



2020-2021
ANNUAL
REPORT



September 2021

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

Mr. Paradis:

In accordance with section 28 of the *Public Protector Act*, section 38 of the *Act respecting the Health and Social Services Ombudsman*, and section 17 of the *Act to facilitate the disclosure of wrongdoings relating to public bodies*, I am hereby submitting the 51st Annual Report of the Québec Ombudsman for the fiscal year 2020-2021.

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

Yours respectfully,

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

Marie Rinfret
Ombudsperson

TABLE OF CONTENTS

6	MESSAGE FROM THE QUÉBEC OMBUDSPERSON	61	Ministère des Transports
9	VALIDATION REPORT FROM THE INTERNAL AUDITOR	63	Ministère du Travail, de l'Emploi et de la Solidarité sociale
10	THE QUÉBEC OMBUDSMAN	65	Retraite Québec
12	HIGHLIGHTS	67	Société d'habitation du Québec
16	A FEW STATISTICS	71	Société de l'assurance automobile du Québec
19	PUBLIC SERVICE	73	CORRECTIONAL SERVICES
30	Agence du revenu du Québec (Revenu Québec)	89	HEALTH AND SOCIAL SERVICES NETWORK
32	Commission des normes, de l'équité, de la santé et de la sécurité du travail	98	Disabilities
39	Curateur public	101	Troubled youth
43	Ministère de l'Éducation	108	Régie de l'assurance maladie du Québec
47	Ministère de l'Énergie et des Ressources naturelles	111	Mental health
49	Ministère de l'Enseignement supérieur	115	Physical health
52	Ministère de l'Environnement et de la Lutte contre les changements climatiques	121	Home support
54	Ministère de l'Immigration, de la Francisation et de l'Intégration	124	Support for elderly autonomy
58	Ministère de la Justice	130	Service support
59	Ministère des Forêts, de la Faune et des Parcs	135	PUBLIC INTEGRITY
		155	LIST OF RECOMMENDATIONS
		156	FOLLOW-UP TO THE RECOMMENDATIONS IN THE QUÉBEC OMBUDSMAN'S 2019-2020 ANNUAL REPORT

Notice

To facilitate onscreen consultation, the blank pages of the printed document have been removed and will not appear if the document is printed. The pagination of this file remains identical to the original.



MESSAGE FROM THE QUÉBEC OMBUDSPERSON

Learning from the crisis and acting now

In reaction to the COVID-19 crisis, in the spring of 2020, while Québec quickly came to a standstill in an attempt to stem the spread of the virus, residential and long-term care facilities were put on high alert and became the major battleground. These facilities were already dealing with a critical and known shortage of staff and material resources. Too many people died there during the pandemic, especially very vulnerable people—the most elderly service users in poor health. Far too many people were deprived of crucial care and cut off from their loved ones.

Seeing that action was urgently needed, and that it was necessary to determine priorities rapidly, in May 2020 the Québec Ombudsman announced that it would conduct an impartial and independent investigation into how care was managed in residential and long-term care centres (CHSLDs). This led to a progress report in December 2020. Titled *Learning from the crisis and moving to uphold the rights and dignity of CHSLD residents*, the report gave a voice to people who experienced the events first-hand. These troubling, if not shattering, testimonies showed that CHSLD workers resisted the onslaught of the pandemic as best they could, displaying compassion and generosity in

striving to meet the needs of vulnerable individuals. In our progress report, five priorities for action were identified so that CHSLDs would comply with their mission as living environments that provide continuous care, while upholding the rights and dignity of the residents. The priorities are as follows:

- Focus CHSLD care and services on the needs of residents by **concentrating on the humanization of care and services** and acknowledging the role of informal caregivers;
- Ensure a stable workforce and sufficient numbers of staff in CHSLDs;
- Continue to deploy to each CHSLD a local manager who can exercise strong leadership;
- Establish a rigorous culture of infection prevention and control that is known by all within the CHSLDs;
- Strengthen local, regional and Québec-wide communication channels in order to convey clear information and directives and facilitate sharing of best practices.

The final report, slated for the fall of 2021, will recommend steps to correct the harm noted during the investigation.

Listen, now more than ever

Gradually, as the months went by, a society-wide portrait emerged of people severely affected by the aftermath of the pandemic: physical and mental health problems, bereavement, loss of income, increased poverty, isolation, anxiety, violence. Beyond daily case statistics, the pandemic created and accentuated many vulnerabilities in an incalculable number of individuals.

Given this context, “learning from the crisis” of the past year must be broadened. All public services must feel summoned to act. **As we edge towards a post-COVID-19 world, the humanity and empathy we witnessed despite the torment within CHSLDs must now, more than ever, set the tone for the concerns and actions of government departments and agencies, and healthcare institutions.** They must all be particularly heedful of citizens’ needs, especially in understanding the lives of those suffering because of the crisis and the vast loss of points of reference. **Listening and understanding** requires being alert to the problems of people who need public services with a view to finding solutions, often innovative, through programs and services that must be adapted to the needs of those they are intended for. The second step is that public services must ensure that they **are understood by the people** for whom the assistance or resource is meant, through a clear, adapted and accessible message about simple and fair procedures.

It is all about providing public services with a **particular emphasis on compassion at the end of an exceptional year.** Government must act intelligently and sensitively so that all may receive the services to which they have a right.

Examples and counter-examples

In the past year, the Québec Ombudsman has seen that the Ministère du Travail, de l’Emploi et de la Solidarité sociale has been able to adjust to the difficulties of its client population grappling with the consequences of COVID-19. It has eased some of the requirements for a number of its programs, including the suspension of recovery measures. It has also cut down on the demands in terms of paperwork. In addition, the Department extended the recognition period for potential recipients of allowances for a severely limited capacity for employment. This status qualifies these people for a larger monthly allowance than regular recipients.

Conversely, the Ministère de l’Immigration, de la Francisation et de l’Intégration refused applications for the Québec Selection Certificate because candidates had to be employed at the time of filing. In the wake of massive business closures because of COVID-19, many of them had been laid off temporarily. Given the circumstances, on the Québec Ombudsman’s recommendation, the Department reviewed this requirement.

Correctional services, on the other hand, tried to compensate for the suspension of visits to detainees. The Ministère de la Sécurité publique established alternative means of communication, such as more phone time and contact with the outside world through videoconferences. However, problems arose because there were no specific guidelines as to the minimum amount of phone time. Videoconferences were cancelled due to staff shortages. In another vein, the Québec Ombudsman remains attentive to the transfer of responsibility for health-care within correctional facilities to the Ministère de la Santé et des Services sociaux. Here again, the pandemic exacerbated certain problems at the facilities in Québec City and Montréal, where, contrary to the rest of the province, transfer is slow to happen.

In closing, it would be unrealistic and unfair to disregard the enormous challenges for government departments, agencies and healthcare institutions posed by an ongoing unprecedented worldwide crisis. While respecting citizens’ rights requires that public services carry out their great mission effectively, the Québec Ombudsman is aware of the enormous weight of this dire situation. However, the tsunami does not exempt government from listening and responding with as much understanding, openness, creativity and compassion as it can muster to the needs of the people who come to it.

A word of thanks

Thank you to my team. I am surrounded by talented, competent and dedicated people. This Annual Report reflects the involvement of one and all. Their daily adaptation to the work conditions imposed by the pandemic is renewed proof of their inventive and sincere attachment to the Québec Ombudsman’s mandate. I know that I can count on them to advance this essential mission ever further.



Marie Rinfret
Québec Ombudsperson

VALIDATION REPORT FROM THE INTERNAL AUDITOR

[Translation]

Québec, June 21, 2021

Madam Ombudsperson:

In accordance with the mandate entrusted to us, we have conducted an examination of the results, indicators, explanations and information presented in the Québec Ombudsman's Annual Report for the fiscal year ending on March 31, 2021.

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

This examination was performed in accordance with the international standards of the Institute of Internal Auditors for the professional practice of internal auditing. Our work consisted of obtaining information and supporting documents, implementing analytical procedures, reviewing calculations and discussing the information provided. This examination does not constitute an audit. Consequently, we do not issue an auditor's opinion on the information presented in the Annual Report.

Further to this examination, we have concluded that the information in the Annual Report for the fiscal year ending March 31, 2021 concerning the Québec Ombudsman appears to be plausible and consistent in all material respects.

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

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

BDO Canada s.r.l./SENCRL/LLP, a Canadian limited liability partnership, is a member of BDO International Limited, a UK company limited by guarantee, and forms part of the international BDO network of independent member firms.

THE QUÉBEC OMBUDSMAN

Our status

The Québec Ombudsman is an independent and non-partisan institution headed by Marie Rinfret, who was appointed Ombudsperson by the National Assembly on March 15, 2017.

Our mission

Ensure that Québec government departments and agencies, institutions and other bodies of the health and social services network, as well as correctional facilities, uphold citizens' rights, thereby participating in improving public service quality and integrity.

Our values

Justice, fairness, respect, impartiality and transparency are the values that shape our actions. Our staff members act with integrity, rigour and empathy.

