



LE PROTECTEUR DU CITOYEN

Assemblée nationale  
Québec

JUSTICE FAIRNESS RESPECT

IMPARTIALITY TRANSPARENCY

2016-2017 ANNUAL REPORT



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Assemblée nationale  
Québec

2016 - 2017 ANNUAL REPORT

Québec City  
September 2017

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 47th Annual Report of the Québec Ombudsman for fiscal year 2016-2017.

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,

A handwritten signature in black ink, appearing to read 'Marie Rinfret', with a stylized flourish at the end.

Marie Rinfret  
Ombudsperson

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## Notice

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

# MESSAGE FROM THE OMBUDSPERSON



## Plan transitions and make the future of public services all about people

While it is normal and desirable that public services evolve, adapt to the challenges of the day and make the most of technological advances, I feel it is paramount that any changes be planned rigorously, with an eye to the future and a focus on the well-being of citizens.

That is why government departments, agencies, and institutions of the health and social services network must assess the whys and wherefores and gauge the impact of any proposed change on people before introducing changes. What will the benefits be for client populations the day after a change in the way of doing things, in the transmission of information or in the allocation of resources? Have all possible risks of adverse effects and the infringement of rights been properly examined? Will there be direct or indirect victims of these changes? In the short, medium or long term? As I see it, it is a matter of ensuring that the future of public programs is truly all about people.

This year, people, often among society's most disadvantaged, paid the price for administrative reforms that were cobbled together hastily and which affected their personal and financial safety as well as respect for their rights. Numerous individuals complained to the Québec Ombudsman about this.

For example, as concerns the solidarity tax credit, which is managed by Revenu Québec, a tax slip is needed to calculate housing assistance. People did not fully understand the nature of the new requirements, were unable to reach Revenu Québec services—which were swamped with calls—and unknowingly made mistakes in their tax returns. As a result, these low-income claimants found themselves having to deal with reimbursement even though they had acted in good faith.

In January 2016, the Ministère de l'Immigration, de la Diversité et de l'Inclusion created a web portal for immigration candidates wishing to file an application. More than one year after the portal was put in place, the Department has still not gotten around to processing the applications received. Delays increase and the plans of these candidates awaiting a crucial decision are put on hold that much longer.

In February 2016, the Direction générale des services correctionnels of the Ministère de la Sécurité publique closed Maison Tanguay correctional facility, infamous for its dilapidated condition. The female detainees were transferred to Leclerc de Laval correctional facility, up to that point reserved for a male client population. In no time at all, there were more and more problems stemming from the gender mix, which prompted the Department to consider building a new facility for female inmates, then to change its mind, and later opt for transferring the men to other correctional facilities. Yet the authorities had long been aware of the state of ill-repair of Maison Tanguay and of the foreseeable difficulties of housing men and women in the same place of detention.

The health and social services network reform in April 2015, under which the number of public institutions went from 182 to 51, was a colossal endeavour. Two years later, I see that the trend in terms of the slate of services is “a race to the bottom.” For example, people who used to get a few hours of home support a week now learn that they no longer qualify even though their needs have not decreased.

With population aging, the need to allocate resources for residences for the elderly is glaring, so how does one explain the blatant shortage of places in residential and long-term care centres? The domino effect is that intermediate resources are overused even though, very often, people are admitted whose needs cannot be handled there. The elderly end up on waiting lists, are placed in temporary resources or live with residents whose cognitive disorders lead to aggressive behaviour. Some seniors have to be moved repeatedly, which makes no sense given their vulnerability.

These are but a few of the cases in which transitions had direct and indirect effects that jeopardized citizens’ right to quality services adapted to their needs.

## SUPPORT CITIZENS IN THEIR OWN TRANSITIONS

Alongside organizational transitions, public services must also be concerned with the adaptations required of citizens. People have no choice but to reorganize their life after an automobile or a work-related accident; others are planning their retirement; some are eligible for student financial assistance; young people become parents and qualify for a public insurance plan; seniors suffer a sharp decline in their autonomy; and workers lose their jobs.

It goes without saying that the public services which accompany people through transitions must be able to provide a response that is adequate, rapid and flexible. This year again, the investigations we conducted revealed various deficiencies, such as long wait times for replies, rigid legal interpretation and file processing errors. They also shed light on the need for the public service to make more of an effort to communicate with people in language they understand and using means to which they have access. It must be remembered, among other things, that in Québec, nearly one out of two people ages 16 to 65 has problems reading, a sizable share of the population is not computer-literate and the most vulnerable members of our society are difficult to reach although their needs may be the most urgent of all.

## AN EXCITING MANDATE, A CLEAR COMMITMENT

As I write this, I am myself making a transition in my capacity as the new Ombudsperson. I would like to thank Raymonde Saint-Germain, who was Ombudsperson for the past 10 years and who made it possible for the institution to pursue its work as a credible and effective ombudsman, with complete independence, and to champion the recognition of citizens' right to quality public services. She often insisted, and rightly so, that when public services are attuned to their users, it creates trust. I also wish to express my gratitude to Claude Dussault, Deputy Ombudsman Citizen and User Services, who was the Acting Ombudsman before my arrival, and who brought his composure and experience to bear in addressing the same priorities.

I pledge to spare no efforts to continue to serve the Québec Ombudsman's noble mission, with a staff whose competence and dedication deserves to be highlighted. I will never shy away from reminding parliamentarians and government of the need to look to the future today, and to better respond to the needs of Quebecers, who are the very reason for public services.



Marie Rinfret  
Ombudsperson

## Validation report from the Internal Auditor

Ms. Marie Rinfret  
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, 2017. The Québec Ombudsman's administrators are responsible for the accuracy, completeness and disclosure of the data.

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

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

Further to this examination, I find nothing to suggest that the results, explanations and information contained in the Québec Ombudsman's 2016-2017 Annual Report are not plausible and consistent in every important respect.



Jean Gamache, Internal Auditor, CPA, CA  
Québec City, July 2017



# THE QUÉBEC OMBUDSMAN

## Its status, mission and mandate

The Québec Ombudsman is an independent institution of the Government of Québec. It is headed by Ms. Marie Rinfret, who was appointed Ombudsperson by the National Assembly on March 15, 2017. She succeeds Ms. Raymonde Saint-Germain, who left the institution on November 11, 2016, after two consecutive five-year terms of office. Mr. Claude Dussault, Deputy Ombudsman Citizen and User Services, was the Acting Ombudsman in the interim.

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 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 or assistant delegates of the Québec Ombudsman."

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.

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## 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.



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.

# HIGHLIGHTS

## PUBLIC SERVICE

**Agence du revenu du Québec (Revenu Québec)..... P. 25**

### **Tax credit for childcare expenses: assessments based on suspected, but unproven, fraud**

Revenu Québec introduced audits, which the Québec Ombudsman feels are warranted, to combat a type of fraud that can involve substantial amounts of money, that is, fake childcare expense receipts. When it feels that someone has fraudulently claimed childcare expenses, Revenu Québec must base the assessment and its refusal to grant the credit on tangible evidence and allow the taxpayer to be heard. This year, the Québec Ombudsman intervened to recommend the cancellation of assessments that had been established simply because fraud was suspected, without the taxpayers having the opportunity to prove that the alleged fraud was unfounded. Revenu Québec agreed to cancel the assessments.

**Commission des normes, de l'équité, de la santé et de la sécurité du travail ..... P. 33**

### **Pulmonary diseases: claim-processing delays of nearly one year**

People who file claims for employment-related pulmonary diseases often have serious health problems such as asbestosis and lung cancer. That is why the *Act respecting industrial accidents and occupational diseases* provides for prompt handling of claims. In 2016-2017, victims of pulmonary diseases had to wait many months, and, in some cases, more than a year for the CNESST's decision.

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

**– Direction de l'indemnisation des victimes d'actes criminels..... P. 36**

### **Compensation for crime victims: decisions based on incomplete medical information**

The Québec Ombudsman intervened several times during the year concerning the Direction de l'indemnisation des victimes d'actes criminels after the directorate staff handed down decisions that were unfavourable to victims, based on incomplete files. In some cases, the personnel had failed to make sure that all the medical documents were in the victim's file or had made a decision contrary to the preponderance of evidence on file.

Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques .....	P. 41
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### **Sounding the environmental alarm: the Department is slow to answer**

Any citizen may report a situation that seems to violate environmental laws or regulations to the Department, which must reply within 40 days. The Québec Ombudsman received complaints from people who had been waiting for follow-up from the Department for over a year. In one case, the citizen had reported that construction work was being carried out in wetlands. In another, the issue was noise pollution from a factory.

Ministère de l'Éducation et de l'Enseignement supérieur .....	P. 44
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### **Access to free education for children with a precarious immigration status: the Department is dragging its heels**

The Québec Ombudsman is displeased about the time it is taking to amend the legislative and regulatory framework to allow free access to education for all children living in Québec, regardless of their immigration status.<sup>1</sup> What is at stake is the basic right to education and compliance with the international Convention on the Rights of the Child, ratified by the Government of Canada and to which Québec has declared itself bound.

Ministère de l'Énergie et des Ressources naturelles .....	P. 50
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### **Processing of public land purchase applications: the Department's delays are unreasonable**

The Department took months, if not years, to process applications for the purchase of land in the public domain. Meanwhile, a more restrictive directive was issued concerning sale of these public tracts. The Department applied the directive retroactive to earlier applications, even though it was itself responsible for the lengthy processing delays. The Québec Ombudsman convinced the Department to change its decisions in these situations.

Ministère des Forêts, de la Faune et des Parcs.....	P. 51
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### **Trapping and fur marketing: uneven application of standards**

In Québec, trapping and fur marketing are subject to the laws and regulations spelled out in the guidelines for trapping-ground management. Some of the Department's regional branches do not apply the guidelines or apply them incorrectly. The result is regional disparity and unfairness, in particular regarding construction or lease renewal.

Ministère de l'Immigration, de la Diversité et de l'Inclusion .....	P. 53
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### **Web portal: a new tool for more efficient application processing that does not fulfil its promises**

Since January 2016, Regular Skilled Worker Program candidates must submit their application for a Québec selection certificate by means of the *Mon projet Québec* web portal. As at March 31, 2017, more than a year after the portal was introduced, the Department still had not begun processing online applications. The backlog of unprocessed applications from qualified workers, including those submitted prior to the new portal, was 31,378.

1. At the time this report went to press, Bill 144, *Act to amend the Education Act and other legislative provisions concerning mainly free educational services and compulsory school attendance*, introduced recently, had not been passed.

Ministère du Travail, de l'Emploi et de la Solidarité sociale.....	P. 55
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#### **Repayment of certain debts: take exceptional circumstances into account**

The Minister of Employment and Social Solidarity may use his or her discretionary power to forgive a debt due to exceptional circumstances. While acknowledging the validity of recovering overpayments from last-resort financial assistance recipients, the Québec Ombudsman feels that the Department must review its analytic framework in order to fairly apply the Minister's discretionary power to waive longstanding debts.

Retraite Québec .....	P. 63
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#### **Audits and investigations concerning certain applications: wait times are piling up**

The Québec Ombudsman received an unusually high number of complaints about the wait times for processing benefit applications, especially for surviving spouse's pensions and the tax credit for child assistance. Delays are particularly long when a file has to be transferred to the Department's investigations branch. In fact, it currently takes a year for files to be assigned to investigators. After the Québec Ombudsman intervened, Retraite Québec agreed to implement an action plan to resolve the situation.

Société de l'assurance automobile du Québec .....	P. 68
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#### **Compensation claims: accident victims pay the price for mistakes and oversights**

The Québec Ombudsman intervened to have mistakes (oversights, faulty assessment of evidence or after-effects, legal misinterpretation) in the processing of compensation claims corrected. These failings had deprived accident victims of the compensation they were entitled to or had caused compensation to be cut off prematurely.

### **REPORT BY THE CORRECTIONAL OMBUDSMAN OF QUÉBEC**

Ministère de la Sécurité publique – Direction générale des services correctionnels.....	P. 75
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#### **Lack of resources in correctional facilities: violation of detainees' rights**

The fallout from staff shortages and insufficient resources in correctional facilities is multi-faceted: more cell time, restrictions on visits from family and friends, postponed medical appointments due to lack of staff to escort detainees, closure of certain departments, shortage of medical staff, cancellation of reintegration assistance programs. Some of these adverse effects violate the rights of detainees.

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

Disabilities.....	P. 88
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#### **Housing for people with disabilities who have complex needs: substantial shortcomings**

Investigations by the Québec Ombudsman have shed light on the unsatisfactory quality of the services offered by residential resources under contract to rehabilitation centres for intellectual disabilities and pervasive developmental disorders. Problems include inappropriate pairing of different client populations, inadequate management of difficult behaviour and of medication, and disregard for food protocols. The Québec Ombudsman has made a formal recommendation to the Ministère de la Santé et des Services sociaux on this subject.

Troubled youth .....	P. 92
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### **Mental health problems in families: available services must be coordinated**

When the youth protection directorate (DPJ) intervenes with families where there are mental health problems, it often encourages the parents to use assessment or assistance services. However, in a context in which such services are hard to get, parents find themselves at an impasse: the DPJ urges them to stabilize their condition, but the local community service centre (CLSC) cannot give them access to mental health services. The result—because the parents did not manage to obtain the required services, social workers end up asking the court to have the child placed in an external resource.

Régie de l'assurance maladie du Québec.....	P. 93
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### **Access to prostheses and other technical aids: the allocation rules must be clarified**

Complaints showed that people have trouble understanding the conditions for accessing technical aids (prostheses and devices). Thus, a man who had an amputation and a woman with partial hearing loss experienced certain problems when they tried to obtain new technical aids. The files revealed lack of information from the Régie de l'assurance maladie du Québec.

Mental health.....	P. 95
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### **Means of control: to be applied exceptionally and in keeping with human rights**

This year again, means of control—physical or chemical restraint or isolation—gave rise to complaints and reports. Among the flaws criticized were lack of information to those on whom means of control are used, the absence of notes in their files, faulty assessment of their suicide risk, lack of compliance with rules such as seeking consent, and inadequate monitoring of people in isolation.

Physical health .....	P. 99
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### **Access to a family doctor: people with multiple conditions wait longer**

Despite the creation in 2016 of the waiting list to find a family doctor (GAMF) and an improved registration rate, the Québec Ombudsman still sees certain inequalities. For example, despite their high priority ranking, people with multiple conditions remain on the list longer.

Home support .....	P. 105
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### **Home support services: when will there be concrete commitments?**

For the fifth consecutive year, the Québec Ombudsman is critical of the government's slowness to really do something about home support. Details as to the slate of services have yet to materialize and, in the meantime, the network is increasingly unable to meet demand. Not only are fewer people served despite growing needs, but under the new guidelines, the average intervention time allocated for each person is shorter. In its Annual Report, the Québec Ombudsman made a formal recommendation to the Ministère de la Santé et des Services sociaux.

Support for elderly autonomy..... P. 109

**Access to CHSLDs: needs are mounting, available places are rare, and improvements are slow to occur**

At a time of mounting pressure on residential and long-term care centres (CHSLDs), available places are rare and the elderly are experiencing increasingly serious health problems. Given this set of circumstances, the difficulty getting into CHSLDs has led to tightening of eligibility requirements and longer wait times. The Québec Ombudsman considers access to public residential resources for the elderly a major issue and in its Annual Report, made a recommendation on this subject to the Ministère de la Santé et des Services sociaux.

Service support .....P. 113

**Billing for certain services: information is faulty, and the Québec Ombudsman recommends cancelling the invoices**

The Québec Ombudsman is pleased that billing for accessory costs is now prohibited. However, in the case of services that are not insured under the public plan, and which therefore continue to be billed, the Québec Ombudsman has seen that necessary information is not always provided to people or that institutions misinterpret the standards, in particular, concerning intraocular lenses used for cataract surgery.

**RESULTS IN FIGURES..... P. 129**

- The number of service requests received was 19,872 (up 1% from last year).
- In the public service, the number of requests for assistance and of complaints handled increased by 5% over last year's figure and by 11.7% over the average for the last three years.
- In health and social services, the number of requests for assistance and complaints handled rose significantly (26% since last year and 30% more than the average for the last three years). As for reports, there was a 13.1% increase over last year's figure, but a 10% decrease (20 reports) compared to the average for the last three years.
- Main grounds for substantiated public service complaints (correctional services excluded): wait times (32.2%), financial aspects (23.9%) and failure to respect citizens' rights (22.3%).
- Main grounds for substantiated correctional services complaints: wait times (55.6%) and failure to respect citizens' rights (14.7%).
- Main grounds for substantiated health and social services complaints and reports: service quality (19.2%), wait times (15.4%) and failure to respect citizens' rights (14.9%).



# PUBLIC SERVICE

This section presents the Québec Ombudsman's findings concerning some of the government departments and agencies within its jurisdiction. Correctional services are covered in a separate section of the Annual Report.

The departments and agencies within the public service must comply with the *Act respecting administrative justice*, among other legislation. Their main duty stemming from this is to act fairly towards citizens, namely, the obligation to:

- respond promptly, with concern for providing information that is complete and easy to understand;
- deliver the services to which citizens are entitled within a reasonable time frame;
- comply with the standards in force and follow simple, flexible rules, in an informal manner and in keeping with the requirements of good faith;
- allow citizens about whom an administrative decision is being made to present their observations and provide all the elements needed for their file before the decision is rendered;
- provide reasons for an unfavourable decision in clear and concise terms (concerning eligibility for a program, financial assistance or a service);
- inform citizens about available recourse and the requirements for exercising it if they wish to contest a decision.

Through its preventive and corrective action, the Québec Ombudsman promotes compliance with the provisions of the *Act respecting administrative justice*. However, the complaints it receives show that all too often some departments and agencies continue to contravene, if not the letter, then the spirit, of the Act.

## A few figures

For 2016-2017, the number of complaints from individuals, associations or businesses concerning government departments and agencies decreased by 6.5%. However, the number of substantiated complaints increased by 4.3%. A little over one complaint out of five (22.2%) was deemed substantiated. The *Results in figures* section ([page 129](#)) presents a detailed analysis of the complaints based on various parameters.

## Long delays: first by far among the major irritants

Again this year, long delays generated the most complaints received by the Québec Ombudsman and the greatest number of substantiated complaints. They included:

- delays for processing files;
- delays for handing down decisions;
- delays in issuing compensation;
- delays for a hearing before an administrative tribunal.

Wait times can extend to several months and even several years, leaving citizens to face government on their own. Meanwhile, some people have had their lives turned upside down. Such delays are unacceptable.

## An uneven playing field

In the past year, the Québec Ombudsman saw that certain departments and agencies required citizens to provide ironclad evidence in order for a decision to be reached in their favour. There were also cases in which government bodies, in making errors of judgement in analyzing proof, did not respect the preponderance of evidence on file.

In matters of administrative justice, citizens must prove that their version of events is true according to the preponderance of evidence, in other words, according to the most plausible probability. Departments and agencies that require more than this impose an undue burden on individuals.

The Québec Ombudsman is concerned about this practice that inevitably creates an uneven playing field between government departments and citizens. Furthermore, it seems obvious that departments and agencies must clarify for their personnel the notion of the preponderance of evidence.

## Preventable errors

The complaints received by the Québec Ombudsman in 2016-2017 brought into focus administrative errors by departments and agencies in handling files. Often preventable, these mistakes are behind lengthy delays and faulty decisions. Departments and agencies must be rigorous in handling requests so that decisions are timely and consistent with the principles of the *Act respecting administrative justice*.

### GENERAL REMARKS

- The situations presented in this Annual Report were chosen based on the gravity of the failings observed or because of their impact on large numbers of people;
- This Annual Report covers the period until March 31, 2017;
- 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](#)
  - [Commission des normes, de l'équité, de la santé et de la sécurité du travail – Direction de l'indemnisation des victimes d'actes criminels](#)

- Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques
- Ministère de l'Éducation et de l'Enseignement supérieur
- Ministère de l'Énergie et des Ressources naturelles
- Ministère des Forêts, de la Faune et des Parcs
- Ministère de l'Immigration, de la Diversité et de l'Inclusion
- 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)

In January 2016, after the Québec Ombudsman intervened, Revenu Québec released an action plan containing measures to improve its citizen relations. In this regard, the Québec Ombudsman applauds Revenu Québec's *Charter of Taxpayers' and Mandataries' Rights*. In a similar vein, it draws attention to the recent launch of an assistance program for small and medium-sized businesses and for individuals in business.

However, Revenu Québec must intensify its efforts to help its entire client population, especially people with low incomes. In order to access various assistance programs, they must comply with increasingly complex legal and administrative requirements.

In addition to having to deal with complex rules, they must understand the specific features of programs with goals that are sometimes similar, cases in point being the shelter allowance program and the solidarity tax credit. Both provide housing assistance and are intended for society's most disadvantaged citizens. Each program has its own requirements as to documents, forms and deadlines.

The Québec Ombudsman received complaints about Revenu Québec's refusal to admit applicants into programs because they had not provided a piece of required information or a document. However, the information published by Revenu Québec was complex or insufficient and people needed explanations to understand their obligations or decipher what was missing in their file. The Québec Ombudsman insists on the fact that the complexity of tax laws hampers people's efforts to comply with them. Despite the expertise of its personnel, Revenu Québec does not always manage to adapt to the requirements of the very laws that govern it.

The Québec Ombudsman also had to intervene concerning files in which principles of fundamental justice were disregarded, e.g. Revenu Québec assessments made without just cause, failure to satisfy the burden of proof or not allowing citizens to be heard or express their point of view.

### ADAPT THE ADMINISTRATIVE MECHANISMS OF THE SHELTER ALLOWANCE PROGRAM TO THE SPECIFIC SITUATION OF PEOPLE WITH LOW INCOMES

In designing and applying its administrative procedures, Revenu Québec must be attentive to people's needs and difficulties. The Québec Ombudsman noted that when it came to the shelter allowance program, there were shortcomings in this regard.

(... **Do not serve government needs at the expense of recipients**

*During the fall, a woman applied for the shelter allowance. Revenu Québec informed her that the allowance would only be issued two months later, even though the terms for implementing the program expressly provide that payment must be issued the month after the application is filed.*

*The investigation by the Québec Ombudsman showed that Revenu Québec had established a procedure that did not comply with the terms of the applicable order in council. Because it intervened, the citizen's situation was rectified. Furthermore, Revenu Québec committed to work hand-in-hand with the Société d'habitation du Québec (responsible for the program's financing) to correct the procedure and thereby comply with the order in council. ...)*

(... **Allow citizens to complete their file**

*A person applied to Revenu Québec for the shelter allowance. However, a form to be completed by her landlord was missing from her file. Revenu Québec turned down her application without telling her that she would qualify for the program simply by providing this form.*

*The intervention by the Québec Ombudsman enabled the citizen to complete her file and access the program. In addition, Revenu Québec reminded its staff to adequately inform clients when their application is incomplete. ...)*

(... **Take a special situation into account**

*A person complained to the Québec Ombudsman about the non-renewal of his shelter allowance for the coming year. His allowance amount was calculated based on the rent paid on October 1.*

*However, that year, the citizen in question found himself in a special situation. Having moved in early October, he paid his landlord rent for only a few days of that month, which distorted the calculations and disqualified him. Yet, in the form, he had indicated that he was moving, circumstances which Revenu Québec refused to take into account.*

*The Québec Ombudsman asked that his right to the allowance be reinstated based on the total amount of monthly rent, which was done. ...)*

## AVOID PENALIZING TAXPAYERS

The Québec Ombudsman intervened to recommend that Revenu Québec ensure that, when necessary, laws be applied to the advantage of citizens, and that its client population be allowed to exercise legal defense as authorized by jurisprudence.

**( . . . Allow a person to benefit from the Department's in-depth knowledge of the law**

*A woman approached the Québec Ombudsman because Revenu Québec refused to correct her tax file. The person had received a letter from the Canada Revenue Agency informing her that she had overcontributed to her RRSP. In analyzing the information sent to her, she realized that there had been a mistake in her file concerning two previous years. She therefore asked the Canada Revenue Agency to correct it, and it issued her a refund. Using the letter from the Canada Revenue Agency, she then asked Revenu Québec for a refund, which it refused to grant her on the grounds that the deadline had expired.*

*The deadline established by law for requesting correction of a tax return for previous fiscal years is 10 years. When the citizen contacted the Canada Revenue Agency, she was just within the 10-year limit. When she made the same request to Revenu Québec, the 10-year deadline had expired very recently. However, the law provides that if a taxpayer receives a new assessment from the Canada Revenue Agency, Revenu Québec may make a new assessment the following year in order to correct the file.*

*The woman had complied with the one-year deadline for asking Revenu Québec for a correction. Revenu Québec acted on the Québec Ombudsman's recommendation and, as a result, issued her a refund. . . .)*

**( . . . Authorize citizens to object to a decision in accordance with jurisprudence**

*A taxpayer was issued a claim by Revenu Québec because he had not sent his employer a copy of the logbook for the vehicle provided to him. In conducting a tax audit of the employer, Revenu Québec saw that he had provided his employee with a car in order for him to travel between his home and the workplace. Within the meaning of the applicable tax law, this is a taxable benefit. The employee accepted the decision, but questioned the penalty imposed.*

*For his part, the employer offered to reimburse his employee and took the blame for the mistake that had led to the claim—he had not realized that the use of the car was a taxable benefit and therefore had not entered the required information in the citizen's statement of employment, nor had he ever asked the employee to keep a logbook. However, if he were to reimburse his employee, here again, Revenu Québec would deem it a taxable benefit.*

*At the end of the investigation, the Québec Ombudsman concluded that it was unreasonable for Revenu Québec to require a person to provide a logbook that he was never asked to keep for a tax benefit that had not been considered one. Hence, the citizen had not been negligent. The Québec Ombudsman had to insist that Revenu Québec accept the citizen's argument of due diligence. The Agency felt that this defense was inadmissible, even though jurisprudence has clearly established that an objection can be based on it. In the end, Revenu Québec cancelled the penalty. . . .)*

## TAKE THE COMPLEXITY OF TAX LAW INTO ACCOUNT AND COMMUNICATE RELIABLE AND ACCESSIBLE INFORMATION

Every year, the Québec Ombudsman receives complaints from people who, further to an error, must deal with assessments or penalties and any interest. In some cases, it appears that the information communicated by Revenu Québec is either inaccessible or unintelligible. The Québec Ombudsman feels that Revenu Québec must always be watchful for the complex notions that spawn assessments and complaints. The Agency must clarify the information in question and emphasize the particular elements likely to generate genuine tax "traps."

### (... **Clarify and publish relevant definitions**

*A man contacted the Québec Ombudsman because his advance payments of the tax credit for childcare expenses had been stopped. The law provides that a person who attends an educational institution may claim this tax credit. The idea here is for parents to receive additional training enabling them to enter or return to the workforce. Revenu Québec informed the citizen that he was ineligible for the credit because he and his spouse had registered for distance education and took classes from home. According to the Agency, to qualify for the credit, the person must physically attend classes.*

*The investigation by the Québec Ombudsman showed that a Revenu Québec interpretation from 2014 broadened credit eligibility, particularly for people taking distance classes given by a recognized institution. However, this interpretation had not been integrated into Revenu Québec personnel's work instructions.*

*After the Québec Ombudsman intervened, the man's tax credit was reinstated. The Québec Ombudsman also intervened to have the 2014 interpretation integrated as soon as possible into the documents for Revenu Québec personnel. It also recommended that it post information on this subject on its website, which had not yet happened as at March 31, 2017. ...)*

### (... **Correct recurrent problems due to lack of information**

*A trust was charged interest by Revenu Québec when, in fact, it had expected to receive the rebate for new housing. The reason for the claim was that even though the trust had applied for the rebate within the prescribed deadline, it should have paid the taxes first.*

*The investigation by the Québec Ombudsman showed that the information about this rebate was confusing. Revenu Québec was within its rights to claim interest, but the information on this subject on its website was inadequate. Given the recurrence of similar problems of which Revenu Québec was aware, the Québec Ombudsman asked it to specify the deadline for payment in the sections of its website about the rebate for new housing. Revenu Québec agreed to do so. ...)*

## COMPLY WITH THE DEADLINE FOR CLAIMING TAX DEBTS

People who owe taxes may invoke the limits for claiming recovery when more than 10 years have elapsed since Revenu Québec's last steps to recover the debt. Until recently, Revenu Québec considered all tax debts as part of an overall debt, no matter what the tax year or period to which a claim applied. As soon as Revenu Québec acted to claim an amount included in the overall debt, it considered that the clock continued ticking with regard to the entire debt. As a result, all the amounts owed became payable, including tax debts that went back more than 10 years.

As the Québec Ombudsman sees it, each claim is a distinct debt. If Revenu Québec acts to recover a tax debt, the deadline must be calculated for that claim only, independent from any other.

In 2013, while handling a complaint, the Québec Ombudsman pointed out to Revenu Québec that it had wrongfully issued claims for debts that had expired. Revenu Québec nevertheless maintained its interpretation of the law. In 2016, further to a similar complaint, the Québec Ombudsman challenged Revenu Québec once again, but this time, it gave in to the Québec Ombudsman's arguments.

### ( . . . **Clarify how the deadline for recovering tax debts is calculated**

*A taxpayer had debts with Revenu Québec. When he contacted the Agency, he was informed that, because of the deadline for recovering tax debts, it could no longer claim the amounts related to three of the tax years. The citizen paid off the outstanding debt. However, Revenu Québec, reneging on its initial position, went on to claim the amount stemming from the three tax years which were off limits.*

*After the Québec Ombudsman intervened, Revenu Québec introduced a new administrative policy in order to have its personnel calculate the deadline for recovering tax debts correctly. It also issued a release to the citizen. . . .)*

## TAKE BETTER ACCOUNT OF THE PRECARIOUS FINANCIAL SITUATION OF SOLIDARITY TAX CREDIT CLAIMANTS

Before January 1, 2016, solidarity tax credit amounts were determined monthly. During the year, people who qualified for it had to notify Revenu Québec about any change in their situation (death of a spouse, a move, etc.) likely to affect their eligibility for the credit or the credit amount. Now the credit is calculated annually and is still based on a series of requirements that claimants must satisfy as at December 31 of each year. This is proving to be a better way of doing things because the calculations are based on the information contained in tax returns, which simplifies administration of the credit.

Nonetheless, again this year, several claimants contacted the Québec Ombudsman concerning the tax credit. These complaints highlighted the trouble they had reaching Revenu Québec's customer services. The reason was the influx of calls from numerous people who had questions about the "housing component" of the solidarity tax credit. Revenu Québec subsequently took the necessary steps to facilitate access to its phone services.

There were also complaints about adjustments to the amounts granted due to the new RL-31 slips. Every tenant receives this slip from his or her landlord, which Revenu Québec uses to determine tenant eligibility for the "housing component" of the solidarity tax credit. On the basis of this slip, Revenu Québec not only reviewed the amounts these people would qualify for henceforth, but it also applied adjustments retroactively, so that it required reimbursement for past overpayments. Given the lack of information about their rights and obligations, people who qualified made mistakes in good faith in the information they provided when they filled out the Schedule for claiming the solidarity tax credit.

The Québec Ombudsman saw that the people who contacted it about this matter had acted in good faith. Most of them confirmed that their situation had not changed. They did not understand why the amounts to which they had been entitled had decreased. The Québec Ombudsman discovered that they had misunderstood the eligibility requirements from their very first income tax return. They could not pick up on the errors in their solidarity tax credit payments because the slips were not detailed or explicit enough. Given the low incomes of people who receive this tax credit, the Québec Ombudsman is especially worried about the consequences of such retroactive claims.

Even if the *Taxation Act* provides that Revenu Québec may issue a reassessment for past years and, as a result, recover solidarity tax credit overpayments for periods prior to January 1, 2016, the Québec Ombudsman reminded the Agency of the special context in which the credit is administered. It recommended that it limit the retroactive scope of its claims to January 1, 2016, when calculation of the tax credit became annual. As at March 31, 2017, the Québec Ombudsman was waiting to hear back from Revenu Québec.

**(... *Treat a mistake made in good faith adequately***

*Revenu Québec claimed more than \$1,000 from a citizen for solidarity tax credit amounts that he had been overpaid during the past three years. The man, who was on a low income, lived in a room in a private home. He had never gotten an RL-31 slip from his landlord and had therefore never sent one in to Revenu Québec. The citizen had been getting the “housing component” of the solidarity tax credit for several years, although, unbeknownst to him, he was ineligible for it because his room did not meet program requirements (it did not have a separate exit or private washroom facilities).*

*First he received a claim that caused a decrease in his monthly benefit due to the overpayments he had gotten since early 2016. He contacted Revenu Québec immediately for explanations about the decrease and he mentioned that he had been living in this room for several years.*

*Not only did Revenu Québec decide to maintain the initial claim, but it added another by way of reimbursement for overpayments for previous years. In light of the man’s precarious financial situation, the Québec Ombudsman considered the claim for the period prior to January 1, 2016 unreasonable. As at March 31, 2017, discussions were underway with Revenu Québec to resolve the situation. . . .)*

## BURDEN OF PROOF: ACT WITH RIGOUR

Again this year, the Québec Ombudsman intervened several times to recommend the cancellation of assessments established on the basis of suspected fraud, rather than on tangible evidence. Thus, taxpayers contacted the Québec Ombudsman after a tax credit for childcare expense audit.

It should be noted that Revenu Québec—and rightfully so—introduced supplementary audits to combat a type of fraud that can involve large sums of money—fake childcare expense receipts. However, the investigation by the Québec Ombudsman showed that in some cases, simple doubt about the payment of childcare expenses was enough for the Agency to refuse to grant the credit and impose a penalty.

Under the *Taxation Act*, a receipt that complies with the legal requirements constitutes proof of payment of childcare expenses. It is up to Revenu Québec to demonstrate, on the balance of probabilities, that the fees were claimed fraudulently. Revenu Québec must act with rigour because once made, an assessment is presumed to be valid. It then becomes the taxpayer's responsibility to prove that the assessment was unfounded.

The Québec Ombudsman also noted that before making an assessment, Revenu Québec does not always inform taxpayers about the elements on which the assessment is based. As a result, the citizens cannot submit any additional information that they may have wanted to provide as evidence.

**(... Provide a person who receives an assessment with means for objecting to it**

*A mother approached the Québec Ombudsman because Revenu Québec refused to grant her the tax credit for childcare expenses for the preceding three years. In addition, she was given a penalty because it alleged that she had claimed these amounts fraudulently. She filed a notice of objection.*

*Basing itself on the total income the citizen had entered in her tax return, Revenu Québec argued that she could not have afforded to pay the childcare expenses she claimed. However, the lady received non-taxable benefits of more than \$15,000 which doubled her income. She had not included these benefits in her total income, which was alright because non-taxable government benefits are not taken into account in calculating total income.*

*Revenu Québec also based the assessment on the fact that the lady used childcare for her school-age child who went to school during the day. What it failed to consider was that the woman had a job with atypical hours that required her to work very early in the morning or late at night.*

*The Québec Ombudsman intervened with Revenu Québec so that the taxpayer be informed of the grounds for the Agency's presumption of fraud. Once these were disclosed, she was able to provide the documents needed to dispel any doubts about her. Revenu Québec cancelled the assessments, which amounted to more than \$20,000. ...)*

**(... Inform taxpayers and pay attention to their version of the events**

*A man turned to the Québec Ombudsman because Revenu Québec refused to grant him the tax credit for childcare expenses. The resulting notice of assessment was sent to him without Revenu Québec even contacting him. The man asked Revenu Québec to send him the report on which the assessment was based, which he received two years later and after countless reminders. Revenu Québec had misplaced the report.*

*The Québec Ombudsman considered that Revenu Québec had shirked its obligation to inform the taxpayer properly and give him an opportunity to be heard. These rights are enshrined in the Act respecting administrative justice and are specified in the Charter of Taxpayers' and Mandataries' Rights recently adopted by Revenu Québec.*

*When the citizen was able to present his observations, the assessment was decreased by more than 90%. The Québec Ombudsman recommended that, henceforth, Revenu Québec contact anyone likely to receive an assessment stemming from refusal to grant the tax credit for childcare expenses. Revenu Québec quickly confirmed that it had modified its procedures accordingly. . . .)*

**(... Listen to taxpayers who receive an assessment**

*A lady contacted the Québec Ombudsman because Revenu Québec had sent her an assessment and was not responding to her requests for explanations. The investigation by the Québec Ombudsman showed that the assessment was related to an audit of her ex-spouse's company. During the audit, the ex-spouse told Revenu Québec that he had paid the citizen sums of money. It should be noted that the assessment in question was based entirely on what the ex-spouse said, without further proof. Revenu Québec never questioned the woman and did not notify her before making the assessment. After the Québec Ombudsman intervened, the assessment was cancelled. . . .)*

## RESPECT LEGAL AND ADMINISTRATIVE OBLIGATIONS

The Québec Ombudsman intervened with Revenu Québec's Direction principale des biens non réclamés because it considered that the directorate had breached its duty to locate right-holders and to update its register. As its name indicates, this directorate manages a register of all property remitted to the Minister of Revenue whose owners or right-holders are unknown or cannot be located.

The interventions by the Québec Ombudsman made it possible to introduce a new work instruction to consolidate the registration of more than 77,000 properties belonging to some 15,500 owners. This instruction will enable the Direction principale des biens non réclamés to extract information about all the property belonging to the same right-holder.

**(... Manage the search for right-holders effectively**

*Seven years after his father died, a man discovered that the succession for which he was the liquidator owned bank-managed shares which had generated dividends issued to a bank annually, which had transmitted them to the Direction principale des biens non réclamés. The citizen therefore contacted the directorate to recover these amounts. In accordance with the statute in force at the time, he was charged administrative fees corresponding to 11.5% of the total amount. Feeling that these fees were abusive, the liquidator contacted the Québec Ombudsman.*

*The investigation showed that the Direction principale des biens non réclamés had published notices in certain newspapers mentioning that a bank had received dividends but had not attempted to locate the citizen. According to the directorate, it was not required to do this because the amounts were under the \$2,000 annual threshold. It came to this conclusion because it opened a new file each year and never added up the amounts. The total amounts paid as dividends exceeded the \$2,000 threshold because each annual payment brought the total amount up by around \$800.*

*After the Québec Ombudsman intervened, Revenu Québec agreed that it should have added up the amounts. With this settled, it waived a portion of the fees claimed from the citizen. Furthermore, it committed to making the necessary cumulation systematic for all similar cases. . . .)*

(... **Keep the register updated as to deadlines**

*A lady discovered that there was a register of unclaimed property and that she and a few family members were right-holders of the financial products listed in the register for the last 10 years. She therefore filed a claim to be able to access these amounts but learned that the deadline had expired. Claims must be filed within 10 years of the property being entered in the register. The deadline had expired nine months earlier, but the property was still listed.*

*The Québec Ombudsman intervened on the citizen's behalf, making the point that at the time of her claim, the property she intended to claim was still listed. There was no reason for the Direction principale des biens non réclamés' refusal because it had neglected to update its public register and delete the unclaimed property when the deadline expired. This negligence had given the citizen legitimate expectations. The Direction principale des biens non réclamés acknowledged that the register had not been updated and agreed to act on the woman's claim. ...)*

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

### RESPECT WORKERS' RIGHT TO RECEIVE A DECISION WITHIN A REASONABLE TIME FRAME

Certain workers come up against long delays after filing a claim with the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST). Thus, victims of an employment injury are deprived of benefits that they could certainly use immediately. The Québec Ombudsman urges the CNESST to handle claims as quickly as possible.

