JUSTICE FAIRNESS RESPECT

LE PROTECTEUR DU CITOYEN

Assemblée nationale
Québec

IMPARTIALITY TRANSPARENCY

2014-2015 ANNUAL REPORT

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LE PROTECTEUR DU CITOYEN

Assemblée nationale
Québec

2014-2015 ANNUAL REPORT

Québec City
September 2015

Mr. Jacques Chagnon
President of the National Assembly
Parliament Building
Québec City (Québec) G1A 1A4

Mr. President:

In accordance with section 28 of the *Public Protector Act*, and section 38 of the *Act respecting the Health and Social Services Ombudsman*, I have the honour of submitting the 45th Annual Report of the Québec Ombudsman for fiscal year 2014-2015.

The annual report on the management of the Québec Ombudsman for the same period also forms part of this document, in accordance with section 35.1 of the *Public Protector Act*.

Yours respectfully,

Raymonde Saint-Germain
Ombudsperson

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Notice

To facilitate onscreen consultation, the blank pages of the printed document have been removed and will not appear if the document is printed. The pagination of this file remains identical to the original.

MESSAGE FROM THE OMBUDSPERSON

As a non-judicial route to dispute settlement, the Québec Ombudsman intervened this year regarding 69% of Québec's government departments and agencies and 59% of the institutions within the health and social services network.

Among other things, its action on the systemic front contributed to major advances:

- The launch underway of the Bureau des enquêtes indépendantes to investigate incidents involving police officers;
- A solid action plan by the Bureau du coroner to reduce investigation wait times;
- Improved off-road emergency response services;
- The Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques's endorsement of the Québec Ombudsman's recommendations and its concrete commitment to greater monitoring and control of private waterworks systems.

In many ways, these gains and others were achieved thanks to the competence, full cooperation and sense of public duty of the vast majority of department, agency and institution employees.

In carrying out its mission this year, the Québec Ombudsman was called to intervene to prevent different types of damage or to have this damage rectified. In this period of economic prudence, it was especially watchful of the possible repercussions of the decisions made.

While I am not questioning the need for and appropriateness of many of the economic measures taken, I have noticed that we cannot always rely on consideration and commitment to counterbalance their adverse effects on individuals and businesses. The Québec Ombudsman has witnessed it: layer upon layer of cutbacks over the years and the resulting choices have created ever-growing wait times, shrinkage of certain services and lower public program indemnities. For five years now, wait times have been the number one ground for public service complaints that the Québec Ombudsman deemed substantiated. Complaints that have a financial impact are dramatically on the rise. In the public service sector, they accounted for 15.7% of substantiated complaints in 2010-2011; this year they reached 27.7%.

But beyond these statistics, I am concerned about the emergence, indeed intensification, of practices that contravene respect for citizens and their rights. Here are a few examples. Revenu Québec is coming down harder on taxpayers and in its initiatives against tax fraud—initiatives which, incidentally, are entirely warranted—it wrongly assumes that certain businesses are guilty by association. The Commission de la santé et de la sécurité du travail uses internal directives as a way of reducing indemnities provided for in legislation. The Ministère du Travail, de l'Emploi et de la Solidarité sociale sometimes applies recovery measures that do not comply with a Tribunal administratif du Québec decision. Health and social services centres (CSSSs) are slow to relocate elderly users whose residence can no longer meet their needs, even when the manager of the

residence has alerted the CSSS about the situation. Residential and long-term care centres (CHSLDs) cut back on residents' hygiene care when, in fact, there should be more. All of this against a backdrop of more fees, some undue and not always lawfully payable, especially within the health and social services network.

Furthermore, the consequences of under-investment in areas where needs are glaring have to be gauged. I note with disappointment that many major issues with serious social and economic implications are not on the government radar. A case in point is mental illness. The same holds true for home support, which, given the greying of the population and limited public residential resources, should be moved up the list of priorities. Same for education, where services should be better adapted to students with difficulties, notably those with autism spectrum disorders.

In the same vein, we must beware of under-investment when service provision is delegated to third parties, private enterprise or community organizations. As a result, there are two crucial conditions that must be fulfilled. First, the government must maintain responsibility for determining quality standards and monitoring compliance in the delivery of the services thus provided. Also, delegation has to be more than a matter of savings for the government. In addition to making sure that the cost to citizens, where applicable, is fair, it must see to it that the supplier has the resources it needs in order to provide quality services. Over the years, and this year again, we have been compelled to conclude that these conditions are not always met.

I would like to draw your attention to a growing trend that has spawned frustration, long wait times and hefty costs for citizens and the public purse alike: excessive reliance on the courts for dispute settlement. The Québec Ombudsman has seen that despite the alternative modes enshrined in the *Code of Civil Procedure*, certain government departments and agencies tend to favour a judicial approach when cases could have been settled using other means. This is worrisome when one considers wait times for civil and administrative court hearings, the costs to the parties involved and the smallness of the individual against the government machine in filing suit or mounting a defense. This does not mean that the interest and need for recourse to the courts should be automatically denied, but it must be considered as a last resort. Being careful about excessive recourse to the courts in settling disputes that could be resolved using more efficient, less costly and quicker means would be a sound measure at a time of public financial recovery and would restore citizens' trust in the government.

In a context of fiscal recovery, we have to be aware of these trends that seem to come out of nowhere and which end up becoming normal practices that feed citizens' feelings of unfair treatment, powerlessness and cynicism regarding public institutions and organizations.

Inarguably, Québec's development and quality of life go hand in hand with public service accessibility and quality. It is therefore imperative to preserve the ability of these organizations to focus on the needs of today's citizens and to fulfil them adequately through efficient management of the resources available to them for that purpose.

Raymonde Saint-Germain
Ombudsperson

Validation report from the internal auditor

Ms. Raymonde Saint-Germain
Ombudsperson

In accordance with the mandate entrusted to me, I have conducted an examination of the results, explanations and information presented in the Québec Ombudsman's Annual Report for the fiscal year ending on March 31, 2015. The Québec Ombudsman's administrators are responsible for the accuracy, completeness and disclosure of the data.

I am responsible for evaluating the plausibility and consistency of the information, based on the work I have done.

This examination was performed in accordance with the international standards of the Institute of Internal Auditors for the professional practice of internal auditing. My efforts were focused on the *Results in figures* section. For the other parts of the report, my work was limited to the meaningful figures provided. My work consisted of obtaining information and supporting documentation, using analytical procedures, documenting the operation of compilation mechanisms, revising calculations and discussing the information provided. This examination does not constitute an audit.

Further to this examination, I find nothing to suggest that the results, explanations and information contained in the Québec Ombudsman's 2014-2015 Annual Report are not plausible and consistent in every important respect.

Jean Gamache

Jean Gamache, Internal Auditor, CPA, CA
Québec City, July 2015

THE QUÉBEC OMBUDSMAN

Its status, mission and mandate

The Québec Ombudsman, headed by Raymonde Saint-Germain, is an institution independent of the Québec government. Ms. Saint-Germain was named Ombudsperson by the National Assembly in April 2006 and reappointed for a second term of office in June 2011. The Québec Ombudsperson reports exclusively to the National Assembly.

The institution's mission is to ensure that the rights of individuals, businesses and associations are respected in their relations with the public service. The Québec Ombudsman takes action every day to prevent and correct abuse, errors, negligence, disregard for rights and inaction by public services.

The Québec Ombudsman has had the authority to intervene with government departments and most public agencies since the *Public Protector Act* was adopted in 1969 and has been responsible for implementing the *Act respecting the Health and Social Services Ombudsman* since April 2006. It generally acts as a second level recourse in response to citizens' complaints. It may take direct action further to reports of errors or injustices and may also intervene on its own initiative with the health and social services institutions under its jurisdiction.

The Québec Ombudsman's mandate allows it to help improve the quality of services provided by these government departments, public agencies or institutions. It also assists members of the National Assembly in their role with the public.

Its action

The Québec Ombudsman has the power of recommendation. Its capacity to effect change is essentially based on its ability to influence and persuade. If, after making a recommendation, the Québec Ombudsman sees that appropriate corrective measures have not been taken in a timely fashion, it may notify the government. If it sees fit, it may also publicize the case in a special report or in its annual report to the National Assembly or comment publicly when it deems necessary.

The Québec Ombudsman's actions have a collective impact when it intervenes in response to complaints or reports and corrects the problem for everyone concerned. It may also conduct systemic investigations into public service governance issues on its own initiative.

The Québec Ombudsman also takes preventive action. To correct detrimental situations and prevent them from recurring, it may call the attention of the National Assembly, government departments, public agencies or health and social services institutions to the need for legislative, regulatory or administrative reforms that it believes to be in the public interest. When it deems it appropriate, it proposes amendments in order to improve bills and draft regulations.

All these actions are made possible through, among other things, the delegation of certain of the Ombudsperson's powers to staff members, who are then granted the title of "Québec Ombudsman delegates".

The Québec Ombudsman's action differs from—yet complements—that of the courts and frequently helps individuals avoid judicial or administrative redress procedures that are often long and onerous.

Its values

The Québec Ombudsman's exercise of these functions and its role as mediator are based on the values of justice, fairness, respect, impartiality and transparency. Its actions are guided by these values, and its employees are required to demonstrate integrity, rigour and empathy.

LE PROTECTEUR DU CITOYEN
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Québec

The Québec Ombudsman's logo symbolizes the search for balance between competing rights. It is a variation on the classic scales of justice. The scale platter on the left evokes justice, while the "P" (for "Protecteur du citoyen") that replaces the right-hand platter refers to fairness

NOTE TO THE READER

With a view to better readability of the report:

- the masculine form is intended to be gender inclusive;
- the acronyms for certain agencies and institutions are used when they are familiar to the public and make the text clearer.

HIGHLIGHTS

PUBLIC SERVICE

Agence du revenu du Québec (Revenu Québec) ..... P. 22

Do not presume that taxpayers are guilty

The Québec Ombudsman reiterates its support of any effort by Revenu Québec to recover taxes in accordance with the *Taxation Act*. However, this mission should never cause it to lose sight of the need to respect citizens' rights. Substantiated complaints show that Revenu Québec is clamping down on taxpayers. As part of a large-scale auditing operation and based on mere presumptions, Revenu Québec prevented many taxpayers from presenting their arguments concerning incorrect notices of assessment.

Complaints concerning the administration of the solidarity tax credit are up from last year. Recently, the Minister of Finance announced that henceforth, the credit would be determined annually instead of monthly. This should translate into fairer management for recipients.

Commission administrative des régimes de retraite et d'assurances (CARRA) ..... P. 33

Assume responsibility for sending reliable information

Again this year, the Québec Ombudsman intervened further to complaints from people who were misled by inaccurate information and calculations from CARRA. As we know, this is the information that participants under various plans use to determine when they retire. However, citizens learned, at retirement or in the months that followed, that their projected retirement income had been based on incorrect data from CARRA, which washed its hands of any responsibility and refused to compensate the participants. While the Québec Ombudsman is aware that mistakes do not create rights for citizens, it believes that CARRA's negligence or indifference in handling applications may make it liable when miscalculation is its fault.

Commission de la santé et de la sécurité du travail (CSST) ..... P. 36

Do not mistake rigidity for rigour

One of the complaints received involved an accident victim who was summoned for a medical examination and was therefore unable to be at the hospital with his spouse for an important surgery scheduled at the last minute. The CSST was poised to suspend his income replacement indemnity if he put off his medical appointment. The Québec Ombudsman recognizes that the CSST can suspend or decrease the indemnity if, without valid cause, a worker fails to fulfill one of the obligations of the *Act respecting industrial accidents and occupational diseases*. However, it has seen that the CSST tends to act abusively by ignoring workers' explanations.

Commission de la santé et de la sécurité du travail (CSST) –
Direction de l'indemnisation des victimes d'actes criminels (DIVAC)..... P. 40

Making rigour and compassion go hand in hand

Need we insist that people who turn to DIVAC are particularly vulnerable because of what they have been through as crime victims? Their difficulties seem to increase tenfold when their application is met with rigidity and lack of understanding. This is what happened to a victim who had been sexually assaulted since childhood. When she finally felt able to approach DIVAC, her application was rejected because she had not filed it within a year of the injury. This delay was completely warranted given the circumstances.

Ministère du Développement durable, de l'Environnement
et de la Lutte contre les changements climatiques ..... P. 43

Increase vigilance and act in a timely fashion

Further to complaints concerning private waterworks systems providing residential drinking water, the Québec Ombudsman conducted an investigation leading to a systemic intervention report. What emerged was that the Department did not exercise its responsibilities regarding the monitoring of private waterworks' operating permits and fees. Another worrisome fact: private waterworks systems remain under boil-water and do-not-drink-water advisories for long periods (months, or even years). When this happens, Department employees have no guidelines that they can follow.

Ministère de l'Éducation, de l'Enseignement supérieur et de la Recherche ..... P. 45

Include children who have a precarious immigration status

Even though they live in Québec, some children do not have access to free elementary public education because they have a precarious immigration status. In an investigation report released this year, the Québec Ombudsman drew a detailed picture of the situation of these children who are denied the basic right to education in violation of international conventions. Alerting the Department, the Québec Ombudsman made a series of recommendations aimed at restoring this right. These recommendations were accepted and a specific implementation timetable was established.

Ministère de la Famille ..... P. 47

Make coordinating offices subject to the *Act respecting administrative justice*

Even though home childcare coordinating offices are 100% government-funded and play a leading role in the establishment and operation of the childcare resources they are tasked to supervise, they do not have government agency status. As a result, these offices are not subject to the *Act respecting administrative justice* and the obligations stemming from it. In the Québec Ombudsman's opinion, they should be governed by the same prescriptions as those for government agencies.

Ministère de l'Immigration, de la Diversité et de l'Inclusion ..... P. 50

Act fairly and reasonably

This year, the number of complaints regarding the Department practically doubled from last year. They mainly concerned how the documents provided by Québec selection certificate applicants are validated. The Québec Ombudsman is aware of the necessity of having effective procedures in this regard. However, the Department must have fair and reasonable requirements and, where applicable, agree to hear candidates' explanations when they propose alternative solutions for fulfilling the various conditions in a manner adapted to their circumstances.

Ministère de la Sécurité publique ..... P. 54

Make sure that all police officers identify themselves

The *Code of Ethics of Québec Police Officers* provides that police officers must always have identification on their person when they interact directly with civilians. However, there is no regulation or act that defines the nature of this identification. Consequently, it happens all too often that police officers involved in breaches cannot be identified, leading to closure of the complaint file by the Police Ethics Commissioner after a preliminary examination. From this point on, the citizens concerned cannot use the existing recourse. More broadly, this identification contributes to public trust in police officers.

Ministère du Travail, de l'Emploi et de la Solidarité sociale..... P. 55

Cease all illegal recovery practices

The Department cannot undertake recovery when a recipient is contesting a claim before the Tribunal administratif du Québec. Clearly set forth in the Act, this prohibition is not systematically obeyed in the real world. This year, on several occasions, the Québec Ombudsman saw that peoples' last resort assistance had been substantially reduced even though their cases were before the Tribunal.

Office de la protection du consommateur ..... P. 58

Do not mistake a merchant for a non-profit organization

It is not uncommon for municipalities to delegate responsibility for sports activities to non-profit organizations. However, the Office considers these organizations as merchants within the meaning of the *Consumer Protection Act*. As a result, if a person asks to be reimbursed mid-season, the Office considers that the organization must issue refunds for the cost of the unprovided services even if this contradicts the refund policy given out to its clients. Such a practice may endanger the very existence of the organizations concerned, which play a significant role in their community. The Québec Ombudsman believes that the exception that the Act recognizes for municipalities should be accorded to these organizations as if the cities provided the sports activities themselves.

Société de l'assurance automobile (SAAQ) ..... P. 59

HIGHWAY SAFETY CODE: **Do not put drivers in violation without their knowledge**

When a health professional sends SAAQ a declaration of incapacity because he or she believes that a person is no longer fit to drive, the agency may immediately place any restriction it deems necessary on the person's driver's licence. In cases of emergency, it informs the person immediately by phone. However, in non-urgent cases, the restriction is immediately entered in the person's driving record but the person is informed by mail. This means that the person can drive for several days without knowing about the licence restriction. In other words, the person is unknowingly driving in violation of the restriction. Under the *Act respecting administrative justice*, SAAQ may not make an unfavourable decision in respect of a citizen without first having informed the citizen of its intention and the reasons for it.

COMPENSATION: **Do not create unfair distinctions between accident victims**

Compensation-related complaints filed with the Québec Ombudsman revealed that SAAQ makes a distinction between accident victims who owned a car at the time of the accident and those who did not. The distinction clearly penalizes the second category of victims when it comes to reimbursement of the costs of vehicle adaptations needed to compensate for functional limitations resulting from their accident.

REPORT BY THE CORRECTIONAL OMBUDSMAN OF QUÉBEC ..... P. 65

Improve the governance of correctional services

Governance of Québec's correctional services must be improved and management of the resources at its disposal must be more efficient. There are hefty human and financial costs associated with the all-too-many transfers from one correctional facility to another when there is no clinical management of detainees who need mental health services and when detainees are not properly prepared to return to society. The number of complaints this year is the highest it has been in the past 10 years and the Québec Ombudsman has, once again, noted numerous and major failings in terms of detainees' residual rights.

MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX AND ITS SERVICE NETWORK

Mental health ..... P. 78

Better plan and organize mental health services

Based on the numerous complaints it receives, the Québec Ombudsman can say that the Ministère de la Santé et des Services sociaux still does not always make the improvement of mental health care and services a priority. Ten years after release of the 2005-2010 action plan, which held a promise of concrete measures, the fact of the matter is that accessibility problems persist and people with pressing needs languish on waiting lists without any support. Measuring the psychological and social costs, the Québec Ombudsman is very displeased that the authorities concerned continue to postpone genuine handling of mental health services.

Physical health ..... P. 82

Reassess emergency room patients

- Because of overcrowding, emergency rooms continue to generate complaints, among other things, about nursing staff's failure to reassess waiting room patients. And yet, there are specific national standards regarding reassessment. Some institutions say that reassessment problems are due to heavy demand and shortage of resources. The Québec Ombudsman refutes this argument because other institutions grappling with the same constraints innovate and manage to reassess patients in keeping with established criteria.
- The Québec Ombudsman notes that in many regions and numerous institutions, palliative care service access and quality are wanting.
- On the subject of centralized waiting lists for people who do not have a family physician, this year the Québec Ombudsman had to intervene concerning the registration process—which can be complex for more vulnerable individuals—and application prioritization.

Disabilities ..... P. 87

Ensure continuity between rehabilitation centres and dovetailing of the appropriate services

- This year, the Québec Ombudsman published a special report on the problems related to services for young people with an intellectual disability or an autism spectrum disorder. The main difficulties that these young people and their families encounter are the lack of access to services and the lack of seamlessness of services. The Québec Ombudsman's recommendations emphasize realistic solutions that can be implemented immediately. These include a greater role for system navigators, the definition of an individualized service plan, better waiting list management and production of a template for an integrated service network.
- People with physical or intellectual disabilities often have trouble finding housing adapted to their condition and even when they do, the quality of services offered in residential resources too often leaves much to be desired.

Support for elderly autonomy ..... P. 91

Ensure that private residences are qualified to meet the growing needs of the client population

- Private residences designed for an autonomous or semi-autonomous client population accept people whose needs are more than the residences can handle. It also happens that these needs increase over time. As a result, some private seniors' residences do not provide users with the necessary guarantees as to safety and service quality.
- For lack of equipment or space, some people in residential and long-term care centres do not get the baths or showers they need. Considering that bathing and showering are essential services, the Québec Ombudsman recommended different measures to the Ministère de la Santé et des Services sociaux for ensuring that the seniors concerned receive appropriate personal care.

Home support ..... P. 98

Provide support consistent with people's needs

Complaints handled in the past year showed that users whose condition called for home support were still grappling with reduced services, long waits, natural caregiver burnout and regional disparities. In 2012, the Québec Ombudsman published an investigation report on the subject, but the Department has yet to figure out what is truly available, despite the fact that organization of the health and social services system hinges on this to a large extent.

Service support ..... P. 100

Exercise the required vigilance regarding fees to users

The Québec Ombudsman received several complaints concerning the fees charged to hospital centre users, primarily care-related fees or supplementary or administrative fees. In particular, it stepped in after users had incurred costs that they are not normally required to cover. At a time when budgets are being squeezed and institutions are scrambling for additional funding, the Québec Ombudsman considers that great care must be taken in order to avoid the slippery slope toward abusive billing.

RESULTS IN FIGURES ..... P. 119

- The number of requests received increased by 5.5% and those resulting in an investigation are up by 11.2%.
- Requests concerning Hydro-Québec, a Government corporation not subject to the Québec Ombudsman's jurisdiction, increased by 168.7%.
- A 2.1% increase is noted in substantiated complaints in the Public service sector.
- In the Public service sector (which excludes correctional services), wait times and lapses with financial repercussions accounted for 57.6% of the substantiated complaints.
- A 21.4% increase in substantiated complaints and a 64.9% increase in substantiated reports is recognized in the Health and social services sector.
- In the Health and social services, lapses regarding the quality of services are on the rise.
- The acceptance rate of individual scope measures recommended by the Québec Ombudsman reached 97.1%.
- In the case of collective scope measures, the acceptance rate is 97.7%.
- The Québec Ombudsman intervened with 56 of the 81 departments and agencies subject to its jurisdiction, or 69.1%, and with 169 of the 286 institutions and agencies of the health and social services network subject to its jurisdiction, or 59.1%.

PUBLIC SERVICE

This section reports on the Québec Ombudsman's main findings regarding complaints about the public service from citizens, businesses and associations.

The number of complaints received in 2014-2015 increased by 10.7% from last year's figure. This year, 28.3% of complaints were deemed substantiated, confirming a visible uptrend in the last five years.

The most frequent ground for substantiated complaints was wait times. This statement applies mostly to government departments and agencies that serve large numbers of citizens. A sign of the times and of budget constraints, substantiated complaints with a financial angle were clearly on the rise. Whether abusive recovery measures, unjustified tax assessments or miscalculation of amounts payable by a department or agency, the Québec Ombudsman had to intervene more frequently this year to rectify situations whose financial fallout hit citizens and companies hard at times.

It is very disturbing that the number of substantiated complaints concerning failure to respect citizens' rights, which held steady from last year, remained very high. In fact, they accounted for 18.1% of all substantiated complaints. In several cases, the Québec Ombudsman noted deficiencies that directly violated citizens' rights as the result of an unjust decision. This shows that departments and agencies ignore certain underlying principles of administrative justice. The Québec Ombudsman reiterates the importance of respect of these tenets by the departments and agencies called on to make decisions that affect citizens.

The situations presented further on illustrate the problems experienced by citizens in interacting with departments and agencies within the purview of the Québec Ombudsman. Some examples were chosen because of the gravity of the failings observed, and others, because of the impact on large numbers of citizens.

The Québec Ombudsman is pleased with the number of advances made in settling the majority of complaints it handled. When the desired changes are reflected in the outcomes obtained, it attests to the openness and collaboration of the organizations concerned. However, there are cases that remain unresolved and require ongoing action by the Québec Ombudsman.

It bears remembering that the portrait drawn in this Annual Report only goes up to March 31, 2015.

In the pages that follow, departments and agencies appear in alphabetical order:

- Agence du revenu du Québec (Revenu Québec)
- Commission administrative des régimes de retraite et d'assurances (CARRA)
- Commission de la santé et de la sécurité du travail (CSST)
- Commission de la santé et de la sécurité du travail (CSST) – Direction de l'indemnisation des victimes d'actes criminels (DIVAC)
- Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques
- Ministère de l'Éducation, de l'Enseignement supérieur et de la Recherche
- Ministère de la Famille
- Ministère de l'Immigration, de la Diversité et de l'Inclusion
- Ministère de la Sécurité publique
- Ministère du Travail, de l'Emploi et de la Solidarité sociale
- Office de la protection du consommateur
- Société de l'assurance automobile du Québec (SAAQ)

Also included in this report is the annual report of the Québec Ombudsman in its capacity as the correctional ombudsman of Québec. The report covers the Ministère de la Sécurité publique (Direction générale des services correctionnels), the 20 correctional facilities under Québec's jurisdiction and the Commission québécoise des libérations conditionnelles.

Agence du revenu du Québec (Revenu Québec)

The Agence du revenu du Québec (Revenu Québec) is responsible for collecting income tax and consumption taxes as well as administering various programs and services, such as the support-payment collection program and the solidarity tax credit. It is thus charged with collecting a significant portion of the government's own-source revenue and, to that end, ensuring that all taxpayers meet their tax obligations and pay their fair share. Revenu Québec thereby plays a crucial role in the government's fight against tax evasion. The Québec Ombudsman fully supports the efforts made to achieve that objective.

In order to fulfil its role, Revenu Québec has been vested with broad powers which, it is important to note, place the burden of proof on the taxpayer in matters relating to notices of assessment. These notices tell individuals and businesses what, if any, corrections were made to their income tax return and how much tax they owe or the refund they will receive for a given taxation year. Following an audit, a notice of reassessment may be issued. If a notice of assessment indicates an amount owed, then the taxpayer has a debt with Revenu Québec. If the taxpayer disagrees with the assessment, he or she has the onus of proving that Revenu Québec made a mistake or of drawing its attention to the facts or relevant documents. Considering that the burden of proof is on the taxpayer, Revenu Québec must act with diligence, care and caution when issuing notices of assessment.

Returning to fiscal balance in 2015-2016 is a demanding goal and achieving it requires, among other things, collecting all of the government's own-source revenue. While tax recovery is an important and legitimate mission in this context as always, Revenu Québec must never lose sight of the need to respect citizens' rights. Yet, based on the complaints it received, the Québec Ombudsman finds that Revenu Québec's attitude toward taxpayers has become more intransigent. The lofty goals of recovering tax dollars must not be achieved by disregarding respect for taxpayers, procedural fairness and the principles of administrative justice.

RESPECTING CITIZENS' INALIENABLE RIGHT TO BE HEARD

Every action taken by Revenu Québec with respect to a citizen must comply with the *Act respecting administrative justice*, which stipulates that the primary duty is to act fairly. Revenu Québec must uphold the principle of fairness by:

- Conducting its procedures in accordance with applicable norms or standards, according to simple and flexible rules and in accordance with the standards of ethics and discipline governing its agents;
- Giving citizens the opportunity to provide any information useful for making a decision and, where necessary, to complete their file; and
- Giving citizens the opportunity to express their views on a given situation.

Despite these obligations, the Québec Ombudsman has noted that Revenu Québec is slow to correct some of its practices. Once again this year, the Québec Ombudsman found that the agency frequently failed to meet these requirements, even though they were based on principles of natural justice, i.e. the right to an unbiased decision and the right to be heard. The number of complaints in this regard increased this year and, more than once, the Québec Ombudsman had to intervene with the tax authorities. It deeply regrets that Revenu Québec failed to rectify the shortcomings criticized in the Québec Ombudsman's last Annual Report.

As a result, an extensive auditing process conducted over the past year led to the issuance of notices of assessment based entirely on assumptions, without giving individuals the opportunity to state their case in a timely manner. The Québec Ombudsman recommended that Revenu Québec rectify prejudicial situations.

STOP NEEDLESS COURT ACTION TO RESOLVE DISPUTES AND TAKE THE SUBSTANCE OF PAST RULINGS INTO ACCOUNT

This year again, the Québec Ombudsman was sorry to see that Revenu Québec sometimes engaged in rigid interpretation of the law, which often resulted in needless court action to resolve disputes with taxpayers. In some cases, Revenu Québec also assumed and maintained a strict stance despite being aware that different courts had rendered contradictory decisions.

(. . . *Stop causing unfair prejudice to insolvent debtors*

Individuals and businesses facing insolvency can make a proposal or a consumer proposal to their creditors in order to negotiate the terms of debt repayment and to avoid bankruptcy. If the proposal is accepted by the required majority of creditors and is approved by the court, it becomes a collective contract that remains in full force and effect.

The Québec Ombudsman received several complaints about Revenu Québec's response to duly approved proposals. After a proposal had been made, Revenu Québec would apply amounts the government owed a taxpayer against a tax debt that pre-dated the proposal. The complainants argued that this practice unlawfully changed the terms of the proposal as well as deprived them of much-needed money in a context of insolvency.

During its analysis, the Québec Ombudsman noted that the Supreme Court of Canada already ruled that set-off in matters of bankruptcy is not legal in Québec.[1] Revenu Québec claimed that the Supreme Court ruling applied only to cases of bankruptcy and refused to extend its application to proposals or consumer proposals.

Taxpayers filed a class action lawsuit against Revenu Québec to contest this practice.[2] The Québec Ombudsman asserted, among other things, that the principles applied in the Supreme Court ruling should be applied to proposals as well. It therefore recommended that Revenu Québec suspend the practice of set-off until the class action suit was ruled on and stop the practice in the case of proposals or consumer proposals. Revenu Québec agreed to follow these recommendations. . . .)

(. . . **Act in a manner that respects citizens and… a Court of Québec ruling**

In 2013-2014, Revenu Québec assessed the social security contributions (Québec Pension Plan, Québec Parental Insurance Plan, Health Services Fund and Régie de l'assurance maladie) of self-employed workers who had gone bankrupt during the year based on the workers' total income for the calendar year. Note that this was standard practice for Revenu Québec and, more recently, despite a decision handed down by the Court of Québec in June 2013 invalidating this practice[3] (Fréchette case). After filing an appeal, Revenu Québec ended up waiving its right of appeal in November 2013. However, between the rendering of the decision in June 2013 and Revenu Québec's waiving of its right of appeal in November 2013, Revenu Québec nevertheless issued 1,426 notices of assessment even though the practice had been invalidated by the Court of Québec. Following the Québec Ombudsman's intervention, Revenu Québec agreed to review all of the assessments in question, leading to cancellation of 1,201 notices of assessment and refunding of amounts owed to the taxpayers concerned.

Revenu Québec subsequently maintained its interpretation of the matter despite its waiving its right to appeal the Fréchette ruling. In fact, between November 2013, when Revenu Québec waived its right of appeal, and March 2014, when the Court of Appeal approved the transaction between Revenu Québec and the taxpayer, Revenu Québec issued 231 more notices of assessment. This was a direct infringement of the case law established by the Fréchette case and breached the right of citizens to be treated fairly. Following the Québec Ombudsman's intervention, Revenu Québec agreed to review the 231 new assessments. Of that number, 27 were cancelled and 167 were reduced. The Québec Ombudsman's intervention resulted in reparation of a collective injury to all of the individuals concerned as well as prevention of needless court action to resolve a dispute pitting every taxpayer against Revenu Québec. . . .)

1 *D.I.M.S. Construction inc. (Trustee of) v. Québec (Attorney General)*, [2005] 2 SCR 564.

2 2014 QCCS 83. A settlement agreement was reached on June 19, 2014.

3 *Fréchette* v. *l'Agence du revenu du Québec*, 2013 QCCQ 8360.

AVOID ABUSIVE AUDITING PRACTICES

Fake invoicing scheme

This year again, the Québec Ombudsman received complaints from businesses that were audited on the grounds of assumed participation in a fake invoicing scheme. At the end of the auditing process, several of them received assessments because they were doing business with other businesses deemed "tax offenders."

The Québec Ombudsman found that, in these cases, Revenu Québec was employing inadequate, and even abusive, auditing methods and refused to consider elements supporting businesses' explanations. For example, to perform their duties, Revenu Québec auditors are required to ask the audited individual or business to provide relevant information and documents. However, in some cases, even though businesses suspected of taking part in a fake invoicing scheme submitted evidence substantiating their business dealings with suppliers of workers—for example, contracts, folders, service offers and timesheets—the auditors ignored the documents or gave them no evidential value, for no reason other than the assumed existence of a fake invoicing scheme. The Québec Ombudsman strongly condemns these practices, as they go against the principles of procedural fairness and seriously affect the financial viability of the businesses concerned.

In its 2013-2014 Annual Report, the Québec Ombudsman related four case studies of companies that had received a notice of assessment or proposed assessment from Revenu Québec for supposedly taking part in a fake invoicing scheme. Following the Québec Ombudsman's intervention, two of the four proposed assessments were cancelled. However, as at March 31, 2014, Revenu Québec was still refusing to cancel the proposed assessments sent to the other two businesses. The Québec Ombudsman had to put pressure on Revenu Québec until it finally cancelled the proposed assessment sent to one business and reduced the amount of the other business's assessment by two thirds. As at March 31, 2015, Revenu Québec still refused to cancel the penalty for gross negligence for the remaining amount of the latter assessment. Dissatisfied with the position taken by Revenu Québec, the Québec Ombudsman is pursuing its intervention.

It is important to note that the Québec Ombudsman continues to receive complaints from businesses suspected of taking part in a fake invoicing scheme. In fact, in the last year, nearly a dozen more businesses have turned to the Québec Ombudsman for the same reason.

(. . . *Appreciate the true value of the evidence*

Since 2010, a manufacturing firm with annual sales of around $10 million had been using the services of employment agencies to complete a specific processing project. In 2014, the firm received a proposed assessment of $129,000 because Revenu Québec claimed that the firm was taking part in a fake invoicing scheme. As Revenu Québec saw it:

- ***The employment agencies did not have the capacity to perform the work and, consequently, the firm was the workers' real employer;***
- ***The firm obtained undue advantages by underpaying the agencies for the workers it supplied.***

Regarding the theory that the real employer was the manufacturing firm, the Québec Ombudsman is concerned that Revenu Québec is applying labour law criteria to tax law. Revenu Québec is indeed borrowing certain concepts from labour law, for example, in the way it determines the real employer. In labour law, employer status is established primarily on the basis of subordination of employees to the management and control of the employer. In tax law, the employer is the one who remunerates the employees and, consequently, is the one who must withhold and remit source deductions to Revenu Québec. Taking notions of labour law and applying them to tax law allows Revenu Québec to broaden certain definitions and issue a notice of assessment to a business for tax obligations as an employer without proving that the business in question is actually the one who remunerated the workers. As for undue advantages, Revenu Québec claims that by not paying enough for the services provided by the employment agencies, the manufacturing firm benefited from the agencies' tax delinquency. Despite the explanations and documentary evidence provided by the firm after receiving the proposed assessment, Revenu Québec maintained that the firm was involved in a fake invoicing scheme, period.

The Québec Ombudsman's believes that, to the contrary, the firm submitted evidence that, off the top, proved the existence of a genuine business relationship between the firm and the employment agencies. Revenu Québec did not at all prove the existence of any collusion between the firm that supplied the work and the agencies that supplied the labour. In fact, Revenu Québec contended that it did not have to prove the existence of collusion to justify assessments issued on the grounds of fake invoices.

The Québec Ombudsman asked Revenu Québec to cancel the proposed assessment, but the latter still refuses to do so. The Québec Ombudsman will never be satisfied with such a refusal. . . .)

Filing of false records of employment

Five complaints on the same subject prompted the Québec Ombudsman to investigate a Revenu Québec operation affecting nearly 200 people. Conducted jointly with the Sûreté du Québec, the operation uncovered a fraud ring whose leaders have been charged with criminal offences.

Among other offences, the ring was selling false records of employment to individuals who were using them to obtain various benefits, including income tax refunds and bank loans. The ring was also offering accounting services to businesses, in particular employment agencies, some of which sought to evade their tax obligations as employers by doing business through shell companies set up by the ring.

It was proven that several people had benefited from the fraud scheme and the Québec Ombudsman fully supports Revenu Québec's efforts to put a stop to it. Nonetheless, it believes that Revenu Québec should not have assumed that everyone who received a false record of employment—which looked real—from one of the shell companies was guilty by association. Yet, Revenu Québec sent proposed assessments to every person who had received a record of employment from any of those companies. When ten of the people submitted supporting documents, Revenu Québec's investigation branch acknowledged that their records of employment were real. Similarly, the agency's contestation branch cancelled two notices of assessment, without the Québec Ombudsman's intervention. Revenu Québec thus admitted that, in all likelihood, the individuals concerned had been innocent victims of a fraud scheme, for they had supplied genuine labour, but that the companies paying them were parties to the fraud ring and were not remitting the source deductions to the government. This finding should have commanded caution and diligence in handling files; instead, the investigation by the Québec Ombudsman revealed major flaws.

For starters, nearly half of the files were handled by Revenu Québec's investigation branch. During the joint investigation with the Sûreté du Québec, the branch had obtained the list of individuals who had reported employment earnings from one of the shell companies. After reviewing the files, the branch decided not to issue a notice of assessment to 14% of those individuals, as they had provided supporting documents proving that they had actually performed work. The investigation branch then entrusted the remaining files to the auditors at Revenu Québec's personal income tax branch, even though these two branches have different practices and different requirements in terms of burden of proof. From that point on, the two groups of individuals were subject to different measures. To explain, the work carried out by the investigation branch usually leads to penal or criminal charges against the offender, which means that it has to demonstrate that a person has acted unlawfully. The personal income tax branch, on the other hand, issues a presumably valid notice of assessment. The burden of proof therefore does not lie with Revenu Québec, except in the case of penalties or assessments that apply to a period prior to the normal assessment period.

In the case at hand, the personal income tax branch just assumed that all of the records of employment were false and, consequently, assessed the 120 remaining individuals included on the list provided by the investigation branch. This initial presumption of guilt led to biased handling of the files. In fact, the sample of files consulted showed that the individuals were not able to submit arguments during the auditing process, either because their explanations were systematically dismissed or because the individuals were not given enough time to put together evidence. How is it that all of the files handled by the personal income tax branch resulted in the issuance of a notice of assessment, whereas among the files handled by the investigation branch, some of the records of employment were acknowledged as being for work actually performed? The automatic presumption of guilt of every individual goes against the principles of administrative justice and procedural fairness.

Lastly, the burden of proof in this case lay with Revenu Québec, as most of the assessments were for given years. In other words, the notices of assessment had been established for years prior to the normal assessment period (three years in the case of income tax; four for other taxes[4]). The Québec Ombudsman reviewed a sample of 45 files and noted that Revenu Québec had not reviewed any of them individually in order to satisfy its burden of proof for assessments established for the given years: in almost every case, Revenu Québec used the general description of the fraud scheme to meet its burden of proof. However, the burden of proof should have been based on the facts of each case. Moreover, this conclusion is reinforced by the fact that Revenu Québec acknowledged, willingly in some cases, that the explanations given by individuals who received the records of employment in question warranted that assessments not be issued or that they be cancelled.

Further to the Québec Ombudsman's intervention, Revenu Québec agreed to cancel the assessments issued to five other people, three of whom had complained to the Québec Ombudsman. In addition, the Québec Ombudsman asked Revenu Québec to review every case and cancel the assessment if Revenu Québec could not meet its burden of proof. Revenu Québec agreed to review the files in light of the Québec Ombudsman's observations.

(. . . *Give due attention to explanations given by taxpayers*

A woman complained to the Québec Ombudsman after Revenu Québec assessed her on the grounds of false records of employment for the 2008 and 2009 taxation years. The woman claimed that she had in fact worked for a packaging company and was remunerated by an employment agency that no longer exists. She provided her pay slips, bank statements and the name of her supervisor at the company where she had worked. The supervisor confirmed that the woman had worked for him and been hired through an employment agency.

4 Paragraph *b* of subsection 2 of section 1010 of the *Taxation Act* (CQLR, chapter I-3).

The investigation by the Québec Ombudsman revealed that even though the woman had explained her situation to the auditor after receiving the proposed assessment, her file was still closed. The woman filed a notice of objection with Revenu Québec and a complaint with the Québec Ombudsman.

Following the Québec Ombudsman's intervention, Revenu Québec agreed to cancel the woman's assessment. . . .)

IMPROVE SERVICES FOR TAXPAYERS IN KEEPING WITH THE AGENCY'S STRATEGIC PLAN

The Québec Ombudsman found that Revenu Québec does not take the lead in resolving certain problems raised by taxpayers, even when it admits that the problem was caused by its own error. Even though the primary objective of Revenu Québec's 2012-2016 strategic plan explicitly aims to establish good relations with its clientele, the reality and type of complaints the Québec Ombudsman receives indicate that this objective has not been met and calls for Revenu Québec's closest attention.

Note as well that the administrative delays in processing files by Revenu Québec are still very long. The Québec Ombudsman received nearly twice as many complaints as last year in this regard.

(. . . ***Show initiative***

After entering into a payment agreement with Revenu Québec, a man made his last payment twice. The amount had been withdrawn from the man's bank account, but Revenu Québec claimed that it had never received the payment, so it withheld the amount from the man's income tax refund. The man called Revenu Québec several times to rectify the situation, to no avail. Following the Québec Ombudsman's intervention, Revenu Québec conducted a payment search and discovered that it had indeed received the payment, but that it had been posted to another account.

