



PROTECTEUR
DU CITOYEN

2021-2022 ANNUAL REPORT



2021-2022
ANNUAL
REPORT





September 2022

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 52nd Annual Report of the Québec Ombudsman for the fiscal year 2021-2022.

For the French version of this document, an annual report on the management of the Québec Ombudsman for the same period was also produced, in accordance with section 35.1 of the *Public Protector Act*.

Yours respectfully,



Marc-André Dowd
Québec Ombudsman

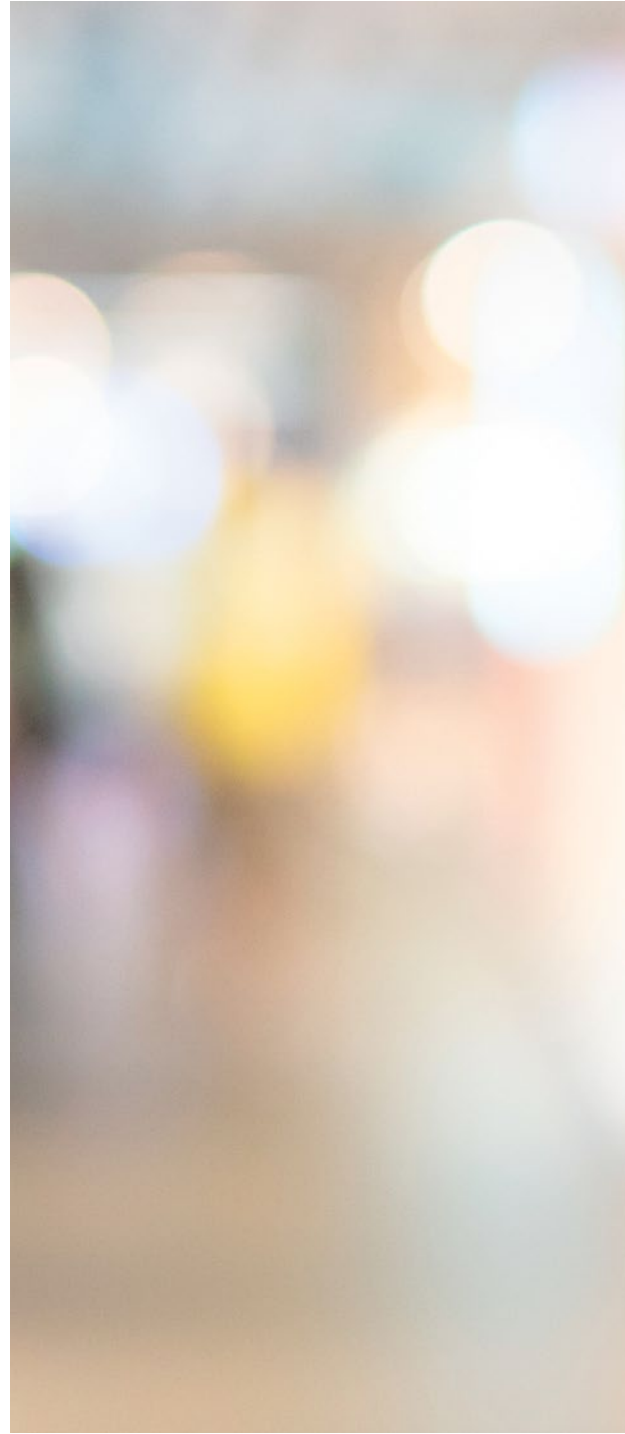


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Notice

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.

MARC-ANDRÉ DOWD



MESSAGE FROM THE QUÉBEC OMBUDSMAN

GETTING BACK ON OUR FEET AGAIN AFTER THE HARSH BLOWS OF THE PANDEMIC

My thanks

I would like to begin by paying tribute to Ms. Marie Rinfret, the Québec Ombudsperson, whom I have the honour of succeeding. Throughout her term of office, she marshalled her vast experience, determination, team spirit and compassion for vulnerable people in order to serve society and improve the quality of public services.

Because the end of Ms. Rinfret's term of office coincided with that of the period covered by this Annual Report, this review of 2021-2022 is hers. The findings, gains, and recommendations of this report reflect the priorities she embraced. I therefore sincerely thank the Ombudsperson who preceded me. I intend to act resolutely and to build on what came before.

Turning the corner, moving ahead and inspiring trust

At the time this Annual Report was being written, Québec, and indeed, the world, was still being battered by successive waves of COVID-19. In March 2020, everything came to a standstill that has lasted longer than expected. In March 2022, the virus has continued to spread and taken a brutal toll on the physical and mental health of a large portion of the population. Many people have emerged bruised from the past 24 months of the pandemic.

Public services tasked to act on people's needs are also out of breath, one of the reasons being absenteeism due to COVID-19. What's more, they have had to tackle the colossal challenge of urgent technological reorganization dictated by health measures. Add to this the daunting feat of juggling work and family life. Also due to the pandemic, these same public services have had to respond more often than usual to people in acute distress.

Overall, Québec is in the throes of collective weariness while at the same time expressing a strong will to deal with a "new normal." **Thus, "living with the virus" as the authorities urge us to do from now on, is not only a personal challenge in**

order to avoid contracting and spreading the virus, but also a societal issue if we are to get back on our feet again after the harsh blows of the pandemic. If we have learned anything from the past two years, it is that people and organizations can veer quickly to fight a totally unknown virus. One catchphrase has been "to reinvent oneself," an ongoing process that has many permutations across the board.

Personally, I consider that this period, when necessity is the mother of creativity and invention, must be an opportunity for public services to refocus on their reason for being—their duty to respond to people's needs appropriately, with the right intensity and at the right time.

We've seen it happen. When means must be deployed immediately and everyone's safety is threatened, energy and resources are mobilized. I am appealing to this agility to reformat and enrich the slate of services as needed. This must give rise to a climate of trust between service providers and service users, who will be reassured to see that they are at the heart of providers' priorities.

Among the sectors where shortcomings remain glaring are care and services to people with mental disorders, disabilities or special needs. Time and again, our investigations showed that staff try to make improvements. Unfortunately, staff shortages lead to cruel service cuts that undermine the policies guaranteeing access to these resources. The same holds true for services in day centres for people with disabilities and respite resources for informal caregivers. The trend is clearly more towards service shrinkage than towards personalizing services based on needs. In both cases, the fallout is felt by people who are particularly vulnerable.

This Annual Report recounts numerous situations in which, sadly, government strays from its mandate. A case in point is the Direction générale de l'indemnisation des victimes d'actes criminels (DGIVAC), which at times restrictively applies its own requirements for awarding financial

assistance, thereby depriving victims of support crucial to their recovery. The Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) handled a complaint from a person from a First Nation who felt that she had suffered workplace harassment because of her Indigenous origins. The agency deemed the jokes acceptable in the circumstances, a decision which the Québec Ombudsman investigated and acted to have modified. The Ombudsman also saw that Retraite Québec used shoddy practices when refusing to grant a surviving spouse's pension to someone who qualified for it. In another case, even though the Ministère de la Sécurité publique itself admits that Leclerc de Laval correctional facility for women is completely inappropriate (run-down and an inadequate environment), it is still dragging its heels in building a new facility for women. Another example among many has to do with integrated health and social services centres and integrated university health and social services centres (CISSSs and CIUSSSs) which are loath to rein in operators of residential resources for the elderly because of the shortfall between supply and demand.

At a time when numerous practices within government departments and agencies are evolving because of an intransigent virus and its attendant constraints, this **sea change must be geared towards solutions and innovations that reassure citizens that they are being heard and that their essential needs are being taken into account.**

Give full access to services in a post-pandemic era

Since March 2020, Internet and digital technologies have allowed public services to interact with their client populations virtually and therefore integrate measures to counter COVID-19. This adaptation is part of a movement towards distance communication that was already underway by means of computerized tools. For example, it is now possible for people to access programs and services without having to leave home or deal with lengthy wait times for swamped phone services. The advantages of this new proximity are many, given Québec's sheer size and the lineups at public service outlets in major urban centres. However, we can expect that there will be less human contact between service users and the people who deliver these services from the different administrations.

I believe that we have not yet fully grasped the extent of today's constantly changing reforms and of the reforms on the horizon. **However, at this point, when many an application remains to be defined, it is paramount that the authorities concerned configure systems and their use in such a way that no one is left behind.** I am thinking especially about people whose age, health, general capacity, or socio-economical condition hinder their ability to use the Web. For them, the digital revolution may accentuate the ever-widening gap between their needs and the new and inaccessible world that is being foisted on them. Ingenuity and innovation must work deftly so that, beyond technical transformation, government puts people and the language of humanity at the heart of its actions and decisions.

A team devoted to First Nations and Inuit

In 2021, after exchanges with chiefs, leaders and Indigenous organization representatives, the Québec Ombudsman decided to monitor the implementation of the calls for action of the Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec (Viens Commission). Expected progress hinges on services being tailored to the reality of the communities concerned, with a view to cultural safety. The Québec Ombudsman sees this new mandate as a natural extension of its actions and a clear endorsement from its partner organizations.

As I have just recently started as Ombudsman, I would like to thank the First Nations and Inuit representatives for their desire to create this new form of collaboration between their organizations and our institution. I take real pride in saying that the Québec Ombudsman has a newly formed team dedicated to following up on the Viens Commission's commitments. I predict fruitful encounters marked by openness and mutual consideration.



Marc-André Dowd
Québec Ombudsman

VALIDATION REPORT FROM THE INTERNAL AUDITOR

[Translation]

Québec, June 30, 2022

Mr. Dowd:

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, 2022.

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, implementing analytical procedures, 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, 2022 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 unbiased institution which was headed by Ms. Marie Rinfret from March 15, 2017, to March 26, 2022. On March 27, 2022, Mr. Marc-André Dowd took office as the Québec Ombudsman for a five-year term.

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

Power to recommend

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

Power to initiate

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

Action with a collective impact

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

Preventive action

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



The Québec Ombudsman's logo

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 its every investigation.



HIGHLIGHTS

PUBLIC SERVICE 19

Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) 35

A First Nations worker filed a claim with the CNESST. She complained about psychological harassment and said, among other things, that insensitive jokes had been made about her Indigenous origins. The CNESST denied her claim. The Québec Ombudsman's investigation showed that the person had suffered real harm and that she qualified for compensation from the CNESST.

CNESST – Direction générale de l'indemnisation des victimes d'actes criminels (DGIVAC) 38

When a crime victim cannot work because of an assault, DGIVAC may grant the person an income replacement indemnity. To do this, DGIVAC must verify the person's professional status at the time they stopped working. A victim was having trouble being recognized as a self-employed worker by DGIVAC. The Québec Ombudsman acted as a go-between for DGIVAC and the person so that her status could be clarified and she could become eligible for the indemnity. This kept the case out of the court.

Ministère de l'Enseignement supérieur – Student Financial Assistance 45

In 2021, the Québec Ombudsman conducted a special investigation into Student Financial Assistance. It examined the following aspects: the decision-making process at the initial level as well as at the review level, handling of applications to recognize a major functional disability, and the process for analyzing files which may contain misrepresentation. In its report, the Québec Ombudsman noticed shortcomings in the information given to students and their access to the person who handles their file. It made 23 recommendations and is following their implementation.

Ministère de l'Immigration, de la Francisation et de l'Intégration 50

The *Act respecting administrative justice* specifies that the administrative directives that agents use to make a decision must be accessible to the client population concerned. However, the Department's guide for immigration procedures, an important document for immigration candidates, has not been available in full since August 2018. The Québec Ombudsman pointed out that this situation violates the *Act respecting administrative justice*.

Ministère de la Famille 53

The Department launched a continuous call for proposals online for creating new subsidized childcare places. A woman started to fill in the form for a given region. All of a sudden, the site crashed and was offline for several hours. The citizen, who had not completely filled out the form, finished up when the site came back online. However, her application was refused because the territory was no longer available when the site was up and running again. The Québec Ombudsman requested that her file be analyzed, and it was done.

Ministère du Travail, de l'Emploi et de la Solidarité sociale 60

A man was living in a homeless shelter. Because he had a debt of around \$6,000, the Department seized his bank account, which it had the right to do. However, the entire account (\$19,000) was seized. The Québec Ombudsman felt that the measure worsened the man's vulnerability and that the procedures that would have rectified the situation were too complex for him. As a result, the Ombudsman stepped in for him and the Department freed up the remaining \$13,000.

Retraite Québec 72

A woman applied to Retraite Québec for a surviving spouse's pension after her spouse died. She specified that at the time of the death, her spouse had been living temporarily at his mother's for a few days (court order, domestic violence). Retraite Québec refused to grant the pension because it felt that their living-as-married status had not been proven. However, the woman had declared herself as a spouse to various public services. The Québec Ombudsman considered that the proof was sufficient. Retraite Québec agreed to grant the pension.

CORRECTIONAL SERVICES 79

A new correctional facility for women 91

For several years now, female detainees have been incarcerated at Leclerc de Laval correctional facility, a run-down building that does not match their needs. The Ministère de la Sécurité publique admitted this, saying in as early as 2016 that women detainees could not be kept there long term. Given the years that have elapsed, this time the Québec Ombudsman is formally recommending that the Department make a firm decision and commit to building a new correctional facility as soon as possible.

Actions after using an inflammatory agent 92

The inflammatory agent used to subdue detainees causes intense irritation. After its use, the person and the premises must be decontaminated without delay. However, this decontamination is not always carried out by the book, and this can have major consequences for the detainees concerned. Further to an investigation by the Québec Ombudsman, authorities issued a reminder to the correctional officers who had not followed procedure. The Québec Ombudsman recommended corrective measures to the Ministère de la Sécurité publique.

COVID-19 – Reducing the prison population during the pandemic 94

Given the risk of the spread of COVID-19 in correctional settings, a ministerial order authorized the temporary release of detainees according to strict conditions. A detainee obtained permission to go home, located 700 km away. By sheer administrative inflexibility, correctional services refused to pay the fare (\$3.50) for him to get to the inter-regional bus station. Instead, they cancelled the permission. They finally reinstated permission after organizing escorted transportation. This situation as a whole caused the detainee several extra days' incarceration, took up staff time when there were staff shortages, and was very costly.

HEALTH AND SOCIAL SERVICES NETWORK 97

Disabilities 109

A woman with a disability lived with her parents. Five days a week she went to a specialized day centre under the supervision of an intellectual disability rehabilitation centre. The service was soon reduced to two days a week, mainly because of the pandemic and staff shortages. The Québec Ombudsman contacted the integrated health and social services centre (CISSS) in charge to ask it to maintain access to existing places in the day centre for this client population, including the woman in question. The CISSS agreed to this.

There are fewer and fewer respite places for the informal caregivers of people with disabilities because existing places in the various resources within the public network have been transformed into residential places. Given the importance of respite so that people can remain living at home and those who care for them do not burn out, the Québec Ombudsman recommended that a CISSS subject to a complaint continue its work to create respite places with its community partners. The CISSS accepted the recommendation.

Troubled youth 113

A woman complained to the Québec Ombudsman about police officers and Director of Youth Protection (DYP) caseworkers showing up at her house and taking her newborn baby away without explanation. At the hospital, the caseworkers saw that the marks on the baby’s body had not been caused by mistreatment, but by a dermatological condition. The Québec Ombudsman made three recommendations to the CISSS in charge to ensure that emergency services act with compassion during their interventions. The DYP issued reminders to the caseworkers and the CISSS pledged to continue to reflect on the matter.

Support for elderly autonomy 136

In November 2021, the Québec Ombudsman released a special report on how the COVID-19 crisis was handled in residential and long-term care centres (CHSLDs) during the first wave of the pandemic. In December 2020, it had published a progress report on the subject based on first-hand witness statements. The final report brought major flaws into sharp relief. The Québec Ombudsman made 27 recommendations to the Ministère de la Santé et des Services sociaux and to the Minister of Health.

In Québec, CISSS and CIUSSS gateways for access to public residential resources receive 21,000 applications each year. In October 2021, the Québec Ombudsman published a special report titled *For access to public residential resources that respects the rights and needs of elderly people and of their families* that made 14 recommendations to the Ministère de la Santé et des Services sociaux. These aimed at improving the rules and practices surrounding access to public residential resources and strengthening respect for the rights and needs of elderly people and their families at every step of the process of finding the appropriate resource.

During its investigations, the Québec Ombudsman has seen that certain private seniors’ residences (RPAs) refuse to comply with the standards that apply to their mission, despite frequent reminders from the CISSSs or CIUSSSs responsible for certifying them. For their part, CISSSs and CIUSSSs hesitate to sanction the residences at fault, mainly because of the lack of residential resources and the desire to maintain existing ones. The operator of about 100 RPA-type rental units refused to do the repairs that the CIUSSS instructed him to do, for example, something as simple as fixing a stair ramp. The Québec Ombudsman got the man to repair the ramp and asked the CIUSSS to produce a procedure for an escalating scale of measures to apply when operators fail to fulfil their obligations.

PUBLIC INTEGRITY 147

A serious breach of the standards of ethics and professional conduct combined with misuse of public funds or property 165

According to a disclosure, a university professor had used his professional position to favour his personal company in the awarding of contracts, operated his company during work hours and used the university's facilities for the company. The Québec Ombudsman made recommendations to the university aimed at curbing this behaviour.

Gross mismanagement 166

According to a disclosure, the authorities of a government department had favoured certain organizations in awarding contracts under one of its programs. The budget concerned, in the tens of millions of dollars, is administrative and discretionary. There are no rules governing the minister's discretionary power. The investigation therefore showed that the line between the political component of the cabinet and the Department's administrative mechanism was permeable. The Québec Ombudsman recommended that the Department ensure the integrity of the political-administrative interface and the impartiality of the process leading to the awarding of subsidies.

Recommendation even though no wrongdoing occurred 168

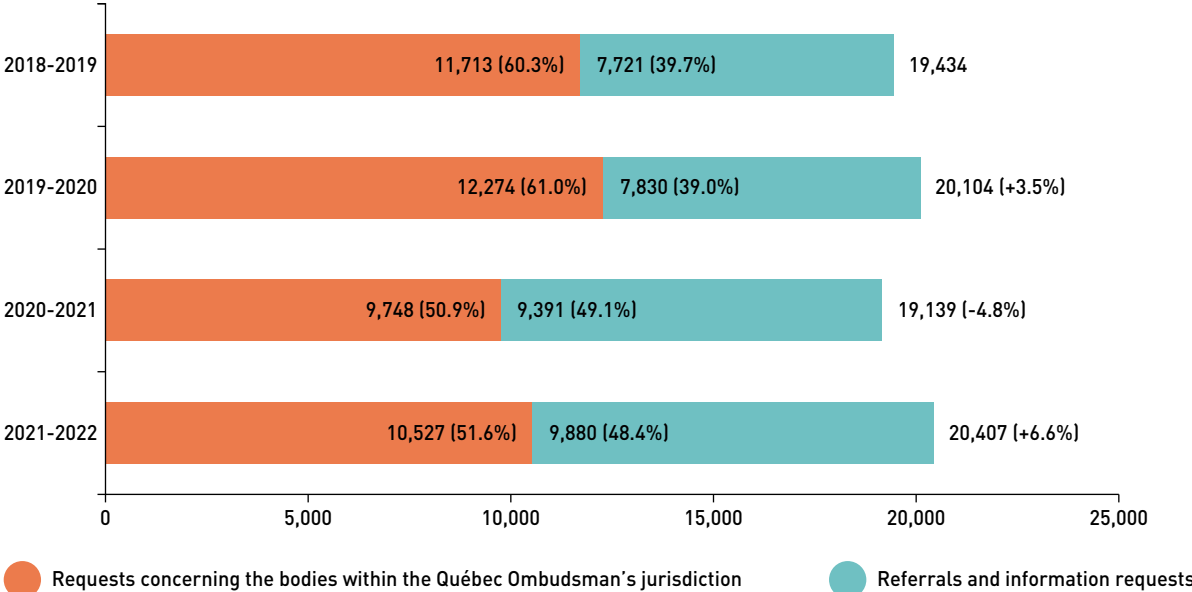
A not-for-profit organization had signed service agreements with four school service centres (CSSs) with a view to offering distance adult general education via an interactive digital platform and a student recruitment service. Thousands of students were therefore referred to the four CSSs, which then proceeded to enrol students and provide any assistance they might need with the enrolment. However, approximately 90% of registered students did not consult, or hardly consulted, the Web platform. The CSSs therefore received money per declared course from the Department and paid for unused services at high cost. Even though no wrongdoing occurred per se, the Québec Ombudsman made recommendations to the Department concerned.

A FEW STATISTICS

The period covered by this Annual Report ended on March 31, 2022.

Note that the period covered in this Report corresponds to a second full year of the COVID-19 pandemic. It goes without saying that the daily operations of public services were affected, as were people’s priorities during this difficult period. The Québec Ombudsman’s findings in its 2021-2022 Annual Report must therefore be taken in context and understood in light of this exceptional situation.

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.

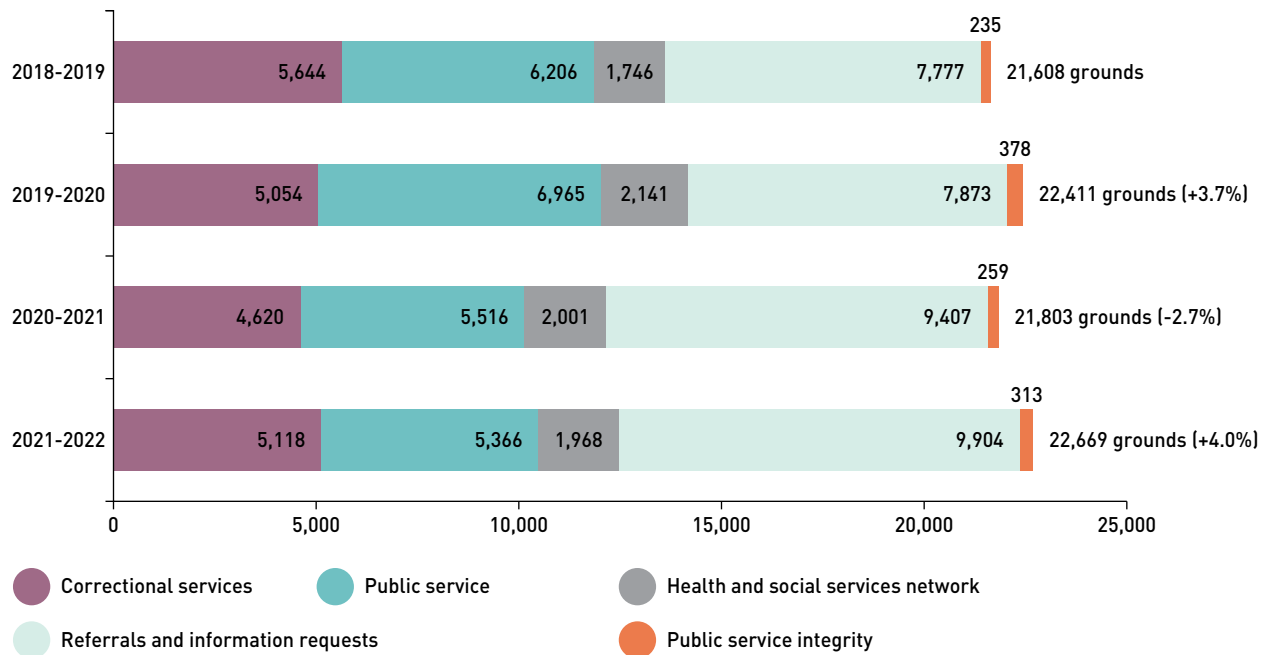
Requests that may give rise to an intervention pursuant to one of the three laws that govern the Québec Ombudsman's action (*Public Protector Act*, *Act respecting the Health and Social Services Ombudsman*, and *Act to facilitate the disclosure of wrongdoings relating to public bodies*) are presented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

In 2021-2022, the total number of requests received by the Québec Ombudsman increased by 6.6% (from 19,139 to 20,407). Of this number, 51.6% fell within the Ombudsman's jurisdiction—an 8% increase over last year's figure (from 9,748 to 10,527).

Requests that did not fall under the institution's jurisdiction (in turquoise) increased by 5.2% compared with last year's number (from 9,391 to 9,880). 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. In 2021-2022, there were 22,699 grounds among the 20,499 closed requests for service.



The total number of closed requests for service increased by 4.0% compared to last year. Grounds under the Québec Ombudsman's jurisdiction (correctional services, public service, health and social services network and public service integrity) increased by 3.0%.

- Public service: closed requests for service decreased by 2.7% compared to last year (from 5,516 to 5,366).
- Correctional services: closed requests increased by 10.8% compared to last year (from 4,620 to 5,118).

- Health and social services network: closed requests decreased by 1.6% compared to last year (2,001 to 1,968). Closed complaints and requests for assistance decreased by 6.6% (from 1,725 to 1,611). Closed reports and requests for assistance increased by 29.3% (from 276 to 357).
- Public integrity (mandate stemming from the *Act to facilitate the disclosure of wrongdoings relating to public bodies*): closed requests increased by 20.8% compared to last year (from 259 to 313).

PUBLIC SERVICE





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.

Note that the period covered in this Report corresponds to a second full year of the COVID-19 pandemic. It goes without saying that the daily operations of public services were affected, as were people's priorities during this difficult period. The Québec Ombudsman's findings in its 2021-2022 Annual Report must therefore be taken in context and understood in light of this exceptional situation.

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 2021-2022, the Québec Ombudsman intervened regarding 56 of the 79 departments and agencies subject to its jurisdiction (70.9%).

1 CLOSED COMPLAINTS AND REQUESTS FOR ASSISTANCE

Trends in closed complaints and requests for assistance

	2018-2019	2019-2020	2020-2021	2021-2022
Requests for assistance	494	511	342	389
Substantiated complaints	772	804	687	709
Mediation	18	20	23	23
Unsubstantiated complaints	2,713	2,360	1,932	2,041
Could not take a definitive position	60	47	40	31
Referred complaints	161	166	184	155
Suspended complaints	1,988	3,057	2,308	2,018
TOTAL	6,206	6,965	5,516	5,366
Difference with the preceding year	-	+12.2%	-20.8%	-2.7%

Note / 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 to both parties in an attempt to foster a resolution.

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**.

A complaint may also be **suspended**. This may happen when the ground for complaint is inadmissible because it is not within the Québec Ombudsman's purview (e.g. when a complaint concerns labour relations). Pursuant to section 19.1 of the *Public Protector Act*, termination may also occur when the ground for complaint is admissible but the citizen has not followed up or withdraws the complaint because the situation

is resolved during the investigation, or because the Québec Ombudsman refuses to undertake or continue processing.¹

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 any corrective measures have been taken to the Québec Ombudsman's satisfaction.

Detailed results

There was a 2.7% decrease in closed complaints and requests for assistance compared to last year and a decrease of 13.9% compared to the average for the past three years.

The bodies for which a marked decrease in closed requests occurred in 2021-2022 were:

- Ministère de l'Immigration, de la Francisation et de l'Intégration (from 840 to 260);
- Société de l'assurance automobile du Québec (from 628 to 471);
- Ministère de la Sécurité publique (Correctional services excluded – from 150 to 80);
- Retraite Québec (from 231 to 188).

Greatest variations in closed complaints and requests for assistance

DEPARTMENT / AGENCY	2020-2021	2021-2022	VARIATION	NUMBER
Ministère de l'Immigration, de la Francisation et de l'Intégration	840	260	Decrease	-580
Société de l'assurance automobile du Québec	628	471	Decrease	-157
Ministère de la Sécurité publique (Correctional services excluded)	150	80	Decrease	-70
Retraite Québec	231	188	Decrease	-43
Ministère du Travail, de l'Emploi et de la Solidarité sociale	538	639	Increase	+101
Régie de l'assurance maladie du Québec	143	247	Increase	+104
Agence du revenu du Québec	474	578	Increase	+104
Ministère de la Santé et des Services sociaux	216	375	Increase	+159

1/ The Québec Ombudsman may refuse to intervene or may stop processing a request when:

- A requirement which it prescribed has not been met (paragraph 1 of s. 19.1 of the *Public Protector Act*);
- The request is frivolous, vexatious or made in bad faith (paragraph 2 of s. 19.1 of the *Public Protector Act*);
- An intervention is not expedient in view of the circumstances (paragraph 3 of s. 19.1 of the *Public Protector Act*);
- The deadline for handling the file by the body concerned has not expired. The request is therefore deemed premature (paragraph 3 of section 19.1 of the *Public Protector Act*).

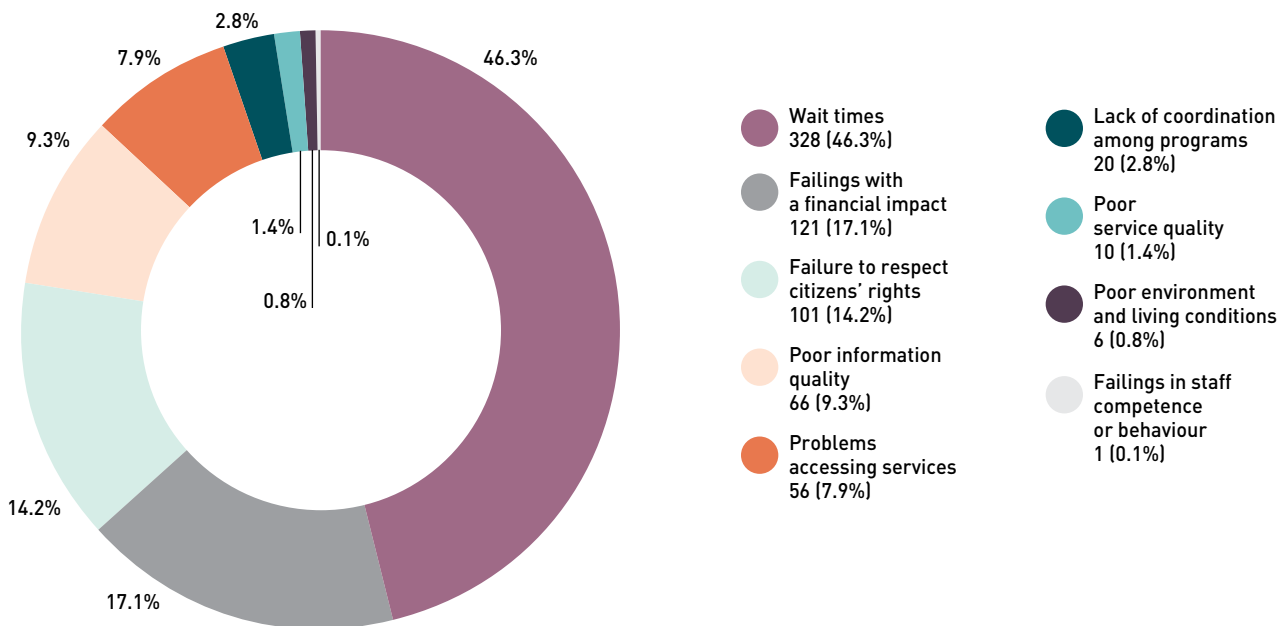
Despite the decrease in closed requests, there was a marked increase in requests received by the Québec Ombudsman concerning the following departments and agencies:

- Ministère de la Santé et des Services sociaux (from 216 to 375);
- Agence du revenu du Québec (from 474 to 578);
- Régie de l'assurance maladie du Québec (from 143 to 247);
- Ministère du Travail, de l'Emploi et de la Solidarité sociale (from 538 to 639).

2 SUBSTANTIATED COMPLAINTS

The proportion of substantiated complaints is established as follows: Number of substantiated complaints/Number of substantiated and unsubstantiated complaints. This year, this proportion decreased by 0.4 percentage points.

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, failings with a financial impact and failure to respect citizens' rights accounted for 77.6% of substantiated complaints (550 grounds for complaint).

Proportion of substantiated complaints

2018-2019	2019-2020	2020-2021	2021-2022
22.2%	25.4%	26.2%	25.8%

Departments with at least 10 substantiated complaints in 2021-2022

DEPARTMENT	SUBSTANTIATED COMPLAINTS			
	2018-2019	2019-2020	2020-2021	2021-2022
Travail, Emploi et Solidarité sociale	128	101	29	48
Santé et Services sociaux	3	9	19	37
Immigration, Francisation et Intégration	35	33	160	29
Enseignement supérieur	35	32	15	19
Transports	5	8	4	17
Énergie et Ressources naturelles	8	6	11	13
Affaires municipales et Habitation	9	2	6	13
Sécurité publique – Correctional services excluded	65	55	27	12

Agencies with at least 10 substantiated complaints in 2021-2022

AGENCY	SUBSTANTIATED COMPLAINTS			
	2018-2019	2019-2020	2020-2021	2021-2022
Commission des normes, de l'équité, de la santé et de la sécurité du travail	182	235	148	189
Régie de l'assurance maladie du Québec	23	30	28	92
Agence du revenu du Québec	62	79	46	54
Société de l'assurance automobile du Québec	58	75	71	46
Curateur public	15	19	11	19
Commissaire à la déontologie policière	11	12	9	18
Retraite Québec	33	33	26	16
Tribunal administratif du logement	5	8	3	14
Office de la protection du consommateur	6	1	15	10

This year, an increase in substantiated complaints was seen regarding the following departments and agencies:

- Ministère du Travail, de l'Emploi et de la Solidarité sociale;
- Ministère de la Santé et des Services sociaux;
- Ministère de l'Enseignement supérieur;
- Ministère des Transports;
- Ministère de l'Énergie et des Ressources naturelles;
- Ministère des Affaires municipales et de l'Habitation;
- Commission des normes, de l'équité, de la santé et de la sécurité du travail;
- Régie de l'assurance maladie du Québec;
- Agence du revenu du Québec;
- Curateur public;
- Commissaire à la déontologie policière;
- Tribunal administratif du logement.

