

## The Curateur public

The mission of the Curateur public du Québec is to protect incapacitated citizens through measures tailored to their specific circumstances and condition. It must ensure that all decisions regarding these persons or their property take their interests into consideration, respect their rights, and focus on helping them remain independent.

### Type of complaints

#### Complaints reviewed by the Québec Ombudsman

Under investigation at April 1, 2007	Received	Curateur public				Under investigation at March 31, 2007
		Investigated*				
		Referred	Interrupted	Unsubstantiated	Substantiated	
47	253	3	50	63	20	142

\* Excluding complaints whose processing was interrupted or which were referred

Citizen dissatisfaction with the Curateur public's services fell into the following categories:

- Delays in responding to certain needs of the persons represented, among these accommodations, psychosocial and medical care programs, and organization of various aspects of their daily lives;
- Supervision of private tutorships;
- The assignment of services meeting the needs of incarcerated incapacitated individuals, such as the presence of the appointed curator at court appearances, and the development of release plans and healthcare plans;
- Decision-making regarding the administration of buildings;
- Access to information and documents.

### Overview of the situation

The Québec Ombudsman is particularly attentive to the Curateur public's actions, given that they determine the well-being and safety of a significant number of incapacitated individuals. This is all the more critical in light of the fact that the Curateur public must depend on its partners (from the health and social services network, community networks, etc.) to meet the needs of the individuals for whom it is responsible.

## Ombudsman follow-up and actions

In its 2006-2007 annual report, the Québec Ombudsman provided an update on the implementation of the recommendations submitted through its most recent special reports. The Curateur public is of the opinion that most of these issues have been or are in the process of being resolved.

As for the Québec Ombudsman, we feel that the problems listed below must continue to be prioritized, given that complaints are still being received.

### Understanding its clientele

According to data provided by the Curateur public, as at March 31, 2007, 11,352 adults were under public supervision, 1,181 of them living in their homes. Hence, 90% of the persons under public supervision are living in residences.

In a Québec Ombudsman special report published in 1997, we had expressed our concern that the Curateur public was unaware of the actual location of most of the persons under supervision. In 1999, the Curateur public had responded to this preoccupation by setting an objective of visiting all of its wards at least once a year. The Québec Ombudsman replied that while it understood that the Curateur public could not be as present as a loved one, this objective seemed somewhat minimalist.

In 2004, the Québec Ombudsman reiterated its recommendation that the Curateur public be increasingly present and develop the necessary mechanisms to visit all of the persons it represented at least once a year and, if and as necessary, develop a standardized program for living environments as well as have investigators able to react to problems whenever they were observed.

### Percentage of persons visited by the Curateur public

	2006-2007	2005-2006
Residences	67%	51%
Home environment	80%	66%

According to these recent statistics, the Curateur public has not yet reached its objective of visiting its wards at least once a year.

The Curateur public specified, however, that in 2006-2007, 1,369 meetings (other than annual visits) were held with 641 persons, either at the Curateur public's offices or within the framework of evaluating intervention programs, accompanying wards to the court, or touring workshops and hospitals. It also indicated that these visits had increased by nearly 30% in 2007-2008.

The Québec Ombudsman notes that the Curateur public made significant efforts over the past few years to improve the situation, and acknowledges that progress has indeed been made.

We are nonetheless still concerned by the status of those - particularly persons living in their homes - who have not been visited by their appointed curator during the last year.

In explaining why it failed to reach its objectives in this regard, the Curateur public cited the extremely heavy workload of appointed curators, ascertaining that they are doing their utmost. Depending on his or her territory, an appointed curator can be responsible for anywhere from 120 to 190 persons. The Curateur public's standard in this regard is 100 cases per resource.

The Québec Ombudsman acknowledges the extremely heavy caseload of appointed curators, particularly for complex cases involving wards who live in their home environment. It also applauds the efforts made over the past years and acknowledges that the situation has improved since 2005.

The Curateur public has indicated wanting to prioritize visits to persons living in their home environment, given that it is harder to determine whether their needs - compared to those of wards living in health and social services network institutions - are being met. The Québec Ombudsman concurs with this strategy, considering it an appropriate way of compensating for the workload of appointed curators.