Since his social insurance number had changed, the man knew from the start that there might be some confusion. He had informed Revenu Québec of the situation, so it could have easily identified the problem. A payment search should have been proposed at the outset. Revenu Québec ultimately refunded the man for the amount collected twice. . . .)

(. . . ***Acknowledge its errors***

Following an initial audit, Revenu Québec assessed a business for sales tax. It also conducted a corporate income tax audit, during which the auditor discovered errors made during the sales tax audit. He corrected the errors for income tax assessment purposes, but neglected to send the file back to the tax division so that it could adjust the previous assessment.

Shortly thereafter, even though it had been notified of the necessary adjustments, Revenu Québec refused to correct the tax file on the grounds that the deadline for filing a notice of objection had passed. The Québec Ombudsman had to intervene before Revenu Québec would do a recalculation, which reduced the assessment by around $9,000, just over 50%. . . .)

(. . . *Acknowledge… a double error*

A man was unable to meet his tax obligations for ten years owing to physical and mental health problems. In 2009, he rectified his situation with the help of a collection officer, who assured the man that the interest on and penalties for the debt would be cancelled because he met some of the fairness criteria under the* Act respecting administrative justice*. However, the officer changed jobs and left without completing the cancellation process. Consequently, the man's file remained in limbo, except that the interest on the debt accrued over time. As a result, all of the income tax returns and tax credit payments to which the man was entitled were withheld and applied against his debt with Revenu Québec—a debt he did not even know he had.

It was not until four years later that the new collection officer working on the man's file informed him that he had to get a letter from his physician in order to complete the application to cancel penalties and interest. The man sent the letter to Revenu Québec in April 2013, but it still took a long time to process his application.

In June 2014, when the man turned to the Québec Ombudsman for help, the collection officer was about to refuse his application for the cancellation of penalties and interest on the grounds that the man now had the means to cover them.

After completing its investigation, the Québec Ombudsman impressed upon Revenu Québec that cancelling the penalties and interests was doubly justified, firstly because Revenu Québec had not acted fairly towards the man from 1998 to 2009, and secondly because the problem was created by the agency's own administrative neglect: it had taken Revenu Québec five years to finalize the man's application. The agency should have implemented the decision made in 2009 and applied the fairness criteria under the Act.

Revenu Québec agreed to cancel the penalties and interest. The man was reimbursed more than $3,000 and the balance owing was cancelled. . . .)

UNCLAIMED PROPERTY: ACTIVELY HELP FIND A FAIR SOLUTION

For administration purposes, "unclaimed property" means any property without an owner or in respect of which the right-holders remain unknown or untraceable and that is therefore entrusted to the administration of Revenu Québec. In the following case where the unclaimed property was a piece of land, Revenu Québec was slow to act to make the property safer.

(. . . *Stop dithering and collaborate*

For years, a man had been asking the competent government authority to carry out the necessary work to make a dangerous cliff behind his house safer. The man believed that a government department or agency was mostly likely responsible for the management or cleanliness of the property; however, none of the authorities he contacted responded to his requests. Revenu Québec, which is the provisional administrator of unclaimed property in Québec, demanded that the man provide a series of notarized deeds before it would review the file.

During the investigation it conducted, the Québec Ombudsman found that there were actually a number of documented assumptions as to the ownership of the land in question. One of them was that the land was considered "property without an owner" and Revenu Québec was responsible for its administration. Another was that the land was considered "land in the domain of the State" and therefore under the responsibility of the Ministère de l'Énergie et des Ressources naturelles.

Regardless, it was clear to the Québec Ombudsman that the landowner had remained unknown for nearly 150 years and, consequently, it was mostly likely up to a government authority to take the necessary action. The Québec Ombudsman thus argued that determining the responsible government body was not the real issue for the moment; rather, what was important was to make the site safe and get the different public stakeholders to work together to find a solution.

With that in mind, the Québec Ombudsman recommended that Revenu Québec, as the provisional administrator of the property, inspect the cliff and make it safe. In addition, it stated that the various government departments and agencies concerned needed to discuss the issue to determine who would pay for the work.

Revenu Québec accepted the Québec Ombudsman's recommendations and, in an exemplary fashion, initiated the necessary discussions with the authorities concerned. Under its leadership, an action plan was established with the Ministère de la Sécurité publique, the Ministère des Transports and the Ministère de l'Énergie et des Ressources naturelles. . . .)

RECURRING RECOMMENDATION: SOLVE THE PROBLEMS WITH THE SOLIDARITY TAX CREDIT ONCE AND FOR ALL

There have been serious problems in Revenu Québec's management of the solidarity tax credit ever since the credit was introduced in July 2011. The number of complaints about the tax credit increased from last year. The complaints continue to highlight major flaws, particularly in terms of red tape. There are also problems in the management of changes in people's situations.

It is important to point out that administration of the solidarity tax credit is complex, as the amount is determined on a monthly basis. Citizens are therefore responsible for informing Revenu Québec of any changes in their situation that might affect the tax credit. In the fall of 2014, the Auditor General of Québec found that "the process put in place by Revenu Québec to administer the solidarity tax credit does not include all the necessary controls for determining the eligibility of households and for ensuring the conformity of the amounts awarded." The complaints lodged with the Québec Ombudsman primarily dealt with eligibility for the tax credit's different components and the payment of wrong amounts. During the investigations it carried out, the Québec Ombudsman noted that Revenu Québec's computer system is inadequate for both administering the tax credit and processing the information provided by beneficiaries and program partners (e.g. Régie des rentes and Ministère du Travail, de l'Emploi et de la Solidarité sociale) to update the information about their personal situation.

By its own admission, Revenu Québec is aware that its computer system is not suited to the program's operation and goals. It is working collaboratively with the Québec Ombudsman to solve individual cases. However, citizens are still experiencing problems and, generally speaking, Revenu Québec is slow to implement remedial measures.

In Budget 2015-2016, the Minister of Finance announced a review of the operating terms of the solidarity tax credit. Among other changes, starting in 2016, the amount receivable will be determined annually, rather than monthly, based on the information contained in the beneficiary's income tax return. This change was anticipated and will simplify administration of the tax credit.

When the solidarity tax credit was introduced in 2011, the Québec Ombudsman already underlined the potential difficulties and cumbersome administration that would result from determining the tax credit on a monthly basis. It recommended that the tax credit be determined on an annual basis, i.e. the solution now being implemented. The Auditor General of Québec had expressed the same concerns in his 2014 report.

(. . . *End the confusion! – 1*

Revenu Québec regularly has to correct amounts claimed by or paid to citizens because of, for example, a change in their personal situation. However, problems arise when Revenu Québec has to cancel a solidarity tax credit debt of a person with low income. Note that the* Taxation Act *provides for special compensation for the very financially disadvantaged. For technological reasons, Revenu Québec cannot cancel a tax credit debt through a simple accounting entry: its computer system requires that a payment entered be equal to the amount owed by a person. What is more—astonishingly—the system automatically issues payments by direct deposit. In other words, a person receives an amount with no explanation. Then when Revenu Québec notes the error, it contacts the person to claim repayment of the amount.

In one woman's case, Revenu Québec wanted to cancel a debt of $42.92. However, instead of cancelling the debt, Revenu Québec made a $42.92 payment to the woman. Having not been informed of the mistake, the taxpayer assumed she was entitled to the money and so kept it. Soon after, expecting to receive an amount owed regarding a debt that it itself had generated, Revenu Québec withheld half of the subsequent solidarity tax credit payments to the woman.

From a strictly accounting perspective, the woman had received an overpayment of $42.92 and the amount applied against her tax credit did not deprive her of amounts to which she was entitled. Nevertheless, the confusion created for a person who may have had trouble managing a shoestring budget could have been avoided.

Following the Québec Ombudsman's intervention, Revenu Québec agreed that the debt was unreasonably created by its inadequate computer system. . . .)

(. . . *End the confusion! – 2*

Following a review, Revenu Québec wanted to cancel the $486 debt that a man had with it. Instead, it cancelled $135 and paid the man $351, without explaining the two amounts. Consequently, the man found himself with an overpayment—and a new debt.

Revenu Québec sent the man two notices of assessment claiming $270 and $521 in connection with the solidarity tax credit. Following another review, Revenu Québec wanted to cancel both claims. However, yet again due to computing problems, instead of cancelling the two debts, Revenu Québec paid the man the sum total of the debts, which meant that the man found himself with an additional overpayment of $791.

Revenu Québec thus mistakenly paid the man a grand total of $1,142 as a result of accounting adjustments.

If Revenu Québec was unable to explain the logic of these transactions, the consequence for the man was even greater confusion because he received neither an explanation nor a notice of determination (Revenu Québec document detailing the tax credit amounts to which a person is entitled). Furthermore, not only did the man have to repay the overpayments, but he had to pay interest to boot.

Following the Québec Ombudsman's intervention, a Revenu Québec employee contacted the man to inform him of what had happened. A note was entered in the man's file so that the interest on the debt would be cancelled once the amounts had been repaid. . . .)

IMPROVE THE QUALITY OF OFFICIAL INFORMATION PROVIDED TO TAXPAYERS

In response to complaints received, the Québec Ombudsman contacted Revenu Québec to obtain clarifications regarding information contained in its publications. As a result, the explanation of the health contribution exemption was reworded in the income tax return to make it easier to understand. With the same goal in mind, Revenu Québec also clarified the wording in other documents to specify that the payment of a subsidy to the owner or provider of services reduces the amount considered in calculating the tax credit for home support services. The same concern about the quality of information arose in individual cases, such as the following.

(. . . ***Make sure taxpayers understand the reasons for an assessment***

After asking a taxpayer who was being audited to provide certain information, Revenu Québec informed the man of its intention to issue a notice of assessment because he had not paid taxes on the sale of part of an income property. Certain that he had paid the taxes and being unable to obtain clearer explanations from Revenu Québec, the man turned to the Québec Ombudsman.

During the investigation it carried out, the Québec Ombudsman learned that Revenu Québec had conducted its audit based on the assumption that the man was using the building for a different purpose after disposing of part of it. This rule, which is rarely applied, meant that the man owed tax on the residual value of the building.

The Québec Ombudsman explained the situation to the man, who was then able to provide Revenu Québec with the necessary documents to prove that the use of the building had not changed. As a result, Revenu Québec did not issue a notice of assessment. . . .)

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

GIVE CITIZENS ACCURATE INFORMATION AND CALCULATIONS AND TAKE RESPONSIBILITY FOR MISTAKES

In 2013-2014, the Québec Ombudsman spoke out against failings regarding the reliability and quality of the information transmitted to citizens by the Commission administrative des régimes de retraite et d'assurances (CARRA). This year again, it intervened concerning complaints about inaccurate information and miscalculations, as well as about data entry errors. As the manager of the pension plans entrusted to it, CARRA must ensure that it sends participants complete and accurate information, which they use to make important decisions such as when to retire.

One of the issues addressed in CARRA's 2012-2015 strategic plan is to provide quality services in response to the needs of its clients so that they can make informed decisions. CARRA acknowledges that the wrong decision, or a decision made at the wrong time, could have serious financial consequences. The Commission must ensure that its actions reflect its commitments and that its numerous errors do not recur. Indeed, in certain cases, CARRA is slow to inform citizens even after it discovers it has made a mistake.

While the Québec Ombudsman is aware that errors do not create rights for citizens, it believes that CARRA's negligence or indifference in handling applications may make CARRA liable, at least when it is entirely to blame for the mistake. CARRA refuses to see it this way. The Québec Ombudsman deplores such an attitude, which could potentially lead to lawsuits, delays and outlays for citizens and CARRA alike.

(. . . *Admit a mistake has been made and provide appropriate compensation*

In January 2014, a person who was retiring in May of that year applied to CARRA for benefits. Only a few days before her official retirement date, she learned that she would not be eligible for a full retirement pension if she retired at that point. The calculation was based on the fact that she had 34.8572 credited years of service. Yet, the CARRA documents on which she had relied for information indicated that she had 35 years of service as at that date. Unfortunately, the documents contained errors. The person came to the Québec Ombudsman with the argument that even if she had wanted to go back to work to complete the number of years of service that qualified her for a full retirement pension, she was no longer a member of her professional order and her employer refused to rehire her.

The investigation by the Québec Ombudsman showed that two CARRA documents from 2013 were wrong:

- ***In estimating the citizen's pension, CARRA had not corrected a bank of 90 days to factor in a buy-back;***
- ***In the Statement of Contributions, there was a double-entry for a maternity leave representing 0.258 years of service.***

Given the complex calculations and the shortage of explanations, the Québec Ombudsman considered that the person could not reasonably have been expected to spot the mistakes. In deciding on her retirement date, it made sense that she had relied on the figures that CARRA had provided. Now she had no choice but to retire on that date and to accept a lower pension amount; the long-term damage she sustained was due directly to CARRA's error.

Therefore, the Québec Ombudsman recommended that the agency issue a lifelong annual supplementary amount equivalent to the financial loss the woman incurred. CARRA refused this recommendation.

(. . . Admit to numerous errors and cancel an unacceptable claim

When a hospital was having internal management problems, a worker was put on a replacement list. In 2008, she went back to work full time, this time at a health and social services centre (CSSS). Since her salary was lower than before, she was entitled to a financial protection measure, with her former employer making up the shortfall (compensating wage differential).

In 2014, nearly two years into her retirement, the citizen received a notice from CARRA informing her that she had been overpaid $30,000 that she would have to reimburse. A portion of this amount consisted of payments that she had mistakenly received because CARRA thought, erroneously, that she had paid too much into the retirement fund after her change in employment. The other portion claimed came from an overly generous benefit based on an estimated amount issued since her retirement (CARRA estimates the pension amount pending a definitive determination).

Feeling that she had been treated unfairly, the woman turned to the Québec Ombudsman.

First, the investigation showed that, according to CARRA, from 2008 to 2012 CARRA had received two annual statements concerning the citizen, one from the CSSS and the other from the employer responsible for issuing the compensating wage differential. Both employers declared that she had worked full time. Since it is impossible to bank more than one year of service per civil year, an automated operation retained the figure corresponding to the best-paid year of service. The citizen was therefore reimbursed for her CSSS contributions.

The Québec Ombudsman also noted that the employer responsible for issuing wage protection informed CARRA of this particular situation. Despite this information, CARRA did not correct the file, so the citizen received four overpayments totalling nearly $17,000. Astonished, she contacted CARRA every time to double check that she was entitled to these amounts. Every time she called, CARRA assured her that the money belonged to her.

The Québec Ombudsman concluded that CARRA had erred in considering that the citizen had two distinct employers rather than recognizing her as a manager on wage compensation. This error was what caused the four overpayments. Even though she received amounts she should not have gotten, she displayed due diligence and good faith by checking with CARRA.

But this was not the end of it, because in May 2013, while CARRA was aware of this problematic file, the computer system churned out another overpayment.

As for the pension overestimate, CARRA maintained that it had determined that the citizen had full-time jobs at both places based on the employers' statements, resulting in the annual salary total. After the corrections were made in the file and the amounts recalculated to take the real salary into account, CARRA claimed an extra $11,000.

Fifteen months elapsed between the time CARRA noticed the problems and the time the citizen was told about them. The Québec Ombudsman considers that CARRA should have contacted the citizen much sooner and adjusted the payment estimates. By not doing so, CARRA contributed to the increase in the debt thus created.

Further to the Québec Ombudsman's intervention, CARRA offered the citizen reimbursement in the form of long-term instalments without interest. Since CARRA was responsible, the Québec Ombudsman felt that this was not good enough. To repair the damage done, CARRA would have had to compensate the citizen, which it refused to do. . . .)

(. . . ***Act on a reasonable request for written information***

A citizen asked CARRA to provide her with written information conveyed verbally beforehand about her estimated pension amount, as well as confirmation that her preretirement would not affect her pension plan qualification period. Since CARRA refused to grant her request, she complained to the Québec Ombudsman.

The latter indeed saw that CARRA had refused, even though the agency had verbally provided the citizen with three possible scenarios. CARRA pointed out that the person's situation was complicated and certain currently unavailable data could change the calculations, hence its decision to not send anything in writing for the time being.

The Québec Ombudsman agreed that this case was unusual. However, it considered the citizen's request legitimate. The production of pension estimates is one of the services that CARRA offers to its clientele. Consequently, it has to be able to adjust its practices when it encounters unusual situations, while being prudent and prompt in handling these applications and the information it sends in its correspondence.

The Québec Ombudsman therefore recommended that CARRA:

- *Send the citizen information in writing about her estimated pension amounts, along with an assessment of how preretirement would affect her pension plan qualification period;*
- *Indicate that due to currently unavailable information, the estimates were imprecise and that the citizen was urged not to make any retirement decisions based solely on them.*

CARRA refused these recommendations, but at the Québec Ombudsman's request, it sent the woman a copy of her file containing certain estimated pension calculations. . . .)

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

As its name indicates, the Commission de la santé et de la sécurité du travail (CSST) administers Québec's occupational health and safety plan. It therefore enforces the *Act respecting occupational health and safety*, aimed at eliminating dangers to the health, safety and physical well-being of workers at the source. The Commission also oversees compliance with the *Act respecting industrial accidents and occupational diseases*, which provides a framework for compensation for employment injuries and the consequences they entail for workers, as well as for the collection from employers of the monies required for financing the plan. Note that the CSST is a co-managed employer-funding agency. Employers assume no-fault collective liability for occupational hazards.

In the course of the investigations it conducted, the Québec Ombudsman saw that the CSST sometimes has a very restrictive view of its mission as the public insurer for workers and employers. As a result, workers who have suffered employment injuries are denied the compensation to which they are entitled or the rehabilitation services they need after sustaining permanent damage to their physical or psychological integrity.

The Québec Ombudsman believes that the CSST must not impose heavier obligations on workers than those provided for in the *Act respecting industrial accidents and occupational diseases*. Quite the opposite in fact—when workers satisfy the Act's legal requirements, the Commission should make it easier for them to get rightful compensation and services.

GAUGE THE CONSEQUENCES OF A PENALTY AND EXERCISE DISCERNMENT BEFORE APPLYING IT

The CSST may suspend or reduce payment of a worker's indemnity if the worker fails to comply with one of the obligations of the *Act respecting industrial accidents and occupational diseases* without just cause. For example, a worker who skips a medical examination or refuses to undergo one may be penalized this way. The purpose of this provision is to dissuade injured workers from doing anything that would delay their return to work. However, this penalty has significant repercussions on citizens' rights and discernment must be used in applying it. When the CSST suspends or reduces the payment of an indemnity, citizens must be clearly informed about what they have been accused of doing so that they can rectify the situation or explain themselves.

The Québec Ombudsman noted that the CSST tends to levy this penalty rigidly, without systematically taking the worker's version into account. The role of the CSST is to hear and assess the possible reasons given by injured workers for failure to comply. The CSST can apply a penalty only when injured workers fail to provide a valid reason. Despite this formal requirement, not only does the CSST not always hear the worker out, but even when it does, it interprets the notion of "valid reason" narrowly.

When the CSST does this, the financial security of the workers who have been penalized unjustly is directly affected and it fails in its duty to act fairly. The Québec Ombudsman considers that applying the rule with all due rigour does not preclude the human and empathetic approach called for. The following case illustrates serious failings in this regard.

(. . . Follow the rules, but make decisions that are empathic

The CSST summoned a worker for a medical examination, but three days before the scheduled date, the worker learned that his spouse would be undergoing surgery under a general anaesthetic that same day. Since the operation was serious, the citizen wanted to be at the hospital with his spouse, so he contacted the CSST to have the examination put off until a later date. The CSST refused and informed him that his income replacement indemnity would be suspended if he did not show up. The decision was based on the following considerations:

- *The worker had no valid reason for not undergoing the medical examination;*
- *He had not been quick enough. As the CSST saw it, he should have advised his indemnity agent as soon as he was summoned for the medical examination several months before that there might be a scheduling conflict because his wife was on the waiting list for surgery;*
- *Seeing how things were shaping up, the worker should have made sure that there was a relative or friend available to go with his spouse to the hospital;*
- *He should have provided written proof (which the CSST never asked him for) of the scheduling conflict.*

The man approached the Québec Ombudsman fewer than 24 hours before the medical examination, which is why it was unable to intervene to have the CSST revoke its decision. The man was not able to accompany his wife for the surgery.

How to describe such an attitude by the CSST, which, in handling a worker's legitimate request, chose to saddle him with unreasonable requirements? This decision constituted a clear lack of regard for the more human approach stemming from the public agency's rules and mission.

The Québec Ombudsman is critical of such insensitivity by an agency tasked to manage a public insurance program for injured workers. . . .)

(. . . Analyze the file attentively rather than cutting arbitrarily

A citizen found out that her income replacement indemnity was being suspended because her file contained contradictory information from two medical reports. In the first report, the attending physician wrote that he wanted the patient to see a physiatrist before starting a multidisciplinary program recommended by the Bureau d'expertise médicale. In the second report, the physiatrist authorized the program but mistakenly indicated that the patient had already started the program. The CSST's explanation was that it had suspended the indemnity because the information on file was inconclusive on the question of whether or not the citizen had started the multidisciplinary program recommended by the Bureau d'expertise médicale.

The investigation by the Québec Ombudsman showed that the confusion had not been caused by the citizen but because the physicians had misunderstood. As a result, the citizen should not have been penalized. The CSST should have contacted her and the physicians and then taken the information obtained into account in order to decide whether or not to continue issuing the indemnities. The CSST agreed to reconsider its decision and continued issuing the indemnities with retroactive effect. . . .)

REIMBURSEMENT FOR HOME MAINTENANCE WORK: BE MORE LENIENT

The *Act respecting industrial accidents and occupational diseases* provides that workers who have sustained a serious physical impairment as a result of an employment injury and who are unable to do the ordinary maintenance work on their residence may be reimbursed for the costs they incur to have the work done (e.g. painting, repairs, snow removal, lawn mowing). Injured workers complained to the Québec Ombudsman about the CSST's refusal to reimburse them for maintenance work costs.

The CSST determines whether or not a person has a serious physical impairment that prevents him or her from doing ordinary home maintenance work only after the injury has been "consolidated," meaning that the injury has stabilized and there will be no foreseeable improvement. If a citizen files a claim for home maintenance before the injury has been consolidated, the CSST tells them that they have to pay for the work out of pocket but to keep any invoices. The citizen may file a claim for retroactive reimbursement when the injury has been consolidated and it has been determined that his or her limitations in terms of the ability to perform home maintenance tasks will persist.

The Québec Ombudsman noticed that in some cases, the CSST authorizes reimbursement for costs incurred for ordinary maintenance work only several years after the injured worker has already paid out of pocket. In the meantime, there is absolutely no guarantee that the worker will ever get the expected payment. Other workers simply cannot afford to pay to have the work done and have to ask relatives to do it, even if their difficulties are due entirely to their employment injury.

In the Québec Ombudsman's opinion, it is unreasonable for the CSST to refuse reimbursement merely because the injury has not yet reached the stage where improvement can no longer be seen as probable. The CSST should reimburse the claimant for the fees in question provided that the medical elements on file show that the person will be left with a serious permanent physical impairment. The Québec Ombudsman recommended that the CSST change its policy and be more lenient in handling this type of claim.

(. . . *Reimbursement of snow removal costs*

In 2011, a man injured both his shoulders severely in an industrial accident. Three years later, the injury had not yet been consolidated. The worker's physician anticipated that the patient would be left with certain functional limitations and that surgery would be needed for stabilization to occur. However, the company physician's prognosis was consolidation with functional limitations affecting both arms. Given these divergent opinions, the Bureau d'expertise médicale sided with the prognosis by the worker's physician.

Since the citizen was incapable of shovelling snow, he claimed reimbursement from the CSST for snow removal costs. However, the CSST refused to grant reimbursement, arguing that the injuries had not been consolidated and so it could not accurately establish what the permanent functional limitations would be.

The Québec Ombudsman insisted on the fact that the medical opinions concurred insofar as they both confirmed that the citizen would be left with a serious impairment. It therefore considered that consolidation should not have been a prerequisite for issuing the requested reimbursement. Instead, the decision should have been based on the physicians' findings to the effect that, from then on, the claimant would no longer be able to remove snow himself.

In a situation of this kind, there is no reason for making a citizen wait.

Since the worker's case was before the Commission des lésions professionnelles again, the Québec Ombudsman had to end its intervention. . . .)

CALCULATE INJURED WORKERS' GROSS INCOME CAREFULLY

To calculate the amount of an injured worker's income replacement indemnity, the CSST must determine the worker's gross income (the salary indicated in the person's employment contract), plus any extra amounts (bonuses, premiums, tips, overtime, etc). Complaints revealed that miscalculations sometimes occur. Despite the proof provided by workers or employers, the CSST leaves out or refuses to consider certain income. By disregarding this income for computation purposes, the worker's income replacement indemnity is lower than it should be.

The CSST's internal directive is clear about the elements to include in gross income, so the problem is one of the agency's lack of rigour in applying its own rules. This is something that the Québec Ombudsman takes a dim view of. It has seen that injured workers who have atypical employment conditions (flextime, seasonal work, overtime, more than one job, etc.) are the most frequent victims of miscalculation.

Further to interventions by the Québec Ombudsman, the CSST agreed to recalculate the gross incomes of the workers concerned. However, fair treatment of injured workers involves more than this, so it asked the CSST to:

- Remind its employees about the elements to consider in calculating workers' gross income;
- Improve communications with workers and employers so that all employment conditions that could affect future computation of gross income are taken into account;
- Ensure that workers and employers know their rights regarding the amounts to consider in determining gross income.

(. . . *Include all relevant income in calculating indemnities – 1*

A citizen was injured on the job in 2003 and as a result, was unfit for employment of any kind. For the purpose of calculating her income replacement indemnity, the CSST determined her gross annual income to be $41,000. In the course of the same year, the citizen and her employer were able to prove to the CSST that there were 200 to 300 hours of overtime a year that had to be considered. When the overtime premiums were factored in, the worker's annual income was more than $45,000.

The CSST disregarded this information and only considered the gross income of $41,000. Furthermore, no one told the injured worker that she could contest the indemnity amount by applying for an administrative review. Ten years later, she learned that the overtime should have been taken into account in the CSST's calculation. She approached the CSST about it, but it refused to adjust the indemnity on the grounds that the deadline for contesting the amount was long gone.

Further to the Québec Ombudsman's intervention, the CSST agreed to review the case and increase the figure for the worker's gross income to include overtime, retroactive to the accident. The organization issued some $55,000 to the citizen and her income replacement indemnity increased by nearly $500 a month. . . .)

(. . . *Include all relevant income in calculating indemnities – 2*

At the time that a citizen had his industrial accident, he was holding down three jobs and worked more than 65 hours a week. However, in calculating the income replacement indemnity, the CSST, in compliance with the* Act respecting industrial accidents and occupational diseases*, only considered his highest-paying job and determined his gross income accordingly. Clearly, by strictly applying this provision of the Act, the citizen's real impairment of earning capacity was disregarded, because, to make ends meet, he had to work more than one full-time job.

At first glance, it would seem that the CSST had acted in accordance with the Act, but given the circumstances, it should have applied another provision enabling the CSST to calculate the indemnity differently if the first method of computation was unfair. Further to the Québec Ombudsman's intervention, the CSST agreed to take the work income from all three jobs into account. The gross income went from $55,000 to $69,000, resulting in a substantial increase in the citizen's income replacement indemnity. . . .)

Commission de la santé et de la sécurité du travail (CSST) – Direction de l'indemnisation des victimes d'actes criminels (DIVAC)

PROVIDE CRIME VICTIMS WITH THE GENUINE SUPPORT TO WHICH THEY ARE ENTITLED

The Commission de la santé et de la sécurité du travail (CSST) is responsible for managing the crime victims compensation system. The Direction de l'indemnisation des victimes d'actes criminels (DIVAC) is tasked to assess the admissibility of and process applications for benefits. Anyone injured as the result of a crime committed in Québec may, if he or she fulfils certain eligibility requirements, receive the compensation and services provided for in the *Crime Victims Compensation Act*. These include medical aid, indemnities for temporary total disability, permanent disability benefits, death benefits for dependents and dependents' parents, and rehabilitation services. For compensation to be granted, preponderant proof of causality between injury or death and the criminal offence must be established.

In the past year, the Québec Ombudsman noted that crime victims are often deprived of benefits under the Act because of inadequate, even unacceptable, handling of their files by DIVAC.

The problems unearthed stem mainly from misinterpretation or overly restrictive interpretation of the Act and flaws in assessing needs and injury related to the criminal offence.

The Québec Ombudsman also found certain problems concerning accessibility to the system and to some services and indemnities, as well as with record keeping and delays at different stages of processing applications for benefits. A systemic investigation by the Québec Ombudsman is underway and DIVAC is collaborating.

It is worthwhile mentioning that the Québec Ombudsman has repeatedly spoken out about the obsolescence of the crime victims compensation system. In fact, the last in depth amendment of the Act goes all the way back to 1972.

UPHOLD THE LAW BUT REMEMBER TO ACT HUMANELY

Need we insist that people who turn to DIVAC are particularly vulnerable because of what they have been through as crime victims? Subsequently, the agency responsible for issuing compensation and providing rehabilitation services must, in accordance with the terms of its governing Act, act rigorously, promptly, and, especially, compassionately, in assuring that crime victims are provided effective access to urgently needed compensation and services. For some victims, seeking assistance from DIVAC requires a monumental effort. Their difficulties seem to increase tenfold when their application is met with rigidity and lack of understanding.

(. . . *A crime victim loses out on compensation because of a restrictive interpretation of the Act*

Still victimized by a family member, a woman who had been mistreated since childhood turned to DIVAC for benefits for psychological injury caused by sexual assault. She was deemed ineligible because she had not filed her application within the deadline prescribed by the Act. Furthermore, she was unable to prove that it had been impossible for her to approach DIVAC sooner.

In accordance with the Act in force at the time, the application should have been filed within one year of the occurrence of the injury. The occurrence of an injury is the moment the victim becomes aware of the damage suffered and of its probable connection with the criminal offence. Even though the application had been made in the year she became fully aware of the extent of the psychological damage she had sustained, DIVAC considered that, because she had suffered physical harm, the time frame of one year had begun during her childhood. . . .)

One could be forgiven for reacting with outrage to this response.

The Québec Ombudsman's opinion is that in certain situations when DIVAC requires that an application be submitted within one year of physical injury for a claim for psychological injury, it is in breach of its governing Act. We know that, often, psychological damage surfaces only many years after the incident. The Act specifies that the clock starts ticking on the one-year deadline when the victim becomes aware of the injury, and not when an injury occurs. Furthermore, DIVAC's interpretation to the contrary does not meet Tribunal administratif du Québec criteria.

The Québec Ombudsman maintained that the woman was unable to apply sooner because of the specific circumstances she found herself in (manipulation, abuse, fear for her life). Pursuant to the Act, DIVAC could have deemed that these impediments justified her lateness in filing.

Despite compelling facts, DIVAC did not agree to amend its initial decision. It is analyzing the Québec Ombudsman's recommendation to approve the woman's application so that she can be compensated and to change its internal policy for future cases of the same kind. It is conferring with the Ministère de la Justice, entrusted with enforcement of the Act. In the meantime, it has accepted the Québec Ombudsman's recommendation to at least suspend processing of the victim's application for review so that she can be reimbursed for the cost of therapy. . . .)

(. . . *Correctly assess assault sequelae and the resulting needs*

A citizen intervened on behalf of her son who had been assaulted in 2006 and had sustained major injuries, including loss of sight in one eye and multiple facial, cranial and hand fractures. Considering that the victim required extensive care and treatment, DIVAC deemed that his injuries had not been "consolidated" (or stabilized, meaning that injuries have reached the optimal point of healing) until 2012. In its decision concerning permanent disability benefits, DIVAC established a permanent disability rate of 62% overall, 61% for the neurological aspect and 1% for the orthopedic aspect. Feeling that this rate was too conservative, the victim's mother complained to the Québec Ombudsman.

After analyzing the file, the Québec Ombudsman noticed that several factors regarding sequelae had been omitted or incorrectly assessed. DIVAC had not taken aesthetic damage or maxillofacial and psychological sequelae into account. It had also disregarded the possibility of reimbursement for home support service expenses.

The Québec Ombudsman therefore asked DIVAC to re-examine the case, which it agreed to do. Further to the reassessment, it increased the total permanent disability percentage, which went from 62% to 100%, and a retroactive amount of roughly $42,000 was issued to him. DIVAC also re-examined his home support needs and approved a monthly payment of $520. Since he should have started getting this payment in 2006, he also received a second retroactive amount of approximately $54,000.

In all, some $96,000 worth of retroactive compensation was issued to the victim, and the monthly lifelong home support payment was increased by more than $400. . . .)

(. . . ***Review how victims from outside Québec are compensated***

A citizen who lived in another province was brutally attacked and assaulted with a weapon while he was visiting Québec. Having sustained severe physical injuries and psychological damage, he was hospitalized for more than four months. Afterwards, he applied to DIVAC for benefits, but it refused to grant him temporary total disability indemnities (income replacement) because he was not resident in Québec.

This decision was based on internal policy stemming from DIVAC's interpretation of certain sections of the Act. According to DIVAC, the victim of a crime committed in Québec but who does not live or has ceased to live in Québec is eligible for the care and services covered by the compensation system but not for temporary total disability indemnities.

The Québec Ombudsman considered this interpretation of the Crime Victims Compensation Act *wrong because the goal of the Act is to provide compensation for every victim of a crime committed in Québec. Nowhere is there any mention of the notion of residency. In light of this, people who are not resident in Québec or have ceased being resident in Québec qualify for temporary total disability indemnities. The citizen was therefore entitled to receive these indemnities. In addition, DIVAC's decision was not consistent with majority and contemporary jurisprudential trends set by the Tribunal administratif du Québec. The Québec Ombudsman's opinion is that it was presumptuous of DIVAC to play legislator by adding a condition that is not provided for in the Act.*

The Québec Ombudsman recommended that DIVAC modify its position, which it agreed to do. As of November 2014, crime victims who are not resident in Québec, or who cease being resident in Québec, qualify for temporary total disability indemnities under the same conditions as victims who are resident in Québec.

However, DIVAC refused to apply the new policy retroactively to the victim in question, whose case was before the Tribunal administratif du Québec. DIVAC's argument is that at the time of the initial decision, the old policy was in effect. Applying the new provisions to him would be unfair to the people before him.

Given implementation of the new policy and Tribunal administratif du Québec trends in case law, the Québec Ombudsman disapproves of this approach. By continuing to refuse to compensate the victim for his temporary total disability, DIVAC is literally forcing the case into the courts, with the attendant costs and wait times for the victim and for DIVAC itself. . . .)

Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques

Greater control and monitoring of private waterworks systems

In recent years, the Québec Ombudsman has received complaints about the private waterworks systems that supply homes with drinking water. The problems raised prompted the Québec Ombudsman to look further into the issue of control and monitoring of private waterworks systems that supply the residential client population by the Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques. A report from the investigation it conducted was released during the year.

The summary of the Québec Ombudsman's report on control and monitoring of private waterworks systems in Québec is found at www.protecteurducitoyen.qc.ca.

STATUS REPORT

In Québec, approximately 60,000 citizens get their water from private waterworks systems. The Department is responsible for ensuring compliance with obligations regarding the distribution of water for human consumption set out in particular in the *Environment Quality Act*, the *Regulation respecting the quality of drinking water* and the *Regulation respecting waterworks and sewer services*.

Any person who makes water intended for human consumption available to users must ensure that the water meets the quality standards for drinking water prescribed by regulation. For systems serving 20 people or less, quality control is the responsibility of the people in charge (owners or operators) and of the users of the system. For systems that serve more than 20 people, water quality monitoring by an accredited laboratory is mandatory.

In cases of contamination, the Department must ensure that a boil-water advisory informing users that the water must not be ingested unless it has been boiled for at least one minute, or a do-not-drink-water advisory, is issued and publicized.

Anyone who operates a waterworks system with at least one subscriber must also comply with certain quality standards for water distribution, unless the operator is not considered an "operator of a waterworks system" within the meaning of the *Environment Quality Act* (for example, co-owned systems are not considered operators). Furthermore, a person must not operate a private waterworks system without an operating permit and must not require payment in exchange for the water supply without having submitted the rates to the Department for authorization beforehand.

FINDINGS

When the analysis it carried out was completed, the Québec Ombudsman determined that 63% of private waterworks systems operate without a permit even though some of them should have one. Some operators charge system users rates without holding a permit, which contravenes the *Environment Quality Act*. In addition, the Department does not systematically exercise its responsibilities regarding rate control, which leaves the door wide open for improper billing.

The Québec Ombudsman also observed that those in charge of public waterworks systems and system users are not aware of their rights and obligations regarding drinking water quality. It is a troubling fact that private waterworks systems remain under boil-water or do-not-drink-water advisories for long periods and, when this happens, the Department's civil servants have no guidelines to follow.

RECOMMENDATIONS

Keeping in mind the importance of developing solutions that do not strain the public coffers unduly given the current economic climate, the Québec Ombudsman made the following recommendations to the Department:

- Produce an intervention framework so that all the Department's regional directorates work rigorously and consistently to identify solutions for restoring safe drinking water to citizens as soon as possible;
- Inform private waterworks system operators and users about their rights and responsibilities regarding water quality, particularly for systems that serve 20 people or less, about obtaining of an operating permit, and about rate control;
- Inventory the waterworks systems that are obliged to obtain an operating permit, and ensure that they comply;
- Ensure application of the legal framework with a view to the effective rate monitoring.

The Québec Ombudsman also recommended that the Ministère de la Santé et des Services sociaux and the Ministère des Affaires municipales et de l'Occupation du territoire work together to lay out and implement the intervention framework.

COOPERATION BY THE DEPARTMENTS

The three Departments each confirmed that they would implement the recommendations that applied to them.

For its part, the Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques produced an action plan and a realistic timeline that addressed all the concerns raised. It agreed in particular to intervene as of 2015 to improve information to users and to those in charge. It will also see to producing an intervention plan presenting concrete solutions when waterworks systems have been under boil-water or do-not-drink-water advisories for more than a year. Further to a first round of regulatory amendments slated for the spring of 2016, the Department will also provide the Québec Ombudsman with an action plan for the compliance of private waterworks systems obliged to have an operating permit. The Québec Ombudsman would like to underscore the Department's excellent collaboration in this file.

Review information disclosure practices concerning notices of environmental non-compliance

The Québec Ombudsman received a complaint from a company about the treatment it had received from the Department within the framework of the Department's environmental audit of the business. According to the company, the Department had not been sufficiently thorough before issuing a notice of non-compliance. Furthermore, the company alleged that the Department had abused its powers by opening a criminal investigation after issuing the notice.

Further to investigation, none of the deficiencies brought to the Québec Ombudsman's attention regarding the Department's abuse of its audit powers were found. The Department had indeed followed the rules concerning the level of proof required for issuing a notice of non-compliance and had fulfilled the requirements for opening of a criminal investigation. However, the Québec

Ombudsman noted irregularities in the Department's procedure for transmitting information to a third party about notices of non-compliance that have already been issued. Since this information is not considered confidential, if anyone requests it, the Department can release it as soon as the notice in question is signed and mailed out—without the company itself being aware at the time of the notice against it.

The Québec Ombudsman recommended that the Department ensure that the citizens concerned always be notified of non-compliance before third parties have access to this information. The Department accepted the recommendations made by the Québec Ombudsman and pledged to provide it with an implementation action plan shortly.

Ministère de l'Éducation, de l'Enseignement supérieur et de la Recherche

Give children with a precarious immigration status access to public education

Concerned about the difficulties that children with a precarious immigration status have accessing public education, the Québec Ombudsman addressed the issue in an investigation report released in November 2014. The picture of the situation and the various possible solutions were based on the following finding: even though they live in Québec, some children are not considered residents and, as a result, do not have access to free elementary and secondary education. The Québec Ombudsman considers this a violation of the basic right to education of these children, which, in turn, contravenes the *Convention on the Rights of the Child*, ratified by the Government of Canada and to which Québec has declared itself bound.

STATUS REPORT

Due to the fact that people with a precarious immigration status live under the radar, it is difficult to estimate how many children are excluded from the school system. Most of these children, located mainly in the Montréal region, have no official immigration papers because their family remained in Canada after expiration of a temporary visa or after having been refused refugee status. In other cases, the children were born here, but their parents have no legal status and therefore have no official papers needed for their children to enrol in school.

As the Québec Ombudsman sees it, the inclusion of children with a precarious immigration status in the free public education system must be viewed as an issue separate from legitimate action to monitor immigration.