Substantiated complaints decreased for the following departments and agencies:

- Ministère de l'Immigration, de la Francisation et de l'Intégration;
- Ministère de la Sécurité publique (Correctional services excluded);
- Société de l'assurance automobile du Québec;
- Retraite Québec;
- Office de la protection du consommateur.

3 MONITORING OF CORRECTIVE MEASURES

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

Accepted case-specific measures

2018-2019	2019-2020	2020-2021	2021-2022	2021-2022	
				ACCEPTED	REFUSED
98.6%	98.3%	97.1%	99.6%	249	1

Accepted measures with a collective impact

2018-2019	2019-2020	2020-2021	2021-2022	2021-2022	
				ACCEPTED	REFUSED
98.0%	97.8%	97.8%	83.3%	30	6

4

**CLOSED REQUESTS BY DEPARTMENT
OR AGENCY, BY PROCESSING OUTCOME²**

AGENCY	REQUESTS RECEIVED IN 2021-2022	CLOSED REQUESTS IN 2021-2022							TOTAL
		REQUESTS FOR ASSISTANCE	COMPLAINTS					SUSPENDED	
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED		
Agence du revenu du Québec									
Unclaimed property	14		1	5				7	13
Taxation	446	53	38	195	10	2	3	161	462
Support payments	75	2	12	40			3	18	75
General	28	5	3	5			2	13	28
Total: Agence du revenu du Québec	563	60	54	245	10	2	8	199	578
Autorité des marchés financiers									
	3			1				3	4
Bureau d'audiences publiques sur l'environnement									
	1							1	1
Bureau des enquêtes indépendantes									
	1							1	1
Bureau du coroner									
	11		2	2			1	7	12
Comité de déontologie policière									
	5			1				3	4
Commissaire à la déontologie policière									
	100	7	18	48			1	38	112
Commissaire à la lutte contre la corruption									
	2								-
Commission d'accès à l'information									
	23	1	4	3				11	19
Commission de la fonction publique du Québec									
	2			1				1	2
Commission de protection du territoire agricole du Québec									
	17		4	5				4	13
Commission des normes, de l'équité, de la santé et de la sécurité du travail									
Pay equity	15			1				14	15
Compensation	410	34	52	137	2	2	8	176	411
Crime victim compensation	435	23	135	151	1	4	9	116	439
Labour standards	63	7	1	21		1		31	61
General	37	4	1	9		1	3	22	40
Total: Commission des normes, de l'équité, de la santé et de la sécurité du travail	960	68	189	319	3	8	20	359	966
Commission des transports du Québec									
	1			1					1
Commission municipale du Québec									
	9			4				5	9
Conseil de la justice administrative									
	6		1	1				4	6
Conseil de la magistrature									
	2							2	2
Curateur public									
	214	18	19	78		1	2	86	204
Directeur des poursuites criminelles et pénales									
	14							14	14

2/ The number of closed requests in one year 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 2021-2022	CLOSED REQUESTS IN 2021-2022							TOTAL
		REQUESTS FOR ASSISTANCE	COMPLAINTS					SUSPENDED	
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED		
Institut de la statistique du Québec	1	1							1
La Financière agricole du Québec	1			1					1
Office de la protection du consommateur	40	8	10	8			1	12	39
Office des personnes handicapées du Québec	1							1	1
Office des professions du Québec	8		1	3				2	6
Office québécois de la langue française	8	1	2	2			2	1	8
Régie de l'assurance maladie du Québec	239	14	92	99			2	40	247
Régie des alcools, des courses et des jeux	3	2						1	3
Régie des marchés agricoles et alimentaires du Québec	1								-
Régie du bâtiment du Québec	19			8			2	10	20
Retraite Québec									
Québec Pension Plan and Family Allowance	140	23	14	66	1	2	2	41	149
Public sector pension plan	27	3	2	14			1	12	32
General	7	2		3				2	7
Total: Retraite Québec	174	28	16	83	1	2	3	55	188
Secrétariat du Conseil du trésor	3							3	3
Service administratif de rajustement des pensions alimentaires pour enfants	2	1		1					2
Société de l'assurance automobile du Québec									
Highway Safety Code	202	13	29	113			5	52	212
Compensation	216	22	17	116	3	4	7	82	251
General	7	1		1			1	5	8
Total: Société de l'assurance automobile du Québec	425	36	46	230	3	4	13	139	471
Société d'habitation du Québec	65	6	2	22			2	53	85
Tribunal administratif du logement	183	25	14	34	2	5	16	79	175
Tribunal administratif du Québec	15	2		4				9	15
Tribunal administratif du travail									
Employment injuries	4			1				3	4
Labour relations	18		6					12	18
General	11		2	1		1		7	11
Total: Tribunal administratif du travail	33		8	2		1		22	33
TOTAL: Agencies	3,155	278	482	1,206	19	23	73	1,165	3,246

DEPARTMENT	REQUESTS RECEIVED IN 2021-2022	CLOSED REQUESTS IN 2021-2022							TOTAL
		REQUESTS FOR ASSISTANCE	COMPLAINTS					SUSPENDED	
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED		
Affaires municipales et Habitation	67	3	13	24	1		2	27	70
Agriculture, Pêcheries et Alimentation	28		3	9	1			12	25
Conseil exécutif	1							1	1
Culture et Communications	4		1	4	1				6
Cybersécurité et Numérique	10		1					1	2
Économie et Innovation	8		1	2				5	8
Éducation	183	3	7	34			3	109	156
Énergie et Ressources naturelles	67	3	13	30		1		20	67
Enseignement supérieur									
Student Financial Assistance	134	5	18	64		2	1	39	129
Higher education	23		1	7			2	14	24
General	2			2				1	3
Total: Enseignement supérieur	159	5	19	73		2	3	54	156
Environnement et Lutte contre les changements climatiques	51	2	6	13			3	20	44
Famille	99	5	8	15		2	5	50	85
Finances	8	1		5				2	8
Forêts, Faune et Parcs	35		5	15				14	34
Immigration, Francisation et Intégration	213	11	29	93			4	123	260
Justice	53	5	7	12			1	25	50
Santé et Services sociaux	374	31	37	132			13	162	375
Sécurité publique									
Civil protection		1	6	27	1	2		6	43
General			6	6			1	24	37
Total: Sécurité publique	68	1	12	33	1	2	1	30	80
Tourisme	4	1		2				1	4
Transports	53	3	17	12			1	17	50
Travail, Emploi et Solidarité sociale									
Directeur de l'état civil	56	1	11	30		1	3	10	56
Emploi-Québec	58	1	4	36			9	13	63
Québec Parental Insurance Plan	9	1	2	6			1		10
Registraire des entreprises	5			2				3	5
Employment	2	1						1	2
Services Québec	12		1	1			2	8	12
Social Solidarity	499	33	30	252			30	144	489
General	3						1	1	2
Total: Travail, Emploi et Solidarité sociale	644	37	48	327		1	46	180	639
TOTAL: Departments	2,129	111	227	835	4	8	82	853	2,120
TOTAL: Departments and agencies	5,284	389	709	2,041	23	31	155	2,018	5,366

General remark

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

- Agence du revenu du Québec (Revenu Québec);
- Commission de protection du territoire agricole du Québec;
- Commission des normes, de l'équité, de la santé et de la sécurité du travail;
- Ministère de l'Éducation;
- Ministère de l'Énergie et des Ressources naturelles;
- Ministère de l'Enseignement supérieur;
- Ministère de l'Immigration, de la Francisation et de l'Intégration;
- Ministère de la Famille;
- Ministère de la Justice;
- Ministère de la Sécurité publique;
- Ministère du Travail, de l'Emploi et de la Solidarité sociale;
- Office de la protection du consommateur;
- Office québécois de la langue française;
- Retraite Québec;
- Société d'habitation du Québec;
- Société de l'assurance automobile du Québec.

AGENCE DU REVENU DU QUÉBEC

(REVENU QUÉBEC)

Handling taxpayer requests

In its service statement, Revenu Québec pledges to provide taxpayers with complete and reliable information concerning their tax file. This statement is consistent with Revenu Québec's desire to offer quality public services. Revenu Québec's *Charter of Taxpayers' and Mandataries' Rights* expressly states the right to quality service.

In 2021-2022, the Québec Ombudsman handled a dozen or so complaints from people about a lack of rigour by agents in processing their requests. In most files, the information provided to these people was insufficient or inaccurate.

In the Québec Ombudsman's opinion, the problem must not be assessed from the angle of the number of complaints handled, but rather, based on the omissions observed. As a rule,

these complaints could have been avoided if the person's request had been handled attentively. In the various cases, the explanations and proof provided by taxpayers were sufficient for Revenu Québec to make the necessary corrections, but the agency did not act in the person's best interests. The Québec Ombudsman had to intervene based on this same evidence.

As the Québec Ombudsman sees it, Revenu Québec agents must:

- Be able to inform its clientele adequately, especially in the context of the pandemic, when certain issues, including financial ones, weigh more heavily than they would in normal times;
- Do all required checking;
- Take citizens' versions into account.



HANDLE EACH CASE WITH THE RIGOUR REQUIRED

A person received a notice of assessment from Revenu Québec for his company, informing him that it had not received a document he had been asked to provide. He contacted Revenu Québec. An agent told him Revenu Québec had indeed received the document, despite the notice to the contrary. The person also received this confirmation by email, with the date of the document's reception.

Then Revenu Québec sent him another notice of assessment that contained another piece of inaccurate information. The man had already provided the required document by the prescribed deadline. He sent Revenu Québec a copy of the email message and the following proof:

- An acknowledgement of receipt from Revenu Québec's computer system confirming that the document had been sent, with a reference number;
- A bank statement showing that Revenu Québec had cashed the cheque.

The man contacted Revenu Québec several times to have the notice of assessment cancelled, but to no avail. Each time he tried, the agency held its ground. This situation was even more surprising because it amounted to saying that Revenu Québec had not taken into account an email message that its own system had sent to the man.

Revenu Québec suggested that the man file an objection (contest the notices of assessment by means of Revenu Québec's administrative review mechanism). The man complained to the Québec Ombudsman.

During the Québec Ombudsman's first intervention, Revenu Québec continued to say that the document had not been sent to it. It was only after the taxpayer's proof had been sent by the Québec Ombudsman that Revenu Québec finally cancelled the notice of assessment and proceeded to issue reimbursement.



TAKE TAXPAYERS' VERSIONS INTO ACCOUNT IN ORDER TO SPARE THEM THE CONSEQUENCES OF ADMINISTRATIVE ERRORS

Revenu Québec cut part of an elderly woman's solidarity tax credit. This credit is designed to help low- to middle-income families. In the case at hand, Revenu Québec had made this cut because the woman supposedly had a tax debt. However, she had already reimbursed the debt.

She tried several times to get information about her file from Revenu Québec. She did not get any clear explanations from any agent whatsoever, notably about the cheques she had sent to pay off her debt in full. Among other actions, she had faxed Revenu Québec a letter providing all useful information concerning proof of payment of her debt as well as about Revenu Québec cashing the cheques.

She remained without a satisfactory response from the agency, so she complained to the Québec Ombudsman. After the Ombudsman intervened, Revenu Québec acknowledged that mistakes had occurred with the cheque transactions. During the investigation, the Québec Ombudsman saw that not a single agent had detected their mistakes despite the woman's many queries. What's more, the agent who had received the explanatory documents had filed them without processing them.

In the end, the woman obtained the reimbursement she was owed.

Collecting child-support payments: applying collection measures

Revenu Québec is mandated to collect and issue child-support payments.

If someone must pay child support (debtor) and does not, they contract a debt towards the person who should be receiving the support (creditor). The unpaid amounts are considered arrears on the support payments. In such cases, Revenu Québec acts to try to collect the amounts. For example, it can seize the debtor's bank account or pension fund or suspend their Canadian passport through Justice Canada's digital platform. Note that passport suspension usually occurs in addition to seizure, or if seizure is not possible. When a payment agreement is made and respected, or if the debt has been repaid in full, ordinarily Revenu Québec stops the collection measures.

Two different sections are involved, one to implement collection measures and the other to manage files. In handling a complaint, the Québec Ombudsman saw that the applicable procedures did not provide for the collection section to be

informed about the reimbursement of arrears. This information came only from the citizen or only when file processing was over.

When a bank account is seized, it is safe to assume that the debtor would instinctively contact Revenu Québec quickly, as soon as the debt was cleared, so that they could regain access to their money. However, if a person whose passport was suspended has no reason to travel or to renew it, it is likely that they will not realize that the measure is ongoing. As a result, they will not approach Revenu Québec about the matter, even if all child-support arrears have been paid.

The Québec Ombudsman insisted to Revenu Québec on the importance of withdrawing the collection measure as soon as a debt is paid off. When this does not happen, people are unjustly penalized even though they dealt with their situation.

Further to the Québec Ombudsman's recommendation, Revenu Québec modified its procedures so that information exchange between the two sections is systematic.



PUT AN END TO COLLECTION MEASURES AS SOON AS THE DEBT IS CLEARED

A man owed child-support. In early 2020, by way of a collection measure, Revenu Québec suspended his passport.

In October of the same year, Revenu Québec gave him confirmation that following a new court judgment, he no longer had any child-support debt. His ex-spouse was now the debtor. As the file still contained amounts owing, Revenu Québec kept it open, which meant that the collection section was not informed about the latest developments.

In August 2021, the man applied to have his passport renewed and paid fees to have his application examined, namely, \$160 payable to Immigration, Refugees and Citizenship Canada. The fees were not reimbursable. However, his application was denied because his passport was still suspended.

Revenu Québec lifted the passport suspension as soon as the person informed it of the situation in September 2021. After the Québec Ombudsman acted, Revenu Québec reimbursed the man \$160.

COMMISSION DE PROTECTION DU TERRITOIRE AGRICOLE DU QUÉBEC

Applying the laws that protect farm land

The Commission de protection du territoire agricole du Québec (the Commission) ensures compliance with two laws (the *Act respecting the preservation of agricultural land and agricultural activities* and the *Act respecting the acquisition of farm land by non-residents*) and with the regulations stemming from them. The laws and the regulations, adopted in 1979, established a system for protecting Québec farm land and farm activities.

The *Act respecting the acquisition of farm land by non-residents* stipulates that to acquire agricultural land whose area is four hectares or more, persons who are not resident in Québec must have the Commission's authorization.

It must be specified that all applicants who have no intention of settling in Québec in the following months can purchase up to 1,000 hectares of land suitable for cultivation or raising livestock. In such cases, the Commission examines the projected use and the effect of the acquisition on:

- The price of farm land in the region;
- Economic development;
- Development of agricultural products;
- Development of under-utilized farm land;
- Land occupancy.

Note that the first section of this law lists the situations that do not constitute acquisitions within the meaning of the Act, the first one being "transmission owing to death."



DO NOT ADD A CONDITION THAT IS NOT IN THE ACT

After a close relative died, a person living outside Québec inherited half the agricultural lots on the family farm in Québec where they had grown up. In keeping with the deceased person's wishes, transmission was by means of testamentary trusts, with the deceased person's two children named as beneficiaries. In the case of the complainant, the trust was created and dissolved the same day.

Nearly two years later, the Commission sent the complainant a formal notice claiming that they had acquired agricultural lots without authorization. The person was given 90 days to sell the lots to a Québec resident or to submit an acquisition application, which costs several hundred dollars, with delays of up to several months. The person complained to the Québec Ombudsman.

As the Commission saw it, the exception provided for in the Act for transmission of farm land after a death did not apply because it was the trust, and not the person concerned, which had inherited the lots in question. The Québec Ombudsman pointed out that the Commission was requiring that transmission of the lots occur via a direct bequest, without a trust. However, this condition, which was not contained in the Act and that the Commission had added, was unreasonable. What's more, in the case at hand, the testamentary trust was but a means used to execute the wishes of the deceased.

The Commission reviewed its position, cancelled the formal notice and closed the file.



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

Recognizing a work-related psychological injury

To establish a causal link between an injury and chronic stress on the job, it must be shown that the injury is a culmination of events or situations that, when superimposed, go beyond what is acceptable in a normal, usual and foreseeable work environment.

Psychological harassment in the workplace is considered a psychosocial risk that can lead to psychological injuries. Harassment can consist of repeated vexatious behaviour, hostile or unwanted acts, actions or language, or abusive

behaviour towards a worker with a view to harming or ostracizing them. All these circumstances can be toxic for a person's psychological health and, more broadly, for the workplace.

Certain groups of people are more likely to suffer psychological harassment at work for reasons of discrimination.³ These people are therefore more exposed to the resulting psychosocial risks. As with all denounced situations, the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) must analyze claims rigorously and with openness.

3/ INSTITUT NATIONAL DE SANTÉ PUBLIQUE, "Harcèlement psychologique au travail – Les facteurs de risque du harcèlement psychologique au travail" [Online], consulted on December 20, 2021, [<https://inspq.qc.ca/risques-psychosociaux-du-travail-et-promotion-de-la-sante-des-travailleurs/harcelement-psychologique-au-travail>].



RECOGNIZE THE CHARACTERISTICS OF A PSYCHOLOGICAL INJURY

A woman from a First Nations community, alleging to be a victim of psychological harassment in the workplace, filed a claim with the CNESST. The harassment supposedly consisted of repeated vexatious behaviour related to her Indigenous origins. She wanted a psychological injury to be recognized.

The CNESST denied her claim. Given the prevailing culture, the board felt that the conduct was a “joke” that did not exceed what is acceptable within a normal, usual and foreseeable working environment. The person made use of the CNESST review mechanism, but the refusal was upheld. The worker complained to the Québec Ombudsman.

After investigating, the Ombudsman saw that the CNESST should have approved the claim given the vexatious attitudes the worker had been subjected to. As a result, it intervened with the review mechanism, arguing that the events to which the worker had been exposed had violated her dignity and psychological integrity in addition to having contributed to her isolation.

More specifically, the Québec Ombudsman’s investigation showed that the worker had been a victim many times of discriminatory language about her Indigenous background by an individual and in the presence of her co-workers. The evidence proved that the worker’s injury stemmed from this discriminatory language, which went far beyond what is acceptable in a normal, usual and foreseeable work environment. This was one of the requirements for qualifying for CNESST benefits.

At the same time, the Québec Ombudsman reminded the CNESST that the vexatious conduct must be analyzed based on the potential victim’s perception, and not only on the intention of the perpetrator. This means that the events must be considered from the viewpoint of a “reasonable person,” that is, a person who would have reacted the same way faced with the same situation. There again, the Québec Ombudsman felt that the evidence was sufficient to qualify the claimant for benefits.

After the Québec Ombudsman intervened, the CNESST approved the worker’s claim.

Costs for travelling for medical care

When a worker's health condition requires medical follow-up, the CNESST may reimburse the person for the travel costs incurred because of this follow-up. To qualify for reimbursement, the person must ask the CNESST for reimbursement before travelling and the board must approve the request. The worker must provide medical proof of the need for care and having to travel to obtain it. The amounts can be for public transit costs, mileage with a personal vehicle, or taxi fees.



HELP THE WORKER FIND SOLUTIONS

A worker from a First Nation had to travel for medical follow-up. He lived in a region far away from urban centres and did not have access to suitable public transit. Since he did not have a personal vehicle, he asked the CNESST to reimburse him for the cost of travelling by taxi. The CNESST refused because the man had not provided the required medical document indicating that his condition called for the medical monitoring concerned and therefore reimbursement for his travel costs.

The worker did what was needed to obtain the required attestation, but this caused delays. In the meantime, the CNESST did not come up with a solution that would enable

the worker to travel for his treatments. The man turned to the Québec Ombudsman.

As part of its investigation, the Québec Ombudsman explained the man's special situation (remote region, lack of public transit, and delays obtaining the document) to the CNESST. It asked the CNESST to find a practical solution to make it easier for the worker to get the medical treatments he so desperately needed.

Put in a position where it had to find solutions, the CNESST contacted an organization that provides assistance in the worker's region. The organization agreed to ensure transportation for him.

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

Issuing income replacement indemnities

When a crime victim cannot work because of the assault they suffered, the Direction générale de l'indemnisation des victimes d'actes criminels (DGIVAC) may issue the person an income replacement indemnity. To determine whether the person qualifies for the indemnity, DGIVAC must, using medical evidence, first assess the connection between the sick leave and the crime. Then it verifies the professional status of the victim when they stopped working.

In terms of professional status, a person may be considered employed or unemployed. If they

are in the employed category when they became unable to work because of the crime, DGIVAC may grant them indemnities to make up for the loss of income. If the victim was unemployed when it became impossible for them to work, DGIVAC examines the medical proof and checks whether the victim can go about most of their usual activities. If this is not the case, they qualify for income replacement indemnities.

In both cases, DGIVAC stops issuing indemnities when the victim regains the ability to work or go about their normal business again.



GIVE A CRIME VICTIM THE RIGHT PROFESSIONAL STATUS

In late 2019, a woman became a victim of crime. In early 2020, she applied to DGIVAC for benefits. She asked that the amounts be backdated to when the events occurred in 2019 because that was when she began to be unable to work.

At the time of the crime, the victim had just started working as a freelance housekeeper. To prove this, she sent DGIVAC:

- Client invoices;
- Proof of the GST and QST self-employed worker codes;
- Her provincial notice of assessment for 2019, which however did not indicate business income.

DGIVAC used these documents to deem her unemployed because it considered that she had not provided sufficient proof that she was a self-employed worker. This decision deprived the person of any income replacement indemnity. Given that DGIVAC considered her an unemployed victim, she

should have proven that she was medically incapable of going about most of her usual activities. The victim contested both these decisions (unemployed status and refusal to grant her indemnities) at the administrative review office. The refusals were upheld. The person asked the Québec Ombudsman to intervene.

At the end of the investigation, the Québec Ombudsman saw that the victim was able to provide an amended notice of assessment that now included her business income. It therefore contacted her so that she could produce this evidence to be handed in to the review office.

Once the document was submitted, the Québec Ombudsman asked DGIVAC to reconsider its refusal to recognize the person's employed status. DGIVAC agreed to do this. As a result, the victim qualified for income replacement indemnities as a self-employed worker. She was backpaid more than \$45,000.

In 2016, the Québec Ombudsman released a special report on compensation for crime victims. One of the things it recommended was that DGIVAC allow reconsideration of decisions about the right to income replacement indemnities in cases where any serious error could lead to the initial decision being cancelled. The aim was to avoid having to turn to the courts needlessly in numerous cases. The present case illustrates that such a systemic intervention by the Québec Ombudsman has the potential to favourably influence the settlement of individual cases.

The Québec Ombudsman's role as an intermediary between the victim and the agency, along with reconsideration, kept the case out of the courts and, in turn, spared the victim up two years of waiting for a Tribunal administratif du Québec hearing.

Rehabilitation for a victim

Victims who have lingering aftereffects of a crime may qualify for rehabilitation. If they do, DGIVAC decides to grant the right to rehabilitation based on victims' sequelae, needs, and health professionals' recommendations.

Before authorizing reimbursement for rehabilitation fees, DGIVAC ensures that the costs incurred do indeed contribute to improving the victim's medical condition as regards the crime's aftereffects.

In the examples of admissible reimbursements described in its policies, DGIVAC states that in the absence of another solution, it may reimburse a victim (for tuition at a private school or for help with homework) who had to change schools or use special student services further to an assault.



GIVE A YOUNG VICTIM'S REHABILITATION PRIORITY

A victim under the age of majority suffered violence in school and had aftereffects that hampered her learning. However, she did not change schools. Unfortunately, the harassment worsened. In the long run, the situation hindered her rehabilitation greatly.

The victim's mother therefore took steps to have her child transferred to another public school, but with no improvement, so she enrolled the child in a private school to get her away from her aggressors. Alongside this, the mother hired a resource to provide remedial services that were not offered by the private school, and which her child needed.

The mother then asked DGIVAC to reimburse her for the private school tuition and for the extra assistance. The agency refused, arguing that the fees stemmed from her personal decision and that it was not up to the agency to cover them. The mother asked the Québec Ombudsman to help.

The Québec Ombudsman analyzed the situation and saw that the mother had made these decisions as a last resort because there were no other solutions. Moreover, her choices reflected her firm desire to allow her child to rehabilitate quickly. More than anything else, she wanted her child to emerge from the events with as few aftereffects as possible.

The Québec Ombudsman reminded DGIVAC that in keeping with its mandate, the agency should give priority to the recovery of crime victims by carefully taking into account every victim's specific needs.

DGIVAC agreed to reconsider both decisions. It reimbursed the mother for the private school tuition for the years concerned, as well as for the fees for the external resource. The amount reimbursed was in the vicinity of \$18,000.

Assistance to crime victims: a draft regulation

On June 23, 2021, the draft *Regulation respecting the application of the Act to assist persons who are victims of criminal offences and to facilitate their recovery* was published. On August 2, 2021, the Québec Ombudsman commented on the draft regulation in a letter to the Minister of Justice.

Note that the draft regulation was published before the Act on which it was based was available to the public. Even though the Québec Ombudsman managed to analyze it, its work—like that of other individuals and organizations who wanted to analyze it too—was that much more difficult.

From the outset, the Québec Ombudsman applauded the will to change the scale concerning victims' sequelae. The scale would no longer be based on earnings but on that of the Société de l'assurance automobile du Québec. This would rectify unfairness which the Québec Ombudsman had condemned in 2002.

The Ombudsman nonetheless made nine recommendations concerning the following, among other things:

- Inequalities between the various victim categories regarding the number of psychotherapeutic or psychosocial rehabilitation sessions;
- Suspension of loss-of-income compensation while victims are incarcerated without taking the victims' dependants into account;
- The notion of incapacity of a child, rarely applicable for people under age 18.

However, the recommendations did not give rise to substantial amendments and the regulation came into force in August 2021. The Québec Ombudsman intends to remain attentive to the regulation's implementation.

MINISTÈRE DE L'ÉDUCATION



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

In October 2017, the Québec Ombudsman released a report on the flaws in the complaint processing procedure within the education system. Titled *Handling of complaints within the education system. For a simple, quick, effective and impartial procedure*, the document contains 19 recommendations for improving how these complaints are dealt with.

Since then, that is, for more than four years, the Québec Ombudsman has repeatedly reminded the Ministère de l'Éducation about the many corrections that must be made. It has also reiterated that most of the recommendations in the report (12 out of 19) did not require any legislative amendments. This means that the authorities concerned could have gone ahead rapidly on the administrative front. In fact, school service centres already have the power to change the situation by simple tweaks to their complaint examination procedure.

On November 23, 2021, Bill 9, *Act respecting the National Student Ombudsman*, proposed that an autonomous, Québec-wide organization that operates at arm's length from the school system be created. The organization would be headed by a National Student Ombudsman tasked to coordinate, support and advise regional student

ombudsmen. The organization would also be responsible for proper and optimal application of the complaint processing procedure.

Overall, the Québec Ombudsman feels that Bill 9 responds to most of the recommendations from its special report in 2017.

However, in its brief on the Bill, it pointed out the need for certain improvements in order to:

- Make the procedure more visible to students, homeschooled children and their parents;
- Improve the process of appointing the person responsible for handling complaints within private educational institutions;
- Give extra powers to the National Student Ombudsman and to regional student ombudsmen;
- Improve the main players' accountability.

As at March 31, 2022, Bill 9 was at the committee stage. The Québec Ombudsman is keeping a close eye on developments at the parliamentary level.



The special report and the brief are found at protecteurducitoyen.qc.ca.

MINISTÈRE DE L'ÉNERGIE ET DES RESSOURCES NATURELLES

Managing a financial assistance program in rural and agricultural regions

The Ministère de l'Énergie et des Ressources naturelles is responsible for administering and applying energy innovation and transfer projects, including the three-phase network extension program. The aim of the program is to better serve rural regions by extending the three-phase network and, as a result, fostering agriculture and agri-food projects.

As the name indicates, the three-phase network is a form of electrical distribution network that consists of three phases and whose electrical current travels through three different wires. The network supports electrical components that require more power, which is essential for agricultural and agri-food businesses.

The program's rules lay out the requirements for participant and project eligibility and the procedure for evaluating applications for financial assistance. However, the rules do not provide for increases in the financial assistance granted should new events arise or if there is a mistake in handling the file. Even though a project may undergo substantial changes, only decreases are possible.



TAKE A SUBSTANTIVE ERROR INTO ACCOUNT

In its application, an agri-business quoted an amount of \$7,800 for work to have the three-phase network connected by the distributor, who verbally informed the business owner of the cost.

Two months later, the agri-business was granted total maximum assistance of a little more than \$104,000, which included the amount for the three-phase network. The following month, the distributor this time estimated that the real cost of hooking up the three-phase network would be nearly \$60,000.

Throughout the spring, the Department, saying that there was no mechanism for increasing the maximum amounts awarded, refused to reconsider the financial assistance granted under the program.

As part of its investigation, the Québec Ombudsman noted that the Department had implicit discretionary power to reconsider decisions in cases of substantive errors. The Department was indeed empowered to reconsider the maximum amount of assistance granted and to increase it by taking into account the distributor's real cost estimate, which was much higher than the amount indicated at the beginning.

Truth be told, the Department was unaware of this discretionary power and therefore never used it. After the Québec Ombudsman intervened, it redid its calculations by factoring in the \$60,000 estimate and granted financial assistance accordingly.

MINISTÈRE DE L'ENSEIGNEMENT SUPÉRIEUR

STUDENT FINANCIAL ASSISTANCE

COVID-19: declaring certain earnings to Student Financial Assistance

In the context of the COVID-19 pandemic, Student Financial Assistance (AFE) introduced a temporary measure aimed at boosting the number of health network workers by enabling students to work within that system without fear of having their loans and bursaries reduced for the coming school year.

More specifically, the *Regulation respecting financial assistance for education expenses* was

amended so that for the 2020-2021 award year, student work income for the period from March 13 to August 31, 2020 was disregarded in calculating assistance, provided the student worked in an institution within the meaning of the *Act respecting health services and social services* (the Act).

Note that under the Act, health services and social services are provided by various kinds of resources, including rehabilitation centres.



APPLY THE EXEMPTION FOR CERTAIN KINDS OF EARNINGS BASED ON THE EXCEPTIONAL REQUIREMENTS DURING THE PANDEMIC

A student was a coordinator at an addiction (drugs and alcohol) treatment centre. She applied to AFE for an exemption from declaring her earnings for the period from March 13 to August 31, 2020. AFE refused her application because it considered that she did not work at an institution as defined in the Act. The student contacted the Québec Ombudsman.

The Act specifies that the mission of a rehabilitation centre is to offer adjustment, rehabilitation and social integration services to persons who require such services by reason of physical or mental impairment, behavioral disorders or

psychosocial or family difficulties, or because of an alcohol, gambling or drug addiction or any other addiction. In the Québec Ombudsman's opinion, this definition meshed perfectly with the student's job and workplace.

After the Québec Ombudsman intervened, pointing out that the rehabilitation centre in question should be considered an institution within the meaning of the Act, AFE reviewed its calculation of the student's financial assistance and awarded her extra loan and bursary amounts.



Applying to AFE after the deadline

AFE can re-examine a financial application file if it is informed about a change that could modify the amount granted at first. However, it considers that such an application may be past the deadline (prescribed). Be that as it may, if AFE's decision, for which an application for review was made, is based on fraudulent information, the application then concerns a "material fact," and can be presented at any time. A material fact must contain sufficiently serious, specific and consistent elements in order to influence decision-makers (the processing agents) in such a way that they would have been prompted to make a different decision if they had known about the material fact at the time the decision was made.



RECOGNIZE THE CONSEQUENCES OF A MATERIAL FACT ON THE ANALYSIS OF A FILE

A person received loans and bursaries for the 2015-2016 award year. After double-checking against his provincial tax return, AFE discovered that he had declared business income. It therefore decreased the amount of assistance to the student at the end of 2016 and claimed the reimbursement of a bursary that should not have been granted. The citizen learned about this debt only in 2018, when he received AFE's decision indicating that he had to reimburse AFE for the bursary. This debt was taken out of his Revenu Québec tax refund.

As it turns out, the citizen had been a victim of identity theft and the information about business income in his tax return was false because he had never even worked at the place mentioned.

He contacted AFE to inform it that he was dealing with identity theft, that the information about his income was false, and that a Revenu Québec investigation was underway. AFE asked him for certain tax documents which the student could not provide until September 2020 because that was when the Revenu Québec investigation would be completed and the agency would be able to send him a corrected notice of assessment for fiscal 2015.

As soon as the student received the corrected notice, he forwarded it to AFE. However, AFE refused to reimburse him for the amount which, as indicated earlier, had been taken out of his tax refund. AFE argued that his application for review concerning his financial assistance for the 2015-2016 award year was prescribed under the *Civil Code of Québec*. The student complained to the Québec Ombudsman.

The Ombudsman pointed out to AFE that the *Act respecting financial assistance for education expenses* specifies that the Minister may re-examine a file if there is a change which could affect the amount of financial assistance. It also argued that in this specific case, fraud was committed by a third party and was beyond the student's control. Lastly, it insisted on the fact that contesting AFE's decision could not be prescribed because it was based on a material fact, namely, information stemming from a fraudulent situation.

