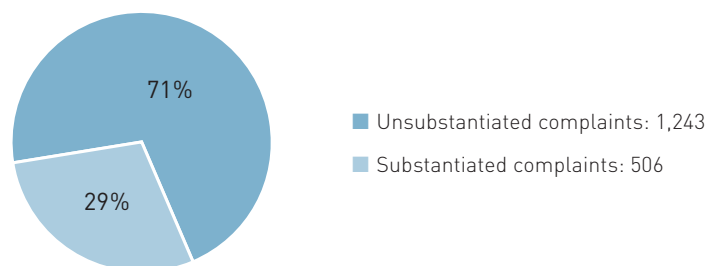


JUSTICE AND PUBLIC SECURITY



Government departments and agencies	Complaints received	Uncompleted investigations		Completed investigations		Total
		Complaints referred	Complaints interrupted	Unsubstantiated complaints	Substantiated complaints	
Commission québécoise des libérations conditionnelles	27	1	11	9	1	22
Ministère de la Sécurité publique						
Correctional Services	3,703	1,344	1,076	884	412	3,716
Revenu Québec						
Taxation	688	20	197	328	87	632
Services Québec						
Directeur de l'état civil	41	1	15	22	6	44
Total	4,459	1,366	1,299	1,243	506	4,414

Inmates submitted 3,703 complaints to the Québec Ombudsman this year, down from 3,826 in 2007-2008. The percentage of substantiated complaints also declined, from 33% last year to 32% in 2008-2009.

However, the number of complaints concerning Revenu Québec (taxation) fell from 697 in 2007-2008 to 688 this year. Most of the substantiated complaints referred to file processing delays (22%), delays in processing requests for reimbursements (16%), loss of files or file management errors (15%) and collection methods (10%). The complaints mentioned in this annual report concerning Revenu Québec related to fair treatment, which is an important principle of social justice.

Administrative justice: Encouraging signs, but much still remains to be done

In its last annual report, the Québec Ombudsman mentioned the tenth anniversary of the Act respecting administrative justice and spoke about the key importance of its basic principles, which serve as the basis for tens of thousands of individual decisions made every year by the Government authority. Overseeing compliance with this Act, and with the Act respecting health services and social services, is a core element of the Québec Ombudsman's everyday task.

The Québec Ombudsman observed a lack of familiarity with the principles set out in the Act respecting administrative justice and the Act respecting health services and social services concerning the duty to act fairly, and noted that as a result, the Government authority did not always understand or uphold that duty.

The Québec Ombudsman believes this problem is fundamental, since a significant percentage of substantiated complaints relate specifically to the sense of not having been treated fairly (37% of admissible complaints in 2008-2009). Some individual situations were described in the Québec Ombudsman's 2007-2008 annual report, relating among other things to the Government's failure to inform and communicate with members of the public, and denial of their right to make comments or be heard before a decision was made.

The Québec Ombudsman encouraged the leaders of Government departments, agencies and health and social service network authorities to ensure that their personnel understood the principles and rules set out in these two Acts. It also recommended measures to raise awareness of and ensure compliance with these principles, including training for new employees, regular upgrading for staff, the formulation of specific expectations for supervisory staff and consideration of these expectations during performance assessments.

The Québec Ombudsman has already observed some real and positive impacts from these recommendations, in the form of measures applicable to all authorities and in the processing of certain specific cases.

IN GOVERNMENT DEPARTMENTS AND AGENCIES

The **Secrétariat du Conseil du trésor**, which coordinates the recruitment and development of human resources in the civil service, has agreed that the rules and principles of administrative justice will be included in its training for new managers and new permanent staff. The Québec Ombudsman will contribute support and expertise to this initiative.

Several government departments and agencies have also taken steps to ensure compliance with the provisions of the Act respecting administrative justice as a result of the Québec Ombudsman's interventions in specific cases:

- **The Régie des rentes du Québec** now systematically mentions the recourses available to citizens wishing to contest its decisions. In addition, between now and the fall of 2009, it intends to ensure that all its personnel are aware of the importance of applying administrative justice principles. All vice-presidents and directors have already been given related training in February 2009.
- **The Commission des transports du Québec** changed its website in the fall of 2008 to include more details of certain conditions for permit exemptions and review mechanisms. The Commission also acknowledged the need to provide special training for its customer service representatives so that they are in a better position to inform the general public about bus transportation permit exemptions. The new training was introduced in November 2008, soon after the Québec Ombudsman's intervention.
- **The Financière agricole du Québec** also responded positively to the Québec Ombudsman's request that more detailed reasons be given for the decisions made by its harvest insurance review committee. The managers concerned were made aware of this requirement in September 2008, and subsequent verification by the Québec Ombudsman has revealed that the reasons for the committee's decisions are now explained more fully.

- **The Ministère des Transports** undertook to bring the provisions of the Act respecting administrative justice to the attention of staff from its local admission committees and the adapted transportation review board. This was done in March 2009, with emphasis on the importance of meeting deadlines and providing detailed reasons for the decisions made.
- **The Commission de la santé et de la sécurité du travail** responded positively in November 2008 to the Québec Ombudsman's request that it include a statement in its decisions to the effect that requests for review must be made in writing in order to be admissible. Failure to stipulate this fact may be prejudicial to members of the public who are not aware of the requirement.
- **Revenu Québec** has taken steps to improve the consistency and transparency of applications for cancellation of the interest, penalties and charges stipulated in Québec's tax legislation. A description of the recourse procedure has been published on the Revenu Québec website since January 2009, and a special brochure was printed in December 2008. In addition, letters informing citizens of the department's decisions now give more detailed reasons, so that people know why their requests have been refused.