RECOMMENDATIONS

In the course of the investigation it carried out, the Québec Ombudsman saw that the Ministère de l'Éducation, de l'Enseignement supérieur et de la Recherche (formerly the Ministère de l'Éducation, du Loisir et du Sport) is sensitive to the situation and willing to act concerning the issue. However, despite certain existing measures, the Québec Ombudsman feels that more should be done. The approach that includes a grace period for parents to sort out their situation does not necessarily translate into free access to education for all children and perpetuates problems regarding transparency and consistency, which create insecurity for the families concerned.

When the investigation was completed, the Québec Ombudsman first recommended that in order to ensure free access to elementary and secondary schooling for all children aged 6 to 16 years living in Québec, no matter what their immigration status, the government amend the *Regulation respecting the definition of resident in Québec* stemming from the *Education Act*. It also made the following recommendations to the Department:

- That, pending the amendments, the Minister use his discretionary power to ensure that every child concerned can go to school;
- That it ensure wide distribution of standardized information to school boards, the people who work with immigrant families, and the people directly concerned;
- That it ensure that school boards do not overstep regulatory requirements for identification for enrolment, in particular, verification of the immigration status of the child or of the child's parents.

The Department accepted all of the Québec Ombudsman's recommendations and committed to implementing them through an action plan containing the adopted measures and a timeline for carrying them out. The Department intends to begin by proposing an amendment to the *Education Act* as early as 2015 to guarantee the right to the free educational services provided in Québec schools to all students contemplated in section 1 who are "resident" in Québec. This would include children with a precarious or even an irregular immigration status. The timeline for implementing the other recommendations will be spelled out once the legislative amendment has been passed.

The summary of the Quebec Ombudsman's report on access to public education for children with a precarious immigration status is found at www.protecteurducitoyen.qc.ca.

Eligibility for financial assistance: take into account the real situation of students' parents

To determine whether a student qualifies for financial assistance for educational expenses, the Department must compute the contribution of students, or where applicable, that of parents. To compute a parent's contribution, the Department claimed that, under the *Regulation respecting financial assistance for education expenses*, it had to consider the parent's total income (line 199 of the tax return). In the following case, this strict interpretation of the Regulation was detrimental.

(. . . *Separate taxable income from a retirement fund*

A student came to the Québec Ombudsman after the Department refused to grant her financial assistance because of a parent contribution that was too high.

In fiscal 2013, the reference year for computing the parent contribution for the 2014-2015 award year, the student's father had benefited from a locked-in retirement account (LIRA)—a retirement savings instrument. The amounts deposited in a LIRA must be used as retirement income. The instrument used to withdraw retirement income is called a life income fund (LIF). The father transferred the full amount of his LIRA into a LIF, withdrew part of it as retirement income and put the balance in his LIRA. The father entered the full LIRA amount as total income (line 199), but declared a lower amount for taxable income (the income withdrawn).

For computation purposes, the Department took into account the total income entered at line 199 of the father's tax return. Since this figure consisted of the total LIRA amount, the student did not qualify for loans and bursaries.

What skewed the numbers here was that the Department considered the father's lifelong retirement savings. This means that the student's ineligibility for the financial assistance program was not based on true income but on a posting transaction instead.

The Québec Ombudsman recommended that the Department review the student's file by taking into account the father's taxable income in his return. It also asked it to take the required means so that other students do not have to deal with this problem.

The Department acted on these recommendations. A new computation was issued, making the student eligible for the Loans and Bursaries Program. It also amended the Regulation in order to clarify the nature of the income used to compute the contribution of parents. . . .)

A summary of the Québec Ombudsman's intervention is presented in the section entitled *Parliamentary Watch Report*, on page 115 of this Annual Report.

The Ombudsperson's letter to the Minister of Education, Higher Education and Research is found at www.protecteurducitoyen.qc.ca.

Ministère de la Famille

PRESCRIBE THE SAME OBLIGATIONS FOR COORDINATING OFFICES AS FOR GOVERNMENT AGENCIES

Home childcare coordinating offices are accredited by the Minister of Families to exercise the functions set out in the *Educational Childcare Act*, in particular, granting, renewing, suspending or revoking the recognition of home childcare providers, according to the cases and conditions determined by law. In the territory assigned to them, the offices also supervise educational childcare services and compliance with regulatory standards. Coordinating offices are funded by the Ministère de la Famille, but do not have government agency status. As a result, they are not subject to the *Act respecting administrative justice* and the obligations stemming from it.

As it is now, pursuant to the Act, if recognized home childcare providers want to contest non-renewal, suspension or revocation of their recognition, they must appear before the Tribunal administratif du Québec (TAQ). However, candidates whose application for recognition as home childcare providers is turned down cannot avail themselves of this recourse. Furthermore, when coordinating offices inform applicants of their decision to refuse to grant recognition, they do not necessarily offer an explanation. It also happens that these applications are discarded following refusal.

The Québec Ombudsman considers that coordinating offices should be subject to the same obligations as government agencies. It is therefore making a recommendation that would enable it to intervene with regard to the Ministère de la Famille to ensure adequate oversight of decisions that may affect citizens' rights, thereby helping to keep cases out of the court.

THE QUÉBEC OMBUDSMAN'S RECOMMENDATION CONCERNING COORDINATING OFFICES

Whereas home childcare coordinating offices exercise the functions set out in the *Educational Childcare Act*, notably, issuance of recognition of home childcare providers;

Whereas the Act does not provide for recourse regarding coordinating offices' decisions to refuse to grant recognition, unlike other types of decisions by these offices, for which recourse to the Tribunal administratif du Québec is provided;

Whereas appeal, including recourse to an administrative tribunal, must be created by means of a law;

Whereas the coordinating offices do not systematically justify their decisions to refuse to grant recognition, even though there is a duty of procedural fairness to this effect;

Whereas the files of applicants refused recognition are often immediately destroyed further to the decision by the coordinating office;

THE QUÉBEC OMBUDSMAN RECOMMENDS THAT THE MINISTÈRE DE LA FAMILLE:

- Take steps to have the following amendments made:
  - To the *Educational Childcare Act*, to provide for recourse to the Administrative Tribunal of Québec regarding coordinating offices' decisions to refuse to grant recognition to home childcare providers;
  - To the *Educational Childcare Regulation*, to provide for the obligation for coordinating offices to justify their decisions to turn down applications for recognition;
  - To the *Educational Childcare Regulation*, to provide for the obligation for coordinating offices to keep the files of applications for recognition that have not been approved.

COMMENTS BY THE MINISTÈRE DE LA FAMILLE

The Department's response to the Québec Ombudsman's recommendation was the following:

"Concerning the amendment to the *Educational Childcare Act*, in 2015-2016 the Department will begin work to examine the recommendation. Concerning the amendment to the *Educational Childcare Regulation*, the directive concerning exercise of the function which consists of granting the recognition provided for in subparagraph 1 of the first paragraph of section 42 of the Act came into force on May 11, 2015. The amendment prescribes that when a coordinating office refuses to grant recognition to an applicant, it must transmit its decision to the applicant in writing indicating the grounds, based on legislative or regulatory requirements, for this decision. The directive also requires that the documents related to every application for recognition must be kept by the coordinating office for 12 months following the decision or for 12 months following the closure of incomplete files, as the case may be." [Translation]

THE QUÉBEC OMBUDSMAN'S RESPONSE

To ensure that the rights of applicants refused recognition are better protected, the Québec Ombudsman reiterates the importance of TAQ recourse. Access to TAQ recourse would necessarily entail the preservation of files, justification of decisions and amendment of the *Educational Childcare Regulation* accordingly, with a view to the consistency of legal and regulatory requirements for decisions to refuse to grant recognition and decisions to refuse to grant renewal of recognition.

ADJUST THE RULE TO HOME CHILDCARE PROVIDERS' FAMILY LIFE

Home childcare services are subject to a rule whereby the occupants of the house who are 18 years old and over must provide an attestation establishing that no impediment exists. The purpose of this attestation issued by a police force is to ensure that the individuals who interact with children in a childcare setting have never been charged with or convicted for an indictable or criminal offence. The police investigation required can take up to 30 days and cannot be carried out if the person being investigated is a minor. However, the attestation is required as soon as the occupant reaches 18. There are serious consequences for home childcare providers because until they receive the attestation, a young person who has just reached 18 cannot remain at home when the service is open.

Questioned about this matter by the Québec Ombudsman, the Department agreed that the situation did not make sense and immediately eased up on how it enforced the Regulation. From now on, a background check consent form will have to be signed by those concerned and sent in as quickly as possible to the coordinating office no later than 30 days after the 18th birthday of the person concerned.

The Department has also committed to getting the information out in its various publications, especially in its newsletter to coordinating offices and home childcare providers.

ANSWER THE PHONE AND RETURN CALLS

The Québec Ombudsman noted that citizens had trouble contacting the Ministère de la Famille's information office by phone. When the lines were busy, the message informing the caller to stay on the line did not come on automatically. When this happened, callers hung up, their questions unanswered, not knowing that if they had waited someone would have picked up. Furthermore, several days, or even weeks, could go by before the Department got back to citizens who left a message.

Prompted by the Québec Ombudsman's intervention, the Department took certain measures to modernize its phone system with a view to improved access. Pending the availability of the required options, more staff were added.

(. . . ***Improve access to the information office***

In the spring and summer of 2014, a citizen tried to phone the Ministère de la Famille's general information office. She waited for long periods every time, sometimes for up to 15 minutes, before being able to leave a message to which no one responded anyway.

Asked about this, the Department informed the Québec Ombudsman that:

- ***Its information service only had one phone line and one employee;***
- ***During summer holidays, the information clerks usually assigned to answer requests for information about childcare services also had to process voice messages;***
- ***Because the phone system was outdated, calls could not be transferred from one extension to another;***
- ***Its information service only does one return call for each phone message;***
- ***Between April and August 2014, the Department had not kept any trace of the voice messages to its information service.***

The Québec Ombudsman asked the Department to contact the citizen, which it did. It also made the required improvements to the processing of voice messages. . . .)

"GHOST" SPACES IN CHILDCARE: GENUINELY OPTIMIZE RESOURCES AND TAKE ATYPICAL CHILDCARE NEEDS INTO ACCOUNT

In January 2015, the Québec Ombudsman presented a brief to the Committee on Citizen Relations concerning Bill 27, the *Act respecting the optimization of educational childcare services*. The purpose of this Bill was to optimize funding and attendance of educational childcare services by curbing the phenomenon dubbed "ghost" spaces, that is, spaces that Québec subsidizes as full time even if attendance is only part time.

In the Québec Ombudsman's opinion, the Department proposal would penalize parents, especially those with non-traditional childcare needs. Furthermore, the solutions advocated would likely have had little or no positive impact on the public purse and, instead, would have forced many parents to put their children in full time care rather than according to the format they would have preferred. Instead of freeing up spaces or generating savings, the Bill would have exacerbated the lack of flexibility of the subsidized educational childcare services program and, by extension, the mismatch between many parents' needs and the slate of childcare services.

Further to Committee on Citizen Relations hearings, the Minister of Families dropped the idea of imposing penalties on parents.

A summary of the Québec Ombudsman's intervention is presented in the section entitled *Parliamentary Watch Report*, on page 112 of this Annual Report.

The Québec Ombudsman's brief is found at www.protecteurducitoyen.qc.ca.

This year, the Québec Ombudsman also appeared before the Committee on Citizen Relations concerning Bill 2, *An Act to amend the Educational Childcare Act*. A summary of the Québec Ombudsman's intervention is presented in the section entitled *Parliamentary Watch Report*, on page 111 of this Annual Report.

The Ombudsperson's speech is found at www.protecteurducitoyen.qc.ca.

Ministère de l'Immigration, de la Diversité et de l'Inclusion

The number of complaints regarding the Ministère de l'Immigration, de la Diversité et de l'Inclusion nearly doubled compared to last year. Most involve the adverse effects of changes in the way of validating document conformity in applications for the Québec selection certificate.

The Department has been faced for some time with a significant increase in the number of applications for the selection certificate in the economic immigration category. The Department's promotional activity combined with the world economic crisis of recent years and Québec's more favourable labour market explain this increase to some extent. Moreover, termination of Citizenship and Immigration Canada's programs for investors and entrepreneurs in 2014 prompted a good number of these applicants, especially Asians, to turn to the Québec Department. The Department consequently had a backlog of 83,227 files as at June 30, 2014.

As early as 2010, the Auditor General of Québec, encouraging the Department to improve its management practices, recommended that it revise its support and selection of qualified workers and implement the necessary procedures to ensure the conformity and fairness of its decisions. In order to act on these recommendations and reduce its backlog, one of things the Department did was to change the procedure for handling applications for the qualified worker selection certificate. Validating document compliance is part of the process. This step, more formal since 2013, is designed

so that only files containing all required documents which meet precise requirements as to format and attestation of conformity are kept for examination. The new way of proceeding generated complaints to the Québec Ombudsman from candidates for economic immigration.

The Québec Ombudsman was also called to act regarding other aspects of managing applications for selection certificates. For example, it intervened for the Department to correct the way it calculates deadlines for the various administrative requirements applicants must fulfil. The Department pledged to clarify this method so that applications are not rejected or refused because candidates misjudge a deadline.

Lastly, the Québec Ombudsman made sure that the Department informs candidates about its policy on returning documents submitted in support of Québec selection certificates to their owner.

TREATING CANDIDATES FOR IMMIGRATION FAIRLY AND EQUITABLY, AT EVERY STAGE

The Department must recruit and select candidates for immigration based on Québec's demographic and economic requirements and intake capacity. Consequently, access to the selection certificate is not a right. Candidates must nevertheless be treated fairly and equitably by the Québec government at all stages of application processing.

This fairness should apply in particular to validating document compliance in applications for the Québec selection certificate. This operation consists of verifying the contents of the file and, subsequently, obtaining from the candidate any missing or noncompliant document or any new document for updating the file before it is assessed. The candidate is invited to produce the required documents in the specified format and in a single mailing. The person has 90 days to do this, failing which the application will simply be rejected with no recourse. The Department collects the processing fees ($765 for a qualified worker) on receiving the file and keeps the fees, whatever its decision may be. Applied strictly since April 2014, this procedure has given rise to the following problems:

- Changes made without prior notice to the list posted on the Department's website regarding required documents or recognized authorities for certifying document compliance;
- Document format requirements that are impossible to meet because the formats are unavailable in some countries;
- The Department's refusal to consider any explanation as to why a documentary requirement does not apply to a candidate's situation.

Consequently, some apparently highly qualified people were likely to be disqualified because of a procedural detail, without their file being assessed and after having waited several years for it to be processed.

The Québec Ombudsman is aware that the Department needs to develop procedures that ensure applications are handled effectively and consistently, the end result being shorter wait times for candidates. It also feels that the Department should have fair and reasonable requirements for candidates and that it should agree to hear explanations that propose alternative ways of meeting Department requirements in a manner adapted to candidates' circumstances.

The Québec Ombudsman intervened in over fifty files this year so that such explanations are taken into consideration. One third of the thirty complaints retained following these interventions proved to be substantiated and led to the files being reopened. The Québec Ombudsman made it clear to the Department that it would be advisable to provide candidates with a review mechanism for applications that have been turned down, especially since Department decisions in this regard are sometimes made several years after the application is filed. In early 2015, the Department informed the Québec Ombudsman that it had created such a mechanism. Another welcome initiative: the Department made improvements to document requirement information to candidates in its forms, letters and on its website. The revised content should help reduce the number of applications rejected due to noncompliant documents.

(. . . *Impose realistic and consistent requirements – 1*

A university graduate applied for a Québec selection certificate for herself as the principal applicant and for her spouse, a professional working in the United States.

Three years later, her spouse received a letter from the Department asking him for certain documents to update the file. The Department gave him 90 days to produce them, failing which his application would be rejected. To speed processing, the man sent the originals of his diplomas earned in the meantime, along with proof of the couple's payroll taxes in a sealed envelope from the tax authority.

The Department turned down their application because the woman's spouse had not produced certified true copies of his diplomas and had failed to produce a copy of his resident permit for Canada and because the couple had produced copies of proof of payroll taxes rather than originals. Surprised, the man tried to explain that original diplomas have at least as much value as certified true copies. He also asserted that the authority that produced the proofs of payroll taxes had forwarded them in a sealed envelope. He also specified that he did not have a visitor's visa for Canada because he already had permanent resident status. Nothing worked. The couple's only option was to file a new application for the selection certificate by paying the fees again and with the prospect of once more having to face long delays.

Following the Québec Ombudsman's intervention, the Department finally acknowledged that it had made a mistake. It should not have included the spouse in the file because he had had permanent resident status since 2010. The Department then informed the candidate that her selection certificate application would be reviewed. The Department also reimbursed the spouse for the administration fees. . . .)

(. . . *Impose realistic and consistent requirements – 2*

The Department rejected the selection certificate applications of two candidates from an African country three years after the applications had been made. In this case, it was the ministry of education and human resources of their country of origin that certified true copies of each candidate's secondary school studies. According to the Québec Department, it is a specific British university (the country in question is a member of the Commonwealth) that issues diplomas, or the High Commission of the United Kingdom that should have signed the certification. Secondary school exams in the candidates' country are in fact the responsibility of the British university in question. However, the university has delegated diploma certifying authority to the ministry of the country of origin. Indeed, the High Commission of the United Kingdom itself sends requests for certification to that department.

At the Québec Ombudsman's request, the Department looked further into the matter, adjusted the requirement and reassessed both files. . . .)

TIME FRAME FOR SEEKING RECOURSE: TAKING SATURDAYS AND SUNDAYS INTO ACCOUNT

In the course of the investigations carried out, the Québec Ombudsman noted that problems may arise when the last day of a time limit for seeking an administrative review falls on a Saturday, Sunday or legal holiday. In official terminology, it is a "nonlegal day." The Department's website indicated that the deadline for applying for review is 90 days from the date of the letter of refusal, with no indication as to how to calculate the time limit. A candidate's right to seek recourse can be forfeited because of this lack of detail.

The Québec Ombudsman suggested that the Department standardize the criteria for calculating time limits as provided in the *Code of Civil Procedure* and make this information available to the public. It has agreed to do so. A directive has been issued whereby if the last day of a deadline falls on a nonlegal day, the Department will extend the deadline to the following business day.

RETURNING ORIGINAL DOCUMENTS TO THEIR OWNER

Some candidates for the Québec selection certificate send in originals of requested documents to meet the Department's documentary requirements. In a specific file, the Québec Ombudsman had to remind the Department to return these documents to a candidate. The Québec Ombudsman recently noted that the Department has, up to now, refused to return certified true copies as well as original documents. There is no mention on the website that originals submitted for a selection certificate application remain the property of the Department. Although these documents may be required for other administrative formalities or new immigration procedures, we know that in some countries reissuance is difficult, if not impossible.

(. . . ***Apply reasonable documentary requirements***

A European woman had been established in Québec for three years and had a steady job. To make her immigrant status official, she filed an application for a selection certificate. A year later, the Department informed her that her application had been rejected because she did not satisfy a documentary requirement regarding the format of proof of payment of taxes in Québec. She had no choice but to apply again and to wait at least 16 months before her file would be assessed. This prospect compromised her employment and her legal status in Canada.

During its intervention, the Québec Ombudsman learned that the Department had, up until then, refused to return most of the original documents candidates had submitted. Moreover, documents submitted in support of an application initially rejected could not be used to speed up processing of a new application.

In the case at hand, the Québec Ombudsman and the Department agreed that when the sole missing document was received, namely, proof of payment of Québec taxes in the required format, the new application would be fast-tracked. The candidate was therefore able to obtain her selection certificate in time to renew her work permit.

The Department also informed the Québec Ombudsman that it would draft a policy on the return of documents. Moreover, it now asks all candidates to refrain from sending original documents unless otherwise indicated. . . .)

PARLIAMENTARY WATCH

This year, the Québec Ombudsman commented on the following draft regulations:

- Draft *Regulation to amend the Regulation respecting the selection of foreign nationals*, published in the *Gazette officielle du Québec* of July 23, 2014;
- Draft *Regulation to replace the Regulation respecting immigration consultants*, published in the *Gazette officielle du Québec* of September 17, 2014;
- Draft *Regulation to amend the Regulation respecting the selection of foreign nationals*, published in the *Gazette officielle du Québec* of December 17, 2014.

The gist of these comments is found in the *Parliamentary Watch Report*, on page 114 of this Annual Report.

The Ombudsperson's letters to the Minister of Immigration, Diversity and Inclusion are found at www.protecteurducitoyen.qc.ca.

Ministère de la Sécurité publique

POLICE OFFICERS AND IDENTIFICATION: DEFINE THE RULE

The *Code of ethics of Québec police officers* specifies that police officers on duty must always carry prescribed identification in their direct relations with the public. However, there is no regulation or act that defines the nature of this identification, despite a 2001 Court of Québec judgement that concluded that a legal vacuum exists[5]. The Québec Ombudsman considers that since this judgment, the Police Ethics Commissioner has been unable to properly process a portion of the complaints it receives.

The Police Ethics Commissioner's office has in fact acknowledged that because there is no clear definition of what this identification consists of, complaint files concerning the failure of police officers to identify themselves during an intervention are closed after a preliminary examination. Furthermore, the office explained that when it receives a complaint involving another breach of conduct (for example, lack of respect or abuse of power), it closes the file if it cannot identify the police officer concerned. In recent years, many complaints have been closed for this reason, to say nothing of the fact that when police officers do not present ID, citizens who might have otherwise filed a complaint with the Police Ethics Commissioner do not even bother.

Given the sizable consequences when citizens are unable to identify a police officer, especially in terms of trust and the recourse afforded them by the police ethics system, the Québec Ombudsman recommended that the Ministère de la Sécurité publique specify the kind of identification police officers must wear in interacting with civilians pursuant to the *Code of ethics of Québec police officers*.

In November 2014, the Ministère de la Sécurité publique accepted the Québec Ombudsman's recommendation. A regulatory amendment is slated to be tabled soon.

INVESTIGATIVE PROCEDURE FOR INCIDENTS INVOLVING POLICE OFFICERS

In 2010, the Québec Ombudsman released a special report on the Québec investigative procedure for incidents involving police officers. The 2014-2015 follow-up to its recommendations is found in the *Report on systemic interventions* section, on page 109 of this Annual Report.

The Québec Ombudsman's report is found at www.protecteurducitoyen.qc.ca.

This year, the Québec Ombudsman also intervened regarding the draft *Regulation respecting the selection procedure and the training of investigators of the Bureau des enquêtes indépendantes*. A summary of the Québec Ombudsman's intervention is presented in the section entitled *Parliamentary Watch Report*, on page 114 of this Annual Report.

The Ombudsperson's letter to the Minister of Public Security is found at www.protecteurducitoyen.qc.ca.

THE ORGANIZATION OF OFF-ROAD EMERGENCY RESPONSE SERVICES

In 2013, the Québec Ombudsman released a report on the organization of off-road emergency services. The 2014-2015 follow-up to its recommendations is found in the *Report on systemic interventions* section, on page 106 of this Annual Report.

The summary of the Québec Ombudsman's report is found at www.protecteurducitoyen.qc.ca.

5 *Pépin and Bourget v. Commissaire à la déontologie policière*, C.Q. 200-02-021352-994, April 26, 2001.

The Ministère de la Sécurité publique is also responsible for correctional services within Québec's 20 correctional facilities. The Québec Ombudsman's findings on this subject are presented in the *Report by the Correctional Ombudsman of Québec* section, on page 65.

Ministère du Travail, de l'Emploi et de la Solidarité sociale

This year, the Québec Ombudsman received roughly the same number of complaints concerning Ministère du Travail, de l'Emploi et de la Solidarité sociale[6] employmemt measures as it did last year. However, there was a sharp increase in the number of complaints concerning social solidarity programs. Note that the Department investigated over 45,000 recipients of last resort financial assistance to verify their eligibility for benefits. Recipients who do not have a "severely limited capacity for employment" and had been receiving benefits for at least five years and whose eligibility had not been reassessed since 2009 were grouped together. It is possible that this operation caused concern among some recipients and contributed to the increase in requests made to the Québec Ombudsman. The majority of the complaints turned out to be unsubstantiated.

Other complaints dealt with:

- Investigations conducted by the Department to verify recipients' marital status or income;
- Recovery measures taken against recipients who were contesting a claim before the Tribunal administratif du Québec (TAQ);
- Cancellation of benefits while recipients were appealing a decision;
- Management of the Réussir program for people with a severely limited capacity for employment.

END ALL RECOVERY MEASURES PROHIBITED BY LAW

The *Individual and Family Assistance Act* generally prohibits the Department from attempting to recover an amount owed from a debtor who is contesting a claim before TAQ. Yet, more than once this year, the Québec Ombudsman noted that the monthly benefits of last resort financial assistance recipients had been reduced even though the recipient had undertaken such steps (was waiting for a hearing or a review decision by TAQ). The Department had withheld $56, $112 or $224, depending on the case, for application to the repayment of a debt. The Department even withheld support payments from people who were contesting as well. Recipients also complained about the Department's failure to comply with a TAQ decision: their benefits were cancelled even though TAQ ordered otherwise.

Recovery measures unduly taken—whether due to factual errors, lack of knowledge of the recovery rules, or computer system limitations—cause significant stress for people who are vulnerable and financially disadvantaged. In such cases, recipients have to live on benefits of less than $450 a month. If they are still waiting for TAQ to render a decision, or if the Department refuses to comply with TAQ's decision, these people find themselves in serious financial insecurity. The Québec Ombudsman deeply regrets that compliance with TAQ decisions is not monitored more rigorously.

6 The Ministère de l'Emploi et de la Solidarité sociale and the Ministère du Travail were merged into a single department in February 2015. The following comments pertain solely to the Ministère de l'Emploi et de la Solidarité sociale.

In other cases, following a decision by TAQ, recipients received a claim certificate in the wrong amount because the Department's computer system cannot issue amended certificates. The Québec Ombudsman noted the recipients' concern over having to rely on what their assistance officer tells them rather than on a certificate that is supposed to indicate the exact amount of their debt with the Department. In the event of a dispute, these recipients risk having to build a defence without written evidence of the recoverable amount.

(. . . Stop unlawful withholding of benefits – 1

Recipients of last resort financial assistance who are also creditors of support payments must inform the Department so that the payments can be taken into account in the calculation of benefits. If the support is not paid regularly or not paid at all, the Department becomes the substitute for the creditor respecting his or her rights to support and asks Revenu Québec to collect the amounts owed from the debtor. While this is happening, the Department continues to pay the full amount of last resort financial assistance. As soon as Revenu Québec has collected the support from the debtor, it remits it to the Department. This procedure is followed for as long as the creditor of support receives last resort financial assistance.

A woman complained to the Québec Ombudsman because the Department was withholding over $5,000 in support arrears owed to her. Shortly before that, the Department claimed repayment of $2,000 from the woman for undeclared support payments she supposedly received while receiving last resort financial assistance. The woman denied the claim and was contesting it before TAQ.

The Québec Ombudsman's investigation revealed that the Department, which became involved because the support payments were not made on a regular basis, deemed that it would not be appropriate to remit the collected support to the woman while she was exercising her right to contest the claim. The Department gave itself the right to withhold the amount in case the woman lost her case before TAQ.

In the Québec Ombudsman's view, the Department acted unlawfully, since Revenu Québec had already remitted the support arrears to it. The Department acknowledged its mistake and repaid the woman the amount owed her. It also reassessed nearly 40 similar cases. In addition, the Department reassured the Québec Ombudsman that it would hold discussions with Revenu Québec to rethink their joint practices to ensure that situations of this kind do not recur. . . .)

(. . . Stop unlawful withholding of benefits – 2

A woman with a severely limited capacity for employment learned that her last resort financial assistance benefits had been cancelled on the grounds that she was living with a spouse and had failed to declare the situation. The Department had issued her a claim for repayment of benefits, which the woman was contesting before TAQ. At her lawyer's request, TAQ ordered the Department to maintain her benefits for six months considering that the woman was living in a state of deprivation.

The Québec Ombudsman's investigation revealed that the assistance officer in charge of the file had forgotten to take the TAQ order into account. At the Québec Ombudsman's request, the Department promptly reinstated the woman's benefits, retroactive to the date of the order. . . .)

(. . . *Make sure recipients are properly informed*

An investigation by the Québec Ombudsman revealed that the Department's computer system automatically issues a claim certificate 30 days after TAQ renders a decision. The certificate is vital in that it enables the Department to recover an amount owed by withholding amounts from the benefits payable or using the means of compulsory execution provided for in the* Code of Civil Procedure*, such as the seizure of property. However, sometimes the debt amount indicated on the claim certificate is wrong, particularly when the assistance officer neglects to enter a claim decrease or cancellation ordered by TAQ into the computer system.

In this particular case, the Department overclaimed nearly $9,000 from a recipient. After being informed of the mistake, the assistance officer corrected the amount in the computer system, but the recipient had not received a written confirmation. In fact, there is no internal procedure for issuing a notice or an amended claim certificate.

The Québec Ombudsman asked the Department to instruct officers to send an amended claim certificate by hand where necessary, which it agreed to do. . . .)

ENSURE BETTER COMMUNICATION BETWEEN EMPLOYEES ASSIGNED TO THE RÉUSSIR PROGRAM

The Réussir program allows people with a severely limited capacity for employment to enrol in or continue a vocational or postsecondary training program recognized by the Ministère de l'Éducation, de l'Enseignement supérieur et de la Recherche. Participants study at their own pace and receive financial support. The program stems from a partnership between the Ministère du Travail, de l'Emploi et de la Solidarité sociale and the Ministère de l'Éducation, de l'Enseignement supérieur et de la Recherche. Since prospective participants have physical or mental health problems that hinder their chances of entering the job market, the program aims to help them become productive members of society by allowing them to acquire skills and, for some, find employment. The Réussir program allows full-time students to receive last resort financial assistance as well as student financial assistance under the Loans and Bursaries Program. Management of the Réussir program is far from easy because it requires close cooperation between the two departments concerned as well as the involvement of both financial assistance officers and employment assistance officers.

During its investigation, the Québec Ombudsman noted that, in the case of five participants, the lack of communication between the two categories of officers had a direct impact not only on the participants' motivation to continue their schooling, but also on the payment of their financial assistance. They saw their last resort financial assistance cancelled on the grounds that they were enrolled in full-time studies, without anyone even contacting Réussir program officers to verify their status.

(. . . *Work together to make it easier, rather than harder, for people to go back to school*

A young man with Asperger syndrome depended on last resort financial assistance to support himself. Despite a few failed attempts, he tried to go back to school to study computer science. To qualify for the Réussir program, he had to, among other requirements, enrol in a CEGEP, fill out an application for financial assistance (Loans and Bursaries Program) and give his employment assistance officer copies of those documents.

The situation was far from easy for the young man, as he had to begin his new term with neither a loan nor a bursary. In fact, two months after submitting his application, the Ministère de l'Éducation, de l'Enseignement supérieur et de la Recherche still had not decided if he was eligible for student financial assistance. Meanwhile, the social assistance officer noted that the young man was a student and, consequently, cancelled his last resort financial assistance without consulting the employment assistance officer. As a result, the young man found himself going to school with no financial resources. Not only was he having a hard time asserting his rights because of the complicated process and his condition, but the Ministère du Travail, de l'Emploi et de la Solidarité sociale deemed that it could not reinstate his financial assistance benefits because he was a student.

Following the Québec Ombudsman's intervention, his benefits were promptly reinstated and the young man was immediately accepted into the Réussir program. . . .)

REGULATORY MONITORING

The Québec Ombudsman submitted comments to the Minister of Labour, Employment and Social Solidarity on the draft *Regulation to amend the Individual and Family Assistance Regulation*, published in the *Gazette officielle du Québec* on January 28, 2015. The gist of these comments is found in the *Parliamentary Watch Report*, on page 116 of this Annual Report.

The Ombudsperson's letter to the Minister of Labour, Employment and Social Solidarity is found at www.protecteurducitoyen.qc.ca.

Office de la protection du consommateur

DIFFERENTIATE BETWEEN A MERCHANT AND A NON-PROFIT ORGANIZATION THAT IS A MUNICIPAL PARTNER

Pursuant to the *Consumer Protection Act* (the Act), a merchant may offer or provide a service the object of which is to obtain instruction, training or assistance for the purpose of developing, maintaining or improving the health, appearance, skills, qualities, knowledge or the intellectual, physical or moral faculties of a person. However, the Act provides for exceptions. For example, a municipality that offers or provides such services is not considered a merchant. If the entity is considered a merchant, consumers can invoke the Act, notably in cases involving the resiliation of a contract or refunds for unprovided services.

The Québec Ombudsman has noted that instead of managing certain sports activities directly, municipalities delegate this responsibility to organizations, usually non-profits (NPOs), while backing them financially. Cases in point are hockey and soccer associations and gymnastic clubs. Often they have greater expertise than municipal services do, and can provide the services at lower cost to the city and citizens alike. When these organizations are recognized as partners of the city, they offer activities and services based on the city's priorities. Their action is crucial for responding to public needs.

In examining a complaint, it was found that the Office de la protection du consommateur (Office) equated these organizations with merchants within the meaning of the Act. If a parent requested to be reimbursed for costs before the season was over, the Office considered that the organization must refund the parent for the cost of the unprovided services for the time remaining, regardless of what the organization's refund policy says.

The Québec Ombudsman is concerned about the effects of such an interpretation. It is important to know that these organizations rely heavily on local volunteers for the vitality—or even survival—of their activities, especially for young people. The Québec Ombudsman believes that strict application of the Act may jeopardize the budgets of the organizations concerned, put the activities offered by cities at risk and, ultimately, penalize users. Its viewpoint is that the exception that the Act recognizes for municipalities should be accorded to these organizations, as if the cities provided the sports activities themselves.

The Québec Ombudsman recommended that the Office de la protection du consommateur review its interpretation of section 188 of the Act. Concerned about this situation, the Office promptly set about conducting an analysis that would enable it to take a position regarding this issue. It pledged to report back to the Québec Ombudsman about the outcome of the analysis as quickly as possible.

(. . . ***Exempt an NPO sports club from merchant obligations***

A father enrolled his son with his city's soccer club. In July, because of his vacation time, he took his son out of the program and asked the club to reimburse him for the residual part of the registration fee. In reply, the head of the club informed the father that the refund policy was included with the registration document. The policy stipulates that as of a given date, refunds will not be issued unless medical proof is presented. The father was therefore told that he would not be reimbursed. He complained to the Office, which advised the head of the club that he would have to issue a refund because the club was considered a merchant. The Office explained that the parent could legally take the club to court and that it could also be subject to penal prosecution by the Office.

The head of the club, judging that such an application of the Act creates a dangerous precedent for the future of his organization's activities and is not in the public interest, approached the Québec Ombudsman.

It was the opinion of the Québec Ombudsman that the exception provided for cities in the* Consumer Protection Act *must apply to the soccer club, and it conveyed this to the Office. The agency advised it that it would analyze the situation to determine whether the desired exemption could be applied to the sports club. . . .)

Société de l'assurance automobile du Québec (SAAQ)

The Highway Safety Code

This year, the complaints received regarding highway safety issues dealt primarily with:

- Suspension of a driver's licence, mainly for medical reasons or further to a negative assessment by the Association des centres de réadaptation en dépendance du Québec;
- Newcomers' difficulty in obtaining a Québec driver's licence;
- Problems registering a road vehicle, including wrongful seizure or impoundment of vehicles, incorrect registration fees and incorrect change-of-address information.

The Québec Ombudsman also had to intervene to get the Société de l'assurance automobile du Québec (SAAQ) to rectify certain practices that had an adverse effect on drivers, especially when the agency failed to notify drivers in a timely manner of a new condition attached to their driver's licence. In addition, the Québec Ombudsman called on SAAQ to take the initiative in resolving issues that cause problems for drivers and can be easily resolved, and to do so before the Québec Ombudsman has to intervene. Furthermore, the Québec Ombudsman succeeded in getting SAAQ to improve its telephone services for the hearing impaired.

Complaints also revealed that the practice of keeping potentially confusing notes in a citizen's driving record could be prejudicial to them, as evidenced by the following case study.

(. . . *Automatically update driving records following an acquittal*

SAAQ suspended a man's driver's licence after he was arrested for an offence of which he was ultimately acquitted. Shortly thereafter, SAAQ informed the man that if he wanted to obtain a copy of the "Information Concerning the Driver's Record" document with no mention of the suspension, he would have to make a request to the branch responsible for the administration of penalties. However, if any person other than the driver (e.g. employer or insurer) were to request a copy of the driving record, SAAQ would send the person the public record mentioning the suspension. The man complained to the Québec Ombudsman that keeping a note of the suspension in his driving record could make it hard for him to get an insurance policy.

Further to the Québec Ombudsman's intervention, SAAQ modified the man's driving record and the agency's practices in general. Now when a person is acquitted of an offence, SAAQ removes the suspension from the person's public driving record, leaving it only in SAAQ's internal records. . . .)

DO NOT PUT DRIVERS IN VIOLATION WITHOUT THEIR KNOWLEDGE

When a health professional sends SAAQ a declaration of incapacity because he or she believes that a person is no longer fit to drive, the agency may immediately place any restrictions it deems necessary on the person's driver's licence. In cases of emergency, it informs the person immediately by phone. However, in non-urgent cases the restriction is immediately entered in the person's driving record and the person is informed by mail. The result: the person can drive for several days without knowing about the licence restriction and, consequently, cannot take the necessary steps to comply with the restriction.

While the Québec Ombudsman wholly supports any and all road safety measures, in these particular cases SAAQ is violating a fundamental principle of the *Act respecting administrative justice*, that is, the obligation to inform a citizen beforehand of an intention to make an unfavourable decision concerning a permit or licence; otherwise, it places the citizen at risk of unknowingly breaking the law.

Following the Québec Ombudsman's intervention, SAAQ undertook to review its practices. The Québec Ombudsman will see that it does.

(. . . Notify drivers in a timely manner of a restriction on their driver's licence

A neurologist informed SAAQ that one of his patients had a cognitive deficit and needed to be assessed. SAAQ sent the man the required medical forms to fill out, along with a letter informing him that a condition ("S") had been attached to his driver's licence and he could drive only if accompanied by an accredited assessor or an occupational therapist. A few days later, the man was stopped by a police officer, who noticed that he was in violation of this condition. The officer gave him a ticket and impounded his vehicle. Later the same day, the man received the letter from SAAQ.

The man filed a complaint with the Québec Ombudsman, which concluded that the man should not have to pay the towing charges or the fine imposed for violation of a restriction he did not even yet know about. Following the Québec Ombudsman's intervention, SAAQ reimbursed the man and revised its guidelines. . . .)

EFFECTIVELY ADDRESS SIMPLE PROBLEMS

The Québec Ombudsman receives complaints from people who have been unable to rectify a situation with SAAQ even though a solution seems easy. Sometimes, the Québec Ombudsman has to take the matter up with the agency's top management for it to be resolved. SAAQ's response to both complainants and the Québec Ombudsman is that it has committed no error. Actually, the issue is not SAAQ's responsibility in the matter, but rather the reasonableness of its decisions.

SAAQ's policy regarding complaints and comments states that "a complaint is also substantiated where the Société determines that, based on the available information, the customer can be given the benefit of the doubt and the complaint can be resolved through conciliation, even if it cannot be concluded that a previously mentioned error or failure occurred. In this case, the matter is resolved with no admission of wrongdoing by SAAQ." [Translation]

As at March 31, 2015, the Québec Ombudsman had handled six complaints from motorists who were unable to resolve their problems with SAAQ. The complaints dealt with the following:

- A licence renewal and registration payment that a SAAQ employee had applied to the wrong person's file;
- Incorrect online transactions related to storage or licensing a stored vehicle, which SAAQ refused to correct even though the vehicle owner reported the mistake promptly;
- A wrong odometer reading by a SAAQ officer;
- A dealer error in determining the purchase cost of a vehicle;
- A dealer error in entering the weight of a recreational vehicle on the registration certificate.

Considering that SAAQ could easily have resolved the problems brought to its attention, the Québec Ombudsman made the agency aware of the importance of identifying and disseminating best practices for effectively handling this type of request itself.

(. . . Handle simple clerical errors promptly and with an open mind

In October 2001, a woman registered a motorized recreational vehicle and paid the fees charged by the SAAQ employee. After stopping at a weigh station, she noticed an error in the vehicle weight indicated on the registration certificate: it was marked 9,600 kg instead of 4,600 kg. SAAQ made the necessary correction in the woman's file, but refused to reimburse the $150 she had been overcharged. The woman turned to the Québec Ombudsman.

SAAQ stood its ground, arguing that it had not made a mistake, even after it was reminded of a similar case the year before in which the Québec Ombudsman decided in favour of the complainant.

SAAQ finally agreed to reimburse the woman after the Québec Ombudsman submitted the matter to a chief executive officer. . . .)