AFE agreed to re-analyze the student's claim and it proceeded to re-calculate his financial assistance. The student was therefore able to recover the amount taken from his tax refund and obtain a supplementary amount corresponding to the results of the new assessment of the bursary for which he qualified.

AFE's request for additional information to establish eligibility for assistance

Students who apply to AFE for financial assistance must send all the documents needed for analyzing their file. AFE directives specify that if a file cannot be fully analyzed because information or documents are missing or not in proper form, the agent who handles the file must contact the applicant to ask him or her to provide what is lacking. The means of communication to be used, in the order given, are the following:

- Phone call;
- Email, if the person cannot be reached by phone and has provided an email address;

- Letter. This is a computer-generated written form letter that is mailed to the person. If the form letters do not match the person's situation, the agent mails out a personalized letter.

The choice of the means of communication that makes the most sense must be based on the file's particular features and must be tailored to the situation.



CHOOSE THE MEANS OF COMMUNICATION THAT MAKES THE MOST SENSE

A citizen who had become a permanent resident in 2020 applied for student financial assistance for the 2021-2022 award year. AFE phoned him to ask him to provide a document issued by Immigration, Refugees and Citizenship Canada (IRCC). The citizen contacted AFE to confirm that he had been in touch with the federal department for the requested document. The department informed him that given the delays at that time of year, it would take six months and possibly more to send the document. However, if the citizen were to send IRCC a letter from AFE indicating that his application was on hold pending receipt of the document, his application would be fast-tracked.

Even with this information, AFE refused to send the request in writing. It told the citizen that based on the sequence for contacting applicants, it had already phoned him. It would wait as long as it took. The student explained that, due to his precarious financial situation, he could not afford to wait very long because he needed the financial assistance for his studies and living expenses. He asked the Québec Ombudsman for help.

As the Ombudsman saw it, by refusing to produce a written document that would have enabled the student to continue the process, AFE showed inflexibility when it came to its means of communication. In fact, if the student had not answered the phone when AFE called in the first place, it would have gone on to use email or mail and the document could have been sent that way. Even though the AFE agents could have also sent a personalized letter, they refused to do so in this particular case, when they could have helped to speed up processing of the student's file while the student was grappling with a precarious financial situation. Lastly, this inflexibility could have hindered the student's ability to continue his studies given that, thus far, he had had to borrow from family.

The Québec Ombudsman recommended that AFE exercise the required flexibility in its administrative practices and send the student the letter requested by the federal department. AFE acted on the Québec Ombudsman's recommendation.



Student Financial Assistance: Give better support to students by being transparent and truly listening: publication of a special report by the Québec Ombudsman

In 2021, the Québec Ombudsman conducted a special investigation on three aspects of the Student Financial Assistance system's management:

- The decision-making process, at the initial level as well as at the review level (Bureau des recours);
- Handling of applications to have a major functional disability recognized;
- The process for analyzing files which may contain misrepresentation.

In its report, and so that the shortcomings identified are dealt with, the Québec Ombudsman made 22 recommendations to the Department and one to the Minister, including the following:

- Enrich the content of its website and the guide for students;
- Enter more complete notes in financial assistance application files and provide reasons for unfavourable decisions;
- Allow students to speak with the agent who analyzed their file;
- Review the mandate of the Bureau des recours and make it a departmental body distinct from AFE in order to ensure its impartiality and credibility;
- Clarify the aim of the measures for students recognized as having a major functional disability and standardize application of the eligibility requirements;

- In reviewing an initial decision when students request backdated recognition of their major functional disability, make it possible to set the clock back to the date of the onset of the significant and persistent impairments indicated in the medical certificate;
- In cases of misrepresentation, improve the clarity of communications by indicating the nature of the alleged fault and the consequences;
- Make it possible for people who are dissatisfied with a Bureau des recours decision to appeal to the Tribunal administratif du Québec.

When it tabled its report, the Québec Ombudsman asked the Department to send it a work plan no later than April 4, 2022, indicating the proposed actions and timeline for implementing each of the recommendations.

As requested, the Department sent the Québec Ombudsman, a work plan indicating the proposed actions and timeline for implementing the recommendations (currently, two of the recommendations have been refused). The Québec Ombudsman intends to discuss this with the Department and remains alert concerning the implementation of its recommendations.



The report is found at protecteurducitoyen.qc.ca.

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

Immigration candidates' access to the directives used in making a decision about their situation

The *Act respecting administrative justice* establishes the general rules concerning the procedures that apply in making decisions about people. The Act specifies that the directives governing the decisions made by agents must be available for the client population to consult them.

The decisions rendered by the Ministère de l'Immigration, de la Francisation et de l'Intégration are administrative decisions. This means that the Department must comply with the Act when it renders decisions. The guide on immigration procedures lays out the directives that the Department takes into account.

The guide, which used to be on the Department website, was removed on August 2, 2018, for an update, when the new *Québec Immigration Act* came into force.

More than a year later, in a response to an access to information request, the Department announced that within six months at most the directives would be available on the website again.

In December 2019, the guide was still not online, so the Québec Ombudsman contacted the Department repeatedly about the update. Ever since, the Department has systematically moved back the date for completing the work, citing the reform of certain programs.

Granted, several programs have been changed since August 2018 and this may be part of the reason for the delays. The first directives only began to be posted on February 10, 2021, and this merely for certain sections of the guide. Other sections were added in late December. At the time this Annual Report was being written, six sections were still unavailable.

This means that for two or three years now, depending on the sections of the guide, immigration candidates and their representatives have been deprived of important information concerning the principles underpinning the decisions about them. As of March 31, 2022, the missing sections are the following:

- Temporary foreign workers;
- Business people;

- Refugees abroad;
- Humanitarian immigration;
- Family reunification;
- Exemptions.

The fact that these sections are not available contravenes the *Act respecting administrative justice*.



CLARIFY THE PROCEDURE FOR APPLYING FOR AN EXEMPTION

The discretionary power of the Department to make exceptions allows it to, in certain cases, select candidates even if they do not fulfil all the requirements of the program for which they applied. When this happens, the person must show that they can settle in Québec successfully. This is an exceptional departmental procedure that very few candidates know about.

A woman turned down for the Regular Skilled Worker Program complained to the Québec Ombudsman. Even though the refusal decision was legitimate, at the end of its investigation, the Ombudsman felt that an application for an exemption could have been made regarding this file because the woman worked in an industrial sector where there are severe labour shortages and because she had successfully settled in Québec.

Since the section of the immigration procedures guide dealing with the power to grant exceptions was not accessible on the Department's website, the Québec Ombudsman contacted the Department to find out about the procedure for filing for an exemption.

In November 2020, based on the information it received, the Québec Ombudsman submitted the candidate's application

to the skilled worker section. A few weeks later, the section told the Québec Ombudsman that an application for an administrative review should have been made instead to determine whether the file fulfilled requirements. Within a few days, the application for review was submitted.

Subsequently, the Québec Ombudsman followed up with the section several times. In March 2021, the Department informed it that a decision would be made a month later.

In late April, the administrative review section informed the Québec Ombudsman that it could not act on the application for an exemption because it absolutely had to have been made by the candidate or her mandatary. A form signed by the candidate had to be sent to the Department.

The form had already been submitted in December 2020.

The Department then changed its instructions and this time required a signed letter by the candidate to the minister. The letter was submitted the same day.

At the end of a process marked by lack of reliable information from the Department, the candidate finally obtained her Québec Selection Certificate in June 2021.



RECOMMENDATIONS BY THE QUÉBEC OMBUDSMAN

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

- Update the immigration procedures guide;
- Post the updated guide on its website;
- By December 1, 2022, inform the Québec Ombudsman about a timeline for posting each of the sections.

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

[Translation]

"In March 2022, 11 out of 17 sections of the immigration procedures guide (GPI), as well as a note concerning exemption guidelines, were available on the Department website. Since April 1, 2022, two other sections of the guide have been posted.

The Department foresees publishing the remaining sections as follows:

GPI section	Intended release date
Humanitarian immigration (section 3.8)	September 2022
Refugees abroad (section 3.7)	October 2022
Family reunification (section 3.6)	December 2022
Exemptions (section 4.1)	December 2022

The timeline may differ depending on the review of the programs and regulatory amendments."

MINISTÈRE DE LA FAMILLE

Developing the educational childcare services network

In October 2021, the Québec Ombudsman commented on Bill 1, *Act to amend the Educational Childcare Act to improve access to the educational childcare services network and complete its development*, introduced by the Minister of Families.

The Québec Ombudsman subscribes to the goals of the Bill aimed at making childcare services accessible in Québec and developing them. However, it considers that the government must put a stop to the unfairness experienced by

numerous families because they do not have access to childcare services due to a shortage of places or because they cannot afford them. It feels that it is inconceivable in this day and age that parents cannot go back to work because their child does not have access to stimulating, safe and affordable childcare. In its brief submitted on November 25, 2021, the Québec Ombudsman made 10 recommendations for improving families' access to such services.

More specifically, regarding the process of submitting a proposal to the Ministère de la Famille, the amendments introduced by the Bill enable more efficient development of the subsidized network. However, in the Québec Ombudsman's opinion, changes are needed, namely:

- Establish in the Act the frequency of the Minister's assessment of each territory's educational childcare needs or define the objective parameters for updating the information about these needs;
- Provide more structure for assessing proposals for developing subsidized places by adding the obligation to set a deadline for analyzing proposals and sending the results to the applicants;
- Set a deadline for sending permit applicants a decision and inform them about this deadline when the application is received;
- Give projected childcare service operators 15 days to comment when the Department takes back subsidized places it had already granted.

The Québec Ombudsman is concerned that children who do not have a disability, as well as those who do, obtain a place in subsidized childcare. Consequently, it recommends that the Department, along with the parents, be informed in writing about why a childcare centre or subsidized day care centre has refused to accept a child who was referred there by the childcare service finder.

To enable the Department to fully protect vulnerable children, the Québec Ombudsman recommends that a provision be added to the Act specifying that, when a childcare service cannot adequately meet a child's special needs, it must inform the Department of this in writing. The person in charge of the childcare service must send this notice before an educational services agreement is cancelled.

The continuous call for proposals process for creating new subsidized places

In October 2021, the Department opened a continuous call for proposals for creating new subsidized places. This call for proposals makes it possible for those interested to apply at any time to create these places. The Department posts on its website a document indicating the territories for which prospective childcare service operators can submit a proposal. The document is updated regularly.

Even though the Department informs people that it regularly updates the information about the territories concerned, they are not given advance notice about territory closures. As a result, closures can occur suddenly, at any time during the day or while an interested person is entering data.

Much is at stake for people who want to submit a proposal because putting one together involves substantial investments of time and money.

Closures of territories without notice offends, and rightly so, people who are submitting their proposal, as does the Department's lack of openness to considering special situations before the Québec Ombudsman steps in.

As the Québec Ombudsman sees it, a continuous call for proposals is an improvement over the former process (producing calls for tender on specific dates for awarding childcare spaces). However, this method must ensure a minimum predictability for the people who submit proposals, in other words, the possibility for all proponents to be informed in a timely fashion about the status of territorial needs, as well as about territory openings and closures.

The Québec Ombudsman intervened with the Department in 2021 to ask it to review its procedures, and the Department agreed to do so. Now the portal is open during specific periods which applicants know about.



IN THE CONTINUOUS CALL FOR PROPOSALS PROCESS, TAKE A SPECIAL CASE INTO ACCOUNT

In December 2021, a citizen was completing the submission of her subsidized childcare application on the Department website for a given region. In early afternoon, the site stopped working and was up and running again at 5 p.m. At that very moment, the woman, who had not finished completing the application before the system crashed, realized that the region for which she was applying was no longer available. She completed the application anyway and sent her application for the region she had selected.

Four days later, the Department informed her that her application could not be analyzed because the territory in question

was no longer open at the time she transmitted her form. The person turned to the Québec Ombudsman.

At the end of the investigation, the Ombudsman learned that the interruption was deliberate because the territories were being updated. This explains the removal of the region concerned after the update.

Considering that the woman was finishing up completing the form when service was interrupted, the Québec Ombudsman asked the Department to forward the file to the committee tasked to examine applications. The Department agreed to act on the Québec Ombudsman's request.

MINISTÈRE DE LA JUSTICE



Abolish any prescription for civil actions in cases of sexual assault, violence suffered during childhood, or violence by a spouse or ex-spouse: follow-up to an opinion by the Québec Ombudsman

In December 2017, the Québec Ombudsman sent the Ministère de la Justice an opinion titled *Abolish any prescription for civil actions in cases of sexual assault, violence suffered during childhood, or violence by a spouse or an ex-spouse*. It made four recommendations.

In 2020, the Department implemented the opinion's first three recommendations, as indicated in the Québec Ombudsman's 2020-2021 Annual Report. The recommendations concerned:

- The abolition of all time limits;
- The law's retroactivity without time limits;
- The right to re-petition the court if an earlier petition was rejected based solely on prescription (under the Bill, the deadline is three years after June 12, 2020).

The fourth recommendation had to do with information to victims and advocacy groups concerning the legislative amendments affecting imprescriptibility and the impact on the exercise of victims' rights. The Department produced a three-year communication strategy aimed at getting information out about the support measures established for victims. The activities for this purpose include the following:

- Posting of information for victims on the Indemnisation des victimes d'actes criminels (IVAC) website;
- A 2021 news release about the new measures for fostering access to justice for victims of sexual or spousal violence;
- Written communications to government departments and agencies who work with victims, notably certain community organizations.

Furthermore, the Commission des services juridiques is putting in place communication mechanisms for promoting the free four-hour legal counsel service for victims of sexual or spousal violence. The following will be deployed in 2022:

- Distribution of pamphlets and posters, notably in community organizations and victim assistance centres;
- Dynamic ad content (multimedia content) in legal aid offices and courthouses;
- A video and information via the Department's social media, Éducaloi and the Commission des services juridiques;
- An ad campaign in traditional media.

The Québec Ombudsman considers that these various measures are a fitting response to its recommendations. It therefore will not follow up any further but will remain attentive to the concrete outcomes of the actions proposed by the Department.



The opinion (in French only) is available at [protecteurducitoyen.qc.ca](https://www.protecteurducitoyen.qc.ca).

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE

DISASTER RELIEF

Reimbursements for floodproofing a building

In its 2019-2020 Annual Report, the Québec Ombudsman said it was concerned about how long it took to process compensation claims from citizens who were flood victims. The Ministère de la Sécurité publique processes these claims under the General Indemnity and Financial Assistance Program. The Québec Ombudsman therefore recommended that the Department act to improve claim and file management.

Since then, people have approached the Québec Ombudsman because they are dissatisfied with long wait times after sending the Department a claim for work to floodproof the foundations of their house. In this context, “floodproofing” means work to protect a residence against flood damage. For example, the work could consist of raising the foundation, installing a waterproof membrane, or putting in a water drain.

The investigation by the Québec Ombudsman showed that processing of some of these people’s claims had been put on hold, which caused longer delays.

Alongside this, on November 13, 2020, the Department enforced new eligibility requirements for reimbursing costs for floodproofing foundations. However, when these changes were made, there were no specific provisions for handling foundation floodproofing claims it had received before November 13, 2020. As a result, the analysis of certain files was put on the back burner.

The Québec Ombudsman endorses the Department’s desire to ensure sound management of the public purse. In fact, that was the reason for the new eligibility requirements. However, it was up to the Department to take the required measures not to unduly prolong handling of the claims it receives for reimbursement, as the Québec Ombudsman had already recommended.



RENDER A DECISION WITHIN A REASONABLE TIMEFRAME

A woman's residence was flooded in the spring of 2019. She applied for financial assistance under the General Indemnity and Financial Assistance Program. Three months later, she asked the analyst who was handling her file about the possibility of floodproofing her foundation. He told her that the municipality was responsible for making the decision to authorize the work and issue the required permit.

The woman was therefore asked to send the municipality the damage report which the Ministère de la Sécurité publique had instructed her to produce so the municipality could decide which permit to issue. At the end of the summer, the municipality informed the Department that it required that the woman floodproof the foundations. Winter was well underway when the woman learned that the Department had agreed to reimburse her for the work.

In September 2020, a year and a half after the woman had set the process in motion, the Department informed her that the file had been put on hold pending changes to program conditions. In November of the same year, she was told that because of the new eligibility requirements, the application was no longer admissible. However, it said that the floodproofing committee would manage her file. This Department committee is responsible for analyzing claims like hers and making final decisions about admissibility.

In the meantime, an engineer commissioned by the Department contacted the woman in December 2020 to assess whether the damage to her residence met one of the three newly adopted requirements:

- That the water had reached the ground floor of the building;
- That the foundations had to be replaced;
- That the building had to be stabilized because it was sagging.

Almost another year went by before the Department informed the woman that in light of the engineer's conclusions and further to the committee's assessment, her application no longer met any of the eligibility requirements. However, the municipality maintained its requirement obliging her to have the necessary work done to floodproof the foundation.

The woman therefore found herself wedged between the Department's and the municipality's positions. She decided to submit her application to the Department's review committee, a body empowered to analyze applications for review of disaster files and to make recommendations. Dissatisfied with the time it was taking to handle her application, she contacted the Québec Ombudsman.

When it had finished investigating, the Québec Ombudsman basically determined that the time it was taking the Department to process the file was clearly unreasonable. It intervened with the Department and recommended that it fast-track the file. Not long after, the Department let the Ombudsman know that it had approved the woman's claim—three years after she had filed it.

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

The impact of compensatory amounts in calculating last-resort financial assistance

In March 2013, the Québec Ombudsman recommended that the Ministère du Travail, de l'Emploi et de la Solidarité sociale amend the *Individual and Family Assistance Regulation*. As the Ombudsman saw it, the amounts received as compensation for the loss of physical or psychological integrity should be excluded in calculating last-resort financial assistance benefits. Given the importance of the issue, the Québec Ombudsman reiterated its recommendation in its 2019-2020 Annual Report.

It bears pointing out that these are reparatory amounts. They are not issued as income replacement, but rather to help individuals deal with the cost of a permanent impairment. As a result, these amounts should not be counted as income used to satisfy subsistence needs.

To the Québec Ombudsman's satisfaction, since January 1, 2022, the Department has excluded these compensatory amounts of up to \$235,401 from calculating last-resort financial assistance.

Updating and indexing special benefits

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

In its 2011-2012 Annual Report, the Québec Ombudsman recommended that the Department ensure that the rates for the special benefits defined in the *Individual and Family Assistance Regulation* be reviewed and indexed annually. The last update of these rates went back ten years

To the Québec Ombudsman's satisfaction, the Department finally agreed to increase most of the special benefits, effective January 1, 2022. They will be indexed as of January 1, 2023, to take into account the rise in the cost of living.

However, some benefits had yet to be increased or indexed, so on August 26, 2021, the Québec Ombudsman recommended that the Department do this for all benefits. The Québec Ombudsman reminded the Department of the need to continue its review of special benefits in order to accurately assess the required adjustments concerning actual costs for social assistance recipients.

The Department's response to this recommendation was that the special benefits that would not be addressed in the 2021-2022 Budget Plan require more in-depth analysis and that work is underway. The work is aimed at evaluating whether the current coverage method makes an optimal response possible to the needs of social assistance and social solidarity program recipients. The Department expects to submit new proposals next year.

The Québec Ombudsman remains attentive to the work undertaken.

The unique character of the Québec Ombudsman's support role

The Québec Ombudsman sees to it that citizens' rights are respected in interacting with Québec public services. This role does not mean, however, that it necessarily must conclude that the government departments and agencies about which it received complaints are at fault. At the same time, it is often the only organization to come to the aid of people who are struggling to resolve their difficulties.

In handling a file, the Québec Ombudsman can also intervene to have situations corrected other than those that were the subject of the initial complaint.

These forms of assistance and support are particularly crucial for the more vulnerable social assistance and social solidarity program client population, who are sometimes dealing with mental health disorders. These people are often ill-equipped to deal with the complexity of the government machine and the sheer number of people involved. In such cases, the Québec Ombudsman is often in the best position to bring to a close a series of steps that have led nowhere.



THE QUÉBEC OMBUDSMAN ACTS ON SEVERAL FRONTS AT ONCE TO HELP SOMEONE WHO IS VULNERABLE

In this file, the Québec Ombudsman took a series of steps to help a vulnerable person and ensure that his rights were upheld. To do this, it approached the Ministère du Travail, de l'Emploi et de la Solidarité sociale, the Régie de l'assurance maladie (RAMQ), the Ministère de la Santé et des Services sociaux (MSSS) and dentists' offices.

The man in question had at first been denied reimbursement for tooth extraction. After this, he could not manage to obtain services to have dentures made. He therefore contacted the Québec Ombudsman.

Initially, when the man obtained services in February 2020, he was a last-resort financial assistance recipient, which made him eligible for a claim slip issued by the Ministère du Travail, de l'Emploi et de la Solidarité sociale authorizing reimbursement for dental fees by RAMQ. He had also received prior authorization to have dentures made.

Then the pandemic struck. His teeth were extracted only in October 2020 because of the confinement measures. By then, the man was 65 years old. As of age 65, he began receiving government pension income and the guaranteed income supplement. This made him ineligible for last-resort financial assistance and for the claim slips. RAMQ therefore refused to reimburse the dentist for the extractions, and this in turn led to him refusing to make the dentures.

However, the pandemic had prompted the Department to establish flexibility measures, precisely for preventing these kinds of situations. Therefore, recipients who reached age 65 during the pandemic and were not able to be reimbursed for dental care could contact RAMQ. The agency was then supposed to refer them to the Ministère de la Santé et des Services sociaux so they could apply for reimbursement under the Minister's discretionary power.

Given the process's complexity, the Québec Ombudsman submitted an application to MSSS on the man's behalf in June 2021. The next August, the required reimbursements for everyone in this situation were ratified by a government order-in-council.

It took RAMQ more than four months to give the Québec Ombudsman confirmation that reimbursement for the dentures would be issued. In October 2021, the confirmation was forwarded to a dentist who had agreed to provide the service upon presentation of authorization.

Given the many moving parts involved, the number of people concerned and the vulnerability of the man, the process would never have been successful had it not been for the Québec Ombudsman.



THE QUÉBEC OMBUDSMAN STEPS IN WHEN A PROCESS IS TOO DIFFICULT FOR A DESTITUTE PERSON

A man who received last-resort financial assistance had a mental disorder which made him unable to manage his benefits properly. He therefore authorized the Department to issue the amounts to a health network organization responsible for administering the amounts. Subsequently, the man complained to the Québec Ombudsman about not receiving enough money from the organization.

After checking, the Department informed the Québec Ombudsman that the man's benefits had decreased because he was now eligible for a Retraite Québec pension. Last-resort financial assistance is reduced by any amount received by a recipient, apart from certain exclusions. In the case at hand, the man was reputed to be getting the pension, which lowered the social assistance amount. However, the Québec Ombudsman's investigation showed that this was not at all what was happening.

Because of his situation, the man was not cashing the Retraite Québec checks. After a certain time, Retraite Québec had stopped his payments after sending him several notices about expired cheques and, in the end, a letter informing him that his pension had been suspended. The man had not responded to the notices. For its part, the Department had been aware of this situation which had dragged on for nearly two years. It had notified the organization responsible for managing the last-resort financial assistance benefits asking it to contact Retraite Québec so that the problem could be resolved. Nothing happened.

The Québec Ombudsman intervened quickly with Retraite Québec. This is how the Ombudsman learned that the man was not getting his pension. It contacted the organization that administered the benefits, which took the situation in hand. The man's pension payments finally resumed and he was backpaid for the amounts he was owed.



THE QUÉBEC OMBUDSMAN INTERVENES FOR A MAN STRUGGLING TO GET OFF THE STREETS

A man who was living at a homeless shelter contacted the Québec Ombudsman. Because of a debt of roughly \$6,000, the Department had seized his bank account showing a balance of \$19,000. The investigation showed that the seizure was legal. However, the entire bank account had been seized.

The bailiff for the case did not have the man's address. He therefore could not inform him about the seizure. As a result, the seizure had to be served at the courthouse. Afterwards, the man, who was in a precarious financial situation, did not

follow-up on the Department's seizure. Alongside this, the courthouse had been slow to process the amounts. Because the Department had still not received the amounts owing, it refused to cancel seizure.

Given that the man faced a measure that unduly exacerbated his vulnerability, the Québec Ombudsman intervened with the courthouse so that the \$6,000 payment to the Department was fast-tracked and the \$13,000 reimbursement was sent to the man.



BE SURE TO ISSUE TEMPORARY INCAPACITY FOR EMPLOYMENT ALLOWANCES TO ELIGIBLE PEOPLE

A woman who took care of her daughter who had a severe disability contacted the Québec Ombudsman. Since the daughter had reached adulthood and had become eligible for the social solidarity program, the mother's last-resort financial assistance benefit had been substantially reduced.

Under the *Individual and Family Assistance Regulation*, the woman no longer had a dependent child, so she no longer qualified to have child support excluded for the purpose of calculating the financial assistance granted to her. This explains part of the decrease. Be that as it may, the Québec Ombudsman saw that the woman was not getting the temporarily limited capacity for employment allowance because her daughter was now admitted to the social solidarity program on her own. However, the mother was still taking care of her child who had a disability.

As the Department saw it, it was up to the woman to know that she was eligible for the allowance.

The Québec Ombudsman reminded the Department that it was legally obliged to help anyone who needed assistance understanding the measures that they may be subject to. What's more, the Department knew that the woman's daughter was considered to have a severely limited capacity for employment (not to be confused with the temporarily limited capacity for employment allowance that would have ordinarily qualified the mother for her supplementary allowance). The woman had given the Department a medical report confirming her daughter's condition at the time of the application for admission to the social solidarity program for her daughter.

For these reasons, the Québec Ombudsman asked that the allowance to the mother be resumed, with the back payments of nearly \$2,000 that she was owed. The request was approved.

The Québec Parental Insurance Plan

Under the Québec Parental Insurance Plan (QPIP), various benefits are granted on the arrival of a child. Parental leave and adoption leave consist of 32 weeks for the basic plan. Parents may share these weeks or take them concurrently.

If the total number of weeks requested by the parents exceeds 32 weeks, an agent from the Department's customer services section must contact them to determine how they will share the weeks. If the parents disagree with each other, the file is transferred to another section, which must make a decision, as indicated in the *Act respecting parental insurance*.

In certain circumstances, QPIP does not necessarily contact the parents again before a decision is made. As the Québec Ombudsman sees it, however, it is up to QPIP to rapidly

inform any citizen, before a decision is made, that it will be examining a prejudicial situation which concerns them.

It therefore made a recommendation to QPIP, which QPIP accepted. QPIP modified its work instruction so that staff send a letter to the parents asking them to get in touch before a decision is made.

As a result, parents are now immediately informed about problems that concern them and about QPIP's decisional power. Furthermore, this gives parents the opportunity to provide the information or documents needed to complete their file. Given that these decisions have to do with the time away from work because of the arrival of a child, the parent, if need be, can make the necessary arrangements to return to work.



ADVISE THE PARENT ABOUT ANY UNFAVOURABLE DECISION CONCERNING THEM

A young woman was separated from the father of her child. A little before she gave birth, she applied to QPIP for 32 weeks of parental leave benefits.

The payments would end in early August. In mid-July, the father applied for benefits for one week of parental leave. However, as indicated earlier, all the weeks had already been attributed to the mother.

Given the disagreement, QPIP made the decision to attribute the week of parental leave to the father. The woman was

informed about the end of her benefits the same day on which the decision took effect.

In the Québec Ombudsman's opinion, QPIP should have contacted the mother as soon as possible to inform her that it was planning to render an unfavourable decision about her. This way, she could have prepared to return to work sooner, if she needed to.

The Québec Ombudsman's intervention led to a settlement that satisfied both parents.

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

DIRECTEUR DE L'ÉTAT CIVIL

Recognizing filiation when a parent dies before the child is born

In its 2018-2019 Annual Report, the Québec Ombudsman recommended that the Ministère de la Justice amend the *Civil Code of Québec* so that the process of declaring filiation does not have to go through the court when a de facto spouse (who is also the child's parent) dies before the child is born.

Pending the recommended change, the filiation of a common-law spouse who dies before the child is born must be established before the Superior Court of Québec.

Without this official recognition, the repercussions are significant for the child whose parent died. For example:

- If the parent died as the result of an automobile accident, the child will not be granted compensation from the Société de l'assurance automobile du Québec (SAAQ);
- Unlike a legally recognized child, the child is not entitled to a portion of the parent's succession.

The processes are much simpler for couples who are married or in a civil union because the surviving parent simply has to make a declaration to the Directeur de l'état civil.

As of 2017, after the Québec Ombudsman intervened, the Directeur de l'état civil advised parents in this situation about the possibility of legal aid on the child's behalf in order to limit legal costs.

On October 21, 2021, the Minister of Justice introduced a bill (*Act respecting family law reform with regard to filiation and amending the Civil Code in relation to personality rights and civil status*), which lays out a solution for keeping the process out of the court. The surviving de facto spouse would simply provide additional documents to the Directeur de l'état civil. The documents would be:

- an affidavit in which the spouse states the facts and circumstances showing that the child was born during the union or within 300 days after the end of the union;
- an affidavit from a third person corroborating the spouse's affidavit and, where applicable, any other evidence proving the union.

In the Québec Ombudsman's opinion, the measures being considered are a favourable response to its recommendation about keeping the matter of filiation out of the courts. It will remain attentive to the Bill's legislative outcome.

OFFICE DE LA PROTECTION DU CONSOMMATEUR

The tools put at the disposal of customers for exercising their rights

One of the components of the mission of the Office de la protection du consommateur (OPC) consists of informing consumers about their rights and recourse in cases of disputes with merchants. The organization makes various tools available on its website, including a formal notice form.

When a person contacts the OPC to complain about a merchant, first the organization assesses whether an offence may have been committed. If it has, the complainant is sent an information kit which contains a formal notice form that is slightly different from the one on

the website. On the form in the kit, there are two boxes to check off at the end of the document:

- The first box is to confirm that the consumer has sent a copy of the formal notice to the merchant concerned;
- The second box attests that a copy of the same document has been sent to the OPC.

In other words, if consumers want the formal notice to be put in the merchant's file and be mentioned in the file found on the OPC website, they must absolutely use the formal notice form from the information kit, and not the one on the website.



GIVE CONSUMERS THE RIGHT TOOL

A citizen who was unaware of the difference between the form on the OPC website and the one in the OPC information kit used the one directly on the website. Subsequently, the consumer contacted the OPC for follow-up. He was told that the form he had completed was not the one that would have allowed his intervention to have a full impact. The formal notice form in question cannot be used by consumers who want it posted in the merchant's profile on the OPC website.

He was therefore sent the information kit to complete, which he did promptly.

Feeling that other consumers might be confused about this as well, the man contacted the Québec Ombudsman. At the time this Annual Report was being written, the Ombudsman had intervened with the OPC so that the information and tools on its website be adjusted to prevent such a situation from recurring.

OFFICE QUÉBÉCOIS DE LA LANGUE FRANÇAISE

Respect Inuit culture through certain grammatical choices

In Inuktitut, the word *Inuit* means “people.” It is the plural of the word *Inuk* and the corresponding adjective, *Inuit*, is invariable.

Despite this, and to ensure better integration of the word *Inuit* within the French language, the Office québécois de la langue française (the Office) advocates that plural, masculine and feminine forms be used (e.g. *un Inuit, des Inuits, une Inuite, des Inuites*). The Office’s opinion is based on historical considerations, linguistic factors and the principles of adaptation when

borrowing into modern French. Québec government departments and agencies apply the Office’s opinions and recommendations.

In recent years, the Québec Ombudsman was called to take a stand on the terminology to apply to the word *Inuit* in its investigations and public communications. It chose to respect the principles of Inuktitut. As a result, in its special report on detention conditions, the administration of justice and crime prevention in Nunavik (2016), as well as in the report on educational services in this region (2018), the word *Inuit* remains invariable.



ADAPT THE OFFICE'S RECOMMENDATIONS TO THE PRINCIPLES OF INUIT CULTURE

After the two special reports mentioned earlier were published, the Québec Ombudsman received comments from people from Indigenous communities. They deplored the fact that the Québec government departments and agencies concerned by these reports had sent them correspondence in which the term “Inuit” is made to agree in number and gender, despite the Québec Ombudsman’s explanations concerning its decision not to do so.

The Québec Ombudsman intervened with the Office in order to sensitize it to the need to respect First Nations and Inuit culture in written exchanges between government and Indigenous peoples, especially at a time when there is increasing momentum to bring both worlds together.

In response, the Office added a note in the tools used for conveying its policy and recommendations regarding this subject. In it, it spells out the following notions:

[Translation]

Sometimes, especially in specialized documents, we see the forms Inuk (singular) and Inuit (plural), which are invariable in gender (un Inuk, une Inuk, des Inuit). These can be used in certain contexts, for example, when we are directly addressing a person or an organization that has a preference for these forms. If any of these forms figure in an official name, the spelling should be respected.

RETRAITE QUÉBEC

Surviving spouse's pension

The *Act respecting the Québec Pension Plan* provides for a surviving spouse's pension for those who qualify. To be recognized as a spouse, the person must be married or living as married to the contributor and have been so for either:

- At least three years;
- At least one year if a child was or is to be born of the union.

Retraite Québec's directives flesh out certain notions that are not defined in the Act, such the notion of "living as married." This consists of

three elements: cohabitation, mutual assistance, and repute. All three requirements must be met for a person to be eligible for the surviving spouse's pension.