IN HEALTH AND SOCIAL SERVICES INSTITUTIONS

The Québec Ombudsman welcomes the steps taken or proposed by the Ministère de la Santé et des Services sociaux (MSSS) in response to its recommendation concerning the application of the administrative justice principles set out in the Act respecting health services and social services:

- At the Network Management Committee meeting of January 22, 2009, the MSSS informed regional agency Chief Executive Officers of the importance of understanding and applying the rules and principles set out in the Act respecting health services and social services and the Act respecting administrative justice. The intervention applied to the agencies' existing personnel and all new employees.
- In 2009-2010, the reception procedures for new MSSS employees will be revised to include a review of users' rights and the rules and principles of administrative justice. A similar review will also be sent to the department's current employees.
- Lastly, in the fall of 2009, the MSSS will prepare a leaflet on this subject, for distribution internally and throughout the network, for all existing and new employees and subcontractors.

THE QUÉBEC OMBUDSMAN CONTINUES TO BE VIGILANT

Although the Québec Ombudsman has observed some significant progress in many government departments and agencies during the last year, it nevertheless notes that much still remains to be done by the Government authorities and by the health and social services network to ensure that citizens' rights are upheld. This topic will continue to be a major concern in 2009-2010. If necessary, and in light of the complaints received, the Québec Ombudsman will take further steps with the authorities concerned to ensure that services to citizens continue to improve.

Ministère de la Sécurité publique

– Direction générale des services correctionnels

The Québec Ombudsman, in its two previous annual reports, once again emphasized the fact that reintegration of offenders into society is central to the Act respecting correctional services, adopted in 2002 and brought into force in 2007. The Québec Ombudsman made recommendations to improve social integration services in the correctional system.

GOVERNMENT ACTION PLAN FOR SOCIAL REINTEGRATION AND CONTRACTING FOR THE LOCAL SOCIAL REINTEGRATION SUPPORT FUND

In its 2006-2007 report, the Québec Ombudsman recommended that the relevance and efficiency of social reintegration measures be reviewed. At that time, the Ministère de la Sécurité publique (MSP) made a commitment to prepare a discussion and guidance document on the execution of its social reintegration mission. However, it was not until the following year, in September 2008, that the MSP finally delivered a document describing its accountability priorities and guidelines for correctional services clients. The same document also addressed access to specialized resources and delivery of services in partnership with other departments. The Québec Ombudsman recognizes that, however belatedly, the MSP has at least taken the first step.

Meanwhile, given the delay in defining precise guidelines and principles for the development of social reintegration support programs, services and activities in detention facilities, the Québec Ombudsman's 2007-2008 report called on the Québec Government to introduce an interdepartmental action plan for the creation and coordination of social reintegration services. It had become obvious by then that implementing this recommendation would require inter-departmental action. The Government asked the MSP to lay the foundations for this plan.

The MSP published its action plan in October 2008, and after identifying the departments and the Government and community agencies involved in social reintegration, undertook to produce a working document dealing in particular with the problem sets and challenges affecting the reintegration of offenders, and their needs. It also agreed to compile an inventory of social reintegration services in detention centres. The MSP expects to complete and deliver this document in the spring of 2009.

As a result, the interdepartmental committee that was to be responsible for coordinating subsequent work was not created as scheduled in January 2009. The Québec Ombudsman is concerned about the negative impact of this delay on the social reintegration action plan, which was to be submitted to departmental authorities in June 2009. In addition, the Québec Ombudsman is astonished to learn that the MSP does not already have an inventory of the programs available in its detention facilities.

Moreover, the MSP has opted to include follow-up action to another recommendation from the Québec Ombudsman in the mandate it received from the Government. As a result, it has undertaken to create a working committee that will define the rules governing contracts between Local Social Reintegration Support Funds, the private sector and other Government departments and agencies. The Local Social Reintegration Support Funds, through the work and services they deliver in detention centres, play a key role in reintegrating offenders into society. The Québec Ombudsman is concerned that delays in implementing the action plan will further postpone the enactment of these structural rules for contracts entered into by the Funds.

In accordance with the spirit of the Act respecting the Québec correctional system, the MSP, in its response to the Québec Ombudsman's 2007-2008 recommendations, stipulated that a social reintegration action plan "could incite the various government agencies involved to truly appropriate the social problems experienced by this sector of the population while also actively searching for effective solutions¹". Nevertheless, one can only conclude, based on the MSP's actions in the last two years, that there is a significant gap between the department's words and actions.

RECOMMENDATION

Whereas, in its 2007-2008 report, the Québec Ombudsman called on the Gouvernement du Québec to implement an interdepartmental action plan for the creation and coordination of social reintegration services;

Whereas the Government entrusted the Ministère de la Sécurité publique with responsibility for laying the foundations of this plan;

Whereas the Ministère de la Sécurité publique undertook to produce a working document dealing in particular with the problem sets and challenges for the reintegration of offenders into society and with the needs of those affected, and to compile an inventory of social reintegration services in detention centres;

Whereas submission of this document to the Québec Ombudsman, scheduled for December 2008, has been postponed due to delays in compiling an inventory of social reintegration services in detention facilities;

The Québec Ombudsman recommends that the Ministère de la Sécurité publique give high priority to this task and increase its efforts to meet the stated deadline and, as such, asks the Ministère de la Sécurité publique to submit the government action plan on social reintegration no later than June 30, 2009.

COMMENTS FROM THE MINISTÈRE DE LA SÉCURITÉ PUBLIQUE

The Ministère de la sécurité publique, through its Deputy Minister, made the following comments:

"First of all, the Ministère de la Sécurité publique confirms that social reintegration is one of its priorities. Its Correctional Services are working closely with the other government departments and community resources involved in this issue. A government plan of action for social reintegration will be introduced to improve and reinforce the everyday efforts of the Correctional Services and community resources in this area.

