



LE PROTECTEUR DU CITOYEN

Assemblée nationale
Québec

HEALTH AND SOCIAL SERVICES COMPLAINTS EXAMINATION PROCEDURE

January 2011

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The Québec Ombudsman, appointed under the Public Protector Act¹, exercises the functions of the Health and Social Services Ombudsman in accordance with section 1 of the Act respecting the Health and Social Services Ombudsman².

Under section 7 of the Act respecting the Health and Social Services Ombudsman, the Québec Ombudsman must, by any appropriate means, see to it that users are respected and that their rights, as defined in Title II of Part I of the Act respecting health services and social services³ and in any other Act, are enforced.

To fulfill this function, one of the Québec Ombudsman's primary duties is to examine complaints made by users in accordance with Division I of the Act respecting the Health and Social Services Ombudsman (sections 8 to 16).

The Québec Ombudsman establishes the priority given to the examination of a complaint based on the probability that the prejudice will materialize during the examination, on the severity of the impact the prejudice will have on the integrity and security of the people concerned, on the financial impact of the prejudice and on the waiting time for a service.

Under section 10 of the Act respecting the Health and Social Services Ombudsman, the Québec Ombudsman must establish a complaint examination procedure that includes, in particular, the elements of information stipulated in subparagraphs 1 to 7 of the second paragraph of that section.

Accordingly, the Québec Ombudsman has established this Complaints Examination Procedure, which now replaces any previous procedure.

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Procedure, unless otherwise indicated by the context, the following expressions and terms have the meanings shown:

Body:

Any institution, or any organization, resource, partnership or person to whom or which an institution has recourse for the provision of certain services;

Any health and social services agency or any organization, resource, partnership or person whose services may be the subject of a complaint under section 60 of the Act respecting health services and social services;

Urgences-santé in the provision of pre-hospitalization emergency services;

Any person working or practising on behalf of a body.

¹ R.S.Q., c. P-32

² R.S.Q., c. P-31.1

³ R.S.Q., c. S-4.2

Complaint Assistance and Support Centre (CAAP):

The regional community organization mandated by the Minister of Health and Social Services to assist and support users, pursuant to section 76.6 of the Act respecting Health Services and Social Services.

Complaints and service quality commissioner:

Depending on the context, the local or regional complaints and service quality commissioner who examined the complaint at the institutional (local) level, or at the regional agency level, or at the level of Corporation d'Urgences-santé (regional).

Complainant:

Any natural person who makes a complaint to the Québec Ombudsman, whether he or she is a user, user's representative or any other person acting in any other capacity.

Highest authority:

Depending on the authority that represents the body in question, the board of directors or its chair, the chief executive officer, the owner or director of a certified residence, of a residence for the elderly contemplated in section 346.0.1 of the Act respecting health services and social services, of a resource offering lodging contemplated in section 346.0.21 of that Act, or of an organization, resource, partnership or legal person, or the director general, secretary or any other authorized representative who liaises effectively with the body's senior management.

Québec Ombudsman:

Depending on the context, the person known as the Ombudsperson, a deputy ombudsperson or any member of the personnel to whom the Québec Ombudsman has delegated the exercise of certain powers to receive and examine complaints from users or to carry out an intervention of its own initiative.

Urgences-santé:

Corporation d'Urgences-santé, as contemplated in section 87 of the Act respecting pre-hospital emergency services⁴, which carries out its activities in the Montreal and Laval regions.

User:

A natural person who has received, should have received, is receiving or requires health or social services from a body in the health and social services network, pursuant to the Act respecting health services and social services.

User's representative or representative:

A "conventional" user's representative, namely a person authorized to represent the user in a mandate or power of attorney from the user, including the user's legal counsel and the holder of a duly homologated mandate in case of incapacity;

⁴ R.S.Q., c. S-6.2

or

A “legal” user’s representative, namely:

- ▶ in the case of a user who is a minor, or of full age but incapable, a person contemplated in the second paragraph of section 12 of the Act respecting health services and social services, presumed to be the person’s representative based on the circumstances, and subject to the priorities stipulated in the Civil Code of Québec.
- ▶ In the case of a user who is a minor, the holder of parental authority is the legal representative; however, for the purposes of this Procedure, a user who is a minor 14 years of age or older is deemed to be of full age;
- ▶ In the case of a user of full age who is incapable, the following people (in order) are presumed to be the user’s representative: the Public Curator or, if not, a private curator or tutor, the user’s spouse, a close relative, the holder of a mandate in case of incapacity that has not been homologated, or a person who shows an interest in the user;
- ▶ In the case of a deceased user, the user’s heir or a liquidator of the estate, with regard to the services the user received or should have received during his or her lifetime.