GIVE THE HEARING IMPAIRED GENUINE ACCESS TO TELEPHONE SERVICES

SAAQ installed a teletypewriter (TTY) service for people who have a hearing impairment. When these people call SAAQ, they get a message asking them to type in their contact information and telling them that someone will call them back shortly. A woman complained to SAAQ that she was never able to get through. When SAAQ failed to remedy the problem, the woman turned to the Québec Ombudsman.

Following the Québec Ombudsman's intervention, SAAQ monitored its TTY service for two months and discovered that over 1,800 calls had been blocked and that nearly 850 others had not been answered. The problem was caused by the TTY's inherent limitations—a busy signal for more than a minute, which blocks all other calls during that time—calls to the TTY number by people who are not hearing impaired, and employees' lack of knowledge of how the system works. To rectify the situation, SAAQ reviewed its operating procedure and employee training and improved customer information so that calls from people who do not need TTY services are redirected to SAAQ's general phone number. It will also install a second teletypewriter.

Compensation for road accident victims

VEHICLE ADAPTATION: BETTER ALIGN THE GUIDELINES WITH THE REALITIES OF ACCIDENT VICTIMS

Under the *Automobile Insurance Act*, SAAQ may take any necessary measures to contribute to the rehabilitation of a victim in order to lessen or cure any disability resulting from bodily injury and to facilitate his or her return to a normal life or reintegration into society or the labour market.

Injuries sustained in an automobile accident that result in physical impairment can diminish a person's access to a vehicle or ability to drive. SAAQ's goal is to make it safe for accident victims to use a vehicle, whether as passengers or drivers, by reimbursing them for the cost of necessary vehicle adaptations.

SAAQ exercised its discretionary power to adopt vehicle adaptation guidelines, which provide that road accident victims who owned a vehicle at the time of the accident can be reimbursed for the optional equipment needed to compensate for their disabilities, including an automatic transmission. However, it is an entirely different situation for accident victims who did not own a vehicle at the time of the road accident, but whose resulting disabilities diminish their ability to access or drive a vehicle. SAAQ does not reimburse them for the cost of optional equipment on a vehicle purchased after their accident.

Considering the rehabilitation objective of the *Automobile Insurance Act* and the jurisprudence of the Tribunal administratif du Québec, the Québec Ombudsman believes that the distinction SAAQ makes between these two categories of road accident victims is unjust. However, it feels that the obligation for accident victims to consider their needs and disabilities and the necessary optional equipment when purchasing a vehicle is reasonable; otherwise, accident victims who purchase a new vehicle that does not have any of the equipment required to compensate for their disability could generate additional costs for SAAQ because the person did not buy a suitable vehicle.

(. . . ***Unjustified refusal to reimburse the costs of optional equipment on a motor vehicle***

A woman suffered significant sequelae associated with a leg injury sustained in a motor vehicle accident. When SAAQ refused to reimburse her for the cost of optional equipment she needed to be able to drive, she turned to the Québec Ombudsman. She explained that because of the sequelae from the accident, SAAQ had attached a condition ("J") to her driver's licence requiring her to drive a vehicle with an automatic transmission. To meet that new condition, the woman bought a new car and requested a reimbursement from SAAQ for the automatic transmission. The agency refused the request on the grounds that it was not required to reimburse a person for optional equipment on a vehicle purchased after a motor vehicle accident.

The woman asked the Québec Ombudsman to intervene, claiming that she was entitled to a reimbursement because the choice of an automatic transmission was directly related to her functional limitations caused by the accident.

The Québec Ombudsman sided with the woman, concluding that SAAQ should not have focused on when the vehicle was purchased, but rather on the disabilities resulting from the accident. SAAQ should have had to reimburse the woman for the cost of the optional equipment.

At the Québec Ombudsman's request, SAAQ agreed to reimburse the woman for the cost of the automatic transmission on her vehicle. It also pledged to amend its vehicle adaptation guidelines accordingly. . . .)

The Québec Ombudsman read SAAQ's revised vehicle adaptation guidelines in March 2015 and noted that, subject to certain conditions, the agency now reimburses the cost of an automatic transmission on a new vehicle purchased because of functional limitations caused by a motor vehicle accident. However, save for some exceptions, the problem remained the same for other optional equipment normally needed. The Québec Ombudsman reiterated its recommendation.

At the time this Annual Report was being written, SAAQ promised to contact the Québec Ombudsman very soon to discuss the matter.

REPORT BY THE CORRECTIONAL OMBUDSMAN OF QUÉBEC

Ministère de la Sécurité publique – Direction générale des services correctionnels

As Québec's correctional ombudsman, the Québec Ombudsman conducts investigations further to complaints it receives concerning Québec's correctional services, which are under the purview of the Ministère de la Sécurité publique, or concerning the Commission québécoise des libérations conditionnelles. It can therefore act on its own initiative. In intervening, the Québec Ombudsman ensures that detainees' basic rights are upheld in accordance with applicable legislation and standards.

Correctional services are responsible for the detention of offenders sentenced to fewer than two years and those detained in custody during trial further to a court order. Québec's correctional infrastructure consists of 20 correctional facilities and 40 courthouse cell blocks. The federal government is entrusted with detainees sentenced to serve two years or more.

This year, nearly 44,000 citizens were admitted to Québec correctional facilities, 54% further to a court sentence (detainees) and 46% pending trial or sentencing (defendants). In Québec, detainees spend an average of 75 days in a correctional facility, compared to 26 days for defendants.

In 2014-2015, complaints concerning correctional services were up nearly 17% from last year's figures, bringing the annual total to a ten-year record high.

Governance that needs improvement

Civil protection is at the heart of the mission of correctional services. Following the June 2014 escapes from a Québec correctional facility, the Department had no choice but to establish or tighten various practices, as well as change detainee classification rules, the latter having been the subject of repeated interventions by the Québec Ombudsman over the years to point out errors and needed improvements.

Similarly, cases of detainees being freed by mistake, despite the existence of a provincial instruction, are reminders of the importance of not only having clear guidelines, but also of effective ways of monitoring the use of means of control and proper management thereof.

In this regard, correctional services must do everything it can to make the best possible and enhanced use of the resources at its disposal, while ensuring respect of detainees' basic rights.

Furthermore, the Québec Ombudsman reiterates that problems related to overcrowding and mechanisms for conditional release remain and require solutions as quickly as possible.

Prison population increases, more prevalent in the past five years, create daunting—but not insurmountable—difficulties within Québec's correctional system. The Québec Ombudsman has noted that the average annual occupancy rate based on correctional facilities' operational capacity was 118% in 2014-2015, a slight decrease explained in part by the 2014 opening of the Leclerc de Laval facility, a building which will be leased from the federal government for the next ten years. The administrators foresee reaching maximum capacity in late 2016. While the purpose here was to alleviate prison overcrowding in the short term, the situation remains worrisome and calls for correctional services to be vigilant.

Prison overcrowding inevitably means inter-institutional transfers to cope with space shortages in the various correctional facilities. In 2014-2015, correctional services carried out approximately 31,500 transfers. Since 2006, the Québec Ombudsman has frequently addressed the rise in transfers in its Annual Reports, particularly as it relates to medical follow-up and social reintegration. The Department has worked on this issue, but so far, no concrete solution has emerged, to the dismay of the Québec Ombudsman. Again this year, it received a substantial number of complaints about the adverse effects of these transfers. In the Québec Ombudsman's opinion, it is inconceivable that these kinds of problems persist despite its longstanding objections and the fact that there are possible solutions. Furthermore, other than medication, medical follow-up and social reintegration, other priorities are not sufficiently taken into account when transfers occur, for example:

- Delays in detainee assessment and management, decisive factors in conditional release;
- Loss of personal belongings;
- The huge costs that these multiple transfers entail.

Better transfer management might even spell savings.

Respect detainees' rights

In ordering a person's incarceration, a judge limits that person's freedom without infringing on the other rights guaranteed by human rights charters. While, as a rule, these rights are upheld in Québec's correctional facilities, the Québec Ombudsman had to intervene again this year when detainees' right to dignity was violated. Here are three examples of the interventions it carried out in this regard:

- During a period of overcrowding, detainees were housed in the common area of a correctional facility and did not have access to their personal belongings for several days. All they had to wear was what they had on when they arrived. They could have the clothing laundered once or twice a week but, in the meantime, they had to make do with a towel while their clothes were being washed. For the sake of hygiene and respect for dignity, the Québec Ombudsman asked that, in circumstances of this kind, the facility see that the detainees are provided undergarments;
- Detainees kept in holding cells pending admission to a correctional facility had to sleep under lights without dimmers. The Québec Ombudsman exhorted the director of the facility to have the required work done;
- Facilities are responsible for taking detainees to court hearings. Because of the vastness of the territory where a correctional facility was located, trips to the courthouse were made in one uninterrupted overnight stretch of several hours. Again for the sake of basic respect for detainees, the Québec Ombudsman asked for a mid-trip stop so that they could use the washroom.

USE MEANS OF CONTROL WITH DISCERNMENT

In the past year, the Québec Ombudsman noted that the use of level S5 restraints—handcuffs and legcuffs—was abusive at times. For example, these restraints were not removed while detainees showered. In another case, a detainee had to keep these same fetters on while he went through documents in preparation for his trial. Furthermore, review of restraint levels sometimes occurs several months later than it should, unduly extending the use of means of control.

In its 2013-2014 Annual Report, the Québec Ombudsman reminded the Department that the instruction concerning standards governing the use of restraints had not been reviewed since 1996 and that it needed updating. The Department pledged to bring a new instruction into effect in 2015-2016.

In the past year, the Québec Ombudsman made other comments aimed at establishing guidelines on restraints, such as:

- Periodic checks of restraint material to ensure a proper fit;
- An addition to the instruction so that detainees assigned a security code that exceeds S1 are systematically reassessed;
- Another addition to the instruction to include a review mechanism for detainees to contest their security level.

(. . . *See to it that the use of restraints complies with standards*

When being transported to another facility, a shackled inmate had to carry his personal belongings. After a few trips back and forth with his bags, he pointed out that the shackles were leaving marks on his ankles and wrists.

During the Québec Ombudsman's initial intervention, the director said that this was standard practice. After inquiring at other correctional facilities, the Québec Ombudsman concluded that, in fact, the opposite was true; this was not done elsewhere. It therefore advised the facility of this and it reviewed its procedure. . . .)

RESPECT ELIGIBLE DEFENDANTS' RIGHT TO RELEASE

Jailed defendants required to pay bail or a penalty may be released if they do so and agree to certain conditions. This year, the Québec Ombudsman saw that, through want of understanding or cooperation, correctional service officers had contributed to delaying defendants' release. The Québec Ombudsman had to ask the authorities to allow these citizens to contact their financial institution or family to make certain arrangements. Further to the intervention, these people were able to pay the required amounts and were released.

Given the issues of the respect and rights of citizens and of prison overcrowding, these situations should receive priority treatment.

(. . . *Do not impede release on bail*

A judge ordered a citizen to pay $1,000 bail in order to be released from custody. The citizen had to contact family members for the money, but he could not reach them by phone from the wing where he was jailed. He asked if he could use another phone, but the correctional officers refused.

The very day of the intervention by the Québec Ombudsman, he was allowed to make the required calls, which enabled him to pay bail and be released. . . .)

DO NOT IMPEDE THE RIGHT TO FAMILY VISITS

Some correctional facilities have staff shortages due especially to vacation time or employees being assigned to duties outside the prison (transportation to other facilities or to a courthouse or guarding detainees in custody in hospital centres). To avoid having to spread staff too thin, some facilities close the visitors' lounge evenings or weekends, thereby depriving detainees of visits from family and friends who have to work or study during the day. The Québec Ombudsman considers that such situations limit the detainees' right to support from their loved ones, which may have a direct effect on detainees' social reintegration.

GRANT PHONE ACCESS WHEN THE NEED IS LEGITIMATE

In 2013, a pilot project was launched in Saint-Jérôme correctional facility to modernize the phone system used by detainees and to install a prepaid call system. Despite the pilot project's difficulties and technical constraints, correctional services put the system in across the network in October 2014. However, the following problems were noted:

- No phone access to certain government departments or agencies;
- Charges for calls to organizations even if they had toll-free numbers (1-800 lines);
- Unrefundable charges to detainees for unjustified call interruptions due to technical reasons;
- High billing for detainees' calls to family or attorneys.

One of the main reasons for the changes to the phone system was to prevent detainees from contacting their victims. Obviously, the Québec Ombudsman is not disputing this very important objective. However, it feels that the adopted solution should not make it difficult for detainees to contact a government department or agency or their attorney free of charge for legitimate purposes and by necessity.

MANAGE PERSONAL BELONGINGS RESPONSIBLY

Repeated transfers, a by-product of prison overcrowding, are frequently the cause of loss of or damage to personal belongings. This year again, the Québec Ombudsman received over 100 complaints in this regard. To be compensated, detainees must file a claim. It is not uncommon for these claims to be processed late or refused because the claimant was not able to prove that the Department was at fault. Bear in mind that it is difficult to establish this proof. In fact, correctional facilities do not have any effective means for cataloguing citizens' belongings when they are incarcerated, even though the facilities are the legal custodians of this property. The Québec Ombudsman considers that the Department must assume this responsibility and has an obligation to review its management of personal effects.

(. . . *Do a complete inventory of personal belongings*

A man was transferred from a correctional facility to a hospital centre for assessment. When the assessment had been done, he was taken to another facility, where he was given back his belongings. He saw that his eyeglasses were broken and he filed a claim. The facility refused the claim because the detainee was not able to show that his glasses had remained under the responsibility of the first correctional facility. Since neither facility had a detailed register of detainees' belongings, it was impossible to demonstrate that either facility had had the glasses in its possession. . . .)

Use reasonable, safe and humane means of control

BETTER DEFINE THE TERMS AND CONDITIONS FOR APPLYING ISOLATION

According to the applicable standards, isolation of a suicidal inmate is a last resort to be used "only in cases of extreme crisis or imminent risk of suicide, limited to the duration of the episode, and with the purpose of protecting the person against himself or herself."[7] [Translation] Isolation entails highly restrictive detention conditions, such as cell confinement 23 hours out of 24, lack of access to personal effects, imposition of antisuicide garments and withdrawal of the daily one-hour prison yard walk.

The normative framework does not specify the frequency of reassessment of the condition of detainees in isolation. The Québec Ombudsman sometimes saw that several days could go by without mental health specialists or the suicide intervention team reassessing the condition of suicidal detainees in isolation.

According to the Québec Ombudsman, a person isolated for suicidal reasons must be seen at least once a day to determine their condition and possibly lift isolation. Consequently, the provincial instruction should be modified to include this.

(. . . *Assign the required staff to suicide watch*

A citizen was placed in isolation after expressing suicidal thoughts. He was put in a straight jacket and denied yard time, if only to get a breath of fresh air, for three days. According to the citizen's statements, certain employees had told him that none of them had time to reassess his situation. For its part, the facility authority indicated that it did not have the qualified staff to review the case soon.

Given the obviously harmful psychological effects of isolation, the Québec Ombudsman cannot but deplore the facility's attitude.

At the Québec Ombudsman's request, the director promised that a member of the suicide intervention team would be there during every shift. . . .)

ACT REGARDING THE EXTENT OF MENTAL DISORDERS IN CORRECTIONAL FACILITIES

Detainees with mental disorders do not receive the care that their condition requires. The Québec Ombudsman has repeatedly criticized major deficiencies in this regard, notably in its 2011 report entitled *Toward services that are better adjusted to detainees with mental disorders*.

Unfortunately, more than four years after tabling of the report, the problems identified remain unresolved. As the Québec Ombudsman sees it, the status quo is unacceptable. It therefore reiterates that transfer of responsibilities to the health and social services network cannot wait. It bears remembering that in 1989, the Ministère de la Sécurité publique and the Ministère de la Santé et des Services sociaux signed a memorandum of understanding to that effect.

7 Provincial instruction on suicide prevention (2 1 I 06) of the Ministère de la Sécurité publique.

Currently, the mental health services offered in correctional facilities are minimal. To make matters worse, they are not adapted to the condition and needs of individuals. The Québec Ombudsman has noted that the following kinds of cases happen too often:

- Detainees' medical information at admission is grossly insufficient;
- Within the facilities themselves, very often there is no access to a psychologist or other professional with mental health expertise, and on-site psychiatric consultation services fare no better, even though needs are glaring;
- There are no medical criteria for limiting the transfer of these vulnerable inmates nor for avoiding the risk of interrupted treatment;
- Given the disparities in the pharmacological management of detainees from one facility to another, when inmates are transferred to another facility, their treatment may change;
- Suicidal individuals are placed in isolation for extended periods due to lack of specialized resources capable of reassessing their situation;
- People ordered to undergo a psychiatric assessment (criminal responsibility, fitness to stand trial) are unduly kept in detention due to shortage of space or available resources in hospital centres.

In light of unacceptable situations that the Québec Ombudsman has continued to see involving the violation of rights, and knowing that failings in this regard primarily affect vulnerable detainees, the Québec Ombudsman is highly critical of the lack of advances.

The 2014-2015 follow-up to the Québec Ombudsman's recommendations regarding the report entitled *Toward services that are better adjusted to detainees with mental disorders* is found in the *Report on systemic interventions* section, on page 108 of this Annual Report.

The Québec Ombudsman's report is found at www.protecteurducitoyen.qc.ca.

Ensure better access to conditional release (parole)

PRESENTATION OF APPLICATIONS FOR TEMPORARY ABSENCE: ELIMINATE OBSTACLES

Detainees serving a sentence of six months or more in a Québec correctional facility may apply for temporary absence in preparation for conditional release. The application may be submitted a few days before one sixth of their sentence has been served.[8] After applying, they are entitled to a hearing by the Commission québécoise des libérations conditionnelles, Québec's parole board, so that it can examine the application and grant or deny permission. However, the Québec Ombudsman is surprised to see that despite chronic prison overcrowding, in recent years only a limited percentage of detainees apply one sixth of the way through their sentence. In fact, between 2009 and 2014, only around 15% of eligible detainees applied to the Commission.

During the investigations it conducted, the Québec Ombudsman did indeed notice that some detainees never manage to submit an application for temporary absence in preparation for conditional release to the Commission. First of all, the hearing application forms are not available in the sectors that detainees have daily access to. Detainees wishing to apply must send a memo to correctional authorities requesting a copy. Sometimes, however, the process is fruitless: memos go missing or the case officer is away and no one takes over the file. The application therefore does not go any further. In other cases, the applicant's correctional intervention plan has not been prepared beforehand. Consequently, the facility does not submit the application to the Commission board because the hearing will undoubtedly be postponed due to the lack of an

8 Section 135 of the *Act respecting the Québec correctional system* addresses eligibility for temporary absence in preparation for conditional release. Section 4 of the *Regulation respecting conditional release* specifies that "an inmate must make an application between the 10th day preceding the eligibility date for temporary absence in preparation for conditional release and the 21st day preceding the eligibility date for conditional release."

assessment. Lastly, if detainees are transferred from one facility to another, they could have to wait to return to the first facility in order for the application to be sent to the Commission. Whatever the reason, the result is that detainees are deprived of their right to be heard by the Commission.

(. . . *Enable exercise of the right to be heard by the Commission*

In mid-April, a detainee contacted the Québec Ombudsman. He had been eligible for temporary absence in preparation for his conditional release for two weeks. He said he had sent two memos informing prison authorities that he wanted a hearing with the Commission.

At the time he applied, because of prison overcrowding, the citizen was no longer incarcerated in his facility of origin and no correctional intervention plan had been drafted for him. Correctional services are legally obliged to assess a detainee no longer than seven days before they have served one sixth of their sentence. This obligation had been breached. The facility where the citizen was placed affirmed that it had never received his application and indicated that he would have to be transferred to the first facility again in order for an application to be transmitted to the Commission.

Following the intervention by the Québec Ombudsman, in the first week of May, the man was transferred to the original facility and his correctional intervention plan was drafted. However, because of the delays, he was past the deadline for a Commission hearing for permission for a temporary absence in preparation for conditional release.

It was only in June that the citizen was given a hearing. The sitting was postponed because correctional services had not provided a complete file as required under the* Act respecting the Québec correctional system*. The hearing was held at the end of the month and the Commission granted the citizen conditional release. The citizen was able to go back to his job while living in a transition house. . . .)

CONTRIBUTE TO INCREASING THE NUMBER OF DETAINEES WHO AVAIL THEMSELVES OF THEIR RIGHT TO CONDITIONAL RELEASE

In its 2013-2014 Annual Report, the Québec Ombudsman noted that in recent years, more and more detainees had chosen to waive applying for examination of their record with a view to parole. In 2013-2014, Ministère de la Sécurité publique statistics indicated that the waiver rate was nearly 48% among eligible detainees. In 2014-2015, the rate was 46.5%.

Several factors may account for this trend, including long delays for detainee assessment and management by correctional services that require drafting of a release plan likely to fulfil the requirements of the Act.[9]

In its last Annual Report, the Québec Ombudsman recommended that the Commission and the Department:

- Document without delay the reasons for the high rate of waivers;
- Establish, by March 31, 2015, a mechanism or mechanisms aimed at decreasing the number of waivers.

9 The *Act respecting the Québec correctional system* lists the criteria that the Commission must take into account when studying an offender's case (section 155).

Further to the intervention by the Québec Ombudsman, the Commission undertook various measures, including the following:

- Production of an information video for detainees, clearly explaining what happens at a hearing;
- In cases of conditional release, invitations to appear transmitted at least 28 days before the date of the hearing;
- Transmission of the prison record to the Commission before the hearing;
- Suspension of the waiver form which would mean that the person must indicate in writing, to the Commission, his or her desire to waive applying for examination of their record with a view to parole;
- Several hearings conducted by means of video-conferencing.

So far, some of these measures have only been partly implemented and their deployment will continue in the coming months. Furthermore, introduced in the fall of 2014, these measures are difficult to evaluate right now. However, the Québec Ombudsman notes the Commission's efforts to find solutions.

As at March 31, 2015, the Department had yet to produce the report on its actions to reduce the number of waivers and to better assure detainees' return to society. The Québec Ombudsman is therefore awaiting follow up.

The process for disciplining detainees: abide by the principles of fairness

Every detainee must obey a series of rules designed to foster safety and orderliness within the correctional facility. Detainees who fail to comply are subject to a disciplinary process.

Starting from the principle that the purpose of the process is to enable detainees to be aware of the consequences of their actions, the discipline committee must, when determining the sanction to be imposed, emphasize the individual's assumption of responsibility for the offence. We know that the discipline committee's decision can have major effects on the offender's living conditions and may result in a sanction that violates the detainee's basic rights. Lastly, it is important to bear in mind that a fair sanction proportionate to the offending behaviour may have positive outcomes in terms of detainees' social reintegration.

In its report entitled *Guarantee the procedural fairness of the disciplinary process for detainees*, sent to the Department in March 2015, further to analyzing comparable normative frameworks, the Québec Ombudsman saw that Québec's disciplinary process is inconsistent in terms of rules as well as their enforcement.

Every detainee who receives a disciplinary report has a right to be heard and present his or her arguments. Even though correctional facility staff do not deliberately set out to breach this right, in practice, certain elements converge to considerably dilute it. Cases in point are lack of access to documents or employees' ignorance of the rules that govern the disciplinary process. Some of the things the Québec Ombudsman noted are:

- Arbitrary reporting;
- Lack of details as to maximum deadlines;
- Failure to summon the person;
- Restrictive interpretation of the right to a witness or to legal counsel.

Every detainee must be treated impartially and without discrimination. The Québec Ombudsman has seen that as it now stands, the composition of the discipline committee provided for in the normative framework does not guarantee impartiality or the appearance of impartiality. The fact that sometimes correctional officers who sit on the discipline committee are in frequent if not in daily contact with detainees breaches detainees' right to neutral and objective treatment. In federal correctional facilities and in certain correctional facilities in other Canadian provinces, people who have regular contact with detainees are not allowed to be on the discipline committee. This provides a better guarantee of impartiality and enhances the committee's credibility and the quality of the committee's decisions.

In its report, the Québec Ombudsman made 15 recommendations to the Department aimed at improving the disciplinary process.

The summary of the Québec Ombudsman's report is found at www.protecteurducitoyen.qc.ca.

Vigilance concerning sanitary conditions in correctional facilities

This year, the Québec Ombudsman visited the Rivière-des-Prairies, Amos, Hull, Laval, Montréal, Québec, Sherbrooke, Sorel, Saint-Jérôme and Trois-Rivières correctional facilities as well as Maison Tanguay.

In several of these facilities, it noted deficient sanitary conditions. The cleanliness of isolation or solitary confinement cells, intended for sick or suicidal inmates or inmates displaying disorganization, was inadequate and often the cells were in a sorry state of disrepair. Detainees are sometimes assigned to cleaning chores, thereby exposing themselves to bodily fluids and to the ensuing health risks. Furthermore, some facilities do not have logs indicating when the cleaning was done, clearly showing that this responsibility is not fulfilled as it should be.

The Québec Ombudsman asked the facilities concerned to immediately tighten their measures regarding hygiene.

THE MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX AND ITS SERVICE NETWORK

This section features the Québec Ombudsman's main findings with regard to complaints concerning the Ministère de la Santé et des Services sociaux and its service network.

Pursuant to the *Charter of Human Rights and Freedoms*, the *Civil Code of Québec* and the *Act respecting health services and social services*, all users of the public health and social services system enjoy the following rights:

- The right to appropriate health services and social services;
- The right to respect for dignity and privacy;
- The right to respect for the confidentiality of one's medical record;
- The right to information;
- The right to make a complaint.

The mission of the Québec Ombudsman is to ensure that these rights are respected and to prevent harm to users by the institutions within the health and social services network. In accordance with its complaint examination procedure, the Québec Ombudsman usually intervenes as a second level of recourse further to the conclusions issued by a service quality and complaints commissioner.[10] It may also intervene directly either on its own initiative or further to reports.

In 2014-2015, the number of complaints and reports that the Québec Ombudsman received about health and social services increased by 10.6% over last year's figures. The percentage of substantiated complaints and reports rose slightly.

Some of the observations and recommendations from the past year are presented in this Annual Report and refer to the following six areas:

- Mental health;
- Physical health;
- Disabilities;
- Support for elderly autonomy;
- Home support;
- Service support.

Note that this Annual Report goes up to March 31, 2015.

10 Since April 1, 2015, the words "local" or "regional" used to designate "service quality and complaints commissioner" have been removed further to passage of the *Act to modify the organization and governance of the health and social services network, in particular by abolishing the regional agencies* (S.Q. 2015, c 1).

At a time of sweeping changes to the network, monitor the transition closely

Since April 1, 2015, a sweeping structural overhaul of the system has been underway stemming from the *Act to modify the organization and governance of the health and social services network, in particular by abolishing the regional agencies* and its assent. With the merger of the 182 institutions and 18 health and social services agencies, there are now 51 public institutions.

In October 2014, the Québec Ombudsman presented a brief to the Committee on Health and Social Services as part of the special consultations and hearings on Bill 10. Feeling that the reform held both promise and major risks, it recommended that the authorities devise a solid transition plan that sets out the phases of the changes, the guarantees that user services will be kept intact, a realistic implementation timetable and expected savings after transition costs.

IDENTIFY RISKS

In the Québec Ombudsman's opinion, the required transition plan must be evaluated and enable rigorous management of identified risks related to the unwieldiness of administering the future mega-institutions, among other factors. There is also cause for concern about managers' distance from services. Lastly, caution must be exercised so that cases and service programs (troubled youth, support for elderly autonomy, mental health, addictions, physical and intellectual disabilities and autism spectrum disorders) that call for multidisciplinary expertise are not short-changed in favour of budgets for institutions' important medical-hospital mission. In short, the reform must not compromise access to social services.

MONITOR THE EFFECTIVENESS OF THE COMPLAINT EXAMINATION PROCEDURE

In this period of change and adaptation, it is crucial to ensure the effectiveness of the complaint examination procedure, especially since complaints increased during the transitional phases of former reforms.

The complaints system was designed to improve service quality and in keeping with an approach based on proximity, in other words, it was structured so that recourse is within hand's reach of services and users so that these users have an impartial and easily accessible intermediary. Will the new position of service quality and complaints commissioner in integrated health and social services centres (CISSSs) and integrated university health and social services centres (CIUSSSs) be consistent with this approach based on proximity in all the facilities of the merged institutions? Designation of a sufficient number of assistant commissioners, provided by law, is imperative during this transitional period.

ALLOW USERS THEIR RIGHTFUL PLACE

To contribute to ensuring that users' rights are upheld and service quality is improved, in accordance with the law, the Department should assess the new format for users' and residents' committees and provide public information about them and about the resources allocated to them. The composition of boards of directors must reflect the integral role conferred on users and their representatives.

ENSURE A SERVICE OFFERING THAT IS APPROPRIATE AND FAIR

Year after year, the Québec Ombudsman's Annual Report cautions politicians about the slow erosion of public services in the health sector and even more so in the social services sector. For lack of clear and transparent choices due to the absence of effective guidelines, the "basket of services" is dwindling, and this means greater inequality. In the context of the implementation of the reform, the Québec Ombudsman will be particularly watchful so that there is a fair service offering across the network and in each of the service programs.

A summary of the Québec Ombudsman's intervention concerning Bill 10, *An Act to modify the organization and governance of the health and social services network, in particular by abolishing the regional agencies*, is presented in the section entitled *Parliamentary Watch Report* on page 112 of this Annual Report.

The Québec Ombudsman's brief is found at www.protecteurducitoyen.qc.ca.

Give the elderly priority

The facts are in and they show that home support services are not really responding to basic needs. This worrisome situation is coupled with a shortage of places for the elderly in the public residential network. Unfortunately, we can expect worsening of pressure on other components of the service network due to the following factors:

- The proportion of elderly needing care is rising;
- The slate of home support services is increasingly limited;
- The wait time for admission to public residential resources is getting longer;
- The number of places in residential and long-term care centres (CHSLDs) is declining.

While places in the public residential network public are decreasing, those in private CHSLDs that are not under contract or CHSLDs in public-private partnership are growing, as are those in intermediate or family-type resources or private seniors' residences. In the short term, use of private partners is likely to increase as the network shifts and readjusts. CISSSs and CIUSSSs must take up their new responsibilities immediately without jeopardizing seniors' health and safety.

The Québec Ombudsman insists on the importance of maintaining the quality of services to the elderly and of upholding their rights, whether the residential resource is public or private. It draws attention to its deep concern about the problems experienced by the elderly whose health condition and needs exceed their residential facility's ability to provide an adequate response.

Time to finally act regarding mental health

Again this year, the Québec Ombudsman deplores the Ministère de la Santé et des Services sociaux's insufficient action regarding various problems in the area of mental health. Put otherwise, it notes a slow leak in mental health gains. The following are examples of the Department's inaction:

- Postponement of its mental health action plan;
- Lack of policy regarding application of the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*, a special law whose enforcement the Québec Ombudsman is sad to say is often deficient;
- Lack of progress further to two systemic mental health interventions by the Québec Ombudsman whose reports were published in 2011. The first addresses the problems with applying the Act,[11] while the second recommends services that are better adjusted to detainees with mental disorders.[12]

Clearly, needs related to mental health are immense. When solutions are not found, the toll in human, social and economic terms is very heavy.

The Québec Ombudsman is urgently calling on the Department for greater and swift action.

11 *Problems with the application of the Act respecting the protection of persons whose mental state presents a danger to themselves or to others (CQLR, c. P-38.001)*, February 2011, 61 p.

12 *Towards services that are better adjusted to detainees with mental disorders*, May 2011, 86 p.

Foster joint action and continuity

The Québec Ombudsman's investigations and systemic interventions regarding health and social services institutions have frequently led to the conclusion that there are lingering problems with governance and management. A silo mentality exists among the various types of institutions within the network and the upshot is that administration becomes more important than people. This results in inefficient coordination between service programs, making it even more difficult for users to find their way from one service provider to another. An overall vision is needed to enable the health and social services network to offer users the right service at the right level of care at the right place and time.

This current reform should provide an opportunity to create integrated service networks in order to ensure that troubled young people, seniors with reduced independence, and people with disabilities or addictions alike enjoy service access, continuity and complementarity. The Québec Ombudsman will pay close attention to how the reform unfolds with a view to seeing that the right of citizens to adequate health services and social services is upheld.

Mental health

Are mental health care and services truly a priority for the Ministère de la Santé et des Services sociaux? Unfortunately, no. More than ten years after the release of the 2005-2010 action plan, there is no measure that puts service development and deployment first, even though needs are pressing and increasing.

Nor is the issue a small one. It is paramount that the health system take charge of mental health not only for the users themselves and the people in their immediate surroundings, but also because of the societal phenomena involved, such as homelessness, substance abuse and other forms of dependency. The legal system, correctional facilities, youth centres and the education system also feel the impact. When mental health is at stake, prevention, care and service management, and medical and social follow-up have a direct effect on people's well-being, integration within their environment and positive contribution to the community.

In the Québec Ombudsman's opinion, a genuine mental health action plan must be based on a solid vision of current needs and include measures capable of meeting them while respecting users' rights, taking into account that resources must be appropriate and in sufficient quantity. In requiring greater collaboration between the various amalgamated institutions and their external partners, the review of network governance should enable a quicker response to the needs of users queuing up for services.

Similarly, standardized procedures from one region to another should foster access to services across Québec cohesively and fairly, which is not the case now. Furthermore, this dovetailing must take into account community organizations' major contribution. We know that these organizations meet the real needs of users and provide services and support that many institutions no longer offer.

Moreover, the Québec Ombudsman challenges the Department to finally fulfil its 2011 commitment, namely, create policy governing application of the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*. In this area, it is important that best practices prevail in matters of monitoring rules and producing guidelines. For a long time, we have known about the problems that come with misapplication of the Act and that have major adverse effects on too many people whose basic rights are being violated.

The 2014-2015 follow-up to the Québec Ombudsman's recommendations concerning the report entitled *Problems in the application of the Act respecting the protection of persons whose mental state presents a danger to themselves or to others* is presented in the section entitled *Report on systemic interventions*, on page 108 of this Annual Report.

The Québec Ombudsman's report is found at www.protecteurducitoyen.qc.ca.

TACKLE DELAYS IN MENTAL HEALTH MANAGEMENT

Health and social services institutions are tasked with supervising the management of the various mental health service requests. A user who has been discharged after receiving care or being seen by a psychiatrist in the emergency room may be referred for outpatient follow-up. When users are placed on a waiting list, they are ranked for quick first contact and re-evaluation during the wait period based on their condition. If users have to see a psychiatrist but they cannot be given an appointment within a reasonable time, there must be better-adapted monitoring, notably in nursing care and social services. Similarly, waiting list management must be more rigorous and efforts must converge with a view to timely services.

In the past year, the Québec Ombudsman has noted that the institutions to which users are referred do not assess these people's condition adequately so that they can be taken in charge when and how they should be, thereby underestimating user risk.

(. . . *Ensure responsible and watchful monitoring of waiting lists*

A citizen complained about how a loved one had been treated further to his hospitalization for suicidal thoughts. After being discharged, the user was referred to an outpatient mental health clinic and put on a six-week waiting list, but he took his own life before the outpatient clinic had a chance to call. The citizen felt that the long wait time was to blame.

The Québec Ombudsman noticed that more than seven weeks had elapsed between the time the user was discharged and the clinic's first attempt to contact him, an unacceptable delay for first contact given the circumstances.

At the end of the investigation it conducted, the Québec Ombudsman recommended that the institution draft a written procedure for managing mental health requests by revisiting the following elements:

- ***Prioritization criteria;***
- ***Establishing contact;***
- ***Assessing users awaiting services;***
- ***Wait times, including for cases in which users who are suicidal and are admitted to hospital and then released;***
- ***The appropriateness of referring certain requests to follow-up nursing care;***
- ***The roles and responsibilities of every medical worker and each of the institutions concerned.***

The Québec Ombudsman's recommendations were accepted and implemented. . . .)

OBTAIN USER CONSENT: TRANSFERS

Pursuant to the *Act respecting health services and social services*, every person is entitled to choose the professional or the institution from whom or which he or she wishes to receive health services or social services. Every institution that transfers a user to another institution must obtain the user's consent to transfer. If the person is unable to provide consent, the institution must seek substitute consent from an authorized representative. If the user categorically refuses to grant consent, a court order is required in order to override the refusal, unless transfer is necessary to ensure the person's safety or that of others. The decision-makers must assess the person's capacity or incapacity to give consent on a case-by-case basis.

In the past year, the Québec Ombudsman saw that an institution introduced a procedure that enabled the transfer of a forcibly confined user from a hospital to another institution without the person's consent.

(. . . *Strictly abide by the consent provisions of the Act – 1*

A citizen complained when a relative who has mental health problems was transferred from one hospital to another without explanation. The user had been forcibly confined to a hospital where the citizen had taken him. The next day, he was transferred by ambulance to another hospital closer to where he lived, where confinement continued.

The institution's bylaw provides that people hospitalized in the psychiatric department must be directed towards their territory of residence in conjunction with the CSSS that services them, but users must consent to transfer. The same bylaw specifies that users who are a danger to themselves or to others, and who refuse to be hospitalized or transferred, must be placed under confinement (preventive, temporary or in an institution, as the case may be) before being moved. In the case at hand, the user was considered unfit to grant consent to transfer. In accordance with the bylaw, the person must be sufficiently sedated to enable safe transfer and must wear a hospital gown and not have access to their street clothes. The institution must seek substitute consent from an authorized representative.

In the Québec Ombudsman's opinion, whether we are talking about transfer or sedation, a distinction must be made between situations in which users' consent is not required and situations in which users are incapable of granting consent. Even though a person who is a danger to himself or herself or to others is placed under confinement, in the Québec Ombudsman's opinion, the person's capacity to grant consent must be assessed nonetheless. The Québec Ombudsman recommended that the institution amend its bylaw so that the ability to give consent is assessed case by case and that the consent be entered in the user's record. The institution indicated that it did not intend to follow the recommendation. This response is very worrisome. By refusing to heed the recommendation, the institution is violating users' rights and integrity. The Québec Ombudsman therefore reiterated the recommendation and informed the Ministère de la Santé et des Services sociaux about the situation.

Note that the bylaw in question was adopted by all psychiatric department decision-makers across the region and therefore applies to the entire territory covered. . . .)

OBTAIN USER CONSENT: MEANS OF CONTROL

When means of control are necessary as part of a planned intervention, user consent is required. Even though Department policy and some institutional policies are clear in this regard, there is a grey zone when there is repeated administration of a chemical substance to control a user's dangerous behaviour. In the Québec Ombudsman's opinion, in the context of a planned intervention, this could be considered a means of control. Consequently, the institution must obtain consent from the user or the user's representative. Even if this assumption is made, consent is still required. Therefore, an institution must obtain consent when a user continues to engage in behaviour dangerous to himself or herself or to others.

Institutions must always respect user dignity, especially when means of control are employed. They must take the information in the user's record into account when the decision is made to apply means of control. The Department framework lays out guidelines for drafting application protocols. It recognizes in particular that because of the significant psychological consequences of the use of means of control, it must be considered a last resort.

(. . . *Strictly abide by the consent provisions of the Act – 2*

Because a user at a general medicine unit of a hospital centre had a mental disorder coupled with an intellectual disability, diagnosis was difficult. It was some time before she could be transferred to a specialized hospital.

The week before the transfer, the woman suffered a particularly aggressive outburst. The healthcare team had to administer at least five injections to calm her down. Even though the user was unfit to grant consent, the team did not seek the consent of a representative, namely, her parent who was an ongoing presence. Also, the receiving institution could see that the woman's hygiene had not been attended to before she was transferred.

The Québec Ombudsman recommended that the institution properly apply the policy about consent and the use of means of control, especially when incapacitated people are involved. It also recommended that staff respect the dignity of users by providing them at all times with the personal care they require, including before transfer to another institution. The institution accepted these recommendations. . . .)

(. . . *Pay attention to signs of personal distress*

A hospital's emergency room staff isolated and used physical restraints on a user who said that she had been severely traumatized by a past sexual assault. The use of physical restraints worsened her psychological state and sent her spiralling into a state of dissociation. The assault she had experienced had been previously noted in her user's record.

The Québec Ombudsman considered that the institution should have taken the woman's personal history into account. The hospital agreed to act on the recommendation that henceforth it pay special attention to circumstances of this kind. . . .)

THE SERVICES OFFERED TO DETAINEES WITH MENTAL DISORDERS

In 2011, the Québec Ombudsman released its report entitled *Towards services that are better adjusted to detainees with mental disorders*. The 2014-2015 follow-up to the Québec Ombudsman's recommendations is presented in the section entitled *Report on systemic interventions*, on page 108 of this Annual Report.

The Québec Ombudsman's report is found at www.protecteurducitoyen.qc.ca.