The MSP notes the Québec Ombudsman's recommendation concerning the need for a government plan of action by June 20, 2009, and undertakes to submit a working document by the requested date."

¹ The Québec Ombudsman, *Annual Report 2007-2008*, p. 99.

PROFILE OF THE PRISON POPULATION

This year, the MSP has begun the task of preparing a profile of its correctional services clientele, in response to a recommendation made by the Québec Ombudsman in its 2006-2007 report. This profile should be available in the spring of 2009.

INSTITUTIONAL SANITARY CONDITIONS

Following its observations in 2006-2007, the Québec Ombudsman asked the MSP to establish a mechanism for sanitary inspections. Two years later, however, the Québec Ombudsman notes that there are still no uniform health standards in place for detention facilities. Although the MSP has acknowledged the need to monitor health and sanitary conditions in order to prevent the transmission of disease and to control the risks of contamination, it has been slow to take any significant steps aimed at dealing with this major deficiency. The Québec Ombudsman does not believe the current negotiations on the eventual transfer of responsibility for health services in detention facilities to the Ministère de la Santé et des Services sociaux are sufficient to justify the MSP's failure to act.

In February 2009, in response to an intervention by the Québec Ombudsman questioning the MSP's inaction, the MSP undertook to cooperate with the Société immobilière du Québec and the Ministère de la Santé et des Services sociaux in order to establish standards for sanitary conditions, and develop and deliver a directive on this subject to the Québec Ombudsman no later than November 30, 2009. In the meantime, the MSP plans to set up interim procedures aimed at improving conditions in all its facilities by June 1, 2009, including disinfection of segregation cells and maintenance of admission cells and showers.

REGISTER OF THE USE OF SEGREGATION AND ISOLATION CELLS

As recommended by the Québec Ombudsman, in May 2008 the MSP undertook to maintain a standard register for recording the use of segregation and isolation cells in all detention facilities by March 31, 2009. It was difficult to assess these practices in the absence of such a register. The new mechanism will increase transparency by recording information on the use of isolation and segregation measures, the reasons for such measures, and their duration. It will also allow for better monitoring of these practices and of the segregation and isolation conditions for inmates. In addition, it will help ensure that the MSP's health care directive is applied and that segregated inmates receive daily visits from nursing staff.

PROCESSING OF WRITTEN REQUESTS FOR HEALTH SERVICES

In its previous annual report, the Québec Ombudsman drew the MSP's attention to the processing of inmates' written requests for health services in detention facilities. The Québec Ombudsman recommended that the MSP look into the possibility of amending this procedure in order to improve it and protect the confidentiality of information exchanged by inmates and medical personnel.

In the fall of 2008, the Québec Ombudsman notified the MSP of problems relating to the selection of priority service requests, stemming from the fact that many inmates find it hard to request services in writing. While the MSP has undertaken to study this problem and has initiated preliminary discussions with the MSSS, the Québec Ombudsman is nevertheless concerned about the slow pace of the work being done to find a solution. It therefore asks the MSP to institute an immediate review of the methods for dealing with written health service requests in detention facilities. To speed up this task, the Québec Ombudsman encourages the MSP to collaborate more closely with the health and social services network and to emulate practices used by other prison systems.

OTHER INTERVENTIONS BY THE QUÉBEC OMBUDSMAN IN 2008-2009

New housing structures and overcrowded prisons

During visits to seven detention facilities in the past year, the Québec Ombudsman paid particular attention to facilities in which new temporary modular buildings have been installed. These quarters will provide up to 324 new spaces in the Québec, Trois-Rivières, Sherbrooke and Amos facilities².

The Québec Ombudsman believes these units will temporarily ease the pressure placed on the correctional system due to overcrowding in certain facilities. However, this temporary solution must be viewed in the context of prison overcrowding and repeated transfers of inmates between facilities. According to the selection criteria for occupancy of these modules, only inmates with the lowest danger rating, who do not have physical or mental problems, and who display acceptable behaviour, can be considered. The MSP recognizes that, in order to fill these new spaces, inmates meeting the required conditions will have to be brought in from facilities where modular buildings are not available. These transfers may have detrimental impacts (distance from family, friends and community resources in the region of origin, discontinuity in medical care, etc.) on the conditions of affected inmates.

The institutions in question have adjusted some of their surveillance practices to the specifics of these new structures. They have also made adjustments to work procedures to reflect their limited human resources. The Québec Ombudsman is monitoring the occupancy of the temporary facilities, paying particular attention to the maintenance of basic services and the impact of these facilities on overcrowding and transfers.

Mental health and correctional services: Special report being prepared

In the wake of a research contract granted to a team from the International Centre for Comparative Criminology at the Université de Montréal, the Québec Ombudsman has continued its analysis of mental health problems in prisons. The results of this work will be published in a special report in 2009, which will also contain a series of recommendations to improve the organization of mental health services in prisons and patient management for inmates with mental problems.

² The Amos facility, which has used this type of structure for 17 years, will be visited at a later date.

PROCESSING OF COMPLAINTS

Substantiated complaints reviewed	2008-2009
Health care	30%
Loss of rights or privileges	8%
Living conditions	7%
Transfers and transportation between facilities	4%
Loss of personal effects	19%
Inmate classification	2%
Services and activities	8%
Officer behaviour and abuse	2%
Sentence management and calculation	8%
Security measures	2%
Procedures for temporary absence requests	2%
Discipline	2%
Complaint processing system	6%
Nature of interventions	2008-2009
Individual interventions	81%
Collective interventions	19%

Between April 1, 2008 and March 31, 2009, the Québec Ombudsman reviewed 412 substantiated complaints from inmates in detention facilities in the Québec correctional system. The breakdown of causes remains basically unchanged from previous years, and the variation in the number of substantiated complaints concerning transfers is due primarily to a change in the Québec Ombudsman's methodology for this problem. The majority of these complaints are now classified or processed according to the impacts of the transfers (loss of personal effects, lapses in medical care, living conditions, etc).

