



LE PROTECTEUR DU CITOYEN

Assemblée nationale
Québec

2017
2018

ANNUAL
REPORT



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September 2018

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 am hereby submitting the 48th Annual Report of the Québec Ombudsman for fiscal year 2017-2018.

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 dark 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



Honour one's commitments

Every government department, agency, health and social services network institution, and correctional facility is duty-bound to provide services based on the programs in effect. They must also deliver appropriate information, process requests rigorously and fairly, convey-within a reasonable timespan-answers that are accurate and easy to understand, as well as enable the exercise of adequate redress. They

are also required to apply the law with transparency and humanity.

How is the fulfilment of these commitments faring? I feel that considerable efforts are made throughout the public system to have them come to fruition. However, the complaints and reports we receive attest to failings.

Government departments, agencies and correctional facilities

Sometimes Revenu Québec contravenes certain principles and commitments of the *Act respecting administrative justice* and of its own *Charter of Taxpayers' and Mandataries' Rights* by failing to inform people about the factors on which an assessment is based. Consequently, these citizens cannot express their point of view.

People were refused compensation by the Direction de l'indemnisation des victimes d'actes criminels, under the jurisdiction of the Commission des normes, de l'équité, de la santé et de la sécurité du travail, because the directorate's reading of its own Act is too narrow at times.

One of the commitments of the Ministère de l'Éducation et de l'Enseignement supérieur is to partly or fully release a person from student debt under exceptional circumstances. Complaints showed that this provision is applied too rigidly, making the rule devoid of the required flexibility.

The Ministère de l'Immigration, de la Diversité et de l'Inclusion must study immigration applications based on known parameters and a specific time frame. Québec selection certificate candidates paid the price for changes to the requirements while the process of examining their application was underway. Moreover, as at January 1, 2018, the Department had a backlog of 24,000 files.

The people who turn to an administrative tribunal have the right to expect a hearing within a reasonable amount of time. Can we really call it access to justice when the Régie du logement posts delays of more than 15 months for general cases? As for the social affairs section of the Tribunal administratif du Québec, the wait time is more than 20 months. This, despite the fact that promptness is one of the pillars of the *Act respecting administrative justice*.

We will not soon forget the spring floods of 2017, for which the Ministère de la Sécurité publique agreed to apply a special financial assistance program that improved the usual provisions. Most of the complaints that we handled reported very lengthy wait times.

A specific mission of the Ministère du Travail, de l'Emploi et de la Solidarité sociale is to help people return to and remain within the job market. However, the Québec Ombudsman handled complaints from young adults who, pending trial, wanted to undergo therapy at a drug treatment centre, and in so doing, increase their chances for social reintegration. Some of these young people, eligible for last-resort financial assistance, were met with refusal from the Department, which interpreted the requirements restrictively.

The Société de l'assurance automobile du Québec, mandated to compensate road accident victims, causes financial harm to those who had two jobs (one full-time and the other part-time) before the accident. In some cases, these people are offered a compensation formula that is contingent on the equivalent of an obligation to have two full-time jobs.

Québec's correctional services' obligation to uphold detainees' residual rights is jeopardized by the overcrowding that has affected the prison community for several years. Faced with this problem, facility administrators end up putting three people in a cell meant to hold one person.

Health services and social services

Despite growing pressure on the health and social services network, mainly due to an aging population, commitments must be met. In terms of long-term home support, the Department will be hard-pressed to achieve the goal of its 2015-2020 strategic plan: by 2020, increase the number of people with access to home support by 15%.

As for services to the elderly, we have noted that residential and long-term care centre (CHSLD) staff can barely keep up. Healthcare teams frequently cope with work shifts when there is a shortage of personnel, which requires the reorganization of care. Some organizational practices introduced by CHSLDs to deal with this situation are inconsistent with department policy commitments that should shape the provision of care in a living environment.

When it comes to lodging for people with severe disabilities, there are numerous shortcomings. The

dearth of resources means, among other things, that people with incompatible profiles must share space. Under these conditions, some residents are victims of violence by their peers, even though the institutions are obliged to provide a safe environment.

The rate of registration with a family doctor-85% in December 2017-was below the projected level as at March 31, 2018, despite the progress made.

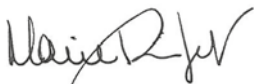
Because people who are hospitalized are not always given complete and adequate information, they are not necessarily able to make an informed decision about their room choice. Hospital centres, like every public service, have the duty to inform citizens accurately, in a way that can be understood and in a timely manner. This is what a commitment to being accessible and transparent means.

Year 1...

This Annual Report marks my first year as the Ombudsperson. Over the months, I had the support of a dedicated and solid team, whom I thank.

It is also Year 1 of our new branch for the investigation of public integrity disclosures, established

since the coming into force of the *Act respecting the disclosure of wrongdoings relating to public bodies*. Already, given the number of disclosures we have received, we can see the merits of such independent and impartial recourse.



Marie Rinfret
Ombudsperson

Validation report from the Internal Auditor

Madam 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, 2018. 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 within the framework of the process of validation.

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 meaningful figures provided. My work consisted of obtaining information and supporting documents, using analytical procedures, documenting the operation of compilation mechanisms, reviewing 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 2017-2018 Annual Report are not plausible and consistent in every important respect.



Jean Gamache, Internal Auditor, CPA, CA
August 2018

The Québec Ombudsman

Our status

The Québec Ombudsman is an independent and non-partisan institution headed by Madam Marie Rinfret, who was appointed Ombudsperson by the National Assembly on March 15, 2017.

Our mission

Ensure that Québec government departments and agencies, institutions and other bodies of the health and social services network, as well as correctional facilities, uphold citizens' rights, thereby participating in improving public service quality and integrity.

Our values

Justice, fairness, respect, impartiality and transparency are the values that shape our actions. Our staff members act with integrity, rigour and empathy.

Our mandates

1. Handle complaints concerning a Government of Québec department or agency;
2. Handle complaints and reports concerning an institution or other body of the health and social services network. Here, in the case of complaints, the Québec Ombudsman acts as a second level of recourse, after the service quality and complaints commissioner of the institution concerned;
3. Handle complaints concerning Québec's correctional services;
4. Handle disclosures of wrongdoings committed or about to be committed within a public body, including the education system, the childcare system and government corporations.

People, associations, organizations or businesses may use our services.

Our legal foundation

The Québec Ombudsman's action is governed by three Acts:

- *Public Protector Act;*
- *Act respecting the Health and Social Services Ombudsman;*
- *Act to facilitate the disclosure of wrongdoings relating to public bodies.*

Our means of action

Our action, different from but complementary to that of the courts, frequently enables people to avoid judicial or administrative recourse, which is often lengthy and costly.

Power to investigate

The Ombudsperson and her delegates are vested with the powers and immunity of commissioners appointed under the *Act respecting public inquiry commissions*, except the power to impose imprisonment. We can therefore require public services to provide us with access to relevant documents and to answer our questions.

Power to recommend

At the end of an investigation, we may make recommendations aimed at rectifying the problematic situation noted. The effectiveness of our action is thus based primarily on our ability to influence and persuade. If, after making a recommendation, we see that no satisfactory measure has been implemented, we may advise the government or parliamentarians. We may also comment publicly on our interventions.

Power to initiate

We may carry out investigations on our own initiative, without having received a complaint or report.

Action with a collective impact

Our intervention regularly makes it possible to correct a problem for a great many people. We can also examine a matter from a systemic angle in order to propose improvements when complex problems exist.

Preventive action

We may propose amendments to bills and draft regulations as well as to administrative policies. In order to prevent the recurrence of harmful situations or wrongdoing, we may also propose legislative reforms to parliamentarians or administrative reforms to government department or agency authorities or to the authorities within a health and social services network institution.

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 on the left evokes justice, while the "P" (for "Protecteur du citoyen") that replaces the right-hand scale refers to fairness.



In a nutshell

1 Public Service

- The Québec Ombudsman intervened regarding 55 of the 79 government departments and agencies subject to its area of jurisdiction.
- The departments and agencies that were the subject of the greatest number of substantiated complaints were those with a high service volume and a financial component. They are the Commission des normes, de l'équité, de la santé et de la sécurité du travail, the Société de l'assurance automobile du Québec, Agence du revenu du Québec and the Ministère du Travail, de l'Emploi et de la Solidarité sociale.
- Most substantiated complaints (41.6% of cases) were due to long wait times.

Agence du revenu du Québec (Revenu Québec)

- Revenu Québec sometimes recovers lapsed debts even though under the *Tax Administration Act*, debt contracted 10 years before or more is off limits unless Québec acted to recover the debt during that time frame.
- Tax credit for childcare expenses: Revenu Québec established assessments based on suspected fraud rather than on tangible proof.
- A discretionary power held by Revenu Québec is hampered by administrative guidelines that are too restrictive.
- Roughly 45,000 last-resort financial assistance recipients are deprived of the solidarity tax credit.

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

- Direction de l'indemnisation des victimes d'actes criminels (DIVAC)

- DIVAC uses a restrictive interpretation of the definition of a victim that requires that a person be an eyewitness to a crime. This deprives people of compensation.
- The Québec Ombudsman applauds the substantial work undertaken by DIVAC further to the recommendations in its report on compensation for crime victims.

Curateur public

- An investigation by the Québec Ombudsman prompted the Curateur public to produce an action plan to better identify and represent incapacitated parents who have a dependent who is a minor.

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

- When the Department committed to acquiring property from landowners, ultimately the Department determined that it already owned the land. This conclusion was based on a deed of sale that was illegitimate.

Ministère de l'Éducation et de l'Enseignement supérieur

- Under exceptional circumstances, a person may apply to have a student debt forgiven. However, at times, the Department is overly rigid in examining such applications.
- The Québec Ombudsman is critical that the notion of cases of "force majeure" cannot be used to allow analysis of an application for financial assistance filed outside the deadline.
- There are major flaws in phone access to the student financial assistance section of the Department.

- Access to free public education for children with a precarious immigration status: the Department must give school boards clear instructions about implementation of the new legal and regulatory framework.
- The Québec Ombudsman is satisfied with the Department's follow-up to its recommendations concerning supervision of homeschooling.
- Handling of complaints within the school system: a Bill has been introduced in response to the Québec Ombudsman's recommendations.

Ministère des Forêts, de la Faune et des Parcs

- Applicants for sugar bush management permits for land in the domain of the State were not informed in time about certain eligibility requirements.

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

- People whose application for a Québec selection certificate stood a good chance of being approved according to the requirements at the time may be turned down based on new requirements adopted while it is being processed.
- Candidates who applied for a Québec selection certificate in 2011 were only informed in 2018 that they could have taken languages tests rather than wait for a selection interview.

Ministère de la Justice

- Lengthy wait times at the Commission d'accès à l'information and the Tribunal administratif du Québec, social affairs section, hinder access to these tribunals.
- On March 31, 2018, the Québec Ombudsman still had not gotten a commitment from the Department concerning its recommendation to abolish any time limit for civil actions in cases of sexual assault, violence during childhood or violence by a spouse or an ex-spouse.

Ministère de la Sécurité publique

- A year after the spring floods of 2017, lengthy delays in processing financial assistance applications persist. The Québec Ombudsman also noted mistakes in the damage appraisal reports.

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

- The Réussir social assistance and support program enables last-resort financial assistance recipients to get an additional allowance for postsecondary studies. People who might qualify do not apply because they are not getting the information.
- The medical review office's processing delays far exceed the standards prescribed in the Act. On March 31, 2018, there was a backlog of 2,039 files and the average delay for processing was 442 days.
- At the Québec Ombudsman's request, the Department agreed to grant financial assistance to young people awaiting trial who have pledged to get therapy at a drug treatment centre. Previously, it had turned down applications from those who had been living with their parents prior to arrest.

Retraite Québec

- In processing an application for a surviving spouse's pension, Retraite Québec was particularly intrusive in questioning witnesses.

Société de l'assurance automobile du Québec

- People who drive without their plasticized driver's licence having been renewed may see their vehicle seized, but this does not happen in cases of non-payment of the annual driver's licence fee. This distinction is illogical and unfair.
- When a person had a full-time and a part-time job before an accident and is no longer able to hold down the part-time one, it is as if the SAAQ requires the person to have had two full-time jobs in order to qualify for compensation.

2 Correctional services

- Due to prison overcrowding, some correctional facilities end up putting as many as three detainees in cells meant to hold one inmate. The situation persists, notably because of a lack of planning regarding the operations surrounding the opening of new facilities.
- Even though solitary confinement (isolation in a cell for 22 hours or more a day) must be an exception and carried out according to clear-cut guidelines, it may last for periods of up to several weeks if not months.
- In a report released in March 2018, the Québec Ombudsman shed light on the consequences of the increase in intermittent sentences in correctional facilities.
- The measures introduced to curb drone activity over correctional facilities must not infringe on detainees' residual rights.
- Detainees cannot vote in municipal and school elections but may do so in federal and provincial elections.
- The Québec Ombudsman's recommendations concerning detention conditions, the administration of justice and crime prevention in Nunavik are slow to be implemented.

3 Health and social services network

- The Québec Ombudsman intervened regarding 57 of the 131 network institutions, 34 private seniors' residences, 14 community organizations, a private community residential resource for a vulnerable client population and 10 pre-hospital emergency services.
- More than 40.5% of closed complaints, reports and requests for assistance concerned hospital centres.
- The leading cause of substantiated complaints and reports was failings regarding service quality.

Disabilities

- The Québec Ombudsman reiterates the importance of providing people who have serious behavioural disorders or who require special physical care with safe lodging adapted to their condition. As at March 31, 2018, the Department had yet to release the action plan for that purpose.
- When children with a disability start school, their rehabilitation services are gradually scaled back, sometimes to the point of being cut completely. They find themselves left behind because the health and social service network institutions and the school boards pass the buck.

Troubled youth

- When an Aboriginal child is placed far from home outside of his or her community, youth centres do not always make sure to preserve the child's cultural identity.

Mental health

- Community organizations dealing with interpersonal conflicts expelled some of their service users without employing progressive penalties, clearly explaining why it happened or hearing their viewpoint.
- Further to legislative amendments, the Department published a framework for applying the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*. Furthermore, institutions must adopt a confinement protocol. These gains are in response to the Québec Ombudsman's recommendations.

Physical health

- The Québec Ombudsman exposed certain shortcomings of the system to foster access to a family doctor: long wait times and priority assignment of patients that is inadequate at times.
- Falls during hospitalization and the resulting injuries are frequent, often take a heavy toll on the person and are ultimately costly for the healthcare system.
- Sometimes nursing staff are too quick to use means of control when a person displays violent or threatening behaviour that poses a danger to his or her own safety or that of others.

Support for elderly autonomy

- When there are staff shortages, CHSLD residents do not receive the care and services they need. This situation is tantamount to maltreatment as defined in the *Act to combat maltreatment of seniors and other persons of full age in vulnerable situations*.
- Substantial failings at certain private seniors' residences—staff training, cleanliness and safety of the premises—confirm that the health and social services centres (CISSSs) or integrated university health and social services centres (CIUSSSs) in charge do not systematically exercise the required oversight.

Home support

- In February 2018, the Québec Ombudsman alerted the ministerial authorities to the need for an immediate turnaround in the state of home support services. On March 27, 2018, an extra investment was announced in Québec's 2018-2019 budget. The Québec Ombudsman is delighted with this but insists on the importance that it not be a one-off measure.

Service support

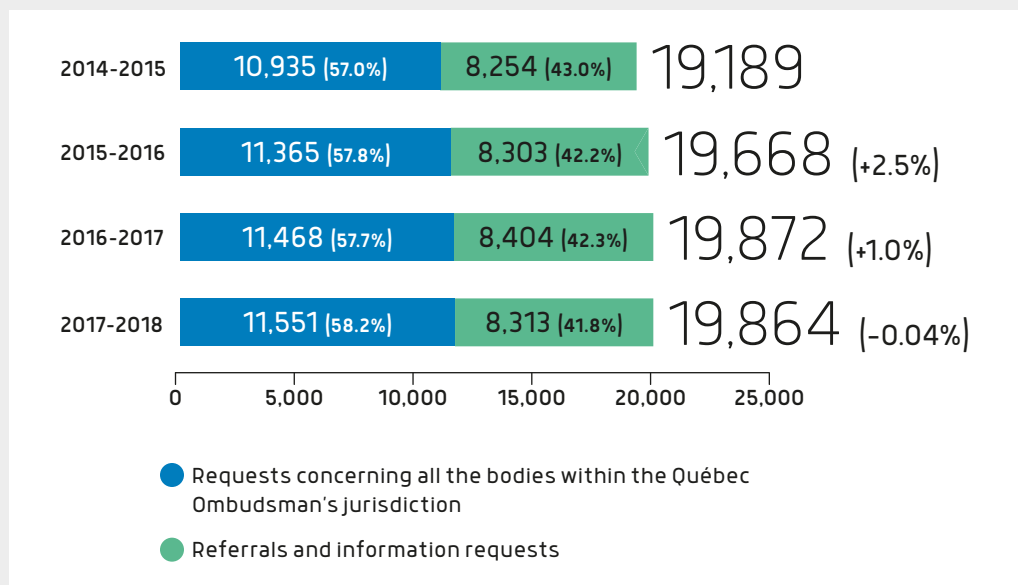
- Because of a lack of information, people pay hospital room fees when they could have chosen a no-cost option had they known about it.

4 Public integrity investigations

- On May 1, 2017, when the *Act to facilitate the disclosure of wrongdoings relating to public bodies* came into force, the Québec Ombudsman established a branch to investigate public integrity disclosures.
- Between May 1, 2017, and March 31, 2018, this new branch received 270 requests (134 requests for assistance and 136 disclosures).

A few statistics

Requests for service received



This graph illustrates the trends in all requests received by the Québec Ombudsman in the past four years for all sectors of intervention.

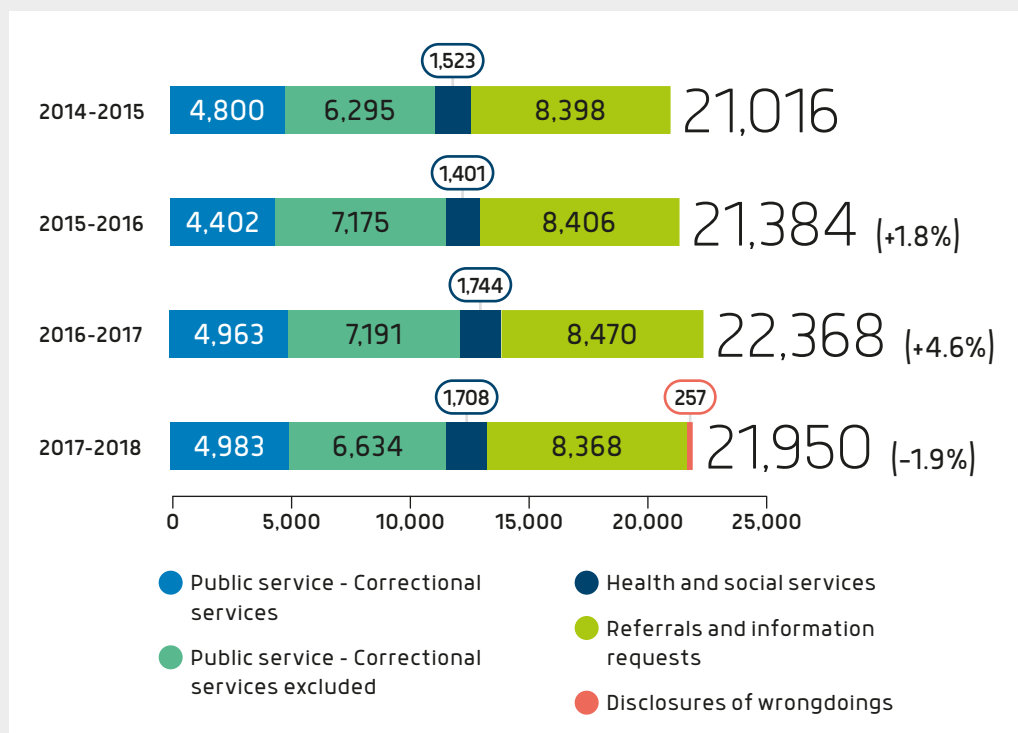
Those that may give rise to an investigation pursuant to one of the three Acts that govern the Québec Ombudsman's action (*Public Protector Act*, *Act respecting the Health and Social Services Ombudsman* and *Act to facilitate the disclosure of wrongdoings relating to public bodies*) are presented in blue.

