



PROTECTEUR
DU CITOYEN



2019-2020
ANNUAL
REPORT



September 2020

Mr. François Paradis
President of the National Assembly
Hôtel du Parlement
Québec (Québec) G1A 1A4

Mr. Paradis:

In accordance with section 28 of the *Public Protector Act*, section 38 of the *Act respecting the Health and Social Services Ombudsman*, and section 17 of the *Act to facilitate the disclosure of wrongdoings relating to public bodies*, I am hereby submitting the 50th Annual Report of the Québec Ombudsman for the fiscal year 2019-2020.

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

Yours respectfully,

A handwritten signature in black ink, appearing to read 'Marie Rinfret', written in a cursive style.

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

Time for action

Whether they concern public program reforms or corrections, decisions by authorities must be based on solid observations and in-depth analysis. What is at stake here is the achievement of stated goals and sound management of the public purse.

But what happens to the conclusions drawn? Rigorously documented by interdepartmental committees or even public inquiry commissions, they nonetheless languish for months or even years without outcomes or never bring about the required reforms and corrections. In the meantime, people, sometimes among our most vulnerable, bear the brunt of delays, and, worse yet, of projects left by the wayside.

This Annual Report contains numerous examples of problems deemed major once we had finished investigating. The resulting observations were acknowledged by the public bodies and, ultimately, led to commitments from them to remedy the issues.

In such cases, the flaws were known, described, decried, and came with solutions. The authorities were poised to act.

Then, time went by...and nothing happened.

Québec's education system still labours under a complaint review mechanism that is cumbersome, has too many steps and lacks transparency. After our special report was published in 2017, the Ministère de l'Éducation et de l'Enseignement supérieur let it be known that work was underway to introduce a bill, no later than December 2019, to facilitate the handling of complaints and to spell out the legal framework for the office of the Student Ombudsman in Québec. So far, the Department has not followed up.

In the detention community, in response to the Québec Ombudsman's recommendations, the responsibility for healthcare in correctional facilities was transferred in most locations from the Ministère de la Sécurité publique to the Ministère de la Santé et des Services sociaux. The only exceptions were the two facilities in Québec City and Montréal which account for 40% of the detainee population. The findings are that healthcare has sharply improved in the facilities where the transfer of responsibilities has taken place. When, then, can we expect concrete action regarding the two remaining facilities?

Preschool children with language impairments receive specialized services from the Ministère de la Santé et des Services sociaux until they start school, when the education system takes over. The problem is that services are drastically reduced or stop altogether at this point due to a shortage of resources. During the year, the Ministère de la Santé et des Services sociaux agreed to analyze the situation. Since then, nothing.

Access to a family doctor is another problem that has not yet been resolved. People are worried because they are on waiting lists for more than a year, and sometimes two.

These are but a few examples among many.

COVID-19 crisis: familiar, neglected and exacerbated problems

The period covered by this Annual Report ended on March 31, 2020. On that date, we were already three weeks into the COVID-19 health crisis.

Among other traumatic outcomes, the coronavirus ran rampant in residences for the elderly, especially residential and long-term care centres (CHSLDs) in Greater Montréal. Understaffing, employee burnout, lack of qualified workers and dilapidated premises—these problems, among others, gushed to the surface, if not to say exploded. And yet, the appalling state of long-term care resources that this picture paints has been repeatedly condemned for decades. In several of its reports, the Québec Ombudsman has described the indignities suffered by residents with reduced autonomy who live in these resources.

Could we have expected the Ministère de la Santé et des Services sociaux, its service network and the entire government apparatus to respond perfectly to a catastrophe as pernicious as it was widespread? Quite unlikely, given the unprecedented nature of the events. However, it cannot be denied that the Ministère de la Santé et des Services sociaux and other government bodies were forewarned many times. Unfortunately, solutions that would have provided the elderly with a safe, compassionate and responsive living environment were postponed.

To sum up, after we have all done our homework, at a certain point we have to admit that there is nothing more to say, that no more information is needed, and that it is time for action. Now.

In closing, I want to thank my team. The people who surround me are not only efficient, but also recognize the importance of the values that guide the Québec Ombudsman's actions—justice, fairness, respect, impartiality and transparency. Halfway through my term of office, I continue to witness the generous contribution of every member of the team to achieving our mission and to the results I proudly present today. We will well remember the adjustments that we had to make to our logistics as soon as the COVID-19 pandemic began. In this exceptional context, I have been able to rely on the agility and inventiveness of my entire staff. For this sharp turn that was successfully executed at lightning speed, I also extend my sincere thanks.



Marie Rinfret
Ombudsperson

VALIDATION REPORT FROM THE INTERNAL AUDITOR

[Translation]

June 26, 2020

Madam Ombudsperson:

In accordance with the mandate entrusted to us, we have conducted an examination of the results, indicators, explanations and information presented in the Québec Ombudsman's Annual Report for the fiscal year ending on March 31, 2020.

The Québec Ombudsman's administrators are responsible for the accuracy, completeness and disclosure of the data. We are responsible for evaluating the plausibility and consistency of the information, based on the work we have carried out as part of the validation process.

This examination was performed in accordance with the international standards of the Institute of Internal Auditors for the professional practice of internal auditing. Our 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. Consequently, we do not issue an auditor's opinion on the information presented in the Annual Report.

Further to this examination, we have concluded that the information in the Annual Report for the fiscal year ending March 31, 2020 concerning the Québec Ombudsman appears to be plausible and consistent in all material respects.

BDO Canada s.r.l./S.E.N.C.R.L./LLP

BDO Canada s.r.l./S.E.N.C.R.L./LLP

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THE QUÉBEC OMBUDSMAN

Our status

The Québec Ombudsman is an independent and non-partisan institution headed by 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. We 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.

A new look for the Québec Ombudsman

The Québec Ombudsman now has a new logo. Modern and minimalist, it echoes the institution's mission that puts people front and centre.



The new logo is based on three main elements:

The scale.

Built into the P in *Protecteur*, it symbolizes justice, balance and neutrality.

Orange.

Suggesting action and initiative in solution mode, the colour orange reflects our active listening and our effective interventions.

Grey.

This tone expresses the seriousness of the Québec Ombudsman's intent, its independence and its rigour, qualities that underpin our every investigation.



HIGHLIGHTS

PUBLIC SERVICE 17

Agence du revenu du Québec (Revenu Québec) 28

The Québec Ombudsman published a report on the rights of taxpayers who enter into a payment agreement with Revenu Québec. Because there were no clear guidelines for protecting taxpayers' rights, it recommended that Revenu Québec better define the parameters for this practice.

Ministère de l'Éducation et de l'Enseignement supérieur 44

In a 2017 special report and on several other occasions, the Québec Ombudsman has pointed out the flaws in the handling of complaints within the school system. The Department made it known that it would introduce a bill addressing this mechanism and the role of the Student Ombudsman in Québec. So far, the Department has not followed up.

Ministère de l'Immigration, de la Francisation et de l'Intégration 49

Despite failure of the procedure for the reception of refugee sponsorship applications in September 2018, the Department has not made any changes. Not surprisingly, similar overflows occurred last January 20.

Ministère de la Justice 56

Since 2017, the Québec Ombudsman has been asking for the abolition of the time limit (currently 30 years) for civil actions in cases of sexual assault or family violence. In response to this intervention, the Department announced that by late June 2020, a bill on this subject would be introduced.

The Department is slow to clarify the scope of the notion of a crime "victim." In the meantime, the Direction générale de l'indemnisation des victimes d'actes criminels (DGIVAC) maintains a restrictive interpretation which deprives people of the help to which they should have a right.

Ministère de la Sécurité publique 58

Complaints reveal that long wait times and the loss of documents persist in the handling of claims to the Department from people who incurred flood damage. Corrective measures must be put in place to better manage these files.

CORRECTIONAL SERVICES 79

Transfer of healthcare 84

Since 2016, the Ministère de la Sécurité publique has been transferring responsibility for healthcare in correctional facilities to the Ministère de la Santé et des Services sociaux. However, transfer is lagging in the Québec City and Montréal facilities, which account for 40% of the detention population.

Strip searches 88

Complaints showed that detainees had been subjected to needlessly invasive and repeated strip searches. Due to the Québec Ombudsman's intervention, facility authorities now ensure that best practice rules are followed.

Alternatives to incarceration 95

In a 2018 special report, the Québec Ombudsman spoke out against the consequences of the increase in intermittent sentences in correctional facilities, which include more overcrowding. As the Québec Ombudsman sees it, possible alternatives to incarceration must be considered. However, when no alternatives can be considered, current practices must change.

HEALTH AND SOCIAL SERVICES 97

Disabilities 105

Once children start school, they no longer qualify for the speech therapy services they had been receiving from the health and social services network. It would be inaccurate to say that the education system takes over with the same intensity.

Troubled youth 108

Investigations show that youth centre staff lack training, support and supervision, especially new hires. Young people and their families may be affected.

Régie de l'assurance maladie du Québec (RAMQ) 113

A person with reduced mobility and without a driver's licence had to use adapted transportation twice to have his or her health insurance card renewed. This entailed having a photo taken at a pharmacy, followed by other formalities at a local community services centre (CLSC). However, anyone can go to a Société de l'assurance automobile du Québec (SAAQ) service outlet to have this done all at once. The Québec Ombudsman recommended that RAMQ do a better job of informing the public.

In 2018, the Québec Ombudsman criticized the fact that Québec-born children do not have access to healthcare because of their parents' precarious migratory status. In the Québec Ombudsman's opinion, this contravenes the applicable legislation because these children are Canadian and live in Québec. RAMQ still refuses to act on this recommendation, even though no legislative amendment would be needed.

Mental health and addictions 116

The care provided to people at risk for suicide, including youth, is flawed in many ways. One of the problems is a lack of screening tools. In one institution, lengthy wait times for obtaining mental health services were also seen.

Physical health 119

The Québec Ombudsman had to remind an institution that even without a health insurance card, anyone who goes to an emergency room must be triaged.

Home support 125

In some regions, people with a mental disorder are increasingly excluded from home support programs. The facts show that, all too often, the assessment of their needs is limited to their physical condition and their psychological state is neglected.

Support for elderly autonomy 130

Brought into glaring focus by the COVID-19 pandemic, understaffing drastically affects residences, including residential and long-term care centres (CHSLDs). The Québec Ombudsman remains very concerned about this problem that persists despite its numerous interventions over the years.

Too often, people with dementia are not housed in environments adapted to their condition. The Québec Ombudsman recommended that institutions clarify the resident profile best suited to their resources in order to prevent a mismatch between needs and means.

Service support 137

The Québec Ombudsman intervened with the Ministère de la Santé et des Services sociaux for a review of hospital room rates and stoppage of billing when a room corresponds to the basic room offered in a specific unit or when the room is medically necessary. With no follow-up thus far, the Québec Ombudsman continues its action on this front.

PUBLIC INTEGRITY INVESTIGATIONS 143

Misuse of funds or property belonging to a public body 154

A senior manager at a health institution overpaid for office furniture. As the Québec Ombudsman sees it, this was an abuse of public funds.

Public safety risks 156

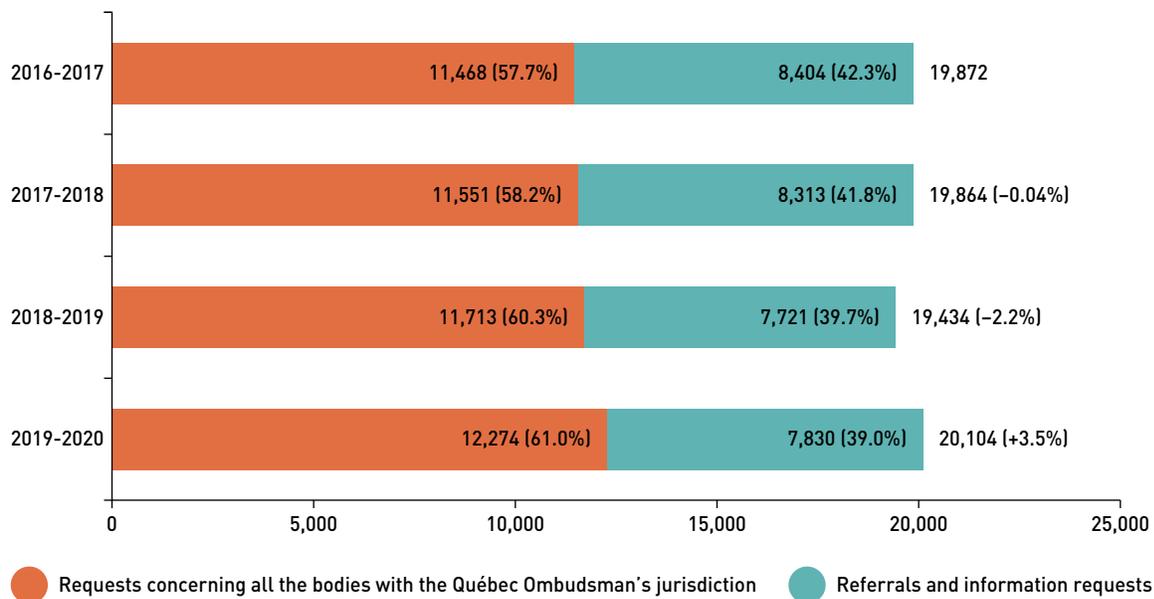
According to a whistleblower, a public body would have jeopardized public safety had it repaired infrastructure based on the specifications at hand. Deeming the risk to be legitimate, the Québec Ombudsman intervened promptly with the authorities concerned.

A Department breaches its confidentiality requirements 159

The Québec Ombudsman saw that the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation (MAPAQ) failed to fully protect the confidentiality of a whistleblower and of the facts disclosed. These breaches have since been corrected and the Québec Ombudsman's recommendations have been implemented.

A FEW STATISTICS

Requests for service received



The *Requests for service received* graph illustrates the trends in all requests received by the Québec Ombudsman in the past four years for all sectors of intervention.

Requests that may give rise to an intervention pursuant to one of the three laws 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 orange.

In 2019-2020, the number of requests subject to the Québec Ombudsman's jurisdiction increased by 4.8% compared to last year. This year, these requests accounted for 61.0% of the total number of requests. The main reason for this trend is that means of communication were introduced to better inform people of the Québec Ombudsman's areas of jurisdiction.

The results in turquoise do not fall within the institution's area of jurisdiction.

Note that when a request does not fall within the Québec Ombudsman's jurisdiction, the person is referred to the appropriate recourse.

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 grounds. For 2019-2020, there were 22,411 grounds among the 20,123 closed requests for service.



Closed requests for service increased by 3.7% compared to last year. However, the total number of closed grounds for complaints under the Québec Ombudsman's area of jurisdiction increased by 5.1%.

- In terms of government departments and agencies within the public service, an increase of 12.2% in closed requests was noted compared to last year (from 6,206 to 6,965).
- In terms of correctional services, closed requests decreased by 10.5% compared to last year (from 5,644 to 5,054).

- For the health and social services network, the number of closed requests increased by 22.6% compared to last year (from 1,746 to 2,141). The number of complaints and requests for assistance increased by 25.9% (from 1,521 to 1,915) and the number of reports and request for assistance went from 225 to 226.
- The number of closed requests concerning the mandate stemming from the *Act to facilitate the disclosure of wrongdoings relating to public bodies* increased by 60.9% compared to last year (from 235 to 378).

PUBLIC SERVICE

This Annual Report covers the period up to March 31, 2020. In the weeks leading up to this date, Québec was struck by the COVID-19 pandemic that had hit globally. It stands to reason that public services as we knew them were greatly affected. The Québec Ombudsman's findings in its 2019-2020 Annual Report—and in this section about the public service—must therefore be placed and understood within a pre-pandemic context. Possibly, in some cases, the responses by government departments, agencies or other bodies had to be postponed because of the health crisis.





PUBLIC SERVICE

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

The 79 public service departments and agencies within the Québec Ombudsman's jurisdiction must comply primarily with the *Act respecting administrative justice*. 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 fosters compliance with the provisions of the *Act respecting administrative justice*.

In 2019-2020, the Québec Ombudsman intervened regarding 58 of the 79 departments and agencies subject to its jurisdiction (73.4%).

1 CLOSED REQUESTS FOR ASSISTANCE AND COMPLAINTS

Trends in closed requests for assistance and complaints¹

	2016-2017	2017-2018	2018-2019	2019-2020
Requests for assistance	700	645	494	511
Substantiated complaints	853	829	772	804
Mediation	66	40	18	20
Unsubstantiated complaints	2,988	2,790	2,713	2,360
Could not take a definitive position	49	40	60	47
Referred complaints	223	169	161	166
Suspended complaints	2,312	2,121	1,988	3,057
TOTAL	7,191	6,634	6,206	6,965
Difference with the preceding year	—	-7.7%	-6.5%	+12.2%

1/ The explanatory notes for this table are on the next page.

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 compensation or services.

Mediation encompasses cases in which the Québec Ombudsman proposes a conciliatory solution at the end of its 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 **referred**. 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**. The complainant is then informed of the Québec Ombudsman's conclusions.

If the complaint proves substantiated, the Québec Ombudsman 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

There was a 12.2% increase in closed requests for assistance and complaints compared to last year and a 4.3% increase compared to the average for the past three years. This increase can be explained by the massive influx of complaints that were suspended in order to be processed as collective files concerning, among others, the Ministère de la Famille, the Ministère de l'Éducation et de l'Enseignement supérieur, the Ministère de l'Immigration, de la Francisation et de l'Intégration, the Ministère des Forêts, de la Faune et des Parcs and the Société de l'assurance automobile du Québec.

There were notable increases concerning the Ministère de la Famille (603.2%), the Commission des normes, de l'équité, de la santé et de la sécurité du travail (11.9%), the Ministère de l'Immigration, de la Francisation et de l'Intégration (86.7%) and the Ministère de l'Éducation et de l'Enseignement supérieur (30.2%).

The greatest variations in closed requests for assistance and complaints

DEPARTMENT/AGENCY	2018-2019	2019-2020	VARIATION	NUMBER
Retraite Québec	332	289	Decrease	-43
Ministère de l'Environnement et de la Lutte contre les changements climatiques	67	35	Decrease	-32
Curateur public	211	183	Decrease	-28
Ministère de la Sécurité publique — Correctional services excluded	231	211	Decrease	-20
Ministère de l'Éducation et de l'Enseignement supérieur	331	431	Increase	+100
Ministère de l'Immigration, de la Francisation et de l'Intégration	135	252	Increase	+117
Commission des normes, de l'équité, de la santé et de la sécurité du travail	1,240	1,388	Increase	+148
Ministère de la Famille	63	443	Increase	+380

The bodies for which a slight decrease in requests was noted are Retraite Québec (13.0%), the Curateur public (13.3%) and the Ministère de la Sécurité publique (excluding correctional services) (8.7%). A notable decrease in requests was observed concerning the Ministère de l'Environnement et de la Lutte contre les changements climatiques (47.8%).

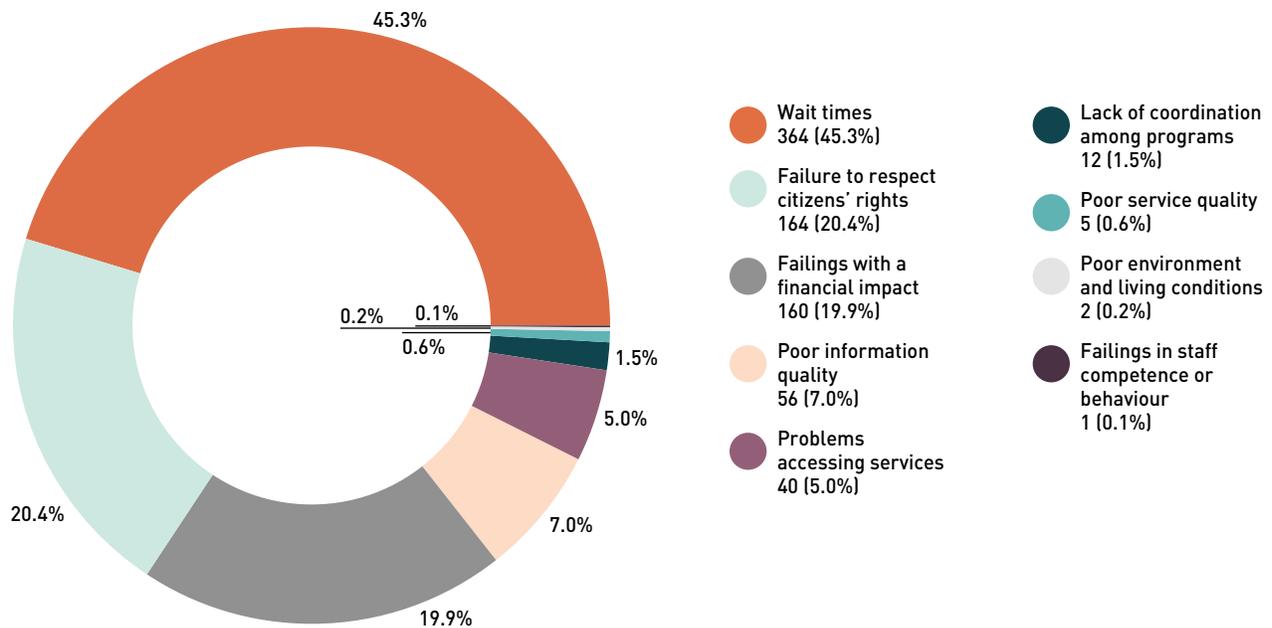
2 SUBSTANTIATED COMPLAINTS

The proportion of substantiated complaints is established as follows: Number of substantiated complaints/Number of substantiated and unsubstantiated complaints. This year, the proportion increased by 3.2 percentage points.

Proportion of substantiated complaints

2016-2017	2017-2018	2018-2019	2019-2020
22.2%	22.9%	22.2%	25.4%

Portrait of substantiated complaints



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

Lengthy wait times, failure to respect citizens' rights and failings with a financial impact accounted for 85.6% of substantiated complaints.

Departments with at least 10 substantiated complaints in 2019-2020

DEPARTMENT	SUBSTANTIATED COMPLAINTS			
	2016-2017	2017-2018	2018-2019	2019-2020
Travail, Emploi et Solidarité sociale	111	100	128	101
Sécurité publique — Correctional services excluded	7	54	65	55
Éducation et Enseignement supérieur	33	45	45	37
Immigration, Francisation et Intégration	40	28	35	33

Agencies with at least 10 substantiated complaints in 2019-2020

AGENCY	SUBSTANTIATED COMPLAINTS			
	2016-2017	2017-2018	2018-2019	2019-2020
Commission des normes, de l'équité, de la santé et de la sécurité du travail	161	161	182	235
Agence du revenu du Québec	130	103	62	79
Société de l'assurance automobile du Québec	108	121	58	75
Retraite Québec	68	41	33	33
Régie de l'assurance maladie du Québec	22	27	23	30
Curateur public	10	8	15	19
Commissaire à la déontologie policière	25	16	11	12

This year, an increase in substantiated complaints was noted, mainly regarding the Commission des normes, de l'équité, de la santé et de la sécurité du travail, the Agence du revenu du Québec, the Société de l'assurance automobile du Québec, the Régie de l'assurance maladie du Québec, the Curateur public and the Commissaire à la déontologie policière.

Otherwise, a decrease in substantiated complaints was noted concerning the Ministère du Travail, de l'Emploi et de la Solidarité sociale, the Ministère de la Sécurité publique (excluding correctional services), the Ministère de l'Éducation et de l'Enseignement supérieur and the Ministère de l'Immigration, de la Francisation et de l'Intégration.

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 following two tables.

Accepted case-specific measures

2016-2017	2017-2018	2018-2019	2019-2020	2019-2020	
				ACCEPTED	REFUSED
97.7%	97.7 %	98.6%	98.3%	356	6

Accepted measures with a collective impact

2016-2017	2017-2018	2018-2019	2019-2020	2019-2020	
				ACCEPTED	REFUSED
96.2%	100.0%	98.0%	97.8%	45	1

4

CLOSED REQUESTS BY AGENCY OR DEPARTMENT, BY PROCESSING OUTCOME²

AGENCY	REQUESTS RECEIVED IN 2019-2020	CLOSED REQUESTS IN 2019-2020							TOTAL
		REQUESTS FOR ASSISTANCE	COMPLAINTS					SUSPENDED	
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED		
Agence du revenu du Québec									
Provisional administration of unclaimed property	16	2	2	10	0	0	0	3	17
Taxation	712	79	59	291	16	1	11	270	727
Support-payment collection	106	2	18	48	0	0	5	33	106
General	10	1	0	2	0	0	2	6	11
Total: Agence du revenu du Québec	844	84	79	351	16	1	18	312	861
Assemblée nationale	3	0	0	2	0	0	0	1	3
Autorité des marchés financiers	13	0	1	2	0	0	0	7	10
Autorité des marchés publics	1	0	0	1	0	0	0	0	1
Bureau d'audiences publiques sur l'environnement	7	0	0	0	0	0	0	7	7
Bureau des enquêtes indépendantes	2	1	0	0	0	0	0	2	3
Bureau du coroner	12	0	1	2	0	0	0	8	11
Centre de services partagés du Québec	8	0	2	4	0	0	0	4	10
Comité de déontologie policière	6	1	1	0	0	0	0	2	4
Commissaire à la déontologie policière	122	8	12	63	0	0	2	45	130
Commission d'accès à l'information	29	3	4	6	0	0	0	15	28
Commission de la fonction publique du Québec	3	0	0	0	0	0	0	4	4
Commission de protection du territoire agricole du Québec	13	0	0	2	0	0	0	7	9

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	REQUESTS RECEIVED IN 2019-2020	CLOSED REQUESTS IN 2019-2020							TOTAL
		REQUESTS FOR ASSISTANCE	COMPLAINTS					SUSPENDED	
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED		
Commission des normes, de l'équité, de la santé et de la sécurité du travail									
Pay equity	2	0	0	0	0	0	0	1	1
Compensation	701	47	74	205	1	3	16	334	680
Crime victims' compensation	574	35	157	186	0	17	14	194	603
Labour standards	73	7	3	24	0	2	3	33	72
General	33	3	1	5	0	0	5	18	32
Total: Commission des normes, de l'équité, de la santé et de la sécurité du travail	1,383	92	235	420	1	22	38	580	1,388
Commission des transports du Québec	2	0	0	1	0	0	0	1	2
Commission municipale du Québec	9	0	0	4	0	0	0	2	6
Conseil de la justice administrative	10	0	0	1	0	0	0	8	9
Conseil de la magistrature	4	0	0	0	0	0	0	3	3
Curateur public	196	13	19	61	2	0	8	80	183
Directeur des poursuites criminelles et pénales	7	1	0	0	0	0	0	7	8
Institut de la statistique du Québec	2	0	0	2	0	0	0	0	2
Institut national d'excellence en santé et en services sociaux	1	0	1	0	0	0	0	0	1
La Financière agricole du Québec	12	0	0	12	0	0	0	2	14
Office de la protection du consommateur	19	1	1	6	0	0	0	6	14
Office des personnes handicapées du Québec	2	0	0	1	0	0	0	1	2
Office des professions du Québec	6	0	0	3	0	0	1	2	6
Office québécois de la langue française	1	0	0	0	0	0	0	2	2
Régie de l'assurance maladie du Québec	191	18	30	118	0	0	4	30	200
Régie des alcools, des courses et des jeux	5	1	0	2	0	0	0	3	6

AGENCY	REQUESTS RECEIVED IN 2019-2020	CLOSED REQUESTS IN 2019-2020							
		REQUESTS FOR ASSISTANCE	COMPLAINTS						TOTAL
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED	SUSPENDED	
Régie des marchés agricoles et alimentaires du Québec	1	0	0	1	0	0	0	0	1
Régie du bâtiment du Québec	37	6	3	17	0	0	2	11	39
Régie du logement	163	18	8	14	0	0	7	110	157
Retraite Québec									
Québec Pension Plan and Child Assistance	275	26	29	85	0	2	5	110	257
Public-sector pension plan	22	4	3	6	0	0	1	10	24
General	11	0	1	0	0	0	2	5	8
Total: Retraite Québec	308	30	33	91	0	2	8	125	289
Secrétariat du Conseil du trésor	5	0	2	0	0	0	0	5	7
Société de l'assurance automobile du Québec									
Highway Safety Code	228	12	30	102	0	0	8	69	221
Compensation	424	31	45	152	0	13	8	141	390
General	9	0	0	2	0	0	0	2	4
Total: Société de l'assurance automobile du Québec	661	43	75	256	0	13	16	212	615
Société d'habitation du Québec	65	2	3	27	0	0	2	31	65
Transition énergétique Québec	13	0	4	5	0	0	1	4	14
Tribunal administratif du Québec	49	7	9	10	0	1	3	19	49
Tribunal administratif du travail									
Occupational diseases and industrial accidents	6	0	0	2	0	0	0	3	5
Labour Relations	7	1	0	0	0	0	0	7	8
General	2	0	0	1	0	0	0	2	3
Total: Tribunal administratif du travail	15	1	0	3	0	0	0	12	16
Vérificateur général	3	0	0	1	0	0	0	2	3
TOTAL: Agencies	4,233	330	523	1,489	19	39	110	1,672	4,182

DEPARTMENT	REQUESTS RECEIVED IN 2019-2020	CLOSED REQUESTS IN 2019-2020							
		REQUESTS FOR ASSISTANCE	COMPLAINTS						TOTAL
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED	SUSPENDED	
Affaires municipales et Habitation	27	1	2	8	0	0	1	6	18
Agriculture, Pêcheries et Alimentation	44	1	8	12	0	0	1	24	46
Conseil exécutif	4	0	0	2	0	0	0	3	5
Culture et Communications	9	0	0	5	0	0	0	2	7
Environnement et Lutte contre les changements climatiques	40	3	4	10	0	1	0	17	35
Économie et Innovation	3	0	0	0	0	0	1	5	6
Éducation et Enseignement supérieur									
Student financial assistance	179	12	31	67	0	1	3	71	185
Education	246	6	5	9	0	0	1	210	231
Higher education	5	1	1	1	0	0	0	5	8
General	6	2	0	1	0	0	0	4	7
Total: Éducation et Enseignement supérieur	436	21	37	78	0	1	4	290	431
Énergie et Ressources naturelles	42	2	6	18	0	0	0	17	43
Famille	445	2	3	21	0	0	1	416	443
Finances	3	0	1	0	0	0	0	2	3
Forêts, Faune et Parcs	68	2	5	6	0	0	0	35	48
Immigration, Francisation et Intégration	218	7	33	76	0	0	3	133	252
Justice	71	3	9	18	0	0	4	40	74
Santé et Services sociaux	60	6	9	19	0	0	2	17	53
Sécurité publique									
Civil Security	146	0	33	49	0	0	1	39	122
General	80	5	22	8	0	2	1	51	89
Total: Sécurité publique	226	5	55	57	0	2	2	90	211
Tourisme	1	0	0	1	0	0	0	0	1

DEPARTMENT	REQUESTS RECEIVED IN 2019-2020	CLOSED REQUESTS IN 2019-2020								TOTAL
		REQUESTS FOR ASSISTANCE	COMPLAINTS							
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED	SUSPENDED		
Transports	71	2	8	26	1	3	1	29	70	
Travail, Emploi et Solidarité sociale										
Directeur de l'état civil	82	3	26	28	0	0	3	24	84	
Employment	70	8	0	41	0	0	5	21	75	
Québec Parental Insurance Plan	18	0	1	18	0	0	2	2	23	
Register of enterprises	10	0	3	5	0	0	0	2	10	
Secrétariat du travail	6	0	0	1	0	0	0	7	8	
Services Québec	5	0	2	1	0	0	1	0	4	
Social Solidarity	815	113	69	415	0	1	25	199	822	
General	11	2	0	5	0	0	0	4	11	
Total: Travail, Emploi et Solidarité sociale	1,017	126	101	514	0	1	36	259	1,037	
TOTAL: Departments	2,785	181	281	871	1	8	56	1,385	2,783	
TOTAL: Departments and agencies	7,018	511	804	2,360	20	47	166	3,057	6,965	

General remark

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

- Agence du revenu du Québec (Revenu Québec);
- Police Ethics Commissioner;
- Commission des normes, de l'équité, de la santé et de la sécurité du travail;
- Ministère de l'Agriculture, des Pêcheries et de l'Alimentation;
- Ministère de l'Éducation et de l'Enseignement supérieur;
- Ministère de l'Immigration, de la Francisation et de l'Intégration;
- Ministère de la Justice;
- Ministère de la Sécurité publique;
- Ministère des Transports;
- Ministère du Travail, de l'Emploi et de la Solidarité sociale;
- Retraite Québec;
- Société de l'assurance automobile du Québec;
- Transition énergétique Québec.