Retraite Québec's directives provide for certain exceptions, notably, the possibility that a spouse or de facto spouse may temporarily interrupt their cohabitation with the contributor, who dies subsequently, and still qualify for the surviving spouse's pension. This is the case, for example, when there has been a temporary breakup, a move for work, hospitalization or domestic violence.



ANALYZE THE APPLICATION FOR A SURVIVING SPOUSE'S PENSION BY TAKING EXCEPTIONAL CIRCUMSTANCES INTO ACCOUNT

A woman applied to Retraite Québec for a surviving spouse's pension after her spouse died. They had lived together for 10 years and had had several children. In the application, the woman mentioned that at the time of his death, her spouse had been living temporarily at his mother's for seven days further to a court order involving domestic violence.

Equipped with this information, Retraite Québec asked several witnesses to confirm that, at the time of the death, the two people were living together, and inquired whether they intended to separate. Based on certain witness statements, Retraite Québec refused to grant the surviving spouse's pension.

The woman used Retraite Québec's review mechanism and provided a letter explaining the circumstances that had led to the momentary interruption of the cohabitation. Alongside this, she filed a complaint with the Québec Ombudsman.

During the investigation, the Québec Ombudsman saw that for several years the couple had declared that they were de facto spouses to Revenu Québec and Retraite Québec. In fact, for family allowance calculation purposes, Retraite Québec considered that the woman had a spouse.

The Québec Ombudsman therefore intervened with Retraite Québec to ask it to grant the woman the surviving spouse's pension because the evidence was sufficient (administrative

status recognized by two government agencies) to conclude that they lived as married.

In response, Retraite Québec's review mechanism informed the Québec Ombudsman that it had asked for extra proof given the particular circumstances surrounding the man's death.

The Québec Ombudsman questioned the level of proof demanded by Retraite Québec.

In actual fact, the woman had described to Retraite Québec the situation of domestic violence surrounding the temporary interruption of the de facto spouses' cohabitation, but the agency wanted this extra proof.

On receiving the proof, the Québec Ombudsman saw yet again that the break in cohabitation had occurred due to exceptional circumstances, provided for in Retraite Québec's directives. It intervened again to request that the woman be granted the pension based on the evidence collected.

Retraite Québec agreed to act on the Québec Ombudsman's recommendation, which earned the woman a retroactive amount of nearly \$19,000 in addition to the regular payment of the new pension.

SOCIÉTÉ D'HABITATION DU QUÉBEC

Applying the Shelter Allowance Program

The Shelter Allowance Program (SAP) provides supplementary financial assistance to low-income households. It is intended for owners and tenants alike. The purpose is to help people who are considered to spend too much of their budget on rent. Currently, the financial assistance is based on:

- The number of people who make up the household;
- The type of household (single person, single-parent family, or couple with children);
- The amount paid in rent;
- Gross annual income.

Until very recently, SAP had changed very little since its beginnings in 1997 in terms of eligibility thresholds and the amounts awarded.

In October 2020, the Société d'habitation du Québec (SHQ) and the Canada Mortgage and

Housing Corporation (CMHC) co-signed the Canada-Quebec Housing Agreement. Under the Agreement, the CMHC invests amounts to support Québec's housing system (renovating and building dwellings, helping people on low incomes pay rent).

Under the terms of the Agreement, Québec, including the SHQ, commits to match CMHC amounts.

In November 2020, the Québec Ombudsman made several recommendations about SAP aimed at:

- Making it easier to access the Program;
- Making the financial assistance retroactive;
- Indexing the allowance amounts and eligibility thresholds (income and maximum rent);
- Reviewing the eligibility requirements to exclude certain amounts and assets in calculating the applicant's net worth.

The component of the Canada-Québec Housing Agreement concerning SAP funding was signed in August 2021. The Québec Ombudsman's recommendations were accepted and their implementation has been progressing satisfactorily since the fall of the same year. The new version of SAP is slated to take effect on October 1, 2022.

The authorities also committed to remove the minimum rent requirement, which had excluded people whose rent was not high enough even if rent accounted for a substantial portion of their income. As the Québec Ombudsman sees it, this requirement ran counter to program objectives. Dropping it means increased access to the program.

The application form should be online in 2023 and there will be several measures for better reaching out to the target clientele.

Regarding the amounts allocated, the maximum allowance before the program review (\$80 a month) will increase to \$170 a month.

These new amounts correspond to inflation-related cost-of-living increases for the period considered. Financial assistance will be backpaid to October 1 of the year of the application.

Another gain is that the maximum income for granting eligibility will take into account the number of children in the family, which is not the case now. As a result, the maximum income for granting eligibility will increase according to the number of children (until then, the criterion is concerned only with whether or not the applicant has children). This amount will be indexed annually.

The Québec Ombudsman feels that these changes will be beneficial for program clientele.

SOCIÉTÉ DE L'ASSURANCE AUTOMOBILE DU QUÉBEC

Parking permits for people with disabilities

This year, further to complaints, the Québec Ombudsman saw that the wait times for the Société de l'assurance automobile du Québec (SAAQ) to issue parking permits for people with disabilities had increased. In the summer of 2021, the average delay of four to six weeks had risen to eight weeks.

Questioned about this, the SAAQ gave three reasons:

- Processing of applications for the permit had been transferred to another SAAQ section;
- There were departures from the team responsible for processing the applications;
- During the COVID-19 pandemic, processing continued with staff physically present on site, but in reduced numbers due to health directives. This also made wait times longer.

The section concerned was already aware of the problems when the Québec Ombudsman intervened in the fall of 2021. It told the Ombudsman that it was trying to recruit staff and intended to put an end to delays in January 2022. In November 2021, a new phone system was put in place to make it easier to access SAAQ services.

In December 2021, the Québec Ombudsman again contacted the SAAQ about delays. The agency informed the Ombudsman that it had authorized overtime to reduce the backlog. The SAAQ also told the Québec Ombudsman that it wanted to review its procedures in order to reduce the time it takes to issue permits.

In February 2022, the SAAQ had cleared the backlog and was able to process applications within the normal timeframe of four to six weeks.



SPEED UP ISSUING A PARKING PERMIT FOR A PERSON WITH PHYSICAL LIMITATIONS

A man had to have chemotherapy for a cancer that seriously affected his overall health. He applied to the SAAQ for a disabled parking permit. He was very exhausted and, because he did not have the permit, sometimes he had to park far away from his house.

A month later, he still had not heard about his application and the SAAQ had not called him back.

The Québec Ombudsman had to intervene before the man received the parking permit, six weeks after the initial application.



Deciding about the link between bodily injury and a traffic accident

The *Automobile Insurance Act* specifies that for a claimant to qualify for income replacement indemnities, the Société de l'assurance automobile du Québec (SAAQ) must be able to establish the link between the bodily injury and the traffic accident. Then, the causality must be demonstrated between the injury and the accident victim's inability to hold down their job or engage in their main occupation. It is important to remember that it is up to the SAAQ to decide about the correlation between the bodily injury and the accident.

The *Act respecting administrative justice* indicates that public bodies must take appropriate measures to ensure that procedures are conducted in accordance with legislative and administrative norms or standards and with other applicable rules of law. The same Act goes on to say that decisions must be made promptly, be communicated to the person concerned in clear and concise terms and contain the information required to enable the person to communicate with the body concerned.

Furthermore, pursuant to its powers, the Québec Ombudsman may intervene on its own initiative to recommend that the SAAQ rule on the existence of a causal link between a traffic accident and an injury, a relapse, or the aggravation of the condition observed or of a pre-existing injury.

Over the course of its investigations, the Québec Ombudsman has seen that the SAAQ sometimes fails to acknowledge certain diagnosed injuries, aggravations or relapses, despite medical proof clearly demonstrating their existence. As a result, accident victims are potentially deprived of indemnities or legal recourse to which they should have been entitled, leading to injury diagnoses that are not handled administratively. The Québec Ombudsman stepped in for each of these files so that the SAAQ would rule on the existence of a causal link between the traffic accident and the bodily injuries sustained.



SEE TO IT THAT A DECISION IS MADE ABOUT EACH DIAGNOSIS FOR AN ACCIDENT VICTIM

A woman complained to the Québec Ombudsman because the SAAQ refused to enter information about a change of situation in her file. The woman wanted to have it recognized that the physical injuries from her traffic accident had caused her psychological condition to deteriorate.

During the investigation, the Québec Ombudsman noted that the SAAQ had not analyzed the aggravation of an injury to the woman's left shoulder, even though it was confirmed in the medical documents already in her file. The Ombudsman therefore intervened with the SAAQ to ask it to analyze the

correlation between the aggravation of the injury and the accident.

Because the Québec Ombudsman intervened, the correction was made in the woman's file and the injury was entered in the computerized record. Even if this does not lead to her being granted indemnities at the moment, it may in the future if there is relapse or worsening of her condition.

In this case, as in all others for which the Québec Ombudsman intervened for the same reasons, the SAAQ agreed to act and corrected the files concerned.



CORRECTIONAL SERVICES



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 and the Commission québécoise des libérations conditionnelles are responsible.

Note that the period covered in this report corresponds to a second full year of the COVID-19 pandemic. It goes without saying that the daily operations of public services were affected, as were citizens' priorities during this difficult period. The Québec Ombudsman's findings in its 2021-2022 Annual Report must therefore be taken in context and understood in light of this exceptional situation.

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 2021-2022, the Québec Ombudsman intervened regarding the Commission québécoise des libérations conditionnelles, the Ministère de la Sécurité publique and the 18 correctional facilities under the Department's responsibility.

1 CLOSED COMPLAINTS AND REQUESTS FOR ASSISTANCE

Trends in closed complaints and requests for assistance

	2018-2019	2019-2020	2020-2021	2021-2022
Requests for assistance	194	180	242	140
Substantiated complaints	545	433	287	433
Mediation	0	0	1	0
Unsubstantiated complaints	782	574	480	553
Could not take a definitive position	57	64	51	72
Referred complaints	2,454	2,128	2,027	2,460
Suspended complaints	1,612	1,675	1,532	1,460
TOTAL	5,644	5,054	4,620	5,118
Difference with the preceding year	-	-10.5%	-8.6%	+10.8%

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.

Mediation encompasses cases in which the Québec Ombudsman proposes a conciliatory solution to both parties in an attempt to foster a resolution.

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**.

A complaint may also be **suspended**. This may happen when the ground for complaint is inadmissible because it is not within the Québec Ombudsman's purview (e.g. when a

complaint concerns a federal penitentiary). Pursuant to section 19.1 of the *Public Protector Act*, termination may also occur when the ground for complaint is admissible but the citizen has not followed up or withdraws the complaint because the situation is resolved during the investigation, or because the Québec Ombudsman refuses to undertake or continue processing.⁴

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 any corrective measures have been taken to the Québec Ombudsman’s satisfaction.

Detailed results

The number of closed complaints and requests for assistance increased by 10.8% compared to last year and by 0.2% compared to the average for the last three years.

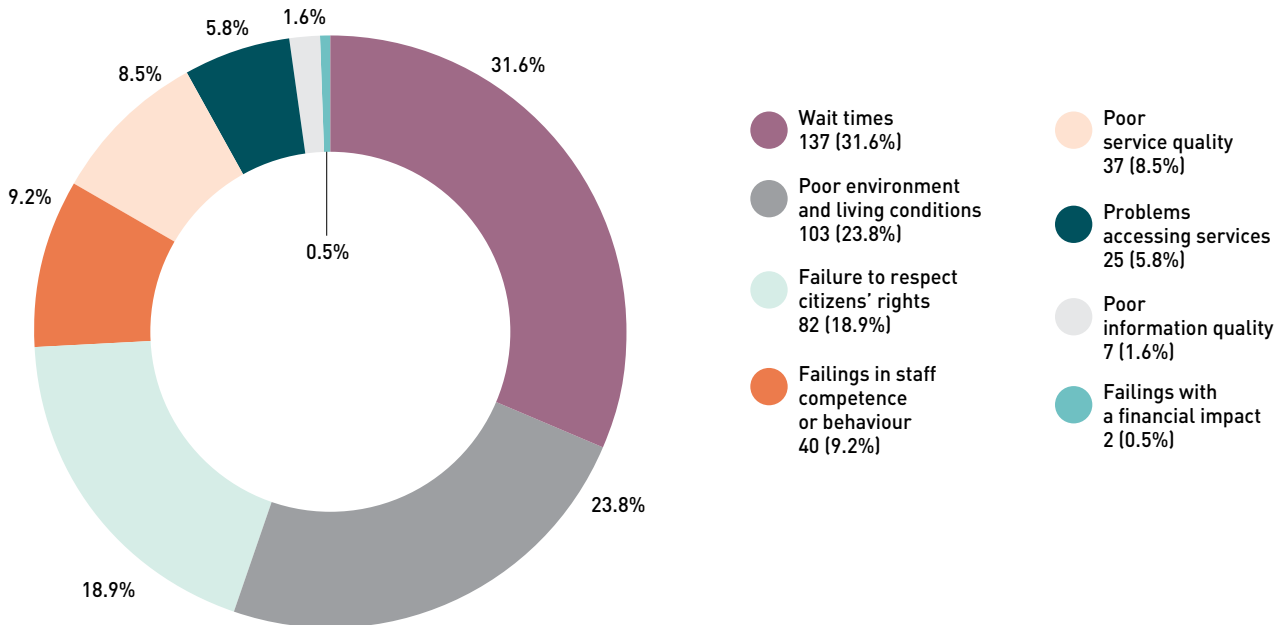
2 SUBSTANTIATED COMPLAINTS

The proportion of substantiated complaints is established as follows: Number of substantiated complaints/Number of substantiated and unsubstantiated complaints. This proportion increased by 6.5 percentage points from last year’s figure, to reach 43.9% in 2021-2022.

Proportion of substantiated complaints

2018-2019	2019-2020	2020-2021	2021-2022
41.1%	43.0%	37.4%	43.9%

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.

- 4/ The Québec Ombudsman may refuse to intervene or may stop processing a request when:
- A requirement which it prescribed has not been met (paragraph 1 of s. 19.1 of the *Public Protector Act*);
 - The request is frivolous, vexatious or made in bad faith (paragraph 2 of s. 19.1 of the *Public Protector Act*);
 - An intervention is not expedient in view of the circumstances (paragraph 3 of s. 19.1 of the *Public Protector Act*);
 - The deadline for handling the file by the body concerned has not expired. The request is therefore deemed premature (paragraph 3 of section 19.1 of the *Public Protector Act*).

Wait times, poor environment and living conditions as well as failure to respect citizens' rights accounted for 74.4% of substantiated complaints (322 grounds).

Prejudicially lengthy wait times represented 31.6% of the grounds for substantiated complaints (137 grounds). These grounds resulted from delays in obtaining personal belongings, compensation for the loss of personal belongings or tobacco substitutes, as well as long wait times for handling complaints. These subjects accounted for 51.1% of the substantiated complaints related to wait times (70 grounds).

Failings regarding the environment and living conditions represented 23.8% of substantiated complaints (103 grounds). These grounds mostly concerned housing conditions, hygiene,

house rules, classification, broken equipment and how space was organized. These subjects represented 53.4% of substantiated complaints related to these failings (55 grounds).

Failure to respect detainees' rights represented 18.9% of the grounds for substantiated complaints (82 grounds), namely, failure to respect the rights guaranteed to service users under the *Act respecting health services and social services*, application of rules or procedures established by a law or a regulation or an order-in-council; the complaint examination procedure; discipline; the use of force, as well as the right to general healthcare. These subjects accounted for 69.5% of substantiated complaints about the failure to respect detainees' rights (57 grounds).

3 MONITORING OF CORRECTIVE MEASURES

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

Accepted case-specific measures

2018-2019	2019-2020	2020-2021	2021-2022	2021-2022	
				ACCEPTED	REFUSED
100.0%	98.4%	97.9%	100.0%	45	0

Accepted measures with a collective impact

2018-2019	2019-2020	2020-2021	2021-2022	2021-2022	
				ACCEPTED	REFUSED
98.6%	100.0%	100.0%	100.0%	31	0

4

CLOSED REQUESTS BY GOVERNMENT DEPARTMENT OR AGENCY, BY PROCESSING OUTCOME⁵

AGENCY AND DEPARTMENT	REQUESTS RECEIVED IN 2021-2022	CLOSED REQUESTS IN 2021-2022							
		REQUESTS FOR ASSISTANCE	COMPLAINTS						TOTAL
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED	SUSPENDED	
Commission québécoise des libérations conditionnelles	13	1	2	4	-	-	2	3	12
Sécurité publique – Correctional services	5,049	139	431	549	-	72	2,458	1,457	5,106
TOTAL	5,062	140	433	553	0	72	2,460	1,460	5,118

5/ The number of closed requests in one year 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

COVID-19 – Staff shortages and respecting detainees’ basic rights

In correctional services, as in the main public service sectors, COVID-19 made a series of health measures necessary as soon as the virus began to spread in March 2020. The Ministère de la Sécurité publique produced these measures after conferring with the Ministère de la Santé et des Services sociaux’s public health directorate.

The detainees’ usual routine was radically disrupted, especially since correctional facilities are crowded, a condition that, unfortunately, is conducive to contagion. Added to this was, and is, high absenteeism among staff because of COVID-19. The result was a context that was even more demanding than usual for staff and detainees alike, coupled as it was with staff shortages.

In 2021-2022, the Québec Ombudsman remained aware of course of the challenges correctional facilities faced because of the exceptional circumstances. However, this context must not become an excuse for the denial of rights for detainees. Our investigations

yielded findings that are particularly damning in that regard and revealed deplorable situations.

It must be remembered that people serving sentences in correctional facilities under the jurisdiction of the Québec government are incarcerated for offences that are not considered major crimes.

According to the latest update of the profile of the detainee population, 60% of sentences in 2019-2020 were for fewer than six months (short sentences), and the percentage of sentences of two years minus a day (long sentences) was 16%. The average length of stays was 47 days for short sentences and 198 days for long sentences. In the same year, the most frequent offences were failure to comply with a probation order, failure to comply with a condition of undertaking or recognizance, and possession of substances for the purpose of trafficking.

Given the socioeconomic profile of detainees in these facilities, many of them may be considered as vulnerable to a greater or a lesser degree, notably due to mental disorders. Because of this, the respect of rights requires

vigilance. In the past year, the Québec Ombudsman has seen that the shortage of correctional officers has created major deficiencies in numerous areas.

Consultation of evidence – Detainees, especially those who represent themselves in court, must have access to a place where they can examine the evidence so that they can mount a full legal defence. This is one of the guarantees enshrined in the *Canadian Charter of Rights and Freedoms*. To have access to this space, detainees must be escorted by correctional officers. Due to understaffing, at least five correctional facilities were unable to assign the necessary resources on a daily basis. When consulting the evidence must be postponed because of this, detainees may suffer delays and their incarceration may be unduly prolonged.

Yard time – In accordance with the *Regulation under the Act respecting the Québec correctional system* and international rules, detainees have the right to at least an hour outside in the facility's yard every day. Since yard time must be supervised by correctional officers, it was regularly cancelled or shortened at four correctional facilities due to understaffing, and this in spite of the positive effects of this type of activity on the prison population.

Intake and processing of personal belongings – In 2021-2022, the Québec Ombudsman received more than 300 complaints from detainees who had not had access to a change of clothing or seasonal clothing for a period ranging from several days to several weeks. In five correctional facilities, because of staff shortages, the officers who take in and search personal belongings were regularly requisitioned to carry out tasks crucial to daily operations. For their part, the families of the detainees had trouble getting personal effects to them due to the closure of this service and sometimes had to go to the facility several times before succeeding.

Virtual visits – From May 15, 2020, to March 25, 2022, because of the COVID-19 pandemic, in-person visits were suspended by ministerial order. For detainees to maintain contact with their families, correctional facilities allowed virtual visits by means of mobile devices. However, at least 11 correctional facilities had to cancel virtual visits because there were no staff available to supervise them.

Daily routine – Detainees may leave their cell or pod according to a precise schedule, also called their daily routine, for different activities. Examples of this are:

- Spending time in the common area with their co-detainees, which helps to break the isolation;
- Doing their laundry;
- Showering;
- Phoning their family or their attorney.

In the past year, the Québec Ombudsman received nearly 100 complaints from detainees about an increase in the amount of time in their cell.

Confinement for periods that could be longer than 72 hours was particularly trying for the detainees thus isolated, at the cost of their physical and psychological stability.

Surveillance – In one correctional facility in particular, due to staff shortages, correctional officers were not always able to carry out rounds according to schedule (every 90 minutes and every 30 minutes for detainees placed in isolation due to COVID-19). As a result, detainees were left alone in their cell, sometimes for many hours.

In the Québec Ombudsman's opinion, the various effects of short staffing are unacceptable. As a result, the Québec Ombudsman asked the Department to:

- Produce an overall portrait of the situation;
- Inform it about the solutions being considered to resolve staff shortages and ensure that detainees' basic rights are upheld.

The Department replied that it acknowledged the problems related to understaffing, that it had struck a committee to analyze the fallout and that measures had been adopted to rectify the situation. In terms of actions that could be taken rapidly, correctional facilities:

- Reviewed contingency plans, which determine priority actions and those that can be put aside when there are staff shortages. Such plans may include mandatory overtime;
- Hired 163 casual officers further to an agreement with their union; however, the agreement ended in December 2021;
- Recalled staff assigned to courthouses;
- Carried out inter-facility loans of staff;
- Temporarily closed certain activity sectors rotationally.

In the Department's opinion, various factors account for correctional service staff shortages:

- Extended absences (maternity leaves, unpaid leaves, salary-insurance leaves and work accidents);
- Lack of interest in becoming correctional officers;
- A decrease in the number of eligible candidates because, since the review of the admissibility guide in the fall of 2019, a diploma of college studies (DEC) in social sciences is no longer sufficient to qualify. Even though this decision was rethought and changed in February 2022, the Québec Ombudsman questions the wisdom of leaving these candidates out. In light of a situation in which correctional services are experiencing drastic understaffing, these potential candidates should be considered;
- Delayed hiring because of the required security screening (sound morals and no criminal record);
- The time it takes to train recruits (eight weeks);
- Difficulties hiring in outlying regions;
- The interruption of cohort training at the École nationale de police du Québec in 2020 because of COVID-19.

Correctional services also had their share of absences due to COVID-19, either after staff contracted the disease or were on preventive confinement. According to the statistics available since 2020, of the 1,531 positive cases of COVID-19 in staff, nearly 80% (1,235) contracted it in 2021-2022.

Seeking medium- and long-term solutions, the Department did the following to cushion the impact of staff shortages:

- Brought correctional officers out of retirement;
- Mounted visibility campaigns aimed at potential correctional officer candidates. According to the Department, this measure made it possible to increase the percentage of eligible candidates (from 18% in 2020 to 28% in 2021);
- Further to an agreement with the École nationale de police du Québec, increase the number of cohorts per year and the number of people per cohort.

As at March 31, 2022, the Department had 3,020 regular correctional agent positions, 12.8% (389) of which were unfilled and 9.4% (284) of which consisted of extended leave.

The Québec Ombudsman recognizes the Department's efforts to solve staff shortages. Nonetheless, the situation remains of deep concern. In its 2016-2017 Annual Report, the Québec Ombudsman had already made note of similar problems.

In the Québec Ombudsman's opinion, the Department must adopt a five-year labour recruitment and retention plan aimed at eliminating the shortfall and therefore ensuring an adequate service level. It is counting on the Department to send it a work plan by April 2023. The Québec Ombudsman is continuing its action on this front.



RESPECT DETAINEES' RIGHTS TO LEAVE THEIR CELL ACCORDING TO THEIR NORMAL ROUTINE

During an investigation, the Québec Ombudsman saw that all the detainees from the same pod within a correctional facility had been isolated in their cells for more than 72 consecutive hours, with the following inconveniences:

- Round-the-clock cell time;
- No showering or yard time;
- No phone contact with their families;
- Cell ventilation problems;
- Delays obtaining basic hygienic products such as toilet paper;
- No access to the evidence consultation room for 72 hours;
- No surveillance for several hours.

When detainees reacted to these measures, a staff member decided not to send in their canteen forms because of their behaviour. The canteen provides detainees the opportunity to place orders for different food products or other products for improving their daily lives.

The facility's authorities confirmed that these problems existed. However, they could not commit to making changes apart from distributing hygienic products and repairing the ventilation.

A person in charge met with the officer who had refused to send the canteen forms so that this kind of sanction did not recur in such circumstances.



REMAIN COMPASSIONATE AND BE EMPATHETIC DESPITE STAFF SHORTAGES

A detainee complained to the Québec Ombudsman because he had not received a response to his request for permission to leave on humanitarian grounds: his father had died and he wanted to attend the funeral. However, he was unable to because of the delay.

The Québec Ombudsman's investigation showed that the man's request had been approved but that on the day of the funeral, there was no one available to escort him. There was therefore nothing that could have been done about the

detainee's situation, but the Québec Ombudsman contacted the warden's section to see if there could be solutions so that such a situation would not recur. Those in charge informed the Ombudsman that they were aware of the event, that it was exceptional, and that the Department had taken measures to cushion the impact of staff shortages on detainees. After the Québec Ombudsman intervened, the complainant met with a manager, who explained why his permission to leave had been cancelled.

Detainee surveillance in zones with increased security

In correctional facilities, zones with increased security house a client population that requires more intense supervision.

Given the issues surrounding the need for increased security, it stands to reason that such zones would have the equipment needed for tighter supervision. However, after investigations at the Rivière-des-Prairies correctional facility, the Québec Ombudsman noted that surveillance in the increased security zone was deficient.

Theoretically, the following supervision mechanisms must exist:

- Direct observation by correctional officers from a control booth;
- Random rounds by the correctional officers, but with a maximum frequency of one round every 90 minutes;
- A panic button for use by detainees in case of an emergency.

The panic button in cells activates a blinking warning light located above the door of each cell. However, the Québec Ombudsman noted that correctional officers could not see some of these lights from the control booth. Furthermore, these warning lights are silent. Thus, detainees who need help urgently and who use the panic button in their cells could, in fact, not be noticed by the correctional officers and wait longer than is reasonable for officers to intervene.

The Québec Ombudsman observed that between June 2019 and June 2021, three cases of detainees who had died at Rivière-des-Prairies correctional facility had one thing in common: officers had indicated in their respective reports that the blinking light was only seen when they arrived at the

increased security zone. Because there were no surveillance cameras in the zone, the ensuing investigations into these tragic events were unable to determine how long the lights had been on. This situation suggests that perhaps the deaths could have been prevented if intervention had occurred sooner.

In recent months, as part of an investigation with a collective impact, the Québec Ombudsman has contacted the correctional facility's authorities:

- To convey its findings concerning the shortcomings in supervision in the increased security zone;
- To obtain the authorities' commitment to carry out concrete and prompt solutions.

The authorities provided the Québec Ombudsman confirmation that they were planning to equip the zone with cameras. However, such additions hinge on various authorizations and budget allocations, steps that increase the time it takes before changes are made.

Flaws were also observed in the general prison population zone of the same facility, including in sectors for detainees with mental disorders. Installation of cameras there has also been pending for several years. The Québec Ombudsman is still waiting for concrete results.

The Québec Ombudsman is continuing to intervene with the Department so that there be a mechanism within the facility concerned for enabling detainees in distress in a locked cell in the sectors in question to alert the staff and get the help they need in time. The Ombudsman expects the Department to produce concrete results by December 2022.



HAVE THE REQUIRED SURVEILLANCE EQUIPMENT FOR ENSURING A RAPID RESPONSE TO URGENT CALLS

The Québec Ombudsman received a complaint from a detainee deploring having had to wait a long time for a correctional officer to help him. He had experienced a cardiac episode in the middle of the night and had activated the emergency warning light.

For its part, the staff said that they had intervened immediately when the warning light went on and had contacted the facility's health section right away. However, the person's medical file indicated that the timelines in the versions of the

events did not match up: the call to the health section had seemingly taken place 25 minutes after the officer had discovered the detainee in difficulty.

Given the contradictory versions and the lack of cameras in the sector concerned, the Québec Ombudsman could not come to any conclusion about the person's complaint. Instead, it opted to conduct the collective investigation explained earlier.

Convey the result of their assessment to detainees

The *Act respecting administrative justice* applies when government, including Québec correctional services, makes a unilateral decision in accordance with legislative, regulatory or administrative norms regarding a person whose rights must be upheld. This law enshrines a basic principle according to which the duty to act fairly must underpin all procedures leading to such decisions. In other words, these decisions must not be arbitrary.

In the particular context of a correctional facility, the facility must provide procedural guarantees to detainees, notably that of allowing inmates the opportunity to convey all the information of use to the authorities in making decisions about them. Detainees must also be:

- Able to complete their file (addition of their version and of documents);
- Able to present their observations;
- Informed about why an unfavourable decision concerning them has been made.

The Québec Ombudsman shed light on serious breaches of the *Act respecting administrative justice* regarding the obligation for correctional services to communicate the results of their assessment to detainees.

The *Act respecting the Québec correctional system* indicates that correctional services are responsible for assessing the people committed to their custody. As a rule, the purpose of the assessments is to gauge things such as detainees' risk of reoffending, their potential for social reintegration, their specific needs and their ability to fulfil certain commitments. These assessments are aimed at effective management of the person and at providing a tool for decisions about their possible release.

For example, a detainee who is assessed and who will have a hearing before the Commission québécoise des libérations conditionnelles is only informed about the results of the assessment verbally. If they want the version in writing, they have to request it under the *Act respecting access to documents held by public bodies and the Protection of personal information*. Unless they make such a request, they cannot check the information in their assessment or provide additional information.

The legal timeframe for replying to access-to-information requests is 20 days. Conceivably, because of this, detainees may not receive a copy of their assessment ahead of the Commission québécoise des libérations conditionnelles hearing or the examination of their temporary absence by the director of the facility. This means that the delay may postpone release or temporary absence.

From this, we can conclude that the *Act respecting administrative justice* is not respected because detainees are subject to a procedure of access to essential information which may compromise the exercise of their rights.

It is important to point out that federally, the Parole Board of Canada and Correctional Service Canada provide that any information taken into account by the Commission is shared with detainees 15 days before their hearing, under the *Corrections and Conditional Release Act*. According to these provisions, assessment results are systematically communicated to detainees in writing.

The Québec Ombudsman is continuing to intervene with the Department so that every detainee is given a copy of all the documents needed, where applicable, for decision-making, ahead of their hearing before the Commission québécoise des libérations conditionnelles or before their application for a temporary absence is examined by the director of the correctional facility. The documents must be handed over in enough time to enable detainees to prepare adequately for presenting their observations and completing their file, if need be.

A new correctional facility for women

In February 2016, detainees from Maison Tanguay, a women's correctional facility located in Montréal, were transferred to the Leclerc de Laval correctional facility (the facility). However, in October 2016, Ministère de la Sécurité publique (Department) authorities declared that the women could not be kept there long-term because the building did not provide them with adequate detention conditions and did not meet the particular needs of a female population.

Since the transfer was announced, the Québec Ombudsman has kept a close eye on living conditions and respect of the rights of female detainees. In its 2015-2016 Annual Report, the Québec Ombudsman pointed out that the transfer had been poorly orchestrated. It would also make sure that there would be corrective action.

In 2016-2017, irritants persisted at the facility, the most significant being the fact that male and female detainees were housed together. This combination ended in May 2017.

In 2018-2019, the Québec Ombudsman's Annual Report showed that the facility did not take into account the fact that, as a rule, female detainees need less security than male detainees. After visiting the premises, the Ombudsman was also critical about the facility's dilapidated condition.

Subsequently, the facility's authorities took measures to solve certain problems, including regular visits by exterminators, installing window screens, and soundproofing common living areas. Furthermore, in the summer of 2019, follow-up work began on the recommendations of the *Rapport pour une proposition d'un modèle innovateur en matière de gestion des services correctionnels de la clientèle féminine*.⁶ Lastly, in the fall of 2020, the ELLES project was launched. One of its goals was to design a female-specific framework for intervention and to harmonize practices among correctional facilities.

The Québec Ombudsman is aware of the Department's efforts to improve the detention conditions at the facility concerned. Be that as it may, the premises remain unsuitable for the women inside.

In other words, the construction of a new correctional facility for women is lagging. A feasibility report was supposed to have been submitted to Cabinet in the winter of 2020, but this never happened.

The COVID-19 pandemic may have slowed things down. However, the Québec Ombudsman deeply deplores that six years have gone by without any progress being made. Sadly, this suggests that the female detainee population will have to cope with a run-down and ill-adapted correctional facility for several more years.

6 / Document produced by the Ministère de la Sécurité publique in partnership with the Elizabeth Fry Society, which sees to it that the rights of female detainees are upheld and that their detention conditions are improved.



RECOMMENDATION BY THE QUÉBEC OMBUDSMAN

Considering the preceding, the Québec Ombudsman recommends that the Minister of Public Security and the Government of Québec:

- By December 31, 2022, announce a firm decision concerning the construction of a new correctional facility for women.

Reply by the Ministère de la Sécurité publique:

[Translation]

“The file concerning construction of a new correctional facility for women is proceeding in keeping with the phases of the directive on major public infrastructure projects issued by the Secrétariat du Conseil du trésor. Under this directive, major infrastructure projects must be tabled with and approved by Cabinet in order to be implemented, notably with a view to their inclusion in Québec’s infrastructure plan.