### PROCESS OCCUPATIONAL DEAFNESS CLAIMS PROMPTLY

The *Act respecting industrial accidents and occupational diseases* provides that a person with a hearing impairment caused by noise is presumed to have an occupational disease if he or she did work involving exposure to excessive noise. Subject to certain conditions, the CNESST may therefore grant indemnities, reimbursement for hearing aids and rehabilitation services, among other things.

Now, the Québec Ombudsman has noted that victims who claim compensation for hearing loss must wait several months before the CNESST makes a decision as to their eligibility. In this regard, the CNESST introduced an action plan by assigning more personnel to the processing of this kind of claim. The plan, applied since June 2016, stipulates that from now on, claims related to occupational deafness must be processed within an average time of 120 days. As at January 31, 2017, the time was 92.5 days. The Québec Ombudsman salutes the CNESST's initiative. The following two cases illustrate the problems created by long delays.

**(... Act promptly and in a manner that respects those who have occupational injuries**

*A citizen filed an occupational deafness claim with the CNESST. Having worked in a textile mill, she had been exposed to excessive noise which had caused neurosensory deafness. She needed hearing aids.*

*With no word about her claim, the lady contacted the CNESST several more times. Ten months after her initial claim, she received a reply from the Commission explaining that her file would be examined two months later. She contacted the Québec Ombudsman. The Québec Ombudsman learned that the citizen's claim had been approved recently. The CNESST confirmed that it would cover the cost of hearing aids. The outcome was positive, but came a year after the worker filed her claim and without any news about progress on her file. ...)*

**(... Speed up responses to claims**

*A retired citizen with a hearing impairment filed a claim with the CNESST for recognition of a connection between his loss of hearing and his former job and for reimbursement for the cost of his hearing aids by the CNESST. After a nine-month wait, he still had no news.*

*At this point, the Québec Ombudsman stepped in to examine the progress of the claim and to ensure that it was being handled. The CNESST replied that it was dealing with a huge backlog of occupational deafness claims. After a 10-month wait, the citizen finally learned that he would be reimbursed for the hearing aids given the link established between his deafness and his job. ...)*

## **OCCUPATIONAL LUNG DISEASES: COMPLY WITH THE LEGAL DEADLINES FOR PROCESSING CLAIMS**

The *Act respecting industrial accidents and occupational diseases* contains specific provisions for claims for employment-related lung diseases, notably concerning processing deadlines:

- First, the CNESST must, within 10 days of receipt of a claim, refer the person to a committee of three pneumologists appointed by the Minister of Labour, Employment and Social Solidarity;
- The committee must examine the claimant within 20 days of the CNESST's request and submit its written report to the CNESST within 20 days of the examination;
- The CNESST then submits the person's record to a second committee of pneumologists;
- This second committee either confirms or quashes the findings arrived at by the first committee within 20 days of the date on which the CNESST submitted the record to it.

In other words, two committees of pneumologists must decide as to the claimant's eligibility within 70 days. The CNESST must then render a decision based on the second committee's conclusions. However, claims of this kind are not being handled within the prescribed deadlines and the victims of lung diseases sometimes have to wait nearly a year for a decision.

Often suffering from serious illnesses, asbestosis and lung cancer in particular, these people should be able to promptly receive the benefits provided for by the system. The Québec Ombudsman deplores these lengthy delays, especially since the legislator has expressly set out the procedure for ensuring expeditious management of these claims.

The CNESST explained to the Québec Ombudsman that the main factor in the exacerbated delays was the shortage of pneumologists for the two committees. After investigating, the Québec Ombudsman realized that, in fact, the delays were largely due to the time it took to collect the medical documents needed to study claims.

After the Québec Ombudsman intervened, the CNESST established an action plan to clear the backlog. This included reviewing how lung disease claims are processed and the training given to its staff. The Québec Ombudsman notes that these measures have helped reduce delays. It will remain attentive to developments in this respect.

**(... Handle lung disease claims in accordance with the requirements of the Act**

*A citizen had had asbestosis since the 1990s. Ever since, every three years his condition was re-evaluated by the pneumologist committee. If it was found that his disease had worsened, his benefits were adjusted by the CNESST.*

*In 2016, on his physician's recommendation, the citizen requested a new examination from the CNESST. It took two months for him to be referred to the pneumologist committee, even though the Act specifies a maximum wait time of 10 days.*

*The Québec Ombudsman saw that nearly a month had gone by before the claim was assigned to a CNESST agent. It took another three weeks for the citizen's record to be forwarded to the pneumologist committee. The CNESST justified the delays by pointing out that there was a work overload and it had had to limit the amount of time spent on claims of this kind.*

*The Québec Ombudsman deplores these delays and reminds the CNESST that it must comply with the Act and give every claim the time it requires. ...)*

**COMPLY WITH AGREEMENTS AND TRIBUNAL DECISIONS IMMEDIATELY**

People who disagree with a CNESST decision may begin by applying for an administrative review. If, after this, they remain dissatisfied, they may then appeal to the Tribunal administratif du travail.

The Québec Ombudsman has noted that people who won their case or settled by means of an agreement must wait several months before the CNESST applies the decision or agreement, and more importantly, before it issues the benefits to which claimants are entitled. This is unacceptable.

**(... Ensure service continuity in all circumstances**

*In the context of conciliation through the Tribunal administratif du travail, a citizen entered into an agreement with her employer. According to the agreement, she had sustained an employment-related injury and qualified for an income replacement indemnity. The agreement was ratified by the Tribunal and a copy was immediately sent to the CNESST. However, four months later, the citizen had not yet been compensated.*

*The Québec Ombudsman learned that the indemnity officer in charge of the claim had been away for a long time and had not gotten around to processing it, and that the file had not been transferred to anyone else. After the Québec Ombudsman intervened, the CNESST promptly processed the file and the woman was issued an income replacement indemnity in compliance with the agreement. ...)*

# Commission des normes, de l'équité, de la santé et de la sécurité du travail – Direction de l'indemnisation des victimes d'actes criminels

## A SPECIAL REPORT ON THE ADMINISTRATION OF THE CRIME VICTIM COMPENSATION SYSTEM

The victims of certain crimes against the person committed in Québec may qualify for compensation under the system for crime victims created in 1972 further to passage of the *Crime Victims Compensation Act*. The Minister of Justice is responsible for implementing the Act, while administration of the compensation system is entrusted to the Direction de l'indemnisation des victimes d'actes criminels (DIVAC), which has been a part of the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) since DIVAC was created. The industrial accident and occupational disease compensation system has been revised more than once, but the system for crime victims has hardly changed.

Apart from the question of updating the legislation, which remains relevant, the complaints received by the Québec Ombudsman pointed to problems related to DIVAC's administrative handling of applications for benefits. The Québec Ombudsman's investigation report published in September 2016 addressed the management of the compensation system in effect. It decried the following:

- poor quality of information to victims;
- long wait times at various stages of application processing;
- difficulty accessing the system or certain services or indemnities, especially because of additional requirements not found in the Act or restrictive interpretation of the Act;
- gaps in communication with certain victims concerning needs assessment;
- lack of rigour of the decisional process (decisions not based on compelling evidence and on independent analyses or expert opinions);
- lack of explanations for the decisions rendered by DIVAC;
- DIVAC's lack of openness to correcting its errors.

The Québec Ombudsman made 33 recommendations so that the administrative practices and the interpretation of the *Act respecting administrative justice* and of the *Crime Victims Compensation Act* be consistent with the goals of the compensation system. DIVAC responded by drafting an action plan containing corrective measures. The Québec Ombudsman will closely monitor its implementation.

 [The summary of the Québec Ombudsman's report on compensation for crime victims is found at protekteurduticien.qc.ca.](https://www.protekteurduticien.qc.ca)

## ENSURE RIGOROUS HANDLING OF DOCUMENTS RECEIVED

In their dealings with DIVAC, crime victims must produce documents proving that they qualify for compensation. These documents are needed in order to establish:

- the connection between their injury and the crime;
- the nature of their disability;
- their financial situation;
- their special care and rehabilitation needs.

One of the required procedures for crime victims is to complete forms to be included as part of their application for benefits and to send them in or have these forms completed (e.g. medical reports, forms authorizing health institutions to send documents to DIVAC, or an information form about their remuneration). They must also provide invoices or receipts in order to claim certain expenses, such as travel costs, medication, moving costs and clothing replacement. Albeit legitimate and warranted, these requirements take energy and call for logistics by the applicants, who are often distressed and vulnerable because of the violence they have suffered.

When a crime victim sends in a document, DIVAC must give it all due attention and provide both the appropriate follow-up and support. However, the Québec Ombudsman noted that sometimes all that DIVAC does is simply file the documents it receives. When this happens, processing delays, which are already lengthy, become excessively long. Reminding DIVAC of its obligation to act in a prudent and timely fashion pursuant to the *Act respecting administrative justice*, the Québec Ombudsman requested that specific corrective measures be applied further to complaints of this nature.

**(... Promptly process a medical report essential for authorizing care**

*A citizen sent DIVAC a medical report containing a new diagnosis that she felt was related to her assaults. Three days later, she contacted DIVAC to make sure that it had received the document. She also asked about the procedure for being reimbursed for the treatment arising from the new diagnosis.*

*DIVAC explained that, according to procedure, the medical report first had to be forwarded to the advising physician of DIVAC's medical office to determine whether there really was a causal connection with the crime. The citizen contacted the directorate again two months later and was told that the file was still queued for processing. In the ensuing months, she called regularly, but to no avail. She then contacted the Québec Ombudsman. During the investigation it conducted, the Québec Ombudsman discovered that the claim had not been forwarded to the medical office and that the DIVAC agents had answered the citizen without doing the required checking, which explains why she still had not received any news 10 months after her claim.*

*After the Québec Ombudsman intervened, DIVAC finally processed the file. Feeling that the diagnosis was probably not related to the crime, the medical office's advising physician asked the attending physician for additional information. As at March 31, 2017, 16 months after her claim, the citizen was still waiting for a decision. Given her lack of financial means, she had not been able to obtain the treatment required by her state of health. ...)*

**(... Act quickly in response to claims for reimbursement**

*Some victims have to travel great distances to obtain health care, and travel costs are high. Claims to DIVAC must therefore be handled promptly in order to prevent financial problems for people who are already in a distressing situation. While examining a file, the Québec Ombudsman noted that DIVAC had not processed a citizen's claim for the reimbursement of travel expenses even though she had in fact provided the required supporting documents several years before. At the Québec Ombudsman's request, the agency agreed to review the file. ...)*

## OBTAIN ALL RELEVANT MEDICAL INFORMATION BEFORE RENDERING DECISIONS

People who are compensation agents or rehabilitation advisers are DIVAC representatives who work alongside victims throughout the compensation process. These agents must, among other things, inform them about system requirements and analyze their eligibility for measures and programs. Before rendering an unfavourable decision, they need to, in accordance with the *Act respecting administrative justice*, ensure that victims' files are complete. If that is not the case, the agents must postpone their decision until they contact the victim to give him or her the opportunity to provide any relevant information or document.

The Québec Ombudsman noted significant flaws in this regard when DIVAC representatives failed to verify that all medical documents were indeed in the victim's file before rendering their decision. It therefore intervened on several occasions to ensure that supplementary and required medical information be added to the file and that the victim be informed.

### (... **Update the victim's medical file in order to make the right compensation decision**

*As the result of an assault, a citizen had to undergo neurosurgery. When he was discharged, he needed help at home while he was recovering, and the physician made sure that this happened. In the months that followed, he continued to see the surgeon and his attending physician.*

*When the citizen applied for benefits with DIVAC, he provided the file that the hospital had put together further to his assault. However, there was no information in the file concerning his condition after he was discharged. The DIVAC agent in charge of his file did not question the citizen any further. In other words, nearly two years after the assault, when rendering a decision on the permanent after-effects, the agent only used the hospital file.*

*In the Québec Ombudsman's opinion, the file did not represent the citizen's state of health at the time of the assessment, which should take place when injuries are consolidated, meaning when no significant improvement is foreseeable. This was not the citizen's case when he was released from hospital, barely a few days after his assault. Furthermore, because of the lack of medical information after his hospitalization, DIVAC was not able to determine the citizen's right to compensation for total temporary incapacity for the period in which he could not take care of himself when he was released from hospital.*

*The Québec Ombudsman therefore recommended that, in order for DIVAC to rule adequately concerning the permanent after-effects, it obtain the notes from the appointments with the neurosurgeon as well as the medical file from the attending physician. The citizen's right to compensation for total temporary incapacity upon his release from hospital was also examined. Because of the remaining after-effects and the resources the man had needed as soon as he was released from hospital, he was granted compensation. ...)*

### (... **Obtain the required medical information before rendering a decision**

*A person applied to DIVAC for compensation for repeated incest. Her compensation file mentioned several health institutions where she had been hospitalized during her adolescence, sometimes for several months, to be treated for assault-related injuries.*

*In processing the application, the DIVAC representative obtained a copy of the files from some of the institutions, but not from all of them. In the absence of complete information, he made mistakes and decisions that penalized the victim unjustly. Among other things, he determined that she was able to continue most of her usual activities and refused to grant her compensation for total temporary incapacity. In fact, one of the files clearly showed that she had missed school for long periods because she was hospitalized. As the Québec Ombudsman saw it, the decision to refuse to grant her compensation for total temporary incapacity was therefore completely unjustified.*

*Analysis of the victim's file also showed that she came from a dysfunctional family, that she had been a minor when she was hospitalized and that DIVAC knew that one of the parents had been reported as having participated in the acts of incest. Given this context, DIVAC should have helped even more and paid particular attention to the documents provided. At the Québec Ombudsman's request, DIVAC agreed to obtain a copy of all the medical files and to analyze the information again. . . .)*

**( . . . Do not render a decision unless all required medical information is in the file**

*A citizen received care from different specialized physicians for numerous injuries stemming from a crime of which he had been a victim. He had informed the person in charge of his DIVAC file of this. This person sent the citizen the forms needed to authorize the transmission of files from the physicians who had treated him. The citizen filled out the forms and returned them within the required deadlines. However, the agent did not wait to receive all the files and went ahead and asked DIVAC's medical office to rule on the diagnoses related to the crime, based only on one of the files.*

*The Québec Ombudsman concluded that this constituted a lack of rigour and did not allow a fair assessment of the citizen's health. It therefore asked DIVAC's administrative review office to obtain all the relevant medical files and to render a decision based on all the information, which it agreed to do. . . .)*

## RENDER DECISIONS CONSISTENT WITH THE PREPONDERANCE OF EVIDENCE ON FILE

DIVAC's decisions have major repercussions for crime victims. For example, recognition of the worker status of crime victims who have become unfit to hold down their job may qualify them for compensation for total temporary incapacity. Recognition of a diagnosis causally related to a crime may give the victim access to care. The date of the incident determined for compensation purposes also affects compensation, especially when a crime is committed over a long period of time.

According to the *Act respecting administrative justice*, decisions must be made based on the preponderance of evidence on file, and victims must be given the opportunity to complete their file based on rules that are simple, flexible and not overly bureaucratic. In the past year, the Québec Ombudsman has noted that decisions with serious consequences are not always based on the preponderance of evidence. The victim must therefore go through the administrative review process, which corrects certain kinds of errors. This extra step is very demanding for victims, who must contest the first decision within the prescribed deadline, or else lose access to all recourse despite the initial mistake. Victims must then wait several months before the administrative review office makes the corrections. Thus, the wait times grow even longer before they receive the compensation or care to which they are entitled.

(... **Render a medical opinion based on the preponderance of evidence on file**

*A crime victim who received compensation from DIVAC saw a psychologist for more than a year. The psychologist, who reported regularly to DIVAC, determined that the victim appeared to be suffering from post-traumatic stress disorder. At the beginning of therapy, at the psychologist's suggestion and one time only, the citizen met briefly with a psychiatrist. In his report, he concluded that there was no compelling evidence of post-traumatic stress.*

*Six months later, the citizen began seeing a new attending physician. After each appointment, the physician sent a report to DIVAC and reached the same conclusion as the psychologist. The Québec Ombudsman was therefore surprised to learn that the analysis of the file by DIVAC's medical office had only taken into account the opinion of the psychiatrist—the professional who knew the citizen the least—which had been based on an appointment that had taken place more than a year and a half before. Furthermore, without any other justification or any medical proof, the medical office had concluded that the citizen's condition was consolidated (meaning that there was no foreseeable improvement possible) and that the assault had not caused any permanent after-effects. The decision resulted in the termination of her compensation and therefore, her psychotherapy.*

*While, after a year, DIVAC was right to verify whether psychological follow-up was necessary, its decision to terminate compensation should have been based on the preponderance of evidence on file. This was what the Québec Ombudsman pointed out. It also reminded DIVAC that medical opinions by its medical office professionals that are inconsistent with the preponderance of evidence on file must include precise reasons (i.e. key elements from the file and clear conclusions that are justified in fact).*

*After the Québec Ombudsman intervened, DIVAC's administrative review office concluded that the medical office's opinion was inconsistent with the proof on file and the opinion regarding consolidation had been premature. The citizen's compensation was reinstated, which enabled her to continue psychotherapy. ...)*

(... **Authorize the issuance of compensation in keeping with the attending physician's opinion**

*After being assaulted, a citizen had to undergo major surgery. When she was released from hospital, her physicians informed DIVAC that she could not attend to her usual daily activities for at least two months and that she would need home support. DIVAC therefore granted her compensation for total temporary incapacity for two months, as well as an amount for home support.*

*Shortly before the two months were over, she met her physician again and he filled out a medical report indicating that she would be unable to carry out her daily activities for another two months. Despite this report, DIVAC concluded that the citizen could carry out certain tasks such as heating food up in the microwave oven, use eating utensils and washing and dressing herself, except for a few movements that required more of her. As a result, her compensation for total temporary incapacity was cut and, by extension, implied an automatic end to her home support payments.*

*The Québec Ombudsman concluded that DIVAC's analysis of this case, in addition to being very restrictive, was inconsistent with the medical proof on file. The administrative review office agreed with this conclusion and authorized compensation for total temporary incapacity for the period indicated by the attending physician. Reimbursement for personal assistance expenses was also reinstated. Even though the outcome was positive, it is regrettable to see that the citizen had to turn to the Québec Ombudsman and wait 10 months to receive the amounts and compensation to which she was entitled. . . .)*

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

### RIGOROUSLY APPLY THE REGULATION RESPECTING WASTE WATER DISPOSAL SYSTEMS FOR ISOLATED DWELLINGS

This year, the Québec Ombudsman received complaints concerning the Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques regarding application of the *Regulation respecting waste water disposal systems for isolated dwellings*. This regulation pertains to most dwellings that are not connected to a sewer system.

In Québec, discharge of waste water from a dwelling into the environment is prohibited, and water treatment is mandatory. As a result, isolated dwellings subject to the Regulation must have septic systems that are up to code.

While municipalities have been delegated to oversee application and implementation of the Regulation, the Regulation itself is under the jurisdiction of the Department, which must provide municipal officers with technical assistance. In some circumstances, for example, when public health or environmental risks are detected, the Department must also carry out analyses and monitoring.

The investigations by the Québec Ombudsman showed that there were problems with the application of the Regulation:

- Some municipalities do not apply certain provisions of the Regulation;
- The time the Department takes to follow up on municipalities' application of the Regulation is unreasonable;
- People are subjected to constraints that are more restrictive than those provided for in the Regulation.

### (. . . **Apply all of the Regulation**

*In handling a complaint, the Québec Ombudsman found irregularities in how a municipality applied the Regulation respecting waste water disposal systems for isolated dwellings. The municipality had refused to do the annual UV upkeep on the system, even though it was responsible for this operation. Furthermore, it did not keep a record of the annual maintenance contracts for owners of advanced systems, although this was indeed one of its obligations.*

*Since it is up to the Department to ensure that municipalities apply the Regulation correctly, the Québec Ombudsman contacted the Department. Acting on the recommendation, the Department promptly sent a letter to the municipality indicating the measures needed to ensure full application of the Regulation. . . .)*

**(... Rapidly carry out the necessary follow-up with municipalities**

*A person contacted the Québec Ombudsman about the Department's inaction concerning a neighbour's septic system that had been contaminating her property for several years. She provided analysis reports showing disturbing levels of toxic substances on her property.*

*Upon verification, the Québec Ombudsman discovered that, for the last three years, the Department and the municipality had known that the septic system in question was not working. The equipment, which was not up to code, discharged waste water into the environment, which is prohibited. The municipality proposed that the dwelling concerned be connected to a new sewage system, but the project kept being postponed.*

*At the time the Québec Ombudsman intervened, the Department had not been in touch with the municipality for nearly three months, even though it is the Department's responsibility to ensure that the municipality applies the Regulation. The municipality finally gave up the idea of connecting the house to the sewage system, and the neighbour put in a new septic system to replace the defective one. . . .)*

**(... Stick to the restrictions provided for in the Regulation**

*A citizen who wanted to renovate and enlarge her home applied to the municipality for the necessary permit for carrying out the work. Since her dwelling was isolated, she also had to change her septic system, which was not up to code. Given the specific characteristics of her property, she opted for the only recommended solution—a hauled sewage system.*

*For its part, the municipality had to ensure that the project complied with the requirements of the Regulation respecting waste water disposal systems for isolated dwellings. When the municipality conferred with the Department in order to conform to requirements, it was informed that under the Regulation, enlargement of a dwelling with a hauled sewage system was not permitted. The municipality therefore refused to issue the permit.*

*The citizen contacted the Department to find out which regulatory provisions it had based its decision on. Dissatisfied with the answer, she contacted the Québec Ombudsman, arguing that the Department had imposed a constraint that was more severe than that specified in the Regulation.*

*The Québec Ombudsman considered that there were no provisions in the Regulation for the case submitted by the citizen and that there was nothing in the wording to suggest that the project should be prohibited. In fact, the Department had extrapolated from a provision concerning dwellings damaged due to disaster.*

*At the Québec Ombudsman's request, the Department agreed to write to the municipality to inform it that the work was not prohibited by the Regulation. Subsequently, the Regulation was amended and the provisions will come into force in April 2017. From now on, the addition of a bedroom to a dwelling with a hauled sewage system will be permitted. The Department informed the municipality in question. . . .)*

## REDUCE DELAYS FOR PROCESSING ENVIRONMENTAL COMPLAINTS

Any citizen may report a situation that appears to breach environmental laws and regulations to the Department. The regional directorates of the Centre de contrôle environnemental du Québec are responsible for handling these complaints.

In this respect, the Department policy on the processing of environmental complaints:

- provides a framework for handling this kind of complaint;
- specifies the Department's commitments to complainants;
- provides that the speed of intervention must be adjusted based on the environmental impact;
- sets a deadline of 40 working days following filing of a complaint for Department inspectors to contact the complainant to inform him or her of the results of the inspection;
- specifies that processing of a complaint is presumed to be completed when an environmental compliance audit has been carried out and feedback has been provided to the complainant.

People who had reported situations that they felt violated environmental laws and regulations to the Department complained to the Québec Ombudsman about the Department's failure to comply with the deadlines specified in the policy and about its lack of follow-up with them.

### (... **Comply with the deadlines provided for in the policy**

*In late autumn, a citizen went to a regional office of the Department to complain about a road being constructed in a wetland. The following month, the Department sent an inspector to the site to examine the situation. Since the bad weather made it impossible to conduct the required inspection, a second one was planned for the following summer.*

*Following this second inspection, the Department closed the file for lack of sufficient proof of an offence. However, contrary to what is stipulated in the policy, the citizen was not notified. More than one year after his complaint, he went to the regional office of the Department to find out what was happening. Dissatisfied with the process, he turned to the Québec Ombudsman.*

*The investigation showed that the report from the inspection carried out the summer before had only been signed the following autumn by the person in charge, that is, after the Québec Ombudsman intervened with the Department. Deeming the process to be inconsistent with the policy, the Québec Ombudsman reminded the Department of its own guidelines. The Department also committed to remind the personnel concerned. ...)*

### (... **Carry out environmental investigations within a reasonable time frame**

*The Department received a complaint from a citizen about noise pollution from a nearby factory. A few months later, the Department proceeded with a first inspection of the premises. Since the factory was closed that day, the inspector could not measure the ambient noise levels. However, he noted that the owner of the business was in breach of the law because he did not have a certificate of authorization. The Department told him that he must apply for the certificate. In addition, the owner was required to have a noise emission study done, which he did not do.*

***In light of these facts and given that the citizen reiterated his complaint about the noise, the Department itself decided to go ahead with the noise emission study—more than one year after the citizen’s initial complaint.***

***These unreasonable delays prompted the Québec Ombudsman to remind the Department of the importance of handling environmental complaints quickly because of the inconvenience they may cause to the population. . . .)***

#### FOLLOW-UP TO THE QUÉBEC OMBUDSMAN’S REPORT ON PRIVATE WATERWORKS SYSTEMS

In February 2015, the Québec Ombudsman released a report entitled *For greater control of private waterworks systems in Québec*. It pointed out that some unlicensed private waterworks operators charge rates to their subscribers and that there are no guidelines for Department employees concerning the duration of boil-water and do-not-drink-water advisories.

Six months later, in response to the report’s recommendations, the Department added information on private waterworks systems to its website. In the fall of 2016, after conferring with the Ministère des Affaires municipales et de l’Occupation du territoire and the Ministère de la Santé et des Services sociaux, it also established guidelines mapping out regional directorates’ interventions with the operators of private waterworks systems under boil-water advisories for more than one year. This should help them find quicker solutions for situations in which a return to compliance proves difficult and costly.

As for closer monitoring of the operators’ obligations with regard to licenses and rates, the Department informed the Québec Ombudsman that it would only begin to move on this issue after review of the *Environment Quality Act* and the *Regulation respecting waterworks and sewer services*, an operation which involves amending several requirements that apply to private waterworks systems.

The bill reforming the applicable law was passed on March 23, 2017. The new law provides that the Minister, at the request of a subscriber, will investigate when the subscriber cannot come to an agreement with the operator regarding the applicable rate. A summary of the Québec Ombudsman’s intervention concerning this bill is presented in the section entitled *Parliamentary Watch Report*, on [page 122](#) of this Annual Report.



[The report is found at protecteurducitoyen.qc.ca.](http://protecteurducitoyen.qc.ca)

## Ministère de l’Éducation et de l’Enseignement supérieur

#### IMPROVE ACCESSIBILITY TO AIDE FINANCIÈRE AUX ÉTUDES PHONE LINES

This year again, the Québec Ombudsman received complaints from students about the trouble they were having reaching Aide financière aux études by phone and the long pick-up times before speaking with information agents. For the first time ever, the checks carried out by the Québec Ombudsman in 2016-2017 showed that these problems persisted even outside the peak periods associated with the beginning of the school year.

The Department makes no specific commitments in this regard in its *Declaration of Services to Citizens*. The Québec Ombudsman asked it to provide 2016-2017 data on the average pick-up time and the proportion of people who hang up before being serviced (renege rate). As at March 31, 2017, this information was still unavailable.

The Department has, however, taken measures to reduce these wait times. In September 2016, it made an exception and extended its business hours to deal with greater call volume at the beginning of the school year. Furthermore, it now posts daily information on its website on the status of individual applications for financial assistance. The Québec Ombudsman remains watchful regarding the effects of these measures.

**(... Answer... the phone**

*A student received a letter from Aide financière aux études asking him to provide certain documents to complete his file. Since he had questions about this, he decided to contact the section by phone, which he attempted some 20 times throughout the summer. Every time he tried, he got a recorded message asking him to call back later due to the unusually high volume of calls. He complained to the Québec Ombudsman. Given the situation, the Québec Ombudsman asked Aide financière aux études to, among other things, contact the student, which it did. ...)*

**INFORM APPLICANTS OF REFUSAL IN WRITING**

A student recognized as having a major functional disability may receive financial assistance entirely in the form of a bursary, without having any loans to repay. To qualify for this program, the person must provide a medical certificate. Based on the Québec Ombudsman's verifications, it appears that if the application for recognition of a functional disability is turned down, Aide financière aux études does not always transmit this decision to students in writing. Worse still, it often fails to contact students because it assumes that, in the absence of news after a certain time, they will contact the Department themselves.

Pursuant to the *Act respecting administrative justice*, every person is entitled to a written decision that specifies why an unfavourable decision was rendered and informs them about available recourse and the deadlines for exercising it. Without such a document, people have no idea whether their application has been processed, nor do they have the elements required to contest an unfavourable decision.

Further to the Québec Ombudsman's intervention, Aide financière aux études took the necessary measures to ensure that any decision not to recognize a major functional disability is transmitted to applicants in writing, including retroactive decisions, and indicates possible recourse.

**(... Provide a written document so that applicants can exercise recourse**

*A student complained to the Québec Ombudsman because she had not received any news about the application she had submitted to Aide financière aux études six months earlier to be recognized as a student with a major functional disability.*

*The Québec Ombudsman learned that the application had been turned down, that no one could say when it had been processed, and that there had been no decision in writing. At the Québec Ombudsman's request, Aide financière aux études produced a written decision, with reasons, and transmitted it to the student. As a result, she was able to understand the outcome and exercise recourse. ...)*

## PROCESS EXCEPTIONAL ASSISTANCE APPLICATIONS PROMPTLY

Pursuant to their discretionary power, the Minister of Education, Recreation and Sports and the Minister responsible for Higher Education may waive the provisions of the *Act respecting financial assistance for education expenses* when they feel it is appropriate to award financial assistance to students who would not usually qualify or who are not entitled to a sufficient amount of aid. This decision is made when it is felt that, without student financial assistance, the person could not continue his or her studies.

According to the terms and conditions established, students in dire financial straits may apply to the Exceptional Case Examination Committee either for student financial assistance or for an increase in the amount initially granted. The Committee meets approximately nine times during the school year and, barring exceptional circumstances, should render its decisions two or three weeks after each of these meetings.

In its last Annual Report, the Québec Ombudsman pointed out that, all too often, the wait times for processing exceptional case applications exceeded the deadlines set out in the document made available to students, the *Guide for presenting an application to the Exceptional Case Examination Committee regarding student financial assistance waivers*. Yet, the fact is that most of the students who avail themselves of this mechanism are in such dire financial straits that their ability to continue studying is threatened.

In 2016-2017, the Québec Ombudsman received individual complaints about this once again, and nothing has changed. It urges the Department to comply with the prescribed deadline.

### RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING THE HANDLING OF APPLICATIONS FOR STUDENT ASSISTANCE WAIVERS

Whereas the Minister of Education, Recreation and Sports and the Minister responsible for Higher Education may award exceptional financial assistance to students if they feel that, without this assistance, the students' studies may be compromised;

Whereas most of the applicants are financially fragile;

Whereas in the *Guide for presenting an application to the Exceptional Case Examination Committee regarding student financial assistance waivers*, the Department pledges to reply to exceptional case applications within two to three weeks of the Committee meeting, barring unusual circumstances;

Whereas, for the past two years, the Québec Ombudsman has received complaints from people who filed exceptional case applications and has noted recurrent processing delays even though files did not involve unusual circumstances;

### THE QUÉBEC OMBUDSMAN RECOMMENDS THAT THE MINISTÈRE DE L'ÉDUCATION ET DE L'ENSEIGNEMENT SUPÉRIEUR:

- take the necessary measures to process all exceptional case applications within the time frame set out in the *Guide for presenting an application to the Exceptional Case Examination Committee regarding student financial assistance waivers*;
- where applicable, inform the students concerned that processing is delayed and specify the new time frame.

≡ COMMENT BY THE MINISTÈRE DE L'ÉDUCATION ET DE L'ENSEIGNEMENT SUPÉRIEUR:  
The Department's response to the Québec Ombudsman's recommendation was the following:

[Translation]

"The Department is careful to offer its client population quality service, especially when it concerns a vulnerable client population. We therefore subscribe to the recommendations made to us. I am hereby informing you that the Department intends to do its utmost to reduce the administrative delays in processing exceptional case applications."

## RESPOND PROMPTLY TO ANY APPLICATION RELATED TO THE FRANCE-QUÉBEC STUDENT MOBILITY AGREEMENT

From 1978 to 2015, French students enrolled at universities in Québec paid the same tuition as Québec students. On March 6, 2015, the French and Québec governments reviewed the terms of their student mobility agreement, notably for French students enrolled in undergraduate programs in Québec universities. Under the new agreement, these students now have to pay the same tuition and lump-sum amounts as Canadian students who are not resident in Québec. Hence, these fees have risen from about \$2,300 to \$7,200.

A transitional tuition measure for French students registered for the 2015 winter session was adopted to enable them to continue paying the pre-2015 tuition amount for the duration of their studies. Québec educational institutions and students therefore requested that the Department determine whether these students were eligible for this transitional measure. However, pending its reply and by virtue of the budgetary rules, the institutions could not apply the transitional measure and, as a result, billed these French students for the same tuition paid by Canadian students who are not resident in Québec. This was the case for the 2015 winter and summer sessions and for all of 2016. Some of the students concerned complained to the Québec Ombudsman about this sudden tuition increase which they could not possibly have foreseen when they began studying in Québec. Such a change could jeopardize the future of their studies.

At the time of the Québec Ombudsman's intervention regarding the Department, educational institutions had been awaiting the Department's reply concerning application of the transitional measure for roughly eight months, which is a patently unreasonable delay. The investigation by the Québec Ombudsman made it possible to determine the reasons for such a delay, namely:

- lack of internal coordination;
- mismanagement of the applications sent by educational institutions;
- lack of assistance and information to institutions.

Further to the Québec Ombudsman's intervention, the Department promptly processed applications from institutions and individuals, who were informed that they qualified for the transitional tuition. As a result, their right to the initial tuition amount was reinstated.

### ( . . . **Promptly reply to transitional measure applications**

*In early 2016, a university contacted the Department for a decision regarding a group of French students' eligibility for the transitional measure. Two months later, the Department rendered a decision concerning only one student. The institution therefore asked the Department if it could apply the same conditions to the entire group. No decision was forthcoming.*

***Five months later, and only after the Québec Ombudsman intervened, the Department rendered a decision. In the meantime, however, the university had had to bill the other students for the 2015 winter and summer sessions and for all of 2016 at the rate charged to Canadian students who are not resident in Québec.***

***In the end, all the students were able to benefit from the transitional rate, with retroactive application of the measure. . . .)***

## GIVE CHILDREN WITH A PRECARIOUS IMMIGRATION STATUS ACCESS TO FREE PUBLIC EDUCATION AT LONG LAST

More than two years after tabling its special report on access to free public education for children with a precarious immigration status, the Québec Ombudsman notes that its recommendations have still not been implemented. It deplores the Department's slowness to act on this file and is worried about the fate of children who are denied the fundamental right to education.

The *Education Act* provides for the right to education for all children. However, cost-free public educational services are reserved by regulation for people resident in Québec within the meaning of the Act and of the *Regulation respecting the definition of resident in Québec*. Thus, certain children, even though they live in Québec, are excluded from free access to public schools because they do not qualify as "residents" due to their parents' precarious immigration status.

As the Québec Ombudsman sees it, this violates the Convention on the Rights of the Child, ratified by the Government of Canada and to which Québec has declared itself bound. It therefore recommended to the Department that all children living in Québec have access to public education free of charge, regardless of their or their parents' immigration status.

As soon as the report was tabled in November 2014, the Department accepted all of the Québec Ombudsman's recommendations and committed to proposing an amendment to the *Education Act* in 2015. As at March 31, 2017, such a legislative amendment had not been passed into law.

In December 2015, nearly a year after the Department's initial commitment, Bill 86 was introduced. It proposed extending the principle of free access to preschool, elementary and secondary education to every child living in Québec by limiting exclusions to three categories of students who are not residents of Québec. However, this Bill was not passed. Bill 105, introduced in June 2016, carried over some of the amendments to the *Education Act* proposed in Bill 86, but none of them addressed this crucial issue.

As long as the legislative and regulatory framework remain the same, the situation described in the Québec Ombudsman's report will persist and certain children, even though they live in Québec, will not be considered residents and therefore will not have access to free public education.


The Québec Ombudsman reiterates that schooling is the cornerstone of children's personal and social development. All children are entitled to this development, regardless of their parents' status or socioeconomic situation. School attendance is also the best way to integrate into Québec society. The Québec Ombudsman is convinced that in the long run, all of society will benefit from this measure.

The Québec Ombudsman also saw that some school boards ask for more than what is required by regulation in terms of identification for enrolment. It considers that the Department must send a clear message in this regard. This year, the Québec Ombudsman was made aware of a case that required it to intervene with the Department to resolve the situation of a child who was denied school attendance by a school board.

(... **Cancel all school fees for children with a precarious immigration status**

*A mother with a foreign nationality who was living in Québec complained to the Québec Ombudsman that her child could not attend public elementary school because she could not afford the school fees that she was being asked to pay. After the Québec Ombudsman intervened with the Department, the child was able to attend school. A few months later, the mother, who thought that the matter had been settled, received an invoice for school fees in an amount of nearly \$4,000 from the school board. The Québec Ombudsman had to step in yet again to have the Department cancel the invoice. ...)*

Once again, this situation illustrates the inadequacy of the current mechanism, which is based more on the notion of exclusion rather than inclusion of children whose immigration status is uncertain or precarious. The Department must correct this unacceptable situation immediately.

 [The summary of the Québec Ombudsman's special report on access to public education for children with a precarious immigration status is found at proteceducitojen.qc.ca.](https://www.proteceducitojen.qc.ca/)

## REVIEW THE LEGAL FRAMEWORK FOR HOME SCHOOLING

In April 2015, the Québec Ombudsman published a special report on the home schooling of children who are of an age to attend elementary or secondary school. The report exposed the main problems that can compromise the required collaboration between parents and school authorities in carrying out this kind of educational project. The difficulties encountered included the disparity among supervision and evaluation practices within the school system, the inability of some school boards to acquire the necessary expertise in this matter, and lack of effective recourse in the case of a dispute. To correct the failings described in the Québec Ombudsman's report and to prevent their recurrence, the Department produced an action plan in response to the Québec Ombudsman's recommendations.