Physical health

The physical health program consists notably of emergency room care, acute care (health problems requiring short-term hospitalization), outpatient consultations (including day surgery) and palliative care. Also included is the care offered in local community service centres (CLSCs)—vaccination, for example—and applications for access to a family physician.

For several years now, the Québec Ombudsman has been concerned about the situation in Québec's emergency rooms, giving rise to recommendations to the Ministère de la Santé et des Services sociaux. These recommendations have been aimed at improving access to front-line services for users assigned a level 4 (less urgent) or 5 (non-urgent) triage assessment rating. The objective is to save these users a trip to the emergency room.

This year, the Québec Ombudsman saw that institutions that had contracts with family medicine groups or private medical clinics were able to refer to these groups or clinics emergency room users whose health problems did not require immediate attention. These people were able to see a doctor without an appointment. The Québec Ombudsman considers this a practice that should be promoted across the health network.

BE RIGOROUS ABOUT RE-ASSESSING EMERGENCY ROOM PATIENTS

The Québec Ombudsman observed that dissatisfaction related to overcrowded emergency rooms, albeit abated somewhat, continued to generate complaints. Cases in which nursing staff neglected an important component of their work, namely, reassessment of waiting room patients, were among these complaints. In fact, the Canadian Emergency Department Triage and Acuity Scale specifies that nursing staff must carry out reassessment according to established parameters, which is also a requirement of the Ordre des infirmières et infirmiers du Québec and the Department. The institutions concerned argue that high traffic and a shortage of human and financial resources in emergency rooms make it impossible for them to act within these parameters. Yet other institutions grappling with the same constraints have displayed determination and creativity in dealing with these problems while managing to comply with prescribed standards. The Québec Ombudsman is very concerned about the potential consequences to user health of the failure to conduct required reassessments on time.

(. . . *Reassess emergency patients' condition according to the prescribed parameters*

A lady went to the emergency room because of numbness in her arms, a sign generally associated with acute coronary syndrome. She had to wait nearly five hours before a physician examined her. In investigating, the Québec Ombudsman learned that the nursing staff had not automatically reassessed her periodically in order to prevent possible deterioration of her condition and ensure her safety. An electrocardiogram showed that the woman had suffered an asymptomatic infarction.

The investigation completed, the Québec Ombudsman recommended that the institution ensure that reassessments are done within the prescribed time frame, which the institution agreed to do. To achieve the goals it had set, the institution established several measures, including drafting of a directive on compliance with these time limits, emphasis on this directive with new emergency room staff and file reviews for conformity with timely reassessment. . . .)

ADAPT CARE AND SERVICES TO END-OF-LIFE NEEDS

End-of-life care and services are completely different from acute care. End-of-life care is not intended to cure people, but, instead, to make sure that they are as comfortable as possible using an approach that is attentive and human. The primary goal is therefore to alleviate suffering through symptom relief and basic, protocol-compliant consistent care (different protocol phases depending on the changes in the dying person's condition).

The Québec Ombudsman noticed that in several regions and numerous institutions, access to and the quality of palliative care is wanting. In 2013, the Québec Ombudsman presented a brief to the Committee on Health and Social Services as part of the public hearings on Bill 52, the *Act respecting end-of-life care*. On this occasion it recommended that the end-of-life care policy be updated and that a Department action plan be drawn up in the short term to improve the service offering in every region that requires it. These recommendations stemmed from the Québec Ombudsman's findings to the effect that some professionals do not have the required skills for providing end-of-life care and services. In the past year, the Québec Ombudsman has had to remind institutions about their responsibilities in this regard.

(. . . *Train nursing staff who work with terminal patients – 1*

A user with terminal-phase cancer was admitted to a CHSLD's palliative care unit. After she died, her family filed a complaint about the quality of the services provided, especially regarding the time it took before the acute respiratory distress protocol was applied.

The investigation by the Québec Ombudsman revealed that unlike the orderlies, the nursing staff had never gotten training in palliative care. As the investigation was winding down, the Québec Ombudsman learned that the institution was in the process of drafting an end-of-life support program in order to better equip its staff to follow the applicable rules.

The Québec Ombudsman recommended that the institution continue its drafting of the program and inform it of the action plan and the intended implementation schedule, especially regarding the training program.

The institution accepted the Québec Ombudsman's recommendations and implemented them to its satisfaction. . . .)

(. . . *Train nursing staff who work with terminal patients – 2*

A user with lung cancer had to be admitted to a hospital's palliative care unit but there were no places available, so he was sent to the surgical unit.

The investigation by the Québec Ombudsman revealed that the nursing staff outside the palliative care unit did not have any end-of-life training. This means that they did not have the skill sets for needs-based assistance to users and their family and friends, nor were they versed in how to communicate with them as death drew near. The Québec Ombudsman recommended that the institution provide for the appropriate training for the nursing staff likely to interact with end-of-life patients.

Further to the Québec Ombudsman's intervention, the institution agreed to dispense the required training to acute care, residential care and outpatient care staff. It went on to hire a nurse to design and dispense the training program. . . .)

MONITOR THE EFFECTIVENESS OF CENTRALIZED WAITING LISTS FOR PEOPLE WHO DO NOT HAVE A FAMILY PHYSICIAN

The Department established centralized waiting lists (GACOs) for orphan patients (users without a family physician) in order to:

- Help users find a family doctor;
- Assign each application a rating based on a recognized scale for assessing access priorities;
- Manage the waiting list according to the available medical personnel.

Anyone who does not have a family physician may ask to be registered on the list for his or her health territory. The team consists of a local coordinator, a manager and a nurse. The coordinator organizes front-line medical services and fosters the participation of physicians within a given territory. The nurse promptly contacts the people registered to document their state of health, conduct an assessment and inform them about the wait time for getting a family physician. The wait time depends on the person's priority rating based on his or her state of health and physician availability in the person's territory.

In fact, what we are referring to here is a Québec-wide frame of reference aimed at standardizing how the centralized lists operate. Yet the Québec Ombudsman has noted failings and disparities. Its interventions primarily concerned the registration process, which can be complex for more vulnerable people. It also had to intervene to ensure that applications were prioritized properly and that applicants were provided with relevant information concerning the projected wait time before they could see a family physician.

(. . . *GACO: be a genuine gateway to physicians*

In July 2013, a user whose family physician had retired registered with GACO at the health and social services centre (CSSS) in his territory. When, after a year and a half, he still had not gotten any news and was worried that he would have to wait just as long to see a family physician, he contacted the Québec Ombudsman. One of the points he made was that if he had a family physician, he might not have to use hospital emergency room services.

During the investigation, the Québec Ombudsman learned that talks were underway to establish a "back-up clinic" which would offer services to orphan patients, including people who need a medical opinion for the Société de l'assurance automobile du Québec (SAAQ) or the Commission de la santé et de la sécurité du travail (CSST). The Québec Ombudsman was also told that in the meantime, a new medical coordinator would ensure that the applications from users in this situation would get processed.

The Québec Ombudsman also noted that GACO administrators refused to tell users approximately how much time they would have to wait before they were assigned to a family physician. It therefore recommended that the CSSS provide this information, which it did by posting general indications on its website.

Another cause for dissatisfaction: citizens who wanted to register with GACO had to use the electronic form, which they could then fill out online or print and mail in. Since this requirement failed to take into account people who do not have a computer, the Québec Ombudsman asked that applicants be allowed to phone in to request the form. GACO concurred. In addition, help would be available to anyone having trouble completing the form. . . .)

(. . . **GACO: manage the waiting list rigorously and fairly**

A user registered with GACO in June 2013. She was told at the time that the approximate wait time was… four years. Feeling that this delay was unreasonable, and rightly so, she complained to the Québec Ombudsman.

During the investigation it conducted, the Québec Ombudsman found that people could be registered with the central waiting list without being assigned a priority rating based on their health condition or according to clinical grid criteria. Furthermore, they could not apply through voice mail.

It was officially announced that there would soon be a family medicine unit in the territory of the same CSSS. The Québec Ombudsman therefore recommended that, for the sake of fairness, the institution ensure that everyone already registered with the central waiting list be given priority even before the unit opened. It also recommended that a voice messaging system be put in place to make registration easier. The institution accepted all of the Québec Ombudsman's recommendations. . . .)

(. . . **GACO: use discernment in dealing with more vulnerable users**

A 17-year-old with attention deficit hyperactivity disorder (ADHD) who had been under the care of a pediatrician since childhood registered with GACO. Two years later, and still with no news, he tried to have a prescription renewed but was unsuccessful because he had no family physician. Turning to the Québec Ombudsman, he complained that he did not know how much longer he would have to wait before he was assigned a family physician. Furthermore, he criticized the fact that so few physicians take on patients with his diagnosis.

The investigation completed, the Québec Ombudsman recommanded that the CSSS introduce a procedure for informing users about the approximate wait time for being assigned a family physician. It also recommended that the institution encourage the physicians of the territory to participate in the collective effort towards front-line management of ADHD patients.

The institution refused the Québec Ombudsman's recommendations, saying that despite real efforts, it was impossible for it to provide any information whatsoever about wait times. The CSSS also made it clear that it would not use any ADHD incentives because the role of the medical coordinator was not to impose management of vulnerable patients on family medicine groups. The CSSS went on to explain that, truth be told, general practitioners are not very inclined to take on these patients because GPs receive very little support from the few pediatric psychiatrists in the region.

The Québec Ombudsman brought the file to the attention of Department authorities, who, to its satisfaction, pledged to remind the CSSS about the rules provided for in the provincial framework on GACOs. Among other things, the rules pertain to medical coordinators' responsibilities, including promoting the management of vulnerable patients. Coordinators must also form ties with other clinical resources within the local service network in order to ensure transitional services for waiting patients. In March 2015, the Québec Ombudsman approached the Department to insist on the importance of giving users some sort of an idea of when they might be seen by a physician, in compliance with the provincial framework. . . .)

DEFINE THE RULES GOVERNING THE ADMISSION OF FOREIGN PATIENTS TO QUÉBEC

Québec's health institutions can enter into expertise-sharing agreements with health institutions outside Québec, especially those who want to be assisted in developing their health system. However, it is imperative that the Department define the rules governing these activities. Also, in the future, only the Department should be empowered to authorize the admission of foreign nationals for the purpose of receiving non-emergency healthcare. There must also be rules concerning the impact of the intake of foreign nationals on service access for Québec healthcare users. Futhermore, it is crucial that the public resources allocated under these agreements are fully and adequately compensated.

Go strictly by the book in the context of medical expertise-sharing

In June 2014, the Québec Ombudsman released a report containing nine recommendations to the Department aimed at ensuring that in cases involving medical expertise-sharing with foreign institutions, the decisions that are made are fair for all public healthcare users in Québec.

The purpose of the investigation by the Québec Ombudsman was to examine the public interest issues raised by the admission of a Kuwaiti foreign national to Royal Victoria Hospital of McGill University Health Centre (MUHC) for healthcare. The admission occurred within the context of the implementation of an expertise-sharing agreement between MUHC and the Ministry of Health of the State of Kuwait.

The investigation revealed that the people in charge of the file had bypassed the procedure for obtaining the Québec acceptance certificate required for issuance of a visa to enter Canada. The Québec Ombudsman also saw other deviations from the rules regarding the foreign national's admission and hospitalization, billing for hospitalization-related costs, and MUHC's use of the monies thus obtained. The Department accepted all the recommendations. So far, the Québec Ombudsman is satisfied with the action plan proposed by the Department.

The Québec Ombudsman's intervention report released in June 2014 is entitled *Admission of a foreign national to Royal Victoria Hospital of McGill University Health Centre*.

The report is found at www.protecteurducitoyen.qc.ca.

Disabilities

SERVICES FOR YOUNG PEOPLE WITH A DISABILITY OR AN AUTISM SPECTRUM DISORDER

After receiving numerous complaints from parents of disabled children, the Québec Ombudsman released a special report in March 2015 entitled *Service access, continuity and complementarity for young people (0-18 years old) with an intellectual disability or an autism spectrum disorder*. One of the findings was that the priority for parents of children aged 0-18 with an intellectual disability or an autism spectrum disorder is to be able to access resources to develop their child's autonomy. As a rule, these services are delivered by rehabilitation professionals who work primarily for rehabilitation centres for intellectual disabilities and pervasive developmental disorders (CRDITEDs) and rehabilitation centres for physical disabilities (CRDPs). In principle, these institutions have dovetailing missions and must work together within a regional organization of services. In practice, however, it is an altogether different story and that is the subject of the Québec Ombudsman's report. It documents the most widespread difficulties faced by young people and their families seeking services, and identifies the causes, namely:

- The lack of service continuity for people referred by a CRDP to a CRDITED;
- Trouble obtaining professional rehabilitation services in CRDITEDs;
- The lack of complementarity of services between CRDPs and CRDITEDs.

In the Québec Ombudsman's opinion, it is imperative that children with an intellectual disability or an autism spectrum disorder have access to the available public resources based on their needs and irrespective of the cause of their impairment. To that end, the Québec Ombudsman made eight recommendations to the Ministère de la Santé et des Services sociaux. For the convenience of readers, the solutions are summarized as follows:

- Designation of a front-line system navigator (pivotal resource) as soon as a user enters the system and use of the individualized service plan for any transition through the system;
- A reference date (system entry date) to ensure fair positioning of users on any waiting list along the care pathway;
- Mandatory use of an individualized service plan for all users who require services from more than one provider, and coordination of this plan by the system navigator (pivotal resource);
- Development of a template for an integrated service network for people with disabilities that will define the service offering, service pathways, operational practices and model partnership agreements between service programs for shared client populations;
- Examination of the usefulness of grouping disability service programs, including the pooling of program resources.

The Québec Ombudsman recommended that the Ministère de la Santé et des Services sociaux develop an action plan and submit it to the Québec Ombudsman no later than June 19, 2015.

The Québec Ombudsman's report entitled *Service access, continuity and complementarity for young people (0-18 years old) with an intellectual disability or an autism spectrum disorder* is found at www.protecteurducitoyen.qc.ca.

The 2014-2015 follow-up to the Québec Ombudsman's recommendations regarding government services for children, adolescents and adults with pervasive developmental disorders is found in the *Report on systemic interventions* section, on page 107 of this Annual Report.

FALLING THROUGH THE CRACKS

People with disabilities sometimes require services from more than one government department or institution. If it can be hard to obtain services from more than one institution within the same network, it is even harder to wend one's way through several departments or institutions belonging to different networks. In some cases, all of them deny responsibility for providing the required services.

(. . . *Work together instead of shifting the blame – 1*

A person with a severe speech impairment used an assistive communication device paid for by the Ministère de l'Enseignement supérieur, de la Recherche et de la Science. However, the device was defective and outdated and needed to be replaced. A request for a replacement was made to the Department, but was refused because the special needs program reimburses the cost of the repair or replacement of equipment only once in a lifetime, and the person had received a reimbursement before.

The person turned to the Ministère de la Santé et des Services sociaux and made a request under its technical aid program. His request was refused again, this time because he was deemed to be still in school. Theoretically, that would mean that he was still eligible to receive financial aid from the Ministère de l'Enseignement supérieur, de la Recherche et de la Science.

Since both Departments claimed that the request did not fall within their purview, the Québec Ombudsman asked them to work together to see that the person got the device that he absolutely needed given his condition. In the end, the MSSS agreed to provide the required financial support. . . .)

(. . . *Work together instead of shifting the blame – 2*

The mother of a young child with a language disorder complained that the regional rehabilitation centre refused to continue giving him speech therapy at school. The centre claimed that the child had already received the services 5-year-olds are entitled to in kindergarten. That may be true, except that the child had to repeat kindergarten and, applying the same logic, he was deprived of services until he started Grade 1, when the school takes over providing services. Furthermore, both the school and the rehabilitation centre felt that the child still needed speech therapy.

To avoid an interruption in services, the Québec Ombudsman recommended that the rehabilitation centre assess the child's needs right away and provide the necessary services until the school took over. The caseworkers agreed to follow the recommendation. . . .)

RESIDENTIAL RESOURCES FOR PEOPLE WITH DISABILITIES: IMPROVE SERVICE QUALITY

People with physical or intellectual disabilities often have difficulty finding suitable housing. Moreover, when they finally do find a place, they continue to face problems because the quality of services in residential resources is often woefully inadequate. Considering this population group's vulnerability and the lack of available resources, this situation is of great concern to the Québec Ombudsman.

(. . . *Give people with disabilities a true home environment*

In January 2014, the Québec Ombudsman received a report concerning the quality of care and services received by the physically disabled tenants of Habitations adaptées et accessibles Tango (Tango). The organization received assistance under the AccèsLogis Québec program of the Société d'habitation du Québec and funding from the regional health and social services agency (the Agency)[13] to provide tenants with personal and domestic care services.

During its investigation, the Québec Ombudsman found that the staff were not respecting the tenants' physical and psychological integrity and that the climate at Tango was tense, even toxic. There was clear evidence that Tango employees were using a tenant's apartment for their own purposes, that the staff had neither the skills nor the qualifications to work with this type of clientele, that tenants were unable to express their food preferences and that special diets were not being respected.

To encourage Tango to work collaboratively with partner institutions, the Québec Ombudsman made several recommendations to Tango directly as well as to the Agency and the social services centre (CSSS), a partner in the agreement with Tango. These network institutions worked closely with the Québec Ombudsman to try to improve the situation, but Tango management dismissed all of the recommendations made to them directly, challenging the legitimacy of the Québec Ombudsman's intervention. Consequently, the Québec Ombudsman asked the Agency to incorporate its recommendations into the Agency's proposed agreement with Tango. On November 4, 2014, Tango refused to sign the agreement. As a result, the Agency informed Tango that it was withdrawing its funding permanently and it put together a transition plan with the CSSS and other partners.

At the time this Annual Report was being written, the Québec Ombudsman was working with the CSSS and the Société d'habitation du Québec to make sure that the tenants continue receiving the necessary services, regardless of whether or not Tango decides to continue its operations. . . .)

(. . . *Conduct a thorough administrative investigation*

A young disabled man was living in a residential resource under contract with a CRDITED. His mother complained to the Québec Ombudsman about the care and services provided by the resource. She reported that her son had bruises and no one could explain why. She questioned the quality of the food at the resource and criticized the lack of supervision as well as the fact that there was almost no recreational activity. The caseworkers interviewed during the investigation also questioned the attitude of the person in charge of the resource and noted that the resource was constantly putting off remedial measures. Furthermore, the person in charge of the resource totally denied the problems raised.

Consequently, the Québec Ombudsman recommended that the CRDITED concerned conduct a thorough administrative investigation. Following this investigation, the CRDITED had to draw up a remedial plan for the resource, including rigorous tracking of its progress in meeting objectives (regular supervision every two weeks by the CRDITED). Concrete verification measures were implemented to measure the improvement made in each area. . . .)

13 Health and social services agencies have been abolished following the passage on February 6, 2015, of the *Act to modify the organization of the health and social services network, in particular by abolishing the regional agencies.*

ALWAYS FAVOUR CONCERTED ACTION

In some regions of Québec, low population density makes it considerably harder to grant requests for services, which is all the more reason why the authorities must work together to come up with innovative solutions.

(. . . *Assess needs better in order to address them effectively*

A four-year-old boy had been diagnosed with autism two years earlier. Normally, he would have been entitled to 20 hours a week of intensive behavioural intervention (IBI) under the existing Québec program. However, under the intervention plan drawn up by the rehabilitation centre, he was allotted six hours a week of IBI. He ended up receiving just four hours a week.

The services he had been receiving since 2013 were chaotic and often interrupted. In addition, he had three different educators during that time. Since this general lack of service continuity obviously hindered the effectiveness of the boy's treatment, his parents asked the Québec Ombudsman to help them at least get the six hours a week of IBI determined in their son's intervention plan, while aiming for the 20 hours established under the provincial program.

The Québec Ombudsman made the following recommendations to the rehabilitation centre:

- ***Get a clear picture of the needs it is unable to meet for users living in remote municipalities;***
- ***Submit the results to the regional Agency;***
- ***Identify possible, realistic solutions.***

The exercise revealed that professionals providing IBI treatment were in short supply and that there were hiring and retention problems. Moreover, the Québec Ombudsman recommended that the Agency support the rehabilitation centre in its service offering.

At the time this Annual Report was being written, the boy had received three hours more a week (for a total of seven hours of IBI). Furthermore, the Agency and the rehabilitation centre were in talks to determine how users affected by the shortage of professional resources in remote regions could be provided with better support. . . .)

Support for elderly autonomy

The complaints and reports brought to the Québec Ombudsman's attention this year primarily highlighted the following problems:

- The presence of an elderly clientele experiencing severe loss of independence in private seniors' residences which are incapable of providing the necessary care;
- Repeated transfers of users waiting for a place in a residential and long-term care centre (CHSLD);
- The fact that residents with incompatible profiles live side by side in CHSLDS;
- Threats to the safety of elderly residents;
- Inadequate treatment of pressure ulcers in certain institutions;
- Deficient personal care.

CURB THE PHENOMENON OF PRIVATE RESIDENCES ADMITTING USERS WHOSE NEEDS ARE TOO GREAT

Private seniors' residences are designed for a client population described as "autonomous" or "semi-autonomous." However, the Québec Ombudsman has noticed that in certain cases, people's needs are too great for a residence's resources. It also happens that these needs increase over time. More and more residents have severe cognitive impairments, multiple physical disabilities and a complex clinical profile. This is especially worrisome given that the demand for private seniors' residences will necessarily rise because of population aging and the difficulty getting into public residential institutions.

It goes without saying that the elderly in private seniors' residences must be able to have adequate care and services that are tailored to their health condition, as well as a pleasant and caring living environment. The Québec Ombudsman's investigations in recent years have shown that some private seniors' residences cannot guarantee this. Clearly, there are people whose condition calls for more care and services than their residence can assure.

The Regulation specifies that if the operator of a residence considers that a resident's state of health requires care or services that are beyond the operator's capacity, the operator must inform the person, or, where applicable, the person's representative or a close relative. If they cannot or do not take the required steps, the operator must notify the health and social services centre (CSSS) of the situation so that it can assess the user's needs and see to his or her safety.

The Québec Ombudsman noted that the way in which some residences and CSSSs handle this kind of situation may compromise the health and safety of the elderly:

- Because of the lack of clearly defined admission requirements, private residences accept seniors who, from the outset, have needs that exceed the residences' ability to meet them;
- Changes in the residents' health condition or needs are not systematically noted;
- Residences fail to notify the CSSS in their territory when a person requires care that exceeds their capacity;
- CSSSs are slow to relocate seniors, even when the managers of the residences alert them to the situation.

All these woes stem from the shortage of places available in public residential centres and the priority accorded to hospital bed patients or patients who need immediate lodging because they do not have sufficient assistance at home.

(. . . *When a residence sees that a user's needs exceeds its capacity, notify the CSSS immediately*

During an investigation into the safety of the users of a private residence for semi-autonomous seniors, the Québec Ombudsman determined that 10 of the 38 residents had moderate to severe loss of autonomy. It was imperative that some of these people be placed in a CHSLD. However, the residence had not notified the CSSS because, as a rule, it only called on it for emergencies. The investigation also revealed that the residence did not collaborate at all with the CSSS to follow up on the care the CSSS had provided users. The Québec Ombudsman therefore recommended that the residence comply with the Regulation which provides that residences must contact the CSSS as soon as they can no longer respond to a resident's growing needs or ensure that person's safety. It also recommended that the health and social services agency[14] study every user's profile to determine if the residents were getting the required services. . . .)

(. . . *A CSSS must act when it learns that people are living in a residence that cannot meet their needs*

In investigating a residence, the Québec Ombudsman found out that quite a few of the residents were still there even though the operator had notified the CSSS that their needs were too substantial for him to meet. He even went so far as to say that their safety was at risk.

A resident with severe cognitive impairment, aggressive behaviour and confusion managed to get away twice. However, the investigation by the Québec Ombudsman showed that those in charge of the residence had alerted the CSSS regularly over the past several months about the risk the lady presented. Formal notices had also been sent to the CSSS concerning other residents, without any effective response on its part. Therefore, the Québec Ombudsman recommended that the CSSS promptly take the necessary measures to, among other things, find new accommodations for those for whom the private seniors' residence could no longer provide proper care.

To the Québec Ombudsman's satisfaction, the CSSS took the necessary steps to relocate certain residents. The CSSS also ensured that those who stayed received additional services from either the CLSC or the residence. In addition, the CSSS reviewed how it processes overload notices so that the residents can be referred to one-stop home support services. . . .)

14 Health and social services agencies have been abolished following the passage on February 6, 2015, of the *Act to modify the organization of the health and social services network, in particular by abolishing the regional agencies.*

AVOID REPEATED TRANSFERS

In its recent Annual Reports, the Québec Ombudsman pinpointed certain difficulties encountered by users waiting for a place in a CHSLD. In its 2013-2014 Annual Report, it noted that the pressure to alleviate congestion in hospital centres, the disparities in CHSLD supply from one territory to another and the long waiting lists for some CHSLDs considerably hampered real access to this kind of resource. The journey of users experiencing loss of independence towards permanent lodging may entail several transfers and span many years.

The *Act respecting health services and social services* provides that no institution may cease to lodge a user who has been discharged unless the patient's condition allows that person's return home, or unless the person's admission to another institution is assured and the services required by his or her condition will be provided by the institution. At this point, these are the steps that often occur for users who cannot go home:

- As soon as hospitalization is no longer necessary, users must be assessed and referred to the resource that will best meet their needs;
- In certain cases, in order to free up hospital beds, assessment occurs while users are lodged temporarily in another institution;
- Users are then channeled to transitional lodging while waiting for a place in the resource of their choosing;
- There may be waiting lists for transitional lodging, which eventually means another transfer for the elderly person.

Delays and repeated transfers endanger the health and autonomy of users who may have significant cognitive impairment that adversely affects adaptation and disorientation which worsens with every move.

(. . . *Treat the elderly with consideration, notably by reducing transfers – 1*

An elderly woman was admitted to an intermediate residential resource because she could no longer live at home due to increasingly severe bouts of confusion. Her particularly difficult stay at the first resource lasted only 13 days because the resource could not cope with her wandering and multiple falls. The lady was therefore hospitalized, this time for seven weeks. During this stay, she had to be restrained to prevent wandering. Then she was transferred to a CHSLD, but it did not have a specialized unit for problems such as invasive wandering, so it could not do anything more about her problematic behaviours. A month after she arrived there, the CHSLD informed her family that she would have to be transferred again, this time to specialized lodging in another CHSLD. In all, she had moved four times in 13 weeks.

During the investigation, the Québec Ombudsman saw that there were a number of shortcomings in the services provided to her by the CSSS as she made her way through the residential system. Therefore, it recommended that the CSSS modify its assessment practices so as to promptly channel users towards a residential environment compatible with their situation. It also recommended greater support to users when they move to an intermediate resource. The Québec Ombudsman is monitoring the implementation of these recommendations.

This woman's case illustrates the unacceptable number of moves the health and social services network can impose on elderly citizens, which is wrong in itself, and even more when users have cognitive impairments that exacerbate their disorientation. . . .)

(. . . *Treat the elderly with consideration, notably by reducing transfers – 2*

A 95-year-old man spent several months in a hospital centre. He was then temporarily transferred to a CHSLD for assessment, where he felt like a stranger, in particular because of language. When the assessment was completed, it was decided that he required permanent placement in a CHSLD. The user chose an institution where he could receive care in his mother tongue. Unfortunately, the admission wait time was roughly two years. In the meantime, he had to be transferred to transitional lodging, which his daughter objected to on the grounds that her elderly father should not have to deal with a second move. According to her, the more appropriate thing would be to give him a higher priority rating so he could get into the CHSLD of his choice.

In the case at hand, the Québec Ombudsman saw that the institution agreed with the need to fast-track this application because of the man's age and difficulties living in an environment where he could not use his mother tongue. However, the man had to be hospitalized again, which brought the transfer process to a halt. The Québec Ombudsman invited the institution to remain vigilant so that when users need to be transferred, their specific needs, including language, will be met. . . .)

IN CHSLDs, MANAGE DISRUPTIVE BEHAVIOUR ATTENTIVELY WHILE UPHOLDING CITIZENS' RIGHTS

When residents with incompatible profiles live side by side, the community's safety and well-being are jeopardized and the balance of an entire living environment is disrupted. Some CHSLDs are overwhelmed by certain users' serious behavioural problems: violent language and conduct, medication abuse and refusal of personal care or pressure sore treatment. The tolerance of such behaviour violates other users' rights and adversely affects the quality of life of vulnerable residents, who are powerless to ward off physical and verbal assault by fellow residents.

The Québec Ombudsman is aware of the complex clinical and social reality of certain non-specialized residential resources. These circumstances make it impossible for them to provide an adequate response to the needs of people whose disruptive behaviours often require a specialized living environment adapted to their health condition and specific profile. Institutions should not hesitate to seek external support and expertise in managing heavier cases. Sometimes users whose behaviour is out of control must be relocated to ensure other users' well-being. The Québec Ombudsman has noted that access to these specialized services is even more difficult for those who live outside major urban centres.

Institutions are duty-bound to ensure users quality care with due regard to their safety and rights. As a result, institutions faced with disruptive behaviour by a user must use effective means of prevention, intervention and management. However, certain institutions err on the side of excessive tolerance.

(. . . *For the benefit of all, effectively monitor residents who exhibit disruptive behaviour – 1*

A CHSLD resident would refuse all personal care and pressure sore treatment for periods of up to a week. The result was a putrid odour that permeated the entire floor and increased the risk of infections and the contamination of fellow residents. Furthermore, the user spent entire days in her wheelchair and refused to go to bed. Incident and accident reports indicated that the woman threatened the staff and residents regularly and tried to run into them with her wheelchair.

The Québec Ombudsman noticed a patent decline in the atmosphere at the residence and increased tension among the residents. Clearly, the CHSLD had to be stricter in this case of disruptive behaviour. In light of the facts, the Québec Ombudsman concluded that the institution has to be firmer when users refuse to abide by the rules that societal living imposes. It therefore recommended that the institution enlist external support and expertise to manage this particular case. It also recommended that measures be established for the lady to receive the daily care specified in her intervention plan. The recommendations were followed to the Québec Ombudsman's satisfaction. . . .)

(. . . *For the benefit of all, effectively monitor residents who exhibit disruptive behaviour – 2*

Elderly residents in a residential centre in an outlying region were regular victims of assaults by a younger resident with an intellectual disability. In a single month, there were more than 80 assaults that caused not only physical injuries but also widespread fear and deterioration of the living environment.

The investigation by the Québec Ombudsman showed that, first of all, the centre downplayed the seriousness of the events and, second, that its staff did not have the expertise to adequately supervise the aggressive resident and respond to her particular needs. Furthermore, the centre had resorted to means of control and had not respected the rules in this regard or the resident's basic rights. Lastly, because of its remoteness, the centre had been slow to explore solutions that lay outside the region.

The Québec Ombudsman made several recommendations to the CSSS, the health and social services agency and the Department. It pointed out in particular that the resident should be assessed in a specialized and adapted environment in order to determine the care, services and kind of lodging she needed. The recommendations were implemented to the Québec Ombudsman's satisfaction. Now the resident in question is in another living environment that can supervise her behaviour adequately. . . .)

IN CHSLDs, ENSURE VIGILANT AND ONGOING TREATMENT OF PRESSURE ULCERS

The Québec Ombudsman saw that the staff in CHSLDs sometimes had difficulty effectively managing pressure ulcer treatment. Systematic screening and proactive treatment of this kind of sore in the elderly must be among the daily considerations of the healthcare team.

We know that pressure ulcers can develop a mere three hours after a person has been lying in bed and are often a sign of significant decline in the user's overall health. They develop when there is no blood flow to certain parts of the body, usually hips, heels, ankles or the tailbone. The ulcers form because skin tissue is compressed between bone and a solid surface when a user is lying in bed or seated in the same position for too long. In addition to aging itself, there are numerous contributing factors in the elderly with reduced autonomy, including cognitive impairment, malnutrition, dehydration, incontinence, muscle wasting and immobility. Furthermore, there are also precipitating factors such as position, humidity, medication, lowered skin and tissue resistance and use of inappropriate sheets, beds, chairs or weight-bearing surfaces.

As soon as a resident is admitted, the CHSLD must assess the user's risk for pressure ulcers and arrange for the required supervision. For its part, the healthcare team must use a comprehensive and multidisciplinary approach in order to ensure optimal management of prevention and treatment.

Given the high proportion of elderly CHSLD residents likely to have pressure ulcers, the Québec Ombudsman insists on the importance of prompt, appropriate and continuous action. Some of the investigations it conducted revealed deficient training in pressure ulcer management. This training is even more crucial given that pressure ulcer treatment methods and practices are constantly changing.

(. . . *Treat pressure ulcers with utmost diligence*

A 70-year-old living in a CHSLD had pressure ulcers on his hips and feet. Severely disabled, the man had a variety of illnesses that required that he be frequently transferred to the hospital. His record indicated that he had pressure ulcers that worsened starting in the fall of 2013. Between spring 2013 and winter 2014, he was rushed to hospital ten times, for a total stay of some 60 days.

In investigating, the Québec Ombudsman established that, considering the resident's fragile health and the multitude of contributing factors, the care provided to the resident by the staff had been adequate. However, certain members of the personnel needed to be updated on the latest practices. Furthermore, the forms for ongoing assessment of the user's pressure ulcers were incomplete.

The Québec Ombudsman therefore recommended a training update and professional development for the staff. It also recommended that the healthcare team fill in the relevant forms correctly. The institution agreed to apply the Québec Ombudsman's recommendations. . . .)

PROVIDE EVERY CHSLD WITH THE EQUIPMENT IT NEEDS TO BATHE RESIDENTS

Some CHSLD residents never get a bath because the institutions do not have the equipment or space to wash them safely. It must be remembered that users experiencing loss of independence often have problems such as dementia, loss of muscle tone, reduced mobility or spasms that require that special equipment be used. When it is not available, the residents are given sponge baths, while, in fact, they should be able to be given a bath or shower.

Many elderly CHSLD residents need specialized equipment in order to be given a bath or shower, for example, an assistive device to provide the physical support lacking because of loss of muscle tone. In some cases, the space is too narrow for a shower stretcher. The Québec Ombudsman agrees that personal care delivery in CHSLDs is a challenge. Given the condition of some residents, bathing or showering is not necessarily the appropriate solution for everyone. However, the fact remains that some residents do not get the bath or shower that would do them good. In these cases, the only reason cited is the lack of safe equipment in the CHSLDs. These institutions should set up the physical environment to respond to the special needs of users experiencing severe loss of autonomy.

(. . . *For CHSLDs: have the equipment needed to bathe residents*

Nine months. That is how long it had been since an elderly CHSLD resident had had a bath. The institution's response to the family's protests was that bathing the woman was hazardous because she reacted strongly to the cold metal and the water. Furthermore, because she had postural control problems and muscle collapse, the hydraulic chair in the therapeutic bath could not be used. As a result, the staff at the CHSLD gave her sponge baths. The person was transferred to another CHSLD, which had the equipment required to give her a bath.

The Québec Ombudsman recommended that all the CHSLDs within the CSSS concerned take the extent of the residents' limitations into account and update their equipment by customizing it to residents' physical characteristics. . . .)

THE QUÉBEC OMBUDSMAN'S RECOMMENDATIONS CONCERNING PERSONAL CARE

Whereas bathing is crucial to the well-being of CHSLD residents;

Whereas in certain situations, notably when a person has late-stage dementia, sponge baths are a recognized practice adapted to the person's health condition;

Whereas specialized bathing or showering equipment is often needed, particularly in CHSLDs, given the state of health of the elderly who are experiencing loss of independence;

Whereas some CHSLDs do not have the specialized equipment required for giving residents with more fragile health a bath or shower;

THE QUÉBEC OMBUDSMAN RECOMMENDS THAT THE MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX:

- Make an inventory of the CHSLDs that do not have the required equipment;
- At the earliest opportunity, take the measures needed to provide these residents with baths or showers without compromising their safety;
- Ensure that CHSLD quality assessment visits systematically include evaluation of personal care;
- Send the Québec Ombudsman the findings from this inventory and information about the concrete measures for ensuring adequate personal care in CHSLDs.

COMMENTS BY THE MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX

The Department's response to the Québec Ombudsman's recommendations was the following:

"The Ministère de la Santé et des Services sociaux welcomes the Québec Ombudsman's recommendations and concurs with them. In the coming months, work will be done to follow up appropriately. The Department shares the concerns they express, as witnessed by the actions undertaken in the past year.

In 2014-2015, the Department used management and accountability agreements to remind the institutions of the importance of assessing, or even the obligation to assess, all users occupying permanent beds in public CHSLDs in CSSSs or in private CHSLDs.

Using this assessment, which includes personal care, institutions must see to it that the needs of these residents are met as much in matters of care and service delivery as in the availability of the required equipment.

Personal care and the way of providing it are determined in the intervention plan of the resident. This plan, agreed upon by the resident and that person's family, is based on the resident's needs, lifestyle and so forth, and therefore may differ from one resident to another. In all circumstances, personal care must be provided safely and in a manner heedful of the user's privacy, needs, preferences, specificities and capacities." [Translation]

Home support

At a time when the pressure on emergency rooms must be relieved, admission to residential resources, managed, and hospitalizations, prevented, the importance of offering home support services that are accessible, in sufficient quantity and adapted to users' needs is self-evident. Furthermore, since most citizens want to continue living at home for as long as they can, the Québec Ombudsman is critical that it is taking so long to develop and strengthen the slate of home support services. It therefore reminds the Ministère de la Santé et des Services sociaux that urgent action is needed.

In 2012, the Québec Ombudsman published a report entitled *Is Home Support Always the Option of Choice? Accessibility of home support services for people with significant and persistent disabilities*, which dealt primarily with personal assistance services and domestic help. The analysis carried out underscored the yawning gap between *Chez soi: Le premier choix – La politique de soutien à domicile* (the home support policy), adopted in 2003, and the daily lives of the people who receive—or should receive—these services. The Québec Ombudsman made two recommendations to the Department: determine the level of funding needed for home support services, and clearly set out the slate of services truly available, according to public needs. The picture that emerges should be based on an analysis of waiting lists, a projection of needs for the next few years, and benchmarking with other governments.

Even though some work has begun on this front, the Québec Ombudsman finds it lamentable that more than three years after the above report was released, the Department is still unable to provide answers about the actual home support services available to the most vulnerable members of society. The complaints received this year confirm that users are still grappling with service cuts, long wait times, natural caregiver burnout and regional disparities. In a context of reconfiguration of the health and social services network, home support remains a priority issue. It is among the favoured approaches for pushing back, if not, in many cases preventing, the move into a residential resource.

The three following cases illustrate the problem of the shortage of resources which led managers to apportion the services as fairly as possible, which, though commendable in itself, did not provide the people concerned with the necessary support.

- *An 84-year-old woman was the caregiver to her husband who was older than her and experiencing severe loss of independence. According to the assessment that had been done by the health and social services centre (CSSS), he should have been getting 37.5 home support hours per week, but, in fact, he was only receiving 13.5. The woman, who was not in the best of health herself, came to the Québec Ombudsman to express how difficult it was for her and how she needed a few respite hours per week. The investigation by the Québec Ombudsman showed that the CSSS did not have the resources required to meet all the needs of its client population. It had therefore decided to distribute the available services among all the users based on the existing resources and the volume of requests—in other words, giving everyone a little bit without giving anyone enough.*
- *A woman with a disability had been getting three and a half hours of domestic help per week for more than eight years. Recently, her CSSS had informed her that her domestic help would be reduced to two hours every two weeks, despite the fact that her needs had not decreased. The demand for home support services had increased significantly, so the region's CSSS had reviewed its allocation criteria to give priority to personal assistance while cutting back on domestic help services.*

- *A woman who had become paraplegic further to surgery was distressed because of the insufficient number of home support hours that her CSSS had offered her. Needing help with every facet of care and not wanting to be placed in a residential institution, she approached the Québec Ombudsman to obtain an extra eight hours of services per week. As in the above cases, the CSSS, given the lack of means for responding to all needs, had put a ceiling on the number of hours per person. Those whose condition called for more support had to pay out of pocket for the additional services required, or, like the woman here, resign herself to moving to a CHSLD.*

SET ASIDE ADMINISTRATIVE INFLEXIBILITY AND DISPLAY OPENNESS

The way in which institutions apply their internal rules is likely to have a huge effect on service accessibility, especially for the most vulnerable members of society. While these rules may be warranted by the monitoring required within any institution, they sometimes result in a hardening of administrative positions that unjustly and even dramatically penalize users. This is how service programs come to deviate wildly from their intended purpose.

