JUSTICE FAIRNESS RESPECT

LE PROTECTEUR DU CITOYEN

Assemblée nationale
Québec

IMPARTIALITY TRANSPARENCY

2015-2016 ANNUAL REPORT

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LE PROTECTEUR DU CITOYEN

Assemblée nationale
Québec

2015-2016 ANNUAL REPORT

Québec City
September 2016

Mr. Jacques Chagnon
President of the National Assembly
Parliament Building
Québec (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 46th Annual Report of the Québec Ombudsman for fiscal year 2015-2016.

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

Table of contents

MESSAGE FROM THE OMBUDSPERSON 7

VALIDATION REPORT FROM THE INTERNAL AUDITOR 11

THE QUÉBEC OMBUDSMAN 13

HIGHLIGHTS 17

PUBLIC SERVICE 25

AGENCE DU REVENU DU QUÉBEC (REVENU QUÉBEC) 26

- Commission des normes, de l'équité, de la santé et de la sécurité du travail 37
- Ministère de l'Économie, de la Science et de l'Innovation 44
- Ministère de l'Éducation et de l'Enseignement supérieur 45
- Ministère de l'Immigration, de la Diversité et de l'Inclusion 52
- Ministère de la Justice 54
- Ministère de la Sécurité publique 57
- Ministère du Travail, de l'Emploi et de la Solidarité sociale 59
- Retraite Québec 64
- Société de l'assurance automobile du Québec 71

REPORT BY THE CORRECTIONAL OMBUDSMAN OF QUÉBEC 79

THE MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX AND ITS SERVICE NETWORK 91

- Home support 94
- Support for elderly autonomy 98
- Mental health 104
- Disabilities 107
- Physical health 111
- Troubled youth 118
- Service support 119

PARLIAMENTARY WATCH REPORT 125

RESULTS IN FIGURES 133

1. Service requests received 134
2. Closed service requests 135
3. Complaints and reports closed further to an investigation, and requests for assistance 136
4. Source of requests for assistance, complaints and reports 142
5. Monitoring of corrective measures 144
6. Profile of complaints, reports and requests for assistance by government department, agency, mission or service program 144
7. A sector outside the Québec Ombudsman's jurisdiction but for which service requests raised concerns 153

FOLLOW-UP TO RECOMMENDATIONS IN THE QUÉBEC OMBUDSMAN'S ANNUAL REPORTS 155

RECOMMENDATIONS IN THE 2015-2016 ANNUAL REPORT 167

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

I sign this message as my second and final term of office comes to a close, in a context of prevailing cynicism about elected officials and public servants alike—cynicism that certain behaviours may have fueled, but that is largely based on generalizations that make government synonymous with bad faith, often without nuance. This is not the way I feel. Over the past 10 years, I have interacted with numerous administrators and civil servants who were competent and dedicated and for whom citizens' interests come first.

The role of Ombudsperson provides the best possible vantage point for grasping how important government services and access to them is in the lives of citizens. The function of Ombudsperson also makes it possible to realize how crucial effective and timely public service delivery is to people's well-being, to the public interest and to quality of life in Québec. Education, health, safety, social services, tax collection, natural resource development and environmental protection, as well as pension and public insurance management, are essential missions of government for which citizens have no choice but to do business with public services.

I have seen that these public services are effective when it comes to broad-based responses for citizens whose situations fit into the mould, but that coping with more complex or unforeseen scenarios is harder. The fact of the matter is that there are significant disparities between citizens—literacy (including computer literacy), disabilities, income, age, autonomy, identity and gender.

The difficulty public services experience in adapting to needs that are not standard, albeit predictable and increasingly frequent, is a source of dissatisfaction. Citizens, individuals and businesses alike tell us that they:

- feel that they are not being heard and are not being treated fairly and equally;
- do not understand the reasons for an unfavourable decision concerning them and for which they are not given an explanation, which feeds into their impression that the decision is unjustified;
- feel as if the government is an adversary and is not working in their favour;
- believe that they pay taxes without getting quality services in return.

Whether or not citizens' complaints are substantiated, these feelings should raise a red flag. When citizens feel respected and treated fairly, this fosters trust in the system. All too often, I have seen that decision-makers underestimate the impact of their actions on citizens.

Over the years, I have come to believe that cumulative budget cuts—whose relevance I have no problem with per se, but, rather, the fact that the real impact on citizens of some of these cutbacks is underestimated—have, in the end, been less daunting for bureaucracy than for vulnerable people.

It is crucial that we take on the correction of systemic dysfunctions and look ahead for the major trends that will have an impact on public service adaptation and development. Basing decisions on compelling data, adopting a broader view in interpreting prevailing conditions—especially on the economic, social and demographic fronts—and taking into account the interaction of the various public service providers remain challenging. Only through greater team work and better pooling of the public service's expertise and resources will we be able to succeed.

Eliminating compartmentalization and remedying the failure to forecast major trends are two of the reasons why, since 2006-2007, I have commented on 125 bills or draft regulations or used the power of initiative granted to me under the law to conduct 21 special interventions. My purpose has been to prevent the perpetuation of harm to vulnerable people as much as possible.

Among these vulnerable citizens are children who face difficulties and injustice. This includes children who are homeschooled without the necessary guidelines or supervision, those who cannot attend school because their parents have a precarious immigration status and those deprived of health services and social services adapted to their condition, whether it be due to an intellectual disability or an autism spectrum disorder.

The need to protect certain seniors who are vulnerable because they have reduced autonomy also gave rise to special interventions, especially concerning access to home support services and protecting the rights of the elderly living in private seniors' residences. Much remains to be done to ensure that elderly people receive services that are more compassionate and that they are provided living environments that are true homes where their dignity is respected, always bearing in mind that the elderly must not be treated like children.

There were other issues that generated special investigations—illegal accessory costs in the field of health and social services, monitoring of private waterworks systems in Québec, coroner investigation wait times, off-road emergency intervention services, home adaptation for people disabled following a road accident, management of the listeriosis crisis involving Québec cheese, procedural fairness of the disciplinary process for detainees, the need for better-adapted services for detainees with mental disorders, and the difficulties in applying the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*.

The administration of justice warranted special consideration, namely, with three systemic investigations respectively concerning the scheduling of Régie du logement hearings in the last quarter of 2010-2011, Québec's investigative procedure for incidents involving police officers, as well as detention conditions, the administration of justice and crime prevention in Nunavik.

For all of these issues, action plans in response to the Québec Ombudsman's recommendations were established or are being established. Matters of this scope are not resolved overnight. The important thing is to commit to ensuring the required progress for the well-being of all.

As my decade as the Ombudsperson draws to a close, I want my message to emphasize the quintessential issue—service to citizens. Over the years, I have noticed that administrators' performance reviews are increasingly based on the bottom line in accounting ledgers and on procedural compliance (which of course I subscribe to). These people are measured first and foremost on their performance as managers, and not on their performance as service providers. Annual "management" reports say a lot more about compliance with standards and procedures than about the ability of the various programs and services to meet citizens' needs.

In this context, the risk is high that administrators and, by extension, the agents who provide services to citizens, increase controls before and after services are provided, tighten the interpretation of laws and regulations, and introduce additional procedures in order to feel more secure. It comes as no surprise that this limits and further impedes action which is already slow and which is often inflexible. This only widens the gap between citizens' pressing requests and insufficient and late outcomes.

In the coming months, if the *Act to facilitate the disclosure of wrongdoings within public bodies* (Bill 87) is assented to, the Québec Ombudsman will receive and handle disclosures from anyone who, acting in good faith and in the public interest, believes that wrongdoing has occurred or is about to occur which must be stopped or prevented. It will also be required to ensure that whistleblowers are protected against reprisal. This important role will certainly contribute to public service integrity in Québec and to bolstering citizens' confidence in the people who deliver these services. The institution is preparing for this responsibility earnestly in full awareness of the many requirements and the complexity involved.

I wish to express my gratitude to and high esteem for my multidisciplinary, objective and conscientious team, whose competence is a guarantee of the Québec Ombudsman's credibility and sustainability. Citizens can trust the Québec Ombudsman, and public service employees can be sure of its impartiality.

Since 2006, the Members of the National Assembly and successive governments have listened attentively to me. I am grateful to them for this and I wish to conclude this message by applauding their very real contribution to democracy. The fact that there is a parliamentary ombudsman in Québec who has extensive powers and can act independently without interference or reprisal is a sign of the vitality of this democracy.

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, 2016. 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* chapter. 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 2015-2016 Annual Report are not plausible and consistent in every important respect.

Jean Gamache

Jean Gamache, Internal Auditor, CPA, CA
Québec City, July 2016

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 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 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. In this regard, it generally acts as a second level of 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, 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 special 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, 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.

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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 this Annual Report:

- when the masculine form is used in a non-specific context, it 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. 26

The fight against tax evasion: a positive change underway

In its *2014-2015 Annual Report*, the Québec Ombudsman spoke out against certain audit methods used by Revenu Québec. On January 26, 2016, at the request of the Minister of Finance, Revenu Québec released an action plan that included tangible measures for improving Revenu Québec's relations with taxpayers and mandataries. The Québec Ombudsman applauds the publication of this plan to foster respect of citizens' rights as well as citizens' confidence in Revenu Québec. The changes made and the shift in organizational culture is already making a real difference. In this respect, the Québec Ombudsman has noticed a marked decrease in the number of complaints from businesses critical of Revenu Québec for sending them hefty notices of assessment further to audits concerning their presumed participation in fake invoice schemes.

In another vein, while the Québec Ombudsman unreservedly supports Revenu Québec's fight against tax evasion, again this year it had to intervene after it received complaints from businesses that had been sent notices of assessment that proved unreasonable. Given the importance of the issues at stake for these businesses, the Québec Ombudsman reminded Revenu Québec of its obligation to exercise its tax inspection responsibilities rigorously and in a manner respectful of citizens' rights.

Commission des normes, de l'équité, de la santé et de la sécurité du travail ..... P. 37

Process workers' files promptly

The Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) must render its decisions promptly because if not, it may unjustly deprive citizens of indemnities or professional services that they need immediately. Injured workers pay the cost for unreasonable delays. For example, a worker had to wait a year before the CNESST, at the Québec Ombudsman's urging, ruled on his eligibility for medical aid after surgery stemming from a work-related accident.

Some decisions by the CNESST do not comply with its own laws and regulations or are the result of overly rigid interpretation or application, thereby depriving citizens of compensation, medical aid or due recourse to which they are entitled. For example, a pregnant citizen was not allowed preventive leave because she ran her own business when, in fact, the law clearly confirmed her eligibility.

Ministère de l'Économie, de la Science et de l'Innovation ..... P. 44

Review of decisions: an inadequate process and… a three-year wait

In its capacity as a corporation specializing in commercialization of intellectual property, a company approached the Department about a tax holiday. Learning that it had been turned down for the measure, the company applied to have the decision reviewed. Normally, all that is required is an examination of the grounds for refusal. In this case, the Department revised the entire file and involved the employee who had made the initial decision. The Québec Ombudsman felt that this process was inconsistent with the principles of a fair administrative review. After the Québec Ombudsman stepped in, the Department took the first decision-maker off the review committee and brought in an external expert to review the file. Based on the expert's opinion, in the end—three years after the initial application—the Department concluded that the business qualified for the tax credit.

Ministère de l'Éducation et de l'Enseignement supérieur..... P. 45

Difficult cooperation and slowness in processing urgent files

Again this year, obtaining adequate and timely follow-up from the Department was not easy. As at March 31, 2016, the Department had not gotten any tangible follow-up concerning the Québec Ombudsman's recommendations in its two special reports—one on access to public education for children with a precarious immigration status (published in November 2014) and the other on the supervision of homeschooled children's learning (published in April 2015).

As for student financial assistance, long processing times were harmful to students who were in dire straits. For example, the processing time for exceptional case applications, which is supposed to be two to three weeks after the Examination Committee for Exceptional Cases meets, can be as much as four months.

The Québec Ombudsman also found errors of interpretation in the application of the Loan Remission Program. Students who met program requirements were denied the remission for which they were eligible. For the students affected, losses could be in the thousands of dollars. After the Québec Ombudsman intervened, the Department promptly granted the students the loan remission amounts to which they were entitled.

Ministère de l'Immigration, de la Diversité et de l'Inclusion ..... P. 52

Candidates unjustly penalized by administrative processing errors

Despite the changes made by the Department in the processing of applications for selection certificates, the Québec Ombudsman noted mistakes at the stage when the documents submitted by candidates are checked for conformity. Hence, the Department maintained that a document was missing, even though it was on file, and turned down the application as a result. Another candidate had the official seals on his transcripts translated into French but his selection certificate was turned down…because of seals that had not been translated! A third person was instructed to send the Department all the documents needed for analyzing her file, even though she had already done so. The Department acknowledged its mistakes, which meant that study of the applications could resume.

The Québec Ombudsman also welcomes the steps taken by the Department to better inform its client population about immigration consultants and those who pretend to be. The Department not only tightened the conditions for recognizing consultants in 2015, but also added information to its website, including the option of filing complaints concerning bad practice by recognized consultants who are listed in the official register or by anyone who uses the title fraudulently.

Ministère de la Justice ..... P. 54

Administrative tribunal wait times… despite changes, still up to two years

Administrative tribunals were created to, among other things, provide quicker solutions with less bureaucracy than the courts, but the Québec Ombudsman is concerned about the lengthy wait between filing of complaints by citizens and file closure by the tribunals. Delays of 22.4 months were recorded at the social affairs section of the Tribunal administratif du Québec, 25 months for some files at the Commission d'accès à l'information and 20.3 months at the Régie du logement. The Québec Ombudsman is aware of the various means deployed by the administrative tribunals to shorten these wait times, but thinks it unfortunate that results are slow in coming.

Ministère de la Sécurité publique ..... P. 57

Bureau des enquêtes indépendantes: postponement after postponement

Three years have elapsed since the creation of the Bureau des enquêtes indépendantes, recommended by the Québec Ombudsman. It is difficult to understand why there have been so many constraints that have delayed start-up of the organization's activities. Establishing the conditions needed for the organization to fulfil its mandate is as much in the public interest as it is in the interest of police officers.

Ministère du Travail, de l'Emploi et de la Solidarité sociale ..... P. 59

Therapy in jeopardy for social assistance recipients in addiction treatment centres

As it now stands, social assistance recipients lodged in an addiction resource are only allowed a personal expense allowance ($200 a month in 2015). Formerly, they had been getting between $616 and $747, depending on their situation. Most centres must charge their residents monthly fees for therapy ranging from $200 to $400, and the recipients pay the fees out of their benefits. The news of the cut made residents fear that they might have to stop therapy, while addiction treatment centres were afraid that they would have to shut down. The Québec Ombudsman recommended that the Department ensure that services and service access are maintained. The Department put measures in place so that all recipients who begin drug addiction treatment are ensured of being able to continue it.

Retraite Québec ..... P. 64

- Québec Pension Plan and Child Assistance

Longer processing times for disability pension applications

The Québec Ombudsman received an unusual number of complaints about the time it takes Retraite Québec to process disability pension applications. Retraite Québec explains that the delays are due to a shortage of personnel for these files—departures, retirement, sick leave. The Québec Ombudsman has taken note of these reasons and the measures taken to correct the situation. In the first three months of 2016, processing times improved, but given its mandate and the issues at stake for citizens, Retraite Québec is obliged to act promptly. In one case handled by the Québec Ombudsman, a person applied for a disability pension in late 2014 and had to wait 225 days before getting an answer.

Public-sector pension plans

Administrative errors: some progress, but pensioners penalized because of miscalculations

The Québec Ombudsman applauds the passage of legislative provisions whereby Retraite Québec must now exempt any citizen from the duty to reimburse it for overpayments, provided the citizen could not have detected the error. In recent years, the Québec Ombudsman has intervened several times in this regard. However, the amendments do not solve a major problem that the Québec Ombudsman has often brought to light—Retraite Québec mistakes that cause a decrease in a pension, even though the beneficiary has already received confirmation of an amount. In all likelihood, the people who are given the news about a readjustment would have planned for retirement differently if they had known how much pension money they would really be getting for the rest of their life. Therefore the Québec Ombudsman once again urges Retraite Québec to own up to its mistakes and compensate citizens.

Société de l'assurance automobile du Québec ..... P. 71

Adapting the homes of people injured in a road accident: average wait times of more than two years

In December 2015, the Québec Ombudsman wrote a special report containing 11 recommendations to the Société de l'assurance automobile du Québec (SAAQ) concerning the wait times for adapting the homes of severely disabled road accident victims. It was critical of the long wait of more than two years before the homes of people with serious-after effects of a road accident are adapted. The Québec Ombudsman salutes the SAAQ's efforts in implementing the recommendations of its report. The SAAQ was quick to produce an action plan aimed at reducing the average delay between the time the SAAQ begins to process an adaptation application and the authorization of the amount needed to get the job done. Previously, the average wait time was 515 days, but the SAAQ has committed to setting a nine-month deadline for processing home adaptation applications for 80% of files. The other measures in the action plan slated for March 31, 2016, were implemented to the Québec Ombudsman's satisfaction.

REPORT BY THE CORRECTIONAL OMBUDSMAN OF QUÉBEC ..... P. 79

Detention and the administration of justice in Nunavik: severe violations of the rights of Inuit detainees

Further to an investigation into detention conditions and the administration of justice in Nunavik, the Québec Ombudsman released a special report containing 30 recommendations, 19 of which dealt directly with detention conditions. All of the recommendations were aimed at improving detention conditions and, more broadly, at preventing the unfairness experienced by criminalized and incarcerated Inuit.

As soon as the report was published, the Premier of Québec pledged to "ensure that the facilities would be overhauled as soon as possible." The Ministère de la Sécurité publique has taken the necessary measures to solve certain problems (insufficient and unsanitary facilities, outdated or non-existent equipment). The Ministère de la Sécurité publique and the Ministère de la Justice have committed to working together proactively on an action plan in response to the Québec Ombudsman's concerns. The Québec Ombudsman will continue to closely monitor implementation of the recommendations of this report as well as developments in the work to counter the underlying causes of Nunavimmiut criminalization and incarceration.

MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX AND ITS SERVICE NETWORK ..... P. 91

System reform: mismanagement of the transition that reduces access to services

In the past year, the Québec Ombudsman has seen problems stemming from changes as a result of the structural reform that took effect on April 1, 2015. The Québec Ombudsman feels that the lack of proper transition planning for such a sweeping reform is behind some of the problems, noting that when local home support services are pooled at the regional level, the trend is to apply the least generous model.

And what about the "basket of insured services?" The question is not new. Over the years, Québec has witnessed gradual slippage towards increasingly high direct financial contributions by system users. The Department's current review of the slate of public services, health services and social services alike, must be carried out transparently and openly.

Home support ..... P. 94

Home support services: a widening gap between supply and demand

It costs roughly $80,000 a year per person lodged in a residential and long-term care centre (CHSLD). For the same annual investment from the public purse, a person could get a 28-hour weekly home support service plan (integrated health and social services centre [CISSS] or integrated university health and social services centre [CIUSSS] employees), a 66-hour plan (domestic help social economy business) or a 96-hour plan (service employment paycheque). Despite these compelling statistics, the trend is to cut back on the number of home support hours offered. In recent years, given the demographic curve, the gap between supply and demand has widened. Home support service users have seen the number of hours slashed, even though their needs have not changed or have in fact increased. The solutions that could be put in place by public services are slow in coming, and this worries the Québec Ombudsman.

Support for elderly autonomy ..... P. 98

Living in a CHSLD: insecurity is the daily reality for some residents

Again this year, the Québec Ombudsman intervened concerning CHSLD residents who were attacked by fellow users whose behaviour is unacceptable or even violent. It is appalling to see that some institutions consider these altercations inevitable and downplay them. Every day, victims live in a state of great insecurity and perceive their living environment as dangerous and hostile. Work on the management of the psychological symptoms of dementia is underway at the Ministère de la Santé et des Services sociaux. Real-life results are urgently needed.

Mental health ..... P. 104

Publication of a long-awaited action plan: gains, but grey areas and insufficient resources

Five years after the previous mental health action plan expired, the 2015-2020 plan was finally published under the name *Faire ensemble et autrement*. Its particular aim is to establish measures for fostering and simplifying access to services. The Québec Ombudsman welcomes some of its provisions, but notes, however, that there is no specific measure regarding age-related mental health problems, even though Québec demographics make this a major issue. The action plan emphasizes home care by specialized teams, but even though such resources exist, they are often insufficient or hard to access. The Québec Ombudsman also wonders about the monitoring of the many measures announced, several of which are general in nature and none of which have any timeline for implementation.

Disabilities ..... P. 107

Admission to services: an obstacle course

Because of the major reform of the health and social services network, most institutions now apply a more restrictive interpretation of disability service eligibility criteria. Children and adults with disabilities still have to wait years before getting the services they need urgently, such as specialized rehabilitation. Furthermore, when they finally qualify, the services are not always as intense as required. For example, the mother of a three-year-old with an autism spectrum disorder complained to the Québec Ombudsman. When she made arrangements to enrol him at the rehabilitation centre in her region, she was told that the services would begin in a year. As the time for the services approached, she was informed that the wait time would be another 22 to 26 months.

Physical health ..... P. 111

Provide timely access to a family physician for all

Despite the creation of centralized waiting lists, the Québec Ombudsman regularly sees that many users continue to have trouble finding a family physician within a reasonable time. Some even have to wait years. Recurrent problems include gaping regional disparities in the effectiveness of list management. Furthermore, certain people with multiple illnesses remain on waiting lists longer. Recently, the centralized waiting list for access to a family physician (GAMF) made its debut. What will be the real outcome for users?

Troubled youth ..... P. 118

Contribution of parents toward the placement of a child under age 18: divergent calculation methods and flagrant inequality

The Québec Ombudsman noted that the financial contribution required of parents for the placement of their child of minor age in a substitute environment differs from one youth centre to another. This stems from differences in management methods, especially regarding billing, calculation of exemptions, and credits for periods when the child spends time away from the substitute environment. Because of the Québec Ombudsman's recommendations, the Department recognized the need for an overhaul in order to, among other things, take better account of parents' ability to pay. Revenu Québec would be entrusted with administering parents' financial contribution toward the placement of their minor children. The Québec Ombudsman feels that in the long run, the solutions will make it possible to set parental contribution amounts fairly and make calculation, collection and recovery of the contribution more efficient.

Service support ..... P. 119

Hospital parking: some fees are clearly excessive

A complaint to the Québec Ombudsman revealed that the daily parking fees at a hospital centre were higher than those at other hospital parking lots in the same city. When such fees are too high, they can be an indirect obstacle to obtaining care and services. The operation of parking lots by institutions within the health and social services network is a commercial activity that must be self-financed. In the case that gave rise to the complaint, the fees were aimed at maximizing revenues instead. The Québec Ombudsman made several recommendations to the hospital in question, which decided to change its rates for long-term parking but to keep the existing daily rate. The issue of daily parking rates was brought to the attention of the Ministère de la Santé et des Services sociaux and the Québec Ombudsman expects it to introduce corrective measures.

RESULTS IN FIGURES..... P. 133

- The number of service requests increased by 2.5%.
- In the public service sector (which excludes correctional services), delays, failings with financial repercussions and infringement of rights accounted for 78.8% of substantiated complaints.
- In health and social services, deficient service quality was the main ground for complaints and reports.
- The acceptance rate for measures recommended by the Québec Ombudsman and which had made a difference to specific individuals was 98.5%. The rate was 97.9% for measures that had a collective impact.

PUBLIC SERVICE

This section reports on the main findings of the Québec Ombudsman concerning the public service sector consisting of the government departments and agencies within its jurisdiction. Correctional services are covered in a separate section of this Annual Report.

The number of complaints that the Québec Ombudsman received from citizens, associations or businesses in 2015-2016 was up by 12.4% over last year's figure. Substantiated complaints rose by 10.8%. It should be noted that nearly 80% of this increase can be attributed to complaints regarding the public service's lengthy delays in providing services or rendering decisions. The *Results in Figures* section (page 133) presents a detailed analysis of complaints based on various parameters.

MAKE IT IMPERATIVE TO REDUCE LONG WAIT TIMES

Year after year, the most frequent reason for substantiated complaints is long wait times. The phenomenon has grown this past year. The proportion of substantiated complaints due to these delays has gone from 29.9% in 2014-2015 to 34.6% in 2015-2016.

The Québec Ombudsman has noted that certain public service measures implemented in 2015-2016 in order to return to a balanced budget have meant a reduction in the resources allocated to various services. This explains how some of the wait times that citizens have experienced have lengthened tremendously. At 23.8% of all substantiated complaints in 2015-2016, failings with a financial impact ranked as the second most frequent reason for complaint.

At the end of the investigations it conducted, when the Québec Ombudsman saw that harm had indeed been caused, the departments and agencies concerned were, as a rule, cooperative in rectifying the situations to the complainants' satisfaction. However, certain problems continue to be major irritants. The situations described in this Annual Report were chosen based on the gravity of the failings observed or because of their impact on large numbers of citizens.

It bears remembering that this Annual Report only covers the period until March 31, 2016.

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

- Agence du revenu du Québec (Revenu Québec);
- Commission des normes, de l'équité, de la santé et de la sécurité du travail;
- Ministère de l'Économie, de la Science et de l'Innovation;
- Ministère de l'Éducation et de l'Enseignement supérieur;
- Ministère de l'Immigration, de la Diversité et de l'Inclusion;
- Ministère de la Justice;
- Ministère de la Sécurité publique;
- Ministère du Travail, de l'Emploi et de la Solidarité sociale;
- Retraite Québec;
- Société de l'assurance automobile du Québec.

Agence du revenu du Québec (Revenu Québec)

Taxation

Agence du revenu du Québec (Revenu Québec) is responsible for fighting tax evasion on the one hand and, on the other, for establishing the measures needed in order to facilitate citizens' voluntary compliance with their obligations in matters of income tax and other taxes. It goes without saying that the Québec Ombudsman unequivocally supports the fight against tax evasion. However, it considers that in the context of Revenu Québec's preventive activities to foster citizens' tax compliance, the agency must guard against using any unfair advantage it may have over taxpayers and mandataries (individuals and corporations that collect sales taxes for the federal and provincial governments) because of its powers and the sheer manpower at its disposal. It bears repeating here that Revenu Québec must perform its duties in keeping with the principles of the *Act respecting administrative justice* and by assuming that taxpayers act in good faith.

FOLLOW-UP TO THE QUÉBEC OMBUDSMAN'S 2014-2015 ANNUAL REPORT

Further to the Québec Ombudsman's most recent Annual Report, the Minister of Finance instructed Revenu Québec to produce an action plan to curb the practices denounced therein. On January 26, 2016, Revenu Québec released an action plan that included a series of new measures for improving its relations with taxpayers and mandataries. In particular, the plan provides for the adoption of a charter of taxpayers' and mandataries' rights which should make it possible to ensure that the principles of the *Act respecting administrative justice* are upheld. The Québec Ombudsman applauds this plan aimed at fostering respect of citizens' rights as well as their confidence in Revenu Québec.

The Québec Ombudsman also draws attention to Revenu Québec's commitment to, under certain conditions, suspend recovery measures against mandataries for input tax refund claims and uncollected Québec Sales Tax. In fact, in the past year, it has intervened several times with Revenu Québec to secure such a suspension so that citizens can make their case without jeopardizing their financial situation.

Furthermore, the Québec Ombudsman is pleased with the proposed intensification of control and inspection measures regarding mandatary registration, an issue which it addressed in its two last Annual Reports. This improvement should make it easier for companies which act in good faith to trust the suppliers with whom they do business.

Another appropriate initiative: Revenu Québec's analysis of the suitability of amending the law in order to allow businesses to take their case to the Smalls Claims Division of the Court of Québec further to their objection to a Revenu Québec's decision, and of the possibility of increasing its eligibility thresholds. Such an increase would allow citizens to have their day in court without having to be represented. The Québec Ombudsman shares Revenu Québec's concern about access to justice and the need to keep disputes out of court. It therefore endorses this exercise and believes that the maximum threshold for presenting a case of this kind before the Small Claims Division should be increased to $15,000, the same as the amount for other cases. Revenu Québec's new approach seems promising.

In the past year, the Québec Ombudsman has seen various problem situations and a slight rise in the number of complaints due in particular to violation of the *Act respecting administrative justice*. This was the case in certain situations in which Revenu Québec used indirect auditing methods as well as in its handling of files concerning citizens' objections to assessments. The Québec Ombudsman also intervened regarding the quality and availability of the information that citizens need in order to know and abide by their tax obligations.

CARRY OUT REQUIRED AUDITS WITHOUT UNJUSTLY PENALIZING BUSINESSES

Again this year, the Québec Ombudsman received complaints from businesses which had been audited because of their alleged participation in a fake invoice scheme. However, the number of complaints of this kind is clearly declining.

In the last three years, the Québec Ombudsman has repeatedly reminded Revenu Québec about the flaws in its auditing methods and the difficulties that citizens encounter in voicing their opinion despite the proof they provide. The Québec Ombudsman also insisted on the need to not make businesses "guilty by association" because of their suppliers' tax delinquency. Moreover, the Québec Ombudsman drew Revenu Québec's attention to the importance of disseminating clear and accessible information about the obligations that businesses must meet in order to obtain input tax refunds.

The Québec Ombudsman had to act regarding certain files in which businesses suffered or were about to suffer the consequences of heavy assessments that sometimes put them in dire financial straits.

In certain cases, Revenu Québec claimed that businesses were involved in a fake invoice scheme, in other words, a scam whereby businesses asked their suppliers to provide them with a bogus invoice which the supplier issued. The suppliers then cashed the cheque as payment, siphoned off a commission, and returned the remaining amount to the businesses in cash. The businesses then used the phony invoice to declare a tax expense, claim an input tax refund and pay workers "under the table" with the cash from the supplier or for any other purpose. Other files involved "sleights of hand," meaning that a business pretended to use the services of a staffing agency when, in fact, the workers were employees of the business. This subterfuge made it possible for them to claim tax expenses and input tax refunds and to sidestep their obligations as employers.

Recently, Revenu Québec informed the Québec Ombudsman that it was about to redefine the parameters for granting input tax refunds (ITRs) and input tax credits (ITCs). The Québec Ombudsman will follow developments closely.

(. . . *Apply audit methods rigorously – 1*

Revenu Québec refused to give a company an input tax refund worth more than $500,000. In justifying this refusal, the agency argued that the company's main supplier did not have the ability to deliver the services it claimed to provide. The company countered with credible explanations and a sworn statement from the supplier in which the latter affirmed that it had developed its expertise by performing work in the area of activity concerned. Note that Revenu Québec could have double-checked this information easily.

Not long after that, the supplier died and his sworn statement was therefore his final word on the matter. Revenu Québec made no mention of this sworn statement anywhere.

After investigating, the Québec Ombudsman considered that the sworn statement was key evidence of the supplier's expertise in the business area in question and thus, as a result, proof of his ability to deliver the services billed to the company. Revenu Québec should have taken this document into account in analyzing the file instead of dwelling on the fact that the supplier had not remitted the taxes he had collected from the company within the context of their business relationship.

The Québec Ombudsman intervened to have Revenu Québec take this evidence into consideration and to finally bring the matter to a close after it had been stalled at the agency's objections directorate for almost four years. In the end, Revenu Québec cancelled the entire assessment. . . .)

(. . . *Apply audit methods rigorously – 2*

A company contacted the Québec Ombudsman because Revenu Québec was about to issue the company an assessment of more than $10 million. Since the company's suppliers were not considered capable of delivering certain billed services, the company was suspected of being in on a fake invoice scheme. After analyzing the audit work carried out by Revenu Québec, the Québec Ombudsman saw that the agency had evidence at its disposal pointing to quite the opposite:

- ***Revenu Québec acknowledged that the services had been delivered and that all the suppliers were capable of providing the services in question, at least in part;***
- ***The suppliers had the material required to carry out the prescribed tasks;***
- ***The suppliers had filed tax returns and had either fully or partly made their tax payments;***
- ***Statements of employment had been produced and source deductions had been made and remitted;***
- ***Amounts sufficient to correspond to the services billed to the company had been deposited in the suppliers' bank accounts.***

From that point on, the Québec Ombudsman realized that the suppliers were capable of delivering the services. However, they were tax offenders nonetheless; in other words, they had not met all their tax obligations. On the other hand, the business was in no way responsible for the suppliers' actions. Consequently, the Québec Ombudsman recommended that Revenu Québec halt the audit of the company that did business with the suppliers, which it agreed to do. The draft assessments were cancelled. . . .)

(. . . *Apply audit methods rigorously – 3*

After an audit, Revenu Québec concluded that the services for which a company had used staffing agencies had indeed been delivered. However, the Revenu Québec report stated that the workers from these agencies were in fact company employees. According to Revenu Québec, the company had used a subterfuge enabling it to shirk its obligations as an employer, a "sleight of hand" specifically designed to make it seem that the salaries had been issued by a third party, namely, a staffing agency. Revenu Québec therefore assessed the company for more than $1 million in source deductions and refused to grant an input tax refund in an amount of nearly $600,000.

According to the Québec Ombudsman, the company had proven that it had legitimate business dealings with the staffing agencies concerned. The company had:

- ***explained to the auditors that it had paid the agencies by cheque after having verified their tax numbers and looked into their status with the Registraire des entreprises du Québec;***
- ***explained convincingly that it used the staffing agencies intermittently depending on its workforce needs;***
- ***kept a detailed log of the hours worked by its employees and by the workers procured through the agencies by means of a fingerprint recognition system;***
- ***submitted several documents to Revenu Québec, including time sheets.***

Furthermore, the audit reports that the Québec Ombudsman analyzed showed that the agencies had the financial, material and human resource capabilities needed to deliver the services in question.

The Québec Ombudsman argued that the evidence collected by Revenu Québec in no way suggested that the company had participated in a fake invoice scheme or "sleight of hand." Revenu Québec retorted that it did not have to prove the company's participation or even intention to do so.

In the case at hand, the Québec Ombudsman concluded that even if the staffing agencies were tax offenders, there was no evidence pointing to a fake invoice scheme or "sleight of hand" by the company itself. It therefore recommended cancellation of the notices of assessment. At first Revenu Québec agreed to act only on part of this recommendation and cancel the assessments related to source deductions, thereby dropping its "sleight of hand" theory. Later, after further discussions with the Québec Ombudsman, Revenu Québec finally granted the input tax refunds to the company, and in so doing, settled a dispute that had dragged on for almost four years. . . .)

ONLY USE ALTERNATIVE AUDIT METHODS AS A LAST RESORT

The Québec Ombudsman received complaints concerning the use of indirect audit methods, also called alternative methods. Revenu Québec has the right to use these methods to determine whether taxpayers have declared all their taxable income. Nevertheless, it can only do this when adequate and reliable accounting exercises that would enable regular auditing cannot be used. The courts qualify these methods as "last resorts."

After investigating three files, the Québec Ombudsman saw that the results of these audits through indirect methods were not very plausible and were contradicted by the facts. In these specific cases, Revenu Québec had gone ahead with draft assessments or notices of assessment stemming from these special audits before taking the citizens' arguments into account.

Even though indirect audit methods hold up in court, produce rapid results and require fewer Revenu Québec staff, they must be used discerningly and only when there are no other options. Furthermore, the Québec Ombudsman reminds Revenu Québec that citizens' evidence-based arguments must be taken into account.

(. . . *Recognize that alternative audit methods have their limits and listen to taxpayers – 1*

Revenu Québec's objections directorate was about to maintain assessments in amounts of more than $300,000, determined further to an indirect audit of a fast-food restaurant.

For auditing purposes, Revenu Québec reconstructed the company's sales figures based on the number of hot dog buns the company had bought in the period concerned. It established that for each bun, the snack bar collected approximately $8 from each customer because hot dogs are usually served with side dishes. Based on this reconstruction, Revenu Québec found a discrepancy in the vicinity of $300,000 with the sales figures declared. It therefore presumed that the owner had not reported all of his sales. However, the owner maintained that he had never omitted any income and had always complied with his tax obligations. The establishment's bookkeeping was done according to the rules and best practices.

While the objections directorate was processing the file, Revenu Québec carried out the same sales reconstitution exercise, only this time using the amount of meat purchased. There was a $150,000 discrepancy—half the previous assessment amount. In order to close the file, a settlement offer to reduce the initial assessments by 50% was made to the business. If it refused, the assessment would be maintained in full.

The inconsistency of the figures that Revenu Québec arrived at, combined with the lack of any trace of undeclared income, was indicative of the inaccuracy and unreliability of the audit method employed. Furthermore, the Québec Ombudsman considered that the objections procedure was unfair and haphazard. It was unthinkable to negotiate a settlement offer when Revenu Québec's own calculation had led to an initial assessment double what it should have been.

The Québec Ombudsman recommended cancellation of the assessments, which Revenu Québec finally agreed to do. . . .)

(. . . Recognize that alternative audit methods have their limits and listen to taxpayers – 2

In conducting an audit using alternative methods leading to a draft assessment, Revenu Québec reconstructed a restaurant business's sales figures based on draft beer and wine glass measurements taken during visits to various restaurants owned by the company in question. In comparing declared sales and reconstructed sales, Revenu Québec concluded that for six years, the company had declared less income than it should have, to the tune of some $10 million.

The company argued that the alcohol measurements taken by Revenu Québec were neither adequate nor reliable. After investigating, the Québec Ombudsman arrived at the same conclusions supported by the same data provided by the company. The beer measurement considered was not representative of the quantity usually dispensed because the format of the beer glasses used (confirmed by the supplier with which the company had an exclusive contract) did not match the measurements taken by Revenu Québec. Furthermore, the quantities indicated on the menus (data corroborated by the employees) were different from the actual measurements and were consistent with the sales declared by the business.

As a result, the Québec Ombudsman recommended that Revenu Québec completely cancel the draft assessment. Instead, it agreed to exclude the beer measurement it had used, which reduced the undeclared income amounts by nearly $6 million, a substantial decrease of more than half.

Continuing the investigation, the Québec Ombudsman focused on the wine measurement used to reconstruct the business's sales. This time it discovered that the auditors had not filled in the measurement forms correctly:

- *the measurements were entered in the wrong columns;*
- *some data were indicated in ounces instead of millilitres;*
- *the forms were not signed or dated.*

Since the draft assessments that were still considered valid amounted to over $1 million and were based solely on inaccurate measurements, the Québec Ombudsman considered these failings unacceptable. Its main point was that the discrepancies for the two years when measurements were taken were in fact below 10%, a statistically insignificant difference given the audit method used.

The Québec Ombudsman therefore reiterated its recommendation to cancel the draft assessment. At the end of the period covered by this Annual Report, Revenu Québec was still holding fast to its position and refusing to act on the recommendation. . . .)

(. . . Recognize that alternative audit methods have their limits and listen to taxpayers – 3

In analyzing a tax file that had been active for a number of years, Revenu Québec used an indirect audit method called the bank deposit method. It consists of isolating all the deposits entered in the bank account of the person being audited for a given period. An explanation or proof concerning the provenance of each deposit must be provided, or else the deposit is considered undeclared income.

During the process, the citizen tried to explain the provenance of the various deposits to the auditor, but the auditor maintained the position that the amounts had not been declared.

The investigation by the Québec Ombudsman revealed that for 2010 and 2012:

- ***Revenu Québec had calculated a discrepancy of more than $500,000 between declared income and the deposits identified in the citizen's account;***
- ***The citizen and his representatives provided the auditor with explanations about the provenance of the deposits. He accepted the explanations and the discrepancy was substantially reduced. Thus, the "unexplained" deposits shrank from $500,000 to $25,000—a 95% decrease.***

For 2007:

- ***Revenu Québec first established a discrepancy of roughly $150,000 between declared income and the deposits in the citizen's account;***
- ***The citizen and his representatives provided the auditor with explanations about the provenance of most of the amounts (rental income and employment income from abroad), but to no avail.***

The Québec Ombudsman made it clear to Revenu Québec that it questioned the relevance of maintaining the draft assessments for 2010 and 2012, given the approximate nature of the data obtained using the bank deposit method. In point of fact, the remaining discrepancy could only be qualified as minor.

Concerning 2007, a prescribed year, that is, prior to the normal assessment period, the Québec Ombudsman reminded Revenu Québec that, in the context at hand, the agency bore the burden of proof and that it had to demonstrate that misrepresentation of the facts occurred due to negligence, voluntary omission or fraud. The Québec Ombudsman's opinion was that Revenu Québec could not prove this. Furthermore, the citizen had provided evidence already described for this period.

Considering the file as a whole and the taxpayer's explanations, the Québec Ombudsman recommended cancellation of the draft assessments, which Revenu Québec agreed to do. . . .)

PAY MORE ATTENTION TO THE QUALITY OF TAX INFORMATION ON THE WEB

Ignorance of the law is no excuse. In a taxation system based on self-assessment, it follows that citizens must have clear and complete information if they are to comply with what are sometimes complex legal requirements and declare their income and expenses correctly.

Revenu Québec's website being the main channel of communication, it is crucial that the information it contains be complete and user-friendly. In the past year, the Québec Ombudsman saw that improvements were necessary in this area. In fact, well-intentioned citizens had sometimes made very costly mistakes because they had relied on incomplete information on the website.

The Québec Ombudsman therefore recommended several changes concerning the information online and on forms so as to enable citizens to understand their rights and obligations. In this regard, it applauds Revenu Québec's openness.

(. . . *Clarify the information*

Construction contractors were issued a claim—wrongly they felt—for the rebate they had been given for new residential rental property. After investigating, the Québec Ombudsman felt that Revenu Québec's claim was legitimate because the citizens had rented out the building they constructed before selling it the same year. A legislative provision stipulates that in such a case, the citizen must give the rebate back to Revenu Québec.