Access to health care remains the most common cause of dissatisfaction, as well as the type of complaint most likely to be substantiated. The Québec Ombudsman has intervened frequently in a preventive capacity for this type of complaint. In addition, in several cases involving complaints, the Québec Ombudsman chose to warn the detention centre in question of a potentially risky situation, rather than launching an investigation to assess whether practices were in compliance with current rules and standards.

In most cases where an appropriate recourse or method was available to inmates in order to protect their rights or defend their point of view, the Québec Ombudsman directed them to use that solution first. On the other hand, when a decision by the prison authorities had an immediate impact, for example solitary confinement without apparent cause or an unreasonable denial of an inmate's right to speak with counsel, the Québec Ombudsman intervened immediately.

For substantiated complaints reviewed as of March 31 2009, the Québec Ombudsman recommended and obtained corrective measures from the detention facilities concerned in 90% of cases; 81% were individual cases, and 18% were collective cases where the results benefited more than one inmate. This represents an increase in the proportion of collective interventions over the last three years, from 9% of the measures requested and granted in 2006-2007 to 11% in 2007-2008.

Substantiated complaints relating to health care and the loss of personal effects accounted for 28% and 19% respectively of complaints for which the Québec Ombudsman's intervention led to the implementation of individual or collective corrective measures. For example, following receipt of a complaint, the Québec Ombudsman recommended to the authorities of a detention facility that admission officers should ensure that the medical files of all newly admitted inmates are properly filled out. The facility accepted the recommendation, and the ensuing measure simplified follow-up and screening of inmates requiring immediate or urgent medical care upon admission.

Finally, the Québec Ombudsman has continued to intervene systematically with a view to ensuring that preventive measures are introduced to address problems identified during the processing of individual complaints. As a result, the Québec Ombudsman has strengthened its monitoring of collective corrective measures during visits to houses of detention. In addition, it regularly checks with the facilities to ensure that measures which were proposed and adopted are still being applied several months after introduction.

Acting in its capacity as correctional ombudsman, the Québec Ombudsman has increased the number of corrective and preventive interventions with staff and management in the correctional system. This report identifies some specific actions that were required to protect and defend the rights of inmates. All these interventions have had an overall impact on the correctional system and have resulted in new recommendations from the Québec Ombudsman to the appropriate authorities.

COMPLAINT HANDLING SYSTEM: MAJOR DEFICIENCIES

A complaint registry that presents an inaccurate picture of the situation

During the past year, the Québec Ombudsman once again evaluated the system used to process complaints from inmates in detention facilities. In addition to the recurrent problems of complaint form availability and failure to respond to complaints within prescribed deadlines, in respect of which it intervenes regularly, the Québec Ombudsman also noted major deficiencies in the maintenance of a provincial registry to record inmate complaints.

In theory, the registry is a tool that allows each facility to document information about the sources of complaints, their frequency, grounds, and processing delays. However, in practical terms the current registry contains only partial data that provide little useful information for the evaluation of services and actually present an inaccurate picture of the situation in detention centres. For example, some facilities do not provide complete information even though the MSP only requires that it be submitted twice a year. In acting in this way, the authorities are depriving themselves of valuable data that could be used to improve practices and to manage certain risks.

Since September 2005, the MSP has been planning to acquire a software tool that would allow for more effective use of the data produced by the complaint processing system. Unfortunately, it continues to delay the delivery of the system. The MSP has recently informed the Québec Ombudsman that the implementation of this system, originally scheduled for April 2009, has been deferred to the fall due to lack of resources.

RECOMMENDATIONS

Whereas such an information management tool is important in the context of loss of freedom for those filing complaints, and taking into account that over 15% of complaints received by the Québec Ombudsman deal with the complaint processing system implemented at its request in all detention facilities in 1992, the Québec Ombudsman believes the Ministère de la Sécurité publique cannot postpone action until a computerized registry of complaints has been created;

Whereas the correctional system is still dealing with many problems linked to overcrowding and access to health care, the Québec Ombudsman finds it regrettable that the Ministère de la Sécurité publique deems it acceptable to delay the implementation of a mechanism that would help improve its knowledge of its client base and make informed choices as to the best options for resolving at least some of these difficulties. In addition, the Québec Ombudsman does not feel the lack of resources can justify the fact that the authorities of certain facilities do not make use of the existing registry;

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

That, with immediate effect, it require management to use the register on a regular basis and that the collected data be examined with a specific focus on improving respect for the fundamental rights of inmates and correcting, once and for all, the recurrent problems with the application of the complaint processing system in detention centres;

That, as of August 2009, it submit quarterly reports to the Québec Ombudsman on its progress in using the register.

COMMENTS FROM THE MINISTÈRE DE LA SÉCURITÉ PUBLIQUE

The Ministère de la sécurité publique, through its Deputy Minister, made the following comments:

“The MSP’s Correctional Services already have a complaints register. However, they are aware that the register could be improved, and are currently working on the development of a computerized complaint processing system. The new system will make it easier to compile statistical data on complaint processing and analysis.

The Correctional Services Development and Advisory Directorate has reviewed the complaint processing system for 2007-2008. Its findings will be submitted to the ministerial authorities in the near future, and will then be forwarded to the Québec Ombudsman.