AGENCE DU REVENU DU QUÉBEC (REVENU QUÉBEC)

Openness that deserves mention

Over the past three years, complaints concerning Revenu Québec have decreased. This can be attributed primarily to the agency's promotion and implementation of the commitments set out in its *Charter of Taxpayers' and Mandataries' Rights*. This document, intended for citizens, specifies their main rights and recourse.

The Québec Ombudsman wishes to highlight that, as a rule, it can count on Revenu Québec to cooperate when the Ombudsman conducts investigations, an attitude that demonstrates the agency's openness to carrying out the required corrective measures.

Filing objections: processing times can be much longer than what Revenu Québec promises

Taxpayers who want to object to a notice of assessment have an administrative mechanism for doing so. If they decide to use it, their file is assigned to an objections officer whose work consists of examining the points being contested. In its *Filing an Objection: It's Your Right* brochure, Revenu Québec pledges to handle notices of objection within six months of receiving them.

Further to complaints it received, the Québec Ombudsman observed that for six of the files it had handled, the processing times were considerably longer and that the same files had remained open at the Direction des oppositions for a year or two, and sometimes more.

The Québec Ombudsman concedes that it may take more than six months to process a file due to complex analysis or taxpayers' reactions. Be that as it may, if files are complete and citizens have presented all their evidence and explanations, it is important for processing to occur within the stated time frame.



A WAIT OF MORE THAN 18 MONTHS FOR A DECISION ABOUT A NOTICE OF OBJECTION

In 2018, a person contacted Revenu Québec's Direction des oppositions to contest notices of assessment for the four preceding years. The claim of approximately \$100,000 (debt, penalties and interest) concerned Revenu Québec's refusal to recognize the person's right to a tax credit for childcare expenses for her four children during the years in question.

Alongside this, the person complained to the Québec Ombudsman on the same grounds. In March 2019, after investigating, it recommended that Revenu Québec cancel the assessments.

Two months later, with no follow-up to the recommendation, Revenu Québec informed the Québec Ombudsman that the officer in charge of the case had had to leave and that the file had been entrusted to a second officer. The following October, the second officer

also left her job. The file was handed to a third person who, according to Revenu Québec, would be able to render a decision in November. In mid-November, the objections officer informed the Québec Ombudsman that she would not be able to meet the deadline. In December, the Québec Ombudsman learned from Revenu Québec that the officer could not begin analyzing the file before 2020 and that no specific date had been set for it.

As at March 2020, the file had not yet been resolved. The Québec Ombudsman maintains its opinion that the assessment should be cancelled. Meanwhile, the person is still awaiting a decision under the stressful weight of a hefty tax debt.

The Québec Ombudsman is continuing its intervention regarding this file.

The Québec Ombudsman as a mediator in helping to find solutions or for clarifying situations

The Québec Ombudsman is regularly called upon to act as a mediator in helping to reach solutions for problems that affect both Revenu Québec and taxpayers seeking to settle a tax debt, for example.

Even if the Québec Ombudsman finds the complaint to be unsubstantiated, it may intervene, depending on the circumstances, to encourage a fair settlement.

In such cases, if need be, its role consists in helping taxpayers:

- Understand the file;
- Enter into a payment agreement that respects their rights;
- Obtain release of a seizure;
- Apply for cancellation of interest and penalties;
- In exceptional circumstances, ask Revenu Québec to be more flexible despite an initial decision that was legitimate.

The Québec Ombudsman's role as a mediator often occurs in the context of tax debt collection but may also prove appropriate in other situations.



ESTABLISH MEANS FOR DEBT PAYMENT AND PREVENTING NEW DEBT

A citizen entered into a first payment agreement with Revenu Québec. When he contracted a second tax debt, the agent claimed immediate payment of the new debt. Failure to fulfil this obligation would render the former agreement invalid and other collection measures would be taken. The man asked the Québec Ombudsman for help.

The Québec Ombudsman read the file and instructed the citizen on which information to provide to Revenu Québec to enter into a new payment agreement spread over 12 months, covering the entire debt. The citizen followed the Québec Ombudsman's advice and obtained an agreement.

The Québec Ombudsman also helped the man's spouse with an agreement with Revenu Québec in order to settle her debts.

Lastly, so that the couple could avoid further tax debt, it suggested that they ask the government agency or body (such as Retraite Québec or the federal government) to make any necessary source deductions.



ON HUMANITARIAN GROUNDS

A woman contacted the Québec Ombudsman about her tax return, which she felt was taking a long time to be processed. The citizen said that Retraite Québec would not be issuing her family allowance until her tax return was processed. She had a pressing need for the amounts to which she was entitled.

She had gone bankrupt during the year but had not produced tax returns before and after the bankruptcy. Both these documents were needed to process her tax return. The Québec Ombudsman informed her that it was not Revenu Québec that was holding up processing. Instead, it was up to her to send in the documents. Once this formality was taken care of, and on humanitarian grounds, the Québec Ombudsman asked Revenu Québec to fast-track processing of her tax returns, which it did.

Agreements between taxpayers and Revenu Québec

In February 2020, the Québec Ombudsman published an investigation report on the rights of taxpayers who enter into transactions with Revenu Québec. Bear in mind that transactions are mechanisms that make it possible to avoid judicial involvement in disputes between the parties. The Québec Ombudsman is in favour of this approach, provided that the process respects taxpayers' rights.

The rules that Revenu Québec must follow to secure a valid agreement are numerous and demanding. During its investigation, the Québec Ombudsman saw that Revenu Québec had not established adequate means for ensuring that these rules were followed.

Given the results of the investigation, the Québec Ombudsman concluded that Revenu Québec must establish clear guidelines for entering into an agreement. These guidelines must be built into its policies, directives and other rules. Moreover, so that these rules are known and applied uniformly, Revenu Québec must provide work instructions and reference tools that fulfil these requirements and train the staff authorized to conduct transactions.

The Québec Ombudsman made eight recommendations to Revenu Québec concerning the following, among other things:

- The context leading to a transaction;
- The guidelines specific to guaranteeing that taxpayers' rights are upheld throughout the process;
- The means employed to ensure taxpayers' free and informed consent to the transaction, which is essential to the process;
- Training of the Revenu Québec staff authorized to enter into transactions;
- Establishing an administrative review mechanism for transactions whose validity is questioned by taxpayers;
- Record-keeping of information about transactions;
- Revenu Québec's publication of the relevant data concerning transactions.

The Québec Ombudsman asked Revenu Québec to send it an action plan and timeline for implementing its recommendations and, subsequently, a copy of the modifications that will be made to the applicable directive and to any other documents, before the changes take effect.

Use of indirect, or alternative, audit methods

In its 2018-2019 Annual Report, the Québec Ombudsman made recommendations concerning Revenu Québec's use of indirect, or alternative, methods for auditing fiscal information. The Québec Ombudsman would like to make it clear that it does not disapprove of the use of alternative methods, which are court-sanctioned. However, as the applicable rule indicates, these methods must be used as a last resort with companies whose accounting practices do not conform to standard practice or when taxpayers refuse to cooperate with Revenu Québec. In addition, the methods must be reliable and used as an exceptional measure only. This was the context for the Québec Ombudsman's recommendations to Revenu Québec, namely:

- Ensure the statistical validity of any alternative method before it is applied as well as when the results are assessed;
- Justify the use of an alternative method in the audit report, which must be made accessible to those concerned so that they can understand why such a method was used in their case.

In response to the Québec Ombudsman's recommendations, Revenu Québec sent a report on the implementation of the recommendations. The Québec Ombudsman acknowledges Revenu Québec's efforts to implement its recommendations as well as the work required to put the new processes in place and to train staff.

However, through the new complaints it has received and those still being processed, the Québec Ombudsman sees that significant problems persist. It is therefore continuing its intervention regarding Revenu Québec.



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



OWN UP TO INVALIDATED ALTERNATIVE METHODS

Made to undergo alternative audit methods for their tax situation, certain businesses were issued assessments for undeclared income.

A business contested the assessment by means of the objections process. At the request of the objections officer, a Revenu Québec statistician produced a report concluding that the alternate audit method used was not valid. The number of observations carried out at the place of business was insufficient to conclude that the business had not declared all its sales. When the objections officer learned that the method employed should have been discarded, he should have cancelled the assessment. Instead, he recalculated using another method (based on the ratios between energy consumption and the merchandise sold) to prove that there had been undeclared income and to therefore maintain the initial assessment. A significant fact is that he did not inform the business that the statistician's report nullified the method that the auditor had used.

In another case, a Revenu Québec expert deemed that the alternative method used was statistically invalid. Instead of cancelling the assessment made on that basis, Revenu Québec tried to undertake a transaction with the business. According to the agency, the statistician's opinion was insufficient to cancel the assessment.

In the Québec Ombudsman's opinion, when Revenu Québec sees that an alternative method is not statistically reliable, it must inform the business concerned and cancel the assessment. The agent in charge of administrative reviews at the Direction des oppositions cannot re-do the audit. If necessary, after the Direction des oppositions has cancelled an assessment stemming from an unreliable method, Revenu Québec may start the audit over again from scratch based on a reliable method. This way, the business will have been audited according to standard practice and will not lose its right to object should it wish to do so later.

After the Québec Ombudsman intervened, Revenu Québec agreed to cancel the assessment based on the invalid alternative method.

After the Québec Ombudsman intervened, Revenu Québec finally cancelled the assessment.

POLICE ETHICS COMMISSIONER

Follow-up after a police ethics complaint

The Police Ethics Commissioner (the Commissioner) handles complaints concerning police forces, game wardens, special constables, highway controllers and anti-corruption squad (UPAC) investigators. These complaints must concern breaches of the *Code of ethics of Québec police officers*.

The Commissioner receives written complaints from citizens and conducts a preliminary analysis. When this analysis has been completed, the Commissioner either refers the complaint to conciliation, investigates, or rejects the complaint. The Commissioner's decision is then sent to the complainant in writing. Under the applicable legislation, the Commissioner is not obliged to verbally inform a citizen about a decision before the written decision is sent.

Many people who turn to the Commissioner are vulnerable and unaware of how the agency works and of the scope of its mandate, which is strictly limited to matters of professional conduct and ethics.

Concretely, an incident involving a police officer or officers, for example, may greatly affect the citizens involved and undermine their confidence in the law enforcement authorities entrusted with their safety or with protecting the public. The fact of having to lodge a written complaint—a requirement of the *Police Act*—may be an arduous exercise that does not necessarily enable every complainant to describe the misconduct accurately and exhaustively. Note that the Commissioner may ask the complainant to provide further details about the circumstances and grounds for the intervention, but, again, in writing.

The preliminary analysis of the complaint is based on the record. Hence, complainants express surprise at receiving the Commissioner's decision without having spoken with the agency beforehand. Many complainants suspect that the agency has conferred with the police officers concerned (or other officers), whereas the complainants themselves were not given the opportunity to talk to the Commissioner. The Commissioner's impartiality may therefore be called into question by the complainants.

The Québec Ombudsman conveyed its findings to the Commissioner, which stated that its resources for preliminary processing were limited. Given this, and for impartiality issues (considering that at this stage, there is in fact no exchange with the officers involved), it is impossible to grant the complainant's request to discuss the file in all cases. However, the Commissioner has pledged that an information agent will contact complainants if they request it. Moreover, when complainants seem to have trouble expressing themselves in writing, the analyst can suggest that they reach him or her by phone.



RECEIVING A FINAL REFUSAL BUT FEELING THAT YOU HAVE NOT BEEN HEARD

A man contacted the Québec Ombudsman concerning the Commissioner's decision to reject his complaint without his having had the opportunity to talk to the person in charge of the file to provide his version of the events, or without having met with the person in charge beforehand.

During its investigation, the Québec Ombudsman noted that the analyst had emailed the complainant to request additional information. When the complainant sent the requested information to the Commissioner's office, he also took the opportunity to say that he wanted to discuss his file with the analyst. He also asked for a meeting. A notice of the decision to reject the complaint and to close the file was sent to him without follow-up on the request for a meeting.

As part of the review mechanism which the person used, the Commissioner argued that the preliminary analysis of a complaint is based solely on the record. However, complainants may be invited to reply in writing to requests for further details. In the case at hand, the Commissioner considered the file complete and felt that a decision could be rendered.

Without questioning the quality of the decision, the Québec Ombudsman considers that it would have been appropriate for the Commissioner to contact the complainant before closing the file because the complainant had expressly requested that the agency do so.

As a rule, direct, verbal communication would give complainants a clearer understanding of the process and enable them to accept the final decision more readily. This would also help to decrease the number of complaints concerning the Commissioner.

COMMISSION DES NORMES, DE L'ÉQUITÉ, DE LA SANTÉ ET DE LA SÉCURITÉ DU TRAVAIL

This year, the Québec Ombudsman saw a significant increase in the number of substantiated complaints about the Commission des normes, de l'équité, de la santé et de la sécurité du travail (the CNESST). Half of the substantiated complaints concerned the time it took to process applications for benefits.

The observed delays mainly concerned eligibility, administrative review and processing of claims for occupational lung diseases. The Québec Ombudsman is monitoring this issue.

Approving claims for recurrences, relapses or aggravation

The *Act respecting industrial accidents and occupational diseases* provides that workers who sustain an employment injury may be compensated under certain conditions. This right also covers recurrence, relapse and aggravation (RRA), characterized by the reappearance or worsening of a consolidated (stable and with no foreseeable improvement) employment injury recognized by the CNESST. For such claims to be approved by the CNESST, workers must provide evidence that the health condition related to the initial injury has changed.

The burden of proof therefore lies with claimants. Recognition of an RRA is usually based on medical evidence. A medical report that is explicit and validly documented must be considered preponderant evidence that the CNESST cannot disregard.



THE SIDE EFFECT OF A TREATMENT MAY BE CONSIDERED A RECURRENCE

A man suffered a back sprain at work. His application for compensation was approved by the CNESST. One of the treatments for his injury was cortisone injections. Subsequently, his condition improved and was deemed consolidated with no functional impairments or limitations.

Four years later, the worker filed an RRA claim, arguing that he had a cataract. A medical report from his ophthalmologist confirmed the diagnosis and stated that the cataract was a direct side effect of the cortisone injections.

The CNESST, considering that there was no medical correlation between the cataract (a vision problem) and the initial back strain injury, rejected the claim. In its opinion, a cataract may appear for any number of reasons.

After investigating, the Québec Ombudsman felt that the agency's refusal had been unreasonable. The medical file had established that the worker presented with no particular traits that could explain why he now had a cataract. Furthermore, the ophthalmologist's medical report demonstrated the link between the cataract and the injections made necessary because of the initial injury and, by extension, the industrial accident.

The Québec Ombudsman recommended compensation for the worker based on his medical file. The CNESST accepted the recommendation.

The deadlines for filing an employment injury claim

Workers unable to do their job for more than 14 days due to an employment injury must file a claim with the CNESST within six months of the injury.

In recent years, the Tribunal administratif du travail, which acts as an appeal tribunal of the CNESST, has fine tuned the notion of a six-month deadline. It begins either on the date at which the employment accident occurred, or on the date at which the worker becomes aware of the probable connection between the diagnosis and the employment accident. The latter date may prove important when, for example, the injury is psychological in nature and is diagnosed several months, or even years, after a job-related accident.



PROVING THE PRESENCE OF AN EMPLOYMENT INJURY FOUR YEARS AFTER THE EVENTS, WHILE REMAINING WITHIN THE DEADLINE

A bank worker was exposed to a series of armed robberies over several years. Each time, the person went back to work immediately. During the same period, she also saw health professionals for various physical problems.

In 2019, the worker's health began to fail. A physician prescribed different tests and diagnosed post-traumatic stress disorder triggered by the repeated robberies. This is when the person first made the connection between her health condition and the heists a few years before. In June that year, she filed a CNESST claim for compensation based on a medical report. Her claim was refused because the agent in charge of the file deemed that it had been filed outside the deadline.

During its investigation, the Québec Ombudsman noted that the CNESST considered that the clock for the deadline started ticking when the robberies occurred. However, it was only in 2019 that the connection was made between the person's diagnosis and the successive events that had traumatized her. Therefore, she could not approach the CNESST about it earlier than this.

In assessing when a psychological employment injury began, it is crucial that the CNESST consider when it was diagnosed, since the injury may only surface many months, if not years, after the event occurred.

After the Québec Ombudsman intervened, the CNESST conducted a new analysis and agreed to compensate the person.

COMMISSION DES NORMES, DE L'ÉQUITÉ, DE LA SANTÉ ET DE LA SÉCURITÉ DU TRAVAIL

DIRECTION GÉNÉRALE DE L'INDEMNISATION
DES VICTIMES D'ACTES CRIMINELS

The notion of the “impossibility to act” to justify a late claim

Under the *Crime Victims Compensation Act*, victims may be granted assistance if they file a claim within two years of incurring material damage or injury.

According to the Act, the injury is said to have been incurred when victims become aware of the damage suffered and of its probable connection with the criminal offence.

If the Direction générale de l'indemnisation des victimes d'actes criminels (the DGIVAC – formerly the Direction de l'indemnisation des victimes d'actes criminels) does not receive a claim from the victim, it assumes that the victim has waived all benefits under the compensation system. However, this assumption may be overturned if victims can prove that it was impossible for them to file a claim any sooner. Further to several investigations, the Québec Ombudsman saw that the DGIVAC could be rigid in recognizing this.

As early as 2016, the Québec Ombudsman's investigation report criticized the DGIVAC's restrictive approach when it assesses the impossibility to act. It recommended various corrective measures so that the agency's interpretation would be consistent with the spirit of reparatory justice. As of 2016, the agency agreed to act on the recommendations. Given that there continue to be complaints describing similar situations, the Québec Ombudsman remains attentive to the follow-up to its recommendations.



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



IGNORING THE IMPOSSIBILITY TO ACT EVEN THOUGH IT IS CLEARLY PROVEN

A woman had been a victim of spousal violence for more than 15 years. About ten years after the events, she applied to the DGIVAC for benefits. In addition to providing proof of numerous serious and crippling injuries, she described the reasons why she had filed outside the deadline. She explained that she feared for her physical safety and that of her children, particularly since she was being threatened.

Two months later, the DGIVAC rendered a decision on her application for benefits:

- The psychological injuries were accepted for compensation purposes;
- The physical injuries were refused for lack of proof of her inability to act in recent years.

The person complained to the Québec Ombudsman.

In studying the file, the Québec Ombudsman noticed that the DGIVAC had not collected the information enabling the citizen to prove why she could not act, even though the application for benefits explicitly stated the reasons for her lateness in applying. She had in fact said that she feared for her life and that of her children.

After the Québec Ombudsman intervened, the DGIVAC analyzed the file again and agreed to take the woman's physical injuries into account. Further to this exercise, the woman qualified for an income replacement indemnity and compensation for the after-effects.

The income considered in calculating an indemnity for total temporary disability

Under certain conditions, a person with a total temporary disability caused by an injury connected to a crime may receive an indemnity under the *Crime Victims Compensation Act* (the Act). The DGIVAC specifies that total temporary disability corresponds to the period during which employed victims cannot work, or during which unemployed victims cannot carry out their usual daily and domestic activities.

For victims who had a job when the crime occurred, the indemnity is equal to 90% of their take-home pay at the time of the event (with an insurable maximum) and is paid throughout their leave from work. Victims may also prove, to the DGIVAC's satisfaction, that they earned more than their normal salary (e.g. accumulated overtime) in the 12 months before the crime or the incapacity.

When the indemnity amount cannot be determined based on victims' wages, the DGIVAC has policies enabling it to determine the base wage using the method it believes is the most appropriate in the circumstances. The Act affords the agency considerable latitude, and this may have a substantial effect on calculating the indemnity. In the Québec Ombudsman's opinion, when the DGIVAC compensates an employed victim, determination of the base wage must be consistent with the victim's situation in the preceding 12 months.



THE DGIVAC EXCLUDES ELIGIBLE INCOME IN CALCULATING AN INDEMNITY

A citizen was the victim of an employment accident. The CNESST granted her income replacement indemnities based on her earnings in the 12 preceding months. A year later, the CNESST considered that the citizen could go back to work and therefore ended the indemnities.

A few days before the intended date of return to work, the person was the victim of a crime and applied to the DGIVAC for compensation. At first her claim was refused because the agency felt that she did not qualify. She appealed to the Tribunal administratif du Québec.

An agreement was reached whereby the woman was deemed eligible for the DGIVAC's compensation plan. However, the agency refused to calculate her benefits based on her income (CNESST indemnities) in the 12 months before the assault. Instead, it used the minimum wage as the salary base.

In the Québec Ombudsman's opinion, it was unreasonable to compensate the citizen based on the minimum wage because in the year in question, her income consisted of income replacement indemnities from the CNESST. The Québec Ombudsman intervened for the DGIVAC to review the calculation of the salary base to take into account the income issued by the CNESST. The DGIVAC agreed to do this.

The woman received an indemnity adjustment of approximately \$85,000 backdated three years, in addition to an increase in her monthly payments, which were made according to the new calculation.

Pension for a child born as the result of sexual assault

Under the *Crime Victims Compensation Act* (the Act), a mother who single-handedly provides for the maintenance (education, housing, food, healthcare) of a child born as the result of sexual assault may receive a monthly pension until the child turns 18, or 25 if the child is a student. The mother preserves this right so long as she alone supports the child. When another person also contributes, regardless of the person's financial capacity, the pension ends.

However, the Act fails to define "contributor." The DGIVAC must not assume that the mere fact of having a spouse means that the spouse contributes to the child's maintenance. As the Québec Ombudsman sees it, it is important that the DGIVAC provide a clear, guideline-based definition of the notion of child maintenance.



PREMATURE CUT-OFF OF THE PENSION FOR A CHILD BORN AS THE RESULT OF SEXUAL ASSAULT

A woman had been the victim of repeated sexual assault. She gave birth to a child whose father was the perpetrator. Given the nature of the events and the woman's psychological vulnerability, she applied for the DGIVAC pension, but only 15 years later.

The pension was backdated, but only three years. It was assumed that as of the child's third birthday, the woman had a new spouse and that they cared for the child's financial needs together.

The Québec Ombudsman's investigation showed that the DGIVAC used the beginning of the woman's new relationship, when she was not yet living with her future spouse, as its reference date. According to the Québec Ombudsman, the DGIVAC, presupposing that both people were assuming financial responsibility for the child, acted too soon in the couple's history.

The DGIVAC reviewed its decision and considered that the cut-off date for the pension began when the man legally became the woman's de facto spouse, and not before. The DGIVAC paid the woman a retroactive amount of nearly \$12,000.



MINISTÈRE DE L'AGRICULTURE, DES PÊCHERIES ET DE L'ALIMENTATION

Under the *Animal Welfare and Safety Act*, animal custodians must ensure that an animal's welfare and safety are not compromised. This entails providing proper care if the animal is hurt, sick or suffering. If this does not happen, the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation can dispatch inspectors to the site for the required checks. Wait times are shorter for certain interventions deemed urgent.

The Québec Ombudsman received reports about long wait times for interventions by inspectors and the quality of their inspections, so it intervened with the Department.



LACK OF RIGOUR IN INSPECTING AN ANIMAL SHELTER

A dog owner was obliged to put his dogs in an animal shelter temporarily. Afterwards, he filed a complaint with the Department. According to him, the dogs had been mistreated and had not received the care required by their condition during their stay.

A week later, a Department inspection took place, but the people in charge of the shelter were not found to have been delinquent. Dissatisfied with the outcome, the dog owner lodged a second complaint, but this time concerning the inspection, which he felt had been considerably less than rigorous.

Once again, the Department rejected the grounds of the complaint, so the dog owner contacted the Québec Ombudsman.

As part of its investigation, the Québec Ombudsman noted that, in fact, the inspection had not been carried out in compliance with the applicable legal framework. The inspector:

- Had not acted within the prescribed 24 hours when there was a risk that an injured or a suffering animal was not getting the required care;
- Had not considered all the evidence on record;
- Had cut corners in inspecting the shelter;
- Had produced a report that contained inaccuracies.

The Québec Ombudsman noted that there had been a second inspection by a Department representative. It revealed obvious flaws in the shelter's operation, a situation which should have been flagged during the first inspection.

The Québec Ombudsman recommended that the Department present an action plan for improving its animal welfare inspection procedure and for standardizing practices. The plan must be produced in the spring of 2020.

MINISTÈRE DE L'ÉDUCATION ET DE L'ENSEIGNEMENT SUPÉRIEUR

Aide financière aux études requirements for its client population

Calculation of the amount granted under the Aide financière aux études (AFE) Loans and Bursaries Program is based mainly on the following quantitative information:

- Students' financial contribution (or that of their parents, respondent or spouse) to their studies;
- Students' eligible expenses (those considered required for the students' studies).

Anyone who wants a loan, to which a bursary may be added, must provide proof of the information in support of their application. Legally, preponderant evidence—in which what is stated is more likely than its opposite—is in fact enough. The *Act respecting administrative justice* provides that the procedures leading to a decision by a public service must be in keeping with its obligation to act fairly by applying simple and flexible rules.

The complaints which the Québec Ombudsman received show that AFE does not comply with the rule of preponderant evidence nor with the principles of administrative justice:

- In its administrative handbook, AFE specifies which documents are needed as proof, but offers no other option for applicants who cannot provide the required documents.
- When a student's situation is specific, for example, if he or she has a dependent child but is not the child's parent, AFE imposes unreasonable requirements and is inflexible about the proof needed to corroborate the facts; this proof would qualify the applicant for student financial assistance or for a supplement.

- When the evidence submitted by applicants is not a perfect match for the proof expected, AFE sends them a notification that the file is incomplete and that processing has been suspended. If, in response, applicants provide proof other than that requested because they are unable to give AFE what it asked for (e.g. lease or notice of assessment), they must assume the burden of proof, which goes far beyond the notion of preponderant evidence.



HANDLE APPLICATIONS WITH THE NECESSARY FLEXIBILITY

A person who immigrated to Québec in 2016 applied for student financial assistance for the 2018-2019 school year.

AFE asked the applicant to prove that Québec was her last place of residence for 12 consecutive months by means of a lease in her name or a letter from the landlord of the building where she lived. However, the woman and her husband lived with a family member, so she did not have a lease in her name. The landlord, arguing that the applicant was not the person who signed the lease, refused to provide a letter of confirmation. AFE stopped analyzing the file.

After this, the applicant sent in several pieces of evidence of her place of residence, including a lease in her name as of September 1, 2018. AFE considered this proof insufficient and suspended its analysis of the file yet again.

The woman submitted another application for financial assistance, for 2019-2020, and enclosed the lease in her name. Even so, AFE still asked for an attestation from the landlord. Note that according to the applicable rules, only one, but not both, of the documents must be provided.

Finding it impossible to provide the letter, the applicant gave up.

After investigating, the Québec Ombudsman concluded that the documents which the woman had sent in showed that she had indeed been living in Québec since 2016 and that the proof constituted preponderant evidence. It asked for the analysis of the file to continue. AFE then instructed the citizen to send it her bank statements from November 2017 to August 2018.

In the Québec Ombudsman's opinion, the file was already complete. However, as part of mediation and to speed things up, the Québec Ombudsman suggested that she take this extra step.

In the end, AFE agreed to grant the woman student financial assistance for the two years.



PAY PROPER ATTENTION TO THE PROOF PROVIDED

A citizen from another Canadian province had been living in Québec since 2016. He applied to AFE for student financial assistance for 2018-2019 and then for 2019-2020. AFE asked him to prove that Québec had been his last place of residence for 12 consecutive months. As proof, it required a lease in his name, notices of assessment, or a letter from the landlord of the building where he lived. Because he was living with a friend, the applicant could not provide these documents. The landlord, feeling that he did not really know the applicant, refused to give him proof of residence.

The citizen sent AFE several documents indicating his address covering various periods, as well as proof that he had been working in Québec since 2016. AFE considered these documents invalid and stopped analyzing the file.

After investigating, the Québec Ombudsman established that the proof on record showed that the citizen had been living in Québec since 2016. It asked AFE to resume analysis of the file. AFE then instructed the citizen to produce his credit card statements for the period being considered.

As the Québec Ombudsman saw it, in this case and in the preceding one, the file was complete and satisfied every requirement as preponderant evidence. However, to speed up handling of the application, it suggested that the citizen provide the statements in question, which he did. AFE agreed to grant him student financial assistance for the two years.



SHOW OPENNESS IN APPLYING FINANCIAL ASSISTANCE RULES

In his application for student financial assistance, a citizen indicated that he had legal guardianship of his nephew whose parents lived in another country. In support of his application, he submitted a sworn statement bearing the Canadian Embassy seal from the country in question. He added a Revenu Québec document acknowledging that his nephew was his dependent. It is worthwhile pointing out that a student who has a dependent child of minor age may qualify for a greater amount from AFE.

AFE refused to recognize the nephew as a dependent and instructed the applicant to provide proof of a court decision on legal guardianship, which the citizen did not have.

The investigation by the Québec Ombudsman showed that the man could also have provided a 1040 form (Family Status Declaration), or a legal document other than a court decision proving legal guardianship. However, he had never been told this. The Québec Ombudsman intervened with AFE for it to inform the citizen accordingly.

Shortly thereafter, AFE realized that the form did not apply to the applicant's specific situation and finally recognized that the documents which the applicant had submitted were sufficient in the circumstances. The child under the applicant's guardianship was factored into the calculation and the citizen received an additional bursary of about \$7,000.

Misapplication of a directive concerning income considered

When AFE calculates the financial assistance for which applicants qualify, it takes the person's income into account. Benefits from a government department or agency for the civil year when they were received are considered income. This includes amounts paid as a Retraite Québec disability pension, for example.

If a person is receiving last-resort financial assistance benefits from the Ministère du Travail, de l'Emploi et de la Solidarité sociale while they qualify for a Retraite Québec disability pension for the same period, Retraite Québec reimburses the Department for these amounts. AFE has an administrative directive whereby these amounts must not be considered income for the purpose of calculating student financial assistance.

However, the Québec Ombudsman noted that the administrative directive that details this is not always properly applied.



A CLAIM ISSUED FOR A BURSARY OVERPAYMENT BECAUSE OF ADMINISTRATIVE INCONSISTENCY

A person recognized by Retraite Québec as disabled received a payment backdated to the date of her disability. Since she was a last-resort financial assistance recipient during the same period, nearly \$10,000 was reimbursed directly to the Ministère du Travail, de l'Emploi et de la Solidarité sociale.

Afterwards, the person was admitted to a college studies program. She applied to AFE for student financial assistance and was awarded a bursary on the strength of AFE's recognition of her major functional disability. In her application, she clearly stated (backed up by supporting documents) that she had gone from social assistance benefits to a disability pension and that Retraite Québec had therefore remitted an amount to the Ministère du Travail, de l'Emploi et de la Solidarité sociale, without any financial benefit for her.

However, in calculating her income, AFE included the \$10,000 that the applicant had not received, resulting in a \$5,000 claim for a bursary overpayment. AFE based its decision on the information from Revenu Québec and argued that the assistance had to be calculated based on her overall income.

In using this approach, AFE misapplied its own administrative rule which specifies that the amounts returned to the Ministère du Travail, de l'Emploi et de la Solidarité sociale by Retraite Québec are not part of student income.

After the Québec Ombudsman intervened, AFE reviewed its decision and the \$5,000 claim was reduced to less than \$700.

Handling complaints within the public education system: follow-up to the Québec Ombudsman's special report

In October 2017, the Québec Ombudsman took stock of the various flaws in the complaint-processing mechanism within schools and school boards, with Student Ombudsmen at the pinnacle. In a special report entitled *Handling of complaints within the education system: For a simple, quick, effective and impartial procedure*, it made 19 recommendations aimed at improving the process. Subsequently, the Québec Ombudsman repeatedly reminded the Department about the numerous changes that needed to be made.

In its *2018-2019 Annual Report*, the Québec Ombudsman reiterated its requests, pointing out that the Department had yet to put together an action plan or devise concrete measures in response to its recommendations.

The Department informed the Québec Ombudsman that work was underway with a view to tabling a bill no later than December 2019 laying out the legal framework for Student Ombudsmen in Québec. So far, no bill of this kind has been introduced.

In November 2019, the Québec Ombudsman intervened with the Department in the wake of Bill 40, the *Act to amend mainly the Education Act with regard to school organization and governance*. It expressed its disappointment that there were no amendments concerning the complaint-examination procedure or the Student Ombudsman.

In February 2020, certain provisions of Bill 40 were passed and came into force. At the time, the Québec Ombudsman noted that there were no transitional measures concerning Student Ombudsmen.

Since February 8, 2020, the directors general of French school boards have been de facto school commissioners and will continue in this role until the new board of directors takes office next June 15. This means that because the directors general now replace the council of commissioners, during this transitional period, they are tasked with receiving recommendations from the Student Ombudsman, who will report directly to them.

The Québec Ombudsman was worried about the repercussions of this change, especially regarding parents' perception of redress through the Student Ombudsman and his or her independence vis-à-vis education decision-makers. It therefore questioned the Department about intended measures for ensuring that complaints from students and their parents are handled without inference and that confidence in the complaints process is not shaken any further.