Our mandates

- 1 Handle complaints concerning a Government of Québec department or agency;
- 2 Handle complaints and reports concerning an institution or other body of the health and social services network. Here, in the case of complaints, the Québec Ombudsman acts as a second level of recourse, after the service quality and complaints commissioner of the institution concerned;
- 3 Handle complaints concerning Québec's correctional services;
- 4 Handle disclosures of wrongdoings committed or about to be committed within a public body, including the education system, the childcare system and government corporations.

People, associations, organizations or businesses may use our services.

Our legal foundation

The Québec Ombudsman's action is governed by three Acts:

- *Public Protector Act*;
- *Act respecting the Health and Social Services Ombudsman*;
- *Act to facilitate the disclosure of wrongdoings relating to public bodies*.

Our means of action

Our action, different from but complementary to that of the courts, frequently enables people to avoid judicial or administrative recourse, which is often lengthy and costly.

Power to investigate

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

Power to recommend

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

Power to initiate

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

Action with a collective impact

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

Preventive action

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



The Québec Ombudsman's logo

The scale

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

Orange

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

Grey

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



HIGHLIGHTS

PUBLIC SERVICE 19

Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) — Direction générale de l'indemnisation des victimes d'actes criminels (DGIVAC) 36

A crime victim was entitled to psychological assistance from DGIVAC. An assessment of her condition showed that her psychotherapy had to take place by phone. DGIVAC refused, claiming that teletherapy was not covered by the plan. The Québec Ombudsman felt that DGIVAC had shirked its duty to adapt its services to the person's limitations.

Curateur public 39

The Curateur public did not display the rigour that is an integral part of its protective mission. For example, it took 15 years to replace a tutor who had engaged in dubious transactions with the money of the person she was representing.

Ministère de l'Éducation / IMPACT OF COVID-19 43

In 2020, the Government of Québec announced \$4 million in additional funding for day camp attendants for young people with disabilities. However, the announcement was only made in late June 2020, which affected certain organizations' slate of services. What's more, the Ministère de l'Éducation was slow to release the monies to the regional bodies responsible for managing the funds.

A student in an anglophone school was about to start her last year of secondary studies when the Department informed her that she no longer qualified for instruction in English. The reason: a change in her father's immigration status. In June 2020, her father had approached the Examining Committee and the decision was cancelled. However, the Department was sluggish to act on it. In late September, the Québec Ombudsman intervened. The Department immediately sent the family the authorization needed for the student to go back to her school.

Ministère de l'Environnement et de la Lutte contre les changements climatiques 52

Any work in a wetland must be authorized by the Department beforehand. If not, the person must pay for the rehabilitation costs themselves. When a citizen who had been misinformed by municipal authorities carried out backfilling in a wetland, the Québec Ombudsman intervened with the Department so that the financial cost would not be unduly high for the woman.

Ministère de l'Immigration, de la Francisation et de l'Intégration / IMPACT OF COVID-19 54

Until recently, applicants for a Québec Selection Certificate under the Québec Experience Program (PEQ) had to be employed at the time of filing. The problem was that many candidates had been laid off temporarily because of the pandemic. Considering this requirement unfair, the Québec Ombudsman convinced the Department to soften its position. Now, a person may be considered employed either at the time of filing or when the application is analyzed.

This year, the Québec Ombudsman noted a marked increase in the number of complaints about documents which the Department had lost, including many sent by mail. This was especially true of cases involving the PEQ.

Ministère de la Justice 58

In an opinion released in 2017, the Québec Ombudsman recommended eliminating any prescription period (period after which a person may no longer institute proceedings) for civil actions in case of sexual assault, violence suffered during childhood, or violence by a spouse or an ex-spouse. In 2020, a law was passed in response to this recommendation.

**Ministère du Travail, de l'Emploi
et de la Solidarité sociale / IMPACT OF COVID-19 63**

This year, through certain programs, the Department was able to adapt to the situation experienced by its client population dealing with the fallout from the COVID-19 pandemic. It made adjustments such as suspending recovery measures and postponing the issuance of claim notices.

Société d'habitation du Québec (SHQ) 67

The Québec Ombudsman received complaints from the residents of a housing cooperative about, among other things, harassment and bullying by the administrator and the manager. The SHQ had refused to investigate on the pretext that it was not empowered to do this. The Québec Ombudsman argued that the SHQ did have jurisdiction to intervene under the applicable act. In the end, it agreed to do so.

CORRECTIONAL SERVICES 73

**Solitary confinement in correctional facilities /
IMPACT OF COVID-19 78**

Because of COVID-19, anyone newly admitted to a correctional facility was placed in quarantine (24 hours out of 24 for 14 days). The result for detainees was cramped cells and no showers, daily yardtime, contact with family or changes of clothing. As the Québec Ombudsman saw it, such measures could have a devastating effect on detainees' mental health.

**Access to personal belongings /
IMPACT OF COVID-19 81**

On arrival at a correctional facility, detainees were quarantined for 14 days because of COVID-19. At first they did not have access to their personal belongings, especially to their clothing. Under the procedure implemented during the pandemic because of the risk of contagion, there was a nine-day waiting period. Added to this was another 48 hours for the usual searches. As a result, detainees wore the same clothes for 11 days, could not have a shower, and were not given normal changes of clothing.

**Reducing detention populations /
IMPACT OF COVID-19 82**

Wanting to reduce the detention population during the pandemic in a bid to limit the risk of contagion, the Department planned to suspend intermittent sentences (weekend sentences) and to temporarily release detainees vulnerable to COVID-19. These measures were slow to materialize and were not highly successful in terms of the goal.

**Transfer of healthcare responsibilities /
IMPACT OF COVID-19 87**

During the pandemic, problems in the health services sections of the correctional facilities in Montréal and Québec City were magnified, leading, in particular, to gaps in the distribution of medication. These are the only locations where the transfer of responsibility for these services from the Ministère de la Sécurité publique to the Ministère de la Santé et des Services sociaux has not occurred, even though it is now the case everywhere else in Québec.

HEALTH AND SOCIAL SERVICES NETWORK 89

Disabilities 98

People with disabilities who must live in a residential setting struggle to find an appropriate format given their condition and specific needs. The Québec Ombudsman has stepped up its actions in this regard with the Ministère de la Santé et des Services sociaux. The Department has acknowledged the shortcomings and has announced performance targets, but concrete gains remain to be seen.

Troubled youth 101

Young people in a foster family supervised by a CISSS or a CIUSSS are entitled to a daily allowance of \$5. An adolescent told the Québec Ombudsman that in the two years she had lived with her foster family, she had almost never been given the allowance. Feeling that the CISSS in charge had not supervised the situation properly, the Québec Ombudsman acted so that the young girl was given the amount owed her.

Régie de l'assurance maladie du Québec (RAMQ) ... 108

In 2018, the Québec Ombudsman released a report on Québec-born children who did not qualify for health insurance because of their parents' precarious migratory status. The Québec Ombudsman recommended that the children be eligible as of birth. On December 10, 2020, the government tabled a bill in response to the recommendation.

Mental health 111

A person who was receiving treatment for a mental health disorder wanted a new psychiatrist, but no one within the section of the CISSS concerned knew what to do with the request. There was no formal procedure for this kind of request for intra- and inter-institutional transfers within the same region or between regions. The Québec Ombudsman recommended that such a procedure be drafted promptly.

Physical health / IMPACT OF COVID-19 115

At the start of the pandemic, a Ministère de la Santé et des Services sociaux directive prohibited visits to residential and long-term care centres (CHSLDs) but allowed palliative care unit visits. The directive was not always followed, especially in a hospital where visits were restricted. The Québec Ombudsman acted so that the hospital complied with the directives in effect.

Home support 121

Year after year, the slate of home support services remains insufficient to meet demand. New exclusion requirements have been added yet again. For example, some institutions have cut back on the number of baths to service users who do not have skin problems—from two or three baths to a single bath a week. The Québec Ombudsman recommended urgent corrective measures and is pressing the Department to act.

Support for elderly autonomy / IMPACT OF COVID-19 124

The Québec Ombudsman received numerous complaints about problems that worsened within private seniors' residences due to the health crisis: staff shortages and constant turnover, mistakes in administering medication, poor supervision of the premises, and services ill-adapted to the residents. CISSSs and CIUSSSs do not monitor these residences with equal rigour, even though it is an important component of their role.

Service support 130

When discharged from hospital after receiving care, people may have to spend time at a resource for other kinds of services (e.g. pre-placement assessment, rehabilitation). If there is no place available, the person may have to remain in hospital in the meantime. Some institutions bill for such stays even though, under these circumstances, people are not always required to pay. For such a financial contribution to be billable, it must be written into the law. The Québec Ombudsman recommended that the Department produce clear guidelines about this kind of billing.

PUBLIC INTEGRITY..... 135

A scheme for obtaining extra funding..... 152

A person in charge of a family medicine group (GMF) converted local community service centre (CLSC) emergency room visits into GMF visits in order to obtain extra funding from the Ministère de la Santé et des Services sociaux. The Québec Ombudsman contacted the CISSS concerned to have the GMF cease such practices.