In 2016-2017, the Québec Ombudsman was pleased to note that the amendments to the *Education Act* under Bill 105, *Act to amend the Education Act*, henceforth enable the Student Ombudsman at each school board to handle homeschooling complaints. This change is slated to come into force on July 1, 2017. The Department has also undertaken work and consultations within the school system aimed in particular at:

- proposing a review of the legal and administrative framework for home schooling, as well as a reform of its ministerial orientations;
- determining the training needs of school personnel in charge of home schooling;
- fostering joint action, communication and expertise-sharing within the education system;
- producing a handbook of best practices, notably for the supervision, follow up and assessment of learning of homeschooled children;
- assisting the development of support and monitoring services.

The Department also committed to undertake work to expand access to distance education for homeschooled children in the context of drafting the government's digital strategy.

As at March 31, 2017, the Québec Ombudsman was still receiving complaints from parents who were having trouble coming to an agreement with their school board about the requirements and methods for evaluating and supervising their child's learning. At the Québec Ombudsman's request, the Department appointed a respondent to whom parents, school authorities and Student Ombudsmen can turn in situations of dispute or for further information about supervision and follow-up of homeschooling projects.

The Québec Ombudsman will closely follow the outcome of the work undertaken by the Department, especially the proposed amendment of the legal framework for home schooling and its impact on the correction and prevention of the adverse effects noted in its report.



[The summary of the special report on home schooling is found at protecteurducitoyen.qc.ca.](http://protecteurducitoyen.qc.ca)

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## Ministère de l'Énergie et des Ressources naturelles

### DO NOT APPLY NEW RULES RETROACTIVELY WHEN THE DEPARTMENT IS RESPONSIBLE FOR THE DELAYS

People turned to the Québec Ombudsman when the Ministère de l'Énergie et des Ressources naturelles refused to sell them land in the domain of the State months, and even years, after their purchase application. In several cases, the Department cited lack of compliance with recent rules which it applied retroactively to citizens' applications, even though it was itself responsible for the unreasonable delays in processing these applications.

Under the *Act respecting the lands in the domain of the State*, the Minister has discretionary power to sell the lands in question. Previously, a person who applied to the Minister for purchase had to satisfy certain conditions of sale, which were not burdensome and varied depending on the regional directorate concerned. Since July 2015, a more restrictive directive governs the sale of lands in the domain of the State, in keeping with a principle enshrined in the Act, that is, in order to maintain the integrity of the public domain, leasing of lands is now the preferred approach. Sale remains possible, but only under exceptional circumstances.

In the wake of this directive, in February 2016, the Department's Direction des politiques et de l'intégrité du territoire adopted new guidelines to ensure consistent management of all public lands. The guidelines specify that land leasing is the option of choice in matters of land rights. However, the Minister may exceptionally agree to sell the land if it is located in a non-contiguous lot or within an urban area, or if a property owner requests a land parcel in order to comply with a municipal environmental bylaw.

By turning down applications for the purchase of public lands submitted before February 2016 on the basis of retroactive application of the new guidelines, the Department did not acknowledge its responsibility for the delay in processing files and penalized the people who applied long before the rules were changed.

### (... **Assume responsibility for unreasonable delays**

***In 2009, a citizen bought a cottage located on lands in the domain of the State from an individual. The Department transferred the lease for vacation purposes to her. In 2013, she was interested in buying the land and she filed an application with the Department. Two years later, she contacted the Québec Ombudsman, emphasizing that her application had not been processed yet.***

*After verifying, the Québec Ombudsman learned that the application was moving ahead, but the Department had not drafted an offer of sale. In fact, it was about to notify her of its refusal because the application did not comply with the recently introduced directive and guidelines. However, analysis of the file showed that she had met all the requirements in effect when she made her application in 2013.*

*The Québec Ombudsman recommended that the Department re-examine its position given that the new directive came into force a full year and a half after the citizen filed her application. The woman was not responsible for the unreasonable amount of time it took to process her file. The Department agreed to act on the Québec Ombudsman's recommendation and proceeded with the sale. . . .)*

**( . . . Be consistent in handling files**

*In 2012, a citizen applied to purchase land in the domain of the State in order to build his principal residence. Two years later, he sent the Department the report from a property assessment firm. Six months went by before the Department informed him that an offer of sale was forthcoming. However, after another year and a half, the Department told the citizen that with the new directive and guidelines, his application had been turned down.*

*After the Québec Ombudsman intervened, the Department reassessed the file. It saw that the application complied with the eligibility requirements in effect at the time the file was opened. It therefore authorized the sale pursuant to the rules from 2012, when all the usual requirements would have been met. . . .)*

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## Ministère des Forêts, de la Faune et des Parcs

### OVERHAUL THE GUIDELINES FOR THE MANAGEMENT OF TRAPPING GROUNDS

In Québec, trapping and fur marketing are subject to the laws and regulations spelled out in the guidelines for the management of trapping grounds. However, the Québec Ombudsman has noted that some of the regional directorates of the Ministère des Forêts, de la Faune et des Parcs do not apply the guidelines or apply them incorrectly. Furthermore, since the guidelines do not indicate the procedure to follow for many situations that trappers experience, regional directorates have set up their own procedures for monitoring the activities concerned. This results in regional disparity, and, by extension, unfairness, in particular regarding lease renewal or building construction.

The Québec Ombudsman is concerned about this lack of consistency. It considers that the Department must ensure the uniformity of the procedures applied across the board so as to ensure fair treatment for everyone in Québec. It therefore asked the Department to send directives to the regional directorates to counter the disparities. The Department agreed that the guidelines required an overhaul and is planning an update for 2017. The Québec Ombudsman feels that this would be a crucial gain, as the following cases show.

**(... Ensure uniform treatment of offences by trappers**

*Trappers who lease lands from the State and who wish to build on them must have a lease of exclusive trapping rights on a territory reserved only for trapping. To build, they must comply with the construction standards and conditions in force.*

*When the Department deems that a building is not up to code, the regional directorate concerned must send the offending party a letter notifying him or her of this. The follow up then differs from one regional directorate to another. Some directorates give the lease holder about six months to correct the situation, failing which the lease is cancelled. Others automatically send a lease cancellation notice. In such cases, it is too late for the person to satisfy requirements, which unfairly penalizes him or her.*

*In light of the complaints on this subject, the Québec Ombudsman convinced the Department to standardize practices so that the regional directorates give trappers the opportunity to comply with requirements before receiving a lease cancellation notice. Standard letters indicating that trappers found to be at fault may make the prescribed corrections within a reasonable time frame will be added to the guidelines when they are reprinted. The regional directorates will be required to use these letters when communicating with trappers. ...)*

**(... Renew leases without undue constraints**

*Trappers complained to the Québec Ombudsman after realizing that the lease renewal letters sent by the Department differed depending on the regional directorate concerned.*

*The Québec Ombudsman saw that, indeed, the guidelines did not provide for standard letters for lease renewal. Each regional directorate had drafted its own standard letter to notify trappers of the renewal of their lease. For example, some of the letters stated that trappers must comply with fishing regulations, even though there is no such legal stipulation governing issuance of a lease.*

*For the sake of fairness and consistency, the Québec Ombudsman and the Department agreed that all holders of a lease of exclusive rights must receive the same information and be subject to the same lease renewal requirements. The new version of the guidelines will therefore include standard letters that will be used by all the regional directorates. ...)*

**(... Have uniform rules for the construction of mezzanines**

*Trappers contacted the Québec Ombudsman because the Department was not applying the guidelines uniformly for mezzanine construction. Under certain conditions, the guide provides that construction of trapping camp mezzanines may be authorized. However, some regional directorates prohibit mezzanine construction, in breach of the existing rule.*

*At the Québec Ombudsman's request, in August 2016 the Department issued a directive to all regional directorates reminding them that holders of leases of exclusive rights may be authorized to build mezzanines, provided they meet guideline requirements. ...)*

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

Most of the complaints concerning the Ministère de l'Immigration, de la Diversité et de l'Inclusion have to do with obtaining a Québec selection certificate in the context of the regular skilled workers program, an immigration program that enables candidates to settle in Québec permanently and to work here.

For certificate candidates, immigration is a milestone that can be costly. Furthermore, the process is often punctuated by long delays and may be compromised by inadequate administrative processing or a faulty decision. That is why it is important that people who detect a mistake have access to effective administrative recourse in order for it to be corrected within a reasonable amount of time.

### RIGOROUSLY MANAGE THE TRANSITION TOWARDS A NEW IMMIGRATION SYSTEM

This year, candidates for the regular skilled workers program may file their application by means of the new *Mon projet Québec* web portal. When it debuted in January 2016, there were major technical difficulties, but the portal proved reliable during two periods when 10,000 applications were received in total in the summer of the same year.

However, one year after the portal was put in place, the Department had not yet started processing the applications received. Furthermore, it was vague as to the time it would take to do so. On March 31, 2017, the following was posted on the Department website: "Applications continue to be reviewed in the order of priority indicated on the Rules and procedures page. Hence, the applications submitted in paper format before December 31, 2015, are currently being processed or are queued for processing. *Mon projet Québec* being a new system, average processing times are not yet known. We intend to begin processing online applications in the spring of 2017." [Translation]

According to a news release dated June 13, 2016, the Department plans to implement a new immigrant selection system in 2017 to speed up application processing and "only invite candidates who best meet Québec's needs." [Translation]. What, then, will become of the 10,000 online applications from the summer of 2016 which still have not been processed, as well as those received before December 31, 2015, which were in paper format?

The Department indicated that as at March 31, 2017, the total number of skilled worker applications awaiting processing was 31,378. One cannot forget that because Québec and Canada share jurisdiction for immigration, these applications have to be examined by the federal government afterwards. Once more, delays could increase, penalizing people who are waiting for a response that will greatly affect their future and that of their family.

### IMPROVE THE QUALITY OF THE ADMINISTRATIVE PROCESSING OF FILES

One of the steps in file processing is verification of the conformity of the documents submitted by candidates. This consists of making sure that the candidate has submitted all of the documents required in the appropriate format. This year again, the Québec Ombudsman noted that the Department had made mistakes. Bear in mind that errors at this stage of the process lead to application refusals. Even though the Québec Ombudsman has noticed a decrease in complaints of this kind, it considers that the Department must maintain strict control over the quality of all of its services.

(... **Rigorously verify document conformity**

*A Canadian citizen had done a portion of his studies abroad. When he returned, he wanted to apply for a job that required a comparative evaluation for studies done outside Québec. He therefore requested one from the Department, which immediately returned it without even collecting the required fee. The reason: the diploma submitted was an original (rather than a copy) and that format was not accepted. Granted, the Department does not accept originals of documents given the risk that they will go missing. Only duplicates, or copies, must be sent.*

*However, when it intervened, the Québec Ombudsman noted that the Department should have accepted the document because it was not, in fact, an original, but a duplicate. The man was therefore able to submit his request once again, accompanied with, among other things, the duplicate and the payable fees. ...)*

(... **Ensure adequate document management to avoid unwarranted delays**

*A temporary worker who had a Québec selection certificate was selected as a permanent worker and received a Québec selection certificate for him and his family. Having decided not to settle in Québec and wishing to retain his temporary worker status, he contacted the Department to have the certificates cancelled.*

*With no news about these steps after a few months, he contacted the Department and learned that it had not received his request. He therefore went in person to the Department office to repeat the request. When he called again a month later, he was told that there was no sign of it. After the Québec Ombudsman intervened, the Department was quick to proceed with the required follow-up. ...)*

## MAKE RECONSIDERATION OFFICIAL AND REDUCE WAIT TIMES

In its 2014-2015 Annual Report, the Québec Ombudsman recommended that the Department create an internal mechanism to allow candidates to contest refusal of their application when it has been turned down at the document compliance stage. Thus, in 2015, the Department introduced an administrative reconsideration process. However, it did not publicize this form of recourse. Furthermore, the Québec Ombudsman found out that the Department intends to use this procedure only as a temporary measure. Given the substantial increase in the number of refusals since the verification of document conformity was introduced, the Québec Ombudsman considers it important that this recourse be maintained permanently.

On another note, there are delays of more than one year for the reconsideration of decisions to refuse applications. It is necessary to insist on the fact that if a such a decision is based on incorrect assessment of a piece of information or a document, a grave injustice has been committed. Consequently, prompt correction is called for, especially since this verdict often comes several years after the application was submitted.

Further to the requests from the Québec Ombudsman, the Department temporarily added personnel to tackle these delays. The Québec Ombudsman will remain watchful of the results and expects these delay-reduction measures to be made permanent.

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

This year again, social assistance and social solidarity programs generated the greatest number of complaints regarding the Ministère du Travail, de l'Emploi et de la Solidarité sociale. Some of them stemmed from administrative failings or overly rigid application of rules. It is important to note that the main purpose of these programs is to grant last-resort financial assistance to people who are among society's most disadvantaged citizens. Some complaints also brought to the fore other problems of a systemic nature that persist despite the Québec Ombudsman's recommendations and the Department's commitments to take corrective action.

It bears mentioning that last year the Québec Ombudsman spoke out against the amount of time it took the Department to provide it with documents needed to analyze files. After reminding the Department about this at the end of the year, the Québec Ombudsman saw a willingness to improve cooperation not only regarding the provision of required documents, but also concerning direct communication with content specialists.

However, the Québec Ombudsman remains concerned about the implementation of certain commitments by the Department and is critical of its slowness to act on recommendations made in the past few years.

## INDEX SPECIAL BENEFITS

As early as 2011, the Québec Ombudsman recommended that the Department ensure that the rates for special benefits provided for in the *Individual and Family Assistance Regulation* be reviewed and indexed. Given that the last update goes back more than 10 years, it is urgent that these benefits be adjusted to the amounts really paid by recipients for the material required by their state of health. For example, an air filter for people with severe respiratory problems costs considerably more than the amount provided for under the current scale. So far, even though some benefits have been reviewed, most remain to be adjusted, and the Department has given no indication of future review work.

## EXCLUDE CERTAIN AMOUNTS IN CALCULATING LAST-RESORT FINANCIAL ASSISTANCE BENEFITS

In 2013, the Québec Ombudsman recommended to the Department that the *Individual and Family Assistance Regulation* be amended so that amounts received as compensation for the loss of physical or psychological integrity be excluded from the calculation of last-resort financial assistance benefits, without time restrictions, whether the amounts are issued as a lump-sum payment or in instalments. Since then, nothing has happened and the Québec Ombudsman deplores that citizens continue to be penalized.

## MANAGING RECOURSE IN KEEPING WITH RECIPIENTS' RIGHTS

In 2014, the Québec Ombudsman insisted that the Department put a halt to recovery measures while recipients are seeking recourse, since this is illegal. Given the lack of corrective measures, in its last Annual Report the Québec Ombudsman recommended that the Department rectify the shortcomings in its management of recourse, produce an action plan spelling out potential solutions and monitor the control of the quality of its services in order to prevent such situations.

In March 2017, the Québec Ombudsman received an action plan from the Department. The plan is aimed at raising the awareness of the personnel concerned, establishing a quality-control procedure, and, in the long term, developing a computer alert for reducing the number of mistakes. The Québec Ombudsman is satisfied with these measures and intends to pay close attention to the outcome.

**(... Put an end to a double recovery that is illegal**

*In 2015, a citizen was instructed by the Department to repay \$15,000 because he had lived in a de facto union with his spouse without declaring it and, as a result, had received overpayments. The man contested the claim before the Tribunal administratif du Québec. Despite the fact that he exercised this recourse, the Department illegally withheld one quarter of his monthly cheque amount.*

*The Department's computer system automatically withholds amounts in claims of this nature. In order to prevent withholding if the decision is being contested, action by an agent is required. In the case at hand, the information about the appeal to the Tribunal administratif du Québec was not entered in the file. Further to the Québec Ombudsman's intervention, the recipient was reimbursed for the amounts withheld. Afterwards, the Tribunal administratif cancelled the claim issued by the Department. Despite this outcome, the same amount was withheld from the citizen's cheque the following month, even though the citizen had hand-delivered the document confirming cancellation of the debt to his local employment centre agent.*

*The investigation by the Québec Ombudsman showed that the required corrections had not been made in the computer system in time to prevent withholding. The file was updated and the citizen became entitled once again to reimbursement of the amounts withheld illegally. ...)*

**(... Respect the payment agreement and the applicable legislation**

*A person contacted the Québec Ombudsman to contest a solidarily liable debt (a debt which involves an ex-spouse as well as the debtor) of more than \$35,000 that she had been paying back for almost 25 years. So far she had reimbursed more than three quarters of the debt amount. A family member had recently agreed to lend her \$5,000 so that she could offer the Department a final settlement. It refused the proposal.*

*Analysis of the file showed that in the early 1990s, the couple had sought recourse before the Commission des affaires sociales (the relevant administrative tribunal for this kind of case at the time) to contest the initial debt. Therefore the Department, the citizen and her spouse at the time had entered into an agreement whereby the woman pledged to reimburse \$23,000 and her ex-spouse, the balance. According to the Regulation respecting income security, which was in force at the time of the agreement, no interest is payable by debtors who carry out the reimbursement agreed upon with the Minister.*

*In the context of the investigation it carried out, the Québec Ombudsman noted that:*

- *the Department had failed to recover the intended reimbursement from the woman's ex-spouse, the result being that she had shouldered the entire debt and that, as of 2016, the ex-spouse's debt had been paid off;*
- *the woman had already paid back more than the prescribed amount according to the agreement;*
- *over the years, interest had been calculated and added to the amount, in disregard of the terms of the applicable regulation, which made the debt so large that the woman could not reasonably expect to be free of it someday.*

*At the Québec Ombudsman's request, the Department agreed to cancel the outstanding debt as well as the interest, and it reimbursed the citizen for the amount she had overpaid, namely, more than \$4,000. . . .)*

## ENABLE DESTITUTE PEOPLE TO SEE THE END OF THEIR DEBT REPAYMENT

The Québec Ombudsman has noticed an increase in the complaints concerning reimbursement of a debt to the Department. It should be explained that to recover debts owed to it, the Department withholds the amounts owing from the monthly benefits issued as last-resort financial assistance. In other cases, it makes an agreement with the person in order to spread the debt out over a certain period of time. Hence, in many cases, the payments represent a minimal portion of the capital or only the interest on the debt. Over the years, debtors may therefore have paid back more than they actually owed because of the interest accrued. If this continues, sometimes for more than 25 years, these people are not able to pay off their debt by the time they are advanced in years.

The Québec Ombudsman acknowledges the Department's right to recover overpayments to last-resort financial assistance recipients as well as the soundness of its efforts. However, it considers that, under certain circumstances, debt reimbursement must be allowed to come to an end.

Under the *Individual and Family Assistance Act*, the Minister is granted discretionary power to suspend, due to exceptional circumstances, the full or partial recovery of an amount owing. Nonetheless, the Québec Ombudsman has seen that the Department only considers situations as exceptional when there is a risk of complete destitution, a risk to a person's health or safety, or situations of spousal violence. This discretionary power, even if governed by guidelines, should be interpreted more broadly and lend itself to case-by-case assessment.

### **( . . . Recognize the exceptional character of reimbursement that never ends**

*A citizen who was over 70 years old had contracted a \$70,000 debt 30 years before because of a claim for an undeclared de facto union (cohabiting with her spouse). Further to the decision rendered by the Department, the woman made an agreement to pay \$120 a month as debt repayment, which she did from 1989 to 2015, when the amount of the debt was \$31,000.*

*Given her deteriorating health, and following a recommendation by a social worker and her gerontologist, she moved into a residential centre, but could no longer reimburse the Department because of the cost of her rent. She applied to have the debt cancelled. By way of supporting documents, her daughter submitted a letter explaining the situation, a statement of her mother's revenue and expenses, as well as her mother's bank statements. The Department turned down the application because it considered that the circumstances were not exceptional within the meaning of the Act. . . .)*

**(... Under exceptional circumstances, terminate the reimbursement of a debt when necessary**

*A woman had been paying back a debt to the Department since 1997. At the time of her complaint to the Québec Ombudsman, she had reimbursed the equivalent of the initial claim, that is, approximately \$35,000. She had received a surviving spouse's pension and a modest salary for several years. According to the agreement with the Department, her debt repayment was \$50 a month. When she reached age 65, her surviving spouse's pension decreased and she could no longer continue making her monthly payments to the Department. For its part, the Department considered that, in this case, the notion of "exceptional circumstances" could not be used to enable cancellation of the outstanding debt. . . .)*

**(... Avoid applying unfair reimbursement measures**

*A citizen who was over 70 years of age had contracted a \$10,000 debt with the Department in the 1990s as the result of an undeclared disability pension. With the interest added to the initial amount, he had already paid back nearly \$16,000. Despite this, he was still not discharged from his debt, continued to make his monthly payments, and half his solidarity tax credit was still being seized by the Department. . . .)*

## RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING THE REPAYMENT OF CERTAIN DEBTS

Whereas citizens pay back their last-resort financial assistance debts over many years and as best they can based on their financial means;

Whereas pursuant to the law, certain debts cannot be forgiven by reason of bankruptcy;

Whereas the Act provides that, due to exceptional circumstances, the Minister may, according to the conditions he or she determines, suspend, in whole or in part, the recovery of an amount owed;

Whereas the exercise of discretionary power should take various factors into account, notably:

- the number of years since the initial claim;
- the amount of the capital already reimbursed or the proportion thereof;
- the debtor's age;
- the debtor's state of health;
- the probability that at some point the debt (capital and interest) will be paid in full;
- the circumstances of the claim;

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

- review its analytic framework so that debts which are paid over a long period (and sometimes repaid in full were it not for the interest) may be forgiven through exercise of the Minister's discretionary power.

≈ COMMENT BY THE MINISTÈRE DU TRAVAIL, DE L'EMPLOI ET DE LA SOLIDARITÉ SOCIALE  
The Department's response to the Québec Ombudsman's recommendation was the following:

[Translation]

"The Department is sensitive to the financial situation of its social assistance program client population, which is why it is currently examining measures aimed at decreasing this population's debt load and at preventing excessive debt to the Department by these clients."

≈ THE QUÉBEC OMBUDSMAN'S RESPONSE

The Québec Ombudsman notes the Department's comment and reiterates the importance of promptly finding a concrete solution so that citizens grappling with a large amount of debt with the Department can argue their case and have their debt reduced or forgiven in certain special situations. It asked the Department to send it the timetable for its analytical work.

**MAINTAIN ELIGIBILITY FOR CERTAIN ADVANTAGES OF THE CLAIM SLIP DESPITE RETRAITE QUÉBEC BENEFITS**

All last-resort financial assistance recipients recognized as having a severely limited capacity for employment must verify whether they qualify for a disability pension from Retraite Québec. If they do and the amounts issued by Retraite Québec exceed the amount of the severely limited capacity for employment allowance, the recipients lose their eligibility for this assistance and for certain claim-slip advantages. Claim-slip holders do not have to pay for prescribed medication and have access to free dental and optometry services. It should be noted that in order for holders to benefit from the last two elements, they must have received last-resort financial assistance for at least 6, 12 or 24 consecutive months, depending on the care covered.

The same slip may also be issued to people who do not qualify for last-resort financial assistance but whose income is insufficient to cover their medication needs. In other words, people excluded from last-resort financial assistance because of their disability pension may get their claim slip back. However, the Department considers this a new request and applies waiting periods of six months to two years.

If the allowance is no longer issued by the Department and the former recipients receive a Retraite Québec pension instead, the claim-slip allocation program itself remains the same. The Québec Ombudsman therefore feels that they should not have to deal with a second waiting period. This deprives them of the care to which they are entitled, given that they still receive government benefits and still need the same medication.

(... **Grant claim-slip advantages to social solidarity recipients who now receive a disability pension**

*A citizen who had worked for nearly 20 years had been a last-resort financial assistance recipient for some 15 years. After being hospitalized, she was recognized as having a severely limited capacity for employment. As provided by law, the Department instructed her to apply to Retraite Québec for a disability pension, which she did. Her application was approved, and she received her new pension. Since the amount that she now received from Retraite Québec exceeded the severely limited capacity for employment allowance by a few dollars, the citizen was excluded from the program. This also meant that she no longer received the claim slip.*

*Because of her health problems, the woman had to pay for medication that cost more than what she received as a disability pension, which entitled her to the claim slip. However, the Department considered her request a new application and the citizen had to wait 12 months, even though she was supposed to receive care as soon as possible.*

*The Québec Ombudsman deplores this rigid approach by the Department, which should treat the applications of people who benefited from the claim slip before receiving disability pensions as an extension of their last-resort financial assistance and not apply a second waiting time. . . .)*

**RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING PARTIAL LOSS OF CLAIM-SLIP ADVANTAGES**

Whereas social solidarity recipients who have a claim slip and who receive a disability pension from Retraite Québec may, under certain conditions, remain entitled to the slip and apply for one, but are subject to waiting times ranging from six to 24 months, as if it were their first application;

Whereas the recipients' state of health has not changed and the need to maintain the advantages of the claim remains;

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

- no longer apply the waiting time for obtaining the claim slip in the case of last-resort financial assistance recipients who become eligible for a disability pension from Retraite Québec.

≈ COMMENT BY THE MINISTÈRE DU TRAVAIL, DE L'EMPLOI ET DE LA SOLIDARITÉ SOCIALE  
The Department's response to the Québec Ombudsman's recommendation was the following:

[Translation]

"The Department has noted the problem concerning the loss of certain claim-slip advantages when recipients no longer qualify for last-resort financial assistance because they are receiving a disability pension from Retraite Québec. The Department pledges to analyze the problem and its impact and to keep the Québec Ombudsman abreast of developments in this regard."

## ≡ THE QUÉBEC OMBUDSMAN'S RESPONSE

The Québec Ombudsman notes the Department's comment and will remain attentive regarding the analytic work announced and the ensuing outcomes. In order to ensure that follow-up occurs within a reasonable time, the Québec Ombudsman is asking the Department to send it the timetable for its work.

### IMPROVE THE QUALITY OF THE ADMINISTRATIVE PROCESSING OF FILES

This year, several last-resort assistance recipients approached the Québec Ombudsman because of the inadequate administrative processing of their file and lack of support from the Department. These failings, revealed in the course of the investigations conducted by the Québec Ombudsman, had very adverse effects on vulnerable people who were partly or completely deprived of financial assistance which was crucial to them because it was their last resort. The Québec Ombudsman expects the Department to rapidly improve its control of the quality of its work and services.

#### (... **Pay greater attention to the documents provided by recipients**

*A citizen was issued a claim of nearly \$3,000 because the Department had refused to consider her adult child who was also a full-time student as her dependent. In addition to this, the citizen became ineligible for the \$100 monthly exclusion because she received child support for her daughter, as well as for the supplementary benefit for a child attending an educational institution. The Department decreased her last-resort financial assistance as a recovery measure.*

*However, the person had provided proof of her child's school attendance for part of the period subject to the claim. As a result, suspension of the supplementary benefit had been unjustified and the claimed amount, inaccurate.*

*Because of the Québec Ombudsman's intervention, the claim by the Department was reduced accordingly and the fair amount to which the woman was entitled was reinstated for the benefits as well as for child support, in the amount of roughly \$250 a month. ...)*

#### (... **Be heedful of providing accurate, complete and timely information**

*A social worker contacted the Québec Ombudsman because a young girl had been refused admission to the pregnant minor financial assistance program. The reason was that the young girl was part of an Aboriginal community, which is under federal jurisdiction. The refusal was upheld when the Department reviewed it.*

*The social worker was astonished by this response since other members of the same community received financial assistance benefits from the Department. In the context of the investigation it conducted, the Québec Ombudsman discovered that the young girl was finally informed that she would qualify for the program if she provided the Department with a letter from her band council indicating that the federal government had no equivalent program. When the Department received the letter, it notified the citizen of her eligibility.*

*In the opinion of the Québec Ombudsman, the Department should have acted promptly and provided this information when the young girl applied. This would have enabled her to avoid delays, the process of seeking recourse and the fear of additional financial difficulties. . . .)*

**(... Avoid unjustly delaying the processing of financial assistance applications**

*A citizen applied to the Department for last-resort financial assistance. Before determining whether the applicant was eligible, the Department instructed him to go to Service Canada to obtain employment insurance, and then provide the Department with proof of termination of employment. The man had already provided all the documents usually requested by the Department, except for proof of termination of employment because his employer, for whom he had worked only three days, refused to provide the document. Since the refusal was illegal, the man filed a complaint with Service Canada.*

*Despite these steps, the Department upheld the refusal to grant him financial assistance. Instead, his file agent indicated that he had been given extra time to produce proof of termination of employment, which uselessly delayed processing of the file.*

*The Québec Ombudsman pointed out to the Department that the situation was beyond the citizen's control and he had been unjustly penalized. It therefore requested that the examination of the file take into account the documents which the citizen was able to provide and that it make the necessary adjustments when the applicant was in a position to send the requested information. The Department agreed to do so. . . .)*

**(... Be rigorous and act promptly when requesting documents**

*A last-resort financial assistance recipient learned that his benefits had been cancelled because he had not provided all the documents requested by the Department. He explained to the Québec Ombudsman that a Department agent had left a short voice message requesting additional documents but without specifying which.*

*During the Québec Ombudsman's intervention, the Department realized that the letter requesting documents had not been sent to the citizen. The Department therefore contacted him again to tell him that his benefits had been maintained and that he was being given extra time to produce the requested documents.*

*The Québec Ombudsman reminded the Department of the importance of being rigorous and of acting in a timely manner when instructing recipients to provide documents. It is important that they be allowed to complete their file before possible announcement of the cancellation of their benefits, given the distress that such an announcement may cause. . . .)*

# Retraite Québec

## Public-sector pension plans

### BE CAREFUL ABOUT THE ACCURACY OF INFORMATION

To make informed decisions, people whose retirement pension is managed by Retraite Québec must be given adequate information which is accessible, reliable and complete, whether it be in forms, documents or on its website.

In the past year, the Québec Ombudsman has recommended certain corrective measures aimed at, among other things, helping citizens better understand and foresee the adverse effects stemming from problems related to their contributions or to the receipt of amounts accumulated in a pension plan.

#### (... **Transmit accurate information on the fiscal impact of shared pension plans**

*When an application for the partition of the family patrimony is filed in the context of a divorce, Retraite Québec sends ex-spouses a statement indicating the value of the rights accrued for the period of the marriage and the value of the rights accrued for the period of participation in the plan. This document specifies that when partitioning occurs, the amounts are deposited into a tax-free account.*

*A citizen settled the terms of her divorce by relying mainly on the content of the statement provided by Retraite Québec. However, when she received the amounts she was entitled to, she realized that a sizable portion had been paid by cheque instead of being transferred into a tax-free account. These amounts therefore had an immediate tax impact, which meant a loss for her of more than \$30,000 compared to what she would have received by withdrawing the money when she reached retirement. If she had been told about this unexpected source deduction, she would have negotiated the terms of her divorce differently.*

*It is important to know that a transfer of amounts further to divorce is not tax-free unless the transfer is authorized within the meaning of the Taxation Act. In the case at hand, a portion of the amount received by the citizen was not from such a transfer and was therefore taxable. The Québec Ombudsman did not find this information anywhere in the documents transmitted by Retraite Québec. Worse yet, the information that was available contained errors on this subject, in disregard of the consequences for spouses in the process of getting a divorce.*

*At the Québec Ombudsman's request, the statement of benefits was modified and now specifies that there may be a source deduction on excess amounts from a supplemental pension plan. The Québec Ombudsman also asked Retraite Québec to compensate the citizen given the faulty information and the resulting harm. Retraite Québec refused to act on this recommendation, which the Québec Ombudsman considers very regrettable. ...)*

(... **Inform citizens adequately about the seizability of pension benefits**

*A citizen whose pension benefits had been seized by Revenu Québec contacted the agency about their seizability. An agent explained to him that pension benefits become seizable when they are deposited in a bank account, which is, in fact, what Retraite Québec's website says.*

*After looking into it, the Québec Ombudsman noticed that the information as given by Retraite Québec was inaccurate. In point of fact, pension benefits do not automatically lose their unseizability simply because they are deposited in a bank account. The type of transactions involved and the nature of the rest of the money deposited in the account also have to be considered. Consequently, the information provided by Retraite Québec could mislead contributors.*

*The Québec Ombudsman asked Retraite Québec to correct the information on its website, which it agreed to do. Noting that the citizen's pension benefits had been seized even though they should not have been, the Québec Ombudsman asked Revenu Québec to cancel the seizure, which it did. ...)*

## Québec Pension Plan and Child Assistance

### REDUCE LENGTHY DELAYS WHEN AN INVESTIGATION IS REQUESTED WHILE AN APPLICATION FOR BENEFITS IS BEING PROCESSED

In the past two years, the Québec Ombudsman has received an unusually high number of complaints concerning wait times for processing benefit applications, especially for surviving spouse's pensions and the tax credit for child assistance. The *Act respecting the Québec Pension Plan* and the *Act respecting administrative justice* instruct Retraite Québec to act promptly in analyzing the applications it receives and when rendering decisions.

It should be explained that after the initial processing of an application for benefits by an agent, some files are transferred to a person in charge for additional checks. No information is given as to the time it takes for these specialized agents to process the applications.

Afterwards, the file is transferred to the investigations branch if necessary. According to Retraite Québec, the current delay for assigning files to the personnel of this investigations branch is one year. Figures show that five members of the investigation branch managed to complete the investigations within an average of 184 days in 2015, which dropped to 153 days the following year when an extra person was called in to help.

The Québec Ombudsman is aware that Retraite Québec is not the only one to blame. Some of the organizations required to provide information also take time doing so, and some citizens are slow to provide the information they are asked for. However, this does not excuse Retraite Québec, which must, in no uncertain terms, tackle the lengthy delays for which it is responsible, especially due to a staff shortage within the investigations branch (departures, retirement, sick leaves).

The situation is worrisome because it jeopardizes contributors' legitimate right to a response from Retraite Québec within a reasonable time. Furthermore, some people with unstable incomes are hit hard by the financial consequences of unjustified wait times. Accumulated delays may affect the quality of the supporting evidence in an application for benefits. The Québec Ombudsman

therefore recommended that Retraite Québec develop relevant management indicators as well as an action plan to rectify the situation, which the agency agreed to do. The Québec Ombudsman will closely monitor the measures put in place.

**(... Process applications for benefits within reasonable time frames**

*During the summer, a woman applied for a surviving spouse's pension. In the early autumn, Retraite Québec asked her for additional proof, which she provided the very same day. Deeming it insufficient, Retraite Québec asked for an internal investigation two months later. The information obtained by the specialized agent entrusted with doing the checking was contradictory, so, more than three months later, the file was forwarded to the investigations branch. It took more than a year for the file to be assigned to an investigator. The investigation itself lasted a month and a half. Overall, more than 600 days had gone by since the initial application.*

*Finally, Retraite Québec rendered its decision. Recognized as qualifying for the surviving spouse's pension, she received more than \$16,000, retroactive to the time of her application... two years before. ...)*

**INFORM CITIZENS THAT CHILD ASSISTANCE BENEFITS AND SUPPLEMENT FOR HANDICAPPED CHILDREN PAYMENTS ARE RETROACTIVE FOR MORE THAN AN 11-MONTH PERIOD**

The tax credit for child assistance and the supplement for handicapped children enable many families, whose circumstances are often precarious, to meet their subsistence needs. The *Taxation Act* provides that people who qualify for this financial assistance may receive benefits retroactive to 11 months before receipt of the application by Retraite Québec. The Act also specifies that the period for the retroactive payment may be extended beyond 11 months provided the person makes the request in writing and satisfies the requirements established by Retraite Québec. The person must be able to demonstrate that it was impossible for him or her to file such a request earlier, which may be the case, for example, for parents:

- with physical or mental health problems;
- overburdened with their child's medical appointments and treatments;
- in the process of separating and, if their communication is strained, who may each assume that the other parent is receiving the benefits.

The *Act respecting administrative justice* and the *Regulation respecting the distribution of information and the protection of personal information* specify that every public body must adequately inform the client population and facilitate access to information about its services, programs and benefits. This includes website information as well as information given by phone and in booklets, folders and forms. Retraite Québec does not, however, provide any information about retroactivity going back more than 11 months. On the contrary, all the information it provides mentions the 11-month limit, without indicating that longer retroactivity is possible.

The Québec Ombudsman asked Retraite Québec to take the required measures to disseminate the information. Retraite Québec's response was that it is inappropriate to inform all its client population about the possibility of extending the 11-month retroactive period because it would create false expectations when, in fact, very few extensions are granted. Even though the agency did not act on the Québec Ombudsman's request, it agreed to remove from its communications the reference to the payment of the tax credits for a maximum or limited period of 11 months.

The Québec Ombudsman deplores Retraite Québec's refusal to make relevant information available, but considers that the measure introduced is a small step in the right direction. In the following case, an extension was granted.

**(... Grant an extension when warranted by exceptional circumstances**

*A Tribunal administratif du Québec decision concerned a couple who adopted an infant with developmental delays. After a few years of medical testing, the child was diagnosed with attention deficit hyperactivity disorder and dysphasia. There were also behavioural, learning and attachment disorders as well as a minor disability.*

*The parents therefore applied for the supplement for handicapped children, which if granted, is retroactive to the 11 months before reception of the application. Given that their child's special condition had existed long before, and that the numerous steps required of them and the battery of medical consultations had left them no time to apply before then, the parents contacted Retraite Québec to see if it would agree to push the period of retroactivity back. Retraite Québec refused, arguing that all the parents had to do was apply sooner.*

*The facts on file clearly show that the parents gave priority to the many appointments with medical specialists and other health professionals to obtain diagnoses for their child and give him all the stimulation possible to make up for his developmental delays and maximize his chances of attending regular school.*

*Exercising their right to seek redress, the parents approached the Tribunal administratif du Québec. In light of the facts and the parents' involvement, the Tribunal granted them 24 additional months of the supplement for handicapped children because it felt that the situation they had experienced justified their tardy application. . . .)*

**HANDLE CITIZENS' APPLICATIONS PROMPTLY, DISCERNINGLY AND RIGOROUSLY**

In the past year, the Québec Ombudsman has noted that some of Retraite Québec's agents were either not thorough enough or too strict when processing certain files. The following cases describe the adverse effects that may ensue for citizens.