The file is currently at the feasibility study stage (DO). This phase includes the elements needed for a decision to be made about whether the project should proceed (needs study, assessment of possible options, selection and justification of the option chosen, funding strategy, etc.). Cabinet should approve the DO shortly.

Approval will enable the Ministère de la Sécurité publique and the Société québécoise des infrastructures to begin preparing the business file, also to be submitted to Cabinet, which will then authorize the implementation phase, in other words, construction of a new correctional facility for women.

Currently, at this point (DO phase), a ‘firm decision’ cannot be announced about the construction of a new correctional facility for women because there are still two more phases of authorization remaining (feasibility file and business file) before construction is confirmed.”

Comment by the Québec Ombudsman:

The Québec Ombudsman is critical that the situation is still being examined seven years after the women detainees were transferred to Leclerc de Laval correctional facility. It considers it unacceptable that women are still being detained in a facility that, at the time, was deemed inadequate by the Ministère de la Sécurité publique’s authorities.

Given the time that has already elapsed, the Québec Ombudsman reiterates the urgency of the announcement of a firm decision about the construction of this new facility.

Actions after using an inflammatory agent

To allow staff to maintain order and security within correctional facilities, physical interventions may be necessary to subdue a person or a group of people. In such cases, the purpose of the use of force is to protect the public, the staff and detainees. Staff must use only the least restrictive measures possible, based on prior threat and risk assessment.

Among the means of control considered, the use of an inflammatory agent, such as pepper spray, may prove necessary in certain intervention situations that call for the use of force. This product is an irritant that causes a burning sensation and inflames the eyes, nose, throat, lungs and skin. After an inflammatory agent is used, the person and the premises must be decontaminated promptly. While decontamination is being carried out, the staff in charge must:

- Remove the person from the contaminated area and escort them to an open space where they can breathe freely;
- Ensure that the person is calm;
- Accompany the person to the shower for decontamination, if the person consents to this course of action. A person has the right to refuse the decontamination shower, but they must have access to it as soon as they say they want one;
- Check whether the person is having trouble breathing;
- Have any person who has been exposed to an inflammatory agent examined by the facility’s health section as soon as possible. The person remains under observation for 12 to 24 hours after decontamination. If their health condition requires it, they must be taken to the nearest hospital for the appropriate care.

Of course, the use of inflammatory agents calls for a series of actions so that the measure serves its purpose without compromising the health of those concerned.

While conducting investigations, the Québec Ombudsman noted that the mandatory steps governing the use of inflammatory agents were not always followed.

- Some intervention reports by correctional officers did not indicate which decontamination measures were taken.
- Certain reports remain vague. For example, one report indicated that decontamination was carried out, even though officers told the Québec Ombudsman that the person had refused it.
- Versions are contradictory. One report did not mention that the person had refused decontamination and had nothing to say about the decontamination measures that were taken. However, the detainee maintained that he had requested decontamination, but that his request had been ignored.

The Québec Ombudsman intervened with certain facilities so that the staff understand its responsibilities regarding decontamination. It also requested that correctional officers be reminded of their obligation to produce the appropriate reports when an inflammatory agent is used as well as regarding any decontamination-related intervention.

The Québec Ombudsman also noted that in some cases, decontamination had not been offered to the person who had suffered the effects of the inflammatory agent. When this happens, the person is reduced to using the sink in their cell to decontaminate themselves. Some detainees were kept in their contaminated cell or in a contaminated sector. Each staff member must be informed that exposure to the substance may trigger respiratory distress.

When it sees poor practices regarding decontamination, the Québec Ombudsman intervenes with the correctional facility authorities to issue reminders to the staff.

The Québec Ombudsman continues to intervene with the Department so that these types of situations do not recur.



USE THE INFLAMMATORY AGENT WITH ALL REQUIRED PRECAUTIONS

A detainee refused to return to his cell despite several warnings. The correctional officers had to physically force him into his cell. However, as the door was closing, the detainee turned around abruptly and charged towards the officers, who therefore had to use an inflammatory agent to prevent him from leaving the cell and to avoid an assault. The detainee tried to leave his cell again and the officers used the inflammatory agent a second time.

The man was then left in his cell, which had been contaminated twice. In their report, the officers indicated that he used water from his sink to decontaminate himself. One of them reported that the detainee had refused decontamination.

A new intervention was necessary when the officers saw that the man was lying on the floor and seemed unconscious. A request for assistance was made to the facility's health section. The man had to be taken to hospital by ambulance.

In the Québec Ombudsman's opinion, even if the man had refused decontamination, he should have been removed from the contaminated area. The facility's authorities told the Québec Ombudsman that a meeting had taken place with the staff concerned about their obligations surrounding decontamination.

Moreover, the video recording from inside the cell showed that the man had tried to decontaminate himself for nearly 25 minutes and was having trouble. Then he fell to the floor, unconscious. The officers only came to his assistance a quarter of an hour later.

The Québec Ombudsman expressed concern about how long it took for a man in difficulty to be helped, despite the fact that the staff were obliged to check for any signs of respiratory distress because he had been exposed to the inflammatory agent.

The officers concerned were dealt with by their managers.

COVID-19 – Reducing the prison population during the pandemic

In its 2020-2021 Annual Report, the Québec Ombudsman weighed in on the measures for reducing the prison population in the context of the COVID-19 pandemic, namely, attempts to counter the effects of overcrowding, which is one of the main factors in transmitting the virus. Among the mechanisms established for achieving this goal was a ministerial order permitting the release of detainees, while adhering to strict requirements, for the period from May 7, 2020, to March 25, 2022.

This decision was consistent with the position of the Institut national de santé publique du Québec, which proposed considering the release of detainees vulnerable to COVID-19 in order to decrease the occupancy rate in correctional facilities. More specifically, the ministerial order stated the following:

That for medical purposes, the director of a correctional facility authorize, on the conditions the director determines, the temporary absence of an inmate serving a prison term of less than two years, in order to protect the inmate's health and that of the other inmates and members of the personnel.⁷

The detainees concerned were the following (first group):

- People 65 years old and over;
- People whose continued incarceration would put them at particular risk for COVID-19, as confirmed by a medical opinion;
- Pregnant women;
- Detainees who will probably be released in 30 days or less.

The detainees must also satisfy the following requirements (second group):

- Have an address where they can stay;
- Show that they can meet conditions within society;
- Not have committed disciplinary infractions related to physical violence or to the use of offensive language towards staff during incarceration.

The following detainees were excluded from release, those:

- Pending trial (remandees);
- Pending transfer to a penitentiary (a federal facility);
- Subject to an immigration measure, notably pending a decision about their migratory status;
- With a domestic violence record;
- With a profile as a sex offender;
- Convicted for child abuse, violence against elders, or any violent offense;
- Belonging to a criminal or a security threat group, such as a street gang.

Further to this decision, every week the Department drew up lists of the detainees eligible for release according to the initial requirements.⁸ Following this, the correctional facilities carried out a detailed study of each file regarding the second group to determine whether the facility's authorities could grant temporary absence.

According to Department data, only 745 detainees were released between May 27, 2020, and March 25, 2022, out of a total of 3,603 people in the first group.

The Québec Ombudsman saw that in certain cases, the administrative rigidity of the release process unduly prolonged the incarceration of detainees who satisfied all the requirements set out in the ministerial order. In the Québec Ombudsman's opinion, the lack of specific directives for managing these releases was supposed to be an incentive for correctional facilities to be flexible.

7 / Ministerial order 2020-033.

8 / Note that these lists also excluded cases of serious offences and belonging to a criminal group.



COVID-19: A TEMPORARY ABSENCE IS CANCELLED DUE TO LACK OF FLEXIBILITY

A detainee obtained a temporary absence under the ministerial order that sanctioned the release of certain inmates because of the COVID-19 pandemic. He qualified because there were only 30 days left on his sentence. The temporary absence certificate issued by the facility where he was incarcerated specified that he would be released on October 25, 2021.

The next day, he was told that his temporary absence had been cancelled, so he complained to the Québec Ombudsman.

Because the inmate had been incarcerated more than 700 km from his home, it had been agreed that the facility would give him \$100 for inter-regional bus fare. However, he mentioned that he did not have the \$3.50 for a bus ticket to the bus terminal from the correctional facility. In checking, the Québec Ombudsman learned from a staff member that the facility's authorities had suspended his temporary absence rather than give him a bus ticket or the little extra amount for a bus ticket.

Questioned about this by the Québec Ombudsman, the authorities maintained that it was not up to the facility to cover the cost of a detainee's transportation as part of a temporary absence, and this is why the absence had been cancelled. The authorities would issue the amounts only when the detainee was released, that is, at the end of his sentence, as specified in the provincial Instruction on that subject.

As the Québec Ombudsman saw it, the instruction should not have restricted the scope of the ministerial order, which was aimed at reducing the prison population based on strict requirements and under exceptional circumstances. The Québec Ombudsman therefore argued this point with the facility authorities.

Afterwards, instead of using the simplest solution and giving the man the \$3.50 for public transit, the facility contacted the correctional facility in the region where the detainee lived to have him transferred by police van, escorted by two officers. Since this facility was located some distance from the first facility, the detainee had to spend time in another correctional facility that was in the throes of a full-fledged COVID-19 outbreak. Moreover, the first facility indicated that a temporary absence granted by a facility could not be applied by another facility. Based on this reasoning, a new analysis of the detainee's case by the facility in his region was necessary. After this was done, the facility authorities finally authorized his release under the ministerial order.

This was the scenario, a veritable relay race. Instead of the detainee being issued \$3.50, he was transferred from a first facility to a second, then to the final destination, where, two days later, he at long last was released for a temporary absence, with another delay of a day.

Because of the correctional facility's lack of flexibility in handling this file, the detainee ended up spending seven extra days incarcerated. Multiple steps and various delays in connection with the way of awarding the temporary absence made the process even more complex before, ultimately, correctional services managed to grant permission under the ministerial order.

Clearly, another way of proceeding would have been more advantageous for the detainee and correctional services alike.

A dehumanized approach in applying restraints

This year, the Québec Ombudsman was particularly shocked when a means of control was applied that defied logic and was devoid of respect for a deceased person. It intervened so that a necessary reminder was issued to the staff because of the following situation.

The inanimate body of a detainee was found when a correctional officer was making his rounds. Assistance was immediately sought from in-house emergency services. Resuscitation was attempted until the ambulance technicians took over. Following their protocol and the result of their analysis of the situation, the technicians stopped resuscitation and noted the death.

The remains were put on a stretcher and taken to the archives room of the health section while waiting for investigators to arrive. At that point, an officer informed his manager that, under such circumstances, handcuffs and ankle cuffs had to be applied to the person until a physician officially declared the person dead. The manager granted authorization, and the body was cuffed.

It is important to know that restraints such as handcuffs are used to restrict a person's freedom of movement. Any

application of such a measure must take into account the person's physical and mental condition, the danger to the person and to others also having been objectively assessed. The measures must respect the dignity, integrity and security of every person, and must never constitute cruel, inhuman, degrading or unusual treatment.⁹

If these requirements are taken into account, nothing can justify the use of restraints on a dead person.

Clearly, in this case, the harm had been done regarding the deceased person, so that at this point it is only a matter of remedial action. The main purpose of the Québec Ombudsman's intervention is to ensure that such an affront never occurs again.

By way of further follow-up, the facility's authorities met with the staff members concerned, including the manager who had given permission for the use of restraints. The authorities reminded them about the instructions on applying restraints, particularly concerning the respect for human dignity.

Acting with humanity and empathy must always be part and parcel of the tasks of the staff in correctional facilities, whose role extends beyond mere supervision and surveillance. This issue is of constant concern to the Québec Ombudsman.

9 / MINISTÈRE DE LA SÉCURITÉ PUBLIQUE, Instruction 2 1 I 08: "Normes d'utilisation des instruments de contrainte à l'intérieur du réseau correctionnel".

HEALTH AND SOCIAL SERVICES NETWORK





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.

Note that the period covered in this report corresponds to a second full year of the COVID-19 pandemic. It goes without saying that the daily operations of public services were affected, as were citizens' priorities during this difficult time. The Québec Ombudsman's findings in its 2021-2022 Annual Report must therefore be taken in context and understood in light of this exceptional situation.

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 concerning 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 data provide an overview of citizens' requests, complaints and reports, as well as the monitoring of the corrective measures recommended by the Québec Ombudsman in 2021-2022.

During this same period, the Québec Ombudsman intervened regarding:

- 39 of the 52¹⁰ health and social services network institutions;
- 11 of the 88 other network-affiliated institutions;
- 59 private seniors' residences;
- 15 community organizations;
- 6 pre-hospital emergency services;
- 2 private or community residences for a vulnerable client population.

10 / That is, 51 network institutions listed on the Ministère de la Santé et des Services sociaux's website (<https://m02.pub.msss.rtss.qc.ca/M02ListeEtab.asp#LienRegion17>) and Nunavik Regional Board of Health and Social Services.

1

TRENDS IN CLOSED COMPLAINTS, REPORTS AND REQUESTS FOR ASSISTANCE

	2018-2019	2019-2020	2020-2021	2021-2022
Requests for assistance	22	8	6	16
Substantiated complaints and reports	552	651	527	576
Mediation	28	25	15	16
Unsubstantiated complaints and reports	661	912	819	824
Could not take a definitive position	20	27	22	16
Referred	109	126	207	200
Suspended	354	392	405	320
TOTAL	1,746	2,141	2,001	1,968
Difference with the preceding year	-	+22.6%	-6.5%	-1.6%

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 encompasses cases in which the Québec Ombudsman proposes a conciliatory solution to both parties in an attempt to foster a resolution.

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**.

A complaint or report may also be **suspended**. This may happen when the ground for complaint or report is inadmissible because it is not within the Québec Ombudsman's purview (e.g. when a complaint or report concerns a private institution). Suspension may also occur when the ground for complaint or report is admissible but the person does not respond, withdraws the complaint or report because the situation is resolved during the investigation, or the Québec Ombudsman refuses to begin or continue processing under section 13 of the *Act respecting the Health and Social Services Ombudsman*.

Lastly, further to the investigation, the complaint or report is deemed **substantiated** or **unsubstantiated**. The complainant or person reporting is then informed of the Québec Ombudsman's conclusions.

If the complaint or report proves substantiated, the Québec Ombudsman asks the department or agency concerned to institute corrective measures and monitors their implementation. A substantiated complaint or report file is closed only after any corrective measures have been taken to the Québec Ombudsman's satisfaction.

Detailed results

In 2021-2022, the total number of closed requests (complaints, reports and requests for assistance) concerning the health and social services network decreased by 1.6% compared to last year, but it increased by 0.3% compared to the average of the past three years.

The CIUSSS de la Mauricie-et-du-Centre-du-Québec had the highest number of requests (129 compared to 109 last year).

The highest increases concerned:

- CISSS de Chaudière-Appalaches (30 grounds), from 69 to 99;
- CISSS du Bas-Saint-Laurent (24 grounds), from 43 to 67;

- Centre hospitalier de l'Université de Montréal (20 grounds), from 34 to 54;
- CIUSSS de la Mauricie-et-du-Centre-du-Québec (20 grounds), from 109 to 129.

The most notable decreases concerned:

- CIUSSS de la Capitale-Nationale (58 grounds), from 163 to 105;
- CISSS des Laurentides (56 grounds), from 177 to 121;
- CIUSSS du Centre-Ouest-de-l'Île-de-Montréal (30 grounds), from 93 to 63;
- CISSS de l'Outaouais (17 grounds), from 79 to 62.

Greatest variations in closed complaints, reports and requests for assistance

INSTITUTION	2020-2021	2021-2022	VARIATION	NUMBER
CIUSSS de la Capitale-Nationale	163	105	Decrease	-58
CISSS des Laurentides	177	121	Decrease	-56
CIUSSS du Centre-Ouest-de-l'Île-de-Montréal	93	63	Decrease	-30
CISSS de l'Outaouais	79	62	Decrease	-17
CIUSSS de la Mauricie-et-du-Centre-du-Québec	109	129	Increase	+20
Centre hospitalier de l'Université de Montréal (CHUM)	34	54	Increase	+20
CISSS du Bas-Saint-Laurent	43	67	Increase	+24
CISSS de Chaudière-Appalaches	69	99	Increase	+30

As for the number of grounds for complaint and requests for assistance, we note a decrease of 6.6% compared to last year and 6.4% compared to the average of the past three years. Compared to last year, the number of reports and requests for assistance increased by 29.3% and 47.3% respectively compared to the average of the past three years, from 276 to 357.

2

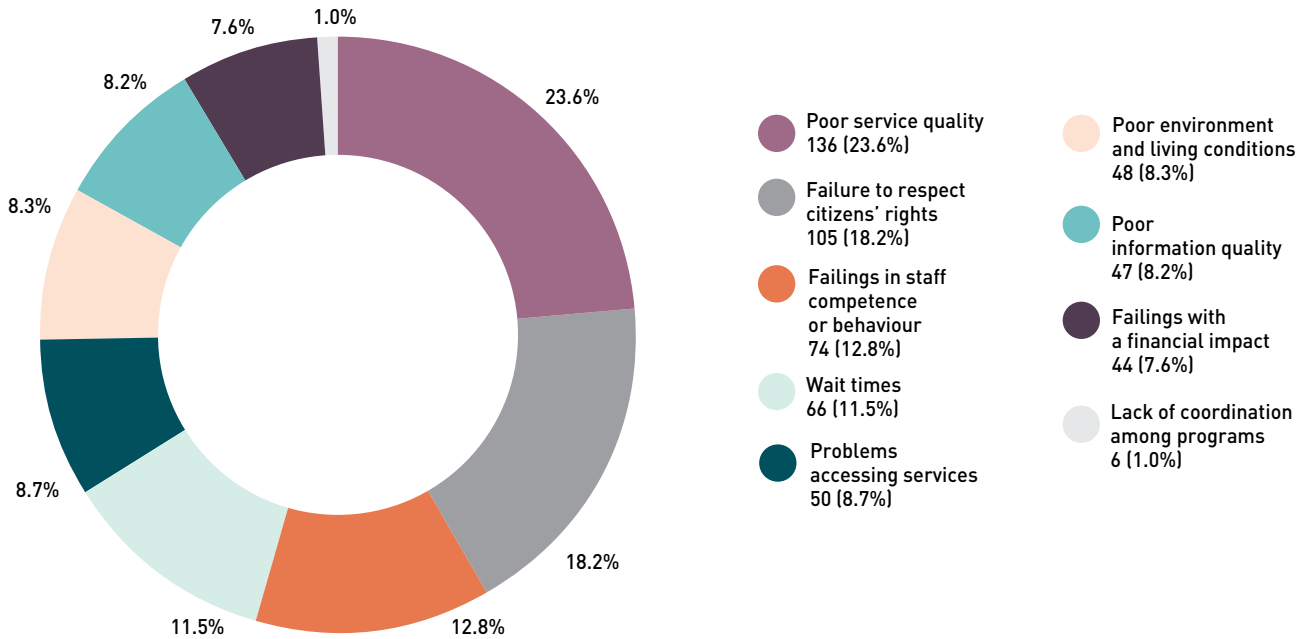
SUBSTANTIATED COMPLAINTS AND REPORTS

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 2021-2022, the proportion of substantiated complaints and reports increased by 1.9 percentage points, as illustrated in the table opposite.

Proportion of substantiated complaints and reports

2018-2019	2019-2020	2020-2021	2021-2022
45.5%	41.7%	39.2%	41.1%

Portrait of substantiated complaints and reports



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

Poor service quality, failure to respect citizens' rights, failings in staff competence or behaviour and lengthy wait times accounted for 66.1% of the substantiated grounds for complaint and report in 2021-2022.

Poor service quality represented 23.6% of substantiated grounds (136), which mainly concerned the quality of physical and psychosocial care, clinical procedures and protocols, care and service organization, use of restraints, isolation, as well as care, service or intervention plans.

Failure to respect citizens' rights represented 18.2% of substantiated grounds (105), which included lack of compliance with legal obligations concerning the complaint examination procedure; negligence, oversights and failure to act within a normal time frame; failure to abide by the right of users to

be informed about a health condition, a specific situation, an incident or an accident; as well as failure to apply rules and procedures. These subjects represented 79.0% of substantiated grounds, for a total of 83.

Failings in staff competence or behaviour represented 12.8% of the 74 substantiated grounds, namely, failure to show respect, lack of empathy and shortcomings concerning qualifications, skills, and professional judgment. These aspects accounted for 83.8% of substantiated grounds (62 grounds).

This year, lengthy wait times represented 11.5% of substantiated grounds (66 grounds). Wait times for access to a family doctor, for obtaining an appointment or access to a service, for surgery, for home support or for a transfer accounted for 77.3% of substantiated grounds (51 grounds).

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MONITORING OF CORRECTIVE MEASURES

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

Accepted case-specific measures

2018-2019	2019-2020	2020-2021	2021-2022	2021-2022	
				ACCEPTED	REFUSED
97.8%	100.0%	100.0%	99.4%	167	1

Accepted measures with a collective impact

2018-2019	2019-2020	2020-2021	2021-2022	2021-2022	
				ACCEPTED	REFUSED
98.2%	97.2%	97.6%	97.4%	308	2

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CLOSED REQUESTS BASED ON THE MISSION PURSUED¹¹

CATEGORY/MISSION	REQUESTS RECEIVED IN 2021-2022	CLOSED REQUESTS IN 2021-2022							TOTAL
		REQUESTS FOR ASSISTANCE	COMPLAINTS AND REPORTS					SUSPENDED	
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED		
Institutions									
Rehabilitation centres	106	1	31	39	1	1	13	16	102
Residential and long-term care centres	232		68	88	1		25	48	230
Hospital centres	748	7	237	286		12	51	103	696
Youth centres	376	3	61	237		2	42	45	390
Local community service centres	196	2	69	67		1	22	36	197
Complaints commissioners and others	232	3	66	57	14		37	40	217
Total: Institutions	1,890	16	532	774	16	16	190	288	1,832
Community organizations	19		11	14			1	2	28
Private seniors' residences	97		28	23			5	29	85
Private or community residences for a vulnerable client population	2		2				1		3
Pre-hospital emergency services	22		3	13			3	1	20
TOTAL	2,030	16	576	824	16	16	200	320	1,968

Hospital centres accounted for 35.4% of closed complaints, reports and requests for assistance this year. The percentage¹² of substantiated complaints and reports was relatively high, reaching 45.3%. As for hospital centres offering mental health care, the number of complaints and reports increased by 7.5 percentage points, from 23.5% last year to 31.0% this year.

11 / The number of closed files in one year 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.

12 / The percentage of substantiated complaints is calculated as follows: Number of substantiated complaints/(Number of substantiated complaints + Number of unsubstantiated complaints).

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CLOSED REQUESTS BASED ON THE SERVICE PROGRAM¹³

SERVICE PROGRAM	REQUESTS RECEIVED IN 2021-2022	CLOSED REQUESTS IN 2021-2022							TOTAL
		REQUESTS FOR ASSISTANCE	COMPLAINTS AND REPORTS					SUSPENDED	
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED		
Buildings and equipment	2							2	2
Intellectual disability/ Autism spectrum disorder	91		39	44	1		8	9	101
Physical disability	56		23	19		1	2	4	49
Addictions	14		7	4			7	4	22
Troubled youth	390	2	63	246		2	44	49	406
Access to the services of a physician	44		29	4			2	10	45
Complaint examination procedure	187	3	42	38	13		31	32	159
Mental health	177	2	39	85			24	36	186
Physical health	540	6	173	193		12	24	73	481
Public health	47		7	15			11	9	42
Support for elderly autonomy	342	2	98	118	1	1	33	79	332
Service support	127		51	55			14	10	130
Total	2,017	15	571	821	15	16	200	317	1,955
Other or does not apply	13	1	5	3	1			3	13
TOTAL	2,030	16	576	824	16	16	200	320	1,968

As last year, the highest percentage of substantiated requests concerned access to the services of a physician (87.9%).

13 / The number of closed files in a year 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.

6

CLOSED REQUESTS CONCERNING PUBLIC SERVICE BODIES CONNECTED TO THE HEALTH AND SOCIAL SERVICES NETWORK

Data taken from the table on pages 26 to 28 of the *Public service* section.

DEPARTMENT AND AGENCIES CONNECTED TO THE HEALTH AND SOCIAL SERVICES NETWORK	REQUESTS RECEIVED IN 2021-2022	CLOSED REQUESTS IN 2021-2022							TOTAL
		REQUESTS FOR ASSISTANCE	COMPLAINTS					SUSPENDED	
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED		
Office des personnes handicapées du Québec	1							1	1
Régie de l'assurance maladie du Québec	239	14	92	99			2	40	247
Ministère de la Santé et des Services sociaux	374	31	37	132			13	162	375
TOTAL: Organizations	614	45	129	231	0	0	15	203	623

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

Reminder to the Ministère de la Santé et des Services sociaux and to CISSSs and CIUSSSs: the Québec Ombudsman has full power to obtain all information

The *Act respecting the Health and Social Services Ombudsman* indicates that the Ombudsman is empowered to demand any information or document required in the context of examining complaints.

It is important to remember that for investigative purposes, the Québec Ombudsman, the Deputy Ombudspersons, as well as the staff mandated to investigate, are vested with the powers and immunity of commissioners appointed under the *Act respecting public inquiry commissions*. The exception to the rule is the power to impose imprisonment. The Act also ensures that the information the Québec Ombudsman collects in performing its duties remains fully confidential.

Only certain documents are exempted, including Conseil des médecins, dentistes et pharmaciens files and minutes.

Most government departments and agencies have a firm understanding of the Québec Ombudsman's exceptional powers and cooperate effectively, providing the information the Québec Ombudsman requests. However, integrated health and social services centres (CISSSs), integrated university health and social services centres (CIUSSSs) and the Ministère de la Santé et des Services sociaux (MSSS) are not always as cooperative.

In 2021-2022, some CISSSs and CIUSSSs failed to send documents requested by the Québec Ombudsman or dragged their heels in providing information needed for examining a

complaint. The Québec Ombudsman had to remind them repeatedly. This was the case for documents held by youth centres and for information about risk management from a CIUSSS's quality section.

Sometimes MSSS delayed sending information, in particular, a document that the Québec Ombudsman had to take into account in analyzing a report. It took several months before the information was provided.

Also, at times MSSS asked Québec Ombudsman investigators to submit official requests for access to documents from institution authorities, even though, under the law, the investigators can access them without this requirement.

Such dithering may contribute to longer complaint processing times and, as a result, cause people harm. The Québec Ombudsman insists on the urgency of certain complaints that, for example, concern the most vulnerable among us.

The scope of the powers of the Québec Ombudsman, clearly set out here, are such that, when all is said and done, it always gets the information it needs in order to investigate. In other words, faced with any refusal, the Québec Ombudsman acts to gain access to the information, documents and people for the investigation. The following example illustrates this.

It should be noted that in March 2022, MSSS sent a letter to health and social services network institutions about confidential risk-management documents. In the letter, MSSS reminded the institutions that these kinds of documents can be sent to the Québec Ombudsman when so requested.



SEND THE QUÉBEC OMBUDSMAN THE REQUESTED INFORMATION

Someone was injured when a code white (signal indicating that a service user is aggressive and that a team must be deployed) was called in a hospital.

Summoned to investigate, the Québec Ombudsman asked the CISSS in charge of the hospital for documents from its quality and risk management section. The CISSS refused to grant the first request and the Québec Ombudsman's many ensuing reminders proved fruitless.

The Québec Ombudsman turned to MSSS to solve the problem but was surprised to learn that the Department had

instructed the CISSS not to send the requested documents until the Department had taken a position.

The legal obligation to provide all information, including that requested in the case at hand, is clear. If the legislator had wanted to prohibit the communication of documents from a quality and risk management authority, this would have been specified, but, in fact, it is not indicated in any legislation.

After checking, MSSS sent the institutions an orientation confirming that they could transmit the confidential risk management documents to the Québec Ombudsman, and the situation was settled.

DISABILITIES

Disability services in specialized day centres

Adults with intellectual impairments or autism spectrum disorders may, under certain conditions, take part in activities offered by day centres. Under Ministère de la Santé et des Services sociaux (MSSS) policy, these activities are part of the slate of services for this client population in particular.¹⁴ These day centres report to community centres or CISSSs or CIUSSSs, as is the case under the CRDI (intellectual disability rehabilitation centre) program. The people who participate in these activities live at home, with their parents for the most part, or in residences for which the health and social services network is responsible.

The last health and social services reform, in 2015, stepped up the transfer of a portion of day

services to the community sector for the client population without significant potential for rehabilitation, the main goal being to maintain their capacities. In the wake of this, places within the health and social services network were reserved for people whose prospects for rehabilitation were better. However, the fact is that the community network struggles to ensure services for part of the client population that it was assigned as a result, namely, more severely disabled people.

In the past year, the combined effect of the pandemic and of a fragile health and social services network and community sector triggered full or partial service ruptures in day centres. Many service users found themselves confined either to their home or a residential resource, with little or no support.

14 / MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *Pour une intégration des soins et des services pour les personnes ayant une déficience. Gamme de services pour les personnes ayant une déficience physique, une déficience intellectuelle ou un trouble du spectre de l'autisme*, 2020, page 16.

Day centres are crucial for these people, not only for maintaining their capacities, but also for their development, as well as for giving them opportunities to socialize and form ties. Parents of adults in this situation told the Québec Ombudsman that the absence of day centre activities had caused their children to be depressed and to regress. The day centre also allowed parents to be given a break, to see to their own needs, and to avoid burnout.



RESTORE ACCESS TO A DAY CENTRE FOR A PERSON WITH A DISABILITY

A severely impaired woman lived with her parents. Five days a week she went to a specialized day centre that reports to an intellectual disability rehabilitation centre (CRDI). However, her services were decreased and she only could go to the centre twice a week. This was partly due to the pandemic, the idea being to reduce group size because of the risk of contagion. Also, services were reduced because staff were assigned to other tasks, again, due to COVID-19. The woman was not able to participate in the program being offered because she had to have naps during the day. There were questions as to whether she should even continue attending.

According to the people responsible for organizing services, community organization front-line services should have taken the lead because the woman did not need the specialized

services provided by the day centre she attended. However, the creation of new adapted resources under collaboration agreements between MSSS and community partners was slow to happen. In the meantime, the day activities of this client population, of which the woman was a part, were reduced if not cut.

Given the lack of day activities for the severely impaired client population entrusted to front-line services, the Québec Ombudsman contacted the CISSS in charge and recommended maintaining access to existing places in specialized day centres for these people, including the woman in question. The institution accepted the recommendations and kept the places, as the Québec Ombudsman had requested.

Respite services for informal caregivers

Respite services are essential for ensuring that people with disabilities continue to live at home and for giving informal caregivers time off.

The network of non-institutional residential resources (RNIs), consisting of intermediate resources and family-type resources for people with disabilities, offers respite places for the informal caregivers of people who live at home. However, the Québec Ombudsman has seen that the RNI network offers fewer and fewer of these. Because of the lack of resources and the growing demand for permanent living environments, respite places were being converted into standard residential places.

The Québec Ombudsman's investigations in Montérégie-Centre, Montérégie-Ouest and Saguenay-Lac-Saint-Jean confirmed that all respite places within the RNI network had been closed. Agreements with community sector partners were hampered by the difficulty in recruiting promoters and staff. The lack of respite for families not only contributed to their exhaustion, but could also possibly cause more emergency placements of people with disabilities in residential resources in the foreseeable future.

Given that enabling people to remain at home is something that everyone involved wants, and that it is also desirable in terms of strengthening available resources, the Québec Ombudsman considered it urgent that MSSS produce a respite action plan for the families of people with disabilities.

As early as 2012, the Québec Ombudsman, in a special report about home support services,¹⁵ alerted MSSS to the need to increase these services and better support informal caregivers. Year after year since then, in each of its Annual Reports, the Québec Ombudsman has spoken out against insufficient support for families who have chosen to take care of a loved one at home.

The Act to recognize and support caregivers was passed on October 28, 2020, followed a few months later by a government action plan for informal caregivers.¹⁶ One of the main thrusts is to support informal caregivers by offering adapted health services and social services. The plan provides for enhancing the slate of home support services for informal caregivers,¹⁷ diversifying the respite service offer for people with disabilities,¹⁸ and continuing the development of external respite services with sleepovers.¹⁹ The Québec Ombudsman urges MSSS to make good on these commitments.



A man with a disability had lived with his family in an outlying village all his life. Before COVID-19, he spent one week per month at a family-type resource where he had been going for the last ten years. When the person in charge of the residence retired, it closed. Because of this, the CISSS was no longer able to offer respite since no residence provided this service.

With COVID-19, respite services within the network of intermediate and family-type resources were suspended in this region. Alongside this, all respite places had been converted into standard residential places. Now it was the community sector that was entrusted with the residential format for respite.

In response to the Québec Ombudsman's recommendations, the CISSS found a stable respite place for the man, namely, a community organization that could accommodate him. However, the service is only for two sleepovers per month (or one weekend per month). As a result, the agreement is very limited and fragile because the organization concerned is the only one available.

Therefore, the family is looking reluctantly at putting the man in a residential resource, but even with such an option, the family faces another obstacle—the lack of available places in their region. This situation could mean that the only place would be in a resource far away from his home.

15 / QUÉBEC OMBUDSMAN, *Is home support always the option of choice? Accessibility of home support services for people with significant and persistent disabilities* – Investigation report by the Québec Ombudsman, 2012.