Lastly, we have reminded the correctional network of the importance of maintaining an up-to-date register of complaints, and of forwarding the information to the computer centre. This will allow for regular monitoring. The MSP undertakes to report on a quarterly basis to the Québec Ombudsman concerning the use of the register, beginning in August 2009.”

MEDICAL ESCORTS: RECONCILING SECURITY REQUIREMENTS AND RESPECT FOR RIGHTS

Whenever health care or medical examinations cannot be performed in the detention facilities, correctional services must set up medical appointments and escorted transportation to health and social services institutions. The Québec Ombudsman regularly receives complaints from inmates concerning the conditions under which these activities are performed.

Many appointments must be rescheduled because detention facilities are unable to keep up with the demand. Naturally, appointments deemed to be urgent take precedence, and the Québec Ombudsman has not been notified of any cases where such appointments were postponed or cancelled. On the other hand, transportation for health appointments is routinely rescheduled. In some facilities, appointments are only organized for examinations deemed to be urgent.

Use of physical restraints

The Québec Ombudsman is also concerned about the physical restraints imposed while waiting for hospital services or even during hospitalization. It goes without saying that security is critically important. Nevertheless, the rules governing the use of physical restraints in a hospital setting are particularly stringent. An inmate waiting for emergency service is usually chained hand and foot to a stretcher or wheelchair, and a hospitalized inmate will be chained 24 hours a day by at least one limb to his or her bed or wheelchair. This procedure is applied systematically, without consideration for the actual risk presented by the individual or the degree of discomfort inflicted.

The Québec Ombudsman has received statements from citizens who prefer to refuse treatment rather than be guarded under such conditions. The Québec Ombudsman is aware that certain situations warrant this type of rule, but nevertheless questions their systematic application. It has notified some detention facilities of this issue and hopes that the correctional system authorities will reconsider the automatic use of these practices.

RECOMMENDATION

Whereas the Québec Ombudsman is concerned about the use of physical restraints during waiting times in hospitals and even during periods of hospitalization;

Whereas some citizens have stated that they prefer to refuse treatment rather than be guarded under such conditions;

The Québec Ombudsman recommends that the Ministère de la Sécurité publique review the internal directives of detention facilities so that, in accordance with provincial guidelines, the use of physical restraints is based on the level of risk represented by the inmate and on the security context in the health facility.

COMMENTS FROM THE MINISTÈRE DE LA SÉCURITÉ PUBLIQUE

The Ministère de la sécurité publique, through its Deputy Minister, made the following comments:

“The MSP’s Correctional Services are currently carrying out an in-depth review of their provincial instruction on custodial methods in hospitals, and will clarify the use of physical restraints to include a better assessment of the flight risk and level of danger presented by each individual inmate.”

Confidentiality of information exchanged by inmates and medical staff

Lastly, the Québec Ombudsman has received complaints, notably from physicians, about the lack of respect for the confidentiality of information exchanged by healthcare professionals and inmates, due to the presence of correctional officers during consultations. It is normal for procedures to be applied rigorously, in order to prevent escapes. However, when conditions allow it, the standard procedure should be for the officer to maintain visual contact with the inmate but remain out of hearing range.

RECOMMENDATIONS

Whereas the principle of confidentiality of information exchanged by users and medical staff is extremely important, the Québec Ombudsman recommends to the Ministère de la Sécurité publique:

That it reassess the internal directives of individual institutions;

That, in its directives, it emphasize the importance of respecting confidentiality and stipulate how this may be done;

That it identify the necessary material conditions to allow for confidential consultations while limiting any security risks, and that it report to the Québec Ombudsman by December 31, 2009, on the steps taken;

That it undertake discussions with the health and social service institutions that most often receive inmates, in order to determine the conditions required to allow confidential medical consultations in a secure environment.

COMMENTS FROM THE MINISTÈRE DE LA SÉCURITÉ PUBLIQUE

The Ministère de la sécurité publique, through its Deputy Minister, made the following comments:

“First of all, the MSP supports the principle of confidentiality between inmates and caregivers.

In their review of the provincial instruction on custodial methods in hospitals, the Correctional Services will have an opportunity to establish guidelines for the supervision of inmates during medical consultations. Clearly, these guidelines will need to take the principle of confidentiality into account, but the level of risk and danger must also be considered.

The Québec Ombudsman may rest assured that it will be informed of developments in the review of the provincial instruction on custodial methods in hospitals by December 31, 2009, and will also be notified of the measures introduced to allow for confidentiality during consultations while limiting the security risks.”

Unacceptable conditions for physician and patient

A physician working outside the correctional system contacted the Québec Ombudsman with regard to the problems he experienced during a consultation with an inmate concerning follow-up for methadone treatment. The inmate was escorted to the physician's office by correctional officers. In spite of the doctor's request, the officers refused to leave the consulting area.

According to the physician, the inmate was not able to provide all the information required for a full assessment of his condition. The physician was convinced that the inmate wanted to speak more fully but did not dare to do so in the presence of the officers. The physician also expressed concern about the quality of the health care services available to inmates under these conditions.

The Québec Ombudsman suggested that the physician try to negotiate with the facility's authorities for the officers to maintain visual contact with the inmate while remaining out of hearing range. The Québec Ombudsman also notified the authorities of the facility about the importance of confidentiality and underscored the need to seek solutions to provide confidentiality while ensuring a secure environment.

Following the Québec Ombudsman's intervention, the physician is now able to perform confidential consultations, using a windowed office in those cases where he is notified of specific security risks.