However, the contractors were unaware of such a legal requirement, even though they had apparently contacted Revenu Québec's customer services for information. Furthermore, the layout of the rebate application form was such that this exception was not very easy to see.

The amounts involved for this kind of rebate are often substantial and once the building has been sold, there is no turning back. The Québec Ombudsman also felt that it is paramount that citizens have all the information required to make an informed choice.

It asked that the form be modified and that the relevant information be emphasized on the Revenu Québec website. Revenu Québec acted on both requests. . . .)

(. . . *Clearly indicate the importance of childcare receipts*

During an intervention, the Québec Ombudsman saw that the information concerning the receipts required for the refundable tax credit for childcare expenses had not been given much visibility on the website or in the pamphlet about the credit. These receipts are necessary in order to establish that childcare fees were paid.

The only time this subject is mentioned is in the Guide to the Income Tax Return, a publication which, as a rule, people only consult at the end of the fiscal year. The Québec Ombudsman recommended that Revenu Québec add the relevant information to its website and to the pamphlet on the subject. Revenu Québec accepted this recommendation and published the information to the Québec Ombudsman's satisfaction. . . .)

COMPLY WITH THE *ACT RESPECTING ADMINISTRATIVE JUSTICE*

Again this year, the Québec Ombudsman saw evidence of failure to comply with the requirements of the *Act respecting administrative justice*, which is founded on the principles of natural justice, namely, the right to an impartial decision and the right to be heard.

The files it investigated involved the objections directorate. This directorate's role is pivotal because it is the last step in the objection process, before the dispute possibly ends up in court. It is therefore essential that citizens and companies have the opportunity to convey their observations fully by providing a complete objections file. For this to happen, they must have enough time to put together their file and procure a legal representative if need be. If not, they also need a reasonable amount of time to decide whether to accept or refuse an offer of settlement conditional on renouncing the right to go to court. Citizens must weigh the cost of recourse to the courts in determining whether the offer is actually advantageous to them.

In its action plan in response to the recommendations in the Québec Ombudsman's 2014-2015 Annual Report, Revenu Québec affirmed its commitment to abide by the *Act respecting administrative justice* through a series of means. The Québec Ombudsman hopes that Revenu Québec will strengthen its monitoring measures to ensure compliance with this Act.

(. . . Respect the right to produce documents within reasonable time frames – 1

A citizen's representative contacted the Québec Ombudsman to complain about a letter his client had received from the objections directorate indicating that he had only a week to transmit several documents in order to exercise due recourse. For example, he was asked for work schedules and a series of receipts. He objected to the short amount of time he had been given to do so.

When the Québec Ombudsman contacted Revenu Québec, the latter specified that the deadline was not in fact prescribed by law. However, there was nothing in the letter to suggest that an extension could be requested. Revenu Québec informed the Québec Ombudsman that, in the beginning, the letter had been intended for citizens who were late in responding. With time, it also came to be used by a team that handles objections concerning the tax credit for childcare expenses. In the cases at hand, there was no reason for such short turnaround times.

At the Québec Ombudsman's request, Revenu Québec agreed to change this practice. . . .)

(. . . Respect the right to produce documents within reasonable time frames – 2

A person complained to the Québec Ombudsman about a deadline he had been given by an objections agent for accepting an offer of settlement.

After investigating, the Québec Ombudsman discovered that the agent in charge of the file had offered to reduce the penalty by several thousands of dollars but to maintain the assessment. The agent gave the citizen seven days to consider his offer and to accept or refuse it. The citizen wanted to confer with a specialist before responding.

The agent explained to the Québec Ombudsman that he had given the citizen a deadline of only seven days so that the directorate's goal of wrapping up files within six months would be met. Further to the Québec Ombudsman's intervention, he quickly agreed to extend the deadline to give the citizen time to make an informed decision. . . .)

(. . . Respect a citizen's right to object to an initial decision

A contractor contacted the Québec Ombudsman concerning the way Revenu Québec's objections directorate had handled his file. Wanting to contest the assessments established further to an audit of his business, he was critical that the objections directorate had ruled unfavourably without allowing him to finish presenting his evidence.

The investigation by the Québec Ombudsman showed that the objections agent initially in charge of the file had gone on sick leave and the new agent had decided to close the file and render a decision without contacting the citizen or his representative to ensure that all possible arguments had been made.

Further to the Québec Ombudsman's intervention, the objections directorate saw that there were flaws in the handling of the file and fast-tracked it to an agent, after which the citizen was able to exercise due recourse. . . .)

BASE ASSESSMENTS ON SOLIDLY ESTABLISHED GROUNDS

In describing its mission, Revenu Québec stipulates the following:

> *The Québec tax system is based on the principle of self-assessment. This means that taxpayers and agents are responsible for calculating, reporting, and remitting to Revenu Québec their contributions and amounts collected within the prescribed deadlines. An administrator of the tax system, Revenu Québec must ensure that each person pays all the amounts owing.*

To fulfil its role, Revenu Québec enjoys presumption of validity concerning its notices of assessment. This principle implies that once notices of assessment have been issued to citizens, it is up to them to take steps to object to the assessments and prove that they are inaccurate if necessary. If they do not, they risk recovery measures. It is therefore crucial that Revenu Québec ensure that citizens really owe the amounts claimed, based on the facts and in accordance with the applicable legislation.

(. . . *Do not use notices of assessments as reminders to citizens...*

A taxpayer contacted the Québec Ombudsman after he noticed that Revenu Québec had carried out a seizure of his bank account because he owed a little over $25,000 in back taxes. He contested the claim, arguing that his activities were not taxable.

The Québec Ombudsman realized that the taxpayer did indeed have a debt arising from a notice of assessment which had been determined further to an internal audit by Revenu Québec. The file notes indicated that the auditor had first sent the citizen a draft assessment because he should have collected taxes for his services and remitted the amounts in his capacity as a self-employed worker earning more than $30,000. The auditor explained that because the taxpayer had failed to reply, he had issued the assessment as a way of getting the citizen to respond.

From the very beginning, the Québec Ombudsman felt that the citizen should have responded to the draft assessment promptly. Be that as it may, the Québec Ombudsman considered that use of a notice of assessment to have the citizen respond was an excessive measure, especially since the information held by Revenu Québec concerning the citizen's area of commercial activity indicated that, as the citizen had said, the activities were not taxable. Furthermore, receipt of a notice of this kind has sizable consequences for the person receiving it, as well as in terms of system performance, as the following string of events shows on record:

- ***After receiving the notice of assessment from Revenu Québec, the citizen contacted the collections directorate;***
- ***He was advised to get in touch with the auditor involved in the case, which he did;***

- ***The auditor then talked with the agent responsible for collecting the debt amount and gave him confirmation that the citizen's activities were not taxable and that the amounts were therefore not owed;***
- ***The suggestion was made that the citizen file a notice of objection with the objections directorate even if the deadline for exercising this recourse had expired;***
- ***The application was refused because of the expired deadline;***
- ***It was proposed that he ask for an extension;***
- ***The request was refused because the citizen did not meet the requirements for obtaining one, namely, that it had not been impossible for him to act within the 90-day deadline.***

In summary, even though Revenu Québec had all the information needed to review its decision, a string of pointless steps for the citizen and for Revenu Québec alike were taken at every stage of the file's trajectory. Time and energy were squandered because of this presumably valid assessment, despite the fact that from the outset the assessment was deemed unfounded.

The Québec Ombudsman intervened with the audit directorate concerned to ask it to cancel the assessment. In the end, Revenu Québec agreed to do so after admitting that the notice was unsubstantiated. . . .)

Child support collection

IMPROVE THE INTERPROVINCIAL SEIZURE MECHANISM

To facilitate the collection of child-support payments, Canada's provincial governments have enacted laws empowering them to collect court-ordered support payments and distribute them to the creditors of support. The provinces have entered into agreements aimed at collecting the child support owed by a debtor who does not live in the same province as the creditor. For example, these reciprocity agreements authorize Ontario's Family Responsibility Office to collect, on behalf of Revenu Québec, the maintenance order amount owed to a creditor living in Québec from a debtor of support living in Ontario, by means of the debtor's property or assets.

The situation is more complicated when a debtor's assets are located outside the province where the debtor lives. Thus, most Canadian jurisdictions have laws empowering their child support collectors to enforce a maintenance order, even if the court is not located in their territory and none of the parties involved lived there when the support payer owned assets.

In handling a complaint, the Québec Ombudsman saw that Revenu Québec's collection agents were unaware that they could have a maintenance order enforced in New Brunswick, even when the debtor lives in Québec. As a result of the Québec Ombudsman's intervention for the creditor of support, Revenu Québec updated its directive. At the same time, the Québec Ombudsman noticed that Québec is the only province that has no legislative provision for the enforcement of a writ of seizure when the creditor and the debtor live outside Québec and that the debtor's property is in Québec.

On the strength of a commitment by the provincial and territorial premiers (July 17, 2015) to work on ways of improving child support collection in Canada, the Québec Ombudsman intervened with the Ministère de la Justice du Québec so it would find a solution for the lack of such legislation. The Department suggested two possible solutions—amendment of the *Act to facilitate the payment of support* (a law administered by Revenu Québec) or of the *Act respecting reciprocal enforcement of maintenance orders*.

The Québec Ombudsman is pursuing its efforts with government authorities in order to identify and implement the best solution.

(. . . ***Allow extraprovincial collection of support payments its full breadth***

A citizen living in Québec complained about the time it was taking Revenu Québec to collect the child support she was owed, especially since the debtor of support was employed. The findings of the investigation were that:

- ***the debtor lived in Québec;***
- ***his employer's offices were in New Brunswick;***
- ***the debtor's wages were deposited in a banking institution in New Brunswick;***
- ***Revenu Québec was unaware that the support collector in New Brunswick is empowered to seize the salary or bank account of a debtor even if he or she does not live in New Brunswick.***

In addition to requesting that the appropriate action be taken to enable regular collection of the support payments and of the arrears owed to the creditor, the Québec Ombudsman asked Revenu Québec to update its directive so that its agents know that they can enforce a maintenance order in New Brunswick, as in other Canadian provinces and territories, even if the debtor does not live there. Revenu Québec accepted the Québec Ombudsman's request. . . .)

Commission des normes, de l'équité, de la santé et de la sécurité du travail

On January 1, 2016, the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) was formed when the Commission de l'équité salariale, the Commission des normes du travail and the Commission de la santé et de la sécurité du travail merged.

This year, the Québec Ombudsman witnessed a marked increase in the number of complaints concerning the CNESST, a rise that was unrelated to reorganization of the employment injury compensation plan.

APPLY THE LAW RIGOROUSLY

In the course of the investigations it conducted, the Québec Ombudsman noticed that sometimes the CNESST hands down decisions that contravene its own laws and regulations. As a public insurer, the CNESST must be careful to comply with this legislation because a decision that strays from it may severely penalize certain citizens who may, as a result, be deprived of compensation, medical aid or the recourse to which they are entitled under the system.

(. . . *Make sure to render decisions that comply with the law*

A pregnant citizen applied to the CNESST for preventive withdrawal from her job. In keeping with requirements, she provided a medical certificate attesting that her working conditions were dangerous to her unborn child or to her. However, arguing that the woman was the manager of her own business and therefore was not a worker within the meaning of the Act respecting occupational health and safety, the CNESST turned down her application.

The Québec Ombudsman noted that in handling the claim, the CNESST looked no further than the definition of "worker" in the Act, even though another provision of the same Act states that a pregnant business manager is, like a worker, entitled to preventive withdrawal. Further to the Québec Ombudsman's intervention, the CNESST changed its decision accordingly. . . .)

MAKE SURE TO RENDER WRITTEN AND SUBSTANTIATED DECISIONS, AS PROVIDED BY THE ACT

Pursuant to the *Act respecting industrial accidents and occupational diseases*, the CNESST must provide written decisions and clear and precise reasons for them. However, the Québec Ombudsman has seen that when a citizen's employment injury is "consolidated" (stable and without any foreseeable improvement of his or her condition), and the citizen has no functional limitations from the injury and is considered medically fit to go back to work, sometimes the CNESST terminates benefits and is content to simply inform the worker verbally. This way of doing things makes it impossible for workers to exercise recourse in order to contest the decision.

To prevent such situations, the CNESST decided to have its internal policy spell out its obligation to provide written decisions as to workers' fitness to do their job, even if there are no functional limitations. Despite this change, the Québec Ombudsman still sees that some decisions by the CNESST are not in writing and are not always substantiated.

(. . . *Do not neglect to transmit decisions in writing*

A worker receiving compensation from the CNESST sent it a medical report containing a new diagnosis which she felt was related to her work-related accident because she wanted to be granted compensation based on the new diagnosis. The CNESST analyzed the diagnosis immediately and decided that it had nothing to do with the work-related accident in question. However, it failed to notify the woman of its decision. Three years later, during an intervention concerning another claim by the same citizen, the Québec Ombudsman noticed that the woman had never received notice of the decision. At the Québec Ombudsman's request, the CNESST sent the women its decision in writing explaining its grounds for refusal. The woman was then able to use the available recourse to contest the decision. . . .)

REDUCE CLAIM PROCESSING TIMES

Pursuant to the *Act respecting administrative justice*, public bodies must render decisions promptly. However, the Québec Ombudsman has seen that CNESST decisions can sometimes take up to several months. Furthermore, the time it takes to process workers' claims varies from one regional directorate to another. These administrative delays may deprive citizens of compensation or professional services which they require immediately.

(. . . Handle claims carefully and promptly – 1

A citizen had been receiving compensation since 2014 for a shoulder injury sustained at work. In 2015, his physician diagnosed capsulitis of the same shoulder. The doctor sent the CNESST a report, followed by a second one two days later, in which he prescribed injections to treat the worker's capsulitis. The new diagnosis was promptly submitted for analysis to the CNESST's advising physician. Two months after receiving the medical report, the CNESST, based on the advising physician's expert opinion, accepted the capsulitis as an employment injury, but failed to consider whether or not the injections were necessary. In the absence of an administrative decision on this aspect, the worker could not begin treatment. He complained to the Québec Ombudsman.

Further to the Québec Ombudsman's intervention, the CNESST admitted the oversight and immediately authorized the injections. . . .)

(. . . Handle claims carefully and promptly – 2

A citizen sent the CNESST a "recurrence, relapse or aggravation" (administrative name) claim. Twelve weeks later, the worker had not yet received an answer, so he contacted the Québec Ombudsman and pointed out that he had been on full work stoppage all that time and had not received compensation.

When the Québec Ombudsman asked the CNESST about this, the agency explained that because of a backlog of work at the regional directorate concerned, it had not started processing the claim. At the Québec Ombudsman's request, the CNESST finally rendered a decision two weeks later—three and a half months after reception of the worker's claim. . . .)

(. . . Handle claims carefully and promptly – 3

A citizen had knee surgery in 1978 after having had an industrial accident. In 2014, his physician felt that his patient should have another operation, which was planned for the coming year. At the very beginning of the year, in anticipation of the surgery, the citizen sent the CNESST a claim for medical aid in connection with the recurrence, relapse or aggravation of the injury.

A year later, the CNESST still had not ruled on the admissibility of the citizen's claim. The citizen, who did not know whether the CNESST would cover the cost of the medical aid in connection with the surgery, asked the Québec Ombudsman to intervene.

When the investigation was concluded, the Québec Ombudsman saw that the CNESST had waited seven months before forwarding the citizen's claim to the directorate concerned. Analysis of the claim took another five months, bringing the total to one year. The reason given by the agency was that the regional directorate was undergoing administrative reorganization.

The Québec Ombudsman asked the CNESST to render an admissibility decision as soon as possible. A week after the Québec Ombudsman's intervention, the agency approved the worker's claim. . . .)

MAKE SURE NOT TO FORGET ANYTHING WHEN PROCESSING CLAIMS

The *Act respecting industrial accidents and occupational diseases* stipulates that the CNESST is bound by the diagnosis established by the physician in charge of the worker. If the agency wishes to contest the existence or nature of the diagnosis, an evaluation process must take place, including requests for expert opinions. If the diagnosis is not contested during this process, as soon as it receives the medical report, the CNESST must determine whether the diagnosis stems from an employment injury.

The Québec Ombudsman has noted however that in some cases, after receiving a medical report containing a new diagnosis, the CNESST is very slow to render a decision concerning the admissibility of the diagnosis as an employment injury or fails to do so at all. In the absence of a decision from the agency, injured workers cannot avail themselves of the benefits of the system or of any legal recourse.

(. . . Make sure not to omit elements in processing claims – 1

A woman received benefits from the CNESST further to a work-related accident in 2008 that caused psychological injury. Six years later, while she was still receiving compensation from the CNESST, her physician produced a report indicating that the injured worker now had a skin problem aggravated by her psychological condition. The report was immediately submitted to the CNESST.

A few weeks later, the agency informed the citizen that the new diagnosis would be submitted to the advising physician to determine causality between this disease and the work-related accident. After 10 months without a response, the citizen contacted the CNESST but after this, was still no further ahead. After more than a year and a half of waiting, she contacted the Québec Ombudsman.

The intervention by the Québec Ombudsman showed that the diagnosis from 2014 had never been analyzed by the CNESST. It therefore asked the agency to do so as soon as possible. In late 2015, the CNESST rendered its decision, 20 months after receipt of the medical report. . . .)

(. . . Make sure not to omit elements in processing claims – 2

In 2013, a man fell at work and hurt his back. Concurring with the worker's physician, the CNESST deemed that the worker had sustained a lumbar spine sprain and agreed to compensate him accordingly. Three days after the CNESST approved the man's claim, he sent it a new report signed by his physician, who added a cervical and lumbar spine sprain diagnosis to the preceding one. This meant that the citizen also had a cervical problem.

Several months later, an expert physician mandated by the citizen's employer maintained the diagnosis of a cervical and lumbar spine sprain. In the summer of 2015, the CNESST ruled that the lumbar spine sprain had stabilized and that the citizen was fit to return to work. As a result, the CNESST stopped his income replacement indemnity.

Three months later, at the injured worker's request, the Québec Ombudsman examined his medical file and saw that the CNESST had:

- ***not followed up on the diagnosis of a cervical and lumbar spine sprain even though it was connected to the diagnosis by the physician in charge of the worker;***
- ***not analyzed the citizen's cervical problems;***
- ***deprived the citizen of adequate treatment;***
- ***instructed the worker to return to work even though his cervical condition had not improved to the expected level.***

Following the Québec Ombudsman's intervention, the CNESST agreed to recognize that the cervical and lumbar spine sprain diagnosis was related to the worker's fall. The agency therefore resumed issuing compensation, which was retroactive in scope. The worker continued to receive indemnities until he was deemed fit to return to work, after his cervical and lumbar spine sprain had healed or stabilized. . . .)

WHEN AN ERROR LEADS STRAIGHT TO COURT

The *Act respecting industrial accidents and occupational diseases* provides that to correct any mistake, the CNESST may reconsider a decision under two conditions:

- the process must be carried out within 90 days;
- the decision has not undergone administrative review.

If either of these conditions is not met, the CNESST cannot correct the mistakes or abuses brought to its attention by the Québec Ombudsman. It is bound by these legislative provisions, even if a citizen is deprived of benefits due to its own error in processing a claim. Besides the provisions of the Act, the CNESST maintains that reconsideration in a worker's favour inevitably involves consequences for the employer. According to the CNESST, these elements hinder reconsideration of the decisions it renders.

In situations in which the CNESST cannot reconsider its decisions, citizens have no choice but to seek recourse with the Tribunal administratif du travail. This reliance on a tribunal is costly to citizens as well as to public coffers. Furthermore, some injured workers do not have the strength to take up a legal battle since they have already suffered several refusals by the CNESST. They then turn to the Québec Ombudsman, which, given the current legal framework, faces an uphill battle in having errors, even flagrant ones, corrected.

(. . . *Differentiate between an industrial accident and an occupational disease*

A pregnant worker saw a physician in order to obtain a reassignment certificate for the duration of her pregnancy. Because she worked with young children, the physician recommended that she be reassigned immediately to tasks that no longer involved children under age five. The purpose of this precaution was to prevent any risk of infection, especially viral. The employer gave the CNESST confirmation that it would follow the physician's recommendations. In the meantime, the worker contracted a form of hepatitis which forced her to terminate the pregnancy. She then filed a claim with the CNESST, which refused to compensate her. The agency felt that no causality could be established between the viral hepatitis and her job. The refusal of the claim was upheld by an administrative review.

The investigation by the Québec Ombudsman revealed that in analyzing the worker's claim, the CNESST had not taken the applicable criteria into account because it had been inaccurately assumed that the worker had filed a claim for an industrial accident. Granted, a diagnosis of hepatitis is incompatible with the notion of industrial accident, but the illness should in fact have been considered as an occupational disease. Using this line of reasoning, the Québec Ombudsman was of the opinion that the citizen's claim should have been approved.

Even though the CNESST acknowledged that it had made a mistake when it analyzed the claim, it refused to reconsider its decision because the decision had already undergone review. Instead, the CNESST suggested that the citizen appeal to the Tribunal administratif du travail, despite the fact that the deadline for doing so had expired. . . .)

(. . . Check the facts before rendering a decision – 1

An assembly-line factory worker experienced pain in her wrist and saw her physician, who diagnosed tendinitis. She filed a compensation claim with the CNESST.

The Act respecting industrial accidents and occupational diseases *provides that tendinitis is considered an occupational disease if it is established that the work involves repeated movements or stress over an extended period of time. When the CNESST had completed the analysis, it refused the claim because it deemed that the worker's tasks did not involve repeated movements. This decision was upheld in an administrative review. As a result, the citizen was not eligible for any compensation, which is what brought her to the Québec Ombudsman.*

The investigation by the Québec Ombudsman showed that the CNESST had not bothered to get a description of the tasks that the worker's job entailed, even though this information would have been easy to obtain from the citizen and her employer alike. The Québec Ombudsman gathered evidence proving that the citizen's job involved repeated movements over extended periods of time. It is deplorable that the CNESST rendered its initial decision without information so crucial to processing the claim.

The CNESST admitted to having based its decision on an incomplete analysis of the situation. The Québec Ombudsman therefore recommended that the agency reconsider its decision in light of this new evidence. The CNESST, arguing that it could not reconsider the decision because it had undergone administrative review, refused the claim. The citizen was forced to turn to the Tribunal administratif du travail to have her rights upheld. . . .)

(. . . Check the facts before rendering a decision – 2

A daycare educator sustained severe wrist injuries in a work-related accident. She was given a work stoppage. After recovering for several years, the worker received a decision from the CNESST stating that:

- *her condition would not improve any more than it had;*
- *she would remain with functional limitations and would have to avoid several tasks, for example, lifting more than 2 kg or bending her wrist frequently or repetitively;*

- *she was fit to go back to her job as an educator;*
- *the compensation was being terminated.*

The citizen felt, however, that she was not able to go back to her job. She therefore requested administrative review of the decision, but the first decision was upheld. She then contacted the Québec Ombudsman.

The investigation brought to light the woman's functional limitations which prevented her from doing several of the tasks that her job required. For example, she could no longer carry the children's meals and snacks, perform certain first-aid duties required by her job or intervene adequately in the event of an emergency.

The Québec Ombudsman therefore recommended that career counselling be authorized for the citizen. The agency argued that it could not reconsider its initial decision because the decision had already undergone administrative review.

The citizen therefore had only one way of ensuring that her rights were upheld, and that was by appealing to the Tribunal administratif du travail to prove that she could not reasonably go back to her job as an educator. . . .)

(. . . ***Do not omit any relevant income in calculating indemnities***

A citizen who had three jobs at the same time before her work-related accident occurred complained to the Québec Ombudsman because the CNESST had not considered her real earnings in calculating her income replacement indemnity. The CNESST had only factored in the highest-paying job and had not taken the salary from her other jobs into account.

Further to the Québec Ombudsman's intervention, the agency agreed to review its decision and to consider her loss of earning capacity for the three jobs. The salaries indicated in the three work contracts were added up and her gross salary went from $55,000 to $69,000, which generated a substantial increase in the citizen's income replacement indemnity. The reconsideration occurred within the 90-day deadline prescribed in the Act respecting industrial accidents and occupational diseases.

At this point, the citizen's employer asked for an administrative review of the decision. In review, the CNESST:

- *was quick to disregard the Québec Ombudsman's opinion;*
- *considered at this point that the citizen had not earned all the income indicated in the different work contracts;*
- *decided that the citizen's gross income could not be established by adding the salaries indicated in the three work contracts;*
- *only factored in the salary from the citizen's highest-paying job according to her earnings for the preceding 12 months;*
- *determined an annual income based on this salary, as if it had been paid to the worker full time;*
- *set the income replacement indemnity by taking into account gross earnings of $41,700.*

The citizen took the decision to the Tribunal administratif du travail, which reinstated the calculation recognized further to the Québec Ombudsman's intervention and declared that the indemnity should be based on the three work contracts, and, as a result, on gross earnings of $69,000.

It is deplorable that the CNESST, by means of its own administrative review process, duplicated—and even worsened—a harmful situation that had been corrected after the Québec Ombudsman intervened. The result was that, once again, a person who had suffered a work-related accident was forced to turn to the courts. . . .)

Ministère de l'Économie, de la Science et de l'Innovation

The mission of the Ministère de l'Économie, de la Science et de l'Innovation is to coordinate and foster joint action and cooperation among the various stakeholders in the economic, scientific, social and cultural spheres in Québec. As a result, one of its tasks is to issue certificates entitling corporations to tax benefits.

Recently, the Québec Ombudsman handled a complaint from a company that had contacted the Department about getting a tax holiday on the income for a corporation specializing in commercialization of intellectual property, in this case, a software licence. The investigation by the Québec Ombudsman brought to light problems with issuance of the certificate in question, particularly at the administrative review stage.

(. . . *Apply decision review rules fairly*

A company turned to the Québec Ombudsman after approaching the Ministère de l'Économie, de la Science et de l'Innovation about getting a certificate so that it could qualify for a tax holiday. The company not only contested the Department's refusal to issue the requested certificate but also the way the application had been handled.

The **Act respecting the sectoral parameters of certain fiscal measures** ***prescribes that a business is issued the certificate if it is recognized as an "eligible commercialization business." For this purpose, the Department must therefore consider that the business is primarily dedicated to commercialization. In the case at hand, the Department turned down the company's application because it deemed that granting computer program licences was not the company's sole occupation.***

The business requested review of this decision. However, instead of reviewing the grounds for the initial refusal, the Department re-examined the entire file. It assigned this task to three of its employees, one of whom was behind the initial decision. After reviewing the facts, the Department informed the business that now it deemed that the very nature of the intellectual property—and no longer the proportion of the company's activities that it represented—made it ineligible for the certificate. It should be noted that this was never brought up the first time the Department addressed the matter.

The Québec Ombudsman became involved in the file for two reasons. First, it considered it unreasonable that one of the review committee members was the person who had rendered the decision the first time. Second, it felt that the business could not exercise its right to be heard because now there was a new reason for the refusal. Since the company was told about this other reason only at the point when the decision was being reviewed, having already exercised the recourse available to it, the business could not present new arguments. At this stage, had the Department rendered a decision, it would have been final. The business would therefore have had to go to Superior Court to present its arguments regarding this new reason for refusal.

The Québec Ombudsman asked the Department to consider the company's new arguments, which it agreed to do, as well as remove the employee who had rendered the initial decision from the review process. Being unable to settle the matter, the Department proposed hiring an external expert to review the file. The Québec Ombudsman salutes this initiative aimed at making up for lack of internal expertise in a specific subject. However, it is unfortunate that the Department only decided to act at this stage and only further to the investigation by the Québec Ombudsman.

In January 2016, three years after the company's initial application, the Department, basing its conclusion on the expert's opinion, deemed that the intellectual property concerned was eligible within the meaning of the Act. As a result, the company got the certificate. . . .)

Ministère de l'Éducation et de l'Enseignement supérieur

STUDENT FINANCIAL ASSISTANCE: STOP THE UNFAIRNESS TOWARDS WIDOWED PEOPLE WHO ARE SINGLE PARENTS

The Loans and Bursaries Program is contributory, in other words, its purpose is to provide students with the financial assistance they need in order to successfully complete their education, after assessing whether it is possible for them to contribute. The *Regulation respecting financial assistance for education expenses* provides that this contribution is set considering a percentage of students' earnings, but in certain circumstances, the Ministère de l'Éducation et de l'Enseignement supérieur does not take earnings into account in order to grant students the maximum amount. However, 100% of other income is always considered in the calculation used to determine the financial assistance granted. This income includes notably orphan's pensions and benefits paid to the parents of a crime victim. The Québec Ombudsman considers that precisely for these two pensions, this way of doing things is unfair.

From the investigations conducted by the Québec Ombudsman, it emerges that in certain cases, consideration of the full amount of this income may penalize widowed people who are single parents. In the Québec Ombudsman's opinion, it is unfair that these people get less financial assistance than if they had a spouse, especially since the pensions granted by Retraite Québec (formerly Régie des rentes) are taxable and must be declared as child income.

(. . . *Grant students the financial assistance they are entitled to*

A widowed single mother complained when the Department factored in 100% of her surviving spouse's pension and her two children's orphan's pensions in calculating her student financial assistance. She had the figures to prove that she was getting less than when her spouse was paying his share of household expenses.

The investigation by the Québec Ombudsman showed that in taking all of the student's pensions into account in calculating her income, the Department had applied the Regulation correctly. While it may be reasonable to consider the surviving spouse's pension as supplementary income for a student, it does not seem right to add in the orphan's pensions because they are granted to the children and declared as their income for tax purposes. If the woman's spouse had not died, she would have gotten an extra $2,000 in financial assistance. The Québec Ombudsman thought it unfair that a single mother who no longer had support from her spouse and who single-handedly met her children's subsistence needs was given less financial assistance than she would have had if her spouse were alive. It therefore recommended that the Department review the student's file and, in light of the unfairness involved, have a second look at the applicable regulation.

The Department, arguing consistency with other departments that calculate beneficiaries' incomes the same way, refused to act on these recommendations. It maintained that reducing the proportion taken into account for the various pensions would create unfair disparities between recipients who are single parents with pensions and those without this income source. The Québec Ombudsman does not share this line of reasoning.

At the Department's suggestion, the citizen's file was sent to the Examination Committee for Exceptional Cases. Realizing that the problem could not be solved using this mechanism, the Québec Ombudsman concluded that a regulatory review was essential if similar cases were to be resolved. As a result, it redrafted its recommendation aimed at rectifying this unfairness by proposing a regulatory amendment that would exclude child pensions from students' income. The intervention is ongoing. . . .)

REDUCE PROCESSING TIMES FOR EXCEPTIONAL CASE APPLICATIONS

Pursuant to his or her discretionary power, the Minister may override the provisions of the *Act respecting financial assistance for education expenses* to grant financial assistance to individuals who would not usually qualify for the programs or are not entitled to a sufficient amount. Within the context of this provision, the Department offers some students the opportunity to apply to the Examination Committee for Exceptional Cases for financial assistance or to request an increase. Most of the students who avail themselves of this mechanism are in dire straits and are asking that their basic needs be met so that they can continue their education.

The exceptional case application guide specifies that, except in unusual circumstances, students receive written notification of the decision within two to three weeks of the Committee meeting. However, the investigations by the Québec Ombudsman found that the wait time can exceed this deadline and can be as long as four months. It should be noted that supplementary financial assistance cannot be granted until the Minister has signed off on the Committee's recommendation.

(. . . ***Take the urgent nature of exceptional case applications into account – 1***

A student contacted the Québec Ombudsman because more than two months had elapsed since the Examination Committee for Exceptional Cases had studied his application and he still had no idea whether he would get the supplementary financial assistance requested. Theoretically, he no longer qualified for the student financial assistance program because he had reached the maximum number of months of study.

At the time of the application, the student could not be granted his degree because he had an outstanding balance with his university. Renewal of his green card for the United States, which was contingent on the degree, was in jeopardy. Furthermore, he could barely manage to make ends meet.

During the investigation by the Québec Ombudsman, the Examination Committee recommended that the Minister grant the student nearly $9,000 in supplementary financial assistance, an opinion ratified by the Minister. Processing of his file had taken ten weeks, a far cry from the three weeks announced. . . .)

(. . . ***Take the urgent nature of exceptional case applications into account – 2***

A student turned to the Québec Ombudsman nearly two months after his application for supplementary financial assistance had gone before the Examination Committee for Exceptional Cases. The student, who had a serious health problem, had received supplementary assistance in the past, but found himself in a precarious financial situation, mainly because of the cost of his medication. His education was at stake.

The Committee recommended that the Minister grant him $7,000 in supplementary assistance. Because of a Cabinet shuffle, two months later, the student was still waiting for a decision. Seemingly, another reason for the delay was that the name of the Department had changed and, as a result, the logo and stationery had to be redone.

Considering these explanations unacceptable, the Québec Ombudsman reminded the Department of its obligation to make decisions in a timely fashion. . . .)

(. . . ***Take the urgent nature of exceptional case applications into account – 3***

A student complained that, after a month, he had not received a reply from the Examination Committee for Exceptional Cases concerning his student financial assistance. His application was made on the grounds that he had reached the maximum allowable number of months for his program of studies. Having been penniless for five months, he had used up all of the student credit available to him and his family was no longer able to help him. Finally, more than two months after the Committee met, the student was informed that he would receive close to $3,000.

In investigating, the Québec Ombudsman was able to pinpoint reasons for the delay, such as employee vacations, the large number of applications and an unfilled coordinator position.

Given recurrent problems with exceptional case application processing times, the Québec Ombudsman is continuing its intervention with the Department to determine where the delays really occur. . . .)

ENSURE THAT PERSONNEL HAVE THOROUGH KNOWLEDGE OF HOW THE LOAN REMISSION PROGRAM WORKS

This year, the Québec Ombudsman noted errors in the interpretation of how to apply the Aide financière aux études' Loan Remission Program that proved harmful to certain students.

To qualify for a 15% loan remission, students have to have finished their program of studies within the prescribed time frame. Other conditions include having received a bursary under the Loans and Bursaries Program for every attribution year in which they were part of the program of studies.

Even so, students who met all the program's requirements were denied the remission which they had the right to receive. In the cases that the Québec Ombudsman looked into, the refusals were caused by a faulty understanding of the program by the agents in charge. The loss for the students concerned could be in the thousands of dollars.

In every file where the Québec Ombudsman found an error, the Department promptly granted the students the loan remission amounts they were owed.

(. . . *Be rigorous in processing Loan Remission applications – 1*

A student turned down for the 15% loan remission by the Department complained to the Québec Ombudsman. The student had completed his Bachelor's and Master's degrees abroad within the time frame of the country where he had studied. The deadlines there are longer than those allowed for equivalent programs in Québec, but the agent in charge of the file did not take this into account. Because the Québec Ombudsman stepped in, the application was promptly re-examined and the student got $1,700 for his undergraduate studies and $1,200 for his graduate studies. . . .)

(. . . *Be rigorous in processing Loan Remission applications – 2*

A citizen complained when the Department would not admit him into the Loan Remission Program. The Department argued that certain credits had been obtained within the context of another degree for which he had never been granted any student financial assistance. It was therefore decided that the student did not qualify for loan remission because he had not received a bursary for the courses he took outside his major and for which his university had nonetheless credited him.

The investigation by the Québec Ombudsman showed that the student had gotten a Master's degree first, worked for a few years, and then gone back to school to get a Bachelor's degree. For the new degree, the university credited him for certain Master's courses—which were already completed—that it considered equivalent to those of his undergraduate program.

In the Québec Ombudsman's opinion, the graduate met all Loan Remission Program eligibility requirements. Acknowledging its mistake, the Department reduced the student's debt by nearly $2,500. . . .)

CHECK THE ACCURACY OF ALL THE INFORMATION GIVEN TO PEOPLE WHO PLAN TO RETURN TO SCHOOL

In its *Declaration of Services to Citizens*, the Department pledges to provide students with clear and precise explanations. In the course of its investigations, the Québec Ombudsman saw that Aide financière aux études Collection Department agents had, on several occasions, given students inaccurate information, especially those planning to return to school. This had major consequences, especially for students who had not cleared their student debt. Students who go back to school full-time are temporarily freed from their obligation to enter into a debt repayment agreement with the Collection Department.

In certain cases, the Québec Ombudsman recommended that the Collection Department advise its agents about the mistakes they made, which the Department agreed to do.

(. . . *Be sure to provide accurate information about student loan repayment – 1*

A citizen who was going back to school pointed out that he could not afford the loan repayment agreement imposed by the Department. A Collection Department agent explained that the student had to enter into an agreement to pay $350 per month or else the financial assistance granted for him to go back to school would be suspended.

The investigation by the Québec Ombudsman showed that the information was wrong because, as a full-time student, the citizen was not obliged to enter into an agreement of this kind, in accordance with the* Act respecting financial assistance for education expenses*. The Department acknowledged its mistake and the file was handled correctly. . . .)

(. . . *Make sure to provide accurate information about student loan repayment – 2*

A citizen who had gone back to school contested the Department's refusal to recognize his educational institution. In examining the file, the Québec Ombudsman noted that the Department's position was warranted. However, the analysis revealed that the agent had told the student that if his educational institution failed to be recognized, he would have to enter into a loan repayment agreement to the tune of $230 a month.

Because the Québec Ombudsman looked into the situation, it was established that the student had already made a consumer proposal (an offer of repayment to the Department). Having accepted the proposal, the Department forfeited any right to recovery provided the student met the terms of the proposal.

The Department quickly accepted the Québec Ombudsman's recommendation to inform the agent responsible about his error. . . .)

GIVE CHILDREN WITH A PRECARIOUS IMMIGRATION STATUS ACCESS TO PUBLIC EDUCATION

In 2014, the Québec Ombudsman released a special report on access to public education for children with a precarious immigration status—children living in Québec and who do not have access to free public or secondary school education. They are excluded because they are not considered "resident in Québec" within the meaning of the *Education Act* and the *Regulation respecting the definition of resident in Québec*. Judging this situation to be unacceptable, the Québec Ombudsman recommended that the government amend the Regulation to ensure free access to public and secondary education for all children age 6 to 16 living in Québec, regardless of their immigration status. It also recommended various measures so that the criteria for residence in Québec within the meaning of the Regulation, as well as the exclusions provided for in the budgetary rules (in certain exceptional situations, the prescribed contribution is not required of non-residents of Québec) be made known, not only to school boards, but also to organizations that work with immigrants who have no legal status.

The Ministère de l'Éducation et de l'Enseignement supérieur accepted all of the Québec Ombudsman's recommendations and committed to proposing an amendment to the *Education Act* in this regard.

On December 4, 2015, the Minister introduced Bill 86, *Act to modify the organization of school boards to give schools a greater say in decision-making and ensure parents' presence within each school board's decision-making body*. The Bill proposes expanding free access to public preschool, elementary and secondary education to all children living in Québec, which is an important gain on the road to a more inclusive process. However, as at March 31, 2016, the Bill had not yet been passed. It is therefore unlikely that school boards will be able to implement the proposed changes before the 2016 school year begins. The Québec Ombudsman wonders about the measures that will be put in place in the meantime to ensure free access to education to every child living in Québec.

The Québec Ombudsman points out that if the proposed legislative amendments go through, a review of the content of the administrative guides distributed to school boards should be done as soon as possible. The required information and the corresponding official documents must be standardized for all school boards and educational institutions and not overstep legal and regulatory requirements regarding the identification needed to enrol in school, in particular, regarding verification of the immigration status of the child or the child's parents. It is also crucial for the Department to ensure that the information distributed about exclusions and the criteria contained in the Regulation, as amended, is accurate and uniform so that all the parents and caseworkers concerned understand it properly.

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

HOME SCHOOLING: DEVELOP EXPERTISE AND STRENGTHEN COLLABORATION WITH A VIEW TO UPHOLDING CHILDREN'S RIGHT TO EDUCATION

On April 28, 2015, the Québec Ombudsman published a special report on home schooling of elementary and secondary school-age children. Pursuant to the *Education Act*, children may, under certain conditions, be exempted from mandatory school attendance. However, the school board concerned must ensure that the educational experience and the instruction the child obtains are equivalent to what is provided in school. With the Ministère de l'Éducation et de l'Enseignement supérieur estimating that 2,000 children are being homeschooled without having been exempted and who have no contact with the school system, the Québec Ombudsman has questions about the causes of this phenomenon and its impact on the right to education. The Québec Ombudsman's reminders to the Department on this subject have proven fruitless.

In its report, the Québec Ombudsman exposes the main difficulties encountered by school authorities and parents in attempting to establish the collaboration required for home schooling. It notes that these difficulties stem in large part from the disparities in supervision and evaluation within the school system, certain school boards' inability to procure the necessary expertise and lack of effective recourse for remedying problem situations and preventing litigation.

The Québec Ombudsman therefore recommended that the Department:

- examine how home schooling is evaluated and how homeschooled children's learning is supervised;
- support dialogue and cooperation by education authorities in developing their expertise and sharing best practices;
- identify the training needs of those involved and support school boards in responding to these needs;
- encourage school boards to offer certain services to families whose children are home schooled;
- study the possibility of expanding access to distance education to homeschooled children under age 16.

In order to make up for the lack of effective recourse in preventing and settling legal disputes, the Québec Ombudsman recommended that the Department ensure that the student ombudsman in every school board be empowered to handle complaints concerning supervision and follow-up of home schooling and to act as a mediator in disputes between parents and school authorities. Bill 86, introduced in December 2015, proposed an amendment to the *Regulation respecting the complaint examination procedure established by a school board* so that students or their parents can file a complaint and turn to the student ombudsman if necessary. As at March 31, 2016, Bill 86 had not yet been passed.

In response to the Québec Ombudsman's recommendations, the Department committed to update its policy thrusts and to create a directory of best practices for evaluating home schooling and supervising student learning. Eleven months after tabling its report, the Québec Ombudsman has yet to receive feedback on the work carried out for this purpose.