Green represents the requests that do not fall within the institution's area of jurisdiction. These requests, to which the Québec Ombudsman reacts promptly by referring them to the appropriate form of recourse, basically concern municipalities, school boards and certain government corporations, including Hydro-Québec.

In 2017-2018, the total number of requests received held steady from last year's figure. The same is true for the percentage of requests subject to the Québec Ombudsman's jurisdiction compared with the total number of requests received.

Closed requests for service

A request for service may include more than one ground for a complaint, report or disclosure. That is why closed requests are broken down based on the grounds evoked. As a result, the number of closed requests is slightly above the number of requests for service received as presented in the preceding graph. For 2017-2018, there were 21,950 grounds for intervention among the 19,790 closed requests for service.



Closed requests for service decreased by 1.9% from last year's figure. If requests that do not fall under the Québec Ombudsman's area of jurisdiction are excluded, the decrease is 2.3%.¹

- There was a 7.7% decrease in closed requests concerning government departments and agencies.
- Closed requests concerning correctional facilities were relatively stable from last year.
- For the health and social services network, complaints decreased by 9.0%, whereas reports increased by 57.5%.
- There were 257 closed requests concerning the new mandate stemming from the *Act to facilitate the disclosure of wrongdoings relating to public bodies* within an 11-month period.

NOTE: The statistics for each of the Québec Ombudsman's mandates are covered separately in the following sections of the Annual Report.

1. The calculation is as follows: $\left[\frac{6,634 + 4,983 + 1,708 + 257}{7,191 + 4,963 + 1,744} \right] - 1 = -0.023$



Public service

This section presents the Québec Ombudsman's main findings concerning the public service, which includes the government departments and agencies within its jurisdiction. This excludes correctional services, which 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*.

The following figures provide an overview of citizens' requests and complaints. Long wait times continue to rank first by far among the grounds for substantiated complaints (41.6% of cases).

The Québec Ombudsman's recommendations were accepted by the organizations concerned in proportions more or less similar to those in past years (97.7% for case-specific measures and 100% for those with a collective impact).

In 2017-2018, the Québec Ombudsman intervened regarding 55 of the 79 departments and agencies (69.6%) subject to its jurisdiction.



1 Closed requests for assistance and complaints

TRENDS IN CLOSED REQUESTS FOR ASSISTANCE AND COMPLAINTS

	2014-2015	2015-2016	2016-2017	2017-2018
Requests for assistance	748	656	700	645
Substantiated complaints	737	818	853	829
Mediation	17	30	66	40
Unsubstantiated complaints	2,173	2,690	2,988	2,790
Could not take a definitive position	32	38	49	40
Redirected complaints	240	307	223	169
Suspended complaints	2,217	2,636	2,312	2,121
TOTAL	6,164	7,175	7,191	6,634
Difference with the preceding year	-	+16.4%	+0.2%	-7.7%

Explanatory notes

A request for assistance or a complaint can involve more than one ground.

Even though **requests for assistance** concern organizations subject to the Québec Ombudsman's jurisdiction, they do not lead to investigations. For example, they may be requests for explanations about program conditions, possible redress or the procedure for obtaining a service or a compensation.

Mediation consists of cases in which the Québec Ombudsman proposes a conciliatory solution at the end of an investigation.

In certain situations, especially in the absence of proof or when faced with two contradictory versions, the Québec Ombudsman **cannot take a definitive position**.

There are different investigative outcomes. Some investigations may not be completed because the Québec Ombudsman refers the person to another resource. When this happens, the complaint is considered as being **redirected**. It may also be that a complaint is **suspended**, notably because the citizen does not respond or withdraws the complaint, or because the situation is resolved on its own during the investigation by the Québec Ombudsman. Lastly, further to the investigation, the complaint

is deemed **substantiated** or **unsubstantiated**. In the case of a complaint, the citizen is then informed of the Québec Ombudsman's conclusions.

If the complaint proves substantiated, the Québec Ombudsman, when possible, asks the department or agency concerned to institute corrective measures and monitors their implementation. A substantiated complaint file is closed only after implementation has been monitored, when the Québec Ombudsman is sure that the corrective measures were taken.

Detailed results

The decrease in closed requests for assistance was 7.7% compared with last year's figure and 1.2% compared with the average for the past three years. The most notable decreases concerned the Commissaire à la déontologie policière (40.2%), Agence du revenu du Québec (23.7%), Retraite Québec (18.1%) and the Société de l'assurance automobile du Québec (16.1%).

The number of requests concerning the Ministère de la Famille increased significantly (160.6%). There were also increases, but to a lesser extent, for the Ministère des Transports, de la Mobilité durable et de l'Électrification des transports (21.7%) and the Curateur public (17.4%).

DEPARTMENT/AGENCY	Variation	2016-2017	2017-2018	Number
Agence du revenu du Québec	Decrease	1,543	1,178	-365
Société de l'assurance automobile du Québec	Decrease	799	670	-129
Retraite Québec	Decrease	439	358	-81
Commissaire à la déontologie policière	Decrease	107	64	-43
Ministère de la Famille	Increase	33	86	53
Curateur public	Increase	201	236	35
Ministère de l'Éducation et de l'Enseignement supérieur	Increase	273	304	31
Ministère des Transports, de la Mobilité durable et de l'Électrification des transports	Increase	92	112	20

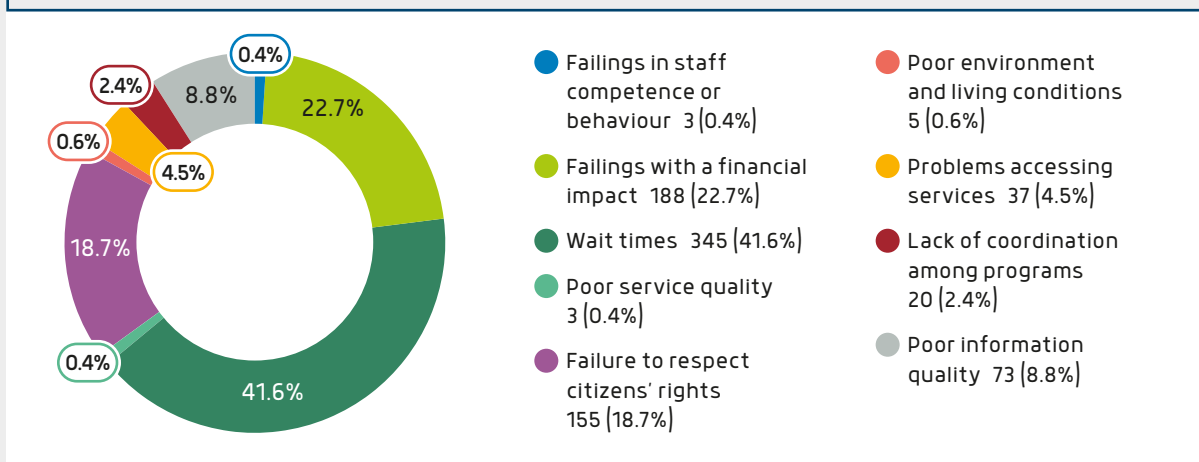
2 Substantiated complaints

The proportion of substantiated complaints is established as follows: Number of substantiated complaints/Number of substantiated and unsubstantiated complaints. This proportion has been relatively stable since 2015-2016, as illustrated in the table on the right.

PROPORTION OF SUBSTANTIATED COMPLAINTS

2014-2015	2015-2016	2016-2017	2017-2018
25.3%	23.3%	22.2%	22.9%

PORTRAIT OF SUBSTANTIATED COMPLAINTS



NOTE: Because the numbers in this chart have been rounded off, it is possible that the percentages do not add up to 100.

Lengthy wait times, failings with a financial impact, and failure to respect citizens' rights accounted for 83.0% of substantiated complaints.

Lengthy wait times, the leading ground for complaints, were the cause of 70 more complaints than last year. The Commission des normes, de l'équité, de la santé et de la sécurité du travail had the greatest number of substantiated complaints stemming from wait times (97 complaints). Three quarters of those complaints (74) were regarding compensation for crime victims.

Failings with a financial impact ranked second as a ground for substantiated complaints. In this category, Agence du revenu du Québec (53 complaints), the Société de l'assurance automobile du Québec (48 complaints) and the Commission des normes, de l'équité, de la santé et de la sécurité du travail (39 complaints) accounted for more than 74.5% of all substantiated complaints.

DEPARTMENTS AND AGENCIES WITH AT LEAST 10 SUBSTANTIATED COMPLAINTS

AGENCY	Substantiated complaints			
	2014-2015	2015-2016	2016-2017	2017-2018
Commission des normes, de l'équité, de la santé et de la sécurité du travail	88	124	161	161
Société de l'assurance automobile du Québec	79	86	108	121
Agence du revenu du Québec	158	136	130	103
Retraite Québec	50	80	68	41
Régie de l'assurance maladie du Québec	16	24	22	27
Régie du logement	30	29	27	17
Commissaire à la déontologie policière	2	10	25	16
Bureau du coroner	5	6	4	15

DEPARTMENT	Substantiated complaints			
	2014-2015	2015-2016	2016-2017	2017-2018
Travail, Emploi et Solidarité sociale	133	121	111	100
Sécurité publique - Correctional services excluded	5	6	7	54
Éducation et Enseignement supérieur	29	38	33	45
Immigration, Diversité et Inclusion	25	36	40	28
Énergie et Ressources naturelles	9	2	8	11
Transports, Mobilité durable et Électrification des transports	11	13	9	11
Other departments and agencies	97	107	100	79
TOTAL: Departments and agencies	737	818	853	829

This year, an increase in substantiated complaints concerning the Ministère de la Sécurité publique, the Société de l'assurance automobile du Québec and the Ministère de l'Éducation et de l'Enseignement supérieur was noted. A decrease was recorded for Agence du revenu du Québec and the Ministère de l'Immigration, de la Diversité et de l'Inclusion.

3 Monitoring of corrective measures

After the Québec Ombudsman has completed an investigation and transmitted its conclusions, the vast majority of departments and agencies concerned accept the recommended corrective measures, as shown in the two following tables.

ACCEPTED CASE-SPECIFIC MEASURES

2014-2015	2015-2016	2016-2017	2017-2018	2017-2018	
				Accepted	Refused
94.9%	97.0%	97.7%	97.7%	426	10

ACCEPTED MEASURES WITH A COLLECTIVE IMPACT

2014-2015	2015-2016	2016-2017	2017-2018	2017-2018	
				Accepted	Refused
100%	92.2%	96.2%	100%	39	0

4 Closed requests by department or agency, by processing outcome²

AGENCY/COMPONENT	Requests received in 2017-2018	Closed requests in 2017-2018							Total
		Requests for assistance	Complaints						
			Substantiated	Unsubstantiated	Mediation	Could not take a definitive position	Redirected	Suspended	
Agence du revenu du Québec									
Provisional administration of unclaimed property	14	2		3				7	12
Taxation	968	150	80	395	39	1	6	353	1,024
Support-payment collection	118	8	23	58			9	30	128
General	14	1		2				11	14
Total: Agence du revenu du Québec	1,114	161	103	458	39	1	15	401	1,178
Autorité des marchés financiers	16	1		9				5	15
Bureau des enquêtes indépendantes	1							3	3
Bureau du coroner	19	1	15	2				3	21
Centre de services partagés du Québec	12		2	11			1	1	15
Comité de déontologie policière	3			5					5

2. The number of requests processed in one year (and thus the number of closed requests) does not necessarily match the number of requests received because, at the beginning of each year, investigations concerning requests received previously are still being processed.

AGENCY/COMPONENT	Requests received in 2017-2018	Closed requests in 2017-2018							
		Requests for assistance	Complaints						Total
			Substantiated	Unsubstantiated	Mediation	Could not take a definitive position	Redirected	Suspended	
Commissaire à la déontologie policière	77	3	16	24				21	64
Commissaire à la lutte contre la corruption				1					1
Commission d'accès à l'information	35	6	5	7				9	27
Commission de la fonction publique du Québec	2			2					2
Commission de protection du territoire agricole du Québec	11	2	3	2				3	10
Commission des normes, de l'équité, de la santé et de la sécurité du travail									
Pay equity	3								0
Compensation	634	64	43	245		5	27	270	654
Crime victims compensation	363	18	115	160		5	7	86	391
Labour standards	87	7	3	33		1	6	38	88
General	34	4		13			2	16	35
Total: Commission des normes, de l'équité, de la santé et de la sécurité du travail	1,121	93	161	451		11	42	410	1,168
Commission des transports du Québec	5			2				3	5
Commission municipale du Québec	5	1		1				1	3
Conseil de la justice administrative	1							1	1
Conseil de la magistrature	1								0
Curateur public	252	23	8	79	1		4	121	236
Directeur des poursuites criminelles et pénales	13	1						12	13
Institut national d'excellence en santé et en services sociaux	1			1					1
La Financière agricole du Québec	2	1		1					2
Office de la protection du consommateur	23	1	4	6			1	9	21
Office des personnes handicapées du Québec	5			2			1		3
Office des professions du Québec	8			5				2	7
Office québécois de la langue française	1			1					1
Régie de l'assurance maladie du Québec	232	26	27	136			19	34	242
Régie des alcools, des courses et des jeux	3			1				2	3
Régie des marchés agricoles et alimentaires du Québec	3	2		1					3
Régie du bâtiment du Québec	35	3	2	11			3	11	30
Régie du logement	150	33	17	19		2		79	150

AGENCY/COMPONENT	Requests received in 2017-2018	Closed requests in 2017-2018							
		Requests for assistance	Complaints						Total
			Substantiated	Unsubstantiated	Mediation	Could not take a definitive position	Redirected	Suspended	
Retraite Québec									
Québec Pension Plan and Child assistance	326	21	38	153		1	7	103	323
Public-sector pension plans	37	3	3	13				9	28
General	7			4			1	2	7
Total: Retraite Québec	370	24	41	170		1	8	114	358
Secrétariat du Conseil du trésor	3		1	2				1	4
Service administratif de rajustement des pensions alimentaires pour enfants	2			1				1	2
Société de l'assurance automobile du Québec									
Highway Safety Code	215	13	34	127			6	33	213
Compensation	427	47	85	182		13	1	125	453
General	2	1	2	1					4
Total: Société de l'assurance automobile du Québec	644	61	121	310		13	7	158	670
Société d'habitation du Québec	46	3	1	15			1	19	39
Transition énergétique Québec	4		3	4				2	9
Tribunal administratif du Québec	34	4	4	8			1	18	35
Tribunal administratif du travail									
Occupational diseases and industrial accidents	13		1				1	11	13
Labour relations	19	4		3			5	7	19
General	2	1	1						2
Total: Tribunal administratif du travail	34	5	2	3			6	18	34
TOTAL: Agencies	4,288	455	536	1,751	40	28	109	1,462	4,381

DEPARTMENT/COMPONENT	Requests received in 2017-2018	Closed requests in 2017-2018							
		Requests for assistance	Complaints						Total
			Substantiated	Unsubstantiated	Mediation	Could not take a definitive position	Redirected	Suspended	
Affaires municipales et Occupation du territoire	39	4	9	15		1		3	32
Agriculture, Pêcheries et Alimentation	18	1	2	5			1	4	13
Conseil exécutif	1							1	1
Culture et Communications	7	1	5	3				2	11

DEPARTMENT/COMPONENT	Requests received in 2017-2018	Closed requests in 2017-2018							
		Requests for assistance	Complaints						Total
			Substantiated	Unsubstantiated	Mediation	Could not take a definitive position	Redirected	Suspended	
Développement durable, Environnement et Lutte contre les changements climatiques	47	1	5	19		1	11	37	
Économie, Science et Innovation	4		1				2	3	
Éducation et Enseignement supérieur									
Student financial assistance	212	23	36	60		1	1	63	184
Education	91	10	6	18			13	42	89
Higher education	8	1	2	3				2	8
General	17	3	1	4			2	13	23
Total: Éducation et Enseignement supérieur	328	37	45	85		1	16	120	304
Énergie et Ressources naturelles	59	1	11	30		1		10	53
Famille	80		3	21		1	2	59	86
Finances	7			4				4	8
Forêts, Faune et Parcs	23		7	20				8	35
Immigration, Diversité et Inclusion	115	8	28	83		4	1	11	135
Justice	99	7	6	19		1	2	54	89
Relations internationales et Francophonie	2							2	2
Santé et Services sociaux	64	13	6	16			3	32	70
Sécurité publique									
Civil security	130	3	46	25		1	1	33	109
General	41	3	8	16			1	16	44
Total: Sécurité publique	171	6	54	41		1	2	49	153
Transports, Mobilité durable et Électrification des transports	110	6	11	54				41	112
Travail, Emploi et Solidarité sociale									
Directeur de l'état civil	39	1	3	18			6	11	39
Employment	103	10	8	76				12	106
Québec Parental Insurance Plan	37	2	4	28				4	38
Enterprise register	6		1	4					5
Secrétariat du travail	7	1		2				1	4
Services Québec	5	1		2		1			4
Social solidarity	900	87	84	492		1	25	215	904
General	9	3		2			1	3	9
Total: Travail, Emploi et Solidarité sociale	1,106	105	100	624		2	32	246	1,109
TOTAL: Departments	2,280	190	293	1,039		12	60	659	2,253
TOTAL: Departments and agencies	6,568	645	829	2,790	40	40	169	2,121	6,634

General remarks

Note that this Annual Report describes facts observed up to March 31, 2018.

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 - Direction de l'indemnisation des victimes d'actes criminels;
- Curateur public;
- 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 des Forêts, de la Faune et des Parcs;
- Ministère de l'Immigration, de la Diversité et de l'Inclusion;
- Ministère de la Justice;
- Ministère de la Sécurité publique;
- Ministère du Travail, de l'Emploi et de la Solidarité sociale;
- Retraite Québec;
- Société de l'assurance automobile du Québec.

Agence du revenu du Québec (Revenu Québec)

Prescription of a tax debt

The *Tax Administration Act* provides that an amount owed under a fiscal law is prescribed after 10 years from the day on which the notice of assessment was sent or, in the case of charges or fees, from the time they were applied, unless Revenu Québec has not acted to recover the amounts owed.

Be that as it may, the Québec Ombudsman has noted that Revenu Québec sometimes collects on lapsed debts. This practice must stop.

This is not a matter of encouraging people who have fiscal debts to count on the passage of time to be released from them. The Québec Ombudsman wants to insist instead that the principle of debt prescription is fundamental. Prescription makes it easier to provide credible evidence, which is more difficult to establish as time goes by. This deadline incites the government to act promptly to collect all types of debt. Prescription also exists for the purpose of financial security: at the end of the set deadline, a person can be reasonably sure that he or she no longer owes certain amounts to the government.