(. . . *Adjust to family needs rather than making calculations more complicated*

The mother of a child with a disability had been receiving a direct allowance of $2,100 for respite care and caretaking costs. In keeping with the CSSS's prescribed terms, she sent in her invoices to her CSSS on a regular basis and it reimbursed her for the amounts claimed. In 2013-2014, the CSSS decided to issue only two instalments per year. Half of the allowance ($1,050) was issued at the beginning of the year to cover expenses for the first five months. To receive the second instalment, the woman had to remit the receipts for the first part of the year. Since her childcare needs were greater in the second half of the year, she claimed only $900 for the first half. However, the institution refused to issue the second instalment, claiming that the full amount of the first instalment had to be used up before it could proceed any further. The Québec Ombudsman recommended that the institution issue the user's family the remaining balance of the allowance granted for 2013-2014, which it agreed to do. . . .)

(. . . *Reinstate indispensable financial assistance*

The father of a disabled child complained to the Québec Ombudsman about the fact that the rehabilitation centre that was the agent for the Rent Supplement program (housing assistance for people with disabilities) had withdrawn his grant. According to the centre, he had not gotten the assistance renewal documents in on time. Without the grant, the family, which was receiving last-resort financial assistance, could not have afforded to continue living in their apartment which had been completely adapted to accommodate their son's limitations.

During the investigation, the Québec Ombudsman realized that the procedure required of the citizen was too much for him, so it intervened to recommend that the institution reinstate the grant. To ensure that the same situation would not recur year after year, the Québec Ombudsman asked the institution to make sure that there was someone to assist the citizen with the paperwork. The recommendations were accepted and the family was able to keep their adapted apartment. . . .)

(. . . ***Do not mistake a paid worker for a natural caregiver***

Hoping to increase his income, a man with a disability decided to rent out the second floor of his house. The employee who had been providing him with home support services for more than 12 years was interested in the apartment. She was paid under the service-employment paycheque program by which users are provided with home support and choose their home support service providers.

Notified of the possible move, the CSSS informed the user that according to the home support policy, if his employee opted for this solution, from that point on she would be considered a natural caregiver[15] and could no longer be paid as a worker under the service-employment paycheque program. The user responded that the person could not be considered a natural caregiver because she was not his spouse or his relative.

The Québec Ombudsman considered that the user was right and recommended that the institution allow her to become the complainant's tenant and to continue to be paid as an employee. The institution agreed to implement the recommendation. . . .)

Service support

KEEP A VERY CLOSE EYE ON FEES TO HOSPITAL USERS

In recent years, the Québec Ombudsman has received several complaints about the fees charged by hospital centres, in particular administrative and care-related fees. At a time when budgets are being squeezed and institutions are scrambling for additional funding, the Québec Ombudsman considers that great care must be taken in order to avoid the slippery slope towards abusive billing. There must be strict guidelines for the fees that can legally be charged to users.

APPLY THE RULE GOVERNING FREE ACCESS AND RETHINK THE DEFINITION OF "MEDICALLY REQUIRED"

In Québec, in accordance with the law, hospital centres must provide insured and medically required services free of charge to people eligible for the Québec Health Insurance Plan. The *Regulation respecting the application of the Hospital Insurance Act* specifies what these services are. For example, prostheses which may be integrated with the human body, such as intraocular lenses, and material and equipment required in performing surgery, are covered. However, the Québec Ombudsman has seen that users have had to pay for care normally provided free of charge in a hospital centre.

For example, intraocular lenses, used in cataract surgery, must be medically necessary. Currently, only hard lenses are considered medically required. Exceptionally, soft lenses may be free of charge if prescribed by a physician. This is just another way of saying that, in most cases, users who choose soft lenses have to pay for them. However, according to a Ministère de la Santé et des Services sociaux directive from 1996 that is still in effect, the cost of a hard lens must be subtracted from the cost of the soft intraocular lens. Complaints handled by the Québec Ombudsman have shown that institutions do not apply this calculation and bill users for the total cost of the soft lens. A few years ago, the Québec Ombudsman asked the Department to make sure that institutions follow the directive. With time, use of hard intraocular lenses in cataract surgery has become increasingly rare. This invites the question: in this day and age, are hard lenses still the medically required option?

15 The Ministère de la Santé et des Services sociaux defines natural caregiver as follows: "Any person in the immediate environment of a person with disabilities who provides significant support, on a continuous or occasional basis, in a non-professional capacity, is considered a natural caregiver. This person can be a family member or friend." [Translation]

The Québec Ombudsman also noticed that users are billed for new technology. The argument used to justify billing is that by definition new equipment cannot be medically required because old equipment, which is still being used and offered to users, produces satisfactory outcomes. What, then, are the guidelines used to determine what is or is not medically required for evaluating whether the services or products are free? In other words, when there is a new way of improving the care provided, should it not be considered medically required technology, and therefore, be free?

(. . . *Do not charge for something that is provided for in the Regulation*

A citizen had surgery that involved a penal implant following removal of the prostate. Even if the surgery was medically required and a prosthetic device had been integrated with the human body, the institution wanted to bill him for the implant. The institution maintained that only the surgery was covered by the Québec Health Insurance Plan. This contravened the* Regulation respecting the application of the Hospital Insurance Act *(medically required internal prosthesis), so the Québec Ombudsman recommended that the user not be required to pay for the implant; the institution agreed. The institution went on to inform the care unit concerned that, in such circumstances, this type of prosthesis is provided and paid for by the institution. . . .)

BE CLEAR ABOUT THE ADMINISTRATIVE FEES CHARGED TO USERS

Hospital centres sometimes require users to pay administrative fees for tasks pertaining to the purchase, delivery and billing of prostheses that are not insured under the Québec Health Insurance Plan (e.g. intraocular lenses). According to the Department, they are allowed to do this because their operating budgets do not cover billing activities. However, the Québec Ombudsman noted that administrative fees vary from one institution to another and there are no guidelines in this regard.

The Québec Ombudsman would like to remind the authorities of the importance of adequately informing users about the fees users will be charged.

(. . . *Administrative fees: be transparent and inform users adequately*

A man went to a hospital centre's outpatient clinic without his Health Insurance Card. In accordance with the rate stipulated in a circular on billing for outpatient services for responsibilities other than those incumbent on the Department, he was charged $40 for the consultation, but was told that he would be reimbursed when he returned with his card. When the time came for him to be reimbursed, he was told that he could not be paid in cash, but only by cheque, and there was a $20 administrative fee, stipulated in a CSSS policy. The amount is charged because of the tasks involved in the reimbursement and cheque issuance process, which according to the institution, are not included in the job description of the assigned employee. The fees are also an incentive for users to remember to bring their Health Insurance Card. The fees are the same regardless of the amount initially charged.

Since the user had not been informed about these fees, the Québec Ombudsman asked for him to be reimbursed, which the institution agreed to do. . . .)

In discussions with the Québec Ombudsman in the summer of 2014, the Department said it was in favour of administrative fees of this kind, while expressing its reservations about establishing specific amounts. It has not produced any guidelines for charging of these fees. The Québec Ombudsman is sceptical about the Department's will to truly act to deal with these situations consistently.

THE QUÉBEC OMBUDSMAN'S RECOMMENDATIONS CONCERNING THE ADDITIONAL FEES CHARGED TO USERS BY HOSPITAL CENTRES:

Whereas hospital centres are obliged to provide insured and medically required care and services free of charge;

Whereas there are no criteria for defining what is medically required;

Whereas institutions receive funding to provide insured services, but there are no guidelines for determining what is really included in administrative fees that enable adequate service delivery;

Whereas hospital centres are free to determine the administrative fees that can be charged;

THE QUÉBEC OMBUDSMAN RECOMMENDS THAT THE MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX:

- Establish guidelines for what is medically required in order to determine which care and services are provided free of charge, within the meaning of the *Regulation respecting the application of the Hospital Insurance Act*;
- Provide fair and reasonable guidelines for the administrative fees that institutions can charge to users, pursuant to the *Hospital Insurance Act*.

COMMENTS BY THE MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX

The Department's response to the Québec Ombudsman's recommendations was the following:

"The Ministère de la Santé et des Services sociaux notes the facts reported by the Québec Ombudsman. It may rest assured of the Department's full cooperation regarding our oversight of the additional fees charged to users by hospital centres. More specifically, the question of the kind of lens that must be considered medically required is central to this file. The Department is currently in talks about this subject with the Association des médecins ophtalmologistes du Québec. The administrative directives will be adjusted based on the outcome of these discussions." [Translation]

ESTABLISH PRECISE STANDARDS FOR AMBULANCE TRANSPORTATION

In its 2013-2014 Annual Report, the Québec Ombudsman recommended that the Department define the concept of "medically or socially required" provided for in appendix 2 of its policy on the transportation of users of the health and social services network. This concept is pivotal because it is used to determine whether or not a person age 65 and over is entitled to free pre-hospital transportation services. In its response to the Québec Ombudsman, the Department promised that this issue would be addressed in the report of the provincial committee on pre-hospital emergency services.

In June 2014, the committee tabled its report. One of its recommendations was the creation of province-wide criteria for the use of ambulances and alternative transportation. Furthermore, the authors of the report felt that a structured examination of population aging should be undertaken. The committee recommended reviewing the question of free ambulance transportation services for people 65 years old and over.

Thus far, no changes have been made in this regard, and the Québec Ombudsman has seen that the methods for determining what is medically or socially required for this population group vary widely. For example, institutions systematically refuse to cover the cost of ambulance transportation when the patient leaves the premises without being seen by a physician or when the user's priority level at triage is 4 or 5 (non-urgent cases). In these situations, nobody takes the time to assess the medical or social need for transportation. Even though the Department has been aware of this problem for many years, it has yet to provide institutions with precise standards that would rectify it fairly. This year, the Québec Ombudsman recommended that an institution change its criteria, which, in the Québec Ombudsman's opinion, were too rigid. The institution refused to do so, arguing that it was up to the Department to establish guidelines. The Department's stance is that current access to free ambulance transportation for this population group should be interpreted "broadly."

To return to the policy on user transportation, it is up to the institution physician or that person's representative to determine whether or not a citizen's condition warrants ambulance transportation. When transportation is deemed to be unnecessary, the user must be informed of this immediately. The Québec Ombudsman knows that patients have only been told about this several days and, sometimes, several weeks after the physician or the physician's representative has made a decision regarding the need for ambulance transportation. This is a prime example of the gap between the standard and what happens in the real world. As the Québec Ombudsman sees it, the user must be informed as quickly as possible of the results of the assessment of the need for ambulance transportation.

(. . . *Recognize the need for ambulance transportation*

Following a fall, a confused user was taken to hospital by ambulance, but he left the emergency room without having been seen by a physician. Shortly after, his daughter brought him back to emergency. At first the institution refused to pay for the cost of ambulance transportation because the user had left the emergency room without having been seen by a physician. Based on the information obtained, his condition at the time of transportation made him eligible for the service free of charge. Subsequently, he was taken to emergency again for the same injury and was hospitalized.

The Québec Ombudsman recommended that the institution cancel the ambulance transportation fees, which it agreed to do. . . .)

REPORT ON SYSTEMIC INTERVENTIONS

In addition to processing the complaints and reports it receives, the Québec Ombudsman conducts systemic analyses of situations that are deleterious to great numbers of citizens. These analyses can give rise to special reports that involve a single government department, agency or health and social services institution or several. Carried out with a view to damage prevention, such interventions encompass the broader goal of concrete and sustainable improvement of public service quality.

It should be noted that not all the systemic interventions in 2014-2015 are presented in this Report because, as at March 31, 2015, some of the recommendations made had not yet been published or sent to the stakeholders concerned.

This year, Québec Ombudsman published three systemic intervention reports whose contents are described in the sections of the Annual Report pertaining to the department, agency or institution concerned. The documents were released under the following titles:

- *Access to public education for children with a precarious immigration status* (see page 45);
- *Control and monitoring of private waterworks systems in Québec* (see page 43);
- *Service access, continuity and complementarity for young people (0-18 years old) with an intellectual disability or an autism spectrum disorder* (see page 87).

This section of the Annual Report presents the Québec Ombudsman's observations concerning the implementation of the recommendations stemming from its systemic interventions.

The Québec Ombudsman's summary reports are found at www.protecteurducitoyen.qc.ca.

LENGTHY WAIT TIMES FOR CORONERS' INVESTIGATIONS (April 2014)

Prompt follow-up to the Québec Ombudsman's recommendations

Following complaints concerning the lengthy wait times for coroners' investigations, the Québec Ombudsman carried out an investigation on this issue which has such serious consequences—human and financial—for bereaved families. At the end of the investigation, it made seven recommendations aimed at reducing these delays and at improving the information given to deceased persons' families.

The Bureau du coroner endorsed all of the Québec Ombudsman's recommendations and presented a detailed action plan for implementing them. It set a goal of six months' wait time for investigations by 2017. Furthermore, starting in the summer of 2014, the Bureau du coroner and all coroners undertook an operation to complete the investigations that had been lagging the longest. This initiative made it possible to wrap up a record number of investigations in 2014. Public information concerning wait times for investigations was revised to better reflect the reality of the situation. This information will be reviewed to factor in the wait time decreases to come.

From the viewpoint of the Québec Ombudsman, the Bureau du coroner's objectives concerning reduced wait times and how to achieve them are realistic, in light of the measures and resources set out for this purpose in its action plan. So far, the plan is on schedule.

FINANCIAL CONTRIBUTION TOWARDS THE PLACEMENT OF A MINOR CHILD (March 2013)

The departments and agencies concerned are working on it. A report is expected.

In the Québec Ombudsman's opinion, the regulation governing administration of parents' financial contribution towards the placement of their minor child is obsolete. Furthermore, it is applied differently from one youth centre to another, leading to prejudicial situations and unfairness. Subsequently, there is a pressing need for review of the way this contribution is calculated and collected and for standardizing youth centre practices in this regard. The Québec Ombudsman therefore made recommendations to the Ministère de la Santé et des Services sociaux (the Department), the Régie des rentes du Québec, the Agence du revenu du Québec and the Ministère des Finances.

In 2014, the Department set about reviewing how it calculates and collects the financial contribution in tandem with its work to review contributions for adult lodging. At the Québec Ombudsman's request, it issued a reminder to managers of youth centres and rehabilitation centres for physical disabilities and for intellectual disabilities of their various obligations, namely, transmitting complete information to parents about the financial incidence of placement so that the parents understand the calculation rules, their rights and their obligations. Another purpose of the reminder was to make sure the residential resources under their responsibility immediately inform the youth centre charged with determining and collecting the financial contribution at the beginning of the placement of a minor child.

The Department sent the Québec Ombudsman a new action plan and a detailed report on the work carried out in collaboration with the Régie des rentes, the Régie de l'assurance maladie, the Ministère des Finances and the Ministère de la Justice. The Department's representatives briefed it on the main measures being considered to reform the calculation and collection of the contribution for the placement of a minor child and for adult lodging. In particular, they informed it that the proposal for a complete overhaul, originally slated for June 2015, should be presented in the fall of 2015.

The Québec Ombudsman has taken note of this work to review how the contribution is calculated and collected. However, it sees that decisions have not yet been made regarding several important measures that underpin the proposed review operation by the Department. The Québec Ombudsman should be receiving a detailed progress report no later than mid-October 2015.

ORGANIZATION OF OFF-ROAD EMERGENCY RESPONSE SERVICES: OPTIMIZE COVERAGE TO SAVE LIVES (March 2013)

Adequate follow-up to recommendations and work on schedule

In its report on organization of off-road emergency response services with a view to greater quality and accessibility, the Québec Ombudsman made various recommendations to the Ministère de la Santé et des Services sociaux and the Ministère de la Sécurité publique. The goal: to save as many lives as possible and reduce the risk of permanent disabilities in off-road accident survivors, especially in isolated areas. The recommendations contained in the report concerned three areas for action, namely, financing of interventions, awareness and communications, and rescue team operationalization.

To follow up on the Québec Ombudsman's intervention, the Departments co-produced a progress report coordinated by Organisation de la sécurité civile du Québec's subcommittee on emergency services in isolated areas. The working group drafted guidelines for off-road emergency service responders. Its current focus is formation of regional committees coordinated by the Ministère de la Sécurité publique's regional civil security and fire safety directorates. The purpose of these committees is to bring together local off-road emergency service partners and to inventory the resources available in their territory with a view to establishing local intervention protocols. As recommended by the Québec Ombudsman, these protocols will be included in fire safety cover plans.

The Québec Ombudsman therefore notes with satisfaction that the actions undertaken are in keeping with its recommendations, are moving forward suitably, and are on schedule. Furthermore, the responsible authorities have created public service messages to increase risk awareness and promote safe off-road behaviour.

GOVERNMENT SERVICES FOR CHILDREN, ADOLESCENTS AND ADULTS WITH PERVASIVE DEVELOPMENTAL DISORDERS (October 2009 and May 2012)

Certain promising gains in support to children and families, but some delays

In October 2009, the Québec Ombudsman published a first report on government services for children seven years old or younger with autism spectrum disorders (ASDs).[16] It concluded that these children's and their parents' access to public services is obstacle-ridden. It made recommendations for short-term solutions likely to improve the daily lives of these children and their parents, as well as actions designed to create sustainable solutions to this recurrent problem. Certain recommendations were made to the Ministère de la Santé et des Services sociaux and others to the Ministère de l'Éducation, du Loisir et du Sport (now the Ministère de l'Éducation, de l'Enseignement supérieur et de la Recherche), the Ministère de la Famille et des Aînés (now the Ministère de la Famille) and the Office des personnes handicapées du Québec.

In May 2012, the Québec Ombudsman tabled a second report, this time concerning government services to young people age seven and over and adults with ASDs. It pointed out that in theory, there is indeed a diversified slate of services available, but in practice, there are few services and they are not equally accessible. The second report contains 17 recommendations to the Departments from the 2009 report, along with recommendations to the Ministère de l'Emploi et de la Solidarité sociale (now the Ministère du Travail, de l'Emploi et de la Solidarité sociale). The recommendations were aimed at quantifiable improvement of access to the services required for ASD children and adults.

Six years after publication of the first report, difficulties persist.

The Ministère de l'Éducation, de l'Enseignement supérieur et de la Recherche continues to require a diagnostic assessment by a qualified multidisciplinary team twelve months before a child with ASD starts school. However, it intends to release an action plan in the fall of 2016 to streamline this process.

Another problem: despite sustained work to harmonize the approximately ten financial assistance programs for children with disabilities, a confirmation of the diagnosis of disability is still required for issuance of the Supplement for Handicapped Children administered by the Ministère de la Famille.

16 Published in May 2013, the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5) creates a new classification for pervasive developmental disorders (PDDs), henceforth called autism spectrum disorders (ASDs).

Be that as it may, the Québec Ombudsman sees that the government departments and agencies concerned are gradually implementing its recommendations. For example, the Ministère du Travail, de l'Emploi et de la Solidarité sociale is continuing its regional pilot projects in collaboration with the Ministère de la Santé et des Services sociaux and the work is on schedule (initiatives for more seamless movement through the system of users receiving services from both networks). The Ministère de l'Éducation, de l'Enseignement supérieur et de la Recherche has produced two guides, the first updating its guide on the transition from school to the workplace, and the second, unpublished, on socio-occupational activities. The Ministère de la Famille continues to lend its expertise to the development of day activities. As planned, the Office des personnes handicapées du Québec is improving how it coordinates services to people with disabilities with Services Québec. Lastly, the Ministère de la Santé et des Services sociaux has tabled its work plan pertaining to the parameters of the program to support the families of people with disabilities and new guidelines are expected for 2015.

Noting these different gains, the Québec Ombudsman estimates that the departments concerned have implemented sixteen of the 21 recommendations from its 2009 report. It reiterates that the five others are important and is particularly disappointed that the projected deadline for changing the requirements concerning diagnostic assessment of children with ASD before starting school has been pushed back.

As for follow-up to the 2012 report, the Québec Ombudsman notes that implementation is on schedule. It applauds the recommendations of the interdepartmental committee on harmonization of financial support programs for children with disabilities.

SERVICES TO DETAINEES WITH MENTAL DISORDERS (May 2011)

When will responsibilities be shifted to the Ministère de la Santé et des Services sociaux?

The organization of the health services and social services provided to detainees with mental disorders is seriously flawed. In its report, the Québec Ombudsman made specific recommendations to the Ministère de la Sécurité publique, Ministère de la Santé et des Services sociaux and Ministère de la Justice. Its recommendations also concerned police intervention, the legal system's handling of these detainees, and their return to society.

In July 2014, the Ministère de la Justice briefed the Québec Ombudsman on the work it had carried out in 2013-2014 regarding adaptation of the legal system to detainees with mental disorders.

The Québec Ombudsman has reservations about follow-up to the recommendations contained in the report, especially those pertaining to adapting the mental health services provided in correctional facilities, as well as those dealing with these detainees' readiness for release and re-entry into society. Granted, initiatives have been undertaken regarding police interventions involving people in crisis or with mental health disorders, and concerning non-judicial solutions for these people, or where applicable, preventing their incarceration. Nonetheless, transfer of responsibility for delivering health services and social services to detainees from the Ministère de la Sécurité publique to the Ministère de la Santé et des Services sociaux has not yet occurred, and the Québec Ombudsman strongly deplores this.

PROBLEMS WITH APPLYING THE ACT RESPECTING THE PROTECTION OF PERSONS WHOSE MENTAL STATE PRESENTS A DANGER TO THEMSELVES OR TO OTHERS (February 2011)

No good reason for the Department's delays

Pursuant to the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*, under certain circumstances a person may be kept under confinement in a health and social services institution against his or her will. The Québec Ombudsman saw major disparities in how the Act is applied from one institution, region or sector to another. Its report exposes numbers of failings and recommends possible solutions: legislative amendment, policy

direction by the Ministère de la Santé et des Services sociaux aimed at better legal supervision of confinement, rigorous accountability for the acts carried out under the Act, and production and provision of a Québec-wide training program.

The Ministère de la Santé et des Services sociaux was open to the Québec Ombudsman's recommendations, one of them being drafting of guidelines for monitoring and standardizing the application of the legal framework governing all forms of forcible confinement. It should be recalled that in 2011, the Department formed an expert committee tasked to create the required policy. The committee's report was sent to the Québec Ombudsman in April 2014, but the Department does not foresee releasing these policy thrusts before the fall of 2016.

The Québec Ombudsman considers that production of this report is taking far too long. Furthermore, there is no justification for the Department's decision to postpone distribution of these orientations until the fall of 2016. The Québec Ombudsman is therefore dissatisfied with the follow-up to its recommendations in this file.

QUÉBEC'S INVESTIGATIVE PROCEDURE FOR INCIDENTS INVOLVING POLICE OFFICERS (February 2010)

At last, the creation of the Bureau des enquêtes indépendantes

After examining the procedure described in the departmental policy regarding the death of civilians during a police intervention or while in police custody, the Québec Ombudsman concluded that the policy did not fulfil certain criteria essential to the credibility and integrity of an investigative process and did not provide guarantees as to independence. It therefore recommended that the Ministère de la Sécurité publique make substantial changes. To this end, it made eight recommendations, including the creation of an independent body headed by qualified civilians and whose investigative team would combine the expertise of such civilians with that of former police officers.

Bill 12, *An Act to amend the Police Act as concerns independent investigations*, was passed on May 9, 2013, in response to the Québec Ombudsman's recommendations. In particular, it proposed the creation of the Bureau des enquêtes indépendantes, a body tasked to investigate incidents in which civilians sustain serious injury or death during a police intervention or while in police custody. This Bill came into force on May 15, 2013, excluding the sections concerning the Bureau des enquêtes indépendantes.

The director of the Bureau des enquêtes indépendantes was appointed on December 17, 2014, and took office on January 12, 2015. As at March 31, 2015, competitions to recruit the assistant director and investigators were underway. As the Québec Ombudsman recommended, the École nationale de police will provide civilian investigators with training and professional development.

The *Regulation respecting the selection procedure and the training of investigators of the Bureau des enquêtes indépendantes* came into force in June 2014, but three regulations stemming from Bill 12 remain to be drafted, namely:

- The regulation defining the notion of serious injury;
- The regulation concerning conducting of the investigations entrusted to the Bureau des enquêtes indépendantes, as well as the obligations of the police chief, the police officers involved in the event and the police officers who were witnesses to it;
- The regulation to determine the conditions that apply to the provision of support services to the Bureau des enquêtes indépendantes by police forces offering level 4 services or more.

The Québec Ombudsman points out that, given that the Bureau des enquêtes indépendantes is operational, the required regulatory framework must be put in place place soon.

PARLIAMENTARY WATCH REPORT

Pursuant to the legislation that governs its activities, the Québec Ombudsman carries out structured monitoring of draft legislation. The main purpose of this exercise is to identify the provisions of bills and draft regulations likely to be interpreted to the disadvantage of citizens or to generate adverse effects, as well as to determine the administrative, economic or social ramifications. By lending its expertise and assistance to the parliamentarians who study a bill, or by submitting comments on a draft regulation to the competent authority, the Québec Ombudsman engages in preventive action and helps to ensure that the respect of citizens' rights and improvement of the quality of public services remain core concerns.

In 2014-2015, the Québec Ombudsman analyzed 43 of the 49 bills introduced in the National Assembly and 110 of the 123 draft regulations published in the *Gazette officielle du Québec*. It intervened with respect to three bills and eight draft regulations. These interventions are summarized below. The nature and scope of the Québec Ombudsman's parliamentary watch interventions are detailed, when warranted, in the sections of this Annual Report dedicated to the subjects in question.

All of the Québec Ombudsman's public parliamentary watch interventions are posted at www.protecteurducitoyen.qc.ca.

Interventions concerning bills

BILL 2, *AN ACT TO AMEND THE EDUCATIONAL CHILDCARE ACT*

June 10, 2014, speech to the Committee on Citizen Relations (French version)

The purpose of this bill, introduced in response to a Court of Appeal of Québec judgement from September 2013, was to clarify the concept of *related persons* within the meaning of the *Educational Childcare Act* with regard to possible ties shared by childcare centre permit applicants or holders, especially those who may be relatives.

The principle of related persons having been the subject of complaints that it had already handled, the Québec Ombudsman recommended that the concept be explained to the persons who could be considered related and that they be informed of their rights and be able to present their points of view before the Department makes its decision. This recommendation was not followed, so the Québec Ombudsman will pay particular attention to this matter.

The recommendation concerning the establishment of a formal review mechanism, allowing a person to contest the Department's decision to consider that he or she is economically related to another person during the eligibility process, was approved.

Lastly, the Québec Ombudsman recommended that the Minister not wait until the last day of the deadline (September 11, 2014) granted by the Court of Appeal, as the Bill had specified, to bring the new provisions into force. Since the *Act to amend the Educational Childcare Act* was only passed on October 21, 2014, and came into force retroactively on September 11, 2014, the recommendation no longer served any purpose.

BILL 10, *AN ACT TO MODIFY THE ORGANIZATION AND GOVERNANCE OF THE HEALTH AND SOCIAL SERVICES NETWORK, IN PARTICULAR BY ABOLISHING THE REGIONAL AGENCIES*

Brief presented to the Committee on Health and Social Services on October 27, 2014

The Québec Ombudsman supported the principle of streamlining of structures and clarification of the responsibilities of the various players and greater managerial accountability set forth in the Bill. In its opinion, these principles, along with definition of the basket of services, are necessary for access to quality, clearly defined, properly integrated services delivered equitably and at reasonable cost.

However, it pointed out that there were major risks that had to be properly assessed and managed if this sweeping reform was to be viable. It emphasized those related to the unwieldiness of managing the new mega-institutions, the fact that managers would be further removed from day-to-day reality in terms of services and therefore less likely to be able to assess service quality, as well as the risk of giving the medical-hospital mission priority when budgets are allocated, to the detriment of the response to significant social service needs.

Given the lack of clear guidelines pending the regional integration of merged institutions' policies, it also cautioned against the risk of settling for the lowest common denominator with regard to the service offering due to cutbacks.

In its recommendations, the Québec Ombudsman insisted on the need for a solid transition plan that establishes the phases of the proposed changes, that sets out guarantees that user services will be kept intact, that specifies expected savings and that establishes a realistic timetable.

Other recommendations, whose principle was reflected in the law passed on February 6, 2015, concerned user participation and representation in the various decisional bodies. Lastly, the Québec Ombudsman recommended that, for the sake of the transparency of government action and the legal certainty that citizens are entitled to expect, the Bill uphold the principles of prepublication and non-retroactivity of the implementing regulations. This recommendation was not followed.

The Québec Ombudsman also insisted on the importance of harmonizing the implementation of these proposed changes with the efforts required so that service provision is not only maintained, but improved in terms of accessibility, fairness and efficiency everywhere in Québec.

Since some of its ten recommendations had more to do with implementation of the reform than with the wording of the Bill itself, the Québec Ombudsman will remain attentive to the implementation component and to the complaints that may stem from it.

BILL 27, *AN ACT RESPECTING THE OPTIMIZATION OF SUBSIDIZED EDUCATIONAL CHILDCARE SERVICES*

Brief presented to the Committee on Citizen Relations on January 15, 2015

The purpose of this Bill, which, as at March 31, 2015, had not been passed, was basically to counter the phenomenon of so-called "ghost" spaces in childcare services. According to the Québec Ombudsman, the Bill attempted to solve this problematic situation through means ill-adapted to family reality.

While it shared the desire to see this public program optimized in terms of accessibility and funding, the Québec Ombudsman reminded the Committee that the phenomenon stems from circumstances beyond parents' control, namely, a limited slate of part-time or atypical childcare services. It expressed the opinion that in order for effective action to occur in the specific context of underused childcare spaces, the primary focus must be the underlying causes of this unwanted effect. It argued that it would be counterproductive to require parents to adjust accordingly or face penalties. Rather, its findings led to the conclusion that the system lacks flexible schedules that would accommodate the childcare needs of many parents. In light of this, the Québec Ombudsman advocated an approach:

- In which funding of subsidized childcare services is based on real attendance rates;
- In which subsidized childcare services are given incentives for offering partly available spaces to meet a portion of the demand for occasional or part-time childcare;
- That is as cost-effective as possible and that better meets both regular and atypical demand alike.

Consequently, it formally recommended:

- That the provisions that impose penalties on parents or subsidized childcare services be removed;
- That funding of the program for subsidized educational childcare services be established on the basis of the real overall attendance rate of children;
- That educational childcare services and other subsidized childcare services offer spaces partly available for occasional or part-time childcare with a view to meeting atypical childcare needs;
- That within the framework of consolidation of the reduced contribution spaces program, funding mechanism requirements be provided for in response to the demand for atypical childcare.

Again, in order to secure a better fit between subsidized childcare space supply and demand, the Québec Ombudsman suggests that private unsubsidized day care centres be allowed to apply to become subsidized, with the same requirements as to quality.

Interventions concerning draft regulations

REGULATION RESPECTING THE QUALIFICATION PROCESS AND QUALIFIED PERSONS
(2014, *Gazette officielle*, Part 2, 645)

Letter of April 10, 2014 to the Minister responsible for Government Administration and the Chair of the Conseil du trésor

While emphasizing the Conseil du trésor's efforts to streamline access to public service jobs by establishing a process whereby applications can be submitted and examined on an ongoing basis, the Québec Ombudsman, with a view to the transparency of the process chosen and to citizens' view of the process as fair, made three recommendations concerning compliance with the provisions of the *Act respecting administrative justice*.

These recommendations concerned in particular the obligation to provide a substantiated decision in writing informing candidates of the outcome of the qualification process, and the obligation to inform candidates who are not selected of the existence of recourse through the Commission de la fonction publique.

Since the draft Regulation provided that a candidate's name be removed from the bank of qualified persons five years after registration but a bank may terminate before the five years are up, the Québec Ombudsman recommended that qualified candidates be informed promptly that the bank will terminate before expiration of their five years of registration.

The Secrétariat du Conseil du trésor agreed with the objectives of these recommendations.

As at March 31, 2015, the Regulation had not been passed.

REGULATION RESPECTING THE SELECTION PROCEDURE AND THE TRAINING OF INVESTIGATORS OF THE BUREAU DES ENQUÊTES INDÉPENDANTES (2014, *Gazette officielle*, Part 2, 641)

Letter of April 25, 2014, to the Minister of Public Security

The Québec Ombudsman endorsed this draft Regulation concerning the selection procedure and training of Bureau des enquêtes indépendantes investigators.

In order to strengthen the proposed selection procedure, it submitted comments and obtained confirmation of its and the Department's common understanding of certain elements of the process, in particular concerning:

- Declaration of penal offences likely to call the Bureau's or candidate's integrity or impartiality into question;
- Grounds for withdrawal of members of the selection committee;
- The effect of the absence or inability to act of the director of the Bureau des enquêtes indépendantes.

The Regulation was enacted by Order in Council on June 18, 2014.

REGULATION TO AMEND THE REGULATION RESPECTING THE SELECTION OF FOREIGN NATIONALS (2014, *Gazette officielle*, Part 2, 1569)

Letter of August 29, 2014, to the Minister of Immigration, Diversity and Inclusiveness

This draft Regulation stipulated that henceforth, applications for Québec selection certificates as a skilled worker would have to be filed by internet. While subscribing to the draft Regulation's objectives, namely, to facilitate application filing and make processing more effective, the Québec Ombudsman expressed its concerns about the obligation to submit applications electronically without the possibility of an exemption, even under exceptional circumstances. It suggested that this requirement must not prevent foreign nationals wishing to immigrate to Québec, but who do not have internet access or a network powerful enough to download the required documents quickly, from submitting an application. Consequently, the Québec Ombudsman recommended that the option of mailing in applications according to the conditions and procedure to be determined be added to the draft Regulation. As at March 31, 2015, the Regulation had not been passed.

REGULATION RESPECTING IMMIGRATION CONSULTANTS (2014, *Gazette officielle*, Part 2, 2035)

Letter of October 22, 2014, to the Minister of Immigration, Diversity and Inclusiveness

While applauding this draft Regulation under which the rules governing the activities of immigration consultants would be tightened, notably, their application to people acting as consultants when their recognition has been suspended or revoked or has expired, the Québec Ombudsman reminded the Ministère de l'Immigration, de la Diversité et de l'Inclusion that it should be vigilant regarding application of these new measures in order to curb remaining abuse in certain cases

of immigration consultancy. It was also pleased to note that the fees for entry in the Registre québécois des consultants en immigration had been reviewed and adjusted to take into account the real cost of application processing, as it had previously recommended. The Regulation was enacted by Order in Council on March 18, 2015.

REGULATION TO AMEND THE REGULATION RESPECTING THE SELECTION OF FOREIGN NATIONALS (2014, *Gazette officielle*, Part 2, 2790)

Letter of January 27, 2015, to the Minister of Immigration, Diversity and Inclusiveness

The purpose of this draft Regulation was to counter certain fraudulent or abusive applications of the current Regulation and also to relax requirements for the issuance of Québec certificates of acceptance or selection certificates. Despite its agreement with these objectives, the Québec Ombudsman expressed its misgivings regarding certain amendments making it mandatory to file applications by internet for Québec selection certificates as a skilled worker.

Concerned about the elimination of the procedure allowing the main applicant's spouse to be substituted for the applicant when this would be more advantageous to the couple, the Québec Ombudsman recommended that the Regulation continue to allow this possibility should an application require manual processing. Furthermore, considering that it would be reasonable to take into account diplomas obtained before an application for a selection certificate is filed, but only if the applications can be processed quickly, it recommended that in the event of problems that lengthen processing times, the Minister be empowered to take into consideration diplomas received between the time the application is submitted and the time it is assessed. As at March 31, 2015, the Regulation had not been passed.

REGULATION TO AMEND THE REGULATION RESPECTING FINANCIAL ASSISTANCE FOR EDUCATION EXPENSES (2014, *Gazette officielle*, Part 2, 2977)

Letter of February 5, 2015, to the Minister of Higher Education, Research and Science

The Québec Ombudsman noted with satisfaction that the Department had been quick to take into consideration its recommendation made in the fall of 2014 further to complaints from students wrongly deemed ineligible for the Department's financial assistance program. By clarifying the nature of the income used to compute the contribution of parents, sponsor or spouse, notably by making allowance for locked-in retirement accounts, the proposed amendment would solve the problem raised further to the investigation the Québec Ombudsman conducted and prevent recurrences for other students. The Regulation was enacted by Order in Council on March 25, 2015.

REGULATION TO ESTABLISH A PILOT PROJECT ON MANDATORY MEDIATION FOR THE RECOVERY OF SMALL CLAIMS ARISING OUT OF CONSUMER CONTRACTS (2015, *Gazette officielle*, Part 2, 55)

Letter of March 6, 2015, to the Minister of Justice

The Québec Ombudsman welcomed this draft Regulation establishing a three-year pilot project on mandatory mediation in the judicial districts of Gatineau and Terrebonne for the recovery of small claims arising out of consumer contracts.

Considering that mediation can contribute to solving problems of access to justice, lengthy waits, complex procedure and the legal fees paid by citizens, problems which it has pointed out time and again and which continue to be a concern, the Québec Ombudsman said it felt that the draft Regulation should foster the settlement of disputes regarding consumer contracts effectively and within a reasonable time, while keeping these cases out of the court.

Maintaining that the government must continue its efforts to offer citizens alternative formats for preventing and settling disputes when they experience difficulties with the government, the Québec Ombudsman pointed out that use of its services was in itself a non-judicial solution in disputes between citizens and the government.

As at March 31, 2015, the Regulation had not been passed.

REGULATION TO AMEND THE INDIVIDUAL AND FAMILY ASSISTANCE REGULATION
(2015, *Gazette officielle*, Part 2, 53)

Letter of March 13, 2015, to the Minister of Labour, Employment and Social Solidarity

While subscribing to the main goals of the draft Regulation, namely, to ensure greater fairness among last resort financial assistance recipients and to update the assistance offered to them, as well as to the principle whereby only citizens who really need it should receive last resort financial assistance, the Québec Ombudsman made recommendations concerning the manner in which certain amendments would be applied.

Concerning the exclusions regarding the net value of a residence, it recommended that the Minister be flexible in applying the new standard so that recipients are not forced to sell their property well below its real value if they have taken the required steps and have not obtained a fair and reasonable purchase offer.

The Québec Ombudsman also recommended that the Regulation be clarified so that when recipients do not declare work income correctly or at the proper time, the Department be allowed to issue claims only for the months when there was exceedence of the portion of work income otherwise excluded, and not when recipients have nothing to gain by not declaring work income for a given month.

As for the amendments concerning financial assistance to last resort financial assistance recipients in a centre that offers addiction services, the Québec Ombudsman recommended that the Department work with the Ministère de la Santé et des Services sociaux to ensure that these recipients' access to these services is not hindered by therapy fees, administrative charges or other incidental expenses.

The Québec Ombudsman also reiterated its recommendation from March 2013 to exclude without time limit the sums paid to compensate for physical or mental impairment from the calculation of last resort assistance benefits, further to a decision by a tribunal or public agency, whether received as a lump-sum amount or in instalments. The aim of this recommendation, which has yet to be implemented, was to preserve the remedial nature and purpose of this type of compensation, which is not designed to meet daily needs.

As at March 31, 2015, the Regulation had not been passed.

RESULTS IN FIGURES

This section presents statistics concerning the Quebec Ombudsman's actions pursuant to the two pieces of legislation that govern it: the *Public Protector Act* and the *Act respecting the Health and Social Services Ombudsman*.

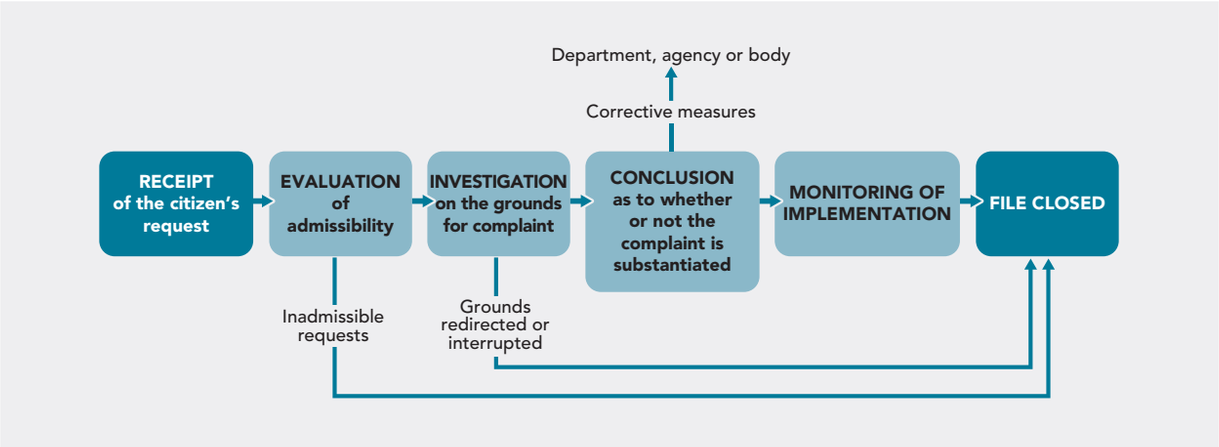
In the health and social services sector, the Quebec Ombudsman is usually the second and last line of non-judicial recourse for users who are dissatisfied with decisions made by service quality and complaints commissioners.