The concerns raised by the Québec Ombudsman prompted the Department to establish measures for cases in which complaints involve an administrative member of a school board.

The Québec Ombudsman has taken note of this Department commitment. However, it insists on the importance of ensuring that all complaints, and not just those involving administrative members, are handled fairly and impartially. The purpose is to preserve children's and parents' rights, particularly given the upheavals related to reforming school governance.



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

MINISTÈRE DE L'IMMIGRATION, DE LA FRANCISATION ET DE L'INTÉGRATION

Administrative review is mandatory for candidates even though the Department erred

To settle in Québec, authorization from the Ministère de l'Immigration, de la Francisation et de l'Intégration is required by means of a Québec selection certificate (CSQ). Candidates must provide the documents which the Department has instructed it to produce within a specific deadline. If not, the file is refused.

After investigating, the Québec Ombudsman saw that in several cases, documents had gone missing because the Department had not kept a paper trail of the items received by mail. This is how the Québec Ombudsman realized that the Department had refused files even if the candidates were able to provide confirmation of delivery proving that the Department had indeed received the mailed items.

The Québec Ombudsman asked the Department that in such cases, candidates be allowed to send the missing documents again and that processing proceed quickly. This was the Department's reply:

- Candidates in this situation are obliged to request an administrative review;
- This step is essential because the Department does not know whether the initial mailing contained the requested documents;
- It is up to review authorities to determine whether or not to give candidates the benefit of the doubt;
- It is only at this stage that a decision is made to authorize candidates to send their documents again or to deny such authorization.

Faced with its responsibility for the loss of documents (as evidenced by the proof of reception of the items), the Department makes candidates pay the price for its mistakes. Candidates therefore are subjected to a recourse process which in no way guarantees a positive outcome for them and which lengthens the wait time for an answer by several months.

Here, the Department clearly displays:

- Lack of rigour regarding its own obligations;
- Administrative rigidity regarding its rules;
- Lack of openness regarding the candidates' version;
- Very little empathy regarding the individual and family issues at stake.

In the Québec Ombudsman's opinion, the Department must allow people whose documents it lost to produce them again. Furthermore, it must be flexible in order to cushion the impact of its mistakes, by, in such cases, allowing candidates to email the documents in order to avoid postal delays. The Department agreed to rectify the situation.



EXERCISING ADMINISTRATIVE RECOURSE BECAUSE OF THE DEPARTMENT'S MISTAKE

In October 2018, a candidate applied for the Québec selection certificate (CSQ) under the Québec experience program. In the ensuing months, he received a letter specifying (as is often the case) that a document was missing and that he had 60 days to produce it. Three days later, the candidate sent his document by registered mail and kept the mailing receipt.

Later, not having heard from the Department, the candidate phoned customer services for information on the progress of his file. He was told that the Department had received the document and that his application was being processed.

In March 2019, he learned that his file had been rejected because a document was missing—the one that he had sent by registered mail. He was also informed that for his file to be re-examined, he had to request an administrative review, despite the mailing receipt and a note in his electronic file attesting that the document had indeed been received (as he was told when he phoned).

In early April 2019, the candidate requested an administrative review. He was refused fast-tracking of the file, even though the Department was responsible for losing the document. In July, it upheld its refusal decision.

The investigation by the Québec Ombudsman showed that given the proof of mailing provided by the candidate, and the probability that the lost letter had contained the requested document, rejection of the application had been unreasonable.

The decision to maintain rejection was overturned and the candidate obtained his CSQ in September 2019, after a nine-month wait.



A REQUEST FOR AN ADMINISTRATIVE REVIEW LOST FOR A FEW MONTHS

In the fall of 2018, a candidate applied for a CSQ. In November 2018, he received a letter informing him that certain documents were missing or were non-standard. The candidate sent in the requested documents immediately.

In December 2018, the Department informed him that his application had been refused because he had failed to provide documents that it had requested and had not received.

Convinced that he had transmitted the required documents, the candidate sent in a request for an administrative review using Xpresspost™. In March, he still had not received an acknowledgement of receipt for his request for review, so he contacted the Québec Ombudsman.

The Québec Ombudsman then learned from the Department that, after looking into the matter internally, no request for review from the candidate had been found. So that the candidate could file a second request (despite

the fact that the 90-day deadline had expired), the Québec Ombudsman submitted the candidate's proof of mailing (the Canada Post receipt and the tracking information leading to the addressee).

According to the Department, the mailing address on the Canada Post receipt was unclear (illegible number). This situation gave rise to lengthy discussions at the end of which the Department admitted that the postal code on the receipt proved that the letter had been sent to the right address. In late May 2019, the candidate was authorized to file a new request for review.

In the end, it turned out that the Department had received the man's request for review in February 2019, but that it had been unable to locate it for several months.

In June 2019, the administrative review made it possible to process the candidate's file, and the candidate obtained his CSQ in July 2019.



A nearly two-year delay for an important change to the *Mon projet Québec* web portal

As indicated earlier, a CSQ is mandatory for candidates who wish to immigrate to Québec. In fact, candidates can only apply to Immigration, Refugees and Citizenship Canada for permanent residence once they have obtained a CSQ for every family member.

Under a regulatory requirement that came into force on December 31, 2015, all new Regular Skilled Workers Program applicants must file online. As a result, in 2016, the Department received electronic applications by means of the *Mon projet Québec* web portal.

Because of the large number of applications received, processing began only in July 2017 and the first CSQs were not issued until early 2018. Given the long processing times, the family situation of several candidates had changed (e.g. a spouse or newborn child).

When a CSQ is issued, a new application must be submitted for the addition of a dependent to a file, and the application must be made online.

However, when the web portal was designed, the Department did not provide for a function allowing candidates to update their file. The Québec Ombudsman therefore intervened with the Department in order to find a transitional solution so that these 57 candidates and their families could update their file.

In June 2019, the Department assured the Québec Ombudsman that solving the problem was a priority. In August 2019, work was still underway. A stopgap solution was put in place on November 1, 2019, and candidates were then able to go online to add dependents to their file and send documents that would otherwise have to be mailed to the Department. In some cases, these people had to wait nearly two years to have their situation sorted out and to immigrate to Québec.

The update file option is now integrated within the *Mon projet Québec* web portal. The Québec Ombudsman considers that the Department had not prepared properly for this administrative change and had been slow to find, then implement, a solution for processing these files.



PAYING THE PRICE FOR POOR PLANNING

A couple from abroad applied for a CSQ as skilled workers in 2016 by means of *Mon projet Québec*. Two years later, the couple had their first child and wanted to include the infant in their application. However, because of a technical problem, the program's computer platform would not allow them to add a dependent to the initial application.

The candidates obtained their CSQ in the summer of 2018 and contacted the Department about their child. They were told that they would have to mail the paper copy of the application to add a person to the file. For several months, they were informed that their application was being processed.

Alongside this, in keeping with the instructions from the Department, the couple applied to Immigration, Refugees and Citizenship Canada for permanent residence.

In the spring of 2019, the couple contacted the Department because, in response to their application, the federal authority required that the CSQs of every family member, including the child, be sent to it. If the applicant failed to do so, the file would be closed, without further action.

In May 2019, the Department confirmed that it was impossible to add a spouse or any dependent to the file due to the technological limits of the *Mon projet Québec* web portal. The Québec Ombudsman therefore intervened to ask the Department to find an alternative for adding the child to the parent's file.

Finally, in November 2019, a temporary solution was put in place (see above). The same day, the couple was able to update their file. The CSQs for all three members of the family were issued a few days later.

These people had to be granted several extensions by the federal authority in order to keep their file active. The child was more than a year-and-a-half old when he could be added to his parents' file.

The Department's lack of planning in processing live-in caregivers' files

The Live-in Caregiver Program (LCP) is a federal program which stopped accepting new applications on December 1, 2014. Under the program, foreign workers could be hired to take care of a child, an elderly person or a person with a disability within a Canadian family.

However, even if the program no longer exists, live-in caregivers who were already admitted under LCP can apply for permanent residence if they want to settle in Canada. Once their eligibility for permanent residence has been confirmed by Immigration, Refugees and Citizenship Canada, this information is forwarded to the Department, which sends candidates a kit allowing them to apply for permanent selection. Once their CSQ is issued, their file is returned to Immigration, Refugees and Citizenship Canada in order to settle the final details. Permanent residence can then be officially granted.

This process is important, because, among other things, the CSQ is needed so that live-in-caregivers can renew their Québec health insurance card and therefore continue to qualify for the free services provided for by the Régie de l'assurance maladie du Québec (RAMQ).

It is worth pointing out that in April 2016, the *Act respecting immigration to Québec* was passed. Two years later, the immigration application management system for qualified workers based on expressions of interest (ARRIMA) was put in place.

When the *Act respecting immigration to Québec* came into force on August 2, 2018, the Department suspended the processing of applications from live-in caregivers while waiting to find a way of resolving the problem so that they would not be subject to the requirements of the new ARRIMA system. As at that date, Immigration, Refugees and Citizenship Canada had sent it confirmation that 56 live-in caregivers qualified. However, they could not apply to the Department for permanent selection.

Only a year later (September 9, 2019) did the Department issue a directive explaining the trajectory of these applications: an information package would be sent to candidates in this situation to enable them to submit their CSQ application. The kits were finally sent out in October 2019.

In the Québec Ombudsman's opinion, between 2016 and 2018, the Department should have found a way of processing live-in caregivers' files.

In all, the processing of 114 live-in caregiver applications was on hold for 13 months. At the time that this Annual Report was being written, several applications were still pending.

In the meantime, these workers had to deal with uncertainty and, while waiting for their file to be processed, the fear that they would need healthcare for which they would have to pay out of pocket, among other major inconveniences they faced.



A WAIT BECAUSE OF A POORLY PLANNED TRANSITION

A candidate came to Canada in 2014 under the federal government's Live-in Caregiver program. To be granted permanent residence, her eligibility had to be confirmed by Immigration, Refugees and Citizenship Canada, after which the required confirmation would then be sent to the Department, which could then process the candidate's application and issue the CSQ. Immigration, Refugees and Citizenship Canada was responsible for finalizing the processing of her application for permanent residence.

The candidate sent Immigration, Refugees and Citizenship Canada her permanent resident application in June 2017. In September 2018, the federal authorities sent the

Department confirmation of her eligibility for the program which had since been suspended. Because of this, the Department did not begin processing the application.

Later, the Department sent the candidate an information package for completing her application, which she did in the fall of 2019.

Processing of the candidate's file began in December 2019 and her CSQ was issued on February 27, 2020, more than 16 months after the Department received federal confirmation of her eligibility for permanent residence. Her application for permanent residence is still being processed.

Processing collective sponsorship applications: congestion and chaos that should have been foreseen

In 2016, after receiving numerous collective sponsorship applications, the Department temporarily stopped accepting them. Groups of two to five people, or not-for-profit organizations, could apply for collective sponsorship. Candidates were sponsored as refugees.

In 2018, the Department announced new conditions:

- For the September 17, 2018, to February 1, 2019 intake period, the maximum number of new applications accepted would be 750;
- The cap on the number of undertaking applications per sponsor category was determined;
- According to the instructions, all applications would have to be sent via a courier service;
- Applications would be accepted as of 8:30 a.m. on September 17, 2018.

This announcement was keenly awaited by prospective sponsors. An influx was therefore to be expected as of the first day and as soon as the office doors opened. Unfortunately, the measures taken were insufficient to guarantee that the operation would go smoothly:

- The numbers indicating the order in which the applications came in did not coincide with the couriers' time of arrival;

- Some couriers were able to enter the Department office before it opened, while others were lined up outside waiting;
- Some couriers who arrived late gave their packages to their co-workers who were at the front of the line;
- This behaviour created tension because some people had waited all night to be at the front of the line.

The upshot was that certain people could not apply because the cap on the number of applications had been reached. It later became apparent that these applications were mainly from the Groups of 2 to 5 People category and from the Other Regular Organizations category.

Further to these events on September 17, 2018, and the resulting complaints, the Québec Ombudsman asked the Department to make improvements for the next intake period. It suggested in particular that the Department draw lots if the number of applications exceeded the cap.

On October 30, 2019, the Department announced a new intake period for sponsorship applications (January 20 to June 5, 2020). None of the application requirements changed. Again, applications had to be delivered by a courier service, on a first-come first-served basis. Informed of this procedure, sponsors planned to line up at the Department offices the Saturday before the Monday morning opening. The Québec Ombudsman was not surprised to see congestion similar to that of September 2018.



UNJUSTLY LOSING YOUR SPOT IN THE LINE IN DELIVERING A SPONSORSHIP APPLICATION

A community organization complained to the Québec Ombudsman because several of its undertaking applications for sponsoring refugees had been turned down by the Department. The reason cited was that cap for the number of applications (200) in the complainant's category (Other Regular Organizations) had been exceeded.

As part of its complaint, the organization explained that it had made arrangements with a courier service to deliver the package to the Department office at 8:30 on the first day of the intake period. However, that morning, the numbers indicating the sequence of the applications were given out to certain couriers ahead of the prescribed time. Moreover, couriers who had arrived later gave their packages to people at the head of the line.

The agency rightly felt that it had paid the price for the Department's disorganization.



RECOMMENDATIONS BY THE QUÉBEC OMBUDSMAN CONCERNING RECEIPT OF APPLICATIONS FOR THE COLLECTIVE SPONSORSHIP OF REFUGEES

Given the preceding, the Québec Ombudsman recommends that the Ministère de l'Immigration, de la Francisation et de l'Intégration:

- Change the way in which undertaking applications are transmitted pursuant to the Collective Sponsorship of Refugees Program with a view to finding a procedure that is fair for all applicants and, by extension, all refugees concerned;
- Among possible solutions, consider drawing lots if the number of applications exceeds the cap established per sponsor category;
- Inform the Québec Ombudsman of the schedule for implementing the required changes.

Reply by the Ministère de l'Immigration, de la Francisation et de l'Intégration

[Translation]

"The Department has taken note of the difficulties encountered in the reception of applications for undertakings in the context of the Collective Sponsorship of Refugees Program. On January 20, 2020, Mr. Simon Jolin-Barrette, the Minister of Immigration, Francization and Integration, publicly committed to changing the intake procedure based on the use of courier services. The Department will release the information about the logistics of the new application reception mechanism when the orientations have been adopted."



MINISTÈRE DE LA JUSTICE

Flaws in the crime victim compensation system: the notion of “victim”

In September 2016, the Québec Ombudsman released a special report on the flaws in the crime victim compensation system. Later, in its 2018-2019 Annual Report, it criticized the Department’s slowness to act on the report’s recommendations, namely:

- Clarify the scope of the notion of “victim;”
- Produce orientations that favour a more inclusive interpretation of victim by the Direction générale de l’indemnisation des victimes d’actes criminels (the DGIVAC).

Note that in 2017, the notion of victim was extended to include parents who were not at the scene of the crime when their child was murdered by a spouse or an ex-spouse. However, for the Québec Ombudsman’s recommendations to be implemented, the notion of victim should also apply to:

- Anyone who suffers harm when he or she arrives at the scene of a crime that has just been committed and that significantly affects or concerns him or her;
- Anyone who proves that there is sufficient simultaneity between the event and his or her knowledge of it, even if the person was not physically present at the scene of the crime. Virtual witnesses (through technology) should also be considered.

As at March 31, 2020, the DGIVAC was still awaiting the Department's policy thrusts. In the meantime, the Québec Ombudsman has seen that a restrictive interpretation persists.

As for broadening the interpretation of the notion of victim, the Department has reiterated that it is waiting for the reform of the *Crime Victims Compensation Act*, slated for late 2020. The Québec Ombudsman has taken note of the Department's commitment in this regard.

Abolishing any prescriptions for civil actions in certain assault cases: follow-up to the Québec Ombudsman's special report

Since 2013, a person may institute a civil action against his or her aggressor within 30 years. Previously, this time limit was three years.

The Québec Ombudsman considers that the law should go even further and abolish any time limit for civil actions in cases of sexual assault, violence during childhood, or violence by a spouse or ex-spouse. This is what it argued in its special report entitled *Abolish any prescription for civil actions in case of sexual assault, violence suffered during childhood, and violence by a spouse or an ex-spouse*, published in December 2017. The report contains four recommendations to the Ministère de la Justice aimed mainly at:

- Abolishing any prescription period for this type of legal action;
- Backdating the law so that there is no time limit.



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

When it submitted its report, the Québec Ombudsman asked the Department to send it an action plan in response to its recommendations, as well as a timeline for its work. The Department instead informed the Québec Ombudsman that it would address the issue of prescription as part of its reform of the *Crime Victims Compensation Act*.

On February 28, 2019, the National Assembly unanimously passed a resolution asking the government to abolish any time limit for civil actions by any victim of sexual assault. On October 10, 2019, another motion was passed unanimously seeking follow-up on the resolution. The purpose of the motion was also the tabling of a bill no later than June 2020.

Subsequently, discussions took place between the Department and the Québec Ombudsman as part of the Ombudsman's tracking of the implementation of its recommendations. The Department confirmed that the June 2020 deadline would be met and that the bill would propose abolishing any time limits in such cases.



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



MINISTÈRE DE LA SÉCURITÉ PUBLIQUE

DISASTER RELIEF

Processing financial assistance claims further to the floods of 2017 and 2019

The Québec Ombudsman regularly receives complaints from disaster victims dissatisfied with the handling of their application for financial assistance by the Ministère de la Sécurité publique further to the floods in 2017 and 2019.

In its 2017-2018 Annual Report, the Québec Ombudsman pinpoints various shortcomings:

- Long wait times for file processing;
- Trouble communicating with Department analysts;
- Lost documents.

Three years after the 2017 floods, the grounds for the flood victims' grievances in the wake of the floods in 2017 and 2019 remain unchanged.

In December 2019, 876 Department flood files for 2017 were still active, 625 of which were from individuals (owners or renters). In reply to the Québec Ombudsman's questions about this, the Department was unable to show that it was managing to reduce the backlog within a reasonable time frame by means of rigorous planning or an appropriate action plan. As at March 31, 2020, approximately 525 files were still active, some 335 of which were for individuals. The Québec Ombudsman remains concerned and continues to follow developments.

After the spring floods of 2019, the Department received 7,599 claims. In December 2019, 4,225 files were still pending. The Department then established measures so that flood victims could be issued estimated financial assistance. Consequently, as at March 31, 2020, about 95% of individuals had received 100% of their estimated financial assistance. The Québec Ombudsman has noted that under these measures, delivery of financial assistance was much quicker than in 2017 and it applauds this outcome.

Nonetheless, changes must be made in how disaster victims' files are managed in order to make the process more efficient by, among other things, putting an end to the loss of claim documents and making better use of technology.

LOSS OF DOCUMENTS

After her principal residence was flooded in the spring of 2017, the owner did the necessary repairs herself.

In May 2019, to obtain the final instalment of the financial assistance that she had been awarded, she emailed all her invoices to the analyst assigned to her file. The following month, the Department emailed her an acknowledgement of receipt of the documents. It also informed the woman that it could not finish analyzing her file because of the new applications that had come in further to the spring floods of 2019. The priority was to issue advances to the new flood victims.

After six months, the citizen still had not heard back from the Department, so she complained to the Québec Ombudsman.

Given the long delay from the time the owner had sent in her invoices, the Québec Ombudsman asked the Department to speed up processing of her file and to issue the amount owing. It agreed to do so, but it told the Québec Ombudsman that her file analyst had left his position and the invoices that the citizen had sent could not be found.

The owner therefore sent the Department the documents again and it completed the processing of her file. At long last, the citizen received her final payment.





UNREASONABLE REQUIREMENTS BY THE DEPARTMENT

After the spring floods of 2017, a citizen decided to use her financial assistance as a departure allowance for moving and for demolishing her damaged residence. As the Department requires, she sent in two contractor bids for demolishing her principal residence. Shortly after this, the company that won the bid upped its estimate.

The Department considered this increase unwarranted, so it asked the claimant to get a third bid. Since the third bid was higher than the other two, the Department asked for a fourth bid. Put off by this string of requirements, the woman complained to the Québec Ombudsman.

The Québec Ombudsman considered the fourth demand for a bid unreasonable. Generally, the Department only asks for two bids for this type of work. The Québec Ombudsman therefore asked the Department to review its position and approve one of the three bids that had already been submitted. It agreed to this. From that point on, the person was able to continue the process of obtaining her demolition permit from her municipality.

Subsequently, an expert report showed that the residence contained asbestos. Since this factor must be taken into account in assessing demolition costs, the Department instructed her to get two new bids. She provided three. The Department, feeling that the bids were overpriced even though they factored in asbestos contamination, asked her for two additional bids.

Disagreeing with this requirement and fearing that she might not be able to carry out the work before winter, she contacted the Québec Ombudsman again. It intervened a second time and convinced the Department to approve one of the three bids that had already been submitted. The person was then able to begin demolition.



A MISCALCULATION

Under the special financial assistance program for the 2017 floods, the financial assistance amount awarded to owners for damage to their principal residence, as well as for emergency work and temporary work, is equal to 90% of the cost of the amount of the eligible damage. The flood victim's financial contribution is therefore 10%. The amount awarded may be increased to 100% if applicants choose to use it for other purposes, particularly for:

- Demolishing their residence and moving, for which they are awarded a departure allowance;
- Having their residence moved to another location on the same lot;
- Applying various measures to provide the protection required to avoid further flood damage to their residence.

When the Québec Ombudsman became aware of the recommendation as issued by the file analyst concerning the final financial assistance payment, it noticed that the Department was forgetting to give the applicant back his financial contribution, which totalled nearly \$20,000. In other words, the final payment did not comply with the 100% rule that applied to the various situations already laid out. The Department had given the applicant only 90% of the estimated amount.

The investigation therefore showed that the file analyst had made a mistake in processing the application.

After the Québec Ombudsman intervened, the Department corrected the calculation and the missing amount was issued to the claimant.



WRONG ADDRESS

A man who had experienced the spring flood in 2017 had to deal with the same events in 2019. He submitted a claim to the Department for damage to his principal residence and an apartment building that he owned, located next door. Because the Department was slow to respond to the claim, he contacted the Québec Ombudsman.

The Department explained to the Québec Ombudsman that the delay had been caused by a mistake with the apartment building address. Confusing this address with that of the principal residence, the person in charge of the file thought that he was looking at a second claim for the same

residence, but this time for the claimant's business located in the basement of this residence, as was the case in 2017.

However, the citizen's application indicated a different address and concerned a rental property. Clearly, it was a second building in this case.

The Department informed the Québec Ombudsman that further to a conversation with the owner of both buildings, the person in charge had corrected his mistake and had started processing the application.

Necessary improvement of disaster claim file management

The Québec Ombudsman has noted that the Ministère de la Sécurité publique is ill-equipped for the challenges it faces in ensuring effective and efficient processing of a large volume of claims in times of major disaster. Manual and uncomputerized management of applications and files has harmful consequences such as disparities in file processing, loss of documents and lengthy processing times.



RECOMMENDATIONS BY THE QUÉBEC OMBUDSMAN CONCERNING THE MANAGEMENT OF DISASTER CLAIM FILES

Given the preceding, the Québec Ombudsman recommends that the Ministère de la Sécurité publique:

- Quickly take all necessary means to improve application and file management, notably by creating an operational procedure for processing these applications and files;
- By December 18, 2020, send it an action plan for ensuring uniform file management.

Reply by the Ministère de la Sécurité publique

[Translation]

"The MSP is keenly aware of the problems related to the handling of disaster claims. As the Québec Ombudsman pointed out, with the new General Indemnity and Financial Assistance Program established in 2019, processing delays were significantly shortened. Despite this progress, the MSP is continuing its work to enhance the Program. Once this exercise is completed, the MSP hopes to improve the services offered to disaster victims, notably by issuing financial assistance more promptly and by improving electronic service provision."



MINISTÈRE DES TRANSPORTS

The Ministère des Transports is mandated to carry out the construction, repair and maintenance of the roads under its jurisdiction. The notion of “road” includes infrastructure and all the works and facilities for road improvement and management.

As a corollary, if infrastructure within the Department’s purview causes damage, the Department is obliged to repair the harm done.



THE QUÉBEC OMBUDSMAN AS A MEDIATOR

Every year with the spring thaw, a citizen's land and even at times his buildings were flooded. The citizen had complained to the Department several times. He believed that the blocked culverts under a provincial road had caused the overflows.

In 2013, the Department mandated an external firm to carry out a hydraulic study with a view to finding solutions. Several recommendations were made, including replacing the culverts. According to the experts, this would increase the flow capacity, reduce the risk of blockage, and prevent the snow on the road from being swept directly towards the surface or the culvert outlets. The authors of the study indicated that other action was required.

Over the following years, the Department implemented some of the recommended improvements but did not replace the culverts. Further flooding occurred.

When the man complained to the Québec Ombudsman, his relations with the Department became strained. Facing off against each other, they both had documents, photos, videos and expert opinions to support their respective points of view.

To bring the parties together and enable corrective measures, the Québec Ombudsman asked the Department to do another hydraulic study to verify:

- Whether the work it had carried out was up to code;
- The hydraulic capacity of the culverts concerned;
- The possible causes of the water retention responsible for the floods.

The Department agreed to act on the Québec Ombudsman's request and hire a specialized firm to carry out the appropriate analyses during the 2020 spring thaw. The Québec Ombudsman will remain attentive to developments in this regard.

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

The value of a residence attributed to a recipient who did not own it

In establishing the amount of last-resort financial assistance for which an applicant qualifies, the Ministère du Travail, de l'Emploi et de la Solidarité sociale considers the value of the applicant's property. However, the Québec Ombudsman has noted that sometimes the Department factors in the value of a building which the applicant does not own. As a result, vulnerable citizens' benefits may be reduced or even cancelled.

To determine a person's owner status, the Department cannot rely solely on the municipal property assessment roll, as it has been known to do. The Registre foncier du Québec is the only source for confirming whether someone is really the owner, or whether his or her name is entered on the assessment roll for some other reason.

We know, for example, that for administrative reasons, some municipalities prematurely register citizens as owners. Thus, in certain files submitted to the Québec Ombudsman, people were registered as owners of a building although the Registre foncier du Québec specified that they were only legatees pending transfer of the property. However, the Department had already either decreased or cancelled last-resort assistance benefits.

The Québec Ombudsman asked that individual files be corrected and that the Department clarify its procedures to ensure that in cases of this kind, its agents refer to the Registre foncier du Québec before rendering a decision.

The Québec Ombudsman will remain attentive to the Department's response to this situation which may exacerbate the financial fragility of vulnerable persons.



FALSELY CONSIDERED A PROPERTY OWNER

The Social Solidarity Program is intended for citizens with a “severely limited capacity for employment,” in other words, a condition that prevents them from working. The purpose of the benefits is to provide recipients with last-resort financial assistance.

The person who complained to the Québec Ombudsman was a program recipient who had received a notice from the Department stating that the benefits had been cancelled due to ownership of a building whose value exceeded the prescribed limit. The complainant was in a genuine state of panic.

The reality was that for the time being, the citizen was the legatee in an unfinished succession and therefore had not

derived any financial gain. The complainant explained this to the Department, which maintained that the citizen was registered as an owner on the municipal property assessment roll.

The citizen complained to the Québec Ombudsman, which consulted the Registre foncier du Québec as well as the declaration of transmission of the property. Both sources confirmed that the citizen had provided the Department with accurate information.

After the Québec Ombudsman intervened, the Department cancelled its decision and recognized that the citizen had the right to benefits again.

Progress in programs for destitute persons

In 2019-2020, the Québec Ombudsman saw that problems affecting thousands of last-resort financial assistance recipients—some of which were longstanding—had been solved. The Québec Ombudsman wishes to highlight these advances.

The Québec Sales Tax (QST) component of the Solidarity Tax Credit

Further to the Québec Ombudsman's 2018-2019 Annual Report, the Minister of Finance announced in his November 7, 2019 economic update that last-resort assistance recipients would have access to the refund to which they are entitled for the QST component of the Solidarity Tax Credit. Revenu Québec will issue the amounts due to more than 40,000 people before June 2020.

These people had been social assistance recipients in December 2018 and had not qualified for this component because they had not produced a tax return for the fiscal year (a prerequisite for receiving the refund).

Child support considered in calculating financial assistance

In April 2018, the Québec Ombudsman recommended to the Committee on Labour and the Economy (a parliamentary committee) that amounts received as child support be excluded from calculable income for last-resort financial benefit purposes.

On November 30, 2018, the National Assembly of Québec unanimously passed a motion providing for this exclusion, which was also recommended for eligibility for legal aid, student financial assistance and housing support.

In the 2019-2020 budget tabled on March 21, 2019, the Minister of Finance announced a substantial increase in the amount excluded (from \$100 to \$350 per child) from child support for the purpose of calculating last-resort financial assistance.

The Québec Ombudsman applauded this gain which would benefit many families, generally, single-parent families. However, it pointed out that the amounts should be completely excluded because, by definition, they are issued for the children's benefit.

A separate eligibility file for people with disabilities who are their parents' dependents

In its 2018-2019 Annual Report, the Québec Ombudsman indicated that more than 100 last-resort financial assistance recipients had an adult child with a disability as a dependent. It bears mentioning that once these young people reach the age of 18, it is more financially advantageous for them to have their own eligibility recognized rather than being entered in their parents' file. That is why the Québec Ombudsman asked the Department to examine the files of the young people likely to qualify for this benefit. After this exercise, 49 young adults were admitted into the Social Solidarity Program. On average, they received a backdated amount of approximately \$13,000.

The waiting period before obtaining a claim slip — the case of people eligible for a disability pension

Every last-resort financial assistance recipient with a recognized severely limited capacity for employment is obliged to check whether they qualify for a Retraite Québec disability pension. If the person is granted the pension and the amounts issued by Retraite Québec exceed that of the last-resort financial assistance benefit with severely limited capacity for employment, the person loses the right to the latter.

Nonetheless, they continue to have the right to the claim slip if they cannot afford their medication. Slip holders can obtain prescribed medication and dental care and eye care free of charge. However, the Department considers the application a new one, and the person is once again subject to the waiting period that he or she faced the first time. This waiting period breaks down as follows (in consecutive Social Assistance Program months):

- Six months for eyeglasses and contact lenses;
- 12 months for dental care and eye examinations;
- 24 months for dental prostheses.

In its 2016-2017 Annual Report, the Québec Ombudsman recommended that the Department cease applying this new waiting period to the detriment of last-resort financial assistance recipients who now receive a disability pension, but whose healthcare and medication needs remain the same.

In response to this recommendation, the Department pointed out that since January 1, 2020, it has no longer imposed the waiting period for people eligible for a Retraite Québec disability pension who cannot afford their medication. Now people receiving a disability pension can still enjoy all the advantages of the slip claim without interruption. The Québec Ombudsman is satisfied with this measure.

Corrective measures that are still pending

Debt cancellation in exceptional situations

In its 2016-2017 Annual Report, the Québec Ombudsman recommended that the Department cancel certain last-resort financial assistance debts pursuant to the Minister's discretionary power when citizens cannot clear their debt within a realistically feasible amount of time. These debts have long payoff time frames; in certain cases, the debts would have been paid in full were it not for the interest charged.

In November 2019, the Department assured the Québec Ombudsman that it intended to act on its request. Analyses are underway so that the following factors are considered when debt cancellation is being contemplated:

- The number of years since the initial claim;
- The amount or proportion of reimbursed capital;
- The probability that, given the circumstances (a person's advanced age; amount of seizable income), the debt will never be reimbursed in full;
- The fact that a major event beyond the debtor's control occurred during the period and influenced the debt or its repayment.

The Québec Ombudsman remains attentive to developments.

Excluding compensation amounts in calculating financial assistance

In March 2013, the Québec Ombudsman recommended to the Department that the *Individual and Family Assistance Regulation* be amended so that amounts received by recipients as compensation for a loss of physical or psychological integrity be excluded from calculating last-resort financial assistance benefits.

On November 14, 2019, the Department informed the Québec Ombudsman that this point would be covered when the basic income program, slated for 2023, was put in place. This would call for the passage of a regulatory amendment.

In the Québec Ombudsman's opinion, these reparatory amounts are not issued to enrich recipients, but rather to compensate them for a permanent impairment.

Seven years later, as at March 31, 2020, the Québec Ombudsman continues to consider this delay unreasonable.

Updating and indexing special benefits

Special benefits are amounts added to the basic last-resort financial assistance benefit, for example, to reimburse recipients for costs incurred for a specific need (e.g. purchasing eyeglasses) or for a specific situation (e.g. fire damage to an apartment).

In its 2011-2012 Annual Report, the Québec Ombudsman recommended that the Department ensure that the rates for the special benefits provided for in the *Individual and Family Assistance Regulation* be reviewed and indexed annually. Note that the last update of these rates goes back ten years. So far, only a few special benefits have been reviewed. An update of the mechanism for determining benefits is underway. The projected deadline is the spring of 2020. A work committee is examining the issue of indexation.