**(... Be meticulous when it comes to filing received documents**

*A citizen was getting the tax credit for child assistance for her two children and the supplement for handicapped children for one of them. When she left the country temporarily, her payments were suspended. Upon her return to Québec, she re-applied and provided all the documents and information required by Retraite Québec. Subsequently, the agency contacted her several times to tell her that that she would once again have to send a form that was missing. The woman then repeatedly tried to prove that she had sent the form, by registered mail to be doubly sure. Despite all of this, the document still could not be found in her file, so the woman decided instead to spend her time on her disabled child, whose care required her full attention. There was no follow-up concerning her application.*

*Six years later, the citizen decided to try to obtain the same benefits and, once again, she sent the required forms and documents. She was informed that her application had been approved retroactive to 11 months before, according to the usual rule. Dissatisfied that Retraite Québec had not taken her former application into account, even though the last time she had sent the same documents, she contacted the Québec Ombudsman.*

*The investigation showed that the documents had in fact been received six years earlier. Retraite Québec had even produced an acknowledgement of receipt of the application. However, certain documents had been filed in the supplement for handicapped children file and not in the master file for child assistance. This mistake led the agent to believe that the file was incomplete. After reviewing the file, Retraite Québec agreed to consider that the application for both benefits had been made six years earlier and to issue more than \$35,000 to the citizen. . . .)*

**( . . . ) Apply appropriate burden of proof**

*A citizen applied to Retraite Québec for the surviving spouse's pension after his spouse died. A month later, he sent in proof of their cohabitation for the three years preceding her death, which is the minimum duration of cohabitation for pension purposes. However, Retraite Québec considered that the facts did not demonstrate cohabitation beyond a reasonable doubt according to its requirements, and the application was turned down. The man went to the Québec Ombudsman.*

*The Act respecting the Québec Pension Plan provides that a person is eligible for the surviving spouse's pension if:*

- the deceased person contributed sufficiently to the Québec Pension Plan;*
- the person who applies for the pension is recognized as the surviving spouse of the deceased contributor;*
- the spouse can prove that he or she lived with the deceased person in the three years preceding the contributor's death if no child was born of their union.*

*The Québec Ombudsman pointed out to Retraite Québec that the citizen had provided ample proof that he had been the deceased contributor's spouse and that there was nothing in the file to suggest otherwise. In this regard, the spouse had sent several pieces of evidence showing that they had lived at the same address: house insurance, pay stubs, record of employment, and written statements attesting to their cohabitation. In the end, Retraite Québec recognized the citizen's eligibility, six months after his application.*

*In the case at hand, Retraite Québec had imposed a burden of proof that contravened the law, namely, the applicant's obligation to prove that he had been the deceased contributor's spouse beyond a reasonable doubt. In administrative law, the principle of preponderance of evidence (proof that makes the existence of a fact or right more probable than its nonexistence) must be applied. . . .)*

# Société de l'assurance automobile du Québec

The Québec Ombudsman wishes to highlight the excellent collaboration of the Société de l'assurance automobile du Québec (SAAQ), whether it be in the context of investigations or for the correction of failings that affected individuals or entire groups of individuals.

## Highway Safety Code component

This year again, complaints concerning the *Highway Safety Code* had mainly to do with driver's licence issuance or renewal as well as with vehicle registration.

### GIVE ACCURATE INFORMATION

Reporting to the SAAQ, Québec's highway controllers see to the application of several laws and regulations governing transportation of people and goods, including the *Taxi Transportation Regulation*. In order to apply this regulation, the SAAQ provides its personnel with a list of vehicles that qualify for use as taxis. It is therefore important for this information to be completely accurate so that taxi drivers do not, as a result of inaccurate information, purchase a vehicle that is not included on the list.

#### (... **Base the information given on updated data so that people are not misled**

*In 2011, a citizen contacted the SAAQ to find out whether the vehicle he was thinking of buying— a two-wheel drive crossover vehicle (which combines the features of a sport utility vehicle, a passenger vehicle and a van)—could be registered as a taxi. The SAAQ confirmed that the vehicle was admissible. The citizen therefore went ahead and bought it and had his taxi licence renewed by the Commission des transports du Québec.*

*However, in 2015, a highway controller informed him that for the vehicle to be used as a taxi, it had to have four-wheel drive, and the driver was hit with a fine of nearly \$1,000. The surprised citizen went back to the SAAQ, which told him once again that his vehicle met the requirements. As it turns out, this information was wrong because the Regulation does indeed specify that a utility vehicle must have four drive wheels.*

*The investigation by the Québec Ombudsman showed that there was an error in the list used by the SAAQ in 2011, which classified the vehicle in question as a "family sedan," thus qualifying the owner for a taxi licence. Given that the regulatory requirement whereby certain vehicles had to have four drive wheels had become outdated and that, under the circumstances, the person had acted with prudence and diligence, the Québec Ombudsman requested cancellation of the statement of offence. The SAAQ agreed and the citizen was able to continue using his vehicle as a taxi.*

*In addition to this outcome, because of the Québec Ombudsman's intervention, the Ministère des Transports, de la Mobilité durable et de l'Électrification des transports agreed to amend the Taxi Transportation Regulation to eliminate the requirement whereby certain types of vehicles must have four drive wheels. For its part, the Bureau des contrôleurs routiers, which reports to the SAAQ, published a directive so that, pending the regulatory amendment, highway controllers do not apply the Regulation in such cases. The SAAQ also reviewed certain elements of the list of eligible taxi vehicles. ...)*

## ENSURE THE QUALITY OF THE INFORMATION ENCLOSED WITH ADMINISTRATIVE DECISIONS

Under the Act respecting administrative justice, administrative authorities must give reasons for any unfavourable decisions they make. Where applicable, they must also indicate the non-judicial recourse available under the Act, as well as the deadlines involved. In recent months, the Québec Ombudsman has asked the SAAQ to correct the letters notifying drivers that their licence has been suspended because they refused to be assessed for their ability to drive. The proposed correction consisted of adding information about recourse for contesting the decision. The SAAQ did so, to the Québec Ombudsman's satisfaction.

This year, other interventions by the Québec Ombudsman led to the SAAQ's review of all standard letters so as to, among other things, ensure that they respect the principles of administrative justice. The Québec Ombudsman applauds this initiative.

### (... **Send standard letters that better inform the receiver**

*After being stopped for impaired driving, a driver had his licence suspended for 90 days. The SAAQ informed him that he could get his licence back after 90 days provided he underwent a so-called "summary" assessment that would last two hours.*

*After this assessment, he was handed an unfavourable decision, which meant that the suspension was extended and a new requirement was added—this time, he would not get his licence back until after he underwent a "full" assessment which would take six months. The SAAQ letter indicated the available recourse for contesting this decision.*

*Subsequently, in light of certain facts surrounding the driver's arrest, the authorities in charge decided to drop any criminal charges and advised the citizen accordingly. However, the SAAQ informed him that after reviewing his file, it had decided to maintain the requirement involving the full assessment, though it did not mention any recourse he could exercise, contrary to the provisions of the Act respecting administrative justice. At the Québec Ombudsman's request, a new letter was sent to the driver, and this time it contained information about the recourse available by means of an administrative review or through the Tribunal administratif du Québec. ...)*

### (... **Correct errors contained in correspondence**

*Because of medical problems, a lady had to undergo regular medical exams to be able to keep her licence. Further to a police denunciation, the SAAQ required her to be assessed for her ability to drive safely. It specified that if she failed to fulfil this requirement within 30 days, her licence would be suspended. Usually the limit is 90 days because, among other things, it generally takes more than 30 days to get an appointment for the assessment.*

*The investigation by the Québec Ombudsman revealed multiple errors in the letters sent to the citizen concerning the assessment she was instructed to undergo, the period during which driving is prohibited and the medical diagnosis. As the Québec Ombudsman sees it, the SAAQ's requirement as to assessment was warranted. However, the problem was the deadline for producing the assessment report. For the sake of consistency, the time frame should have been 90 days. This is what the Québec Ombudsman requested and obtained.*

*The SAAQ informed the Québec Ombudsman that, with a view to the continuous improvement of its services, it intended to more regularly monitor the quality of the letters sent to citizens and to provide its personnel with tools to make it easier to draft personalized letters. . . .)*

## Compensation component

### PREVENT MISTAKES THAT DEPRIVE ACCIDENT VICTIMS OF COMPENSATION FOR WHICH THEY QUALIFY

This year, the Québec Ombudsman had to intervene to correct errors made by the Société de l'assurance automobile du Québec in processing certain compensation claims filed by accident victims. These included oversights by an agent, inadequate assessment of evidence and faulty legal interpretation. These lapses deprived accident victims of compensation they were entitled to or caused compensation to be cut off prematurely.

#### **(... Properly assess all the after-effects of an accident**

*The SAAQ instructed an accident victim to undergo a medical examination to determine whether there was a connection between alleged mobility problems and the automobile accident. During the meeting, the expert acknowledged a causal link and sent the SAAQ a report to that effect. In turn, the SAAQ recognized the functional limitation. However, it failed to assess the severity of the permanent mobility impairment, thereby depriving the person of the lump-sum compensation to which he or she was entitled. The Québec Ombudsman intervened to ask the SAAQ to assess the after-effects in question, which it agreed to do, thereby granting the accident victim nearly \$12,000. . . .)*

#### **(... Rigorously assess a person's fitness to work before the accident occurred**

*A citizen had an automobile accident at a time when she was unemployed. According to the Automobile Insurance Act, an accident victim, even one unemployed at the time of the accident, is entitled to an income replacement indemnity as of the 181st day after the accident, if he or she remains unable to work because of the accident. It cannot be assumed that a person who was unemployed at the time of the accident would not have worked afterwards.*

*The SAAQ refused to grant the woman the indemnity because it considered that due to a health condition, she had been unfit to work before the accident. The woman, who now had no income, turned to the Québec Ombudsman.*

*The investigation showed that the SAAQ had not assessed all of the citizen's medical information in reaching its decision. Furthermore, it had ignored a Tribunal administratif du Québec opinion which, a few years earlier, had established that the woman was fit to work. In short, the information on file did not enable the SAAQ to deduce that the citizen was unfit to work before her accident. The Québec Ombudsman therefore recommended that, in accordance with the Act, the SAAQ compensate this person as of the 181st day after her accident.*

*The SAAQ recognized the citizen's right to an income replacement indemnity, paid her more than \$23,000 retroactively and, subsequently, continued with periodic indemnity payments. . . .)*

(... **Rigorously take into account the proof on file before refusing to compensate an accident victim**

*A citizen had a road accident and went back to work a few days later. Her physical condition soon declined due to after-effects of the accident. She therefore applied for an income replacement indemnity. The SAAQ refused to grant her the indemnity on the grounds that her inability to work had lasted fewer than seven days. Accident victims become eligible for an income replacement indemnity only as of the seventh day if they still have functional limitations preventing them from doing their job. The SAAQ deemed that the woman did not meet this requirement.*

*The investigation by the Québec Ombudsman showed that after several brief attempts to return to work, the citizen had to stop trying, and, at her physician's request, underwent a series of tests. It must be noted that, given the known and persistent symptoms, he had prescribed prolonged sick leave. It appeared obvious that the woman had invested time and energy in her clinical follow-up, after briefly and unsuccessfully trying to go back to work. Furthermore, the SAAQ had already authorized specific treatment for her condition.*

*Further to the Québec Ombudsman's intervention, the SAAQ agreed to pay income replacement indemnities to the woman for 24 weeks in an amount of nearly \$16,000. ...)*

**BE CERTAIN THAT A PERSON IS FIT TO WORK BEFORE CUTTING HIS OR HER INCOME REPLACEMENT INDEMNITY**

In recent years, the Québec Ombudsman has seen that the SAAQ ends income replacement indemnities without basing the decision on the preponderance of proof. For example, this may occur when the SAAQ instructs an accident victim to undergo a medical assessment by a specialized physician outside the organization who, in such case, serves as an expert. This expert must give an opinion on, among other things, the person's fitness to work. This is done by assessing people's physical or mental condition, questioning them about their state of health and reading the medical information on file.

The Québec Ombudsman noted that in certain investigations in which the expert consulted felt that the person was unable to go back to work, the SAAQ cut the income replacement indemnity. In these particular cases, the SAAQ had only taken into account the opinion of the SAAQ Expertise-conseil en santé professional which was contrary to the external expert's opinion. Furthermore, the professional from the Expertise-conseil en santé had failed to contact the external expert to discuss their divergent opinions. In these files, the Québec Ombudsman:

- concluded that the SAAQ did not have sufficient proof to allow it to ignore the opinions of experts and determine that the accident victims could go back to work;
- asserted that accident victims who cannot work find themselves unjustly without income and are forced to contest unfounded decisions.

It therefore asked for review of the files concerned. In some cases, the income replacement indemnity was reinstated and even extended for an undetermined length of time.

In 2009, the Québec Ombudsman asked the SAAQ to pay particular attention to the medical opinions from the Expertise-conseil en santé when these opinions were contrary to those of the experts it had itself mandated. This prompted the SAAQ to introduce, then update, a procedure for handling the results of expert medical assessments. However, since the Québec Ombudsman continues to receive complaints about this subject, it is clear that this procedure, implemented on a voluntary basis, is not solving the problem.

The Québec Ombudsman considers that certain situations require conferral with the external expert so that the SAAQ has all the necessary evidence before making a decision that is contrary to the expert's opinion. Otherwise, the opinion of the SAAQ Expertise-conseil en santé professional, on a question as important as the ability to work, cannot be considered preponderance of evidence given the lack of any other factual element. The Québec Ombudsman immediately recommended that the SAAQ use all necessary means so that no decision terminating an income replacement indemnity is rendered without a preponderance of evidence showing that the person is truly able to work. The SAAQ agreed to implement this recommendation. The Québec Ombudsman will be vigilant regarding the measures introduced to rectify the situation.

**(... Make sure to render a decision consistent with the preponderance of evidence on file**

*The SAAQ instructed an accident victim to undergo an orthopedic assessment to determine her ability—or inability—to go back to work after a relapse (deterioration or worsening of the condition stemming from the accident). The external expert mandated by the SAAQ maintained the same functional limitations and restrictions determined before the relapse. He concluded that the person could walk only a few steps without a cane and was unable to do the job that the SAAQ considered she was able to do.*

*After receiving this report, a professional from the Expertise-conseil en santé delivered an opinion. Based on the fact that the person presented the same functional limitations and restrictions as before the relapse, he considered that she was fit to occupy the designated job. As a result, the expert's opinion was dismissed without the professional contacting the expert, even though the procedure suggests this course of action. Consequently, the SAAQ terminated the income replacement indemnity. The citizen, whose only source of income for her subsistence was the indemnity, complained to the Québec Ombudsman.*

*Noting that the job requirements were incompatible with the accident victim's physical condition, the Québec Ombudsman asked the SAAQ to review its decision, which it agreed to do. The woman's income replacement indemnity was reinstated, and, in addition, she received a retroactive payment of \$3,000. ...)*

# REPORT BY THE CORRECTIONAL OMBUDSMAN OF QUÉBEC

## Ministère de la Sécurité publique – Direction générale des services correctionnels

As Québec's correctional ombudsman, the Québec Ombudsman ensures that detainees' rights are upheld and their detention conditions are adequate. It does so by conducting investigations further to complaints or on its own initiative. It also carries out scheduled visits of correctional facilities that report to the Ministère de la Sécurité publique's Direction générale des services correctionnels.

The Québec Ombudsman has jurisdiction over provincial correctional facilities that detain offenders in custody during trial and those sentenced to fewer than two years. It may also intervene regarding courthouse holding areas.

Individuals who commit more serious offences and who are handed down a sentence of more than two years serve time in a facility under the responsibility of the Government of Canada. This means that provincial correctional facilities are intended primarily for first offenders or those who commit lesser crimes. Since these people serve short sentences, the Government of Québec has a stake in doing all it can to help them rejoin society.

The Commission québécoise des libérations conditionnelles is also one of the organizations within the Québec Ombudsman's purview.

### ASSIGN THE RESOURCES NEEDED TO ENSURE GREATER RESPECT OF DETAINEES' RIGHTS

For several years, the Québec Ombudsman has pointed out, especially in its Annual Reports, that the scarcity of resources and personnel within provincial correctional facilities directly violates detainees' rights. While it is aware of the financial constraints of the Direction générale des services correctionnels, the Québec Ombudsman cannot condone these rights violations. Here are a few examples of the consequences of the shortage of resources and personnel.

- **Longer cell hours:** It often happens that on weekends, detainees must remain in their cell until 11 in the morning instead of being able to move about their section as of 8 or 9 a.m., as they do on weekdays. The reduced number of guards is cited as the reason.
- **Restrictions on visiting hours:** One correctional facility does not allow weekend visits because of staff shortages. At other facilities, visits are limited to 30 minutes every second Sunday and there are no visits on weeknights. These situations make it difficult to maintain family and social ties.

- **Various inconveniences due to postponed escorted outings:** On a daily basis, some detainees must leave the facility to attend court hearings, go to medical appointments, to be hospitalized, for temporary absences or to be transferred to another facility. For security reasons, they are escorted by at least two officers. When there are staff shortages, certain escorted outings are postponed and detainees suffer the consequences.
- **Inadequate management of personal effects:** Detainees' personal effects must be searched and catalogued. In several facilities, there are not enough staff to do this. As a result, the backlog gets worse and detainees have to wear the same clothes for days while waiting for a change of clothing. Furthermore, because inventory forms are not filled out correctly, it becomes practically impossible for detainees to prove that their personal belongings have been lost. In some facilities, detainees cannot access the items meant for them, especially books, because safety searches of the books would require extra staff.
- **Closure of certain services:** Due to lack of staff, correctional facility administrators must regularly deny detainees access to visitor lounges, the gymnasium or the room where they can review evidence in order to prepare for their trial.
- **Lack of personnel to guard detainees:** At one facility, there was only one guard for more than 40 people housed in a gymnasium for the weekend. The people were serving an intermittent sentence.
- **Lack of healthcare staff:** Healthcare staff in correctional facilities say they are exhausted and overworked, and this may delay detainees' medical management. In December 2016, several members of the nursing staff of a facility were absent at the same time and were not replaced. At another correctional facility, there were only two staff members on duty at the nursing station for all of Labour Day, a statutory holiday. Because of the heavy work load (care provided to an inmate with cancer and to another detainee with a biliary drain, supervision of two detainees who self-mutilate, attending to a detainee in a wheelchair and to inmates undergoing withdrawal, bandages to change, etc.) and the shortage of staff that day, the healthcare team decided not to dispense medication even though it was considered necessary for several detainees.
- **Postponed temporary absences:** While the Québec Ombudsman has seen improvement, sometimes, because of insufficient resources, delays pile up before risk and needs assessments are produced, an exercise necessary for the drafting of detainees' correctional plans. One of the results is that the study of temporary absence applications is pushed back unduly.
- **Program cancellation:** The priority for professional staff working in correctional facilities or with people in open custody is offender assessment. Subsequently, because of staff shortages, reintegration programs are not offered. In fact, in some places of detention, the counsellors trained to deliver this kind of program are few in number, plus they are given other assignments determined by the administrators.

## RESOLVE SUPERVISION PROBLEMS IN ORDER TO KEEP VULNERABLE DETAINEES SAFE

The Québec Ombudsman is worried about the lack of guidelines concerning the supervision of detainees and the consequences for their safety and physical integrity. While each correctional facility may have its own procedures and practices, there is no provincial directive governing this crucial element.

The Direction générale des services correctionnels still has no formal policy regarding the duration, supervision and detention conditions for inmates placed in isolation. Similarly, new guidelines concerning the restraining of detainees have been on the back burner for years. Such last-resort measures must be tightly regulated given the vulnerability of the detainees concerned and the risks associated with isolation and restraining.

( . . . **In crisis situations, adapt supervision resources**

*A detainee contacted the Québec Ombudsman to contest the fact that he was put in solitary confinement (a disciplinary measure). He said that before that, he had been in an isolation cell in the infirmary. Given his mental condition, he feared for his own safety if he remained in solitary confinement. He asked to either be returned for medical observation or to see a psychiatrist.*

*During the investigation, the Québec Ombudsman learned that no fewer than 12 assessments confirming the detainee's suicide risk had been carried out in the preceding four months after he had self-mutilated or made suicidal statements. After being under observation in the infirmary for a few days, the citizen was released because the staff perceived his self-mutilation as manipulation. The correctional services officer who carried out the last suicide risk assessment concluded that the citizen was still likely to self-mutilate. The administrators therefore decided to put him in the isolation section, in a cell equipped with a surveillance camera.*

*Alongside this, the Québec Ombudsman discovered that the staff assigned to camera surveillance at the facility have to attend to other tasks at the same time. This means that monitoring cannot be constant, even if the people under surveillance are a real risk to themselves.*

*The Québec Ombudsman asked the facility administrators to clarify the instructions to the personnel in such situations, for example, concerning the need for constant supervision, controlling access to utensils during mealtime or searching isolation cells extra carefully. As at March 31, 2017, the Québec Ombudsman's discussions with the facility were ongoing. . . .)*

( . . . **Get new surveillance equipment when necessary**

*Since 2014, Rivière-des-Prairies correctional facility administrators have been planning to install surveillance cameras in isolation or preventive isolation cells because these places are used for medical observation when there is an overflow from the infirmary. Currently, there is no guard station or surveillance monitor near these cells. The staff assigned to surveillance are dispatched from another section. Even if, in theory, surveillance rounds are regular, this measure in and of itself is not enough to ensure the safety of detainees, especially those who have a history of attempted suicide, are very agitated or are intoxicated.*

*While other correctional facilities already have surveillance mechanisms, the Direction générale des services correctionnels is slow in providing the resources needed for the Rivière-des-Prairies correctional facility to be similarly equipped. We should remember that in 2013, a person with a history of attempted suicide died in one of these cells. . . .)*

( . . . **Establish special supervision for detainees with mental health conditions**

*A detainee was confined to his cell 23 hours a day. A few weeks before, he had stopped taking his medication, which exacerbated his obsessive-compulsive disorder, leading to disorganized behaviour when he was exposed to his fellow inmates. After he had an altercation with one of them, the administrators decided to put him in isolation for his own safety. The measure lasted six weeks.*

*This situation shows how scarce the resources and infrastructure for dealing with mental illness are within correctional facilities. This facility had no section where the schedule allowed for alternating use of living space in order to accommodate behavioural problems. Furthermore, the inmate in question did not receive any psychiatric care while he was in isolation.*

*The Québec Ombudsman deplores the lack of provincial guidelines for isolation, i.e. maximum duration, assessment of suicide risk or of the mental condition of detainees before they are placed in isolation, situational and isolation measure reassessment, and record-keeping. Such directives would guide personnel when applying the required measures. The Québec Ombudsman considers that the Department must also see to the professional development of correctional services personnel.*

*The Department committed to providing the Québec Ombudsman with a timetable concerning provincial instructions, including those governing isolation practices. . . .)*

#### SEE TO IT THAT STRIP SEARCHES ARE CARRIED OUT IN A MANNER THAT RESPECTS DETAINEES' DIGNITY

In 2015-2016, the Québec Ombudsman intervened after searches were carried out in a manner that violated detainees' fundamental rights. At certain facilities, male detainees were strip searched in the presence of female officers as part of a planned search. Elsewhere, a female detainee was strip searched in a cell equipped with a camera while a male officer was assigned to the monitoring station. In another case, a male inmate was searched while three male officers and a female officer were present. In such cases, the authorities sometimes cite a shortage of staff to justify the presence of officers of the opposite sex.

The Québec Ombudsman considers that there is no administrative constraint serious enough to warrant strip searches by an officer who is not the same sex as the detainee being searched. Furthermore, searches must be done privately and out of sight of officers of the opposite sex. The Québec Ombudsman expressed its concerns to the Direction générale des services correctionnels and is in continued talks with it.

#### (... **Prohibit any humiliating intervention**

*An intervention occurred at a correctional facility in response to a female detainee's disorganized behaviour. A team of four men and two women hurried to control the detainee, who was only wearing a blanket, and took her to an isolation cell. By the time the team arrived, the detainee was no longer in crisis. The officers proceeded to strip search and cuff her, then led her along a 20-metre hallway without her blanket on. During the intervention, all the officers present, as well as a male inmate, saw her naked. Note that most inmates at this facility are male and that the woman was there pending her court appearance.*

*After the event, the woman said that she felt very humiliated and psychologically affected. Her complaint prompted the Québec Ombudsman to approach the Direction générale des services correctionnels to prevent the recurrence of this kind of situation. In May 2016, a directive was sent out by the authorities to the entire correctional services network as a reminder of the rules to follow to maintain detainees' dignity in such situations. . . .)*

(... **Prohibit male officers from seeing strip searches of female detainees**

*The Québec Ombudsman intervened with the administrators of a correctional facility concerning the presence of a male correctional officer while a female inmate was being strip searched. The officer had no reason to enter the cell, but did anyway, and watched while his female colleagues conducted the search. It was shown that even when he stayed just inside the doorway, sometimes he looked directly at the intervention. At the Québec Ombudsman's request, the warden reminded all the facility's personnel about the procedure for strip searches. ...)*

## ASSESS THE HELP PROVIDED TO QUIT SMOKING SINCE THE BAN ON SMOKING IN CORRECTIONAL FACILITIES

For all Québec citizens who want to quit smoking, certain products, including transdermal nicotine patches, commonly called nicotine patches, are covered by the public insurance plan or by a private plan, provided they are prescribed. However, detainees only have access to nicotine patches. This year, the Québec Ombudsman witnessed several problems in connection with this smoking cessation program.

Since 2014, tobacco possession and use have been prohibited in correctional facilities. To reduce the effects of withdrawal in smokers, the Direction générale des services correctionnels committed to making nicotine replacement products available to them as soon as they are incarcerated. Medical staff can prescribe patches for a maximum of 12 weeks.

In light of the complaints received this year,<sup>2</sup> the Québec Ombudsman considers that the Direction générale des services correctionnels' management of nicotine patches is deficient. Even if Québec was one of the last Canadian provinces to ban smoking in places of detention, the Direction générale des services correctionnels has not managed to avoid the main pitfalls—despite the fact that other provinces have done a good job documenting them—concerning treatment access and management. In addition, there are glaring disparities among facilities.

Detainees who ask for nicotine patches must wait several days, if not weeks, before they can access this treatment. Meanwhile, they go through withdrawal. In some cases, smokers are not treated because the medical staff do not get around to assessing their needs. Afterwards, given the time that has elapsed since these detainees were admitted, it is assumed that they have made it through withdrawal.

Furthermore, like tobacco and cigarettes in the past, nicotine patches are trafficked or misused in correctional facilities, where they may be used to produce homemade cigarettes. Detainees being treated to quit smoking are therefore under strong pressure from co-inmates who want their patches. The situation creates tensions and potential health risks.

The extent of the problem must compel the Direction générale des services correctionnels to work with public health specialists to take a long hard look at the effectiveness of its smoking cessation program and establish corrective measures.

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2. 523 grounds for complaint concerning nicotine patch management, including 171 (32.7%) deemed substantiated.

(... **Provide timely treatment**

*A citizen asked for nicotine patches as soon as he was admitted to a correctional facility. However, the medical staff refused, arguing that he had been there for over a month, had been through withdrawal and had been treated earlier that year. After verifying, the Québec Ombudsman concluded that these reasons were unfounded. Later, the medical staff asserted that the physician had put a stop to treatment due to misuse, when, in fact, the citizen had never even started the treatment in question. The health section acknowledged that it had made a mistake, but given the time that had elapsed since the detainee was admitted, the physician, judging that the detainee's withdrawal was over, refused to prescribe treatment. ...)*

(... **Standardize best practices**

*In some correctional facilities, when individuals misuse their nicotine patches and their treatment is suspended, they are not entitled to receive treatment within the next three to five years. When the Québec Ombudsman questioned the logic of this approach, the Direction générale des services correctionnels du Québec replied that it was an isolated local practice. Nonetheless, certain facilities are still using this approach. The Québec Ombudsman will remain watchful. ...)*

## PLAN TRANSITIONS

In February 2016, the Direction générale des services correctionnels transferred all its female detainees in the Montréal area and closed Maison Tanguay correctional facility due to its dilapidated condition. The women were moved to Leclerc de Laval correctional facility, which, until then, had been exclusively male.

Further to complaints, the Québec Ombudsman found that the transition had been poorly orchestrated. It recommended a series of corrective measures and, six months later, concluded that the situation had stabilized. Nevertheless, as at March 31, 2017, irritants persisted, the worst of which was the gender mix. For example, some women told the Québec Ombudsman in confidence that the male detainees were verbally abusive towards them when they went from one section of the facility to another.

In June 2016, the Ministère de la Sécurité publique said it was seeking a solution to end the gender mix. A few months later, the Department alluded to the possibility of building a new correctional facility for women only. Later, it decided instead to progressively transfer the male detainees at Leclerc de Laval to other facilities so that Leclerc de Laval would be exclusively female as of June 2017.

The Québec Ombudsman is critical of this lack of planning by the Department, which was long aware of the dilapidated condition of Maison Tanguay. Forced to act, the Department opted for a solution that did more harm than good. The Québec Ombudsman will keep a close eye on the situation in order to ensure that conditions for female detainees in the Montréal area improve and that the authorities take into account the specific characteristics of this client population.

## STICK TO THE TIMETABLE

Again this year, the Québec Ombudsman draws attention to further unjustifiable delays surrounding the opening of the Sorel-Tracy and Amos correctional facilities. Slated for 2016, as at March 31, 2017, they had not yet opened. These postponements only add to the endless delays since the

announcements between 2007 and 2010 concerning the construction of these two buildings. On March 31, 2017, the word was that the new Sept-Îles correctional facility would begin intake in the summer, nine years after the Department announced its construction.

## MANAGE CORRECTIONAL INFRASTRUCTURE

This year, the Québec Ombudsman intervened with the Direction générale des services correctionnels concerning the lack of confidentiality in the holding area of a courthouse. It also called on the Department to act so that the detainees in a correctional facility have basic furniture.

### **(... *Respect the principle of confidentiality of client-attorney meetings in a holding area***

*Respect of professional secrecy is a fundamental right enshrined in the Charter of Human Rights and Freedoms. Moreover, under their code of ethics, attorneys must ensure the confidentiality of all the information obtained within the framework of their professional relationship with their clients. In spite of this, the Québec Ombudsman received a complaint in which attorneys' conversations with detainees in the holding area of a courthouse could be heard by colleagues and special constables.*

*These claims were corroborated by the Ministère de la Sécurité publique, which felt, however, that no changes could be made until later, when major work on the building would be carried out. The Québec Ombudsman intervened with the Department to speed up the required renovations. The Department mandated the Société québécoise des infrastructures, which submitted a proposal. The Québec Ombudsman is following up with authorities and received confirmation that the work would be completed by April 21, 2017. ...)*

### **(... *Provide basic equipment, such as chairs, in a living environment***

*In late 2015, the Québec Ombudsman found out that the chairs in a living environment of a correctional facility had been removed for security reasons. The decision came in the wake of three intervention reports by the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST), which concluded that infrastructure in that section endangered the correctional services officers. According to these reports, the premises were not adapted to the classification (protective measures for behavioural reasons) of the detainees. Even if the CNESST did not specifically suggest removal of the chairs, it instructed that the premises be made safe for the personnel by installing benches that are attached to the floor. In the end, the facility's administrators decided to have the chairs removed altogether.*

*The lack of chairs in this living environment caused problems. The detainees had no choice but to sit on the floor to eat their meals. The Québec Ombudsman asked the facility administrators, then the assistant director general, and finally the Direction générale des services correctionnels, to have fixed furniture installed in this section.*

*Fixed seating was finally installed in December 2016, several months after the removal of the chairs and the Québec Ombudsman's intervention. It is deplorable that it took such a long time to solve such an obvious problem, and a lack of financial resources could hardly be used as an excuse. ...)*

## Special reports from recent years: follow-up

### TRANSFER OF RESPONSIBILITY FOR HEALTHCARE

In 2011, the Québec Ombudsman recommended the transfer of responsibility for healthcare in places of detention from the Ministère de la Sécurité publique to the Ministère de la Santé et des Services sociaux. On April 1, 2016, transfer of responsibility had occurred in nine of the system's 17 correctional facilities in operation. Local partnerships between these correctional facilities and Ministère de la Santé et des Services sociaux institutions already existed.

This year, the Québec Ombudsman will be particularly attentive to the transfer of responsibility concerning Rivière-des-Prairies correctional facility, where there was no such partnership. As for the other facilities, the Québec Ombudsman has asked the Departments concerned to provide it with a timetable.

 [The Québec Ombudsman's report entitled \*Toward services that are better adjusted to detainees with mental disorders\* is found at \[protecteurducitoyen.qc.ca\]\(https://www.protecteurducitoyen.qc.ca\).](https://www.protecteurducitoyen.qc.ca)

### DETENTION CONDITIONS, THE ADMINISTRATION OF JUSTICE AND CRIME PREVENTION IN NUNAVIK

The special report entitled *Detention conditions, the administration of justice and crime prevention in Nunavik* was released in February 2016. Very quickly, the Ministère de la Sécurité publique responded with concrete measures to rectify certain deficiencies that could be addressed immediately. The Québec Ombudsman applauds the Department's promptness regarding these specific points. However, more than half of the 30 recommendations dealing with systemic issues requiring active collaboration by various partners have not yet produced the intended advances.

 [The report is found at \[protecteurducitoyen.qc.ca\]\(https://www.protecteurducitoyen.qc.ca\).](https://www.protecteurducitoyen.qc.ca)

### DISCIPLINARY PROCESS FOR DETAINEES

In 2015, the Québec Ombudsman published a special report entitled *Guarantee the procedural fairness of the disciplinary process for detainees*. The Department acted on 14 of the report's 15 recommendations.

The unapproved recommendation advocates the removal of correctional services officers from discipline committees so as to avoid the appearance of partiality. The Québec Ombudsman remains convinced of this measure's relevance, for the sake of the principles of procedural fairness as much as for the legitimacy of these committees' decisions. It therefore intends to tackle this issue again in the coming year.

 [The report is found at \[protecteurducitoyen.qc.ca\]\(https://www.protecteurducitoyen.qc.ca\).](https://www.protecteurducitoyen.qc.ca)



# 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*, users of the public health and social services network 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 one's medical record;
- the right to complete, accurate and relevant information;
- the right to make a complaint.

One aspect of the Québec Ombudsman's mission 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 the complaint examination procedure, the Québec Ombudsman usually intervenes as a second level of recourse further to the conclusions issued by the institution's service quality and complaints commissioner. It may also intervene directly further to a report or on its own initiative.

## A few figures

In 2016-2017:

- The number of health and social services complaints handled by the Québec Ombudsman increased by 30.0% over the average for the last three years;
- The percentage of substantiated complaints was 46.2%, compared to the 40.9% average for the last three years;
- The Québec Ombudsman handled 181 reports, whereas the average for the last three years was 201, a 10.0% decrease;
- The percentage of substantiated reports was 61.1% versus the 56.0% average for the last three years.

The increase in the number of substantiated complaints and reports points to a worrisome situation that calls for solutions.

## Two years after the network reform, harmonize the slate of services fairly

Last year, the Québec Ombudsman drew attention to various problems stemming from the reform of the health and social services network<sup>3</sup> that took effect on April 1, 2015. Even if it was premature at the time to assess the impact of such sweeping changes, the Québec Ombudsman could already see that service access problems were still an issue, especially regarding home support.

One year later, the integration of local service offerings within regional structures has been slow to materialize. Furthermore, there is no guarantee that services will be maintained and resources redistributed based on priorities. In short, execution of the reform has been problematic and this is delaying the implementation of service access improvements.

Given the red flag raised by the complaints it received about the decline in the service offering, the Québec Ombudsman sought the opinion of those in charge of home support services in Québec's integrated health and social services centres (CISSSs) and integrated university health and social services centres (CIUSSSs). The findings are clear: most service network players are hard-pressed to implement the April 2015 reform, in particular with regard to meeting home support needs.

It is imperative that the Department provide provincial guidelines for decision-making so that services are harmonized across the network everywhere in Québec, though it must be noted that as at March 31, 2017, CISSSs and CIUSSSs were still struggling to harmonize services regionally. It is up to the Department to equip them to do this.

Furthermore, the Québec Ombudsman has seen that standardization of the CISSS and CIUSSS resources provided to client populations often results in a "race to the bottom" in terms of the slate of services. A local model that generates savings is chosen and used on a regional scale. The first adverse effects of this exercise are discussed in greater detail in the section entitled *Home Support*, on [page 105](#) of this Annual Report.

## Act to counter the negative effects of the reform on residential housing for seniors

There are different types of residential housing for seniors, depending on their degree of autonomy:

- Private seniors' residences offer certain services, mainly having to do with safety and help with domestic or social life (meals, personal assistance, domestic help, recreation, nursing care, etc.);
- Family-type resources accept seniors (no more than 10 at a time) with a slight loss of autonomy;
- Intermediate resources fall under the jurisdiction of a public institution and accommodate at least nine people with medium to severe loss of autonomy;
- Residential and long-term care centres (CHSLDs) offer residential services to people with a severe loss of autonomy who can no longer live at home despite support from their immediate environment.

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3. With the reform further to 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 agencies.

A direct consequence of less than adequate home support may be increased demand for residential services. This situation is particularly worrisome given population aging. There has been a disturbing insouciance with respect to the following over the past five years:

- an increase (+4%)<sup>4</sup> in the number of people living in private seniors' residences;
- a decrease (-8%) in the number of places in family-type resources;
- a rise (+34%) in the number of seniors with increasing loss of independence who live in intermediate resources;
- a decrease (-2%)<sup>5</sup> in the number of places in CHSLDs.

As for public CHSLDs, there was:

- a decrease of 2,763 in the number of places between 2013 and 2017;
- a decrease of 8,000 places over the past 25 years.<sup>6</sup>

As at March 31, 2015, 3,527 seniors<sup>7</sup> with a severe loss of autonomy were waiting for places in CHSLDs.

These findings show that there is a yawning gap between supply and demand when it comes to home support services and public residential resources for the elderly. In the Québec Ombudsman's opinion, restoring this balance must be a priority for the Ministère de la Santé et des Services sociaux. That is why it made a recommendation in this regard in the section entitled *Support for elderly autonomy*, on [page 109](#) of this Annual Report.

## Maintain the effectiveness of the complaint examination procedure

Since July 2015, because of the reorganization of services and increased institutional size, the structure of the offices that handle complaints within institutions has changed. Now there are advisers (or delegates) who assist the service quality and complaints commissioner. However, these new advisers have not been delegated the powers that would allow them to perform the duties reserved for assistant commissioners under the *Act respecting health services and social services*. And yet, the effectiveness of the complaint examination procedure hinges on the fact that complainants can avail themselves of an impartial, independent and easily accessible mechanism for airing their dissatisfaction.