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

REFORM OF SCHOOL GOVERNANCE

The Québec Ombudsman intervened this year concerning Bill 86, *Act to modifiy the organization and governance of school boards to give schools a greater say in decision-making and ensure parents' presence within each school board's decision-making body*. A summary of the Québec Ombudsman's intervention is presented in the section entitled *Parliamentary Watch Report*, on page 128 of this Annual Report.

The Ombudsperson's letter to the Committee on Culture and Education is found at www.protecteurducitoyen.qc.ca.

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

The complaints concerning the Ministère de l'immigration, de la Diversité et de l'Inclusion were mainly from candidates or representatives of candidates who had made an application for a Québec selection certificate in the skilled worker category. The number of complaints this year is more or less the same as last year. The main grounds for dissatisfaction that the Québec Ombudsman deemed valid were the following:

- mistakes due to obvious lack of attention during verification of the conformity of the documents submitted for a selection certificate application;
- longer delays than those indicated;
- mistakes in assessing professional experience or degrees.

For the complaints for which the Québec Ombudsman concluded that the Department had erred or was at fault, the required corrections were made. Solutions were also found concerning the new *Mon projet Québec* website, online as of January 5, 2016, further to passage of the regulatory amendments concerning selection of foreign nationals. Under the new regulation, foreign nationals in the skilled worker category must apply for a selection certificate online. However, from the very beginning there were glitches, which caused many complications for candidates and in some cases even prevented them from applying. Given that technological errors can occur, the Québec Ombudsman made sure that the Department informed candidates of the situation in timely fashion and of the measures it intended to take to mitigate the effects of these technological malfunctions. The required information was added, notably to the *Mon projet Québec* home page, which is updated on a regular basis. Among other things, the time frame for receiving applications, initially slated for the winter of 2016, was pushed back to a later date further to a ministerial order on February 24, 2016. The Minister also increased the number of applications that could be received. The Québec Ombudsman remains watchful of the Department's efforts in matters of risk management and management of candidates' expectations.

ELIMINATE MISTAKES DUE TO AN OBVIOUS LACK OF ATTENTION IN CHECKING DOCUMENT CONFORMITY

To make the processing of selection certificate applications in the skilled worker category more efficient, the Department first examines the documents submitted for their compliance with administrative requirements. This year, the Québec Ombudsman saw a decrease in complaints concerning decisions to turn down applications due to the non-conformity of submitted documents. It was easier for candidates to satisfy requirements as to paperwork because:

- the quality of the information provided by the Department was improved;
- certain conditions related to the type and format of the required documents were simplified;
- the obligation to systematically present proof of the legality of professional experience as a salaried worker was withdrawn.

Despite these improvements, the Québec Ombudsman noted inexcusable mistakes in checking the conformity of documents in certain files. The Department told the Québec Ombudsman that changes to its quality control measures were planned for the spring of 2016. These changes should help reduce the risk of error.

(. . . ***Check document conformity meticulously – two cases of inexcusable errors***

The Department instructed a candidate to provide all the required documents with his application for a Québec selection certificate in the skilled worker category or his application would be turned down. In fact, most of these documents had already been submitted in the required format. Because of the Québec Ombudsman's intervention, the Department acknowledged its mistake and sent the candidate a new notice concerning only the documents needed to complete the file.

A candidate's application for a selection certificate was turned down because the documents were not in the required format. The form "Documents to submit in support of an Application for a* Certificat de sélection du Québec*" indicates that if a document is written in French or in English, but has a validation seal in another language, this seal must be translated. In point of fact, the candidate had had the seals from the diplomas submitted translated into French. Further to the Québec Ombudsman's intervention, the Department acknowledged its mistake and pledged to continue assessing the file. . . .)

INFORM THE CLIENT POPULATION ABOUT IMMIGRATION CONSULTANTS AND PEOPLE WHO PRETEND TO BE IMMIGRATION CONSULTANTS

Foreign nationals may decide to hire an immigration consultant to assist them in their dealings with the Department. However, some believe—wrongly—that they are required to use these services, particularly in applying for a selection certificate. Misleading publicity by a few unscrupulous consultants has encouraged this misperception. Some consultants even go so far as to convince candidates that by using their services, their application will be fast-tracked or that they are guaranteed a selection certificate.

The Department must adequately inform immigration candidates of its mandate and of how to submit these applications directly to it. It must also see to it that the candidates who choose to use the services of consultants are protected. This is why the Department passed the *Regulation respecting immigration consultants* in 2010, which provides a framework for consultants' activities. Anyone who violates this Regulation may be prosecuted under the penal provisions of the *Act respecting immigration to Québec*. The Regulation provides, for example, that only persons duly recognized by the Department and entered in the Registre québécois des consultants en immigration kept by the Department may act as candidates' representatives in candidates' interaction with the Department. In 2015, the Department tightened the recognition requirements for consultants by adopting a new regulation. More specifically, the scope of the former regulation was extended to include consultants who advise, assist or represent an immigration applicant while they are a member in good standing of the Canadian Society of Immigration Consultants or when their recognition has been suspended, revoked or has expired, even if they claim to not charge for their services.

Until very recently, the Department's website made no mention of the possibility of making a complaint to the Department concerning bad practices by a recognized consultant entered in the Registre, or anyone who uses the title fraudulently. Thus, at the end of the summer of 2014, the Québec Ombudsman emphasized the importance of posting this information on the Department website so as to better protect the public. This was done on April 16, 2015, to coincide with the coming into force of the new regulation.

(. . . ***Better inform the client population concerning immigration consultants or persons who pretend to be immigration consultants***

A woman complained to the Québec Ombudsman about the abuse and incompetence of an immigration consultant in the context of her nephew's application for a Québec selection certificate in the skilled worker category. The application was turned down because the supposed consultant passed the deadline for submitting an update to the documents requested by the Department. The citizen said she had hired the consultant after she heard a radio advertisement. He was registered with the* Registre québécois des consultants en immigration *at the time of the complaint but had not been when he offered his services to the woman's nephew. The Québec Ombudsman had the consultant's name removed from the register and explained to the complainant that the Department was not responsible for errors made by consultants or by people who represent themselves as such if they are not registered. Nevertheless, the Department is obliged to inform anyone in this situation about possible recourse. . . .)

INTERVENTION CONCERNING A BILL

This year, the Québec Ombudsman intervened with the Committee on Citizen Relations concerning Bill 77, *Act respecting immigration to Québec*. A summary of the Québec Ombudsman's intervention is presented in the section entitled *Parliamentary Watch Report*, on page 127 of this Annual Report.

The Ombudsperson's letter to the Chair of the Committee on Citizen Relations is found at www.protecteurducitoyen.qc.ca.

Ministère de la Justice

ADMINISTRATIVE TRIBUNALS: REDUCE WAIT TIMES

Québec's administrative tribunals, such as the Tribunal administratif du Québec (TAQ), the Tribunal administratif du Travail, the Commission d'accès à l'information and the Régie du logement, were created to improve access to justice, reduce red tape and provide quicker solutions than those afforded by the courts. In this regard, the *Act respecting administrative justice*, passed 20 years ago, expressly provides that its purpose "is to affirm the specific character of administrative justice, to ensure its quality, promptness and accessibility and to safeguard the fundamental rights of citizens." The Québec Ombudsman is concerned about wait times, which are especially long from the time citizens file their application to the time the tribunals close the cases. The following are only some of the average wait times noted in 2014-2015:

- 22.4 months: cases from the social affairs section of the Tribunal administratif du Québec (TAQ);
- 25 months: jurisdictional cases, cases closed further to a ruling and hearing postponement at the Commission d'accès à l'information; 16.2 months: cases without postponement;
- 20.3 months: a first hearing for general civil cases at the Régie du logement. It should be pointed out that the Régie only reports the wait time between the filing of an application and the first hearing. This may be followed by several other sessions because many initial hearings are postponed. The Québec Ombudsman disapproves of this way of calculating wait times which provides no way of knowing what the average wait time is between filing of an application and rendering of a decision.

Average wait times were significantly shorter at the Commission des lésions professionnelles (10 months) and the Commission des relations du travail (8.7 months). Note that on January 1, 2016, these commissions were replaced by the Tribunal administratif du travail.

Be that as it may, the Québec Ombudsman is pleased to see that the administrative tribunals are making efforts to innovate, particularly in the method of scheduling and managing hearings. In 2014-2015, TAQ opened 10,696 files and closed 12,776—a 31% increase over the number of files closed in 2010-2011 and up 19% from 2013-2014. This pace is making it possible to make a dent in the backlog of cases yet to be processed, a key factor in the reduction of wait times.

In late 2014, the Régie du logement introduced a new procedure whereby uncontested cases of default on rent payment (cases are considered uncontested if one of the parties fails to attend the hearing) are heard by special court clerks in Montréal, Longueuil and Laval, rather than by commissioners. Commissioners are then more available to hear cases only they are qualified to hear. However, despite these efforts, Régie du logement wait times are still much too long.

REDUCE WAIT TIMES FOR THE TRANSLATION OF JUDGMENTS WRITTEN IN A LANGUAGE IN WHICH A CITIZEN IS NOT FLUENT

In Québec, the *Charter of the French Language* provides that in drafting a judgment, a judge may opt for French or English, regardless of the language used during the trial. By the same token, when citizens receive a judgment written in an unfamiliar language, they may ask for an English-to-French or a French-to-English translation, paid for by the civil administration concerned. Citizens wishing to have a translation must apply to the registry of the judicial body where the judgment was rendered, and an external translator is assigned the work. In 2014-2015, there were 261 requests for translation to the Montréal courthouse registry, 230 of them for translation from French to English, and 31 from English to French.

However, some translation wait times have proven especially long and create problems for people who want to contest a decision. The *Code of Civil Procedure* provides that a party intending to appeal a judgment is required to file a notice of appeal within 30 days after the date of the notice of judgment. Certain specific laws prescribe even tighter deadlines. This means that citizens who do not receive the translation by the legal deadline or who receive it just under the wire have very little time to react. Their decision as to whether or not to appeal is therefore made in haste, or they have to seek recourse to maintain their right to appeal or account for why they did not respond on time. There are no direct fees for this recourse, but, invariably, there are procedures and fees for filing motions with the Québec Court of Appeal registry.

The fact is that people who have to ask for a translation of their judgment and who want to appeal are at a clear disadvantage compared to those who get a judgment written in a language they know. The Québec Ombudsman therefore recommended that the Ministère de la Justice:

- Inform citizens of their right to request a translation and of the recourse allowing them to maintain their right to appeal (addition of information in the judgment transmission note, addition of a page on the Ministère de la Justice website with a link to the Québec Court of Appeal site, production of a sheet for the information agents at the various registries and for the Department's client communication centre);
- Sensitize the Québec Court of Appeal to the inconvenience experienced by citizens who receive a judgment in a language they do not understand, so that it urges judges, in keeping with the principle of the independence of the judiciary, to take this into account, especially when recourse is exercised in order for citizens to preserve their right to appeal;
- Improve supervision of translation wait times.

The Ministère de la Justice agreed to act on these recommendations and will keep the Québec Ombudsman informed about their implementation.

(. . . *Do not hinder recourse and provide translations of judgments promptly*

A citizen was the plaintiff in a trial conducted mostly in French. The last day of the hearing, learning that the judgment would be drafted in English, she requested a French translation. However, the Ministère de la Justice only provided her with the translation three months later, saying that the judgment in question had been long.

Meanwhile, the woman decided to file an appeal and had 30 days to do so. However, because she did not get the translation on time, as part of the process of filing motions at the Court to maintain her right to appeal, she incurred certain costs (i.e. legal representation, travel costs, bailiff, and photocopies).

After investigating, the Québec Ombudsman asked the Ministère de la Justice to grant the citizen reasonable compensation for these costs, which it agreed to do. . . .)

ADMINISTRATION OF JUSTICE AND CRIME PREVENTION IN NUNAVIK

In Nunavik, the administration of justice is carried out through Itinerant Court, generally presided by a Court of Québec judge. Currently, this Court serves eight of Nunavik's fourteen communities. Before being heard by the Court as part of their trial, many Inuit offenders must travel to the Amos courthouse, especially for their bail hearing. Eventually they return north for their Itinerant Court trial.

In its special report entitled *Detention conditions, administration of justice and crime prevention in Nunavik*, published in February 2016, the Québec Ombudsman denounced the human consequences of the shuttling of offenders from place to place: long delays, numerous transfers and challenging journeys. Up to 14 days may elapse between a person's arrest in Nunavik and arrival in Abitibi for the bail hearing.

The financial impact of transportation is substantial. The annual cost of the transportation and detention of offenders arrested in Nunavik was $6,556,604 in 2014-2015.

Such problems call for concrete solutions, particularly, greater use of videoconferencing or other adapted technology for court hearings, so that pre-trial procedures, including bail hearings, are (barring certain exceptions) carried out remotely and without unnecessary transfers. The Québec Ombudsman made two such recommendations to both the Ministère de la Justice and the Ministère de la Sécurité publique.

Inuit are over-represented in the justice and correctional systems, and the figures point to a trend that is on the rise: a 239% increase in the number of cases handled by the Itinerant Court over 10 years. The lack of concerted crime-prevention initiatives, especially in treatment for substance abuse, is a contributing factor.

The Québec Ombudsman considers that in order to attack the problems behind this phenomenon, prevention and social reintegration programs tailored to the needs of each community must be developed. It made seven recommendations to the Ministère de la Justice and the Ministère de la Sécurité publique concerning:

- Access to information and justice services;
- Prevention and social reintegration;
- Alternatives to the court system.

The Québec Ombudsman applauds the government commitment made in March 2016, "to improve access to the justice system in the Aboriginal community, particularly for the Inuit nation, and to modernize its services…Additional appropriations will be granted to the Ministère de la Justice, and will provide for, in particular,…an increase in the frequency of the Itinerant Court in the Cree and Inuit communities; an increase in the on-site availability of the services of defence lawyers and the Director of Criminal and Penal Prosecutions; the use of videoconferencing during proceedings, thereby favouring preparatory meetings between lawyers and their clients."[1] These actions are in keeping with several of the Québec Ombudsman's recommendations.

In the coming year, the Québec Ombudsman expects the Ministère de la Justice to participate actively in the targeted prevention and social reintegration initiatives, as well as in implementing the action plan to reduce crime and excessive reliance on the court in Nunavik.

Bear in mind that other issues addressed in the special report, such as detention conditions in Nunavik, involve the Ministère de la Sécurité publique. This is covered in the section entitled *Report by the Correctional Ombudsman of Québec* (page 87).

The special report by the Québec Ombudsman entitled *Detention conditions, administration of justice and crime prevention in Nunavik* is found at www.protecteurducitoyen.qc.ca.

Ministère de la Sécurité publique

THREE YEARS AFTER ITS CREATION, LET THE BUREAU DES ENQUÊTES INDÉPENDANTES FULLY EXERCISE ITS MANDATE

In 2010, the Québec Ombudsman published a report on the Québec investigative procedure for incidents involving police officers. It showed that the procedure did not afford the required guarantees of impartiality. As a result, it recommended that the Ministère de la Sécurité publique make major changes to the procedure. It therefore made eight recommendations, one in particular aimed at creating an independent agency headed by qualified civilians and an investigative team built on the expertise of these civilians and of former police officers.

Further to these recommendations, Bill 12, *Act to amend the Police Act as concerns independent investigations*, was passed on May 9, 2013. Notably, it proposed the creation of the Bureau des enquêtes indépendantes, an agency tasked to conduct the required investigations when a civilian is seriously injured or killed during a police intervention or while in police custody. The Act came into force on May 15, 2013, except for certain sections concerning the Bureau des enquêtes indépendantes.

1. Ministère des Finances du Québec, *The Québec Economic Plan*, March 2016, p. B44.

Since then, the Bureau's director was appointed on December 17, 2014, and took office on January 12, 2015. After a recruitment competition, Cabinet named two investigation supervisors on October 7, 2015. Subsequently, 16 investigators were named between November 11, 2015, and February 10, 2016. Eight of them had police experience and the eight others were civilians.

In addition to the amendments made to the *Police Act* by Bill 12, the creation of the Bureau des enquêtes indépendantes and start-up of its operations required the passage of four regulations on the following:

- The procedure for selecting and training Bureau investigators;
- The notion of serious injury;
- Conducting of the investigations entrusted to the Bureau, as well as the obligations of the director of the police force involved, the police officers involved and the police officers who witnessed the occurrence;
- The terms governing the provision of support services by police forces that provide level 4 services or higher (service level corresponds to the number of inhabitants of a given territory. For level 4, the number is 500,000 to 999,999 inhabitants).

As at March 31, 2016, only one regulation had come into force.

A draft regulation on the conducting of the investigations entrusted to the Bureau was published in the *Gazette officielle du Québec* on July 15, 2015, but was not yet in force on March 31, 2016. The draft regulation suggests a definition of "serious injury" that is limited to "physical" injuries. This means that alleged sexual assault is excluded unless the assault causes physical injury deemed "serious." The Québec Ombudsman conveyed its comments and recommendations on this subject and on the draft regulation as a whole to the Department. In particular, it reiterated its recommendation that the definition of serious injury not be limited to "physical" injuries and that alleged sexual abuse be included.

A summary of the Québec Ombudsman's intervention is presented in the section entitled *Parliamentary Watch Report*, on page 129 of this Annual Report.

The Ombudsperson's letter to the Minister of Public Security concerning the draft *Regulation respecting the conduct of investigations by the Bureau des enquêtes indépendantes* is found at www.protecteurducitoyen.qc.ca.

It is worth pointing out that in October 2015, following the comments by the Commission des droits de la personne et des droits de la jeunesse and the Québec Ombudsman, and further to allegations of sexual assault by Sûreté du Québec officers of Aboriginal women in the Val d'Or region, the Premier announced that the mandate of the Bureau des enquêtes indépendantes would be expanded to include investigations into sexual assault by police officers. The recent change to the Bureau's investigator training program attests to the government's resolve in this regard.

The special report by the Québec Ombudsman entitled *For a credible, transparent and impartial process that inspires confidence and respect* is found at www.protecteurducitoyen.qc.ca.

MAKE POLICE IDENTIFICATION MANDATORY ACCORDING TO SPECIFIC RULES

In last year's Annual Report, the Québec Ombudsman recommended that the Department introduce a regulatory amendment to specify the kind of identification police officers must wear in interacting directly with the public, pursuant to the *Code of Ethics of Québec police officers*.

In November 2014, the Department approved the Québec Ombudsman's recommendation to introduce the regulatory amendment as soon as possible. However, so far nothing has been done further to the recommendation.

Given the sizable consequences for citizens who are unable to identify a police officer with whom they have dealings, the Québec Ombudsman would like to reiterate what it expects. When a police officer cannot be identified, it undermines public trust and may compromise possible recourse afforded by the police ethics system. The regulatory amendment must therefore be made without delay.

It should be noted that 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 judgment that concluded that a legal vacuum exists.[2] The Québec Ombudsman considers that because of this vacuum, 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 this identification, complaint files concerning the failure of police officers to identify themselves during an intervention are closed without further follow-up. Furthermore, even if the office receives a complaint alleging 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. To compound matters, these citizens cannot file a complaint with the Police Ethics Commissioner because they are unable to identify the police officer responsible for an act which they feel is unlawful.

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

Again this year, most complaints concerning the Ministère du Travail, de l'Emploi et de la Solidarité sociale were about social assistance programs. These complaints increased by 45% over last year's figures, while the number of employment-related complaints holds steady from year to year. This rise is due in part to regulatory amendments that, among other effects, resulted in reduced last-resort financial assistance to people lodged in a drug addiction resource. Since there were other measures that reduced the impact of the decrease in benefit amounts, as explained later, most of these complaints proved unsubstantiated.

2. *Pépin and Bourget v. Police Ethics Commissioner*, C.Q. 200-02-021352-994, April 26, 2001.

DO NOT HINDER THE TREATMENT PROCESS OF FINANCIAL ASSISTANCE RECIPIENTS LODGED IN A DRUG ADDICTION RESOURCE

In May 2015, the *Individual and Family Assistance Regulation* was amended to provide that recipients lodged in a drug addiction resource would only be allowed a personal expense allowance, which was $200 a month in 2015. Up until then, these people had been getting between $616 and $747, depending on the case. Most resources must charge their residents monthly fees for therapy, which range from $200 to $400. The recipients pay the fees out of their benefits. The announced cut therefore caused residents to fear that they might have to stop therapy because they would no longer be able to afford it. Between April and July 2015, the Québec Ombudsman received nearly 250 complaints on this subject. In every case, it was given confirmation by the centres that they would not bill for therapy, which would enable their residents to complete treatment.

The Québec Ombudsman also received complaints from several directors of drug addiction resources who feared they would have to close down because of the probable decrease in their clientele further to this regulatory amendment. It should be noted that the Department gives the resources approximately $1,500 per month per person lodged. This means that a drop in client numbers directly impacts the centre's revenues alongside operating costs that are not decreasing.

Anticipating this fallout, the Québec Ombudsman raised the question when it studied the draft regulation in March 2015. It recommended that the Department, together with the Ministère de la Santé et des Services sociaux, ensure that recipients' access to centres offering addiction services not be hindered by therapy fees, administrative charges or other incidental expenses. The purpose of this recommendation was to produce permanent measures in order to maintain the slate of services. The Department responded to this recommendation by introducing temporary assistance for the centres which had taken a financial hit further to the cuts to benefits. This assistance, which will end in October 2016, is two-pronged:

- management support through consultants tasked to evaluate centres' administrative organization and propose a recovery plan with a view to ensuring centres' sustainability;
- financial support pending recovery plan implementation, in an amount not exceeding $100,000, for centres which, without this assistance, could not continue their activities.

Furthermore, on January 20, 2016, the government announced a total subsidy of $6 million from the Ministère de la Santé et des Services sociaux to centres which would not have qualified for temporary financial support.

The Québec Ombudsman is hopeful that these initiatives will make it possible to maintain the necessary resources so that any recipient wishing to begin drug rehabilitation can have access to it.

STOP ALL ILLEGAL RECOVERY PRACTICES

In the last two years, the Québec Ombudsman has noted that the Department uses illegal collection measures to recover amounts which, according to its interpretation of facts, it is owed.

In its 2014-2015 Annual Report, the Québec Ombudsman spoke out against situations in which, due to human error or computer system underperformance, recovery measures are applied while recipients are exercising recourse in the form of administrative review or recourse with the Tribunal administratif du Québec. It has seen that this causes great stress to recipients and all too often leads to an unwarranted decrease in benefit amounts. It feels that it is unfortunate that compliance with Tribunal decisions is not monitored more rigorously.

In the past year, the Québec Ombudsman has noted that despite its interventions, the problem has not been resolved. The Department confirmed that the probability of error remains high despite a new system for managing applications for administrative review and cases before the Tribunal administratif du Québec. The Québec Ombudsman considers it unacceptable that file management is so riddled with human error, resulting in reduced benefits for people who are the most financially vulnerable.

THE QUÉBEC OMBUDSMAN'S RECOMMENDATIONS CONCERNING THE MANAGEMENT OF APPLICATIONS FOR ADMINISTRATIVE REVIEW AND CASES BEFORE THE TRIBUNAL ADMINISTRATIF DU QUÉBEC

Whereas pursuant to the *Individual and Family Assistance Act*, the Minister may not apply recovery measures to a debtor before expiry of the 90-day deadline for citizens to submit an application for review of a decision claiming payment of a debt or before the review decision is rendered;

Whereas pursuant to the Act, the Minister may not apply recovery measures before expiry of the 60-day deadline for citizens to contest a review decision before the Tribunal administratif du Québec or before expiry of the 30 days after a decision is rendered by the Tribunal;

Whereas it is illegal to use recovery measures with recipients who are contesting a claim within the prescribed deadline;

Whereas the use of recovery measures with recipients is a significant source of stress for people who are already financially vulnerable;

Whereas the probability of human error should be minimal in a file management system likely to have an impact on the benefit amounts of people who depend on last-resort financial assistance;

THE QUÉBEC OMBUDSMAN RECOMMENDS THAT THE MINISTÈRE DU TRAVAIL, DE L'EMPLOI ET DE LA SOLIDARITÉ SOCIALE:

- Commit to correcting the flaws in its recourse management within a year;
- First produce an action plan setting out the solution chosen for this purpose as well as the expected outcomes, and inform the Québec Ombudsman accordingly;
- In the meantime, have more stringent quality control so as to prevent other illegal recovery measures;
- When the solution has been implemented, verify the achievement of outcomes by means of ongoing quality control, and inform the Québec Ombudsman accordingly.

COMMENTS BY THE MINISTÈRE DU TRAVAIL, DE L'EMPLOI ET DE LA SOLIDARITÉ SOCIALE

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

[Translation]

"The Ministère du Travail, de l'Emploi et de la Solidarité sociale fully subscribes to the Québec Ombudsman's recommendations and therefore pledges to:

- Correct the deficiencies in recourse management within a year;
- First produce an action plan setting out the solution chosen as well as the expected outcomes;
- In the meantime, have more stringent quality control so as to prevent other illegal recovery measures;
- When the solution is implemented, verify the achievement of outcomes by means of ongoing quality control."

(. . . ***Limit the probability of human error so as to prevent illegal withholding of benefits***

A social assistance recipient called on the Québec Ombudsman to help him and his friend, who was a recipient as well. They both complained because the Ministère du Travail, de l'Emploi et de la Solidarité sociale had withheld a portion of their benefits and of their solidarity tax credit. The Department claimed that they had been living as spouses and had not declared it to their employment assistance officer, hence, the decision to reduce their benefits and claim the overpayments. They denied living as spouses and maintained that they did not have any debt with the Department. They therefore applied for review of these decisions and ended up in appeal before the Tribunal administratif du Québec. Despite this, the Department's computer system automatically withheld a portion of the last-resort financial assistance benefits and of the solidarity tax credit.

The investigation by the Québec Ombudsman showed that the information had not been entered in the data bank, a preliminary step which allows a second agent to enter them in the computerized recourse management system.

Thanks to the action taken by the Québec Ombudsman, the recipients were promptly reimbursed nearly $800. So as to prevent any other illegal withholding of amounts, the Québec Ombudsman also made sure that the required computer entries were made. . . .)

HANDLE THE CASES OF RECIPIENTS AWAITING AMOUNTS FROM A THIRD PARTY WITH ALL DUE ATTENTION

When a person applies for last-resort financial assistance pending receipt of a decision concerning amounts for which they are eligible (in a private matter further to a ruling, or from a government department or agency), the agent in charge of the file indicates on record that the person is likely to receive amounts as the result of an exercise of rights. The agent must also inform the applicant that he or she will have to reimburse the Department for the benefits if the amounts materialize. In turn, the person must inform the agent that the amounts have been received. In entering the information about exercise of rights in the recipient's computer file, the agent indicates a hypothetical deadline for the decision. A month before the expected deadline, the agent automatically receives a reminder to follow up with the recipient.

When the decision comes from a government department or agency, and the Department has a file-sharing arrangement with it, the Department is advised of the decision electronically and the agent does not have to follow up with the recipient. However, if the agent forgets to cancel the follow-up reminder and the system does not get a reply from the recipient, the system automatically sends out a notice of cancellation of the financial assistance.

Since this concerns last-resort financial assistance, the Québec Ombudsman considered it crucial that this procedure be corrected. It also made the Department aware that these quality control mechanisms are insufficient for files in which recipients are exercising a right.

Further to this intervention, the Department reminded its regional directorates to ensure that the personnel assigned to these files are careful in processing them. It promised to issue such reminders as needed.

(. . . ***Wait for an answer concerning an application for compensation submitted to another agency before cancelling last-resort financial assistance***

A woman got a notice from the Department notifying her that her last-resort financial assistance would be cancelled as of the following month. She was told that she had received an amount following the exercise of a right (amount from the Direction de l'indemnisation des victimes d'actes criminels (IVAC)). This information was false since she had not yet received the IVAC decision. Without the financial assistance, she could not pay rent. That is when she asked the Québec Ombudsman for help.

The Department informed the Québec Ombudsman that the notice of cancellation had been generated automatically by the computer system. The Department assured the Québec Ombudsman that the financial assistance would be restored as soon as the Department received a letter from the recipient attesting that she had not yet received the IVAC decision, which was done. . . .)

ADAPT ASSISTANCE TO THE REAL NEEDS OF RECIPIENTS

The *Individual and Family Assistance Regulation* provides for a special benefit to cover the cost of orthopedic shoes or plantar orthoses. It also provides that the rate for a wedge or elevation (an addition to the heel or sole of a shoe to realign the foot) applies to each shoe. In handling a complaint, the Québec Ombudsman saw that when this detail was interpreted narrowly, the wedge in question was authorized for shoes only and not for plantar orthoses.

This interpretation of the rule figured in the Department's manual of practice as well as in the internal handbook for last-resort financial assistance officers, which explained that plantar orthoses acted as a wedge. Consequently, the Department had refused to grant a special benefit to reimburse recipients with plantar othoses for the purchase of a wedge.

The Québec Ombudsman's intervention prompted the Department to obtain further information specifically from organizations specializing in physical disabilities. In so doing, the Department learned that sometimes a wedge has to be added to plantar orthoses to correct abnormal foot movement. It therefore modified the manual of practice and the handbook accordingly.

IN CALCULATING FINANCIAL ASSISTANCE, EXCLUDE AMOUNTS RECEIVED FURTHER TO A CLASS ACTION LAWSUIT CONCERNING THE LAC-MÉGANTIC TRAGEDY

The employment assistance program is intended for people who do not have a severely limited capacity for employment, whereas the social solidarity program is for people who do. While social assistance recipients can have liquid assets of up to $1,500 without their benefits being decreased, for social solidarity recipients the amount is $2,500. Above these amounts, benefits are reduced by the amount in excess. However, the *Individual and Family Assistance Regulation* provides for exceptions. Amounts received further to certain class action lawsuits are excluded for benefit calculation purposes, regardless of the amount. The Regulation specifies the class action lawsuits concerned.

In the fall of 2015, a recipient in Lac-Mégantic contacted the Québec Ombudsman concerning an amount she would receive further to a class action lawsuit against the railroad company responsible for the 2013 tragedy. However, the Department had not planned ahead for what it might do in such a case. Because of the action taken by the Québec Ombudsman, the Department modified its directive so that amounts received under that circumstance would be excluded in calculating benefits. The Regulation will be amended accordingly.

ACT PROMPTLY IN RESPONSE TO THE QUÉBEC OMBUDSMAN'S INTERVENTIONS

Even though the interventions described in this Annual Report turned out well for the recipients concerned, the Québec Ombudsman did not get the same level of cooperation from the Department in other situations.

A case in point is the compensation issued for the loss of physical or psychological integrity, which is taken into account for benefit calculation purposes. The Department has been slow to implement the Québec Ombudsman's recommendation which goes back to 2013.

It is also critical of the length of time it takes for the Department to provide the documents the Québec Ombudsman needs in order to examine the complaints it receives or to analyze bills and draft regulations. Obviously, the ensuing delays mean that it requires much more time to resolve the problems which citizens are dealing with. In addition, the Québec Ombudsman cannot be as thorough as it would like. The Québec Ombudsman needs government departments and agencies to react quickly when they are called to contribute to investigations. The Québec Ombudsman therefore counts on a prompt and transparent response from the Department.

INTERVENTION CONCERNING A BILL

This year, the Québec Ombudsman presented a brief to the Committee on Labour and the Economy concerning Bill 70 – *Act to allow a better match between training and jobs and to facilitate labour market entry*. A summary of the Québec Ombudsman's intervention is found in the section entitled *Parliamentary Watch Report*, on page 126 of this Annual Report.

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

Retraite Québec

On January 1, 2016, the Commission administrative des régimes de retraite et d'assurances (CARRA) and the Régie des rentes du Québec merged to form a new agency called Retraite Québec. Here, the Québec Ombudsman reports on its interventions concerning Retraite Québec in the following order:

- Québec Pension Plan and Child Assistance (formerly the Régie des rentes du Québec);
- Public-Sector Pension Plans (formerly CARRA).

Québec pension plan and child assistance

REDUCE WAIT TIMES FOR PROCESSING DISABILITY PENSION APPLICATIONS

In the past two years, the Québec Ombudsman has received an unusually high number of complaints concerning the time it takes to process disability pension applications. In its Service Statement, Retraite Québec pledges to process disability pension applications within 150 days, if the information initially received is sufficient for it to make a decision. It should be noted that the *Act respecting the Québec Pension Plan* provides for a waiting period and also that the pension becomes payable only as of the fourth month following the month in which the beneficiary became disabled. For years, Retraite Québec met its goal of handling 95% of disability pension applications within this time frame. In 2014, the deadline was met in only 77% of files and in 2015, remained relatively stable at 78%. These processing delays have to do with a shortage of pension agents and

of medical assessment service physicians. This scarcity of resources is due mainly to departures, retirement and sick leave. Even though Retraite Québec works actively on hiring new physicians, recruitment remains difficult.

The agency has established an action plan to reduce the backlog and processing times. Furthermore, it now notifies citizens when their disability pension application is taking longer than usual to process. Retraite Québec's inventory of unprocessed files went from 4,946 in January 2015 to 2,812 in November 2015, and the wait time plummeted from 226 days in January 2015 to 58 days in November 2015. The Québec Ombudsman applauds Retraite Québec's initiatives to speed up application processing. For the first three months of 2016, 96% of disability pension applications were processed within the 150-day deadline.

As for the wait times for handling disability pension applications requiring additional medical information, the Québec Ombudsman is aware that Retraite Québec is not to blame for some of the delays. A case in point is when the agency is waiting for additional information from a citizen or for additional medical information from a health professional or an institution within the health and social services network. However, once Retraite Québec has received this additional information, it should make sure to process it promptly.

(. . . *Respond to disability pension applications within reasonable deadlines*

A citizen applied for a disability pension in September 2014, but the application was only assigned to an administrative agent two months later. The same day, the agent sent the file to the head nurse for a preliminary medical assessment. The head nurse processed the application in late December and transferred the file to the medical assessment service. In March of the following year, the file was assigned to a physician, who concluded that the woman qualified for a disability pension. At the same time, Retraite Québec sent her a letter asking her to choose between her retirement pension and her disability pension. Her reply was received three weeks later and official confirmation of her eligibility for a disability pension was produced in early April 2015.

Even though no complementary medical information was required in order to study the application, it took 225 days before the decision was issued. The length of this delay was due in large part to the 63 days that elapsed before an agent even began looking at the file and the 73 days it spent at the medical assessment service before the case was assigned to a physician. . . .)

BETTER INFORM CITIZENS ABOUT CERTAIN ASPECTS OF THEIR RETIREMENT PENSION

People who are 60 years old and over can apply for a retirement pension pending the results of a disability pension application. If they are indeed found to be eligible for a disability pension, they must reimburse the agency for the retirement pension amounts they received.

This year, the Québec Ombudsman saw that Retraite Québec did not publicize the fact that it was possible to receive a retirement pension pending a response concerning a disability pension application. Only the citizens who phoned to complain about the time it was taking for their disability pension application to be processed were given this information.

As a public agency, Retraite Québec must inform citizens adequately about its services and programs. Given that the long delays for processing disability pension applications could cause financial difficulties for people who often have no income, it is important for citizens who are 60 years old and over to know about this provision.

On the Québec Ombudsman's recommendation, Retraite Québec agreed to add this information to its website and to its information pamphlet when it is reprinted.

BETTER INFORM CITIZENS ABOUT THE PENSION FOR A DISABLED PERSON'S CHILD

In accordance with the applicable law, the pension for a disabled person's child, as well as the orphan's pension, belongs to the child who is the beneficiary. The only role of the person who receives the payment (the person who sees to the child's subsistence) is to be the liaison between Retraite Québec and the child and to serve as an administrator. Notably, this person does not have any rights with regard to the child's pension, and the pension must be used for the child's exclusive benefit. However, ensuring the child's subsistence is not the only purpose of the pension. Depending on the circumstances, it can be used for other purposes, in particular, to cover the child's school fees or to make investments with a view to the child's higher education.

When the application has been approved and the pension payments begin, if the beneficiary of a disability pension is also the person who sees to the child's subsistence as the administrator of the pension for a disabled person's child, that person receives both pensions monthly in a single cheque or payment. Every year, the person also receives a tax slip in the child's name, but without any other information.

This situation is what prompted the Québec Ombudsman to argue that the information provided to an administrator of a pension for a disabled person's child is incomplete, making it difficult for the person to really understand what the pension was intended for, both from the time of the initial application and throughout payment. This can be very harmful to both the child and the disabled parent. The following may happen because of these information gaps:

- The pension is not used for the child's sole benefit even though it belongs to him or her;
- In such cases, children of minor age who start to have earnings are issued income tax claims on a pension that has not benefitted them;
- The disabled parent with whom the child no longer lives is issued a sizable claim for reimbursement from Retraite Québec because he or she was getting the child's pension unknowingly.

The Québec Ombudsman recommended that Retraite Québec clarify the information in the disability pension application, application acceptance letter, *Beneficiary's Guide* and the website so that anyone who now applies as an administrator of the pension for a disabled person's child is well informed. The information must emphasize the following elements:

- Legally, the pension belongs to the child;
- Parents are responsible for notifying Retraite Québec of a change in custody;
- The parent administrator may be required to account for how the pension was used;
- The same parent could be required to reimburse Retraite Québec for the amounts issued if they were not used for the child's needs.

The Québec Ombudsman also asked that this information be transmitted to people already acting as administrators of the pension for a disabled person's child. Retraite Québec confirmed that it had started the process of analyzing the situation with a view to implementing the chosen solution by the end of the year.

(. . . Better inform parents who are administrators of a pension for a disabled person's child

A father was getting a disability pension for himself and a pension for a disabled parent's child for his daughter. Both amounts were issued as a single monthly payment. The child went to live with her mother but the father continued getting the pension in his daughter's name, even though Retraite Québec had been notified of the change of custody within the framework of the Child Assistance program. However, neither the mother nor the child even knew that the pension for a disabled parent's child existed, which means that they were unaware that the pension had been added to the father's disability pension.

Sometime later, the young girl, who was still a minor, filed her first income tax return. That was when Revenu Québec informed her that the pension was part of her personal income, but that her father was still receiving it. Also, Retraite Québec looked into the father's use of these amounts and claimed the amounts whose use he could not account for. After this, the pension was sent to the mother, who now had custody.

This situation was harmful to the people involved. The young girl felt that she had been treated unfairly because she had been required to pay income tax on a pension that she did not know she had. As for the mother, she had no idea that she was supposed to administer this amount. . . .)

Public-sector pension plans

RECOGNIZE UNDETECTABLE ADMINISTRATIVE ERRORS: GAINS WORTH HIGHLIGHTING, BUT PROBLEMS THAT PERSIST

The Québec Ombudsman applauds the November 3, 2015, passage of legislative provisions whereby Retraite Québec can now remit a claim amount stemming from administrative errors that the citizen could not have noticed. What this means in real terms is that from now on, any citizen who has been overpaid by Retraite Québec will not have to reimburse it for that amount, provided that the citizen could not have reasonably detected the error.

In recent years, the Québec Ombudsman has called authorities to task several times about this issue, arguing that citizens are harmed when they are obliged to reimburse often considerable amounts because of these errors. These legislative amendments are consistent with a recommendation made in this regard in its 2009-2010 Annual Report. This major gain will contribute to more equitable handling of the problems experienced by citizens.

With a view to fairness, the Québec Ombudsman proposed that in cases of serious errors in which Retraite Québec is civilly liable, and in order to keep the matter out of the courts, the agency compensate the citizens thus affected before the amendments came into force on November 3, 2015. It is unfortunate that this proposal was dismissed.

In several files that it analyzed, the Québec Ombudsman saw errors by Retraite Quebec that were sufficiently serious for the agency to incur civil liability under the *Civil Code of Québec*. Nonetheless, despite the fact that the Québec Ombudsman regularly provides it with recommendations on this subject, Retraite Québec almost systematically refuses to acknowledge its mistakes and compensate citizens. There is one particularly eloquent tribunal decision[3] in which an applicant first approached the Québec Ombudsman to have her problem solved. The Québec Ombudsman recommended that Retraite Québec compensate the citizen, but the agency refused to do so. Ultimately, the woman turned to the court system. More than two years later, a judge ordered Retraite Québec to pay due damages plus interest. Although the Québec Ombudsman is satisfied with this outcome, it feels that it is unfortunate that the woman had to go to court when in fact, the Québec Ombudsman had reached the same conclusion two years earlier.

Granted, these new provisions concerning debt remission are significant, but they do not solve a major problem that the Québec Ombudsman has spoken out against repeatedly—Retraite Québec errors leading to a decrease in a pension amount even if the citizen had already received confirmation of an amount. In all likelihood, the people given the news about the readjustment would have planned for retirement differently if they had known the amount they would really be getting for the rest of their life. The Québec Ombudsman therefore insists yet again that Retraite Québec own up to its mistakes and compensate the citizens who are harmed when the error is serious enough for the agency to incur civil liability.

(. . . *Do not make citizens pay for administrative errors that they cannot detect – 1*

Two succession liquidators complained to the Québec Ombudsman because Retraite Québec claimed for overpayments stemming from the agency's own mistake.

Within the framework of the investigation it conducted, the Québec Ombudsman saw that 19 other liquidators had experienced the same situation. In all of these files which Retraite Québec had handled between 2012 and 2013, the agency had issued an amount to the successions further to the beneficiary's death. In October 2014, Retraite Québec corrected this amount because it had not taken into account that 25% of the value of the pension had already been paid out to the beneficiary several years before.