The Québec Ombudsman is awaiting the review of all these benefits.



RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING COMPENSATION FOR LOSS OF PHYSICAL OR PSYCHOLOGICAL INTEGRITY

Given what is described in the section entitled *Excluding compensation amounts in calculating financial assistance*, the Québec Ombudsman reiterates its March 12, 2013 recommendation to the Ministère du Travail, de l'Emploi et de la Solidarité sociale:

- That the *Individual and Family Assistance Regulation* be amended so that the amounts received as compensation for the loss of physical or psychological integrity be excluded without time limits in calculating last-resort financial assistance benefits, and that they be issued as a single payment or in instalments.

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

[Translation]

"The Department acknowledges the Québec Ombudsman's findings whereby amendments to the *Individual and Family Assistance Regulation* must be made concerning the handling of IVAC compensation and benefits. The Ministère de la Justice is working on a project to reform IVAC and discussions are underway with the MTESS to ensure the consistency of the amendments to the Regulation."

Comment by the Québec Ombudsman

The Québec Ombudsman has noted the Department's reply. However, it reminds the Department that the solution should apply to all compensation received by recipients and not only to that issued by IVAC.

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

DIRECTEUR DE L'ÉTAT CIVIL

Progress concerning registration delays and issuance of official documents

In its 2018-2019 Annual Report, the Québec Ombudsman addressed the increase in wait times for registration of “life events” (birth, marriages, civil unions, death) in the register of civil status and for issuing the official documents for these events.

On its website, the Directeur de l'état civil pledges to register events within 15 business days of receiving the application, plus 10 business days for issuing the document. However, the Québec Ombudsman noted that, in fact, in numerous cases the wait time could be more than three months.

According to the Ministère du Travail, de l'Emploi et de la Solidarité sociale, the longer wait times were due primarily to re-assignment of the registration section staff to other sections. Obviously, the necessary planning was not done to deal with the consequences of these re-assignments. The Department also ascribed the problem to a lack of space for hiring extra staff and a marked increase in the number of deaths that needed to be registered.

Subsequently, during discussions between the Québec Ombudsman and the Department, the latter indicated that it was engaged in concrete action to reduce Directeur de l'état civil wait times and was aiming for December 2019 as the deadline for achieving its goals.

The Québec Ombudsman is happy to say that because of the means introduced, the backlog has been cleared and the official deadlines met. This gain was even more desired because the consequences of delays weigh heavily on citizens, as the following examples show.

The very real consequences of delays in registering births and deaths

The registration of life events with the Directeur de l'état civil is mandatory for certain essential administrative procedures to be carried out. Any delay can have major consequences.

Delays in entering births affected parents waiting to receive Retraite Québec's family allowance. It bears mentioning that the *Taxation Act* provides that "an individual may be considered to be an eligible individual, in respect of an eligible dependent child [...] only if the individual files an application for a family allowance [...] with Retraite Québec." Furthermore, Retraite Québec's service statement specifies that the agency issues Family Allowances within 40 days of receiving the information about the birth of a child from the Directeur de l'état civil.

Because of delays, in some cases Retraite Québec received the information more than three months after the birth of a child. Furthermore, extra checking had to be done before the allowances were issued. Given the large number of applications that had to be handled this way, Retraite Québec also had to extend its response time, with ensuing delays of up to four months. To avoid unjustly penalizing families waiting to receive their allowance, Retraite Québec decided to take measures to mitigate this problem and reduce processing response times.

Other people complained about the consequences of these delays on their registration for La Place 0-5, the sole gateway to daycare spaces. To keep their child's name on daycare waiting lists, parents must update their file. This includes, within 45 days of the birth of their child, entering his or her date of birth and Directeur de l'état civil registration number (NIREC) found on the birth certificate. In some cases, the child's file has been archived because the birth certificate was issued after the deadline expired. Because of this hiatus:

- The child's La Place 0-5 file is no longer active. In other words, the child is no longer on the waiting lists for the daycares chosen by the parents;
- The parent must apply to have the file reactivated in order to have the date of registration on La Place 0-5 restored;
- If a daycare place becomes available in the meantime, the parent is not notified.



When a birth or a death occurs, the Directeur de l'état civil makes it easier for citizens to take care of any related administrative requirements. It sends their application for simplified access to the services and programs related to the life event to participating government departments and agencies, for example, the Régie de l'assurance maladie du Québec and Retraite Québec.

More specifically, when the simplified form is filled in after a death, applicants can quickly inform several public services without having to provide each service with a death certificate. The agencies concerned can, for example, stop issuing benefits so that there are no claims for overpayment later, close a file or cancel a permit or license. However, because the application for simplified access is processed at the same time as registration of the death by the Directeur de l'état civil, longer delays mean that the participating departments and agencies are informed later, with the resulting problems.

Other people complained to the Québec Ombudsman because the delays in registering a death had complicated their will search with the Chambre des notaires du Québec and the Barreau du Québec. Both require a death certificate in order to start the process, which is an obligatory step for the people to whom the provisions of a will apply. Moreover, will searches make it possible to confirm the identity of the executor (the only person legally authorized to undertake estate arrangements).

In the Québec Ombudsman's opinion, the government departments and agencies in question must, without fail, gauge the possible impact of their reforms and re-organization on citizens. Furthermore, it is their responsibility to be more proactive in informing their institutional partners about internal problems that may affect their customer services more broadly.

These various situations show the extent to which delays can harm people—including vulnerable ones—in their daily lives, above and beyond a simple accountability rating.

RETRAITE QUÉBEC

The verifications for establishing eligibility for the surviving spouse's pension

Under Retraite Québec's surviving spouse's pension, the spouse of a deceased person who contributed sufficiently to the Québec Pension Plan is guaranteed basic financial protection. To be granted the pension, the applicant must be recognized as the spouse of the deceased person. It is up to applicants to prove that they qualify for the pension. In this regard, the *Civil Code of Québec* provides that demonstration of eligibility can be based on preponderant evidence (in which the probability of a fact is greater than its inexistence, unlike proof beyond a doubt).

The Québec Ombudsman would like to remind Retraite Québec that it must use discernment so that the proof it requires is adapted to citizens' circumstances.



EXCESSIVE REQUIREMENTS CONCERNING BURDEN OF PROOF

When she was applying for a retirement pension, Retraite Québec informed a woman that she could also apply for the surviving spouse's pension because her de facto spouse had died 30 years before.

At that time, she learned that she could have applied for the surviving spouse's pension as early as 1994. It would not have been possible earlier because the law stated that the pension was awarded only if the spouse died at age 35 or older. Further to the legislative amendments in 1994, the pension could be paid regardless of the spouse's age at the time of death.

The woman therefore applied and explained that, at the time, she had received a death benefit for funeral expenses and an orphan's pension for her son. She also provided an obituary indicating, among other things, that she was the deceased's fiancée, as well as a photograph of the tombstone indicating that she was his spouse.

In response to her application, Retraite Québec gave her 30 days to provide documents proving that she and her spouse had lived at the same address during two specific periods before his death.

The woman worked hard to find:

- tax accounts (school and property taxes);
- phone or cable bills;
- bank or credit card statements;
- notices of assessment;
- tax records.

However, she did not manage to do so because of the time that had gone by. She then contacted:

- a police force, for the death report drawn up in the past;

- the ambulance cooperative that had intervened at the time of the event;
- the hospital centre where her spouse had received care.

Unfortunately, with every attempt she was told that time had not acted in her favour and that the documents had disappeared. She had also filed access to information requests with several bodies and they too informed her that they had not kept anything that could serve as confirmation.

The woman complained to the Québec Ombudsman, which advised her to write to Retraite Québec to report all the fruitless steps she had taken, which she did. She enclosed a letter signed by the former owner of the apartment where she and her spouse had lived at the time of his death. It attested to her conjugal situation and to the couple's shared residence.

Preponderant evidence having therefore been established, the Québec Ombudsman intervened with Retraite Québec so that the woman's pension would be issued quickly.

However, Retraite Québec asked the owner for the deed of sale of the building—which he no longer possessed—or other documents proving ownership.

The Québec Ombudsman intervened with Retraite Québec a second time so that a third party would not be delegated the burden of proof. According to the Québec Ombudsman, the preponderant evidence already established was more than enough to show that the woman qualified for the pension.

Retraite Québec acted on the Québec Ombudsman's request. The woman finally obtained her pension, including a backdated amount of more than \$12,000.

SOCIÉTÉ DE L'ASSURANCE AUTOMOBILE DU QUÉBEC

Evaluating the after-effects of a traffic accident

The *Automobile Insurance Act* provides that traffic accident victims may be eligible for a non-pecuniary damage indemnity due to their temporary or permanent injuries or functional or cosmetic sequelae.

Pursuant to the applicable regulation, the evaluation of permanent impairments must be carried out in keeping with strict rules. The results of this evaluation must be based on accepted medical knowledge and objective data from the clinical examination.

Sometimes—as in the following cases and others—the Société de l'assurance automobile du Québec (SAAQ) renders decisions that disregard the opinion of a medical expert it commissioned. The Québec Ombudsman is critical of this.



UNDERESTIMATING THE SERIOUSNESS OF PERMANENT AFTER-EFFECTS

A person was in a traffic accident. The SAAQ mandated an independent medical expert to evaluate the person's permanent psychological after-effects. The physician determined that the category of severity was a 5.

However, the SAAQ's advising physician disagreed with the conclusion of the expert physician consulted by the agency, deeming the after-effects less severe (severity category 3). This evaluation is highly important because the severity category determines the indemnity amount.

Dissatisfied with the SAAQ's decision despite the expert physician's opinion, the person complained to the Québec Ombudsman.

After analyzing the medical evidence, the Québec Ombudsman felt that the SAAQ's decision was unreasonable. The preponderant evidence (in which the probability of a fact is greater than its inexistence) on record, namely, the independent expert opinion, clearly indicated that the after-effects observed did not correspond to the category 3 severity attributed by the SAAQ.

The Québec Ombudsman therefore conveyed its findings to the SAAQ.

After analyzing the file again, the SAAQ reviewed its decision and agreed that the after-effects were consistent with category 5 severity.



INACCURATE EVALUATION OF PERMANENT SEQUELAE

A person was in a traffic accident and was left with permanent after-effects. After evaluating her physical limitations, the SAAQ assigned a category 2 level of severity to the sequelae. Because the person considered that the SAAQ had not analyzed her condition properly, she complained to the Québec Ombudsman.

The *Regulation respecting lump-sum compensation for non-pecuniary damage* contains specific thresholds regarding certain complex movements (such as kneeling). The evaluation must determine whether the person is capable of these movements efficiently and confidently and for how long. A category 3 applies when the person can do the movements, but inefficiently. In comparison, category 2

applies when these movements, albeit less confident, are possible if done more slowly and by making changes to normal movements.

The Québec Ombudsman's investigation showed that the report by the person's attending physician indicated an inability to remain in a squatting position, without specifying for how long. The Québec Ombudsman considered that the inability to remain in a squatting position made the exercise ineffective, which corresponds with category 3 severity.

The SAAQ acted on the Québec Ombudsman's recommendation and increased the indemnity by more than \$10,000.

Determining compensation for loss of quality of life before consolidation

A traffic accident victim may qualify for lump-sum compensation for non-pecuniary damage related to pain, mental suffering or loss of enjoyment of life. All other inconveniences stemming from the injuries or functional or cosmetic sequelae may also be considered, provided that they may permanently affect the person. The purpose of the compensation issued is to recognize this fact. The attendant regulation specifies the rules to be followed and the levels of severity assigned.

The extent of the sequelae (the functional or cosmetic consequences that will definitively persist after the injuries have stabilized) is the criterion used to determine the amount of compensation awarded to the accident victim for loss of quality of life. An injury is said to be consolidated when no improvement is foreseeable after the appropriate treatment.

After analyzing a file, the Québec Ombudsman noted that the SAAQ's decision about compensation for loss of quality of life had been hasty. The medical evidence on record did not show that the injuries were consolidated.



A HASTY DECISION BEFORE THE CONSOLIDATION OF SEQUELAE

A student was in a traffic accident that caused a mild head injury requiring rehabilitation. Two neuropsychological evaluations were carried out as part of the rehabilitation program. Cognitive problems such as trouble with reading and concentrating were diagnosed. Permanent compensatory strategies were recommended so she could continue her studies, along with a desensitization program regarding driving.

In this context, a compensatory strategy meant, for example, allowing the student to write exams away from the other students, or provision of a laptop for taking notes in class.

After receiving the student's transcript, the SAAQ noted that she had passed all her classes and it issued an opinion whereby the student's psychological condition was consolidated (stable, without any foreseeable improvement), with permanent category 2 after-effects. Dissatisfied, she requested a review of the decision and contacted the Québec Ombudsman.

The Québec Ombudsman discovered that at the time of the SAAQ's decision, the student was still in the desensitization program. Furthermore, the medical information on file, especially the neuropsychological evaluation reports, did not show that psychological consolidation with category 2 severity had occurred.

The Québec Ombudsman intervened with the SAAQ to convey its findings, in particular, the hastiness of the decision. The Québec Ombudsman also asked it to obtain the opinion of a physician and, if necessary, a specialized medical evaluation in the field of head trauma.

The SAAQ acquiesced to this request. A physician issued a new opinion and recommended a neuropsychological evaluation. The expert's report showed that the student had temporary category 3 sequelae, but that it was too early to say that her psychological condition was consolidated.

The necessary discernment in applying laws and directives

The SAAQ may take measures to contribute to a victim's rehabilitation and to mitigate the impact of any impairment stemming from a physical injury caused by a traffic accident.

Accordingly, the attendant regulation and administrative directives provide for the application of eligibility requirements concerning the reimbursement of expenses incurred by the victim because of the accident.

In the Québec Ombudsman's opinion, it is crucial that the SAAQ show openness regarding the special situations that accident victims may experience and, if need be, help them with the process.



RIGID APPLICATION OF THE LAW AND DIRECTIVES

About 30 years ago, a person had been in a traffic accident resulting in the amputation of one of her legs and requiring her to use a wheelchair.

Over the years, and now that the woman was over age 70, her abilities and needs had changed. Overall, she saw her physical condition deteriorate to the point that her autonomy was affected.

She asked the SAAQ to cover the cost of a mobility scooter that would make it easier for her to go to medical appointments and carry out her usual activities. The scooter would enable her to go out more often and therefore improve her quality of life.

The woman enclosed an occupational therapy report, as the SAAQ requires for an application of this kind. The report attested to her difficulty moving about and confirmed several limitations, notably when she went out in her wheelchair: trouble with transfers between her wheelchair and her car, a car that was not adapted to her impairment, and difficulty managing hills and other obstacles when using her wheelchair.

Despite this report, the SAAQ rejected her application, considering that the woman had a car, moved about by means of a wheelchair, and could have her groceries delivered. As the agency saw it, she was autonomous.

On the strength of the occupational therapist's report, the Québec Ombudsman asked the SAAQ to agree to the purchase of a scooter.

Then the SAAQ, arguing that the occupational therapist had failed to provide the necessary details of the transfers between the wheelchair to the car, requested a supplement to the report. The report in question did not explicitly indicate that the transfers were unsafe for the woman, even though that was the case.

The additional information did indeed corroborate that the woman had difficulties. The Québec Ombudsman therefore repeated its request for SAAQ to cover the cost of the scooter. In the end, it agreed to do so.

TRANSITION ÉNERGÉTIQUE QUÉBEC

Transition énergétique Québec (TEQ) is a public corporation whose mission is to support, encourage, promote and ensure energy transition, innovation and efficiency.

At the time that this Annual Report was being written, a bill to abolish TEQ and to merge it with the Ministère de l'Énergie et des Ressources naturelles had been introduced. As a result, the Québec Ombudsman's observations are intended for either the public corporation or the department concerned, depending on the outcome of the bill.

Access to the Rénoclimat program

The Rénoclimat program encourages citizens to renovate their home in order to reduce their energy consumption and greenhouse gas emissions, while improving the comfort of their home.

Eligible applicants may be granted a subsidy for installing or replacing ventilation equipment which must be listed in the online directory of products certified by the Home Ventilating Institute (HVI). This list enumerates the equipment certified by HVI. Some models may be removed from the directory when the monthly update occurs. That said, if the equipment was in the directory when it was manufactured (and not at purchase), the subsidy can be approved even if the equipment was removed from the list subsequently.



NO SUBSIDY DUE TO MISAPPLICATION OF PROGRAM RULES

A citizen signed up for the Rénoclimat program and a pre-work energy evaluation of the owner's home was done in the spring of 2018. The EnerGuide rating of the building and any specificities were noted, in compliance with program standards.

The owner had the work done the next fall. He acquired a new air exchanger in November 2018. Both the box and the instruction booklet indicated that the appliance was HVI-certified.

A second energy evaluation of the home was carried out. The owner learned that the new air exchanger was no longer listed in the directory of certified products. As a result, he could not be given a subsidy for the appliance.

The citizen contacted the manufacturer. He was informed that the company had stopped producing the appliance in September 2018. Another company now produced it and it was listed under this company's name in the HVI directory. The citizen conveyed this information to TEQ so that it would do the necessary checking and change its decision. TEQ maintained the refusal.

The citizen complained to the Québec Ombudsman. After investigating, it saw that the appliance in question had been duly certified when the first company stopped producing it (September 2018). The citizen had therefore purchased an air exchanger that had been manufactured before this date. According to program rules, he should have been given the subsidy. The Québec Ombudsman intervened with TEQ, which accepted and acted on its recommendation.

The Québec Ombudsman made sure that when TEQ receives an application for a subsidy concerning an uncertified appliance, it has access to old HVI lists to be able to confirm whether or not the product was certified when it was produced.

CORRECTIONAL SERVICES

This Annual Report covers the period up to March 31, 2020. In the weeks leading up to this date, Québec was struck by the COVID-19 pandemic that had hit globally. It stands to reason that public services as we knew them were greatly affected. The Québec Ombudsman's findings in its 2019-2020 Annual Report—and in this section about correctional services—must therefore be placed and understood within a pre-pandemic context. Possibly, in some cases, the responses by government departments, agencies or other bodies had to be postponed because of the health crisis.



CORRECTIONAL SERVICES

This section outlines the Québec Ombudsman's main findings regarding correctional services in the 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 and for offenders sentenced to serve fewer than two years. It may also intervene regarding courthouse holding areas as well as 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 of the agencies within the Québec Ombudsman's jurisdiction.

In 2019-2020, the Québec Ombudsman intervened regarding the Commission québécoise des libérations conditionnelles, the Ministère de la Sécurité publique and the 18 correctional facilities for which the Department is responsible.

1 CLOSED REQUESTS FOR ASSISTANCE AND COMPLAINTS

Trends in closed requests for assistance and complaints³

	2016-2017	2017-2018	2018-2019	2019-2020
Requests for assistance	91	113	194	180
Substantiated complaints	646	462	545	433
Mediation	0	0	0	0
Unsubstantiated complaints	935	763	782	574
Could not take a definitive position	75	66	57	64
Referred complaints	1,741	2,147	2,454	2,128
Suspended complaints	1,475	1,432	1,612	1,675
TOTAL	4,963	4,983	5,644	5,054
Difference with the preceding year	—	+0.4%	+13.3%	-10.5%

3 / The explanatory notes for this table are on the next page.

Explanatory notes

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

Requests for assistance do not lead to investigations. They may, for example, 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. The complaint is then considered as being **referred**. 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 Québec Ombudsman's investigation. Lastly, further to the 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 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 closed requests for assistance and complaints decreased by 10.5% compared to last year and by 2.8% compared to the average for the last three years.

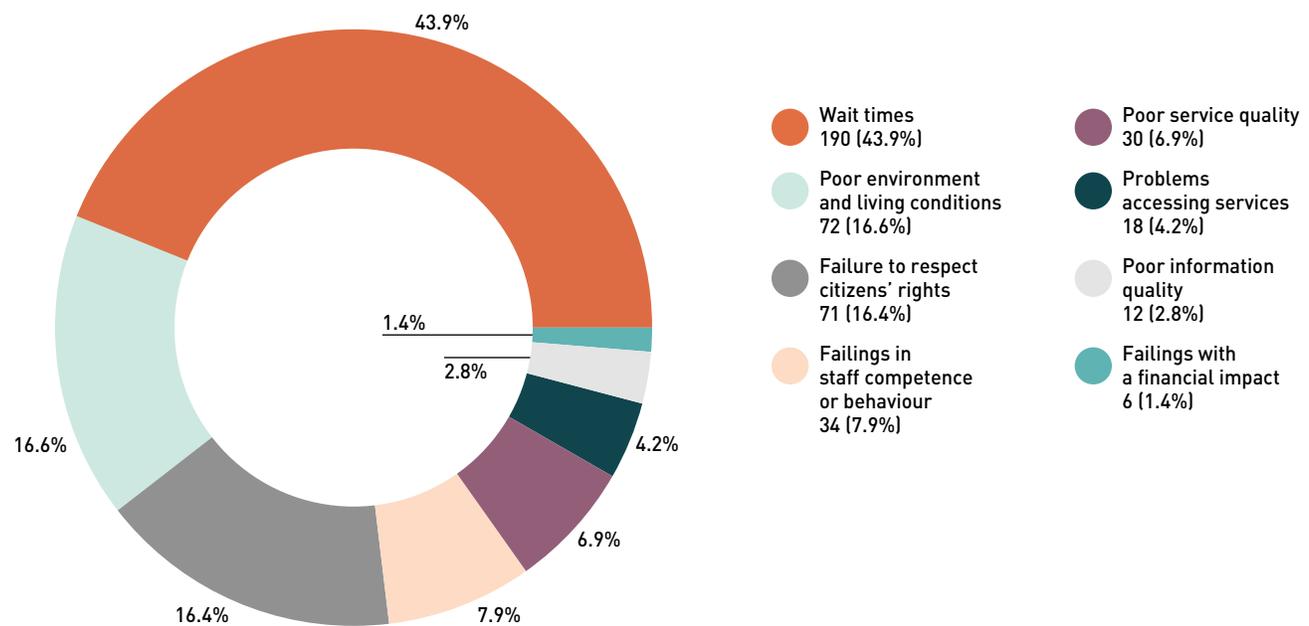
2 SUBSTANTIATED COMPLAINTS

The proportion of substantiated complaints is established as follows: Number of substantiated complaints/Number of substantiated and unsubstantiated complaints. It increased by 1.9 percentage points compared to last year, bringing it to 43.0% in 2019-2020.

Proportion of substantiated complaints

2016-2017	2017-2018	2018-2019	2019-2020
40.9%	37.7%	41.1%	43.0%

Portrait of substantiated complaints



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

Wait times was the category with the greatest number of substantiated complaints, with nearly one out of two. Among other things, they consisted of wait times for obtaining personal belongings, the result of a claim for the loss of personal belongings, money, tobacco substitutes, medication or healthcare. Long wait times were also noted for assessments and sentence supervision.

These subjects represented 76.3% of substantiated complaints about wait times.

Failings regarding the environment and living conditions took second place among the grounds for substantiated complaints. Among other factors, they consisted of classification problems, housing conditions, hygiene and searches. These subjects represented 56.9% of substantiated complaints about this category of failings.

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 accepted the recommended corrective measures, as shown in the following two tables.

Accepted case-specific measures

2016-2017	2017-2018	2018-2019	2019-2020	2019-2020	
				ACCEPTED	REFUSED
100.0%	100.0%	100.0%	98.4%	61	1

Accepted measures with a collective impact

2016-2017	2017-2018	2018-2019	2019-2020	2019-2020	
				ACCEPTED	REFUSED
100.0%	98.8%	98.6%	100.0%	47	0

4 CLOSED REQUESTS BY GOVERNMENT DEPARTMENT OR AGENCY, BY PROCESSING OUTCOME⁴

AGENCY AND DEPARTMENT	REQUESTS RECEIVED IN 2019-2020	CLOSED REQUESTS IN 2019-2020							TOTAL
		REQUESTS FOR ASSISTANCE	COMPLAINTS					SUSPENDED	
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED		
Commission québécoise des libérations conditionnelles	11	3	1	4	0	0	1	3	12
Sécurité publique — Correctional services	5,116	177	432	570	0	64	2,127	1,672	5,042
TOTAL	5,127	180	433	574	0	64	2,128	1,675	5,054

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 concerning requests received previously are still being processed.

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE

DIRECTION GÉNÉRALE DES SERVICES CORRECTIONNELS

Healthcare in correctional facilities

In 2016, the Ministère de la Sécurité publique began transferring responsibility for healthcare in correctional facilities to the Ministère de la Santé et des Services sociaux.

Transfers are slow in two facilities

As early as 2011, the Québec Ombudsman released an investigation report entitled *Towards services that are better adjusted to detainees with mental disorders*. It described shortcomings in healthcare provision in detention settings. The report recommended transferring this responsibility to the Ministère de la Santé et des Services sociaux.

Currently, only the infirmaries of the Québec City and the Montréal (Bordeaux) correctional facilities have not been transferred because a legislative amendment is required in their case. Note that the delay at Bordeaux is also due to infrastructure problems.

Together, these two facilities account for 40% of the detention population under the jurisdiction of Québec correctional services. As a result, the push to define the procedure for service transfer is even more important.

Generally speaking, the Québec Ombudsman has observed improvements in the service offering in the facilities where transfer of responsibility has occurred.



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

The complaint mechanism creates confusion

In recent years, the two Departments concerned have come to an agreement about their respective roles regarding detainee healthcare. As a result, a document was adopted in August 2019 containing guidelines produced by the Ministère de la Santé et des Services sociaux and the Ministère de la Sécurité publique concerning health services in the correctional system in the context of the transfer of responsibility.

This document establishes that the health and social services' complaint examination system is the only formal recourse available to detainees with grievances about the healthcare staff within the facility. Henceforth, complaints must be filed in the first instance with the service quality and complaints commissioner of the integrated health and social services centre (CISSS) or of the integrated university health and social services centre (CIUSSS), and afterwards, if need be, with the Québec Ombudsman.

However, problems persist in the handling of complaints concerning the care provided within correctional facilities, whether the complaints are handled by the staff of a CISSS or of a CIUSSS, or are filed against the staff.

In recent months, the Québec Ombudsman has, in fact, seen that within the correctional community, very little is known about the possibility of filing a complaint by means of the health and social services network. Moreover, the system has not yet been put into place in every correctional facility where the transfer of responsibilities has occurred,

with the ensuing disparities. Depending on the case, detainees must therefore rely on:

- The Direction générale des services correctionnels complaint handling system; or
- The health and social services network's complaint examination system; or
- A memo which is sent to the person in charge of the correctional facility's health services section.

In addition to the difficulty caused by the fact that there are three different ways of proceeding, the form for lodging a complaint with the service quality and complaints commissioner is not available in the living quarters of most facilities, particularly at officers' gatehouses. Even though these officers are responsible for distributing the form to detainees, very often they are unaware that this specific form exists. If the form is not available at the gatehouse, this poses a genuine problem because, as a rule, prospective complainants do not go anywhere else in the building.

Such a situation interferes with detainees' rights to file a complaint.

Furthermore, in setting deadlines for responding to health-related complaints in correctional facilities, the context must be taken into account. In other words, in the intake and processing of complaints, it must be considered that detainees cannot consult health professionals other than those in-house if they are dissatisfied with their services.



REFUSED THE RIGHT TO CONTACT THE COMPLAINTS COMMISSIONER

A detainee asked a correctional officer for a form to send to the service quality and complaints commissioner. Instead, he was given the Direction générale des services correctionnels complaint form. The citizen had already completed this document and been told that his complaint was inadmissible because it concerned health services and therefore had to be submitted using the form intended for the commissioner.

He insisted on having the appropriate document, which the correctional facility refused to provide. He then contacted the Québec Ombudsman.

Even though, by then, responsibility for healthcare in this facility had been transferred to the Ministère de la Santé et des Services sociaux, the director informed the Québec Ombudsman that such a form was not yet available. Therefore, the only recourse available to the complainant was a memo.

After the Québec Ombudsman intervened, the facility's health service section pledged to process the detainee's complaint. At the time this Annual Report was being written, the commissioner complaint form was still unavailable within the facility.



RECOMMENDATIONS BY THE QUÉBEC OMBUDSMAN CONCERNING THE TRANSFER OF RESPONSIBILITY FOR HEALTH SERVICES AND SOCIAL SERVICES WITHIN CORRECTIONAL FACILITIES

Given the preceding, the Québec Ombudsman recommends the following to the Ministère de la Sécurité publique and the Ministère de la Santé et des Services sociaux:

- That the steering committee that will be coordinating the transfer of the Montréal correctional facility infirmary be struck and begin meeting before December 1, 2020;
- That work to determine the service offering of the Montréal correctional facility's infirmary begin before December 1, 2020;
- As soon as possible, propose the necessary legislative amendments for completing the transfer of Ministère de la Sécurité publique staff to the Ministère de la Santé et des Services sociaux.

Furthermore, considering the importance of establishing a uniform complaint processing system across the entire correctional system, the Québec Ombudsman recommends the following to the Ministère de la Sécurité publique and the Ministère de la Santé et des Services sociaux:

- That by December 31, 2020, correctional staff and detainees be informed about the process approved by both Departments for lodging a complaint;
- That the complaint forms be available to detainees at all times;
- That the complaint processing system be reviewed after a year to better adjust it to penal realities if necessary.

Reply by the Ministère de la Sécurité publique and the Ministère de la Santé et des Services sociaux

[Translation]

“While the Québec Ombudsman’s recommendation only concerns the Montréal correctional facility, the formation of steering committees by the MSSS and the MSP leading to the transfer of health services to the Montréal (Bordeaux) and Québec City facilities should begin in the fall of 2020. The infirmaries’ service offering will then be analyzed to better meet detainees’ needs and to comply with MSSS’s quality and safety standards. This last phase in transferring human resources requires a legislative amendment by the Secrétariat du Conseil du trésor.

Regarding the handling of complaints concerning the health services provided in correctional facilities, the MSSS would like it to be as closely aligned as possible with the spirit of the complaint examination procedure in the *Act respecting health services and social services* while taking into account specific incarceration-related issues. In the same vein as the Québec Ombudsman, the MSSS wants the procedure to remain simple for detainees and staff alike. Discussions will take place with the MSP and the health and social services institutions involved to define the required adaptations.”

Use of force in correctional facilities

In correctional environments, staff sometimes use force to subdue individuals to ensure the security of the premises, other detainees and staff. The use of force must be reasonable (in proportion to the detainee's resistance and the risks involved). Staff who employ force must always be able to justify its use.

More specifically, the applicable instruction provides for the following:

[Translation]

There must always be reasonable grounds for the use of force in order to execute required or permitted action. All staff are responsible for any excessive use of force and must only use sufficient force to defend themselves when needed, protect human life and the premises assigned to them in the performance of their duties, or to control detainees to prevent them from harming themselves or committing an offence.

When it receives a complaint about the use of excessive force, the Québec Ombudsman is mandated to assess the facts according to these same conditions. If the events have not been captured on camera, it must base its analysis on the reports drafted by the staff and on the detainee's statement.

During its investigations, the Québec Ombudsman saw certain flaws that made an accurate evaluation of the events exceedingly difficult:

- Even though each officer concerned (directly or indirectly) is supposed to write up a report, this does not always happen;
- The reports do not always describe how the detainee resisted physically or verbally;
- Some video recordings of interventions are incomplete or interrupted, even though the taping should be continuous.

In the absence of a detailed report or video recording, and in the presence of contradictory versions, doubt may be cast as to whether use of force was excessive or not.

Documenting incidents and justifying the use of force must occur in the interest of detainees and the staff concerned alike. The Québec Ombudsman exhorts the Department to be rigorous and transparent in managing this type of event.



OBTAIN THE REQUIRED AUTHORIZATION AND BE ACCOUNTABLE

Correctional officers used force against a detainee. However, they should have obtained authorization to do so from a superior. Afterwards, they did not write up the required reports. Informed of the intervention, their supervisor did not meet with them to remind them of their obligations in order to prevent the recurrence of such a situation.

It was only after the Québec Ombudsman intervened that correctional facility authorities were informed of the events for which they had no written or video evidence. The staff were issued a reminder on this subject.



SEE TO IT THAT VIDEO RECORDINGS WORK PROPERLY

The facility's emergency intervention team neutralized a detainee. As part of their planned intervention (when an assessment prior to the threat warrants an intervention strategy), it used an inflammatory spray similar to cayenne pepper.

The detainee complained about not having been decontaminated afterwards.

The warden's report indicates that the detainee refused to be decontaminated and this was recorded on camera.

The Québec Ombudsman did not have access to this footage because the video recording stopped at the time of

the planned intervention. The intervention reports by the officers concerned do not indicate why (e.g. technical problem) the recording was interrupted.