It must be pointed out that in 1999, Revenu Québec expressly decided, by means of a departmental policy, to no longer recover prescribed debts. This provision figures in the Direction générale du recouvrement reference document used by personnel. Nevertheless, certain practices strayed from it.

Consequently, in November 2017, the Québec Ombudsman recommended that Revenu Québec:

- stop recovering prescribed debts;
- correct the files of taxpayers to whom recovery measures had been applied since April 1, 2016 even though their debt was prescribed;
- reimburse citizens if need be.

In December 2017, Revenu Québec let the Québec Ombudsman know that it intended to comply with the 1999 policy. An action plan was announced for early 2018. As at March 31, the plan had not materialized.



COMPLY WITH THE **PRESCRIPTION** OF A TAX DEBT

In 2017, a person complained to the Québec Ombudsman about receiving a collection notice from Revenu Québec for a debt attributable to 1998. Interest of more than \$600 had been added to the amount owed, which was less than \$300. The citizen paid off the debt but refused to pay the interest.

Since the debt had indeed been prescribed at the time of the claim, the Québec Ombudsman recommended that Revenu Québec reimburse the citizen and cancel the interest, which it agreed to do.

Monitoring the tax credit for childcare expenses

This year again, the Québec Ombudsman saw failings in the auditing of claims for the tax credit for childcare expenses. The complaints showed in particular that Revenu Québec had not abided by the rules of burden of proof.

The *Taxation Act* provides that the person who claims the credit must meet eligibility requirements. Claimants must therefore justify their need to have their children in childcare and have receipts that comply with the legal requirements. Of course, Revenu Québec has the power to conduct audits. However, to demonstrate that a person's claim is fraudulent, Revenu Québec must base its argument on concrete evidence. It must act with the greatest of rigour because once made, an assessment is presumed to be valid. It then becomes the taxpayer's responsibility to prove that the assessment is unfounded. However, certain complaints showed that assessments had been established based on suspected fraud rather than on tangible evidence.

The Québec Ombudsman also noted that before issuing an assessment, Revenu Québec does not always inform taxpayers about the elements on which its suspicions are based. This prevents taxpayers

from providing their own proof. In so doing, Revenu Québec contravenes its *Charter of Taxpayers' and Mandataries' Rights*, whereby people must be informed about the reasons for a decision concerning them. People must also be able to express their point of view. The *Act respecting administrative justice* bolsters these provisions.

The Québec Ombudsman unreservedly supports the fact that Revenu Québec combats fraud which consists of providing false childcare expense receipts in order to claim the credit. However, the agency must avoid any imbalance of power with citizens.

That is why the Québec Ombudsman recommended that Revenu Québec modify the instructions and work documents for audit staff:

- to signify that proof on the balance of probabilities, and not mere doubt, is required in order to question the validity of a receipt and eligibility for the credit;
- to have the principles and commitments of the *Act respecting administrative justice* and of the *Charter of Taxpayers' and Mandataries' Rights* reflected in auditing practices.



BE REASONABLE IN CHECKING THE FACTS DECLARED BY TAXPAYERS

The youngest child of a nurse with an atypical work schedule was in childcare. She claimed the tax credit for childcare expenses for this child who was of an age to attend school. Theoretically, Revenu Québec assumes that a child who attends school is in the care of the educational institution during the parent's work hours. Therefore, childcare expenses are not generally recognized. However, it may be otherwise if, for example, the parent's work schedule is atypical.

In auditing, Revenu Québec focuses on proof of payment of childcare fees. Since the woman paid in cash, she was only able to provide bank statements that included

other everyday expenses. Revenu Québec concluded that the withdrawals were not sufficient proof and refused to grant the amounts claimed.

First, the Québec Ombudsman asked the citizen to establish her childcare needs, which she did by means of a letter from her employer confirming that her work schedule included evenings and nights. Secondly, it noted that the bank statements indicated sufficient withdrawals to account for the childcare fees. Revenu Québec therefore had no proof demonstrating that the citizen had made a false statement. Furthermore, Revenu Québec's audit report indicated that the

person had never provided proof of employment when, actually, it had never asked her for it.

Alongside her recourse with the Québec Ombudsman, the woman had approached Revenu Québec's Direction des oppositions, which had ruled in her favour based on the same facts and findings as those of the Québec Ombudsman.

In the Québec Ombudsman's opinion, it seems clear that the audit was not conducted in accordance with the applicable rules and that the citizen should have been granted the tax credit without her having to resort to objection, with the red tape and delay that it entails.

Exercising discretionary power

Under the *Taxation Act*, Revenu Québec is granted the discretionary power to cancel or waive interest if it feels such action is justified. Obviously, exercise of this power must be carried out fairly for all citizens and be consistent with specific guidelines. A complaint brought to the Québec Ombudsman's attention revealed that in one particular situation, this discretionary power was contingent on an interpretation bulletin that narrowed its scope too restrictively.

In the situation submitted to the Québec Ombudsman, two companies which do business with each other made a tax billing mistake. Even though the error concerned taxes, it did not create losses for the State. Furthermore, the companies corrected their mistake quickly. The operation was considered to be a "wash transaction." However, in order to ensure that businesses comply with their fiscal obligations, the Act provides for interest on the amounts that companies should have remitted to Revenu Québec. In this case, Revenu Québec exercised its discretionary power to cancel only part of the interest, based on the interpretation bulletin that governs wash transactions.

The Québec Ombudsman reminded Revenu Québec that by its very nature, discretionary power must not be governed by overly restrictive guidelines. Based on a Superior Court of Québec decision,³ it therefore recommended that Revenu Québec:

- review the file of the company that contacted it and cancel the interest;
- review all files involving wash transactions processed since November 22, 2017, the date of the decision;
- modify its interpretation bulletin to include the possibility of waiving all penalties and interest and to cancel them when the circumstances lend themselves to it.

Revenu Québec agreed to make the required changes to its interpretation bulletin. However, it held to its position regarding the company's file and did not give its opinion concerning the files of other individuals or companies in the same situation. As at March 31, 2018, the Québec Ombudsman was still working on the matter.

Payment of the solidarity tax credit for last-resort financial assistance recipients

Starting in July 2011, the refundable Québec Sales Tax (QST) credit which last-resort financial assistance recipients received with their benefits was included in the solidarity tax credit (STC), a refundable credit for low-income households. Since then, to have their QST reimbursed, recipients must claim the STC by means of their income tax return. Now, despite the information distributed by Revenu Québec and the Ministère du Travail, de l'Emploi et de la Solidarité sociale, some 45,000 last-resort financial assistance recipients do not benefit from reimbursement because they do not file an income tax return. Consequently, the credit does not fully achieve its goal of assisting the most disadvantaged citizens.

The Québec Ombudsman alerted the three bodies concerned (Ministère des Finances, Revenu Québec and Ministère du Travail, de l'Emploi et de la Solidarité sociale) to this issue. It argued that the simple introduction of a measure for automatic payment of the QST component of the STC would enable the most vulnerable citizens to benefit from the measure. Payment of the QST component could be included with the last-resort financial assistance benefit as was the case before July 2011.

The Québec Ombudsman was informed that the three bodies would propose ways to reduce the number of recipients that do not receive the STC. However, it was not given any details or time frame. It feels that it is important to provide for measures that are conducive to achieving goals because those in place are obviously not making it possible to do this. The Québec Ombudsman intends to be vigilant about the effectiveness of the proposed solutions.

3. Cour supérieure, 1092072 Ontario inc. v. Agence du revenu du Québec, decision rendered on November 22, 2017.

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

The definition of a crime victim

The *Crime Victims Compensation Act* defines "crime victim" and sets out the requirements for the public system to issue compensation, whether to the victim or to the victim's family. It is specified that to be considered a victim, the person has to have been "killed or injured by reason of the act or omission of any other person occurring in or resulting directly from the commission of an offence." The injury may be physical or psychological.

However, the Direction de l'indemnisation des victimes d'actes criminels (DIVAC) interprets this definition restrictively, requiring that the person be a

direct witness to the crime (having seen or heard the incident). In the Québec Ombudsman's opinion, the Act calls for a broader reading of the notion of victim. In fact, the courts tend towards this. Recently, the Superior Court ruled that it is not necessary for victims to have played an active role during the events. Demonstrating a clear connection to the incident that explains the existence and nature of their injury is sufficient. The Tribunal administratif du Québec has extended the status of victim to anyone at the scene of the crime in the instants after the incident occurred.



ALLOW THE ACT ITS **FULL BREADTH**

A person witnessed the discovery by investigators of the lifeless bodies of her father and her brother in a shed behind the family home. Even though the police officers tried to keep her away, she had time to see that it was her family members' corpses.

Following the events, the person had mental health problems and was hospitalized several times. She filed a claim with DIVAC for financial assistance for therapy, among other things. Her claim was turned down because it did not consider her a witness to the crime.

Even though the person was not there at the time the crime was committed, the facts showed that there was sufficient simultaneity between the event and the person's awareness of it. Moreover, her physician correlated the existence and nature of her psychological injuries with the event.

The Québec Ombudsman approached the Ministère de la Justice because the person's case was being challenged at the Tribunal administratif du Québec. An out-of-court settlement was reached, specifying that the person was recognized as a victim and was therefore eligible for compensation.

In an investigation report released in 2016, which will be discussed in the following paragraph, the Québec Ombudsman recommended that DIVAC recognize as a victim anyone who arrives at the scene of a crime that has just been committed and that directly affects or concerns him or her. As at March 31, 2018, DIVAC continued to refuse to act on this recommendation, thereby depriving victims of crucial and often urgent help.

For effective management of crime victims

The Québec Ombudsman's investigation report entitled *Compensation of crime victims: for effective and prompt management of vulnerable people*, published in 2016, has 33 recommendations that could be implemented within the current legal framework. The recommendations are aimed at more

effective, humane and fair application of compensation system requirements. They primarily concern:

- the quality of information to victims;
- wait times at the various stages of application processing;
- access to the system or to certain services or indemnities;
- communication with certain victims for needs assessment purposes;
- the rigour of the decisional process;
- explanations for decisions in the first instance;
- DIVAC's openness to correcting its errors.

The Québec Ombudsman recognizes the substantial work done by DIVAC to implement its recommendations. So far, it can be said that 21 of them have been put in place. The Québec Ombudsman will continue to monitor the situation until all of its recommendations have been carried out.



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

Curateur public

Protection of minors who live with an incapacitated parent

Legally, the opening of protective supervision for an adult has no impact on the person's parental authority. While the Curateur public is not empowered to judge a person's abilities as a parent, it, like anyone else, is obliged to report incidents in which a child's safety and development are compromised to the Director of Youth Protection.

In the context of an investigation, the Québec Ombudsman wondered about how the Curateur public handles cases in which a minor child is the dependent of an incapacitated parent. It concluded that in such situations, better communication between the Curateur public and the health and social services network is needed. After the Québec Ombudsman intervened, the Curateur public produced an action plan that provides for the following measures:

- intervene with the professional order for social workers so that when they conduct psycho-social assessments of incapacitated persons under curatorship, they mention the presence of any minor children in the evaluation report;

- better supervision of Curateur public practices in representing incapacitated adults who live with their minor children and, by April 2018, put together training with regard to this subject for Curateur public employees;
- create a directory of incapacitated adults represented by the Curateur public who live with their minor children;
- inform professional health and social services network staff about the Curateur public's new policy directions.

The Québec Ombudsman is attentive to the implementation of the various measures that the Curateur public has proposed to improve its practices in cases in which a represented adult has a dependent who is a minor. The Québec Ombudsman wishes to draw attention to the agency's cooperation and initiatives in this regard.

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

Respect a contract

A complaint brought to the Québec Ombudsman's attention showed that the Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques had entered into an agreement to purchase land from citizens

and had decided subsequently not to follow through. The Department claimed that it already owned the land. In light of the information obtained while investigating, the Québec Ombudsman felt that the Department should honour its commitments.



ACT ON A PROMISE TO PURCHASE

Some citizens owned land adjacent to a dam. The Department signed an agreement with them to be able to use part of the property to operate, supervise and maintain the dam. The contract provided that, in return, arrangements would be made for the State to acquire the land when the Department saw fit.

Two years later, a Department land surveyor carried out a property analysis in order to establish the chain of title of the land in question. He concluded that the Department was the owner. The analysis was based on a

deed of sale dating back to 1926, which, at the time, had not been published in the land register. It only appeared in 1961 as annexed to another lot. Despite this, on the strength of the land surveyor's conclusion, the Department refused to honour the agreement and buy the land.

The Québec Ombudsman felt instead that the land legally belonged to the citizens. It reminded the Department that pursuant to the provisions of the *Civil Code of Québec* concerning the rules governing the publication of rights, a deed of property

must be published in the land register at the opportune time for it to be set up against third persons. Consequently, the contract remains valid, as do the obligations stemming from it. The Québec Ombudsman recommended that the Department undertake discussions with the citizens to acquire the property rights to the land, or else compensate the citizens.

As at March 31, 2018, the Québec Ombudsman had not yet received an answer from the Department.

Ministère de l'Éducation et de l'Enseignement supérieur

Student financial assistance: take exceptional circumstances into account

Under the *Act respecting financial assistance for education expenses*, the minister may fully or partly release a person from student debt if the minister deems it is warranted. Therefore, people in a particularly precarious financial situation who are unable to handle the required payments may apply to the Department for release.

This year, the Québec Ombudsman noted that the student financial assistance section (the section) was excessively rigid in studying some of these applications, going so far as to base its refusals on elements that are not in the Act. As a result, the Québec Ombudsman recommended that the section review its analysis.



DO NOT GIVE THE ACT SCOPE THAT IT DOES NOT HAVE

Saddled by student debt of nearly \$30,000, a person applied to have it cancelled because all she now had was a disability pension, with no other income options. The situation was such that in processing the application, the section indicated in its very own files that the person was insolvent and that the chances of it collecting the amounts were nil. Nonetheless, it refused loan remission by arguing that the spouse's income enabled the student to meet his obligations.

The legal framework for the financial assistance program does not provide for the joint and several liability of spouses. This is what the Québec Ombudsman pointed out when it recommended that the Department cancel the debt and reimburse the amounts that the person had already paid. At first the Department maintained its position but subsequently, through the action of the Québec Ombudsman, the file was reconsidered and the entire outstanding balance of her student debt was cancelled.

The transition towards new eligibility conditions

This year, the Department tightened certain eligibility conditions for the student financial assistance program, pursuant to an amendment to the *Regulation respecting financial assistance for education expenses*. This amendment abolished the provisions that, until then, had enabled students to qualify for assistance because they were recognized as residents of Québec or deemed to reside in Québec. Because of this amendment, the academic plans of some students may have been jeopardized

during their studies. The Québec Ombudsman called for a transitional measure to make it possible for anyone studying full time and who qualifies as residing in Québec in 2017-2018 to remain qualified for the loans and bursaries program. However, there is one condition: they must still be enrolled in the same study program as before. The Department followed up on the Québec Ombudsman's recommendation.

Handling of superior force cases

Another restriction stemmed from the same Regulation: “superior force” can no longer be invoked for the possible admissibility of a financial assistance application filed outside the deadline. In the past year, the Québec Ombudsman intervened by

arguing that the notion of superior force could ensure some security for students grappling with exceptional circumstances. Its recommendation was not approved. The following case illustrates that such a position may deprive people of their rights.



RECOGNIZE THAT **LATENESS** MAY BE WARRANTED

A student began a preparatory year at university and therefore only started the first year of her study program the following year. After referring to the rules concerning the awarding of loans and bursaries, she planned on not having her parent's contribution taken into account in determining her financial assistance three years after she began university, when she had accumulated 90 credits. In other words, she could then be awarded loans and bursaries without her parents' income being a factor.

However, she learned that now the Department required that the three years and 90 credits be for a same program. As the student understood it, given that the first year of her studies was a preparatory phase, from the system's vantage point, her financial independence was set back by one year. Knowing that

her financial assistance application would be refused for the following year, she did not submit one.

Subsequently, there was a new interpretation of the same Regulation reverting to the former procedure. As a result, the student immediately sent the section's recourse office an application for financial assistance based on the conditions that were to her advantage. However, the problem was that the position now adopted by the Department was taken too late for the student to send her form in on time. It therefore refused to consider her application even though her lateness was due to the chronology of the events.

The Québec Ombudsman pointed out to the Department that the student had done the logical thing in this sequence of occurrences

because, first, she had not filed an application, knowing that she was not eligible for assistance, and, second, she reacted as promptly as possible to the announcement of the new conditions.

The Department maintained its position, replying that, in order to meet the deadline, the person should have sent in her application even though she knew she was not eligible for anything. Moreover, according to the authorities, her lateness showed that perhaps she did not really need financial support. To this, the Québec Ombudsman replied that it was unacceptable that a person who took the initiative to find out about the conditions of a program should be penalized, while another person who sent in the application while ignoring its provisions is not.

No phone reply at the student financial assistance section

A recurrent problem for several years: phone access to student financial assistance services remains difficult, as attested to by the numerous complaints that the Québec Ombudsman receives.

At our request, the Department produced statistics on the situation. The Québec Ombudsman was informed of the measures-in terms of human resources, work organization, the phone system, and

communications and technology-put in place to absorb the backlog. Even so, the fact of the matter is that these initiatives have not produced the expected results. In August 2017, of 188,969 calls received, only 22,704, or 12%, received a reply. The Québec Ombudsman is therefore continuing to intervene so that the Department makes the appropriate corrections.



ANSWER THE PHONE

A student had been receiving financial assistance for several years. In the course of the steps taken, she found out that she did not qualify for assistance the following year's second term. Since she did not understand why, she decided to phone student financial services. However, she did not manage to talk to anyone because every time she called, all she got was a voice message telling her to call back later. The student complained to the Québec Ombudsman. Because of its action, an information agent finally contacted her.

Access to free public education for all children with a precarious immigration status

In 2014, the Québec Ombudsman produced a special report on the lack of access to free public education for some children who live in Québec, but whose parents have a precarious immigration status. As the Québec Ombudsman sees it, the schooling of children is the basis for their personal and social development, as well as a springboard for their integration within Québec society. In that capacity, education must be accessible to every child, regardless of his or her status.

This year, while the recommended improvements have yet to be made despite the gravity of the problems, the Québec Ombudsman intervened when Bill 144, *Act to amend the Education Act and other legislative provisions concerning mainly free educational services and compulsory school attendance*, was being considered.

First, it applauded the Department's desire to broaden the scope of the right to free educational services. Under the proposed amendments, students of minor age who are not residents of Québec within the meaning of the *Education Act* and the *Regulation respecting the definition of resident in Québec* would now be eligible for free public education if the holder of parental authority ordinarily resides in Québec. This provision will be favourable for a certain number of children.

However, the Québec Ombudsman argued that certain categories of students would still have to pay

fees to attend elementary or secondary school. Cases in point are children who live with a family member who does not have parental authority. In order to make the law more inclusive, in keeping with the *Convention on the Rights of the Child*, to which the Government of Québec has declared itself bound, the Québec Ombudsman recommended that children have access to free public education if it can be shown that they ordinarily reside in Québec, regardless of where the holder of parental authority lives.

In the end, the Act was passed without such a provision. However, the new legislation expressly provides that the identification requirements for a child or a child's parents cannot be such that the child's access to school free of charge is conditional on the presentation of proof of immigration status. The Québec Ombudsman considers that this amendment to the Act respects the spirit of its first recommendation.