Pay for unworked overtime..... 153

Managers of a public organization authorized payment for unworked overtime in order to recruit new employees or entice them to stay through higher wages. The Québec Ombudsman intervened to put an end to this misuse of public funds.

**A serious breach of the code of ethics
and professional conduct..... 154**

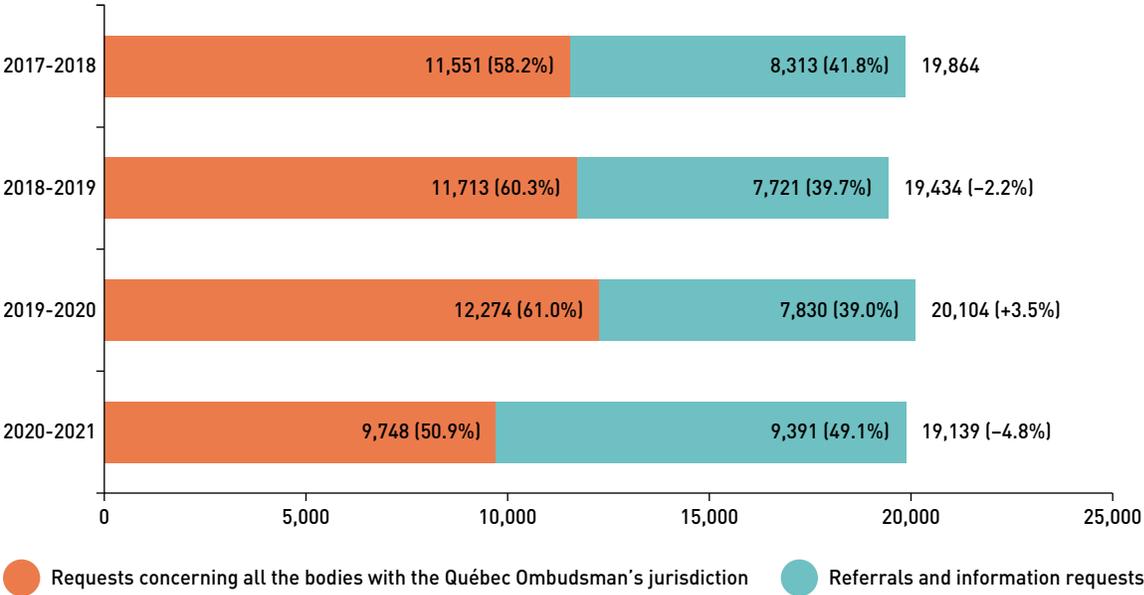
A disclosure was filed about a manager of a public organization who had allegedly been on a prize-awarding panel within the same public body. The manager's participation had seemingly given an advantage to someone the manager knew, in an apparent conflict of interest. In investigating, the Québec Ombudsman did not come to this conclusion. However, the rules of ethics for such cases should have been spelled out. In fact, this is what the Québec Ombudsman recommended.

A FEW STATISTICS

The period covered by this Annual Report ended on March 31, 2021.

Note that this end-of-year also coincides with the first full year of the COVID-19 pandemic. It goes without saying that the daily operations of public services were affected, as were citizens' priorities during this difficult period. The Québec Ombudsman's findings in its 2020-2021 Annual Report must therefore be taken in context and understood in light of this exceptional situation.

Requests for service received



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

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

In 2020-2021, requests subject to the Québec Ombudsman's jurisdiction accounted for 50.9% of the total number of requests received. This is a decrease of 10.1 percentage points compared to 2019-2020, when 61% of the total number of requests received fell under its jurisdiction.

Therefore, we noted a decrease of 20.6% in the number of requests under the Québec Ombudsman's jurisdiction compared to last year (12,274 in 2019-2020 compared to 9,748 in 2020-2021). According to the Québec Ombudsman, this decrease can be attributed mostly to the slowing of public

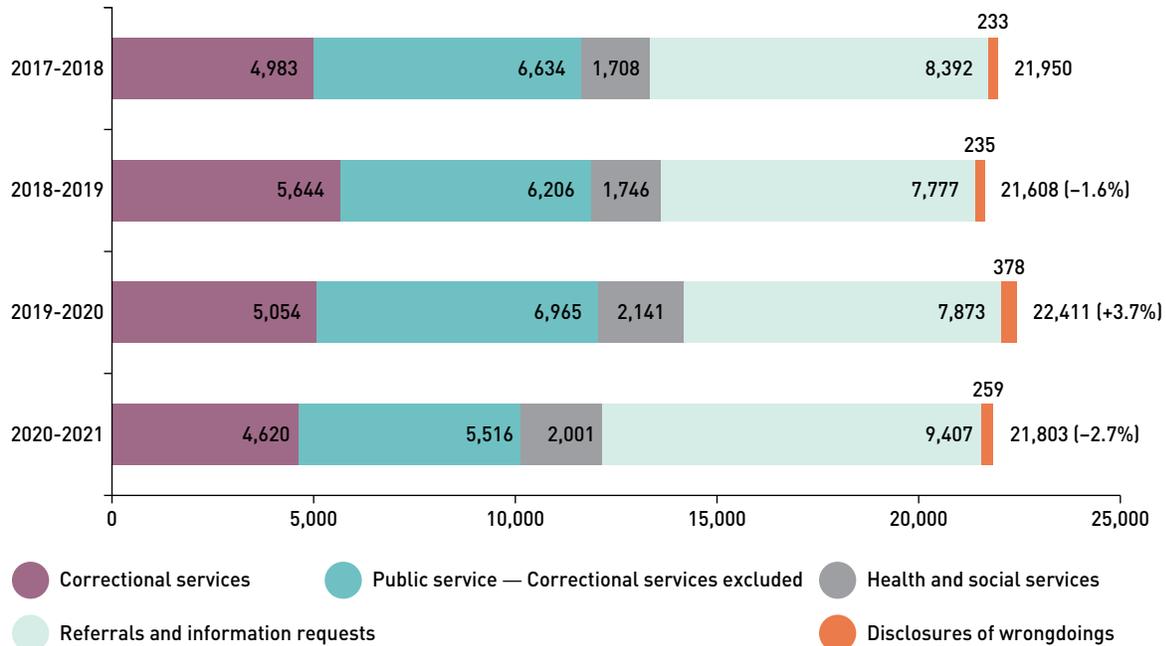
service activities, particularly at the start of the pandemic, as well as decisions made by departments and agencies that had a financial impact (extensions for filing tax returns, suspension of recovery measures, etc.).

As for requests that did not fall under the institution's jurisdiction (in turquoise), we noted an increase of 19.9% compared to last year (7,830 non-jurisdictional requests in 2019-2020 compared to 9,391 in 2020-2021). According to the Québec Ombudsman, this increase is mainly due to the reception of a completely new type of request. Many citizens contacted the Québec Ombudsman about exceptional decisions made by the government within the context of the health emergency. However, the Ombudsman could not necessarily intervene.

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

Closed requests for service

A request for service may include more than one ground for a complaint, report or disclosure. That is why closed requests are broken down based on grounds. In 2020-2021, there were 21,803 grounds among the 19,576 closed requests for services.



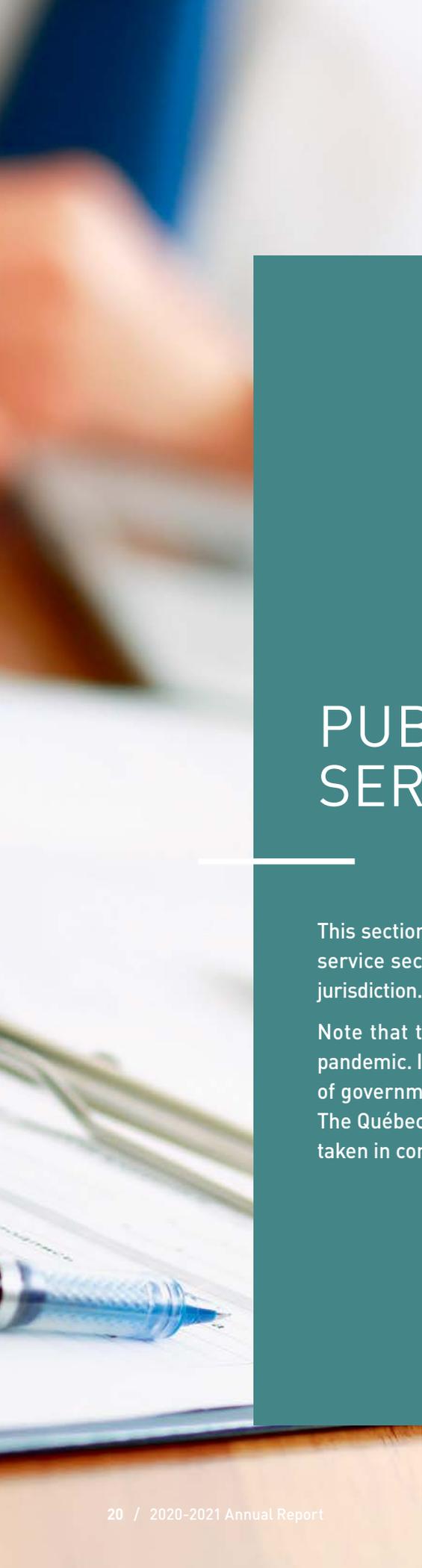
The total number of closed requests for service decreased by 2.7% compared to last year. Grounds under the Québec Ombudsman's jurisdiction (correctional services, public service, health and social services and the disclosure of wrongdoings) that were definitively closed decreased as well (down 14.7%).