The instruction on recourse to necessary force in correctional settings provides that when a planned intervention is carried out, the video recording must continue throughout the intervention and not end until the intervention is completed.

The Québec Ombudsman recommended that the staff be reminded about the procedure for video recordings. This was done.

Strip searches

Detainee searches must be carried out in compliance with specific rules that define the circumstances in which they may be allowed and the characteristics of the different kinds of searches. Searches must be conducted in a manner so as to minimize their invasiveness and in keeping with the principle of human dignity enshrined in the *Charter of Human Rights and Freedoms*. In short, they must not be abusive nor carried out for frivolous, vexatious or punitive reasons.

Again this year, the investigations by the Québec Ombudsman revealed shortcomings in the execution of searches. Members of the staff proceeded to carry out searches without planning them, when in fact, the situation would have allowed them to plan ahead. The result was that detainees were strip searched in the presence of more officers than required or officers of the opposite sex. In one correctional facility, because of an internal procedure that included strip searches at regular intervals, people in solitary confinement could be searched repeatedly.

The Québec Ombudsman considers these situations unacceptable. It urges the Department to take all necessary means so that strip searches are carried out in compliance with the applicable rules.



A DEGRADING STRIP SEARCH

A detainee was suspected of having a prohibited object in his possession. The facility decided to carry out a first strip search during which nothing was found. Having reasonable grounds to believe that the man had the object, the supervisor ordered a second strip search and then the man was taken to solitary confinement.

This time, the citizen refused to cooperate and the use of force was deemed necessary. He was told to stand facing the wall and the supervisor was particularly intrusive: he touched parts of the citizen's body and used a flashlight to inspect an intimate part of the detainee's anatomy. Several officers were there. Nothing was found.

The supervisor's intervention violated the *Regulation under the Act respecting the Québec correctional system*, which provides that strip searches must be limited to a visual inspection of the naked body.

During its investigation, the Québec Ombudsman learned that the directors had, on their own initiative, established corrective measures so that such a situation would never recur.



REPEATED AND ABUSIVE STRIP SEARCHES

During an investigation, the Québec Ombudsman was given an internal checklist from a correctional facility concerning administrative segregation. It specifies that staff may require that detainees suspected of hiding a prohibited object do squats and remain in that position for ten seconds, and that detainees be strip searched systematically every four hours.

The complainant had been searched 24 times in four days and even during the night.

After numerous interventions by the Québec Ombudsman, the facility's authorities modified the document so that practices complied with the applicable framework. This indicates that searches must be carried out in keeping with human dignity and that they not be abusive or be carried out for frivolous, vexatious or punitive reasons.

Assessment of detainees

Under the *Act respecting the Québec correctional system*, correctional services are obliged to assess the persons committed to their custody as soon as they are taken in charge. Such assessments are vital because their purpose is to determine detainees’:

- Risk of recidivism;
- Correctional intervention plan;
- Prospects for parole.

In the past year, the Québec Ombudsman has received several complaints showing that the deadlines for detainee assessment were not met. These time limits are:

- Seven days before a sixth of the sentence has been served, or no later than 45 days after the sentence has been handed down, for sentences exceeding six months;
- Seven days after the sentence has been handed down or no later than before a sixth of the sentence has been served, for sentences of less than six months.

Given that a decision to grant parole is based on these assessments, delays cause detainees substantial prejudice, with the ensuing unjustified delays for parole. In fact, this may have major consequences, including an impact on detainees’ social reintegration.

In 2018-2019, the Department set a target whereby 65% of assessments for sentences of less than six months be conducted within the required deadlines. However, in its 2019-2023 strategic plan, the target was reset because a proportion of only 62% had been achieved. For 2019-2020, the target was even reduced to 63.5%, and for 2020-2021, the initial target of 70% was changed to 65%.

The Department is obliged to carry out these assessments in a timely fashion. The delays observed and the diluted targets are particularly worrisome.



A LATE ASSESSMENT

A man was sentenced to serve less than six months. He became eligible for a temporary absence (conditional parole) when one-sixth of his sentence had been served (as of mid-September 2019). However, when he complained to the Québec Ombudsman, three weeks after this date, he still had not been assessed. The temporary absence examining board therefore could not render a decision about his application.

During the investigation, the Québec Ombudsman learned that the officer responsible for carrying out the assessment had not had time to do so because she had other assigned tasks.

After the Québec Ombudsman intervened, the man was finally assessed. A delay of nearly a month had elapsed between the date of his eligibility for temporary release and the time when the committee was able to make a recommendation in favour of his application.

Respecting detainees' dignity and basic rights

In 2019-2020, the Québec Ombudsman received complaints concerning the violation of detainees' basic rights by correctional staff. The Québec Ombudsman wishes to point out that these breaches contravene the *Act respecting the Québec correctional system*, which specifies that correctional facilities must:

- Respect detainees' rights;
- Provide reasonable and humane measures of security and control in their regard;
- Optimize detainees' chances of reintegration.

Detainees' residual rights (rights that continue to exist despite incarceration) must be respected. Furthermore, acting with humanity and empathy must be a part of the job description of facility staff, whose role extends far beyond mere supervision. In fact, they directly contribute to the potential social reintegration of detainees.

Clearly, the deficiencies observed are such that the Department must remind facility staff of this.



SHOW HUMANITY

A detainee requested a temporary absence to see his dying mother. Without getting information from his colleagues about the procedure for such cases, the correctional officer approached by the detainee answered that no applications for temporary absence could be processed during the weekend. His reason was that the members of the temporary absence examining board were not available. During its intervention, the Québec Ombudsman was told by the directors that this information was inaccurate.

Unfortunately, because the situation could not be corrected before the detainee's mother died, the detainee was unable to see her one last time.

Staff were issued a reminder so that a similar situation would not recur.

In another correctional facility, a detainee was refused permission to attend his father's funeral. He was told that this decision was due to understaffing.

The Québec Ombudsman had to intervene with the directors of the facility for the decision to be revised and that staff be designated to escort him.



PROVIDE BASIC MATERIAL

A pregnant detainee asked for a second mattress so that she would be more comfortable and sleep better. She was told that to obtain an extra mattress, she would have to weigh at least 300 pounds.

After the Québec Ombudsman intervened, the correctional facility gave the woman a second mattress and changed the requirements in this regard. Henceforth, as soon as a pregnancy is confirmed, the detainee has a right to a second mattress, or a more comfortable mattress (depending on availability), as well as a second pillow.

In another case, a detainee contested the facility's refusal to provide him with incontinence briefs that are easy to put on. The man had lost mobility in one of his arms and since then, it had been difficult for him to securely tie the incontinence briefs that the facility's health services provided.

Almost two months after the citizen's request, the facility reassessed its position and allowed the man to have briefs that were adapted to his condition. However, it was up to his family to buy them for him.

Questioned about this by the Québec Ombudsman, the authorities were unable to provide a clear explanation as to why such a request could not be approved.

The man was satisfied with the solution. However, the Québec Ombudsman ensured that in the future, the facility's health services provide detainees with the type of incontinence briefs required by their condition free of charge, as is done in the other correctional facilities.

Use of means of restraint

In investigating over the past three years, the Québec Ombudsman has noted failings in the use of means of restraint in correctional facilities, notably regarding restraint beds and straps.

In some cases, use of this equipment served no purpose. In others, supervision of the restrained detainee was flawed. Furthermore, there is currently no register for recording the number of times these means have been used.

Neither the *Act respecting the Québec correctional system* nor its attendant regulation contains any provisions regarding the use of restraints in correctional facilities. In the past, only a 1996 instruction on the use and application of restraint equipment governed this practice. In 2016, a memo sent to correctional staff was added as a reference tool.

The instruction states that the use of restraint equipment can only be authorized by the warden. This exceptional measure must only be used for specific purposes, namely, subduing detainees in severe crisis (psychotic episode, hallucination, intoxication) or when they pose a danger to themselves or to others and/or if they are disconnected from reality.

For its part, the memo merely indicates that the warden may authorize the use of restraints aimed at subduing or controlling persons whose behaviour constitutes an imminent danger to their health or safety, or to that of others, but only in emergency situations.

In the past few years, the Department has been drafting a new instruction regarding restraint equipment, but it has not yet been adopted. The Québec Ombudsman considers that urgent action is called for, given that restraints:

- Can have a major impact on the physical and mental health of those subjected to them;
- Must only be used as a last resort and as an exceptional measure.

The instruction on the use of means of restraint must be distinct from the one on restraint equipment. By combining them in a single instruction, there is a risk that recourse to restraints will be regarded as normal, or even trivialized. In fact, they are put on the same level as handcuffs, which are used on a daily basis, in particular when detainees are moved.

The instruction must take into account the standards applied in hospital centres as well as Correctional Services Canada policy. This way, the following details will be clearer:

- The situations warranting the use of means of control;
- The people authorized to use them;
- The responsibilities of these people;
- The standards governing the supervision of detainees placed under restraint;
- Obligations in matters of reporting.

The Québec Ombudsman expects the Department to table a provincial instruction on the use of restraints as quickly as possible. The instruction will then have been discussed with the Ministère de la Santé et des Services sociaux beforehand and must detail the role of the staff of both Departments. Correctional facility staff must be given training on the appropriate use of restraints.



ABUSIVE USE OF RESTRAINTS

A detainee was taken to the solitary confinement cell for a strip search supervised by six correctional officers. He remained facing the wall and gave his clothes to an officer as he was told to do. He did not resist physically. When he gave the officer his undergarments, the officer interpreted his movements as aggressive and decided to intervene. The citizen was held down and then put on a bed, where he was restrained by officers and handcuffs and leg chains were applied. Throughout the operation, the man remained calm.

As he saw it, the warden decided to have him restrained to end the detainee's threats to the staff present as well as his lack of cooperation. He instructed the officers to get a bed and straps ready in a cell.

After a short wait, the officers took the still-naked citizen into a cell, applied the straps to his four limbs and removed the cuffs and chains. The man continued to cooperate. Throughout the half-hour that ensued, his attitude remained the same.

The Québec Ombudsman intervened with the directors of the correctional facility so that the staff be issued a reminder with emphasis on the fact that:

- A calm detainee who cooperates must never be put under restraint;
- Restraints must never be used for punitive reasons or for too long a time.



RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING THE USE OF MEANS OF RESTRAINT IN A PENAL ENVIRONMENT

Given the preceding, the Québec Ombudsman recommends that the Ministère de la Sécurité publique:

- By March 31, 2021, with the support of the Ministère de la Santé et des Services sociaux, produce an instruction on the use of restraints in penal environments. The instruction should cover the following:
 - The circumstances warranting the use of such means;
 - The roles and responsibilities of the staff from both Departments when restraints are used;
 - The level of supervision required when restraints are used;
 - The facility's obligation to report on the use of means of restraint on a regular basis.

Reply by the Ministère de la Sécurité publique

[Translation]

"The instruction regarding restraint equipment will come into force by December 2020 and will take into consideration standards of use applicable in provincial hospital centres, among other places. While the instruction covers restraint equipment as much as means of restraint, the care taken to draft this instruction and the training of staff are such that the use of means of restraint cannot be taken lightly."

The Nunavik situation regarding detention, justice and crime prevention: follow-up to the Québec Ombudsman's special report

In February 2016, the Québec Ombudsman released a special report on its findings further to an investigation in Nunavik villages. The report (*Detention conditions, administration of justice and crime prevention in Nunavik*) contained 30 recommendations to the Ministère de la Sécurité publique and the Ministère de la Justice.

Since then, thanks to the stakeholders' cooperation, implementation of the Québec Ombudsman's recommendations, more than half of which are already in place, is moving forward.

The Québec Ombudsman is pleased that the construction of a new building in Puvirnituq to temporarily house detainees is underway. It expects the building to be completed on schedule. This initiative will help improve detainees' detention and sanitary conditions, lower the cell occupancy rate at the police station, and separate the different categories of occupants (men-women, detainees-remanded, adults-minors, people in protective custody).

However, other recommendations are lagging, such as installing:

- An air link between Amos and Nunavik. This should help reduce transport wait times and transportation costs, as well as the costs involved in the escorting of detainees by guards;
- A videoconference system for making the administration of justice more efficient. The advantages include enabling the Itinerant Court to concentrate more on trials, helping to reduce preventive custody wait times for Nunavimmiut, and halting useless transfers to the "south."

The Québec Ombudsman is interested in seeing developments regarding its recommendation aimed at active stakeholder participation in designing and implementing prevention and social reintegration initiatives (Ungaluk Program and Saqijjuq project). The purpose of this recommendation is also to develop a common action plan to reduce crime and court involvement in Nunavik. One year after the Québec Ombudsman's report was published, in its Action Plan for the Social and Cultural Development of the

First Nations and Inuit 2017-2022, the Government of Québec committed to supporting Inuit communities as they implement the Saqijjuq project. This participation is crucial to achieving the expected outcomes.

The Québec Ombudsman remains attentive to the work undertaken in response to its recommendations.



The Québec Ombudsman's report is available at [protecteurducitoyen.qc.ca](https://www.protecteurducitoyen.qc.ca).

The consequences of the increase in intermittent sentences: follow-up to the Québec Ombudsman's special report

On March 21, 2018, the Québec Ombudsman released a special report on the consequences of the increase of intermittent sentences in Québec correctional facilities. This increase exacerbates the problem of overcrowding that affects many of these facilities, especially on Saturdays and Sundays.

This situation has repercussions not only for people serving intermittent sentences, but for the detention population as a whole. The Québec Ombudsman's report contains 17 recommendations, intended mostly for the Ministère de la Sécurité publique, but some for the Ministère de la Justice as well.

Since this report, the Ministère de la Sécurité publique has begun work in response to the Québec Ombudsman's recommendations.

The Department has reviewed the distribution of detainees across the correctional network. To date, as a result, the number of transfers and the searches these transfers entail has decreased according to statistics. In the same vein, most correctional facilities now have a specific section for intermittent sentences. However, in three correctional facilities, people serving intermittent sentences are housed in a gymnasium, in intake cells or in solitary confinement cells. Women serving these sentences in men's facilities are at a particular disadvantage because, given that there is no women's wing, they often find themselves in solitary confinement cells, or are transferred.

In 2019, the Department began drafting a document to inform people serving intermittent sentences about their rights and obligations. It also started drafting a provincial instruction for managing this segment of the detainee population. The documents are not ready yet.

The Québec Ombudsman expects the instruction concerning intermittent sentences to lessen the sharing of space by people serving intermittent sentences and those serving sentences on continuous days. It must also prohibit the use of solitary cells, gymnasiums and intake cells for those serving intermittent sentences. Pending adoption of the instruction, some facilities continue to house these citizens in these areas. The Québec Ombudsman is critical of the time it is taking for the Department to produce and implement the required instruction.

Some correctional facilities have introduced a project to assess all files before detainees have served a sixth of the sentence, as well as programs to encourage granting of temporary absences. The results of these initiatives were slated to be evaluated in the summer of 2019 in order to decide whether they would be extended to include other facilities. The Québec Ombudsman is awaiting the conclusions of the assessment.



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

In its report, the Québec Ombudsman recommended alternatives to the detention of people serving intermittent sentences in every region of Québec. In the spring of 2019, the Ministère de la Sécurité publique and the Ministère de la Justice began analyzing the programs being used in other Canadian provinces. This study is slow to be completed. As the Québec Ombudsman pointed out in its report, in addition to decreasing the number of detainees, alternatives to incarceration would also be a way of fostering social reintegration. The analysis and possible implementation of these alternatives should take into account the particular needs of women, as provided for the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules).

Clearly, despite the substantial work undertaken, most of the special report's recommendations have not yet been implemented, even though an initial time frame was set. The Québec Ombudsman feels that the goals of every recommendation it made are vitally important. Their approval notwithstanding, implementation is taking too long.



RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING INTERMITTENT SENTENCE MANAGEMENT

Given the preceding, the Québec Ombudsman recommends that the Ministère de la Sécurité publique:

- Before December 1, 2020, provide it with an action plan and a timeline for completing the implementation of the recommendations in its special report.

Reply by the Ministère de la Sécurité publique

[Translation]

"The recommendations in the Québec Ombudsman's special report are being given special attention and prompt follow-up. The Ministère de la Sécurité publique (MSP) intends to continue the important work undertaken and to inform the Québec Ombudsman of the timeline for completing implementation of the recommendations as soon as possible."

HEALTH AND SOCIAL SERVICES NETWORK

This Annual Report covers the period up to March 31, 2020. In the weeks leading up to this date, Québec was struck by the COVID-19 pandemic that had hit globally. It stands to reason that public services as we knew them were greatly affected. The Québec Ombudsman's findings in its 2019-2020 Annual Report—and in this section about the health and social services network—must therefore be placed and understood within a pre-pandemic context. Possibly, in some cases, the responses by government departments, agencies or other bodies had to be postponed because of the health crisis.





HEALTH AND SOCIAL SERVICES NETWORK

This section reports on the Québec Ombudsman's main findings about the requests regarding Québec's health and social services 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 citizens' requests, complaints and reports, as well as the monitoring of the corrective measures recommended by the Québec Ombudsman in 2019-2020.

Poor service quality (22.4%), failure to respect citizens' rights (16.6%) and wait times (14.1%) accounted for 53.1% of the grounds for substantiated complaints and reports in 2019-2020 (more than one out of two grounds).

During this same period, the Québec Ombudsman intervened regarding:

- 39 of the 51 health and social services network institutions;
- 26 of the 92 other network-affiliated institutions;
- 42 private seniors' residences;
- 18 community organizations;
- 6 pre-hospital emergency services;
- 3 private or community residences for a vulnerable client population.

1 TRENDS IN CLOSED REQUESTS FOR ASSISTANCE, COMPLAINTS AND REPORTS

Trends in closed requests for assistance and complaints⁵

	2016-2017	2017-2018	2018-2019	2019-2020
Requests for assistance	15	14	18	7
Substantiated complaints	560	465	478	600
Mediation	0	0	2	1
Unsubstantiated complaints	651	635	632	887
Could not take a definitive position	21	31	19	25
Referred complaints	92	85	93	118
Suspended complaints	224	193	279	277
TOTAL	1,563	1,423	1,521	1,915
Difference with the preceding year	—	-9.0%	+6.9%	+25.9%

5/ The explanatory notes for this table are on the next page.

Trends in closed requests for assistance and reports

	2016-2017	2017-2018	2018-2019	2019-2020
Requests for assistance	0	0	4	1
Substantiated reports	44	102	74	51
Mediation	27	24	26	24
Unsubstantiated reports	28	45	29	25
Could not take a definitive position	0	3	1	2
Referred reports	10	12	16	8
Suspended reports	72	99	75	115
TOTAL	181	285	225	226
Difference with the preceding year	—	+57.5%	-21.1%	+0.4%

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 its 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 facts gathered lead the Québec Ombudsman to refer the person to another resource. When this happens, the complaint or report is then considered as being **referred**. 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 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

In 2019-2020, the number of closed complaints, reports and requests for assistance increased by 22.6% compared to last year. It was up by 23.6% compared with the average for the past three years. The number of complaints and requests for assistance increased by 25.9% compared to last year and by 27.5% compared with the average for the past three years.

2

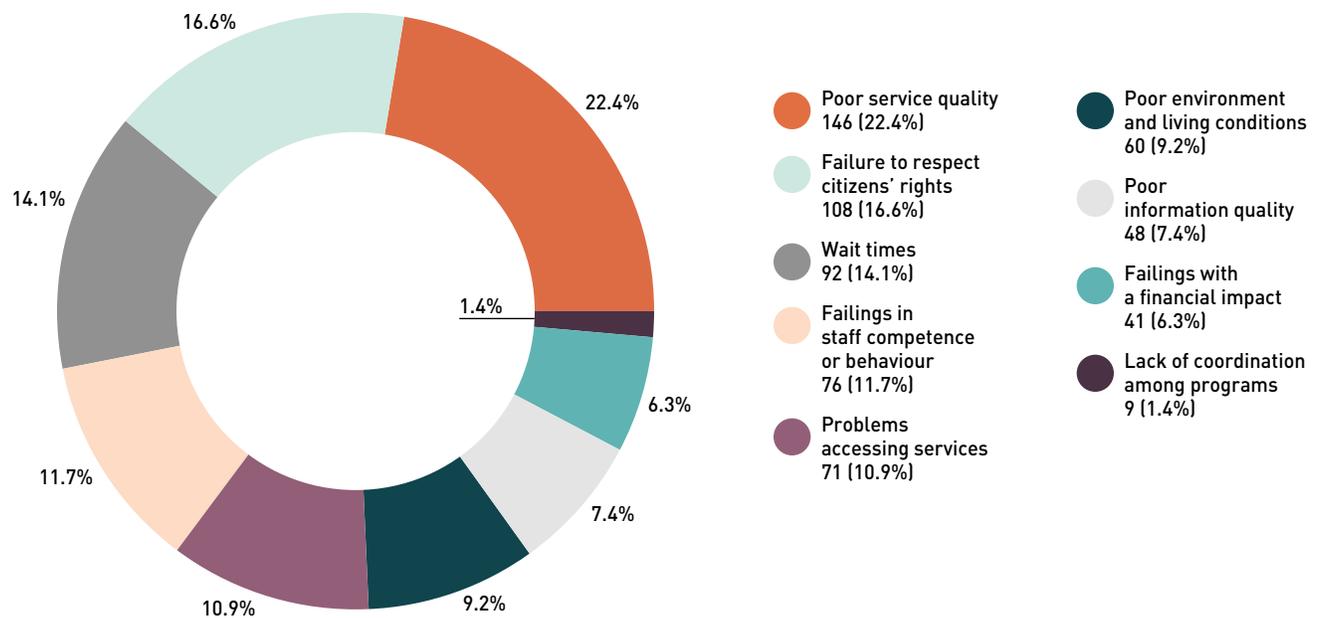
SUBSTANTIATED COMPLAINTS AND REPORTS

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. In 2019-2020, the proportion of substantiated complaints and reports decreased by 3.8 percentage points.

Proportion of substantiated complaints and reports

2016-2017	2017-2018	2018-2019	2019-2020
47.1%	45.5%	45.5%	41.7%

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 represented 22.4% of grounds for substantiated complaints and reports and topped the list this year. These failings mainly concerned the quality of physical and psychosocial care, the lack of respect of clinical procedures and protocols, use of restraints, isolation, or care and service organization.

In second place was failure to respect citizens' rights, which accounted for 16.6% of the grounds for substantiated complaints and reports. These substantiated grounds concerned, among other things, lack of compliance with the legal obligations surrounding complaint-processing mechanisms, negligence, oversights and failure to act within a normal time frame, as well as failure to abide by the right of users to be informed about a health condition, a specific situation, an incident or an accident.

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 measure, as shown in the following two tables.

Accepted case-specific measures

2016-2017	2017-2018	2018-2019	2019-2020	2019-2020	
				ACCEPTED	REFUSED
98.8%	98.0%	97.8%	100.0%	138	0

Accepted measures with a collective impact

2016-2017	2017-2018	2018-2019	2019-2020	2019-2020	
				ACCEPTED	REFUSED
98.8%	97.0%	98.2%	97.2%	376	11

4

CLOSED REQUESTS BASED ON THE MISSION PURSUED⁶

CATEGORY / MISSION	REQUESTS RECEIVED IN 2019-2020	CLOSED REQUESTS IN 2019-2020							TOTAL
		REQUESTS FOR ASSISTANCE	COMPLAINTS AND REPORTS					SUSPENDED	
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED		
Institutions									
Rehabilitation centres	104	0	34	29	0	1	8	18	90
Residential and long-term care centres	260	1	80	100	6	4	20	65	276
Hospital centres	832	3	321	413	2	11	42	140	932
Youth centres	315	1	57	173	1	10	27	78	347
Local community service centres	237	3	84	92	1	1	21	44	246
Complaints commissioners and others	105	0	34	23	15	0	4	16	92
Total: Institutions	1,853	8	610	830	25	27	122	361	1,983
Community organizations									
Private seniors' residences	72	0	17	34	0	0	3	18	72
Private or community residences for a vulnerable client population	10	0	12	5	0	0	0	0	17
Pre-hospital emergency services	32	0	5	28	0	0	0	4	37
TOTAL	1,991	8	651	912	25	27	126	392	2,141

More than 43.5% of the closed complaints, reports and requests for assistance concerned hospital centres. The percentage of substantiated complaints was relatively high (43.7%⁷).

It bears mentioning that in 2019-2020, substantiated complaints and reports about residential and long-term care centres increased by 44.4% (compared to 38.2% last year), as well as those about youth centres (an increase of 24.8% compared to 16.4% last year). It was the same for private or community residences for a vulnerable client population (70.6%), about which the Québec Ombudsman had not received any complaints or reports in 2018-2019.

6/ 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.

7/ The percentage of substantiated complaints is calculated as follows:

$$\text{Number of substantiated complaints} / (\text{Number of substantiated complaints} + \text{Number of unsubstantiated complaints})$$

5

CLOSED REQUESTS BASED ON THE PROGRAMS CONCERNED⁸

PROGRAM – SERVICE	REQUESTS RECEIVED IN 2019-2020	CLOSED REQUESTS IN 2019-2020							TOTAL
		REQUESTS FOR ASSISTANCE	COMPLAINTS AND REPORTS					SUSPENDED	
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED		
Buildings and equipment	2	0	0	2	0	0	1	0	3
Intellectual disability/ Autism spectrum disorders	82	1	26	22	0	4	6	14	73
Physical disability	90	0	32	25	0	0	10	14	81
Addictions	27	0	15	14	0	0	2	2	33
Troubled youth	314	1	54	181	0	10	27	81	354
Access to physicians	68	1	47	9	0	0	3	22	82
Complaint examination procedure	78	0	35	17	20	0	6	7	85
Mental health	188	1	44	98	0	0	17	30	190
Physical health	591	4	243	253	1	10	23	108	642
Public health	4	0	0	0	0	0	0	0	0
Support for elderly autonomy	354	0	98	139	4	3	23	96	363
Service support	188	0	54	148	0	0	8	12	222
Total	1,986	8	648	908	25	27	126	386	2,128
Other	5	0	3	4	0	0	0	6	13
TOTAL	1,991	8	651	912	25	27	126	392	2,141

The highest percentage of substantiated requests concerned access to physicians (83.9%) and the complaint examination procedure (67.3 %).

General remark

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

- Disabilities;
- Troubled youth;
- Régie de l'assurance maladie du Québec⁹;
- Mental health and addictions;
- Physical health;
- Home support;
- Support for elderly autonomy;
- Service support.

8/ 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.

9/ The data concerning the Régie de l'assurance maladie du Québec are found in the *Public Service* section.



DISABILITIES

Residences for people with special needs

People with special needs are defined as people who have a disability and who cannot continue to live at home for some reason. Their difficulties securing adequate residential resources are longstanding. At this point, the Québec Ombudsman is critical not only of the fact that these problems are recurrent, but also that they are worsening.

It bears recalling that:

- In 2016-2017, the Québec Ombudsman recommended that, within the following year, the Ministère de la Santé et des Services sociaux put together a slate of residential services tailored to people with special needs;
- In January 2018, the Department informed the Québec Ombudsman that work to implement the recommendation was underway. It carried out a needs assessment based on the clinical profiles of its client population—physical disability, intellectual disability, autism spectrum disorder, and severe behavioural disorder—and on the type of residential resource.

Then in January 2019, the Department acknowledged that there were very few residential options for this group, and that in some regions, there were none at all. It also conceded that the service offering must be enhanced so that these people can remain at home if possible.

The Department then pledged to produce a template for improving the availability and management of the appropriate resources. According to the new timeline, publication is scheduled for the spring of 2020.

Because this problem affects society's most vulnerable citizens, the Québec Ombudsman insists on the need for action. For their part, families feel that they are at an impasse. On the one hand, they are dealing with ever-longer delays for admission to a suitable residence for their family member. On the other, too many residences are not adapted to the particular characteristics of this specific

group. Moreover, numerous resources are not equipped with a comfort room or safe room designed to better manage behavioural crises. Lastly, there are persistent difficulties with the pairing of residents whose clinical profiles are incompatible. These were the most frequent complaints in 2019-2020.

Overall, the Québec Ombudsman's investigations reveal a disconnect between the evolution of users' needs and the slate of residential services.



KEEPING A PERSON IN AN UNSUITABLE RESOURCE BECAUSE THERE IS NO ALTERNATIVE

A woman with a severe behavioural disorder was living in her region's only rehabilitation centre even though it did not meet her needs. However, it was the only available solution because intermediate or family-type resources could not provide her with sufficient services.

Despite the involvement of the CIUSSS and changes to the building, problems related to the woman's behaviour persisted, to the point that she was physically violent with staff and other residents.

During its investigation, the Québec Ombudsman saw that the institution truly wanted to do something about the situation. For example, the authorities had decided to set up a safe room. The work was scheduled for the spring of 2020.

Even if these kinds of changes may improve the quality of life of the user and those around her, the caseworkers acknowledge that the environment is not suited to her needs but is the only resource available in her region. The institution has reached its limit in terms of its ability to adapt the premises and its intervention techniques in order to admit this type of resident.

No more specialized rehabilitation services when a child starts school

The Québec Ombudsman handled complaints concerning children whose speech therapy services provided by the health and social services network stopped when they reached school age. Since many of their intervention plan objectives had not been achieved, continuing the services would have been legitimate. The Department's argument is that in such cases, the education system picks up where the social services network left off.

In the Québec Ombudsman's opinion, the slate of rehabilitation services offered by the school community, intended to support the school's educational mission, cannot replace that of health and social services network

institutions, which is centred on life habits and social participation. Nonetheless, every year, language impairment services come to an end when the child starts school.

In recent years, based on its investigations at various institutions, the Québec Ombudsman has noted a marked increase in demand for specialized language-impairment rehabilitation services. At the same time, supply is not increasing.

The Québec Ombudsman has observed that most institutions limit their response for children who are already receiving services and are about to start school so that younger children can obtain at least baseline services before they start school.

The Québec Ombudsman sees that current services are struggling to keep up with the increasing demand while maintaining the level and duration of clinically required services. Rightly so, parents are asking that the speech therapy services provided by institutions that are part of the health and social services network continue as their children progress through their school years.

The Québec Ombudsman recommended that the Department analyze this increased demand and its effect on institutions' ability to adequately carry out their mission regarding these children. It also asked for an assessment of the impact of the new *Agir tôt* program on trends in the demand for specialized services. The program is based on a computer platform that gives parents access to a questionnaire designed to evaluate their children's development profile. The Department agreed to act on these recommendations.



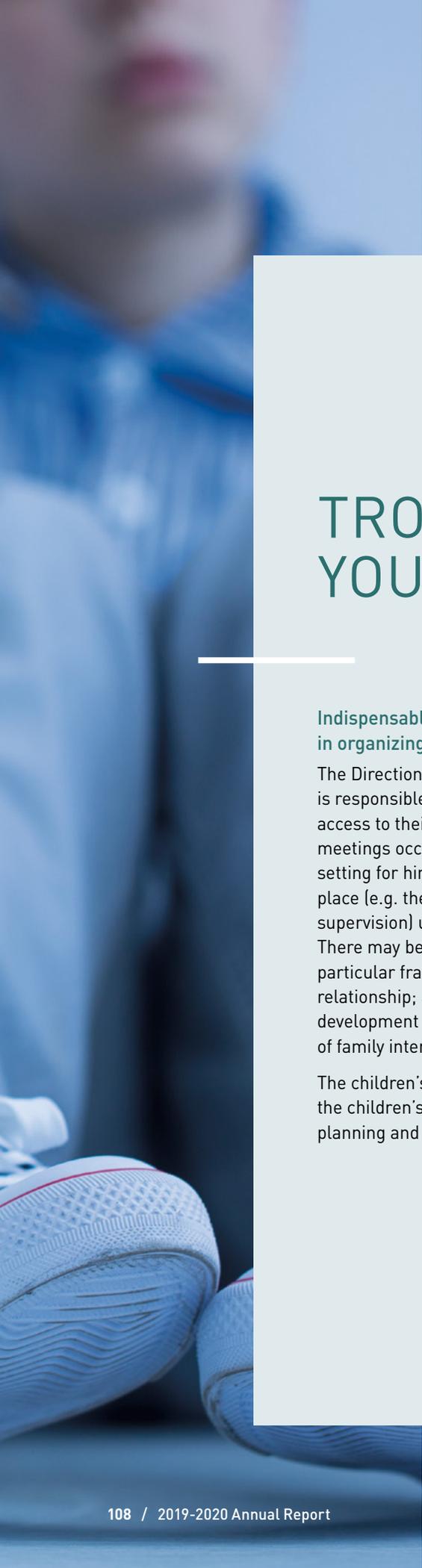
SERVICE BREAKDOWN AT A CRUCIAL TIME IN A CHILD'S DEVELOPMENT

When a five-year-old with a severe language impairment started first grade, the specialized rehabilitation service he had been getting previously ended. Those in charge explained that under the terms of the program, the school would provide services—albeit reduced—from then on.