16 / MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *Reconnaître pour mieux soutenir – Plan d'action gouvernemental pour les personnes proches aidantes 2021-2026*, 2021.

17 / Plan d'action gouvernemental pour les personnes proches aidantes (supra, note 16), focus 3, orientation 3.2, mesure 40.

18 / Plan d'action gouvernemental pour les personnes proches aidantes (supra, note 16), focus 3, orientation 3.2, mesure 41.

19 / Plan d'action gouvernemental pour les personnes proches aidantes (supra, note 16), focus 3, orientation 3.2, mesure 45.



GIVE PARENTS RESPITE AND PREVENT BURNOUT

A person with a disability had not had access to a residential respite service in an RNI network resource since March 2020. Before this, she had gone there two weekends per month.

The person's parents were exhausted. They had tried to place their child in a standard residential resource, but the experience had been a failure because the resource could not provide the desired living environment.

The CISSS in charge therefore proposed the service-employment paycheque format for one morning per week. This measure would make it possible to hire someone to help

with household activities and some care. This format did not meet the parents' need for respite.

Considering the seriousness of the issue of service access for people with severe disabilities and for their families, the Québec Ombudsman recommended that the CISSS:

- Continue to work with its community partners to create respite places in residential resources for people with disabilities;
- Send it an action plan, with a timeline, for 2022.

The CISSS accepted both recommendations and sent the Québec Ombudsman the action plan and the timeline.

TROUBLED YOUTH

The information provided to the court by caseworkers

When a child is removed from their family of origin to be entrusted to a foster family, the biological parents may maintain their right to be in contact with the child. Even if a child has a formal living arrangement such as placement until they reach adulthood, the Director of Youth Protection (DYP) must foster continued ties with the child's family of origin if that serves the young person's interests.

One of the responsibilities of caseworkers is to present a thorough report to the court faithfully reflecting the ties that the child for whom they are responsible has with their biological parents as well as with their foster family. The court can then make an informed decision about a child's permanent living arrangements based on these elements.

Problems arise when this portrait of the situation is incomplete. The court can be misled, and this may have major, even disastrous, effects on the child's future life.



RIGOROUSLY AND OBJECTIVELY PORTRAY THE FOSTER FAMILY

The biological parents of a child in foster care contacted the Québec Ombudsman to criticize the lack of objectivity of the DYP caseworkers assigned to them. They also deplored that the reports presented in court by the caseworkers were too categorical and painted a negative portrait of their parenting skills.

The Québec Ombudsman's investigation showed that the rosy description of the foster environment in the reports in question had exacerbated the dispute between the substitute environment and the parents. The situation meant that the children had divided loyalties.

The caseworkers told the Québec Ombudsman that the foster family had threatened to sue them if they dared express any reservations about their behaviour. What's more, the DYP had recognized that there was an organizational culture that incited caseworkers to omit any problems with foster families from their court reports. The effect of this tendency was that

the portrait of foster families was incomplete, which, as a rule, painted their qualifications in a favourable light. Such taking of sides may greatly influence the court.

The Québec Ombudsman made several recommendations to the CISSS in charge, in particular so that the DYP caseworkers painstakingly describe the foster family's positive and negative aspects alike in their reports. It also recommended that the DYP supervise the foster family more closely in order to ensure better cooperation between the family and the youth centre concerned and to spare the children any conflicting loyalties.

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



Assessing the factors that endanger a child's security, and justifying a report

When the DYP receives and accepts a report, it is crucial that the factors that endanger the child's security be correctly identified based on the relevant provisions of the *Youth Protection Act*. These elements shape the file's orientation and the actions stemming from it.

But if the opposite occurs and a mistake is made concerning the legal provisions taken into account, the goals of the DYP's intervention may not be the right ones for the child.

The Québec Ombudsman intervened to insist on the major adverse effects of an inaccurate assessment of the grounds of endangerment that puts the child's well-being at stake.



ASSESS THE GROUNDS FOR THE ENDANGERMENT OF A CHILD'S SECURITY MORE ATTENTIVELY

The Québec Ombudsman received a report about children who allegedly were the victims of sexual touching by their father, but whose situation had not been taken into account correctly by the DYP.

The Québec Ombudsman's investigation showed that the caseworker responsible for handling the file had assessed the situation incorrectly by citing educational neglect as a ground rather than sexual touching by the parent. She had not taken into account the fact that the children from the same parent's first union had been the subject of a report ten years before after being the victims of sexual touching.

Another report had to be made about these children for similar behaviours by the same parent before a new caseworker and her manager came to a different verdict—it was a case

of sexual abuse rather than educational neglect. It is certainly regrettable that the children had to experience other events of a sexual nature before the DYP assessed their situation adequately.

The Québec Ombudsman recommended that the CISSS in charge conduct an in-depth review of the case to pinpoint the flaws in how the situation was handled. The Québec Ombudsman felt that it was essential to understand how DYP caseworkers managed to attribute identical circumstances to two different grounds for endangerment.

The Québec Ombudsman will examine this review attentively to ensure that action will be taken so that such a situation never happens again.

Deployment of a DYP emergency measure to protect a child

The *Youth Protection Act* allows the DYP to take immediate protective measures for up to 48 hours when a child's security is endangered. Under these circumstances, the DYP may immediately place the child temporarily without the parents' consent.

The Québec Ombudsman is aware that this kind of intervention may be necessary in critical situations. Action by police is sometimes required to ensure everyone's safety. However, the context for an emergency intervention is dramatic for the parents and children involved, who are at the centre of overwhelming events. That is why it is essential, even in the heat of the moment and even though exceptional measures have to be deployed, to be compassionate and remain attentive to the distress being expressed.



HUMANIZE AN EMERGENCY INTERVENTION

A woman complained to the Québec Ombudsman that police officers and DYP caseworkers showed up at her home without warning. They left quickly with her newborn child without explanation. Once at the hospital, the caseworkers were informed that the visible marks on the baby's body had not been caused by mistreatment but were in fact natural skin markings.

The Québec Ombudsman's investigation showed that the intervention and insinuations by the caseworkers had heightened the mother's state of apprehension and confusion, leading to communication and interpretation problems between the mother and the DYP representatives.

Its investigation completed, the Québec Ombudsman made three recommendations to the CISSS in charge so that in such

a context, emergency services are empathetic towards the people concerned and use a compassionate approach—explain the facts, answer questions, and use a respectful tone of voice.

One of the outcomes was that the DYP reminded its caseworkers that in emergency interventions, they must ensure that the parents understand the reasons, the procedure and the consequences.

The CISSS pledged to continue to consider ways of humanizing service delivery in emergency situations.

Lastly, the complainant met with a CISSS manager with whom she talked about her distress surrounding the event.

Payment for foster family candidates

Under the *Youth Protection Act*, children who cannot live with their family of origin may be entrusted to a member of the extended family or to a person who is important to them. In such cases, people can apply to be a kinship foster family.

However, the procedures for certifying the substitute environment as a foster family are often long and complex. In the meantime, frequently the foster parents who have already taken in the child are not paid the amount usually allocated to cover the child's daily needs.

The Québec Ombudsman would like to point out that recruiting foster families is a genuine problem. Moreover, it may be difficult for these families to remain committed to children who are vulnerable. Everything must therefore be done so that these families do not give up on their role if, in addition to child-related issues, they must repeatedly appeal to the system to get the amounts they are entitled to.

At the end of an investigation that showed that the payment process was taking a long time, the Québec Ombudsman intervened with the CISSS concerned in order to prevent such a situation from recurring and so the child's permanent living arrangements were not jeopardized. It recommended that the CISSS:

- Determine a reasonable delay for obtaining the required documents for making certification of the foster family official;
- When it proves impossible to comply with the reasonable delay, do what is needed to begin issuing payment anyway, for current and future cases.

After the Québec Ombudsman intervened, the CISSS determined that 90 days was a reasonable deadline. Furthermore, an application follow-up tool was put in place so that reminders would be issued if payments were late. Lastly, with a view to certifying a foster family while waiting for the required documents, exceptions could be considered when the reasonable delay had come and gone.



DO NOT JEOPARDIZE A FOSTER FAMILY'S COMMITMENT BECAUSE OF ADMINISTRATIVE DELAYS

A woman had taken in a young girl who would stay with her until age 18. The woman's eligibility as a kinship foster family had been evaluated and her application had been accepted. However, a few months later, her certification had still not gone through because the CISSS responsible for processing her file was waiting for documents in order to complete it. The woman was supposed to get \$60 a day but was barely getting half.

During its investigation, the Québec Ombudsman recommended that, given the importance of keeping the foster arrangement, an exception be made so that the woman could get paid even if documents were missing.

Because the Québec Ombudsman intervened, the sections responsible fast-tracked the process. The situation was dealt with, the woman received her official certification, and she began to get the financial support she was entitled to.



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

On March 21, 2013, the Québec Ombudsman released its special report titled *The financial contribution towards the placement of children under age 18*. The document emphasized the outdated nature of the regulation governing the contribution. Furthermore, application of the regulation differed from one youth centre to another, which created inconsistencies and unfairness in how the contribution was calculated, collected and recovered in cases where the contribution went unpaid.

At the time, the Québec Ombudsman had collected data from the Régie des rentes. They indicated that in 2010, of the 9,789 placed children whose parents paid a contribution, 69% were from single-parent families most of whom paid the baseline monthly contribution (\$22.24). However, the investigation showed that there was a sharp spike in the contribution amount as soon as parents' income exceeded \$30,000 per year.

For example, a single mother with two children, one of whom (a 15-year-old) was placed, was subject to the following conditions: for the same kind of placement, if her annual income went from \$34,169.97 to \$42,652.82 (an increase of \$8,482.85), her annual contribution shot up from \$288.72 to \$2,489.76. In other words, practically one third of the income increase was used to pay for her child's placement, which soared by 862%.

With a view to correcting the harm noted during the investigation, the Québec Ombudsman made 11 recommendations, mainly to the Ministère de la Santé et des Services sociaux (MSSS).

Over the years, MSSS worked on multiple scenarios, analyses and interministerial initiatives for overhauling the contribution, primarily with the Ministère des Finances and Retraite Québec. However, no solutions were found. In 2019, MSSS and its partners opted to completely abolish the contribution, regardless of the parents' income and the kind of placement. It was finally abolished on September 1, 2021. The CISSSs and CIUSSSs responsible up to that point for managing the contribution no longer had to collect it from the parents concerned.

Before the contribution was abolished, Family Allowance payments were issued indiscriminately to all parents, even if their child was placed. However, the allowance was contingent on paying the contribution and could therefore be withdrawn if the parent did not do so. Now that the contribution has been abolished, Family Allowance eligibility is based solely on the child's status—if the child is placed temporarily and, as a result, it is possible that they will be returned to their home before they become adults, the parents receive Family Allowance payments. If the child is placed until adulthood in the context of permanent placement, the parents no longer get Family Allowance payments.

In the Québec Ombudsman's opinion, by abolishing the contribution and continuing to issue Family Allowance payments to the parents of a child who is placed temporarily, the government helps the family of origin maintain a certain income level. This, in turn, fosters the family's stability and the possible return of the child to their family.



The report is found at protecteurducitoyen.qc.ca.

RÉGIE DE L'ASSURANCE MALADIE DU QUÉBEC

Public access to its information staff

It may be difficult to talk with a Régie de l'assurance maladie du Québec (RAMQ) agent, especially at certain periods of the year:

- In April and May, when seasonal workers arrive;
- In September, December and January, when foreign students arrive.

People have trouble contacting agents when, for example, they want information about getting or renewing a Québec health insurance card.

The Québec Ombudsman discussed this in its 2019-2020 Annual Report. RAMQ said it was aware of the shortcomings raised and ensured that it would spare no efforts to improve the

situation because, it insisted, its clients were among its top priorities. RAMQ therefore informed the Québec Ombudsman that it was trying to hire additional staff. It was also planning to go digital to increase access to its online services so that people could carry out their transactions without phoning or having to go to the office in person.

However, the Québec Ombudsman noted that problems with phone access worsened during the year, especially from October 2021 to January 2022. It received numerous complaints about that subject. In some cases, phone access was difficult, if not impossible, notably for people who wanted to register for the public health insurance plan.

The Québec Ombudsman is aware and wishes to underscore the hefty challenge RAMQ faces when it comes to customer services. During its busiest months, RAMQ could receive up to 10,000 calls a day. The increases were due to the following factors, among others:

- The end of reduced requirements due to COVID-19 for issuing health insurance cards (temporary issuance of cards without photos because of Société de l'assurance automobile du Québec service outlet closures);
- Coming into effect of the eligibility of more than 4,500 children present in Québec at least six months per year (including children whose parents have a precarious migratory status, discussed later in this Annual Report);
- Coming into effect of the eligibility of 10,000 children because of the abolition of the wait time for people who have settled in Québec to become eligible for health insurance.

Moreover, because of a backlog of 40,000 files to be processed, RAMQ re-assigned many of its staff, including those who would ordinarily answer phone calls. To rectify the situation, RAMQ established a system for making appointments, but very few places were offered.

Alongside this, RAMQ, like many employers, had to deal with absenteeism because of COVID-19.

All of this had a sizable impact on the slate of services.

Note that RAMQ has established a procedure so that certain foreign students and unaccompanied temporary workers can now register for public health insurance online. The same procedure should come into effect subsequently for other groups.

RAMQ presented different short-, medium- and long-term solutions it was considering to the Québec Ombudsman aimed at making it easier for people to talk to its information agents. The Québec Ombudsman asked RAMQ to provide it with the concrete results of its various measures. The Ombudsman will keep an eye on developments.

The grounds for unfavourable decisions about citizens

The *Act respecting administrative justice* states that administrative authorities must inform citizens who have received an unfavourable decision about why such a decision was made. Where applicable, they must also inform the citizen about forms of non-judicial redress provided for under the Act, as well as the deadlines involved. This provision therefore obliges administrative decision-makers to provide clear and transparent reasons for an unfavourable decision.

Further to complaints, the Québec Ombudsman analyzed decision letters that RAMQ sends to those who are notified that they are ineligible for health insurance or the public prescription drug insurance plan. It saw that these letters are general in nature. In other words, there are no explanations that enable the receiver to understand the basis for the decision on the factual or legislative level, even though these decisions stem from reports that are drafted at the end of administrative investigations and include all the information needed to understand the decision to refuse eligibility.

Aware of this breach of the *Act respecting administrative justice*, and so that the people who receive unfavourable decisions know why this occurred, the Québec Ombudsman recommended that RAMQ review all its letters, starting with those for administrative investigation decisions.

RAMQ argued that the current computer system complicates any attempt to improve letter content. As the Québec Ombudsman sees it, this only shows how obsolete this component of RAMQ's computer resources is. The agency must make efforts to have an efficient and agile system so that it can meet its administrative obligations towards its client population. The same holds true for its ability to enable numerous people to understand the meaning of decisions that have a major impact on their lives and to exercise available recourse.

RAMQ accepted the recommendations. However, the action plan it sent to the Québec Ombudsman on March 31, 2022, provided for a two-year timeframe for changing the letters further to administrative investigations in which the decision is unfavourable for the petitioner. In the Québec Ombudsman's opinion, this is much too long, especially since the action plan does not cover all unfavourable decision letters.

At the time this Annual Report was being written, discussions were still underway.

The information given to people presumed to be ineligible for the public plan

While conducting investigations concerning RAMQ, the Québec Ombudsman came across an administrative directive for RAMQ staff who communicate with applicants about their eligibility for Québec's public health insurance plan. The directive says that when someone contacts RAMQ and the agent tells them that they do not seem to be eligible for health insurance, the person must insist if they wish to obtain an official decision. A file is then created, the person must provide various documents, and RAMQ analyzes the file. If the person is ineligible, he or she receives a letter confirming that they do not qualify and indicating that a review is possible.

In the Québec Ombudsman's opinion, this way of doing things is illogical and lacks transparency. People who contact RAMQ to see whether they are eligible have no way of knowing that

the agent's answer is not an official decision, but rather a short assessment based on the information obtained during the conversation.

The Québec Ombudsman feels that it is imperative that RAMQ clarify the distinction between, on the one hand, information given verbally by an agent about refused eligibility, and, on the other, formal, written refusal.

As a result, RAMQ must ensure that its agents inform callers adequately so that they can tell the difference between the two. Moreover, the applicant only finds out about the review process and how it works if they receive a letter of refusal.

The Québec Ombudsman made recommendations to RAMQ. In response, RAMQ produced an action plan for correcting the situation. The Québec Ombudsman will pay close attention to its implementation.



DISTINGUISH INFORMATION FROM AN OFFICIAL DECISION

A Canadian couple returned to Québec with their two children after time spent abroad. One of the children had been born in Québec and the other, in the country where the family had been.

The mother asked for a return-to-Québec form and, in turn, eligibility for the public plan for her and her children. After explaining her status over the phone, she was told that she and her Québec-born child qualified. However, the agent refused to send her the form for the child born outside Québec because, based on the information from the mother, the agent considered that the child was ineligible. During

subsequent calls, the father had to insist to get the form. The parents contacted the Québec Ombudsman.

During the investigation, and at the parents' request, the Ministère de la Santé et des Services sociaux (MSSS) agreed exceptionally to use its discretionary power to recognize the child as being eligible.

Note that when the *Act respecting mainly the health insurance plan and prescription drug insurance plan eligibility of certain children whose parents' migratory status is precarious and amending the Act respecting end-of-life care* (discussed below) was passed in September 2021, children in this situation became eligible.



Eligibility for the public plan for children of parents with 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 the situation of Québec-born children who did not qualify for health insurance because of their parents' precarious migratory status. One of the things the Québec Ombudsman recommended was that they become eligible for the public plan at birth.

In December 2020, the Minister of Health and Social Services tabled Bill 83, *Act respecting mainly the health insurance plan and prescription drug insurance plan eligibility of certain children whose parents' migratory status is precarious and amending the Act respecting end-of-life care*.

The next spring, the Québec Ombudsman participated in the special parliamentary committee consultations, where it expressed its satisfaction with the possible eligibility of children with a precarious migratory status, including those born in Québec whose parents have a precarious migratory status. It also recommended that certain sections of the Act that were confusing be adjusted so that the children concerned benefit from coverage within a reasonable amount of time, despite administrative procedures that can drag on.

The bill came into force in September 2021. To its great satisfaction, the Québec Ombudsman saw that the provisions broadening these children's eligibility had been kept. The Act specifies that not only do children of parents with a precarious migratory status qualify, but also all children authorized to be in Québec for six months or more, even if they were not born there. Accessibility concerns Québec health insurance and, under certain conditions, prescription drug insurance too. The Québec Ombudsman applauds this major gain. As recommended by the Québec Ombudsman, flexibility is provided for and clarified for children without legal status vis-à-vis Canadian immigration, but for whom the intention to remain in Québec for more than six months has been proven.



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

MENTAL HEALTH

Screen for the risk of homicide

In Québec, crisis centres must assist the client population at risk for suicide sometimes combined with the risk for homicide. Even though there are province-wide risk assessment tools for suicide, the case is different for homicide.

In analyzing a complaint from 2019, the Québec Ombudsman noted that because there was no suitable evaluation tool, assessment by crisis centre staff as to whether there was a danger of homicide could be subjective.

While clinical judgment is crucial in assessing such situations, objectively demonstrating serious and imminent danger is also important in justifying application of the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*. More specifically, the Act allows a person's liberty to be curtailed against their will.

In investigating, the Québec Ombudsman recommended that crisis centre workers be given training on how to use an assessment tool for screening for the risk of homicide, namely, the tool created by the Centre de recherche appliquée en intervention psychosociale (CRAIP). This Centre's training sessions are included in Québec's directory of activities for developing the skills of health and social services network staff. It is also indicated in the reference framework for applying the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others* in the context of confinement in a health and social services institution.

After looking into the matter and receiving a second complaint of the same kind in 2021, the Québec Ombudsman learned that the staff at many crisis centres had not received the training it had recommended. The reason given was that CISSSs and CIUSSSs were responsible for the training, and they had not yet given the training to the crisis centre workers.

Last March, MSSS reminded the members of Québec's general social services coordination panel of their responsibilities regarding the homicide risk assessment training given to organizations. In 2022-2023, CRAIP will have five trainer activities.



HAVE THE RIGHT TOOL FOR ASSESSING THE RISK OF HOMICIDE

A man complained to the Québec Ombudsman that workers at a crisis centre had contacted the police after he had made some disturbing remarks.

The Québec Ombudsman's investigation showed that even though the workers did not have a homicide risk assessment grid, they were able to evaluate the level of risk warranting police intervention in the case at hand.

During a former complaint, the Québec Ombudsman had recommended that this same crisis centre have its workers take the homicide risk assessment training given by the CRAIP. However, the CIUSSS was slow to offer this training. As a

result, the crisis centre took the initiative to design its own tool with objective requirements for assessing homicide risk. The Québec Ombudsman noted this initiative and was given confirmation that the tool was now available for the staff.



The rights of people with mental disorders: follow-up to two major reports by the Québec Ombudsman

People whose mental condition poses a danger to themselves or to others may be confined against their will in a health institution that reports to the Ministère de la Santé et des Services sociaux (MSSS). To contest this Court of Québec confinement order, a person may approach the Tribunal administratif du Québec (TAQ), which handles the petition urgently.

In 2011, the Québec Ombudsman published a special report about the difficulties in applying the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*. Presenting its various findings, the Ombudsman recommended that MSSS introduce standardized training for all clinical staff.

In 2018, it released another report, this time about accessible and timely recourse before TAQ for contesting the continuance of institutional confinement. The Québec Ombudsman recommended that MSSS take the necessary steps to improve the initial and ongoing training of the staff of institutions that provide services to people under confinement, especially hospital centres and local community service centres (CLSCs). Among other things, the training was to cover the staff's legal obligations and service users' rights.

According to a report provided by TAQ in 2021, the average wait time went from 13 days in 2018-2019 to 8 days in 2020-2021. During the same period, the number of files processed

nearly doubled. What's more, in 2020-2021, it took TAQ an average of 7 days after receiving the grounds for objection to propose a first hearing date.

In the context of the COVID-19 pandemic, more systematic use of videoconferences made it possible to maintain secure access to this recourse and prompt handling of petitions.

In April 2021, MSSS made new training available for health and social services institution staff who offer services to people under confinement. This much-awaited training was officially launched on its digital learning platform. The Centre de recherche appliquée en intervention psychosociale (CRAIP) was mandated to distribute the training and provide accountability (results, effectiveness). The training, given in three capsules, is basically aimed at fostering best intervention practices, in keeping with the legal provisions and MSSS policy.

The Québec Ombudsman is satisfied with:

- The quality and relevance of the training material;
- Training availability;
- TAQ's and MSSS's follow-up to its two reports.



The reports are found at protecteurducitoyen.qc.ca.

PHYSICAL HEALTH

COVID-19: where to send people who go to the emergency room

With the COVID-19 pandemic, anyone who goes to a hospital emergency room must first answer questions so that their risk for spreading infection can be assessed. The triage nursing staff then assess the person's condition and direct them towards one of three zones:

- The cold zone, for people who have recovered from COVID-19 or who pose no risk for spreading the virus;
- The lukewarm zone, for people who might be affected with COVID-19;
- The hot zone, for people diagnosed with COVID-19.

People must keep to their respective zones so that the virus does not spread from one zone to another (for example, from the hot zone to the lukewarm zone).

In lukewarm zones, the person must be put in a separate room with the door closed. However, it may not always be possible to apply this measure when there are too many people in the emergency room. When this happens, two people from the lukewarm zone can be put in the same room, separated by a physical barrier such as a plexiglass screen. A minimum distance of two metres between people may be used instead. In all cases, special attention must be paid to immunosuppressed people.



COVID-19: REVIEW THE TRAJECTORY OF IMMUNOSUPPRESSED PEOPLE AT THE EMERGENCY ROOM

A person went to a hospital emergency room. She had COVID-19-like symptoms. She was directed to the zone where people who could have the virus are assessed. However, because her specific health condition made her immunosuppressed, she asked to be isolated from the other people in the lukewarm zone. Her request was refused.

Afterwards she complained to the Québec Ombudsman about having to wait with people who could have COVID-19, which, given her specific situation, exposed her dangerously to the risk of transmission.

During its investigation, the Québec Ombudsman noted that while people suspected of having COVID-19 were waiting at the emergency room, they were separated by a physical barrier. This was the right course of action. In addition, there was a special trajectory for immunosuppressed people, but only

if the immunosuppression was caused by chemotherapy. This was not the service user's case.

And yet, the Ministère de la Santé et des Services sociaux (MSSS) does not make this distinction. In fact, it recommends that the institution have algorithms so that as soon as they arrive, immunosuppressed people who have COVID-19-like symptoms are isolated.

Further to the investigation, the Québec Ombudsman recommended that the institution revise the trajectory of the immunosuppressed people who go to the emergency room so that they are handled as suspected cases of COVID-19. This way, everyone has optimal protection as soon as they arrive. The institution accepted and implemented the recommendation.

Assessing a child at the emergency room post-surgery

Assessing the condition of a child at an emergency room involves notions specific to their age group because of their particular anatomical and physiological characteristics. Health staff must therefore use age-appropriate assessment tools for the pediatric client population.

After surgery, children may have pain and be dehydrated and be taken to the emergency room for these reasons. In such cases, the professional staff enter in the file information about certain clinical signs, such as the amount of liquid ingested, urine frequency and quantity, and pain intensity

based on a scale for children. This makes it possible to adjust interventions. One of the purposes of detailed monitoring of pain—localization, type, aggravating factors, duration—is to gauge the effectiveness of the medication that has been administered. Monitoring of fluid balance (water gain and loss) makes it possible to enter any deviation from normal thresholds and to act accordingly.

We have detailed these elements so that readers understand the following case. The Québec Ombudsman saw the problems described below in a general hospital without a pediatric wing.



IMPROVE THE ASSESSMENT OF CHILDREN AT THE EMERGENCY ROOM AFTER SURGERY

A child had her tonsils removed. A few days after she went home, she was still in pain and had trouble swallowing liquids and food. She was taken to the emergency room where the nursing staff assessed her and put her on a stretcher. During the night, she was given an anti-inflammatory. Early the next morning, she managed to eat a little. She was soon given her hospital discharge. Not long after, her condition worsened drastically.

The mother contacted the Québec Ombudsman later because she felt that the emergency staff had underestimated the seriousness of her daughter's condition. She believed that the team should have done more.

In investigating, the Québec Ombudsman noted several shortcomings that cast doubt on the quality of the triage assessment, the subsequent assessments, and the care provided by the nursing staff.

After the Québec Ombudsman intervened, the hospital improved the assessment and monitoring of children who end up at the emergency room after surgery, in particular by means of reminders to the staff, training, and upgrading of clinical tools. Corrective measures were applied, especially regarding pain management and reassessment, fluid balance monitoring and temperature-taking.

COVID-19: informal caregivers in hospital centres

Given COVID-19, MSSS produced specific directives about the presence of informal caregivers in hospitals. These directives varied from one hospital to another depending on hospitalization capacity and sector (pediatrics, oncology, etc.).

For exceptional reasons such as a particularly high occupancy rate, hospitals could ask MSSS for authorisation to prevent informal caregivers from entering.

In handling certain complaints, the Québec Ombudsman noted that there were hospitals that restricted access without MSSS's authorization.



ALLOW INFORMAL CAREGIVERS INTO THE HOSPITAL, IN COMPLIANCE WITH MINISTERIAL DIRECTIVES

An elderly man had to have cancer-related surgery. His condition was such that he did not understand the medical staff's instructions very well and sometimes had difficulty answering their questions. Informed of this situation, a nurse made an exception and authorized the patient's spouse to be with him before surgery. However, she was not allowed to be with him when he came back from surgery and she resented this.

After this happened, the woman complained to the Québec Ombudsman.

The Québec Ombudsman's investigation showed that informal caregivers are rarely allowed into this hospital's day surgery unit. What's more, according to in-house policy, informal caregivers can be asked to postpone their visit or leave the premises temporarily, especially if physical distancing of two metres between people is difficult to achieve.

MSSS directives allow one informal caregiver at a time to be with a hospitalized person, without any particular authorization. To restrict the access of informal caregivers, MSSS must approve beforehand a request for an exemption from needing authorization.

Considering that the hospital did not have such an exemption, the Québec Ombudsman recommended that the day surgery staff be reminded about MSSS's directives about the presence of informal caregivers. It also recommended that everyone be informed that restricting access is not allowed unless a request for an exemption has been approved by MSSS.

The hospital agreed to implement the Québec Ombudsman's recommendations.

Administering medication

Every year, MSSS publishes a report on incidents and accidents in delivering healthcare and social services in Québec. In the 2020-2021 report, there were 108,385 medication-related errors that occurred in supply, prescription issuance, prescription processing or medication management. Of this number, 91,424 cases (84.35%) concerned medication management. For instance, these mistakes may have happened because the person was not identified correctly, there was an error in when the medication was administered, or the dose to be given was not correct.

It goes without saying that nursing staff must know and comply with certain requirements when they administer

medication. These seven “rights” are: the right patient, the right medication, the right dose, the right route (intravenous or otherwise), the right time, the right documentation, and the right monitoring. The purpose of these requirements is to prevent staff from simply acting automatically and to ensure that the proper precautions are taken.

Several hospital centres have an independent cross-checking rule for high-risk medications such as morphine, insulin and heparin. This consists of a professional preparing the medication and a second professional checking the dose. If there is no one to double-check (which can happen when there is understaffing), the same professional must check himself or herself, in other words, verify the medication and the dose twice.



ESTABLISH INDEPENDENT DOUBLE-CHECKING

A hospital patient was prescribed 2.5 mg of sub-cutaneous morphine. A medication was administered. The patient's daughter complained to the Québec Ombudsman because she believed her mother had been given 2.5 mg of hydromorphone (Dilaudid) instead.

Hydromorphone is much stronger than morphine. In fact, the Institute for Safe Medication Practices Canada considers that hydromorphone and morphine are among the most frequently reported medications about which errors occur and which cause the most harm if an error occurs.

The Québec Ombudsman's investigation showed that a mistake had indeed been made, but that luckily, there were no serious consequences for the patient. It was also found that the hospital did not have independent cross-checking for administering narcotics. It is safe to assume that if cross-checking had been done, the mistake would not have been made.

The Québec Ombudsman recommended that the hospital establish independent cross-checking for injectable narcotics or opiates. The hospital accepted the recommendation.

PUBLIC HEALTH

COVID-19: vaccination and the vaccine passport

From the outset, it is important to say that the Québec Ombudsman is in favour of the health measures implemented to fight COVID-19. Because its mandate is to ensure people's rights are upheld in interacting with government departments and agencies, it received and processed the complaints related to these measures from the vantage point of this mandate.

To combat COVID-19, the Québec government established various preventive measures, notably, vaccination and the vaccine passport. After they were implemented, the Québec Ombudsman received some 200 complaints about:

- The fact that it was impossible to move up the appointment for the second dose of the COVID-19 vaccine;
- Trouble getting the COVID-19 information hotline;
- The mandatory vaccine passport for entering certain public places;
- The wait time for getting the vaccine passport;
- Trouble obtaining the Quick Response (QR) code by mail, in print, or the wait time for getting it;
- Trouble getting an appointment for the third COVID-19 vaccine;
- Refusal to grant an exemption for the vaccine passport (vaccine counter-indicated).



COVID-19: ENTER VACCINE DOSES IN THE VACCINATION REGISTER

A person contacted the Québec Ombudsman because she could not get her vaccine passport. She specified that she had received two doses of the COVID-19 vaccine. However, the computer system showed otherwise.

She had contacted the COVID-19 hotline herself twice. The first time she was told that the matter would be looked into and that someone would contact her within the next few days. When she had not heard back after 10 days, she phoned again and the agent told her that certain irregularities had been found and that her file would be corrected.

Two weeks later, nothing had changed, so she asked the Québec Ombudsman help her get her vaccine passport.

The investigation showed that the woman's first COVID-19 vaccine had not been entered in the vaccination register. At the Québec Ombudsman's request, the situation was corrected immediately and the woman was emailed proof of vaccination. She obtained her vaccine passport the following hour.



COVID-19: GIVE ACCURATE INFORMATION ABOUT THE WAIT TIME FOR A MAILED QR CODE

A person contacted the Québec Ombudsman to complain about how long it would take to get her QR code by mail, in print. She had been told it would take four to six weeks.

The Québec Ombudsman talked with the person in charge of the call centre in the region where the woman lived (there were several CISSSs in the region). It got an entirely different answer: the normal time for sending out a QR code was 24 to 48 hours. Only one CISSS took longer (five days).

During the investigation, the Québec Ombudsman received confirmation that the woman had received her QR code. The person in charge of the call centre in question pledged to remind the staff that it is important to give accurate information about the wait time for receiving the QR code by mail. What's more, staff were added to reduce the wait time to a maximum 48 hours for every CISSS in the region.

HOME SUPPORT

Making social economy enterprises responsible after a recipient has been excluded

Within the framework of Ministère de la Santé et des Services sociaux (MSSS) home support services, people over age 65 who only need help with household tasks (housework, laundry, preparing meals, running errands) are steered towards home support social economy enterprises. They then become eligible for a financial exoneration program. Under this program, they may receive a reduction in the hourly rate of up to \$18.24, depending on their income.