COMMISSION QUÉBÉCOISE DES LIBÉRATIONS CONDITIONNELLES, MINISTÈRE DE LA SÉCURITÉ PUBLIQUE, MINISTÈRE DE LA JUSTICE, DIRECTOR OF CRIMINAL AND PENAL PROSECUTIONS

Release on parole: Chronic postponement of hearings

Following a number of complaints from inmates, the Québec Ombudsman investigated the causes for postponements of hearings by the Commission québécoise des libérations conditionnelles (CQLC). The percentage of hearings postponed by the CQLC has increased substantially since the implementation of Act respecting the Québec correctional system, which imposed strict rules for the constitution of files to be sent to the Commission. For parole release hearings alone, the postponement rate increased from 21% in 2006-2007 to 28% in 2007-2008, and the same trend has continued in 2008-2009. Obviously, many postponements are legitimate and justified, but others unduly prolong time spent in custody and delay, if not compromise, inmate participation in social reintegration programs.

The Québec Ombudsman has observed that the number of postponements and the reasons for them vary between detention facilities and administrative regions in the corrections system. A large number of stakeholders from the correctional, judicial and community environments are involved in building the files that are submitted to the CQLC. In some cases, postponements are caused by the absence of documents usually contained in the files of the Director of Criminal and Penal Prosecutions. In other cases, they are due to delays in obtaining the necessary evaluations from correctional services. Approval from a community organization for the inmate's candidacy may also be missing.

The Québec Ombudsman believes the large number of stakeholders reflects the complexity of the process of preparing files for the CQLC. Lack of resources and accumulated delays by one party, or lack of coordination and communication among other parties, is sufficient to delay the delivery of certain files required by the commissioners, who then postpone the hearing.

Because of the short average duration of prison terms, stakeholders have very little leeway. In addition, some offenders lose interest in parole programs due to the excessive number of postponements. However, many of these offenders really need the programs, among others things to reduce the chances of re-offending, to counter spousal abuse, or to treat addiction problems. It is important to ensure that all these inmates participate in the programs prior to release, and that those whose cases justify it have access to supervised release on parole. It is all the more important to strengthen the conditions underlying access, since the number of inmates who give up on parole has increased steadily over the years. In 2007-2008, 1,198 out of 3,362 eligible inmates gave up on parole release, compared to 501 out of 3,618 eligible inmates in 2000-2001. Overall, the percentage of eligible inmates who gave up on parole release increased from 13.8% in 2000-2001 to 35.6% in 2007-2008.

RECOMMENDATION

Whereas the parole program is a fundamental element of the social reintegration of inmates;
Whereas the tendency of inmates to give up on release on parole has increased over the last few years;

Whereas such a high rate of postponements two years after implementation of the new regime indicates that the system must be adjusted in order to ensure that the processes in place truly serve the letter and the spirit of the Act;

The Québec Ombudsman recommends that the Ministère de la Justice, the Ministère de la Sécurité publique, the Director of Criminal and Penal Prosecutions and the Commission québécoise des libérations conditionnelles work together to analyse bottlenecks in the current parole release system, in order not only to improve existing practices but also to make suitable changes to the rules and simplify their operation, if possible. It also asks that they report to it on the changes made by January 31, 2010.

COMMENTS

The **Commission québécoise des libérations conditionnelles**, through its President, made the following comments:

“The Commission agrees on the need for mechanisms to ensure that all documents stipulated in section 19 of the Act are in fact provided. The decision-making process must uphold the principles of public protection and social reintegration. The Commission is therefore willing to collaborate in every initiative in this area.”

The **Ministère de la sécurité publique**, through its Deputy Minister, made the following comments:

“We agree with the comments made by the President of the Commission des libérations conditionnelles.”

The **Ministère de la Justice**, through its Deputy Minister and Deputy Attorney General, made the following comments:

“I confirm that the Ministère de la Justice agrees with this objective, and is prepared to collaborate fully.”

The **Director of Criminal and Penal Prosecutions** made the following comments:

“I confirm that the Director of Criminal and Penal Prosecutions agrees on the recommendation made by the Québec Ombudsman.”

Social reintegration: Ignoring the spirit of the law

An inmate contacted the Québec Ombudsman to complain that the Commission québécoise des libérations conditionnelles had been slow to examine his request for release on parole.

The Québec Ombudsman's investigation revealed that the initial hearing was postponed because two documents from the Director of Criminal and Penal Prosecutions had not yet been added to the inmate's file.

A second hearing was scheduled a month later, but was also postponed because one of the documents,

which the Director of Criminal and Penal Prosecutions is obliged to supply, was still missing. Following an intervention by the Québec Ombudsman, the missing document was finally sent to the detention facility. Because of legal delays in setting a new hearing date, the inmate had to wait almost another month before being able to submit a complete file to the Commission québécoise des libérations conditionnelles, so that it could review his request for release on parole.

Ministère de la Sécurité publique – Investigation processes for incidents involving police officers

SERIOUS INCIDENTS INVOLVING POLICE OFFICERS

On August 9, 2008, a citizen of Montréal-Nord died during an intervention by City of Montreal Police Force. The following day, the Ministère de la Sécurité publique asked the Sûreté du Québec to investigate the actions of the police officers concerned, in accordance with departmental policy on police investigate or detentions involving fatalities.

The circumstances surrounding the death of the citizen, as well as the fact that the investigation was entrusted to another police force, generated extensive debate and raised many questions about the investigation process for incidents involving police officers and resulting in death. The Québec Ombudsman paid close attention to this case, and decided to review the investigation process used for such incidents in Québec, adding to its previous interventions on this topic.

The Québec Ombudsman's thoughts are based on the assumption that, in investigations of incidents involving police officers, the process must reassure both the general public and the police officers themselves that there is not only the appearance of justice, but also true justice that takes into account the realities of police work and the circumstances of the event being investigated. The Québec Ombudsman has therefore identified a number of criteria that must be met during any investigation of police actions. Departmental policy in Québec has been reviewed in light of these criteria and compared to practices used in the rest of Canada and in the United Kingdom.