When the rehabilitation services ended, more than 16 of the child's 27 speech therapy objectives had not been achieved. As a result, his speech therapist recommended that the services continue.

This situation was among those which prompted the Québec Ombudsman to make the preceding recommendations to the Department.





TROUBLED YOUTH

Indispensable rigour in organizing supervised visits

The Direction de la protection de la jeunesse is responsible for supervising certain parents' access to their child to ensure that the meetings occur in a reassuring and optimal setting for him or her. The framework put in place (e.g. the place and the kind of supervision) usually stems from a court order. There may be different reasons for choosing a particular framework (e.g. parent-child relationship; assessment of parenting skills; development of parenting skills; observation of family interactions).

The children's well-being and the response to the children's needs must come first in planning and carrying out supervised visits.

In 2019-2020, the Québec Ombudsman noted major flaws in the management of supervised visits by one youth centre in particular. Recurrent and continuing problems primarily concern staff shortages, unqualified caseworkers at times, unreliable logistics and administrative practices that are not in the interests of the families.

The upshot is that families are deprived of the visits to which they are entitled under the court order in force. Postponements, cancellations and lateness take a heavy toll on children and their parents.



UPHOLD FAMILIES' RIGHT TO SUPERVISED VISITS

Under a court order, a mother had the right to supervised visits with her children once every two weeks. However, these visits were regularly postponed or cancelled. Sometimes the mother would report to the designated place only to find, without prior notice, that one or even both of her children were not there. She complained to the Québec Ombudsman.

The shortcomings in the visits supervised by the youth centre concerned have been brought to the Québec Ombudsman's attention more than once. In the spring of 2018, the youth centre had committed to decreasing cancellations which were due to supervision understaffing. The Québec Ombudsman asked it to monitor the

implementation of its action plan closely and keep the Québec Ombudsman informed. However, the desired outcomes never materialized.

In the fall of 2019, the Québec Ombudsman intervened again, recommending that the youth centre use all necessary means to ensure that the terms of the supervised visits be respected and comply with court-ordered measures.

In the months leading up to March 31, 2020, the Québec Ombudsman saw that the respect of visiting rights had improved significantly. It continues to follow the situation closely.

Caseworker training and supervision

Investigations by the Québec Ombudsman showed that caseworkers called to act pursuant to the *Youth Protection Act* sometimes lack training, support and supervision. This is especially true of new hirees. They have not necessarily received all the training they need before working with young people or making decisions that concern them. Other caseworkers use intervention techniques without having completed the training.

These deficiencies directly affect youth and families when, for example, a court order is not obeyed or a clinical decision is made without approval by a superior.

Caseworkers, who deal directly with youth and families, are often held responsible for intervention quality. However, the director of youth protection (DPJ) remains responsible for any intervention or decision on the agency's behalf. The director must ensure that managers fulfil their obligation to provide staff with the appropriate clinical guidance and supervision. For example, the director must review the caseworkers' workload regularly and hold supervision meetings. In the context of resource reorganization stemming from the reform of the health and social services network, the Québec Ombudsman underscores how important it is for DPJs to ensure supervision and training adapted to caseworkers' needs.



ENSURE STAFF TRAINING AND SUPERVISION

A parent complained to the Québec Ombudsman because the caseworker who had recently been assigned to his daughter's file did not obey the court order concerning supervised visits.

Note that in this particular case, there was supposed to be an agreement between the parent and the DPJ concerning the supervised visits, but there was no such agreement for about seven months. In other words, for this entire time, the caseworker and the parent had not worked out an arrangement concerning the terms and conditions of the visits. In the meantime, the parent and child could not see each other. Furthermore, the caseworker was unaware that when an impasse occurs, he had to inform the tribunal.

The investigation by the Québec Ombudsman showed that the caseworker had just been hired. He had no youth protection experience and was unsupervised. Moreover, at the time, there was no training program for new employees because the person in charge was overloaded with work and about to leave on vacation.

The Québec Ombudsman recommended that the institution ensure that all caseworkers, especially new ones, are given the support and guidance they need to do the job.

Further to the recommendation, the institution established a program to train and supervise new staff. The program is also intended for staff who are reassigned or given a new position, as well as for those who return to work after being away for more than a year.

Standardized practices

When the health and social services system was overhauled in 2015, the Association des centres jeunesse du Québec (the Association) was abolished. Until then, this umbrella group pooled the expertise of all youth centres. Its mission was to strengthen, support and represent them. In that capacity, the Association had produced, among other things, a provincial training program, as well as notices and reference documents which were distributed.

Some of these documents, such as the one adopted in 2010 on the policy and procedure for cases involving more than one youth centre, continue to be used. However, like many other Association documents, it has not been updated since. Its obsolescence makes it difficult to apply.

The Association, through the standing committee on policy monitoring, had been entrusted with the update and standardizing practices throughout Québec. It had done this by producing biannual policy summaries and recommendations concerning the policy's application. It could also be consulted for specific cases.

Now the Ministère de la Santé et des Services sociaux must update the policy, but it has been slow to do so.



BE CONSISTENT IN HANDLING FAMILIES SUBJECT TO PROTECTIVE MEASURES

A father who had custody of his son complained that it was always the youth centre in another region—where the child’s mother lived—that made decisions regarding his file.

The situation caused him many inconveniences, especially concerning travel, absence from work, extra expenses and stress. Yet, according to the applicable policy, the youth centre in the territory of the parent with whom the child lives as a rule is legally and clinically responsible for the child’s situation.

The Québec Ombudsman’s investigation showed that the child had a half-brother who lived with his mother. The youth centre in the mother’s territory refused to share legal responsibility with another centre for what it considered to be the same family unit.

This is not necessarily the thrust of the Department’s policy, but neither is it any more precise about arrangements for situations that involve half-siblings. In the Québec Ombudsman’s opinion, the policy must be updated. Furthermore, all caseworkers must have a common understanding of it.

The Québec Ombudsman recommended that the Ministère de la Santé et des Services sociaux:

- Update the policy and procedure document for cases involving more than one youth centre;
- Establish a provincial coordination mechanism.

In March 2020, the Department informed the Québec Ombudsman that work to update the policy and procedures was underway. A committee was therefore struck to propose changes to the policy as well as clear orientations concerning situations involving half-siblings. The Québec Ombudsman is following the implementation of this recommendation.

The financial contribution to the placement of children under age 18: follow-up to the Québec Ombudsman's special report

In March 2013, the Québec Ombudsman published a special report exhorting the government to urgently review parents' financial contribution to the placement of their children under age 18. It contained 11 recommendations aimed at correcting and preventing the adverse effects of the method for calculating and collecting parents' financial contribution to the placement of their children under age 18 in a substitute environment.

These recommendations, most of which were made to the Ministère de la Santé et des Services sociaux, were worked on extensively in collaboration with the Ministère des Finances and Retraite Québec.

It should be remembered that in February 2016, the Ministère de la Santé et des Services sociaux and the Ministère des Finances agreed on three orientations aimed at creating and implementing a comprehensive and definitive solution:

- Eliminate the mandatory financial contribution for parents whose income is below a minimum threshold;
- Eliminate payment of the financial contribution of parents as a requirement for obtaining the refundable child assistance tax credit;
- Terminate the above credit for parents whose child is placed permanently and who therefore is no longer the parents' dependent.

According to the information obtained by the Québec Ombudsman in November 2019, the scenario now being considered consists of abolishing the financial contribution regardless of parent income and the type of placement. However, the Department and its partners have yet to amend the legislative framework that determines how the contribution is calculated and collected.

In the fall of 2019, the Québec Ombudsman presented its recommendation follow-up report to the steering committee of the Committee on Public Administration. Subsequently, Committee members approached the government authorities in question to express their concern about the lack of a solution to the problem raised by the Québec Ombudsman.

Like the Committee, the Québec Ombudsman expects the Department and its partners to make the decisions enabling them to complete their work as soon as possible. Meanwhile, it is concerned about the disparities that continue to exist and the negative consequences of the status quo that has lasted much too long. It intends to follow developments closely.



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



RÉGIE DE L'ASSURANCE MALADIE DU QUÉBEC

Phone pick-up times

In its Statement of services for the public, the Régie de l'assurance maladie du Québec (RAMQ) pledges to do all it can to answer phone calls within three minutes' time. At certain times of the year, it takes considerably longer than that for callers to reach a RAMQ phone agent. This situation tends to occur when foreign workers arrive in the spring and when foreign students arrive in the fall.

Four months after the familiar peak period, the Québec Ombudsman continued to receive complaints from citizens who said that they had waited for more than three minutes for someone to pick up the phone. Some maintained that they had waited for half an hour. Others say that they never even got the line. Most calls concerned registration for the public healthcare system and access to the health insurance card.

RAMQ told the Québec Ombudsman that these wait times were due primarily to an increase in applications and the departure of some 40 agents promoted to other positions in late summer 2019. One approach used by RAMQ to attempt to decrease these delays was to post new jobs in the fall of 2019. Since then, the recruits have been given the required training. Another initiative was the introduction in the summer of 2019 of a mechanism for ordering individualized forms for renewing or replacing health insurance cards via RAMQ's website.

The Québec Ombudsman sees that despite this initiative, problems getting the line persisted months after the peak period. In fact, it was still receiving complaints about this in January 2020. It therefore asked RAMQ to keep it abreast of its action plan for rectifying the situation.

RAMQ said it was aware of the issues related to the accessibility of its services and indicated that it would do everything possible to improve the citizen experience because people are its priority. RAMQ therefore informed the Québec Ombudsman that it was moving towards digitalization, the short-term goal of which is to make the registration or renewal process easier for citizens. This shift should enable citizens to conduct their transactions without calling or going to RAMQ offices. The Québec Ombudsman is carefully following developments on this front.

Health insurance card photos when people do not have a driver's licence

To renew their health insurance card, people who live near Québec City or Montréal and who do not have a driver's licence can go to a RAMQ office to have the photo taken and authenticated on the premises. However, residents of other Québec regions must go to a pharmacy or an approved photographer, for example, to have their photo taken, and then to a local community service centre (CLSC) that offers photo ID services.

The Québec Ombudsman was made aware of the case of a person with reduced mobility who had no driver's licence and who had had to use adapted transportation twice to have the health insurance card renewed:

- First to the pharmacy to have the photo taken;
- Then to the CLSC for photo ID and for sending in the renewal application.

Under the applicable regulation, people with reduced mobility can request a health insurance card without a photo and without having to leave the house, but because there are very few ID cards with photos, health insurance cards are often quite useful, especially for people who do not have a driver's licence.

RAMQ informed this person that the Société de l'assurance automobile du Québec (SAAQ) helps people with reduced mobility by taking their photo and authenticating it. However, the agencies do not have a formal agreement and, as a result, health insurance card renewal notices do not mention that accommodation is available.

Moreover, the person was told that to renew the health insurance card through the SAAQ, people with reduced mobility who do not have a driver's licence must obtain approval from their local SAAQ service outlet before going to a RAMQ office to have the card renewed.

After cross-checking with both agencies, the Québec Ombudsman discovered that anyone, whether or not he or she has reduced mobility, can go to a SAAQ service outlet to have the health insurance card renewed, with or without a driver's licence.

The Québec Ombudsman recommended that RAMQ improve communication of this information to citizens.

The agency accepted the recommendation and clarified this information on its website as well as on that of Services Québec. In the coming months, RAMQ will assess the changes that can be made to the documents sent to people who renew their photo ID health insurance card. The Québec Ombudsman is monitoring this work.

Access to health insurance for Québec-born children whose parents have a precarious migratory status: follow-up to the Québec Ombudsman's special report

On May 30, 2018, the Québec Ombudsman released a special report on Québec-born children denied access to health insurance by means of RAMQ's Québec Health Insurance Plan because of their parents' precarious migratory status.

In the Québec Ombudsman's opinion, under the *Health Insurance Act* and the *Regulation respecting the eligibility and registration of persons in respect of the Régie de l'assurance maladie du Québec*, these children (who were born in Québec and are therefore Canadian, and whose regular

place of residence is Québec) qualify for the Plan from birth, regardless of their parents' migratory status.

The Québec Ombudsman believes that pursuant to the applicable legislative and regulatory provisions, and to Québec's and Canada's international human rights commitments, these children are insured persons within the meaning of the Act.

At the time this Annual Report was being written, RAMQ was still refusing to act on this recommendation. The Minister of Health and Social Services has discretionary power whereby children otherwise deemed inadmissible can be granted eligibility on humanitarian grounds. However, this power is intended only for exceptional situations and cannot be used to solve the problem for all the children concerned.

A committee within RAMQ's purview, mandated by the Minister to assess various options for making these children eligible, submitted its report containing recommendations to the Minister. The Québec Ombudsman remains particularly watchful regarding their implementation.



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

MENTAL HEALTH AND ADDICTIONS

The safety of people on psychiatric units

In 2019, several incidents in which users assaulted psychiatric unit staff in Québec hospitals made the news. Subsequently, staff working in this context joined forces to lobby for a safe work environment given the client population's instability and vulnerability.

The Québec Ombudsman underscores the fact that safety is an issue for staff and service users alike. In 2019-2020, the Québec Ombudsman handled complaints from mental health patients who had been assaulted by staff and fellow patients.

In one specific case, an institution claimed that its biggest priority was the safety of the people and the premises, but the investigations by the Québec Ombudsman revealed significant shortcomings in how victims of assault were dealt with. For example, the staff on the unit did not listen to victims or believe them immediately when they described the abuse they had suffered.

The Québec Ombudsman made recommendations to the integrated university health and social services centre (CIUSSS) aimed at rectifying the situation.



KEEP PATIENTS SAFE FROM ASSAULT

A hospitalized mental health patient reported to the staff on the unit that a staff member came to her room to kiss her during the night shift.

Even though the institution quickly launched an investigation when it became aware of the event, at first no one believed the person or sought to immediately provide protection from the assailant. Furthermore, there was no procedure indicating what the head of the unit and team members must do when such allegations are brought to their attention.

In another hospital centre under the jurisdiction of the same CIUSSS, a patient entered someone else's room without permission and acted inappropriately.

The investigation by the Québec Ombudsman showed that heightened supervision of this patient, known to be particularly unstable, had been requested but refused due to understaffing. Generally, this centre tended to underplay assault risks.

The Québec Ombudsman recommended that the CIUSSS:

- Draft and distribute to staff a procedure for dealing with assault;
- Inform patients about procedures and possible recourse in such cases;
- Never downplay this type of incident and react promptly to ensure safety for all.

The recommendations were accepted by those in charge and then implemented.

Suicide prevention

Over the course of its investigations, the Québec Ombudsman has witnessed the monumental work performed by caseworkers. However, certain situations have confirmed that there are significant failings in the handling of people at risk for suicide, including young people.

The current strategy for preventing suicide, which goes back more than 20 years, has never been updated. However, in late fall 2019, the government committed to drafting a Québec suicide prevention strategy.

Even though the subject of suicide is less taboo than it used to be, and professional practices have improved, people with mental health disorders continue to take their own lives, and family members clamour to do more to act preventively. This includes changes regarding

confidentiality. At times service users refuse to give their consent so that their family or spouse may be informed about their condition. As a result, families are deprived of information they consider essential.

In the context of an investigation, the Québec Ombudsman was informed that the Ministère de la Santé et des Services sociaux is working on orientations for the public healthcare system concerning suicide risk assessment in children 13 years of age and younger. A university centre has been mandated to create a screening grid for this specific age group by November 2020. Subsequently, the Department will oversee the tool's promotion and distribution, as well as caseworker training on using the grid.

The Québec Ombudsman will remain attentive to the introduction and implementation of these orientations.



FOR BETTER MANAGEMENT OF YOUTH AT RISK FOR SUICIDE

The parents of a teenager who committed suicide complained to the Québec Ombudsman about the caseworkers' management of their son's situation several months before his death.

The Québec Ombudsman's investigation revealed flaws in the handling of the teenager's case, in particular:

- Flagrant lack of communication within the attending team responsible for the child's safety net and with the child's parents;
- The caseworkers' lack of effective tools for suicide-risk screening for 5 to 13 year-olds;
- Lengthy wait times for access to youth mental health services in general.

The Québec Ombudsman has noted that since the events, corrective measures have been established. Nonetheless, it made several recommendations to the CISSS, aimed at, among other things:

- Reducing wait times for access to youth mental health services in order to achieve the departmental target of one month as specified in the Department's mental health action plan for 2005-2010;
- Documenting case discussions between caseworkers;
- Ensuring effective and ongoing communication between physicians and caseworkers, as well as between the attending team and parents;
- Ensuring that caseworkers use the proper clinical tools, including the suicide-risk screening grid adapted for young people age 14 to 25, and the version that will be adapted for children 13 years of age and younger, which will be available in late 2020.

The Québec Ombudsman's recommendations were accepted and implemented.

PHYSICAL HEALTH

Access to a family doctor

Since 2008, centralized waiting lists for orphan patients (GACOs) have offered support and assistance to anyone seeking a family doctor. In 2016, a centralized database for managing all applications for a family doctor was created by the Ministère de la Santé et des Services sociaux. GAMF, the Québec Family Doctor Finder, is administered by the Régie de l'assurance maladie du Québec (RAMQ).

It should be noted that physicians are not obliged to use GAMF to recruit patients, and that physicians may terminate a patient's GAMF registration if, for example, the physician retires or leaves his or her place of practice.



TAKE THE INITIAL DATE OF A GAMF APPLICATION FOR A FAMILY DOCTOR INTO ACCOUNT

A person was registered with a family doctor after being on the GAMF list for more than four years. The person met with the physician once. The following month, the person learned that the doctor had decided to no longer participate in RAMQ's public plan. As a result, the person would have had to pay out of pocket for a medical consultation with that doctor.

The person, who decided instead to re-register on GAMF, was told that the clock would be set to the time of the new registration and not to the initial application. The person complained to the Québec Ombudsman.

The investigation showed that:

- When GAMF was created, the Department had not foreseen such a situation;
- A person's name disappears automatically from the GAMF waiting list when the person is registered with a family doctor;
- RAMQ has a person's initial GAMF registration date on file.

The Québec Ombudsman therefore recommended that the Department:

- Set a maximum period for registration with another family doctor during which an applicant is considered as re-registered on GAMF as at the date of the initial application, when a family doctor terminates a person's registration;
- Define the conditions for applying this measure;
- Backdate the measure for situations in which a family doctor has terminated registrations since January 1, 2019.

Furthermore, it recommended that the integrated health and social services centre (CISSS) concerned:

- Re-register people assigned to a family doctor through GAMF as at the date of their initial application, in compliance with the maximum period and conditions determined by the Department.

On March 31, 2020, the Québec Ombudsman was still monitoring developments regarding this issue.

Access to hospital emergency rooms

The health insurance card entitles holders to the services covered by Québec's health insurance plan. However, barring exceptional circumstances, if card holders go to the emergency room but do not have the card with them, they must pay out of pocket to obtain services. They may apply to RAMQ for reimbursement no later than a year after this.

After receiving a complaint, the Québec Ombudsman had to remind an institution that even without a health insurance card, anyone who goes to a hospital emergency room must be seen in triage. The institution concerned agreed to change its practices in this regard.



FIRST AND FOREMOST, ASSESS THE CONDITION OF PEOPLE AT EMERGENCY ROOMS

A man who was entitled to receive healthcare services went to a hospital centre emergency room without his health insurance card. Despite the pain he was experiencing, it was explained to him that he could not be treated without the card. The man went to another hospital, where he was treated for a pulmonary embolism. Afterwards, he complained to the Québec Ombudsman about the first hospital's refusal to provide care.

The Québec Ombudsman's investigation showed that the staff at this hospital centre required that users present their health insurance card before their clinical condition is assessed at triage. This contravenes the *Act respecting health services and social services*.

After the Québec Ombudsman intervened, the institution pledged to ensure that triage nurses would assess all emergency room users, even if they do not have their health insurance card on them.

Optimal use of resources

The ability of institutions to adequately meet the needs of those who require services is directly affected by emergency room overcrowding and the fact that patients remain on care units even though they no longer require active care.

One solution is better planning of a patient's trajectory through the healthcare system. In concrete terms, one of the things this means is home care for hospital patients when they are well enough to be discharged. As a result:

- Inpatients leave the critical care unit sooner;
- Beds are freed up for patients who no longer require critical care;
- Ultimately, there are more available critical care beds.



THE RIGHT RESOURCES FOR THE RIGHT PEOPLE

A man in his twenties went to a hospital emergency room at approximately 6:30 p.m. The triage nurse rated him a priority level 2, in other words, very urgent. The man was put on a stretcher in the hallway and the nursing staff started to provide care. At about 7 p.m., he was transferred to the treatment section of the emergency room. His condition worsened, but no reanimation room was available before 10:15 p.m.

Subsequently, a family member complained to the Québec Ombudsman.

The investigation showed that:

- Because of his condition and according to clinical criteria, the man should have been taken to the reanimation room at about 8:30 p.m.;
- He could have been monitored more closely had he been there;
- The problems concerning service users' trajectory through the public healthcare system contributed to emergency room overcrowding and prevented the user's timely access to the reanimation room;
- In the past, the institution had tried to improve the situation but problems had persisted.

After the Québec Ombudsman's investigation, the institution agreed to review the agreements with its partner institutions in order to decrease the wait times for home support and residential care as much as possible. In addition, the Department and the institution decided to work together to review ambulance service quotas (the number of ambulances dispatched to the hospital) and introduce measures to direct users to other institutions. Lastly, the Department agreed to analyze some of the institution's financial requests, notably, to increase professional services such as physical therapy and occupational therapy, to provide for the presence of liaison nurses on the premises seven days a week, to open day services in oncology and to increase the number of critical care beds.

Clinical monitoring after sedation

Anyone who undergoes a test requiring intravenous sedation (which causes drowsiness or altered consciousness) must be specifically monitored.

The monitoring:

- Must occur for at least 30 minutes after the last dose of sedative has been administered or until service users have returned to their initial level of consciousness;
- Must include vital sign measurement and assessment of the level of sedation and consciousness;
- Must be carried out by a professional qualified to recognize possible complications and to intervene quickly.



ENSURE VIGILANT MONITORING BY A QUALIFIED PROFESSIONAL

A woman went to an emergency room because of acute respiratory problems. She was conscious and alert. The physician ordered a bronchoscopy. An intravenous sedative was administered so the test could be carried out. Not long after the bronchoscopy, she was returned to the emergency room.

It took an hour before the emergency staff noticed that she was unconscious and unresponsive. She was taken to the critical care unit, where her condition deteriorated. She died a few hours later.

The Québec Ombudsman's investigation showed that:

- No post-sedation monitoring had occurred after the bronchoscopy;
- Ten minutes after being sedated intravenously, she was taken to the emergency room accompanied only by a stretcher bearer;
- The stretcher bearer did not have the training to recognize the precursors of complications;
- After she was returned to the emergency room and for more than an hour afterwards, she was not monitored or assessed.

The Québec Ombudsman recommended to the institution that any sedated service user be monitored (for the prescribed amount of time) by a professional able to recognize the precursors of complications and to intervene quickly. It also recommended that vital signs be measured and the level of sedation and consciousness be assessed for everyone in such cases.

The institution agreed to and implemented the Québec Ombudsman's recommendations. As of now, a respiratory therapist must always accompany a sedated person to the unit in question if it has been less than 30 minutes since sedation occurred or if the person has not returned to his or her initial level of consciousness.

Means of control applied to people with a fall risk

When a hospitalized patient is at risk for falling, the staff must use preventive measures adapted to the patient's condition. If a fall occurs despite these precautions, the patient's condition must be reassessed and other measures must be established.

Only when all possible preventive measures have been tried can means of control be considered to prevent patients from getting hurt. When this happens, the measures must be planned and the following conditions met:

- The person, or the person's legal representative, must provide consent;
- The person's physical and mental condition must be assessed;
- The chosen measure must be the least constraining one possible;
- The measure must be used for as short a time as possible and be punctuated by rest periods;
- The person must be closely monitored;
- The relevance of the measure must be reassessed continually;
- Use of the measure must be documented in detail and the reasons for the decision by the professionals concerned described.



APPLY MEANS OF CONTROL IN UTMOST COMPLIANCE WITH THE RULES AND RESPECT FOR THE PATIENT

An elderly person was hospitalized. The assessment indicated that she was at high risk of falling. At first the nursing staff used basic preventive measures. The next day, she was found on the floor in her room. From then on, the staff used different means of control, including a lap belt. Certain family members complained to the Québec Ombudsman.

The investigation revealed that:

- Means of control had been used continuously for several hours a day for nearly two weeks, including up to 50 hours without interruption;
- No fall-risk reassessment had been carried out;
- The staff had not considered any new preventive measure instead of the means of control applied;

- Alternative measures suggested in the institution's protocols could have been used;
- Recourse to means of control was premature from the outset.

The Québec Ombudsman also noted other failings (e.g. use of means of control without the consent of the woman's legal representative). After the Québec Ombudsman intervened, the institution established complete and detailed training for the staff of the unit concerned on means of control.

HOME SUPPORT

Clinical judgement at the heart of the response to service users' needs

Integrated health and social services centres (CISSSs) and integrated university health and social services centres (CIUSSSs) tend to standardize their practices across their respective territories. Hence, with a view to efficiency for their ever-increasing client populations, institutions decide not to provide certain services because they feel that alternatives exist. A case in point is home meal-preparation services. As those in charge see it, people can buy prepared meals at the grocery store or order groceries online or by phone. Community organizations, such as

meals-on-wheels or volunteer centres, may also fill the gap. This perspective factors in all options, without limiting them solely to the public health and social services network.

The Québec Ombudsman agrees with this approach, but feels that, beforehand, there must be an assurance that community services can respond to the imperatives of the specific needs and condition of the population in question.

Every time there is a question of granting a service, whether through the public network or an alternative, the professional's clinical judgement must be taken into account above all.



RESPECTING PEOPLE'S NEEDS WHEN SUBSTITUTE RESOURCES ARE USED

A woman with multiple sclerosis had modest financial means and had to rely on her children to help her pay for groceries. She had been receiving help from her local community service centre (CLSC) but was informed that services would be suspended because there were other options, such as buying prepared food.

The woman's social worker recommended that the CLSC's services be maintained to compensate for the woman's mobility problems and to avoid putting more pressure on her informal caregivers.

The investigation by the Québec Ombudsman showed that, as a rule, the institution did not consider users' specific circumstances before terminating service provision. In the case at hand, knowing that store-bought food is more expensive than food cooked at home, it should have considered the person's ability to pay for this commodity.

The Québec Ombudsman recommended that the institution review its decision. As at March 31, 2020, implementation was still being monitored.

The needs of people with a significant loss of autonomy and their informal caregivers

In the past two years, the Department has invested heavily in home support programs. However, the fact remains that the programs do not always meet the assistance needs of people with a significant loss of autonomy who would qualify for a public residence but who want to remain living at home.

When the new government investments were announced, the performance indicators targeted not only an increase in the number of home support program recipients, but also a strengthening of services for people with a significant loss of autonomy.

The Québec Ombudsman has noted that the maximum thresholds for the number of support and assistance hours fluctuate widely from region to region. The resulting disparities create inequities based solely on territorial data that have nothing to do with people's condition and needs.

In other words, despite major investments, institutions are still struggling to raise the ceiling for service hours for this group of people. Lack of support is a proven cause of burnout of informal caregivers who cannot keep up with what needs to be done.

To make matters worse, informal caregivers sometimes experience difficulties when their family member is discharged from the hospital. When planning for the person's return home and drafting of the service intervention plan occurs, informal caregivers are not systematically given all necessary information about the resources and services available to them. This includes professional services such as the CLSC's psychosocial services. The lack of information may delay the appropriate support for the people within the user's environment and, ultimately, jeopardize the person's ability to remain living at home.

The Québec Ombudsman insists that informal caregivers are genuine partners of the home support team and must be able to rely on the team's support. They must have access to the assistance services intended for them.



CONCERN FOR INFORMAL CAREGIVERS' ACCESS TO RESOURCES

An informal caregiver asked to meet a CLSC social worker. The nurse navigator told her that only users had access to psychosocial services. The woman then turned to the Québec Ombudsman.

After investigating, the Québec Ombudsman recommended that the institution ensure that:

- Such services be provided to the informal caregivers who request them, in keeping with the home support policy;
- It identify the signs of informal caregiver burnout;
- It provide any required follow-up.

The institution agreed to and implemented the Québec Ombudsman's recommendations.

In another case, an informal caregiver had not been invited to be part of the decision process when plans were being made for her spouse's return home. The social workers assumed that the caregiver could handle her spouse's trips to the CLSC for outpatient care. However, she was unable to accompany him as his treatments progressed because she was exhausted after his two months of hospitalization.

She was critical that she had not gotten help when she needed it and wanted to make sure that this never happened to anyone else. The Québec Ombudsman made several recommendations aimed at preventing such situations. Furthermore, made aware by the Québec Ombudsman of the harm to the woman and her spouse, the institution sent them a letter of apology.



INTENSIFY SERVICES AND SPREAD THEM FAIRLY

An elderly woman with advanced Alzheimer's disease lived at home. She depended entirely on her son, who was her informal caregiver. He was there all the time and was assisted by a care attendant paid under the service employment paycheque program. He wanted to care for his mother at home until her death. However, the shortage of resources took an increasingly heavy toll on him and jeopardized his ability to care for her.

The woman received 15 hours of services per week (the maximum threshold from the institution responsible for allocating the services). Given the low threshold, the son had to pay for 20 to 25 additional hours. The institution refused to approve any more hours, and the son felt that the evolution of his mother's condition was not being considered.

The son was also critical of the disparities in the hours of service depending on the region. He cited the case of a person who was more than 90 years old and who, like his mother, had Alzheimer's disease, but who was getting double the hours granted to his mother.

After the Québec Ombudsman's intervened, the son finally obtained 12 hours of respite per week, added to the existing 15 hours of care. However, the Québec Ombudsman is displeased that the maximum thresholds for the number of allocated hours have not yet been increased for the entire client population, as it recommended. The institution claims that the funds granted by the Department thus far are insufficient to enable the requested increase.



RECOMMENDATIONS BY THE QUÉBEC OMBUDSMAN CONCERNING SERVICES TO PEOPLE WITH A SIGNIFICANT LOSS OF AUTONOMY

Given the preceding, the Québec Ombudsman recommends that the Ministère de la Santé et des Services sociaux:

- Inventory the institutions which have set a ceiling for the number of hours of services for people with a significant loss of autonomy in order to measure regional disparities;
- Support the institutions that cannot manage to meet the home support needs of people with a significant loss of autonomy, with a view to shrinking the gap between the cost of public residential resources (approximately \$65,000 per year) and the home support subsidy.

Reply by the Ministère de la Santé et des Services sociaux

[Translation]

"The Ministère de la Santé et des Services sociaux has noted the Québec Ombudsman's findings, as well as the inherent recommendations, and pledges to take the measures it deems necessary to shed light on the situation and correct it, where applicable."

Home support services for people with mental disorders

Given the increase in demand for home support services, the health and social services network has tightened eligibility requirements. In recent years, the Québec Ombudsman has noted that in some regions, more and more people with a mental disorder are being excluded from home support programs.

Because of their condition, some of these people cannot tend to their own hygiene or housework. Moreover, in some cases, their care attendant is the only source of human contact in their life, an important factor in maintaining their fragile mental balance.

After investigating, the Québec Ombudsman has observed that the assessment of these people's needs is often limited to their physical capacity and not their mental aptitude. The result is that they do not qualify for home support. It bears remembering that the Department home support policy (*Chez soi: le premier choix*) clearly indicates that home support is intended for people with impairments whose causes may be physical, mental or psychosocial.

The Québec Ombudsman had to intervene to remind those in charge that involving mental health teams in assessing the impairments of the people who have a mental disorder is important.



CONDUCT A FULL ASSESSMENT THAT INCLUDES A PERSON'S MENTAL CONDITION

A woman had been monitored by her CLSC for several years under the mental health program. She had been a victim of abuse and violence and had developed mental problems and anxiety. Furthermore, she had undergone a tracheotomy which, according to her, made her unable to tend to her hygiene by herself because she was afraid of choking. For four years, the CLSC had provided a care attendant to help her shower twice a week. However, she was told that she would no longer qualify for this support due to budget cuts.

Two days later, she went to the emergency room with symptoms resembling a stroke. The tests showed that the problem was not physical, but mental.

The woman applied for assistance under the home support program. It was turned down because it was felt that she was not part of the intended client population. The ensuing assessment showed that she had no physical impairment and the refusal was upheld.

In the context of the Québec Ombudsman's investigation, the person in charge of resource allocation indicated that he or she had no intention of earmarking part of the home support budget for clients with mental health disorders.

The Québec Ombudsman recommended that another assessment be carried out, but this time in conjunction with a mental health specialist. The CLSC agreed to this.