- In terms of the public service, a decrease of 20.8% in closed requests compared to last year was noted (from 6,965 to 5,516).
- As for correctional services, there was an 8.6% decrease in closed requests compared to last year (from 5,054 to 4,620).

- For the health and social services network, the number of closed requests decreased by 6.5% compared to last year (from 2,141 to 2,001). The number of closed complaints and requests for assistance decreased by 9.9% (from 1,915 to 1,725), whereas the number of closed reports and requests for assistance increased by 22.1% (from 226 to 276).
- The number of closed requests concerning the mandate stemming from the *Act to facilitate the disclosure of wrongdoings relating to public bodies* decreased by 31.5% compared to last year (from 378 to 259).

PUBLIC SERVICE





PUBLIC SERVICE

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

Note that this end-of-year also coincides with the first full year of the COVID-19 pandemic. It goes without saying that the daily operations of the public services section of government were affected, as were citizens' priorities during this difficult period. The Québec Ombudsman's findings in its 2020-2021 Annual Report must therefore be taken in context and understood in light of this exceptional situation.

The **78 public service departments and agencies** within the Québec Ombudsman's jurisdiction must comply primarily with the *Act respecting administrative justice*. Their main duty stemming from this is to act fairly towards citizens, namely, the obligation to:

- Respond promptly, with concern for providing information that is complete and easy to understand;
- Deliver the services to which citizens are entitled within a reasonable time frame;
- Comply with the standards in force and follow simple, flexible rules, in an informal manner and in keeping with the requirements of good faith;
- Allow citizens about whom an administrative decision is being made to present their observations and provide all the elements needed for their file before the decision is rendered;

- Provide reasons for an unfavourable decision in clear and concise terms (concerning eligibility for a program, financial assistance or a service);
- Inform citizens about available recourse and the requirements for exercising it if they wish to contest a decision.

Through its preventive and corrective action, the Québec Ombudsman fosters compliance with the provisions of the *Act respecting administrative justice*. For example, in 2020, government departments and agencies were given the *Fairness by Design: An Administrative Fairness Self-Assessment* document to guide and support them in the adoption of fair policies.

In 2020-2021, the Québec Ombudsman intervened regarding 58 of the 78 departments and agencies subject to its jurisdiction (76.3%).

1 CLOSED REQUESTS FOR ASSISTANCE AND COMPLAINTS

Trends in closed requests for assistance and complaints

	2017-2018	2018-2019	2019-2020	2020-2021
Requests for assistance	645	494	511	342
Substantiated complaints	829	772	804	687
Mediation	40	18	20	23
Unsubstantiated complaints	2,790	2,713	2,360	1,932
Could not take a definitive position	40	60	47	40
Referred complaints	169	161	166	184
Suspended complaints	2,121	1,988	3,057	2,308
TOTAL	6,634	6,206	6,965	5,516
Difference with the preceding	-	-6.5%	+12.2%	-20.8%

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

Explanatory notes

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

Even though **requests for assistance** concern organizations subject to the Québec Ombudsman's jurisdiction, they do not lead to investigations. For example, they may be requests for explanations about program conditions, possible redress or the procedure for obtaining compensation or services.

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

In certain situations, especially in the absence of proof or when faced with two contradictory versions, the Québec Ombudsman **cannot take a definitive position**.

There are different investigative outcomes. Some investigations may not be completed because the Québec Ombudsman refers the person to another resource. When this happens, the complaint is considered as being **referred**. It may also be that a complaint is **suspended**, notably because the citizen does not respond or withdraws the complaint, or because the situation is resolved on its own during the investigation by the Québec Ombudsman. Lastly, further to the investigation, the complaint is deemed **substantiated** or **unsubstantiated**. The complainant is then informed of the Québec Ombudsman's conclusions.

If the complaint proves substantiated, the Québec Ombudsman asks the department or agency concerned to institute corrective measures and monitors their implementation. A substantiated complaint file is closed only after implementation has been monitored, when the Québec Ombudsman is sure that the corrective measures were taken.

Detailed results

There was a 20.8% decrease in closed requests for assistance and complaints compared to last year and a decrease of 16.5% compared to the average for the past three years. According to the Québec Ombudsman, this decrease can be explained by the slowing of public service activities, particularly at the start of the pandemic, as well as decisions made by departments and agencies that had a financial impact (extensions for filing tax returns, suspension of recovery measures, etc.).

Despite the decrease in closed requests, the Québec Ombudsman saw notable increases in requests concerning the Ministère de l'Immigration, de la Francisation et de l'Intégration (from 252 to 840 requests), the Ministère de la Santé et des Services sociaux (from 53 to 216 requests), the Ministère des Affaires municipales et de l'Habitation (from 18 to 45 requests) and the Office de la protection du consommateur (from 14 to 37 requests).

Greatest variations in closed requests for assistance and complaints

DEPARTMENT/AGENCY	2019-2020	2020-2021	VARIATION	NUMBER
Ministère du Travail, de l'Emploi et de la Solidarité sociale	1,037	538	Decrease	-499
Commission des normes, de l'équité, de la santé et de la sécurité du travail	1,388	914	Decrease	-474
Agence du revenu du Québec	861	474	Decrease	-387
Ministère de la Famille	443	88	Decrease	-355
Office de la protection du consommateur	14	37	Increase	+23
Ministère des Affaires municipales et de l'Habitation	18	45	Increase	+27
Ministère de la Santé et des Services sociaux	53	216	Increase	+163
Ministère de l'Immigration, de la Francisation et de l'Intégration	252	840	Increase	+588

The bodies for which a marked decrease in requests was noted were the Ministère du Travail, de l'Emploi et de la Solidarité sociale (from 1,037 to 538), the Commission des normes, de l'équité, de la santé et de la sécurité du travail (from 1,388 to 914), the Agence du revenu du Québec (from 861 to 474) and the Ministère de la Famille (from 443 to 88).

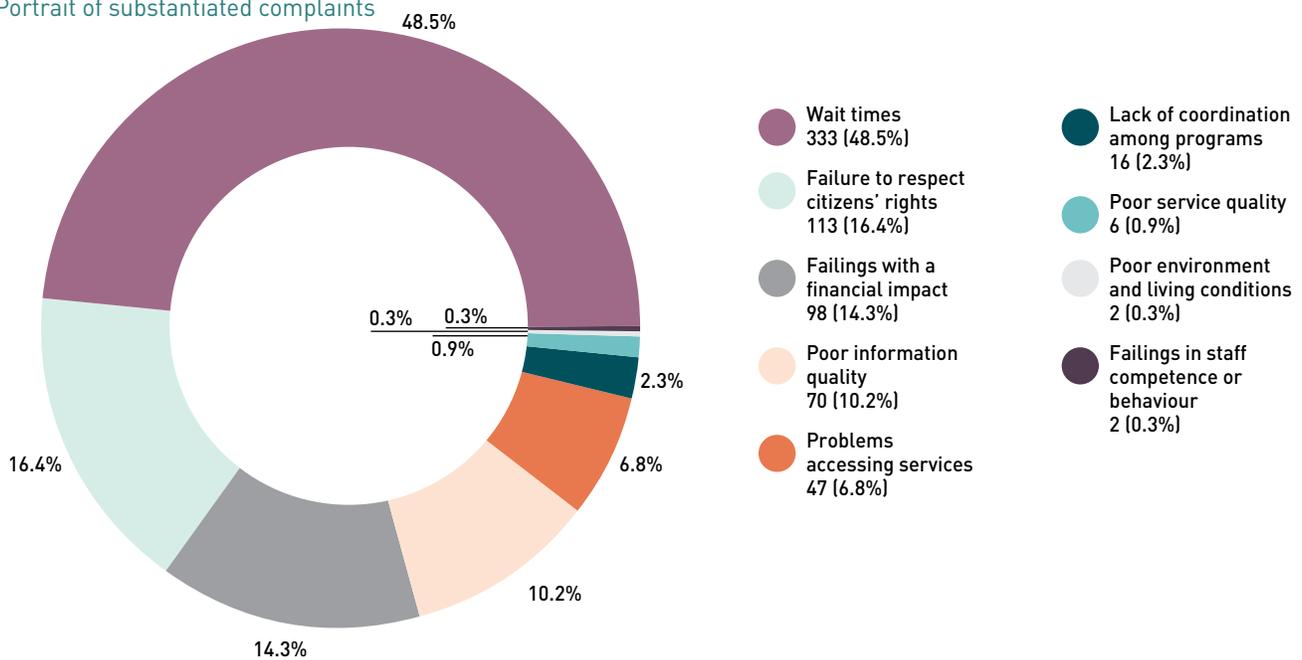
2 SUBSTANTIATED COMPLAINTS

The proportion of substantiated complaints is established as follows: Number of substantiated complaints/Number of substantiated and unsubstantiated complaints. This year, this proportion increased by 0.8 percentage points.