The Québec Ombudsman's report will be available on www.protecteurducitoyen.qc.ca, in 2009.

Revenu Québec: A question of fairness

APPLICATIONS TO CANCEL STATUTORY INTEREST, PENALTIES AND CHARGES

The Act gives the Minister of Revenue discretionary power to cancel interest, penalties, or charges relating to a tax debt³. The criteria allowing for cancellation are described in a Revenu Québec interpretation newsletter.

Last year, the Québec Ombudsman said it had intervened systemically following complaints from citizens whose applications for cancellation of interest or penalties on their tax debt had been refused by Revenu Québec, even though their situation met the criteria set out in the interpretation newsletter. The goal of the Québec Ombudsman's intervention was to ensure that the process implemented by Revenu Québec to review these applications gave equal treatment to all citizens, regardless of where they might live and regardless of the Revenu Québec authority contacted.

More specifically, the goal of the intervention was to check that the Revenu Québec process:

- Ensured that, in all cases, the citizen's arguments and personal situation were fully reviewed, and that the analysis of cases was consistent in all regional offices and directorates;
- Ensured transparency in how decisions were made, especially in writing;
- Ensured impartial treatment of applications through independent recourse.

The Québec Ombudsman noted the following deficiencies:

- As far as transparency was concerned, the recourse was not well-known to tax payers as it was not widely advertised;
- The officers who processed applications for cancellation did not have access to the tools they needed to ensure consistent decisions between the various Revenu Québec authorities;
- The reasons given were not satisfactory, since they did not allow the citizen to understand why the application had been refused and, as a result, to determine the grounds on which to base a request for review;
- The mechanism used to process requests for review following a refusal did not guarantee an independent recourse. In fact, the same person was likely to be involved in both the initial processing of an application and its review.

³ Section 94.1 of the Act respecting the Ministère du Revenu [s. 94.1]

Following its intervention, the Québec Ombudsman issued five recommendations to Revenu Québec, in order to correct these deficiencies. In summary, these recommendations are:

- That Revenu Québec publish information concerning this recourse on its website and in its public documents, along with the justification criteria from the interpretation newsletter;
- That a form for cancellation applications be provided to citizens, on the website, so that they are able to provide all relevant information for assessment of their situation;
- That the measures introduced by the *Direction principale des services à la clientèle des particuliers* to assess applications for cancellation⁴ be applied to all Revenu Québec units that process such requests, except for applications based on the inability to pay⁵;
- That Revenu Québec be more transparent in giving the reasons for its decisions to the population;
- That reviews be entrusted to a different regional office than the one that processed the initial application for cancellation, or to a centralized team within each general directorate.

Revenu Québec has agreed to the first four recommendations.

COLLECTIVE
GAINS

Since December, 2008, the recourse has been published in the Revenu Québec brochure entitled "Recourse for Your Tax-Related Problems" since December 2008, and has appeared on the Revenu Québec website since January, 2009.

Three application forms for cancellation have also been available to the general public on Revenu Québec's website since December 2008. They are *MR-94.1* (for applications related to personal income tax), *MR-94.1.A (Application for the Evaluation of a Financial Situation)*, and *FP-4288 (Application for the Cancellation of Interest, Penalties or Charges Related to the GST or the QST)*.

Since September 2008, all general directorate branches that process applications for cancellation have set up teams of officers specifically appointed for that task. These officers received structured training in January 2009, and new work instructions have been put online for their use.

To ensure greater transparency regarding the grounds for refusal of applications, the tax collection centre, along with the *Direction générale des particuliers*, has reviewed the decision letters in order to explain the reasoning more clearly, to the Québec Ombudsman's satisfaction. The new letter templates and the list of different possible grounds for refusal were published online in October 2008 for the tax collection centre and in January 2009 for the *Direction générale des particuliers*. Their use will be subject to ongoing quality control.

⁴These are measures that were implemented during the Québec Ombudsman's investigation with the goal of ensuring more consistent decisions. Request processing has been centralized in four administrative regions where officers have been appointed to perform this task. These officers have received structured training and are assisted by five resource people. A communication network will be set up, and periodic meetings between the resource people are also planned to improve exchanges of information, under the responsibility of a coordinator.

⁵Applications for cancellation based on inability to pay are processed by Revenu Québec's tax collection centre. Since inability to pay is an objective criterion that can be confirmed after assessing the taxpayer's financial situation, the Québec Ombudsman feel it is necessary to extend its third recommendation to the processing of these requests.

Revenu Québec did not agree to the Québec Ombudsman's fifth recommendation. Given the expertise that the general directorates have built up with respect to their respective clienteles, Revenu Québec prefers to process requests for review within the same unit that processed the initial application. Review requests will continue to be assessed by a person at a higher hierarchical level than the person who made the initial decision. However, in light of the Québec Ombudsman's concern about the independence of the recourse, Revenu Québec has agreed to add the names of the people consulted to the assessment reports for cancellation applications, so as to ensure that they are not consulted again in the event of a request for review.

The Québec Ombudsman believes the measures implemented by Revenu Québec to process applications for cancellation in a more consistent manner and to improve transparency will result in applications being processed more fairly. It therefore concludes that the measures implemented by Revenu Québec in response to its intervention meet the intent of its recommendations. These improvements, which will benefit taxpayers, have been achieved thanks to the collaboration of Revenu Québec.

AN UNFAIR SITUATION FOR MEMBERS OF THE PUBLIC SERVICE

An amendment to section 12.0.2 of the Act respecting the Ministère du Revenu, adopted by the National Assembly on November 7, 2007, stipulates that a citizen's fiscal debt can be deducted from any sums owed to him or her by a department or public agency. This deduction can be performed within 90 following the issuing of the notice of assessment.

