LE PROTECTEUR DU CITOYEN
Québec Ombudsman
Assemblée nationale
Québec

THE OMBUDSMAN'S CHRONICLE April 2000

The year 2000 marks the return of the Ombudsman's Chronicle.

The Chronicle is a communication tool designed to inform as many people as possible about the role and powers of the institution and to provide concrete examples of the cases handled and the actions undertaken by the Québec Ombudsman. In future issues, the Ombudsman's Chronicle will tackle various subjects of interest and pass on useful information concerning the departments and agencies that make up the Québec Government. Enjoy your reading!

In this issue, the Ombudsman will consider notions of equity (natural justice) and of what is reasonable (common sense) when resolving problems involving citizens and the Public Administration. The complaints concern the ministère du Revenu and the ministère des Transports.

Promoting Well-Being Rather than Simple Administrative Convenience

In 1988, a citizen purchased a residence in a charming location. However, his dream soon turned into a nightmare: the Québec ministère des Transports extended Highway 20, and his home was suddenly located at the edge of a major thoroughfare. The noise caused by road traffic was unbearable.

In April 1994, the citizen filed a complaint with the ministère des Transports. The Department did not react. The complainant then planted a grove of conifer trees and put up an impressive fence, but these measures proved to be ineffective in reducing the noise coming from the highway.

In August 1996, the Department finally decided to carry out sound tests. The study revealed that the noise level measured at the residence in question exceeded the norm for acceptable noise established by the Department's own policy. Thus a recommendation was made to implement noise-reduction measures.

However, it proved impossible to apply in an effective manner any measures whatsoever. In March 1999, government officials proposed to purchase the property. The citizen hired an evaluator to determine the value of the property. The Department undertook the same step. The two parties could not agree on a sales price, the Department having evaluated the residence based on rules applied to commercial property since the house was no longer being used for personal purposes. Indeed, in a letter dated June 6, 1997, the owner stated: "We can't imagine spending another summer in an environment where the noise level has become simply intolerable so we've found a place to live for the duration of the proceedings. But we still intend to go back to our former residence." The citizen made this choice in order to improve his quality of life. However, the Department was of the opinion that "the citizen took justice into his own hands when he left his residence." According to the Department, he should simply have put up with the situation and continued to live in the house!

In August 1999, negotiations with the ministère des Transports broke down completely. At this point, the citizen asked the Québec Ombudsman to intervene.

Acting as a mediator, the Ombudsman convinced the two parties to re-establish negotiations and proposed certain possible solutions, including transferring the citizen's residence to another lot. He also recommended that the Department reach a decision that was reasonable and to the citizen's satisfaction as quickly as possible.

Following the Ombudsman's mediation, an agreement was reached between the ministère des Transports and the citizen, to the satisfaction of both sides: the initial offer to purchase the citizen's residence was increased by a full 50%.

Thus the Ombudsman's intervention in a case that had been blocked for nearly five years paved the way for a mutually satisfactory settlement.

Out of a Concern for Equity

In 1991, a self-employed worker started up a small word-processing company. A few months later, the introduction of the Québec Sales Tax (QST) and the Goods and Services Tax (GST) led him to register his company in the QST and GST files of the Québec ministère du Revenu. In 1991 and 1992, he collected these taxes from his clients. In 1993, he learned that he was not under any obligation to do so since he corresponded to the definition of a "small supplier" under the law (given that his annual sales figures were less than $30,000). Without taking any other formal steps, he simply stopped collecting the taxes.

In 1998, the entrepreneur received a notice of assessment from the ministère du Revenu claiming $8,092.84 in unremitted taxes for the period extending from January 1, 1993, to September 30, 1996. The man had been unaware of his obligation to submit a written request in order to cancel his registration in 1993; thus his name had simply remained on the Department's files.

The Department's position was as follows: in order to stop collecting the taxes from his clients, the citizen would have to request in writing that his registration be cancelled. Since he had not yet carried out this formality, the citizen was simply obliged to pay the taxes being claimed, track down his clients from 1993 to 1996, and collect the taxes from them retroactively.

The Ombudsman's investigation led him to conclude that another option remained open to the Department: to act in an equitable manner and cancel the amount claimed from the citizen, along with all interest charges and penalties.

In fact, the citizen in question never attempted to cheat the Department, nor did he try to avoid honouring his tax obligations. His only mistake was that he neglected to make a written request that his registration in the files be cancelled, given that as a "small supplier" he did not have to collect the aforementioned taxes. It is often difficult for those operating small businesses to be aware of all the subtleties of tax legislation and of the steps to take in order to avoid problems. According to the Québec Ombudsman, an error made in good faith should not lead to such a large debt, given the extenuating circumstances surrounding the entire matter.[1]

Basing his proposal upon principles enunciated in the Social Contract[2] which are intended as guidelines for the Public Administration so that it might offer services of the highest quality to the general public, the Québec Ombudsman especially mentioned two rules of thumb that should be applied in solving the problem at hand:

Make decisions that not only comply with the law, but that are also are reasonable, fair and appropriate.

Have the means to act, where applicable, on a purely equitable basis, when exceptional circumstances so require.

After having approached the Department in vain on several occasions, the Québec Ombudsman appealed to the office of the deputy minister, requesting the complete cancellation of the assessment given that the citizen had acted in good faith. The deputy minister accepted our recommendation and cancelled the payment of $8,092.84.

DID YOU KNOW THAT …

Thanks to the Internet, Québec taxpayers may now send their tax returns directly to the ministère du Revenu by E-mail. All those wishing to take advantage of this new service must first obtain an access code from the Québec Government and acquire tax-calculation software certified by the latter. For 1999, it is anticipated that one return out of every six will be transmitted by e-mail. For further information please call: **(418) 659-6299** for the Quebec City region and **1 800 267-6299** for those living elsewhere in Québec. For the hearing impaired: **(514) 873-4455** for the Montréal region and **1 800 361-3795** for those living elsewhere in Québec.

The ministère de la Justice and the Barreau du Québec have just inaugurated the new web site Éducaloi: **www.educaloi.qc.ca**. The site has been designed as a crossroads providing access to the law, as well as a service offering legal information and explanations for both citizens and community organizations. Educaloi has two objectives: to foster a better understanding of Québec's laws and its legal system and to explain the various roles played by the main actors on the judicial scene (judges, lawyers, Crown prosecutors, police officers, bailiffs, etc.).

[1] A good example of how applying a norm has effects which are disproportionate to the error itself.
[2] The Social Contract is available both in brochure and poster form at the offices of the Québec Ombudsman.