Proportion of substantiated complaints

2017-2018	2018-2019	2019-2020	2020-2021
22.9%	22.2%	25.4%	26.2%

Portrait of substantiated complaints



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

Lengthy wait times, failure to respect citizens' rights, failings with a financial impact and poor information quality accounted for 89.4% of substantiated complaints.

Departments with at least 10 substantiated complaints in 2020-2021

DEPARTMENT	SUBSTANTIATED COMPLAINTS			
	2017-2018	2018-2019	2019-2020	2020-2021
Immigration, Francisation et Intégration	28	35	33	160
Travail, Emploi et Solidarité sociale	100	128	101	29
Sécurité publique – Correctional services excluded	54	65	55	27
Santé et Services sociaux	6	3	9	19
Enseignement supérieur	39	35	32	15
Éducation	6	10	5	10
Famille	3	4	3	10

Agencies with at least 10 substantiated complaints in 2020-2021

AGENCY	SUBSTANTIATED COMPLAINTS			
	2017-2018	2018-2019	2019-2020	2020-2021
Commission des normes, de l'équité, de la santé et de la sécurité du travail	161	182	235	148
Société de l'assurance automobile du Québec	121	58	75	71
Agence du revenu du Québec	103	62	79	46
Régie de l'assurance maladie du Québec	27	23	30	28
Retraite Québec	41	33	33	26
Office de la protection du consommateur	4	6	1	15
Curateur public	8	15	19	11

This year, an increase in substantiated complaints was noted, mainly regarding the Ministère de l'Immigration, de la Francisation et de l'Intégration, the Ministère de la Santé et des Services sociaux, the Ministère de l'Éducation, the Ministère de la Famille and the Office de la protection du consommateur.

On the other hand, a decrease in substantiated complaints was noted concerning the Ministère du Travail, de l'Emploi et de la Solidarité sociale, the Ministère de la Sécurité publique (excluding correctional services), the Ministère de l'Enseignement supérieur, the Commission des normes, de l'équité, de la santé et de la sécurité du travail, the Société de l'assurance automobile du Québec, the Agence du revenu du Québec, the Régie de l'assurance maladie du Québec, Retraite Québec and the Curateur public.

3

MONITORING OF CORRECTIVE MEASURES

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

Accepted case-specific measures

2017-2018	2018-2019	2019-2020	2020-2021	2020-2021	
				ACCEPTED	REFUSED
97.7%	98.6%	98.3%	97.1%	270	8

Accepted measures with a collective impact

2017-2018	2018-2019	2019-2020	2020-2021	2020-2021	
				ACCEPTED	REFUSED
100.0%	98.0%	97.8%	97.8%	45	1

4

CLOSED REQUESTS BY DEPARTMENT OR AGENCY, BY PROCESSING OUTCOME¹

AGENCY	REQUESTS RECEIVED IN 2020-2021	CLOSED REQUESTS IN 2020-2021							TOTAL
		REQUESTS FOR ASSISTANCE	COMPLAINTS					SUSPENDED	
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED		
Agence du revenu du Québec									
Provisional administration of unclaimed property	6	1	2				1	5	9
Taxation	309	47	31	147	5	1	2	137	370
Support-payment collection	77	2	13	35			13	17	80
General	17	3		2		1		9	15
Total: Agence du revenu du Québec	409	53	46	184	5	2	16	168	474
Assemblée nationale	2							2	2
Autorité des marchés financiers	14			5	1		1	9	16
Autorité des marchés publics	1			1					1

1/ The number of requests processed in one year (and thus the number of closed requests) does not necessarily match the number of requests received because at the beginning of each year, investigations concerning requests received previously are still being processed.

AGENCY	REQUESTS RECEIVED IN 2020-2021	CLOSED REQUESTS IN 2020-2021							TOTAL
		REQUESTS FOR ASSISTANCE	COMPLAINTS					SUSPENDED	
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED		
Bureau d'audiences publiques sur l'environnement	3							3	3
Bureau des enquêtes indépendantes	3							3	3
Bureau du coroner	7			2				5	7
Centre d'acquisitions gouvernementales	1			1					1
Comité de déontologie policière	-			2					2
Commissaire à la déontologie policière	80	5	9	44			3	19	80
Commission d'accès à l'information	22	6	3	5		1		11	26
Commission de la fonction publique du Québec	4	1					1	2	4
Commission de protection du territoire agricole du Québec	11	1	4	3				5	13
Commission des normes, de l'équité, de la santé et de la sécurité du travail									
Pay equity	1			1				1	2
Compensation	378	27	54	136	2	3	12	205	439
Crime victims' compensation	344	26	90	107	9	4	12	114	362
Labour standards	76	7	4	29		3	6	32	81
General	30	4		8				18	30
Total: Commission des normes, de l'équité, de la santé et de la sécurité du travail	829	64	148	281	11	10	30	370	914
Commission des transports du Québec	1							1	1
Commission municipale du Québec	5			5				1	6
Conseil de la justice administrative	1							2	2
Conseil de la magistrature	2	1						2	3
Curateur public	162	18	11	64			10	72	175
Directeur des poursuites criminelles et pénales	9			1				8	9
Infrastructures technologiques Québec	1			1					1
Institut de la statistique du Québec	1	1							1
La Financière agricole du Québec				1					1
Office de la protection du consommateur	34	4	15	4	1	1		12	37
Office des personnes handicapées du Québec	2			1				1	2
Office des professions du Québec	2							2	2
Office québécois de la langue française	7		1	4				2	7
Régie de l'assurance maladie du Québec	143	9	28	74	1		6	25	143
Régie des alcools, des courses et des jeux	1							1	1
Régie du bâtiment du Québec	22	1		7			2	10	20

AGENCY	REQUESTS RECEIVED IN 2020-2021	CLOSED REQUESTS IN 2020-2021							TOTAL
		REQUESTS FOR ASSISTANCE	COMPLAINTS					SUSPENDED	
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED		
Retraite Québec									
Québec Pension Plan and Child Assistance	163	14	22	87		2	2	65	192
Public-sector pension plan	35	2	4	13			1	14	34
General	5			4				1	5
Total: Retraite Québec	200	16	26	104		2	4	79	231
Secrétariat du Conseil du trésor	5	1		3				1	5
Société de l'assurance automobile du Québec									
Highway Safety Code	192	9	32	95			15	39	190
Compensation	368	16	38	214	1	13	8	130	420
General	15	1	1	5			1	10	18
Total: Société de l'assurance automobile du Québec	575	26	71	314	1	13	24	179	628
Société d'habitation du Québec	74	3		19			1	37	60
Transition énergétique Québec	3		3	1					4
Tribunal administratif du logement	161	29	3	21		1	9	97	160
Tribunal administratif du Québec	22	2	4			1	1	15	23
Tribunal administratif du travail									
Occupational diseases and industrial accidents	10	8	1	1					10
Labour Relations	3							3	3
General	6	2					1	3	6
Total: Tribunal administratif du travail	19	2	1	1			1	14	19
TOTAL : Agencies	2,838	243	373	1,153	20	31	109	1,158	3,087

DEPARTMENT	REQUESTS RECEIVED IN 2020-2021	CLOSED REQUESTS IN 2020-2021							TOTAL
		REQUESTS FOR ASSISTANCE	COMPLAINTS					SUSPENDED	
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED		
Affaires municipales et Habitation	42	2	6	14			2	21	45
Agriculture, Pêcheries et Alimentation	22	1	2	8				16	27
Conseil exécutif	2	1						1	2
Culture et Communications	5		3					2	5
Économie et Innovation	5						1	3	4

DEPARTMENT	REQUESTS RECEIVED IN 2020-2021	CLOSED REQUESTS IN 2020-2021								
		REQUESTS FOR ASSISTANCE	COMPLAINTS						TOTAL	
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED	SUSPENDED		
Éducation	101	1	10	38				3	54	107
Enseignement supérieur										
Student financial assistance	104	2	14	61				5	38	120
Higher education	17		1	6				1	8	16
General	2								1	1
Total: Enseignement supérieur	123	2	15	67				6	47	137
Énergie et Ressources naturelles	60	3	11	19				1	21	55
Environnement et Lutte contre les changements climatiques	34	5	2	17				1	19	44
Famille	77	6	10	22		2		3	45	88
Finances	15	2	2	1					9	14
Forêts, Faune et Parcs	22	3	9	15		1		2	14	44
Immigration, Francisation et Intégration	843	12	160	138				9	521*	840
Justice	54	2	5	14	1			2	34	58
Relations internationales et Francophonie	1			1						1
Santé et Services sociaux	218	19	19	85				9	84	216
Sécurité publique										
Civil Security	80	2	17	61		2			25	107
General	41		10	8	1	2			22	43
Total: Sécurité publique	121	2	27	69	1	4			47	150
Tourisme	5			2					3	5
Transports	41	5	4	20	1	1		1	17	49
Travail, Emploi et Solidarité sociale										
Directeur de l'état civil	27	1		10				4	9	24
Employment	46	13	1	21				6		41
Québec Parental Insurance Plan	12			7					4	11
Register of Enterprises	3	1		1					2	4
Secrétariat du travail	-									-
Services Québec	9	2	1	4				3	1	11
Social Solidarity	418	28	27	205				22	161	443
General	4	1		1					2	4
Total: Travail, Emploi et Solidarité sociale	519	33	29	249				35	192	538
TOTAL : Departments	2,310	99	314	779	3	9	75	1,150	2,429	
TOTAL : Departments and agencies	5,148	342	687	1,932	23	40	184	2,308	5,516	

* / Of these 521 suspended grounds, 335 grounds concerning processing delays for the Québec Experience Program (PEQ) were processed in a collective file and are substantiated.