1.2 Interpretation

The expressions and terms used in this Procedure should be interpreted in accordance with the provisions set out in the applicable legislation, including provisions relating to the examination of users’ complaints in the Act respecting health services and social services and the Act respecting the Health and Social Services Ombudsman.

The preamble forms an integral part of this Procedure.

2 ACCESS TO SERVICES AND ASSISTANCE FROM THE QUÉBEC OMBUDSMAN

2.1 Access to reception and referral services

The Québec Ombudsman takes steps to facilitate access to its reception and referral services through its call centre, which serves Québec as a whole and may be contacted by telephone at 1 800 463-5070, by fax at 1 866 902-7130 or by e-mail at protecteur@protecteurducitoyen.qc.ca, and through its offices in Montreal and Québec City, at the following addresses:

525, Boul. René-Lévesque East Suite 1.25
Québec City (Québec) G1R 5Y4

1080, Beaver Hall Hill 10th Floor, Suite 1000
Montreal (Québec) H2Z 1S8

2.2 Assistance

Any person who requires general information on the Québec Ombudsman’s mission in general, and on the health and social services complaint mechanism in particular, may contact the Québec Ombudsman.

The Québec Ombudsman gives assistance to anyone requiring information or help with the complaint procedure, including formulation of the complaint.

It informs users of their right to be assisted and supported by a person of their choice during the procedure, including an advisor from their region's CAAP.

3 COMPLAINT: FORMULATION, RECEIPT, ADMISSIBILITY AND FOLLOW-UP

3.1 Verbal or written complaint

A complaint may be made to the Québec Ombudsman at its offices in Montreal or Québec City verbally or in writing (by mail, e-mail, Internet or fax). The complaint is treated confidentially. If the complainant has been informed of the conclusions reached by the complaints and service quality commissioner, the complaint should mention the nature of the complainant's disagreement with those conclusions.

A copy of the conclusions should be enclosed with the complaint. If this is not done, the Québec Ombudsman may obtain a copy directly from the complaints and service quality commissioner.

If a complaint is initially made verbally, the Québec Ombudsman may, if it considers this to be necessary, ask for it to be formulated in writing, in particular if the facts supporting the complaint are complex. In such a case, the Québec Ombudsman informs the complainant of this requirement as soon as possible after the complaint has been made.

3.2 First contact

The Québec Ombudsman verbally notifies the complainant of the date on which the complaint was received, within two working days. If the Québec Ombudsman is unable to contact the complainant by telephone, it does so in writing.

Also within two working days of receiving the complaint, the Québec Ombudsman must decide whether or not it is admissible, in accordance with sections 3.3 and 3.4 below.

3.3 Admissibility of complaints

Every complaint is deemed to be admissible, unless the Québec Ombudsman has reasonable grounds to believe that the complainant is a minor under 14 years of age or a person who is unable to take care of his or her personal needs and property, in which case, after informing the complainant, it must obtain consent from the person's legal representative before examining the complaint.

However, complaints are inadmissible in the following cases:

1. The person who made the complaint is not the user of the services to which the complaint refers, and does not have the necessary status to represent the user. In such a case, a complaint is deemed inadmissible due to the complainant's lack of status.

However, unless there are reasonable grounds to believe that the person making the complaint does not have the necessary status to represent the user, a complaint made by a person who acted as the user's representative when the complaint was examined at the first level is deemed to be admissible, provided the complaints and service quality

commissioner considered that person to be the complainant when examining the complaint, and communicated his or her conclusions to that person.

2. No recourse was made to the first level of examination, namely the institution, agency or Urgences-santé, as the case may be, or the complaint examination period has not yet expired. In this case, the complaint is deemed inadmissible because it was sent to the Québec Ombudsman too early in the process.

