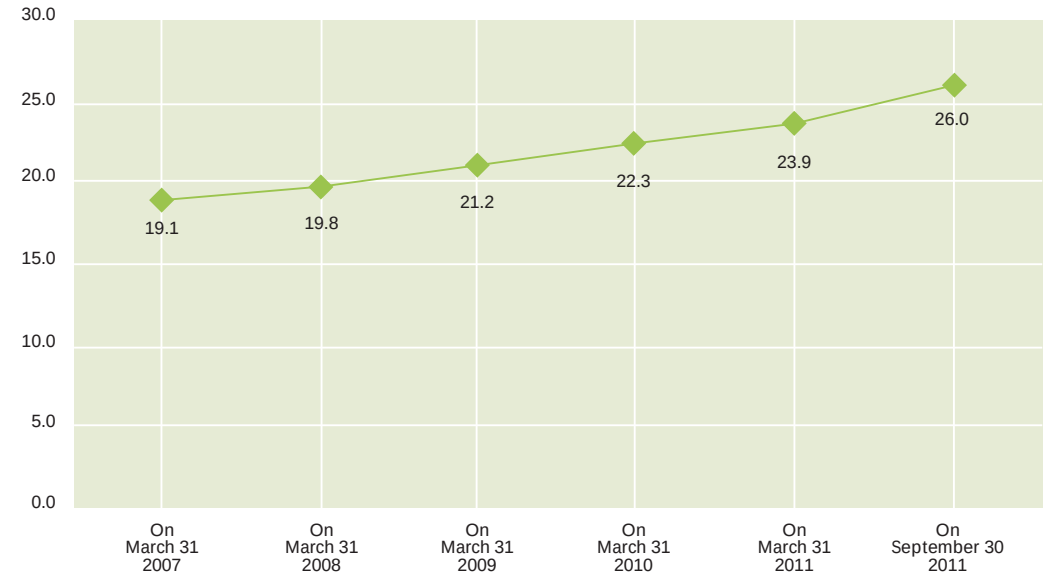
The Québec Ombudsman's last annual report contained a third recommendation concerning the importance for TAQ to set short- and medium-term targets, particularly for the purpose of reducing backlogs and average processing delays.

TAQ informed the Québec Ombudsman that it would assess how the measures were doing before setting specific targets. For its part, the Québec Ombudsman would like to stress the importance of proceeding with the assessment in the very first months of implementation of the action plan and of achieving action plan goals as quickly as possible.

The Québec Ombudsman is aware that in order for the action plan to be implemented, there must be sufficient staff and resources, among other things. This was the Ombudsperson's position when she appeared before the Committee on Institutions on February 14, 2012. TAQ informed the Québec Ombudsman that it is in discussions with the Secrétariat du Conseil du trésor, which recently agreed to relax its rule on the replacement rate of four out of ten departures due to retirement.

The Québec Ombudsman will closely monitor implementation of the action plan aimed at quality, prompt and accessible administrative justice in accordance with the principles set out in section 1 of the Act respecting administrative justice, the law that established the Tribunal administratif du Québec in 1998.

AVERAGE PROCESSING TIME (IN MONTHS) FOR CLOSED CASES



CASE INVENTORY