It is now imperative that the Department give school boards clear directives concerning the implementation of the new legal and regulatory framework. The content of the administrative handbooks distributed to school boards must be revised soon. The information and documents requested for admitting a child must be standardized and not exceed the legal and regulatory identification requirements for school enrolment, especially regarding verification of the immigration status of children or of their parents.



The Québec Ombudsman's report entitled *Access to free public education for children with a precarious immigration status* is found at protecteurducitoyen.qc.ca.

Supervision of homeschooling

The Québec Ombudsman is pleased to see that this same Bill corrects the various shortcomings which it described in a report on the legal and administrative supervision of homeschooling. In response to the Québec Ombudsman's recommendations, the Department made a first regulation on homeschooling. It also formed a Québec homeschooling roundtable to advise the minister. Lastly, a first handbook of best homeschooling practices will be written for school boards and distributed no later than July 1, 2019.

The Québec Ombudsman intends to closely monitor this overhaul of homeschooling supervision, particularly concerning:

- the definition of school board responsibilities and how school boards will go about fulfilling them;
- the procedure for monitoring and evaluating educational plans and student learning;
- the procedure in case of legal disputes between parents and school boards;
- the regularization of the situation of children who are not exempted from compulsory school attendance.



The Québec Ombudsman's report entitled *Home schooling: for respect of children's right to education* is found at protecteurducitoyen.qc.ca.

Handling of complaints within the education system

The Québec Ombudsman has noted that improvements must be made to the complaint examination procedure within school boards and schools in order to ensure simple, accessible and effective recourse. Currently, there is very little information about recourse mechanisms, which involve too many intermediaries and steps for people who wish to seek redress, and in which complaint processing is slow. Student ombudsmen generally have no special training or opportunities for sharing their expertise. Their independence vis-a-vis educational bodies needs to be strengthened. The Québec Ombudsman also deplores that they cannot act on their own initiative. Lastly, there are gaps in the accountability of these student ombudsmen and it is difficult to follow up on their recommendations.

In a special report entitled *Handling of complaints within the education system. For a simple, quick, effective and impartial procedure*, released in October 2017, the Québec Ombudsman described

various failings and made 19 recommendations aimed at making recourse to the student ombudsman simpler, quicker, more effective and more impartial. One of its recommendations was that the school board's student ombudsman be the gateway to the complaint examination procedure. It also recommended that the Québec Ombudsman be empowered to act as a second level of neutral and independent recourse, as it does regarding the health and social services network, for parents and students who are dissatisfied with the student ombudsman's conclusions or their follow-up by the council of commissioners.

In response to the report by the Québec Ombudsman, the Department pledged to act on its recommendations, notably through legislative means and, no later than March 15, 2018, produce a work plan with deadlines. As at March 31, no results were forthcoming. The Québec Ombudsman is continuing to act so that there is adequate recourse within the education system.



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

Ministère des Forêts, de la Faune et des Parcs

The conditions for issuing a sugar bush management permit for acericultural purposes

The Fédération des producteurs acéricoles du Québec is responsible for managing quotas for maple sap, concentrated maple sap and maple syrup. In the spring of 2016, it began to issue new quotas, something it had not done since 2009. In order to participate, applicants had to send the Fédération their completed registration form and a business plan before August 15, 2016.

Applicants who wanted to operate a sugar bush on land in the domain of the State also had to have a permit, valid for five years, from the Ministère des Forêts, de la Faune et des Parcs.

This land is often used by other people who themselves hold various permits (e.g. harvesting of firewood for domestic or commercial purposes). To ensure harmonization of the various uses of land in the domain of the State, the Department therefore added its own assessment criteria to those of the

Fédération. Since the number of permits issued for the operation of a sugar bush on land in the domain of the State was very limited in some regions, the criteria were used to select applicants by means of a scorecard. In previous exercises, the Department had posted the criteria at its regional offices with a view to a transparent and fair process. However, it was not ready to post the information when the new procedure was launched.

Applicants therefore assumed that only Fédération criteria were taken into account, or that the decisions were arbitrary. Had they been properly informed, applicants would have been better able to put together or modify their application. This is what the Québec Ombudsman pointed out.

After the Québec Ombudsman intervened, the Department committed to, henceforth, make the assessment criteria available to applicants from the outset.

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

Changes in selection requirements unjustly penalize immigration candidates

All applications for a Québec selection certificate filed by an immigration candidate are evaluated by the Ministère de l'Immigration, de la Diversité et de l'Inclusion based on a point system. The points that count towards eligibility mainly apply to education, professional qualifications and linguistic knowledge. Applications are also analyzed by considering the fit between the immigrant worker's skills and labour market requirements in Québec.

In March 2017, the Department changed the weighting of selection criteria to take new socioeconomic parameters into account. The changes not only apply to applications for selection certificates filed as of that date, but also to those sent in earlier and whose preliminary assessment had not yet begun.

Since January 1, 2016, Regular Skilled Worker Program candidates must apply through the *Mon projet Québec* web portal. None of the 10,000 applications submitted this way were processed before the changes that took effect in March 2017. The same holds true for the 18,000 other paper applications submitted before December 31, 2015. Consequently, people whose files stood a good chance of being approved based on the selection criteria at the time they submitted their application could be turned down based on the criteria established in March 2017. Applied retroactively, the changes to the guidelines for reviewing candidacies are likely to unjustly penalize candidates.

The Québec Ombudsman understands that in adapting selection criteria to new socio-economic parameters, the Department seeks to put all chances for successful integration within Québec society on the side of individuals or families. However, plans to immigrate are so important for people as well as their families that the outcome cannot be jeopardized by changing the rules before application processing is completed.

It costs approximately \$700 for a person to apply for a selection certificate. For a family of four, the fees are roughly \$1,000. These amounts are not refundable if the candidates do not meet the amended selection criteria. Such a practice, even if it complies with the Act, may weigh heavily on people from countries with a low standard of living, or people with a low income due to a precarious situation in their country of origin.

The Department wants to introduce a new system for processing applications whereby people who fulfil several selection criteria could first file an “expression of interest” free of charge which is entered in the expressions-of-interest bank. A draft regulation to that effect was introduced on March 28, 2018, further to the passage of Bill 77 on immigration to Québec. The Department will determine additional conditions at a later date, inviting candidates to submit their file for the subsequent steps. Fees will be charged only at the invitation phase. File processing will then proceed as quickly as possible. Furthermore, the guidelines in force at the time of the invitation will not be allowed to be changed for candidates who have received the invitation. The Québec Ombudsman will closely monitor the introduction of this new method for processing selection certificate applications.

On January 1, 2018, some 24,000 files were being processed by the Department.



MAINTAIN INITIAL **SELECTION CONDITIONS** UNTIL **ANALYSIS** OF AN APPLICATION IS COMPLETED

A person submitted a selection certificate application and paid the fees. A year went by during which some criteria for the attribution of points were changed (e.g. fewer points allotted for education). Given these new criteria, the candidate's application could be turned down.

For this person, the process proved costly in time and money. Furthermore, his plans for the future were jeopardized due to conditions that did not exist when he began the process.

With the new application processing system which the Department intends to put in place in 2018, these problems should no longer occur. However, applications that were already submitted will not be processed using the new system.

The department must provide all relevant information

Until December 2011, the assessment of language skills of all immigration candidates was carried out by a public servant of the Department who met with the candidates for a selection interview. To speed up the process, the Department introduced standardized languages tests that candidates could take. In November 2017, the tests became compulsory.

However, most people who had applied before 2011 were not informed that they could now take standardized tests to speed up the processing of their file. Only those who contacted the Department

were informed of this. It was not until January 2018 that the Department informed all the candidates concerned that they would have to take the tests in question.

At the Québec Ombudsman's request, the Department agreed to proceed to analyze the files concerned when they received the results of the language tests. The Québec Ombudsman insists on the importance of handling these files promptly given that the applications had been received before December 2011.

Ministère de la Justice

Access to administrative justice

In Québec, administrative tribunals play a crucial role for those wishing to contest a decision involving a government department, a public agency or a municipality. Some are tasked to hear and settle disputes between parties, concerning, for example, housing or labour relations. Others act in matters of compensation or land protection and public protection. Several administrative tribunals offer the option of a conciliation session before the hearing phase. Such a session enables the parties to discuss and negotiate directly with the representative of the government department, the agency or the municipality whose decision they are contesting.

There are lengthy wait times for some of these tribunals, a fact which the Québec Ombudsman is critical of again this year. For example, the following wait times were recorded for the time between when a person submits his or her application and the hearing by these tribunals:

- Commission d'accès à l'information du Québec: 25 months;
- Régie du logement: 15.4 months for general cases;
- Tribunal administratif du Québec, social affairs section: 20.8 months.

The people who approach an administrative tribunal expect to obtain justice within a reasonable time frame. The first section of the *Act respecting administrative justice* makes promptness one of the bases of administrative justice. Currently, prolonged delays jeopardize access to these tribunals.

Delays in decision-making by an administrative tribunal may have a significant impact on people's lives. This can be the case when, for example, a tribunal must hand down a decision in the following situations: when the Société de l'assurance automobile du Québec or the Direction de l'indemnisation des victimes d'actes criminels is slow to issue an income replacement indemnity or decides to terminate it; or when the Ministère du Travail, de l'Emploi et de la Solidarité sociale refuses to recognize a recipient's severely limited capacity for employment.

The Québec Ombudsman has observed that certain appeals before administrative tribunals could have been avoided. It can happen that further to complaints, an out-of-court solution is found after the Québec Ombudsman recommends that the departments and agencies reassess a person's situation in order to reach a settlement. However, it has noted that departments and agencies are reluctant to do this and generally prefer referring the matter to the court. This finding only concerns administrative tribunals that settle disputes between a person and a department or agency. This excludes the Régie du logement, to which only private parties (owners and tenants) can appeal.

Accessibility to administrative tribunals calls for prompt and effective action. The Québec Ombudsman expects these issues to be a priority for the Ministère de la Justice.

Exercising civil recourse against an aggressor

Since 2013, a person who has been a victim of sexual assault, violence suffered during childhood, or violence by a spouse may institute a civil action against his or her aggressor within 30 years. Previously, this time limit was three years. While welcoming this extension of the authorized time limit for instituting such a proceeding, the Québec Ombudsman felt that any prescription for this type of redress should be abolished in order to facilitate the exercise of civil recourse for the victim.

The *Civil Code of Québec* provides that the calculation of the 30-year prescription period begins on the date when the person becomes aware that the harm he or she has suffered can be attributed to the assault or the act of violence. The calculation period may also be suspended and begin after the date of this awareness if the victim was a minor at the time he or she became aware of the alleged act. In such a case, the calculation of the period begins only on the victim's 18th birthday. Suspension may also be considered if the victim, regardless of his or her age, can prove it was impossible to act despite this awareness.

Clearly, it may be complex to calculate the prescription period, prove that it was impossible to act or reconstruct the timeline of the events to pinpoint when the awareness of harm related to such an assault occurred. This complexity may hinder many people from filing an action. This is another obstacle

in addition to the difficulty victims usually have reporting their aggressor and recognizing the link between the act committed and the lingering aftereffects.

In an opinion released in December 2017 entitled *Abolish any prescription for civil actions in case of sexual assault, violence suffered during childhood, or violence by a spouse or an ex-spouse*, the Québec Ombudsman made four recommendations to the Ministère de la Justice:

- abolish the prescription period for all civil actions for these specific cases;
- establish retroactivity without any time limit for the legal provisions for that purpose;
- enable victims to institute new proceedings within five years as of the coming into force of the new provisions if their application was turned down simply because of the prescription period;
- inform the victims and organizations for victim assistance about the legislative amendments put in place as a result.

The Québec Ombudsman asked the Ministère de la Justice to send it an action plan for implementing its recommendations as well as a time frame for carrying out the required work. As at March 31, 2018, it had not obtained any concrete commitment from the Department on this subject.



The Québec Ombudsman's press release is found at protecteurducitoyen.qc.ca.

Ministère de la Sécurité publique

Processing of financial assistance applications after the spring 2017 floods

The spring floods of 2017 affected 291 municipalities in Québec. Given the extent of the events, the Ministère de la Sécurité publique replaced the general financial assistance program with a special program offering increased amounts. However, problems with the processing of applications occurred repeatedly.

Most of the complaints handled by the Québec Ombudsman had to do with lengthy delays in processing financial assistance applications. The Department was responsible for a good many of these delays at different stages of processing.

Mistakes in the damage appraisal reports were also noted. The flood victims concerned had to contest these reports, which added another step to a process that was complex to begin with, hence creating further delays.

For some citizens, communication with the analysts responsible often proved daunting: difficulty reaching them, no return calls or follow-up on email messages or documents, applicants shuffled from one agent to another.

In some cases, the information provided by Department staff was inaccurate, leading to needless requests or steps for the flood victims. The Department also lost documents, which, once again, slowed down the processing of applications.

A year after the floods, the Québec Ombudsman sees that the situation is not completely resolved. It is still handling complaints from flood victims who feel that they have suffered considerable harm. For example, the delay in receiving a response concerning admissibility is a significant source of insecurity for many of them. Moreover, people found themselves in a precarious financial situation because

of the lengthy wait times for an advance payment. Others could not begin repair work on their home or had to halt it because the Department had not yet authorized the issuance of supplementary funds. People evacuated from their home had to stay away several months pending the Department's decision. As at March 31, 2018, some families had not yet returned.

The Minister of Public Security tabled an action plan in the winter of 2018. He transmitted a draft of a general financial assistance program regarding actual or imminent disasters to the Québec Ombudsman.



PROMPTLY ISSUE **FINANCIAL ASSISTANCE** TO DISASTER VICTIMS

A citizen's home was flooded during the spring floods of 2017. The man, who was nearly 80 years old, as well as his spouse and their grandson with a disability, were taken in charge by the Red Cross and given a place to stay in a motel.

In June, an expert mandated by the Department appraised the damage to the house. In September, still without news and after contacting the Department several times, the citizen contacted the Québec Ombudsman with a complaint about the scanty information he had received.

After the Québec Ombudsman intervened, the couple were visited by a second claims adjuster, who informed

them that the first report had been lost. Three days later, the citizen received the second appraisal report.

In December 2017, nearly seven months after the floods, the man informed the Québec Ombudsman that the Department had still not issued the financial assistance for the damage to his home. He was still living at the same motel, paid for by the Red Cross.

The Québec Ombudsman contacted the Department, which assured it that the cheque would be mailed as soon as the phone conversation ended. The cheque was mailed that same day.

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

The information given to recipients of *Réussir*, a social assistance and support program

According to the *Individual and Family Assistance Act*, adults may attend a secondary-level educational institution as part of a general education program and still continue to receive last-resort financial assistance. However, they become ineligible for this assistance if they study full-time at a postsecondary educational institution or a secondary-level educational institution in a vocational program.

The Act provides for exceptions, for example, when an adult takes part in the social assistance and support program *Réussir*, which enables recipients of last-resort financial assistance to carry out postsecondary studies. Under this support measure, aimed at providing access to the labour market, a monthly allowance is added to basic financial assistance.

Any last-resort financial assistance recipient who transitions from a general education program in a

secondary-level educational institution to a vocational program in a secondary-level institution or to a postsecondary institution must inform the Department about this change. It then terminates last-resort financial assistance unless the person qualifies for a program such as *Réussir*. If there is a delay in sending the notification to the Department, the person could be issued a claim for the overpayment received. To requalify, the person must give up his or her studies.

Further to complaints, the Québec Ombudsman pointed out to the Department that recipients who attend a secondary-level institution with the intention of continuing their studies must be given better information. The Department pledged to better inform these people about their rights and obligations, as well as about the fact that there are measures, programs and services tailored to their situation. It also committed to reviewing the files of some 50 recipients in this situation.



ADEQUATELY INFORM STUDENT RECIPIENTS

A quadriplegic last-resort financial assistance recipient was finishing his secondary-level general education studies and would be starting cegep the following autumn. That is when he learned about *Réussir*. He therefore took steps to take part in it. Six months later, the Department realized that the student was getting last-resort financial assistance while attending cegep. It advised him that his benefits would be cut and that he would have to reimburse the amount received during his first year of cegep studies, which was \$7,000. Another consequence: the citizen would no longer qualify for the claims slip that entitled him to free medication for his health condition.

Since the citizen had acted in good faith and the Department had not informed him that *Réussir* existed while he was studying at the secondary level, the Québec Ombudsman intervened and he was admitted to the program in question retroactive to when he began his cegep studies. The result was that his debt was cancelled and his last-resort financial assistance was reinstated.

Lengthy processing times for medical reviews

People who are recognized as having a severely limited capacity for employment may be eligible for last-resort financial assistance increased by 25%. They must apply to the Department for this and include a medical report attesting to their condition. If the application is refused, the *Individual and Family Assistance Act* provides that they may contact the medical review office, which must handle the application within 30 days of its receipt. However, as at March 31, 2018, 2,039 files were pending review and the average processing time was 442 days.

The Québec Ombudsman acknowledges the measures that the Department has established in the past three years to decrease processing times: improved work methods, more interviews with recipients,

additional staff, and administrative relief. However, processing delays continue to exceed what is prescribed in the Act by a wide margin. Moreover, a projection based on recent results suggests that it will take another few years before the backlog is completely absorbed. This situation is very unnerving because if these people are proven right during the review, while waiting, they will have been deprived of an amount of money to which they were entitled.

The Québec Ombudsman will check periodically on the recovery plan aimed at absorbing the backlog of applications for review which are queued for processing, with a view to ensuring compliance with the 30-day time frame prescribed in the *Individual and Family Assistance Act*.



REDUCE PROCESSING TIMES

The Ministère du Travail, de l'Emploi et de la Solidarité sociale refused to recognize a last-resort financial assistance recipient as having limited capacity for employment status. She contested the decision and contacted the Department's medical review office. After nearly a year without any news, she complained to the Québec Ombudsman.

At its request, her application was processed and a decision was promptly made. The outcome was in the woman's favour and she obtained an increase in her benefit. She was issued an amount retroactive to the time of her application, namely, \$5,000.

The right to last-resort financial assistance for people in drug treatment centres

Pending their trial, people who have committed addiction-related crimes may, rather than being detained as remandees in a correctional facility, pledge before the court to undergo therapy in a drug treatment centre. In these cases, the person signs an agreement that includes several conditions, including agreeing to be entrusted to such a centre and to live there around the clock. Since such therapy is expensive and the person can no longer work, he or she may turn to the Ministère du Travail, de l'Emploi et de la Solidarité sociale for last-resort financial assistance. The Department then pays the centre \$1,596 for the cost of therapy.

The Québec Ombudsman handled complaints from young adults awaiting trial who had applied to the Department for this type of financial assistance. The Department refused every time, arguing that before their arrest, these young people had lived with their parents and were therefore subject to the parental contribution provided for in the Act. Without the Department's assistance, the youths could not afford costly therapy, and this jeopardized their chances for sustainable reintegration within society.

Feeling that the application of the rule was too rigid, the Québec Ombudsman intervened with the Department, stressing that these young people would be living at a specialized centre full time and, as a result, could not be considered as living with their parents while in therapy. In fact, in every case, the parents had declared to the Department that they were no longer responsible for the subsistence of their adult children.

At the Québec Ombudsman's request, the Department agreed to grant financial assistance not only to the people who had filed complaints, but also to every young person in that situation.

Since Department agents are provided with ongoing training, the Québec Ombudsman asked that the members of the staff involved in the application of these requirements be issued a reminder, which was done. Since the intervention by the Québec Ombudsman, no other complaint of this kind has been brought to its attention.