Also, while deploring the difficulties ensuing from limited resources, among these the inability to achieve the Curateur public's minimum objectives, the Québec Ombudsman will continue to closely monitor the measures introduced to enable the Curateur public to better understand its clientele and hence meet needs in a satisfactory and timely fashion.

Certain cases are particularly of concern, notably those involving isolated persons in a precarious situation or incapacitated individuals with significant behavioural problems and no access to appropriate resources. The Québec Ombudsman will analyze the problem over the upcoming year, as well as the Curateur public's increased synergy with the health and social services network with the aim of implementing psychosocial services for vulnerable citizens.

The Québec Ombudsman is concerned by another specific issue, that of the delays between the time the director general's report ("Rapport du directeur général")<sup>17</sup> is received and the actual launching of the protective supervision program, when necessary.

In responding to the Québec Ombudsman, the Curateur public indicated that it acts quickly whenever abuse is reported, and that it must evaluate the situation by visiting the persons at risk. According to the Curateur public, a first intervention is executed in less than 24 hours for 90% of the reports received. It reiterated that it must, in these instances, always give due consideration to the rights of the person whose circumstances are reported, particularly since their incapacity has not yet been observed.

The Curateur public estimates that around a quarter of the 500 cases reported each year will result in the initiative of a protective supervision program. In emergency situations, it uses the current legal provisions with regard to provisional administration and the administration of personal affairs.

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17 The "Rapport du directeur général", a document required to initiate the procedures involved in launching a protective supervision program, has two components: a medical evaluation and a psychosocial evaluation. Together, these two evaluations determine whether or not a person is of sound ability or incapacitated, and whether a protective supervision program is necessary either for the person and/or his or her property. This report is the first critical step to enable the Curateur public to initiate the legal process of launching a private or public protective supervision program, depending on the circumstances involved.

The Québec Ombudsman did note that the Curateur public cannot always act quickly in launching a protective supervision program. In fact, the files submitted to the Québec Ombudsman included major delays between the moment the Curateur public received a report from the director general indicating the need for a protective supervision program and the date on which said program came into force as a result of a judgment.

The Curateur public stated that it immediately processes all reports from institution directors general attesting to the incapacity of an individual and emphasizing that his or her safety or integrity is at risk.

The Québec Ombudsman is of the opinion that persons declared incapacitated are vulnerable even when the director general's report may not have indicated that their safety or integrity was compromised. Worried about the delays in handling such cases, we have already requested specific details from the Curateur public in this regard. These cases will be the topic of a specific analysis in 2008-2009.

### **Replacement of the program aimed at evaluating the services provided and the quality of life of wards**

Since the end of January 2004, when the quality of life evaluation program came to an end, the Québec Ombudsman has been asking the Curateur public to develop measures to replace this program. The Curateur public, in turn, has repeatedly stated its opinion that the program aimed at evaluating the quality of life and services is first and foremost the responsibility of the Ministère de la Santé et des Services sociaux.

Quality assessment visits, regularly conducted with network actors, are currently being held in two of the living environments, namely:

- Residential and long-term care centres (CHSLDs), where visits were first initiated in the winter of 2004; and,
- Intermediary and family-type residences, where visits began in the spring of 2005. These visits target all of the users in these resources, regardless of their age or difficulties (youth with difficulty adapting, health problems and intellectual disabilities, as well as elderly persons with little or no autonomy).

The Québec Ombudsman feels that this new evaluation method, namely assessment visits under the purview of the Ministère de la Santé et des Services sociaux, can prove an adequate replacement to the former quality of life evaluation program, specifically since Curateur public representatives participate in these visits in a significant and ongoing manner.

The Québec Ombudsman acknowledges that this method allows for optimizing the use of Curateur public resources and increasing the efficiency of Ministère de la Santé et des Services sociaux visits.

## The reassessment and revision of protective programs

The Québec Ombudsman in 2001 recommended that when reassessing protective supervision programs, the opinion of the incapacitated adult should be sought out and recorded, and this in the event that his or her protective supervision program is maintained. We also requested that changes be made to the guide prepared for professionals, to notably inform them of incapacitated adults' right to receive a copy of the examination report.