The corrections had been made in November 2013, after Retraite Québec had noticed and rectified an anomaly in the administrative procedure for processing benefits further to a death. This procedure did not make it possible to check whether a deceased person had already received a payment before issuing a succession an amount to which it was entitled. In the agency's opinion, this shortcoming was due to the introduction of a new computer system in June 2010. The claims arising from these corrections, in amounts ranging from $6,000 to $31,000, were issued in December 2014 and January 2015.

The Québec Ombudsman reminded Retraite Québec that it was duty-bound to ensure that the pensions issued are calculated accurately. To achieve this, the agency must have effective methods and make any possible corrections promptly. In the cases at hand, it had taken Retraite Québec nearly three and a half years to notice and correct the problem. After this, it had taken nearly another year for the changes to be made to the files concerned. Retraite Québec had also shown no hurry in sending the liquidators the claims.

3. *Hamel v. Commission administrative des régimes de retraite et d'assurance (CARRA)*, 2016 (CQ, Small Claims Division of the Court of Québec), January 18, 2016.

The Québec Ombudsman drew attention to the serious consequences of this situation for the successions and the heirs affected, who had to pay back huge amounts, even though it had been impossible for them to detect the error that gave rise to the claim.

The Québec Ombudsman recommended that Retraite Québec issue each of the persons concerned financial compensation equivalent to the amounts claimed. The agency refused to do so. . . .)

(. . . Do not make citizens pay for administrative errors that they cannot detect – 2

Two people sought the Québec Ombudsman's assistance concerning claims for overpayments stemming from a mistake that Retraite Québec made when it calculated their retirement pension. The investigation revealed that 18 other citizens had the same problem.

These citizens had opted to receive their retirement pensions by means of a transfer into a locked-in retirement account and a supplementary payment. A few months after the transfer, Retraite Québec informed them that the amounts it had transferred had been too high and that it was now issuing a claim in these amounts. The agency was to blame for the mistake, Without going into the complicated details, suffice it to say that when authenticating the pension amounts, the calculation software used had applied a rate of reduction of 3% to determine the reduction due to anticipation (anticipation refers to the fact that a pension is payable before the usual retirement age). However, the applicable rate was 4%.

During the investigation it conducted, the Québec Ombudsman learned that a regulatory amendment had come into force on July 1, 2013, whereby the rate of reduction due to anticipation had in fact gone from 3% to 4%. Further to this, the authentication software was adjusted for some, but not for all, kinds of calculations. On May 5, 2014, Retraite Québec noticed its mistake and adjusted its software accordingly. The agency then found and corrected 18 files whose actuarial values had been overestimated. It sent out its claims to the citizens in amounts ranging from $1,600 to $23,000.

After analyzing the context of the regulatory amendment in question, the Québec Ombudsman concluded that Retraite Québec had been well aware of the change and had had several months to adjust the software. Authentication is an important exercise aimed at ensuring accurate calculations. By failing to adjust the software properly to ensure compliance with the regulatory amendment, Retraite Québec clearly displayed negligence, which made it civilly liable concerning the 18 citizens.

Since this was a serious failing by an agency tasked to ensure the accuracy of all data concerning the pensions issued, the Québec Ombudsman asked Retraite Québec to grant each of the persons concerned financial compensation equivalent to the amounts claimed. The agency refused to do so. . . .)

(. . . ***Do not make citizens pay for administrative errors that they cannot detect – 3***

A citizen complained because he had to deal with a claim from Retraite Québec and a decrease in his retirement pension, both of which occurred more than five years after his retirement.

The investigation by the Québec Ombudsman showed that when the person retired in 2009, Retraite Québec confirmed a given pension amount. In 2013, the pension review service took up his file and completed study of it in late 2014. Thus, five years after his retirement, the citizen was notified that his pension had been decreased. The explanation given was that when the initial calculation of his pension had been carried out, the agency had failed to correctly apply a restriction under federal taxation rules (the federal Income Tax Act***). Among other things, he was issued a claim for overpayments in the three preceding years.***

According to Retraite Québec, the maximum three-year deadline for decreasing a pension further to review—as provided for in the Act respecting the Government and Public Employees Retirement Plan***—did not apply in this case. It went on to argue that the tax restrictions stipulated in the federal Act were incompatible with those in the provincial Act (which prescribed a maximum deadline of three years for decreasing a pension further to review). In such circumstances, the federal Act should prevail over the provincial Act.***

The Québec Ombudsman maintained that there was no such incompatibility. In this case it was more a question of Retraite Québec's negligence in failing to apply the federal Act properly to begin with or to review the retirement pension within the prescribed deadline. As a result, Retraite Québec could not use precedence of the federal Act as a way of justifying faulty application of the provincial Act, in this case, for more than five years. The Québec Ombudsman therefore recommended that Retraite Québec waive the pension adjustment and cancel the claim. Retraite Québec refused to act on this recommendation, reiterating that it had to apply the Income Tax Act ***and correct the citizen's pension accordingly, even if the deadline prescribed in the provincial Act had expired.*** . . .)

INTERVENTIONS CONCERNING TWO BILLS

A summary of the Québec Ombudsman's interventions concerning Bill 58, *Act to group the Commission administrative des régimes de retraite et d'assurances and the Régie des rentes du Québec*, and Bill 73, *Act respecting mainly the implementation of recommendations of the pension committee of certain public sector pension plans*, are presented in the section entitled *Parliamentary Watch Report*, on pages 125 and 127 of this Annual Report.

The Ombudsperson's letter to the Chair of the Committee on Labour and the Economy concerning Bill 58 is found at www.protecteurducitoyen.qc.ca.

The Ombudsperson's letter to the Chair of the Committee on Public Finance concerning Bill 73 is found at www.protecteurducitoyen.qc.ca.

Société de l'assurance automobile du Québec

Highway safety

Again this year, complaints regarding the *Highway Safety Code* were diverse and concerned driver's licences as much as vehicle registration. The Québec Ombudsman can usually count on the cooperation of the Société de l'assurance automobile du Québec (the SAAQ), whether it be for the investigations that the Québec Ombudsman conducts or to have something corrected. In 2015-2016, this positive attitude was particularly evident in three files for which the Québec Ombudsman obtained collective results concerning:

- sales tax payment when road vehicles are transferred between individuals;
- notices of driver's licence suspensions for failure to meet a SAAQ requirement within the prescribed deadline;
- conditions regarding foreign driver's licence exchanges.

UPDATE SALES TAX DIRECTIVES

Management of the registration of road vehicles owned by Quebecers is one of many mandates entrusted to the SAAQ. Other activities include collecting sales tax on behalf of Agence du revenu du Québec (Revenu Québec) when registration is transferred. In so doing, the SAAQ acts as a mandatary and must ensure enforcement of the law according to Revenu Québec's instructions.

There are certain exceptions when it comes to sales tax collection, for example, when the transfer of vehicle ownership occurs between spouses. In such cases, the owner and buyer can do business without the buyer having to pay sales tax. The SAAQ is a Revenu Québec mandatary but its agents are not tax specialists. This is why, when collecting ownership transfer taxes, the agents rely on a directive drafted by Revenu Québec. An investigation by the Québec Ombudsman showed that the directive needed updating.

(. . . *When in doubt, refer citizens to Revenu Québec*

So that settlement of their separation would be fair, a pair of common-law spouses saw a notary. The spouses agreed that the family car should be registered under only one of their names from that point on. The citizens therefore went to a SAAQ service outlet to have full ownership of the vehicle transferred to one of them. Since they had been living apart for two weeks, their addresses were different.

Since the only exemption provided for in the Revenu Québec directive concerns married spouses who are separating, the agent charged $1,400 in sales tax. Despite the citizens' astonishment, the agent did not refer them to Revenu Québec, which would have enabled them to check whether there were other exemptions that were not contained in the directive.

The couple came to the Québec Ombudsman, which immediately referred them to Revenu Québec. They quickly obtained written confirmation from Revenu Québec that the buyer was exempt from paying the sales tax. On the strength of this document, the SAAQ transferred ownership without charging the tax.

The investigation also brought to light the fact that the directive in question, which went back to 2002, was outdated. Prompted by the Québec Ombudsman, the SAAQ and Revenu Québec revised the directive so that it clearly states which circumstances are required for a sales tax exemption to be granted. . . .)

ABIDE BY THE *ACT RESPECTING ADMINISTRATIVE JUSTICE*

Pursuant to the *Act respecting administrative justice*, an administrative authority must give reasons for all unfavourable decisions it makes and indicate any non-judicial proceeding available under the law and the applicable time limits. Similarly, the *Highway Safety Code* stipulates that when the SAAQ advises a person that it will suspend his or her driver's licence on a given date, it must inform the person about available recourse and the opportunity for that person to present his or her views before that date. An investigation by the Québec Ombudsman revealed that the form letter transmitted to citizens to notify them of the suspension of their driver's licence because they had refused to take a road test did not comply with the Act.

(. . . *Inform citizens about the possibility of having an initial decision reviewed*

Further to a police report indicating that, according to a third party, a citizen had vision problems, the SAAQ instructed him to produce two medical reports. The citizen immediately sent the reports to the SAAQ, which then told him to take a road test within the next month. If not, the SAAQ would suspend his driver's licence. The citizen contested this new condition in writing and enclosed the two medical reports and a sworn statement indicating that he had not been involved in the incident reported by the police.

Not having received any feedback about his contestation, he went to a SAAQ service outlet on the last day of the deadline for taking the test, without knowing that he should have made an appointment. The agent refused to let him take the test. Two weeks later, the citizen received a decision from the SAAQ informing him that his driver's licence would be suspended unless he took the road test before a given date. Despite his attempts, he was not able to get an appointment by the required deadline. He then turned to the Québec Ombudsman, which secured a test for him quickly.

The Québec Ombudsman noticed that the decision letter sent to the citizen made no mention anywhere of the possibility for him to express his views or to ask for review of the suspension. Following the Québec Ombudsman's intervention, the SAAQ agreed to change its form letter in order to add these details. . . .)

RELAX CERTAIN RULES FOR NEWCOMERS' ACCESS TO A DRIVER'S LICENCE

The *Highway Safety Code* provides that a person holding a valid driver's licence issued by an administrative authority other than Québec may, during the six months after settling in the province, drive a passenger vehicle in Québec without obtaining a licence from the SAAQ. When this deadline expires, they must obtain a Québec licence.

The requirements for obtaining a Québec licence vary depending on the answers to the following questions:

- Was the foreign licence issued by an administrative authority with which the SAAQ has an agreement?
- Is the initial licence still valid?
- What is the licence class (passenger vehicle, motorcycle or commercial)?

In the Québec Ombudsman's opinion, the conditions for exchanging a licence issued by a country which does not have an agreement with the Government of Québec for a Québec licence should be relaxed. The SAAQ agreed to this. At the Québec Ombudsman's request, holders of a licence

which expired more than six months earlier and was issued by a country that does not have an agreement with the Government of Québec will no longer have to follow the graduated licencing process. They will only have to take a driving test.

(. . . *Do not unjustly penalize certain foreign driver's licence holders*

A citizen from abroad who had been a refugee in a third country settled in Québec in 2013, after becoming a permanent resident of Canada. A few months after his arrival, he asked the SAAQ to exchange his foreign driver's licence for a Québec licence. He was astonished when an agent informed him that he would have to follow the graduated licence process even though he had more than six years' driving experience. The licence obtained in his country of origin had expired more than a year before that and had been issued by a country with which Québec did not have a reciprocity agreement. To speed things up, the SAAQ suggested that he go back to the country from which he had fled to have his licence renewed… Since this was not possible, the citizen would have had to take the compulsory driving course that costs roughly $1,000 and is spread over one year. In the meantime, he would not have been allowed to drive unaccompanied.

The citizen felt that all that was needed was to verify his driving proficiency by having him take the knowledge and road tests. When the SAAQ refused, he went to the Québec Ombudsman.

In analyzing the situation, the Québec Ombudsman concluded that it was unreasonable to have a citizen who has more than six years' driving experience jump through the same hoops as someone who is getting his or her first driver's licence. It is unfair to use the fact that a licence has or has not expired or that the issuing administration does or does not have a reciprocity agreement with Québec as justification for disparities in handling a file.

Because of the Québec Ombudsman's intervention, a driving course will no longer be required for people whose permit expired more than six months before and was issued by a country without an agreement with the Government of Québec. The SAAQ directive now provides that only driving tests will be required in such cases. . . .)

Compensation

HOME ADAPTATION: PROVIDE A MORE PROMPT RESPONSE TO THE PRESSING NEEDS OF SEVERELY INJURED ROAD ACCIDENT VICTIMS

The Québec Ombudsman received complaints from road accident victims who said that they were dissatisfied with the time it took for the SAAQ to process their claim for reimbursement for the expenses incurred to adapt their home. These were road accident victims who had been left with serious residual incapacity, notably, spinal cord injury causing paralysis, significant brain injury or major limb injury resulting in amputation. What emerged from analyzing these complaints is that after their stay in hospital or at a rehabilitation centre, injured persons must go back to a home that has only been adapted temporarily and which only minimally meets their needs, pending processing of the application and carrying out of the required work. In the meantime, because of the lack of proper facilities, some injured persons have only partial access to personal hygiene care, are limited in their movement within the home and need help from family and friends.

The Québec Ombudsman decided to conduct an investigation based on the complaints received and on a sample of files opened, processed or closed since June 1, 2013, and concerning home adaptation applications for more than $20,000. When the analysis was completed, the Québec Ombudsman determined that the time that elapsed between the SAAQ's taking up an application of this kind and completion of the work done to the home was on average 823 days. If the actual carrying out of the work is excluded from the 12 steps of application processing, the average wait time was 515 days. The delays were due in particular to the following factors:

- The applications are handled by two distinct SAAQ units, whose work does not dovetail enough;
- It is difficult to recruit external experts (occupational therapists and architectural consultants);
- There is much shuttling between the SAAQ and these experts;
- At times, the application of the principle of the "most appropriate and least expensive solution" is applied rigidly;
- Often the information given to injured persons is incomplete;
- The assistance provided to injured persons by the SAAQ, especially for calls for bids, is often insufficient.

The SAAQ administers a compulsory contributory insurance plan under which each road vehicle driver and owner pays a premium in order to receive timely compensation should he or she have an automobile accident. The investigation by the Québec Ombudsman has led it to conclude that given the numerous cases of prolonged wait times in home adaptation files, there needs to be significant improvement in the management of home adaptation applications.

The Québec Ombudsman made 11 recommendations to the SAAQ, including the following:

- Set the maximum wait time for handling home adaptation applications to nine months in 80% of cases;
- As of December 31, 2016, evaluate the process for handling home adaptation applications so as to determine whether the objective of nine months can be reduced;
- Review its processing methods;
- Include the injured persons in the process to a greater extent;
- Monitor wait times closely.

The SAAQ accepted the Québec Ombudsman's recommendations and sent it an implementation plan on December 14, 2015. It gave the Québec Ombudsman a progress report on March 31, 2016, and will do so again on December 31, 2016.

The summary of the Québec Ombudsman's special report on the processing of home adaptation applications is found at www.protecteurducitizen.qc.ca.

ADMINISTRATIVE REVIEW: RESPECT CITIZENS' RIGHTS IN DEALINGS WITH THEM

The law provides for an administrative mechanism that enables citizens to apply for review of an initial decision by the SAAQ concerning them. The review officer assigned to a file must allow the applicant to present his or her observations and to produce all documents needed to complete the file. The review officer's role is to confirm, overturn or amend the initial decision for which an application for review was made. In case of dispute, the review officer's decision can then be taken to the Tribunal administratif du Québec (TAQ). Before the hearing, TAQ usually offers the parties conciliation in the presence of an administrative judge acting as a conciliator.

Since April 2015, the SAAQ has allowed review officers, under certain conditions, to enter into a contract with the review applicant in the form of a transaction. The purpose of this is to:

- settle a greater number of cases at the administrative review level so as to reduce the number of cases that end up at TAQ, which is also dealing with a sizable backlog;
- take the client population's needs into account and address their expectations;
- make it possible for all the decisions contested by the same citizen to be considered.

The Québec Ombudsman subscribes to preventing excessive reliance on the courts in settling disputes between citizens and the government. However, it is crucial that citizens' rights be upheld and that the transactions entered into take into account the specificities of administrative justice and the legal framework. Guidelines should therefore be established to ensure the validity of the transactions entered into between the SAAQ and citizens. Review officers must ensure in particular that:

The citizen:

- is competent to enter into a contract;
- is competent to consent to a transaction;
- has all relevant and useful information for making an informed decision;
- understands this information properly;
- is informed of the consequences of the transaction and of his or her relinquishment of legal recourse;
- freely consents to the agreement.

Regarding the content of the agreement:

- that the proof on file is complete;
- that the terms and conditions of the agreement comply with the law;
- that concessions are reciprocal;
- that no clause forces citizens to relinquish future rights regarding their compensation file.

In the past year and before these guidelines were implemented, the Québec Ombudsman analyzed complaints from citizens who had entered into transactions with the SAAQ. The Québec Ombudsman considered that the transactions it analyzed did not satisfy the requirements for a valid transaction and could infringe on citizens' rights and be harmful to them. The SAAQ therefore drafted guidelines which it submitted to the Québec Ombudsman for comment.

The Québec Ombudsmam continues to be concerned about one of the aspects of the approach chosen by the SAAQ to keep disputes out of the court, namely, entering into a contract with citizens. In its opinion, contractualizing the SAAQ's relationship with citizens as a way of settling disputes opens up areas of potential harm to them because, by going the contractual route, there is no independent third party. The presence of such a third party acts as a guarantee of fairness for alternative means of settling disputes. For example, the conciliation process at the Tribunal administratif du Québec or the Tribunal administratif du travail involves a conciliator. As a rule, the fact that an independent and impartial third party is present guarantees that proceedings will be conducted respectfully and in good faith, in accordance with legislative and administrative standards, and that citizens have been given the opportunity to provide all useful information and complete their file. Furthermore, the presence of a third party ensures a more level playing field because this third party sees to it that citizens have all relevant and useful information for making an informed decision and that they fully understand the consequences of the agreement as well as of their relinquishment of legal recourse.

Nonetheless, the Québec Ombudsman will monitor the application of this new SAAQ policy direction and, by analyzing complaints, will determine whether the principles of administrative justive are being upheld.

(. . . *Transactions: avoid putting undue pressure on citizens*

During the administrative review of an initial decision, a SAAQ review officer suggested that a citizen settle his entire file by means of a transaction. After investigating, the Québec Ombudsman considered that the SAAQ had not created an environment conducive to true negotiation and had put undue pressure on the person to sign an agreement.

The citizen had been diagnosed with a brain injury coupled with an adjustment disorder. From the beginning, the citizen told the SAAQ that the process was causing him anxiety. The Québec Ombudsman noted that the SAAQ was keen to proceed by means of a transaction despite the diagnoses and the information conveyed by the citizen. In addition, it gave him a mere nine days to sign the agreement and, despite the fact that he had refused to sign it on two occasions and had sent a letter of dissatisfaction indicating that he was signing against his will, the SAAQ wanted to send him the agreement for signature yet again.

In the end, the citizen decided not to enter into a transaction with the SAAQ. As a result, each of his applications for review was turned down even though the SAAQ had said that it was prepared to overturn some of the initial decisions. The Québec Ombudsman intervened to prevent a recurrence of such a situation. . . .)

DO NOT UNJUSTLY MAKE THE BURDEN OF PROOF HEAVIER ON ROAD ACCIDENT VICTIMS

Under the *Automobile Insurance Act*, since January 1, 1990, if a victim suffers a relapse of a bodily injury stemming from an automobile accident, the accident is considered a new accident if the injury occurs more than two years after the end of the last period of disability for which he or she was entitled to an income replacement indemnity or, if he or she was not entitled to such an indemnity, more than two years after the accident. In such cases, the SAAQ grants an income replacement indemnity if the person can provide preponderant evidence that he or she cannot go back to the job they had at the time of the relapse.

Before January 1, 1990, to qualify for an income replacement idemnity, injured persons had to show that the relapse prevented them from having any form of employment.

However, with the amendments to the *Automobile Insurance Act* that came into force on January 1, 1990, the legislator included transitional provisions, in other words, provisions intended to stipulate the rules that apply to automobile accidents that occurred prior to January 1, 1990. The SAAQ even drafted a directive governing the transitional provisions. The directive specifies that when an accident occurred before January 1, 1990, and the injured person had a relapse as of January 1, 1990, the provisions of the Act in force on January 1, 1990, are the ones that apply. The relapse is therefore considered as stemming from a new accident if the relapse happened more than two years after the end of the income replacement indemnity period or, if no indemnity was granted, more than two years after the accident. In these cases, injured persons do not have to prove that they cannot hold down any job but rather that they cannot hold down the job they had at the time of the relapse, unlike injured persons who had a relapse within two years of an automobile accident that occurred before 1990.

The Québec Ombudsman intervened to have the SAAQ's misapplication of the transitional provisions corrected. The SAAQ had asked accident victims to prove that they were unfit for any job, which increased the burden of proof on them and deprived some of them of an income replacement indemnity when, in fact, they were only unfit for the job they had when the relapse occurred.

(. . . *Apply the law rigorously and in a manner respectful of accident victims' rights*

In 2014, a citizen had a relapse from a bodily injury sustained in a road accident that occurred in 1986. The SAAQ refused to grant him an income replacement indemnity because it considered that his relapse did not make him unfit to hold down a job of any kind. Being without any source of income, he asked the Québec Ombudsman to intervene.

According to the Québec Ombudsman, because the man's relapse had occurred more than two years after the accident in 1986, the SAAQ should not have required him to provide proof that he was unfit to occupy any form of employment. The transitional provisions that came into force on January 1, 1990, therefore applied to his situation.

The SAAQ was required to compensate the citizen for the relapse without saddling him with the burden of proving that he was unfit for any job, when all he had to prove was that he was unfit for the job that he had when the relapse occurred. . . .)

REPORT BY THE CORRECTIONAL OMBUDSMAN OF QUÉBEC

Ministère de la Sécurité publique – Direction générale des services correctionnels

The Québec Ombudsman's mandates include seeing to it that the rights of detainees are upheld in accordance with applicable legislation and standards. In so doing, it acts in its capacity as Québec's correctional ombudsman, intervening as soon as it becomes aware or has cause to believe that correctional facilities, the Ministère de la Sécurité publique's Direction générale des services correctionnels or the Commission québécoise de libérations conditionnelles are not fulfilling their obligations towards detainees or are treating them unreasonably.

Québec's correctional facilities are responsible for the detention of offenders sentenced to less than two years as well as those detained in custody under court order pending or during trial. Federal penitentiaries house detainees sentenced to serve two years or more.

Correctional services must ensure civil protection while providing offenders with safe custody and fostering their social reintegration. In 2015-2016, 43,149 citizens were admitted to one of Québec's 20 correctional facilities. Of the 43,149, 11% were serving a continuous sentence and 13% an intermittent sentence. The remaining 76% were held during trial. Their average respective times of detention were 75, 12 and 27 days.

Reduce prison overcrowding

In December 2015, the correctional facility in Roberval opened. It is one of four new facilities, the others being in Sept-Îles, Sorel-Tracy and Amos (all slated to open in 2016-2017). These new facilities are intended to replace the institutions which have become obsolete.

According to the Department, these new facilities are a response to the problem of chronic prison overcrowding which is afflicting the correctional system, a subject addressed many times by the Québec Ombudsman in its Annual Reports. However, it should be noted that because of the closure of the facility in Chicoutimi, ultimately there will only be 25 new places in the system after construction of the Roberval facility, which has a total capacity of 180 places.

In its last Annual Report, the Québec Ombudsman said it was heartened by the opening of the Leclerc de Laval facility in 2014, which, hopefully, would solve the problem of overcrowding. However, the Québec Ombudsman wonders about the decision to keep only 84 male detainees out of a total population of 332, when the facility could hold a maximum of 775 detainees. By moving almost 160 men who were there before the women were transferred after the closure of Maison Tanguay, the Department only exacerbated prison overcrowding.

Given this situation, and in light of the data, the Québec Ombudsman believes that even with the opening of the Roberval, Sept-Îles, Sorel-Tracy and Amos correctional facilities, the problem of prison overcrowding will not be solved because not enough places will be created. One of the solutions is optimal use of the Leclerc de Laval facility.

New correctional facility: optimize Roberval resources

The Québec Ombudsman visited the Roberval correctional facility in March 2016, a few months after it opened. It saw that the facility's architecture and layout were modern and designed for safety. Nonetheless, certain things stood out. First, the facility has a 28-place section for detainees serving an intermittent weekend sentence. If the trend observed in the past few years holds, the number of places could prove insufficient for this category of detainee. Furthermore, there are only two cells for women held in preventive detention. Even though the women are usually transferred to Québec City or Laval when they are sentenced to serve time, the Québec Ombudsman has qualms about the fact that there is so little dedicated space for them. In fact, the Department's most recent estimates show that, generally, there will be an increase in the number of female detainees in the coming years.

Plan transfers so as to prevent adverse effects on detainees

In September 2015, so that detainees would no longer be exposed to the precarious conditions that prevailed at Maison Tanguay (a facility for female offenders), conditions that the Québec Ombudsman condemned in its recent Annual Reports, the Department announced that the inmates would be transferred to Leclerc de Laval correctional facility. As a result, in February 2016, Leclerc became a mixed-gender population facility. Before this happened, the Québec Ombudsman asked the Department to keep the existing service offering and activities, along with the medical expertise provided to the women through the support of Centre de santé et de services sociaux d'Ahuntsic et Montréal-Nord (now Centre intégré universitaire de santé et de services sociaux du Nord-de-l'Île-de-Montréal). The Department confirmed that the same services would continue.

From the minute the detainees began to be transferred to the Leclerc de Laval facility, there were multiple problems. With a view to preventing such situations during the massive transfers that will occur when the new facilities open, the Québec Ombudsman requested that the Department review and adjust its strategy in order to keep the impact of these transfers on detainees to a minimum.

(. . . ***Manage inter-facility transfers in a manner respectful of detainees' rights***

The move of detainees from Maison Tanguay to Leclerc de Laval correctional facility began on February 16, 2016. In the course of its interventions, the Québec Ombudsman noted several problems with the planning of the transfer:

- ***The female detainees could not use their personal belongings for a period that sometimes was as long as 14 days. In addition to having to wear the same clothing for several days, some of them were not given personal hygiene products due to distribution mismanagement.***
- ***A lag in the searches[4] through personal effects meant that some people were released without the items that they owned being given back to them. When this happened, one woman was not able to get into her apartment because the keys were in a purse that had not been returned to her. Management committed to taking the necessary measures so that this kind of situation would not recur.***
- ***Female detainees were strip searched in premises that afforded them no privacy. At the Québec Ombudsman's request, the situation was corrected.***
- ***The correctional facility put female detainees with incompatible prison profiles in the same section. For security reasons, these detainees could not be in the common living areas at the same time. The result was that the time they could spend outside their cell was greatly reduced. Furthermore, the women with mental disorders lived side by side with other detainees who had been put under protection in order to ensure their safety. The latter therefore had to have all of their meals in their cells. While management admitted that it would be better if there were a section set aside for detainees with mental disorders, it could not do anything about it because of lack of space and staff.***
- ***In their first weekend of detention, women serving intermittent sentences were kept in a room that did not have a toilet. Without the consent of the facility's authorities, the correctional services officers on duty refused to let some of the detainees go to the washroom. As of the second weekend, the women were relocated to a living area that had the necessary sanitary facilities.***
- ***In the days after the first transfers, two detainees with disabilities were kept in their cells 22 hours out of 24. For lack of available adapted space, they were put next to detainees in a different category, with whom they were not allowed to have contact.***
- ***On the pharmacological front, because of administrative foul-ups, detainees were deprived of their medication and then had to go through unplanned and sudden withdrawal.*** . . .)

4. When they arrive at the correctional facility, detainees must hand their personal effects over to members of the staff, who examine them in order to prevent unauthorized objects from being smuggled in.

Once and for all, transfer full responsibility for correctional facility health services to the Ministère de la Santé et des Services sociaux

In a special report released in May 2011, the Québec Ombudsman drew attention to the fact that health services and social services for detainees with mental disorders were in sorry disarray. It recommended transfer of responsibility for service provision from the Ministère de la Sécurité publique to the Ministère de la Santé et des Services sociaux. Five years later, the transfer is still not completed.

In 2015-2016, some of Québec's correctional facilities were hard-pressed to provide adequate medical services because of the shortage of general practitioners working within the correctional system. It should be noted that most correctional facilities in Québec offer general healthcare services similar to those in walk-in clinics. In emergency cases or for specialized care, detainees are escorted to a hospital centre. In several correctional system facilities, medical consultation services are delivered through private contracts with physicians. When such contracts are cancelled or are not renewed, the facility has to try to recruit another physician in order to ensure service continuity.

Clearly, the situation illustrates how necessary it is for the Ministère de la Santé et des Services sociaux to take charge of these services in correctional facilities. The protocol signed in 1989 by the Ministère de la Sécurité publique and the Ministère de la Santé et des Services sociaux recognized that detainees have the right to care equivalent to that provided to the population at large and also acknowledged the Departments' respective missions. Under this agreement, the Ministère de la Santé et des Services sociaux was required to assume healthcare service organization and delivery to detainees as it would to every citizen in the community.

It is unthinkable that in 2016, the healthcare provided to the prison population continues to be contingent on contractual ties between the Ministère de la Sécurité publique and the few practitioners who agree to work with this clientele. The recruitment required of correctional facilities is even more difficult because the need for medical follow-up is markedly on the rise even within the population as a whole.

In January 2016, the Department informed the Québec Ombudsman that further to the work done jointly with the Ministère de la Santé et des Services sociaux, by April 2016, health and social service network professionals would provide healthcare services to nine correctional facilities. The correctional facilities are Baie-Comeau, New Carlisle, Laval (Leclerc facility), Percé, Rimouski, Saint-Jérôme, Sherbrooke, Trois-Rivières and Hull. The same transfer of responsibility is slated for April 2017 for the Rivière-des-Prairies facility.

While the Québec Ombudsman welcomes this gain, in the absence of a time frame, it remains worried about the facilities not slated for these changes.

The Québec Ombudsman's special report entitled *Toward services that are better adjusted to detainees with mental disorders* is found at www.protecteurducitoyen.qc.ca.

(. . . ***Speed up transfer of responsibility in order to make it easier to recruit a new physician***

Upon learning that the general practitioner who had been on contract with the correctional facility would be retiring in a few months, institution authorities had to double their efforts to find a replacement by the fall of 2014. It took until July 2015 for a service contract to finally be secured with a new general practitioner interested in working in a correctional environment. However, given the extent of the facility's medical needs, the Direction générale des services correctionnels sought the cooperation of the Ministère de la Santé et des Services sociaux to ensure that complementary medical services would be provided. The Ministère de la Sécurité publique and an integrated university health and social services centre (CIUSSS) therefore signed an agreement whereby, from then on, physicians affiliated with the CIUSSS would provide medical consultations on a regular basis. . . .)

Ensure adequate management of detainees with a disability

Further to a commitment in its 2013-2014 Annual Report, the Québec Ombudsman investigated the management of disabled detainees. The purpose was to identify best practices so as to induce the Department to adopt guidelines in response to the special needs of this client population. Here are the Québec Ombudsman's main findings from its research into correctional facilities in the fall of 2015:

- Eleven of the 19 correctional facilities consulted can accommodate this client population, even though they do not necessarily have all the required infrastructure;
- More than one third of institutions do not have adapted premises;
- 52% of institutions do not have adapted sanitary facilities;
- More than a quarter of correctional facilities do not have an accessible courtyard for detainees with a disability and six institutions do not have an adapted recreation room, adapted educational training or adapted workshops;
- In four correctional facilities, visitor lounges are not accessible to detainees with disabilities. Three correctional facilities do not have the required infrastructure for visitors with disabilities.

This snapshot shows that the ability to house disabled detainees varies greatly from one facility to another. One of the possible consequences is that a person who is in a wheelchair may be sent to a facility outside his or her region, far from family and friends, which makes social reintegration more difficult.

It bears pointing out that the Department's 2015-2016 action plan for people with disabilities provides that the installation of adapted equipment for people with disabilities be included in the blueprints for the new facilities in Amos, Sept-Îles and Sorel. When it visited the Roberval correctional facility in March 2016, the Québec Ombudsman saw that the new facility is adapted for the intake of people with disabilities, as intended in the action plan.

Another example of disparities—the fees related to the medical management of people with disabilities who need a care attendant varies from place to place depending on the facility's share of the cost. A person incarcerated in Montréal may have to pay for such services, unlike a person in the same situation in Québec City. When the Québec Ombudsman queried the Department about this, it confirmed that there was no directive or official position concerning payment for the necessary care to disabled detainees. The Québec Ombudsman feels that this matter needs clarifying and is continuing its work on this front.

(. . . *Provide disabled detainees with the services they need*

An assessment of the needs of a detainee with a disability was carried out when he began serving his sentence. It showed that, given his physical condition, he required help with personal hygiene. At first, the correctional facility footed the bill for the services of a care attendant, but soon afterwards, it stopped doing so. The citizen, who could not do without these services, decided to pay out of pocket, which cost him nearly $200 a week. This went on for a few months, until the Department reversed its decision during the intervention by the Québec Ombudsman. As of March 31, 2016, the citizen had not yet been reimbursed. . . .)

Immediately adopt standards that apply to dynamic supervision in correctional facilities

Pursuant to their mandate in matters of protection and safety, correctional facilities must ensure effective and constant supervision of the prison population. This vigilance is necessary, especially in order to monitor the physical or mental condition of certain detainees. This makes it possible to detect and defuse tensions that could jeopardize detainees' safety as well as that of prison staff.

Currently, supervision practices vary widely from one facility to another. Cases in point are the number of rounds that correctional officers are required to make and the manner in which records of this are kept. Similarly, at some facilities, staff, who only enter common living areas when all the detainees are in their cells, have practically no interaction with them, whereas elsewhere practices are different.

In the fall of 2014, a pilot project on "dynamic" supervision was supposed to be conducted in certain correctional facilities in order to ensure optimal detainee supervision through the increased presence of correctional officers in the different sections of the facility as well as more frequent contact with the prison population. The pilot project was to culminate in a provincial instruction on dynamic supervision that would include standards as to the number of rounds, head counts (specific operation during which officers ensure that every detainee in a given section is alive and accounted for) and the inspections that correctional officers should conduct. At the time this Annual Report was being written, the pilot project had not started and the instruction had not been introduced, even though its adoption had been slated by the Department for at least six years.

This is not without consequence. In the real world of the prison system, the safety—if not the lives—of people are likely to be at risk because of the lack of clear guidelines for the work that correctional officers do. Within the framework of the investigations it conducted, the Québec Ombudsman discovered, for example, that certain detainees had been assaulted repeatedly by other detainees without the correctional officers assigned to the sections concerned becoming aware of it soon enough.

Provide a strict framework for placing detainees in isolation

Detainees generally have access to their cell and a common living area in their classification section where they can go about their daily activities in contact with other people. However, an isolation measure may be imposed in situations provided by law, for example, as a disciplinary sanction.

In certain circumstances—for instance, to prevent the escalation of trouble in a given living area, or when the detainee cannot be controlled despite the disciplinary or classification process—the director of a correctional facility is empowered to use administrative segregation. This type of decision is called an "administrative measure."

Within the context of several investigations, the Québec Ombudsman noted that the main purpose of these decisions was to maintain order and security in the correctional facility. However, administrative segregation also curtails detainees' residual freedom and may have serious consequences such as anxiety, cognitive problems, altered perception, paranoia, sleep disorders, and problems with memory and concentration.[5]

In any administrative segregation measure, the principle of procedural fairness must be respected. In other words, the detainees concerned must be informed about the reasons for this decision and have the opportunity to voice their opinion. Furthermore, the measure must be reviewed at regular intervals.

The normative framework in effect in Québec correctional facilities makes no mention of the obligation of procedural fairness and how to exercise administrative segregation, unlike the standards for correctional services in the other provinces and for Correctional Services Canada.[6] This shortcoming is behind the lack of uniformity in applying administrative segregation and lack of compliance with the rules of procedural fairness.

Consequently, the Québec Ombudsman recommended that the Department modify its normative framework so that the mandatory rules of procedural fairness for the administrative segregation of detainees are spelled out.

(. . . *Prevent such situations from occurring*

- ***A citizen was confined to his cell 22 and a half hours a day for a month without his situation being reassessed.***
- ***Further to trouble in a section of the facility, four detainees were placed under administrative segregation. The only explanation they were given was that the measure had become necessary for "security reasons," which the decision-makers would not elaborate on. At no time were the detainees given any other information or the opportunity to express their opinion. One of them was kept under administrative segregation for over a month. . . .)***

5. United Nations, *Report on torture and other cruel, inhumane or degrading treatment or punishment, submitted by the Special Rapporteur of the Human Rights Council*, A/66/268, August 5, 2011, par. 62, 64 and 65.

6. Administrative segregation is governed by several sections of federal laws and regulations which prescribe procedures for abiding by the principle of procedural fairness. The enacting laws and implementing regulations of most provinces, including Ontario, British Columbia, Alberta, Manitoba, Saskatchewan, New Brunswick, Prince Edward Island, and of the Yukon (a territory), contain provisions concerning administrative segregation and its reassessment.

Guarantee the procedural fairness of the disciplinary process in correctional facilities

In 2015, based on numerous investigations, the Québec Ombudsman published a report entitled *Guarantee the procedural fairness of the disciplinary process for detainees*. After a disciplinary process, detainees may be given a sanction if they have breached the correctional facility's internal rules or procedures. The report contained 15 recommendations aimed at ensuring compliance with the applicable rules. Further to the report, the Department established an action plan to modify the instruction on discipline and the responsibilities of detainees ("*Discipline et responsabilités de la personne incarcérée*"). The Québec Ombudsman was pleased to see several of the measures that the action plan contained. The Department committed to:

- set a deadline beyond which a disciplinary report cannot be produced or the disciplinary committee can no longer hold a session;
- make it easier for detainees to have access to a witness and an attorney when they appear before a discipline committee;
- ensure the right to request review for every person who has received an unfavourable decision from the committee.

However, the Québec Ombudsman notes that the Department did not immediately accept a recommendation necessary to ensure that the principles of procedural fairness are upheld. Its purpose was to end the problem of bias (or the appearance of bias) in the composition of the discipline committee. In this respect, the Québec Ombudsman remains convinced of the need to exclude the detainees' guards from the discipline committee. It is worth mentioning that correctional services in certain other Canadian provinces and Correctional Services Canada have already decided that personnel in daily contact with detainees should not be allowed to be part of these committees. The Québec Ombudsman therefore reiterated its recommendation to the Department.

(. . . Respect the right of expression of detainees who are subject to a sanction

A correctional facility's discipline committee met to study the behaviour of a detainee. However, the detainee was not summoned so that his opinion could be heard. When the discussions were over, the man was ordered to spend seven days in segregation, without being given the opportunity to mount a defense or provide any explanation.

The Québec Ombudsman pointed out that the detainee had not been summoned to appear before the discipline committee which was about to rule on his case. The director of the facility repealed the sanction and issued a reminder of this right to all the staff. . . .)

(. . . ***Rigorously assess the relevance of the measures applied as part of the disciplinary process***

In the space of a few months, a detainee with difficult behaviour received a great number of disciplinary sanctions—100 days in solitary confinement, 32 days confinement to his cell and the loss of 100 days of reduced sentence. Because there had been so many sanctions, the Québec Ombudsman conducted an investigation which showed that the various measures had not made a dent in the detainee's behaviour.

In the Québec Ombudsman's opinion, the fact that the disciplinary process was not working should have been noticed long before the sanctions began to pile up without any improvement. It therefore asked the director of the facility to review the measures contemplated. He decided to cancel most of the sanctions imposed. . . .)

The Québec Ombudsman's special report entitled *Guarantee the procedural fairness of the disciplinary process for detainees* is found at www.protecteurducitoyen.qc.ca.

Review and improve detention conditions, the administration of justice and crime prevention in Nunavik

In April 2015, further to complaints and information it received, the Québec Ombudsman launched an investigation into the detention conditions of people incarcerated in Nunavik, a Québec territory north of the 55th parallel with about 11,000 inhabitants. To do so, it visited three villages—Puvirnituq, Akulivik and Kuujjuaq. Further to this investigation, on February 18, 2016, it published a report entitled *Detention conditions, the administration of justice and crime prevention in Nunavik*.

RESPECT THE FUNDAMENTAL RIGHTS OF DETAINEES, ESPECIALLY THEIR RIGHT TO DIGNITY

There is no correctional facility in Nunavik. People who are arrested are temporarily detained at a Kativik Regional Police Force station or in a holding cell under the responsibility of the Direction générale des services correctionnels. They remain there until their release or transfer to a facility in the "south" pending their court hearing.

In Nunavik, and more particularly in Puvirnituq, the hub for the administration of justice in the territory, the Québec Ombudsman witnessed serious violations of detainees' rights: insufficient and unsanitary facilities, obsolete sanitation facilities (if any at all), promiscuity due to overcrowding, heterogeneity (detainees with incompatible profiles kept in the same space) and cell confinement 24 hours a day. In summary, the detention conditions in Nunavik were substandard and did not always guarantee respect of detainees' basic rights, notably their right to dignity.

DETENTION CONDITIONS IN THE "SOUTH": TAKE INUIT REALITY INTO ACCOUNT AND IMPROVE THE CONDITION OF THE PREMISES

Inuit incarcerated in the 20 correctional facilities south of the 49th parallel are deprived of family and community support, and this is a serious impediment to their social reintegration. Add to this the language barrier, another obstacle when these people are called to defend their rights.