Citizens' requests for service, which are deemed admissible as complaints or reports, give rise to investigations. In the course of an investigation, a citizen may decided not to follow through with a complaint or withdraw it. The investigation then is interrupted. It can also happen that an investigation is not completed because, in light of the facts gathered, the Quebec Ombudsman refers the person to another resource or because the complaint or report is settled during the investigation. Note that a report is made by someone who has observed breaches or injustices in public services, whether a government department, a public agency or an institution within the health and social services network. He or she informs the Québec Ombudsman for the welfare of the people concerned. Whichever sector is involved, the Québec Ombudsman takes action in the first instance. Note that a service request (complaint or report) can involve several grounds for intervention on the part of the Québec Ombudsman.

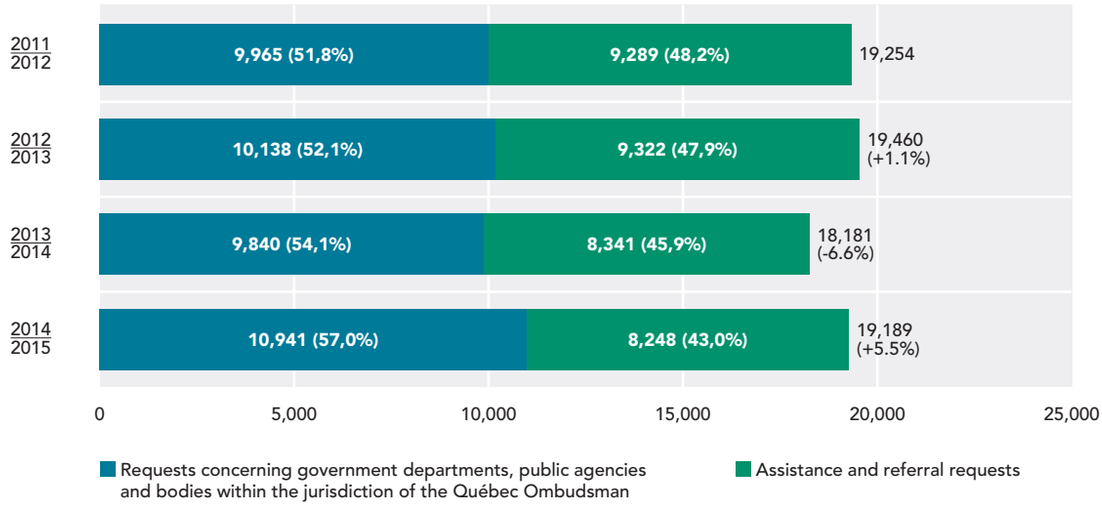
All other requests are treated as requests for assistance or referrals.

At the end of an investigation, the Québec Ombudsman informs the complainant of its conclusions. If the complaint is substantiated, the government department, public agency or institution concerned may be asked to introduce corrective measures, and the Québec Ombudsman monitors their implementation. A substantiated complaint file is not closed until implementation has been monitored, when the Québec Ombudsman is assured the corrective measures have been applied.

Processing of requests for service



1. REQUESTS FOR SERVICE RECEIVED



This year, total requests received increased by 5.5% and of these the number of requests giving rise to an investigation rose by 11.2% compared with the previous year. The number went from 9,840 in 2013-2014 to 10,941 in 2014-2015.

Also, the proportion of requests regarding government departments, public agencies and bodies under the Québec Ombudsman's jurisdiction is constantly rising. It rose from 44.8% in 2006-2007 to 57.0% in 2014-2015. This trend dates from 2006 and has not declined since.

Assistance and referral requests decreased by 1.1% compared with last year. These requests generally concern public agencies over which the Quebec Ombudsman has no jurisdiction. Still, such requests are significant, comprising 43.0% of service requests received. This assistance and referral role is an integral part of the institution's mission, and for each such request, the Québec Ombudsman must give accurate information or direct the citizen to the appropriate resource.

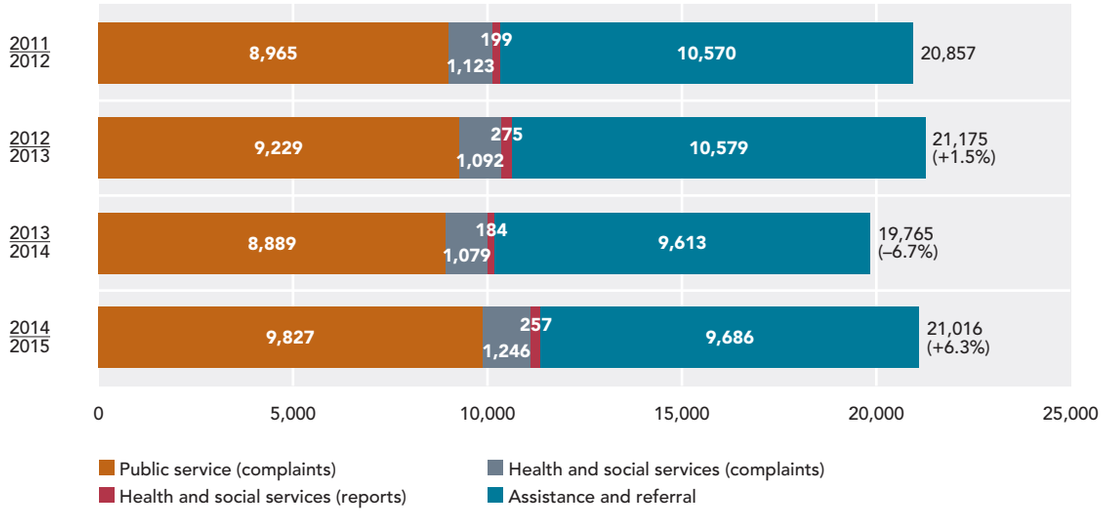
Assistance and referral requests include requests for information. A marked decrease (39.1%) in this type of request was noted. Certain factors explain it. Generally, there is widespread use in Quebec of the Internet and social networking sites to search for information[17]. So the Québec Ombudsman's own tools – website, Facebook and Twitter – are being consulted more and more.

By contrast, requests regarding Hydro-Québec, which is not subject to the jurisdiction of the Québec Ombudsman, have increased by 168.7% by comparison with last year (see point 7 of this section).

17 CEFRIO (http://www.cefrio.qc.ca/projets-recherches-enquetes/internet-medias-sociaux-mobilite/netendances-2014/).

2. CLOSED REQUESTS FOR SERVICE

A service request can involve more than one ground for intervention on the part of the Québec Ombudsman. In this case, closed requests are grouped by grounds. That is why the number of closed requests is slightly higher than the total number of requests received, presented in the previous figure. So for 2014-2015 there were 21,016 grounds for intervention among the 19,223 closed requests.



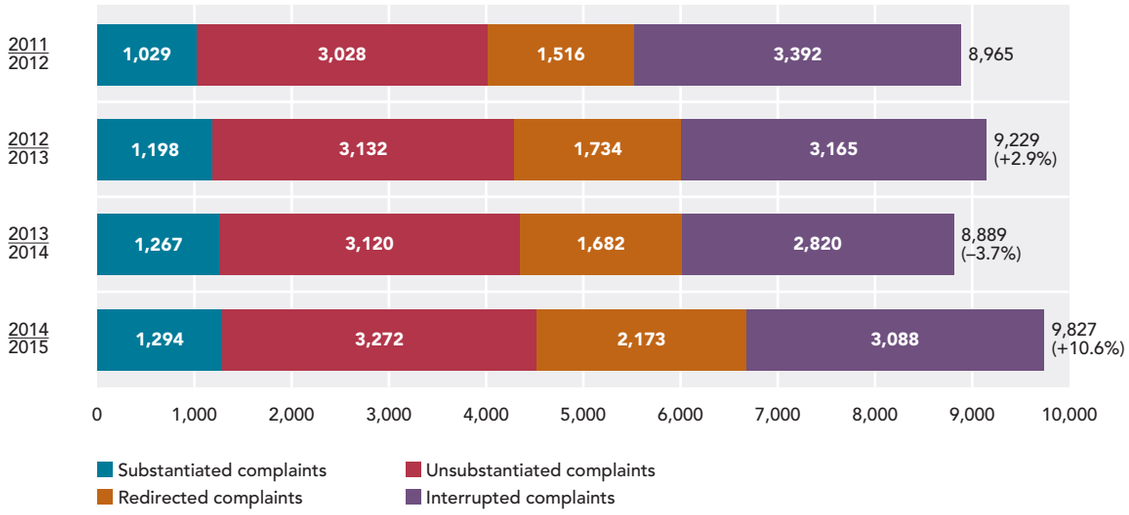
At 6.3%, the increase in closed requePsts follows the same trend as the number of requests received. For closed requests under jurisdiction, the increase is 11.6%.

In the field of health and social services, there has been an increase of 15.5% for complaints and 39.7% for closed reports, compared with last year.

3. COMPLAINTS AND REPORTS CLOSED FOLLOWING AN INVESTIGATION

When a complaint or report is deemed admissible, the Québec Ombudsman launches an investigation. It may be that an investigation is not completed because, in light of the facts gathered, the Québec Ombudsman had to refer the person to another resource (redirected complaint). It can also happen that a complaint or report is settled during the investigation, for example the Québec Ombudsman deals with the file, or because the citizen does not follow up the complaint, or simply withdraws it (interrupted complaint). A decision as to whether or not a complaint or report is substantiated is made after the investigation has been completed.

3.1 Variation in the number of closed complaints – Public service

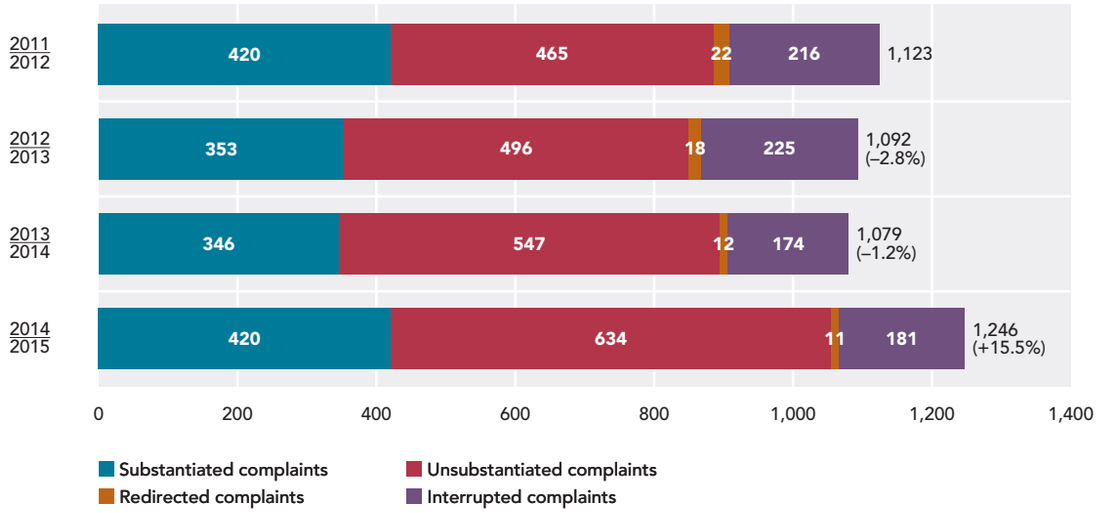


The total number of public service complaints investigated increased by 10.6% in 2014-2015, up from 8,889 to 9,827.

In detail:

CLOSED COMPLAINTS	Variation in number of complaints by comparison with the previous year	Variation in number of complaints by comparison with the last three years' average
Substantiated complaints	Increase of 2.1%	Increase of 11.1%
Unsubstantiated complaints	Increase of 4,9%	Increase of 5.8%
Redirected complaints	Increase of 29,2%	Increase of 32.2%
Interrupted complaints	Increase of 9,5%	Decrease of 1.2%

3.2 Variation in the number of closed complaints – Health and social services

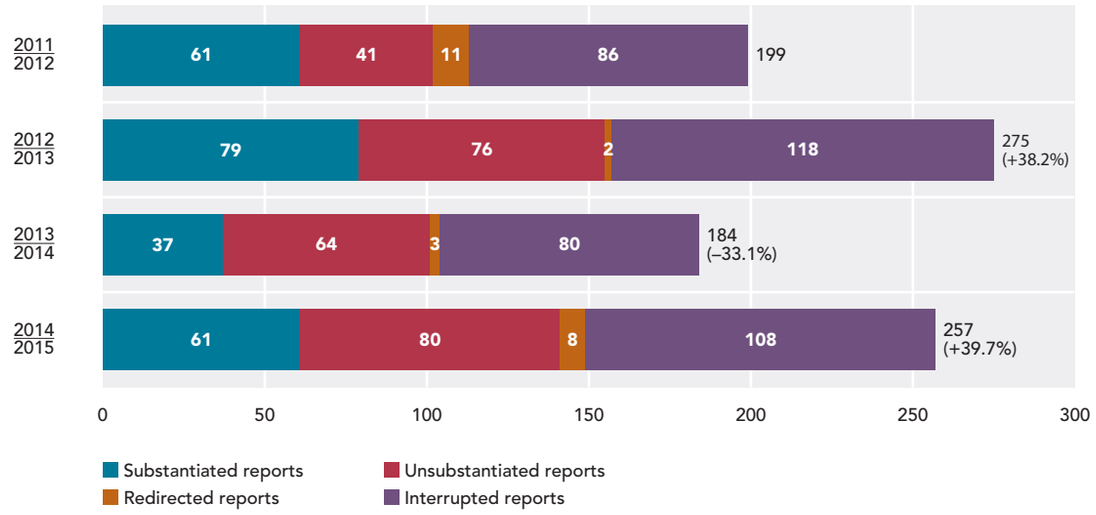


In terms of health and social services, the total number of closed complaints is up by 15.5%. A 21.4% increase in substantiated complaints is also noted in this sector. The physical health program was the source of the greatest number of substantiated complaints. The number of unsubstantiated complaints increased by 15.9%.

In detail:

CLOSED COMPLAINTS		Variation in number of complaints by comparison with the previous year	Variation in number of complaints by comparison with the last three years' average
Substantiated complaints		Increase of 21.4%	Increase of 12.6%
Unsubstantiated complaints		Increase of 15.9%	Increase of 26.0%
Redirected complaints		Decrease of one complaint	Decrease of six complaints
Interrupted complaints		Increase of 4.0%	Decrease of 11.7%

3.3 Variation in the number of closed reports – Health and social services



The total number of closed reports is up by 39.7% over the previous year, and by 17.4% over the average of the last three years.

Also in this sector there is a 64.9% increase in substantiated reports. Unsubstantiated reports are up by 25.0%. Regarding interrupted reports, up by 35.0%, these are generally cases where the Québec Ombudsman made a pre-investigation, and then concluded that there was no cause to pursue the investigation.

In detail:

CLOSED REPORTS		Variation in number of reports by comparison with the previous year	Variation in number of reports by comparison with the last three years' average
Substantiated complaints		Increase of 64.9%	Increase of 3.4%
Unsubstantiated complaints		Increase of 25.0%	Increase of 33.3%
Redirected complaints		Increase of five reports	Increase of three reports
Interrupted complaints		Increase of 35.0%	Increase of 13.7%

3.4 Proportion of substantiated complaints and reports

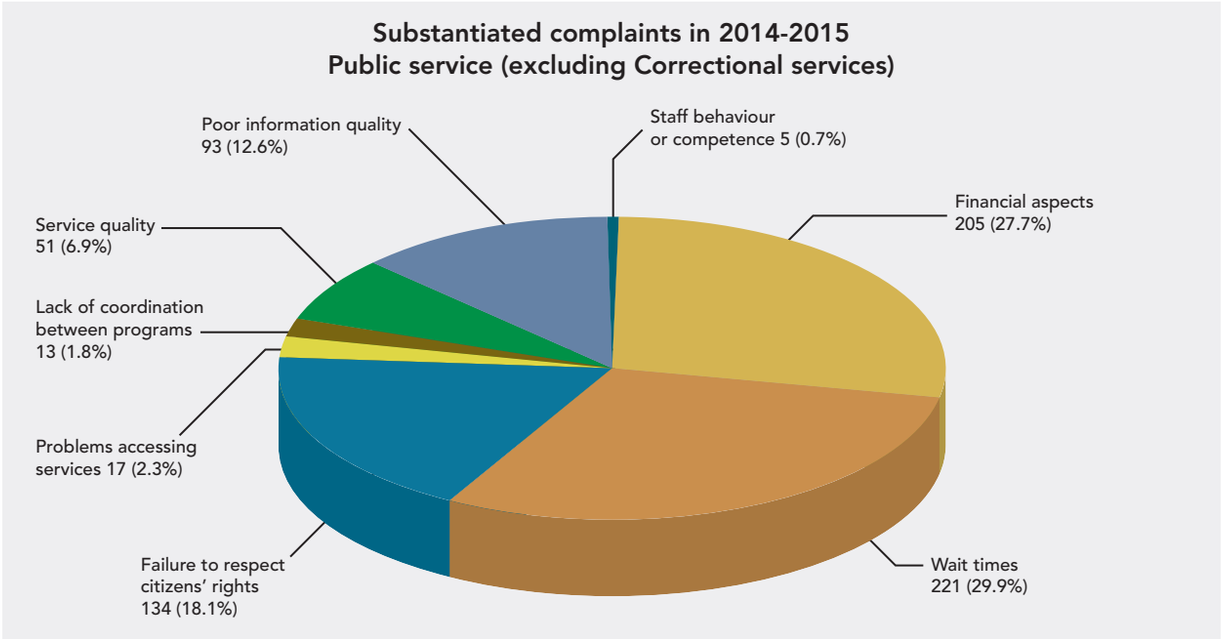
SECTOR	2011-2012	2012-2013	2013-2014	2014-2015
Substantiated complaints in the public service	25.4%	27.7%	28.9%	28.3%
Substantiated complaints and reports – Health and social services	48.7%	43.0%	38.5%	40.3%

The proportion of substantiated complaints and reports is established as follows:

$$\frac{\text{Substantiated complaints and reports}}{\text{Substantiated complaints and reports + Unsubstantiated complaints and reports}}$$

In 2014-2015, the proportion of substantiated public service complaints remained stable (slight decrease of 0.6 percentage point), while the proportion of substantiated health and social services complaints and reports rose by 1.8 percentage point relative to the previous year's figure.

3.5 Profile of substantiated complaints and reports

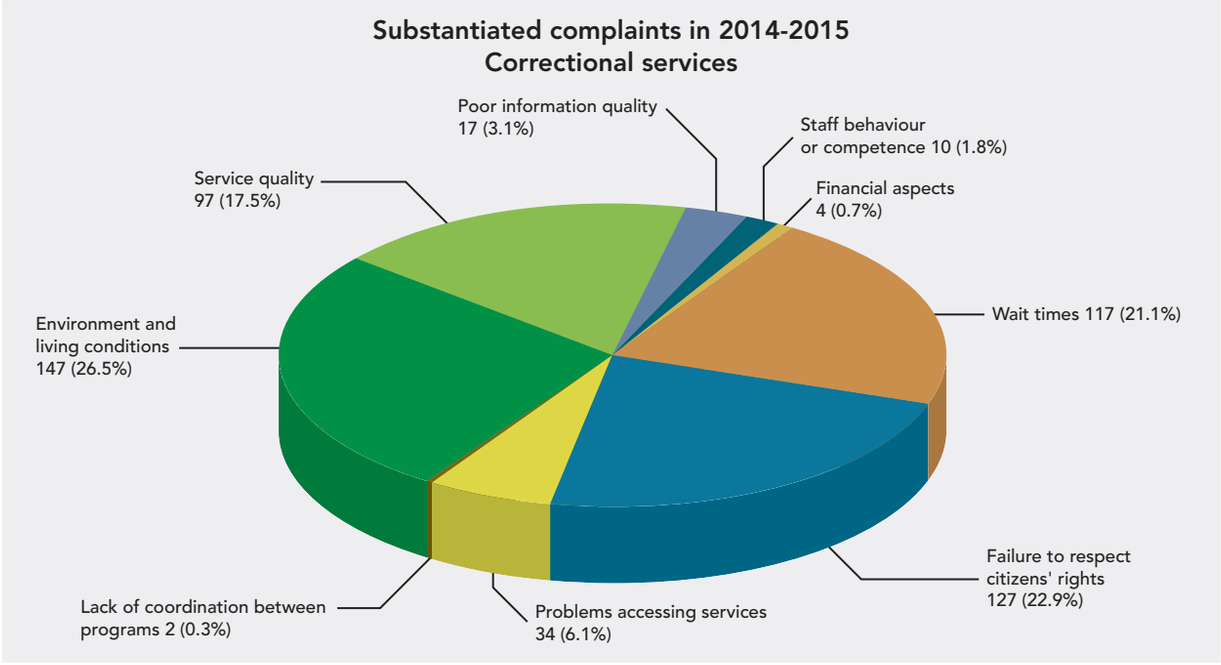


In public service, wait times, financial aspects and failure to respect citizen' rights represent over three quarters (75.8%) of substantiated complaints.

Wait times, although representing the most frequent grounds for complaint, were actually the subject of fewer substantiated complaints this year. This ground fell from 46.6% in 2011-2012 to 29.9% in 2014-2015.

However, a survey of the last four years reveals an upward trend in lapses with financial repercussions, which rose from 15.4% in 2011-2012 to 27.7% this year. In this category, in 2014-2015, grounds mainly concern the Agence du revenu du Québec, Commission de la santé et de la sécurité du travail (CSST) and the Ministère du Travail, de l'Emploi et de la Solidarité sociale, comprising over 77% of all complaints.

The category "failure to respect citizen' rights" mainly concerns inadequate application of rules and procedures as well as inappropriate requirements and conditions in the administration of department and agency programs.



Regarding correctional services complaints, "Shortcomings in environment and living conditions" is the category with the most substantiated complaints. The most frequent problems concern:

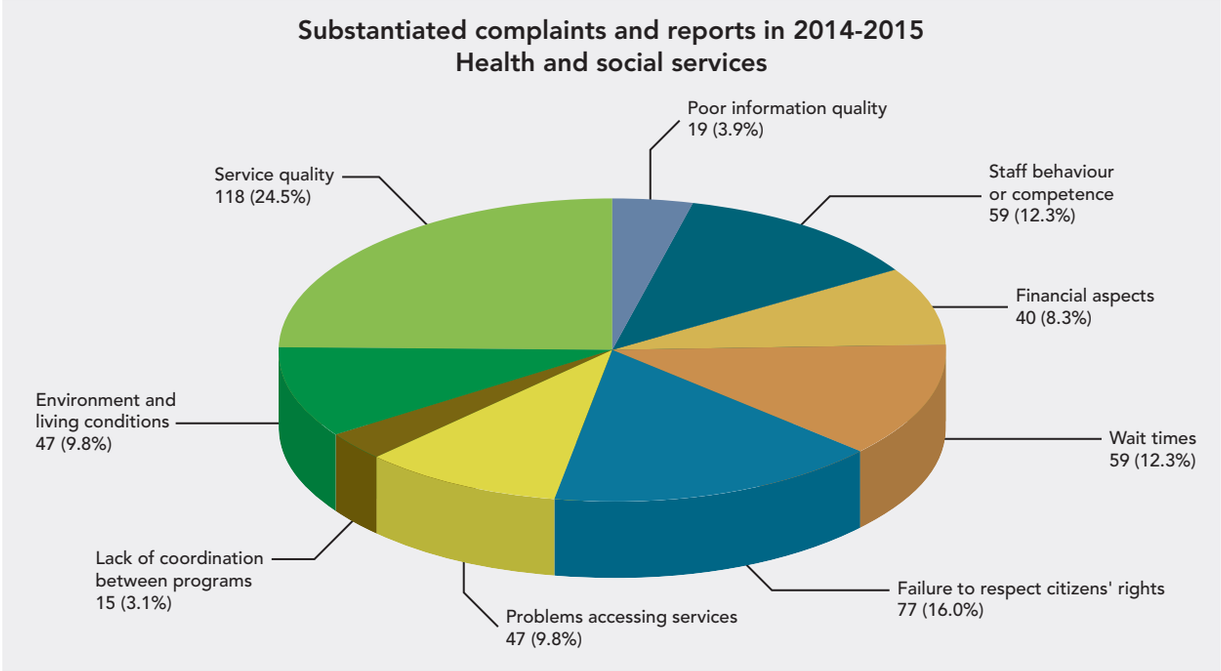
- The mechanism for examining complaints within the institutions;
- Rules governing outings and visits;
- Application of rules and procedures, especially regarding personal belongings.

In the category "Failure to respect citizen' rights", the principal grounds for complaint were:

- Application of rules and procedures set by a law, regulation or order (e.g. illegal detention);
- Demands, constraints, obligations required by a body or its staff, over and above the usual standards and criteria;
- Non-respect of the complaint review procedure and of legal obligations;
- Rules governing outings and visits authorized or permitted to a category of person.

Wait times are in third place, with 21.1% of substantiated complaints.

The category "Shortcomings in service quality" has been on the rise for four years, up from 7.4% in 2011-2012 to 17.5% in 2014-2015. This category mainly consists of complaints regarding medication follow-up.



For health and social services complaints and reports, the categories are more evenly distributed.

Shortcomings in service quality, failure to respect citizens' rights, shortcomings in staff behaviour or competence, and long wait times comprise more than half (65.1%) of substantiated complaints.

An analysis of the last four years shows that shortcomings in service quality are on the rise, from 20.0% to 24.5%. In this category, grounds for complaint mainly concern:

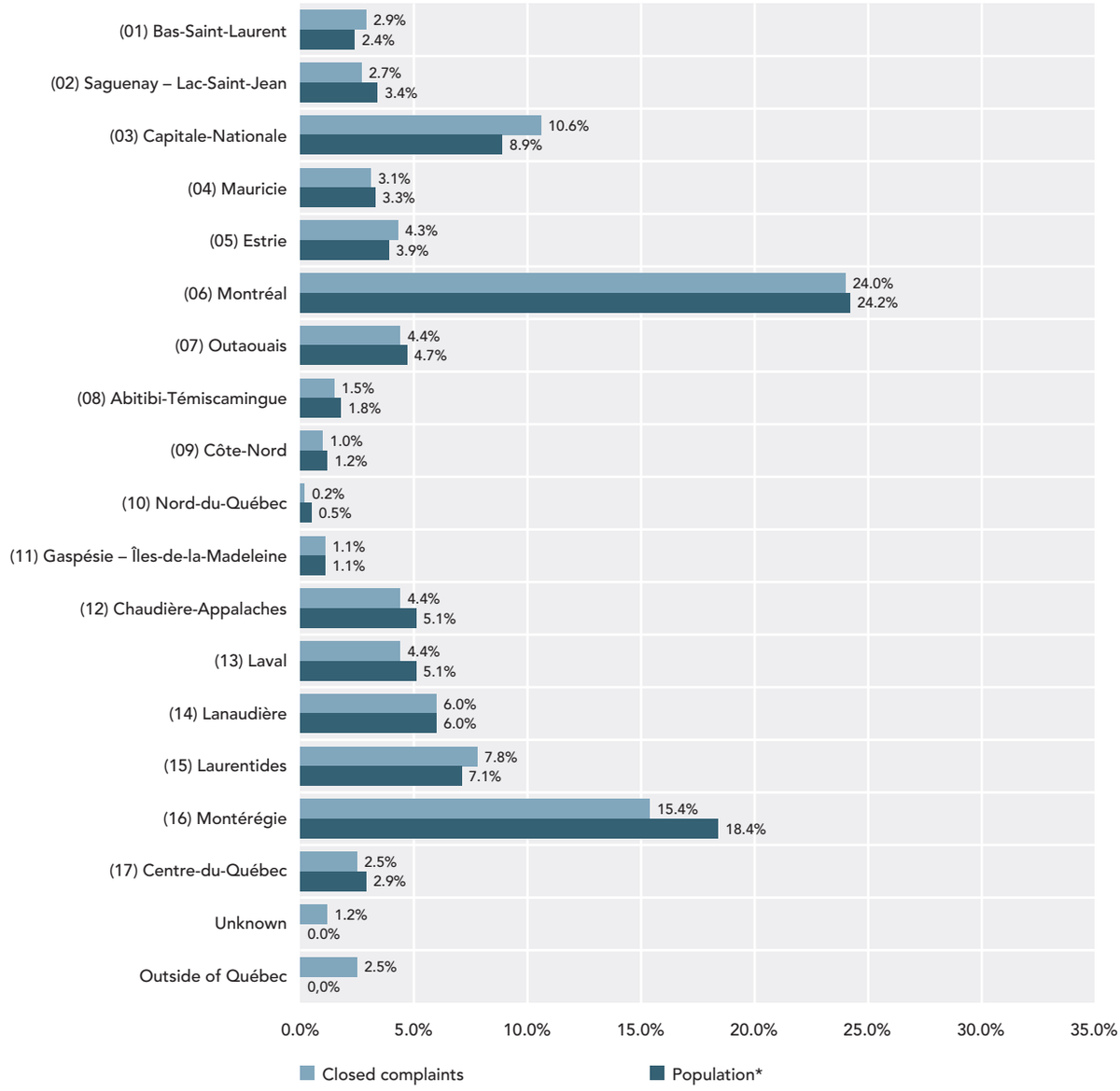
- The absence, inadequacy, non-respect or non-updating of clinical protocols and procedures for care-giving and services (infection prevention, isolation, accident and incident reports, etc.);
- Shortcomings in the organization of care and services directly relating to clinical, not administrative practice;
- Insufficient or inadequate security and protection such as to compromise people's safety (e.g. users insufficiently supervised, unauthorized preventive isolation and strip searching).

As for the category "failure to respect citizen' rights", in 31 cases it concerns failure to respect the complaint review procedure and legal obligations, which includes referral to the consulting physician. Also noted are 32 grounds contesting the application of the rules and procedures set by a law, regulation or order, as well as grounds regarding the exercise of rights users are guaranteed under the *Act respecting the health and social services*.

4. SOURCE OF COMPLAINTS AND REPORTS CLOSED FOLLOWING AN INVESTIGATION

4.1 Source of closed complaints for the public service[18] by administrative region of applicant

Proportion of closed complaints for the public service/Proportion of the population



* Sources: Statistics Canada, Demographics Division; Institut de la statistique du Québec, Direction des statistiques sociodémographiques. Estimated population as of March 16, 2015.

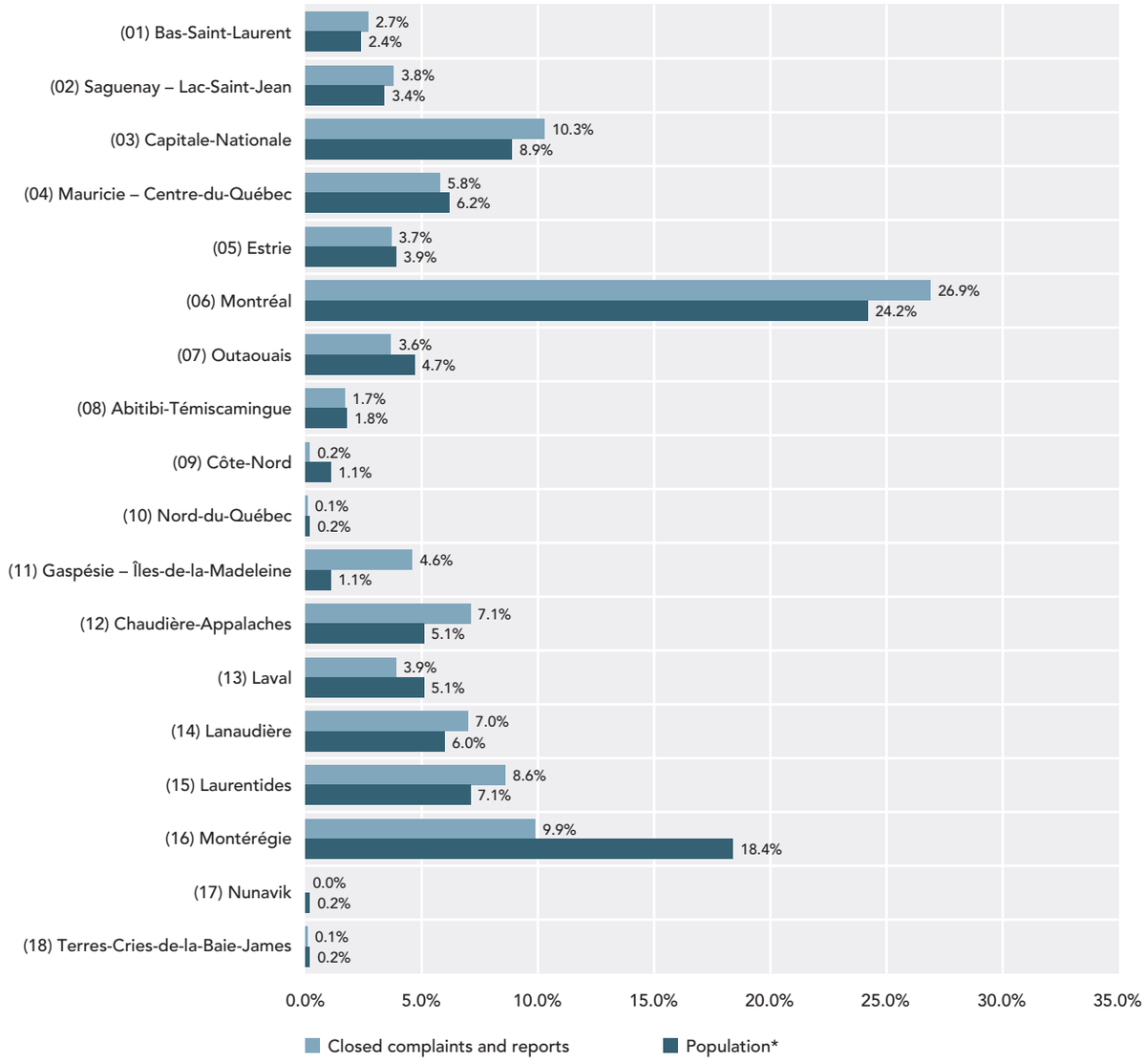
For the public service, regional statistics are compiled on the basis of the citizen's address. Of the 17 regions, the greatest difference between the proportion of the region's population and the percentage of closed complaints is in Montérégie, where there is a 3-point gap.

18 This distribution does not include complaints from people in detention centres, who tend to be concentrated in certain regions of Québec.

4.2 Source of closed complaints and reports in health and social services, by health and social service region of the body concerned

While the service offering in the public service sector is divided by administrative regions, that of the health and social services sector is administered by the health and social service regions. Québec is divided into a number of health and social service regions under the auspices of the Ministère de la Santé et des Services sociaux, and the bodies of these regions are accountable for the services they provide for citizens.

Proportion of closed complaints and reports for health and social services/Proportion of the population



* Source: Institut de la statistique du Québec, Direction des statistiques sociodémographiques. Estimated population as of March 16, 2015.

Regional statistics for the health and social services sector depend on data matching the address of the body that is the subject of the complaint.

With the exception of Montérégie, which is under-represented, the number of health and social services complaints and reports is relatively proportional to the population of the region served.

In almost half the regions (8 out of 18), the number of closed complaints and reports is proportionately higher than the population.

5. MONITORING OF CORRECTIVE MEASURES

At the end of the Québec Ombudsman's investigation and the transmittal of its conclusions, the bodies concerned accept a very high proportion of the recommended corrective measures.

5.1 Individual scope measures accepted

SECTOR	2011-2012	2012-2013	2013-2014	2014-2015	2014-2015	
					Measures accepted	Measures refused
Public service (complaints)	99.0%	99.4%	99.5%	97.1%	930	28
Health and social services (complaints)	96.3%	98.0%	94.0%	97.6%	121	3
Health and social services (reports)	100.0%	100.0%	100.0%	94.7%	18	1
Total	**98.5%**	**99.2%**	**98.8%**	**97.1%**	**1,069**	**32**

The acceptance rate for case-specific measures recommended by the Québec Ombudsman has decreased by 1.7 percentage point. This year it attained 97.1%, 32 measures out of 1,101 having been refused. Nearly half these rejected recommendations concerned complaints with financial repercussions about the Commission de la santé et de la sécurité du travail (CSST), with 8 measures, and the Commission administrative des régimes de retraite et d'assurances (CARRA), with 7 measures.

5.2 Collective scope measures accepted

SECTOR	2011-2012	2012-2013	2013-2014	2014-2015	2014-2015	
					Measures accepted	Measures refused
Public service (complaints)	97.8%	98.9%	99.7%	100.0%	248	0
Health and social services (complaints)	98.9%	98.1%	97.9%	97.9%	233	5
Health and social services (reports)	98.5%	100.0%	100.0%	91.1%	82	8
Total	**98.4%**	**98.8%**	**99.1%**	**97.7%**	**563**	**13**

The acceptance rate for collective measures recommended by the Québec Ombudsman this year reached 97.7%, with 13 out of 576 measures being refused. Eight of the thirteen measures concerned the not-for-profit agency Les habitations accessibles et adaptées Tango.

6. PROFILE OF COMPLAINTS AND REPORTS BY GOVERNMENT DEPARTMENT, PUBLIC AGENCY, MISSION OR SERVICE PROGRAM

In 2014-2015, the Québec Ombudsman intervened:

- With 56 of the 81 government departments and public agencies subject to its jurisdiction, or 69.1%;
- With 169 of the 286 institutions and agencies of the health and social services network subject to its jurisdiction, or 59.1%.

6.1 Substantiated complaints in public service matters for government departments and public agencies for which at least 10 substantiated complaints were received

AGENCY	Substantiated complaints 2011-2012	Substantiated complaints 2012-2013	Substantiated complaints 2013-2014	Substantiated complaints 2014-2015
Agence du revenu du Québec	160	157	105	158
Commission de la santé et de la sécurité du travail	56	91	83	84
Société de l'assurance automobile du Québec	72	73	91	79
Régie du logement	53	39	39	30
Régie des rentes du Québec	8	29	14	29
Commission administrative des régimes de retraite et d'assurances	88	39	37	21
Régie de l'assurance maladie du Québec	14	9	13	16
Commission d'accès à l'information	5	9	5	11

DEPARTMENT	Substantiated complaints 2011-2012	Substantiated complaints 2012-2013	Substantiated complaints 2013-2014	Substantiated complaints 2014-2015
Sécurité publique	384	466	638	560
Travail, Emploi et Solidarité sociale	57	89	98	129
Éducation, Enseignement supérieur et Recherche	33	38	24	29
Immigration, Diversité et Inclusion	3	8	11	25
Famille	7	54	13	19
Développement durable, Environnement et Lutte contre les changements climatiques	9	6	10	12
Transports	3	7	2	11
Other departments and agencies	77	84	84	81
Total: DEPARTMENTS AND AGENCIES	**1,029**	**1,198**	**1,267**	**1,294**

The bodies for which an upward trend in substantiated complaints was noted over four years include the Ministère du Travail, de l'Emploi et de la Solidarité sociale and the Ministère de l'Immigration, de la Diversité et de l'Inclusion. Conversely, there has been a downward trend in substantiated complaints to the Commission administrative des régimes de retraite et d'assurances (CARRA) and the Régie du logement.

6.2 Closed complaints, by government department or public agency, by processing outcome[19]

AGENCY/COMPONENT	COMPLAINTS RECEIVED IN 2014-2015	CLOSED COMPLAINTS IN 2014-2015				
		Redirected	Interrupted	Unsubstantiated	Substantiated	Total
Agence du revenu du Québec						
Direction générale des biens non réclamés	17	1	4	6	4	15
Fiscalité/Taxation	1,089	21	422	337	133	913
Perception des pensions alimentaires/Support payment collection	109	5	28	61	12	106
Registraire des entreprises/ Enterprise Registrar	9	0	3	1	3	7
General	131	2	1	3	6	12
Total: Agence du revenu du Québec	1,355	29	458	408	158	1,053
Assemblée nationale	1	0	1	0	0	1
Autorité des marchés financiers	14	0	4	8	0	12
Bureau de décision et de révision en valeurs mobilières	1	0	1	0	0	1
Bureau du coroner	7	0	1	1	5	7
Centre de services partagés du Québec	27	0	16	7	5	28
Comité de déontologie policière	3	0	1	0	0	1
Commissaire à la déontologie policière	65	2	15	37	2	56
Commissaire à la lutte contre la corruption	1	0	0	0	0	0
Commission administrative des régimes de retraite et d'assurances	71	1	20	15	21	57
Commission d'accès à l'information	30	3	7	5	11	26
Commission de la fonction publique du Québec	2	0	1	2	1	4
Commission de la santé et de la sécurité du travail						
Indemnisation/Compensation	528	12	178	153	50	393
Indemnisation des victimes d'actes criminels	146	2	32	76	33	143
General	42	0	11	5	1	17
Total: Commission de la santé et de la sécurité du travail	716	14	221	234	84	553
Commission de l'équité salariale	5	0	2	0	0	2
Commission de protection du territoire agricole du Québec	9	0	2	1	4	7
Commission des lésions professionnelles	49	0	40	4	1	45
Commission des normes du travail	61	3	24	18	4	49

19 The amount of complaints processed in one year (and thus the amount of closed complaints) does not necessarily match the amount of complaints received. At the start of each year, investigations into complaints received previously are still being processed.