Since April 1, 2006, the Curateur public sends persons who are under protective supervision a letter entitled "Agreement to maintain protective supervision". Signed by the assigned curator representing the person under protective supervision, it informs the latter of his or her right to be reassessed at any time.

Activities for acting on the recommendations regarding the reassessment and revision of protective supervision programs are included in the 2007-2008 operating plan. The Curateur public advised us that they would be executed no later than December 31, 2008. The psychosocial section of the reassessment report requires that the person's opinion with regard to changes to the actual supervision program be recorded. The person's opinion is also required if the evaluator is of the opinion that the supervision program should be maintained. The report must notably include the date on which this information was transmitted to the person involved.

Lastly, the June 2007 training guide for health and social services network resources clearly outlines the Curateur public's expectations in this area. This guide was prepared for a series of training sessions that the Curateur public offers to all resources working in agencies or institutions.

The Québec Ombudsman acknowledges the Curateur public's efforts to disseminate the information necessary to protect the rights of supervised persons in cases of program reassessment, revision or maintenance.

## Overseeing instances of private supervision

Overseeing instances of private supervision is one of the Curateur public's primary mandates and an aspect of its activities that the Québec Ombudsman monitors on an ongoing basis.

The Curateur public's 2006-2010 strategic plan and the action plan underway both provide for more emphasis on information and assistance, increasingly efficient supervision with regard to tutorships and curatorships, and faster action in cases of actual or potential abuse or neglect of incapacitated persons. The action plan's implementation was initiated in the fall of 2007, with emphasis on the following priority projects:

- Personnel training vis-à-vis current practices;
- Standardization of practices through the development of guidelines, particularly with regard to supervision;
- Revision of the strategy and delays for obtaining documents from legal representatives;

- Improved and more appropriate information for close relatives or close friends and the actors involved in launching protective supervision programs, mainly notaries and court clerks.

The Québec Ombudsman will monitor the action plan's implementation and the ensuing results.

## Appointing a tutor or curator

When a minor or incapacitated person is entitled to benefits, the Société de l'assurance automobile du Québec (SAAQ) and the Commission de la santé et de la sécurité du travail (CSST) pay these amount to his or her tutor or legal curator. Should there be no tutor or curator, the SAAQ and CSST appoint a person with the powers of either a tutor or curator, as the case may be. The Québec Ombudsman was notably concerned that an administrator appointed in this fashion might not be subject to the same degree of supervision by the Curateur public as legal tutors or curators.

In response to the Québec Ombudsman's observations in this regard, the Curateur public introduced a new procedure to deal with such cases :

- When justified by an incapacitated person's financial situation, namely when there is property to administer other than a SAAQ benefit or if the latter makes a significant lump-sum payment, the Curateur public applies the assessment criteria of its specific guide and subsequently recommends the launching of a protective supervision program or the homologation of the mandate in the event of incapacity.
- The SAAQ should continue temporarily designating administrators, until such time as a program is launched or in cases where a person's circumstances are expected to improve.
- If the incapacitated adult's sole income consists of monthly SAAQ benefits and he or she enjoys adequate support, it may be best to appoint an administrator that would have a tutor's rights and obligations vis-à-vis property.

This position ensures the greatest respect for the rights of incapacitated individuals and improved flexibility from the Curateur public as regards agencies that may appoint an administrator under the Curateur public's legal framework. In terms of the Société de l'assurance automobile du Québec, the notice of payment can serve as an inventory, with the administrator only needing to submit an annual report and final accounting. For other agencies that pay indemnities, annuities or benefits, administrative changes of this type will be proposed, with due consideration given to the applicable legislation.

Lastly, the position adopted with regard to consolidation and the setting of parameters for appointing administrators was communicated to the SAAQ in December 2007. The Curateur public will subsequently establish a directive to standardize the definition and designation of administrators. The Curateur public also communicated this position to the Commission de la santé et de la sécurité du travail.