The Québec Ombudsman noted that this amendment to the Act does not have the same impact for Government staff as for private sector employees. The Act allows Revenu Québec to immediately repay a debt incurred by a public servant through deductions from that employee's salary. In the case of an employee in the private sector, however, Revenu Canada must seize the employee's wages, 90 days after the notice of assessment has been issued. Employees in the private sector therefore benefit from breathing space which is not available to Public Service staff.

COLLECTIVE GAIN

Following the Québec Ombudsman's intervention, Revenu Québec issued a directive to collection officers on June 18, 2008, instructing them not to deduct sums of money from the wages of a Government employee until the 91st day following the issuing of the notice of assessment.

HOME MAINTENANCE TAX CREDIT FOR SENIORS

Unacceptable delays in payment: The Québec Ombudsman intervened

In March 2008, the Ministère des Finances introduced an analysis grid stipulating the expenses that are eligible for the home maintenance tax credit for seniors. It also required mandatory justification of these expenses to obtain early payment.

To apply the grid introduced by the Ministère des Finances, Revenu Québec established a set of administrative guidelines for the tax credit. However, a backlog of applications soon accumulated due to the significant increase in the number of verifications required as a result of the new standards. Accordingly, in May 2008, Revenu Québec decided only to process monthly early payment requests, and to leave aside all applications for reimbursement of expenses for occasional services.

The Québec Ombudsman, alerted by a complaint from a citizen, approached Revenu Québec in September 2008, and asked for members of Revenu Québec's personnel to be assigned to the processing of applications for early payment of occasional expenses. Revenu Québec agreed to this request and assigned ten employees (out of a total of 80) to this task.

By December 2008, Revenu Québec had eliminated its backlog of applications for early payment of the home maintenance tax credit for seniors.

Services Québec – Directeur de l'état civil

NEW PROCESSES TO MEET THE NEEDS OF CITIZENS

In 2006-2006 and again in 2007-2008, the Québec Ombudsman issued the following two recommendations concerning the powers of the Directeur de l'état civil:

- "That the Civil Code of Québec be amended so that a person born in Québec can ask the Directeur de l'état civil for a certificate of change of designation of sex even if he or she is no longer domiciled in Québec";
- "That it also be amended to take into account the traditions and customs of new immigrants and members of cultural communities with regard to patronymics upon registration of a birth in the register of civil status."

With regard to the first recommendation, the Ministère de la Justice, in the winter of 2008, said it was willing to reopen this issue in order to introduce legislation concerning gender change certificates at the earliest possible opportunity. In February 2009, the Québec Ombudsman was informed that a draft bill would be prepared on the basis of its recommendation. The Québec Ombudsman draws the attention of MNAs to the urgency of this change, which has already been delayed too long.

As for the family names of certain cultural communities, the Ministère de la Justice is still reviewing the situation. The Superior Court of Québec has determined that the grounds for masculinizing family names have merit and are not capricious. Nevertheless, in 2008-2009, the Directeur de l'état civil still requires that the parents of a newborn pay a fee of at least \$350 to make this change.

MAINTAINING THE REGISTERS OF THE DIRECTOR OF CIVIL STATUS

In 2008-2009, two interventions by the Québec Ombudsman helped to improve the integrity of the registers maintained by the Directeur de l'état civil for delivery of birth certificates. A third intervention led to the relaxation of a practice dating back to 1994.

It is extremely important for citizens to be able to obtain a birth certificate. A birth certificate is usually required to obtain a driver's licence, a health insurance card, and a Canadian passport. The certificate, along with the birth registration itself, also give access to various government services, such as childcare programs and the retirement pensions of the Régie des rentes du Québec. The obligations and duties of the Directeur de l'état civil therefore carry an enormous weight.

The results of the Québec Ombudsman's three interventions are described below.

Following a ruling affecting the patronymic and given names of a newborn, the Director issued a new birth certificate at the request of a child's father, contrary to the law. Because the ruling was being appealed, the law did not allow the birth certificate to be changed. The Ombudsman was assured that, in future, the Directeur de l'état civil will check with the court in question that the ruling he receives is truly final and without appeal.

COLLECTIVE GAIN

The Directeur de l'état civil issued a document that did not correspond to the birth certificate as amended by an adoption ruling in the 1980s. At that time, civil status registers were kept by parishes and municipalities, which all had their own individual processes. In particular, rulings amending birth certificates were not always kept with the amended instrument. Therefore, if an error occurred, the Directeur was not able to recognize it. The Québec Ombudsman showed that a citizen, in one such case, received a birth certificate that changed her patronymic and thus her identity. At the Ombudsman's request, the Directeur modified the process in order to obtain access to rulings made before January 1, 1994, for all new applications. He will act on the basis of those rulings whenever the document request does not correspond to the birth certificate as amended following a ruling.

The Directeur de l'état civil changed a third practice related to declarations of birth made by parents more than 30 days after the birth of the child. Since 1994, under the regulation concerning fees payable for acts of civil status, changes of name and changes of gender, the Directeur imposes a fine for late registration of a child. If this fine is not paid, the birth is not registered. This process has resulted in approximately 200 denied registrations. The Québec Ombudsman intervened, deeming it unreasonable for the Directeur to make the registration of children conditional on payment of a fine when his primary duty is to register births without delay. The Directeur de l'état civil, who himself had questioned the validity of this practice, introduced changes while still respect the wording of the rule, and corrected the pending cases. Since the summer of 2008, all new reported births are registered without waiting for payment of the fine. Parents who are late in declaring births are required to pay these fees at a later date.