During an investigation, the Québec Ombudsman saw that a social economy enterprise did not respect the rights of the program recipients, and, in addition, refused to cooperate with the CISSS in charge. Note that starting in 2015, when health and social services agencies were

abolished, the compliance of social economy enterprises has no longer been supervised regionally and that this function has not been transferred to CISSSs and CIUSSSs.

MSSS certifies only one social economy enterprise of this kind per service territory. To receive the reduced-rate subsidy, potential recipients have no choice but to use the designated enterprise. Sometimes service users do not want to or cannot do business with the designated enterprise, due to a dispute, for example. Of course, these people cannot obtain services from another enterprise, nor can they complain to a service quality and complaints commissioner of the CISSS or CIUSSS in their territory because the enterprise is not under the purview of the CIUSSS or the CISSS. They therefore lose their subsidy and run the risk of becoming even more vulnerable because of their loss of autonomy.

Once its investigation was completed, the Québec Ombudsman recommended that MSSS:

- Ensure that a competent authority take charge of the recognition and compliance of home support social economy enterprises, a responsibility that used to belong to agencies;
- Broaden access to complaint examination to all home support financial exoneration program recipients;
- Ensure that CISSSs and CIUSSSs have collaboration agreements with the social economy enterprise in their respective territories in keeping with the ministerial home support policy.

At the time this Annual Report was being written, the Québec Ombudsman was waiting for MSSS's response.



PROVIDE FOR RECOURSE FOR THE RECIPIENTS OF AN ESSENTIAL ASSISTANCE PROGRAM

The service quality and complaints commissioner of a CISSS contacted the Québec Ombudsman after having received several complaints from financial exoneration program recipients for home support services. They did business with the social economy enterprise in their territory.

The people reported that the enterprise had terminated their service agreement without notice and without giving them the opportunity to have the board of directors hear them out. The decision had been made following disagreements over payment methods, billing or service cancellation. What's more, the enterprise was refusing to enter into a collaboration agreement with the CISSS, despite MSSS's home support policy. The purpose of such an agreement is to decide on services, orientation mechanisms, the exchange of information about the client population, and ways of ensuring quality services.²⁰

The Québec Ombudsman wishes to point out that the decision to exclude someone has serious consequences because it deprives the person of the financial exoneration program for home support services. Added to this is the fact that the social economy enterprise has a monopoly in its region. If it decides to exclude someone, there must be a phased approach to finding solutions (beginning with a warning, for example).

The Québec Ombudsman therefore recommended that the enterprise:

- Enable service users to present their version of the events to the board of directors before their service agreement is terminated;
- Contact the service users to remind them that if they are dissatisfied, they can file a complaint with the enterprise's board of directors, as specified in the in-house policy.

The Québec Ombudsman also recommended that the CISSS and the enterprise:

- Co-produce an agreement on home support service provision within their local service network, as provided for in MSSS's home support policy.

At the time this Annual Report was being written, the CISSS and the social economy enterprise said that they agreed to producing a co-agreement. However, the social economy enterprise continues to refuse to implement the recommendations intended specifically for it.

This makes the need even more pressing for MSSS to intervene to correct the situation.

20 / MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *Chez soi : le premier choix – La politique de soutien à domicile*, 2003.

COVID-19: managing the family support program during the pandemic

The family support program is intended for families of people who have a physical or intellectual disability or an autism spectrum disorder. Under certain conditions, it provides financial assistance for purchasing respite services, sitting services and emergency care services. The amount is calculated yearly.

In the unusual context of the pandemic, on March 3, 2021, MSSS produced a directive for families who had been unable to spend all the amounts they had received for the preceding period. As a result, program recipients were able to carry over the unspent amounts to 2021-2022.

MSSS also authorized easing of the reporting required of families. Exceptionally, this formality would have to be taken care of every two years for 2020-2021 and 2021-2022. Proof

of expenses could therefore be submitted at the end of 2021-2022 and would cover both years.

One CISSS believed, however, that the directive was limited to allowing families to provide their supporting documents as announced, but without an effect on the amounts granted but unspent in the preceding year.

The Québec Ombudsman submitted the differing interpretations to MSSS so that it would clarify the directive's intention, which it did. The institution was made aware that its interpretation was wrong and it:

- Reviewed its position;
- Agreed to give the families the assistance amounts that were not used in 2020-2021;
- Decided not to ask the families to reimburse the amounts they had already received.



DURING THE PANDEMIC, ALLOW RECIPIENTS TO BENEFIT FROM AN EXCEPTIONAL DIRECTIVE

A man who had been taking care of his severely handicapped wife at home for some 12 years received financial assistance under the family support program. The assistance made it possible for him to obtain respite as an informal caregiver.

Because of the pandemic, he was unable to spend the full amount of assistance granted for 2020-2021. The man learned that MSSS allowed local community service centres (CLSCs) to carry over unspent amounts from 2020-2021 for use in 2021-2022. He therefore contacted the CLSC social worker

responsible for his wife's case to ask to receive the amounts that way. His request was refused. According to the CLSC staff, and in keeping with policy of the CISSS in charge, the amounts granted for a specific year could not be carried over.

The spouse brought this situation to the Québec Ombudsman's attention. First it double-checked with MSSS to make sure the Ombudsman's interpretation of the directive was correct. Then it asked the CISSS to comply with it, which it did. The CLSC issued the amounts to which the man was entitled.

SUPPORT FOR ELDERLY AUTONOMY

The responsibility of CISSSs and CIUSSSs regarding shortcomings in private seniors' residences

In Québec, there are approximately 1,600 government-certified private seniors' residences (RPAs). RPA operators must comply with the *Regulation respecting the certification of private seniors' residences*. They must adhere to various standards regarding the residents' health and safety, their meals, hire only employees without a police record, and maintain well-trained staff in sufficient numbers.

During its interventions, the Québec Ombudsman has seen time and again that RPAs refuse to comply with the standards, despite frequent reminders from the CISSSs or CIUSSSs responsible for certifying them.

Their refusal consists of not:

- Making the changes requested by the certifying bodies, for example, improving food services, making repairs or training the staff;
- Implementing the recommendations by the service quality and complaints commissioner;
- Permanently correcting deficient care or staff behaviour.

In certain cases, the Québec Ombudsman sees a certain stubbornness in RPA operators when it comes to making improvements, corrections or repairs which may be crucial to the residents' quality of life. The refusal to comply—notably to make minor but critical repairs, as in the following case—is worrisome considering that they are resources for the elderly.

The Québec Ombudsman has noted that CISSSs and CIUSSSs are loath to respond strictly when RPAs pose problems in terms of residents' health and safety.

The Québec Ombudsman is aware that the hesitation by CISSSs and CIUSSSs may be related to the lack of residential resources and the desire to keep existing ones going. The Québec Ombudsman also believes that when there is a problem, these CISSSs and CIUSSSs must use an escalating scale of measures. Closing a facility is the culmination of a series of interventions and warnings. Nonetheless, this progression must not mean that situations that should be ended immediately must be tolerated.

In the same vein, the Québec Ombudsman sees that RPA operators tend to manage living environments as if they were businesses for which they have no obligation to be accountable. It is critical that these operators be briefed about the requirements that are integral to the resource for which they are responsible.



ACT SO THAT AN RPA MAKES THE CHANGES REQUESTED BY THE CIUSSS

The operator of several hundred RPA-type rental units was openly defiant about making any changes that had been the subject of a notice by the CIUSSS in charge. He even dismissed the requests out of hand. He was the same way with the municipal authorities. What's more, during discussions, he was not shy to raise his voice and act in a vulgar manner in a bid to bully the residents and the CIUSSS representatives.

For example, a resident at one of these RPAs told the operator that the ramp to the main entrance was not solid enough and could be dangerous for someone like her who uses a wheelchair.

Here we are talking about:

- Repairing a wheelchair ramp, which is even more crucial because the residents are elderly and their mobility is compromised;
- An order from the CIUSSS in charge;

- Minor repairs in order to prevent any risk of falling.

The operator, who should have been attentive to the residents' safety, held off on repairs for several months. His reason: the repairs were unnecessary because so far there had been no accidents.

The Québec Ombudsman visited the premises and saw that the resident had reason to complain about the ramp. The investigation also confirmed that the CIUSSS had repeatedly tried to get the operator to act.

After the Québec Ombudsman intervened with the operator, he finally repaired the ramp.

The Québec Ombudsman also asked the CIUSSS to produce a procedure for an escalating scale of measures to apply when an operator refuses time and again to make the required changes.

The shortage of healthcare staff in residential and long-term care centres (CHSLDs)

For many years now, living environments for the elderly have been hard hit by staff shortages. COVID-19 made it even more difficult to attract and retain staff, especially in CHSLDs, which has rendered care and service organization even more complex.

In the past year, the effect of the pandemic has intensified yet again and CHSLDs have had to find last-resort solutions in order to function. Every day, numerous CHSLDs are obliged to reorganize care and services.

Given this, strategies are rolled out without necessarily assessing the impact on residents' care and safety. For

example, the Québec Ombudsman has noted an increase in medication-related errors, postponement or cancellation of baths and longer wait times for responding to residents' requests.

Another consequence of the labour shortage is that staff have a heavier workload and their distress and exhaustion worsen. Since the work conditions may put off many potential employees, new recruits are rare, and this phenomenon accentuates understaffing even more.

To sum up, this is an alarming far cry from the characteristics of an adequate living environment and adequate care, and this is very worrisome.



CHSLD: ENSURE QUALITY CARE FOR RESIDENTS

In the summer of 2021, while there was a shortage of staff, a CIUSSS had to review how its human resources were distributed and employed in the CHSLDs which reported to it. To do this, it drew up a contingency plan providing for reduced staff/resident ratios across the board. As part of this, the CIUSSS also reduced monitoring and clinical assessment of the residents. This option quickly degenerated from providing care and services that comply with best practices, to ensuring only minimal security and supervision for the residents.

The Québec Ombudsman investigated further to receiving complaints. The investigation revealed a deplorable state of affairs, including the following:

- Care was more satisfactory for residents whose families were there regularly;
- People who needed more attention were isolated in their rooms;
- Incontinence briefs were not changed as often as they should have been;
- Care was provided hastily;

- Hygiene care was not provided;
- Baths were postponed or cancelled;
- The staff provided very little help when the residents ate or drank;
- Residents were left in bed until late in the morning and were back in bed before supper, and some were kept in pyjamas all day;
- Residents and their families had an overall feeling of insecurity and abandonment regarding the healthcare staff;
- Some staff displayed obvious signs of distress.

The Québec Ombudsman made seven recommendations to the institution aimed at improving the quality of the care and services provided in the CHSLDs concerned, specifically, having a nurse on the premises at all times, staff training on the subject of mistreatment, proper use of means of control, and support for healthcare staff and managers experiencing distress.

COVID-19: palliative and end-of-life care in CHSLDs during the pandemic

The *Act respecting end-of-life care* establishes the rights of end-of-life patients to quality care that is appropriate to their needs, including prevention and relief of suffering.

Within the meaning of the Act, palliative care means the total and active care to patients at the end of their lives in order to:

- Relieve their suffering, without delaying or hastening death;
- Maintain the best quality of life possible; and
- Provide them and their close relatives the support they need.



GIVE THE FAMILY OF A PERSON AT THE END OF LIFE THE NECESSARY INFORMATION AND SUPPORT

The Québec Ombudsman received a complaint from the family of a CHSLD resident who tested positive for COVID-19 and was given an end-of-life prognosis. With the physician's consent, the family asked that she be given comfort care (care provided to relieve the person, without any expectations about improving their condition).

In the days that followed, the family, who were with the woman, saw that she was suffering and that her pain was not being managed. In the very last moments of her life, the woman was agitated and in constant pain. The family felt that the comfort-care medication had not been administered properly and that the staff had been tardy in notifying the physician so the medication could be adjusted when the woman's condition deteriorated. As the family saw it, neither the resident nor they had been given the right to peaceful circumstances.

The Québec Ombudsman's investigation showed that the staff had observed and assessed the resident's comfort attentively, that they had given her pain management care as prescribed, that they had followed up and that they had contacted the physician at the right times.

However, it was also shown that the family had not been kept informed about the nature of palliative care and the reactions their loved one might have. In other words, they did not tell them about the kind of interventions taking place or the monitoring of the woman's condition. Furthermore, the family did not get the psychological support and the presence they had

During the COVID-19 pandemic, many people were affected by the imminent death of a loved one in a context of health restrictions. Many of them could not be with their loved one as they would have wanted. Staff reassigned to CHSLDs to make up for the shortage of workers provided end-of-life care. Often these reinforcements were insufficient, so much so that the families of residents at the end of their life did not get the emotional support they would have needed. Moreover, they did not have access to information for better understanding the particular circumstances surrounding the end of life.

the right to. As a result, the family believed that care was not properly provided and that they were left on their own to deal with the anxiety and distress experienced at such times.

According to the investigation, at the time of the events, half the unit's residents had tested positive for COVID-19. A portion of the usual staff was absent because they had the virus. Coinciding with this, many residents needed a level of care that the staff struggled to provide, given the shortage of staff.

Overwhelmed by the situation and not terribly familiar with palliative care and end-of-life care in CHSLDs, the staff reassigned to the unit had trouble applying the end-of-life care program. The slate of end-of-life care was incomplete and they did not manage to provide families with the psychological support they expected.

The Québec Ombudsman made various recommendations to the CHSLD emphasizing the need for competent support for the families of people who are at the end of their lives. It recommended in particular that:

- Families be given documentation and information about palliative care;
- Human and material end-of-life care and palliative care resources be available to CHSLD staff in order to support families.

The CHSLD accepted these recommendations, which are in the process of being implemented.



The first wave of COVID-19 in CHSLDs: follow-up to the Québec Ombudsman's special report

On November 23, 2021, the Québec Ombudsman released its special report on how the first wave of the COVID-19 pandemic was handled in CHSLDs. Its findings arose from an impartial and independent investigation. In December 2020, the Québec Ombudsman had published its progress report containing alarming accounts by people who had experienced the crisis first-hand.

The final report includes analyses of the accounts by government authorities and experts in key fields: medical administration, geriatrics, crisis management, epidemiology, and infection prevention and control.

The Québec Ombudsman made 27 recommendations to the Ministère de la Santé et des Services sociaux (MSSS) and to the Health Minister. They basically focus on the need to deploy broad-based, sustainable and effective measures to act on the causes of the crisis and to improve residents' living conditions.

On January 31, 2022, the Québec Ombudsman received MSSS's action plan for implementing the recommendations. When this Annual Report was being written, the Québec Ombudsman noted that the action plan proposed by MSSS indicated that certain actions were underway in connection with the recommendations. However, it considers that in order to fully assess the proposed measures, it needs further detail. To do this, and with a view to effective monitoring of how application of the action plan is faring, the Québec Ombudsman proposed that a monitoring committee be struck to meet periodically in order to foster direct exchange between the people entrusted with implementing the actions and measures MSSS has proposed. The committee will meet for the first time in June 2022, and then in the fall of 2022. As specified in its special report, the Québec Ombudsman will keep track of the process in its Annual Report until all its recommendations have been implemented to its satisfaction.



The reports are found at protecteurducitoyen.qc.ca.



Public residential resources and the rights of residents and their families: follow-up to the Québec Ombudsman's special report

In Québec, CISSS and CIUSSS mechanisms for access to public residential resources receive 21,000 applications each year—the number of people who can no longer live at home and who need to be in one of these resources.

Concerned about certain problems related to the rules and practices surrounding access to these resources as well as about the difficulties encountered by the elderly who are trying to find a resource, in October 2021 the Québec Ombudsman released a special report titled *For access to public residential resources that respects the rights and needs of elderly people and of their families*. It made 14 recommendations to MSSS, broken down into four themes. The recommendations are aimed at:

- Improving the rules and practices surrounding access to public residential resources;

- Taking the human factor into account in the access process;
- Strengthening respect for the rights and needs of elderly people and their families at every step of the process of finding the appropriate resource;
- Producing an exhaustive portrait of the situation regarding access to residential resources.

The Québec Ombudsman asked MSSS to provide it with an action plan no later than December 2021. It received it on March 31, 2022. The Ombudsman will analyze it and work with MSSS to determine the follow-up that will enable the recommendations to be implemented promptly.



The report is found at protecteurducitoyen.qc.ca.

SERVICE SUPPORT

The advance paid by non-residents at emergency rooms

When people who do not have a Québec health insurance card have to go a hospital emergency room, the public health care system does not cover the cost of care and services, which are therefore billed to the person. Every year, the Ministère de la Santé et des Services sociaux (MSSS) determines the rates that apply for each type of care or service that can be provided by hospitals, apart from physicians' honoraria. The rates, listed in a memo, are increased by 200% for non-residents of Québec.

As a rule, when these people arrive at the emergency room, they must pay an advance on the fees for the care and services they will

receive. Sometimes they are asked to pay an additional amount to cover care or services such as exams or laboratory tests that are not included in the emergency room fees but that might be needed. However, at the time they are asked to pay this extra amount, there is no way of knowing whether the physician will order the tests or not.

After the fact, institutions try to reimburse the service users for the overpayment, but it is not always possible because some of them have left Québec or their address has changed.

MSSS pointed out to the Québec Ombudsman that hospitals can require non-residents to pay the advance for extra services, but only if they are sure to receive them.



BILL FOR THE EMERGENCY SERVICES THAT A NON-RESIDENT WILL REALLY RECEIVE

Because of COVID-19, a woman from another country could not go home immediately. She was taken to a hospital emergency room by her son because she was suffering. Since she could not speak French, her son was allowed to stay with her at triage despite COVID-19 restrictions. Afterwards, he was asked to leave while his mother remained in the hospital.

Later, during the night, the physician contacted the son to ask him to come back to sign the consent-to-care form. When he returned to the hospital, he was asked to pay an advance on the cost of care for his mother and to sign the form for that purpose. Feeling he had been overcharged for the care and services provided while his mother was hospitalized, he complained to the Québec Ombudsman.

In examining the complaint, the Québec Ombudsman saw that the advance requested from non-residents for emergency care consisted of, on top of the \$762.57 prescribed at the time in the ministerial memo, another \$200 for care and services that were undetermined at the time of the request for payment.

Feeling that it was not right to ask someone to pay for hypothetical care, the Québec Ombudsman recommended that the CISSS responsible for the hospital stop asking non-residents for an advance on the cost of services at the emergency room.

Initially, the CISSS refused the recommendation but after several discussions, it finally agreed to it and the recommendation was implemented.

Ambulance fee billing for people 65 years old and over – the special case of CISSS de la Montérégie-Est

In Québec, people who are transported by ambulance must pay the cost themselves. However, an exception is made for people 65 years old and over who must be taken by ambulance out of medical or social necessity, as established in the ministerial policy on service user transportation. On several occasions, MSSS has told the Québec Ombudsman that the spirit of the policy is to make ambulance transportation free for this demographic. However, they can be billed in order to prevent abuse that could deprive someone of ambulance transportation whose life is in danger. In other words, ambulance transportation is free for this age group, but billable under exceptional circumstances.

Year after year, the Québec Ombudsman reminds CISSS de la Montérégie-Est of this principle.

For its part, the CISSS digs in its heels and maintains another application of the policy: people 65 years old and over must be billed unless they meet strict medical and social conditions.

At the time this Annual Report was being written, the CISSS was still refusing to implement the Québec Ombudsman's recommendations, including the following:

- Do not bill a person age 65 and over for first-time ambulance transportation that was not a medical or social necessity, but instead issue them a warning so that the event is not repeated;
- Stop automatically billing people age 65 and over for ambulance transportation if they leave the emergency room without having seen a physician. As it turns out, the need for ambulance transportation is determined when the request for an ambulance is made.

This CISSS is the only one of its kind in Québec that does not accept the Québec Ombudsman's recommendations based on the information obtained from MSSS. The Québec Ombudsman is continuing to intervene.



PROVIDE FREE AMBULANCE TRANSPORTATION TO PEOPLE 65 YEARS OLD AND OVER, ACCORDING TO MSSS POLICY

Feeling ill, a citizen in the 65+ age bracket contacted Info-Santé to find out what to do. The person who took the call recommended that he go by ambulance to the emergency room as quickly as possible. The dispatcher assessed the request for transportation as priority 1 (very urgent). An ambulance was dispatched to the site immediately.

Once the man got there, the triage nurse assigned him priority 4, which meant that his condition did not require urgent intervention. After waiting three and a half hours, the man left the emergency room.

Later he received an invoice for ambulance transportation based on the triage nurse's assessment. Even if the nurse had gauged his case more urgent, the CISSS would have still

billed the man because he had left the emergency room without seeing a physician.

Because of the Info-Santé nurse's recommendation when he called 811, and the priority ranking when the request for ambulance transportation was made, the Québec Ombudsman recommended that the CISSS cancel the invoice, which it did. However, the CISSS made it clear that if other such recommendations were made to it, it would refuse to act on them. It also let it be known that it would continue billing for ambulance transportation those who leave the emergency room without having seen a physician.

As at March 31, 2022, the Québec Ombudsman was still working on this issue.

Reimbursements under the service user transportation policy

In Québec, ordinarily, the cost of transportation to a health and social services institution is charged to the person who is transported, unless they qualify for a free government program. MSSS's service users' transportation policy is one of the programs which determines the situations in which compensation is possible. A case in point is when elective (non-urgent) care is medically required for remotely located service users but is unavailable in the hospitals or clinics in their region.

Compensation can be awarded if the transportation is ordered by the physician in the region and the distance between the hospital where the person should receive care and the one where they will actually receive it is more than 200 km. It is therefore up to the physician in the region of origin who refers the patient to the second hospital to complete the request for a consultation. Depending on the region, patients must ask to be reimbursed within a set amount of time after the consultation outside their region.

Sometimes people are not informed that there is such a policy. When this happens, they are deprived of amounts they could have received.



RECOGNIZE THE EXCEPTIONAL NATURE OF THE FINANCIAL COMPENSATION UNDER THE POLICY

A service user saw a specialist regularly. He moved in 2014, but he could not register with the same kind of physician in his new region because no such physician was available. He therefore continued to see the same physician, with the inconvenience of having to travel and to pay certain fees.

In 2019, he accidentally learned that there was an MSSS service user transportation policy. A regional addition to this policy also existed, and the public had been informed about it since 2018.

Not long after, he got an appointment with a specialist who had just moved to the region. However, the doctor could not take him as a patient because of the kind of care he needed. According to the new physician, his colleague—the first physician the man had consulted—was the appropriate resource.

Seeing that he would have to continue to travel, the service user decided to take steps to be reimbursed for a portion of his travel costs since his move in 2014. He therefore began the process with the sections in charge. He was told that his application had not been made with the CISSS in the region

where he now lived within 30 days, a requirement indicated in the regional policy. He was denied the reimbursement he requested.

The man complained to the Québec Ombudsman.

Under civil law, the prescription period is ordinarily three years as of the moment that a person became or should have become aware of a fact. However, the prescription period does not apply if it was impossible for the person to act. This was precisely the man's case because he had no way of knowing about the policy before 2018. The policy had not been advertised before that year, and the medical services or staff in his new region could not inform him because no physician could see him before 2019.

This is what the Québec Ombudsman pointed out to the CISSS in arguing for his exceptional eligibility, with supporting documents, for the flat-rate compensation set out in the ministerial and regional service user transportation policies. The CISSS agreed to act on the Québec Ombudsman's request.

COVID-19: choosing a hospital room during the pandemic

Because of the COVID-19 pandemic, hospitals have had to rethink how room choices are made in order to prevent direct contact between staff and service users. Since then, in certain hospitals the choice is made verbally with an agent at the admissions desk. Rooms can also be chosen in advance by phone for patients who will be hospitalized non-urgently (planned intervention). The procedure consists of the agent filling out the required form for the person, making sure that the person has been read the document in full. To ensure that the information was taken down correctly, the person must be given a copy of the form. Some hospitals email this copy or give it to the person when they get to the care unit.

Complaints to the Québec Ombudsman showed that this way of proceeding could cause problems. For example, at times the agent did not initial certain parts of the form, perhaps suggesting that the service user had not been read that section. In other cases, people never received their copy of the form, even by the time they left the hospital. As a result, they had no way of checking whether their room choice had been made based on the right information, or if the form reflected their wishes.

In recent months, the Québec Ombudsman has recommended corrections so that patients or would-be patients obtain the information they need to make an informed decision about their choice of room.



GIVE A PERSON TIMELY AND APPROPRIATE INFORMATION ABOUT CHOOSING A HOSPITAL ROOM

A person would soon be hospitalized for a planned intervention and had to choose the type of room she would be in. During the call to plan her hospital stay, she opted for a semi-private room because her insurance company would cover the cost.

When she was in the hospital, she was put in a private room for a few days. She was not worried because she thought she would be billed for the room she had chosen.

However, after her hospitalization, she received a copy of her form by mail that indicated, wrongly, that she had chosen a private room. She was billed accordingly.

The Québec Ombudsman's investigation showed that the staff had not given her the room-choice information leaflet ahead of time. However, on the form completed with her by phone, it was indicated that the leaflet had indeed been given to her. The staff were in the habit of indicating from the outset that the document had been given, even though they planned to give the form to the patient only later.

To be valid, choosing a room must arise from an informed decision, that is, in light of all the information that enables patients to understand the meaning of their decision. MSSS's memo on billing for private and semi-private rooms and for phone availability lists the information that service users must be given.

By receiving the information about her room choice and the procedure for changing the choice too late (after the hospitalization), the person was deprived of necessary information. She could not have known in enough time that the choice indicated on the form was not the choice she had given by phone.

The Québec Ombudsman recommended that the institution stop automatically indicating beforehand that the documents have been provided, when clearly that was not case for the woman concerned, and cancel the invoice, which it agreed to do.



A woman with long, straight blonde hair is shown from the chest up, wearing a black sleeveless top. She is holding a black mobile phone to her ear with her right hand and has her eyes closed, appearing to be in a conversation. Her left arm is crossed over her chest. The background is a bright, out-of-focus office environment with windows and shelves. The text 'PUBLIC INTEGRITY' is overlaid in a large, bold, black sans-serif font on the right side of the image.

PUBLIC INTEGRITY



PUBLIC INTEGRITY

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* in relation to its public integrity mandate. 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.

Note that the period covered in this report corresponds to a second full year of the COVID-19 pandemic. It goes without saying that the daily operations of public services were affected, as were citizens' priorities during this difficult period. The Québec Ombudsman's findings in its 2021-2022 Annual Report must therefore be taken in context and understood in light of this exceptional situation.

Confidential and independent recourse

Disclosure of wrongdoing: definitions and main players

The *Act to facilitate the disclosure of wrongdoings relating to public bodies* 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 whistleblowers with protection against all reprisal. This protection extends to those who cooperate in audits or investigations.

The whistleblower may be:

- A member of the staff of a body subject to the Act;
- A supplier or subcontractor;
- Anyone else who has learned that a wrongdoing relating to a public body has been committed or is about to be committed.

THE DIFFERENT CATEGORIES OF WRONGDOINGS

The following breaches may be considered wrongdoings:

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

FACTORS TO CONSIDER

To assess 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 only concerns an employment condition or the personal situation of an individual.

Reprisal complaints

Under the Act, it is forbidden to seek reprisal against a person on the ground that the person has, in good faith, filed a disclosure or cooperated in an audit or investigation stemming from a disclosure. It is also forbidden to threaten to seek reprisal against a person so that the person will refrain 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, and to a fine of \$10,000 to \$250,000 in the case of a legal entity. The amounts are doubled for a subsequent offence. In certain situations, the Québec Ombudsman can conduct criminal 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 people who:

- Discloses or wishes to disclose a wrongdoing pursuant to the *Act to facilitate the disclosure of wrongdoings relating to public bodies* as well as to the *Educational Childcare Act*;
- Cooperates in an audit or investigation stemming from a disclosure made pursuant to the same Acts;
- Feels he or she has suffered reprisal because of a disclosure or cooperation in an investigation;
- Communicates information to the Autorité des marchés publics or to the Commission municipale 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 on a case-to-case basis the terms for granting access to the service, in particular, the number of hours of legal counsel.



All the information about the Québec Ombudsman's public integrity mandate is found at protecteurducitoyen.qc.ca.

1 REQUESTS RECEIVED

Requests received in 2021-2022 increased by 9.4% compared to last year.

	2018-2019	2019-2020	2020-2021	2021-2022
Requests for assistance	68	82	42	57
Disclosures	182	244	190	193
Reprisal complaints	8	16	12	12
Requests for access to legal advice	10	19	11	15
Requests for exemption	3	10	0	2
TOTAL	271	371	255	279

Notes / 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. Applications for exemption are not included in the Requests for service received table on page 16.

2

STATUS OF PROCESSING OF PUBLIC INTEGRITY FILES

The following tables provide a portrait of requests in 2021-2022.

2.1 Status of disclosure files

STATUS	NUMBER
Implementation being monitored as at April 1, 2021	11
Being examined as at April 1, 2021*	71
Received in 2021-2022	193
Closed in 2021-2022	215
Being examined as at March 31, 2022	52
Being analyzed for admissibility	2
Being audited	23
Being investigated	18
Completed	9
Implementation being monitored as at March 31, 2022	8

* Concerning *Being examined as at April 1, 2021*, the published number in the 2020-2021 Annual Report was 72. The reason for the difference of one is because the file was closed as a request for assistance in 2021-2022.

Of the eight disclosure files whose implementation was being monitored as at March 31, 2022, there are 23 recommendations being monitored and 15 recommendations that have already been implemented.

2.3 Status of requests for access to legal advice

STATUS	NUMBER
Being examined as at April 1, 2021	3
Received in 2021-2022	15
Closed in 2021-2022	12
Being examined as at March 31, 2022	6

2.2 Status of reprisal complaint files

STATUS	NUMBER
Implementation being monitored as at April 1, 2021	0
Being examined as at April 1, 2021*	1
Received in 2021-2022	12
Closed in 2021-2022	12
Being examined as at March 31, 2022	1
Being analyzed for admissibility	1
Being audited	0
Being investigated	0
Completed	0
Implementation being monitored as at March 31, 2022	0

3

BREAKDOWN OF CLOSED GROUNDS FOR COMPLAINT

Explanatory notes

A request for assistance, a disclosure, a reprisal complaint or a request for access to legal advice may include several grounds.

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 legal matters, about possible recourse, or about the steps required to make a disclosure, a reprisal complaint, or a request for accessing legal advice.

The handling of disclosures and complaints may have different outcomes. Some requests may not be completed because the facts gathered lead the Québec Ombudsman to refer the person or to forward the disclosure to another resource that is believed to be better suited for it. When this happens, the request is considered as being **referred**.

A request may also be **suspended**, particularly when the disclosure or the reprisal complaint is inadmissible pursuant to section 12 of the *Act to facilitate the disclosure of wrongdoings relating to public bodies*.

When the Québec Ombudsman considers that the information brought to its attention may be disclosed pursuant to section 26 of the *Anti-Corruption Act* (c. L-6.1), it conveys the information obtained to the Anti-Corruption Commissioner as soon as possible. The same applies when it feels that the information obtained falls within the purview of the Autorité des marchés publics, the Commission municipale du Québec or the Inspecteur général de la Ville de Montréal, for example. In all cases, the Québec Ombudsman can then cease examining the disclosure, or continue to do so in keeping with the conditions agreed upon with the body to which it conveyed the information.

Uncompleted requests are written requests received by the Québec Ombudsman because it was copied to the correspondence and on which it did not act, or reprisal complaints on which the complainants did not follow up.

Generally, further to investigation, the Québec Ombudsman decides if the disclosure or reprisal complaint is **substantiated** or **unsubstantiated**. If the disclosure or reprisal complaint proves substantiated, the Québec Ombudsman asks the department or agency concerned to institute corrective measures and monitors their implementation. The Québec Ombudsman may also request corrective measures even in unsubstantiated files. If a disclosure or reprisal complaint proves substantiated, the file is closed only after any corrective measures have been taken to the Québec Ombudsman's satisfaction.

Lastly, in certain situations, further to an audit or investigation, the Québec Ombudsman **cannot take a definitive position**, notably, when there is no evidence or two versions are contradictory.

Detailed results

In 2021-2022, the Québec Ombudsman closed 239 requests that contained 313 grounds: 229 for disclosure, 12 reprisal complaints, 14 requests for access to legal advice and 58 requests for assistance (tables 3.1 and 3.2).

As far as grounds for disclosure were concerned, we noted a marked increase of 33.9%, from 171 to 229, compared to last year, and 14.7% compared to the average of the last three years (from 200 to 229).

We counted 12 grounds for complaint related to reprisals. There were 11 last year.

Requests for assistance increased by 38.1%, going from 42 to 58 this year.

3.1 Grounds for closed disclosures and requests for assistance

CLOSED REQUESTS IN 2021-2022	NUMBER OF GROUNDS	
Requests for assistance	57	
Substantiated	6	} 229 grounds for disclosure
Unsubstantiated	18	
Forwarding of information (section 14)	11	
Not completed (other)	48	
Referred	5	
Suspended (section 12)	141	
TOTAL	286	

3.1.1 Breakdown of grounds for disclosure, by body category

BODY CATEGORY	NUMBER	% OF TOTAL
Departments	70	30.6%
Agencies	54	23.6%
Health and social services institutions	33	14.4%
Municipal bodies	31	13.5%
School service centres and school boards	22	9.6%
Cegeps	7	3.1%
Childcare centres	4	1.7%
Universities	3	1.3%
People appointed by the National Assembly	3	1.3%
Government corporations or other	2	0.9%
TOTAL	229	100.0%

Note / The numbers in this chart have been rounded off. Therefore, it is possible that the percentages do not add up to 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	6	1	7
Gross mismanagement/abuse of authority	4	3	7
Misuse of public funds or property	4	2	6
Contravention of an act/regulation	3	0	3
Endangering health and safety	1	0	1
Endangering the environment	0	0	0
TOTAL	18	6	24

In 2021-2022, there were 18 unsubstantiated grounds for disclosure and six substantiated grounds, for a total of 24 grounds for disclosure that were handled. This represents an increase of 4.3% compared to last year (23 grounds).