AGENCY/COMPONENT	COMPLAINTS RECEIVED IN 2014-2015	CLOSED COMPLAINTS IN 2014-2015				
		Redirected	Interrupted	Unsubstantiated	Substantiated	Total
Commission des relations du travail	17	1	11	2	0	14
Commission des transports du Québec	1	0	1	0	0	1
Commission municipale du Québec	3	0	2	1	0	3
Commission québécoise des libérations conditionnelles	17	4	4	5	2	15
Conseil de la justice administrative	4	0	3	0	0	3
Conseil de la magistrature	8	1	6	0	0	7
Curateur public	183	0	77	70	8	155
Directeur des poursuites criminelles et pénales/Director of Criminal and Penal Prosecutions	2	0	2	0	0	2
Institut national d'excellence en santé et en services sociaux	1	0	0	1	0	1
La Financière agricole du Québec	19	1	9	5	2	17
Office de la protection du consommateur	27	1	4	12	7	24
Office des personnes handicapées du Québec	2	0	0	1	0	1
Office des professions du Québec	11	0	1	5	1	7
Office québécois de la langue française	5	0	2	0	1	3
Régie de l'assurance maladie du Québec	225	10	40	116	16	182
Régie des alcools, des courses et des jeux	3	0	2	1	0	3
Régie des rentes du Québec	279	4	79	130	29	242
Régie du bâtiment du Québec	33	2	11	10	2	25
Régie du logement	180	6	98	30	30	164
Service administratif de rajustement des pensions alimentaires pour enfants (SARPA)	2	0	1	0	1	2
Société de l'assurance automobile du Québec						
Code de la sécurité routière/ Highway Safety Code	297	12	51	187	42	292
Indemnisation/Compensation	420	8	116	143	37	304
General	33	1	0	1	0	2
Total: Société de l'assurance automobile du Québec	750	21	167	331	79	598
Société d'habitation du Québec	40	1	13	22	3	39
Tribunal administratif du Québec	30	0	14	8	4	26
Total: AGENCIES	**4,259**	**104**	**1,361**	**1,490**	**481**	**3,436**

DEPARTMENT/COMPONENT	COMPLAINTS RECEIVED IN 2014-2015	CLOSED COMPLAINTS IN 2014-2015				
		Redirected	Interrupted	Unsubstantiated	Substantiated	Total
Affaires municipales et Occupation du territoire	55	1	12	32	4	49
Agriculture, Pêcheries et Alimentation	23	1	6	6	3	16
Culture et Communications	1	0	1	1	0	2
Développement durable, Environnement et Lutte contre les changements climatiques	47	0	9	18	12	39
Éducation, Enseignement supérieur et Recherche						
Aide financière aux études/ Student Financial Assistance	175	2	41	82	24	149
Éducation	109	53	16	8	5	82
Enseignement supérieur/Higher education	7	1	3	2	0	6
General	14	0	1	0	0	1
Total: Éducation, Enseignement supérieur et Recherche	305	56	61	92	29	238
Énergie et Ressources naturelles	35	0	12	8	9	29
Famille	49	7	9	25	19	60
Finances	8	0	3	5	1	9
Forêts, Faune et Parcs	20	2	8	6	1	17
Immigration, Diversité et Inclusion	129	3	11	55	25	94
Justice	61	3	19	21	7	50
Santé et Services sociaux	42	4	22	10	3	39
Sécurité publique						
Sécurité civile	8	0	3	3	2	8
Services correctionnels	4,822	1,929	1,256	1,045	555	4,785
General	32	0	5	19	3	27
Total: Sécurité publique	4,862	1,929	1,264	1,067	560	4,820
Tourisme	3	1	1	1	0	3
Transports	68	6	14	19	11	50
Travail, Emploi et Solidarité sociale						
Directeur de l'état civil/ Registrar of Civil Status	29	2	6	21	6	35
Emploi/Employment	102	6	29	39	18	92
Régime québécois d'assurance parentale/Québec Parental Insurance Plan	32	0	8	17	4	29
Secrétariat du travail	5	0	2	1	0	3
Services Québec	5	1	0	3	0	4
Solidarité sociale/Social Solidarity	884	47	230	333	101	711
General	81	0	0	2	0	2
Total: Travail, Emploi et Solidarité sociale	1,138	56	275	416	129	876
Total: DEPARTMENTS	**6,846**	**2,069**	**1,727**	**1,782**	**813**	**6,391**

Total: DEPARTMENTS AND AGENCIES	**11,105**	**2,173**	**3,088**	**3,272**	**1,294**	**9,827**

6.3 Closed complaints, health and social services, by mission[20]

HEALTH AND SOCIAL SERVICES NETWORK MISSION	COMPLAINTS RECEIVED IN 2014-2015	CLOSED COMPLAINTS IN 2014-2015				
		Redirected	Interrupted	Unsubstantiated	Substantiated	Total
Health and social services agencies	18	0	6	3	4	13
Rehabilitation centres	83	0	13	34	35	82
Residential and long-term care centres	105	1	24	57	46	128
Hospital centres	589	5	43	271	219	538
Youth centres	188	1	46	116	14	177
Local community service centres	219	1	36	90	84	211
Community organizations	43	3	6	27	3	39
Private residences	28	0	6	25	11	42
Private or community shelter resources for vulnerable clienteles	4	0	0	4	1	5
Pre-hospital emergency services	13	0	1	7	3	11
Awaiting assignation to a mission	1	0	0	0	0	0
Total	**1,291**	**11**	**181**	**634**	**420**	**1,246**

More than 43% of closed complaints concern hospitals, and the percentage of substantiated complaints there is fairly high, at 44.7%. Local community services centres and residential and long-term care centres are also the target of several complaints. Substantiated complaints for these are respectively 48.3% and 44.7%.

Youth centres have also been subject to a high number of complaints. However, the Québec Ombudsman's scope for action is more limited here. It does not have the power to modify a decision taken by the Youth Division, nor can it question clinical decisions taken by the Director of Youth Protection (DPJ) concerning evaluation of a report. The result is a low number of substantiated complaints.

20 The amount of complaints processed in one year (and thus the amount of closed complaints) does not necessarily match the amount of complaints received. At the start of each year, investigations into complaints received previously are still underway.

6.4 Closed reports[21], health and social services, by mission[22]

HEALTH AND SOCIAL SERVICES NETWORK MISSION	REPORTS RECEIVED IN 2014-2015	CLOSED REPORTS IN 2014-2015				
		Redirected	Interrupted	Unsubstantiated	Substantiated	Total
Health and social services agencies	11	0	7	4	0	11
Rehabilitation centres	11	1	8	6	5	20
Residential and long-term care centres	48	0	27	14	8	49
Hospital centres	84	5	25	36	20	86
Youth centres	10	1	10	2	0	13
Local community service centres	51	1	22	14	3	40
Community organizations	12	0	2	0	10	12
Private residences	32	0	7	4	15	26
Pre-hospital emergency services	1	0	0	0	0	0
Total	**260**	**8**	**108**	**80**	**61**	**257**

6.5 Closed complaints, health and social services, by service program[23]

PROGRAMS AND SERVICES OF THE HEALTH AND SOCIAL SERVICES NETWORK	COMPLAINTS RECEIVED IN 2014-2015	CLOSED COMPLAINTS IN 2014-2015				
		Redirected	Interrupted	Unsubstantiated	Substantiated	Total
Buildings and equipment	5	0	1	3	3	7
Intellectual disability/Pervasive developmental disorders	72	1	11	25	34	71
Physical disability	65	0	9	26	28	63
Addictions	8	0	1	7	2	10
Troubled youth	195	1	47	123	16	187
Physicians	16	0	1	1	4	6
Complaints investigation system	16	0	2	3	7	12
Mental health	174	4	26	92	26	148
Physical health	395	2	25	162	183	372
Support for elderly autonomy	173	1	43	90	65	199
Service support	168	1	12	102	52	167
Other	4	1	3	0	0	4
Total	**1,291**	**11**	**181**	**634**	**420**	**1,246**

21 Section 38 of the *Act respecting the Health and Social Services Ombudsman* requires a separate report on complaints and reports made pursuant to section 20 (reports). "The Ombudsman may intervene if the Ombudsman has reasonable grounds to believe that a natural person or a group of natural persons has been or may likely be wronged by an act or omission: 1° by any institution or public agency, resource, company or person to whom the institution turns for certain services; 2° by any agency, public agency, resource, company or person whose services can be subject to a complaint under section 60 of the Act respecting health services and social services; 3° by Corporation d'urgences-santé in rendering pre-hospital emergency services; 4° by any person working or pursuing their profession for a body mentioned in paragraphs 1°, 2° or 3°. ").

22 The amount of reports processed in one year (and thus the amount of closed reports) does not necessarily match the amount of reports received. At the start of each year, investigations into reports received previously are still underway.

23 The amount of complaints processed in one year (and thus the amount of closed complaints) does not necessarily match the amount of complaints received. At the start of each year, investigations into complaints received previously are still underway.

For two years, the programs physical health, support for elderly autonomy and troubled youth have been the object of most closed complaints (60.8% of all closed complaints this year). The physical health and support for elderly autonomy programs have been the object of a high proportion of substantiated complaints year after year. The troubled youth program has garnered a lower percentage of substantiated complaints because here the Québec Ombudsman has less scope for action (see explanation under table 6.3).

6.6 Closed reports[24], health and social services, by service program[25]

PROGRAMS AND SERVICES OF THE HEALTH AND SOCIAL SERVICES NETWORK	REPORTS RECEIVED IN 2014-2015	CLOSED REPORTS IN 2014-2015				
		Redirected	Interrupted	Unsubstantiated	Substantiated	Total
Intellectual disability/Pervasive developmental disorders	15	1	9	4	5	19
Physical disability	11	0	4	0	10	14
Addictions	1	0	0	0	0	0
Troubled youth	10	1	8	1	0	10
Complaints investigation system	27	0	13	29	1	43
Mental health	45	1	13	20	10	44
Physical health	47	3	9	12	11	35
Support for elderly autonomy	96	1	51	10	23	85
Service support	5	0	0	4	1	5
Other	3	1	1	0	0	2
Total	**260**	**8**	**108**	**80**	**61**	**257**

24 Section 38 of the *Act respecting the Health and Social Services Ombudsman* requires a separate report on complaints and reports made pursuant to section 20 (reports). "The Ombudsman may intervene if the Ombudsman has reasonable grounds to believe that a natural person or a group of natural persons has been or may likely be wronged by an act or omission: 1° by any institution or public agency, resource, company or person to whom the institution turns for certain services; 2° by any agency, public agency, resource, company or person whose services can be subject to a complaint under section 60 of the Act respecting health services and social services; 3° by Corporation d'urgences-santé in rendering pre-hospital emergency services; 4° by any person working or pursuing their profession for a body mentioned in paragraphes 1°, 2° or 3°. ").

25 The amount of reports processed in one year (and thus the amount of closed reports) does not necessarily match the amount of reports received. At the start of each year, investigations into reports received previously are still underway.

7. A SECTOR NOT UNDER THE QUÉBEC OMBUDSMAN'S JURISDICTION BUT FOR WHICH REQUESTS FOR SERVICE RAISE CONCERNS

In 2014-2015, there were 833 requests for service concerning Hydro-Québec, though the Québec Ombudsman has no power to intervene with respect to this agency. This is an 168.7% increase compared with the previous year. Grounds for complaints were various and included payment agreements, billing, service interruptions, installation wait times, refusal to give back deposits, and billing errors. The requests included 455 form letters opposing the installation of smart meters.

The Québec Ombudsman, under the jurisdiction assigned to it by law, cannot process these requests as complaints. Following hearings held in October 2014, the Committee on Institutions tabled a report at the National Assembly recommending that "the mandate of the Québec Ombudsman be extended so as to bring Hydro-Québec under its jurisdiction, provided that it is done at no cost and complements the current mandate of the Régie de l'énergie".

AGENCY	2011-2012	2012-2013	2013-2014	2014-2015
Hydro-Québec	263	210	310	833

FOLLOW-UP TO RECOMMENDATIONS IN THE QUÉBEC OMBUDSMAN'S ANNUAL REPORTS

NOTE: Follow-up to recommendations from previous years deemed satisfactory and achieved or no longer relevant have not been repeated in this Annual Report.

PUBLIC SERVICE

AGENCE DU REVENU DU QUÉBEC (REVENU QUÉBEC) – TAXATION		
SOLIDARITY TAX CREDIT		
RECOMMENDATION 2011-2012	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**
That Revenu Québec modify the notices of determination issued to citizens so that they understand what the amounts refer to that make up the credit they receive.	**WILL MONITOR** implementation of the working committee's recommendations. The Québec Ombudsman is displeased with the time it is taking for the work to get done. The expected improvements (to make it easier for citizens to understand the amounts that make up the solidarity tax credit received) must be in place for the 2015-2016 mailings.	**WILL MONITOR** implementation of the working committee's recommendations and the mailing slated for May 2015 of the improved notices of determination (form and presentation).
INTEREST BECAUSE FILES ARE NOT PROCESSED PROMPTLY		
RECOMMENDATION 2011-2012	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**
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.	**DISSATISFIED** with Revenu Québec's refusal over the last two years to take the measures needed to ensure that taxpayers are not charged interest further to the agency's own error or negligence. This remains an open file.	**DISSATISFIED** with Revenu Québec's refusal to take the measures needed to make audit officers aware that they can waive interest when the agency's own error or negligence has caused an overly long processing time.

COMMISSION ADMINISTRATIVE DES RÉGIMES DE RETRAITE ET D'ASSURANCES (CARRA)		
REMISSION OF DEBT ARISING FROM ERRORS		
RECOMMENDATION 2009-2010	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015
That CARRA take steps to obtain an amendment to the application regulation for the *Act respecting the government and public employees retirement plan* in order to include the possibility of remission of debts arising from errors that recipients cannot reasonably detect.	**NOTES** that the Comité de retraite du RREGOP (Government and Public Employees Retirement Plan) and the Comité de retraite du RRPE (Pension Plan of Management Personnel) have examined the issue of remission of debts and have approved direct ions that could be subject to regulatory amendment if necessary.	**DISSATISFIED** with how long it is taking for *the Regulation under the Act respecting the government and public employees retirement plan* to be amended to include the possibility of remission of debts arising from errors that recipients cannot reasonably detect.

MINISTÈRE DE L'ÉDUCATION, DE L'ENSEIGNEMENT SUPÉRIEUR ET DE LA RECHERCHE		
SUMMER COURSES AND FEES CHARGED FOR RETAKING MINISTERIAL EXAMINATIONS		
RECOMMENDATIONS 2012-2013	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015
That the Ministère de l'Éducation, du Loisir et du Sport provide guidelines for summer courses and fees that take into account, notably, the impact on educational success and student retention. **That** it monitor school boards to check whether summer courses and ministerial examination retakes comply with the act and applicable standards.	**DISSATISFIED** that there is no effective action plan or time frame for regularizing the situation. **DISSATISFIED** with the lack of follow-up with regard to school boards. **DISSATISFIED** that the Department has not kept the Québec Ombudsman informed despite its numerous requests for follow-up.	**DISSATISFIED** that the Department has not acted on this recommendation for summer 2015 courses. However, the Department informed the Québec Ombudsman that a working committee is studying all fees charged to parents. It committed to informing the Québec Ombudsman about the committee's recommendations concerning summer courses and ministerial examination retakes, as well as about the resulting departmental decisions. These recommendations will be tabled with the Department in June 2015. The Québec Ombudsman will monitor the Department's follow-up with the school boards.

MINISTÈRE DU TRAVAIL, DE L'EMPLOI ET DE LA SOLIDARITÉ SOCIALE		
MINISTER'S DISCRETIONARY POWER		
RECOMMENDATION 2010-2011	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**
That the application of the minister's discretionary power allow debtors to stabilize their situation over a reasonable period of time.	**SATISFIED** with the improvements made since April 2013 (increase in the minimum duration of relief granted pursuant to the minister's discretionary power). **WILL MONITOR** follow-up to the Québec Ombudsman's recommendations presented in the fall of 2013, by the Department working group tasked with reviewing the limits of the minister's discretionary power.	**SATISFIED** with the new directives in effect in response to the Québec Ombudsman's recommendation.
APPLICATION OF THE $130,000 EXCLUSION TO SUCCESSIONS IN ANY FORM		
RECOMMENDATIONS 2013-2014	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**
That the government introduce a bill in the next session of the National Assembly to amend the Individual and Family Assistance Act and that the bill make the necessary amendments to the Regulation as well. **That** once the amendment has entered into force, it be applied retroactively to July 26, 2012, the date of the Québec Ombudsman's first recommendation.	—	**DISSATISFIED** with the delay in proposing the recommended legislative amendment.

MINISTÈRE DE L'IMMIGRATION, DE LA DIVERSITÉ ET DE L'INCLUSION		
FEES FOR APPLICATIONS FOR RECOGNITION AS AN IMMIGRATION CONSULTANT		
RECOMMENDATION 2012-2013	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**
That the Ministère de l'Immigration et des Communautés culturelles review its practice so that applicants who are refused admittance to the Registre no longer have to pay the full fees currently set out in the Regulation.	**WILL MONITOR** the regulatory amendments that the Québec Ombudsman was apprised of in the spring of 2013.	**SATISFIED** with the new fee structure introduced by the *Regulation respecting immigration consultants* passed on March 18, 2015. The Regulation provides for a difference in fees based on whether the person is a first-time applicant for entry in the register or is applying for renewal.

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE – SERVICES CORRECTIONNELS		
PROVINCIAL INSTRUCTION ON THE HEALTH NEEDS OF DETAINEES		
RECOMMENDATIONS 2011-2012	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**
That the Ministère de la Sécurité publique implement transitional measures regarding transfer criteria as soon as possible. **That** it begin work to implement the recommendations stemming from the task force report without delay and complete the work by December 31, 2012. **That** it submit a progress report to the Québec Ombudsman no later than September 15, 2012.	**DISSATISFIED** that one year after the creation of a new task force, not a single concrete measure has been implemented to date. **WORRIED,** given the context, about the over 20% increase in the number of transfers in the past year.	**DISSATISFIED** that the Department has suspended the use of a grid containing the criteria to consider when transferring detainees from one correctional facility to another.
DETENTION CONDITIONS AT MAISON TANGUAY		
RECOMMENDATION 2013-2014	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**
That the Ministère de la Sécurité publique proceed immediately with the necessary physical changes in order to provide Maison Tanguay inmates with decent and safe detention conditions, especially in the maximum security section.	—	**DISSATISFIED** with the lack of progress in providing detention conditions that preserve the residual rights of the women incarcerated at Maison Tanguay. **SATISFIED** with the installation of a camera in an isolation cell in order to provide safe detention conditions for Maison Tanguay detainees. **WILL MONITOR** how long it takes for the Department to install cameras in the other isolation cells.

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE AND COMMISSION QUÉBÉCOISE DES LIBÉRATIONS CONDITIONNELLES		
EXAMINATION OF CONDITIONAL RELEASE		
RECOMMENDATIONS 2013-2014	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015
That the Ministère de la Sécurité publique and the Commission québécoise des libérations conditionnelles document without delay the reasons for the high rate of waivers of the right to examination of applications for conditional release.	—	**DISSATISFIED** that as at March 31, 2015, the Department had yet to document the reasons for the high rate of waivers of the right to examination of applications for conditional release.
That they establish, by March 31, 2015, a mechanism or mechanisms aimed at decreasing the number of waivers.	—	**DISSATISFIED** that as at March 31, 2015, the Department had not yet decided on the mechanisms it intends to establish for decreasing the number of waivers. **SATISFIED** with the Commission québécoise des libérations conditionnelles's efforts to find solutions aimed at decreasing the number of waivers of the right to examination of applications for conditional release. **WILL MONITOR** the effect on waiver rates of the measures set forth by the Commission.
That they transmit, by March 31, 2015, a report on the action carried out and the results obtained to the Québec Ombudsman.	—	**DISSATISFIED** that as at March 31, 2015, the Québec Ombudsman had not received a report on the action carried out and the results obtained from the Department. **WILL MONITOR** the results of the action carried out by the Commission. Even though there is no report, the Québec Ombudsman considers that this action should lower the number of waivers.

COMMISSION QUÉBÉCOISE DES LIBÉRATIONS CONDITIONNELLES, MINISTÈRE DE LA SÉCURITÉ PUBLIQUE, MINISTÈRE DE LA JUSTICE, DIRECTEUR DES POURSUITES CRIMINELLES ET PÉNALES		
RELEASE ON PAROLE: CHRONIC POSTPONEMENT OF HEARINGS		
RECOMMENDATIONS 2008-2009	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015
That the Ministère de la Justice, the Ministère de la Sécurité publique, the Director of Criminal and Penal Prosecutions and the Commission québécoise des libérations conditionnelles work together to analyze bottlenecks in the current parole release system, in order not only to improve existing practices but also to make suitable changes to the rules and simplify their operation, if possible. **That** they report to the Québec Ombudsman on the changes made by January 31, 2010.	**DISSATISFIED** with the ineffectual measures for solving the problem of postponement of hearings.	**DISSATISFIED** with the ineffectual measures for solving the problem of postponement of hearings.

RÉGIE DES RENTES DU QUÉBEC		
COMBINATION OF BENEFITS WITH NO NEGATIVE EFFECTS		
RECOMMENDATION 2008-2009	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015
That, as part of the pension plan review that will take place in the fall of 2009, steps should be taken to ensure that the rules applicable to benefit combinations paid to citizens receiving compensation from the Société de l'assurance automobile du Québec do not have the effect of reducing their income from its original level.	**WILL MONITOR** the work of the Régie des rentes and Société de l'assurance automobile du Québec joint working group to inform surviving spouse's pension beneficiaries about changes that could affect their pension amount when the rules governing benefit combinations are applied (when citizens receive compensation from the Société de l'assurance automobile du Québec). The Québec Ombudsman draws attention yet again to the unreasonable delay in following up on the recommendation since the problem was first brought to light.	**SATISFIED** with the measures by the Régie and the Société de l'assurance automobile du Québec to inform surviving spouse's pension beneficiaries about changes that could affect their pension amount when the rules governing benefit combinations are applied (when citizens receive compensation from the Société de l'assurance automobile du Québec).

RÉGIE DU LOGEMENT		
LEGISLATIVE AMENDMENTS TO REDUCE WAIT TIMES		
RECOMMENDATIONS 2007-2008	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015
That the legal framework under which the Régie du logement addresses cases involving the non-payment of rent be modified so as to incorporate a new procedure for improving the availability of decision-makers in this area while jointly hearing all cases within a reasonable time frame. **That** measures are taken to ensure that these changes are designed so as to respect the fundamental rights of all the parties, particularly with regard to procedures involving lease cancellation and the eviction of a tenant.	**DISSATISFIED** with the delay in follow-up to this recommendation given that the problem of wait times persists at the Régie du logement.	**DISSATISFIED** with the delay in follow-up to this recommendation given that the problem of wait times persists at the Régie du logement.

MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX

COMPLAINT EXAMINATION PROCEDURE		
INDEPENDENCE AND IMPARTIALITY OF COMMISSIONERS		
RECOMMENDATION 2013-2014	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015
That the Ministère de la Santé et des Services sociaux ensure that local service quality and complaints commissioners themselves conduct the examination of complaints in the first instance so as to guarantee the independence and impartiality of such examination.	—	**SATISFIED** with the information sent by the Department to service quality and complaints commissioners specifying the expectations of the Department's ethics and quality directorate concerning commissioners' independence and impartiality.

MENTAL HEALTH		
CONFINEMENT		
RECOMMENDATIONS 2009-2010	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**
That the Ministère de la Santé et des Services sociaux formulate guidelines to direct and standardize the application of the legal framework governing all types of forced confinement.	**DISSATISFIED** that the Department is not planning to release its policies before the fall of 2016.	**DISSATISFIED** that the Department is not planning to release its policies before the fall of 2016.
That it provide practitioners and workers with a standardized form to avoid the abusive interpretation of the rule of law and ensure it is able to monitor practices.	**DISSATISFIED** that pending the release of the Department's policies, the Department has not done anything to instruct institutions about the information that should be entered in users' records.	**DISSATISFIED** that pending the release of the Department's policies, the Department has not done anything to instruct institutions about the information that should be entered in users' records.
That it require institutions to report on their practices, including the annual number of confinements, the reasons for them, and their duration.	**DISSATISFIED** that pending the release of the Department's policies, the Department has not done anything so that institutions account for their compliance with P-38.001.	**DISSATISFIED** that the Department has not taken any concrete steps so that institutions be required to account for their compliance with P-38.001.
MEANS OF CONTROL		
RECOMMENDATIONS 2009-2010	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**
That the Ministère de la Santé et des Services sociaux supervise the use of chemical substances as a control measure.	**WILL MONITOR** the 2014 review of the framework for producing protocols for the use of means of restraint that include how the use of chemical substances should be handled.	**DISSATISFIED** that the framework for producing protocols for the use of means of control is not yet modified. *Note: As at March 31, 2015, the Department expected the framework to be published shortly.*
That, as set out in its action plan, it design and implement a standardized data collection tool that must be completed by professionals every time a control measure is used, and that it suggest a method for data compilation and monitoring.	**WILL MONITOR** the results of the working committee formed in December 2013. The committee is tasked with assessing certain tools used by the network and with identifying the variables for reporting on the use of means of control. The Québec Ombudsman expects this work to be carried out expeditiously.	**DISSATISFIED** that nothing has been done in this regard, and even more so because a restriction of basic rights is involved. The Québec Ombudsman understands that the priority is to revise the framework, so it expects the evaluation of these tools to be carried out as soon as the framework is published.
That it assess the impact of implementing its guidelines.	**WILL MONITOR** the assessment in 2015 of the impact of implementing these policies.	**DISSATISFIED** that steps have yet to be taken in this regard.

MENTAL HEALTH		
ABSENCE OF CONSENT TO PLANNED MEANS OF CONTROL		
RECOMMENDATION 2012-2013	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**
That the Ministère de la Santé et des Services sociaux take measures to ensure that when an unplanned control measure turns into a measure of some duration, facilities obtain the required consents.	**WILL MONITOR** the review and dissemination, no later than the end of 2014, of the framework for the production of protocols for the use of means of restraint. This framework will include institutions' obligations with respect to obtaining consent when an unplanned means of restraint turns into a measure of some duration. **WILL MONITOR** release of the written reminder about institutions' obligations with regard to obtaining consent that the Department must issue to all health and social services agencies when the framework is distributed.	**SATISFIED** with the reminder to regional respondents regarding the obligation to obtain consent when planned means of control are employed. **WILL MONITOR** to ensure that specifications concerning institutions' obligations with regard to obtaining consent are included in the modified framework.
ABSENCE OF OVERSIGHT OF PRIVATE RESIDENTIAL RESOURCES FOR PEOPLE WITH MENTAL HEALTH PROBLEMS		
RECOMMENDATIONS 2013-2014	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**
That the Ministère de la Santé et des Services sociaux take the necessary steps to require that private resources providing lodging to people with mental health problems be certified. **That** it make sure that the certification process provides for transitional measures to enable residential resources to adjust to the requested changes while minimizing the impact on users' housing needs. **That** it provide for adequate quality control of these residential resources, including regular monitoring of implementation of the things requested in inspection reports.	—	**DISSATISFIED** that the Department refuses to apply the recommendations concerning certification of private resources providing lodging to people with mental health problems based on the argument that these resources do not provide users with any direct services (only lodging). The voluntary registration proposed by the Department is unsatisfactory.

PHYSICAL DISABILITIES, INTELLECTUAL DISABILITIES AND PERVASIVE DEVELOPMENTAL DISORDERS		
AVAILABILITY OF PHYSICAL DISABILITY, INTELLECTUAL DISABILITY AND PERVASIVE DEVELOPMENTAL DISORDER SERVICES		
RECOMMENDATION 2009-2010	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**
That the Ministère de la Santé et des Services sociaux set acceptable wait times between the beginning of the needs evaluation process and the provision of actual rehabilitation services.	**WILL MONITOR** progress on the various initiatives to identify wait times and the nature of services after the first service has been provided. **DISSATISFIED** that the Department continues to be unable to provide a complete picture of the situation that would enable it to assess whether it is responding fully or partly to public needs.	**SATISFIED** that the amounts were allocated in December 2014 for completing deployment of the SIPAD computer program that will provide more accurate information about wait times in rehabilitation centres for intellectual disabilities (CRDIs). **WILL MONITOR** the outcomes of the performance reviews of physical disability, intellectual disability and autism spectrum disorder services.
CONTINUITY OF CARE AND SERVICES		
RECOMMENDATIONS 2011-2012	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**
That the Ministère de la Santé et des Services sociaux take the necessary steps to prevent service interruptions within its network when a user is transferred from one institution to another. **That** it ensure that, for users presenting a dual diagnosis, rehabilitation centres for physical disabilities (CRDPs) and rehabilitation centres for intellectual disabilities and pervasive developmental disorders (CRDITEDs) assume their respective responsibilities according to their particular expertise. **That** it ensure that the CSSSs concerned immediately begin defining their clinical and organizational projects for people with disabilities.	**SATISFIED** that the Department is drafting a circular on intraregional and interregional transfer in order to prevent service interruptions when users are transferred from one institution to another. **WILL MONITOR** publication of this circular slated for release no later than the fall of 2014.	**SATISFIED** that the circular on service fluidity and continuity when intraregional and interregional transfer occurs has been in place and implemented within the network since May 2014. **DISSATISFIED** that this circular does not include home support services. *Note: The recommendations on duel diagnosis and clinical projects are presented in the report entitled* Service access, continuity and complementarity for young people (0-18 years old) with an intellectual disability or an autism spectrum disorder. *Their particular purpose is to ensure that children with an intellectual disability or an autism spectrum disorder have seamless access to the health services and social services required in response to their needs without these services being hampered by narrow impairment-based criteria.*

PHYSICAL DISABILITIES, INTELLECTUAL DISABILITIES AND PERVASIVE DEVELOPMENTAL DISORDERS		
QUALITY ASSESSMENT VISITS IN INTERMEDIATE AND FAMILY-TYPE RESOURCES		
RECOMMENDATION 2010-2011	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015
That the Ministère de la Santé et des Services sociaux amend its quality assessment program such that visits to intermediate and family-type resources make it possible to ensure that every resident in a substitute living environment that is associated with or part of the public system receives suitable services and enjoys a quality physical environment.	**WILL MONITOR** the quality of assessment visits in intermediate residential resources for troubled youth or people with an intellectual disability or a pervasive developmental disorder. **WILL MONITOR** review of the quality assessment program for intermediate and family-type residential resources slated for the spring of 2014.	**DISSATISFIED** that further to passage of *the Act respecting the representation of family-type resources and certain intermediate resources and the negotiation process for their group agreements*, the Department no longer carries out visits of family-type and intermediate resources. **DISSATISFIED** that review of the quality assessment program for intermediate and family-type residential resources is not finished yet.

PHYSICAL HEALTH		
TREATMENT OF EMERGENCY SERVICE USERS		
RECOMMENDATION 2008-2009	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015
That the Ministère de la Santé et des Services sociaux plan temporary solutions for the interim period, so that users whose state of health is evaluated at priority level 4 or 5 can gain access to front-line services.	**WILL MONITOR** production of the new management framework for family medicine groups, which should provide for measures to increase access to family doctors, including the new guidelines for covering opening hours evenings and weekends.	**DISSATISFIED** that the new management framework for family medicine groups has not been distributed yet. **WILL MONITOR** the effects of the implementation of the *Act to enact the Act to promote access to family medicine and specialized medicine services and to amend various legislative provisions related to assisted procreation*.
REDUCING EMERGENCY ROOM OVERCROWDING		
RECOMMENDATION 2012-2013	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015
That the Ministère de la Santé et des Services sociaux draw up a report on patients who were redirected following agreements between hospitals and family medicine groups and network clinics.	**WILL MONITOR** the Department's efforts to produce, in 2014, a comprehensive portrait of the institutions that have redirection agreements. The Québec Ombudsman notes the long time that this has taken.	**SATISFIED** with the establishment of the Banque de données communes des urgences (BDCU) and the report produced by the Department.

PHYSICAL HEALTH		
ABSENCE OF CLEAR GUIDELINES ON THE PROVISION OF HEPARIN		
RECOMMENDATION 2013-2014	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**
That the Ministère de la Santé et des Services sociaux revise and distribute the information circular to the entire network no later than June 30, 2015.	—	**WILL MONITOR** distribution of the revised circular slated for June 2015.

SUPPORT FOR ELDERLY AUTONOMY		
ENVIRONMENTS THAT ALLOW PRIVACY AND RESPECT		
RECOMMENDATION 2007-2008	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**
That residential and long-term care centres provide, in the event of death, an appropriate environment to allow users to spend time with their loved ones in private, and ensure that bodies are treated with respect at all times, up until they are taken away by the undertaker.	**WILL MONITOR** publication of the CHSLD property planning guide slated for May 2014 that will amend the normative framework for CHSLD facilities.	**DISSATISFIED** about not receiving an adequate response to this recommendation which goes back to 2007-2008. The CHSLD property planning guide slated for May 2014 has yet to be produced.
QUALITY LIVING ENVIRONMENTS FOR PEOPLE IN RESIDENCES		
RECOMMENDATION 2009-2010	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**
That the Ministère de la Santé et des Services sociaux report to the Québec Ombudsman, by April 2011, on the measures it intends to adopt to guarantee to all users with behavioural disorders, even before they are referred and admitted to a residential resource, that the institution that accepts them will be able immediately to provide all the services required by their condition, especially in terms of organization and environment, without infringing on the other residents' right to privacy, security and dignity.	**WILL MONITOR** publication of the two practical guides and implementation of the five training modules slated for June 2014.	**WILL MONITOR** the ongoing review of front-line assessment, management and work organization practices regarding residential users with behavioural disorders.
QUALITY OF CARE AND SERVICES FOR PEOPLE TEMPORARILY HOUSED IN PRIVATE HOMES		
RECOMMENDATION 2012-2013	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**
That the Ministère de la Santé et des Services sociaux take measures to ensure that residents housed by virtue of agreements for purchasing places receive the care and services that match their needs assessment. The Québec Ombudsman requests that the Ministère de la Santé et des Services sociaux inform the Ombudsman of measures taken to meet this recommendation.	**WILL MONITOR** production of a status report concerning the purchase of places slated for the fall of 2014. **WILL MONITOR** policy development (no later than spring of 2015) concerning a quality assurance process.	**SATISFIED** with the production of a status report concerning the purchase of places presented in the fall of 2014. **WILL MONITOR** policy development concerning a quality assurance process, which was supposed to be done as at March 31, 2015, but was not.

SUPPORT FOR ELDERLY AUTONOMY		
HETEROGENEITY OF THE CLIENT POPULATION AND USER SAFETY		
RECOMMENDATIONS 2013-2014	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**
That the Ministère de la Santé et des Services sociaux establish, by December 31, 2014, measures to ensure that every resident in a residential and long-term care centre has a violence-free living environment. **That** it establish, by December 31, 2014, measures to improve care and services, particularly to users with behavioural disorders while ensuring that they have the care and services required by their condition. **That** it inform the Québec Ombudsman of the measures established for these purposes.	—	**WILL MONITOR** the ongoing review of front-line assessment, management and work organization practices regarding residential users with behavioural disorders and its real impact on user management and referral.
COMPETENCE OF STAFF IN INTERMEDIATE RESOURCES		
RECOMMENDATION 2013-2014	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**
That the Ministère de la Santé et des Services sociaux provide for staff training requirements in intermediate resources adapted to the elderly who have cognitive impairments coupled with behavioural disorders.	—	**SATISFIED** with the Department's initiative to raise awareness about the training of staff in intermediate and family-type resources.
ACCESS TO PUBLIC CHSLDs		
RECOMMENDATION 2013-2014	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2013-2014**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**
That the Ministère de la Santé et des Services sociaux immediately take appropriate measures to ensure users long-term, transitional or permanent accommodations that take all their needs into account, including the psychosocial aspects that influence their overall health. The Québec Ombudsman is asking the Ministère de la Santé et des Services sociaux to inform it of the measures taken for this purpose.	—	**SATISFIED** that the Department has developed new needs assessment tools, in particular, tools for assessing social needs. **WILL MONITOR** the additional measures the Department must establish to ensure users long-term, transitional or permanent accommodations that take all their needs into account, including the psychosocial aspects that influence their overall health. Currently, the tools developed will not enable achievement of this goal.

SUMMARY OF RECOMMENDATIONS IN THE 2014-2015 ANNUAL REPORT

MINISTÈRE DE LA FAMILLE

THE QUÉBEC OMBUDSMAN'S RECOMMENDATION CONCERNING COORDINATING OFFICES

- Whereas home childcare coordinating offices exercise the functions set out in the *Educational Childcare Act*, notably, issuance of recognition of home childcare providers;
- Whereas the Act does not provide for recourse regarding coordinating offices' decisions to refuse to grant recognition, unlike other types of decisions by these offices, for which recourse to the Tribunal administratif du Québec is provided;
- Whereas appeal, including recourse to an administrative tribunal, must be created by means of a law;
- Whereas the coordinating offices do not systematically justify their decisions to refuse to grant recognition, even though there is a duty of procedural fairness to this effect;
- Whereas the files of applicants refused recognition are often immediately destroyed further to the decision by the coordinating office;

THE QUÉBEC OMBUDSMAN RECOMMENDS THAT THE MINISTÈRE DE LA FAMILLE:

- Take steps to have the following amendments made:
  - To the *Educational Childcare Act*, to provide for recourse to the Administrative Tribunal of Québec regarding coordinating offices' decisions to refuse to grant recognition to home childcare providers;
  - To the *Educational Childcare Regulation*, to provide for the obligation for coordinating offices to justify their decisions to turn down applications for recognition;
  - To the *Educational Childcare Regulation*, to provide for the obligation for coordinating offices to keep the files of applications for recognition that have not been approved.

MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX

THE QUÉBEC OMBUDSMAN'S RECOMMENDATIONS CONCERNING PERSONAL CARE

- Whereas bathing is crucial to the well-being of CHSLD residents;
- Whereas in certain situations, notably when a person has late-stage dementia, sponge baths are a recognized practice adapted to the person's health condition;
- Whereas specialized bathing or showering equipment is often needed, particularly in CHSLDs, given the state of health of the elderly who are experiencing loss of independence;
- Whereas some CHSLDs do not have the specialized equipment required for giving residents with more fragile health a bath or shower;

THE QUÉBEC OMBUDSMAN RECOMMENDS THAT THE MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX:

- Make an inventory of the CHSLDs that do not have the required equipment;
- At the earliest opportunity, take the measures needed to provide these residents with baths or showers without compromising their safety;
- Ensure that CHSLD quality assessment visits systematically include evaluation of personal care;
- Send the Québec Ombudsman the findings from this inventory and information about the concrete measures for ensuring adequate personal care in CHSLDs.

THE QUÉBEC OMBUDSMAN'S RECOMMENDATIONS CONCERNING THE ADDITIONAL FEES CHARGED TO USERS BY HOSPITAL CENTRES:

- Whereas hospital centres are obliged to provide insured and medically required care and services free of charge;
- Whereas there are no criteria for defining what is medically required;
- Whereas institutions receive funding to provide insured services, but there are no guidelines for determining what is really included in administrative fees that enable adequate service delivery;
- Whereas hospital centres are free to determine the administrative fees that can be charged;

THE QUÉBEC OMBUDSMAN RECOMMENDS THAT THE MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX:

- Establish guidelines for what is medically required in order to determine which care and services are provided free of charge, within the meaning of the *Regulation respecting the application of the Hospital Insurance Act*;
- Provide fair and reasonable guidelines for the administrative fees that institutions can charge to users, pursuant to the *Hospital Insurance Act*.

LE PROTECTEUR DU CITOYEN

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