Further to this, an intervention plan was drafted and joint services were put in place. The services, granted for 10 weeks, called for cooperation between home support workers and mental health workers. After the 10 weeks were over, the services stopped because the workers felt that the goals of the intervention plan had been achieved. However, the service user disagreed.

Discussions between the institution and the Québec Ombudsman are ongoing.



RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING ACCESS TO HOME SUPPORT SERVICES FOR THE MENTAL HEALTH CLIENT POPULATION

Given the preceding, the Québec Ombudsman recommends that the Ministère de la Santé et des Services sociaux:

- Remind institutions that mental health-related limitations that decrease users' capacity to perform activities of daily living and instrumental activities of daily living must be considered at par with physical or psychosocial impairments for home support eligibility purposes.

Reply by the Ministère de la Santé et des Services sociaux

[Translation]

"The Ministère de la Santé et des Services sociaux has noted the Québec Ombudsman's findings, as well as the inherent recommendations, and pledges to take the measures it deems necessary to shed light on the situation and correct it, where applicable."



SUPPORT FOR ELDERLY AUTONOMY

Caregivers' exemplary dedication to vulnerable elderly people

The Québec Ombudsman regularly sees shortcomings in care and services to people who live in residential and long-term care centres (CHSLDs) or other living environments for the elderly. These observations result in the Québec Ombudsman recommending the required improvements. Of course, it is imperative that these reminders and findings be addressed. However, these flaws notwithstanding, it must never be forgotten that most healthcare providers who work in these living environments are genuinely dedicated.

During its investigations, the Québec Ombudsman regularly sees that staff go beyond the call of duty to try

to compensate for the shortage of human and material resources, to meet the needs of the residents and to ensure their safety. The vast majority of people who work with the elderly care about their well-being. These men and women truly give of themselves to fulfil their demanding role. They deserve recognition for the value of their important contribution.

Putting aside the flagrant lack of resources—denounced repeatedly—in residential resources, especially in CHSLDs, the Québec Ombudsman insists on highlighting the monumental work of the people—care attendants in particular—who provide care to vulnerable elderly people. They are at the front line and are the last rampart in preserving the quality of the care, services and living environments offered to elderly residents.



RECOGNIZE A CARE ATTENDANT'S DEDICATION AND INGENUITY

During an investigation at a private seniors' residence, the Québec Ombudsman was made aware of the case of a woman who became agitated when her incontinence briefs were soiled. When this happened, she became aggressive with the staff who tried to provide personal care.

Only one particularly dedicated care attendant always managed to calm her. For example, she put on music that the woman liked, gave her a doll and took her for a short walk, or watched the aquarium fish with her. She used these strategies to calm down the resident, bring her back to her room, and provide the necessary care.

This example, which is one of many, illustrates the patience, empathy and competence of those who work with the elderly.

The challenges posed by dementia in residential resources

A high proportion of CHSLD residents have dementia. Their symptoms are expressed in different ways (e.g. screaming, wandering, aggression, agitation, resistance to care provision, loss of sexual inhibition). Managing these symptoms is a major challenge for residential resources.

All too often, the Québec Ombudsman's investigations show that the places where people with dementia live are not adapted to their condition, but there are no available places elsewhere. Furthermore, many formal caregivers and families are truly at a loss regarding these people's behaviour and, at times, their aggressiveness. Workers experience additional pressure due to lack of training or specialized support. Their stress also stems from families' lack of knowledge about the reality of dementia. Such a context contributes to creating risky situations for staff and residents alike.

It is crucial that people with dementia be referred to environments adapted to their condition. With this in mind, integrated health and social services centres (CISSSS) or integrated university health and social services centres (CIUSSSS) must assess residential resources rigorously so that their capacities and limits are known. In the same vein, caregiver training must be designed so that these workers are able to respond to the needs of residents with dementia, as well as those of their families.

Public institutions are also responsible for providing people who have such symptoms with a residence that meets their needs if their present living situation cannot offer appropriate services.



PROVIDE A RESIDENTIAL RESOURCE EQUIPPED TO DEAL WITH DEMENTIA

A woman exhibited behaviour indicative of acute dementia—screaming, hitting, disorganization. Even if the home and hospital caregivers had long known about these behaviours, the CISSS still transferred her to a private non-contractual CHSLD, a residence that had little experience with managing such intense behavioural problems. Realizing that the resource was not suitable for the woman's needs, family members complained to the Québec Ombudsman.

Its investigation showed that because of limited resources, the CHSLD could not in fact provide the required supervision and support. Its intake and case management skills had not been adequately evaluated by the CISSS in charge. The Québec Ombudsman also noted flaws in how the chosen intervention strategies were carried out.

It therefore recommended that the CISSS and the CHSLD clarify the criteria for admitting people with behavioural disorders to this residential resource.

Its recommendations were accepted. The Québec Ombudsman is following their implementation attentively.

Understaffing at all residential resources

Again this year, the Québec Ombudsman received complaints and reports about understaffing in residential resources. Care attendants in particular are sorely lacking in all Québec regions and in every kind of resource—private seniors' residences, intermediate resources, public CHSLDs and private CHSLDs. This shortage has a direct effect on the quality and scope of the services provided to residents.

The complainants are critical of the impact of this situation on the elderly and on their quality of life. They condemn the shortcomings in personal care, insufficient supervision of residents, long waits before call bells are answered, lack of assistance with meals for residents, and high staff turnover. Some complaints are levelled against places where, for example, residents are helped out of bed at about noon because there are no staff available to get them up any earlier.

It stands to reason that in private resources, the fact that care attendants are paid much less than staff within the public network contributes to high turnover rates.

In the course of its investigations, the Québec Ombudsman listened to workers who described a demanding occupational reality—caregivers work under pressure, and generally in insufficient numbers, and have too little time to provide quality care.

The Québec Ombudsman remains concerned about the situations brought to light and the insufficient efforts in this regard by the public healthcare network and the Department.



UNDERSTAFFING AND EMERGENCY TRANSFER OF SOME RESIDENTS

The Québec Ombudsman received a report concerning a private seniors' residence with a series of problems, namely:

- Understaffing at all times;
- Lack of staff training;
- Lengthy times for responding to call bells;
- Deficient screening of residents at risk for wandering;
- Lack of reliability in administering medication;
- No fire safety plan;
- Mismanagement of incidents and accidents.

In response to the Québec Ombudsman's recommendations, the CISSS responsible for certifying the residence instructed the resource's authorities to put a series of corrective measures in place. Furthermore, it urgently transferred 22 of the most vulnerable residents. Subsequently, the ownership of the residence changed.

All of the Québec Ombudsman's recommendations to the CISSS and to the residence were implemented to the Québec Ombudsman's satisfaction.

The human consequences of the shortage of places in specialized residential resources

Given Québec's aging population, more and more elderly people with reduced autonomy must live in CHSLDs. However, the number of available places is insufficient. This scarcity creates major problems on the human level for the elderly, as well as for their families.

We see that users:

- Do not have access to the institutional living environment which they chose;
- Face lengthy wait times;
- Are placed far from their home or their families.

This shortage is especially critical for specialized residential resources, for example, those capable of dealing with wandering behaviour or aggressiveness.

The Québec Ombudsman regularly receives complaints and reports from people who are deeply dissatisfied with how the public network responds to this group's residential needs. They also comment on the lack of empathy of certain public network representatives.



GIVE PRIORITY TO RESIDENTIAL RESOURCES CLOSE TO LOVED ONES

The Québec Ombudsman received a report about a CHSLD resident who was located an hour away from her spouse. To make matters worse, her spouse had multiple sclerosis and the travelling back and forth exhausted him.

The Québec Ombudsman's investigation showed that the woman's family had applied to have her transferred, However, the woman needed to be on a special-care unit (an environment adapted to residents who have wandering behaviour). No residence near her spouse had such a unit.

The fact is that the region has very few places of this sort. The Québec Ombudsman therefore recommended that the CISSS concerned keep a close eye on the woman's transfer application. It also asked the institution to produce a plan to improve access to lodging for people who need to be in a specialized environment, with a view to preventing lengthy wait times for service users and unreasonable travel distances for their families.

The CISSS implemented the Québec Ombudsman's recommendations. It produced the action plan and the woman was finally relocated close to her spouse.

The issue of care and service quality in some private non-contractual CHSLDs

Even though they are not funded by the Department, private non-contractual CHSLDs have the same obligations as public CHSLDs in terms of the quality of the care, services and environment provided to residents. In fact, these resources admit many people referred there by the public network by means of places purchased by CISSSs and CIUSSSs.

Investigations by the Québec Ombudsman have revealed, however, that these CHSLDs often have acute problems with staff shortages and turnover. Furthermore, they struggle to meet the needs of people with distinct clinical profiles, especially those with behavioural disorders.

At the same time, the Québec Ombudsman has noted lack of CHSLD support and supervision by CISSSs and CIUSSSs. It expects them to assume their responsibilities regarding care and service quality.



ENSURE THE REQUIRED MONITORING OF PRIVATE NON-CONTRACTUAL CHSLDS

For several years, most places in a private non-contractual CHSLD had been purchased by the regional CISSS in order to house vulnerable residents. Over time, two departmental reports and a report by a consultant commissioned by the CISSS revealed substantial shortcomings in the quality of the living environment and its services. All these reports suggested corrective measures that gave rise to action and improvement plans, which included implementation deadlines.

Despite this follow-up, the CHSLD has still not implemented several recommendations, some of which go back to 2015, showing its indifference overall.

The Québec Ombudsman recommended that the CISSS:

- Step up its monitoring of the CHSLD and its clinical support;
- Quickly implement the existing action plans.

The Québec Ombudsman is closely following the implementation of its recommendations.

Respect tenants at private seniors' residences: follow-up to the Québec Ombudsman's special report

On June 16, 2016, the Québec Ombudsman released a special report entitled *Private seniors' residences: more than just rental businesses*. Since then, and especially in 2019-2020, the Ministère de la Santé et des Services sociaux and the Ministère des Affaires municipales et de l'Habitation have worked to implement some of the report's recommendations. The Québec Ombudsman is therefore satisfied to see:

- The publication of two information handbooks that enable tenants of private seniors' residences (PSRs) to better understand and assert their rights;
- An online practical guide on the following subjects: the rights and obligations of operators of private seniors' residences; dispute prevention and settlement; complaint mechanisms; and possible recourse;
- A support and assistance service for these tenants in disputes concerning leases. The service is provided by complaint assistance and support centres.

The Québec Ombudsman will attentively follow the ongoing work by the Departments and their partners to, among other things:

- Facilitate recourse with the Régie du logement under certain circumstances regarding grievances common to the tenants of the same PSR;
- Produce a lease specific to PSRs.

However, there have been no changes concerning review of the mechanism for indexing the cost of PSR services. The Québec Ombudsman therefore assumes that its recommendation was refused. It remains concerned about the potential harm to tenants dealing with rent hikes that exceed the rates prescribed by the Régie du logement. The Québec Ombudsman continues to intervene in this regard.



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

SERVICE SUPPORT

Loss, breakage or theft of service users' items

The Québec Ombudsman regularly receives complaints from service users because the public health institution in question refused to reimburse them for personal belongings (e.g. eyeglasses, dentures or hearing aids) that had been lost, stolen or damaged.

The Québec Ombudsman's investigations show that:

- Often, staff are unfamiliar with or misapply the claim procedure. This makes the steps that service users or their families must take more unwieldy;
- The impact of a physical or cognitive impairment on users' ability to take care of their personal belongings themselves is barely considered;
- The staff who interact with users regularly do not take proper measures to prevent loss, damage or theft.

As the Québec Ombudsman sees it, institutions must do what is necessary to prevent such incidents. They must therefore properly inform users or their families about the preventive measures they should take. Files should include a list of the user's personal belongings. However, sometimes these lists are not drawn up because the staff do not have time to do so. The upshot is that no one can say for certain what users had in their possession when they were admitted.

Furthermore, if a user is unable to take care of his or her belongings, a secure place for storing them must be available.

In the Québec Ombudsman's opinion, users do not have to be under protective supervision to be deemed unable to tend to their belongings. The assessment of the patient's ability to do this must be carried out not only at admission, but their condition when the incident occurred must also be evaluated.

While institutions are not systematically liable for the loss, breakage or theft of personal belongings, they are legally obliged to use all reasonable means to protect them. One example of what can be done is the adoption of a policy for managing users' property.

Reasonable means must be used so that institutions are not held liable for loss, theft or damage. The notion of "reasonableness" is based on users' ability to take care of their personal belongings themselves.



CONSIDER A RESIDENT'S ABILITY TO TEND TO HER BELONGINGS

A very elderly person living in a residential and long-term care centre (CHSLD) had a great deal of difficulty with her movements, transfers and mobility, especially because she had lost the use of an arm. She also had almost constant cognitive problems that affected her judgement and memory. In addition, she had hearing loss for which she needed hearing aids prescribed by a physician. Less than 48 hours after getting these hearing aids, they went missing.

Made aware of the situation, the CHSLD refused to reimburse her for them, arguing that the woman's cognitive problems were only intermittent and that her reduced autonomy was not a factor. Furthermore, there was no evidence that the staff had been negligent.

At the end of its investigation, the Québec Ombudsman noted that the woman's reduced autonomy and cognitive problems had been reported by several caseworkers at the local community service centre (CLSC) and at the hospital.

No provision had been made for a period for her to adapt to the hearing aids, and there was no supervision to prevent them from being lost or damaged.

Furthermore, in the Québec Ombudsman's opinion, the fact that the woman's cognitive problems were intermittent was all the more reason to monitor her carefully because her reactions were unpredictable. Someone in her situation could have more difficulty than other people learning something new, such as wearing hearing aids, and taking care of them.

Given this, the Québec Ombudsman recommended that she be reimbursed, and the CHSLD agreed to do so.



THE INSTITUTION MUST TAKE RESPONSIBILITY REGARDING PERSONAL BELONGINGS

While he was at a hospital for day surgery, a man left his clothing in a locker that, like all the other lockers there, was not equipped with a locking mechanism.

After his surgery, he saw that all his clothing was gone except for his coat and boots. He and the staff looked for it, but to no avail. For its part, the institution declined any responsibility for the clothing's disappearance. It pointed out that service users are informed that they are responsible for their personal belongings at all times.

In the Québec Ombudsman's opinion, the fact that service users are capable of looking after their personal belongings does not exempt the hospital from certain obligations. Even though people must be informed about the risk they take if they keep their personal belongings

with them during their stay, the hospital must also provide a safe place where they can leave them. It is unrealistic to think that people can keep an eye on their items constantly, especially given that some of them are undergoing surgery.

Similarly, not all service users are accompanied by family to whom they can entrust their belongings. Lockers with padlocks must be made available to people on the day surgery unit.

The Québec Ombudsman recommended that the day surgery department withdraw its non-liability clause, reimburse the service user and do what is required so that lockers with padlocks are at the disposal of people in day surgery. Its recommendations were accepted.

Hospital room billing

Year after year, the Québec Ombudsman receives complaints about hospital room billing.

In its 2017-2018 Annual Report, the Québec Ombudsman indicated that it had intervened with the Ministère de la Santé et des Services sociaux concerning a review of hospital room fees. It asked the Department to amend the applicable regulation and the departmental memo in order to resolve the many instances of unfairness, notably by not billing in either of the following situations:

- When the room corresponds to the basic type of room offered in the unit;
- When the room is medically necessary.

The Québec Ombudsman also insisted that all relevant information be distributed to service users and health and social services network staff alike so that the improvements made are known and applied.

Further to these recommendations, the Department informed the Québec Ombudsman that there would be no amendments to the *Regulation respecting the application of the Hospital Insurance Act*, passed in 1981, or to the departmental memo concerning billing for private or semi-private rooms and phone availability, adopted on July 26, 2007 and updated on February 27, 2013. However, in the fall of 2019, a new orientation was communicated to the public network so that every institution would be aware of its obligation to offer service users a genuine room choice. This means that the option of a free room must always prevail according to the following considerations:

- If the institution cannot offer a ward, semi-private rooms become unbillable;
- If it cannot offer a room containing two beds or more, private rooms become unbillable.

However, this information is interpreted differently from one institution to another across the health and social services network, and since 2019, the Department has not provided any further explanations that would rectify the situation. Moreover, the orientation is inconsistent with the current Regulation and memo, which do not provide for such possibilities. In the opinion of the Québec Ombudsman, changes must be made. It is continuing its intervention in this regard.



APPLY THE RIGHT RATE AND GIVE ACCURATE INFORMATION

On the day when a woman was supposed to give birth, her spouse signed a form for a private room, but he told the agent that if no such room was available, his spouse wanted a ward.

Despite the information on the form, the agent replied that if no private room was available, there would be no fees charged. However, if the woman wanted to increase the likelihood of having a private room, she should request one.

The baby was born. The mother had initially requested a private room, but she ended up in a semi-private room for which she was billed. And yet, the other mothers in semi-private rooms who had requested a ward did not have to pay any fees. Feeling that she had been treated unfairly, she complained to the Québec Ombudsman.

Seeing as how there was no ward on the perinatal unit, the Québec Ombudsman considered that the basic type of room (the one which she should have been allocated free of charge) was a semi-private room. Furthermore, to enable the woman to make an informed decision, the institution should have given her the right information when the room-choice form was being filled out. In fact, the admissions department already knew which care unit the patient would be on.

The Québec Ombudsman recommended that the institution:

- Cancel the invoice;
- Stop billing for semi-private rooms because they are the basic type of room on that care unit.

The institution accepted the Québec Ombudsman's recommendations.

Progress by the Department further to the Québec Ombudsman's recommendations

Parking fees

In its 2015-2016 Annual Report, the Québec Ombudsman presented a case in which it recommended a review of hospital parking fees with a view to maximum amounts that are reasonable and adapted to users' means. It bears mentioning that the Department defines institutions' obligations in this regard and that institutions must recover parking-related costs, primarily by charging parking lot users.

In the Québec Ombudsman's opinion, parking fees must not interfere with the accessibility of care and services. At the time, it had contacted the minister in the context of examining a complaint. It had pointed out that in October 2016, the Government of Ontario had announced that it would impose certain restrictions on institutions that charged more than \$10 a day for parking. The minister replied that he would pay special attention to this matter the next time the departmental memo was reviewed.

In November 2019, the minister announced \$120 million in investments as of 2020-2021 to decrease parking fees based on the following parameters:

- The maximum daily rate will range from \$7 to \$10;
- The first two hours will be free at all times;
- After four hours, no further fees will be charged;
- There will be reduced fees for frequent healthcare users.

The Québec Ombudsman will be watchful regarding the implementation of these changes in the way fees are managed, slated for 2020, and the effective date for reduced fees.

Room billing for people who are not Québec residents

Some people who live in Québec are not entitled to free healthcare and health services. Cases in point are people who do not have permanent resident status in Canada (e.g. tourists or students from a country which does not have a reciprocity agreement with Québec). The Department is responsible for determining billable amounts, particularly when non-residents go to an emergency room or are hospitalized. The Department also provides for a 200% surcharge for non-residents added to the fees that must be charged to people who do not qualify for the Régie de l'assurance maladie du Québec's public healthcare plan.

Again this year, complaints showed that, contrary to what is indicated in the applicable memo, institutions had charged non-residents additional fees, notably, administrative fees. Similarly, even though the Department has prohibited institutions from billing non-residents for private or semi-private hospital rooms because the fees are included in the prescribed costs, some institutions continue to bill them.

As a result, in October 2019, the Department added details to the memo concerning the fees for outpatient services, daily rates for short-term and long-term care, and daily rates for rehabilitation, newborns and youth services. It specified that non-residents of Canada or a paying agency cannot be billed supplementary fees for a private or a semi-private room. Daily rates for short-term or long-term care include all costs, regardless of the type of resource used.



EXCLUDE ALL ADMINISTRATIVE FEES FROM ROOM BILLING

During an investigation, the Québec Ombudsman noted that an institution's room-choice form indicated that users who are not covered by the Régie de l'assurance maladie du Québec's public healthcare plan would be charged a room supplement. This did not comply with Department directives.

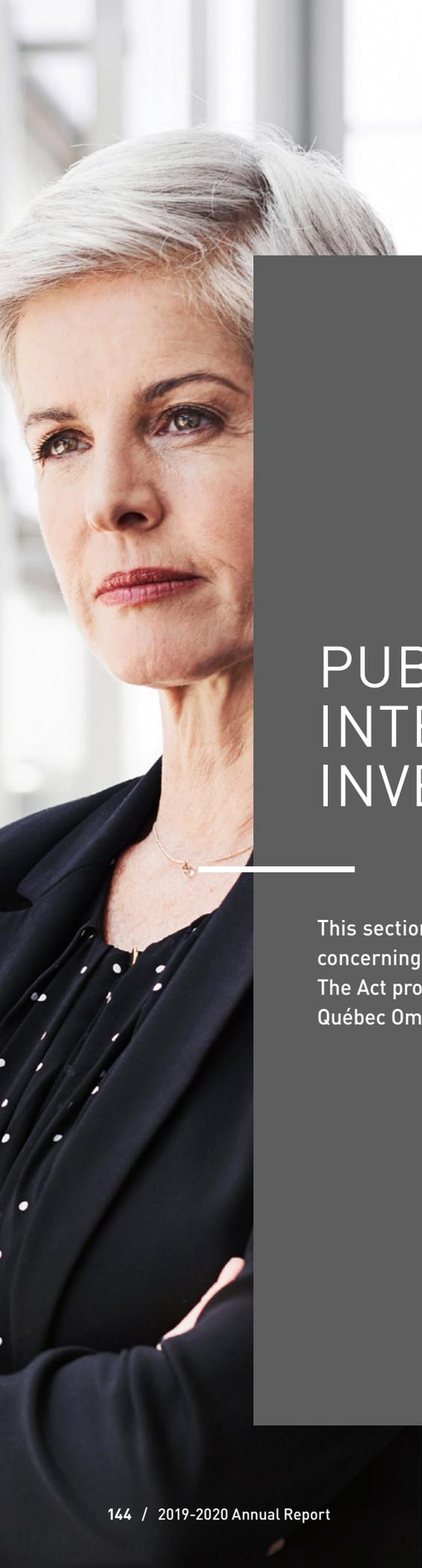
The institution systematically added these fees to the invoices of people without resident status in Canada.

The Québec Ombudsman recommended that the institution reimburse the user and stop billing non-residents for private or semi-private rooms. At first the institution refused to act on the recommendation. However, further to this refusal, the Department clarified its memo. Since then, the institution has changed its form and stopped charging room fees to non-residents.

PUBLIC INTEGRITY INVESTIGATIONS

This Annual Report covers the period up to March 31, 2020. In the weeks leading up to this date, Québec was struck by the COVID-19 pandemic that had hit globally. It stands to reason that public services as we knew them were greatly affected. The Québec Ombudsman's findings in its 2019-2020 Annual Report—and in this section about public integrity investigations—must therefore be placed and understood within a pre-pandemic context. Possibly, in some cases, the responses by government departments, agencies or other bodies had to be postponed because of the health crisis.





PUBLIC INTEGRITY INVESTIGATIONS

This section reports on the Québec Ombudsman's main findings about the requests concerning the *Act to facilitate the disclosure of wrongdoings relating to public bodies*. The Act provides that anyone can disclose a wrongdoing involving a public body to the Québec Ombudsman with complete confidentiality and without fear of reprisal.

This year, the scope of the *Act to facilitate the disclosure of wrongdoings relating to public bodies* was modified when certain provisions of the *Act to facilitate oversight of public bodies' contracts and to establish the Autorité des marchés publics* (SQ 2017, c. 27) came into force. Since May 25, 2019, the handling of disclosures of breaches of an act or a regulation concerning the tendering or awarding of a public contract within the meaning of the Act, or concerning the execution of such a contract, is now within the jurisdiction of the Autorité des marchés publics.

Confidential and independent recourse

Disclosure of wrongdoings: definitions and main players

The *Act to facilitate the disclosure of wrongdoings relating to public bodies*, which came into force on May 1, 2017, mandates the Québec Ombudsman to investigate wrongdoings that have been committed or are about to be committed relating to a public body. The Act also provides for protection against reprisals for whistleblowers. This protection extends to people who cooperate in audits or investigations.

The whistleblower behind the disclosure may be:

- A member of the personnel of a body subject to the Act;
- A supplier or subcontractor;
- Anyone else who is aware of a wrongdoing relating to a public body that has been committed or is about to be committed.

THE DIFFERENT CATEGORIES OF WRONGDOINGS

- A contravention of a Québec law, of a federal law applicable in Québec or of a regulation made under such a law.

The Québec Ombudsman's role is not to replace the government department or agency responsible for applying an act or a regulation. However, in matters of wrongdoing, the Québec Ombudsman takes the applicable legal framework into consideration. For example, in examining a disclosure concerning gross mismanagement, including abuse of authority, it could look into whether labour laws have been broken. In matters of public contracts, handling of disclosures of breaches of an act or

a regulation concerning the tendering or awarding of public contract or concerning the execution of such a contract is now within the jurisdiction of the Autorité des marchés publics.

- A serious breach of the standards of ethics and professional conduct.
An act, omission or behaviour that deviates markedly from generally accepted practices or standards of conduct within public bodies, or from the ethical standards or obligations that apply.
- A misuse of funds or property belonging to a public body.
Consists mainly of unauthorized expenses, or authorized expenses at an unreasonable cost. This also refers to expenses which are illegal or contrary to applicable laws, regulations, policies or procedures, including expenses related to funds or property that the public body manages for others.
- Gross mismanagement within a public body, including an abuse of authority.
An intentional or unintentional act or omission which indicates substantial or significant indifference, negligence or disregard of the sound management of public resources. This could also be an arbitrary decision aimed at harming a person or advancing one's own interests, which includes bad faith and favoritism. The act is committed by a person of authority, real or by operation of law, who exceeds his or her powers.
- 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.

THE FACTORS TO CONSIDER

In order to evaluate the gravity of the alleged wrongdoing, the Québec Ombudsman considers the following factors: the intention of the wrongdoer, the objective gravity of the act, the position of the alleged wrongdoer within the organization, the recurrence of the conduct and the consequences for the public body.

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

THE PUBLIC BODIES SUBJECT TO THE ACT

The Act lists the categories of public bodies subject to it, which correspond to approximately 5,000 bodies:

- Government departments and bodies;
- Government enterprises (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 and school service centres;
- Cegeps and universities;
- Public and private (contracted) health and social services institutions;
- Childcare centres, subsidized daycare centres and home childcare coordinating offices;
- Municipal bodies;
- Persons appointed by the National Assembly.

Reprisal complaints

The Act provides that it is forbidden to take a reprisal against a person on the ground that the person has, in good faith, made a disclosure or cooperated in an audit or investigation conducted on the basis of a disclosure. It is also forbidden to threaten to take a reprisal against a person so that the person will abstain from making a disclosure or cooperating in an audit or investigation conducted on the basis of a disclosure. The offender is liable to a fine of \$2,000 to \$20,000 in the case of a natural person and to a fine of \$10,000 to \$250,000 in other cases. The amounts are doubled for a subsequent offence. In certain situations, the Québec Ombudsman can conduct penal investigations in matters of reprisal.

Requests for access to legal advice

The Québec Ombudsman's access to legal advice service consists of financial assistance used to reimburse fees for legal counsel chosen by the person making the request.

The Québec Ombudsman may grant financial assistance for obtaining legal services to a person who:

- Discloses or wishes to disclose a wrongdoing;
- Cooperates in an audit or investigation stemming from a disclosure;
- Feels he or she has suffered reprisal because of a disclosure or cooperation in an investigation;
- Conveys information to the Autorité des marchés publics or the Commission municipale du Québec;
- Makes a disclosure to the Commissaire à l'intégrité municipale et aux enquêtes within the Ministère des Affaires municipales et de l'Habitation du Québec.

A person wishing to obtain this financial assistance must make a request to the Québec Ombudsman prior to retaining legal counsel.

Financial assistance is granted **if the person's specific situation warrants legal assistance.**

The Québec Ombudsman determines the terms for granting access to the service, especially the number of hours of legal counsel, on a case-by-case basis.

Requests for exemption

In accordance with the Act, the Québec Ombudsman may exempt public bodies from the obligation to adopt a procedure to facilitate the disclosure of wrongdoings and to designate an officer responsible for dealing with disclosures. This exemption may be granted particularly if the body's size, available resources or specific context does not enable it to assign someone to be the officer responsible for handling disclosures.

1 REQUESTS RECEIVED

	2017-2018	2018-2019	2019-2020
Requests for assistance	112	68	82
Disclosures	135	182	244
Reprisal complaints	0	8	16
Requests for access to legal advice	4	10	19
Requests for exemption*	36	3	10
TOTAL	287	271	371

* / Applications for exemption are included in the *Requests for services received* table, on page 15.

Note / A request for assistance is a request for information concerning the possibility of making a disclosure, a reprisal complaint or a request for access to legal advice in compliance with the *Act to facilitate the disclosure of wrongdoings relating to public bodies* or for advice about the procedure to follow.

2 STATUS OF DISCLOSURES BEING PROCESSED AS AT MARCH 31, 2020

The following table shows the portrait of processed requests from April 1, 2019 to March 31, 2020.

2.1 Status of disclosures

STATUS	NUMBER
Implementation being monitored as at April 1, 2019	6
Being examined as at April 1, 2019	58*
Accepted	244
Closed	253
Being examined as at March 31, 2020	49
Being analyzed for admissibility	1
Being audited	36
Being investigated	11
Completed	1
Implementation being monitored as at March 31, 2020	6

2.2 Status of reprisal complaints

STATUS	NUMBER
Implementation being monitored as at April 1, 2019	0
Being examined as at April 1, 2019	2
Accepted	16
Closed	18
Being examined as at March 31, 2020	0
Being analyzed for admissibility	0
Being audited	0
Being investigated	0
Completed	0
Implementation being monitored as at March 31, 2020	0

* / Last year, the published number was 61. The three-file difference is explained by the fact that those files were transferred to the public service sector in 2019-2020.

2.3 Status of requests for access to legal advice

STATUS	NUMBER
Being examined as at April 1, 2019	7
Accepted	19
Closed	4
Being examined as at March 31, 2020	22

3 BREAKDOWN OF GROUNDS FOR CLOSED REQUESTS

A request for assistance, a disclosure, a reprisal complaint or a request for access to legal advice may include several grounds. In 2019-2020, the Québec Ombudsman closed 275 requests that included 292 grounds (270 disclosures, 18 reprisals and four requests for access to legal advice). Eighty-six closed requests for assistance were added to this (see Tables 3.1 and 3.2).

As far as grounds for disclosures were concerned, an increase of 70.9% was noted compared to last year. There were 18 reprisal complaints this year, whereas there were six last year.

Requests for assistance increased by 34.4% (from 64 to 86).

3.1 Disclosures and requests for assistance

CLOSED REQUESTS IN 2019-2020	NUMBER	
Requests for assistance	85	
Substantiated	6	} 270 grounds for disclosure
Unsubstantiated	29	
Forwarding of information (section 14)	9	
Not completed (other)	28	
Referred	22	
Interrupted (section 12)	176	
TOTAL	355	

3.1.1 Breakdown of grounds for disclosure, by body category

BODY CATEGORY	NUMBER	% OF TOTAL
Departments	55	20.4%
Agencies	54	20.0%
Health and social services institutions	49	18.1%
School boards	38	14.1%
Municipal bodies	36	13.3%
Cegeps	16	6.0%
Childcare centres	11	4.1%
Government corporations and others	6	2.2%
Persons appointed by the National Assembly	3	1.1%
Universities	2	0.7%
TOTAL	270	100%

3.1.2 Breakdown of unsubstantiated and substantiated grounds for disclosure, by category of wrongdoing

BREAKDOWN OF GROUNDS	UNSUBSTANTIATED	SUBSTANTIATED	TOTAL
Serious breach of the standards of ethics and professional conduct	8	2	10
Misuse of a public body's funds or property	6	2	8
Gross mismanagement/abuse of authority	5	2	7
Contravention of an act/regulation	5	0	5
Endangering health and safety	4	0	4
Endangering the environment	1	0	1
TOTAL	29	6	35

In 2019-2020, 35 grounds for disclosure were handled (29 unsubstantiated and six substantiated), which represents an increase of 25.0% compared to last year (28 grounds for disclosure were handled).

3.1.3 Follow-up to recommendations

For the files that were closed in 2019-2020, the Québec Ombudsman made eight recommendations which were approved and implemented. Three substantiated grounds concerned the misuse of a public body's funds or property, one involved a serious breach of the standards of ethics and professional conduct, and another was a case of gross mismanagement, as well as an abuse of authority.

One other recommendation concerning the misuse of a public body's funds or property was made and approved, but follow-up on its implementation was cancelled so as not to interfere with another investigation that was underway.