General remark

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

- Agence du revenu du Québec (Revenu Québec);
- Commission des normes, de l'équité, de la santé et de la sécurité du travail;
- Curateur public;
- Ministère de l'Éducation;
- Ministère de l'Énergie et des Ressources naturelles;
- Ministère de l'Enseignement supérieur;
- Ministère de l'Environnement et de la Lutte contre les changements climatiques;
- Ministère de l'Immigration, de la Francisation et de l'Intégration;
- Ministère de la Justice;
- Ministère des Forêts, de la Faune et des Parcs;
- Ministère des Transports;
- Ministère du Travail, de l'Emploi et de la Solidarité sociale;
- Retraite Québec;
- Société d'habitation du Québec;
- Société de l'assurance automobile du Québec.

AGENCE DU REVENU DU QUÉBEC

(REVENU QUÉBEC)

Recovering tax debt

Under the *Tax Administration Act*, the prescriptive period (statute of limitations) for a tax debt is 10 years after the day on which the notice of assessment was sent or, in the case of fees, from the time the fees are applied, unless Revenu Québec has not acted to collect the amount owed. In 2017, the Québec Ombudsman saw that sometimes Revenu Québec tried to collect debts for which the prescriptive period had expired.

Prescription makes it easier to provide credible evidence, which is more difficult to establish as time goes by. This deadline incites the government to act promptly to collect all types of debt. Prescription also exists for the purpose of legal stability and financial security: at the end of the set deadline, individuals no longer have debts towards the government for certain amounts.

It bears remembering that in 1999, Revenu Québec adopted a departmental policy against recovering prescribed debts. This provision is found in the reference document used by staff of the agency's recovery section (Direction générale du recouvrement). In 2017, while

handling a complaint from an individual, the Québec Ombudsman noted recurrent problems and recommended that Revenu Québec:

- Stop recovering prescribed debts;
- Correct the files of taxpayers to whom recovery measures had been applied since April 1, 2016, even though their debt had expired;
- Issue any resulting reimbursements.

Revenu Québec began by correcting its practices and computer systems to prevent the recovery of expired debts. In December 2020, it gave the Québec Ombudsman confirmation that it had corrected 1,457 files, leading to reimbursements totalling \$781,615.94 for taxpayers to whom recovery measures had been applied since April 2016, at a time when their debt had expired. Also, the \$635,044.97 withheld by Revenu Québec and used as repayment of the debts prescribed since April 1, 2016, were reallocated for reimbursing non-prescribed debts.

The Québec Ombudsman is satisfied with Revenu Québec's cooperation and the measures introduced in response to its recommendations.

Support-payment collection: adapting the file-processing system to client needs

In recent years, Revenu Québec has changed how support-payment files are handled by adopting a new system, PA-CIBLE, to improve service quality. With this new system:

- Files are no longer assigned to only one agent;
- When action is required for a file, a “task” is created and placed in a common pool;
- Tasks are ranked by priority and an available agent takes charge of them.

Starting in 2017, new support-payment collection files were created directly in PA-CIBLE. As of 2019, Revenu Québec began to convert certain existing files from the old system to the new system.

Revenu Québec followed a rollout schedule which it shared with the Québec Ombudsman. This rigour made it possible for Revenu Québec to react quickly to certain problems in order to minimize the negative consequences for its client population.

Not long after this, the Québec Ombudsman began to receive complaints from people who were no longer getting their support payments. It reported the situation to Revenu Québec, which stopped converting files in November 2019.

In February 2020, Revenu Québec agreed that there were problems with the overhaul:

- The new computer system had glitches;
- There were too many tasks in the pool;
- The method created overly long processing times.

In October 2020, Revenu Québec informed the Québec Ombudsman that it would continue to suspend the conversion of files from one system to the other and that as of November 2020, any new files would be opened in the old system. Since then, processing times have been shorter.

Realizing that continuing to implement the new system would have major consequences for its client population, Revenu Québec took action to rectify the situation. Obviously, the absence of support payments can put individuals and families in a dire financial situation.

Revenu Québec set in motion a recovery plan for the new system spanning several years to improve its performance and determine all the applications. The Québec Ombudsman will remain attentive to this ongoing work and applauds Revenu Québec’s intention to improve the process while maintaining service quality for citizens.



PROCESS SUPPORT-PAYMENT FILES EFFECTIVELY

The amount of support payments for a creditor’s children was set until the end of September 2020 in an interlocutory judgment (pending a final judgment). A week later, Revenu Québec received a new interlocutory judgment that extended the payments until the end of the same year.

So that the payments would continue to be issued, Revenu Québec had to process the new judgment. A “task” was added

to the pool using PA-CIBLE. As a result, the processing time was more than 30 days. The creditor could not understand why she was no longer getting her support payments, so she turned to the Québec Ombudsman. After the Ombudsman intervened, Revenu Québec processed the judgment immediately and the payments resumed a few days later.

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

Calculating income replacement indemnities

The Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) manages two compensation systems, one for injured workers and the other for crime victims. In the case of industrial accidents and occupational diseases, the CNESST issues an indemnity based on the income lost by the person on sick leave because of the accident or illness. The indemnity is equal to 90% of the person's net salary before the accident or illness (with caps on indemnity amounts). The purpose is for workers to maintain a financial situation similar to that before the occurrence.

The CNESST can also issue an indemnity for loss of salary when workers have a new job that pays less than the job they had before their workplace injury or illness. The indemnity makes up the shortfall between the new salary and 90% of their pre-accident salary.

Under the law, people can be compensated concurrently if certain conditions are met. Some public bodies have agreements allowing this. However, if there is no agreement, this principle may be more difficult to apply. Take, for example, the two compensation systems managed by the CNESST.



RECOGNIZE THAT TWO COMPENSATION SYSTEMS CAN COMPLEMENT EACH OTHER

In 2012, a welder who had been injured on the job saw his condition worsen. He filed a claim with the CNESST, which agreed to grant him compensation for his aggravated condition.

Two years later, the worker began a new job as a truck driver, which paid less than his job as a welder. The CNESST agreed to cover the difference between the two salaries.

In 2019, the citizen was assaulted, so he filed a claim with the agency's crime victim compensation section (DGIVAC), the other compensation system managed by the CNESST. Because the man was unable to go back to work due to the assault, the DGIVAC issued compensation based on his income as a truck driver.

However, the CNESST stopped covering the difference in salary it had granted because of his work accident. It should have continued these payments. The CNESST had the following responsibilities:

- The CNESST compensation system, that helps workers injured on the job should have covered the difference between a welder's salary and a truck driver's salary;
- The CNESST compensation system which helps crime victims (DGIVAC) should have paid the claimant his truck driver's salary.

After the Québec Ombudsman intervened, the CNESST agreed to acknowledge its full responsibility towards the claimant. In addition to resuming the regular payments, it paid the claimant nearly \$19,000 retroactively. A new directive was also adopted so that such a situation would never recur.

The information to consider before denying a claim

When the CNESST is about to refuse a compensation claim, it must ensure that the worker has had the opportunity to transmit all the information needed for a decision to be made. Of course, this also applies in cases of musculoskeletal disorders. The CNESST must have all necessary information about the employee's tasks that may have caused the injury.



TAKE INTO ACCOUNT THE SEQUENCE OF REPETITIVE MOVEMENTS THAT A JOB INVOLVES

A woman worked as a warehouse clerk. When she began to have persistent pain in her right arm, she told her employer and saw a doctor. Then she filed a claim with the CNESST for an employment injury. After her file had been studied, her claim was denied because the agency considered that she did not perform repetitive movements likely to cause the pain she reported. The worker complained to the Québec Ombudsman.

The Ombudsman saw that the CNESST had not done enough research about the worker's tasks and the workplace in the first instance. The CNESST would have needed this information to decide whether the claim should be approved or denied.