The Québec Ombudsman will leave this investigation open until such time as it receives a confirmation of the directive's publication, and will notably monitor its application by the agencies involved.

### **Transmission of annual reports to persons represented by a tutor or curator**

The Québec Ombudsman has already recommended that annual management reports be transmitted to persons represented by a tutor or private curator.

Given the exchanges between the Curateur public and the Québec Ombudsman in acting on this recommendation, the directive on access to and protection of documents and information held by the Curateur public under the Act respecting access to documents held by public agencies and the protection of personal information was amended to specify the circumstances in which the Curateur public can transmit annual management reports to persons represented by a tutor or private curator. This directive will be adopted in the spring of 2008. A distribution plan for its dissemination to all employees will be developed in the months following its adoption.

The Québec Ombudsman will close this file once it receives the new directive and distribution plan developed by the Curateur public for all of its employees. It will nonetheless remain vigilant in this regard.

### **Consent for care**

In a 1999 report, the Québec Ombudsman noted that the Curateur public did not systematically investigate requests for consent for care submitted to it by institutions, nor did it check whether or not the person it represented had refused to receive care or not. Instead, it blindly trusted in what institutions would report back.

The Québec Ombudsman had asked that it change its method of handling such cases. In 2004, it acknowledged that the Curateur public had made major changes to its unit responsible for such consent. This being said, numerous requests for care were not sent to the Curateur public, despite the latter's efforts. The Curateur public notably observed, during its inspection visits of health and social services institutions, that some of them were neglecting to obtain its consent in spite of it being mandatory. The Québec Ombudsman recommended that the Curateur public make further efforts to have health professionals obtain its prior consent whenever necessary.

The Curateur public responded that it was taking concrete actions to notify health and social services actors of their obligations with regard to consent for care: not only was the point repeated during visits of institutions, but the issue was also discussed during information sessions offered throughout the health and social services network.

Consent for care is also on the agenda of information sessions held for employees of health institutions who are responsible for Curateur public cases.

The Curateur public also relies on a network of "multiplying agents", namely network actors to whom it provides training on applicable procedures that institutions must

follow. This training also addresses practices involved in the application of the Public Curator Act as regards persons to whom services are delivered by a health institution. Once fully developed, this network of multiplying agents should include one person in each agency and institution designated as the “respondent” for all issues pertaining to the Curateur public. As these persons are assigned, the Curateur public creates groups to whom training is provided.

In addition to the training and information sessions organized for network actors, the Curateur public has taken careful note of the latter’s comments and improved the form used to submit an application for consent for care.

The Curateur public states, furthermore, that urgent requests are responded to immediately or within 24 hours, and this 365 days a year. Other less urgent requests are processed in less than 24 hours.

The Québec Ombudsman notes the Curateur public’s efforts to provide training that is tailored to the needs of health and social services network actors, and will seek to obtain a better picture of results in this regard over the coming year.

We should recall that the steps to obtain consent for care from the Curateur public for one of its wards are the responsibility of health and social services network actors. Only time will tell what the Curateur public’s attempts to inform and train these network actors has achieved.

## The protection of persons

### Under tutorship and with no fixed address

*On February 28, 2006, the court temporarily appointed the Curateur public to ensure the protection of a young woman incapacitated as a result of a road accident. On May 10, 2006, the Curateur public was named tutor and mandated to administer the person and her property.*

*Upon communicating with the Québec Ombudsman, the citizen explained that she was desperate and afraid she would soon end up homeless. She had spent some time in various community residences, but would prefer to live alone in a home where she would feel protected. She even admitted to having committed several petty crimes in the hope of being caught and sent to prison, where she thought she would feel safer.*

*During its investigation and careful reading of the notes regarding the citizen, the Québec Ombudsman observed that the citizen and her appointed curator did not appear to have had any meetings between February 28, 2006 and December 27, 2006. On this latter date, we saw that the citizen called and had a telephone conversation with her curator. The Curateur public stated that during the first year of protective supervision, the appointed curator saw her on four occasions and met with her several times when she went to the territorial directorate from which her case was managed.*