3.2 Reprisal complaints and requests for assistance

CLOSED REQUESTS IN 2019-2020	NUMBER	
Requests for assistance	1	
Substantiated	0	} 18 grounds for complaint
Unsubstantiated	0	
Forwarding of information (section 14)	0	
Not completed (other)	3	
Referred	1	
Interrupted (section 12)	14	
TOTAL	19	

3.2.1 Breakdown of grounds for reprisal complaints, by body category

BODY CATEGORY	NUMBER	% OF TOTAL
School boards	5	27.8%
Municipal bodies	4	22.2%
Agencies	3	16.7%
Departments	3	16.7%
Health and social services institutions	2	11.1%
Government corporations and others	1	5.6%
TOTAL	18	100%

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

3.3 Requests for access to legal advice

CLOSED LEGAL CONSULTATIONS	2019-2020
Inadmissible	1
Refused	1
Approved/not used	2
Approved/paid for	0
TOTAL	4

In 2019-2020, the Québec Ombudsman made payments regarding 12 requests for legal advice. However, the files concerned will be accounted for in the 2020-2021 Annual Report, as they were not closed at of March 31, 2020.

3.4 Requests for exemption

REQUESTS FOR EXEMPTION	
Granted	9
Refused	1
TOTAL	10

STAGES IN HANDLING OF DISCLOSURES

PROTECTION OF THE WHISTLEBLOWER'S IDENTITY

AUDIT

1. RECEPTION OF THE DISCLOSURE

- The purpose of this stage is to gather the required information and to explain the disclosure processing procedure to the whistleblower.
- The disclosure may be anonymous or not.
- It can be made by phone, by secure form, by email or in person.
- First contact with the whistleblower is established within two business days of receiving the disclosure.
- An acknowledgement of receipt is sent to the person within five business days of the first contact, unless the person does not want one or if the disclosure is anonymous.

2. ANALYSIS OF THE ADMISSIBILITY OF THE DISCLOSURE

- The purpose of this stage is to determine whether the disclosure is admissible.
- A disclosure is deemed inadmissible if, for example, it is made solely for personal purposes rather than in the public interest, if it questions the merits of government policies or objectives, or if the matter is before a court.
- Analysis of the admissibility of the disclosure is usually completed within 10 business days of receiving it.
- If the disclosure is deemed inadmissible, a notice of termination of processing is sent to the whistleblower.

3. AUDIT FOR ESTABLISHING THE ACCURACY OF THE ALLEGATIONS

- The purpose of this stage is to determine whether there are reasonable grounds to believe that a wrongdoing has been committed or is about to be committed within or relating to a public body.
- The Québec Ombudsman writes to instruct any source likely to provide useful audit information to produce documents and information.
- Under normal circumstances, the audit must be completed within 60 days of receiving the disclosure.
- If, after the documents have been analyzed and the audit is completed, it is found that the facts do not warrant a public integrity investigation, a notice is sent to the whistleblower informing him or her that processing has been terminated.
- If an investigation must be conducted, the process continues.

4. INVESTIGATION

- At this stage, a notice of investigation is usually sent to the highest administrative official of the body concerned, or if the circumstances warrant it, to the minister responsible for the body.
- For conducting such investigations, the Québec Ombudsman is invested with all the powers of public inquiry commissioners.
- Witnesses are summoned to appear before the Québec Ombudsman.
- Under normal circumstances, before the meeting, a preparatory document is sent to the person(s) about whom the disclosure was made.
- When possible, the Québec Ombudsman meets with the person(s) about whom the disclosure was made.
- It does its utmost to complete the investigation within 12 months of receiving the disclosure.

5. CONCLUSION

- At this stage, four conclusions are possible:
 - The disclosure is unsubstantiated;
 - The disclosure is unsubstantiated but the Québec Ombudsman makes recommendations;
 - The disclosure is substantiated but there are no recommendations;
 - The disclosure is substantiated and the Québec Ombudsman makes recommendations.
- Under normal circumstances, if the disclosure proves substantiated, a preliminary investigation report is sent for comment to the person(s) about whom the disclosure was made.
- Next, a draft investigation report is sent to the public body's highest ranking administrative official. The draft report includes any recommendations made and takes into account the comments of the person(s) about whom the disclosure was made.
- Then the Québec Ombudsman produces its final investigation report containing comments from the person(s) about whom the disclosure was made and from the public body. The final report and its preliminary versions remain confidential.
- When a wrongdoing has occurred, a conclusion is made public. The conclusion does not include any details that would enable identification of the people concerned or of their work environment.

6. RECOMMENDATIONS

- The Québec Ombudsman monitors the recommendations until they have been implemented.
- If the public body has failed to establish any satisfactory measure within the prescribed deadline, the Ombudsperson may inform the minister responsible for the public body in writing.
- She may also advise the government of this in writing and expose the case in a special report or in her Annual Report tabled at the National Assembly.



WRONGDOING: MISUSE OF FUNDS OR PROPERTY BELONGING TO A PUBLIC BODY

The Québec Ombudsman received a disclosure alleging that a senior manager of a health institution had committed a wrongdoing by acquiring overpriced office furniture.

The *Public Administration Act* specifies that the government management framework must focus on:

- Responsiveness to the expectations expressed by the public in light of available resources;
- Optimal use of government resources.

The document outlining the skills profile of senior managers in the public service¹⁰ that was in force at the time indicated that people in such positions must fulfil the imperatives of transparency and accountability incumbent on them. The same document specifies that decision-makers must ensure optimal use of the resources entrusted to them.

At the end of its investigation, the Québec Ombudsman concluded that the furniture purchased by the senior manager constituted a misuse of funds or property belonging to a public body within the meaning of the *Act to facilitate the disclosure of wrongdoings relating to public bodies*. The purchases were deemed excessive when their costs were contrasted with those for comparable goods in a similar context. Furthermore, they were inconsistent with the institution's organizational and operational needs and therefore public funds had been squandered.

The Québec Ombudsman made two recommendations to the Minister of Health and Social Services:

- That the Minister take the appropriate action regarding the senior manager so that such wrongdoings do not recur;
- That the Minister remind the managers of the health institution in question about the rules governing the management of public bodies' supply contracts.

Both recommendations were accepted and implemented.



The Québec Ombudsman's
conclusion is available at
divulgate.protekteurducitoyen.qc.ca.

10 / Secrétariat aux emplois supérieurs, Ministère du Conseil exécutif (2014). *Profil de compétences. Titulaire d'un emploi supérieur en situation de gestion*, Québec City, Gouvernement du Québec, 15 pages.



WRONGDOING: MISUSE OF FUNDS OR PROPERTY BELONGING TO A PUBLIC BODY

The Québec Ombudsman received a disclosure concerning a public body that allegedly used public funds to offer its staff training deemed very costly. According to the whistleblower, the events were opportunities for socializing outside the city rather than genuine training sessions.

The Québec Ombudsman's investigation made it possible to trace the trajectory of the meetings and training sessions for the organization's staff over time. A professional development program had been established to respond more specifically to the organization's training needs while enabling it to pursue its activities. Various formats were offered, such as summer sessions, regional sessions and webinars.

Misuse of public funds or property belonging to a public body means unauthorized expenses, illegal expenses, or expenses that run counter to the applicable acts, regulations, policies or procedures, including funds or property which the public body manages for others.

The investigation showed that the way in which meetings were held was legitimate because of the public body's situation. The Québec Ombudsman therefore considered that no misuse of public funds or property had occurred.

It also concluded that the cost of the training sessions was not excessive given the travel costs incurred and the logistics involved in bringing a large number of people together at the same place for several days. However, the format, which is more akin to a convention than training sessions per se, is rarely chosen by government departments and agencies because of cost.

Even though no wrongdoing occurred, the Québec Ombudsman made recommendations to the public body aimed at, among other things, reviewing the relevance of activities of this magnitude based on the following parameters:

- The need for this kind of training;
- The possibility of achieving the same objectives by using available communication technology instead;
- The venue;
- The need to bring so many participants together.

The public body agreed to act on these recommendations.

Investigations by the Québec Ombudsman pursuant to other acts governing its action

The Québec Ombudsman can process files based on the powers conferred on it pursuant to the *Public Protector Act*, the *Act respecting the Health and Social Services Ombudsman* and the *Act to facilitate the disclosure of wrongdoings relating to public bodies*. It decides on the appropriate way of intervening on a case-by-case basis according to the

facts of each case and the powers conferred on it by each Act. For example, it intervenes under the *Public Protector Act* when it has reason to believe that citizens may be harmed or when it deems that it is important to intervene promptly with authorities to alert them to an urgent situation or to bring events to the attention of the public or the government.



INVESTIGATION CONCERNING A PUBLIC SAFETY RISK

The Québec Ombudsman received a disclosure alleging that a public body could compromise public safety if it made major infrastructure repairs based on the specifications at hand.

In light of the information collected, the Québec Ombudsman had reasonable grounds to believe that the work could be a public safety risk. Furthermore, work was scheduled to begin very soon.

In this file, the Québec Ombudsman's main concern was to prevent possible public endangerment. It therefore intervened promptly with the public body's highest ranking administrative officers under the *Public Protector Act* by:

- Instructing them to provide documents and details about the elements of concern;
- Mandating experts to analyze the project and comment on potential dangers.

At the end of the investigation, the Québec Ombudsman was reassured that the public body had exercised due diligence to guarantee the safety of the work. It nonetheless made sure that an additional analysis was carried out before the work began. The Québec Ombudsman is satisfied with the follow-up to this recommendation and considers it implemented.

Audits concerning the public education system

Under the *Act to facilitate the disclosure of wrongdoings relating to public bodies*, the mechanisms for disclosing wrongdoings apply to school service centres, school boards subject to the *Education Act*, general and vocational colleges, and universities. As a result, in 2019-2020, the Québec Ombudsman handled 56 disclosures concerning school boards and educational institutions.

For the most part, the disclosures denounced:

- A misuse of funds or property belonging to a public body, including the funds or property it manages for others;
- Gross mismanagement within a public body, including an abuse of authority.



AUDITS LEADING TO UNFOUNDED ALLEGATIONS

The Québec Ombudsman received a disclosure whereby every year, a school board sent educational institutions amounts earmarked for “dedicated measures” (student services measures). Recently, the school board had ceased this practice.

These are special-funding measures and are categorized as such. However, inter-category funding transfers may occur. Protected measures are also specially funded but the related amounts cannot be transferred to another measure.

According to the disclosure, by adopting this centralization, the school board was contravening its operating budget rules and, by extension, the *Education Act*.

The Québec Ombudsman saw that in one school board, the resource allocation committee, composed of school administrators, has the power to recommend the centralization of certain budgets earmarked for dedicated measures. This is a regular practice, especially regarding hiring of human resources. This decision to centralize does not have to be approved by schools through their governing boards. However, it is important that school principals convey all budget-related information to their governing board members and explain the relevance of certain centralized dedicated-measure budgets. This disclosure was therefore unfounded.

In another case, a whistleblower reported irregularities by an administrator, notably in managing and organizing educational services for special-needs students in an educational institution.

Given the facts and after its investigation was completed, the Québec Ombudsman concluded no wrongdoing had occurred.

However, it saw that the teaching staff lacked knowledge about the following:

- The procedure for filing a report to the Direction de la protection de la jeunesse;
- The procedure when a staff member witnesses bullying;
- The role of the intervention committee and the procedure for establishing such a committee following persistent difficulties with a student.

The Québec Ombudsman therefore conveyed its observations to the administrator and the school board concerned.

In a third case concerning schools, the Québec Ombudsman received a disclosure from a member of the staff of an educational institution. The whistleblower reported having talked with a student’s mother who was particularly concerned that a person in a position of authority within the school was texting with her son. Questioned by the whistleblower, the person admitted the facts and acknowledged that she was having a sexual relationship with the student.

Because of the nature of the events—acts of a sexual nature by a person in a position of authority in the school and the need to protect the student—the Québec Ombudsman forwarded the information to the police so that the student be protected and a criminal investigation opened, as provided in the *Act to facilitate the disclosure of wrongdoings relating to public bodies*.

The Québec Ombudsman as a referral centre

Since the *Act to facilitate the disclosure of wrongdoings relating to public bodies* came into force in 2017, new public bodies have been created and the mandates of others have changed. The following are cases in point:

- The Commissaire à l'intégrité municipale et aux enquêtes (CIME) of the Ministère des Affaires municipales et de l'Habitation became operational on October 18, 2018. It handles the disclosure of wrongdoings concerning municipalities and municipal bodies.
- Since November 2018, the Commission municipale du Québec (CMQ) may, on its own initiative or further to information received anonymously or not, compel those concerned to provide information concerning a breach of ethics and professional conduct by a member of a municipal council.
- On May 25, 2018, the Autorité des marchés publics (AMP) was entrusted with handling disclosures concerning public contracts.

Numerous other public bodies work to strengthen public integrity:

- Commissaire à la lutte contre la corruption (CLCC);
- Unité permanente anticorruption (UPAC);
- Bureau de l'inspecteur général de la ville de Montréal (BIG);
- Commissaire à l'intégrité municipale et aux enquêtes (CIME);
- Commission municipale du Québec (CMQ).

The lines between the mandates of these bodies are sometimes blurred and it is difficult for prospective whistleblowers to know where to turn to make a disclosure.

To make it easier to disclose wrongdoings—which is the very essence of the *Act to facilitate the disclosure of wrongdoings relating to public bodies*—the Québec Ombudsman has been tasked with receiving all disclosures, and if they are not within its purview, with referring them to the appropriate body. In such cases, with the whistleblower's consent, it phones the body concerned before the transfer is made in order to comply with the prescribed terms and conditions. As the Act specifies, agreements are entered into with these bodies for the forwarding of information.

The Québec Ombudsman therefore contacted various bodies and then forwarded information from disclosures it had received. Here are a few examples.

With the Autorité des marchés publics concerning:

- Alleged double billing in the execution of a computer contract with a public body;
- Alleged awarding of a forward contract covering more than 10 years by a college to a private company for rental of its gymnasium. The private company's contract stipulated that the company had priority access to the gymnasium over the college's physical education classes every Monday, Tuesday and Wednesday of the year;
- Upkeep of specialized equipment belonging to a government corporation by a subcontractor who did not have the required permit, thereby breaching the terms of the contract;
- Sale of a defective landscaping product to various municipal bodies, educational institutions, and other public bodies in the context of certain contracts by a business that was aware of the product's flaws. This situation was also brought to the attention of the Bureau de l'inspecteur général de la ville de Montréal.

With the Ministère des Affaires municipales et de l'Habitation (Commissaire à l'intégrité municipale et aux enquêtes) concerning:

- The dangerous condition of a road under the responsibility of a municipality. Emergency vehicles were unable to get to their destination within the required time;
- Alleged misuse of funds from the Fonds de développement des territoires (a Department program) by a municipality.

With the Commission municipale du Québec concerning:

- Inappropriate behaviour or breaches of ethics and professional conduct by elected officials within municipal bodies.

With the Unité permanente anticorruption concerning:

- Shortcomings and conflicts of interest regarding the financial management of a health and social services institution;
- An employee of a corporation awarded funding by a public body who allegedly used the funds for personal benefit.

Report on implementation of the *Act to facilitate the disclosure of wrongdoings relating to public bodies*

As the person responsible for application of the *Act to facilitate the disclosure of wrongdoings relating to public bodies*, the Chair of the Conseil du trésor must:

- No later than three years after section 1 of the Act is in force, report to the Government on the implementation of this Act and on the advisability of maintaining or amending it;
- Table the report in the National Assembly within 30 days or, if the Assembly is not sitting, within 30 days of resumption.

On December 5, 2019, the Québec Ombudsman sent the Conseil du trésor its report on the implementation of the Act. It contained several recommendations for improving various aspects of the Act. The goal of the report was to guarantee the credibility of the disclosure mechanism and to establish conditions that enable whistleblowers to approach the Québec Ombudsman with complete confidence.

The Québec Ombudsman's report was slated to be tabled at the National Assembly at the same time as the report by the Chair of the Conseil du trésor. This was postponed because of the suspension of National Assembly proceedings on March 17, 2020, due to the health emergency.

Follow-up to the Québec Ombudsman's special report

On May 1, 2017, in accordance with the *Act to facilitate the disclosure of wrongdoings relating to public bodies*, the Deputy Minister of the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation (MAPAQ) announced to his staff that an officer responsible for dealing with disclosures had been appointed.

Any person appointed to the position of officer in a government department or agency must:

- Carry out the required audits and investigations after receiving a disclosure of wrongdoing;
- Ensure the confidentiality of the information collected;
- Ensure the whistleblower's confidentiality and that of anyone who cooperates in an audit or investigation.

On October 30, 2017, a MAPAQ employee (the whistleblower) made a disclosure to the officer.

On January 24, 2019, further to media leaks, the employee was dismissed.

On February 1, 2019, the Québec Ombudsman undertook an investigation on its own initiative pursuant to the *Public Protector Act* on MAPAQ's application of the *Act to facilitate the disclosure of wrongdoings relating to public bodies*. It observed numerous failings in the officer's handling of the disclosure, notably:

- Processing of the disclosure had led to delegation of responsibilities by the officer, who was not authorized to do this under the Act;
- The means of communication used was not secure and did not guarantee confidentiality;
- The whistleblower and the people who cooperated in the audit and investigation were given incomplete information about their rights and obligations;
- The officer had interpreted the reach of her jurisdiction concerning allegations of wrongdoing too narrowly;
- The whistleblower's identity had been disclosed to third parties;

- The disclosure should have been transferred to the Québec Ombudsman because of the restrictive vision of the officer's purview and the difficulty protecting the whistleblower's identity internally;
- The deficient follow-up by the officer with the whistleblower made the latter lose confidence in the process;
- The investigation concluded that MAPAQ authorities and the officer had not complied with the Act, and that the failings were major.

In a special report released on June 13, 2019, the Québec Ombudsman asked for prompt and substantial corrective measures for ensuring that the identity of whistleblowers and of anyone who cooperates in an audit or investigation by an officer is protected, along with the facts disclosed.

The Québec Ombudsman recommended:

- That MAPAQ, no later than July 30, 2019, establish and send the Québec Ombudsman an action plan for correcting the failings noted and that no later than September 30, 2019, it report on the measures implemented to carry out this action plan.
- That the Secrétaire du Conseil du trésor, within the framework of the report on the implementation of the Act (which the Chair of the Conseil du trésor must table in the National Assembly no later than June 1, 2020), review more particularly the role and legislative framework for disclosure officers. The purpose of the recommendation is to ensure adequate support for whistleblowers, complete confidentiality and the handling of disclosures without fear of appearing disloyal.

MAPAQ accepted and implemented the Québec Ombudsman's recommendation. As for the second recommendation, as provided in the Act, the Secrétariat du Conseil du trésor will address it in its report on the Act.



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

LIST OF RECOMMENDATIONS

MINISTÈRE DE L'IMMIGRATION, DE LA FRANCISATION ET DE L'INTÉGRATION

RECOMMENDATIONS BY THE QUÉBEC OMBUDSMAN CONCERNING RECEIPT OF APPLICATIONS FOR THE COLLECTIVE SPONSORSHIP OF REFUGEES

The Québec Ombudsman recommends that the Ministère de l'Immigration, de la Francisation et de l'Intégration:

- Change the way in which undertaking applications are transmitted pursuant to the Collective Sponsorship of Refugees Program with a view to finding a procedure that is fair for all applicants and, by extension, all refugees concerned;
- Among possible solutions, consider drawing lots if the number of applications exceeds the cap established per sponsor category;
- Inform the Québec Ombudsman of the schedule for implementing the required changes.

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE

RECOMMENDATIONS BY THE QUÉBEC OMBUDSMAN CONCERNING THE MANAGEMENT OF DISASTER CLAIM FILES

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

- Quickly take all necessary means to improve application and file management, notably by creating an operational procedure for processing these applications and files;
- By December 18, 2020, send it an action plan for ensuring uniform file management.

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

RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING COMPENSATION FOR LOSS OF PHYSICAL OR PSYCHOLOGICAL INTEGRITY

The Québec Ombudsman reiterates its March 12, 2013 recommendation to the Ministère du Travail, de l'Emploi et de la Solidarité sociale:

- That the *Individual and Family Assistance Regulation* be amended so that the amounts received as compensation for the loss of physical or psychological integrity be excluded without time limits in calculating last-resort financial assistance benefits, and that they be issued as a single payment or in instalments.

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE (CORRECTIONAL SERVICES)

RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING THE USE OF MEANS OF RESTRAINT IN A PENAL ENVIRONMENT

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

- By March 31, 2021, with the support of the Ministère de la Santé et des Services sociaux, produce an instruction on the use of restraints in penal environments. The instruction should cover the following:

- The circumstances warranting the use of such means;
- The roles and responsibilities of the staff from both Departments when restraints are used;
- The level of supervision required when restraints are used;
- The facility's obligation to report on the use of means of restraint on a regular basis.

RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING INTERMITTENT SENTENCE MANAGEMENT

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

- Before December 1, 2020, provide it with an action plan and a timeline for completing the implementation of the recommendations in its special report.

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE AND MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX (CORRECTIONAL SERVICES)

RECOMMENDATIONS BY THE QUÉBEC OMBUDSMAN CONCERNING THE TRANSFER OF RESPONSIBILITY FOR HEALTH SERVICES AND SOCIAL SERVICES WITHIN CORRECTIONAL FACILITIES

The Québec Ombudsman recommends the following to the Ministère de la Sécurité publique and the Ministère de la Santé et des Services sociaux:

- That the steering committee that will be coordinating the transfer of the Montréal correctional facility infirmary be struck and begin meeting before December 1, 2020;
- That work to determine the service offering of the Montréal correctional facility's infirmary begin before December 1, 2020;
- As soon as possible, propose the necessary legislative amendments for completing the transfer of Ministère de la Sécurité publique staff to the Ministère de la Santé et des Services sociaux.

Furthermore, considering the importance of establishing a uniform complaint processing system across the entire correctional system, the Québec Ombudsman recommends the following to the Ministère de la Sécurité publique and the Ministère de la Santé et des Services sociaux:

- That by December 31, 2020, correctional staff and detainees be informed about the process approved by both Departments for lodging a complaint;
- That the complaint forms be available to detainees at all times;
- That the complaint processing system be reviewed after a year to better adjust it to penal realities if necessary.

MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX

RECOMMENDATIONS BY THE QUÉBEC OMBUDSMAN CONCERNING SERVICES TO PEOPLE WITH A SIGNIFICANT LOSS OF AUTONOMY

The Québec Ombudsman recommends that the Ministère de la Santé et des Services sociaux:

- Inventory the institutions which have set a ceiling for the number of hours of services for people with a significant loss of autonomy in order to measure regional disparities;

- Support the institutions that cannot manage to meet the home support needs of people with a significant loss of autonomy, with a view to shrinking the gap between the cost of public residential resources (approximately \$65,000 per year) and the home support subsidy.

RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING ACCESS TO HOME SUPPORT SERVICES FOR THE MENTAL HEALTH CLIENT POPULATION

The Québec Ombudsman recommends that the Ministère de la Santé et des Services sociaux:

- Remind institutions that mental health-related limitations that decrease users' capacity to perform activities of daily living and instrumental activities of daily living must be considered at par with physical or psychosocial impairments for home support eligibility purposes.

FOLLOW-UP TO THE RECOMMENDATIONS IN THE QUÉBEC OMBUDSMAN'S 2018-2019 ANNUAL REPORT

PUBLIC SERVICE

AGENCE DU REVENU DU QUÉBEC (REVENU QUÉBEC)

USE OF INDIRECT, OR ALTERNATIVE, AUDIT METHODS

RECOMMENDATIONS IN 2018-2019

The Québec Ombudsman recommends that Revenu Québec:

- Draft work directives concerning the use of indirect audit methods, commonly called alternative methods, and specify therein that:
 - alternative methods must be used only when there are no other audit options,
 - the statistical validity of the method must be established before it is applied as well as when the results are assessed,
 - citizens' explanations must be taken into account when they are based on valid proof,
 - the reasons for using an alternative method must be indicated in the audit report so that the taxpayer or the mandatary can understand why Revenu Québec had to resort to it.

The Québec Ombudsman recommends that Revenu Québec:

- Provide audit agents with training in the use of alternative methods and their application.

The Québec Ombudsman recommends that Revenu Québec:

- Produce a timeline for carrying out these actions and send it to the Québec Ombudsman before December 1, 2019.

ASSESSMENT IN 2019-2020

THE QUÉBEC OMBUDSMAN:

- **NOTES** that on November 29, 2019, Revenu Québec specified that, since April 2018, all of the Québec Ombudsman's recommendations have been integrated within the agency's audit process.
- **IS DISSATISFIED** because the complaints received this year and the ones still being processed show that problems persist, especially concerning the statistical validity of alternative methods and the justification provided in the audit reports. It has seen that even though Revenu Québec asks statisticians for their opinion in order to validate the methods it uses, the Direction des oppositions, which handles administrative review files, does not send the statisticians' opinions to citizens and does not cancel the assessments stemming from invalid methods.

THE QUÉBEC OMBUDSMAN:

- **IS MONITORING THE SITUATION** because on November 29, 2019, Revenu Québec gave it a progress briefing on current and future training concerning alternative audit methods.

THE QUÉBEC OMBUDSMAN:

- **IS MONITORING THE SITUATION** given that Revenu Québec sent it a report rather than a timeline. The agency says that it has carried out the recommended actions regarding work instructions. Revenu Québec also says that its staff training is ongoing.

MINISTÈRE DE L'ÉDUCATION ET DE L'ENSEIGNEMENT SUPÉRIEUR

PHONE ACCESS TO STUDENT FINANCIAL ASSISTANCE

RECOMMENDATION IN 2018-2019

- The Québec Ombudsman recommends that the Ministère de l'Éducation et de l'Enseignement supérieur:
- By December 20, 2019, put in place a detailed action plan to significantly reduce phone wait times that includes in particular a timeline, performance targets and specific measures for the addition of human resources, with a view to phone access within a reasonable length of time.

ASSESSMENT IN 2019-2020

THE QUÉBEC OMBUDSMAN:

- **NOTES** that the Department intends to introduce an access strategy as well as approximately ten measures to resolve the problem, including adding 16 positions.
- **IS DISSATISFIED** because in 2019-2020, it has continued to receive complaints about access to student financial assistance phone lines.
- **IS DISSATISFIED** because the Department has not acted on its recommendation and has not produced an action plan with a timeline and targets.
- **IS DISSATISFIED** because the Department has not sent it, as promised, the statistics on phone access as at December 31, 2019.

The Québec Ombudsman is therefore continuing its intervention.

MINISTÈRE DE LA JUSTICE

RECOGNIZING FILIATION WHEN A PARENT DIES BEFORE HIS/HER CHILD IS BORN

RECOMMENDATION IN 2018-2019

- The Québec Ombudsman recommends that the Ministère de la Justice:
- Propose an amendment to the *Civil Code of Québec* whereby declaration of filiation by a parent whose common-law spouse died before their child was born may be carried out without a judicial procedure.

ASSESSMENT IN 2019-2020

THE QUÉBEC OMBUDSMAN:

- **NOTES** that the Department intends to settle this question as part of its reform of family law.
- **NOTES** that from March 15 to June 28, 2019, the Government of Québec consulted citizens on the reform of family law. This consultation is now completed.
- **NOTES** that further to the consultation, the Minister of Justice intends to introduce two bills at the National Assembly, one on filiation and the other on conjugalité, so as to successfully carry out the reforms deemed appropriate.
- **NOTES** that the Directeur de l'état civil has established an interim measure. It now informs parents in this situation about the possibility of legal aid on the child's behalf with a view to limiting the legal fees for court proceedings to recognize the filiation of a deceased parent.
- **WILL MONITOR** developments in the reform of family law.

CORRECTIONAL SERVICES

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE

USE OF RESTRAINTS

RECOMMENDATION IN 2018-2019

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

- By December 2019, bring into force an instruction providing for systematic reassessment of the use of restraints after a maximum of two weeks in order to prevent their unwarranted use.

ASSESSMENT IN 2019-2020

THE QUÉBEC OMBUDSMAN:

- **IS DISSATISFIED** because no new instruction has been brought into force.

SOLITARY CONFINEMENT

RECOMMENDATION IN 2018-2019

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

- Pending a new provincial instruction governing solitary confinement, apply the provisions of the Mandela Rules on solitary confinement so that, as of December 1, 2019, it is limited to a maximum of 15 days.

ASSESSMENT IN 2019-2020

THE QUÉBEC OMBUDSMAN:

- **IS DISSATISFIED** because despite the Department's commitment, there is still no instruction governing solitary confinement and the Department does not abide by the Mandela Rules.

BAIE-COMEAU CORRECTIONAL FACILITY

RECOMMENDATION IN 2018-2019

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

- By December 31, 2019, provide it with an action plan and timeline aimed at improving the detention conditions of the inmates at Baie-Comeau correctional facility.

ASSESSMENT IN 2019-2020

THE QUÉBEC OMBUDSMAN:

- **IS SATISFIED**
 - with the changes made to the schedule for returning detainees to their cell;
 - with the repairs and painting done in numerous living quarters;
 - with the authorization to use civilian coats.
- **WILL MONITOR**
 - the renovations to solitary confinement cells;
 - the addition of beds in the women's section and the section for intermittent sentences;
 - the proposed solution concerning permanent posting of the Québec Ombudsman's phone number;
 - improvements with a view to respecting detainees' cell privacy.

RETURNING PERSONAL BELONGINGS TO DETAINEES

RECOMMENDATION IN 2018-2019

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

- By March 31, 2020, modify the provincial instruction concerning the management of personal belongings to specify that if detainees are not given back their street clothing within a maximum of 48 hours, they be given a change of clothing.

ASSESSMENT IN 2019-2020

THE QUÉBEC OMBUDSMAN:

- **IS DISSATISFIED** because it is still awaiting modification of the provincial instruction.

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE AND MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX

TRANSFER OF HEALTH AND SOCIAL SERVICES RESPONSIBILITIES IN CORRECTIONAL FACILITIES

RECOMMENDATIONS IN 2018-2019

The Québec Ombudsman recommends that the Ministère de la Sécurité publique and the Ministère de la Santé et des Services sociaux:

- Complete the transfer of responsibilities for all correctional facilities as soon as possible.

The Québec Ombudsman recommends that the Ministère de la Sécurité publique and the Ministère de la Santé et des Services sociaux:

- Establish and disseminate clear guidelines to standardize practices in correctional facilities and put in place mechanisms for ensuring that the staff from the Ministère de la Sécurité publique as well as that of integrated health and social services centres and of integrated university health and social services centres understand and apply these guidelines.

The Québec Ombudsman recommends that the Ministère de la Sécurité publique and the Ministère de la Santé et des Services sociaux:

- Ensure that detainees have access to health services equivalent to those provided to the general population with comparable needs.

ASSESSMENT IN 2019-2020

THE QUÉBEC OMBUDSMAN:

- **IS DISSATISFIED** because it has not obtained any official response about the transfer of the two remaining infirmaries (in Montréal and Québec City).

THE QUÉBEC OMBUDSMAN:

- **IS SATISFIED** because in August 2019, the Ministère de la Sécurité publique and the Ministère de la Santé et des Services sociaux co-authored and co-signed a document setting out the guidelines for health services in correctional facilities in the context of the transfer of responsibilities.
- **WILL MONITOR** the application of these guidelines and the aspects of the transfer that must be finalized.

THE QUÉBEC OMBUDSMAN:

- **IS SATISFIED** because the guidelines selected by the Ministère de la Santé et des Services sociaux and the Ministère de la Sécurité publique are based on the principle whereby all detainees have the right to health services equivalent to those available to the general population.
- **WILL MONITOR** the service offering in correctional facilities based on this principle.

HEALTH AND SOCIAL SERVICES NETWORK

RÉGIE DE L'ASSURANCE MALADIE DU QUÉBEC

ACCESS TO THE PUBLIC HEALTH SYSTEM FOR QUÉBEC-BORN CHILDREN WHOSE PARENTS HAVE A PRECARIOUS MIGRATORY STATUS

RECOMMENDATION IN 2018-2019

The Québec Ombudsman recommends that the Régie de l'assurance maladie du Québec:

- Give full effect to the provisions of the *Health Insurance Act* and of the *Regulation respecting eligibility and registration of persons in respect of the Régie de l'assurance maladie du Québec* by considering as residents of Québec for the purposes of eligibility for the public health insurance plan all unemancipated minor children:
 - who are born in Québec,
 - for whom Québec is their regular place of residence,
 - who are in Québec more than 183 days per calendar year.

ASSESSMENT IN 2019-2020

THE QUÉBEC OMBUDSMAN:

- **IS DISSATISFIED** because the Régie de l'assurance maladie du Québec still refuses to cover Québec-born children whose parents have a precarious migratory status.
- **NOTES** that at the request of the Minister of Health and Social Services, an interdepartmental committee was been struck to, among other things, offer possible solutions so that Québec-born children, regardless of their parents' immigration status, are covered by the Régie de l'assurance maladie.
- **WILL MONITOR** follow-up to the committee report.



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