In its report, the Québec Ombudsman made 19 recommendations to the Department with a view to rectifying the failings in matters of detention in the north and south alike. These recommendations were aimed in particular at:

- reducing the cell occupancy rate in Nunavik;
- avoiding putting people who are incarcerated for very different reasons in the same cell;
- ensuring that there are basic supplies and that infrastructure and sanitation facilities are maintained and in working order;
- ensuring that holding cells, police station cells and bedding are clean at all times;
- ensuring that the quality and quantity of food served at mealtime complies with standards;
- enabling detainees to have outdoor time by providing safe space;
- ensuring better management and storage of personal belongings;
- adjusting camera angles so that the view of sanitation facilities is obstructed;
- improving access to the complaint examination system;
- ensuring that there is intervention equipment in the event of attempted suicide and that officers know how to use it properly;
- clarifying the sharing of responsibility for safe custody between correctional officers and Kativik Regional Police Force officers;
- addressing the language barrier.

On February 23, further to publication of the Québec Ombudsman's report, the Premier of Québec pledged to "ensure that the facilities would be overhauled as soon as possible." [translation] In the following days, the Department gave the Québec Ombudsman confirmation that a thorough cleaning operation had taken place and the cells at the Puvirnituq police station had been upgraded. It was provided with photographic evidence, which completed the cross-checking it had done through other means, which also served as corroboration.

ACT IN MATTERS OF THE ADMINISTRATION OF JUSTICE AND PREVENTION

At the beginning, the purpose of the investigation by the Québec Ombudsman was to determine whether detention conditions in Nunavik were such as to guarantee the respect of the detainees' rights. However, once there, it was quick to see that the shortcomings in this regard stemmed from a much broader problem that involved both the administration of justice and crime prevention. The section of this Annual Report concerning the Ministère de la Justice describes the nature of the various problems and the Québec Ombudsman's position.

The Québec Ombudsman's special report entitled *Detention conditions, the administration of justice and crime prevention in Nunavik* is found at www.protecteurducitoyen.qc.ca.

Improve the detention conditions of people serving an intermittent sentence

This year, the Québec Ombudsman visited the Hull, Leclerc de Laval, Montréal, New Carlisle, Québec City women's, Québec City men's, Percé, Rimouski, Rivière-des-Prairies, Roberval, Saint-Jérôme, Sherbrooke, Sorel and Trois-Rivières correctional facilities. Different problems were noticed and brought to the attention of the directors, in particular concerning people serving an intermittent sentence, a situation at the root of several difficulties.

As a rule, detainees serve an uninterrupted sentence. However, in certain circumstances, a judge may allow a citizen to be incarcerated intermittently, generally on weekends. This exceptional measure is allowed for low-risk offenders with short sentences. In certain cases, this enables them to keep their job.

However, this formula calls for heightened vigilance in order to prevent this detainee category from becoming suppliers of illicit substances or unauthorized items to the prison population. They are therefore grouped in distinct living areas. Given prison overcrowding, this is yet another challenge for some facilities. Hence, these offenders often end up being housed in gymnasiums, holding cells or visitors' lounges. Sometimes they are transferred to a facility far from their home. We also see several of them crammed into the same room where the air quality leaves much to be desired, the heating is inadequate or there is so much promiscuity that it is difficult to navigate the mattresses on the floor. In terms of guidelines, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment considers that there must be at least 4 m^2 of living space per person in a communal cell. The Québec Ombudsman has noted that in certain areas reserved for intermittent sentences, each individual has less than 3 m^2, which is below international standards. Furthermore, use of these "non-traditional" accommodations means that lounges or gymnasiums are closed on weekends, thereby depriving the regular prison population of activities or visits from family and friends.

Between 2010 and 2015, the number of offenders serving intermittent sentences was up by 64%, but the space available for housing them did not increase. Furthermore, several facilities have not established a maximum capacity for the areas where this population is housed.

The Québec Ombudsman has noticed that alongside this progression, the offenders who serve this kind of sentence are increasingly diversified. For example, according to facility administrators, in recent years, offenders who qualify for an intermittent sentence have more serious criminal records. As a result, some of these detainees are separated from the regular group for their own protection or that of others, a reality that makes space management even more daunting. Similarly, since it is impossible to use regular sections for offenders serving an intermittent sentence and the gymnasiums are set aside for the male detainees, the women with an intermittent sentence are relegated to overcrowded and inadequate cells. They are also put in lounges under mediocre conditions where they do not have access to certain basic amenities and items (drinking fountain, toothbrush, etc.).

Differing court-ordained terms and conditions for intermittent sentences create administrative complications. Detention days and admission times vary from person to person. As a result, the risk of error at admission or release is greater. Despite these problems and the fact that correctional facility infrastructure is not adapted to this reality, the substantial and steady increase in the number of intermittent sentences handed down by the court continues year after year. In light of this, it is clear that alternatives will have to be considered.

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

This section of the Annual Report 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 adequate health services and social services;
- the right to respect of dignity and privacy;
- the right to respect of the confidentiality of their medical record;
- the right to complete, accurate and relevant information;
- the right to make a complaint.

One aspect of 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. It may also intervene directly either on its own initiative or further to reports.

In 2015-2016, the number of health and social services complaints handled by the Québec Ombudsman decreased by 1.9% from last year's figure. The number of reports was also down (from 258 to 160). However, the percentage of substantiated complaints rose (from 40.2% to 43.2%), as did the percentage of substantiated reports (from 58.1% to 67.2%).

One year after the network reform: act on the commitments put on the back burner, particularly to improve access to services

In the past year, the Québec Ombudsman has witnessed problems stemming from the changes triggered by the structural overhaul[7] that took effect on April 1, 2015. For example, on the home support front, the investigations it conducted have shown that when local service offerings are pooled at the regional level, the trend is to apply the least generous model to the whole region.

While it is premature to assess the impact of such sweeping changes, the Québec Ombudsman can already say that the service access problems it frequently spoke out against in its previous Annual Reports have not gone away. In its opinion, in the context of this reform, one of the things that could have helped reduce these service access problems was a solid transition plan clearly

7. With this reform further to the assent of the *Act to modify the organization and governance of the health and social services network, in particular by abolishing the regional agencies*, there are now 51 public institutions as a result of the merger of the 182 institutions and 18 health and social services agencies.

establishing the phases of the proposed changes, setting out guarantees that user services would be kept intact and reallocating resources based on priorities. In fact, it recommended this in its brief on Bill 10 – *Act to modify the organization and governance of the health and social services network, in particular by abolishing the regional agencies*, presented to the Committee on Health and Social Services on October 27, 2014.

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

For several years now, the phenomenon of unreasonable wait times has increased. The figures said it all in 2014-2015:[8]

- Only 66% of citizens are registered with a family physician;
- In terms of citizens' access to a family physician, Québec ranks last among Canadian provinces;
- In the past five years, more than a million users have signed up for the centralized waiting list for orphan patients (GACO)[9] so that they could be taken in charge by a family physician. Even so, in certain regions, the wait after registering with GACO can be as much as two years;
- In Québec, only 13% of family physicians see their patients the same day or the next day if the need arises. The rate is 28% for Canada as a whole, 37% for Ontario, 54% for Switzerland, 56% for New Zealand and 67% for Germany;[10]
- While 71% of people age 55 and older report suffering from a chronic disease, only 38% have a treatment plan and only 18% are contacted about their health condition between medical appointments.[11] For this indicator as well, Québec is at the bottom of the list of Canadian provinces and industrialized societies.

Stop delaying the correct response to home support needs and to the question of autonomy for vulnerable individuals

The Québec Ombudsman remains particularly concerned about the difficulties people with reduced autonomy have in getting home support services. By this we mean vulnerable individuals who depend on the services required by their condition, services which they do not get soon enough or as needed.

At a time when the 65-and-over population has been growing by over 3% annually for the past ten years,[12] the increase in the number of elderly people who receive home support services is under the 2% mark.[13] In 2014-2015, only 13% of seniors with reduced autonomy received home support services, far below the Department's target of 16%.[14] In tangible terms, 40,000 people aged 65 and over were kept waiting for services this year, which is an increase of nearly 15% since 2005.[15]

8. Ministère de la Santé et des Services sociaux, *Rapport annuel de gestion 2014-2015*, p.16.
9. In April 2016, the Ministère de la Santé et des Services sociaux announced the creation of the centralized waiting list for access to a family physician (GAMF).
10. Commissaire à la santé et au bien-être, 2015, *Perceptions et expériences des médecins de première ligne: le Québec comparé*, p.9.
11. Commissaire à la santé et au bien-être, 2014, *Perceptions et expériences des personnes de 55 ans et plus: le Québec comparé*, p.15.
12. Estimates based on Statistics Canada data, Demography Division, Estimates of Total Population. Adapted by Institut de la statistique du Québec, 2015.
13. Estimates based on data provided further to a request to the Ministère de la Santé et des Services sociaux, March 2016.
14. Ministère de la Santé et des Services sociaux, *Rapport annuel de gestion 2009-2010*, p.39-40.
15. Estimates based on data provided further to a request to the Ministère de la Santé et des Services sociaux, March 2016.

Find real solutions to problem situations and have all users benefit

The Québec Ombudsman has also seen that, in many cases, it is increasingly difficult to truly resolve a situation that is harmful to a user, due, we are told, to a lack of resources within institutions. For example, when the Québec Ombudsman successfully intervenes to have an institution put someone on its waiting list, that is a first step; however, if the person waits for several months, the response remains unsatisfactory. In such cases, in all fairness to other users, the Québec Ombudsman cannot recommend that a public service give this person priority to the detriment of another.

This is why the Québec Ombudsman insists on the importance of ensuring that solutions to individual problems are applied to everyone who experiences the same problem, with a view to systemic solutions.

As a rule, the Department accepts the Québec Ombudsman's recommendations. However, all too often, commitments are slow to be acted on. This in turn produces gaps and delays in gauging the services required, thereby deepening the divide between service supply and demand.

Follow-up on some of the Québec Ombudsman's special reports speaks volumes in this regard:

- The report on accessibility to home support services, published in 2012, contained recommendations whose implementation is pushed back constantly (page 96 of this Annual Report);
- Three reports on services for children, youth and adults with an autism spectrum disorder, physical disability or intellectual disability, released in 2009, 2012 and 2015 respectively, proposed tangible improvements that have yet to be made (page 109 of this Annual Report).

Clearly define the "basket of insured services"

The Department's current review of the public service offering (or "basket of insured services") for health services and social services alike must be transparent and open. In its October 2015 brief to the Committee on Health and Social Services, the Québec Ombudsman suggested tangible solutions regarding the funding of accessory costs.

Apart from revising health and social services system governance, other means of lowering the tab for public services must be considered, including:

- Better monitoring of pharmacotherapy at all service outlets;
- Optimal intervention by physicians and other medical and social service professionals;
- A rigorous examination of situations of overdiagnosis and overtreatment;
- Review of pre-hospital emergency service funding.

In the Québec Ombudsman's opinion, these are ways of generating substantial savings that would make it possible for users to keep on receiving insured services free of charge at service outlets, and, at the same time, ensure a more adequate response to their needs.

The Québec Ombudsman's brief and letter to the Committee on Health and Social Services are found at www.protecteurducitoyen.qc.ca.

Keep the complaint examination system efficient

The complaint examination system's effectiveness lies in the fact that users can turn to an impartial and accessible mediator to express their dissatisfaction. Service reorganization and bigger institutions notwithstanding, these principles must remain.

Since July 2015, a Department policy has provided for a service quality and complaints commissioner in every institution within the network. On the basis of this approach, professional employees were designated service quality and complaints advisors in order to replace certain commissioners who had managerial status.

However, under the *Act respecting health services and social services*, the advisers are not delegated any powers enabling them to fulfil the duties reserved to service quality and complaints commissioners or assistant commissioners. The Québec Ombudsman feels that certain functions should devolve to them, including those concerning the protection of personal information, and that they should be granted the necessary immunity in the exercise of their duties. This would require a legislative amendment.

It should be noted that this Annual Report covers the period until March 31, 2016.

The Québec Ombudsman's observations and recommendations presented in this Annual Report concern the following areas:

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

Home support

The vast majority of people experiencing a loss of independence, whether due to age or disability, want to remain in their own home for as long as they can. It is clear that home support services help them to maintain their quality of life, in addition to reducing episodes of hospitalization and preventing or delaying a move to an intermediate resource or a residential and long-term care centre (CHSLD).

According to the latest data,[16] the Ministère de la Santé et des Services sociaux invests an average of nearly $5,000 a year per home support user. In contrast, lodging in a CHSLD costs some $80,000 per user. In the case of home support, the money is not invested in capital assets, but in care and services.

16. Committee on Health and Social Services, *L'étude des crédits. Réponses aux questions particulières* (2014-2015 and 2015-2016), Ministère de la Santé et des Services sociaux.

The hourly rate for home support varies depending on the type of service provider:

- $55: family assistants from integrated health and social services centres (CISSSs) and integrated university health and social services centres (CIUSSSs);
- $23: workers from social economy enterprises that provide domestic help;
- $16: employees hired privately through the direct allocation program – service employment paycheque.

These figures show that for the same amount of public money invested annually for lodging in an CHSLD, a person could get a 28-hour weekly home support service plan (CISSS or CIUSSS employees), a 66-hour plan (domestic help through a social economy enterprise) or a 96-hour plan (service employment paycheque). Despite these compelling statistics, the trend has been to cut back the number of hours offered. Yet, the many advantages of home support are clearly evident, both economically and in terms of meeting the needs of people with reduced independence.

MAKE MORE ROOM FOR HOME SUPPORT RESOURCES

Still today, for most people experiencing a loss of independence, home is their first choice.[17] There are 6,300 CISSS or CIUSSS health and social services assistants, better known as family assistants, who go into users' homes to provide home support services. Generally, these services consist of assistance with activities of daily living, such as helping people wash themselves, get dressed and eat.

The remaining publicly funded home service hours are divided among the following providers:

- social economy enterprises that provide domestic help;
- home service and health cooperatives;
- health cooperatives;
- community organizations and not-for-profit organizations;
- nearly 17,000 privately hired employees under the direct allocation program – service employment paycheque.

The Social Economy Action Plan, launched in March 2015, is a first step in the revamping of the government vision of home support. The action plan, which stemmed from deliberations by the main associations representing the 102 social economy enterprises that provide domestic help, provides for measures such as a manpower training program that will enable the creation of 4,000 new positions for home care attendants by 2020.

Insofar as they help seniors who are experiencing a loss of independence maintain their quality of life, the Québec Ombudsman sees all these partners as being part of the solution for dealing with this demographic reality. Because these home workers are in a position to see possible changes to their clients' health condition, they also play a preventive role.

17. Home support policy published by the Ministère de la Santé et des Services sociaux in 2003 (*Chez soi: le premier choix*).

BE PREPARED FOR THE MAJOR HOME SUPPORT ISSUES OF THE FUTURE

Despite progress in home support, the Social Economy Action Plan alone cannot address certain home support service development issues, namely:

- strengthening the role of prevention with seniors with reduced independence;
- realigning the government's financial support with the realities of users who need home support;
- adjusting the service offering based on current and future needs.

In recent years, given the demographic curve, the gap between supply and demand has widened. Concrete solutions afforded by public services are disturbingly slow in coming.

As early as the spring of 2012, in its special report entitled *Is home support always the option of choice?*, the Québec Ombudsman asked the Ministère de la Santé et des Services sociaux to clarify its service offering and establish means conducive to deploying it. Four years later, there are still no guidelines. Meanwhile, numerous users pay the price for an increasingly restrictive interpretation—if not misinterpretation—of the home support policy which dates back to 2003. Institutions grappling with a rising demand for services and limited resources make care-provision projections that fall well below what needs really are and set new exclusion criteria contrary to the home support policy. The many substantiated complaints bear this out. For example, people who have received services for several years are suddenly no longer entitled to them because, purportedly, they no longer satisfy eligibility requirements. Yet the policy criteria themselves have not changed.

Furthermore, with the gradual erosion of free services for assistance with activities of daily living, even for the most underprivileged client populations, prevention is seriously compromised. Many people simply cannot afford such services. For these vulnerable people, stoppage of services can lead to severe undernourishment, isolation, deficient hygiene and general health problems.

Again this year, the Québec Ombudsman is critical of public authorities' insufficient action when it comes to home support and urgently calls for service provision that better responds to needs.

The Québec Ombudsman's report entitled *Is home support always the option of choice?* is found at www.protecteurducitoyen.qc.ca.

(. . . *Restore free domestic help services for disadvantaged seniors*

A low-income senior who lived alone contacted the Québec Ombudsman further to a decision by the CIUSSS in her region to cut the free domestic help service hours she had been getting for several years.

The investigation by the Québec Ombudsman showed that the lady was unable to do a series of household chores that had, until this point, been taken care of by a worker who came to her house. She could not afford services equivalent to the ones she had been getting.

In the wake of the budget trimming demanded of institutions, the CIUSSS had decided to terminate the services provided to everyone whose condition required four hours or less of services per week. The people in charge considered that these users had no disability to speak of, despite the assessments that confirmed the opposite.

The Québec Ombudsman concluded that the institution could not use this rationale to systematically end access to free domestic help for people whose situations actually were consistent with home support policy criteria. It therefore recommended that free services be restored for these people, and this was done. . . .)

(. . . **Assess users' needs carefully in order to provide them with the necessary services – 1**

A man with a serious pulmonary disease filed a complaint with the Québec Ombudsman when the CISSS in his region cut the three hours of weekly domestic help services he had been granted under a program for people at the end of life. The man having beaten the odds, the institution decided that he no longer met program requirements. Even though his needs were still the same, the sick man was put on a waiting list for a regular home support program.

The user was not prioritized on the new waiting list because his application was for domestic help rather than for personal care. However, the investigation by the Québec Ombudsman showed that the man needed help with personal care, but that his spouse took care of it because the couple had chosen to protect his privacy.

The Québec Ombudsman concluded that it was completely unfair to penalize the user because he and his spouse had chosen to take on part of the service provision themselves when they could have received the services free of charge. At the Québec Ombudsman's request, the service hours were reinstated. . . .)

(. . . **Assess users' needs carefully in order to provide them with the necessary services – 2**

A woman with multiple sclerosis had received 33 hours a week of home support services for many years. She contacted the Québec Ombudsman because the CISSS had cut the services down to 12 hours, even though her needs had not changed.

The investigation by the Québec Ombudsman established that the CISSS had considered that the lady's degree of autonomy had been relatively stable over time for her activities of daily living and her instrumental activities of daily living. However, her daughter who lived with her had turned 18, and the institution took this into account in assessing the care it would grant. The Québec Ombudsman felt that this was reasonable, at least at first glance. However, it soon became obvious that the lady dealt with the service reduction by shifting the use of the allocated hours; she declined provision of help for getting out of bed and gave the provision of other needs priority, the upshot being that she slept in her wheelchair. Deeming this situation unacceptable, the Québec Ombudsman recommended that the institution reassess the woman's situation. Further to reassessment, she was found to be entitled to 17 service hours instead of the 12 initially granted. . . .)

(. . . ***Assess users' needs carefully in order to provide them with the necessary services – 3***

An elderly woman with a disability had just found out that she had cancer. For more than 10 years she had been getting three hours of home support services per week, which she used to have laundry, a few errands and a bit of housework done. The CIUSSS in her region informed that she would no longer be getting any services at all, a decision based on program criteria. Because she lived with her spouse, it was deemed that his contribution would make up for her disability.

The user contested the decision and pointed out that her needs would only increase and that her spouse was less and less able to take care of her because he too had been diagnosed with cancer very recently.

During the investigation it conducted, based in particular on comments by the woman's social worker, the Québec Ombudsman learned that, in fact, the woman needed help with washing herself, getting dressed and doing housework. Her spouse was ill and exhausted.

The Québec Ombudsman recommended that the CIUSSS reassess the user's situation in keeping with the principles of the home support policy. The reassessment was carried out and all of the services were restored. . . .)

Support for elderly autonomy

With population aging there comes a greater need for residential resources for the elderly, especially for those with cognitive impairments. This increases pressure on the service network at a time when it cannot keep up with the rising demand for home support. The number of places in public residential and long-term care centres (CHSLDs) being limited, private partners, whether intermediate resources or seniors' residences, are more and more in demand. In its 2014-2015 Annual Report, the Québec Ombudsman emphasized the importance of quality services to seniors and respect of their rights, whether the residence is public or private. To this day, it remains concerned about the problems of seniors whose health condition and needs are more than the residence can handle.

For the past several years, the Québec Ombudsman has drawn the Ministère de la Santé et des Services sociaux's attention to the problems encountered by residents exposed to the aggressive behaviour of fellow residents with dementia. The Department is working on reviewing its policy, particularly in the area of senior care and services as well as the management of the behavioural and psychological symptoms of dementia. However, the concrete results of this work have yet to be seen and in the investigations it carries out, the Québec Ombudsman continues to witness the distress of the residents and of the families concerned.

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

- difficulty in accessing public residential resources;
- violence in CHSLDs;
- cases of mistreatment of residents in CHSLDs;
- environments unsuitable for younger people who live in CHSLDs;
- inappropriate behaviour by operators of private seniors' residences.

ACCESS TO PUBLIC RESIDENTIAL RESOURCES: RESPOND TO THE NEEDS OF PEOPLE BEFORE THOSE OF MANAGERS

Each year, the Québec Ombudsman reports on the difficulties encountered by users who need to be in a public residential resource because of their condition. Again this year, it saw that the health and social services network's way of working does not take the consequences of certain decisions on users and their families into account sufficiently. Investigations show that some people have been subjected to several transfers from one to resource to another because none of the places met their needs. Other people have had to accept a place in a temporary resource, sometimes far from their loved ones, because there was no available space in the residence of their choice.

For example:

- A person with advanced dementia was transferred to four different residences in one month before getting a place in a CHSLD, mainly because his needs in relation to the available resources were not taken into account sufficiently. These moves, which were trying and unsettling, also generated high administrative costs.
- Users have been housed in temporary resources where distance complicated all contact with their loved ones. However, these transitional residences are often the elderly person's last home, since the wait time for admission to the place of their choice may range from four to six years in some cases. It happens that people of an advanced age die before they are admitted to the residence of their choice for this last period of their life.

The Québec Ombudsman is also concerned about the exhaustion experienced by natural caregivers, who are often treated more as care providers than as family. Take the case of a person over 90, with significantly reduced autonomy, who lived alone in his house thanks to constant help from his family. However, the family said that they were exhausted by this increasingly difficult task. Despite this, the institution refused to admit the person to a public residential resource. The most that was offered was an increase of a few home support hours, which never materialized because the institution did not have sufficient resources. In another case, a user with terminal cancer was admitted to a CHSLD. Two weeks after his admission, the staff were intent on sending him home, in spite of his many needs and his spouse's trepidations. The transfer never took place: the user's condition deteriorated and he died five days later.

(. . . *Provide an end-of-life environment of dignity and respect*

After a hospital stay, an elderly man with severe health problems was admitted to a CHSLD. He died not long afterwards. The family approached the Québec Ombudsman because they felt that instead of providing the peaceful and harmonious atmosphere that one would want for someone with such a short time left to live, the institution had exposed him to living conditions that were unacceptable.

The investigation by the Québec Ombudsman showed that not long after the man was admitted, the CHSLD had started renovations on his unit. While the work was being done, he was placed in the residents' lounge, near an uncurtained window. After the family complained, the CHSLD agreed to put the man back in his room. However, the noise and odours greatly inconvenienced the sick man and his family. Evidently, the CHSLD had underestimated the consequences of its decision to admit a resident under such conditions.

The Québec Ombudsman recommended that the institution review its admission policy for the residential and long-term care centre. The people in charge of admission must ensure that they are familiar with the needs of users coming from another institution even before they are transferred, and determine whether they can fulfil these needs on the clinical and human level. The institution agreed to modify the admission procedure. . . .)

(. . . ***Properly weigh the consequences of an administrative decision on elderly people and their family***

A lady who was nearly 90 years old lived alone in her apartment. Her sister, who was the only person who helped her, lived in the apartment next door. After falling, the lady was hospitalized and the evaluation of her condition showed that she was not capable of going home. The people in charge of access to residential resources in the region prioritized her application for a place in an intermediate resource that she had chosen. However, there was a projected wait of several months before her admission. In the meantime, the hospital transferred her to a CHSLD. In order to visit the lady, her sister had to travel two hours every day using public transportation. She therefore decided to move close to her elderly sister's next living environment—the resource she was waiting to be admitted to. To make matters worse, from an administrative viewpoint, the lady's transfer to a CHSLD resulted in her losing her priority rating. This meant a possible wait time of four to six years before she might be offered a place in the resource she preferred from the beginning.

Thanks to action by the Québec Ombudsman, the user's priority ranking was reinstated retroactive to the date of her transfer. Furthermore, the hospital adopted new rules regarding temporary lodging (which would no longer only be provided in CHSLDs) for all client populations. From then on, available places would be sought within the local service network, therefore closer to residents' families. . . .)

EXERCISE THE UTMOST VIGILANCE IN ENSURING THE SAFETY OF SENIORS IN CHSLDS

For the past several years, the Québec Ombudsman has intervened in cases in which CHSLD residents have been attacked by fellow users displaying violent behaviour. Certain institutions even consider altercations between residents inevitable and downplay them. It goes without saying that the Québec Ombudsman cannot condone this way of thinking. Work on management of the behavioural and psychological symptoms of dementia is presently underway at the Ministère de la Santé et des Services sociaux. The real-life results remain to be seen.

Aggressive behavior by residents in residential settings is a major problem. Victims live in a state of great insecurity and perceive their living environment as having become dangerous and hostile. On the other hand, the quality of life of people who display aggressive behavior is also affected since they often find themselves isolated from the group and given psychotropic medication. The *Act respecting health services and social services* specifically provides that every resident has the right to receive adequate health services and social services in a personalized and safe manner.

(. . . ***See to protecting seniors in CHSLDs – 1***

The Québec Ombudsman received a report of sexual touching in a CHSLD. The investigation made it possible to establish that some 30 similar incidents had occurred within eight months and that the authorities had dragged their heels in reacting. These delays pointed to the conclusion that the institution had shirked its responsibility to protect the safety and physical integrity of its clientele. The investigation by the Québec Ombudsman also revealed failings in terms of the reporting and disclosure of sexual touching and regarding application of means of control to the person who committed these acts.

At the end of the investigation, the Québec Ombudsman made six recommendations to the integrated health and social services centre (CISSS) to which the CHSLD reports. The recommendations were aimed in particular at immediately ensuring the safety of the residents and at introducing a protocol for managing situations in which residents display behavioural disorders of a sexual nature.

The CISSS agreed to act on the various recommendations. . . .)

(. . . ***See to protecting seniors in CHSLDs – 2***

An elderly woman living in a CHSLD was regularly hit and sworn at by an aggressive resident. Understandably, this behaviour made her anxious and worried her family. The Québec Ombudsman saw that she was not the only one subjected to violence.

Before the Québec Ombudsman was made aware of the matter, the CHSLD had tried to solve the problem by assigning a new employee to monitor the aggressive resident around the clock. This solution, which was too expensive in the long term, was dropped and other measures were put in place, i.e. tighter surveillance, diversion strategies to distract the aggressive resident, use of measures to alert the personnel when the resident left his room or got out of bed and presence of a male care attendant. In addition, the personnel were instructed to complete a behavioural assessment grid, and a request for a geriatric psychiatric assessment was made. Despite these initiatives, the situation only got worse, and in spite of the risks for residents and staff alike, more than eight months elapsed before the CHSLD obtained transfer of the violent resident.

The Québec Ombudsman recommended that the integrated university health and social services centre (CIUSSS) introduce measures to reduce the risk of assault among residents and to determine criteria for people to be admitted to, and allowed to stay on the unit, with a view to keeping residents with incompatible profiles away from each other. The CIUSSS agreed to act on the Québec Ombudsman's recommendations. It also plans to open a unit for people with cognitive impairments with behavioural symptoms. . . .)

ENSURE NOT ONLY CARE, BUT ALSO THE WELL-BEING OF SENIORS IN RESIDENTIAL RESOURCES

Each year, people inform the Québec Ombudsman of situations where people in residential resources are neglected in terms of care and sometimes even mistreated by staff. The complaints have to do primarily with long response times when residents ask to be taken to the washroom, insufficient help with eating and personal hygiene and disruptive staff shortages and high turnover, as well as a stultifying environment.

During the investigations it has carried out, the Québec Ombudsman has noted that the problems experienced by residents are sometimes known to the authorities. In these particular cases, flawed and inadequate management practices and supervision allow unacceptable situations to persist. In acting this way and not paying attention or providing support, managers abdicate responsibility for the well-being of residents.

According to departmental guidelines, the provision of quality living environments for residents requires that managerial teams demonstrate leadership. They state clearly that in their management practices, people in positions of responsibility must make the response to residents' needs and expectations a priority.

(. . . *Act promptly to effectively counteract all situations of mistreatment in CHSLDs*

The Québec Ombudsman received reports of the mistreatment of elderly people with severe cognitive impairments and physical limitations in a CHSLD. The investigation it conducted brought to light major failings in the quality of care and services to residents, as well as in the living environment:

- ***insufficient personal hygiene care;***
- ***meals taken away before residents were finished eating;***
- ***residents deprived of hearing aids or eyeglasses;***
- ***residents tied down or prevented from moving about.***

The deterioration of care and services stemmed from the actions and nursing approach advocated by a nurse in a position of authority. The administrators of the institution knew that the behaviour of certain members of the personnel towards the residents was unacceptable. Furthermore, the employees who blew the whistle on some of the abuse became, in turn, the victims of reprisal by the institution.

The Québec Ombudsman made several recommendations to the CISSS to which the CHSLD reports. They were aimed at a complete overhaul of how care and services are organized, namely:

- ***evaluation and improvement of staff behaviour towards residents;***
- ***use of means of control in compliance with established standards;***
- ***an administrative investigation into the management practices behind the failings observed.***

The CISSS was quick to respond to the Québec Ombudsman's recommendations and promptly implemented all of them.

After filing its intervention report, the Québec Ombudsman received a copy of a letter sent to Ministère de la Santé et des Services sociaux authorities five years earlier informing it of the same unacceptable practices within the CHSLD. The Department said that it did not have the letter in question. . . .)

ADAPT THE RULES FOR A COMPLETELY DIFFERENT CLIENT POPULATION, THOSE WHO ARE UNDER 65

The challenges faced by CHSLDs in providing their residents with a quality living environment are even greater when people under age 65 are forced to live there because of a serious or degenerative illness. Residential resources have difficulty reconciling their administrative and organizational constraints with the needs of this more active client population. It should be remembered that in 2014, the Québec Ombudsman transmitted a brief to the National Assembly's Committee on Health and Social Services concerning the living conditions of adults living in CHSLDs. In it, the Québec Ombudsman argued that this kind of environment was unsuitable for people who are not seniors, but who do have severe physical disabilities. We should therefore be looking at a flexible organization of services that fosters their social participation, a vision which by definition is hardly compatible with CHSLDs' current context and structures. The Québec Ombudsman considers that institutions must be creative and humane in adapting the living environment to the needs of these residents.

(. . . *Adapt the rules to the needs of a resident who is younger than the usual client population in a CHSLD*

A CHSLD refused to allow a resident in his 60s to have visitors after 10 p.m. The resident had become quadriplegic further to a stroke. He was particularly critical that the restrictions on his right to visitors prevented his wife from seeing him after she finished work. Furthermore, he could not do his work properly because he needed someone to help him with his writing and literary composition. He felt that the best time to work was when things were quiet at the end of the evening.

The CHSLD used the issue of security as a pretext for its decision to limit visiting hours to between 8 a.m. and 10 p.m. The idea was to avoid having non-residents wander the hallways and perhaps bother residents in their room. However, the information gathered by the Québec Ombudsman showed that the visits to the resident, who had his own room, did not disturb anyone around him.

The Québec Ombudsman recommended that the CHSLD allow the family and the transcriber to visit the resident outside regular visiting hours, which it agreed to do. . . .)

TREAT EVERY RESIDENT WITH UTMOST RESPECT AND END INAPPROPRIATE BEHAVIOR BY THOSE IN CHARGE OF PRIVATE SENIORS' RESIDENCES

Certain residents say they are bullied and threatened if they dare to complain about the quality of the care and services they receive in private seniors' residences. The Québec Ombudsman has observed that certain operators do not like to be criticized. By dangling the threat of legal action over the heads of complainants, they perpetuate a climate which is not conducive to the filing of complaints.

Moreover, these operators have been known to reject any government intrusion in the administration of their affairs and to ignore certain rules which do not suit them. Also, they do not always offer the necessary training to their staff. A seniors' residence cannot be operated the same way as another business. Attending to the well-being and comfort of seniors entails responsibilities and obligations. Even though these residences are called on more and more to relieve an overburdened public system, they cannot disregard their primary obligation, that of treating every resident with courtesy, fairness and understanding, in keeping with his or her dignity, autonomy and needs.

DRAFT REGULATION ON THE CERTIFICATION OF PRIVATE SENIORS' RESIDENCES

This year, the Québec Ombudsman intervened with the Minister of Health and Social Services concerning the draft *Regulation respecting the certification of private seniors' residences*. A summary of the Québec Ombudsman's intervention is presented in the section entitled *Parliamentary Watch Report*, on page 131 of this Annual Report.

The Ombudsperson's letter to the Minister of Health and Social Services is found at www.protecteurducitoyen.qc.ca.

Mental health

REACH 2015-2020 MENTAL HEALTH ACTION PLAN TARGETS

In October 2015, five years after the previous action plan expired, the 2015-2020 plan was finally published under the name *Faire ensemble et autrement* (working together in a new way). Its particular aim is to establish concrete measures for fostering and simplifying access to services.

The action plan reaffirms that people must come first, that families have a central role in care and service provision and that the healing-based approach is valid. An entire component deals with the prevention of mental health problems in young people, including the required care and service continuum as they reach adulthood. The Québec Ombudsman notes, however, that there is no specific measure regarding age-related mental health problems, even though demographics make this a major issue.

The action plan stresses home care by specialized teams rather than in-patient care. While this type of care may be suitable for a certain clientele, the Québec Ombudsman reiterates that for some people a return home on their own can be complex. When they cannot live alone at home, resources adapted to their condition are required. While non-institutional resources exist, they are often insufficient or difficult to access.

A component of the action plan deals specifically with clinical practice, including partnership and inter-professional collaboration, especially for front-line services. Targets have been set, in particular for service access wait times. However, the Québec Ombudsman questions whether the system is able to meet some of these targets and offer service in a timely manner without compromising the quality of the initial assessment and the medical care of users. The complaints examined this year show that users wait several months for services, even though the target is 30 days. In an attempt to reduce wait times, certain local community service centres (CLSCs) have instituted group follow-ups. While this shortens wait times, the Québec Ombudsman considers that particular attention must be paid to the organization of services to ensure that follow-up corresponds to users' needs.

The Québec Ombudsman notes that a national institute for forensic psychiatry will be created to help develop, among other things, best practices in forensic psychiatry in civil and criminal law alike.

Moreover, the Québec Ombudsman is pleased that the Ministère de la Santé et des Services sociaux finally intends to publish ministerial guidelines for the application of the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*. It specifically recommended this course of action in its special report published in 2011. It will therefore follow the publication and implementation of the guidelines in 2016 with interest. The boards of directors of institutions are required to include information on the application of this Act in their annual management reports and adopt a protocol consistent with the guidelines.

Lastly, the action plan provides that the Ministère de la sécurité publique and the Ministère de la Santé et des Services sociaux make a joint request to the government for the latter to take full responsibility for health and social services in correctional facilities. As far back as 2011, the Québec Ombudsman recommended such a transfer of responsibilities in its special report entitled *Toward services that are better adjusted to detainees with mental disorders*. When this aspect of the action plan is implemented, the Québec Ombudsman will pay particular attention to the adaptation of mental health services, as well as the preparation of detainees for their release and social reintegration.

While supporting the announced advances, the Québec Ombudsman has qualms about follow-up on the numerous measures contained in the action plan, several of which remain general in nature. Some of the measures require issue panels or action plans while others will be implemented by means of a ministerial plan and territorial plans. How will implementation of the action plan by various institutions and bodies be monitored?

USE JUDGMENT IN APPLYING PLANNED MEANS OF CONTROL

Again this year, the Québec Ombudsman had to issue reminders about the procedure for the use of planned means of control. In May 2015, the Ministère de la Santé et des Services sociaux released a revised version of the framework for developing protocols regarding the use of means of control. The framework now includes chemical substances as a means of control. However, in spite of this review, and even if the Department's guidelines are clear as to the exceptional character of means of control, it appears that in certain institutions, particularly hospital emergency rooms and psychiatric departments, there are breaches of these guidelines in cases of isolation, among others, or in cases of the prolonged use of unplanned means of control.

(. . . *Call a spade a spade – 1*

A person complained about how she was dealt with when she arrived at a hospital emergency room. She reports that she was put in a room devoid of medical equipment which she could leave only when she needed to use the washroom down the hall and that she was under the constant watch of a security guard. As she saw it, she had been placed in isolation, even though the institution had no good reason for using such a measure.

In the institution's opinion, because this room could be used for purposes other than isolation, coupled with the fact that the woman could leave the room to use the washroom, this did not constitute isolation. In fact, this was indeed isolation because the woman could not leave the room when she wanted to. Furthermore, there was nothing in the user's medical record that warranted the use of such a measure.

The Québec Ombudsman recommended that the institution concerned modify its protocol governing the use of means of control and see that the personnel comply with it. The institution accepted and implemented the recommendations. . . .)

(. . . *Call a spade a spade – 2*

A citizen was escorted to a hospital centre by correctional service officers for a court-ordered criminal responsibility assessment. When the man got there, an emergency physician prescribed full watch by a security guard. The only place the man was allowed to go was the washroom, until a psychiatrist changed the measure and allowed the man to move about freely after he took him to the mental health unit.

Neither while he was in the emergency room nor in the mental health unit was his risk of harming himself or others properly documented. It was not any better when a planned isolation measure was used and he was confined to his room and the isolation room. The measures were undertaken without the staff having tried to obtain his consent or that of his representative.

The Québec Ombudsman made specific recommendations aimed at rectifying the deficiencies observed. The institution concurred. As at March 31, 2016, the Québec Ombudsman was monitoring their implementation. . . .)

COMMUNITY ORGANIZATIONS: ENSURE RESPECT OF USERS' RIGHTS

Under the *Act respecting health services and social services*, subsidized community organizations that offer health services and social services are free to define their orientations, policies and approaches. However, in exercising this leeway, they must not violate the Act or ignore best practices concerning users' rights. In the past year, the Québec Ombudsman has had to recommend that some community groups change their practices in this regard. These recommendations touched mainly on the procedures for record-keeping, management of problem behaviours and searches of residents' rooms.

(. . . *Improve record-keeping so as to better manage problem situations*

A citizen filed a complaint when a community organization of which she had been a long-time member expelled her. Afterwards, she alleged that because of her complaint, she was denied a portion of the services provided to her by the organization up to that point.

The investigation showed that no information had been entered about the organization's interactions with this woman. If information about the difficulties with the user over the years had been written down, the organization would have been able to justify her suspension. Even though there is nothing in the Act that obliges community organizations to collate this information, not doing so may complicate the management of problem situations considerably, as it did here. Furthermore, the community organization disregarded the rules that should be followed in managing suspensions or expulsions. In order to improve the quality of the services offered, the institution agreed to introduce a record-keeping system for special cases, to review its by-laws and regulations and to provide for the attendant conflict-management measures. . . .)

(. . . ***Foster joint action by a community organization and a CISSS***

A citizen complained about being expelled from an organization that provides shelter for people with a mental health disorder and that he had not been given the opportunity to be heard on the matter.

He reported that after a little more than a year at the resource, he was advised that the board of directors had expelled him because of his lack of cooperation, lack of compliance with the rules and persistent negative criticism of the resource and its workers. His criticism concerned, among other things, the fact that users had to allow the staff to search their rooms without notice.

Based on its examination of the complaint, the Québec Ombudsman made the following recommendations to the community organization:

- ***develop a clear expulsion procedure;***
- ***devise an intervention plan in order to coordinate the services that the resource offers to users and those of all network workers called to intervene in their regard;***
- ***ensure that caseworkers receive professional development and clinical supervision;***
- ***modify the handbook for residents to include guidelines concerning room searches.***

Recommendations were also made to the integrated health and social services centre (CISSS), the organization's main source of funding, which, as such, has a share of the responsibility for the quality of the services provided to users.

The organization and the CISSS, whose willingness to collaborate to improve services to users was mutual, welcomed the Québec Ombudsman's recommendations. . . .)

Disabilities

Last year, the Québec Ombudsman participated in the special consultations on Bill 10 – *Act to modify the organization and governance of the health and social services network, in particular by abolishing the regional agencies*. At the time, it warned the Ministère de la Santé et des Services sociaux that the integration of regional policies might come at the cost of diluting the slate of services. It feared that, because of the changes, the Department would use the least generous of the local baskets of services as a regional template. Unfortunately, based on the investigations it conducted this year, the Québec Ombudsman sees that this risk was not well managed. This is especially evident in the way eligibility criteria are applied for programs for people with physical or intellectual disabilities or autism spectrum disorders.

Concretely, most institutions now favour a more restrictive interpretation of eligibility rules, thereby limiting access to a greater number of users. Children and adults with disabilities admitted into the various programs still have to wait years before getting the services they need, such as specialized rehabilitation. To make matters worse, when they finally qualify, the services are not always delivered at the required intensity.

The Québec Ombudsman applauds the efforts made to simplify structures and to put a stop to compartmentalization, but it nonetheless reiterates that the changes made in implementing this Act must lead to better access to services. The Québec Ombudsman draws attention to the fact that the Department announced that its slate of physical and intellectual and autism spectrum disorder services would be published in the spring of 2016. This should eliminate a case-by-case approach to solving problem situations. The service offering must meet the needs of people with disabilities according to their condition based on the required guidelines and in timely fashion.