That is why, in examining Bill 130, *Act to amend certain provisions regarding the clinical organization and management of health and social services institutions*, the Québec Ombudsman proposed an amendment to ensure advisers' or delegates' independence and exclusivity of functions.<sup>8</sup> To achieve this, the amendment must provide, in particular, for the appointment of advisers or delegates by the board of directors and provisions for the exclusivity of their functions, for the benefit of users' rights.

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4. Estimate based on data collated in: Canada Housing and Mortgage Corporation, *Seniors' Housing Report*, Québec, 2014.

5. Unless indicated otherwise, the estimates presented in this section are based on data collated in: Committee on Health and Social Services, *Examination of the Estimates of Expenditure*, Ministère de la Santé et des Services sociaux, Réponses aux questions particulières des oppositions, 2012-2013 and 2016-2017.

6. Association des ressources intermédiaires du Québec, 2016, *Le défi de la main-d'œuvre dans le réseau des ressources intermédiaires du Québec, Étude diagnostic [sic] effectuée avec la participation d'Emploi-Québec*, p. 8.

7. Committee on Health and Social Services, *Examination of the Estimates of Expenditure 2016-2017*, Ministère de la Santé et des Services sociaux, Réponses aux questions particulières de l'opposition officielle, volume 2, question 286, p. 280.

8. The Québec Ombudsman recommended amending section 31 of the *Act respecting health services and social services* so as to ensure the independence and the exclusivity of the functions of advisers or delegates under the authority of commissioners or assistant commissioners.

## GENERAL REMARKS

- It should be noted that this Annual Report covers the period until March 31, 2017, and at the time of writing, Bill 130 had not been assented to yet.
- In the pages that follow, the Québec Ombudsman's observations and recommendations concern the following areas:
  - [Disabilities](#)
  - [Troubled youth](#)
  - [Régie de l'assurance maladie du Québec](#)
  - [Mental health](#)
  - [Physical health](#)
  - [Home support](#)
  - [Support for elderly autonomy](#)
  - [Service support](#)

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## Disabilities

### OFFER ADEQUATE HOUSING FOR PEOPLE WITH DISABILITIES WHOSE NEEDS ARE COMPLEX

Investigations by the Québec Ombudsman, further to complaints and reports, shed light on failings in the quality of the services provided by residential resources under contract with rehabilitation centres for intellectual disabilities and pervasive developmental disorders (CRDITED) in different regions of Québec:

- inappropriate pairing of the client population;
- long delays for moves to other resources;
- inappropriate management of problem behaviours resulting in physical assaults among the residents;
- inadequate supervision ratio;
- lack of compliance with food protocols;
- lapses in medication management.

In some residential resources, there is a shortage of personnel and those they do have are not properly trained to respond to needs. Consequently, the staff are hard-pressed to cope with the demands of a client population with serious behavioural disorders or people with physical disabilities in addition to intellectual disabilities. CRDITEDs struggle to recruit personnel prepared to offer services to this kind of client population, which, in turn, limits leeway when a resident must be moved to another resource. As a result, despite internal reports criticizing an inadequate or insufficient slate of services, some CRDITEDs are slow to terminate contracts because there are no alternatives. The Québec Ombudsman also saw that in some cases contractual relations between the CRDITEDs and the residential resources were strained.

An unheard of and particularly disturbing situation was observed this year: the Québec Ombudsman's intervention led to the closure of three resources.

( . . . **Take the client population's complex needs into account**

*A report concerning a residential resource led the Québec Ombudsman to not only investigate, but also to extend the investigation to a second residence belonging to the same owner.*

*The first resource housed people with profound intellectual disabilities combined with a physical disability. The personnel were visibly overwhelmed by the extent of their duties (meal preparation, application of different food protocols, medication management, personal care, laundry, housecleaning). The residents were left to their own devices, with no stimulation whatsoever. At the second residence, the people were much more autonomous and the services were better adapted to their situation.*

*The Québec Ombudsman recommended that, among other things, the integrated university health and social services centre (CIUSSS) responsible for these two resources reassess each resident's situation and ensure that he or she receive the required services. At the end of the investigation, the CIUSSS implemented the Québec Ombudsman's recommendations and concluded that the owner was unable to fulfil his duties fully in both resources. It therefore decided to close the problematic resource. . . .)*

( . . . **End mistreatment**

*A person in an intermediate resource had been mistreated by other residents for a number of years. She was not the only resident to suffer such abuse. It transpired that the institution in charge was aware of the situation because serious shortcomings had been reported by its personnel and an internal report described significant organizational problems. The Québec Ombudsman deplores that the institution, which had been given this information, did not act to ensure the safety of these vulnerable people.*

*The day after the Québec Ombudsman's visit to this resource, the institution in charge transferred the residents to another resource and severed contractual ties with the owners. It also pledged to take the necessary measures to prevent such situations from occurring in the other resources under its purview. . . .)*

( . . . **Protect the most vulnerable**

*The mother of a young woman who is severely disabled spoke out against the negligence to which her daughter was subjected while living in a family-type resource. The investigation by the Québec Ombudsman showed that the young woman had suffered severe malnutrition and anemia, and that her autonomy had regressed. In fact, she had had to be hospitalized because of the decline in her condition, in addition to having to undergo rehabilitation.*

*Those in charge of the resource had always denied responsibility. However, the fact remains that the young woman's condition improved markedly after her transfer to a new residence.*

*After intervening, deeming that these disturbing events augured ill for all of the resource's residents, the Québec Ombudsman recommended:*

- *that the users be referred elsewhere;*
- *that the institution in charge conduct an administrative investigation of the resource and its operation.*

*As a result of the investigation, the institution terminated its contract with the resource and moved the residents. . . .)*

#### RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING THE SLATE OF RESIDENTIAL SERVICES FOR PEOPLE WITH DISABILITIES WHOSE NEEDS ARE COMPLEX

Whereas people with intellectual disabilities who live in residential resources are among the most vulnerable members of society;

Whereas non-institutional resources have difficulty responding to the needs of client populations who have serious behavioural disorders or who need special physical care;

Whereas the institutions have difficulty recruiting and retaining resource managers able to respond to the needs of this client population within the framework of current agreements;

Whereas the Québec Ombudsman has observed serious failings during its recent investigations;

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

- in the next year, design a slate of residential services that respond adequately to the needs of people with intellectual disabilities combined with serious behavioural disorders or who need special physical care, notably by implementing an action plan by March 31, 2018.

#### ≡ COMMENT BY THE MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX

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

[Translation]

"Further to the needs assessment spearheaded by the *Table nationale de coordination en déficience physique, déficience intellectuelle et trouble du spectre de l'autisme*, potential improvements for defining and optimizing residential options will be geared specifically to these three client populations, i.e physical disabilities, intellectual disabilities and autism spectrum disorders. These improvements will also take into account the project by the *Service québécois d'expertise en troubles graves du comportement* on residential models deemed promising for people with severe behavioural disorders."

#### REDUCE THE DELAYS FOR MANAGING CHILDREN, YOUNG PEOPLE AND ADULTS AMONG SOCIETY'S MOST VULNERABLE MEMBERS

In recent years, the Québec Ombudsman has released three reports concerning services for children, young people and adults with autism spectrum disorders or physical or intellectual disabilities. The reports proposed concrete solutions, some of which are slow to materialize.

The first report, published by the Québec Ombudsman in 2009, dealt with public services for children 7 years old and younger with autism spectrum disorders. It showed that access to public services for these children and their parents was an obstacle course. Eight years later, strides have been made. Combining 14 forms into a single professional report form has cut down on red tape for parents.

That being said, many major elements remain to be reviewed regarding administrative harmonization among the different government departments and agencies concerned (Office des personnes handicapées du Québec, Retraite Québec and the following departments: Famille; Éducation et Enseignement supérieur; Travail, Emploi et Solidarité sociale; Finances; and Santé et Services sociaux):

- all 14 financial support programs for people with disabilities and for the parents of children with disabilities;
- parents' obligation to produce confirmation of the diagnostic assessment by a multidisciplinary team 12 months before a child with autism starts Grade 1.

Concerning the latter, the Ministère de l'Éducation et de l'Enseignement supérieur has yet again postponed easing of this requirement, which was scheduled for late 2016, even though this obligation is a major irritant that delays the start of specialized services for these children by a year. Meanwhile, parents will have to wait until at least the start of the 2018 school year before there are improvements in this area.

A second report was released in 2012, this time about public services for children over 7 years of age and adults with autism spectrum disorders. In it, the Québec Ombudsman described a slate of diversified services, available only in theory. In the real world, the services were sparse and unequally accessible, and parents seeking diagnostic and rehabilitation services struggled to obtain them.

Five years later, progress has been made and the action plan promised by the Ministère de la Santé et des Services sociaux for improving access to these specialized services has been released. The Québec Ombudsman will remain watchful for the concrete repercussions of the plan.

## CONTINUE IMPROVEMENTS

The third report by the Québec Ombudsman, released in 2015, concerns service access as well as service continuity and complementarity for people 18 years old and younger who have intellectual disabilities or autism spectrum disorders. The Québec Ombudsman made eight recommendations that the Ministère de la Santé et des Services sociaux accepted and for which an action plan was established. The measures applied include:

- the taking into account of a single reference date for positioning young people "where they really belong" on waiting lists, at each of the steps in the service continuum;
- informing all institutions about their formal requirement to assign a system navigator to every user as soon as he or she enters the system.

A draft framework for implementing an integrated service network template for people with disabilities is being produced. Acknowledging the progress achieved, the Québec Ombudsman will monitor implementation of the action plan.



[The reports concerning services for children, young people and adults with autism spectrum disorders or intellectual disabilities are found at protecteurducitoyen.qc.ca.](http://protecteurducitoyen.qc.ca)

# Troubled youth

## FOSTER BETTER COORDINATION BETWEEN YOUTH CENTRES AND LOCAL COMMUNITY SERVICE CENTRES

When the youth protection directorate (DPJ), through its youth centres, intervenes with a family in which it perceives there are mental disorders affecting either the parents or their child, it may conclude that certain factors compromise the child's development and safety. When this happens, it must establish means for ending the situation while, as much as possible, keeping the child in his or her family environment. The DPJ must therefore guide the family towards services that provide appropriate therapy or diagnosis, as the case may be.

However, the Québec Ombudsman has seen a lack of coordination of the programs and services leading to the necessary assessments and actions, resulting, for example, in a silo approach to interventions as much by the DPJ as by adult mental health services within the purview of local community service centres (CLSCs).

Thus, in a context in which such services are hard to get due to a lack of resources, parents find themselves at an impasse: the DPJ urges them to stabilize their condition, but the CLSC cannot give them access to mental health services. The result is that the parents remain on the waiting list for the required services even though their family situation is such that the DPJ ends up asking the court to have the child placed in an external resource.

### (... **Establish better communication among the services**

*A mother with a mental disorder lost custody of her children because her condition did not enable her to give them a stable family environment. She took steps to get help through the CLSC's mental health access mechanism and found herself on a waiting list for nearly two years. This delay was mainly due to the fact that she was considered functional according to the mental health access mechanism protocol. However, the DPJ saw quite the opposite and considered that the woman's mental health was sufficient cause for removing the children. This was also the conclusion reached by the court, which, in the end, ordered placement of the children until their age of majority, thereby preventing them from going back to their mother.*

*At no point whatsoever did the DPJ inform mental health services of the social urgency of the mother's situation, which might have pushed her request up the priority list. Furthermore, the investigation by the Québec Ombudsman showed that the DPJ worker did not have the tools needed for effective intervention regarding the mother.*

*The Québec Ombudsman made recommendations to the institution to which the DPJ and the CLSC reported:*

- *improve youth centre staff training;*
- *establish a criterion for prioritizing the parents of children who are minors receiving DPJ services so as to fast-track their access to mental health services;*
- *foster the necessary program-service coordination.*

*The institution accepted the recommendations and the Québec Ombudsman will pay particular attention to their implementation. . . .)*

(... **Establish continuity among services**

*The monitoring of a child by a behavioral specialist at the CLSC ended as soon as the DPJ became involved. Several months went by during which the child had no psychological follow-up, even though his mother continued asking for help for him. Despite some conversations between youth centre and CLSC staff, in the end, and after a process that lasted a year, it took a court order for the services to resume.*

*This case brings into sharp relief the lack of coordination and continuity between youth centre and CLSC services, the result being that the child became a victim of interrupted psychological supervision even though this help was necessary. The investigation by the Québec Ombudsman also showed that the youth centre had not followed up on its own service request to the youth mental health access mechanism.*

*The Québec Ombudsman recommended that concrete measures be put in place so that youth centre staff follow up rigorously on service requests to the CLSC access mechanism. Furthermore, it asked that a procedure be established for coordinated action and service continuity between the youth centre and the CLSC's mental health component. The institution accepted these recommendations and implementation is underway. ...)*

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## Régie de l'assurance maladie du Québec

The discontent concerning the Régie de l'assurance maladie du Québec (RAMQ) attests to the trouble people have understanding:

- health insurance eligibility rules;
- obligations regarding registration for prescription drug insurance;
- the legality of the fees charged by physicians.

### COMPLY WITH THE ACT RESPECTING ADMINISTRATIVE JUSTICE, NOTABLY BY PROVIDING ACCESSIBLE AND ACCURATE INFORMATION

RAMQ administers various programs, including those concerning technical aids that compensate for motor, visual or hearing impairments. Anyone who needs such a device must first contact an "insured service dispenser" recognized by RAMQ, in other words, a provider of insured services or goods (e.g. audioprothesists, denturologists, assistive listening device distributors, some physical disability rehabilitation centres). When dispensers receive a request of this kind, they assess the person's needs and recommend the appropriate technical aid. They then forward the required information to RAMQ for confirmation that the purchase, repair or modification of the device is covered and, therefore, authorized. When RAMQ considers that the request does not meet legislative and regulatory requirements, it is turned down.

To ensure fairness, the entire process must comply with the *Act respecting administrative justice*. However, the Québec Ombudsman has noted certain breaches in files in which RAMQ turned down a request for a technical aid. Its investigations showed that RAMQ does not systematically inform citizens that an administrative review is underway; it considers that it is up to the dispenser to do so.

(... **Adequately inform people that their request has been refused**

*A man had had an amputation and had two prostheses, which had been approved by RAMQ. When he asked to be reimbursed for the cost of replacing a certain part on one of the prostheses, RAMQ refused. In an attempt to have the decision changed, the insured service dispenser sent the same request to RAMQ three times, but to no avail. The citizen turned to the Québec Ombudsman.*

*The Québec Ombudsman saw that the prosthetic device for which refusal had occurred was no longer insured further to an administrative review that the man had not been informed of. Considering that the man should have been made aware of the review in order to be able to seek recourse, the Québec Ombudsman recommended that RAMQ better inform people about the decisions that concern them, and that it ensure greater monitoring of the role of dispensers in this regard.*

*Further to the Québec Ombudsman's intervention, RAMQ contacted the dispenser to clarify the situation, thereby ensuring that its client population be informed adequately from this point on and be equipped to exercise any required recourse. ...)*

(... **Transmit all useful information to people who make requests under technical aid programs**

*A person went through her insured service dispenser to request that her hearing aid be replaced because her hearing had declined. She also wanted the new hearing aid to have different components. RAMQ refused the request for replacement, mainly because of this modification.*

*The dispenser sent a new request, this time for two new devices with the same modifications. According to the dispenser, given the person's hearing decline and the need to match the two devices, the second device was necessary even though according to the renewal schedule, it was too soon for the device to be replaced. RAMQ refused again and did not provide any clear explanations.*

*During the Québec Ombudsman's intervention, RAMQ changed its decision and agreed, exceptionally, to approve the initial request. However, the agents, deeming that the woman's hearing had not changed significantly, refused to authorize the second hearing aid. Subsequently, RAMQ's Direction de la révision concluded instead that the person did in fact need the second hearing aid.*

*The Québec Ombudsman recommended that RAMQ:*

- contact citizens directly when there are special situations;*
- ensure standardized interpretation of the Regulation respecting hearing devices and insured services pursuant to the Health Insurance Act by service dispensers and RAMQ staff alike;*
- ensure that its personnel know and understand the mandate, process and standards when carrying out administrative reviews.*

*RAMQ accepted the Québec Ombudsman's recommendations. It is currently examining the possibility of informing people in writing about refusal concerning eligibility for a hearing aid or any decision by which such devices are no longer insured. Regulatory amendments are also being studied. ...)*

## RESPECT REVIEW DEADLINES

The *Health Insurance Act* provides that RAMQ must review a case and render a decision, indicating the reasons, within 90 days of receiving an application for review. However, in the past two years, it has exceeded this deadline, notably due to tighter checks concerning proof of presence and proof of residence in Québec. These checks are necessary when, for example, a person returns to Québec after a stay abroad or after a first registration.

RAMQ informed the Québec Ombudsman that it has had to deal with a particularly heavy volume of requests. To address the fact that it is not meeting the prescribed deadline, it has established an action plan containing various corrective measures, including the addition of personnel and file prioritizing.

The Québec Ombudsman notes these efforts and intends to monitor them carefully. However, it would point out that when a government department or agency introduces new measures that may affect citizens in some way, it is imperative to establish a transition plan before the changes are applied.

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## Mental health

### BETTER OVERSIGHT OF THE APPLICATION OF AN EMERGENCY LAW

In 2011, the Québec Ombudsman released its special report entitled *Problems with the application of the Act respecting the protection of persons whose mental state presents a danger to themselves or to others*. The report contained several recommendations aimed at rectifying shortcomings in the implementation of this emergency law which, in particular, addresses situations in which people with mental disorders are confined against their will.

It should be noted that it was only in December 2016 that the Minister of Health and Social Services finally introduced Bill 130, which proposed amending the *Act respecting health services and social services* in order to provide guidelines for applying the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others* (hereinafter P-38.001). As at March 31, 2017, detailed consideration of Bill 130 had not yet begun. The Bill states that the board of directors of an institution must adopt a procedure which is consistent with the ministerial orientations to regulate confinement of persons in its facilities. The Québec Ombudsman expects the orientations to be made available as soon as the Bill becomes law.

The procedure must include several administrative measures to regulate confinement, including the obligation to enter the following, among other details, in the confined user's record:

- the start and end dates of the confinement;
- a description of the danger that warrants placing and keeping the user under confinement;
- if a psychiatric assessment was carried out without a temporary confinement order, a note attesting that the user's consent to the assessment was obtained;
- the date on which the information required under P-38.001 was transmitted to the user.

Furthermore, the board of directors of each institution must include information about the application of P-38.001 in the annual management report. The executive director of the institution must report to the board of directors at least once every three months on the implementation of the procedure.

The Québec Ombudsman recommended that the Committee on Health and Social Services make changes to the Bill so that every facility under the umbrella of a given institution provide its own data in the annual management report, even if there is a single confinement procedure for the entire institution.

A summary of the Québec Ombudsman's intervention concerning Bill 130 is presented in the section entitled *Parliamentary Watch Report*, on [page 125](#) of this Annual Report.

## INCREASE ACCESS TO PSYCHOTHERAPY

The Québec Ombudsman continues to receive complaints concerning wait times of several months before obtaining first-line services, especially psychotherapy, which is not available in every institution because it is not covered by the public health insurance plan. Some institutions decide to provide it anyway by taking the funds from their operating budget. However, others do not, and therefore there are disparities in the provision of care and serious inequality among users.

## BETTER REGULATE PRIVATE RESIDENCES THAT OFFER MENTAL HEALTH SERVICES

In Québec, many people with mental disorders live in private residences that provide certain services. Such residences, for example boarding houses, are not required to be certified by the Ministère de la Santé et des Services sociaux. Often, the people who live in them are vulnerable and may be exposed to situations that compromise their rights. These situations may include owner and staff behaviour, medication management, meal quality and the cleanliness of the premises.

The Québec Ombudsman cannot examine complaints concerning these kinds of residences because they are not department-certified. However, several times in the past few years it has recommended that the Ministère de la Santé et des Services sociaux improve their regulation. The Department maintains that it is unaware of the existence of such resources for people with mental disorders and which offer services.

Be that as it may, reports to the Québec Ombudsman prompted it to make recommendations to an integrated university health and social services centre (CIUSSS) and to the Curateur public, which had in common a client population housed in a private mental health residence of this kind.

### (... **Oversee the quality of services**

*A report to the Québec Ombudsman indicated, among other failings:*

- *inadequate medication management by the residence's personnel;*
- *staff violence towards the residents;*
- *exploitation of certain residents by making them work without pay;*
- *criminal activities in the residence and the filth of the premises.*

*The residence in question is a boarding house that takes in particularly vulnerable people who are one step away from being homeless. After investigating, it was found that the residence was indeed filthy, the same conclusion reached by several healthcare network workers and the Curateur public in the context of an intervention concerning bedbugs, among other things. The residence had already been criticized by the CIUSSS and the Curateur public for the inadequate storage of medication. As a result, the Québec Ombudsman recommended that both bodies exercise greater monitoring in this regard. Furthermore, even if mistreatment of the residents by certain members of the personnel was never proven, the Québec Ombudsman recommended that the CIUSSS and the Curateur public work together to intervene with respect to the owners when the users' fundamental rights are breached.*

*All the recommendations were approved. It also bears mentioning that the CIUSSS took the initiative to create a list of the private residences requiring monitoring and the actions needed. . . .)*

## USE MEANS OF CONTROL IN A MANNER THAT RESPECTS RIGHTS

This year again, the Québec Ombudsman had to intervene regarding inadequate application of means of control, such as the use of physical restraints or isolation, further to reports of practices that endangered the safety and violated the rights of vulnerable individuals within an institution offering mental health care.

### **( . . . Ensure the safety of the people on whom means of control are used**

*A man who had been placed in isolation managed to remove the window in the room and hoist himself on to the narrow ledge several floors above the ground without the personnel of the institution noticing. In the end, it was the security guards who acted to have the man returned to his room.*

*The investigation by the Québec Ombudsman revealed major flaws, especially concerning the security devices in isolation rooms and implementation of the protocol for applying means of control:*

- *Assessment of the man while in isolation and analysis of his suicide risk had not been carried out according to the rules;*
- *Normal supervision had not made it possible to notice that the man was escaping and putting himself at great risk;*
- *The beds and windows in the isolation room had parts that were unsafe;*
- *The use of isolation in this unit did not comply with the protocol in terms of seeking the user's consent, use of alternative means, the length of isolation and reporting the use of means of control in an internal register.*

*The Québec Ombudsman made recommendations to the institution regarding its infrastructure, staff training and compliance with the normative framework governing the use of means of control.*

*Several actions have been undertaken or are about to be. For example, the manager of the unit supervises the nursing staff more closely to ensure compliance with the protocols for assessing suicide risk and applying means of control. Isolation room furniture and layout have been reviewed in order to strengthen security. The institution has also pledged to review surveillance and accountability mechanisms for applying means of control, as provided for by law. . . .)*

## MAKE SURE THAT INFORMATION IS CLEAR

The complaints and reports received indicated that users do not always receive the required information in situations where they were denied services or a means of control was used on them, for example. The result is that users concluded that the staff had made unwarranted or arbitrary decisions, which was not the case.

### (... **Clarify the slate of services**

*A man complained that a community organization had denied him individual follow-up services because he had a visual impairment. Given the community organization's mission and the user's mental health, the Québec Ombudsman concluded that the organization was indeed not able to offer him services and that this had nothing to do with his visual impairment.*

*However, the user's request had not been entered in his file. Furthermore, the evasive answers given by those in charge suggested that the man had not been properly informed of the reasons why his application was refused. Because there was no note in the file, it could not be confirmed that he had been referred to another institution more able to meet his needs.*

*In another vein, the information about the slate of services on the organization's website was not clear, especially concerning follow-up within the community.*

*The Québec Ombudsman recommended that the organization collect all required information and enter it in users' files. It also recommended that it clarify the information on its website about its slate of services. The recommendations were approved. . . .)*

### (... **Specify house rules and guidelines for applying means of control**

*A report to the Québec Ombudsman indicated that people being treated in two mental healthcare hospital units were kept in isolation and were victims of violations of their fundamental rights.*

*The investigation revealed that users and staff alike were somewhat confused about the house rules in particular:*

- *Some members of the personnel reprimanded a user for going to bed in clothes he had worn all day, while others did not, which made the decisions inconsistent and arbitrary. In fact, no house rules as such were applied uniformly and consistently;*
- *Some people had no intervention plan and, as a result, had never been given the opportunity to consent to planned means of control that were nevertheless applied;*

- *The terminology regarding means of control was vague, which was another factor that contributed to the confusion of the staff. Isolation could thus be described as “withdrawal,” “simple isolation” or “final means of restriction.” This resulted in lack of reporting of some means of control.*

*The Québec Ombudsman recommended that the institution standardize healthcare team practices and decisions, especially by drafting house rules, establishing intervention plans that are followed by all, using standard terminology, increasing awareness of the protocols and systematically reporting all cases of isolation. The institution agreed to implement the Québec Ombudsman’s recommendations. . . .)*

**( . . . Make sure that a person knows why he or she is being placed in isolation**

*A user claimed to have been victimized by hospital staff who had kept him in isolation in his room, under the constant supervision of a security guard, as soon as he arrived at the emergency department. The investigation revealed that the facts warranted the man being put in isolation for his own safety. However, the personnel had not given him any information that would explain the situation and foster greater cooperation.*

*Several weeks later, he was able to understand what had happened, and, as a result, he withdrew his complaint to the Québec Ombudsman. This example illustrates that if the personnel had explained the use of means of control to the user (at least, as soon as he was capable of understanding the procedure), he could have had more faith in them. The Québec Ombudsman recommended that the institution give its personnel extra training on applying means of control, which it agreed to do. . . .)*

## Physical health

### ENSURE FAIR ACCESS TO A FAMILY DOCTOR

On April 12, 2016, the Minister of Health and Social Services announced the creation of the waiting list to find a family doctor (GAMF), a databank administered by the Régie de l’assurance maladie du Québec and consisting of applications by citizens without a family physician. This overhaul of the centralized waiting lists for orphan patients (GACOs), created in 2008, was aimed at having 85.0% of Quebecers registered with a family doctor by December 31, 2017. As at December 31, 2016, the registration rate was 74.4%, up by 3.1% from the figure as at March 31, 2016.

Despite the improvement observed in registration management since GAMF’s creation, the Québec Ombudsman notes that equity in terms of access to a family doctor does not always exist. The reasons include the following:

- Due to the GAMF application form’s lack of precision concerning the person’s state of health, assessment by a nurse is often required to adequately establish application priority;
- Physicians do not use GAMF for accepting new patients;
- People with mental illness or with multiple health conditions still remain on the waiting list for several years, despite their high-priority rating.

(... **Promptly and carefully assess the state of health of people registered on GAMF**

*Informed that their physician would soon retire, spouses who were over age 75 registered on GAMF. They were told that the wait time for registration with a doctor would be at least a year. Given that their state of health required regular follow-up, they felt that the delay was too long and they contacted the Québec Ombudsman.*

*The investigation showed that the couple's condition had not been assessed by any of the nurses of GAMF's local service network because the couple had not selected this option on the online form. Thus, the priority level assigned by GAMF's computerized system was C on a scale of A to E, A requiring urgent care.*

*The Québec Ombudsman convinced the institution to have a GAMF nurse promptly assess the couple's state of health, which raised their priority level from C to A. The spouses were immediately assigned a family doctor. ...)*

(... **Ensure the medical management of vulnerable people**

*A man with a priority level of C, who had been registered on GAMF for several months, complained about the long wait time. Informed about his medical history, the Québec Ombudsman intervened with the GAMF nurse, who realized that the man's file was not up to date. She therefore made the required corrections, which raised his priority level from C to A. However, despite this change, the wait could still be long because in the region where the man lived, the last person with a similar level had had to wait nearly three years to be assigned a family doctor.*

*The investigation showed that the reason for the delay was not flawed management of GAMF, but increased demand and physicians' refusal to accept people with multiple conditions. Two physicians are scheduled to arrive in the region shortly, which should improve the situation.*

*The Québec Ombudsman is following the situation in order to gauge the impact of the addition of physicians on the medical management of citizens with multiple conditions. ...)*

## RESPOND TO PATIENTS' NEEDS

This year, several patients and their families told the Québec Ombudsman that they felt as if they had not been heard or treated with respect.

(... **Ensure the safety of care and services**

*After being released from hospital after day surgery, a man and his spouse went towards the hospital exit. Suddenly, the man became pale, started sweating profusely, had trouble breathing and loss consciousness briefly. They immediately returned to the day-surgery unit, where the spouse reported the situation to the nurse in charge. She ignored them and went to the nurses station, saying that she did not have time to take care of them, that the patient had been discharged, his file had been closed and she was no longer responsible for him. She told them to go to the emergency room.*

*The investigation by the Québec Ombudsman showed that the nurse's attitude and her lack of follow-up, empathy and respect had compromised the continuity and safety of care to the patient. Further to the Québec Ombudsman's intervention, the institution met with the nurse to ensure that such a situation never recurred. . . .)*

**( . . . Respond promptly to the concerns of family members**

*A man fell at home and fractured his hip. The next day he underwent surgery. When his son entered the room the following day, he heard moaning and saw that his father was foaming at the mouth.*

*The investigation revealed that the son had immediately informed a nurse about his father's condition. Not gauging that the situation was urgent, she replied this was normal and she would go see his father later. It was then that she saw that the patient was unconscious.*

*The Québec Ombudsman made several recommendations to the institution so as to ensure prompt assessment of the condition of patients when family members say that they are worried, and even more so when respiratory problems are involved. The institution accepted and implemented all the recommendations. . . .)*

**( . . . Be attentive to needs**

*A man with severe withdrawal symptoms was brought to the emergency room by ambulance. No sooner was he admitted than he wanted to leave the hospital. Due to his condition, he was placed under preventive confinement and tied to a stretcher instead. He remained this way in the emergency room for more than 25 hours.*

*The investigation by the Québec Ombudsman revealed several failings in the care and assistance provided to the patient. No one had seen to his basic needs, such as elimination, food and adjusting his position, especially since the man's freedom of movement was limited. The restraints, which had been not been applied according to standard practice, had caused him severe injuries which were treated only several hours later because a family member insisted.*

*The Québec Ombudsman considers that the events not only had adverse effects on the man's physical condition, but also violated his dignity. It therefore made recommendations to the institution in order to prevent the recurrence of such a situation. As requested by the Québec Ombudsman, extra training was given to the personnel on the use of restraints. They were also made aware of the importance of responding to patients' basic needs, respecting their dignity and listening to the patients as well as to their family. . . .)*

**( . . . Treat people with empathy and respect**

*An elderly woman went to the emergency room after falling at home. Since she was not able to move about on her own and the pain persisted, she was admitted to a care unit. The next day, she asked a care attendant to help her get seated in her chair. He refused and told her that she had to do it herself. The woman insisted and explained that she had various impairments that affected her mobility. The personnel finally decided to lift the woman by pulling on her arms, which caused her to fall. The woman said that she felt unheard, humiliated and deeply hurt by the personnel's attitude and behaviour.*

*In the Québec Ombudsman's opinion, the woman had not been treated with respect and dignity and the assessment of her condition and needs had been erroneous. It therefore made recommendations to the institution to ensure that the personnel understand patients' situations, while adequately determining their particular needs. The institution acted on the Québec Ombudsman's recommendations. . . .)*

## USE JUDGEMENT WHEN APPLYING TEMPORARY BANS ON VISITS

The potential consequences of infectious disease outbreaks in hospitals—notably in cases of gastroenteritis or the flu—are multiple, for example, the suspension of new admissions or the obligation for visitors to wear a mask and a protective gown. The purpose of these requirements is to prevent deaths or exacerbation of certain patients' condition. In these critical times, restrictions on the number of visits are among the measures sometimes used to control the situation.

This year, the Québec Ombudsman intervened to remind certain institutions that despite their obligation to offer safe care, they must use their judgement when temporarily banning visits under such circumstances.

### (... **Adapt the ban on visits to special situations**

*An elderly man with cognitive disorders was hospitalized. His spouse visited him every day and helped him eat and move about, which he often refused to do when she was not there. Informed of the increase in cases of gastroenteritis, she obeyed the hospital's instructions and wore a protective gown, a mask and gloves when visiting. A few days later, the personnel told her that because of the rise in the number of cases, visits would be prohibited until further notice. Her spouse died suddenly during this period. Subsequently, the woman contacted the Québec Ombudsman, deploring the fact that she had not been allowed to be by her spouse's side in the last days of his life.*

*The Québec Ombudsman made recommendations to the institution in order to prevent the recurrence of such a tragic situation. From now on, the family and friends of terminal patients, the parents of young children, and anyone who must be at a person's side for any other humanitarian reason will be allowed to visit, even when there is a ban during contagious disease outbreaks. . . .)*

### (... **Inform family about exceptional measures**

*An elderly woman with dementia was admitted to the emergency room accompanied by her daughter. During the night, the personnel told the daughter that she would have to leave because of a flu outbreak. Despite her explanations about her mother's particular situation and the importance of her staying with her mother, the personnel made her leave the hospital. A week later, when the ban on visits had been lifted, the woman's family saw how serious the woman's condition was. She died shortly thereafter. They asked the Québec Ombudsman to intervene.*

*The Québec Ombudsman discovered that families of people hospitalized at the institution could ask the personnel for permission to visit. However, the woman's family had not been informed of this, despite phoning repeatedly.*

*Further to the intervention by the Québec Ombudsman, the people in charge reminded the personnel of the various options for visits in special situations when there are infectious disease outbreaks. . . .)*

## ADAPT HEMODIALYSIS SERVICES TO REGIONS

On the subject of hemodialysis treatments (in cases of renal insufficiency), because of the geography of certain regions, people are forced to move, or travel great distances several hours a day, three times a week, to access this treatment, which they need in order to survive.

According to the orientations of the Ministère de la Santé et des Services sociaux, in order to increase accessibility, local development of renal replacement therapy is desirable. The hemodialysis satellite unit, which operates without a nephrologist, but depends on a main centre, enables people to obtain local services under certain conditions. The Québec Ombudsman considers that the health and social services network must be creative and foster innovative approaches to tailor care and services to regional specificities.

### **( . . . Ease the requirements for establishing local hemodialysis services**

*A person had been receiving hemodialysis at a hospital centre on the North Shore three times a week for eight years. Because there was no satellite hemodialysis unit in her region, she had to travel five hours by car both ways.*

*The ministerial orientations recommend that hospital hemodialysis services be available no more than three hours away by car both ways. The investigation also showed that in order for a satellite hemodialysis unit to be profitable, it must serve at least 16 people. In the region concerned by the complaint, only two people met the requirements for being treated in a satellite hemodialysis unit.*

*The Québec Ombudsman notes that the various criteria used by the Ministère de la Santé et des Services sociaux are warranted in most cases. However, at times, their strict application does not take into account the challenges of vast, less populous regions that are far from major cities. It therefore recommended that the institution and the Department review the organization of hemodialysis services on the North Shore in order to reduce the distances that dialysis patients must travel and that the criteria for establishing local services be eased. In the end, the Department confirmed that it had authorized a hemodialysis unit in Baie-Comeau. . . .)*

## REDUCE WAIT TIMES FOR DIAGNOSTIC TESTS

This year again, the Québec Ombudsman was contacted by worried people who wanted to have diagnostic tests done sooner, particularly ultrasounds and MRIs.

Since December 29, 2016, ultrasounds have been reinstated as insured services when they are done by a radiologist, even outside a hospital centre—a measure designed to increase their accessibility. The Québec Ombudsman will keep a close eye on this measure's impact on wait times.

(... **Reduce wait times for access to a mammogram**

*A woman had to have an additional diagnostic mammogram because a lesion was detected during a screening mammogram. The institution informed her that the wait time was 18 months, even though the Department's maximum targeted wait time is three weeks.*

*In the course of the investigation, the Québec Ombudsman noted that the institution and the Ministère de la Santé et des Services sociaux are trying to rectify the situation. However, it also saw that the way in which the waiting list is managed is prejudicial to certain people (appointments based on the source of the request and not on the person's state of health). The investigation also confirmed that wait times did not comply with the Department's target. At the Québec Ombudsman's request, the institution's action plan was therefore reviewed and various measures were established to improve access to these tests, including fair and equal appointment setting, additional time slots in the evening, and the recruitment of radiologists. Wait times at the institution for these kinds of tests are now 20 days, which is within the Department's target. ...)*

(... **Ensure access to MRIs within a reasonable time**

*Several complaints to the Québec Ombudsman brought into focus the long wait times for obtaining an MRI at an institution. It bears mentioning that the Ministère de la Santé et des Services sociaux's target for 2020 is a wait time of fewer than three months for all MRI requests. In the meantime, the Québec Ombudsman has indeed noted worrisome wait times at this institution:*

- *Only 48% of pediatric requests meet the target of fewer than three months;*
- *For adults, approximately 60% of MRI requests were taken care of in fewer than three months;*
- *Roughly one request out of eight involved a one-year wait;*
- *The wait time for nearly 12% of MRIs exceeded one year;*
- *As for MRIs for children aged 3 to 7 years, which are generally done under anaesthetic, the oldest priority 1 (urgent) request went back more than six months, and the oldest priority 3 request (non-urgent) went back nearly three years.*

*In the context of the investigation it conducted, the Québec Ombudsman saw that despite several measures put in place by the institution and the Ministère de la Santé et des Services sociaux to decrease MRI wait times, they continue to be considerable, if not unreasonable. It therefore recommended that the institution:*

- *transfer MRI requests immediately to other facilities which are able to respond to these requests more quickly;*
- *examine the possibility of creating an agreement with private radiology clinics;*
- *optimize the use of the MRI machine by adding other night slots;*
- *reassess the slate of radiologist services.*

*As at March 31, 2017, the Québec Ombudsman was closely monitoring developments. ...)*

## COMPLY WITH THE REGULATION RESPECTING THE APPLICATION OF THE HOSPITAL INSURANCE ACT

In Québec, people insured under the public plan may receive the services set out in the *Regulation respecting the application of the Hospital Insurance Act* free of charge at a hospital centre. The Department allocates the amounts required to fund insured services to the institutions, whereas the Régie de l'assurance maladie du Québec pays physicians' honoraria. It is therefore up to the Department to determine health policies and ensure that they are applied. It is not within the purview of physicians to decide which care can or cannot be insured under the public plan.