Retraite Québec

The verifications needed to establish eligibility for the surviving spouse's pension

Retraite Québec's surviving spouse's pension ensures a basic income to the spouse of a deceased person who has sufficiently contributed to the Québec Pension Plan. To qualify, a person must be recognized as the spouse of the deceased contributor, and it is up to the applicant to prove that he or she qualifies for it. The *Act respecting administrative justice* provides that the agency must ensure that procedures are conducted in accordance with the

applicable laws and rules, according to rules devoid of formalism, and with respect for people's rights.

This year, the Québec Ombudsman noted that in processing an application for a surviving spouse's pension, Retraite Québec had questioned people intrusively. The particular circumstances of the death called for an empathetic approach instead.



HANDLING OF A SURVIVING SPOUSE'S PENSION APPLICATION: ADJUST TO THE CIRCUMSTANCES

The applicant's de facto spouse died by suicide. In handling the application for a surviving spouse's pension, Retraite Québec asked for documents proving that they had lived together as spouses, as well as contact information for witnesses who could corroborate it. The agency received the requested information.

Subsequently, Retraite Québec contacted the witnesses and asked them several delicate questions, going so far as to gauge their perceptions about the deceased's suicidal intentions.

The Québec Ombudsman considered that these questions revealed a lack of consideration of the context of the death. Furthermore, they were pointless because there was sufficient evidence to prove cohabitation as spouses.

The Québec Ombudsman approves of any mechanism for ensuring that the people who receive a pension actually qualify for it. However, it deplores that Retraite Québec went beyond program requirements and even displayed insensitivity. The agency accepted the Québec Ombudsman's recommendations and removed the question aimed at gauging perceptions concerning suicidal intentions from its procedure. It also provided for extra training for its personnel so that such a situation does not recur.

Société de l'assurance automobile du Québec

Recourse when a vehicle is seized because the driver's licence was not renewed

The *Highway Safety Code* authorizes police officers to seize a road vehicle if they have reasonable grounds to believe that the person is driving without a valid driver's licence or is under a sanction.

Any person wishing to maintain the right to drive a road vehicle must pay annual fees and insurance contributions. Furthermore, by the date indicated on the driver's licence, drivers must have renewed the licence by going to a service outlet to have their photo taken and paying the related fees.

In cases of non-renewal, two different scenarios are possible if the driver is stopped by a police officer:

- If the person has not paid the annual fees within the period of validity of the plasticized driver's licence, he or she is issued a statement of offence;
- If the person's plasticized driver's licence has expired and has not been renewed, the vehicle may be seized immediately for 30 days. In addition to being issued a statement of offence, the person must pay towing and impoundment fees of roughly \$1,000.

The Québec Ombudsman considers that even though these offences are similar, the penalties do not have the same level of severity whatsoever. The *Highway Safety Code* is silent about the possibility for owners of vehicles confiscated due to permit non-renewal to apply for release from seizure.

Let us compare other circumstances where seizure may occur. Such a practice is possible when a licence is suspended or revoked for one of the following reasons:

- refusal to take a proficiency examination, or failure to pass this examination;

- refusal to undergo a medical examination, or a medical condition inconsistent with driving a road vehicle;
- failure to pay a fine;
- failure to comply with licence requirements concerning an alcohol ignition interlock device (instrument for measuring blood alcohol concentrations);
- driving with a blood alcohol level above the legal limit, excessive speeding, car surfing and other *Criminal Code* offences;
- the accumulation of 15 demerit points or more.

In some of these situations, the owner of the vehicle may request release from seizure. As the Québec Ombudsman sees it, driving under the above conditions is a much greater risk to highway safety than getting behind the wheel without having had the plasticized licence renewed.

The Québec Ombudsman conveyed its observations to the Société de l'assurance automobile du Québec (SAAQ). It reiterated its position when Bill 150, *Act respecting mainly the implementation of certain provisions of the Budget Speeches of 17 March 2016 and 28 March 2017*, was being considered. In its letter to the Committee on Public Finance, it recommended that Bill 150 be amended so that the non-renewal of an expired driver's licence no longer be a reason for seizing a vehicle.

The Québec Ombudsman expects that the subsequent stages in the passage of the Bill will enable the addition of clear provisions to that effect.

Compensation for road accident victims

Under the *Automobile Insurance Act*, traffic accident victims have the right to an income replacement indemnity if they are unable to do their job as a result of the effects of the accident. If, three years after the event, the impairment persists and the person still cannot go back to work, the SAAQ may determine a job category that takes into account the person's abilities and the regional availability of the job, among other factors. The accident victim must then take steps to find a job based on those parameters. To enable the person to do this, he or she is granted an income replacement indemnity for a period of up to a year (the indemnity ends if the person finds a job). When the year has expired, the person may be eligible for an income replacement indemnity equal to the difference between the indemnity he or she was receiving when the SAAQ determined the job category, and the net income that he or she is getting or could be getting from the job as determined.

When a person has two jobs at the time of an accident, one full-time and the other part-time, a problem may arise if he or she is able to hold down the full-time job again but not the part-time one. For indemnity purposes, the SAAQ only counts one full-time job, even if the second job that the person had before the accident was part-time. In order to avoid losing income, people must have two full-time jobs, which is obviously unreasonable.

In doing this, the SAAQ interprets and applies the Act correctly. This is what the Tribunal administratif du Québec concluded in several decisions. However, the fact remains that in such cases, there are adverse effects for certain traffic accident victims.

The Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) also handles applications for compensation from traffic accident victims who had more than one job at the time of the accident. Certain CNESST solutions for handling these files would point the way towards means that are more likely to result in fair compensation in such cases.

THE QUÉBEC OMBUDSMAN'S RECOMMENDATION CONCERNING THE CALCULATION OF THE RESIDUAL PENSION

In light of the preceding, the Québec Ombudsman recommends that the Minister of Transport, Sustainable Mobility and Transport Electrification, who is responsible for the SAAQ:

- Amend the *Automobile Insurance Act* so that the calculation of the residual pension is established on a fair salary basis in order to prevent adverse financial effects stemming from the traffic accident.

Reply from the Minister of Transport, Sustainable Mobility and Transport Electrification:

[Translation]

"The Société de l'assurance automobile du Québec pledges to analyze the impact of this recommendation and to take the results of this analysis into account in the next legislative amendments."





Correctional services

This section outlines the Québec Ombudsman's main findings regarding services in correctional facilities for which the *Direction générale des services correctionnels* of the *Ministère de la Sécurité publique* is responsible.

The Québec Ombudsman has jurisdiction concerning provincial correctional facilities that detain people in custody during trial or for offenders sentenced to serve less than two years. It may also intervene regarding courthouse holding areas and the supervision of sentences served within the community. The Québec Ombudsman acts further to complaints or on its own initiative. It also visits correctional facilities.

The *Commission québécoise des libérations conditionnelles* is another one of the organizations within the Québec Ombudsman's jurisdiction.

One of the findings that emerged was that long wait times were the leading ground for substantiated complaints (45.2% of cases).

The organizations concerned accepted the Québec Ombudsman's recommendations in proportions similar to those in past years (100% for case-specific measures and 98.8% for those with a collective impact).

In 2017-2018, the Québec Ombudsman intervened regarding the *Commission québécoise des libérations conditionnelles* and the *Ministère de la Sécurité publique* and the 17 correctional facilities which report to it.

1 Closed requests for assistance and complaints



TRENDS IN CLOSED REQUESTS FOR ASSISTANCE AND COMPLAINTS

	2014-2015	2015-2016	2016-2017	2017-2018
Requests for assistance	131	99	91	113
Substantiated complaints	557	499	646	462
Unsubstantiated complaints	1,000	839	935	763
Could not take a definitive position	50	37	75	66
Redirected complaints	1,933	1,746	1,741	2,147
Suspended complaints	1,260	1,182	1,475	1,432
TOTAL	4,931	4,402	4,963	4,983
Difference with the preceding year	-	-10.7%	+12.7%	+0.4%

Explanatory notes

A request for assistance or a complaint can involve more than one ground.

Requests for assistance do not lead to investigations. For example, they may concern requests for information about the complaint examination procedure, detainee rights or a correctional facility's obligations when a detainee is released.

In certain situations, especially in the absence of proof or when faced with two contradictory versions, the Québec Ombudsman **cannot take a definitive position**.

There are different investigative outcomes. Some investigations may not be completed because the Québec Ombudsman refers the person to another resource. When this happens, the **complaint is then considered as being redirected**. It may also be that

a complaint is **suspended**, notably because the citizen does not respond or withdraws the complaint, or because the situation is resolved on its own during the investigation by the Québec Ombudsman. Lastly, further to investigation, a complaint is deemed **substantiated** or **unsubstantiated**. The complainant is then informed of the Québec Ombudsman's conclusions.

If the complaint proves substantiated, the Québec Ombudsman, when possible, asks for corrective measures and monitors their implementation. A file is closed only after implementation has been monitored, when the Québec Ombudsman is sure that the corrective measures were taken.

The number of requests remained stable from last year. However, there was an increase (4.6%) when compared to the average for the past three years.

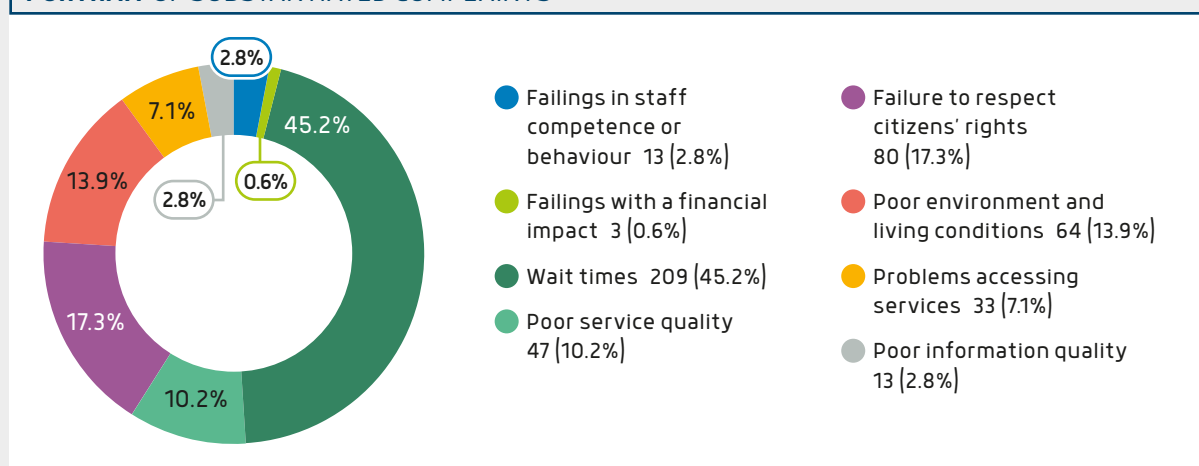
2 Substantiated complaints

PROPORTION OF SUBSTANTIATED COMPLAINTS

2014-2015	2015-2016	2016-2017	2017-2018
35.8%	37.3%	40.9%	37.7%

The proportion of substantiated complaints is established as follows: Number of substantiated complaints/Number of substantiated and unsubstantiated complaints.

PORTRAIT OF SUBSTANTIATED COMPLAINTS



NOTE: Because the numbers in this chart have been rounded off, it is possible that the percentages do not add up to 100.

Wait times is the category with the greatest number of substantiated complaints (nearly one out of two complaints). For example, there may be lengthy wait times for a person admitted to a correctional facility to receive his or her medication.

Failure to respect citizens' rights, which ranked second for grounds for substantiated complaints, may consist of the failure to apply a regulation, an order in council, rules or procedures, or constraints or obligations that exceed requirements or standards.

3 Monitoring of corrective measures

After the Québec Ombudsman has completed an investigation and transmitted its conclusions, the vast majority of bodies concerned accept the recommended corrective measures, as shown in the two following tables.

ACCEPTED CASE-SPECIFIC MEASURES

2014-2015	2015-2016	2016-2017	2017-2018	2017-2018	
				Accepted	Refused
99.6%	100%	100%	100%	204	0

ACCEPTED MEASURES WITH A COLLECTIVE IMPACT

2014-2015	2015-2016	2016-2017	2017-2018	2017-2018	
				Accepted	Refused
100%	100%	100%	98.8%	85	1

4 Closed requests by government department or agency based on the result⁴

AGENCY OR DEPARTMENT/BRANCH	Requests received in 2017-2018	Closed requests in 2017-2018							
		Requests for assistance	Complaints						Total
			Substantiated	Unsubstantiated	Mediation	Could not take a definitive position	Redirected	Suspended	
Commission québécoise des libérations conditionnelles	13	1	1	4		2	4	12	
Sécurité publique - Correctional services	5,068	112	461	759	66	2,145	1,428	4,971	
TOTAL	5,081	113	462	763	66	2,147	1,432	4,983	

4. The number of requests processed in one year (and thus the number of closed requests) does not necessarily match the number of requests received because, at the beginning of each year, investigations into requests received previously are still being processed.

Ministère de la Sécurité publique – Direction générale des services correctionnels

Three people in a cell meant for one person

The phenomenon of overcrowding has affected the correctional community for many years. Faced with this problem, correctional facilities end up putting as many as three people in a cell meant for only one person. These detainees therefore have to share an area measuring approximately 7.5 m². The Québec Ombudsman denounces this overcrowding and expects the Ministère de la Sécurité publique to take the required corrective measures.

In 2015, the Québec Ombudsman observed such triple occupancy in all the cells at Amos correctional facility. At the time, the authorities considered that the imminent opening of a new facility in this city would rectify the situation. As at March 31, 2018, problems persisted and the projected correctional facility had yet to open. This triple occupancy also occurs in the Hull and Trois-Rivières facilities, albeit less regularly, and only in certain areas. Nonetheless, the situation remains worrisome.

Cells with three occupants are equipped with one set of bunkbeds. The third person sleeps on a mattress on the floor. Because of the material they are made of, some of these mattresses cannot be disinfected. The cells are dirty and cluttered with personal belongings. Such a situation could contribute to the spread of certain diseases.

At one correctional facility visited by the Québec Ombudsman this year, people assessed as being highly dangerous had been put in an area where there were three detainees per cell. In fact, there were 22 inmates in the eight cells in this area. In the same facility, 40 people had been put in 16 cells. Such a context causes tension to breed among the detainees. The situation is particularly critical in summer, when the temperature climbs rapidly in the crowded cells (which do not have air conditioning), thereby increasing the level of tension.

The Department has not come up with many solutions for solving the problem, basically relying on the opening of new facilities. As at March 31, 2018, the Sorel facility, inaugurated in May 2017, was still not at full capacity due to a shortage of personnel. Given their low accommodation capacity, the new facilities in Sept-Îles and Roberval contribute very little to reducing overcrowding. The Leclerc de Laval facility, initially intended for male inmates, now houses women. Therefore, these openings cannot relieve overcrowding at the other facilities.

Clearly, triple occupancy continues, notably because of a lack of planning regarding the logistics of opening new facilities.



THE QUÉBEC OMBUDSMAN'S RECOMMENDATIONS CONCERNING TRIPLE OCCUPANCY

In light of the preceding, the Québec Ombudsman recommends that the Ministère de la Sécurité publique:

- Collate the data on the triple-occupancy phenomenon and, using these data, produce an action plan by December 31, 2018, to remedy the situation;
- Improve the planning of logistics in opening new facilities, notably, staff recruitment and training, in order to make it possible to admit detainees without delay.

Reply from the Ministère de la Sécurité publique:

[Translation]

"Triple occupancy is not a general practice and is only used when no other option is feasible. The Department is continuing work to improve its management of prison overcrowding and remains confident that this will have a significant impact on the use of triple occupancy. The Department pledges to send the Québec Ombudsman monthly data in this regard."

Use of solitary confinement

In 2015, the United Nations adopted provisions concerning solitary confinement, which it defines as confinement of prisoners for 22 hours or more a day. The measure is to be used only in exceptional cases as a last resort, for as short a time as possible and pursuant to the authorization by a competent authority. Furthermore, under these provisions, use of solitary confinement for an undetermined period is formally prohibited, and it cannot be imposed for more than 15 days. People with mental disabilities cannot be placed in solitary confinement.

In some Québec correctional facilities, solitary confinement occurs:

- without regard for the person's mental health;
- without a predetermined time limit;
- for periods of more than 15 days, which can stretch out to several weeks and even months.

Solitary confinement happens for various reasons, for example, when there is a shortage of space in the area that corresponds to the detainee's classification, further to a violent act, to prevent suicide, or to protect an inmate from fellow inmates.

In recent years, the Québec Ombudsman has intervened regularly with prison authorities so that the use of solitary confinement is governed by strict rules and respects detainees' rights. Other Canadian bodies have adopted similar positions. Cases in point are the Canadian Human Rights Commission, the College of Family Physicians of Canada, the Ontario Ombudsman, the Canadian government (by means of a Bill on the use of solitary confinement), the British Columbia Civil Liberties Association, Correctional Services Canada, the Superior Court of Justice of Ontario and the Office of the Correctional Investigator of Canada.

It is urgent that the Ministère de la Sécurité publique respond to the Québec Ombudsman's concerns. In this regard, the Department committed to providing it with a draft provincial instruction by May 2018 concerning solitary confinement. The Québec Ombudsman will remain particularly alert concerning this deadline and the content of the instruction.



STOP PROLONGED SOLITARY CONFINEMENT

A man was put in solitary confinement further to assaults and threats to the personnel. He was kept in his cell 22 hours out of 24, despite the fact that a psychiatric assessment indicated that his mental condition was fragile and he tended towards psychotic episodes. The man had been in solitary confinement for four months and was only a few weeks away from his release when the Québec Ombudsman was made aware of the situation.

The Québec Ombudsman recommended that the integrated university health and social services centre (CIUSSS) and the correctional facility produce an intervention plan so that the man could receive care adapted to his condition. Even though this was done, the Québec Ombudsman is critical that the citizen was kept in solitary confinement until the end of his sentence.

Managing intermittent sentences in prison settings

When a court sentences a person to serve 90 days or less, it may allow the sentence to be served intermittently, usually on weekends. Intermittent sentences are granted to people who pose a low risk to society. This makes it possible for them to keep their job and fulfil their family obligations, for example.

However, some of the inconveniences of intermittent sentences include:

- sporadic increases in the prison population even though the premises are not designed to deal with these surges;
- expecting more of personnel on Saturdays and Sundays, when there are already fewer staff;
- cramming the people who are serving intermittent sentences into places that are not equipped for them, for example, gymnasiums, visiting rooms, admission holding cells, or isolation cells intended for people given disciplinary sanctions;
- an impact on the detention conditions of all detainees, notably due to transfers from one area or facility to another to make room for people serving intermittent sentences;

- more control procedures and searches when these transfers occur.

Concerned about the repercussions of intermittent sentences and the complexity of their management by correctional services, the Québec Ombudsman released a special report in March 2018. The purpose of its recommendations was to, among other things, ensure:

- adequate processing of people given intermittent sentences as soon as they arrive at the correctional facility, including the obligation to inform them about how their sentence will proceed;
- respect of the rights of people serving intermittent sentences, notably by means of access to appropriate amenities and premises that are uniform from one facility to another;
- respect of the rights of all detainees in terms of the adjustments to the environment necessary for managing intermittent sentences;
- solutions intended to foster the social reintegration of people serving intermittent sentences.



The Québec Ombudsman's report entitled *The consequences of the increase in intermittent sentences in Québec correctional facilities* is found at protecteurducitoyen.qc.ca.