Apply service access criteria without unfairly narrowing their reach

In the wake of the optimization measures with which institutions must cope, many have reviewed their users' files to make sure that the services offered match program admission requirements, which are based on the severity of the diagnoses. In some cases, this has resulted in restrictive and unfair interpretation of these criteria. Families have suffered unjustified service cuts and have been saddled with a greater financial burden at a time when they are already distressed about their loved one's illness or disability.

(. . . *Do not decrease services unfairly – 1*

The spouse of an elderly woman complained because she was no longer eligible for a program at the rehabilitation centre in her region. Under this program, incontinence underwear is provided free of charge. Thus far, she had qualified due to her diagnosis of a neurological disorder unrelated to age. A few years later, when her condition was reassessed, it was found that she now had age-related dementia, which put an end to her eligibility.

The investigation by the Québec Ombudsman made it possible to establish that the woman's dementia was a known consequence of the pre-existing condition which had made her eligible for the program. The Québec Ombudsman therefore recommended that her right to free incontinence underwear be reinstated, which the institution agreed to do. . . .)

(. . . *Do not decrease services unfairly – 2*

The mother of a child who has a very rare syndrome that prevents him from eating complained when the rehabilitation centre cut off the subsidy she had been getting for three years. This amount covered part of the cost of transporting the child to a hospital located several kilometres from the family home for treatment. The reason for the decision: the child is not disabled within the meaning of the program.

At the end of the investigation it conducted, the Québec Ombudsman, considering that the child's limitations were indeed akin to a disability, rejected this interpretation, and recommended that the institution reinstate the subsidy, which it refused to do. It then contacted the Department, which replied that in the past, the interpretation of program eligibility criteria had been too broad. Given the financial constraints and waiting lists, the criteria are currently under review with a view to better defining the client population. The Québec Ombudsman will be watchful concerning the results of this review. . . .)

Reduce wait times

In June 2008, the Department published its access plan for persons with physical disabilities, intellectual disabilities or autism spectrum disorders. The goal was to increase access to services for eligible people within a reasonable time.

Eight years later, the Québec Ombudsman sees that despite their good intentions, many institutions are hard-pressed to respect the access criteria specified in the plan. It expects the results of the Department's work on the disability service offering, slated for the spring of 2016, to contribute to reducing wait times.

(. . . ***Assign sufficient resources in order to deliver services within a reasonable time***

The mother of a three-year-old with an autism spectrum disorder made arrangements to have her son enrolled at the rehabilitation centre in her region. She was told that the services would begin in a year. As that time approached, she contacted the institution, only to learn that the wait time would be 22 to 26 months instead. She was worried about her child's development, and with reason, because the services were intended for pre-schoolers.

The investigation by the Québec Ombudsman showed that in the preceding three years, the number of places available at this institution for stimulation services like the ones the child needed had remained stable. However, demand had doubled. In these circumstances, many children, especially those referred to the services after age 3 or 4, ultimately would not have access to them before reaching school age because of the long wait times.

Unfortunately, the Québec Ombudsman could not recommend that the child begin receiving the services within the prescribed time frame because this would have been unfair to the other children who had been waiting even longer. However, it recommended that the institution review its practices and improve access to its programs, which it agreed to do. . . .)

The Québec Ombudsman's findings over the course of three special reports

In October 2009, the Québec Ombudsman published a first report on government services for children age 7 and under with an autism spectrum disorder. It found that access to public services for these children and their parents was fraught with obstacles, so it made 21 recommendations in this regard.

This document was followed by a second report in May 2012. This time, the subject of the report was government services for young people over age 7 and adults with an autism spectrum disorder. In it, the Québec Ombudsman pointed out that the service offering was indeed diversified but that, unfortunately, it only looked good on paper. In the real world, services are few and not equally accessible. The report contains 17 recommendations aimed at genuine improvement of access to the required services.

The Québec Ombudsman's third report, released in March 2015, discusses the accessibility, continuity and interdependence of services for youth age 18 and under with intellectual disabilities or autism spectrum disorders. The problems observed gave rise to eight recommendations by the Québec Ombudsman to the Department and its network of specialized rehabilitation facilities.

Take real action further to the Québec Ombudsman's recommendations

GOVERNMENT SERVICES TO CHILDREN AGE 7 AND UNDER WITH AN AUTISM SPECTRUM DISORDER

Even though the Ministère de la Santé et des Services sociaux, the Ministère de la Famille, the Ministère de l'Éducation et de l'Enseignement supérieur and the Office des personnes handicapées du Québec pledged to implement the recommendations in the Québec Ombudsman's first report, seven years after release of this report, difficulties persist. The recommendation aimed at abolishing parents' obligation to produce confirmation of their child's diagnostic evaluation before starting school has yet to be dealt with. In fact, the Ministère de l'Éducation et de l'Enseignement supérieur continues to require that, for the 2016 school year, a child with an autism spectrum disorder must have a diagnostic evaluation from a qualified multidisciplinary team in the 12 months before he or she starts elementary school. Despite the work by an interdepartmental committee to harmonize the dozen financial support programs for children with disabilities, diagnostic confirmation is still required in order for parents to be issued the supplement for handicapped children.

The Québec Ombudsman reiterates the importance of the four last recommendations which remain to be implemented further to this report, namely, harmonizing the financial support programs for the families of people with disabilities, redefining the role of the system navigator when several sectors are involved, harmonizing the requirements regarding obtaining or confirming a diagnosis of autism spectrum disorder, and parents' obligation to provide confirmation that a qualified multidisciplinary team has conducted a diagnostic evaluation in the 12 months before the child begins elementary school. Last year, the Ministère de l'Éducation et de l'Enseignement supérieur reiterated yet again that parents are obliged to produce confirmation of their children's diagnostic evaluation and it put off any relaxation of the rule until late 2016. This is a major irritant for the parents concerned, the upshot being that specialized services for their children will begin a year later than planned. The Québec Ombudsman therefore asked the Department to review its implementation schedule and immediately adjust the requirements concerning the diagnostic evaluation of autistic children before they start school.

GOVERNMENT SERVICES FOR YOUTH OVER 7 YEARS OLD AND FOR ADULTS WITH AN AUTISM SPECTRUM DISORDER

The Québec Ombudsman applauds the implementation—albeit gradual—of the recommendations from its report published in 2012. It also endorses the policy directions of the interdepartmental committee on harmonizing financial support programs for disabled children. However, it is not pleased that the implementation of the recommendations that will affect the 2016-2017 budget has been postponed. In the meantime, parents are struggling to get services.

The government bodies called to act in the Québec Ombudsman's report are:

- the Ministère du Travail, de l'Emploi et de la Solidarité sociale. It is pursuing a certain number of regional initiatives to reduce occupational and social barriers for all disabled persons, including those over age 21 with an autism spectrum disorder;
- the Ministère de l'Éducation et de l'Enseignement supérieur. It met with the Québec Ombudsman to spell out how it would act on the recommendations;

- the Office des personnes handicapées du Québec. It continues to improve how it coordinates services to people with disabilities as part of the 2014-2019 implementation of the *Equals in every respect: Because rights are meant to be exercised* policy;
- the Ministère de la Santé et des Services sociaux. It continues to draft its work plan for its program to support families of people with disabilities. The suggested improvements will also be part of the review of the service offering for these people and their families.

SERVICE ACCESS, CONTINUITY AND COMPLEMENTARITY FOR YOUNG PEOPLE (0-18 YEARS OLD) WITH AN INTELLECTUAL DISABILITY OR AN AUTISM SPECTRUM DISORDER

In the action plan tabled in 2015, according to the time line provided, the Ministère de la Santé et des Services sociaux intends to implement the recommendations from the Québec Ombudsman's third report as part of the Department's work to review the service offering for people with physical disabilities, intellectual disabilities or an autism spectrum disorder.

In February 2016, the Department reiterated its desire to act on the recommendations from the third special report aimed at developing the autonomy of the young people concerned and support to parents. At that time, it also committed to specifying, by late 2016, how it would put the Québec Ombudsman's recommendations into practice.

The three special reports are found at www.protecteurducitoyen.qc.ca.

Physical health

This section deals essentially with the care and services offered in hospital centres and local community service centres (CLSCs). This year, the Québec Ombudsman handled complaints that proved yet again that care and services are difficult to get. They primarily concerned wait times for:

- registering with a family physician;
- seeing an emergency physician;
- undergoing surgery;
- seeing a specialist.

SORT OUT THE MECHANISM FOR ACCESSING A FAMILY PHYSICIAN ONCE AND FOR ALL

In 2008, the Ministère de la Santé et des Services sociaux created centralized waiting lists for orphan patients (GACOs). The purpose of this initiative was to help everyone find a family physician. However, the Québec Ombudsman regularly sees that many users continue to have trouble finding one within a reasonable time frame. Some are even forced to wait years. Family physicians, in collaboration with other professionals, are a gateway to the health and social services system, which includes referral to specialized services. People without a family physician must therefore go to the emergency room of hospital centres unless they have access to walk-in services at a public medical clinic.

The provincial framework for GACOs was introduced in 2011. It was supposed to yield substantial improvements, but what we are seeing instead are recurrent problems:

- There are gaping regional disparities in the effectiveness of the lists and this creates unfairness among those waiting;
- Some users with multiple illnesses, including mental health disorders, remain on the list longer. Note that physicians have the right not to treat a person unless he or she needs emergency care or hospitalization;
- Users suffer needless wait times simply because GACO personnel assume, without checking, that people on the waiting list will be unwilling to travel a few dozen kilometres away from home to see a family physician;
- Sometimes people are given a priority code many weeks after their application is received, thereby penalizing the most vulnerable users;
- In some cases, registering members of the same family all at the same time is the preferred course of action, to the detriment of people with pressing needs or who have been waiting longer.

The Department announced that the GACO system would be overhauled by the end of the winter of 2016 in conjunction with the agreement entered into with the Fédération des médecins omnipraticiens du Québec in 2015.

A few days after the period covered by this Annual Report (April 12, 2016), the Minister of Health and Social Services announced the creation of the centralized waiting list for access to a family physician (GAMF). The Québec Ombudsman will keep a watchful eye on the impact of this new gateway to family physicians. In particular, it will ensure that it provides fair access for all citizens across the province.

(. . . *Reduce wait times for access to a family physician and provide better information about them – 1*

An elderly couple registered with their local GACO. The couple, both suffering from diabetes and chronic inflammatory diseases, were told that the wait time would be two years. Ten months later, an agent informed them that the wait time was now three years for the man and four years for the woman. Five months after that, they were told that it was no longer possible to determine a wait time and that it all depended on physician availability. Almost two years after registering, the couple still did not have a family physician, despite the fact that the wait time established by the provincial framework for a man with the complainant's health condition is three to six months and less than a year in the woman's case.

The investigation by the Québec Ombudsman showed that in the couple's region, the average wait time for registering with a family physician had increased considerably since 2013 due to a shortage of medical staff. With a view to transparency, the institution, at the Québec Ombudsman's urging, agreed that from that point on, information about the time it takes to get a family physician (extrapolated from statistics from previous years) would be provided to and clarified for users who were waiting. The institution also confirmed the recent opening of a new family medicine unit in order to reduce wait times. In fact, the couple were able to register with one of the doctors of that unit. . . .)

(. . . *Reduce wait times for access to a family physician and provide better information about them – 2*

In 2013, a 70-year-old woman registered with the GACO in her region. Approximately a year and a half later, a GACO employee informed her that she had been registered with a doctor. She waited another six months for a call from the doctor's secretary to schedule an appointment. The woman was aghast that she had had to wait almost two years before she got an appointment with her new family doctor.

The investigation by the Québec Ombudsman showed that the clinic had in fact received the woman's contact information in September 2014. The problem was that the woman had not been told that she was registered with a doctor from this clinic, despite the messages that she left with GACO, which were never returned.

To prevent recurrence of this situation, the Québec Ombudsman requested that the integrated university health and social services centre (CIUSSS) responsible for the GACO systematically inform patients of the name of the family physician who has been assigned to them and provide them with the clinic's contact information. As a result, the CIUSSS changed its way of proceeding. . . .)

ENSURE SERVICE QUALITY FOR HOSPITAL EMERGENCY ROOM USERS

When people do not have access to a family physician or to walk-in services at a public medical clinic and their state of health is worrisome, they generally have no choice but to go a hospital emergency room. Again this year, the Québec Ombudsman intervened to remind hospitals of their obligation to guarantee users the safe provision of health services in compliance with emergency department standards.

(. . . *As required by the guidelines, periodically reassess the condition of emergency waiting room users*

A user went to the emergency room with severe respiratory problems which he had had for two weeks. The triage nurse who took care of the initial assessment read his vital signs, administered an electrocardiogram (ECG) and assigned him priority level 3 (urgent). She then sent him to the waiting room, where he waited for nine hours before leaving the hospital without having seen a doctor. Three days later, he died at home of a heart attack.

The investigation showed that the user's health condition had not been reassessed while he was waiting his turn, even though, according to the priority level he had been assigned, he should have been seen every 30 minutes. For the investigation it conducted, the Québec Ombudsman used a random sample of the files from the institution, which indicated a reassessment level that was clearly substandard. During the investigation, the institution:

- ***undertook reorganization of the nursing staff's tasks;***
- ***added a nursing position designated specifically for pre-triage and reassessment from 11 a.m. to 7 p.m.;***
- ***trained nursing staff on acute coronary syndrome;***
- ***reviewed its procedures concerning ECGs in order to clarify the roles of all the staff, including physicians.***

The Québec Ombudsman was satisfied with the measures put in place. . . .)

IMPROVE ACCESS TO SPECIALISTS

If, after examining a patient, a front-line physician sees that the person needs specialized services, for example, from an allergist or ophthalmologist, the physician must give the patient a consult request. However, the Québec Ombudsman has noted that, more and more often, people have difficulty accessing these kinds of medical services. First they have to wait for an appointment with a general practitioner, then wait again to see a specialist and yet again if they need surgery.

Present in outlying regions and major cities alike, this phenomenon is often caused by a shortage of specialists, lack of financial resources or rigid application of rules and procedures. The Québec Ombudsman has also noticed that when faced with this problem, users turn to private services even if their financial resources are limited because they know that by doing this they can get care within a reasonable time.

In November 2015, the Fédération des médecins spécialistes du Québec pledged to improve access to specialists by December 31, 2017. A project called *Accès priorisé aux services spécialisés* stemmed from this promise. The plan provides for the creation of standardized consult request forms and service request dispatch centres.

Here again, the Québec Ombudsman hopes that the means established yield the expected results.

(. . . *Make specialized services available within a reasonable time – 1*

A user had been waiting for hip-replacement surgery for almost two years despite the Department's commitment to a maximum wait time of six months for 90% of these kinds of surgeries. Moreover, it is understood that if surgery cannot be performed within the expected time frame, the institution must propose an alternative to patients, for example, to be operated on by another surgeon in a different hospital. However, this user was not offered an alternative.

During the investigation, the Québec Ombudsman noted that only 61% of the patients from this institution had surgery within the prescribed time limit and that they had not been offered any other option. In the case at hand, the user had surgery in another institution after making all the arrangements himself.

The Québec Ombudsman recommended that the Department work with the institution to find appropriate solutions, but the Department's stance was that it was the institution's responsibility to tailor its service offering to the needs of the population and in compliance with prescribed wait times and that it was already busy spearheading a strategic committee to roll out the* Accès priorisé aux services spécialisés *project.

The Québec Ombudsman is concerned about this situation. It considers that institutions must abide by Department commitments so that users may benefit from an alternative offer. When this does not happen, the Department must live up to its responsibilities in this matter. . . .)

(. . . Make specialized services available within a reasonable time – 2

In 2011, a woman had a prosthetic knee replacement. Not long after, she experienced various health problems, including persistent pain. In 2013, tests showed that she was allergic to three metals in the alloy used in the prosthesis. Her orthopedist authorized a new prosthesis which did not contain these metals. At the beginning of 2015, the surgery still had not taken place.

The investigation showed that at this same hospital, about 20 people were also waiting for their prosthesis to be replaced. These people all had pain and functional limitations that no clinical or radiological investigation could explain. In such cases, tests for hypersensitivity to the metals and cement are administered. If results come back positive, and no other cause is detected, the orthopedic surgeon may replace the first prosthesis with one which contains a different alloy. However, this second prosthesis is made-to-measure, which makes it much more expensive (between $16,000 and $60,000) than the regular one ($6,400).

As a result of the expertise of its orthopedic surgeons, the hospital became a victim of its own success and inherited several cases from other institutions, but without the corresponding budgets. It therefore found itself facing unprecedented cost overruns and, in turn, a longer and longer wait list. By virtue of the law, however, users are entitled to receive medically necessary care and services and should not have their health compromised because of cost overruns.

Further to the Québec Ombudsman's intervention, the institution operated on the user. Moreover, the integrated university health and social services centre (CIUSSS) to which the hospital reports followed up on the Québec Ombudsman's recommendations by implementing an action plan whereby all the users on the waiting list would have surgery as soon as possible and these situations would not recur. . . .)

(. . . Make specialized services available within a reasonable time – 3

A user faced with a progressive loss of hearing needed an appointment in audiology. He was informed that in the case of people with level 4 (non-urgent) status, the wait time was at least two and a half years.

During the investigation it conducted, the Québec Ombudsman discovered that the institution had undertaken to make, over a five-year period, a sizable dent in wait times for users who had the same priority level as the complainant. The changes made by the institution included:

- *a review of its service offering;*
- *contacting the referring physicians (a referring physician is the one who completes the prescription in order to refer the patient to another professional) so that the required paperwork, often a prescription, is completed properly;*
- *requesting additional funding;*
- *reviewing the priorities of the team of audiologists.*

The Québec Ombudsman considered that, despite these gains, the two and a half year wait time was still unreasonable and that the user was being deprived of his right to an essential service. It therefore recommended that the institution reduce its backlog and offer an alternative to users which would enable them to access this service within a reasonable time.

Further to this recommendation, the institution made a detailed inventory of wait times in the region. They also looked at the possibility of extending the workday in order to optimize use of the audiometric booth. Ultimately it was decided that service agreements would be established with other regions. The Québec Ombudsman is keeping an eye on the tangible results of these various measures. . . .)

CLARIFY IN A TIMELY MANNER THE CONDITIONS GOVERNING THE TRANSITION TOWARDS TERMINATION OF THE FREE *IN VITRO* FERTILIZATION PROGRAM

In 2010, the Government of Québec established a publicly funded program to cover the cost of *in vitro* treatments for people who are infertile. On November 10, 2015, this free program ended when Bill 20, *Act to enact the Act to promote access to family medicine and specialized medicine services and to amend various legislative provisions relating to assisted procreation*, was both passed and assented to. While the Québec Ombudsman is not calling the government's decision into question, it wonders about its application.

As of now, the Régie de l'assurance maladie du Québec no longer covers fees related to *in vitro* fertilization, apart from certain services required for maintaining fertility. People who use this kind of service must pay out of pocket and may, under certain conditions, get a tax credit. When the Bill became law, it was clear that the free program for *in vitro* fertilization services was no longer offered, but it was a lot less so for other aspects, notably regarding the criteria that would apply during the transitional period.

By way of transitional measures, the Bill provides that people who began to receive *in vitro* fertilization services before October 11, 2015, remain covered until the end of the ovulatory cycle in which the *in vitro* fertilization services are provided, or until pregnancy occurs, whichever comes first. But in practice, there was no way of knowing what was meant by the "beginning of services." Is it the initial consultation or the start of treatments? By the same token, when is a cycle considered finished? These transitional provisions created true confusion for service dispensers and citizens alike. To make matters worse, at the time the Bill was passed into law, it was unclear when these new measures would come into force and the text was available only several days after the Bill's passage.

Use of assisted procreation is usually fraught with emotion. Even so, almost ten days elapsed after the passage of the Bill before the Minister of Health and Social Services issued a news release explaining the transitional measures, in particular, what constituted the point when the required services began, which, as it turns out, is the initial consultation. Similarly, it was only in December 2015 that the Department issued more specific guidelines so that citizens as well as fertility clinics had a better idea of what would be covered from then on. In the meantime, many people were critical, and rightly so, of the government's mismanagement when it was time to specify how the transition towards the end of the program would occur.

What emerges is that there must be a solid transition plan, including clear and accessible guidelines, before any decision that has a substantial and immediate impact on citizens is applied.

(. . . ***Make sure that there is a carefully crafted transition plan before a major public program is terminated – 1***

Two viable embryos were created following ovarian stimulation. A child was born from one of the embryos and the other was frozen. In the fall of 2015, the couple decided to try for a second child. After all the paperwork had been done, the prescriptions received and the tests performed, the first day chosen for beginning the protocol was November 10, 2015, the exact date that the Bill on assisted procreation was passed. Since the couple already had a child from the same ovulatory cycle, they were informed that these services might no longer be covered.

During the investigation by the Québec Ombudsman, the Department confirmed that* in vitro *fertilization services provided with a view to implanting an embryo were no longer covered as of October 11, 2015, because there had already been a viable pregnancy from this same cycle, even though the medication had been started before the Bill's passage when the couple did not know what the possible scope of the transitional measures would be. A few weeks later, after getting confirmation that the services were not free, the couple had to put off their plans due the billable costs which they could not afford. . . .)

(. . . ***Make sure that there is a carefully crafted transition plan before a major public program is terminated – 2***

After numerous months of waiting and tests, a couple finally received official authorization from their doctor to start an ovulatory cycle with a view to* in vitro *fertilization. The necessary prescription was sent to the pharmacy on November 10, 2015, but because it was an exceptional medication, the payment could not go through the same day. A few hours later, Bill 20 was passed. At that point, the couple did not know whether their plan to have a child was still feasible.

In the following days, the information given to the couple by the clinic, the Régie de l'assurance maladie and the Department did not tally. It was only later, when the Department issued a news release on the applicable criteria for eligibility during the transitional period and specifying what was meant by "initial consultation," that the couple finally received confirmation that they qualified for the assisted procreation transition program. . . .)

INTERVENTION CONCERNING A DRAFT REGULATION

This year, the Québec Ombudsman intervened with the Minister of Health and Social Services concerning the draft *Regulation respecting the procedure followed by the Commission sur les soins de fin de vie to ensure compliance with the conditions for the administration of medical aid in dying and the information to be sent to the Commission for that purpose*.

A summary of the Québec Ombudsman's intervention is presented in the section entitled *Parliamentary Watch Report*, on page 130 of this Annual Report.

The Ombudsperson's letter to the Minister of Health and Social Services is found at www.protecteurducitoyen.qc.ca.

Troubled youth

PROVIDE TANGIBLE FOLLOW-UP TO THE QUÉBEC OMBUDSMAN'S SPECIAL REPORT ON THE FINANCIAL CONTRIBUTION TOWARDS THE PLACEMENT OF MINORS

In March 2013, the Québec Ombudsman published a report revealing major failings and unfairness in the calculation and collection of parents' financial contribution towards the placement of their child in a substitute living environment (a foster family, for example).

In all cases in which a child is placed—whether under the *Youth Protection Act*, the *Youth Criminal Justice Acts* or the *Act respecting health services and social services*—the Ministère de la Santé et des Services sociaux requires a financial contribution from the parents. The amount is used to cover a portion of the lodging costs and is in line with the principle whereby it is up to parents to provide for their children's care, subsistence, education and supervision.

In its report, the Québec Ombudsman drew attention to unfairness having mainly to do with:

- differing practices from one youth centre to another concerning the information conveyed to citizens, billing, calculation of exemptions, credits for periods when the child spends time away from the substitute environment, negotiation of agreements with parents for contribution payment and collection from parents in default;
- calculation of parents' financial contribution that ignores certain tax provisions or benefits that affect family income.

So that the harmful situations noted would be rectified and their recurrence prevented, the Québec Ombudsman made recommendations to the Ministère de la Santé et des Services sociaux, the Régie des rentes du Québec (now Retraite Québec), the Agence du revenu du Québec (Revenu Québec) and the Ministère des Finances.

In February 2016, the Ministère de la Santé et des Services sociaux sent the Québec Ombudsman an update of its action plan for implementing the recommendations along with a detailed report of the work carried out with the Department's partners. The Québec Ombudsman welcomes the agreement in principle between the Ministère de la Santé et des Services sociaux and the Ministère des Finances, both of which recognize that an overhaul of parents' financial contribution to the placement of their children under age 18 must take parents' ability to pay into account. The Québec Ombudsman endorses the main thrusts of the agreement, namely:

- No more mandatory baseline financial contribution (according to the Ministère de la Santé et des Services sociaux's estimates, this measure will affect some 75% of parents with income below the minimum contribution threshold);
- No more mandatory contribution payment necessary in order for parents to receive the refundable tax credit for child assistance;
- Cutting off of the refundable tax credit for child assistance for parents whose child is placed permanently.

The Québec Ombudsman considers that these approaches, depending on how they are applied (undetermined so far), will bring about change that could satisfy the recommendations in its report.

The Ministère de la Santé et des Services sociaux informed the Québec Ombudsman of a proposal to entrust administration of the financial contribution towards the placement of children under age 18 to Revenu Québec. This should simplify calculation, collection and recovery of the contribution of parents who cannot afford to pay the amounts in question and make these operations more efficient. The new administrative method must provide for:

- recourse for parents in litigation over Revenu Québec decisions or about the information that integrated health and social services centres (CISSSs) and integrated university health and social services centres (CIUSSSs) would send to Revenu Québec for contribution calculation purposes;
- the option of different payment methods for parents so that their financial situation is not harmed or if their income drops during the year due to illness or job loss;
- a communication strategy so that parents receive the information they need in order to understand and abide by their financial obligations and information concerning the new contribution calculation, collection and recovery methods used by Revenu Québec.

As for the current status of the work being carried out by the Ministère de la Santé et des Services sociaux and its partners, the Québec Ombudsman notes that the legislative and regulatory amendments required for reshaping the financial contribution and implementing the new administrative methods have been postponed again.

The Québec Ombudsman feels that the next phases of this work must be undertaken without delay. It has asked the Ministère de la Santé et des Services sociaux to keep it abreast of developments in this file and to send it a detailed progress report by September 14, 2016.

The summary of the special report by the Québec Ombudsman on the financial contribution towards the placement of children under age 18 is found at www.protecteurducitoyen.qc.ca.

Service support

The Ministère de la Santé et des Services sociaux's service support program consists of administrative and technical activities such as user admission and registration and financial services, as well as maintenance or food services. The Québec Ombudsman considers pre-hospital emergency services part of these activities.

ADEQUATELY SUPERVISE THE ADMINISTRATIVE FEES BILLED BY HOSPITAL CENTRES

Health institutions may charge citizens certain fees, provided the care and services for which they are billed are not free of charge under the law.

Last year, the Québec Ombudsman recommended that the Ministère de la Santé et des Services sociaux provide fair and reasonable guidelines concerning the administrative fees that institutions can charge to users pursuant to the *Hospital Insurance Act*. Further to this, the Department issued a reminder on the subject to the presidents and executive directors of the institutions. The Department, feeling that this was a matter that concerned the institutions' internal management, made it clear that it would not intervene any further.

It is worth noting that the budget allocated to hospitals by the Department is intended for the "proper operation" of activities and adequate delivery of the services they are called on to provide. To date, there is no departmental standard for this notion of "proper operation" or guidelines in this regard. Institution administrators are therefore free to be creative in their interpretation and have users pay for whatever the institutions consider is not included in their slate of services. The Québec Ombudsman is nonetheless sticking to its position: in a context when every available penny counts, the Department must monitor the situation carefully in order to prevent abusive billing.

HOSPITAL PARKING: SET REASONABLE FEES ADAPTED TO USERS' NEEDS

Concerning the fees that institutions can charge, the *Act respecting health services and social services* provides that a health institution, within the scope of its objects and powers, may organize activities complementary to the health services or social services it provides.

The operation of parking lots by institutions within the health and social services network is an incidental commercial activity. This includes the obligation to recover costs from the clientele or otherwise be financed by means of voluntary contributions paid by third parties for that purpose. The Department defines institutions' obligations in this regard. Parking fees must take into account operating costs, annual expenditures in capital and interest and the portion of the general expenses borne by the institution's operating budget. Fees must also take into consideration the institution's environment, among other elements.

The Québec Ombudsman's opinion is that fees must remain reasonable so that they do not become indirect barriers to care and services.

(. . . *Review parking fees*

The representative of a hospital centre user committee made a complaint to the Québec Ombudsman about the centre's parking fees, which he considered too high. Furthermore, he felt that reduced-rate packages were ill-adapted to user needs. Parallel to the complaint, the hospital centre formed a committee to review its parking fee policy.

The investigation by the Québec Ombudsman showed that the daily rates in effect were among the highest in the city's parking lot market and several dollars more than the average for other hospital parking lots in Québec. The institution argued that the fees were warranted because of the construction of a new parking lot that required a loan of several hundreds of millions of dollars. Be that as it may, after becoming aware of discrepancies in the institution's version of the facts, the Québec Ombudsman made several recommendations, including reviewing the daily rates. Further to the recommendations, the hospital centre agreed to make the following improvements:

- ***Offer users reduced rates based on treatment frequency instead of on the type of diagnosis;***
- ***Offer ticket booklets at a reduced rate to anyone who uses the parking lot on a regular basis;***
- ***Improve the posting and communication of information to users concerning reduced rates so that the information is at their disposal in time for them to benefit;***
- ***Make daily parking passes with unlimited entry and exit transferable within the different institutions of the hospital centre.***

Further to this and after all analyses were completed, the committee struck by the hospital centre decided to keep the existing daily rates, pointing out that it would have been impossible to lower the daily rate without endangering the institution's ability to meet its financial obligations. During subsequent talks, the Québec Ombudsman learned that the current rates were not based on parking lot construction and operating costs, but had been set in order to maximize future parking-sourced revenues. Subsequently, a loan equivalent to a 30-year projection of parking-sourced revenues was taken out by the hospital centre to finance not only the construction of a new parking lot, but also a portion of the construction costs for a new hospital. At that point, the Québec Ombudsman felt that the rationale for the parking rates in effect did not hold up and that the fees were contrary to the spirit of the departmental circular. The Québec Ombudsman went on to contact the Ministère de la Santé et des Services sociaux about making the necessary changes.

It should be noted that the Government of Ontario announced that as of October 1, 2016, institutions will no longer be allowed to charge more than $10 per day for parking. Québec's Minister of Health and Social Services responded that he would be particularly watchful about parking fees when the departmental circular was being redrafted. Limiting fee increases and offering different staggered rate options (weekly or bimonthly) are possibilities that are being examined. . . .)

OBEY THE LAW IN CASES OF THEFT OR LOSS OF PERSONAL BELONGINGS

Every year, the Québec Ombudsman receives complaints from healthcare users concerning loss, theft or breakage of personal belongings or effects such as dentures or hearing aids, eyeglasses, clothing, jewelry or money. The complaints are made against hospital centres, residential resources and pre-hospital emergency transportation services alike.

The following are examples of the kinds of circumstances that prompt users or their families to file complaints:

- users' inability to take care of their belongings themselves for health reasons;
- users' need to have certain items which are indispensable to their activities and in order to remain autonomous;
- insufficient means established by institutions enabling them to fulfil their legal obligation to prevent the disappearance, theft, loss or breakage of users' personal effects.

Complainants ask to be reimbursed for replacement costs or to be given an amount by way of compensation. Some users contest the amount offered by the institution.

Institutions are not systematically liable for the loss or breakage of users' personal effects. However, the law provides that they must use all reasonable means to ensure that personal items are protected. The reasonability of these means is based on users' ability to take care of their personal belongings themselves. Institutions are always responsible for the loss or breakage of users' personal belongings when members of their staff are at fault.

When an institution's responsibility has been established, users have the burden of proving how much the damaged or lost items were worth. The *Civil Code of Québec* stipulates that the damages and interest owed to the creditor, in this case, the user, must compensate for the loss sustained. The purpose of the payment of damages is to restore the item to the person in pre-loss condition. For this reason, the courts, like insurance companies, generally apply depreciation on the real replacement cost of lost objects based on years of use.

(. . . *Make institutions accountable*

A woman with dementia lived in a residential resource. So that she would not misplace her eyeglasses, her representative had labeled them and had advised the staff. Two weeks later, he noticed that the lady was wearing glasses that were not hers. No one at the residence, not even the person who provided the lady with basic care, had noticed it. The staff checked with the lady's roommate, but found nothing. According to the citizen's representative, if the staff had checked on the day the eyeglasses went missing, the search could have begun sooner and would have probably been more productive. Several months later, the eyeglasses were found by an optometrist while he was examining another resident and he realized a switch had occurred.

Even though it could not be proven that the institution was at fault, the Québec Ombudsman's recommendations yielded three changes:

- ***mention of the institution's non-liability for lost or stolen personal items was removed from the welcome guide;***
- ***a procedure for protecting personal belongings was produced;***
- ***measures to prevent the loss of objects belonging to vulnerable residents were noted in their intervention plans.*** . . .)

(. . . *Set a fair price for damages*

A user lost his hearing aids while he was hospitalized. Even though he was considered able to take care of them on his own, the institution agreed to a 50-50 split, a proportion that the Québec Ombudsman felt was reasonable given the facts. However, the compensation offered was calculated based on the retail value of the hearing aids four years earlier. The institution's internal policy—like many court rulings—considers that the replacement value, minus depreciation, should be used in calculating compensation.

After the Québec Ombudsman intervened, the institution agreed to consider the current retail value, with supporting invoices, for hearing aids equivalent to those that had been lost.

The user obtained an extra $190 in compensation. Furthermore, the institution promised to change its way of calculating compensation. . . .)

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 support 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 2015-2016, the Québec Ombudsman analyzed 56 of the 61 bills introduced in the National Assembly and 105 of the 117 draft regulations published in the *Gazette officielle du Québec*. It intervened with respect to six[18] bills and three draft regulations. These interventions are summarized below.

All of the Québec Ombudsman's public parliamentary watch interventions are found at www.protecteurducitoyen.qc.ca.

Interventions with regard to bills

BILL 58, *ACT TO GROUP THE COMMISSION ADMINISTRATIVE DES RÉGIMES DE RETRAITE ET D'ASSURANCES AND THE RÉGIE DES RENTES DU QUÉBEC*

August 31, 2015, letter to the Committee on Labour and the Economy

The Québec Ombudsman did not call into question the merger of the Commission administrative des regimes de retraite et d'assurances and the Régie des rentes du Québec. It did caution, however, that the merger might bring to the fore a disparity in processing claims for an overpayment stemming from an administrative error that the citizen could not have reasonably noticed. Processing methods vary depending on whether the error was committed in the administration of the Québec Pension Plan or, on the other hand, the administration of public sector pensions (formerly under the responsibility of the Commission administrative des régimes de retraite et d'assurances (CARRA)). While the Régie des rentes du Québec was empowered to not claim for overpayments arising from an error of this kind, this was not the case for CARRA. There were no provisions empowering CARRA to remit an amount owed due to an overpayment made fewer than 36 months previously, further to an administrative error that it made and which the citizen could not have reasonably noticed.

18. Seven interventions are included in the annual management report, but because one of them was undertaken informally with the people in charge of the Bill at the Department to point out a minor mistake in a reference in the Bill, this intervention has been excluded.

The Québec Ombudsman recommended that the *Act respecting the Government and Public Employees Retirement Plan*, administered by CARRA until that point, be amended to enable the new agency to not claim these amounts when a citizen could not detect the agency's mistake, as was the case with the pensions managed by the Régie until then.

While this Bill was being given detailed consideration, the Minister pledged that the *Act respecting the Government and Public Employees Retirement Plan* would be amended to solve the problem of administrative errors committed by CARRA. Bill 73, *Act respecting mainly the implementation of recommendations of the pension committee of certain public sector pension plans*, was introduced on November 3, 2015.

BILL 70, *ACT TO ALLOW A BETTER MATCH BETWEEN TRAINING AND JOBS AND TO FACILITATE LABOUR MARKET ENTRY*

Brief presented to the Committee on Labour and the Economy on February 9, 2016

The Québec Ombudsman said it felt that the Bill, which had not been passed as at March 31, 2016, lacked sufficient guidelines and gave bureaucracy too much leeway. It considered that respect of participants' rights, consideration of the situation of the most underprivileged, the consistency of the proposed measures and the scope of the issues involved demanded certain amendments to the Bill in order to better define its reach.

The Québec Ombudsman subscribed to the need for measures to allow a better fit between training and jobs, an issue addressed in Part I of the Bill. It also agreed with the labour market entry goals of the Aim for Employment Program, the subject of Part II of the Bill. However, it had serious reservations about the program's implementation. The Québec Ombudsman felt that it was crucial that all the conditions laid out in its recommendations be present if it was to endorse the principle of mandatory participation in the Aim for Employment Program. Furthermore, in its opinion, failure to take these conditions into account would make the imposition of penalties unacceptable. The Québec Ombudsman therefore recommended:

- clearly defining what constitutes suitable employment and aligning this employment with participants' employability profiles because they may be obliged to accept any suitable employment they are offered, or else face possible penalties;
- defining the notion of failure to fulfil the obligations of the individual labour market plan and establishing that such failure is determined according to participants' efforts, taking into account their situation, and is not based on the outcomes achieved, given that the benefit amount may be reduced because of such failure;
- providing for the right to a review in order to contest not only the reduction in benefit amounts but also the purported failure;
- enabling the Minister to exercise his or her discretionary power to restore benefits and thereby prevent the complete destitution of participants further to a penalty, pending a review decision, given the hefty financial penalties imposed for failure to fulfil labour market plan commitments;
- ensuring that sufficient monies for responding to the diversified needs of the client population are allocated for program measures and services and that the achievement of program targets, particularly sustainable employment, is assessed in the short and medium terms.

The Québec Ombudsman applauds the enhanced flexibility in response to its July 26, 2012, recommendation by putting a stop to an unfair distinction between social solidarity recipients who get a lump-sum inheritance and those who receive it in instalments. It nonetheless recommended that this amendment be retroactive to the date of the recommendation, given that all the Department decisions in this matter that were taken to the Tribunal administratif du Québec since 2012 have been systematically quashed. It also recommended that it be made clear that the interest on these amounts must also be excluded for benefit calculation purposes, as the Tribunal administratif du Québec has also ruled.

Approving of the reduced paperwork for the monthly short-form statement, the Québec Ombudsman also recommended that recipients be reminded, through any appropriate means, of their obligation to declare any changes to their circumstances since the last statement. It was also pleased to see that the Bill provided for the possibility of extending by regulation the minimum one-year period of cohabitation leading to spouse status because, in its opinion, this amendment was likely to lessen an irritant it had often seen when handling complaints.

BILL 73, *ACT RESPECTING MAINLY THE IMPLEMENTATION OF RECOMMENDATIONS OF THE PENSION COMMITTEE OF CERTAIN PUBLIC SECTOR PENSION PLANS*

November 12, 2015, letter to the Committee on Public Finance

The Québec Ombudsman subscribed to the amendments to the *Act respecting the Government and Public Employee Retirement Plan* aimed at obliging the Commission administrative des régimes de retraite et d'assurances (CARRA) to remit an amount where the amount was paid further to an error the citizen could not have reasonably noticed. These amendments were in response to a recommendation in the 2009-2010 Annual Report, reiterated in the comments on Bill 58 – *Act to group the Commission administrative des régimes de retraite et d'assurances and the Régie des rentes du Québec*. The amendments should contribute to considerably reduce the consequences to citizens who, in the past, were issued claims for overpayments that they could not have reasonably noticed.

However, the Québec Ombudsman was concerned about the unfair situation created by the fact that the former provisions would continue to apply to the remission of amounts owed to CARRA until the date that the new provisions come into force. This is why the Québec Ombudsman, in the spirit of the Bill and with a view to avoiding use of the court system, proposed that CARRA compensate citizens already wronged by these mistakes, at least in cases where CARRA (now Retraite Québec) is civilly liable for a serious error. This proposal was not accepted.

BILL 77, *QUÉBEC IMMIGRATION ACT*

January 25, 2016, letter to the Committee on Citizen Relations

The Québec Ombudsman subscribed to the general goals and principles of the Bill, which proposes reform of Québec's immigration system, in particular by basing application management on expressions of interest. In its opinion, this reform should reduce wait times and thereby rectify a situation that has been harmful to candidates and Québec society alike. However, it reiterated the importance of making sure that the computer system established to support the reform is reliable and fully operational particularly since the only means for candidates to send their expressions of interest is electronically.

The Québec Ombudsman expressed concern that the projected expansion of the Tribunal administratif du Québec's jurisdiction in immigration matters—recourse which, moreover, would only be available to certain classes of candidates—would mean elimination of the internal administrative review mechanism. If felt that the former mechanism is more accessible to candidates from abroad because the process is much simpler and much less costly than filing a proceeding with the Tribunal administratif du Québec. It therefore recommended, for all classes of immigration candidates, that the Act establish a formal administrative review process for contesting a refusal as a prerequisite for any recourse before the Tribunal administratif du Québec.

An amendment to the Bill was passed to provide for re-examination of a decision made by the Minister in the cases and under the conditions that he or she determines. The Québec Ombudsman will remain watchful of the conditions under which this power is exercised as well as the reach of this power, so as to ensure that it is a full and effective response to its recommendation.

BILL 86, *ACT TO MODIFY THE ORGANIZATION AND GOVERNANCE OF SCHOOL BOARDS TO GIVE SCHOOLS A GREATER SAY IN DECISION-MAKING AND ENSURE PARENTS' PRESENCE WITHIN EACH SCHOOL BOARD'S DECISION-MAKING BODY*

February 1, 2016, letter to the Committee on Culture and Education

The Québec Ombudsman commented only on the elements of the Bill related to the special reports it published and on follow-up to the ensuing recommendations.

