

PROTECTEUR DU CITOYEN

In the first issue of 2002, we will discuss some cases where citizens have experienced tax-related problems with the Public Administration. It will also feature a summary of last fall's commentary regarding our participation in the Forum on Compulsive Gambling.

It should surprise no one that quite a few complaints forwarded to the Québec Ombudsman involve the *Ministère du Revenu*. After all, the *Ministère* is a constant presence in all our lives. Everyone from workers and employees to upper management has to send in those yearly tax returns. If you're a parent who's divorced or separated, that very same *Ministère* is there to collect and forward alimony cheques, among other things. Last spring, the Québec Ombudsman presented a report to the National Assembly entitled: "Universal Support-Payment Collection System – Five Year Update" which explores the program and proposes a series of recommendations, particularly in the area of reducing delays. Please feel free to consult the document on the Québec Ombudsman's Web site at www.ombuds.gouv.qc.ca under the heading *Publications, Press Releases, Speeches – Special Reports*.

The cases presented in this issue involve two typical examples of direct conflict with the *Ministère du Revenu* and another resulting from negligence on the part of another Québec ministry.

THE QUÉBEC OMBUDSMAN'S CHRONICLE
Winter 2002

THE QUÉBEC OMBUDSMAN'S Commentary on Gambling



In November 2001, the Québec Ombudsman was invited to participate in the Forum on Compulsive Gambling organised by Agnès Maltais, Minister for Health and Social Services. The theme of the forum was "Connaître, comprendre, agir" ("Knowledge, Understanding and Action") and its goals were to target the problems related to gambling in Québec and to develop possible solutions. The Québec Ombudsman took advantage of the occasion to highlight a number of values upon which interventions in this field should be based, and to propose several concrete measures that could help improve the situation. These measures stress that citizens are to be considered free and responsible, but also that they be adequately informed by the State who, in turn, must curb its appetite for profit.

The following is an overview of the commentary presented to the Minister for Health and Social Services and the Administration of Loto-Québec.

A Free and Responsible Citizenry: The Prohibitive Approach Should be Avoided

In a democratic society like Québec, individuals are considered free and responsible people, capable of making enlightened life choices and consuming goods in moderation. Only 1.5 to 3% of the population is considered at risk of developing an addiction to gambling. The Québec Ombudsman therefore rejects the idea of a legal prohibition.

The Responsibility to Inform and to Warn

In order for citizens to make enlightened choices, they must be well informed. The Québec Ombudsman believes that the State must provide accurate information that includes revealing facts about gambling; for example, the fact that the laws of probability and chance make the possibility of long term gains highly unlikely. The State must also warn players against the illusion of "control" over the outcome of the game. In order to avoid any appearance of conflict of interest and in order to reinforce the credibility of the information transmitted to the citizens, this task should be entrusted to an organisation other than Loto-Québec.

Moderation in Supply and Promotion...

The State must moderate its promotion of lottery products, given the vulnerability of some citizens to consume gambling products to excess. The State must develop a code of ethics to that effect.

... And in the Quest for Profit

While the citizen must consume in "reasonable" amounts, the State must also evince the same amount of moderation in its quest for profit. This is why the Ombudsman has proposed that the State fix a maximum profit threshold. Upon reaching this threshold, there should be a reduction in marketing intensity. In this way, the State itself will be forced to moderate its own appetites, which should help in avoiding an excessively sharp increase in gambling.

Responsibility for Social Solidarity

Given the considerable profits at stake and the seriousness of the problems experienced by people plagued with a gambling addiction, the State should help those who are affected. The Québec Ombudsman feels that, in addition to the appropriate therapy, such aid could go so far as to include financial support for social reintegration. If we, as a community, wish to continue walking the path of liberty, then we owe it to ourselves to come to the assistance of those who have stumbled.

If you would like to read the complete document entitled "*Réflexion du Protecteur du citoyen sur les jeux de hasard et d'argent, le rôle de l'État et sur la liberté et la responsabilité des citoyens*" ("The Ombudsman's Commentary on Gambling, the Role of the State and the Freedom and Responsibility of Citizens" – in French only), please feel free to visit the Québec Ombudsman's Web site at www.ombuds.gouv.qc.ca in the "Special Reports" section under *Publications, Press Releases, Speeches*.

A credit WHERE credit WAS DUE



A citizen has been living with his mother for several years now. After having completed his 2000 tax returns, he discovered a tax credit for adults whose parents live with them as dependants. He therefore applied for this caregiver credit to the *Ministère du Revenu*, and it was granted. Pleased with the result, he tried to claim the same credit for the years 1993 to 1999, but this time the *Ministère* rejected his application. The citizen did not understand the logic behind the decision and appealed to the Québec Ombudsman.