3.1.3 Follow-up to recommendations

The Québec Ombudsman made 16 recommendations for the six substantiated grounds for disclosure and 12 recommendations for unsubstantiated grounds. All of the recommendations were accepted and implemented.

3.2 Grounds for closed reprisal complaints and requests for assistance

REQUESTS CLOSED IN 2021-2022	NUMBER OF GROUNDS
Requests for assistance	1
Substantiated	0
Unsubstantiated	0
Forwarding of information (section 14)	1
Not completed (other)	0
Referred	1
Suspended (section 12)	10
TOTAL	13

} 12 grounds for complaint

3.2.1 Breakdown of reprisal complaints by body category

BODY CATEGORY	NUMBER	% OF TOTAL
Municipal bodies	4	33.3%
Public bodies	3	25.0%
Departments	2	16.7%
Health and social services institutions	1	8.3%
Cégeps	1	8.3%
Universities	1	8.3%
TOTAL	12	100.0%

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

3.3 Closed grounds for requests for access to legal advice

REQUESTS CLOSED IN 2021-2022	NUMBER OF GROUNDS
Inadmissible	2
Refused	0
Not completed/not authorized/ assistance was not used	8
Authorized/payments made	4
TOTAL	14

3.4 Requests for exemption

The Québec Ombudsman received two requests for exemption in 2021-2022. One was given, while the other was still being examined as of March 31, 2022.

STAGES IN HANDLING DISCLOSURES



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 filed 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.
- Un accusé de réception est transmis à la personne cinq jours ouvrables suivant le premier contact, sauf si cette personne n'en souhaite pas ou si la démarche est anonyme.

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 ten business days of the date of the acknowledgement of receipt of the request.
- 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. This would be the case if:
 - The alleged events prove to be unfounded;
 - The alleged events are under investigation by another organization;
 - The reported situation is being handled, was settled or is being settled;
 - The wrongdoers have left the organization and will not return.
- 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 a public inquiry commissioner.
- Witnesses are summoned to appear before the Québec Ombudsman.
- To respect the rights of alleged wrongdoers and for the sake of procedural fairness, a preparatory document is usually sent to them before a meeting is held.
- Then the Québec Ombudsman meets with the alleged wrongdoers, when possible, to hear their version of the events about the allegations or the evidence collected during the investigation.
- 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 unfounded;
 - The disclosure is unfounded but the Québec Ombudsman makes recommendations;
 - The disclosure is founded and there are no recommendations;
 - The disclosure is founded and the Québec Ombudsman makes recommendations.
- Under normal circumstances, if the disclosure proves founded, a preliminary investigation report is sent for comment to the alleged wrongdoer(s).
- 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 alleged wrongdoer(s).
- Then the Québec Ombudsman produces its final investigation report containing comments from the alleged wrongdoer(s) and from the public body. The final report and its preliminary versions remain confidential.
- When a wrongdoing has occurred, a conclusion might be made public. In such cases, usually the conclusion does not include any information that could cause the person or the person's work environment to be identified.

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.
- The Ombudsperson may also advise the government of this in writing and expose the case in a special report or in the Annual Report tabled at the National Assembly.

PUBLIC INTEGRITY: THE QUÉBEC OMBUDSMAN'S DECISION TO ACT OR TO LET ANOTHER ORGANIZATION INTERVENE ON ITS OWN

When the Québec Ombudsman considers a disclosure admissible, it conducts the necessary audits. If, further to the audits, it concludes that wrongdoing may have occurred, it conducts a public integrity investigation.

Before undertaking an investigation, the Québec Ombudsman may consider it suitable to ask the organization in question to manage the alleged wrongdoing. When the organization agrees to take the situation in hand, the Québec Ombudsman stops intervening but remains watchful. The same holds true when an intervention is already underway within the organization and the Québec Ombudsman feels that it is better to let the organization continue on its own. Once the intervention by the organization is completed, the Québec Ombudsman

requires evidence that the situation has been resolved and the necessary changes have been made. If the Québec Ombudsman is dissatisfied with the intervention or the measures stemming from it, it may decide to conduct its own investigation.

In the Québec Ombudsman's opinion, when the organization carries out a thorough intervention concerning a wrongdoing, this process may help to develop and strengthen a culture of integrity within the organization. It also establishes trust within the organization that is conducive to encouraging people concerned about a wrongdoing to speak out against the misconduct.



LET AN ORGANIZATION HANDLE AN ALLEGED BREACH OF ETHICS

Further to a disclosure which it considered admissible, the Québec Ombudsman conducted audits concerning allegations about the manager of a public agency. According to the allegations, the manager had posted and continued to post highly inappropriate comments on social media.

After looking into the matter, the Québec Ombudsman, having reason to believe that the manager had indeed committed a wrongdoing within the meaning of the Act, decided to investigate. At first glance, the wrongdoing appeared to be a serious breach of the standards of ethics and professional conduct.

However, the Québec Ombudsman felt that the public body, which had not been informed about the problem, was able to conduct its own investigation. It therefore suggested that the body do so, which it did. As a result, the Québec Ombudsman suspended its investigation, with the understanding that the

Ombudsman had to be kept abreast of the follow-up to the analysis that the public body intended to carry out.

A few weeks later, after its investigation was completed, the public body gave the Québec Ombudsman confirmation that the allegations were true. The body intended to correct the situation by:

- Imposing a disciplinary measure on the manager who had committed the wrongdoing;
- Sensitizing the staff;
- Reviewing and fine-tuning its in-house policy on employee behaviour on social media;
- Reviewing and fine-tuning its code of ethics.

The Québec Ombudsman asked the public body for a copy of the relevant documents and confirmation that it had implemented the intended actions. The Québec Ombudsman was satisfied with the intervention and closed the file.



FACTOR IN THE STEPS ALREADY TAKEN BY A PUBLIC BODY REGARDING ETHICS AND PROFESSIONAL CONDUCT

Further to deeming certain disclosures admissible, the Québec Ombudsman carried out audits concerning a managerial employee within a public body. According to the allegations, the person had not complied with the in-house hiring process several times, and, as a result, had favoured people with whom he or she had close ties.

Concluding that there were reasonable grounds to believe that the person had indeed committed serious violations of the code of ethics and conduct, the Québec Ombudsman decided to investigate. As work was beginning, new events were brought to its attention: the public body's board of directors had already commissioned a firm to assess the corporate climate, notably, to resolve the problems associated with the disclosure transmitted to the Québec Ombudsman.

Given this initiative, the Québec Ombudsman suspended its investigation while the firm did its work. It informed the public body about its decision to stop investigating.

Subsequently, the public body gave the Québec Ombudsman a copy of the report by the firm, and the Ombudsman saw that the firm had been rigorous in assessing the climate. Among other things, the report confirmed that the favouritism in appointing job candidates was one of the risk factors that could undermine harmony within the workplace.

The Québec Ombudsman was satisfied that the public body had acknowledged and taken charge of the misconduct. What's more, the public body pledged to implement the recommendations from the report. The Québec Ombudsman closed the file.

THE ISSUE OF PROTECTION AGAINST REPRISAL

Where does one go?

The 2016 adoption of the Act was a response to a recommendation from the Commission of Inquiry on the Awarding and Management of Public Contracts in the Construction Industry (Charbonneau Commission). The purpose of this law is to facilitate the disclosure of wrongdoing and to establish a system for protecting whistleblowers against reprisal. Ever since, the Québec Ombudsman has seen that it can be difficult for would-be whistleblowers to make sense of disclosure mechanisms. Moreover, if they go to the wrong place or person (for example, if they make a disclosure to their superior or to their union, or if they use the organization's internal complaints procedure), they may not be protected against reprisal.

Turning to the Québec Ombudsman is a wise choice for whistleblowers who want to understand the workings of the Act and to know when it provides protection against reprisal and when it does not. Potential whistleblowers can count on the Québec Ombudsman's team to inform them about the protection that applies to them.

When it receives a disclosure, the Québec Ombudsman examines the events and quickly lets the person know what it intends to do. If the disclosure is deemed admissible, the whistleblower is protected against reprisal. The Québec Ombudsman makes every effort to ensure protection and explains what the person must do to remain protected.

The Québec Ombudsman's mandate is broadened

In 2019, the Québec Ombudsman reported its findings about how complex the disclosure process was for whistleblowers and the risk of them losing protection against reprisal. It shared its concerns on two occasions:

- During exchanges with representatives of the Secrétariat du Conseil du trésor;
- In its report on implementation of the Act.

It made several recommendations aimed at simplifying the disclosure mechanism and bolstering the system for protecting whistleblowers as well as people who cooperate in audits or investigations.

On May 28, 2020, the senior officials of the Conseil du trésor tabled a report at the National Assembly on the implementation of the Act. In it, they recommended that:

- The Québec Ombudsman be given the exclusive mandate to receive disclosures from the staff of public bodies;
- A multipartite committee be formed to analyze the system for protection against reprisal;
- The effectiveness of the protection system be improved.

A tripartite committee was struck and the Québec Ombudsman played an active role in it. When the work was completed, a report was submitted to senior government and Conseil du trésor officials. In early 2022, the Québec Ombudsman approached these same officials to inquire about follow-up to the committee's conclusions and possible amendment of the Act.

On March 29, 2022, the Conseil du trésor president informed the Québec Ombudsman that the government officials considered the amendment of the Act a priority. She specified that a letter had been sent to all the disclosure officers in the public bodies. The purpose was to ensure that such officers are appointed, that disclosure processing procedures are put in place, that staff are adequately informed about it, and that training concerning the Act is organized for all new staff members and for ethics officers.



RECOGNIZE THE RISK OF LOSING PROTECTION AGAINST REPRISAL

In the fall of 2021, the Québec Ombudsman received a complaint from a man who said he had suffered reprisal by the wrongdoers named in a disclosure he had made to a public body.

To back up a little, the winter before, the man had denounced acts that he felt were wrongdoings to the disclosure officer of the public body concerned. A few weeks later, the officer advised him that:

- The disclosure was inadmissible within the meaning of the Act because the whistleblower was not an employee of the public body;
- He did not intend to send the disclosure to the Québec Ombudsman;
- As the disclosure officer, he was the right person to respond to the matter, which he did based on the information from the whistleblower.

After looking into the reprisal complaint, the Québec Ombudsman explained to the man that it could not intervene because his disclosure had not been transmitted in accordance with the Act. Seeing as how the disclosure officer could not act, the whistleblower should have forwarded the disclosure to the Québec Ombudsman, which he did not do. As a result, according to the mechanism provided for in the Act, he could not be afforded protection against reprisal.

The Québec Ombudsman contacted the disclosure officer concerned and informed him that:

- When he saw that the whistleblower had not gone to the right place, he should have told him to forward the disclosure to the Québec Ombudsman;
- He was not mandated to substitute for the Québec Ombudsman in assessing the denounced situation;
- In his capacity as the disclosure officer, he could not use the information that was disclosed for the purpose of his other functions.

THE QUÉBEC OMBUDSMAN'S ROLE AS A PUBLIC INTEGRITY PARTNER

As mentioned earlier, there are other organizations with public integrity mandates, such as the:

- Anti-Corruption Commissioner;
- Autorité des marchés publics;
- Commission municipale du Québec;
- Office of the Inspector General.

Given that there is more than one mandated organization, whistleblowers may not know where to turn. This is why the Québec Ombudsman assists anyone who wants to disclose wrongdoing. If the Québec Ombudsman feels that the information brought to its attention is not within its purview, it forwards the information to the appropriate organization.

When this happens, the Québec Ombudsman contacts the whistleblower to inform him or her that it is not empowered to handle the disclosure. At the same time, it asks the whistleblower for consent to forward the disclosure and their contact information to the competent authority. After discussion with the resource to determine whether it can handle

the disclosure, the Québec Ombudsman gives it all the useful information.

Note that the Québec Ombudsman has entered into an agreement with each of its public integrity partners. The agreements lay out the terms and conditions for conveying information.

Sometimes the Québec Ombudsman realizes at the audit or investigation stage that a disclosure is not within its jurisdiction. This situation arises especially when the disclosure refers to a crime rather than an administrative breach. In such cases, the procedure is the same as described earlier: the Québec Ombudsman forwards this information to the organization concerned. Where applicable, it obtains the consent of the whistleblower to divulge their identity and contact information, and the matter takes its course.

Whatever the context for forwarding information to a partner, the Québec Ombudsman makes arrangements so that the organization keeps it informed about the outcome. If the organization cannot intervene, or no criminal charges are laid, the Québec Ombudsman may take back the file.



DISCLOSURE CONCERNING AN INTEGRATED HEALTH AND SOCIAL SERVICES CENTRE (CISSS)

The Québec Ombudsman received an anonymous disclosure about alleged wrongdoing in a CISSS. The whistleblower claimed that a health professional was paid an allowance of several hundred dollars a day even though no sooner had he entered the institution than he walked right out and went home. The secretary indicated that he was at the CISSS on the attendance sheet, which was then sent to the payer in order to claim the amounts entered in the account of the professional concerned.

In investigating, the Québec Ombudsman studied various documents, including the payer's data bases. It saw that the attendance sheets enabled the professional to claim and receive daily allowances that he had no right to. This scheme had been going on for several years. As a result, the professional had unduly claimed hundreds of thousands of dollars.

The scheme came to an end after the Québec Ombudsman intervened.

During the investigation, the Québec Ombudsman felt that this misconduct might be a criminal offence under the jurisdiction of the Anti-Corruption Commissioner. It therefore stopped its investigation and contacted the Commissioner to provide the relevant information. No steps had to be taken to obtain the whistleblower's consent because the disclosure had been anonymous.

The Québec Ombudsman is keeping abreast of developments with the Commissioner. If the Commissioner considers that it will not follow up, or that no criminal charges can be laid, the Québec Ombudsman may decide to resume its investigation.

A SERIOUS BREACH OF THE STANDARDS OF ETHICS AND PROFESSIONAL CONDUCT

This consists of an act, an omission or a behaviour that deviates markedly from practices or standards of conduct generally accepted in public bodies or from ethical standards or the applicable obligations of professional conduct.



DISCLOSURE CONCERNING A PUBLIC BODY

The Québec Ombudsman received a disclosure indicating that a senior manager of a public body was in a potential conflict of interest: using a front man, he had sold his employer livestock that belonged to him, with the possibility of buying it back. He had also housed and used the livestock for his own purposes, with the public body footing the bill.

The investigation showed that the public body had entrusted the manager with a pilot project involving his own livestock, at the lowest cost possible and with a tight timeframe. The manager started up the project alone, without a team to assist him. Given the minimum costs he had guaranteed his employer, he had made his livestock, facilities and time available free of charge, as well as not claiming certain amounts issued under the project.

The evidence showed that the manager had signed contracts under his own name for the sale of livestock, with the possibility of buyback at the same price. However, well before the contracts were signed, the manager had already bought the livestock for his employer. He was therefore not the owner of this livestock.

The manager housed his employer's livestock and charged monthly fees. This situation, which at first was intended to be temporary, lasted for a year and a half.

The livestock definitely was at the manager's personal disposal for more than a year. However, there was no evidence that he had used the animals himself.

The Québec Ombudsman saw that as part of the project, on the one hand the manager had made numerous expenditures

which he never claimed. On the other, at various stages of the project, the manager had not complied with the public body's policies. For example, when specialized training was being arranged, he made himself a member of the delegation that would go overseas for technical training, at a time when he was no longer responsible for the project's operational management.

The facts also showed that the manager wanted to prevent the animals from being sold at auction, which meant that there was no desire for financial gain. However, his personal interests and attachment to the project collided with his obligations as an employee, and this influenced his decisions. For example, this situation led him to sign off on information that was untrue so that he could recover a portion of his personal investment. To sum up, his hierarchical position within the public body made him both the decision-maker and the beneficiary because, within the framework of the project, he was a service provider for his own government department. The Québec Ombudsman concluded that the manager's actions were a serious breach of the standards of ethics and professional conduct within the meaning of the Act. It therefore recommended that the public body:

- Produce a directive for pilot projects;
- Update its in-house conflict-of-interest policy and inform its staff about it.

The Québec Ombudsman was satisfied with the implementation of its recommendations and it closed the file.

A SERIOUS BREACH OF THE STANDARDS OF ETHICS AND PROFESSIONAL CONDUCT COMBINED WITH MISUSE OF PUBLIC FUNDS OR PROPERTY

As well as a serious breach of the standards of ethics and professional conduct, here is added the misuse of public funds and property, which may consist of:

- Expenses incurred without proper authorization;
- Expenses that were authorized but that were exorbitant;
- Expenses that are illegal or contrary to the applicable law, regulation, policy or procedure, including funds or property that the body manages for others.



DISCLOSURE CONCERNING A UNIVERSITY

The Québec Ombudsman received a disclosure about alleged wrongdoings within a Québec university. The whistleblower reported that the professor in question had:

- Used his position within the university to give his company an advantage for the awarding of contracts;
- Operated his business on university time;
- Used the university's facilities for his company without declaring the conflict of interest to his employer.

The Québec Ombudsman's investigation showed that the professor's closeness to a research scholar at the university had given him excessive leeway in awarding certain university research fund contracts. When the university was informed of this, it proceeded to centralize the contract-awarding process to enable the financial resources section to conduct oversight in compliance with the provisions of the *Act respecting contracting by public bodies*.

The investigation also confirmed that the professor ran his personal company from the university during normal office hours. The collective agreement in effect allows professors to do this if:

- They have first discharged their professorial duties properly;
- The time spent on external professional activities does not exceed seven hours a week;
- They do not use the university's material or computer resources;
- They declare the type of activity annually in order to obtain authorization from their department.

The professor in question had not made such an annual declaration. As a result, the university had never entered into an agreement about the arrangement and could not determine

whether the professor complied with the rule about the maximum seven hours per week. The university authorities, saying that they counted on their teaching staff to act ethically and with integrity, nonetheless used this annual declaration to circumscribe external professional activities.

The professor and his staff were misusing the university's facilities and computer resources to benefit the professor's personal company.

The Québec Ombudsman's investigation also brought to light a case in which the university had entered into a contract with a municipality. The professor in question had acted as the university's contract coordinator and had proceeded to hire members of his company, including a family member.

Because of the preceding, the Québec Ombudsman concluded that the behaviour described constituted a serious breach of the standards of ethics and professional conduct as well as misuse of public funds or property within the meaning of the Act.

The Québec Ombudsman recommended that the university:

- Establish a written agreement with the person concerned, given his role as a professor and company manager;
- Review the use of the university's facilities;
- Review the application of the conflict-of-interest policy and its ethics guide;
- Make teaching staff aware of the importance of complying with the clauses concerning professional activities outside the university.

The university accepted the Québec Ombudsman's recommendations and their implementation is underway.



The investigation conclusion is available at protecteurducitoyen.qc.ca.

GROSS MISMANAGEMENT

This is understood to be an act or omission which, whether intentional or not, displays substantial or significant indifference, negligence or disregard pertaining to the sound management of public resources, whether human or financial.

It may also consist of an arbitrary decision made to harm a person or to further one's personal interests, which includes bad faith and favouritism. The wrongdoing is committed by a person in a position of authority (real or by operation of law) and exceeds the wrongdoer's powers. In such cases, it is referred to as abuse of power.



DISCLOSURE CONCERNING A GOVERNMENT DEPARTMENT

In 2018, the Québec Ombudsman received a disclosure alleging that the authorities of a government department had, in awarding contracts under one of its programs, repeatedly favoured not-for-profit organizations at the cost of other organizations. In the case at hand, the government department itself was the seeming wrongdoer in its capacity as a public body and a legal entity.

The program in question represented a hefty budget of several tens of millions of dollars. This administrative and discretionary budget, which is unregulated, provides support to partner organizations in the government department's sphere of activity for projects consistent with its mission. There are no rules or directives governing the minister's discretionary power regarding this budget.

The administrative section analyzes the subsidy application and recommends—or does not recommend—that the financial assistance be awarded. The minister may then accept or refuse to grant the assistance. When the minister decides to grant financial assistance, he or she signs a letter to the public body indicating the amount awarded and the reason for the assistance. Other documents, such as assistance agreements or letters of refusal, are signed by the assistant deputy minister or the director general of the section concerned.

In investigating, the Québec Ombudsman saw that the political component of the government department's cabinet unduly swayed the administrative mechanism in awarding, processing or monitoring the program's financial assistance.

It was also found that the alleged misconduct occurred repeatedly. These acts were as follows:

- Requests for changes to notes and letters to the minister;
- Awarding of financial assistance without an application or project from the organization;
- Requests by political authorities for fast-tracking files for certain organizations in order to give them an edge;
- Regular use of the wrong financial vehicle (a subsidy instead of a contract or vice-versa).

The Québec Ombudsman's investigation showed that the government department:

- Had not established requirements, rules of conduct or directives for the minister's discretionary power in awarding financial assistance under the program;
- Had ignored its own mission, program objectives and unfavourable recommendations from its professional staff regarding certain files;
- Had overridden the opinions of people tasked to provide advice and to ensure that the line drawn between political and administrative functions is not crossed.

In summary, the Québec Ombudsman noted several examples of organizations that had been given preferential treatment. It also saw that the professionals concerned as well as the administrative authorities lacked the financial knowledge needed to determine which financial vehicle to use for the applications submitted.

As a result, the Department awarded financial assistance:

- When it should have granted a service contract instead, which would have created competition;
- Despite internal recommendations to the contrary.

The investigation therefore showed that the line between the political component of the cabinet and the Department's administrative mechanism was permeable. Even though the program was funded under an unregulated budget, and that the minister's power to approve—or not to approve—financial assistance was discretionary, this did not mean that the department's political component had absolute power.

As a result, political players meddled in the application of an administrative program, but without the impartiality required for exercising their discretionary power. This interference had adversely affected the integrity of the process.

The Québec Ombudsman concluded that gross mismanagement had occurred within the meaning of the Act because of the:

- Recurrence of the wrongful practices;
- Impact on all the administrative staff concerned (demobilizing effect due to the fact that they felt they were working for an organization rather than fulfilling the department's mission);
- Effect on other applicants;

- Failure of various players to ensure healthy management of the political-administrative interface and to respect the program's mission and objectives.

Lastly, the *Act respecting contracting by public bodies* and the rule governing contract management indicate that no public body may split or segment its procurement requirements for the purpose of avoiding the obligation to make a public call for tenders. This is what the department did in at least one situation. The same applies to the choice of financial vehicle to use.

Because of the preceding, the Québec Ombudsman recommended that the department:

- Ensure the integrity of the political-administrative interface;
- See to the impartiality of the tendering process and the awarding of financial assistance under the program;
- Support both these objectives concerning directives and rules of conduct for its administrative and political staff;
- Better equip its staff to determine which financial vehicle is appropriate.

In response to these recommendations, the department produced a comprehensive action plan. The Québec Ombudsman is keeping a close eye on its implementation.

RECOMMENDATIONS EVEN THOUGH NO WRONGDOING OCCURRED

After conducting a public integrity investigation, the Québec Ombudsman may conclude that the events analyzed, albeit disturbing, are not a wrongdoing within the meaning of the Act. In such cases, it considers the allegations unfounded. If the situation requires correcting nonetheless, it makes recommendations. This is what occurred in the following two cases.



DISCLOSURE ABOUT A SCHOOL SERVICE CENTRE

The Québec Ombudsman carried out an investigation concerning a service agreement that possibly involved three wrongdoings under the Act, namely:

- A serious breach of ethics and professional conduct by two private companies in their contractual ties with four school service centres (CSSs);
- Misuse of the public funds of the Ministère de l'Éducation (the Department) by two private companies and four CSSs;
- Gross mismanagement within the four CSSs.

A not-for-profit organization (NPO) which was a partner of a private company had signed service agreements with four CSSs with a view to offering distance adult general education via an interactive digital platform and student recruitment service. The service agreement stipulated that the cost of these services corresponded to half of the amounts that each CSS receives from the Department under budgetary rule 12080.

As it turns out, the recruitment service used by the NPO was very effective. Thousands of students were referred to the

four CSSs, which then proceeded to enrol students and provide any assistance they might need with the enrolment. This agreement was highly lucrative for the partners (the NPO, the private company and the CSSs).

However, approximately 90% of registered students did not consult, or hardly consulted, the Web platform. Hence the disclosure: according to the allegations, the NPO and the company deliberately kept this information (low student participation) from the CSSs in order to maintain the service contracts. The CSSs therefore received money per declared course from the Department and paid for unused services at high cost.

The investigation showed that the CSSs had access to the information about the real student traffic on the platform by means of external sources or by expressly requesting the information from the private company. However, the company did not provide specific data. The CSSs, which nonetheless had some information, knew that very few students persisted after they enrolled. As a result, the Québec Ombudsman felt that the private partners had not committed a serious breach of the rules of ethics and professional conduct.

In investigating, the Québec Ombudsman also saw that the parties concerned complied with the Department's requirements concerning student admissions, declared enrolment, and budgetary rule 12080. However, the Department had not revised this rule for several years. The requirements were therefore not designed for digital education. For example, the rule, whose only requirement was enrolment per se, assumed that students spent 25 hours on each of the courses. Since the conditions were met, the Québec Ombudsman concluded that no misuse of public funds had occurred. However, it recommended that the Department update its budgetary rule.

Another important fact was that the CSSs delegated to the private company a portion of their responsibilities for creating the students' education profiles. This meant that the company provided the students and the CSSs with suggestions about which courses students should enrol in. The more courses, the more funding from the Department. As the Québec Ombudsman saw it, this situation could create the appearance of conflict of interest between the private company eager for enrolments and CSSs which must ensure that they are fulfilling their mission.

None of the CSSs about which allegations had been made had assessed the adult general education program since its creation to determine whether it was efficient and consistent with their mandate.

When the Québec Ombudsman's investigation was completed, none of the points raised could be said to be gross mismanagement within the CSSs.

The Québec Ombudsman nonetheless recommended that the Ministère de l'Éducation:

- Review and update budgetary rule 12080;
- Assess the distance adult general education program;
- Act so that CSSs exercise greater control over the production, relevance and quality of students' education profiles.

The Department and the CSSs accepted the Québec Ombudsman's recommendations. The Québec Ombudsman is keeping an eye on their implementation.



DISCLOSURE REGARDING A GOVERNMENT CORPORATION

The Québec Ombudsman received a disclosure alleging that the director of a government corporation had unduly favoured his spouse in awarding contracts by mutual agreement. According to the whistleblower, this situation constituted a conflict of interest within the meaning of the Act.

The Québec Ombudsman's investigation showed that the alleged wrongdoer was indeed a director within the government corporation and that contracts by mutual agreement had indeed been awarded to his spouse.

The corporation's code of ethics stipulates that any staff member who sees real or potential conflict of interest must immediately inform the director general, who will determine what should be done. The Québec Ombudsman's investigation revealed that the manager had declared the conflict of interest to the director general. As a result, measures had been taken so that the manager concerned would avoid any further conflict of interest beyond what had already been declared.

However, these steps were not properly documented and any exchanges were verbal. There was no written code-of-ethics procedure or form for officializing, managing and collating information concerning conflict-of-interest declarations. Moreover, the Québec Ombudsman noted that the government corporation's staff were unfamiliar with the code of ethics.

The investigation also showed that there was a disparity in the details indicated in the invoices produced by the contractual employees hired by the corporation. In the Québec Ombudsman's opinion, the government corporation needed to have clearer internal standards for awarding contracts involving expenditures below the public tender thresholds established in the *Act respecting contracting by public bodies*.

When its investigation was completed, the Québec Ombudsman concluded that the evidence collected did not suggest that wrongdoing had occurred and that the allegations were therefore unfounded. However, the issues raised called for corrective measures, so the Québec Ombudsman made three recommendations to the government corporation:

- Establish a policy specifying the measures to be taken in cases of conflict of interest. The policy should include mandatory declarations of conflict of interest in writing;
- Make sure staff are made aware every year of the code of ethics in effect;
- Review and ensure that staff are aware of the policy on contracts involving expenditures below the public tender threshold.

The government corporation accepted the three recommendations. The Québec Ombudsman will monitor their implementation.

LIST OF RECOMMENDATIONS

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

IMMIGRATION CANDIDATES' ACCESS TO THE DIRECTIVES USED IN MAKING A DECISION ABOUT THEIR SITUATION

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

- Update the immigration procedures guide;
- Post the updated guide on its website;
- By December 1, 2022, inform the Québec Ombudsman about a timeline for posting each of the sections.

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE (CORRECTIONAL SERVICES)

A NEW CORRECTIONAL FACILITY FOR WOMEN

The Québec Ombudsman recommends that the Minister of Public Security and the Government of Québec:

- By December 31, 2022, announce a firm decision concerning the construction of a new correctional facility for women.

FOLLOW-UP TO THE RECOMMENDATIONS IN THE QUÉBEC OMBUDSMAN'S 2020-2021 ANNUAL REPORT

PUBLIC SERVICE

Société d'habitation du Québec

INTERVENTION WITH HOUSING COOPERATIVES AND NON-PROFIT HOUSING AGENCIES

RECOMMENDATIONS IN 2020-2021

ASSESSMENT IN 2021-2022

Establish a standardized and clear mechanism or procedure for examining complaints concerning the cases specified in section 85.2 of the *Act respecting the Société d'habitation du Québec* regarding intimidation, harassment and mistreatment.

THE QUÉBEC OMBUDSMAN:

- **IS MONITORING THE SITUATION** because work began in November 2021. Follow-up on the new procedure for examining complaints regarding intimidation, harassment and mistreatment is slated for September 2022.

Appoint a respondent tasked to handle these complaints (management consultant, member of the complaints bureau, or an auditor).

THE QUÉBEC OMBUDSMAN:

- **IS MONITORING THE SITUATION** because designation of a respondent tasked to handle complaints should be built into the process of establishing the complaint-examination mechanism. Follow-up is slated for September 2022.

Produce a guide for staff defining the notions of intimidation, mistreatment and harassment as well as explaining the scope and limits of the Minister's powers in the cases specified in section 85.2 of the *Act respecting the Société d'habitation du Québec*.

THE QUÉBEC OMBUDSMAN:

- **IS MONITORING THE SITUATION**. Work began in August 2021 but was not completed by March of 2022 as planned. Follow-up is slated for Fall 2022.

Distribute the information about the complaint examination procedure to the directors and managers of housing agencies and to the public.

THE QUÉBEC OMBUDSMAN:

- **IS MONITORING THE SITUATION** because the information about the procedure is slated for distribution no later than September 30, 2022.

No later than December 31, 2021, send the Québec Ombudsman a plan for follow-up to the recommendations.

THE QUÉBEC OMBUDSMAN:

- **IS SATISFIED** because on December 17, 2021, the Ministère des Affaires municipales et de l'Habitation sent its work plan for establishing a complaint-examination procedure regarding intimidation, harassment and mistreatment.

CORRECTIONAL SERVICES

Ministère de la Sécurité publique

ACCESS TO THE COMPLAINT-EXAMINATION PROCEDURE IN PENAL ENVIRONMENTS

RECOMMENDATION IN 2020-2021

By December 31, 2021, issue a written reminder to all employees about how the complaint-examination procedure should be conducted, as specified in Instruction 21104 concerning the processing of complaints from remandees or offenders, with a view to facilitating detainees' access to the procedure and providing any required support.

ASSESSMENT IN 2021-2022

THE QUÉBEC OMBUDSMAN:

- **IS SATISFIED** because the Ministère de la Sécurité publique, Direction générale des services correctionnels, sent the correctional network a memo about how to apply the complaint-examination system with a view to facilitating access to complaint forms.

HEALTH AND SOCIAL SERVICES NETWORK

Ministère de la Santé et des Services sociaux

PATIENT FLOW WITHIN THE HEALTHCARE SYSTEM

RECOMMENDATION IN 2020-2021

Without delay, ensure that the recommendations made in 2019 to resolve the problem of overcrowding at Royal Victoria Hospital (MUHC) be implemented in order to make it possible for patients to have timely access to a reanimation room.

ASSESSMENT IN 2021-2022

THE QUÉBEC OMBUDSMAN:

- **IS MONITORING THE SITUATION** because even though the Ministère de la Santé et des Services sociaux has implemented most of the measures in response to the Ombudsman's recommendations, inter-institutional agreements could not be fully deployed due to the COVID-19 pandemic. The Department has pledged to put all the measures in place by September 30, 2022.

BILLING FOR SERVICE USERS WHO OCCUPY HOSPITAL BEDS

RECOMMENDATION IN 2020-2021

By December 31, 2021, produce and distribute clear guidelines governing billing for service users occupying a bed in a hospital centre who are waiting for a place other than one indicated in the regulation.

ASSESSMENT IN 2021-2022

THE QUÉBEC OMBUDSMAN:

- **IS DISSATISFIED** because even though the Ministère de la Santé et des Services sociaux recognizes that significant regulatory amendments are necessary and that the Québec Ombudsman has noted that they could not be made by December 31, 2021, the Department has failed to produce an action plan and has not suggested any timeframe for its production.



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