Concerning access to free public education for children with a precarious immigration status, the Québec Ombudsman felt that broadening of the principle of free access to preschool, elementary and secondary education to every child living in Québec would offer a more favourable framework for free access to public education for all these children. However, it insisted on the necessity for the required information and corresponding official documents to be the same everywhere and that they not overstep legal and regulatory requirements regarding the identification needed to enrol in school, particularly regarding the verification of the immigration status of the child or the child's parents.

The summary of the report on access to free public education for children with a precarious immigration status (November 2014) is found at www.protecteurducitoyen.qc.ca.

The Québec Ombudsman also welcomed the proposed changes to the complaint examination procedure within school boards, which, as it recommended, would empower the student ombudsman in each school board to receive and examine complaints concerning supervision and follow-up of home schooling and to act as a mediator between parents and school authorities.

The summary of the report on home schooling (April 2015) is found at www.protecteurducitoyen.qc.ca.

Lastly, the Québec Ombudsman noted the power to issue directives to school boards granted to the Minister under the Bill. By paving the way for regional pooling of services, this power could help make up for the shortage of resources and expertise regarding the supervision of home schooling in several school boards. More generally speaking, this new power could be an additional means of action for the Department with regard to school boards.

As at March 31, 2016, the Bill had not been passed.

BILL 87, *ACT TO FACILITATE THE DISCLOSURE OF WRONGDOINGS WITHIN PUBLIC BODIES*

Brief presented to the Committee on Public Finance on February 9, 2016, and second speech, February 16, 2016

The Québec Ombudsman subscribed to the government's will to develop and strengthen probity within public services. In this respect, it supported Bill 87's basic goals and means. In making some 15 recommendations, it nonetheless proposed improvements which, in its opinion, are likely to make the wrongdoing disclosure process fully effective and its enforcement optimal, not only for dissuasion, but also for the promotion of sound administration and good governance.

The Québec Ombudsman recommended:

- broadening the scope of the Bill by including wrongdoings committed not only within public bodies, but also with regard to public bodies;
- making municipal bodies subject to an independent disclosure mechanism either by including them in the list of bodies subject to the Bill, or by amending the *Municipal Ethics and Good Conduct Act* to make municipal employees subject to the Bill;
- strengthening protection against reprisal which is unrelated to whistleblowers' employment, notably for third parties.

Called to play a central role in handling the disclosure of wrongdoing, the Québec Ombudsman also drew the legislator's attention to the Québec Ombudsman's role of providing advice and support to these bodies and to the powers it should be granted. It therefore recommended:

- ensuring public bodies' obligation to cooperate within the context of the functions that would devolve to the Québec Ombudsman;
- giving the Québec Ombudsman the power to conduct audits and investigations on its own initiative;
- allowing the Québec Ombudsman to suggest reforms and comment publicly on the audits and investigations it carries out, as it does within the framework of its current mission.

The Québec Ombudsman also made comments and recommendations concerning other issues, notably, the accountability of public bodies and the designation of their internal disclosure officers and regarding the implementation of the Act by the Québec Ombudsman.

As at March 31, 2016, detailed consideration of the Bill had not yet begun.

Interventions concerning draft regulations

DRAFT REGULATION RESPECTING THE CONDUCT OF INVESTIGATIONS THE BUREAU DES ENQUÊTES INDÉPENDANTES IS CHARGED WITH (2015, *GAZETTE OFFICIELLE*, Part 2, 2195)

August 21, 2015, letter to the Minister of Public Security

As early as 2010, the Québec Ombudsman pointed out the need for significant changes to Québec's investigative procedure for serious incidents involving police officers, in particular in order to maintain public confidence in police services and the justice system. The Québec Ombudsman welcomed the draft regulation given that it was an essential step in the creation of the Bureau des enquêtes indépendantes. However, so as to enable the Bureau to fully play its role, the Québec Ombudsman made recommendations concerning four specific aspects of the draft regulation.

It recommended that police officers who witness an occurrence, as well as the police officers involved, be prohibited from communicating, both amongst themselves and with the police officers involved, pending their meeting with Bureau investigators. Furthermore, it recommended that the director of the police force involved be obliged to take reasonable measures to enforce this prohibition.

Being of the opinion that it is crucial that sexual assault victims, as well as police officers and the public, trust those who will be investigating further to their complaint, and that this trust demands that the investigation be assigned to the Bureau, the Québec Ombudsman once again recommended that the definition of "serious injury" not be limited to "physical" injury and that allegations of sexual assault be included.

The Québec Ombudsman went on to recommend that the director of the police force involved must be obliged to report any incident to the Minister that could reasonably be considered as being within the Bureau's purview, even in cases where there is doubt as to the "gravity" or "severity" of the injury.

Finally, the Québec Ombudsman recommended that the regulation stipulate that all breaches or omissions concerning an obligation provided for in the Regulation may lead to the imposition of a penalty. It also recommended that the Regulation expressly indicate that, when a failing can be considered a violation of the *Code of Ethics of Québec police officers*, the director of the Bureau must send the citizen written notice of his or her rights, and forward a copy to the Police Ethics Commissioner as well as to the director of the police force concerned.

As at March 31, 2016, the regulation had not been passed.

DRAFT REGULATION RESPECTING THE PROCEDURE FOLLOWED BY THE COMMISSION SUR LES SOINS DE FIN DE VIE TO ENSURE COMPLIANCE WITH THE CONDITIONS FOR THE ADMINISTRATION OF MEDICAL AID IN DYING AND THE INFORMATION TO BE SENT TO THE COMMISSION FOR THAT PURPOSE (2015, *GAZETTE OFFICIELLE*, Part 2, 2210)

August 21, 2015, letter to the Minister of Health and Social Services

The Québec Ombudsman felt that the information that institutions are required to send to the Commission sur les soins de fin de vie when a physician has administered medical aid in dying was adequate and met intended goals. It felt it was unfortunate, however, that this information would include neither the number of refused requests for medical aid in dying and the reasons for these refusals nor all other statistics that were nonetheless collected by each institution. The fact remains that it had made this recommendation during the consultations on Bill 52, *Act respecting end-of-life care*, in September 2013.

The Québec Ombudsman reiterated the importance of having comprehensive accountability information for the whole of Québec so as to determine the extent of requests for medical aid in dying and the changes over time. It also repeated its recommendation whereby all the statistics collected by each institution—both for refused requests and approved requests—be sent to the Commission sur les soins de fin de vie in order to ensure the quality of the content of the institutions' accountability reports and for monitoring purposes in the context of the Commission's five-year report.

This recommendation was disregarded in the regulation enacted by order in council on November 11, 2015.

DRAFT REGULATION RESPECTING THE CERTIFICATION OF PRIVATE SENIORS' RESIDENCES
(2015, *GAZETTE OFFICIELLE*, Part 2, 3941)

November 27, 2015, letter to the Minister of Health and Social Services

The Québec Ombudsman felt that there was a risk that the draft regulation would lead to a lowering of quality requirements for certain categories of private seniors' residences. In the Québec Ombudsman's opinion, easing of standards and requirements must never occur at the expense of user protection.

It was critical of the fact that, pursuant to the draft regulation, there was no correlation between the category of the private seniors' residence (determined on the basis of the types of services offered) and the profile of the client population that the residence can admit. The Québec Ombudsman also expressed concern because the definition of autonomous person and semi-autonomous person is not spelled out. It therefore recommended that the profiles of the admissible client populations for private seniors' residences be defined using recognized autonomy assessment instruments.

The Québec Ombudsman also spoke out about the easing of supervision and training requirements for all care attendants. It pointed out that even though the residences concerned were intended for an autonomous client population, it was not uncommon to see residents there who were semi-autonomous. Consequently, it wondered how, without the appropriate training, a resident or a volunteer could properly oversee the safety of residents—many of whom are vulnerable—in the event of an incident. It therefore recommended:

- that the provisions concerning security, supervision and training in the regulation in force be maintained, regardless of the number of rental units these residences have;
- that the draft regulation's provisions respect the recommendations of the Ministère de la Sécurité publique concerning fire prevention and the evacuation of seniors' residences, and that the regulation specify that the person in charge of supervision must not be a resident.

Finally, the Québec Ombudsman discussed temporary certificates of compliance, for which there did not appear to be sufficient guidelines. It also expressed concern that such a certificate might be a way for some private seniors' residences to qualify, even though they would have been otherwise unable to comply with certification requirements.

As at March 31, 2016, the regulation had not been passed.

RESULTS IN FIGURES

This chapter presents statistics concerning the Québec Ombudsman's action pursuant to the two laws that govern it, namely, the *Public Protector Act* and the *Act respecting the Health and Social Services Ombudsman*.

For the public service sector, the Québec Ombudsman is the first line of recourse. In terms of health and social services, it generally intervenes as a second and final level of non-judicial recourse for users dissatisfied with decisions made by a service quality and complaints commissioner.

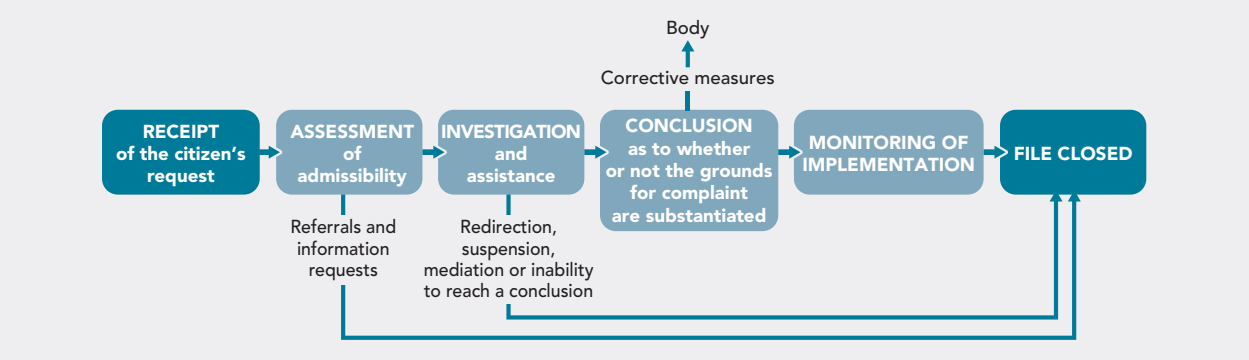
Citizens' service requests which are deemed admissible as complaints or reports give rise to investigations. While complaints are generally made by the people who experience the situation, reports are made by someone who has observed breaches or injustices in public services, whether a government department, an agency or an institution within the health and social services network. Whatever the sector concerned, the Québec Ombudsman takes front-line action in the case of reports.

In the course of an investigation by the Québec Ombudsman, citizens may decide not to follow up on a complaint or may withdraw it. In such cases, the investigation is suspended. It can also happen that the investigation is suspended because the facts gathered are such that the Québec Ombudsman refers the person to another resource or because the complaint or report is settled during the investigation. Note that a service request can involve several grounds for intervention by the Québec Ombudsman.

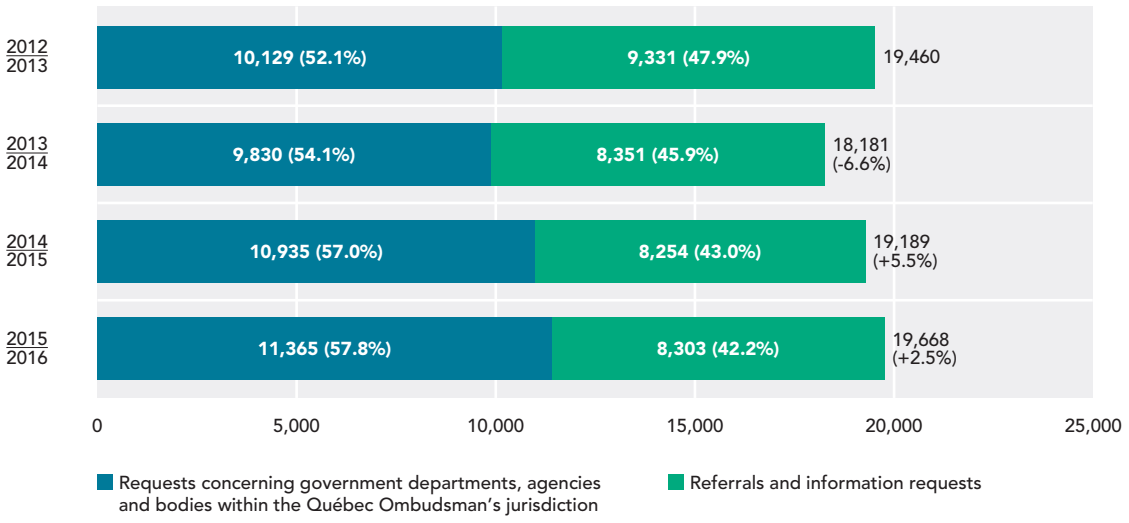
At the end of the investigation it conducts, the Québec Ombudsman informs the complainant of its conclusions. If the complaint is found to be substantiated, the government department, agency or institution concerned may be asked to introduce corrective measures and the Québec Ombudsman monitors their implementation. A substantiated complaint or report file is only closed after follow-up on the implementation of corrective measures, when the Québec Ombudsman is assured that they have been applied.

The Québec Ombudsman also receives many requests concerning bodies that are not within its jurisdiction, such as municipalities, private enterprises and certain government-owned corporations. These requests, to which the Québec Ombudsman reacts promptly, are included in the "Referrals and information requests" category.

Processing of service requests



1. SERVICE REQUESTS RECEIVED



This year, due to the overhaul of the computerized investigation management system carried out in 2014-2015, the Québec Ombudsman was able to provide more specific data in its Annual Report and make certain changes to the way the data are presented.

Therefore, the category of "Requests concerning government departments, agencies and bodies within the Québec Ombudsman's jurisdiction" now includes requests for assistance as well as complaints and reports leading to an investigation. These kinds of requests involve supporting citizens in the steps they take with a government department or agency or a health and social services institution, without undertaking an investigation per se.

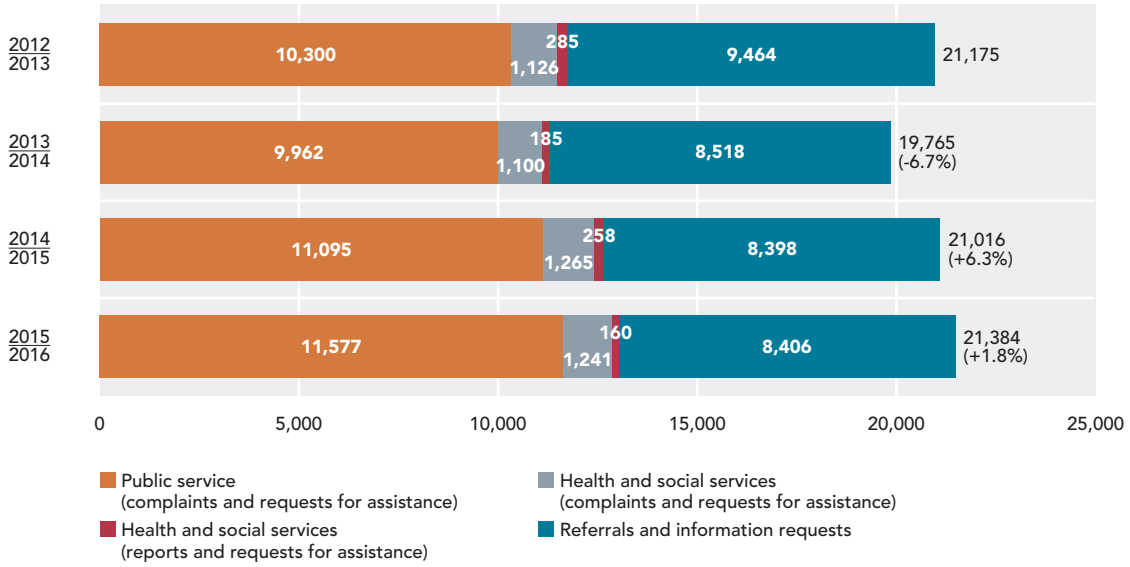
The total number of requests received went from 19,189 in 2014-2015 to 19,668 in 2015-2016, an increase of 2.5%. Of this number, the requests concerning organizations within the Québec Ombudsman's jurisdiction increased by 3.9%, going from 10,935 to 11,365. The proportion of requests within the Québec Ombudsman's jurisdiction in relation to the total number of requests posted a steady increase, going from 52.1% in 2012-2013 to 57.8% in 2015-2016, a trend that began in 2006 and has not declined since.

The "Referrals and information requests" category consists of requests concerning organizations that are not within the Québec Ombudsman's jurisdiction.

This year, referrals and information requests were relatively stable in relation to last year's figures (an increase of 49 requests). However, this type of request remains significant, accounting for 42.2% of all service requests received. This assistance and referral role is an integral part of the institution's mission and for each request of this nature, the Québec Ombudsman ensures that the relevant information is provided and citizens are referred to the appropriate resource promptly.

2. CLOSED SERVICE REQUESTS

A service request can involve more than one ground for intervention by the Québec Ombudsman. Here, closed requests are categorized according to the grounds involved. That is why the number of closed requests is slightly higher than the total number of requests received, as presented in the previous figure. Therefore, in 2015-2016, there were 21,384 grounds for intervention among the 19,455 closed service requests.



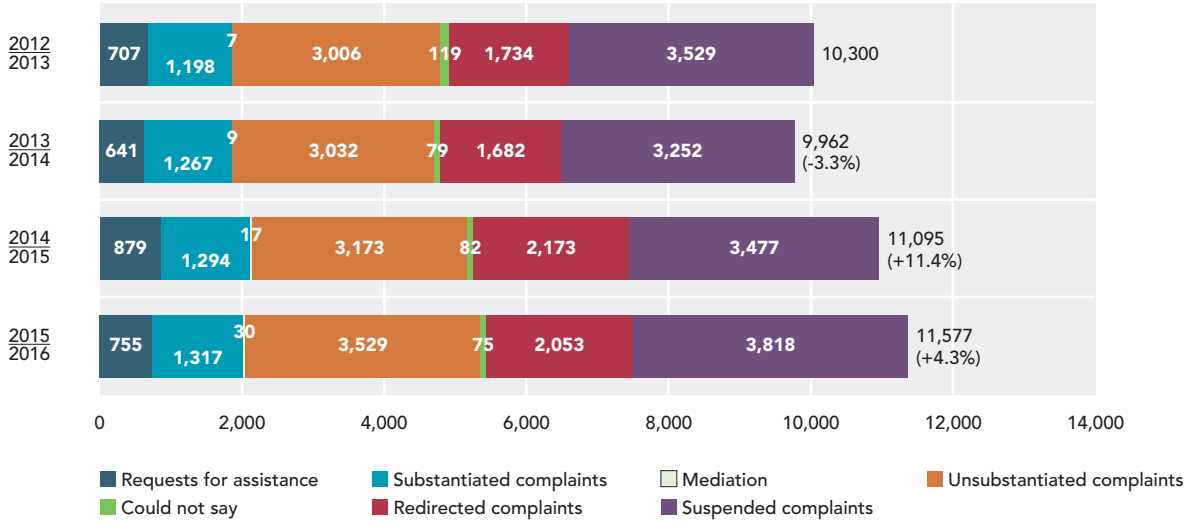
There was an overall increase of 1.8% for closed service requests, referrals and information requests. For closed requests concerning government departments, agencies and bodies within the jurisdiction of the Québec Ombudsman, the increase was 2.9%.

More specifically for the public service sector, closed service requests increased by 4.3%. There was an 8.0% decrease in closed complaints and reports concerning health and social services. This decrease was due in large part to the 6.6% decrease in the number of complaints and reports that were received.

3. COMPLAINTS AND REPORTS CLOSED FURTHER TO AN INVESTIGATION, AND REQUESTS FOR ASSISTANCE

When a request is deemed admissible, the Québec Ombudsman launches an investigation, which may not be completed because, in light of the facts gathered, the Québec Ombudsman may refer the person to another resource (redirected complaint). It can also happen that the complaint or report is settled during the investigation by the Québec Ombudsman, notably because the Québec Ombudsman has stepped in, or because the citizen does not follow up on the complaint or simply withdraws it (suspended complaint). A decision as to whether or not a complaint or report is substantiated can only be made when the investigation has been completed.

3.1 Trends in closed complaints and requests for assistance – Public service



This year, more detailed information is presented in the breakdown by investigation conclusion type through the addition of two categories: "Mediation" and "Could not say." The "Mediation" category includes cases in which the Québec Ombudsman proposed conciliation as a solution at the end of the investigation. The "Could not say" category consists of situations in which, given lack of proof and two contradicting versions, the Québec Ombudsman cannot determine whether or not the complaint is substantiated. In Annual Reports from previous years, these types of investigation conclusions fell under the "Unsubstantiated complaints" category.

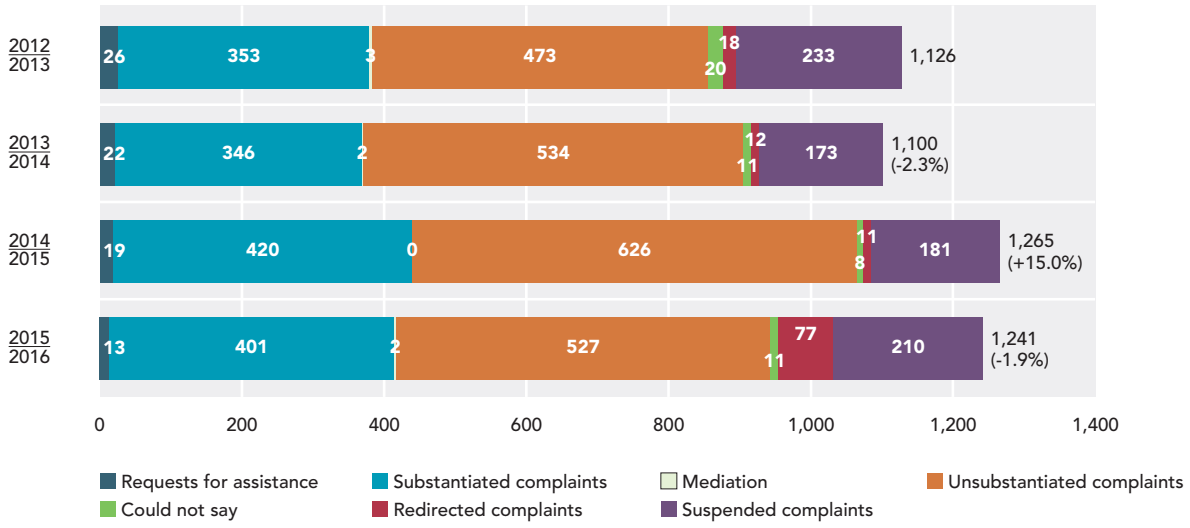
Furthermore, a more specific breakdown of suspended complaints was applied, causing a slight increase in this category.

Detailed breakdown:

TRENDS IN CLOSED SERVICE REQUESTS BY TYPE OF CONCLUSION			
Type of conclusion		Compared to last year	Compared to the average for the last three years
Requests for assistance		Down by 14.1%	Up by 1.7%
Substantiated complaints		Up by 1.8%	Up by 5.1%
Mediation		Up by 13 complaints*	Up by 19 complaints*
Unsubstantiated complaints		Up by 11.2%	Up by 14.9%
Could not say		Down by 8.5%	Down by 19.6%
Redirected complaints		Down by 5.5%	Up by 10.2%
Suspended complaints		Up by 9.8%	Down by 11.7%

* For statistical reasons, smaller variation amounts are shown in whole numbers rather than percentages.

3.2 Trends in closed complaints and requests for assistance – Health and social services



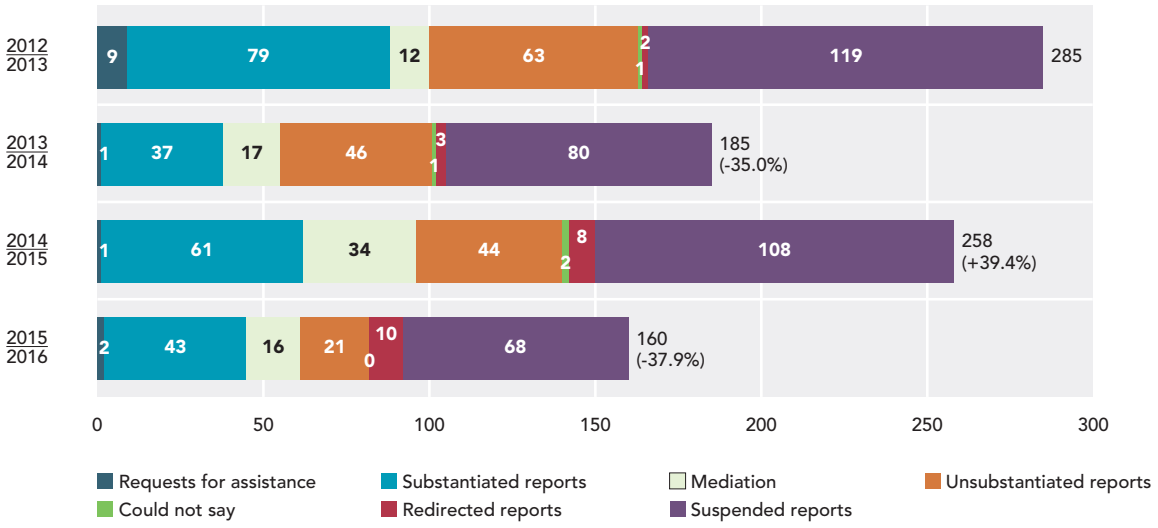
In terms of health and social services, the total number of closed requests posted a slight decrease of 1.9% compared to last year, but increased by 6.6% in comparison to the average for the past three years. Unsubstantiated complaints were down by 15.8% compared to last year.

Detailed breakdown:

TRENDS IN CLOSED COMPLAINTS BY TYPE OF CONCLUSION		
Type of conclusion	**Compared to last year**	**Compared to the average for the last three years**
Requests for assistance	Down by 6 requests*	Down by 9 requests*
Substantiated complaints	Down by 4.5%	Up by 7.5%
Mediation	Up by 2 complaints*	Stable
Unsubstantiated complaints	Down by 15.8%	Down by 3.2%
Could not say	Up by 3 complaints*	Down by 2 complaints*
Redirected complaints	Up by 66 complaints*	Up by 63 complaints*
Suspended complaints	Up by 16.0%	Up by 7.3%

* For statistical reasons, smaller variation amounts are shown in whole numbers rather than percentages.

3.3 Trends in closed reports and requests for assistance – Health and social services



The total number of closed reports decreased by 37.9% compared to the previous year and by 34.1% compared to the average for the last three years. This decrease is closely linked to this year's significant decrease in the number of reports received.

In the health and social services sector, there was a 29.5% decrease in substantiated reports.

Detailed breakdown:

TRENDS IN CLOSED REPORTS BY CONCLUSION TYPE		
Type of conclusion	**Compared to last year**	**Compared to the average for the last three years**
Requests for assistance	Up by 1 request*	Down by 1 request*
Substantiated reports	Down by 29.5%	Down by 27.1%
Mediation	Down by 18 reports*	Down by 5 reports*
Unsubstantiated reports	Down by 52.3%	Down by 58.8%
Could not say	Down by 2 reports*	Down by 1 report*
Redirected reports	Up by 2 requests*	Up by 6 requests*
Suspended reports	Down by 37.0%	Down by 33.5%

* For statistical reasons, smaller variation amounts are shown in whole numbers rather than percentages.

3.4 Proportion of substantiated complaints and reports

SECTOR	2012-2013	2013-2014	2014-2015	2015-2016
Substantiated complaints concerning public services	28.5%	29.5%	29.0%	27.2%
Substantiated complaints and reports concerning health and social services	44.6%	39.8%	41.8%	44.8%

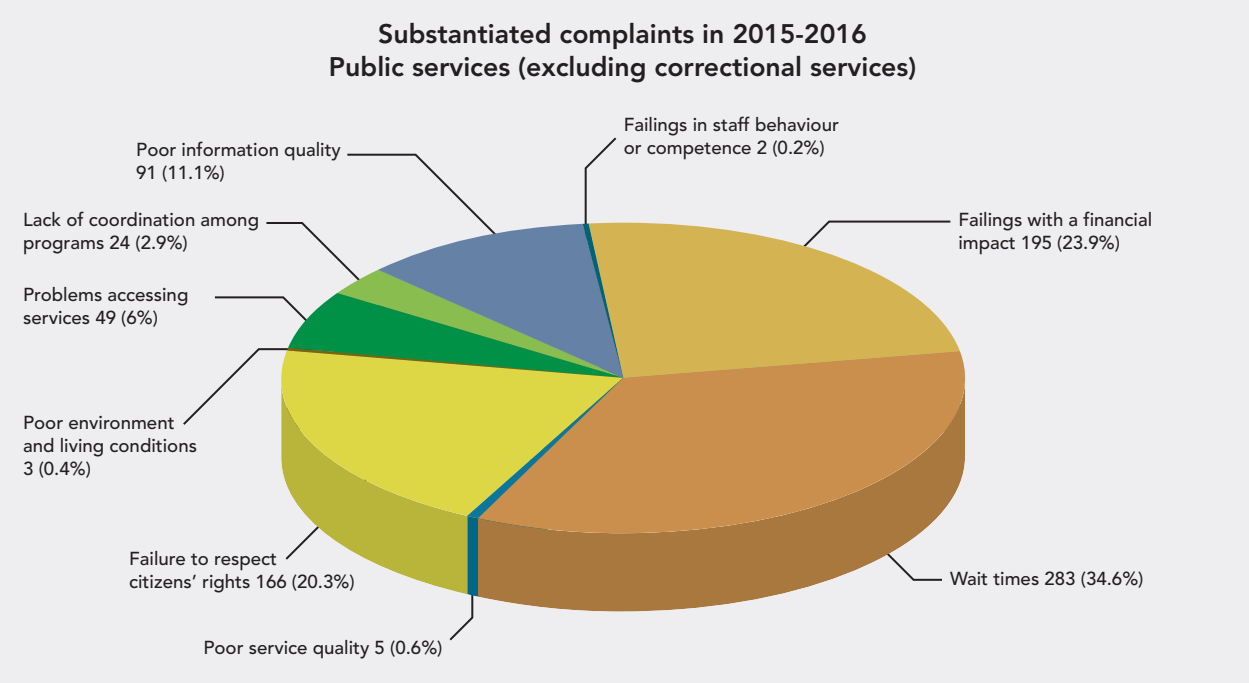
The proportion of substantiated complaints and reports is established as follows:

$$\frac{\text{Substantiated complaints and reports}}{\text{Substantiated complaints and reports + Unsubstantiated complaints and reports}}$$

The results presented here are slightly different from those of previous Annual Reports, as the investigations that led to mediation or those for which a conclusion could not be reached are now excluded from the "Unsubstantiated complaints and reports" category.

In 2015-2016, the proportion of substantiated public service complaints was down by 1.8 percentage points, while the proportion of substantiated health and social services complaints and reports increased by 3 percentage points relative to the previous year's figures.

3.5 Profile of substantiated complaints and reports

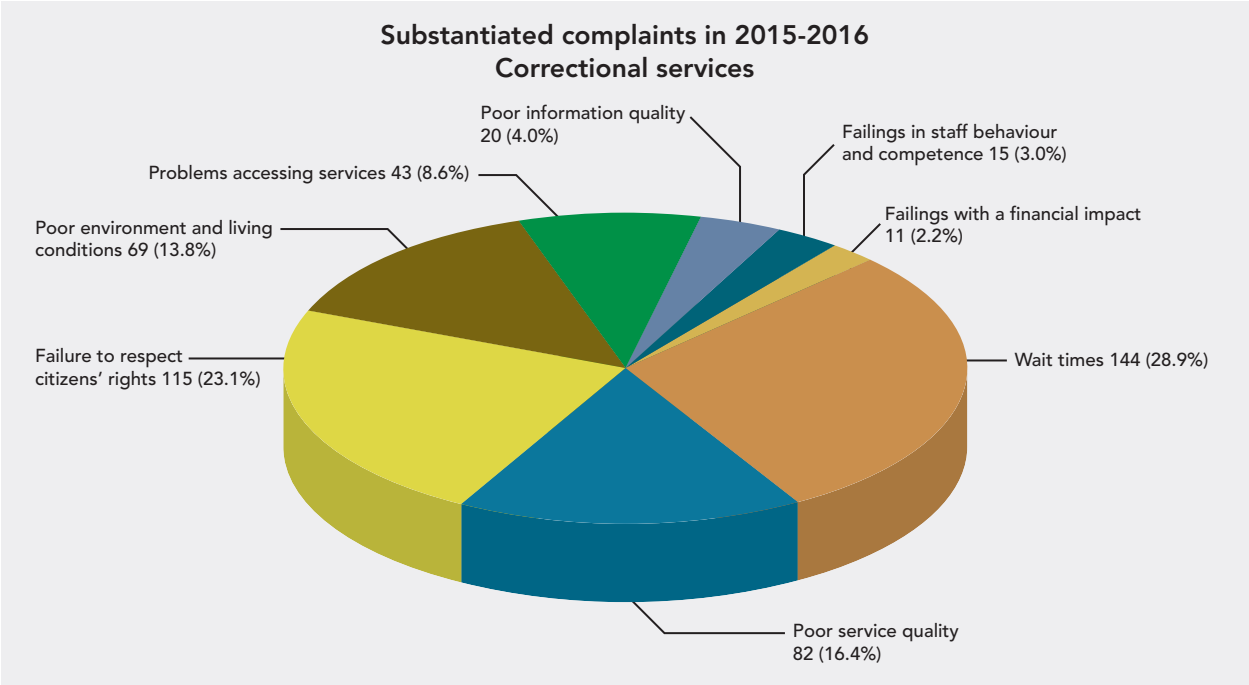


In public services, excluding correctional services, the wait times, failings with a financial impact and failure to respect citizens' rights accounted for 78.8% of substantiated complaints.

Wait times, which ranked first in terms of the most frequent grounds, were the subject of 283 substantiated complaints this year (62 more than last year). The Commission des normes, de l'équité, de la santé et de la sécurité du travail and Retraite Québec generated the greatest number of substantiated complaints about wait times (57 and 50 respectively). Wait times accounted for 96.6% of the substantiated complaints concerning the Régie du logement (28 out of 29).

Accounting for nearly a quarter of substantiated complaints (23.9%), failings with a financial impact came second. In this category, Agence du revenu du Québec, the Ministère du Travail, de l'Emploi et de la Solidarité sociale, the Société de l'assurance automobile du Québec and the Commission des normes, de l'équité, de la santé et de la sécurité du travail accounted for most of the substantiated complaints, at more than 86.2% of all such complaints.

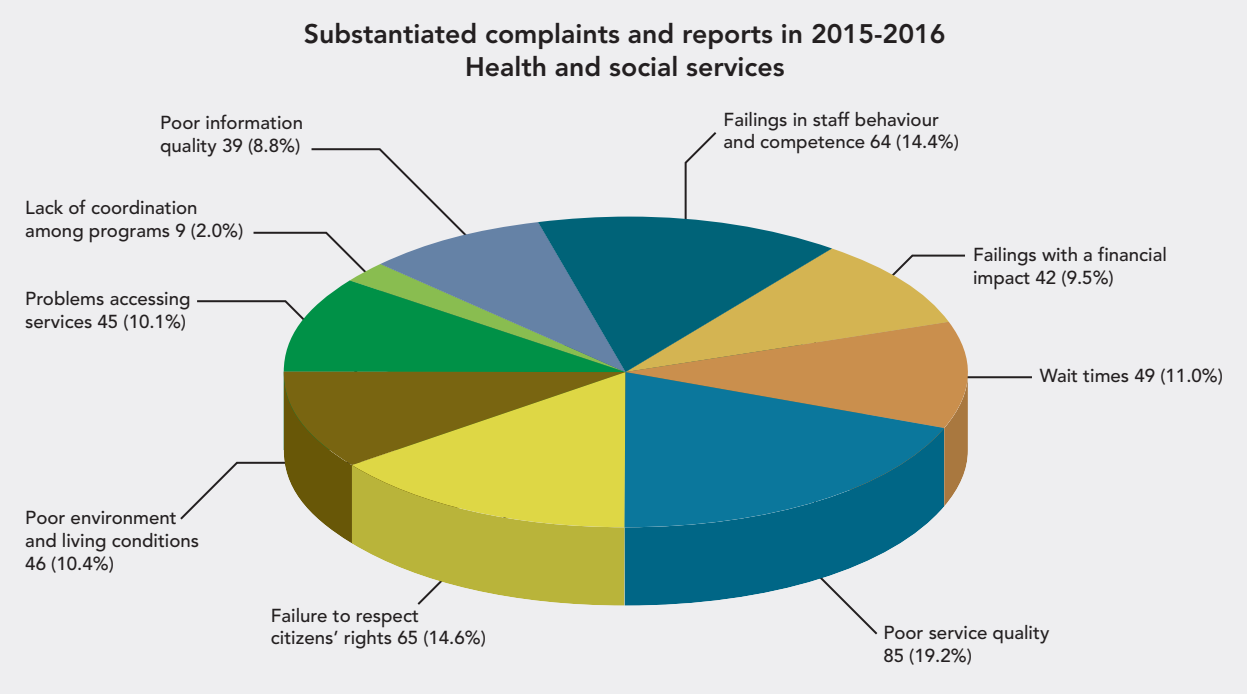
The "Failure to respect citizens' rights" category mainly concerned inadequate application of rules and procedures as well as inappropriate requirements and conditions in the administration of department and agency programs. Two thirds of the substantiated complaints in this category (66%) concerned the following organizations: the Ministère du Travail, de l'Emploi et de la Solidarité sociale, the Commission des normes, de l'équité, de la santé et de la sécurité du travail, the Société de l'assurance automobile du Québec and the Ministère de l'Immigration, de la Diversité et de l'Inclusion.



As for complaints concerning correctional services (Ministère de la Sécurité publique and Commission québécoise des libérations conditionnelles), long wait times was the category in which the number of substantiated complaints was the highest, with 28.9%, a 7.8 percentage points increase over last year's figures. The time it took to give back detainees their personal effects and to provide detainees with medication when they are transferred from one facility to another accounted in large part for this increase.

The "Failure to respect citizens' rights" category came second, with 23.1% of substantiated complaints. These failings concerned:

- non-compliance with rules or procedures established by a law, regulation or order in council (i.e. illegal detention);
- requirements, constraints or obligations that overstep usual criteria and standards;
- non-compliance with the complaint examination procedure and legal obligations;
- non-compliance with the rules concerning outings or visits authorized or allowed for a category of detainee.



For health and social services complaints and reports, the "Poor service quality" category was still first, with 19.2%. These failings had to do notably with:

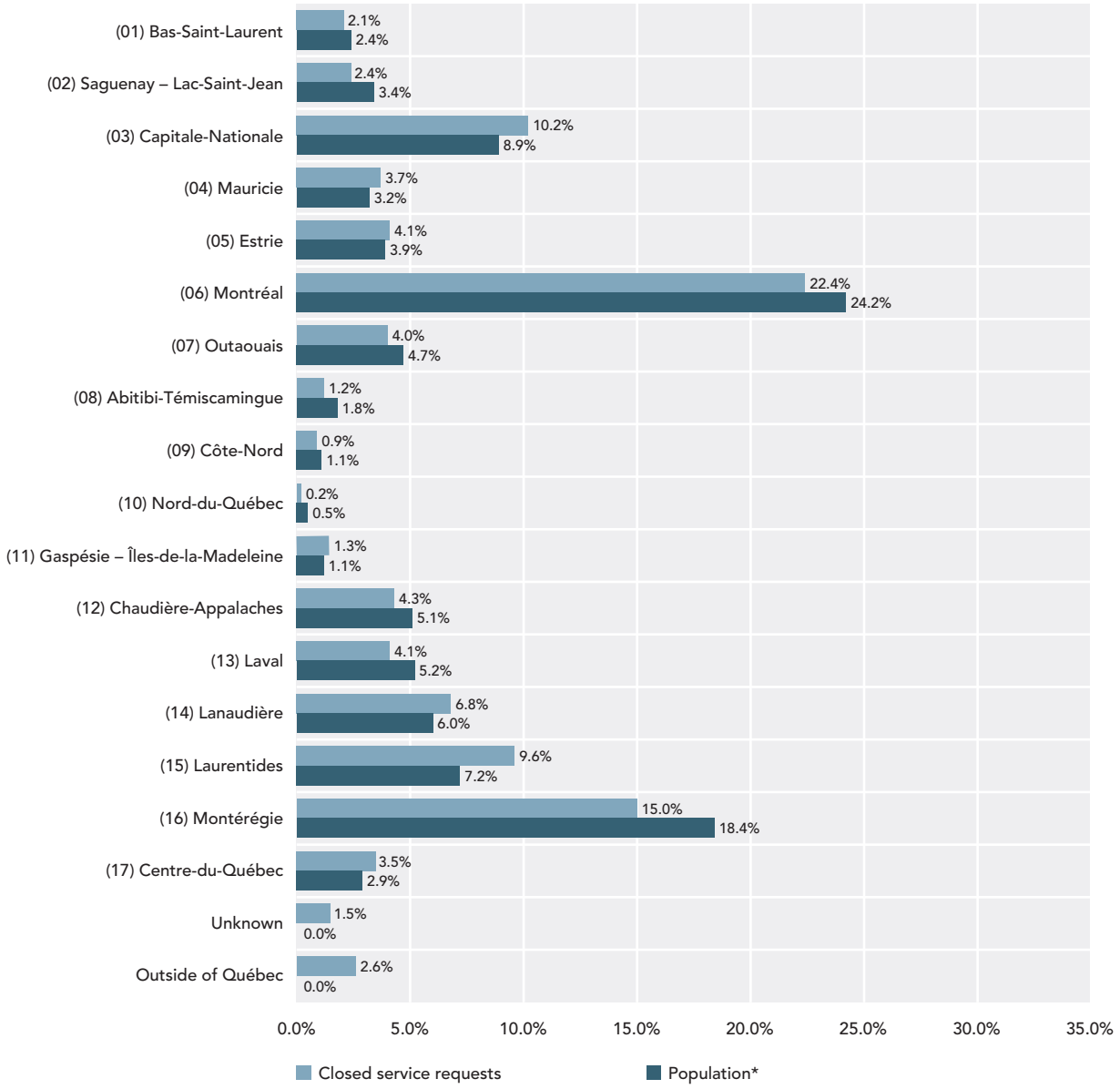
- the absence, inadequacy, lack of compliance with or failure to implement the clinical protocols or procedures governing care and service delivery (prevention of infections, isolation, incident accident reports, etc.);
- flaws in the organizations of care and services directly related to the clinical aspect;
- safety or protection measures deemed insufficient or inadequate, causing people's safety to be compromised (i.e. deficient supervision of a use, preventive isolation or searches that do not comply with rules).