If the complainant offers reasonable grounds to believe that he or she has been, is or will be subjected to reprisals by the body concerned, because of the complaint to the Québec Ombudsman, the Québec Ombudsman may consider it appropriate to address this aspect in accordance with section 8 or section 20 and following of the Act respecting the Health and Social Services Ombudsman.

3. The complaint or one of its grounds concerns a subject that does not fall under the Québec Ombudsman's jurisdiction by virtue of the applicable legislation, including the following situations:
 - a. the complaint refers to a physician, dentist, pharmacist or resident governed by the complaint examination procedure applicable under sections 41 to 59 of the Act respecting health services and social services;
 - b. the complaint or one of its grounds falls under the investigative jurisdiction of the Commission des droits de la personne ou de la jeunesse pursuant to section 75 of the Charter of Human Rights and Freedoms (R.S.Q., c. C-12) and the complainant does not object to the complaint being transferred to the Commission for processing;
 - c. the complaint or one of its grounds concerns a subject that falls under the jurisdiction of the Commission d'accès à l'information pursuant to section 173 of the Act respecting access to documents held by public bodies and the protection of personal information (R.S.Q., c. A-2.1);

In the case of subparagraphs (b) and (c), the complaint or ground is transferred to the organization with jurisdiction over it.

4. The complaint has already been examined by the Québec Ombudsman.
5. The complaint concerns a body over which the Québec Ombudsman does not have jurisdiction.

If a complaint is considered inadmissible, the Québec Ombudsman must inform the complainant of its decision, giving reasons. This must be done in writing if the complaint itself was in writing. In such a case, the person is referred to the appropriate resource, and where necessary the Québec Ombudsman informs the person briefly of his or her rights and recourses, if any. The complaint file is then closed.

3.4 Admissibility of a complaint from a representative

At any stage in the complaint examination procedure, the Québec Ombudsman may request evidence attesting to the status of the user's representative. If the complainant cannot establish his or her status as the user's legal or conventional representative, the complaint is deemed inadmissible. If the complaint was initially deemed admissible and

the Québec Ombudsman concludes, during the examination procedure, that the complainant is not the user or the user's legal or conventional representative, it may inform the complainant in writing that it is unable to continue with its examination due to the representative's lack of status, and the procedure is terminated. In exceptional circumstances, however, it may continue with its examination of the complaint and submit conclusions to the complainant based on the information available to it under the applicable law, with due respect for the confidential nature of the user's file.

3.5 Notice of receipt of a complaint concerning the services provided by a body

The Québec Ombudsman informs the institution, agency or Urgences-santé, in writing, that a complaint has been received, and asks it to provide a full copy of the complaint file it has created for the user in question, in compliance with the law.

If the complaint concerns services or activities under the authority of an organization, resource, partnership or person other than the body referred to in the first paragraph, the Québec Ombudsman also informs the highest authority of that organization, resource, partnership or person.

The Québec Ombudsman may send a copy of the complaint to the body in question if it believes this will not cause prejudice to the user.

3.6 Deadline for provision of the complete complaint file by the body concerned

The body concerned must send a complete copy of the user's complaint file, including its conclusions, to the Québec Ombudsman within five days of receiving the written notice described in section 3.5. The file should be forwarded via the complaints and service quality commissioner, or via any other person authorized by the body.

4 PROCESSING OF THE COMPLAINT

4.1 Commitments and deadlines

The complaint is examined by the Québec Ombudsman diligently, objectively and impartially, with due respect for the applicable law and the Québec Ombudsman's values, while seeking as far as possible to reconcile the various interests of the parties.

The Québec Ombudsman must contact the complainant at the earliest opportunity, to inform him or her of the name of the person who will be responsible for the file.

In compliance with the undertaking made in its Declaration of Services to the Public, the Québec Ombudsman will do everything it can to complete its examination of the complaint within sixty (60) working days after receipt of the documents it needs for that purpose. If this deadline cannot be met, in particular if the request is complex, the Québec Ombudsman informs the complainant and provides an approximate timeline for the examination of the complaint.

4.2 Rejection of the complaint after summary examination

The Québec Ombudsman may, upon a summary examination, dismiss a complaint if, in its opinion, it is frivolous, vexatious or made in bad faith. However, it must first allow the complainant to make observations.