More and more drones

In 2015-2016, 27 drones were spotted over correctional facilities, but 120 were seen the following year. This growing phenomenon jeopardizes the security of inmates, prison staff and, ultimately, the public at large.

When a drone is detected near a correctional facility, the personnel take immediate action to intercept the objects delivered (i.e. inspection of the premises, pat searches and strip searches, confinement, closure of yards). In 2017-2018, these measures had to be used more often because of the increase in the number of drones. As a result, all the inmates in a living quarter were searched

several times in a same week, were denied yard time, and were confined to their cell for longer periods than usual because of the actions of a few individuals who had orchestrated a drone delivery.

Aware of the security issues involved, the Québec Ombudsman feels that cost-effective material and technological solutions for countering flyovers of correctional facilities by drones must be put in place. However, it points out that these measures must not infringe on detainees' residual rights. The Ministère de la Sécurité publique has committed to inform the Québec Ombudsman about the measures it will take to curb the presence of drones.



FLYOVER OF A CORRECTIONAL FACILITY BY A DRONE: NOT EVERYONE SHOULD BE SANCTIONED

After a drone flew over a correctional facility, all the detainees in one of the areas were informed in writing that the hours spent outside their cell would be significantly reduced for several days.

When asked about this by the Québec Ombudsman, the facility administrators explained that the sanction had not been applied because of the drone delivery, but rather because of a series of incidents in which several detainees in this living quarter had participated.

The Québec Ombudsman reiterated that simply a flyover by a drone could not justify such a measure which violated inmates' residual freedom. It urged the facility's administrators to ensure that, in the future, the real reasons for such measures be indicated in the written notice to the detainees concerned. The Québec Ombudsman has not received any other complaints on this specific matter from the detainees at this facility.

Exercise of the right to vote in municipal elections and school elections

Pursuant to the *Act respecting elections and referendums in municipalities* and the *Act respecting school elections*, people incarcerated in provincial and federal correctional facilities are allowed to vote in municipal and school elections. However, in practice, this right cannot be exercised because

these same two Acts have no special provisions enabling it, for example, voting by mail. Note that these difficulties do not arise with provincial and federal elections because the terms for exercising the right to vote are specified in the applicable legislation.

The *Act respecting elections and referendums in municipalities* was assented to in 1987. At the time, voting took place on different days in different municipalities and with varying frequencies. In such conditions, complex logistics would have been needed for every detainee to vote in the elections in his or her municipality. Since then, there have been legislative amendments. As a result, since 2005, elections are held on a set date for all Québec municipalities. However, 13 years later, there are still no measures that make it possible for

detainees to vote in municipal elections. The same problem exists in the case of school elections.

Consequently, the Québec Ombudsman feels that the *Act respecting elections and referendums in municipalities* and the *Act respecting school elections*, for which the Minister of Municipal Affairs and Land Occupancy and the Minister of Education, Recreation and Sports have respective responsibility, must be amended to allow detainees to exercise their right to vote in municipal and school elections.



THE QUÉBEC OMBUDSMAN'S RECOMMENDATIONS CONCERNING THE EXERCISE OF DETAINEES' RIGHT TO VOTE IN MUNICIPAL ELECTIONS AND SCHOOL ELECTIONS

In light of the preceding, the Québec Ombudsman recommends that the Minister of Municipal Affairs and Land Occupancy:

- Amend the *Act respecting elections and referendums in municipalities* to include provisions equivalent to those in sections 294 to 299.1 of the *Election Act* with a view to enabling detainees to exercise their right to vote in municipal elections.

Reply from the Ministère des Affaires municipales et de l'Occupation du territoire:

[Translation]

"The Ministère des Affaires municipales et de l'Occupation du territoire has undertaken work to review the *Act respecting elections and referendums in municipalities*. As part of this process, thought is being given to the question of the exercise of detainees' right to vote in municipal elections."

In light of the preceding, the Québec Ombudsman recommends that the Minister of Education, Recreation and Sports:

- Amend the *Act respecting school elections* to include provisions enabling detainees to exercise their right to vote in school elections.

Reply from the Ministère de l'Éducation et de l'Enseignement supérieur:

[Translation]

"The Ministère de l'Éducation et de l'Enseignement supérieur is sensitive to the fact that anyone with voter status must be able to vote in school elections. We therefore subscribe to the recommendation made to us. In the context of the work to draft a regulation governing the procedure and conditions for the use of a remote voting method for the 2020 school elections, the possibility of giving detainees access to the vote will be evaluated."

Detention conditions, administration of justice and crime prevention in Nunavik

In 2016, the Québec Ombudsman published a special report entitled *Detention conditions, the administration of justice and crime prevention in Nunavik*. The report came in the wake of an investigation in Nunavik villages, mainly Puvirnituq and Kuujuaq. When the analysis was completed, the

Québec Ombudsman concluded that detention conditions were deplorable. In addition, there were problems in terms of how the judicial apparatus operated and with Inuit overrepresentation in the judicial and correctional systems.

Of the report's 30 recommendations, mainly to the Ministère de la Sécurité publique, but also to the Ministère de la Justice, more than half led to prompt corrective measures such as:

- separation of people with incompatible profiles (differences in their physical and mental condition, sex, age, and status, i.e. awaiting trial or convicted offenders);
- marked improvement in the condition and availability of basic supplies (mattress, bedding) in cells;
- compliance with standards for the quantity and quality of the food served at mealtimes;
- acquisition of the required equipment for suicide crisis intervention;
- new communication tools (websites and videos) for Inuit concerning their rights and how the justice system operates;
- reopening of a community residential centre.

However, certain improvements are slow in coming. During a visit in February 2018, the Québec Ombudsman saw that detention conditions in Nunavik continue to be substandard in some respects. For example, the following difficulties persist in Puvirnituq:

- The occupancy rate of cramped police station and courthouse holding cells in periods when the itinerant court is in session remains too high. The government's commitment to build a new place of detention in Nunavik has yet to materialize. Further to the intervention by the Québec Ombudsman, pending the construction of these new facilities, chartered flights have been added to bring offenders who must be incarcerated after their hearing in the "North" back to the Amos correctional facility more quickly.
- Because of the dilapidated condition of the police station, detainees continue to eat sitting on the floor.
- Some surveillance cameras at the police station point directly towards cell toilets.
- There are still no permanent justice services, due in particular to the difficulty of finding staff to fill administrative positions.

In 2018-2019, the Québec Ombudsman intends to continue its rigorous monitoring of each of its recommendations and, as a result, see to the respect of the rights of the Inuit in Nunavik.



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



Health and social services network

This section reports the Québec Ombudsman's main findings concerning the Ministère de la Santé et des Services sociaux and its service network. Pursuant to the *Charter of Human Rights and Freedoms*, the *Civil Code of Québec* and the *Act respecting health services and social services*, users of the public health and social services network enjoy the following rights:

- the right to adequate services;
- the right to be treated with respect to their dignity and privacy;
- the right to the confidentiality of their medical record;
- the right to have access to complete, accurate and relevant information;
- the right to make a complaint.

The Québec Ombudsman's mission consists mainly of ensuring that these rights are respected and of preventing 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. If the person is dissatisfied with the response received, or if there was no response within 45 days of filing the complaint, he or she may then contact the Québec Ombudsman, which may also intervene directly further to a report by a third party or on its own initiative.

The following figures provide an overview of citizen requests, complaints and reports, as well as the monitoring of the corrective measures recommended by the Québec Ombudsman in 2017-2018.

Notably, it was shown that deficient service quality was the leading ground for substantiated complaints and reports (nearly one out of five).

In 2017-2018, the Québec Ombudsman's recommendations were accepted by the bodies concerned in proportions more or less similar to those in past years (98% for case-specific measures and 97% for those with a collective impact).

During this same period, the Québec Ombudsman intervened regarding:

- 45 of the health and social services network's 51 institutions;
- 12 of the other 80 network-affiliated institutions;
- 34 private seniors' residences;
- 14 community organizations;
- 1 community residence for a vulnerable client population;
- 10 pre-hospital emergency services.



1 Trends in closed requests for assistance, complaints and reports

TRENDS IN CLOSED REQUESTS FOR ASSISTANCE AND COMPLAINTS

	2014-2015	2015-2016	2016-2017	2017-2018
Requests for assistance	19	13	15	14
Substantiated complaints	420	401	560	465
Mediation	0	2	0	0
Unsubstantiated complaints	626	527	651	635
Could not take a definitive position	8	11	21	31
Redirected complaints	11	77	92	85
Suspended complaints	181	210	224	193
TOTAL	1,265	1,241	1,563	1,423
Difference with the preceding year	-	-1.9%	+26.0%	-9.0%

TRENDS IN CLOSED REQUESTS FOR ASSISTANCE AND REPORTS

	2014-2015	2015-2016	2016-2017	2017-2018
Requests for assistance	1	2	0	0
Substantiated complaints	61	43	44	102
Mediation	34	16	27	24
Unsubstantiated complaints	44	21	28	45
Could not take a definitive position	2	0	0	3
Redirected complaints	8	10	10	12
Suspended complaints	108	68	72	99
TOTAL	258	160	181	285
Difference with the preceding year	-	-37.9%	+13.1%	+57.5%

Explanatory notes

A request for assistance, a complaint or a report can involve more than one ground.

Even though **requests for assistance** concern bodies subject to the Québec Ombudsman's jurisdiction, they do not lead to investigations. For example, they may be requests for explanations about possible redress or the procedure for obtaining a service.

Mediation occurs in cases in which the Québec Ombudsman proposes a conciliatory solution at the end of an investigation.

In certain situations, especially in the absence of proof or when faced with two contradictory versions, the Québec Ombudsman **cannot take a definitive position**.

There are different investigative outcomes. Some investigations may not be completed because the Québec Ombudsman refers the person to another resource. When this happens, the **complaint or report is then considered as being redirected**. It may also be that a complaint or report is **suspended**, notably because the citizen does not respond or withdraws the complaint, or because the situation is resolved on its own during the investigation by the Québec Ombudsman. Lastly, further to investigation, a complaint or report is deemed **substantiated** or **unsubstantiated**. In the case of a complaint, the

citizen is then informed of the Québec Ombudsman's conclusions.

If the complaint or report proves substantiated, the Québec Ombudsman, when possible, asks the body concerned to institute corrective measures and monitors their implementation. A file is closed only after implementation has been monitored, when the Québec Ombudsman is sure that the corrective measures were taken.

Detailed results

While the number of complaints decreased by 9.0% in 2017-2018 compared with the figure for 2016-2017, it increased by 4.9% with regard to the average for the past three years. The total number of closed reports was up by 57.5% over last year's figure and by 42.7% compared with the average for the past three years. Similarly, the number of substantiated reports more than doubled [44 to 102].

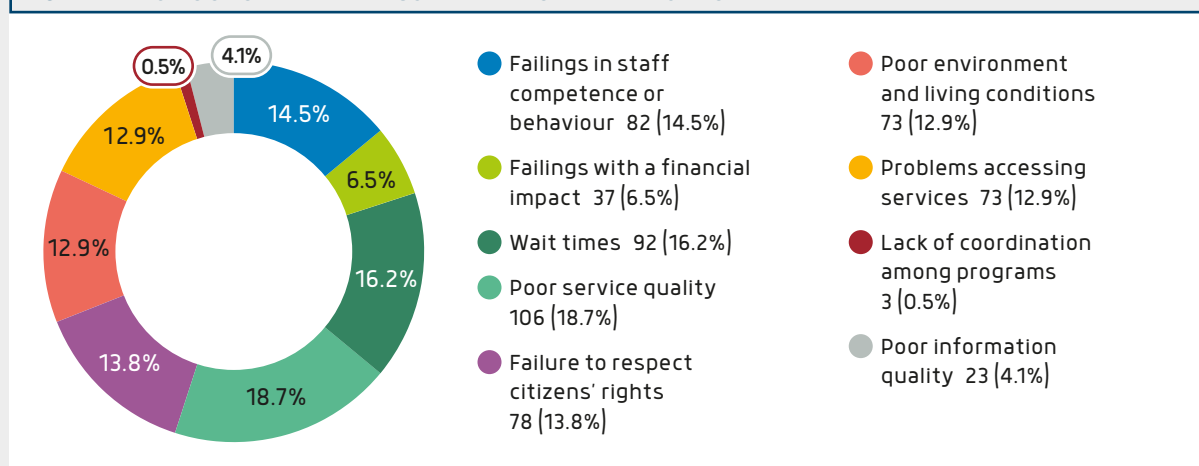
2 Substantiated complaints and reports

The proportion of substantiated complaints and reports is established as follows: Number of substantiated complaints and reports/Number of substantiated and unsubstantiated complaints and reports. This proportion has been relatively stable since 2015-2016, as illustrated in the table on the right.

PROPORTION OF SUBSTANTIATED COMPLAINTS AND REPORTS

2014-2015	2015-2016	2016-2017	2017-2018
41.8%	44.8%	47.1%	45.5%

PORTRAIT OF SUBSTANTIATED COMPLAINTS AND REPORTS



NOTE: Because the numbers in this chart have been rounded off, it is possible that the percentages do not add up to 100.

Poor service quality (with 18.7% of cases) accounted for the most grounds for complaints and reports. These shortcomings consisted notably of:

- lack of or non-compliance with clinical protocols and procedures (e.g. infection prevention);
- inadequate safety or protection measures.

3 Monitoring of corrective measures

After the Québec Ombudsman has completed an investigation and transmitted its conclusions, the vast majority of bodies concerned accept the recommended corrective measures, as shown in the two following tables.

ACCEPTED CASE-SPECIFIC MEASURES

2014-2015	2015-2016	2016-2017	2017-2018	2017-2018	
				Accepted	Refused
97.2%	99.2%	98.8%	98.0%	147	3

ACCEPTED MEASURES WITH A COLLECTIVE IMPACT

2014-2015	2015-2016	2016-2017	2017-2018	2017-2018	
				Accepted	Refused
96.0%	98.2%	98.8%	97.0%	350	11

4 Closed requests based on the mission pursued⁵

CATEGORY/MISSION	Requests received in 2017-2018	Closed requests in 2017-2018						
		Requests for assistance	Complaints and reports					
			Substantiated	Unsubstantiated	Mediation	Could not take a definitive position	Redirected	Suspended
Institutions								
Rehabilitation centres	99		49	33		3	8	11
Residential and long-term care centres	230	1	77	89	1	5	10	74
Hospital centres	714	7	262	277	5	12	35	93
Youth centres	184	3	36	112	2	8	15	38
Local community service centres	253	3	87	95		3	20	39
Complaints commissioners and others	69		16	18	16	1	5	17
Total: Institutions	1,549	14	527	624	24	32	93	272
Community organizations	22		11	15		1	1	1
Private seniors' residences	62		24	14		1	3	18
Private or community residences for a vulnerable client population	1							1
Pre-hospital emergency services	35		5	27				
TOTAL	1,669	14	567	680	24	34	97	292

5. The number of requests processed in one year (and thus the number of closed requests) does not necessarily match the number of requests received because, at the beginning of each year, investigations into requests received previously are still being processed.

More than 40.5% of closed complaints, reports and requests for assistance concerned hospital centres. The percentage of substantiated complaints, stable from last year, is relatively high, at 48.6%.⁶

CLOSED REQUESTS BASED ON THE PROGRAMS CONCERNED⁷

PROGRAM	Requests received in 2017-2018	Closed requests in 2017-2018							
		Requests for assistance	Complaints and reports						Total
			Substantiated	Unsubstantiated	Mediation	Could not take a definitive position	Redirected	Suspended	
Buildings and equipment	1		1					1	2
Intellectual disability/Autism spectrum disorders	77		42	22		2	8	10	84
Physical disability	97		29	48		2	9	8	96
Addictions	16		1	6			1	6	14
Troubled youth	181	2	33	112		8	15	39	209
Access to physicians	38	3	12	2			4	9	30
Complaint examination procedure	90	3	36	6	22	1	4	8	80
Mental health	220	2	44	109			17	39	211
Physical health	464	3	206	162	1	11	14	60	457
Support for elderly autonomy	320	1	113	117		8	14	98	351
Service support	157		49	94		2	10	10	165
Total	1,661	14	566	678	23	34	96	288	1,699
Other	8		1	2	1		1	4	9
TOTAL	1,669	14	567	680	24	34	97	292	1,708

For the physical health program, the proportion of substantiated complaints was 56.0%, which was higher than that of the average for programs as a whole (45.5%). Nonetheless, the program posted a decrease of 12.1% in the number of requests compared with last year's figure.

The programs with a marked spike in the number of requests were support for elderly autonomy, and mental health, with respective increases of 43.3% and 25.6% compared with the numbers for 2016-2017.

6. The percentage of substantiated complaints is calculated as follows: Number of substantiated complaints/Number of substantiated complaints + Number of unsubstantiated complaints.

7. The number of requests processed in one year (and thus the number of closed requests) does not necessarily match the number of requests received because, at the beginning of each year, investigations into requests received previously are still being processed.

General remarks

Note that this Annual Report describes facts observed from April 1, 2017, to March 31, 2018.

The Québec Ombudsman's observations and recommendations in this report concern the following areas:

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

Disabilities

Residential services for people with disabilities and complex needs

Under contract with integrated health and social services centres (CISSSs) or integrated university health and social services centres (CIUSSSs), intermediate residential resources and family-type resources are managed by private promoters or non-profit organizations.

This year again, the Québec Ombudsman noted shortcomings in residential resources for people with disabilities and complex needs, notably those with serious behavioural disorders or significant physical limitations. The main problems observed were the following:

- there are few intermediate and family-type resources prepared to admit these people;
- the resources that admit them have trouble providing them with the required supervision.

Lodging people who have severe physical disabilities requires a layout based on their limitations, which may include the installation of costly equipment: access ramps, mobility devices, lifts and elevators. Furthermore, in order to properly meet the needs of this client population and residents with severe behavioural disorders, resource owners must have a sufficient ratio of qualified personnel. Because of these factors, few promoters are interested in offering this type of lodging which, in turn, limits the possibilities of finding an environment that can respond adequately to people's needs.

The Québec Ombudsman handled complaints and reports which indicated that residents had been assaulted by fellow residents because they live with people who do not have the same clinical profile as they do. The Québec Ombudsman reiterates the importance of offering the people concerned an environment that is safe and adapted.

In its 2016-2017 Annual Report, the Québec Ombudsman recommended that the Ministère de la Santé et des Services sociaux create, in the coming year, a slate of residential services that responds adequately to the needs of people who have severe behavioural disorders or need special physical care, notably by implementing an action plan no later than March 31, 2018. On that date, the Department had yet to publish the plan.



ENSURE A **SAFE LIVING ENVIRONMENT** FOR RESIDENTS

A young boy living in a family-type resource was often the victim of violence by another person with a disability. It took a long time for the CISSS responsible for the resource to transfer the resident with aggressive behaviour to another place. Meanwhile, it introduced temporary measures to enhance surveillance.

Even so, the child's stress level was high, his skills regressed and he tended to withdraw. The child's mother complained to the Québec Ombudsman about:

- not having been informed soon enough about what her son was experiencing;
- not having been advised of the solutions put in place;

- the lengthy delay before the CISSS found new lodging for the woman with the behavioural problems.

After the Québec Ombudsman intervened, the CISSS stepped up its work to improve access to residential resources adapted to people with behavioural disorders.