The Québec Ombudsman also discovered that the worker's job consisted mainly in taking products from shelves, scanning them, tying them with elastic bands, then putting them on a cart, 800 to 1,000 times a day. These were indeed repetitive movements. This number had not been taken into consideration when the claim was denied.

The Québec Ombudsman received confirmation from the people responsible for the CNESST's administrative review mechanism that the worker had the right to be heard concerning her job description.

After analyzing the worker's tasks, the review agent approved her claim and granted her the amounts for which she qualified.

Take into account all of a claimant's earnings

According to the *Act respecting industrial accidents and occupational diseases*, the rule of thumb in determining an income replacement indemnity amount is to use the salary indicated in the claimant's work contract at the time when the worker could no longer do that job. However, claimants may be able to prove to the CNESST's satisfaction that they earned more than what is indicated in the work contract in the 12 months before their incapacity.





CALCULATE THE INDEMNITY BASED ON ALL ELIGIBLE INCOME

In 2019, a man had a work accident and filed a CNESST claim. The agency determined the amount of the income replacement indemnity based on a salary of \$8,000. Arguing that he was eligible for a bigger amount, he convinced the CNESST to reconsider its decision. The indemnity was calculated based on a salary of \$32,000. The man felt that the CNESST had, once again, not assessed his salary correctly, so he complained to the Québec Ombudsman.

The Ombudsman noted that the worker had had three different employers in the preceding 12 months and had received income replacement indemnities for a work accident earlier in 2019, along with employment insurance benefits. As a result, the estimated indemnity was lower than what he should have been granted.

After the Québec Ombudsman intervened, the CNESST paid the man more than the \$4,000 retroactively and reconsidered the salary base, which was now set at more than \$50,000.

This situation indicates that when CNESST claimants have an employment injury that prevents them from working, they generally need to demonstrate that their injury or illness is job-related. Because of this, claimants often emphasize the job they had on the day when they could no longer work. The Québec Ombudsman considers that it is up to the CNESST to get all useful information from claimants so that it has an accurate picture of their income in the year before the injury or illness.



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

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

Measures to support victims

The CNESST's crime victim compensation section (DGIVAC) manages various services to crime victims in order to lessen the consequences of their traumatic experience and support them as they recover.

In the matter of compensation services for people who are particularly vulnerable, as with any other public service, the Québec Ombudsman insists that organizations:

- Understand the specific situations of anyone who uses their programs;
- Collect all the information from the claimants about what they are experiencing;
- Pay particular attention to any medical diagnosis or assessment;
- Properly inform people about their rights.

In a nutshell, public bodies must truly understand the individual so that government services adjust to the client population and not vice versa. DGIVAC's mission compels the agency to do this with utmost respect for the victims who come to it for help.

One form of assistance that DGIVAC can provide is to reimburse victims for the cost of travelling to receive medical care, to have medical exams, or for individualized rehabilitation plan activities. Under specific conditions, claimants can receive an amount above the basic mileage rate (47 cents/km instead of 14.5 cents/km) if they use their own vehicle (rate in effect as of 2020). They may qualify if their physician attests that they cannot use available public transit because of their condition. This inability must have been caused or worsened by the crime.



TAKE THE VICTIM'S SPECIFIC CONDITION INTO ACCOUNT

In 2008, a person sustained significant physical and psychological injuries due to spousal violence. After DGIVAC received her claim, it determined that several of the person's diagnoses were directly related to her trauma, including major depression and post-traumatic stress disorder. In 2015, the person relapsed and DGIVAC agreed to compensate her again.

In 2019, the victim's physician attested to the person's inability to use public transit since the relapse in 2015. DGIVAC authorized reimbursement of travel costs with her own vehicle at the higher rate (43 cents/km), but only as of the date of the medical attestation.

The person hired a lawyer who asked for administrative reconsideration (internal mechanism) so that the four years of the inability to use public transit (as of 2015) would be recognized. DGIVAC refused.

The Québec Ombudsman intervened with DGIVAC for it to re-examine the preponderance of evidence, given the victim's special circumstances. Preponderance of evidence means that the alleged events are more likely than their opposite based on certain requirements. To support its request, the Québec Ombudsman produced an in-depth analysis of the woman's file, with numerous extracts proving her psychological disorders over the years (phobias, anxiety, agoraphobia, life circumstances, etc.).

After the Québec Ombudsman intervened, DGIVAC authorized reimbursement of the cost of the use of the victim's own vehicle at the preferential rate as of her relapse four years before. She received a retroactive amount of \$2,900.



ADAPT SERVICES TO THE VICTIM'S CONDITION

One of the services crime victims can obtain from DGIVAC is psychological assistance. In 2018, a person filed a claim with the agency after being assaulted. Weakened by the events, she was also particularly vulnerable because of a degenerative disease that significantly affected her condition. Her doctor diagnosed post-traumatic stress disorder and recommended psychotherapy.

The woman started therapy, beginning with an assessment of her condition. The report, which was sent to DGIVAC, indicated that because of the claimant's physical condition, psychotherapy sessions should be conducted over the phone. However, DGIVAC refused to authorize these psychological sessions, arguing that such services were not covered by the compensation system when conducted over the phone.

In investigating, the Québec Ombudsman saw that the citizen had only had 12 psychotherapy sessions over 21 months, even though initially, 52 sessions were intended. The investigation

also showed that the citizen's health had declined during this period. In addition, despite the opinion of its medical office, DGIVAC upheld its refusal to authorize therapy over the phone, not only for reasons of coverage, but also for reasons of security and confidentiality.

The Québec Ombudsman considered that DGIVAC had been overly zealous in the case at hand. Clearly, the citizen's specific situation and her health condition had not been taken into account in adapting the services. As for confidentiality, it is up to individuals to decide how important it is that the information conveyed about their situation be fully protected. DGIVAC had no right to cite confidentiality in order to compel her to have in-person therapy.

After the Québec Ombudsman intervened, DGIVAC agreed to authorize therapy over the phone with the psychotherapist whom the citizen had already consulted.



Compensating crime victims: follow-up to the Québec Ombudsman's special report

In January 2021, Bill 84, *Act to assist persons who are victims of criminal offences and to facilitate their recovery*, broadened the notion of victim as defined by the public crime victim compensation system. This was a comprehensive reform since now several categories of people would be considered crime victims because of their parental or emotional ties with the actual crime victim (parent, child, spouse, dependent, close relation).

This designation is unrelated to whether these people were physically present at the scene of the crime when it happened or shortly thereafter. Furthermore, with the introduction of the notion of "designated significant person," the definition of close relation can even include someone who is not related to the victim, for example, a friend. In other words, these persons qualify as victims even though they were not present at the time of the event.

The Québec Ombudsman sees this as an important gain that could, in many situations, prevent the grueling legal proceedings that are often required for people to be recognized as crime victims and for them to receive the help for healing and recovery afforded by the system.

In its special report in 2016 (*Compensation for crime victims: for effective and prompt management of vulnerable people*)

and at numerous other times, the Québec Ombudsman criticized the fact that DGIVAC maintained a restrictive interpretation of the notion of victim defined in section 3 of the Act. This ran counter to the broad and liberal interpretation warranted by any legislation that has a social and reparatory purpose.

Since the Québec Ombudsman published the report, DGIVAC has implemented several measures to:

- Assess the delays at the different stages of claim-processing;
- Set targets for reducing these delays;
- Supervise compliance with the targets and foster their achievement.

In the Québec Ombudsman's opinion, in adopting these measures, DGIVAC responded to its report satisfactorily. The Ombudsman will continue to follow the management of these delays and whether the targets set by DGIVAC are being met. It will also remain attentive to the tangible benefits of these corrective measures.



The report is available at protecteurducitoyen.qc.ca.

CURATEUR PUBLIC

Overseeing private protective supervision

When family members or other significant persons are appointed by the court to be tutors or curators to an incapacitated person, a private protective supervision file is opened. The Curateur public informs the tutors or curators about their responsibilities and oversees the administration of the files. If the tutors or curators do not carry out their duties or they do so incorrectly, the Curateur public can require them to rectify the situation and even go so far as to petition the Superior Court to have them replaced.

Under the *Civil Code of Québec*, private tutors or curators must:

- Make an inventory of the property to be administered;
- Purchase insurance or provide other security when the value of the property to be administered exceeds \$25,000;
- Produce an annual management report;
- Report to the Curateur public for each of their obligations.

For its part, the Curateur public examines the accounts provided to it by private tutors or curators and ensures that they have insurance or security.

The Québec Ombudsman noted that in certain cases, the Curateur public was remiss regarding its supervisory role. At times it:

- Was slow to react when problematic situations arose;
- Did not monitor as required.

In these specific cases, it lacked the rigour that should be an integral part of its protective mission. In situations involving complaints to the Québec Ombudsman, people lost significant amounts at the hands of their private tutor. In at least one case, the Québec Ombudsman felt that the harm could have been prevented or reduced had the Curateur public been rigorous.