The Québec Ombudsman may also refuse or cease to examine a complaint if it has reasonable grounds to believe that its intervention would clearly serve no purpose, if the length of time that has elapsed between the events that gave rise to the complainant's dissatisfaction and the filing of the complaint makes it impossible to examine the complaint, or if more than two years have elapsed since the complainant received or is deemed to have received the conclusions of the complaints and service quality commissioner, unless the complainant can prove that it was impossible for him or her to act sooner.

In all cases, the Québec Ombudsman must inform the complainant in writing of its final decision, giving reasons.

4.3 Observations from the parties

During its examination of the complaint, the Québec Ombudsman must allow the complainant to make observations. The representatives of the body concerned and, where the services to which the complaint refers fall under their responsibility, the representatives of the highest authority of the organization, resource or partnership, or any other person holding the highest authority, must also be given an opportunity to make observations.

The Québec Ombudsman gathers these observations at the time and using the methods it chooses, and must, in every case, encourage the parties to express themselves.

4.4 Observations from an agency

If the examination raises a question that falls under the responsibility of an agency contemplated in section 340 of the Act respecting health services and social services, including access to and organization, coordination and financing of services, the Québec Ombudsman may ask the agency in question to make observations.

However, the Québec Ombudsman must ask the agency for observations if it intends to make a recommendation to it at the end of the process.

To obtain these observations, the Québec Ombudsman must first identify the body concerned and provide the regional complaints and service quality commissioner with the elements of information it considers relevant to the subject of the complaint, and those it feels will encourage the parties concerned to make observations.

4.5 Notice of meeting

During examination of the complaint, the Québec Ombudsman contacts and, if necessary, meets with all the people whose testimony or expertise it considers is required to understand the facts relating to the complaint. It may also ask them to provide information and copies of documents that are needed for the examination, including the user's file.

The Québec Ombudsman may issue a written notice, in the form it considers appropriate, calling people to attend a meeting, and subject to the provisions of the law, it may also require people, within the timeframe and on the conditions determined by it, to provide information and copies of documents that are needed for the examination of the complaint, including access to and communication of information from the user's file.

In the absence of a valid excuse, every person who is called to a meeting by the Québec Ombudsman is required to attend and answer questions. If a person refuses to attend, the Québec Ombudsman has the powers and immunity provided for in the Act respecting public inquiry commissions (chapter C-37), including the power to summon witnesses, but not the power to impose a term of imprisonment.

5 CONCLUSIONS AND RECOMMENDATIONS

5.1 Communication of the conclusions and reasons

At the end of its examination, the Québec Ombudsman must send written conclusions to the complainant, with reasons, and must also inform the complainant of any recommendations it has made to the institution, agency or Urgences-santé, as the case may be, or to the highest authority of the organization, resource or partnership, or to any other person holding the highest authority, where the services in question are under their responsibility.

A copy of the Québec Ombudsman's conclusions, with reasons, must also be sent to the highest authority of the body concerned.

At the same time, the Québec Ombudsman must also send written notification to any body concerned by a recommendation, notifying it of its obligation to inform the Ombudsman in writing, within thirty days of receiving the recommendation, of the actions it will take as a result or, if it has decided not to act on the recommendation, of the reasons for its decision.

Notwithstanding the first and second paragraphs of this section, the Québec Ombudsman may communicate its conclusions and recommendations verbally to the complainant and to the bodies concerned, if the complaint was made verbally. However, the notice mentioned in the third paragraph must be sent in writing to all bodies concerned by a complaint, with a copy to the complainant.

5.2 Submission of conclusions, with reasons, to any person who supported or assisted the complainant

Unless there is a power of attorney to the file, it is up to the complainant to send a copy of the Québec Ombudsman's conclusions, with reasons, to the CAAP or to any other person who supported or assisted him or her during the complaint procedure.

In such a case and in the absence of a power of attorney to the file, the Québec Ombudsman must send an additional copy of its conclusions to the complainant, so that he or she can forward it to the CAAP or to any other person who provided support and assistance.

5.3 Notice or report to the Government or National Assembly

If, after making a recommendation, the Québec Ombudsman considers that no satisfactory action has been taken by the body, or that the reasons given for not taking action are unsatisfactory, it may notify the Government in writing, and may also, if it sees fit, include the case in its annual report or make a special report to the National Assembly.

Procedure adopted on January 21, 2011.