*The Québec Ombudsman notably observed that instead of taking advantage of the health and social services network, which should have set up a treatment plan tailored to the citizen's needs, the Curateur public opted to enter into an agreement with a private resource - paid for by the citizen - to help her organize her daily life.*

*The person represented thus often found herself in situations that posed a risk to her personal safety. The Curateur public, in turn, claims to have offered the citizen various services, which were in large part refused. Given the circumstances, the Québec Ombudsman recommended that the Curateur public conduct an assessment of the citizen's "capacity to consent". It also asked that the Curateur request support from the health and social services network so that its ward receive the necessary psychosocial, biomedical, material and legal services.*

*The Curateur public recently began working with health and social services network actors to ensure that this young lady under its responsibility receive suitable services, including an appropriate place to stay.*

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## Communication breakdown

*A citizen with PDD (pervasive development disorder) is under the tutorship of the Curateur public, which administers the person and his property. The citizen communicated with the Québec Ombudsman to complain that he was having problems receiving the payment of his daily living expenses and to decry certain deficiencies in the organization of the services he was provided. He found this situation extremely stressful, which exacerbated his inappropriate behaviour.*

*The Québec Ombudsman's investigation uncovered communication problems between the Centre de ressources en déficience intellectuelle and the Curateur public, particularly with regard to the roles of each of the actors involved in this particular case. The result : a lack of consistency in the delivery of services, and significant confusion for the citizen, who described the situation as "a ping pong game between his intervener and his appointed curator."*

*The Québec Ombudsman subsequently requested that communications be increasingly structured to improve information exchanges between actors and most importantly, with the citizen. We also asked that a chart of roles and responsibilities be drawn up and adjusted so that it could be understood by the citizen as well as ensure that his needs would be met. The Québec Ombudsman is monitoring this case to ensure that mandates assigned to various agencies are adhered to and that the citizen receive seamless services, unhindered by administrative hassles.*

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## The protection of incarcerated incapacitated individuals

In order to appropriately execute its mandate of protecting incapacitated individuals for which it is responsible, the Curateur public should be immediately notified of the incarceration of any one of them. Detention centres should similarly be able to quickly identify persons under private or public curatorships or tutorships. This would allow appointed curators to ensure adequate protection for incapacitated individuals as soon as they are incarcerated, by supporting them and representing them in front of discipline committees for the purpose of developing treatment and release programs, among others.

And yet the Québec Ombudsman notes that incarcerated incapacitated individuals experience significant problems as a result of their appointed curators not being systematically notified of their incarceration and the various decisions that must be taken within such a context. Detention centres, in turn, claim to have no means of identifying at the time they are admitted detainees who may be under the responsibility of the Curateur public.

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### An extremely vulnerable detainee left to his own devices

*A detainee represented by the Curateur public and due to be released from the detention centre was extremely nervous, for he has no fixed address to return to.*

*The Québec Ombudsman's investigation uncovered that this citizen had been left to his own devices, rejected by various residences because of his behaviour. No release program or intervention program had been prepared for him, and the option of turning to the health and social services network had not been considered. In short, the Curateur public did not take any action in this case. In response to the Québec Ombudsman's observation that the citizen's protective supervision program had not been reassessed within the time period provided for under the law, the Curateur public claimed to have had no information as to his whereabouts.*

*The Québec Ombudsman requested that the Curateur public reassess the citizen's protective supervision program and appoint a CLSC to help organize services and prepare a treatment plan in line with the health condition of the incarcerated citizen. The reassessment of the protective supervision program is currently underway, and a CLSC has gotten actively involved to ensure the citizen receives the necessary psychosocial treatment.*

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## An incarcerated citizen has no news from his appointed curator

*A detainee represented by the Curateur public and whose release from prison was imminent worried about what would happen to him once he was on the outside. How would he meet his basic needs over the next few days? Where would he stay? These were questions that greatly concerned him. The citizen had attempted to contact the person in charge of his case on a number of occasions, but had been forced to leave him voice mail messages. In the prison environment, detainees are forbidden from receiving direct calls, which greatly hindered communications in this particular instance.*

*The Québec Ombudsman got involved, asking the Curateur public to take the necessary measures to communicate with the represented citizen, notably by asking the detention centre to set up a telephone meeting. The citizen was thus finally able to exchange with his appointed curator and organize his release.*

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## Surveillance of private tutorships and curatorships

Even when it does not intervene directly with incapacitated individuals, Curateur public must ensure that those acting as tutors or private curators do so in accordance with the regulations. Following are two examples where the Québec Ombudsman recommended that Curateur public assume this responsibility.