Rehabilitation services for children with a disability who are starting school

When a child with a disability is of an age to start school, the rehabilitation services provided to him or her up until then by the health and social services network decrease drastically, sometimes to the point of stopping completely. Does this mean that it is up to the school system to take over? The school's mission is rather to educate and socialize students. Clearly, the complementary services offered by school boards support this mission. However, the actions by the school may converge with those of the health and social services network, but they cannot replace them.

Through the complaints it receives, the Québec Ombudsman has noted that children are left behind because the Ministère de la Santé et des Services sociaux and school boards pass the buck.



MAINTAIN **SPECIALIZED SERVICES** EVEN THOUGH A CHILD HAS REACHED SCHOOL AGE

A mother complained to the Québec Ombudsman about the CISSS's decision to stop her son's speech therapy services because he was starting school. She argued that her son still needed services; this was confirmed by the CISSS's speech therapist. For its part, the school told the mother that it was not

responsible for providing the services in question.

The investigation by the Québec Ombudsman showed that under an agreement between the CISSS and the school boards of the territory, services could be extended for the first year

of school if warranted by the child's situation. However, the agreement had been suspended in 2014. The Québec Ombudsman recommended that the CISSS reinstate the terms of the agreement, which it did, thereby preventing similar problems for other children.

Troubled youth

Preserve the cultural identity of first nations children

The Director of Youth Protection must, as much as possible, use resources within the proximity of the community of origin of a child which it is obliged to remove from his or her family. This is specified in the *Youth Protection Act*. Proximity must not only refer to geography, but to emotional and cultural imperatives as well.

In the context of interventions regarding First Nations, efforts must be made so that children who belong to an Aboriginal community are kept within that community. However, before the amendments to the *Youth Protection Act* were passed in October 2017, certain considerations (especially concerning the clinical or physical environment) meant that foster families within the young person's cultural community did not qualify. The Québec Ombudsman welcomes the adoption of the amendments to the Act because they enhance the efforts made to entrust children from an Aboriginal community to families of the same community.

Nevertheless, sometimes a child cannot be placed close to his or her family, due either to a lack of resources in the immediate environment or because of issues related to the protection of the child. Moreover, youth centres do not always ensure that the cultural identity of children placed outside their community is preserved.

The investigations by the Québec Ombudsman also showed that the intervention plans that youth centres produce with the participation of the parents are not always adapted to real life in Aboriginal communities. Hence, the necessary correlation with emotional, physical, spiritual and mental dimensions is missing. As a result, the young person and his or her family may not completely understand or accept the intervention plan.



ADAPT INTERVENTIONS TO THE CULTURAL SPECIFICITIES OF **FIRST NATIONS**

Before the amendments to the *Youth Protection Act* were passed, a parent complained about having little information about her two children placed in a foster family outside their community, among other things.

First, the investigation by the Québec Ombudsman showed that the youth centre was not doing anything to preserve the children's cultural identity. It

therefore recommended that the CISSS remedy the situation by having the children participate in activities likely to develop and protect their Aboriginal identity.

The Québec Ombudsman also noted that no intervention plan had been drawn up for these children and that no information had been sent to their parents. Therefore, another of the Québec Ombudsman's recommendations

concerned the importance of promptly drafting the required intervention plans and of adapting them to the cultural context. It also reminded the centre that parents must always be the first to be kept informed of what their children are experiencing.

The recommendations were accepted and implemented.

Mental health

Decision-making in community organizations

Community organizations subsidized by the health and social services network are recognized as its independent partners. They are free to define their mission, policies, intervention approaches and means of management as they see fit. Under the *Act respecting health services and social services*, they must treat people with courtesy, fairness and understanding, with respect for their dignity and autonomy.

This year, the Québec Ombudsman received complaints about how community organizations had managed conflictual situations involving people who used their services. Some of them had been expelled without explanation or without being able to express their viewpoint.

In most cases, the organization's board of directors makes the decision to expel or suspend a person. To do so, it must base its decision on clear rules and take a scale of sanctions into account. This is even more important because, for certain people, these organizations are the only resource available. Furthermore, we expect organizations whose mission is to help people who have mental health disorders to be understanding about certain atypical behaviours.



AVOID SANCTIONS THAT ARE OUT OF PROPORTION WITH THE ALLEGED ACTS

After having been excluded from a mental health day centre because of her behaviour, a woman was allowed to return progressively. It did not go well, and she was expelled again, on allegations of psychological harassment in particular. She complained to the Québec Ombudsman.

The investigation showed that it was difficult to justify that the alleged actions warranted the sanctions imposed both times. The Québec Ombudsman considered that the management of human resources, the interventions and the approach of those in charge and of the staff of the organization were flawed. Hence, a sanction that was too severe given the alleged actions.

The Québec Ombudsman recommended, among other things, that the integrated university health and social services centre (CIUSSS), as the organization's financial partner, monitor the quality of the services provided by the organization. It asked the community organization to take the woman back under the best conditions. The Québec Ombudsman would like to highlight the excellent cooperation of the CIUSSS, which, however, is grappling with lukewarm cooperation by the community organization. The Québec Ombudsman therefore remains particularly attentive to the follow-up by the community organization.

Difficulty applying the Act respecting the protection of persons whose mental state presents a danger to themselves or to others

On October 26, 2017, Bill 130, *Act to amend certain provisions regarding the clinical organization and management of health and social services institutions*, was assented to, adding section 118.2 to the *Act respecting health services and social services*. This section makes it mandatory for institutions to adopt a confinement protocol for their facilities. They must then report on the implementation of the protocol, which must take into account the departmental framework for applying the *Act respecting the protection of persons whose mental health presents a danger to themselves or to others*. The framework was published on March 8, 2018.

The protocol and the reference framework are advances in response to recommendations by the Québec Ombudsman in its 2011 special report on the difficulties applying the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*. While satisfied to see that progress has been made, the Québec Ombudsman is critical that it took so long to achieve this outcome. It will pay close attention to the application of this reference framework by the institutions as well as to the implementation of confinement protocols in institutional facilities.

Physical health

Registration with a family physician

In April 2015, the Ministère de la Santé et des Services sociaux and the Fédération des médecins omnipraticiens du Québec signed an agreement to ensure in particular that 85% of Quebecers are registered with a family doctor. This target was to be reached on December 31, 2017. However, as at that date, the registration rate had topped off at 78.3% for all regions.

The Québec Ombudsman would nonetheless like to draw attention to the progress that has been made. This rate represents a 3.9% increase over last year's figures. Moreover, certain regions surpassed the projections. Cases in point are Bas-Saint-Laurent, Chaudière-Appalaches, Gaspésie and Saguenay-Lac-Saint-Jean. In fact, real efforts have been made across Québec to increase the number of people registered with a family doctor. The staff for centralized waiting lists for orphan patients (GACOs) in some regions therefore:

- contact physicians directly;
- facilitate the administrative procedures surrounding new registrations and clinic management.

Nevertheless, the target has not been reached, hence the importance of maintaining and increasing the efforts to achieve this goal.

GACOs have nursing staff whose role includes assessing the state of health of the people who register with the Québec Family Doctor Finder (GAMF), a centralized computer system. The Québec Ombudsman has noted that the rules governing the GACO in each territory are not applied uniformly. This means that some GACOs, unlike others, do not allow people whose family doctor will retire within the next two years to register with GAMF.

Furthermore, GACOs do not always have the required resources and information to adequately determine the priority that a request should be assigned.

- The GAMF registration form only contains questions concerning the person's general state of health, and nothing about medication, use of specialized services or monitoring of chronic illnesses;
- Data that a person considers relevant to the analysis of his or her file cannot be added to this form;
- Some GACOs that cannot count on the expertise of a nurse do not offer a clinical assessment at the time of registration with GAMF;
- For some GACOs, it seems obvious that, given the form's limitations, registrars must be assessed by the nursing staff; however, other GACOs do not offer this service. As the Québec Ombudsman sees it, this affects equal access to quality services.

The Québec Ombudsman made eight recommendations to the Minister of Health and Social Services aimed in particular at:

- achieving a better fit between people's state of health and their GAMF priority ranking;
- re-entering people assigned a family doctor on GAMF if they have not been registered with that doctor within 60 days;
- allowing people who want to be assigned a family doctor beyond the geographical limits of their health and social service region to do so;
- helping Montréal region GACOs to increase the assignment of people to a family doctor while ensuring equal access.

The Québec Ombudsman will remain very attentive to the follow-up to its recommendations.



The Québec Ombudsman's report entitled *Improve the process for registering with a family doctor* is found at protecteurducitoyen.qc.ca.

Falls while hospitalized

The Québec Ombudsman is concerned about falls during hospitalization and the resulting injuries. These frequent falls often take a heavy toll on the person and are ultimately costly for the healthcare system.

According to data from the Ministère de la Santé et des Services sociaux, for 2016-2017 alone, 48,195 falls were reported in hospital centres. This confirms that they are not isolated incidents and that special attention must be paid to them.

Considering the high risk of falls, nursing staff must act preventively. Users at risk for falling must be identified and their individual risk factors assessed as soon as they arrive. If necessary, the staff must introduce preventive measures and enter all useful information into the person's file.



ESTABLISH ADEQUATE SUPERVISION

An elderly woman fell at home and was taken to hospital. After an operation, she remained on the surgical unit for a few days, where she fell again. She died not long afterwards, the fall having caused her condition to decline rapidly.

The investigation showed that the intensive care unit physician had instructed her to be given a room close to the nurses' station and that a member of the personnel be by her bedside permanently

because of the patient's high fall risk. Despite the file notes, the personnel did not feel that it was necessary to assign someone to her continually.

Further to the Québec Ombudsman's recommendations, the hospital provided training to the staff on the unit concerned with a view to improving practices when a person who is at risk of falling is identified as such and for deciding on the level of supervision required.

Use of means of control

Various approaches are used to calm patients who display symptoms of dementia (screaming, wandering, agitation, hallucinations, delirium). For example, a “code white” is an emergency intervention procedure used when patients express violent or threatening behaviour that poses a danger to themselves or to others.

However, the Québec Ombudsman has noted that nursing staff are sometimes too quick to use means of control when a “code white” is called.



USE APPROPRIATE MEANS IN CASES OF DEMENTIA

An elderly man with severe dementia was hospitalized in a short-term geriatric care unit because of his behavioural disorders and aggression. During his stay of a few weeks, there were nearly 50 “code whites” (more than one per day) involving him.

These findings emerged from the investigation by the Québec Ombudsman:

- The patient had a heavy build and wandered from room to room.
- The environment made possible interventions complicated (numerous patients with various disorders, the presence of visitors and medical equipment).
- The personnel had very little training in the management of dementia symptoms.
- The personnel resorted to “code whites” regularly, notably for personal care.

- “Code whites” systematically led to the use of physical restraints and the injection of antipsychotics.
- The man in question was not necessarily aggressive when “code whites” were called; in fact, sometimes he even cooperated when the physical restraints were put on him.

The Québec Ombudsman made 14 recommendations to the institution aimed at, among other things, personnel training on the use of “code whites” and on a non-pharmacological approach to treating symptoms of dementia. It also asked that the personnel be reminded about the conditions for using means of control. Lastly, it insisted on the importance of adapting the premises to the people who display these symptoms. The institution agreed to implement the Québec Ombudsman’s recommendations, and as at March 31, 2018, some of them had been carried out.

Support for elderly autonomy

Staff shortages in numerous CHSLDs

During certain investigations, the Québec Ombudsman noted that the personnel in residential and long-term care centres (CHSLDs) were struggling to keep up. Among the causes were absenteeism, high staff turnover, and, at times, a staff-resident ratio that failed to take into account the more serious needs of some residents. The Québec Ombudsman also saw that residential resources have trouble recruiting staff or people to replace absent employees, whether nurses or care attendants. Thus, healthcare teams must frequently cope with work shifts when there is not a full staff on duty. This requires reorganization so that residents receive basic care such as the administration of medication, food and rudimentary personal care despite the shortage of personnel. As a result, services such as weekly baths, oral hygiene, shaving and hairdressing are postponed.

Such situations have become so frequent that some CHSLDs have produced written guidelines for decisions by healthcare staff regarding the reorganization of duties or the cancellation of certain care or services. These organizational practices are inconsistent with the provisions of the *Act respecting health services and social services* as well as with departmental policy directions that should shape care provision in a living environment. According to these guidelines, residents' characteristics, needs and expectations must

be the basis for any decision regarding organization, intervention and the physical layout of the premises.

In the context of staff shortages, the people who do not obtain the care and services they need are harmed. The Québec Ombudsman considers this tantamount to maltreatment within the meaning of the *Act to combat maltreatment of seniors and other persons of full age in vulnerable situations*.



IN BED FOR DAYS ON END BECAUSE OF A **SHORTAGE OF PERSONNEL**

The Québec Ombudsman received a report concerning the practices of a CHSLD which, due to staff shortages, was slow to provide residents with certain care and services.

Here are a few examples of these failings:

- People were not taken out of bed for 36 consecutive hours; others were not only taken out of bed very late in the morning, but were put back into bed for the night early in the afternoon.
- Weekly baths were postponed regularly.
- Shaving, oral hygiene and nail care were omitted.
- Response times to call bells and bed alarms were slow.
- Because of a lack of adequate supervision, the residents' risk of assault was greater.
- Recreational activities were cancelled or residents were unable to attend because the staff did not have time to help them get ready (getting them out of bed, personal care, getting dressed).
- Care and service organization and intensity were not based on the client population's lifestyle, needs or pace.

The Québec Ombudsman concluded that the CHSLD's way of doing things was inconsistent with departmental policy for ensuring a quality living environment and that such practices breached the *Act respecting health services and social services* and the *Act to combat maltreatment of seniors and other persons of full age in vulnerable situations*.

It therefore made recommendations not only to the integrated university health and social services centre (CIUSSS) responsible for the CHSLD about which the report was filed, but also to the Ministère de la Santé et des Services sociaux. The recommendations dealt with the need to improve staff ratios and care reorganization in the event of a shortage of human resources. They also aimed to foster the development of measures to attract and retain care attendants and nursing staff in CHSLDs in order to achieve a sufficient presence of staff, consistent with expected ratios. The Québec Ombudsman remains attentive to the implementation of its recommendations, some of which will affect all Québec CHSLDs.



The Québec Ombudsman's intervention report is found at protection.ducitoyen.qc.ca.

Laxity by some integrated health and social services centres

Québec has more than 1,800 private seniors' residences, which must be certified by their region's integrated health and social services centre (CISSS) or integrated university health and social services centre (CIUSSS). To obtain and maintain this certification, the operator must comply with all health and social criteria and operating standards prescribed in the *Regulation respecting the conditions for obtaining a certificate of compliance and the operating standards for a private seniors' residence*. These criteria and standards are designed to ensure that people in private seniors' residences have a place to live that is safe and able to meet their needs.

During its investigations, the Québec Ombudsman noted significant shortcomings in certain residences, whether in terms of staff training or the cleanliness or safety of the premises. It also observed that residences were unable to respond to the changing needs of some of their client population. In certain cases, these situations had persisted for several months, if not years, with the knowledge of the CISSSs or CIUSSSs in charge. They did not systematically respond with the expected vigilance to ensure compliance with the prescribed standards.



REQUIRE PRIVATE SENIORS' RESIDENCES TO MEET **COMPLIANCE STANDARDS**

When there was a scabies outbreak at a private seniors' residence, a quarter of the 65 residents contracted it. The operator of the residence decided to cover up the facts and did not provide any information either to the staff or the residents about the basic precautions to take.

Informed of the situation, the CISSS saw that the premises were not disinfected in keeping with the standards in place. The operator claimed he had the

situation under control but, visibly, that was not the case.

The residence was known for its lack of cooperation when instructed to comply with certification requirements. In fact, it had already received dozens of citations from different organizations (i.e. Ministère de l'Agriculture, des Pêcheries et de l'Alimentation du Québec, Régie du bâtiment du Québec, the municipal fire department, and the Direction de l'inspection et des enquêtes

of the Ministère de la Santé et des Services sociaux). Despite this, the CISSS had not done anything concrete to ensure that the infestation was contained.

The Québec Ombudsman concluded that the CISSS should exercise the required leadership by not allowing such a situation to persist. It made recommendations to it as well as to the residence. Further to the Québec Ombudsman's intervention, the residence decided to close.

Deficient quality control further to agreements between public institutions and private residential resources

To help relieve pressure on hospital emergency rooms, some CISSSs and CIUSSSs purchase services in private seniors' residences or private residential centres that are not under contract. The purpose of these purchases is to lodge seniors, often temporarily while waiting for a place to become available within a permanent residence that meets their needs. Therefore, instead of creating new residential resources that should be

certified following a rigorous process or by means of a permit from the Ministère de la Santé et des Services sociaux, CISSSs and CIUSSSs use less formal agreements provided for in the *Act respecting health services and social services*. Although legal, in certain cases, this type of agreement does not provide the level of supervision required by the residents' state of health.

The Québec Ombudsman considers that CISSSs and CIUSSSs are not thorough enough in verifying whether the resource is able to offer the appropriate services:

- the resource choice is not always based on a rigorous selection process;
- the monitoring of the implementation of agreements varies;
- complacency is tolerated.

Moreover, the needs of the people transferred are not always assessed before the residents are admitted. They may therefore be steered towards places that do not suit their considerable needs. Indeed, in many cases, there are not enough personnel and they do not have the training needed to respond to the limitations and needs of the client population. Service quality standards are not always well understood by the resources and are interpreted differently from one place to another.

In its 2012-2013 Annual Report, the Québec Ombudsman recommended that the Ministère de la Santé et des Services sociaux take appropriate measures to ensure that residents provided lodging in the context of agreements for the purchase of places receive care and services that correspond to the assessment of their needs.

Subsequently, the Department tightened tendering requirements for better quality control. It also committed to make improvements by requiring that private seniors' residences that have entered into agreements by which CISSSs and CIUSSSs purchase places, and, as a result, admit people with a severe loss of autonomy, obtain a CHSLD permit. Unfortunately, six years later, the Québec Ombudsman still sees deficient quality control further to these agreements.



RIGOROUSLY ASSESS PEOPLE'S NEEDS AND THE RESOURCE'S SERVICES

A CIUSSS entered into an agreement with a private seniors' residence to ensure that the elderly receive the care and services that respond to their needs. The purpose was to relieve pressure on hospital emergency rooms by freeing up beds occupied by the elderly who no longer need active care or are waiting for a place within an intermediate resource or a CHSLD. There were no specific requirements concerning the quality of care and services. At the time of the investigation, out of the 122 places at the residence, more than 90 were subject to an agreement with the CIUSSS.

During the investigation it conducted, the Québec Ombudsman noted significant shortcomings in organization, care quality and continuity, supervision practices and the quality of the living environment. For example, it noticed:

- untrained and poorly supervised personnel with little motivation and in insufficient numbers;
- failure to call in a specialized company to handle a bedbug infestation;
- lack of appropriate surveillance equipment to ensure the safety of the residents;

- lack of written notes following incidents or about the condition of residents;
- inadequate food;
- lack of stimulation for residents;
- dirty premises.

The investigation also revealed that the residence had received multiple requests and recommendations, notably from the Ordre des infirmières et infirmiers du Québec, without any improvements being made.

The Québec Ombudsman made recommendations to the CIUSSS responsible for oversight of the agreement in order for it to supervise the residence more closely and stop referring people there until a seismic shift in the situation had occurred. It was recommended that the agreement be terminated if such change did not occur. It also made a recommendation to the CIUSSS responsible for certification aimed at strict supervision of the residence and non-renewal of the certificate of compliance should there be no improvements.