An inquiry revealed that the person responsible for the file had concluded that the woman had been living alone during that period, since she had received a property tax credit.

While it is true that this credit is generally granted to one person per household, this does not necessarily indicate that the person lives alone. In fact, according to the regulations, the property tax credit may also be claimed by a co-owner or a co-tenant; i.e.: by someone who is sharing a home.

The Québec Ombudsman therefore considers that the decision of the *Ministère* was unfounded and, at our request, the citizen was finally granted his tax credit for the preceding years, upon presentation of proof of joint occupancy.

INADVERTANT OMMISSION

In completing his 1997 income tax return, a citizen forgot to list some investment earnings. However, he enclosed the Relevé-5 statement from this additional income and, when he filled in his federal income tax form for the same period, he did not make the same mistake.

In March 2001, the *Ministère du Revenu* discovered the error and demanded payment of the tax on this amount, plus interest for the period of April 30, 1998 to March 28, 2001.

The citizen is prepared to pay the tax owed, but requested that the interest be written off since he did not act in bad faith, having attached the statement attesting to the income to his tax form. The *Ministère* refused his request. The citizen then turned to the Québec Ombudsman.

Upon inquiry, the Québec Ombudsman determined that the citizen's error was discovered when the 1997 provincial and federal tax returns were paired. And while it has no doubt of the citizen's good faith, the *Ministère* refuses to write off the interest. It acknowledges that the statements attached to the tax forms were not audited. However, as tax returns are self-assessed, the *Ministère* deems it the responsibility of the citizen to have correctly written in all amounts involved.

The Québec Ombudsman then referred to Article 94.1 of the *Loi sur le ministère du Revenu*, which grants the Minister the power to cancel or write off interest on a debt under certain circumstances. The Québec Ombudsman outlined the following items to the Minister: the taxpayer has met all his fiscal obligations in the past, he is not in debt to the *Ministère*, he has made a reasonable effort to comply with the law, he has shown no evidence of negligence or impropriety in his business affairs and his good faith is undisputed.

In the end, the *Ministère du Revenu* accepted the Québec Ombudsman's argument and wrote off the interest.



The tortoise and the hare



Tax refunds may be retained by the government in order to repay a debt owed to a ministry or organisation, until said debt has been paid off in full. This process is called "set-off".

In April 2001, a student who no longer wished to be deprived of her tax refunds, cleared her entire student debt of \$7,032 with the *Ministère de l'Éducation* Student Financial Assistance Program (SFA). Her cheque was cashed by the SFA collection department on April 26.

However, one week later, she received a notice of assessment from the *Ministère du Revenu* informing her that her 2000 tax return of \$150 would be forwarded to the SFA collection department towards the repayment of her student debt. Surprised and shocked, the student contacted the Québec Ombudsman.

During the inquiry, the Québec Ombudsman determined that the SFA did indeed cash the student's cheque paying off the entirety of her student loans.

The tortoise and the hare

(continued)

Furthermore, the student claimed that the SFA collection agent had confirmed that no additional interest would be charged if her debt was paid off in full before the end of May 2001, which she did in April of that same year. However, despite the fact that her entire student debt was cleared within the required time period, additional interest had been added to the amount due for the month of April.

The reason for the confusion was that the SFA collection agent, upon cashing her cheque, did not immediately delete the student's code from her computer file, which would have indicated that her student loans had been repaid in full. The *Ministère du Revenu* was therefore not informed that the debt had been cleared and automatically applied the set-off, plus interest calculated on a debt that had already been paid off.

The Québec Ombudsman believes that the student should not be held accountable for the time it took the agent to delete the data from the computer system.

The SFA finally agreed to write off the interest calculated for the month of April and the student was able to recover the total amount of the income tax refund due her.

THE QUÉBEC OMBUDSMAN



in a nutshell

The Québec Ombudsman hears complaints from any person, trade organisation or association, etc., who feel they have suffered injustice, wrongs or prejudice at the hands of the *Ministères* or Agencies. In order that the Québec Ombudsman be free from bias and governmental or administrative influence, she is appointed by the National Assembly. Her assistants and staff also share the same impartiality and neutrality.

Under the Public Protector Act, the Québec Ombudsman and her delegates have the power to investigate, gain access to any files and obtain answers in all inquiries.

How does one go about filing a complaint? Simply by calling the Québec Ombudsman at offices either in Québec City or Montréal. A receptionist will handle the call and accordingly, help in formal complaint referral by getting detailed information for investigation. A complaint may also be filed by writing to the Québec Ombudsman, and either by visiting the offices or consulting the website www.ombuds.gouv.qc.ca under the heading "Filing a Complaint" **All requests are treated confidentially. It's simple, quick and free.**

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