According to the Regulation, penal prostheses may be provided free of charge by a hospital centre if they are medically required. However, during an investigation, the Québec Ombudsman learned that an institution had taken the initiative to suspend all penal prosthesis surgeries because it considered that erectile dysfunction treatment is never medically required and therefore should not be insured under the public health insurance plan.

### (... **Reinstate penal implant surgery**

*A man with a degenerative disease had been prescribed penal prosthesis surgery by his physician the year before. However, after having undergone all the presurgical tests, the man was informed that the institution had cancelled his surgery.*

*The investigation by the Québec Ombudsman showed that the institution had suspended all penal prosthesis surgeries for an undetermined period of time because it questioned whether the service was insured. Be that as it may, the institution's policy indicated that a prescription from a physician is sufficient for a prosthesis to be considered medically required. Contacted by the institution, in September 2016, the Department sought the opinion of the Collège des médecins in order to draft clinical guidelines for assessing situations in which penal implants are medically required.*

*Considering that the cancellation of surgeries was based on the questioning of the insurable nature of a service and that the Regulation respecting the application of the Hospital Insurance Act is still in force, the Québec Ombudsman recommended that the institution ensure that patients waiting for a penal prosthesis have access to this surgery. It also recommended that the Department carry out the necessary follow-up in order to ensure that these patients have access to this kind of surgery free of charge and within a reasonable time. All of the Québec Ombudsman's recommendations were approved and the institution has resumed provision of these surgeries free of charge. ...)*

## Home support

### ASSESS NEEDS ACCURATELY IN ORDER TO SET PRIORITIES AND ACT ON THEM CONCRETELY

For the fifth consecutive year, the Québec Ombudsman is critical of the government's slowness to tackle the issue of home support as a genuine priority. Details about the slate of services have yet to materialize and, in the meantime, institutions are increasingly ill-equipped to meet demand.

The estimated proportion of people 65 years old and over who need home support varies between 15% and 18%,<sup>9</sup> although in Québec only 8.6%<sup>10</sup> of people age 65 and over receive such services. In fact, the number of people who received services decreased slightly (by 0.9%<sup>11</sup>) between March 31, 2015, and March 31, 2016.

The ministerial target<sup>12</sup> set out in the Department's 2015-2020 strategic plan consists of a 15% increase by 2020 in the number of seniors with reduced autonomy receiving such services, which corresponds to roughly 10% of the population age 65 years and older in Québec. There is cause for concern when, in the first year of the implementation of the plan, the number of people who received services decreased, when, in fact, there should have been an increase.

According to data from the Department,<sup>13</sup> the average length of an intervention with a person receiving home support services decreased by 7.4% between April 1, 2010, and March 31, 2016. It was 44 minutes in 2015-2016. One of the reasons for this is the adoption of new guidelines limiting the amount of time spent on each of the activities offered. This may mean, for example, less time allocated for giving a bath to a person with reduced autonomy or for preparing his or her meals. This leaves little or no leeway for adapting to people's pace and personal characteristics. The Québec Ombudsman reminds the Department that the intensity and quality of the services offered must not suffer because of the increase in the number of people assisted.

## OFFER HOME SUPPORT SERVICES THAT RESPECT PEOPLE'S NEEDS

Increasingly unable to meet demand, certain institutions cut services. For example, the time for running errands is no longer calculated for allocation purposes. Several institutions have terminated cost-free domestic help services without taking users' ability to pay into account. In other cases, natural caregivers are constantly called on to do more and more, sometimes at the expense of the dignity and privacy of the person being helped.

Some institutions have reduced the time spent on each task. Others slash service plans without prior assessment, or set ceilings for service hours even if, in certain cases, this cap only partially meets the person's needs.

For three years now, the Ministère de la Santé et des Services sociaux has announced the imminent publication of a framework that would update the home support policy. The Québec Ombudsman feels that the time to truly start acting is long overdue.

### (... **Reinstate hours that have been cut**

***An elderly woman with Alzheimer's disease was waiting for a place in a residential resource. She received 31 hours of home support per week. Considered incapacitated and requiring constant supervision, she was able to continue living at home because care tasks were divided among natural caregivers and the personnel paid by the local community service centre (CLSC) and the family.***

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9. Statistics Canada, 2008, *Projecting the Future Availability of the Informal Support Network of the Elderly Population and Assessing its Impact on Home Care Services*, no. 009, 91F0015M.

10. This percentage is determined on the basis of the number of seniors receiving home support services as at March 31, 2016, according to Ministère de la Santé et des Services sociaux data (*Rapport annuel de gestion 2015-2016*, «Objectif 10», p. 32). The population estimate of people 65 years old and over is determined based on the Statistics Canada Demography Division database (adapted by Institut de la statistique du Québec, September 28, 2016).

11. Ministère de la Santé et des Services sociaux, *Rapport annuel de gestion 2015-2016*, «Objectif 10», p. 32.

12. Ministère de la Santé et des Services sociaux, *Plan stratégique 2015-2020*, «Axe – Personnes âgées», p. 13.

13. Estimates based on data provided further to two requests to the Ministère de la Santé et des Services sociaux in December 2016 and January 2017 respectively.

*Barely a few months after granting her the 31 hours of home support, the CLSC established new guidelines, the result being that she had eight fewer service hours per week. The institution argued that the new service offering was consistent with the woman's needs and that, given the resources available, it could not offer her more.*

*In this context and in light of the woman's needs, the Québec Ombudsman deemed that the reduction was unreasonable. It therefore asked the institution to reinstate the hours that had been cut and reassess the woman's situation. Further to these steps, she obtained close to 35 hours of services per week. . . .)*

**( . . . Be flexible in applying eligibility requirements**

*A person with multiple sclerosis was offered home support for personal care. She said that she would rather have someone to help her out of the bathtub and to do a bit of housework. The institution refused and the woman found herself deprived of any assistance.*

*The investigation by the Québec Ombudsman showed that she needed supervision and help bathing, and that she also had great difficulty doing any household chores. Feeling that the institution was being particularly rigid in applying the program rules, the Québec Ombudsman recommended that it review her intervention plan and offer her service hours that met her needs. The institution agreed to act on the Québec Ombudsman's recommendations. . . .)*

**( . . . Comply with the policy in effect**

*People who had been receiving the minimum number of home support hours for many years found themselves without any assistance at all, ostensibly because their situation required fewer than five hours of services per week.*

*This is how the institution arrived at that conclusion:*

- *In conducting assessments, the most severe thresholds had been used, which enabled it to determine that many of these people needed fewer than five hours of home support per week;*
- *Then, a new requirement was added specifying that, from now on, when the number of hours needed was below the five-hour threshold, users would have to cover service costs themselves.*

*The Québec Ombudsman reminded the institution that these new requirements ran counter to the Department's home support policy and recommended that it cease this practice. The institution agreed to follow the Québec Ombudsman's recommendation pending publication of departmental guidelines. . . .)*

(... **Help, rather than hinder, the ability to live at home**

*A man with a disability who lived alone and worked full time relied on home support services for his personal care, housework, laundry and meals. He was informed that his service hours would be cut back gradually, from nearly 40 hours to 28 hours per week.*

*This decision stemmed from the application of new guidelines concerning the frequency, duration, and maximum number of hours or minutes per type of home care service. For example, the man received eight and a half hours of services per week for a series of tasks which, according to the new standards, could be carried out in three and a half hours. The institution felt that the allocated hours were sufficient.*

*Doubtful that the tasks could be performed in the allotted time, the Québec Ombudsman asked the institution to put a halt to any further reduction in the number of hours and demonstrate that the compression required under the new standards was not affecting the quality of the services offered.*

*At the end of the investigation, the Québec Ombudsman asked the institution to ease the intended reduction and grant the user 35 and a half hours of services. The request was approved. . . .)*

**RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING ACCESS TO HOME SUPPORT SERVICES IN QUÉBEC**

Whereas the slate of home support services has dwindled across Québec;

Whereas only 8.6% of people 65 years old and over with reduced autonomy receive home support services, while the percentage of people who need such services is at least 15%;

Whereas the time for each intervention has decreased;

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

- by December 31, 2017, make a concrete commitment to implement an action plan specifying the means for achieving:
  - a 15% increase in the number of seniors with reduced autonomy who receive long-term home support services;
  - a 10% increase per year in the average number of home support service intervention hours.

≡ **COMMENT BY THE MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX**

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

[Translation]

"The Ministère de la Santé et des Services sociaux welcomes the Québec Ombudsman's recommendations and shares the goal of continuous improvement of the home care and support services offered to Quebecers."

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## Support for elderly autonomy

### BE ATTENTIVE TO THE NEEDS OF THE ELDERLY IN IMPLEMENTING THE PUBLIC NETWORK REFORM

With the reform of the health and social services network in April 2015, several administrative structures were overhauled. This transformation had an impact on eldercare and services for the elderly, among other areas.

The Québec Ombudsman noted that, in some cases, harmonizing the practices of merged institutions proved daunting, especially regarding residential access mechanisms. Those in charge now had to deal with bigger territories while maintaining service continuity. For example, because personnel did not have a full grasp of some of the changes to residential access mechanisms, seniors were lodged far from family and friends even though there were closer resources available. The Québec Ombudsman had to recommend changes to decisions which did not take sufficient account of the adverse effects on seniors with reduced autonomy and on their family.

In a complex service environment, the red tape that comes with finding a residential resource for a loved one may be a source of concern for family members, who want to be sure that they are making the best decisions. That is why families, as much as the elderly person concerned, need clear information about the options available to them. Some feel that they have no choice but to consider a private seniors' residence and to pay out of pocket even if they fear that this solution is not an adequate response to needs.

#### **(... Put the elderly and their family at the centre of any decision about residential resources**

*An elderly man applied for a place in a residential and long-term care centre (CHSLD) near his spouse's home. However, a mistake was made while his application was being processed—he was informed that because of the mergers within the health and social services network, it would take several years before he could be admitted to the resource of his choice because it was located in a different territory. At no time was he told that there might be other options.*

*The Québec Ombudsman recommended that the integrated university health and social services centre (CIUSSS) responsible for the access mechanism improve personnel training and review its communication and support practices for seniors regarding the selection of lodging. Further to the Québec Ombudsman's intervention, the man was admitted into a CHSLD not far from where his spouse lived. ...)*

#### **(... Take users' former environment into account in choosing relocation to a CHSLD**

*An elderly woman had no choice but to accept a room in a CHSLD located two hours away from her home by car. Her friend, who was her legal representative and her only regular visitor, complained to the Québec Ombudsman.*

*The Québec Ombudsman realized that, in the context of the reform of the health and social services network, the fusion of two access mechanisms had been slow to happen. This explains why no one performed the required search to find a residential resource closer to where the woman had always lived.*

*The Québec Ombudsman recommended that the region's integrated health and social services centre (CISSS) ensure that in finding residential resources for seniors, proximity to their former home be a priority and that the search be conducted on the entire territory under the CISSS's responsibility. In the end, the woman was finally admitted into the CHSLD of her choice. . . .)*

**(... In choosing a residential resource, consider the family's point of view**

*A CISSS placed an elderly man in a private seniors' residence. The members of his family expressed their disagreement with the choice because they felt that their parent's needs were too complex for the resource chosen. As they saw it, he should have been placed in a CHSLD. The notes on file indicated that he frequently had night terrors because of his increasing confusion. Barely a few days after he arrived at the new residence, the man went into crisis and had to be rushed to the hospital. Subsequently, he was admitted to a CHSLD.*

*The family felt particularly dissatisfied because they got the impression that their concerns had not been heard. Furthermore, they had had to spend more than \$1,000 to break the lease with the private residence. For her part, the owner of the private residence said that she would not have agreed to admit the man if she had been more aware of his condition.*

*The Québec Ombudsman recommended that the CISSS reimburse the family for the amounts paid, and, in the future, pay more attention to the opinion of the family when placing a user. Its recommendations were approved. . . .)*

**(... Before transferring a person from one residential resource to another, take into account the opinion of the person, the person's family and the healthcare team**

*An elderly woman had been living at a CHSLD for 13 years and was well-adapted to her living environment. She was informed that her region's CISSS had decided to move her to an intermediate resource. The reason given by those responsible was that according to an assessment of her functional autonomy, she no longer qualified for admission to a CHSLD. Fearful of the consequences for her health, she and her family were against the change. The medical staff were of the same mind. Despite the apprehensions expressed, the move took place and the family was not notified. Subsequently, the woman lost all interest in adapting to her new lifestyle and died a month later.*

*The Québec Ombudsman recommended that the CISSS review its needs assessment practices by factoring in the foreseeable effects of such a move. Its recommendations were approved and implemented. . . .)*

## DEMYSTIFY SPECIAL CARE UNITS IN CHSLDS

When an elderly person with reduced autonomy is admitted into a unit specifically for people with severe behavioral disorders which often have an aggression component, it may be unsettling for family members. On the one hand, it is hard for them to accept that their parent has been identified as part of this client population and, on the other, they may fear for their parent's safety. If they are not properly informed, family members may mistrust the CHSLD's decisions and the healthcare team's motives.

### **(... Support families when a loved one is transferred to a special care unit**

*Not long after being admitted to a CHSLD, a woman began to be aggressive with the people around her. She was therefore transferred to a unit for a client population with severe behavioural disorders. Upset by the behaviour of the fellow residents on this unit, the family members could not understand why their parent had to be there and expressed grave concerns about her safety.*

*The Québec Ombudsman asked the CHSLD:*

- *to take measures to increase user safety in this unit;*
- *to provide families with greater support and better explain the reasons for a possible transfer to a special care unit.*

*The CHSLD accepted the recommendations and designed a standardized special care intake program for residents as well as information documents presenting the characteristics of a special care unit. ...)*

## ACT IMMEDIATELY TO IMPROVE ACCESS TO PUBLIC LONG-TERM RESIDENTIAL RESOURCES

Because of a well-known demographic fact, pressure on public long-term residential resources for the elderly will necessarily increase. Even at this point, Québec is facing a worrisome shortage of available CHSLD places. Residents grapple with increasingly severe health problems, which makes medical management that much more complicated. As a result, CHSLD access problems lead to:

- tighter admission requirements;
- longer wait times;
- increasing reliance on private seniors' residences which are not necessarily equipped to care for people with severely reduced autonomy.

## RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING THE ADJUSTMENT OF LONG-TERM RESIDENTIAL RESOURCES TO THE EXPECTATIONS AND NEEDS OF THE ELDERLY WITH SEVERELY REDUCED AUTONOMY

Whereas the shortcomings of the public residential system for people with severely reduced autonomy have an amply documented impact;

Whereas the achievement of concrete targets regarding improved accessibility to residential resources is becoming a particularly urgent issue;

Whereas such targets have already been tagged as a priority in the strategic planning of the Ministère de la Santé et des Services sociaux, for example, that of 2005-2010, which was aimed at the construction or reconfiguration of some 3,000 public residential places;

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

- by December 31, 2017, produce an action plan to rapidly improve access to public residential resources for the elderly with severely reduced autonomy.

### ✧ COMMENT BY THE MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX

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

[Translation]

"The Ministère de la Santé et des Services sociaux welcomes the Québec Ombudsman's recommendations and shares the goal of improving the care and service organization in residential and long-term care centres for the elderly in Québec."

### PRIVATE SENIORS' RESIDENCES: GIVE TENANTS FULL ACCESS TO THEIR RIGHTS

In Québec, there are more than 1,850 seniors' residences and this type of lodging is growing. The average age of residents is 82. In accordance with the *Act respecting health services and social services*, residences that offer at least two services in addition to lodging (meals, personal assistance, domestic help, security, recreation or nursing care) must be certified by the Ministère de la Santé et des Services sociaux. More than just rental businesses, they provide care and services to people who need them to varying degrees for their daily well-being and safety. However, even though the services offered make them a distinct kind of rental operation, the legal framework is the same as for other kinds of rental housing. Everyone who lives there must sign a lease that describes the cost of rental and the cost of the services tenants choose. In cases of lease-related disputes, tenants and owners must contact the Régie du logement.

In a report published in 2016, the Québec Ombudsman described numerous difficulties faced by people who live in these kinds of residences and want to have their rights as tenants upheld. To foster respect of these rights, the Québec Ombudsman made seven recommendations that involve, depending on the issue, the Secrétariat aux aînés, the Ministère de la Santé et des Services sociaux, the Régie du logement and the Minister of Municipal Affairs and Land Occupancy, who is entrusted with managing the Régie:

- Produce and distribute a comprehensive guide for seniors' residence tenants and owners, explaining their respective rights and obligations regarding lease signing, modification or resiliation (termination), or recourse in the event of disputes.

- Amend the regulation to oblige the owners of these residences to distribute copies of the building rules in effect and to make sure they are readily available at all times.
- Task community organizations such as complaint assistance and support centres to assist and guide tenants who ask for help in initiating or exercising recourse for lease-related disputes.
- Under certain conditions, broaden the scope of Régie du logement decisions that are in one tenant's favour to all other tenants affected by a similar problem.
- Analyze the impact of the rent-setting method on the funding of services offered by these residences and adopt measures to prevent abusive rent increases.

While the Ministère de la Santé et des Services sociaux did not dispute the Québec Ombudsman's findings, it expressed reservations about its share of responsibility for correcting and preventing the wrongs described in the report. The Québec Ombudsman considers that the Department has the legal capacity and expertise necessary to act on the recommendations made to it.

In 2016-2017, work was undertaken, spearheaded by the Secrétariat aux aînés, to produce a guide on the rights and obligations of tenants and owners of private seniors' residences. However, the Québec Ombudsman has still not received an action plan or a progress report for the six other recommendations.



[The summary of the report on private seniors' residences is found at protecteurducitoyen.qc.ca.](http://protecteurducitoyen.qc.ca)

## Service support

### END ALL IRREGULARITY CONCERNING BILLING FOR SERVICES

In keeping with the Québec Ombudsman's interventions this year, the Minister of Health and Social Services made various decisions to limit, if not eliminate, certain health and social services fees charged to users. Hence, billing for accessory costs is now prohibited. The Department also changed the type of intraocular lens used in cataract surgery from uninsured to insured. Furthermore, billing administrative fees to people who purchase uninsured lenses is now prohibited.

The Department also updated its policy concerning incidental commercial activities by institutions. New directives govern the operation of parking lots, among other things. However, the Québec Ombudsman remains concerned about parking lot fees, which remain high.

In another vein, citizens subject to billable fees must have access to pertinent information before making a decision. In the past year, the Québec Ombudsman, arguing that people had not received the necessary information or institutions had misinterpreted the standards put in place, has had to recommend cancellation of invoices numerous times.

### (... **Transmit all relevant information concerning insured services**

*In 2015, prior to cataract surgery, a person spent \$300 for an uninsured soft intraocular lens. The receipt she was given indicated the amount paid, but did not specify whether the cost of the hard intraocular lens had been subtracted from that of a soft lens. Given the lack of information in the invoice, the person went to the service quality and complaints commissioner of the institution concerned. She recommended that it change its internal procedure so as to issue detailed invoices.*

*The citizen contacted the Québec Ombudsman to ensure that the commissioner's recommendation had indeed been implemented. The investigation by the Québec Ombudsman showed that the recommendation had not been followed. The Québec Ombudsman also discovered that the institution still charged administrative fees ranging from 22.4% to 49.0%, depending on the type of soft lens, even though a new internal procedure indicated a 10.0% fee instead.*

*Since January 26, 2017, basic soft intraocular lenses have been insured. Furthermore, billing for administrative fees in addition to the cost of an uninsured lens is now prohibited. The Québec Ombudsman therefore recommended that the institution change its procedure regarding the transmission of information about the provision of prostheses and orthotic devices as well as the fact that billing for administrative fees is prohibited, so as to comply with the ministerial circular of January 26, 2017. It also recommended that the Department ensure that health and social services institutions have all the information needed to apply a circular from the day it takes effect. The Québec Ombudsman will closely monitor the implementation of these recommendations. . . .)*

**(... Comply rigorously with the law governing insured services**

*A woman had to have surgery in a hospital centre. A portion of the fees related to a medically necessary aspect of the surgery was insured by the Régie de l'assurance maladie du Québec (RAMQ). The other portion was not because it was considered aesthetic surgery. However, she was charged the full day-surgery rate. Furthermore, due to postoperative complications, she had to remain in hospital an extra day and was charged certain fees, because, in the institution's opinion, the extended stay was related to the aesthetic component of the surgery.*

*Pursuant to the Health Insurance Act, all medically required care and services are considered insured. In the case at hand, a physician deemed that the woman required an extra day of hospitalization because of her condition. Since the day was medically required, she should not have been billed for it.*

*The Québec Ombudsman recommended cancellation of the fees related to the insured part of the surgery and to the second day of hospitalization. The institution accepted its recommendations. . . .)*

**(... Adequately inform anyone who has dealings with a non-participating health professional**

*A child required dental care that was covered by RAMQ. He was seen at the dental department of a hospital. After he received care, his parents paid the bill and contacted their insurer about reimbursement. It refused, pointing out that the services in question were covered by the public plan.*

*Further to verification, it seemed that the dentist they saw at the hospital centre had "non-participating professional status" at RAMQ, which meant that he was not remunerated by the public plan, but by patients instead.*

*The Regulation respecting the application of the Health Insurance Act stipulates that, prior to service provision, non-participating professionals must inform insured persons in writing of their non-participation and that the insured persons must assume the full cost of their services. In the case at hand, this information was not provided. The Québec Ombudsman therefore made the following recommendations, which were approved:*

- *that the institution reimburse the parents;*
- *that in the future it ensure that people who have dealings with a non-participating professional are sent a written notice prior to service provision as well as a quote for the projected treatment. . . .)*

## ENABLE EVERYONE TO MAKE AN INFORMED DECISION

Before patients or their representatives sign the form indicating their choice of room, the hospital must inform them of the possible room options, related costs and the fact that any choice can be reversed. They must also encourage people who have private insurance coverage for certain hospitalization-related fees to find out about the costs assumed by the insurer so that they can make an informed decision. The Québec Ombudsman has noted failings in this regard and recommends that institutions make certain improvements in order to ensure that rules are respected, especially concerning:

- people's ability to consent to payable fees;
- the information that personnel must provide;
- compliance with Department requirements in drafting the room-choice form.

### **( . . . Adopt a precise room-rate procedure**

*While she was in the emergency room, a woman was asked by a care attendant to choose a room in case she was hospitalized. The care attendant entered the information in the admission/discharge form without signing it or asking the user to sign it. Furthermore, several pieces of the information required for the user to make a free and informed choice were missing from the form. A few days later, another care attendant asked the user to confirm the room choice. The person then signed the form that contained all the relevant information.*

*In the case at hand, because the first form was incomplete, was unsigned and, to make matters worse, several days had elapsed between the woman's admission and her signing of the document, the Québec Ombudsman recommended cancellation of the hospital room rates for the first days of hospitalization. It also recommended correcting the room-choice procedure so that it complies with ministerial requirements. The institution accepted these recommendations. . . .)*

(... **Properly inform people who must be hospitalized about the financial consequences of choosing a private room**

*Since her condition was contagious, as soon as a woman got to the hospital she was placed in a private room so that she would not contaminate anyone. The personnel told her that she would not have to pay for the room because it was medically required. Afterwards, she had to sign documents concerning the room choice. Having been told that she had to be in a private room, this is what she chose, counting on it being free of charge.*

*According to the Hospital Insurance Act, a person who has requested a private or double room must pay the prescribed rate, even in a coronary or intensive care unit, if the stay becomes medically required.*

*Here, the Québec Ombudsman noted that the woman had been given inaccurate information. The findings prompted the Québec Ombudsman to make recommendations, including:*

- *reimbursement of the cost of the private room;*
- *the addition of pertinent details to the room-choice form;*
- *better information to personnel about the relevant provisions of the Act. . . .)*

(... **Better inform personnel about respecting users' choice of hospital room**

*The morning of a surgery, in keeping with the institution's procedure, a man chose a private room for the user he represented. The form specified that the choice could be changed at any time at the admissions office. It should be noted that the representative went to the office twice to ask if the user could be put in a ward (for which no fees are charged) if no private room was available after the surgery.*

*Subsequently, he was told that no private rooms were available and he would be placed in a double room for which he would be charged. The Québec Ombudsman recommended cancellation of the invoice for the double room; the institution agreed. . . .)*

## APPLY THE BILLING PROVIDED BY LAW TO NON-RESIDENTS

In Québec, people who do not have resident status, such as tourists or foreign students from countries that do not have reciprocity agreements with Québec, are among those who do not qualify for the public health insurance plan. As a result, these people do not have access to free health and social services. The Ministère de la Santé et des Services sociaux determines the fees that can be charged to them, particularly in emergency rooms or when hospitalized. The Department also prescribes a 200% surcharge on the fees that must be charged to non-residents who do not qualify for the plan. Complaints have shown that some institutions charged non-residents fees that did not comply with the law.

Furthermore, on several occasions, the Québec Ombudsman has recommended that non-residents be given appropriate information concerning healthcare costs. Since it is not always possible to foresee the exact kind and cost of care when a person goes to the hospital, a list of rates for the most common services as well as a mention to the effect that there may be additional fees are usually sufficient. Whatever the case, the information provided must enable non-residents to properly understand the applicable rates and make the best decisions.

**(... Exclude unwarranted administrative fees from billing)**

*A foreign student whose child had to be hospitalized for a few days received an invoice that included administrative fees as well as the 200% surcharge to non-residents. The Québec Ombudsman noted that this method contravened the rule and that the institution systematically used this approach with all non-residents. It therefore recommended cancelling the administrative fees and subtracting them from the total amount charged to the complainant. It also recommended an end to this practice for everyone in a similar situation, which the institution agreed to do. ...)*

**(... Stop billing for undelivered services)**

*A non-resident went to an emergency room twice because of a health problem. Dissatisfied with the care she had received and complaining in particular about having to pay for radiology and laboratory services that she had not received, she asked for cancellation of the fees she had been charged.*

*Concerning the quality of care, the woman was referred to the medical examiner because the Québec Ombudsman is not mandated to intervene regarding medical activities.*

*The investigation revealed that the institution billed non-residents at a flat rate when they were referred for emergency room radiological and laboratory services, which was contrary to the instructions contained in the ministerial circular. After the Québec Ombudsman intervened, the institution agreed to lower the amount of the woman's invoice and change its practices to comply with Department directives. ...)*

**(... Make sure to provide accurate information about service costs to people who do not qualify for the public plan)**

*A man who was not eligible for the public plan had to have bloodwork done. A care attendant at the hospital centre told him that no fees for the blood tests would be involved. As a result, the man was not sent to the accounting office to settle the invoice, as stipulated in the institution's procedure.*

*When the man received a bill afterwards, he complained to the Québec Ombudsman about being misinformed and having to pay more than he would have if he had gone to a private laboratory for the blood test, which is what he usually did. The investigation by the Québec Ombudsman showed that the information given to the person was wrong. The institution agreed to cancel the invoice. ...)*

## ESTABLISH RULES FOR THE INTAKE OF FOREIGN PATIENTS IN QUÉBEC

2016-2017 marks the end of follow-up on the nine recommendations made by the Québec Ombudsman to the Department in its report entitled *Admission of a foreign national to Royal Victoria Hospital of McGill University Health Centre*. Here is a recap of the facts. In December 2011, a woman from Kuwait was admitted to McGill University Health Centre (MUHC) for healthcare and health services within the framework of an expertise-sharing contract between MUHC and the Ministry of Health of the State of Kuwait.

While intervening, the Québec Ombudsman saw that there were failings with regard to the rules governing these activities, which is why it recommended that the Department examine the possible impact of foreign patient intake on Quebecers' access to services. It also recommended that public resources be fully and adequately compensated under this type of agreement.

The Department implemented all of the recommendations to the Québec Ombudsman's satisfaction. The actions by the Department included:

- production and distribution of a circular setting out the terms for international agreements entered into by institutions within the health and social services network (the circular specifies the conditions to be met, especially that the signatory institution must ensure that the agreement does not involve transfer of its rights and responsibilities for the benefit of a private company);
- production and distribution of the circular entitled *Modalités d'accueil et d'admission des ressortissants étrangers qui viennent au Québec pour recevoir un traitement médical*;
- an audit and full reporting regarding the amounts of money already paid to MUHC by Kuwait, as well as for all future transactions within the framework of the contract binding MUHC and Kuwait.



[The Québec Ombudsman's intervention report on the admission of a foreign national to MUHC is found at protecteurducitoyen.qc.ca.](https://www.protecteurducitoyen.qc.ca/)

# PARLIAMENTARY WATCH REPORT

Pursuant to the legislation that governs its activities, the Québec Ombudsman carries out structured monitoring of draft legislation. The main purpose of this exercise is to identify the provisions of bills and draft regulations likely to be interpreted to the disadvantage of citizens or to generate adverse effects, as well as to determine the administrative, economic or social ramifications. By lending its expertise and assistance to the parliamentarians who study a bill, or by submitting comments on a draft regulation to the competent authority, the Québec Ombudsman engages in preventive action and helps to ensure that the respect of citizens' rights and improvement of the quality of public services remain core concerns.

In 2016-2017, the Québec Ombudsman analyzed 34 of the 49 bills introduced in the National Assembly and 94 of the 101 draft regulations published in the *Gazette officielle du Québec*. It intervened with respect to eight bills and three draft regulations. These interventions are summarized below. The nature and scope of the Québec Ombudsman's interventions are detailed in the sections of the Annual Report dedicated to the subjects concerned when it was deemed relevant to do so.

 [All of the Québec Ombudsman's public parliamentary watch interventions are found at protecteurducitoyen.qc.ca.](http://protecteurducitoyen.qc.ca)

## Interventions with regard to bills

### BILL 92, ACT TO EXTEND THE POWERS OF THE RÉGIE DE L'ASSURANCE MALADIE DU QUÉBEC AND TO AMEND VARIOUS LEGISLATIVE PROVISIONS

 [Brief presented to the Committee on Health and Social Services on May 10, 2016](#)

While endorsing the goals of this Bill, passed on December 6, 2016, which gave the Régie de l'assurance maladie du Québec new powers over remuneration, curbing of illegal practices, inspection and penalties, the Québec Ombudsman intervened so that the Régie be subject to certain further obligations. It therefore recommended stepping up communication with professional orders concerning all relevant information about their members who have been found to violate the Act. The Bill was amended to make this communication by the Régie mandatory. The Québec Ombudsman also recommended that anyone who reports an illegal behaviour to the Régie be protected against reprisal, and this was approved. However, the recommendation aimed at the Régie reimbursing insured users who have been billed illegally without their having to apply to be reimbursed, as well as the recommendation proposing greater accountability by the Régie, was not approved.

Furthermore, the Québec Ombudsman recommended that the government use its regulatory power provided for in the Act to promptly set a ceiling on administrative tariffs related to uninsured services. As at March 31, 2017, no draft bill of this nature had been published.

Lastly, the Québec Ombudsman recommended repeal of the legislative provision making it possible to authorize accessory costs for insured services by regulation. Even though this did not occur, the Québec Ombudsman considers that the desired outcome was achieved because since then, the Minister of Health and Social Services has issued a regulation prohibiting practically all accessory costs (see the section entitled *Interventions with regard to draft regulations*, on [page 126](#)).

## **BILL 98, ACT TO AMEND VARIOUS LEGISLATION MAINLY WITH RESPECT TO ADMISSION TO PROFESSIONS AND THE GOVERNANCE OF THE PROFESSIONAL SYSTEM**

### [Brief presented to the Committee on Institutions on August 23, 2016](#)

Generally, the Québec Ombudsman subscribed to the amendments to the *Professional Code* proposed in the Bill because they are aimed at greater public protection and optimizing the operation of professional orders.

Since Québec's professional system is basically founded on self-regulation (peer oversight), the Québec Ombudsman pointed out that measures aimed at the disciplinary process are crucial to regaining public trust. It therefore commented on two provisions under which the syndics of professional orders are granted additional powers, namely, suspension or provisional restriction of the right of a member of an order to engage in professional activities, and disciplinary immunity for whistleblowers.

Furthermore, the Québec Ombudsman was critical that the extensive powers and independence of syndics, essential to the exercise of their functions, are not subject to any framework for professional ethics expressly aimed at their particular role. It therefore recommended that the syndics of professional orders be subject to standards of ethics and professional conduct specific to them.

Also with a view to strengthening public protection, the Québec Ombudsman recommended standardization of the prescriptive deadlines for instituting certain penal proceedings, not only for acts that are derogatory to the dignity of the profession, but also for unlawful practice of a profession and unauthorized use of a title reserved to members of a professional order. As at March 31, 2017, the Bill had not been passed.

## **BILL 102, ACT TO AMEND THE ENVIRONMENT QUALITY ACT TO MODERNIZE THE ENVIRONMENTAL AUTHORIZATION SCHEME AND TO AMEND OTHER LEGISLATIVE PROVISIONS, IN PARTICULAR TO REFORM THE GOVERNANCE OF THE GREEN FUND**

### [November 9, 2016, letter to the Committee on Transportation and the Environment](#)

In continuity with its February 2015 report on the control and monitoring of private waterworks systems in Québec, the Québec Ombudsman only commented on the provisions dealing with wastewater management and treatment facilities. Under these provisions, certain requirements regarding sewer system operation were changed.

While the *Environment Quality Act* obliges all private waterworks system operators to obtain the Minister's prior approval of the rates to be charged to their subscribers, the Bill eliminated this requirement. Instead, it provided that the Minister, at the request of subscribers dissatisfied with the rates charged, may, but is not obliged to, approve, with or without modification, changes to the new rates.

Since private operators have the power to charge fees for an essential service, the Québec Ombudsman recommended that the Bill be amended to oblige the Minister to analyze the requests of subscribers whose drinking water supply comes from a private waterworks system. This recommendation was heeded, and the Act passed on March 23, 2017, scheduled to come into force a year later, was amended to provide that the Minister must, at the request of a subscriber, investigate when the subscriber and the operator cannot reach an agreement concerning the applicable rate.

The Québec Ombudsman also recommended that subscribers who are dissatisfied with the Minister's response to their request be allowed to seek recourse with the Tribunal administratif du Québec in order to contest the decision. Previously, such recourse was available only for operators. This recommendation was approved.

#### **BILL 105, ACT TO AMEND THE EDUCATION ACT**

 [September 16, 2016, letter to the Committee on Culture and Education](#)

As it did in February 2016 during the consultations on Bill 86, which was set aside and replaced by Bill 105, the Québec Ombudsman commented only on the elements related to two of its special reports and the follow-up to the recommendations stemming from them.

Concerning access to free public education for children with a precarious immigration status, the Québec Ombudsman was disappointed that this issue was not addressed in the Bill being considered, even though Bill 86 had proposed amendments likely to rectify this situation which contravenes international conventions. It therefore reiterated its recommendation to ensure free access to public elementary and secondary education for all children 6 to 16 years of age who are living in Québec, regardless of their or their parents' immigration status. The Act passed on November 17, 2016, was not amended to solve this situation.

On the other hand, the Québec Ombudsman expressed satisfaction with the legislative amendment specifying that homeschooled children or their parents may avail themselves of the complaint examination procedure established by their school board and approach the Student Ombudsman if they are dissatisfied with the services provided by the school board. However, its recommendation expressly aimed at extending this redress to include cases in which a school board refuses or fails to provide these services was not approved.

#### **BILL 112, ACT TO GIVE EFFECT MAINLY TO FISCAL MEASURES ANNOUNCED IN THE BUDGET SPEECH DELIVERED 17 MARCH 2016**

 [February 3, 2017, letter to the Minister of Finance](#)

The Québec Ombudsman, in commenting on the amendments to the *Taxation Act* concerning the small business deduction and its qualification criteria, foresaw adverse effects that could be caused by two elements introduced by the Bill.

Small businesses already keep a record of the number of hours paid, but the use of the notion of “hours worked” specified in the Bill would have obliged these businesses to create a new record in order to enter this information. To prevent increasing the management workload of these businesses (which sometimes have limited means), the Québec Ombudsman proposed that the presumption that an hour paid is an hour worked be introduced. Even though this recommendation was not addressed in the Act passed on February 8, 2017, the Budget Speech of March 28, 2017, provided for the use of a qualification criterion concerning the minimum number of hours paid, which is in line with the Québec Ombudsman’s recommendation.

The Québec Ombudsman also discussed the 40-hour-per-week limit per employee calculable for deduction purposes. Feeling that this weekly limit imposed an undue constraint on businesses and compromised their ability to adapt to employees’ respective situations (e.g. work-family balance, supplementary time bank during rush periods), the Québec Ombudsman suggested an annual rather than a weekly limit on the number of hours. This recommendation, which would have enabled businesses to continue to have management that is adapted to the specific features of their sectors of activity, was not approved.

#### **BILL 113, ACT TO AMEND THE CIVIL CODE AND OTHER LEGISLATIVE PROVISIONS AS REGARDS ADOPTION AND THE DISCLOSURE OF INFORMATION**

 [November 22, 2016, letter to the Committee on Institutions](#)

The Québec Ombudsman welcomed this Bill built around the notion of the child’s best interest and the safeguarding of his or her rights, while upholding parents’ rights. In so doing, the Bill ensures that the rights of the various members of the “triangle of adoption” are in balance.

The Québec Ombudsman subscribed in particular to the amendments allowing adoption to be coupled with recognition of pre-existing bonds of filiation if the child’s interest so requires. It also expressed its agreement with the amendments concerning adoption-file confidentiality as well as the possibility of establishing contact between adoptees and their birth parents. In the opinion of the Québec Ombudsman, these measures are more consistent with today’s realities, while respecting birth parents’ right to confidentiality, by allowing registration of identity disclosure or contact vetoes.

Lastly, the Québec Ombudsman was pleased with the intended communication plan to inform parents about upcoming changes and the impact on their rights. However, as at March 31, 2017, detailed consideration of the Bill had not yet begun.

#### **BILL 115, ACT TO COMBAT MALTREATMENT OF SENIORS AND OTHER PERSONS OF FULL AGE IN VULNERABLE SITUATIONS**

 [Speech before the Committee on Citizen Relations on January 17, 2017](#)

The Québec Ombudsman endorsed the spirit of this Bill which sends a clear message—maltreatment of vulnerable people is unacceptable. It therefore drew attention to certain advances, including less stringent requirements for the communication of protected information under certain circumstances that resemble maltreatment, notably, waiving of professional secrecy. Similarly, it supported the banning of reprisal against anyone who reports maltreatment in good faith or cooperates in the examination of a report or complaint.

The Québec Ombudsman welcomed regulation of the use of monitoring mechanisms such as cameras in the living environments subject to the *Act respecting health services and social services*. It will therefore pay close attention to the draft regulation to ensure that it will not make things more complicated for residents who want to install them, and that their use will respect users' right to privacy.