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### A portion of the children's inheritance disappears

*A father was named the tutor of his three children following their mother's death in an automobile accident. The youngest child, upon becoming of legal age, asked about her inheritance and quickly ascertained that a major portion of it had disappeared. No one - not the tutor or the Curateur public - could offer an explanation as to what had happened.*

*The Québec Ombudsman's investigation uncovered major problems with the supervision of the tutor as well as the lack of surveillance of tutorships by the Curateur public. During the period when the tutorship was in effect, no tutorship council was created and no charge was constituted, despite the obligations in this regard under the Civil Code of Québec. Furthermore, the accounting was incomplete, with amounts taken from the children's account for their upkeep, and did not take into consideration the father's support obligations. Financial transactions did not correspond to Civil Code of Québec criteria for "presumed sound investments".*

*The Québec Ombudsman recommended that the Curateur public reimburse the children the amounts to which they would have been entitled had the actions of the private tutor been adequately monitored. The Curateur public accepted to pay the children an amount equal to the capital lost as a result of their legal tutor's poor administration and failure to strictly fulfill his surveillance role.*

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## Curateur public dallies in reacting to a tutor's poor judgment

*A member of the tutorship council shared his concerns regarding the administration of the inheritance of two minors to the Curateur public. The children's mother, also the private tutor, had invested \$20,000 from the children's inheritance in a building that was thereafter sold. This borrowed amount was never repaid, and no further action was taken, despite the report submitted to the Curateur public.*

*The Québec Ombudsman's investigation disclosed that the tutor had not responded to numerous requests from the Curateur public, particularly those requiring her to account for and repay the debt of \$20,000.*

*The Québec Ombudsman asked the Curateur public to be stricter in its exchanges with the tutor, and even consider replacing her if she continued to ignore the Curateur public's requests. The Curateur public reacted accordingly, proceeding to put the tutor in default. In light of her failure to respond to this legal initiative, the Curateur public began the process of replacing her as the children's tutor.*

## 2007-2008 recommendations

Given the extreme vulnerability of the persons in whose regard reports were submitted to the Curateur public and the fact that they are at risk of physical or financial harm ;

### THE QUÉBEC OMBUDSMAN RECOMMENDS :

That the Curateur public provide it, no later than September 1, accurate data on the delays for obtaining a judgment subsequent to the receipt of the director general's reports attesting to the need for a protective supervision program. In addition, the Québec Ombudsman asked the Curateur public for a copy of its action plan, including the measures it plans to introduce to limit to the greatest possible extent the intervention delays when a protective supervision program must be launched.

That the Curateur public measure the results of its efforts, primarily to ensure that its message has been heard and understood by the main stakeholders involved in the issue of consent for care. This measure should also allow the Curateur public to determine whether institutions or actors are failing to obtain its consent when necessary.

That the Curateur public notify the Québec Ombudsman of the results obtained.

That the Curateur public establish an action plan to ensure that it can efficiently fulfil its responsibility towards the incarcerated incapacitated individuals it represents, both while they are in prison and after they are released. That a copy of the plan be forwarded to the Québec Ombudsman no later than December 31, 2008.

That the Curateur public demonstrate, by December 2008, that it has introduced, in conjunction with the Ministère de la Sécurité publique, concrete measures for the efficient dissemination of information and to ensure that it is immediately notified when a person under its supervision is kept or held in a detention centre.

## Comments from the agency

The following statement was issued by the Public Curator :

“ My reaction to the possible solutions put forth for some specific problems is a positive one. In line with my ongoing focus on improving the services provided by the Curateur public, I will give these all of the required attention. In fact, some measures designed to correct identified problems are already in the process of being implemented, while others will be introduced in the coming months.”