In many cases, "Failure to respect citizens' rights" concerned failure to respect the rules and procedures governing the examination of complaints. Several grounds were also related to the misapplication of rules or procedures established by a law, regulation or order in council as well as grounds having to do with the exercise of the rights guaranteed to users under the *Act respecting health services and social services*.

4. SOURCE OF REQUESTS FOR ASSISTANCE, COMPLAINTS AND REPORTS

4.1 Source of closed complaints and requests for assistance for the public service[19] by the administrative region of the applicant

Proportion of closed service requests for the public service/Proportion of the population



* Source: Provisional data as at July 1, 2015. Institut de la statistique du Québec, Direction des statistiques sociodémographiques.

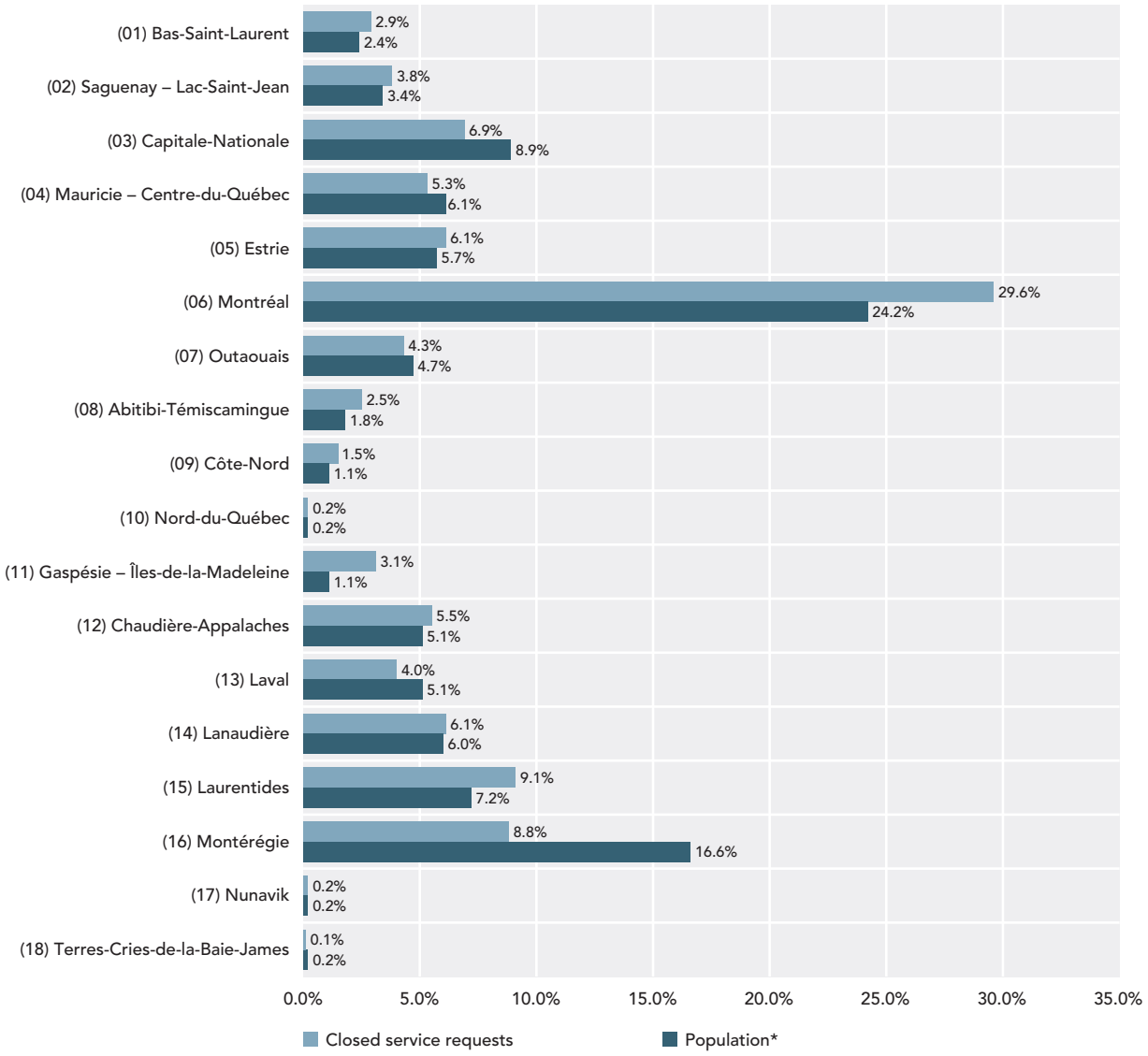
For the public service, regional statistics were compiled on the basis of citizens' addresses. Of the 17 regions, the greatest difference between the proportion of the region's population and the percentage of closed service requests was in Montérégie, where there was a 3.4 percentage points gap. We also noted that in Montréal and its outlining regions (Laval and Montérégie), the proportion of closed service requests was proportionally lower than the population.

19. This breakdown does not include the source of service requests from detainees, who tend to be concentrated in a few regions of Québec.

4.2 Source of closed complaints and reports and requests for assistance 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 into administrative regions, that of the health and social services network is divided into health and social service regions. The bodies within a given health and social service region are accountable for the services provided to citizens according to an official delimitation set by the Ministère de la Santé et des Services sociaux.

Proportion of closed service requests for health and social services/Proportion of the population by health and social service region



* Source: Provisional data as at July 1, 2015. Institut de la statistique du Québec, Direction des statistiques sociodémographiques.

Regional statistics for the health and social services sector depend on data matching the address of the body that is the subject of the request for service.

With the exception of the Montérégie region, which is under-represented, and the Montréal region, which is over-represented, the number of service requests regarding bodies within the health and social services network was relatively proportional to the population of the regions served.

In more than half of the regions (10 out of 18), the number of closed service requests was proportionately higher than in the population.

5. MONITORING OF CORRECTIVE MEASURES

At the end of an investigation by the Québec Ombudsman and the transmission of its conclusions, the bodies concerned implemented a very high proportion of the recommended corrective measures.

5.1 Case-specific measures accepted

SECTOR	2012-2013	2013-2014	2014-2015	2015-2016	2015-2016	
					Accepted	Refused
Public service (complaints)	94.4%	99.5%	97.1%	98.4%	813	13
Health and social services (complaints)	98.0%	94.0%	97.6%	99.1%	112	1
Health and social services (reports)	100.0%	100.0%	94.7%	100.0%	17	–
Total	**99.2%**	**98.8%**	**97.1%**	**98.5%**	**942**	**14**

The acceptance rate for case-specific measures recommended by the Québec Ombudsman increased by 1.4 percentage points. This year, it reached 98.5%, 14 of the 956 measures having been refused. These 14 refused recommendations concerned 10 departments and agencies.

5.2 Collective scope measures accepted

SECTOR	2012-2013	2013-2014	2014-2015	2015-2016	2015-2016	
					Accepted	Refused
Public service (complaints)	98.9%	99.7%	100.0%	97.2%	137	4
Health and social services (complaints)	98.1%	97.9%	97.9%	97.9%	283	6
Health and social services (reports)	100.0%	100.0%	91.1%	100.0%	47	–
Total	**98.8%**	**99.1%**	**97.7%**	**97.9%**	**467**	**10**

This year, the acceptance rate for collective scope measures recommended by the Québec Ombudsman reached 97.9%, 10 measures out of the 467 measures having been refused. The refused measures mainly concerned the health and social services sector.

6. PROFILE OF COMPLAINTS, REPORTS AND REQUESTS FOR ASSISTANCE BY GOVERNMENT DEPARTMENT, AGENCY, MISSION OR SERVICE PROGRAM

In 2015-2016, the Québec Ombudsman intervened:

- with 54 of the 77 government departments and agencies subject to its jurisdiction, or 70.1%;
- with 41 of the 52 institutions within the health and social services network, or 78.8%. It also handled complaints and reports concerning 10 of the other 91 institutions associated with the network, or 11.0%. Lastly, the Québec Ombudsman intervened regarding 28 private residential facilities, 14 community organizations, 3 prehospital emergency services and 3 residential resources for vulnerable client populations.

6.1 Substantiated complaints in public service matters for government departments and agencies for which at least 10 substantiated complaints were received

AGENCY	Substantiated complaints			
	2012-2013	2013-2014	2014-2015	2015-2016
Agence du revenu du Québec	157	105	158	136
Commission des normes, de l'équité, de la santé et de la sécurité du travail	95	85	88	124
Société de l'assurance automobile du Québec	73	91	79	86
Retraite Québec	68	51	50	80
Régie du logement	39	39	30	29
Régie de l'assurance maladie du Québec	9	13	16	24
Office de la protection du consommateur	4	3	7	11
Commissaire à la déontologie policière	12	5	2	10

DEPARTMENT	Substantiated complaints			
	2012-2013	2013-2014	2014-2015	2015-2016
Sécurité publique	466	638	560	504
Travail, Emploi et Solidarité sociale	97	98	133	121
Éducation et Enseignement supérieur	38	24	29	38
Immigration, Diversité et Inclusion	8	11	25	36
Justice	8	8	7	14
Transports, Mobilité durable et Électrification des transports	7	2	11	13
Développement durable, Environnement et Lutte contre les changements climatiques	6	10	12	10
Other departments and agencies	111	84	87	81
Total: **DEPARTMENTS AND AGENCIES**	**1,198**	**1,267**	**1,294**	**1,317**

This year, there was a marked increase in the number of substantiated complaints concerning the Commission des normes, de l'équité, de la santé et de la sécurité du travail, Retraite Québec, the Régie de l'assurance maladie, the Commissaire à la déontologie policière, the Ministère de l'Éducation et de l'Enseignement supérieur, the Ministère de l'Immigration, de la Diversité et de l'Inclusion as well as the Ministère de la Justice.

The data from preceding years were adjusted to take into account the changes in the missions of government departments and agencies, which may explain the variation when compared with data published previously. For example, Retraite Québec includes data from the Régie des rentes du Québec and the Commission administrative des régimes de retraite et d'assurances.

6.2 Closed requests by department or agency, by processing outcome[20]

AGENCY/COMPONENT	REQUESTS RECEIVED IN 2015-2016	Closed requests in 2015-2016							
		Requests for assistance	Complaints						Total
			Substantiated	Unsubstantiated	Mediation	Could not say	Redirected	Suspended	
Agence du revenu du Québec									
Direction générale des biens non réclamés	22	2	3	7	1	—	1	7	21
Fiscalité	1,233	113	108	382	27	3	20	506	1,159
Perception des pensions alimentaires	128	6	24	55	—	—	10	27	122
Registraire des entreprises	15	2	—	4	—	—	1	8	15
General	42	7	1	5	1	1	2	25	42
Total: Agence du revenu du Québec	**1,440**	**130**	**136**	**453**	**29**	**4**	**34**	**573**	**1,359**
Assemblée nationale	**1**	**—**	**—**	**1**	**—**	**—**	**—**	**—**	**1**
Autorité des marchés financiers	**17**	**—**	**—**	**5**	**—**	**—**	**—**	**11**	**16**
Bureau d'audiences publiques sur l'environnement	**1**	**—**	**—**	**1**	**—**	**—**	**—**	**—**	**1**
Bureau du coroner	**15**	**2**	**6**	**4**	**—**	**—**	**—**	**4**	**16**
Centre de services partagés du Québec	**7**	**—**	**1**	**—**	**—**	**—**	**—**	**1**	**2**
Comité de déontologie policière	**5**	**—**	**1**	**—**	**—**	**—**	**1**	**—**	**2**
Commissaire à la déontologie policière	**83**	**4**	**10**	**37**	**—**	**—**	**1**	**20**	**72**
Commission d'accès à l'information	**23**	**2**	**4**	**5**	**1**	**2**	**2**	**7**	**23**
Commission de la fonction publique du Québec	**3**	**—**	**—**	**1**	**—**	**—**	**—**	**1**	**2**
Commission de protection du territoire agricole du Québec	**12**	**3**	**—**	**5**	**—**	**1**	**—**	**1**	**10**
Commission des transports du Québec	**11**	**1**	**1**	**4**	**—**	**—**	**—**	**4**	**10**
Commission des normes, de l'équité, de la santé et de la sécurité du travail									
Équité salariale	18	1	1	—	—	—	1	16	19
Indemnisation	727	85	75	311	—	3	21	241	736
Indemnisation des victimes d'actes criminels	241	8	43	71	—	2	4	48	176
Normes du travail	51	2	3	18	—	—	3	20	46
General	52	8	2	15	—	—	4	24	53
Total: Commission des normes, de l'équité, de la santé et de la sécurité du travail	**1,089**	**104**	**124**	**415**	**—**	**5**	**33**	**349**	**1,030**
Commission municipale du Québec	**2**	**—**	**—**	**—**	**—**	**—**	**—**	**2**	**2**

20. The number of service requests processed in one year and thus the number of closed service requests does not necessarily match the number of service requests received. At the start of each year, investigations into service requests received previously are still being processed.

AGENCY/COMPONENT	REQUESTS RECEIVED IN 2015-2016	Closed requests in 2015-2016							
		Requests for assistance	Complaints						Total
			Substantiated	Unsubstantiated	Mediation	Could not say	Redirected	Suspended	
Commission québécoise des libérations conditionnelles	13	4	1	1	—	—	—	7	13
Conseil de gestion de l'assurance parentale	1	—	—	—	—	—	—	1	1
Conseil de la justice administrative	4	—	—	—	—	—	—	4	4
Conseil de la magistrature	5	—	—	2	—	—	—	3	5
Curateur public	190	17	7	66	—	—	4	70	164
Directeur des poursuites criminelles et pénales	9	1	—	—	—	—	—	8	9
Institut de tourisme et d'hôtellerie du Québec	2	—	—	—	—	—	—	2	2
La Financière agricole du Québec	5	—	—	1	—	1	—	3	5
Office de la protection du consommateur	21	—	11	10	—	—	—	2	23
Office des personnes handicapées du Québec	2	—	—	1	—	—	1	—	2
Office des professions du Québec	6	1	—	3	—	—	1	1	6
Office québécois de la langue française	4	1	2	3	—	—	—	—	6
Régie de l'assurance maladie du Québec	291	28	24	143	—	—	18	68	281
Régie des alcools, des courses et des jeux	6	—	3	2	—	—	—	1	6
Régie des marchés agricoles et alimentaires du Québec	2	—	—	—	—	—	—	1	1
Régie du bâtiment du Québec	28	—	7	13	—	—	6	6	32
Régie du logement	199	22	29	31	—	2	8	86	178
Retraite Québec									
Régime de rentes du Québec et Soutien aux enfants	392	19	57	148	—	14	8	104	350
Régimes de retraite du secteur public	67	6	22	29	—	1	—	28	86
General	5	1	1	—	—	—	—	—	2
Total: Retraite Québec	464	26	80	177	—	15	8	132	438
Service administratif de rajustement des pensions alimentaires pour enfants (SARPA)	1	—	1	—	—	—	—	—	1
Société de l'assurance automobile du Québec									
Code de la sécurité routière	287	12	35	164	—	1	12	55	279
Indemnisation	481	78	48	239	—	1	11	149	526
General	11	—	3	6	—	—	—	2	11
Total: Société de l'assurance automobile du Québec	779	90	86	409	—	2	23	206	816

AGENCY/COMPONENT	REQUESTS RECEIVED IN 2015-2016	Closed requests in 2015-2016							
		Requests for assistance	Complaints						Total
			Substantiated	Unsubstantiated	Mediation	Could not say	Redirected	Suspended	
Société d'habitation du Québec	**51**	**6**	**5**	**13**	**—**	**—**	**3**	**23**	**50**
Tribunal administratif du Québec	**36**	**2**	**3**	**13**	**—**	**—**	**1**	**16**	**35**
Tribunal administratif du travail									
Lésions professionnelles	42	4	1	3	—	—	—	33	41
Relations du travail	18	—	—	1	—	—	—	16	17
General	1	1	—	—	—	—	—	—	1
Total: Tribunal administratif du travail	**61**	**5**	**1**	**4**	**—**	**—**	**—**	**49**	**59**
Total: AGENCIES	**4,889**	**449**	**543**	**1,823**	**30**	**32**	**144**	**1,662**	**4,683**

DEPARTMENT/COMPONENT	REQUESTS RECEIVED IN 2015-2016	Closed requests in 2015-2016							
		Requests for assistance	Complaints						Total
			Substantiated	Unsubstantiated	Mediation	Could not say	Redirected	Suspended	
Affaires municipales et Occupation du territoire	**66**	**5**	**7**	**31**	**—**	**—**	**2**	**19**	**64**
Agriculture, Pêcheries et Alimentation	**24**	**1**	**6**	**11**	**—**	**1**	**2**	**6**	**27**
Culture et Communications	**11**	**1**	**4**	**3**	**—**	**—**	**—**	**3**	**11**
Développement durable, Environnement et Lutte contre les changements climatiques	**82**	**3**	**10**	**36**	**—**	**1**	**2**	**32**	**84**
Économie, Science et Innovation	**2**	**—**	**—**	**—**	**—**	**—**	**—**	**—**	**—**
Éducation et Enseignement supérieur									
Aide financière aux études	172	7	34	85	—	2	2	52	182
Éducation	99	4	2	9	—	—	74	15	104
Enseignement supérieur	13	—	1	6	—	—	5	2	14
General	5	—	1	1	—	—	—	3	5
Total: Éducation et Enseignement supérieur	**289**	**11**	**38**	**101**	**—**	**2**	**81**	**72**	**305**
Énergie et Ressources naturelles	**54**	**3**	**2**	**19**	**—**	**—**	**—**	**12**	**36**
Famille	**61**	**1**	**9**	**40**	**—**	**—**	**4**	**20**	**74**
Finances	**15**	**2**	**1**	**7**	**—**	**—**	**2**	**2**	**14**
Forêts, Faune et Parcs	**30**	**1**	**2**	**8**	**—**	**—**	**—**	**14**	**25**
Immigration, Diversité et Inclusion	**127**	**3**	**36**	**48**	**—**	**1**	**1**	**47**	**136**
Justice	**61**	**2**	**14**	**24**	**—**	**—**	**1**	**23**	**64**
Santé et Services sociaux	**76**	**15**	**7**	**10**	**—**	**—**	**6**	**35**	**73**
Sécurité publique									
Sécurité civile	6	—	—	5	—	—	1	2	8
Services correctionnels	4,515	95	498	838	—	37	1,746	1,175	4,389
General	41	1	6	20	—	—	—	17	44
Total: Sécurité publique	**4,562**	**96**	**504**	**863**	**—**	**37**	**1,747**	**1,194**	**4,441**

DEPARTMENT/COMPONENT	REQUESTS RECEIVED IN 2015-2016	Closed requests in 2015-2016							
		Requests for assistance	Complaints						Total
			Substantiated	Unsubstantiated	Mediation	Could not say	Redirected	Suspended	
Tourisme	**2**	—	—	**1**	—	—	—	**1**	**2**
Transports, Mobilité durable et Électrification des transports	**86**	**10**	**13**	**25**	—	—	—	**31**	**79**
Travail, Emploi et Solidarité sociale									
Directeur de l'état civil	30	1	3	16	—	—	3	6	29
Emploi	102	4	6	53	—	1	7	20	91
Régime québécois d'assurance parentale	28	5	—	8	—	—	1	15	29
Services Québec	3	—	1	1	—	—	—	1	3
Solidarité sociale	1,302	141	109	398	—	—	50	600	1,298
General	9	1	2	3	—	—	—	3	9
Total: Travail, Emploi et Solidarité sociale	**1,474**	**152**	**121**	**479**	—	**1**	**61**	**645**	**1,459**
Total: DEPARTMENTS	**7,022**	**306**	**774**	**1,706**	—	**43**	**1,909**	**2,156**	**6,894**
Total: DEPARTMENTS AND AGENCIES	**11,911**	**755**	**1,317**	**3,529**	**30**	**75**	**2,053**	**3,818**	**11,577**

6.3 Closed complaints and requests for assistance in health and social services matters, by mission[21]

CATEGORY/MISSION	REQUESTS RECEIVED IN 2015-2016	Closed requests in 2015-2016							
		Requests for assistance	Complaints						Total
			Substantiated	Unsubstantiated	Mediation	Could not say	Redirected	Suspended	
Institutions									
Rehabilitation centres	69	1	20	23	—	—	5	19	68
Residential and long-term care centres	117	2	35	61	—	3	4	22	127
Hospital centres	620	3	246	247	2	2	33	73	606
Youth centres	167	—	9	77	—	2	13	36	137
Local community service centres	191	2	67	78	—	3	17	22	189
Complaints commissioners or other	56	4	11	12	—	—	4	19	50
Total: Institutions	**1,220**	**12**	**388**	**498**	**2**	**10**	**76**	**191**	**1,177**
Community organizations	**31**	—	**10**	**10**	—	—	—	**10**	**30**
Private residential facilities	**18**	**1**	**1**	**8**	—	—	**1**	**6**	**17**
Private or community residential resources for vulnerable client populations	**1**	—	—	—	—	—	—	**1**	**1**
Pre-hospital emergency services	**15**	—	**2**	**11**	—	**1**	—	**2**	**16**
Total	**1,285**	**13**	**401**	**527**	**2**	**11**	**77**	**210**	**1,241**

21. The number of service requests processed in one year and thus the number of closed service requests does not necessarily match the number of service requests received. At the start of each year, investigations into service requests received previously are still being processed.

More than 48.8% of closed complaints and requests for assistance concerned hospital centres and the percentage of substantiated complaints concerning hospital centres was relatively high, at 49.9%.[22] Local community and service centres (CLSCs) and residential and long-term care centres (CHSLDs) were also the subject of several service requests. The proportion of substantiated complaints concerning these institutions was 46.2%[22] and 36.5%[22] respectively.

Youth centres were also 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 have a decision by the Youth Division of the Court of Québec amended, nor can it question clinical decisions by the Director of Youth Protection (DPJ) concerning evaluation of a report. The result is a low number of admissible and substantiated complaints.

6.4 Closed reports[23] and requests for assistance in health and social services matters, by mission[24]

CATEGORY/MISSION	REQUESTS RECEIVED IN 2015-2016	Closed requests in 2015-2016							
		Requests for assistance	Reports						Total
			Substantiated	Unsubstantiated	Mediation	Could not say	Redirected	Suspended	
Institutions									
Rehabilitation centres	22	—	1	1	—	—	3	6	11
Residential and long-term care centres	29	—	17	1	—	—	—	17	35
Hospital centres	52	1	11	10	4	—	5	15	46
Youth centres	8	—	—	—	1	—	—	6	7
Local community service centres	13	1	5	2	3	—	2	9	22
Complaints commissioners or other	20	—	2	—	8	—	—	2	12
Total: Institutions	**144**	**2**	**36**	**14**	**16**	**—**	**10**	**55**	**133**
Community organizations	**1**	**—**	**1**	**—**	**—**	**—**	**—**	**1**	**2**
Private residential facilities	**15**	**—**	**6**	**6**	**—**	**—**	**—**	**10**	**22**
Private or community residential resources for vulnerable client populations	**1**	**—**	**—**	**—**	**—**	**—**	**—**	**2**	**2**
Pre-hospital emergency services	**—**	**—**	**—**	**1**	**—**	**—**	**—**	**—**	**1**
Total	**161**	**2**	**43**	**21**	**16**	**—**	**10**	**68**	**160**

22. To calculate the percentage of substantiated complaints, the number of substantiated complaints is divided by the number of substantiated complaints plus the number of unsubstantiated complaints.

23. Section 38 of the *Act respecting the Health and Social Services Ombudsman* requires a separate report of complaints and reports (made pursuant to section 20, which stipulates that the Health and Social Services Ombudsman may, on his or her own initiative, 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) of any institution or any organization, resource, partnership or person to whom or which an institution has recourse for the provision of certain services; (2) of any agency or any organization, resource, partnership or person whose services may be the subject of a complaint under section 60 of the *Act respecting health services and social services* (chapter S-4.2); (3) of Corporation d'urgences-santé in the provision of pre-hospitalization emergency services; or (4) of any person working or practising on behalf of a body referred to in subparagraph 1, 2 or 3).

24. The number of service requests processed in one year and thus the number of closed service requests does not necessarily match the number of service requests received. At the start of each year, investigations into service requests received previously are still being processed.

6.5 Closed complaints and requests for assistance in health and social services matters, by service program[25]

SERVICE PROGRAMS OF THE HEALTH AND SOCIAL SERVICES NETWORK	REQUESTS RECEIVED IN 2015-2016	Closed requests in 2015-2016							
		Requests for assistance	Complaints						Total
			Substantiated	Unsubstantiated	Mediation	Could not say	Redirected	Suspended	
Buildings and equipment	—	—	—	—	—	—	—	—	—
Intellectual disability/Pervasive developmental disorders	75	—	27	26	—	—	5	18	76
Physical disability	55	2	14	16	—	—	7	12	51
Addictions	7	—	—	3	—	—	1	2	6
Troubled youth	165	—	8	74	—	2	13	37	134
Physicians	31	—	21	9	—	—	1	6	37
Complaint examination procedure	39	3	15	8	1	—	2	8	37
Mental health	112	1	43	59	—	1	9	23	136
Physical health	430	2	164	157	1	2	11	43	380
Support for elderly autonomy	175	5	51	82	—	5	12	36	191
Service support	189	—	58	90	—	1	16	21	186
Other	7	—	—	3	—	—	—	4	7
Total	1,285	13	401	527	2	11	77	210	1,241

This year, the physical health, support for elderly autonomy and service support programs were the programs for which the greatest number of closed complaints and requests for assistance were received (61.0% of all closed service requests this year). The physical health program accounted for 51.1%,[26] which was above the average for service programs.

The mental health program, relatively stable as to the number of closed complaints, had a higher proportion of substantiated complaints this year, at 42.2%[26], compared to an average of 30.2%[26] for the preceding years.

With the least number of closed complaints (37), the physicians and complaint examination procedure programs had high substantiated complaint rates (respectively 70%[26] and 65.2%[26]). Note that the Québec Ombudsman cannot process complaints of a medical nature.

The troubled youth program had a lower percentage of substantiated complaints because the Québec Ombudsman's power to intervene is more limited (see the explanation on section 6.3).

25. The number of service requests processed in one year and thus the number of closed service requests does not necessarily match the number of service requests received. At the start of each year, investigations into service requests received previously are still being processed.

26. To calculate the percentage of substantiated complaints, the number of substantiated complaints is divided by the number of substantiated complaints plus the number of unsubstantiated complaints.

6.6 Closed reports[27] and requests for assistance in health and social services matters, by service program[28]

SERVICE PROGRAMS OF THE HEALTH AND SOCIAL SERVICES NETWORK	REQUESTS RECEIVED IN 2015-2016	Closed requests in 2015-2016							
		Requests for assistance	Reports						Total
			Substantiated	Unsubstantiated	Mediation	Could not say	Redirected	Suspended	
Buildings and equipment	1	—	—	—	—	—	—	—	—
Intellectual disability/Pervasive developmental disorders	20	—	1	1	—	—	3	6	11
Physical disability	6	—	—	1	1	—	—	3	5
Addictions	1	—	—	—	—	—	—	2	2
Troubled youth	7	—	—	—	—	—	—	6	6
Complaint examination procedure	24	—	2	1	15	—	—	6	24
Mental health	28	—	7	8	—	—	5	7	27
Physical health	21	1	6	1	—	—	—	9	17
Public health	1	—	1	—	—	—	—	—	1
Support for elderly autonomy	48	1	24	7	—	—	1	29	62
Service support	1	—	—	2	—	—	—	—	2
Other	3	—	2	—	—	—	1	—	3
Total	161	2	43	21	16	—	10	68	160

More than half of the substantiated reports (24 out of 43) concerned the support for elderly autonomy program.

27. Section 38 of the *Act respecting the Health and Social Services Ombudsman* requires a separate report of complaints and reports (made pursuant to section 20 which stipulates that the Health and Social Services Ombudsman may, on his or her own initiative, 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) of any institution or any organization, resource, partnership or person to whom or which an institution has recourse for the provision of certain services; (2) of any agency or any organization, resource, partnership or person whose services may be the subject of a complaint under section 60 of the *Act respecting health services and social services* (chapter S-4.2); (3) of Corporation d'urgences-santé in the provision of pre-hospitalization emergency services; or (4) of any person working or practising on behalf of a body referred to in subparagraph 1, 2 or 3).

28. The number of service requests processed in one year and thus the number of closed service requests does not necessarily match the number of service requests received. At the start of each year, investigations into service requests received previously are still being processed.

7. A SECTOR OUTSIDE THE QUÉBEC OMBUDSMAN'S JURISDICTION BUT FOR WHICH SERVICE REQUESTS RAISED CONCERNS

This year, there were 406 service requests concerning Hydro-Québec, an agency over which the Québec Ombudsman has no power to intervene under the jurisdiction assigned to it by law. Grounds for complaint were various and included payment agreements, billing, service interruptions, installation wait times, refusal to give back deposits and billing errors.

In its 2014-2015 Annual Report, the Québec Ombudsman indicated that 455 form letters against the installation of smart meters had been received. Excluding these form letters, there was a 7.4% increase in service requests concerning Hydro-Québec this year.

AGENCY	2012-2013	2013-2014	2014-2015	2015-2016
Hydro-Québec	210	310	833	406

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 2014-2015	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016
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 and the mailing slated for May 2015 of the improved notices of determination (form and presentation).	**SATISFIED** with the improvements to notices of determination with a view to simplifying them, but, in particular, to adapt them to the legislative changes made to the solidarity tax credit.

RETRAITE QUÉBEC – PUBLIC SECTOR PENSION PLANS (FORMERLY COMMISSION ADMINISTRATIVE DES RÉGIMES DE RETRAITE ET D'ASSURANCES (CARRA))		
REMISSION OF DEBT ARISING FROM ERRORS		
RECOMMENDATION 2009-2010	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016
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.	**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.	**SATISFIED** with passage of the legislative provisions obliging Retraite Québec to remit debts arising from errors that cannot reasonably be detected by the recipients.

MINISTÈRE DE L'ÉDUCATION ET DE L'ENSEIGNEMENT SUPÉRIEUR		
SUMMER COURSES AND FEES CHARGED FOR RETAKING MINISTERIAL EXAMINATIONS		
RECOMMENDATIONS 2012-2013	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016
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 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.	**SATISFIED** with the correspondence sent by the Department in the spring of 2016 to the directors general of school boards to remind them about the legal framework that applies to the management of the fees charged by school boards for retaking ministerial examinations.

MINISTÈRE DE LA FAMILLE		
COORDINATING OFFICES		
RECOMMENDATION 2014-2015	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016
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 Tribunal administratif du 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.	—	**WILL MONITOR** implementation of the work plan developed by the Ministère de la Famille to establish recourse to the Tribunal administratif du Québec. **SATISFIED** with the directive obliging coordinating offices to transmit a written decision with explanations as to why an application for recognition has been turned down. **SATISFIED** with the directive obliging coordinating offices to keep the files of refused applications for recognition for 12 months.

MINISTÈRE DU TRAVAIL, DE L'EMPLOI ET DE LA SOLIDARITÉ SOCIALE		
EXCLUSION APPLICABLE TO ALL FORMS OF SUCCESSION		
RECOMMENDATIONS 2013-2014	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016
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.	**SATISFIED** that the legislative and regulatory amendments were proposed in Bill 70, introduced on November 10, 2015. **DISSATISFIED** that the Bill does not provide for retroactivity to July 26, 2012. **DISSATISFIED** with the intended application by the Department, namely, that interest will not be excluded in calculating last-resort financial assistance benefits.

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE – SERVICES CORRECTIONNELS		
PROVINCIAL INSTRUCTION ON THE HEALTH NEEDS OF DETAINEES		
RECOMMENDATIONS 2011-2012	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016
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 the Department has suspended the use of a grid containing the criteria to consider when transferring detainees from one correctional facility to another.	**DISSATISFIED** that the Department did not take any steps to improve the situation in 2015-2016.

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE ET COMMISSION QUÉBÉCOISE DES LIBÉRATIONS CONDITIONNELLES		
EXAMINATION OF CONDITIONAL RELEASE		
RECOMMENDATIONS 2013-2014	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016
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.	**DISSATISFIED** with the Department's and the Commission québécoise des libérations conditionnelles's inaction in this regard. Despite the measures introduced by the Commission to improve the situation, the rate of waivers of the right to examination of applications for conditional release remains high, in particular because the underlying reasons for the problem have not been properly documented.
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.	**DISSATISFIED** that as at March 31, 2016, the Department had still not decided on the mechanisms it intends to establish for decreasing the number of waivers.
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.	**DISSATISFIED** that the rate of waivers of the right to examination of applications for conditional release has not decreased significantly.

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 2014-2015	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016
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 insufficiency of the measures taken to solve this problem. There continue to be numerous hearing postponements due especially to lack of the documents needed for the Commission québécoise des libérations conditionnelles to study files.

RÉGIE DU LOGEMENT		
LEGISLATIVE AMENDMENTS TO REDUCE WAIT TIMES		
RECOMMENDATIONS 2007-2008	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016
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 lack of follow-up given that the problem of long wait times persists at the Régie du logement.

MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX

MENTAL HEALTH		
MEANS OF CONTROL		
RECOMMENDATIONS 2009-2010	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016
That the Ministère de la Santé et des Services sociaux supervise the use of chemical substances as a control measure.	**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.*	**SATISFIED** that the framework for producing protocols for the use of means of control was modified in the spring of 2015 to include use of chemical substances.

MENTAL HEALTH		
MEANS OF CONTROL		
RECOMMENDATIONS 2009-2010	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016**
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.	**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.	**DISSATISFIED** with the Department's refusal to produce a standardized data collection tool. **WILL MONITOR** the results of the work by the task force struck by the Department to identify mandatory accountability indicators for the use of means of control by institutions.
That it assess the impact of implementing its guidelines.	**DISSATISFIED** that steps have yet to be taken in this regard.	**DISSATISFIED** with the time it is taking to assess the impact of implementing the guidelines because this cannot happen until all institutions adopt common indicators.
ABSENCE OF CONSENT TO PLANNED MEANS OF CONTROL		
RECOMMENDATION 2012-2013	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016**
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.	**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.	**SATISFIED** that the framework for producing protocols for the use of means of control modified in the spring of 2015 addresses the rules concerning consent to planned means of control. The Québec Ombudsman will remain watchful of how the protocols are applied in practice.
ABSENCE OF OVERSIGHT OF PRIVATE RESIDENTIAL RESOURCES FOR PEOPLE WITH MENTAL HEALTH PROBLEMS		
RECOMMENDATIONS 2013-2014	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016**
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.	**DISSATISFIED** that the Department underestimates this issue and therefore refuses to certify private residential resources for a client population with mental health problems, in disregard of its duty to protect these vulnerable people.

PHYSICAL DISABILITIES, INTELLECTUAL DISABILITIES AND AUTISM SPECTRUM DISORDERS		
AVAILABILITY OF SERVICES		
RECOMMENDATION 2009-2010	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016**
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.	**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.	**DISSATISFIED** that the intellectual disability and autism spectrum disorder service offering was not reviewed in the spring of 2016 as planned.
CONTINUITY OF CARE AND SERVICES		
RECOMMENDATIONS 2011-2012	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016**
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 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.	**WILL MONITOR** distribution of the home support guidelines planned for June 2016.

PHYSICAL DISABILITIES, INTELLECTUAL DISABILITIES AND AUTISM SPECTRUM DISORDERS		
QUALITY ASSESSMENT VISITS TO INTERMEDIATE AND FAMILY-TYPE RESOURCES		
RECOMMENDATION 2010-2011	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016
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.	**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.	**SATISFIED** that official quality assessments visits to intermediate and family-type resources have resumed. **SATISFIED** with the Department's review of the procedure for these visits.

PHYSICAL HEALTH		
TREATMENT OF EMERGENCY SERVICE USERS		
RECOMMENDATION 2008-2009	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016
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.	**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*.	**SATISFIED** that the commitment to put in place a new computerized list for access to a family physician has been met. **WILL MONITOR** whether implementation significantly reduces wait times for access to front-line services.
ABSENCE OF CLEAR GUIDELINES ON THE PROVISION OF HEPARIN		
RECOMMENDATION 2013-2014	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016
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.	**SATISFIED** that the Department has withdrawn the obsolete circular.

SUPPORT FOR ELDERLY AUTONOMY		
ENVIRONMENTS THAT ALLOW PRIVACY AND RESPECT		
RECOMMENDATION 2007-2008	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016**
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.	**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.	**WILL MONITOR** distribution of the CHSLD property planning guide slated for 2016.
QUALITY LIVING ENVIRONMENTS FOR PEOPLE IN RESIDENCES		
RECOMMENDATION 2009-2010	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016**
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** the ongoing review of front-line assessment, management and work organization practices regarding residential users with behavioural disorders.	**SATISFIED** with the Department's work to date. **WILL MONITOR** the conducting and outcomes of the work underway and of future work.
QUALITY OF CARE AND SERVICES FOR PEOPLE TEMPORARILY HOUSED IN PRIVATE HOMES		
RECOMMENDATION 2012-2013	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015**	**QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016**
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.	**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.	**SATISFIED** with the quality assurance measures by the Department in the context of the purchase of places within the private sector.

SUPPORT FOR ELDERLY AUTONOMY		
HETEROGENEITY OF THE CLIENT POPULATION AND USER SAFETY		
RECOMMENDATIONS 2013-2014	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016
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.	**SATISFIED** with the work to date. **WILL MONITOR** the work underway.
PERSONAL CARE		
RECOMMENDATIONS 2014-2015	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016
That the Ministère de la Santé et des Services sociaux make an inventory of the CHSLDs that do not have the required equipment. **That,** at the earliest opportunity, it take the measures needed to provide these residents with baths or showers without compromising their safety. **That** it ensure that CHSLD quality assessment visits systematically include evaluation of personal care. **That** it send the Québec Ombudsman the findings from this inventory and information about the concrete measures for ensuring adequate personal care in CHSLDs.	—	**WILL MONITOR** the Department's interventions regarding all institutions so that they provide users with personal care in a safe environment.

SUPPORT FOR ELDERLY AUTONOMY		
ACCESS TO PUBLIC CHSLDS		
RECOMMENDATION 2013-2014	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016
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.	**SATISFIED** with the measures put in place. **WILL MONITOR** the real impact of these measures on user referral to the right accommodations for them.

SERVICE SUPPORT		
ADDITIONAL FEES CHARGED TO USERS BY HOSPITAL CENTRES		
RECOMMENDATIONS 2014-2015	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2014-2015	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016
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*. **That** it provide fair and reasonable guidelines for the administrative fees that institutions can charge to users, pursuant to the *Hospital Insurance Act*.	—	**WILL MONITOR** the work underway, and is concerned about the guidelines that will be used to determine what is medically required, especially regarding the use of new medical techniques. **DISSATISFIED** that the Department has not provided any guidelines on this question and that the managers of institutions are given free rein to set administrative fees.

RECOMMENDATIONS IN THE 2015-2016 ANNUAL REPORT

MINISTÈRE DU TRAVAIL, DE L'EMPLOI ET DE LA SOLIDARITÉ SOCIALE

THE QUÉBEC OMBUDSMAN'S RECOMMENDATIONS CONCERNING THE MANAGEMENT OF APPLICATIONS FOR ADMINISTRATIVE REVIEW AND CASES BEFORE THE TRIBUNAL ADMINISTRATIF DU QUÉBEC

- Whereas pursuant to the *Individual and Family Assistance Act*, the Minister may not apply recovery measures to a debtor before expiry of the 90-day deadline for citizens to submit an application for review of a decision claiming payment of a debt or before the review decision is rendered;
- Whereas pursuant to the Act, the Minister may not apply recovery measures before expiry of the 60-day deadline for citizens to contest a review decision before the Tribunal administratif du Québec or before expiry of the 30 days after a decision is rendered by the Tribunal;
- Whereas it is illegal to use recovery measures with recipients who are contesting a claim within the prescribed deadline;
- Whereas the use of recovery measures with recipients is a significant source of stress for people who are already financially vulnerable;
- Whereas the probability of human error should be minimal in a file management system likely to have an impact on the benefit amounts of people who depend on last-resort financial assistance;

THE QUÉBEC OMBUDSMAN RECOMMENDS THAT THE MINISTÈRE DU TRAVAIL, DE L'EMPLOI ET DE LA SOLIDARITÉ SOCIALE:

- Commit to correcting the flaws in its recourse management within a year;
- First produce an action plan setting out the solution chosen for this purpose as well as the expected outcomes, and inform the Québec Ombudsman accordingly;
- In the meantime, have more stringent quality control so as to prevent other illegal recovery measures;
- When the solution has been implemented, verify the achievement of outcomes by means of ongoing quality control, and inform the Québec Ombudsman accordingly.

LE PROTECTEUR DU CITOYEN

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