However, the Québec Ombudsman recommended that the thrust of the entire Bill, as its title indicates, must be to combat maltreatment of anyone of full age who is vulnerable, not just seniors. It also recommended that the Bill clearly state that the anti-maltreatment policy must fit within the broader framework of the complaint examination procedure enshrined in the *Act respecting health services and social services*. Thus, people who are dissatisfied with a service quality and complaints commissioner's conclusions would know that they could contact the Québec Ombudsman as the second recourse.

Lastly, it recommended clearly defining the scope of practice of service quality and complaints commissioners who would be entrusted with receiving maltreatment complaints and reports. In fact, the Québec Ombudsman felt that it was crucial that commissioners be obliged, if such action is warranted, to refer any situation of maltreatment to the police or another appropriate authority better able to follow up.

As at March 31, 2017, the Bill had not been passed.

#### **BILL 130, ACT TO AMEND CERTAIN PROVISIONS REGARDING THE CLINICAL ORGANIZATION AND MANAGEMENT OF HEALTH AND SOCIAL SERVICES INSTITUTIONS**

 [February 8, 2017, letter to the Committee on Health and Social Services](#)

The Québec Ombudsman commented on two aspects of this Bill whose detailed study had not begun as at March 31, 2017, namely, the complaint examination system and the role of institutions in cases of confinement.

With the reorganization of the health and social services network undertaken on April 1, 2015, the structure of complaint examination offices within integrated health and social services centres was changed. Since then, in many institutions, there are advisers who assist the commissioners or assistant commissioners in their functions. The Québec Ombudsman considers this contrary to the *Act respecting health services and social services*.

In amending the Act, the Bill sought to regularize these arrangements. However, as worded, the Bill did not ensure the crucial independence of advisers in the exercise of their functions of office. That is the reason why the Québec Ombudsman recommended that they be included in the existing provision whereby the board of directors must take steps to at all times preserve the independence of the commissioner or assistant commissioner in the exercise of his or her functions.

As for the role of institutions in cases of confinement, in the opinion of the Québec Ombudsman, the proposed legislative amendment addressed several of the shortcomings related to application of the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*, and was consistent with one of the recommendations in its February 2011 report on the subject. It nonetheless made two recommendations concerning reporting. The first one was aimed at the inclusion within annual management reports of quantitative data not only on the number of times confinement occurred, but also its duration. The purpose of the second was to ensure that this reporting be carried out in each of the facilities which can implement confinement. This would make it possible to obtain more accurate data, even if there is only a single confinement protocol for the entire institution.

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## Interventions with regard to draft regulations

### REGULATION TO AMEND THE REGULATION RESPECTING MEDICAL AID (2016, GAZETTE OFFICIELLE, Part 2, 2101)

 [May 30, 2016, letter to the Chair and Chief Executive Officer of the Commission des normes, de l'équité, de la santé et de la sécurité du travail](#)

Pointing out that there has been an official framework for psychotherapeutic practice since June 2012, the Québec Ombudsman welcomed this regulatory amendment whereby the care provided by psychotherapists to people who have suffered an occupational injury be included in the services covered pursuant to the *Regulation respecting medical aid*. As early as January 2013, the Québec Ombudsman had made this recommendation to the Commission de la santé et de la sécurité du travail (now the Commission des normes, de l'équité, de la santé et de la sécurité du travail).

The Regulation was made by an order in council dated 15 March 2017.

### REGULATION TO AMEND THE REGULATION RESPECTING THE REIMBURSEMENT OF CERTAIN EXPENSES (2016, GAZETTE OFFICIELLE, Part 2, 4875)

 [October 7, 2016, letter to the Minister of Transport, Sustainable Mobility and Transport Electrification](#)

The Québec Ombudsman subscribed to this draft regulation which:

- proposed an increase in certain amounts reimbursed to road accident victims;
- eased a requirement for expenses incurred for psychological care or physiotherapy;
- provided for the inclusion of the amount of any consumption taxes in maximum insurable amounts.

While sensitive to the legitimate need for the Société de l'assurance automobile du Québec to control its costs, the Québec Ombudsman nonetheless indicated that it was important to prevent the risk of gradual and implicit devaluation of citizens' coverage and its consequences for road accident victims.

There is no provision for annual revalorization of all maximum insurable amounts prescribed in the *Regulation respecting the reimbursement of certain expenses*. Given the financial soundness of the automobile insurance plan and the adverse effects on people who must make up the shortfall between expenses paid out of pocket and those that are reimbursed, the Québec Ombudsman recommended annual revalorization as defined in the *Automobile Insurance Act*.

As at March 31, 2017, the regulation had not been passed, but a letter dated March 23, 2017, from the Minister of Transport, Sustainable Mobility and Transport Electrification to the Ombudsperson suggested that the recommendation would not be approved.

REGULATION ABOLISHING ACCESSORY COSTS RELATED TO THE PROVISION OF INSURED SERVICES AND GOVERNING TRANSPORTATION COSTS FOR BIOLOGICAL SAMPLES  
(2016, GAZETTE OFFICIELLE, Part 2, 5517)

 [November 4, 2016, letter to the Minister of Health and Social Services](#)

The *Act to enact the Act to promote access to family medicine and specialized medical services and to amend various legislative provisions relating to assisted procreation* (2015, c. 25) was assented to on November 10, 2015. It amended the *Health Insurance Act* such that no accessory costs may be charged to insured persons for services insured under the public plan. However, the Act provided that the government may, by regulation, prescribe the cases and conditions in which a payment is authorized. Pending such a regulation, the costs authorized under agreements with medical federations could continue to be charged to insured persons, a situation which the Québec Ombudsman criticized when it commented on Bill 92 (see the section entitled *Interventions with regard to bills*, on [page 121](#)).

The Québec Ombudsman therefore applauded the effect of this Regulation, namely, the abolition of almost all accessory costs, apart from billing for the transportation of biological samples. Because the amounts in question seemed reasonable and the services could be delivered free of charge in the public network, the Québec Ombudsman confined itself to pointing out that this was a form of delisting.

However, since it is not impossible that, over time, other accessory costs related to services, furniture, equipment, medication or equipment might be added to the list through regulatory means, the Québec Ombudsman said it remained concerned about the issue of accessory costs.

The Regulation was made by an order in council dated 21 December 2016.



## RESULTS IN FIGURES

This section of the Annual Report 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.

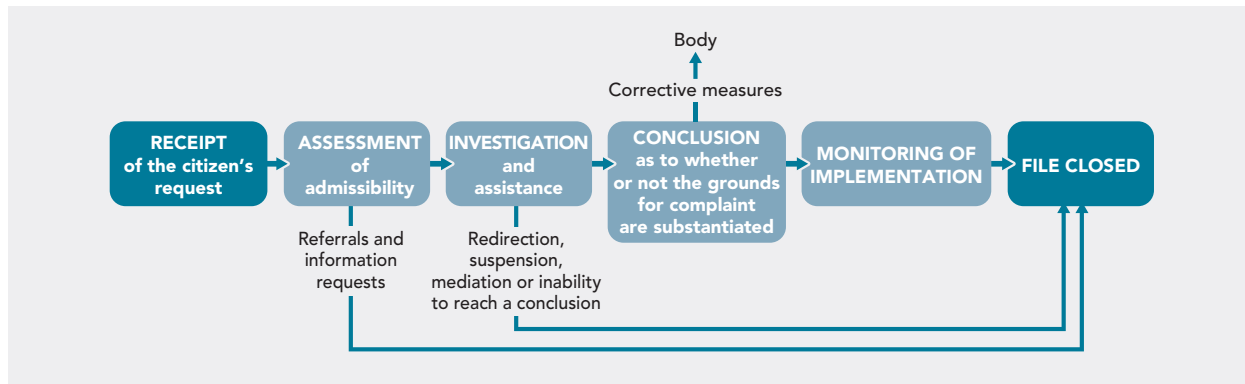
Citizens' service requests which are deemed admissible as complaints or reports give rise to investigations. While complaints are generally made by the people who experience the situation, reports are made by someone who has observed breaches or injustices in public services, whether a government department, 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 for the Québec Ombudsman.

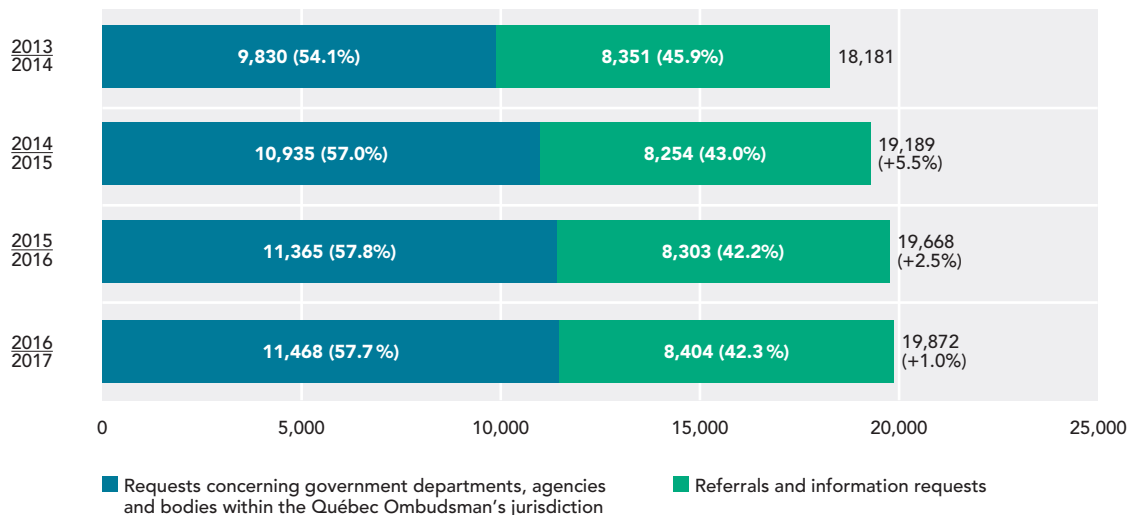
At the end of the investigation it conducts, the Québec Ombudsman informs the complainant of its conclusions. If the complaint is found to be substantiated, the government department, agency or institution concerned may be asked to introduce corrective measures, and the Québec Ombudsman monitors their 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 organizations 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



The category of requests concerning bodies (government departments, agencies, and health and social services institutions) within the Québec Ombudsman's jurisdiction includes requests for assistance as well as complaints and reports leading to an investigation.

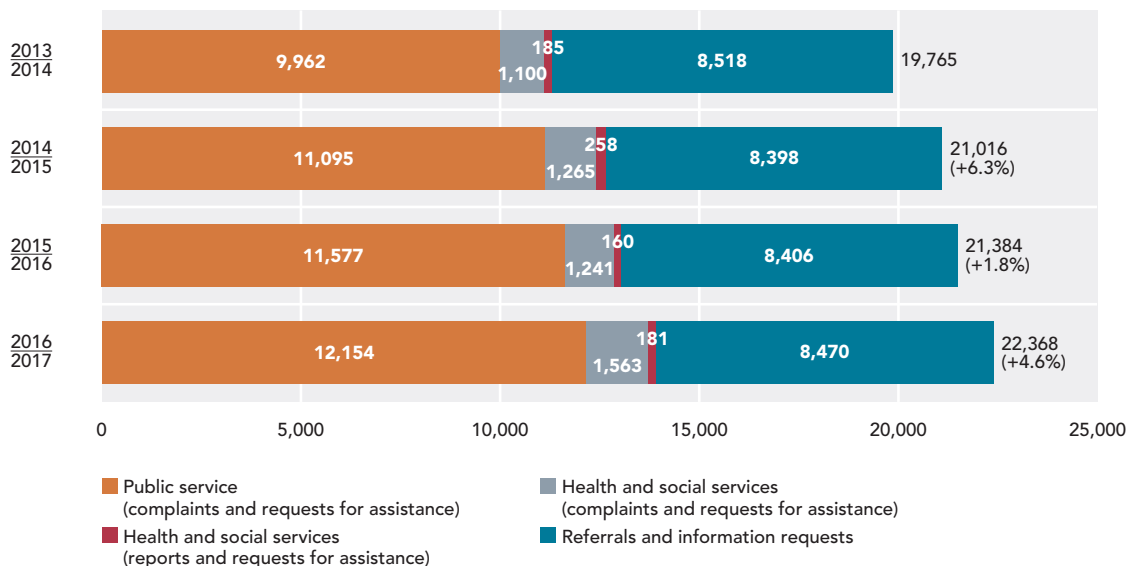
The total number of requests received went from 19,668 in 2015-2016 to 19,872 in 2016-2017, an increase of 1.0%. Of this number, the requests concerning bodies within the Québec Ombudsman's jurisdiction increased slightly (0.9%), going from 11,365 to 11,468. The proportion of requests within the Québec Ombudsman's jurisdiction in relation to the total number of requests remained stable at 57.7%.

The "referrals and information requests" category consists of the requests concerning organizations that are not within the Québec Ombudsman's jurisdiction.

Referrals and information requests were slightly higher than last year (by 0.01%). This type of request remains significant, accounting for 42.3% of all service requests received. It should be noted that 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 promptly referred to the appropriate resource.

## 2. CLOSED SERVICE REQUESTS

A service request can involve more than one ground for intervention by the Québec Ombudsman. Here, closed requests are calculated 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 2016-2017, there were 22,368 grounds for intervention among the 20,076 closed service requests.



There was an overall increase of 4.6% for closed service requests. For closed requests concerning bodies within the Québec Ombudsman's jurisdiction, whether in the public service sector or within the health and social services network, there was an increase of 7.1%<sup>14</sup> compared to last year.

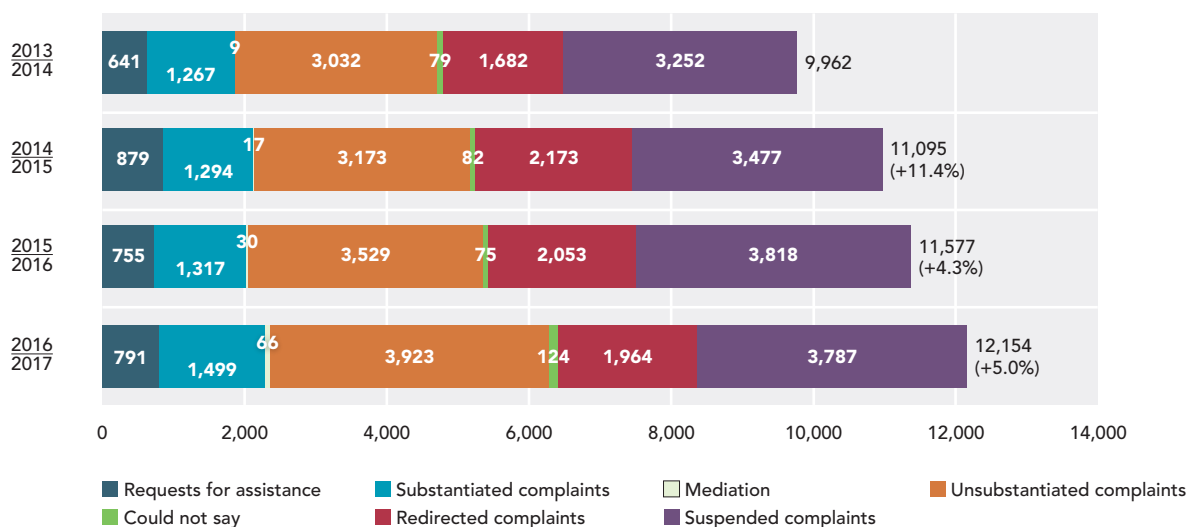
Still related to last year, more specifically for the public service sector, closed service requests increased by 5.0%. There was a 24.5% increase for closed complaints and reports concerning health and social services.

14. The amounts were calculated as follows:  $[(12,154 + 1,563 + 181) - (11,577 + 1,241 + 160)] / (11,577 + 1,241 + 160)$ .

### 3. CLOSED REQUESTS FOR ASSISTANCE, COMPLAINTS AND REPORTS

When a service request is deemed admissible, the Québec Ombudsman processes the requests for assistance and if a complaint or report is involved, it launches an investigation. The investigation might not be completed because, in light of the facts gathered, the Québec Ombudsman may refer the citizen to another resource (redirected complaint). It can also happen that the complaint or report is settled during the Québec Ombudsman's investigation, simply because the Québec Ombudsman has stepped in, or because the citizen does not follow up on the complaint or 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 requests for assistance and complaints – Public service



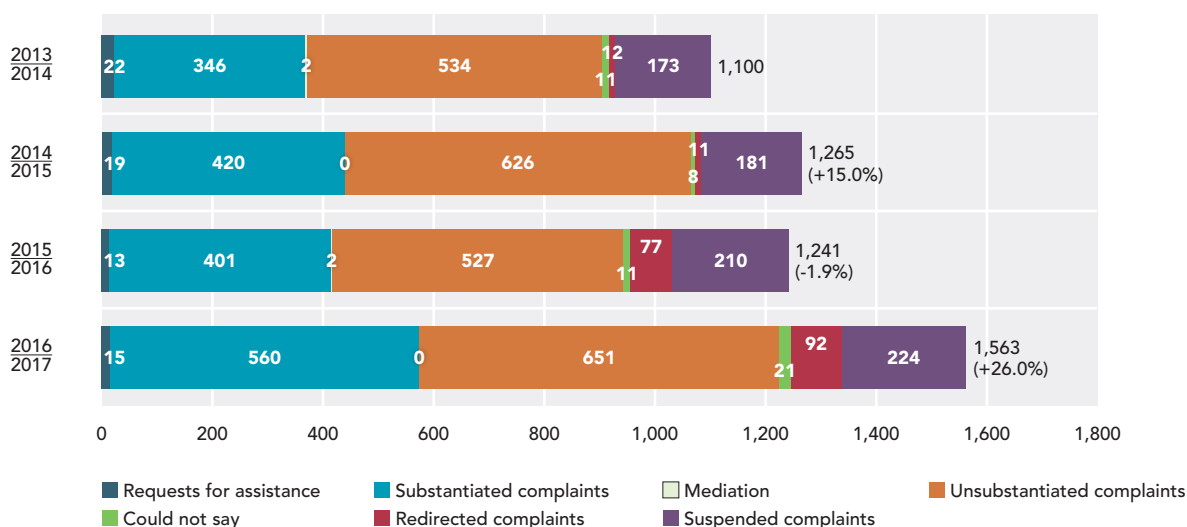
There was a 5.0% increase in closed requests compared to last year and an 11.7% increase compared to the average for the last three years.

Detailed breakdown:

TRENDS IN CLOSED REQUESTS BY TYPE OF CONCLUSION		
Type of conclusion	Compared to last year	Compared to the average for the last 3 years
Requests for assistance	Up by 4.8%	Up by 4.3%
Substantiated complaints	Up by 13.8%	Up by 16.0%
Mediation	Up by 36 requests*	Up by 47 requests*
Unsubstantiated complaints	Up by 11.2%	Up by 21.0%
Could not say	Up by 49 requests*	Up by 45 requests*
Redirected complaints	Down by 4.3%	Down by 0.3%
Suspended complaints	Down by 0.8%	Up by 7.7%

\* For statistical reasons, smaller amounts are shown in whole numbers rather than percentages.

### 3.2 Trends in closed complaints and requests for assistance – Health and social services



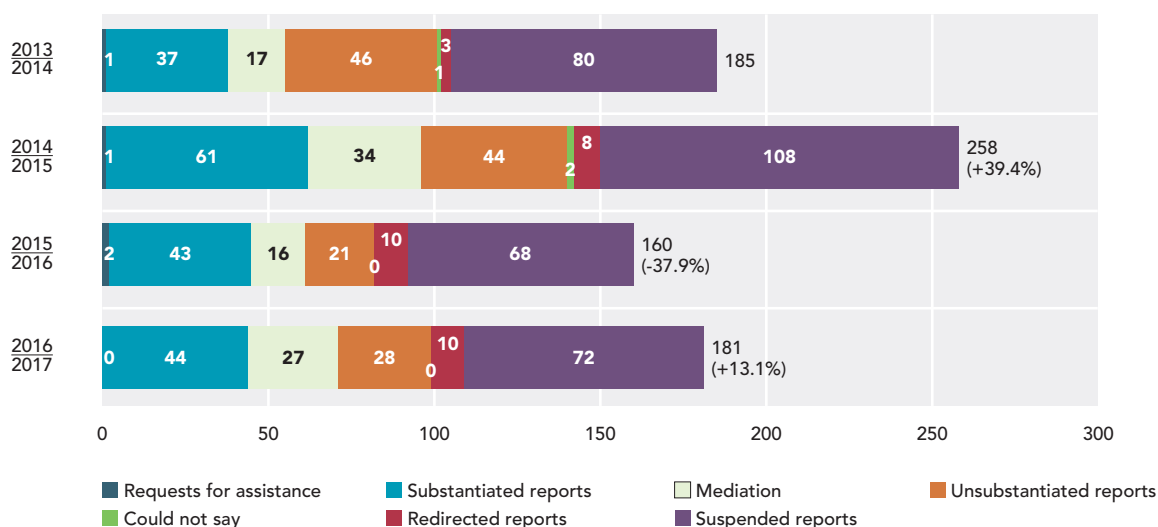
The number of requests for assistance and complaints regarding health and social services increased considerably. In fact, there was a 26.0% increase since last year and a 30.0% increase compared to the average for the last three years. The number of substantiated complaints has also increased by almost 40.0% compared to last year and by 44.0% compared to the average for the last three years.

Detailed breakdown:

TRENDS IN CLOSED COMPLAINTS BY TYPE OF CONCLUSION			
Type of conclusion		Compared to last year	Compared to the average for the last 3 years
Requests for assistance		Stable	Down by 16.7%
Substantiated complaints		Up by 39.7%	Up by 44.0%
Mediation		Stable	Stable
Unsubstantiated complaints		Up by 23.5%	Up by 15.8%
Could not say		Up by 10 requests*	Up by 11 requests*
Redirected complaints		Up by 15 requests*	Up by 59 requests*
Suspended complaints		Up by 6.7%	Up by 19.1%

\* For statistical reasons, smaller amounts are shown in whole numbers rather than percentages.

### 3.3 Trends in closed requests for assistance and reports – Health and social services



In terms of health and social services, the total number of closed reports increased by 13.1% compared to last year, but decreased by 10.0% (20 reports) compared to the average for the last three years.

Detailed breakdown:

TRENDS IN CLOSED REQUESTS BY TYPE OF CONCLUSION			
Type of conclusion		Compared to last year	Compared to the average for the last 3 years
Requests for assistance		Down by 2 requests*	Down by 1 request*
Substantiated reports		Up by 1 report*	Down by 3 reports*
Mediation		Up by 11 reports*	Up by 5 reports*
Unsubstantiated reports		Up by 7 reports*	Down by 9 reports*
Could not say		None	Down by 1 report*
Redirected reports		None	Up by 3 reports*
Suspended reports		Up by 4 reports*	Down by 13 reports*

\* For statistical reasons, smaller amounts are shown in whole numbers rather than percentages.

### 3.4 Proportion of substantiated complaints and reports

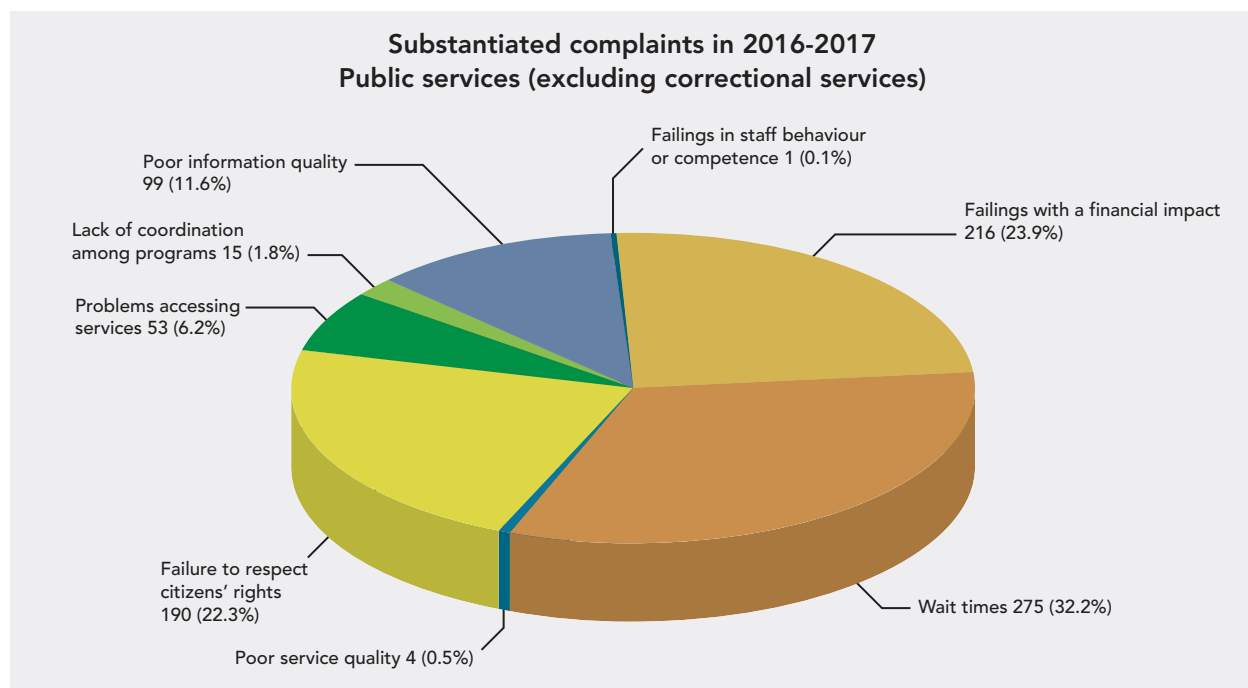
SECTOR	2013-2014	2014-2015	2015-2016	2016-2017
Substantiated complaints concerning the public service	29.5%	29.0%	27.2%	27.6%
Substantiated complaints and reports concerning health and social services	39.8%	41.8%	44.8%	47.1%

The proportion of substantiated complaints and reports is established as follows:

Number of substantiated complaints and reports / (Number of substantiated complaints and reports) + (Number of unsubstantiated complaints and reports).

The proportion of substantiated public service complaints increased slightly (by 0.4 of a percentage point) compared to last year. In terms of health and social services, the proportion of substantiated complaints and reports increased by 2.3 percentage points compared to last year and by 7.3 percentage points compared to 2013-2014. Within that sector, almost one out of two complaints or reports (47.1%) was deemed substantiated.

### 3.5 Profile of substantiated complaints and reports



The numbers presented in this graph were rounded off, therefore it is possible that the total percentage amount is not equal to 100.

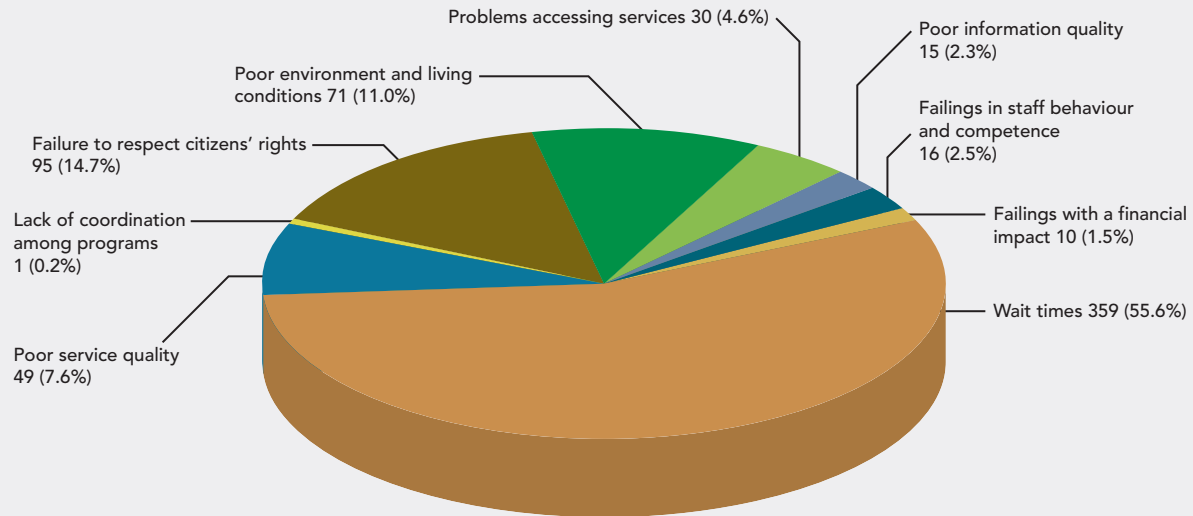
In public services (excluding correctional services), wait times, failings with a financial impact and failure to respect citizens' rights accounted for 78.4% of substantiated complaints.

Wait times, which ranked first in terms of grounds for complaints, were the subject of 275 substantiated complaints this year, 8 fewer than last year. The Commission des normes, de l'équité, de la santé et de la sécurité du travail generated the greatest number of substantiated complaints about wait times (61 complaints). Half of these complaints (31) concern the Direction de l'indemnisation des victimes d'actes criminels. On the other hand, wait times represent 88.9% (24 out of 27) of substantiated complaints concerning the Régie du logement.

Failings with a financial impact ranked second in terms of substantiated grounds for complaint, with 23.9%. In this category, the Agence du revenu du Québec (86 complaints), the Commission des normes, de l'équité, de la santé et de la sécurité du travail (46 complaints) as well as the Société de l'assurance automobile du Québec (37 complaints) accounted for more than 78.2% of the total number of substantiated complaints.

The "failure to respect citizens' rights" category mainly concerns the 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 (68.4%) concerned the following bodies: the Société de l'assurance automobile du Québec (40 complaints), the Ministère du Travail, de l'Emploi et de la Solidarité sociale (37 complaints), the Commission des normes, de l'équité, de la santé et de la sécurité du travail (34 complaints) and the Agence du revenu du Québec (19 complaints).

### Substantiated complaints in 2016-2017 Correctional services

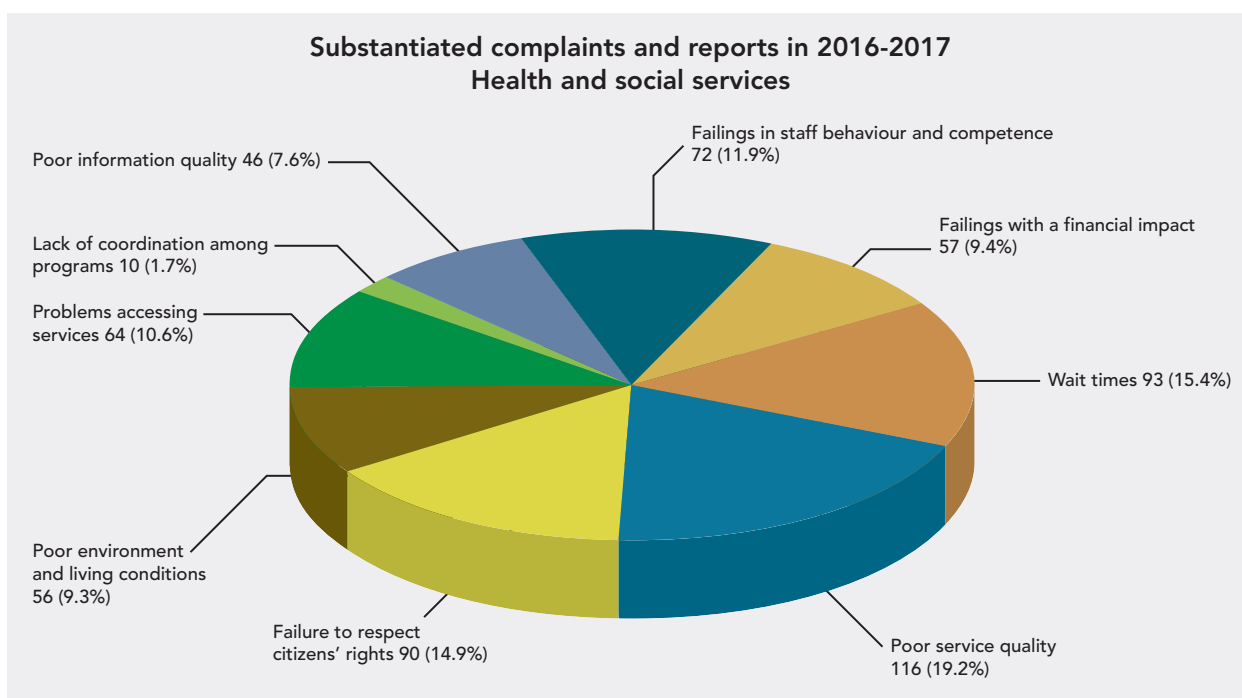


The numbers presented in this graph were rounded off, therefore it is possible that the total percentage amount is not equal to 100. It should be noted that file codification was reviewed this year for better distribution of the different categories of adverse effects. It is therefore impossible to compare these results with those of last year.

As for complaints concerning correctional services (Ministère de la Sécurité publique and Commission québécoise des libérations conditionnelles), "wait times" was the category in which the number of substantiated complaints was the highest, with more than one out of two complaints (55.6%) being substantiated. The time it took to give personal effects back to detainees and to provide them with medication or nicotine replacement products accounted in large part for this increase.

The "failure to respect citizens' rights" category came second, with 14.7% of substantiated complaints. These failings concerned:

- non-compliance with rules or procedures established by a law, regulation or order in council (e.g. illegal detention);
- requests, constraints or obligations that exceed the usual criteria and standards;
- non-compliance with the complaint examination procedure and legal obligations;
- non-compliance with the rules concerning outings and visits authorized or allowed for a category of detainees.



The numbers presented in this graph were rounded off, therefore it is possible that the total percentage amount is not equal to 100.

For health and social services complaints and reports, the “poor service quality” category was still first (as it has been for many years), with 19.2%. These failings mostly concerned:

- the absence, inadequacy, lack of respect of or the failure to implement the clinical protocols or procedures governing care and service delivery (prevention of infections, isolation, accident/incident reports, etc.);
- flaws in the organization 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 (e.g. deficient supervision of a user, preventive isolation or searches that do not comply with rules).

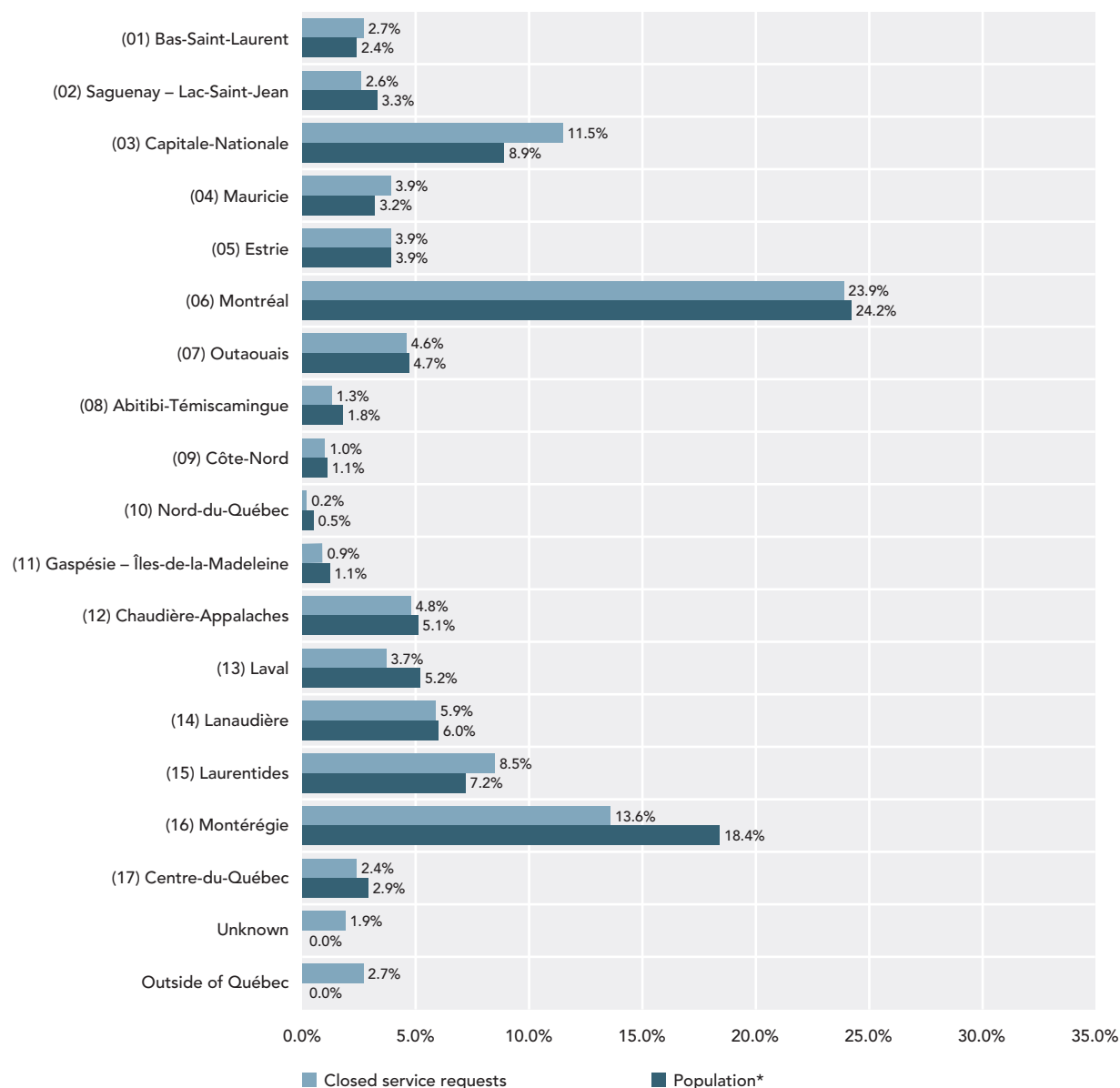
Wait times ranked second in terms of the most frequent substantiated grounds, up by 4.4 points compared to last year. For the most part, this concerned wait times for the processing of health files or complaint mechanisms.

In many cases, the “failure to respect citizens’ rights” category concerned the 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 regarding 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 requests for public service assistance and complaints<sup>15</sup> by the administrative region of the citizen

Proportion of closed public service requests/Proportion of the population



\* Source: Provisional data as at July 1, 2016. Institut de la statistique du Québec, Direction des statistiques sociodémographiques.