Respect tenants' rights in private seniors' residences

In addition to renting rooms or apartments, seniors' residences must offer at least two of the following services: meals, personal assistance, domestic help, recreation, security services or nursing care. The average age of residents is 83 years old.

Even though the services offered make private seniors' residences a distinct kind of rental operation, their legal framework is the same as for other kinds of rental housing. As a result, all tenants must:

- sign a lease that complies with the *Regulation respecting mandatory lease forms and the particulars of a notice to a new lessee*;
- seek redress with the Régie du logement in the case of disputes with the owner or manager of the premises.

In a special report published in 2016 entitled *Private seniors' residences: more than just rental businesses*, the Québec Ombudsman made recommendations to the Ministère de la Santé et des Services sociaux, the Secrétariat aux aînés and the Minister of Municipal Affairs and Land Occupancy, who was responsible for the Régie du logement at the time the report was released. The purpose of the recommendations was to foster respect for the rights and obligations of the tenants and owners of private seniors' residences. The Québec Ombudsman had three objectives in mind:

- prevent and correct harmful situations and keep lease disputes out of the courts;
- improve the protection of seniors, especially the most vulnerable ones;
- put lease signatories back on an equal footing through better information on tenant rights and support.

The bodies concerned recognized the need to act and submitted a joint action plan. The Québec Ombudsman salutes the work undertaken by the Secrétariat aux aînés to produce an information guide on the rights and obligations of the tenants and owners of private seniors' residences, a contribution stemming from its recommendations. However, that aside, it notes the Ministère de la Santé et des Services sociaux's refusal to act on its recommendations.



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

Home support

A necessary turnaround in home support

The vast majority of people in need of home support choose this option rather than life in a residential institution. This is what the Ministère de la Santé et des Services sociaux had in mind when it adopted a home support policy entitled *Chez soi: le premier choix* in 2003. Another advantage of this formula: it helps to relieve pressure on hospitals, rehabilitation centres and residential resources.

In March 2017, the Québec Ombudsman collected information from those in charge of home support services at integrated health and social services centres (CISSSs) and integrated university health and social services centres (CIUSSSs). The analysis of the results showed that the situation had not changed since 2012. In fact, in some ways it had even worsened:

- a decrease in the number of service hours allocated to people with a lesser-needs profile;
- a cap on the number of service hours, which are less costly than lodging someone in the public network;
- introduction of new exclusion requirements;
- in half of the CISSSs and CIUSSSs, a lack of compliance with the Department instruction concerning free domestic assistance for people under the low-income threshold.

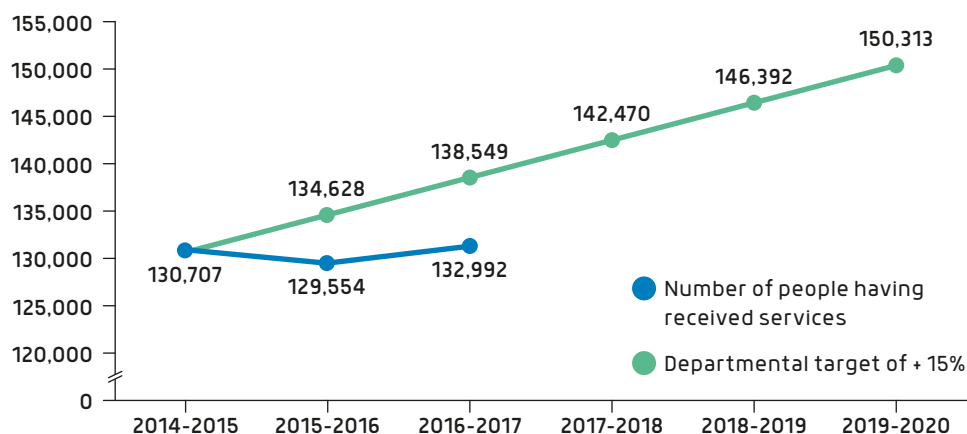
These findings shed light on how institutions are intensifying the restrictive measures that apply

to their slate of services, which runs counter to the Department's home support policy. Numerous complaints confirm the widening gap between service requests and the home support that is really provided.

As part of its 2015-2020 strategic plan, the Department gave itself the goal of increasing the number of users of long-term home support services by 15% by 2020. As the following chart shows, for 2016-2017, the Department reported a pace below that which is required for achieving its self-imposed target. Thus, two years after the start of the 2015-2020 strategic plan, the number of people served (132,992) had increased by 1.7%, when it should have risen by 6% in order to sustain the expected progression. This translates into 5,557 people who did not receive services.

In light of these worrisome figures, the Québec Ombudsman alerted the Department in February 2018 and requested an immediate turnaround.

DATA FROM THE 2016-2017 ANNUAL MANAGEMENT REPORT OF THE MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX



It should be pointed out that subsequently, under the 2018-2019 Québec Budget (March 27, 2018), an extra \$100 million was earmarked for home support services. Since the details of this investment were

unknown as at March 31, 2018, the Québec Ombudsman insists on the importance of this not being a one-off measure if continuous improvement of this slate of services is to be achieved.



Free home support services for people with a low income

This year again, complaints to the Québec Ombudsman attest to unwarranted service reduction. The Department's *Chez soi: le premier choix* home support policy provides that people who only need domestic help are referred to a social economy enterprise. These services are offered free of charge to people with a low income. The government covers the cost.

In the past year, the Québec Ombudsman has intervened several times to have free services reinstated for those who were eligible for them.



GRANT AND MAINTAIN **FREE SERVICES** FOR THE PEOPLE WHO QUALIFY

A person had been receiving domestic help services for more than five years when she learned that, despite her low income, the CIUSSS concerned would no longer cover the cost.

According to the new requirements, she no longer qualified because her needs were solely domestic and she required fewer than five hours of services per week. As a result, the CIUSSS closed her file and referred her to a social economy enterprise.

However, she would be charged certain fees which she could not afford.

The Québec Ombudsman recommended that the CIUSSS reinstate the free services for this person as well as for people with a low income whose needs are confirmed by the institution, as stipulated in the Department policy. The CIUSSS implemented the Québec Ombudsman's recommendation.

Service support

Hospital room billing

People who ask to have a private or semi-private room must pay the fee prescribed in the *Regulation respecting the application of the Hospital Insurance Act* if the room is assigned to them and reserved in their name. Wards are free of charge.

These provisions, which date back to 1981, are no longer adapted to today's medical and social context. In fact, in recent years, hospitals have reconfigured their space to decrease the number of wards and increase the number of private and semi-private rooms. This has the main advantage of limiting the spread of infection.

In so doing, some hospitals no longer comply with the minimum number of beds situated in wards as required under the Regulation, that is, 20%. Similarly, hospital centres only have wards in certain units and not in others. It therefore follows that the free option (a ward) is becoming increasingly rare, if not extinct. Now, to uphold the principle of accessible care, the institutions must offer every person the possibility of being hospitalized free of charge.

People who go to the hospital, either because of an emergency or for a scheduled surgery, are often weak and worried. Even if they remain able to grant consent to care, they do not always have the necessary concentration to properly understand the choices offered to them.

In addition, they are often barely informed or not all informed about the real availability of the different types of rooms when they sign the required form. As a result, sometimes a person who requests a ward and another who opts for a private or semi-private room end up in the same type of room. The patient who asked for the private or semi-private room pays a fee because he or she expressed a preference, whereas the one who requested a ward—which does not exist in the unit—is given a chargeable room without cost. In the Québec Ombudsman's opinion, this principle creates unfair treatment among patients.

In an intervention report on the subject, the Québec Ombudsman pointed out the practices that bear reviewing to the Ministère de la Santé et des Services sociaux. For example, people for whom a private room is medically necessary must pay a fee if they chose this type of room at admission, even though they did not know that such a room would be assigned to them anyway because of their state of health. On the other hand, if they had not made that choice, the medically necessary room would have been assigned to them free of charge. Another situation: a person who had chosen a ward beforehand was assigned a semi-private room because no ward was available. During her hospitalization, she requested a private room so that she could be in a quieter environment. Because no room of this type was available, she remained in the semi-private room. However, because of her request, she was billed for the semi-private room.

Furthermore, the Québec Ombudsman noted disparities among institutions. While some hospitals acknowledge that it is unreasonable to have a room choice form signed when in fact there are no choices within a unit, other hospitals continue to have these forms signed in such cases. The fact that people admitted to a hospital that only offers private rooms do not pay any fee, while others hospitalized at an institution that has several types of rooms must pay for a private room is also inconsistent.

In its intervention report, the Québec Ombudsman recommended that the Ministère de la Santé et des Services sociaux:

- amend the Regulation and the departmental memo so as to resolve any unfairness, notably by stopping billing for rooms that correspond to the basic type of room offered in the unit, or when the room is medically necessary;
- distribute the required information to users and personnel alike so that the improvements made are known and applied.



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



PROVIDE **ACCURATE INFORMATION**

Because of her state of health, a person opted for a private room which, according to the personnel, she could have free of charge. She signed the room choice form accordingly. Subsequently, she received an invoice for the entire time she was in the private room.

During the investigation it conducted, the Québec Ombudsman noted that the personnel did not know the applicable rules and had misinformed the woman. It recommended that she be reimbursed and that the personnel be informed about the new procedure, which was done. Not long after, it learned that the procedure provided that when there are no wards on certain units, no fee could be charged for a semi-private room unless the person had insurance. The Québec Ombudsman intervened again so that patients are treated equally, regardless of whether or not they are insured.



Public integrity investigations

Year 1 of the Québec Ombudsman's new mandate

In November 2015, in the aftermath of its work, the Commission of Inquiry into the Awarding and Management of Public Contracts in the Construction Industry ("Charbonneau Commission") felt it crucial to foster greater citizen participation in matters of public integrity. It therefore recommended the creation of a general system to facilitate the disclosure of wrongdoings and to ensure the protection of whistleblowers.

This would not only ensure the protection of all whistleblowers, but also provide them with necessary assistance and support.⁸

A year later, the *Act to facilitate the disclosure of wrongdoings relating to public bodies* was passed, providing that, henceforth, anyone could disclose a wrongdoing involving a public body to the Québec Ombudsman with complete confidentiality and without fear of reprisal.

On May 1, 2017, the date on which the Act came into force, the Québec Ombudsman established a branch to investigate public integrity disclosures. Here is the report of the first 11 months of its existence.

Confidential and independent recourse

A whistleblower, the driving force behind a disclosure, may be a member of the personnel of a body subject to the Act, a supplier, a subcontractor or anyone else who is aware of a wrongdoing relating to a public body that has been committed or is about to be. According to the Act, a wrongdoing may consist of:

- a contravention of a law or regulation applicable in Québec;
- a serious breach of the standards of ethics and professional conduct;
- a misuse of funds or property belonging to a public body;
- gross mismanagement within a public body, including an abuse of authority;
- an act or omission that seriously compromises a person's health or safety or the environment;
- directing or counselling a person to commit a wrongdoing.

Disclosures are considered inadmissible in certain situations, notably if the alleged act is before the court or concerns an employment condition only.

8. *Report of the Commission of Inquiry into the Awarding and Management of Public Contracts in the Construction Industry*, 2015, Vol. 3, p. 81.

The Act lists the categories of public bodies subject to it, which correspond to more than 5,000 such organizations. They consist of:

- government departments and agencies;
- government corporations (e.g. Hydro-Québec, Loto-Québec, Société des alcools du Québec), Commission de la construction du Québec and Caisse de dépôt et placement du Québec;
- school boards;
- cegeps;
- universities;
- public health and social services network institutions and private institutions under contract;
- childcare centres, subsidized childcare services and home childcare coordinating offices;
- people appointed or named by the National Assembly.

A few figures

1 Requests received

Type of request	Number
Requests for assistance	134
Disclosures	136
TOTAL	270

2 Status of disclosures processing as at March 31, 2018

The first step in processing a disclosure is to determine the **admissibility** of the disclosure. If it deems it admissible, the Québec Ombudsman performs the **audits** it considers appropriate. At the end of the audit, it decides as to the suitability of conducting an **investigation** into the alleged wrongdoing.

Status	Number
Examining admissibility	8
Being audited	15
Being investigated	12
Closed	101
TOTAL	136



3 Breakdown of grounds for closed requests, by type of request

Type of request	Number	
Requests for assistance	135	
Inadmissible disclosures under section 12 of the Act ⁹	70	122 grounds for disclosure
Disclosures referred to another body	28	
Disclosures of information under section 14 of the Act ¹⁰	9	
Grounds for disclosure leading to a conclusion further to an audit or investigation	15	
TOTAL	257	

A request for assistance or a disclosure may include more than one ground. This year, 101 closed disclosures consisted of 122 grounds, and the 134 closed requests for assistance, 135 grounds.

4 Breakdown of grounds for closed disclosures, by category of body

Category of body	Number
Public agency	34
Health and social services institution	33
Department	28
School board	13
Childcare service	6
University	4
Cegep	3
Person appointed by the National Assembly	1
TOTAL	122

9. At any time, the Québec Ombudsman must put an end to the processing of a disclosure if the alleged wrongdoing is the subject of court proceedings or relates to a decision rendered by a court. In addition, the Québec Ombudsman puts an end to the examination of a disclosure if of the opinion, in particular, (1) that the subject-matter of the disclosure does not fall within the Québec Ombudsman's mandate; (2) that the disclosure is made for personal purposes and not in the public interest; (3) that the subject-matter of the disclosure questions the merits of the policies and program objectives of the Government or of a public body; (4) that the subject-matter of the disclosure questions the effectiveness, efficiency or merits of strategies, policy directions and operations related to the investment activities, fund management activities or debt management activities of the Caisse de dépôt et placement du Québec or Investissement Québec; or (5) that the disclosure is frivolous.

10. Transmission to the Anti-Corruption Commissioner or to any other body responsible for the prevention, detection or repression of crime or statutory offences, including a police force or a professional order.

5 Breakdown of grounds for closed disclosures, by category of wrongdoing

Category of wrongdoing	Unsubstantiated grounds	Substantiated grounds
Serious breach of the standards of ethics and professional conduct	4	0
Misuse of funds or property belonging to a public body	4	0
Seriously compromising a person's health or safety	3	0
Gross mismanagement within a public body, including an abuse of authority	3	0
Contravention of a law or regulation	1	0
Seriously compromising the environment	0	0
Inciting a person to commit a wrongdoing	0	0
TOTAL	15	0

Complaints related to reprisals

Under the Act, it is prohibited to seek reprisal against a person who made a disclosure in good faith or who cooperated in a related audit or investigation stemming from disclosure. Moreover, threatening someone to prevent him or her from making a disclosure or cooperating in an audit or investigation is also prohibited. The offender is liable to a fine of

\$2,000 to \$20,000 and of \$10,000 to \$250,000 for government corporations. The amounts are doubled for subsequent offences.

The Québec Ombudsman did not receive any reprisal complaints between May 1, 2017, and March 31, 2018.

Requests for access to legal advice

The Québec Ombudsman may grant financial assistance for obtaining legal services to a person who discloses or wishes to disclose a wrongdoing. The same applies to anyone who cooperates in an

audit or investigation stemming from a disclosure, or who feels he or she has suffered reprisal, based on the conditions and procedures of the legal advice branch.

LEGAL ADVICE

Number of requests received	Number of requests approved	Number of people who received legal advice between May 1, 2017, and March 31, 2018
4	4	1

Officers responsible for dealing with disclosures in government departments and agencies

Another effect of the Act: a procedure to facilitate the disclosure of wrongdoings must be established within every government department and agency, making it possible for employees to communicate with a person within the body who is responsible for handling disclosures. When he or she receives a disclosure from an employee, the officer:

- verifies whether a wrongdoing has been committed or is about to be committed and, if so, advises the highest ranking administrative official of the department or agency;
- forwards the disclosure to the Québec Ombudsman if he or she feels that, given the circumstances, it is better suited to deal with the disclosure, and notifies the person;
- may put an end to the processing of a disclosure based on certain requirements, including if the disclosure was made for personal purposes or is frivolous;
- may make a disclosure to the Québec Ombudsman on his or her own initiative.

When making a disclosure, the employees of the body can either contact the officer or the Québec Ombudsman. Any other person, whether a citizen, a company or an association, must make his or her disclosure to the Québec Ombudsman.

Note that in accordance with the Act, the Québec Ombudsman may grant a body an exemption if its size or resources do not enable it to assign a person to be the officer responsible for dealing with disclosures.

REQUESTS FOR EXEMPTIONS

Requests received	Exemptions granted	Exemptions refused
36	23 (including 4 temporarily)	13

A brief to the Committee on Planning and the Public Domain

The Québec Ombudsman reminds us that trust is the cornerstone of a system for protecting whistleblowers. That is why the legislator, at the time the *Act to facilitate the disclosure of wrongdoings relating to public bodies* was passed, felt it was important to entrust an independent and impartial third party, the Québec Ombudsman, with a central role in implementing the disclosure system.

Subscribing to these goals, in January 2018, the Québec Ombudsman presented a brief to the Committee on Planning and the Public Domain concerning Bill 155, *Act to amend various legislative*

provisions concerning municipal affairs and the Société d'habitation du Québec. The Bill entrusted the handling of disclosures concerning municipal bodies to the Ministère des Affaires municipales et de l'Occupation du territoire (MAMOT).

The Québec Ombudsman recommended an operating model whereby the handling of disclosures pertaining to municipal bodies would be shared between the Québec Ombudsman and MAMOT, giving the whistleblower freedom to choose either one. As at March 31, 2018, Bill 155 had not been passed into law.



The brief by the Québec Ombudsman is found at protecteurducitoyen.qc.ca.

List of recommendations

Minister of Transport, Sustainable Mobility and Transport Electrification (Société de l'assurance automobile du Québec)

THE QUÉBEC OMBUDSMAN'S RECOMMENDATION CONCERNING THE CALCULATION OF THE RESIDUAL PENSION

The Québec Ombudsman recommends that the Minister of Transport, Sustainable Mobility and Transport Electrification, who is responsible for the SAAQ:

- Amend the *Automobile Insurance Act* so that the calculation of the residual pension is established on a fair salary basis in order to prevent adverse financial effects stemming from the traffic accident.



Ministère de la Sécurité publique (Correctional services)

THE QUÉBEC OMBUDSMAN'S RECOMMENDATIONS CONCERNING TRIPLE OCCUPANCY

The Québec Ombudsman recommends that the Ministère de la Sécurité publique:

- Collate the data on the triple-occupancy phenomenon and, using these data, produce an action plan by December 31, 2018, to remedy the situation;
- Improve the planning of logistics in opening new facilities, notably, staff recruitment and training, in order to make it possible to admit detainees without delay.



Minister of Municipal Affairs and Land Occupancy



THE QUÉBEC OMBUDSMAN'S RECOMMENDATION CONCERNING THE EXERCISE OF DETAINEES' RIGHT TO VOTE IN MUNICIPAL ELECTIONS

The Québec Ombudsman recommends that the Minister of Municipal Affairs and Land Occupancy:

- Amend the *Act respecting elections and referendums in municipalities* to include provisions equivalent to those in sections 294 to 299.1 of the *Election Act* with a view to enabling detainees to exercise their right to vote in municipal elections.

Minister of Education, Recreation and Sports



THE QUÉBEC OMBUDSMAN'S RECOMMENDATION CONCERNING THE EXERCISE OF DETAINEES' RIGHT TO VOTE IN SCHOOL ELECTIONS

The Québec Ombudsman recommends that the Minister of Education, Recreation and Sports:

- Amend the *Act respecting school elections* to include provisions enabling detainees to exercise their right to vote in school elections.

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