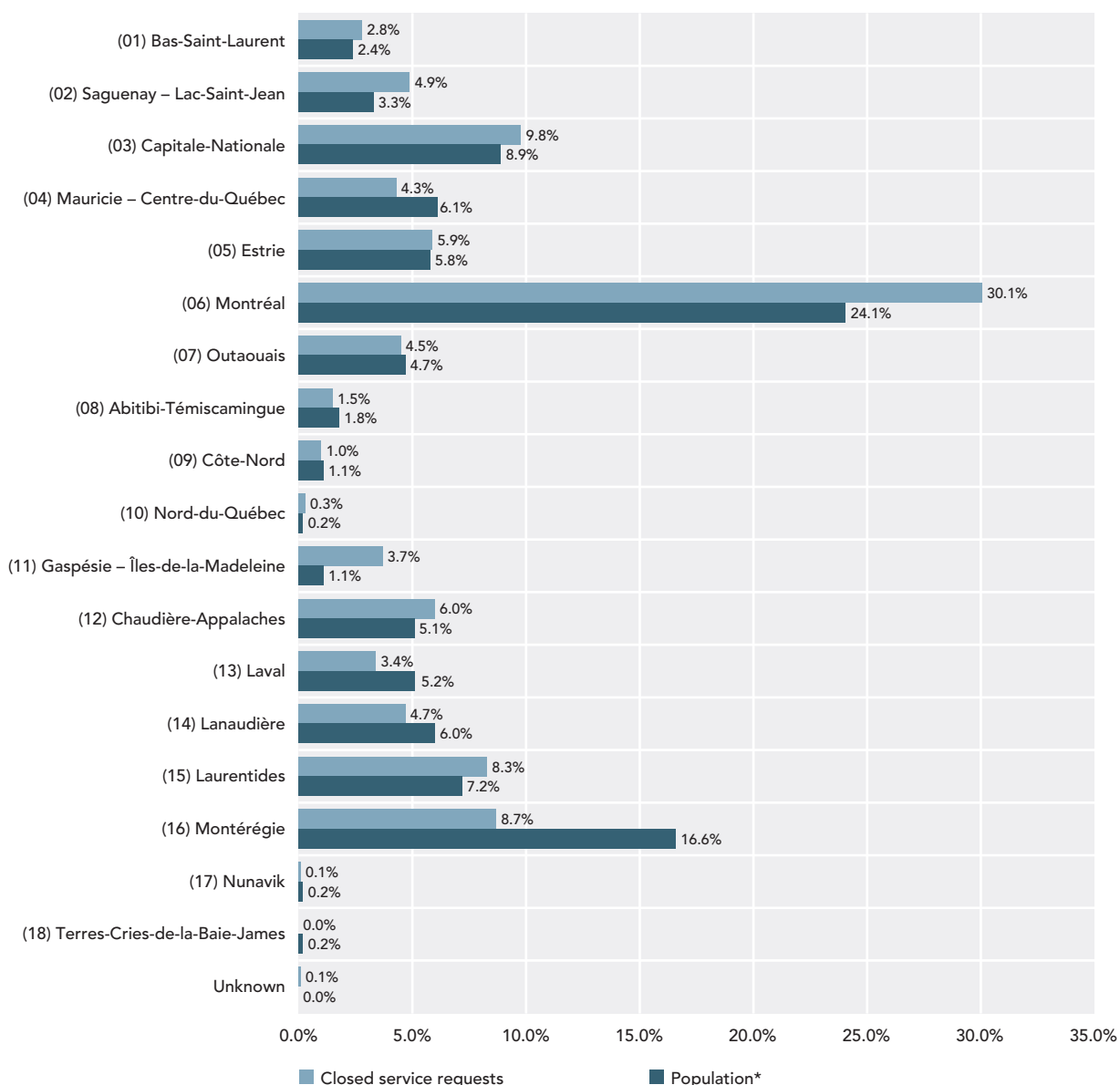
For the public service sector, regional statistics were compiled based on citizens' addresses. In general, the requests were proportional to the regional breakdown of the population. In fact, of the 17 regions, the greatest difference between the proportion of the region's population and the percentage of closed requests was in Montérégie, where there was a 4.8-point gap. We also noted that in the Capitale-Nationale region, the proportion of closed requests was 2.6 points higher than the proportion of the population.

15. This breakdown does not include the source of service requests from detainees, who are concentrated in certain regions of Québec.

## 4.2 Source of closed requests for assistance, complaints and reports in health and social services by health and social service region of the institution 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 institutions within a given health and social service region are accountable for the services provided to the citizens according to an official delimitation set by the Ministère de la Santé et des Services sociaux.

### Proportion of closed requests for health and social services/Proportion of the population by health and social service region



\* Source: Provisional data as at July 1, 2016. Institut de la statistique du Québec, Direction des statistiques sociodémographiques.

Regional statistics for the health and social services sector are based on data corresponding to the address of the institution which is the subject of the request.

Apart from the Montérégie region, which is under-represented, and the Montréal region, which is over-represented, the number of requests regarding institutions within the health and social services network was relatively proportional to the population of the regions served.

## 5. MONITORING OF CORRECTIVE MEASURES

At the end of an investigation by the Québec Ombudsman and the transmission of its conclusions, the bodies concerned accept a very high proportion of the recommended corrective measures.

### 5.1 Case-specific measures accepted

SECTOR	2013-2014	2014-2015	2015-2016	2016-2017	2016-2017	
					Accepted	Refused
Public service (complaints)	99.5%	97.1%	98.4%	98.8%	822	10
Health and social services (complaints)	94.0%	97.6%	99.1%	98.8%	164	2
Health and social services (reports)	100.0%	94.7%	100.0%	100.0%	6	0
<b>Total</b>	<b>98.8%</b>	<b>97.1%</b>	<b>98.5%</b>	<b>98.8%</b>	<b>992</b>	<b>12</b>

The acceptance rate for case-specific measures recommended by the Québec Ombudsman reached 98.8% this year, 992 measures out of 1,004 having been accepted. The measures that were accepted concerned 51 bodies. The 12 measures that were refused concerned six departments and agencies.

### 5.2 Accepted measures with a collective impact

SECTOR	2013-2014	2014-2015	2015-2016	2016-2017	2016-2017	
					Accepted	Refused
Public service (complaints)	99.7%	100.0%	97.2%	98.6%	141	2
Health and social services (complaints)	97.9%	97.9%	97.9%	98.6%	347	5
Health and social services (reports)	100.0%	91.1%	100.0%	100.0%	53	0
<b>Total</b>	<b>99.1%</b>	<b>97.7%</b>	<b>97.9%</b>	<b>98.7%</b>	<b>541</b>	<b>7</b>

This year, the acceptance rate for measures with a collective impact that were recommended by the Québec Ombudsman reached 98.7%, 541 measures out of 548 having been accepted. The measures that were accepted concerned 53 bodies. The measures that were refused mainly concerned the health and social services sector.

## 6. PROFILE OF REQUESTS FOR ASSISTANCE, COMPLAINTS AND REPORTS BY BODY AND BY MISSION OR PROGRAM

In 2016-2017, the Québec Ombudsman intervened with:

- 58 of the 78 government departments and agencies within its jurisdiction, or 74.4%;
- 36 of the 51 institutions within the health and social services network, or 70.6%;
- 9 of the 81 other institutions associated with the network, or 11.0%;
- 34 private residential facilities, 9 community organizations and 4 pre-hospital emergency services.

### 6.1 Public service complaints concerning government departments and agencies for which at least 10 substantiated complaints were received

AGENCY	Substantiated complaints			
	2013-2014	2014-2015	2015-2016	2016-2017
Commission des normes, de l'équité, de la santé et de la sécurité du travail	85	88	124	161
Agence du revenu du Québec	105	158	136	130
Société de l'assurance automobile du Québec	91	79	86	108
Retraite Québec	51	50	80	68
Régie du logement	39	30	29	27
Régie de l'assurance maladie du Québec	13	16	24	22
Commissaire à la déontologie policière	5	2	10	25
Commission d'accès à l'information	5	11	4	13
Curateur public	8	8	7	10

DEPARTMENT	Substantiated complaints			
	2013-2014	2014-2015	2015-2016	2016-2017
Sécurité publique (including correctional services)	638	560	504	653
Travail, Emploi et Solidarité sociale	98	133	121	111
Immigration, Diversité et Inclusion	11	25	36	40
Éducation et Enseignement supérieur	24	29	38	33
Développement durable, Environnement et Lutte contre les changements climatiques	10	12	10	13
Justice	8	7	14	12
Other departments and agencies	76	86	94	73
<b>TOTAL: DEPARTMENTS AND AGENCIES</b>	<b>1,267</b>	<b>1,294</b>	<b>1,317</b>	<b>1,499</b>

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. There were also noticeable increases regarding the Ministère de la Sécurité publique (particularly for correctional services) as well as the Commissaire à la déontologie policière, the Société de l'assurance automobile du Québec and the Commission d'accès à l'information.

## 6.2 Closed requests by department or agency, by processing outcome<sup>16</sup>

AGENCY/COMPONENT	REQUESTS RECEIVED IN 2016-2017	Closed requests in 2016-2017							Total
		Requests for assistance	Complaints						
			Substantiated	Unsubstantiated	Mediation	Could not say	Redirected	Suspended	
Agence du revenu du Québec									
Direction principale des biens non réclamés	15	3	5	8	—	1	—	5	22
Fiscalité	1,298	173	104	462	58	8	6	554	1,365
Perception des pensions alimentaires	126	8	17	61	—	—	6	26	118
Registraire des entreprises	20	1	2	5	1	—	—	11	20
General	16	—	2	4	—	—	—	12	18
Total: Agence du revenu du Québec	1,475	185	130	540	59	9	12	608	1,543
Assemblée nationale	1	—	—	—	—	—	—	1	1
Autorité des marchés financiers	18	—	—	10	—	—	—	9	19
Bureau des enquêtes indépendantes	3	—	—	—	—	—	—	1	1
Bureau du coroner	9	1	4	1	—	—	1	—	7
Centre de services partagés du Québec	23	—	3	17	—	—	2	4	26
Comité de déontologie policière	3	—	—	3	—	—	—	3	6
Commissaire à la déontologie policière	102	1	25	55	—	—	1	25	107
Commissaire à la lutte contre la corruption	2	—	—	—	—	—	—	1	1
Commission d'accès à l'information	33	3	13	10	—	1	1	6	34
Commission de la fonction publique du Québec	4	1	—	—	—	—	—	4	5
Commission de protection du territoire agricole du Québec	11	1	1	6	—	—	—	5	13
Commission des normes, de l'équité, de la santé et de la sécurité du travail									
Équité salariale	0	—	—	—	—	—	—	—	0
Indemnisation	651	90	70	255	—	6	27	259	707
Indemnisation des victimes d'actes criminels	379	28	88	163	1	2	6	103	391
Normes du travail	55	7	1	15	—	—	8	23	54
General	38	4	2	13	—	—	2	19	40
Total: Commission des normes, de l'équité, de la santé et de la sécurité du travail	1,123	129	161	446	1	8	43	404	1,192

16. The number of service requests processed in one year (and thus the number of closed requests) does not necessarily match the number of service requests received. In fact, at the start of each year, investigations into service requests received previously are still being processed.

AGENCY/COMPONENT	REQUESTS RECEIVED IN 2016-2017	Closed requests in 2016-2017							
		Requests for assistance	Complaints						Total
			Substantiated	Unsubstantiated	Mediation	Could not say	Redirected	Suspended	
Commission des transports du Québec	1	—	—	1	—	—	—	1	2
Commission municipale du Québec	1	1	—	—	—	—	—	—	1
Commission québécoise des libérations conditionnelles	14	2	—	2	—	—	3	7	14
Conseil de la justice administrative	3	—	—	—	—	—	—	2	2
Conseil de la magistrature	5	—	—	—	—	—	1	4	5
Conseil du patrimoine culturel du Québec	1	—	—	—	—	—	—	—	0
Curateur public	194	9	10	85	1	1	6	89	201
Directeur des poursuites criminelles et pénales	8	1	—	1	—	—	—	6	8
Institut de la statistique du Québec	1	—	—	—	—	—	—	1	1
Institut national d'excellence en santé et en services sociaux	1	1	—	—	—	—	—	—	1
La Financière agricole du Québec	2	—	2	2	—	—	—	1	5
Office de la protection du consommateur	22	—	2	7	—	—	5	8	22
Office des personnes handicapées du Québec	2	—	—	1	—	—	1	—	2
Office des professions du Québec	13	3	4	2	—	—	—	5	14
Office québécois de la langue française	1	—	—	1	—	—	—	—	1
Régie de l'assurance maladie du Québec	254	36	22	131	1	1	18	40	249
Régie des alcools, des courses et des jeux	7	—	4	2	—	—	—	1	7
Régie des marchés agricoles et alimentaires du Québec	1	—	1	—	—	—	1	—	2
Régie du bâtiment du Québec	36	1	6	9	—	—	6	10	32
Régie du logement	153	21	27	29	—	8	1	86	172
Retraite Québec									
Régime de rentes du Québec et Soutien aux enfants	376	24	58	209	—	10	1	96	398
Régime de retraite du secteur public	31	1	10	17	—	—	—	8	36
General	1	—	—	4	—	—	—	1	5
Total: Retraite Québec	408	25	68	230	0	10	1	105	439

AGENCY/COMPONENT	REQUESTS RECEIVED IN 2016-2017	Closed requests in 2016-2017							
		Requests for assistance	Complaints						Total
			Substantiated	Unsubstantiated	Mediation	Could not say	Redirected	Suspended	
Secrétariat du Conseil du trésor	3	—	—	—	—	—	—	2	2
Société de l'assurance automobile du Québec									
Code de la sécurité routière	252	15	31	154	—	—	3	46	249
Indemnisation	548	57	77	259	—	4	11	142	550
General	2	—	—	—	—	—	—	—	0
<b>Total: Société de l'assurance automobile du Québec</b>	<b>802</b>	<b>72</b>	<b>108</b>	<b>413</b>	<b>0</b>	<b>4</b>	<b>14</b>	<b>188</b>	<b>799</b>
Société d'habitation du Québec	50	5	1	19	—	—	2	28	55
Tribunal administratif du Québec	47	5	7	12	—	—	1	21	46
Tribunal administratif du travail									
Lésions professionnelles	12	3	1	5	—	—	1	7	17
Relations du travail	41	7	—	5	—	—	15	13	40
General	2	2	—	—	—	—	—	—	2
<b>Total: Tribunal administratif du travail</b>	<b>55</b>	<b>12</b>	<b>1</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>16</b>	<b>20</b>	<b>59</b>
<b>Total: Agencies</b>	<b>4,892</b>	<b>515</b>	<b>600</b>	<b>2,045</b>	<b>62</b>	<b>42</b>	<b>136</b>	<b>1,696</b>	<b>5,096</b>

DEPARTMENT/COMPONENT	REQUESTS RECEIVED IN 2016-2017	Closed requests in 2016-2017							
		Requests for assistance	Complaints						Total
			Substantiated	Unsubstantiated	Mediation	Could not say	Redirected	Suspended	
Affaires municipales et Occupation du territoire	33	1	6	15	—	2	3	12	39
Agriculture, Pêcheries et Alimentation	12	1	4	1	—	—	—	6	12
Conseil exécutif	1	—	—	1	—	—	—	—	1
Culture et Communications	20	4	1	5	—	—	—	7	17
Développement durable, Environnement et Lutte contre les changements climatiques	53	3	13	32	—	—	—	17	65
Économie, Science et Innovation	3	—	1	3	—	—	—	1	5
Éducation et Enseignement supérieur									
Aide financière aux études	184	25	28	59	—	—	4	51	167
Éducation	98	9	2	12	—	—	32	27	82
Enseignement supérieur	17	1	2	6	3	—	2	1	15
General	16	1	1	1	—	—	2	4	9
<b>Total: Éducation et Enseignement supérieur</b>	<b>315</b>	<b>36</b>	<b>33</b>	<b>78</b>	<b>3</b>	<b>0</b>	<b>40</b>	<b>83</b>	<b>273</b>

DEPARTMENT/COMPONENT	REQUESTS RECEIVED IN 2016-2017	Closed requests in 2016-2017							
		Requests for assistance	Complaints						Total
			Substantiated	Unsubstantiated	Mediation	Could not say	Redirected	Suspended	
Énergie et Ressources naturelles	66	3	8	26	—	—	—	40	77
Famille	48	5	4	7	—	—	2	15	33
Finances	14	1	—	6	—	—	—	5	12
Forêts, Faune et Parcs	31	—	—	12	—	1	—	7	20
Immigration, Diversité et Inclusion	125	5	40	67	—	—	2	29	143
Justice	75	4	12	31	—	—	2	24	73
Relations internationales et Francophonie	4	—	—	2	1	—	—	1	4
Santé et Services sociaux	56	3	4	10	—	—	6	36	59
Sécurité publique									
Sécurité civile	6	—	—	1	—	—	—	—	1
Services correctionnels	4,885	89	646	933	—	75	1,738	1,468	4,949
General	37	2	7	8	—	—	—	15	32
Total: Sécurité publique	4,928	91	653	942	0	75	1,738	1,483	4,982
Tourisme	1	—	—	—	—	—	—	1	1
Transports, Mobilité durable et Électrification des transports	92	9	9	41	—	—	1	32	92
Travail, Emploi et Solidarité sociale									
Directeur de l'état civil	34	—	—	22	—	—	2	7	31
Emploi	126	5	11	90	—	3	—	28	137
Régime québécois d'assurance parentale	36	1	4	21	—	—	—	6	32
Secrétariat du travail	1	—	—	—	—	—	—	1	1
Services Québec	9	1	1	4	—	1	—	2	9
Solidarité sociale	942	102	95	456	—	—	30	245	928
General	12	1	—	6	—	—	2	3	12
Total: Travail, Emploi et Solidarité sociale	1,160	110	111	599	0	4	34	292	1,150
Total: Departments	7,037	276	899	1,878	4	82	1,828	2,091	7,058
Total: Departments and agencies	11,929	791	1,499	3,923	66	124	1,964	3,787	12,154

### 6.3 Closed requests for assistance and complaints in health and social services, by mission<sup>17</sup>

CATEGORY/MISSION	REQUESTS RECEIVED IN 2016-2017	Closed requests in 2016-2017							
		Requests for assistance	Complaints						Total
			Substantiated	Unsubstantiated	Mediation	Could not say	Redirected	Suspended	
Institutions									
Rehabilitation centres	83	1	32	40	—	3	4	8	88
Residential and long-term care centres	128	2	37	38	—	—	7	20	104
Hospital centres	640	8	326	300	—	9	38	79	760
Youth centres	229	2	29	117	—	3	20	63	234
Local community service centres	234	—	101	105	—	1	21	38	266
Complaints commissioners or other	34	—	12	13	—	3	—	10	38
Total: Institutions	1,348	13	537	613	0	19	90	218	1,490
Community organizations	17	—	9	9	—	—	—	1	19
Private residential facilities	34	2	11	11	—	2	2	4	32
Pre-hospital emergency services	22	—	3	18	—	—	—	1	22
Total	1,421	15	560	651	0	21	92	224	1,563

More than 48.6% of closed complaints and requests for assistance concerned hospital centres. The percentage of substantiated complaints was relatively high, at 52.1%.<sup>18</sup> Local community service centres (CLSCs) were also the subject of several requests. The proportion of substantiated complaints was 49.0%.

Youth centres saw an increase of 70.8% in the number of requests compared to last year (from 137 to 234). It is important to note that the Québec Ombudsman's scope for action is more limited in this sector. In fact, it does not have the power to have a decision by the Court of Québec (Youth Division) amended and it cannot question the clinical decisions by the youth protection directorate (DPJ) concerning the evaluation of a report. The result is a low number of admissible and substantiated complaints (29).

17. The number of service requests processed in one year (and thus the number of closed requests) does not necessarily match the number of service requests received. In fact, at the start of each year, investigations into service requests received previously are still being processed.

18. The following equation is used to calculate the percentage of substantiated complaints: Number of substantiated complaints / (Number of substantiated complaints) + (Number of unsubstantiated complaints).

#### 6.4 Closed requests for assistance and reports<sup>19</sup> in health and social services, by mission<sup>20</sup>

CATEGORY/MISSION	REQUESTS RECEIVED IN 2016-2017	Closed requests in 2016-2017							
		Requests for assistance	Reports						Total
			Substantiated	Unsubstantiated	Mediation	Could not say	Redirected	Suspended	
<b>Institutions</b>									
Rehabilitation centres	41	—	6	4	—	—	1	8	19
Residential and long-term care centres	44	—	5	2	—	—	—	16	23
Hospital centres	41	—	16	8	4	—	3	11	42
Youth centres	21	—	—	—	2	—	2	11	15
Local community service centres	19	—	9	4	—	—	2	6	21
Complaints commissioners or other	42	—	5	—	21	—	2	8	36
<b>Total: Institutions</b>	<b>208</b>	<b>0</b>	<b>41</b>	<b>18</b>	<b>27</b>	<b>0</b>	<b>10</b>	<b>60</b>	<b>156</b>
<b>Community organizations</b>	<b>2</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>0</b>
<b>Private residential facilities</b>	<b>23</b>	<b>—</b>	<b>3</b>	<b>10</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>11</b>	<b>24</b>
<b>Pre-hospital emergency services</b>	<b>1</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>—</b>	<b>1</b>	<b>1</b>
<b>Total</b>	<b>234</b>	<b>0</b>	<b>44</b>	<b>28</b>	<b>27</b>	<b>0</b>	<b>10</b>	<b>72</b>	<b>181</b>

19. 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*; (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).

20. The number of service requests processed in one year (and thus the number of closed requests) does not necessarily match the number of service requests received. In fact, at the start of each year, investigations into service requests received previously are still being processed.

## 6.5 Closed requests for assistance and complaints in health and social services, by program<sup>21</sup>

PROGRAMS OF THE HEALTH AND SOCIAL SERVICES NETWORK	REQUESTS RECEIVED IN 2016-2017	Closed requests in 2016-2017							
		Requests for assistance	Complaints						Total
			Substantiated	Unsubstantiated	Mediation	Could not say	Redirected	Suspended	
Buildings and equipment	5	—	2	1	—	—	—	2	5
Intellectual disability/Autism spectrum disorders	62	1	31	28	2	—	5	5	72
Physical disability	92	—	31	53	2	—	3	5	94
Addictions	5	—	—	3	—	—	1	2	6
Troubled youth	225	2	26	117	4	—	19	66	234
Physicians	25	—	14	1	—	—	3	11	29
Complaint examination procedure	53	2	41	6	1	—	2	4	56
Mental health	135	3	37	74	—	—	10	20	144
Physical health	404	3	237	174	8	—	23	55	500
Support for elderly autonomy	208	2	67	64	4	—	14	40	191
Service support	202	2	74	130	—	—	12	12	230
Total	1,416	15	560	651	21	0	92	222	1,561
Other	5	—	—	—	—	—	—	2	2
<b>Total</b>	<b>1,421</b>	<b>15</b>	<b>560</b>	<b>651</b>	<b>21</b>	<b>0</b>	<b>92</b>	<b>224</b>	<b>1,563</b>

This year, physical health, service support, troubled youth and support for elderly autonomy were the programs for which the greatest number of closed complaints and requests for assistance were received (73.9%). The physical health program accounted for 57.7%<sup>22</sup> of substantiated complaints, which was above the average for programs.

Furthermore, the support for elderly autonomy program, relatively stable as to the number of closed complaints, had a higher proportion of substantiated complaints this year, at 51.1%, compared to an average of 40.0% for the preceding three years.

With the least number of closed complaints (56), the complaint examination procedure had a high number of substantiated complaints (87.2%).

As for the troubled youth program, the percentage of substantiated complaints almost doubled, compared to the average for the past three years (18.2% and 9.2% respectively), even though the Québec Ombudsman's scope of action is more limited with regard to this program (see the explanation in section 6.3).

21. The number of service requests processed in one year (and thus the number of closed requests) does not necessarily match the number of service requests received. In fact, at the start of each year, investigations into service requests received previously are still being processed.

22. The following equation is used to calculate the percentage of substantiated complaints: Number of substantiated complaints / (Number of substantiated complaints) + (Number of unsubstantiated complaints).

## 6.6 Closed requests for assistance and reports<sup>23</sup> in health and social services, by program<sup>24</sup>

PROGRAMS OF THE HEALTH AND SOCIAL SERVICES NETWORK	REQUESTS RECEIVED IN 2016-2017	Closed requests in 2016-2017							
		Requests for assistance	Reports						Total
			Substantiated	Unsubstantiated	Mediation	Could not say	Redirected	Suspended	
Buildings and equipment	0	—	—	—	—	—	—	1	1
Intellectual disability/Autism spectrum disorders	39	—	5	5	—	—	—	5	15
Physical disability	5	—	1	—	—	—	1	4	6
Addictions	2	—	—	1	—	—	1	—	2
Troubled youth	15	—	—	—	—	—	2	10	12
Physicians	2	—	—	1	—	—	—	1	2
Complaint examination procedure	35	—	6	1	26	—	—	5	38
Mental health	35	—	8	5	—	—	2	9	24
Physical health	22	—	13	1	1	—	—	5	20
Public health	1	—	—	—	—	—	1	—	1
Support for elderly autonomy	74	—	9	13	—	—	2	30	54
Service support	2	—	—	—	—	—	1	1	2
Other	2	—	2	1	—	—	—	1	4
Total	234	0	44	28	27	0	10	72	181

## 7. A SECTOR OUTSIDE THE QUÉBEC OMBUDSMAN'S JURISDICTION BUT FOR WHICH SERVICE REQUESTS RAISED CONCERNS

This year, there were 218 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 as well as refusal to reimburse deposits. These are problematic situations for which recourse cannot be sought with the Régie de l'énergie.

AGENCY	2013-2014	2014-2015	2015-2016	2016-2017
Hydro-Québec	310	833	406	218

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*; (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 requests) does not necessarily match the number of service requests received. In fact, at the start of each year, investigations into service requests received previously are still being processed.

# 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

MINISTÈRE DE LA FAMILLE		
COORDINATING OFFICES		
RECOMMENDATION 2014-2015	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2016-2017
<p>That the Ministère de la Famille take steps to have the following amendments made:</p> <ul style="list-style-type: none"> <li>• To the <i>Educational Childcare Act</i>, to provide for recourse to the Tribunal administratif du Québec regarding coordinating offices' decisions to refuse to grant recognition to home childcare providers;</li> <li>• To the <i>Educational Childcare Regulation</i>, to provide for the obligation for coordinating offices to justify their decisions to turn down applications for recognition;</li> <li>• To the <i>Educational Childcare Regulation</i>, to provide for the obligation for coordinating offices to keep the files of applications for recognition that have not been approved.</li> </ul>	<p><b>WILL MONITOR</b> implementation of the work plan developed by the Ministère de la Famille to establish recourse to the Tribunal administratif du Québec.</p> <p><b>SATISFIED</b> with the directive obliging coordinating offices to transmit a written decision with explanations as to why an application for recognition has been turned down.</p> <p><b>SATISFIED</b> with the directive obliging coordinating offices to keep the files of refused applications for recognition for 12 months.</p>	<p><b>DISSATISFIED</b> with the time it is taking to begin amending the <i>Educational Childcare Act</i> so as to provide for the requested recourse to the Tribunal administratif du Québec.</p>

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE – SERVICES CORRECTIONNELS		
PROVINCIAL INSTRUCTION ON THE HEALTH NEEDS OF DETAINEES		
RECOMMENDATIONS 2011-2012	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2016-2017
<p><b>That</b> the Ministère de la Sécurité publique implement transitional measures regarding transfer criteria as soon as possible.</p> <p><b>That</b> it begin work to implement the recommendations stemming from the task force report without delay and complete the work by December 31, 2012.</p> <p><b>That</b> it submit a progress report to the Québec Ombudsman no later than September 15, 2012.</p>	<p><b>DISSATISFIED</b> that the Department did not take any steps to improve the situation in 2015-2016.</p>	<p><b>WILL MONITOR</b> the work underway concerning the transfer of responsibility to the Ministère de la Santé et des Services sociaux for the healthcare delivered in correctional facilities. The Québec Ombudsman expects there to be mechanisms to limit the adverse effects of inter-facility transfers on detainees' health.</p>

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE AND COMMISSION QUÉBÉCOISE DES LIBÉRATIONS CONDITIONNELLES		
EXAMINATION OF CONDITIONAL RELEASE		
RECOMMENDATIONS 2013-2014	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2016-2017
<p><b>That</b> 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.</p>	<p><b>DISSATISFIED</b> 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.</p>	<p><b>WILL MONITOR</b> the preliminary results of the <i>Accès au droit et à la justice</i> research project involving the Department and the Commission concerning the waiver phenomenon in particular.</p>
<p><b>That</b> they establish, by March 31, 2015, a mechanism or mechanisms aimed at decreasing the number of waivers.</p>	<p><b>DISSATISFIED</b> 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.</p>	<p><b>WILL MONITOR</b> the Commission's efforts to curb the increase in the rate of waivers.</p>
<p><b>That</b> they transmit, by March 31, 2015, a report on the action carried out and the results obtained to the Québec Ombudsman.</p>	<p><b>DISSATISFIED</b> that the rate of waivers of the right to examination of applications for conditional release has not decreased significantly.</p>	<p><b>WILL MONITOR</b> the decrease in the rate of waivers, which seems to be continuing.</p>

**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**

<b>RECOMMENDATIONS 2008-2009</b>	<b>QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016</b>	<b>QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2016-2017</b>
<p><b>That</b> 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.</p> <p><b>That</b> they report to the Québec Ombudsman on the changes made by January 31, 2010.</p>	<p><b>DISSATISFIED</b> 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.</p>	<p><b>WILL MONITOR</b> implementation of the Ministère de la Sécurité publique's deployment plan to forward a complete file to the Commission 14 days before the parole hearing and five days before study of an application for a temporary absence.</p>

**MINISTÈRE DU TRAVAIL, DE L'EMPLOI ET DE LA SOLIDARITÉ SOCIALE**

**THE MANAGEMENT OF APPLICATIONS FOR ADMINISTRATIVE REVIEW  
AND CASES BEFORE THE TRIBUNAL ADMINISTRATIF DU QUÉBEC**

<b>RECOMMENDATIONS 2015-2016</b>	<b>QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016</b>	<b>QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2016-2017</b>
<p><b>That</b> the Ministère du Travail, de l'Emploi et de la Solidarité sociale commit to correcting the flaws in its recourse management within a year.</p> <p><b>That</b> it 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.</p> <p><b>That</b> it, in the meantime, have more stringent quality control so as to prevent other illegal recovery measures.</p> <p><b>That</b>, when the solution has been implemented, it verify the achievement of outcomes by means of ongoing quality control, and inform the Québec Ombudsman accordingly.</p>	<p>—</p>	<p><b>DISSATISFIED</b> that the Department did not correct the flaws within the recommended time frame.</p> <p><b>WILL MONITOR</b> implementation of the action plan produced on February 16, 2017.</p> <p><b>WILL MONITOR</b> introduction of the solution slated for March 2018.</p>

RÉGIE DU LOGEMENT		
LEGISLATIVE AMENDMENTS TO REDUCE WAIT TIMES		
RECOMMENDATIONS 2007-2008	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2016-2017
<p><b>That</b> 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.</p> <p><b>That</b> 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.</p>	<p><b>DISSATISFIED</b> with the lack of follow-up given that the problem of long wait times persists at the Régie du logement.</p>	<p><b>DISSATISFIED</b> with the long delays that persist.</p>

## MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX

MENTAL HEALTH		
MEANS OF CONTROL		
RECOMMENDATIONS 2009-2010	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2016-2017
<p><b>That</b>, 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.</p> <p><b>That</b> it assess the impact of implementing its guidelines.</p>	<p><b>DISSATISFIED</b> with the Department's refusal to produce a standardized data collection tool.</p> <p><b>WILL MONITOR</b> 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.</p> <p><b>DISSATISFIED</b> with the time it is taking to assess the impact of implementing the guidelines because this cannot happen until all institutions adopt common indicators.</p>	<p><b>DISSATISFIED</b> with the Department's slowness to identify mandatory accountability indicators for the use of means of control by institutions.</p> <p><b>DISSATISFIED</b> with the time it is taking to assess the impact of implementing the guidelines because this cannot happen until all institutions adopt common indicators.</p>

PHYSICAL DISABILITIES, INTELLECTUAL DISABILITIES AND AUTISM SPECTRUM DISORDERS		
AVAILABILITY OF SERVICES		
RECOMMENDATION 2009-2010	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2016-2017
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.	DISSATISFIED that the intellectual disability and autism spectrum disorder service offering was not reviewed in the spring of 2016 as planned.	DISSATISFIED that the intellectual disability service offering was still not available as at March 31, 2017.
CONTINUITY OF CARE AND SERVICES		
RECOMMENDATIONS 2011-2012	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2016-2017
<p>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.</p> <p>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.</p> <p>That it ensure that the CSSSs concerned immediately begin defining their clinical and organizational projects for people with disabilities.</p>	WILL MONITOR distribution of the home support guidelines planned for June 2016.	DISSATISFIED that the home support guidelines slated for June 2016 were still not in circulation as at March 31, 2017.

SERVICE SUPPORT		
ADDITIONAL FEES COSTS CHARGED TO USERS BY HOSPITAL CENTRES		
RECOMMENDATIONS 2014-2015	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2015-2016	QUÉBEC OMBUDSMAN'S ASSESSMENT IN 2016-2017
<p>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 <i>Regulation respecting the application of the Hospital Insurance Act</i>.</p> <p>That it provide fair and reasonable guidelines for the administrative fees that institutions can charge to users, pursuant to the <i>Hospital Insurance Act</i>.</p>	<p>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.</p> <p>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.</p>	WILL MONITOR the results of the work underway.

# RECOMMENDATIONS IN THE 2016-2017 ANNUAL REPORT

## MINISTÈRE DE L'ÉDUCATION ET DE L'ENSEIGNEMENT SUPÉRIEUR

### RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING THE HANDLING OF APPLICATIONS FOR STUDENT ASSISTANCE WAIVERS

- Whereas the Minister of Education, Recreation and Sports and the Minister responsible for Higher Education may award exceptional financial assistance to students if they feel that, without this assistance, the students' studies may be compromised;
- Whereas most of the applicants are financially fragile;
- Whereas in the *Guide for presenting an application to the Exceptional Case Examination Committee regarding student financial assistance waivers*, the Department pledges to reply to exceptional case applications within two to three weeks of the Committee meeting, barring unusual circumstances;
- Whereas, for the past two years, the Québec Ombudsman has received complaints from people who filed exceptional case applications and has noted recurrent processing delays even though files did not involve unusual circumstances;

### THE QUÉBEC OMBUDSMAN RECOMMENDS THAT THE MINISTÈRE DE L'ÉDUCATION ET DE L'ENSEIGNEMENT SUPÉRIEUR:

- take the necessary measures to process all exceptional case applications within the time frame set out in the *Guide for presenting an application to the Exceptional Case Examination Committee regarding student financial assistance waivers*;
- where applicable, inform the students concerned that processing is delayed and specify the new time frame.

## MINISTÈRE DU TRAVAIL, DE L'EMPLOI ET DE LA SOLIDARITÉ SOCIALE

### RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING THE REPAYMENT OF CERTAIN DEBTS

- Whereas citizens pay back their last-resort financial assistance debts over many years and as best they can based on their financial means;
- Whereas pursuant to the law, certain debts cannot be forgiven by reason of bankruptcy;
- Whereas the Act provides that, due to exceptional circumstances, the Minister may, according to the conditions he or she determines, suspend, in whole or in part, the recovery of an amount owed;

- Whereas the exercise of discretionary power should take various factors into account, notably:
  - the number of years since the initial claim;
  - the amount of the capital already reimbursed or the proportion thereof;
  - the debtor's age;
  - the debtor's state of health;
  - the probability that at some point the debt (capital and interest) will be paid in full;
  - the circumstances of the claim.

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

- review its analytic framework so that debts which are paid over a long period (and sometimes repaid in full were it not for the interest) may be forgiven through exercise of the Minister's discretionary power.

*RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING PARTIAL LOSS OF CLAIM-SLIP ADVANTAGES*

- Whereas social solidarity recipients who have a claim slip and who receive a disability pension from Retraite Québec may, under certain conditions, remain entitled to the slip and apply for one, but are subject to waiting times ranging from six to 24 months, as if it were their first application;
- Whereas the recipients' state of health has not changed and the need to maintain the advantages of the claim remains;

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

- no longer apply the waiting time for obtaining the claim slip in the case of last-resort financial assistance recipients who become eligible for a disability pension from Retraite Québec.

**MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX**

*RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING THE SLATE OF RESIDENTIAL SERVICES FOR PEOPLE WITH DISABILITIES WHOSE NEEDS ARE COMPLEX*

- Whereas people with intellectual disabilities who live in residential resources are among the most vulnerable members of society;
- Whereas non-institutional resources have difficulty responding to the needs of client populations who have serious behavioural disorders or who need special physical care;
- Whereas the institutions have difficulty recruiting and retaining resource managers able to respond to the needs of this client population within the framework of current agreements;
- Whereas the Québec Ombudsman has observed serious failings during its recent investigations;

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

- in the next year, design a slate of residential services that respond adequately to the needs of people with intellectual disabilities combined with serious behavioural disorders or who need special physical care, notably by implementing an action plan by March 31, 2018.

*RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING ACCESS TO HOME SUPPORT SERVICES IN QUÉBEC*

- Whereas the slate of home support services has dwindled across Québec;
- Whereas only 8.6% of people 65 years old and over with reduced autonomy receive home support services, while the percentage of people who need such services is at least 15%;
- Whereas the time for each intervention has decreased;

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

- by December 31, 2017, make a concrete commitment to implement an action plan specifying the means for achieving:
  - a 15% increase in the number of seniors with reduced autonomy who receive long-term home support services;
  - a 10% increase per year in the average number of home support service intervention hours.

*RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING THE ADJUSTMENT OF LONG-TERM RESIDENTIAL RESOURCES TO THE EXPECTATIONS AND NEEDS OF THE ELDERLY WITH SEVERELY REDUCED AUTONOMY*

- Whereas the shortcomings of the public residential system for people with severely reduced autonomy have an amply documented impact;
- Whereas the achievement of concrete targets regarding improved accessibility to residential resources is becoming a particularly urgent issue;
- Whereas such targets have already been tagged as a priority in the strategic planning of the Ministère de la Santé et des Services sociaux, for example, that of 2005-2010, which was aimed at the construction or reconfiguration of some 3,000 public residential places;

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

- by December 31, 2017, produce an action plan to rapidly improve access to public residential resources for the elderly with severely reduced autonomy.



## LE PROTECTEUR DU CITOYEN

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Québec

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