ACT PROMPTLY TO PREVENT PROLONGED ABUSE

As part of a private tutorship, the tutor loaned \$60,000 (the amount of an indemnity that the represented person had previously received) to someone she knew. The loan did not comply with the criteria governing securities and sound investments within the meaning of the Civil Code of Québec.

Informed of the situation, the Curateur public took a year to react. Subsequently, it agreed to a compromise (that the borrower offer a notarized mortgage on a building as collateral until the maturity date). This solution was inadequate because the Curateur public did not have sufficient proof of the building's value. Furthermore, it was up to the tutor, and not the borrower, to provide security.

Later, at the loan's maturity, the Curateur public did not follow up. Moreover, it did not audit the tutor's annual reports for the years after the loan matured. The tutor had conducted other suspicious transactions, which made it impossible to

recover the lost amounts. After several years, a family member of the represented person was made aware of the tutor's breaches and petitioned the court to have her replaced.

In all, 15 years went by before the Curateur public was appointed tutor, a delay which the Québec Ombudsman considered unacceptable. It was only after the family member complained to both the Québec Ombudsman and to the Curateur public that the latter offered the represented person compensation. The Québec Ombudsman felt that this outcome was reasonable.

In recent years, the Curateur public has issued more specific instructions for stricter monitoring of the obtaining of securities and of other aspects of the supervision of private tutorship or curatorship. The Québec Ombudsman is examining these practices to determine whether they are sufficient.



EXERCISE ALL THE RIGOUR NEEDED TO ENSURE FULL PROTECTION OF REPRESENTED PERSONS

The Québec Ombudsman was asked to intervene in a file in which a person represented by a private tutor had been the victim of financial abuse by a previous private tutor several years earlier.

The Québec Ombudsman noted that despite past abuse, the Curateur public had not acted with the necessary rigour in supervising the new tutor's administration:

- When the adult's patrimony increased again, the Curateur public did not ensure that the new tutor provide valid security.
- It did not ensure that the new tutor assess the advisability of seeking recourse regarding the former tutor.
- File supervision was interrupted due to staff turnover.
- The new tutor's annual reports were not audited in depth even though they contained questionable elements.

First, the Québec Ombudsman intervened to have the case properly attended to and to have various audits carried out. The Curateur public did this.

When its investigation was completed, the Québec Ombudsman recommended that the Curateur public:

- Take the measures needed so that the tutor hold insurance or that he provide other security to guarantee discharge of his duties, that he maintain this security throughout his mandate, and that he account for it to the Curateur public annually;
- Require that the books and accounts for the property administered by the tutor be audited by an accountant.

The Curateur public accepted the Québec Ombudsman's recommendations and is working to get the file in order.

Supervising the management of buildings and patrimony

The Curateur public is the legal representative of more than 13,000 people. In that capacity, it sees to their well-being while respecting their level of autonomy. It must also manage the patrimony of represented persons and is obliged to preserve its value. Since there is a direct correlation between the rise in the number of people for whom protective measures exist and population ageing, we are seeing a constant increase in the incidence of tutorship and curatorship. Moreover, patrimonies have tended to be increasingly complex in recent years. More and more, they consist of assets other

than money in bank accounts or invested funds. For example, the Curateur public administers more than 600 buildings. In most cases, the Curateur public does a good job, albeit with limited resources, taking care of urgent repairs or solving various building- or property-related problems.

However, complaints show that there are shortcomings in terms of supervision, either because someone else becomes responsible for the file, because the person in charge information is not processed correctly or is not sent to the appropriate section, or because teams are overloaded with more urgently required supervision.



BE RIGOROUS ABOUT THE ENTIRE PATRIMONY

In 2016, the Curateur public was appointed provisional administrator for a citizen who owned a condominium which he had purchased in 1997 and which included a parking space. The citizen bought a second parking space in 2001. When the citizen amassed debt, the condo was sold. At the time, the Curateur public did not realize that the second parking spot had not been part of the sale even though it had all the paperwork. The upshot was that the asset was not

entered in the represented person's file and therefore did not generate any rental or sales income.

It was, in fact, the Québec Ombudsman that informed the Curateur public that there was a second parking space. The Curateur public therefore committed to ensuring the best possible management of the asset (rental or sale).



ACT PROMPTLY SO THAT THE PROPERTY ENTRUSTED TO A TUTOR IS MANAGED EFFICIENTLY

The Curateur public was appointed tutor for a woman with reduced autonomy who lived in a triplex which she owned. When the woman was placed in a residential resource permanently, the person responsible for her file at the Curateur public asked the organization's building section to rent out the vacated apartment so that it would generate rental income for the protected person.

A year went by before the Curateur public mandated an inspector to evaluate the premises before proceeding with rental. Then the apartment had to be emptied and repaired. In all, two years elapsed between the time the apartment was

vacated and the time it was rented. As the tutor, the Curateur public's duty was to safeguard the represented person's patrimony, which included collecting rental income for a rental property.

Intervening further to a complaint by a family member of the woman, the Québec Ombudsman noted that the delays could have been due to the repairs and to the fact of having to find a tenant. Be that as it may, it was clear that the Curateur public had remained inactive for too long, a fact which it admitted. An arrangement was made to the Québec Ombudsman's satisfaction.

MINISTÈRE DE L'ÉDUCATION

Financial support for hiring day camp attendants for children with disabilities / IMPACT OF COVID-19

The Ministère de l'Éducation provides financial support to regional organizations responsible for recreational activities for people with disabilities in order to hire attendants for young people with special needs. This funding enables youngsters who have a physical or an intellectual disability to attend day camp, in addition to giving families respite time.

In 2020, the Government of Québec announced extra funding of \$4 million to hire day camp attendants for children with disabilities. This

funding was eagerly awaited by the people responsible for the camps concerned, especially given the additional challenges posed by COVID-19 and the health emergency. The funding was welcomed with relief, one of its purposes being to cushion the impact on children and parents of the closure of schools in the spring of 2020.

However, the announcement was tardy (June 23), which affected the slate of services of certain organizations. Moreover, after the funding was announced, the Department was late to issue it to the regional organizations.



MAKE GOOD ON COMMITMENTS

A regional recreational organization for people with disabilities contacted the Québec Ombudsman in late July 2020. It had not yet received the funding announced by the Department for day camp attendants for children with special needs. As a result, the regional organization was unable to give the day camps their financial assistance. The organization pointed out that it had not yet received the contract that the Department usually sends it formalizing the financial assistance once it is signed. Because of this delay, the amounts could not be transmitted to the day camps, and summer was well underway.

Adapted services for special-needs students while schools were closed / IMPACT OF COVID-19

In the spring of 2020, parents of children with disabilities approached the Québec Ombudsman further to a government decision to keep schools closed due to COVID-19.

Before the closures in March 2020, their children had been attending special classes and could use in-school care services. Without these resources, the students could not ensure their own safety or meet their basic needs themselves. They could not stay home alone either and needed ongoing assistance from their parents. As a result, the parents could not go back to work or work from home.

On April 27, 2020, the government announced a plan to reopen preschool and elementary educational institutions as of May 11, 2020, except those in the Greater Montréal area (CMM). The plan also included the reopening of schools offering regional or supraregional education services as well as private special education schools located outside of the CMM for students with disabilities or with serious behavioural disorders at the preschool, elementary and secondary school level.

For other secondary-level students, distance pedagogical support services were to be organized by school service centres and English school boards. As a result, special-needs secondary-level students were not schooled for an extended period. This affected them significantly. Apart from virtual educational services and student services, no other resource or measure was added to support families.

The Québec Ombudsman contacted the Department immediately, which confirmed that the contracts had not yet been sent to the regional organizations. After checking, the Department discovered that there had been an internal management problem which had delayed issuance of the amounts. It assured the Québec Ombudsman that it would promptly process the files concerned. The contracts were sent to the regional organizations within a few weeks.

Even though certain secondary-level students with disabilities or serious behavioural disorders were able to go back to their specialized school, the situation was unfair for the young people who did not receive these same services.

On May 20, 2020, the Québec Ombudsman recommended that the Department:

R-1 Take the necessary measures so that services or exceptional support measures are quickly provided to students with disabilities or serious behavioural disorders because they had been deprived of adapted educational services and their usual in-school care services;

R-2 Establish services or measures for these students for the summer;

R-3 Plan for the resumption of adapted educational services for students with disabilities or serious behavioural disorders for the next school year.

On June 3, 2020, the Department informed the Québec Ombudsman that respite services for families who have children with a disability or who are vulnerable were to be organized before the end of the school year and for the summer by school service centres and English school boards in collaboration with the health and social services network. However, the Québec Ombudsman learned that the Department never sent the guidelines to the school service centres and English school boards, which, ultimately, were unable to organize the services.

In the Québec Ombudsman's opinion, it is clear that the Department was not proactive and failed to exercise the necessary leadership so that school service centres and English school boards could implement the measures. As a result, some parents and their children were deprived of respite services until the end of the school year and during the following summer.

Handling of requests submitted to the language of instruction examining committee

The *Charter of the French Language* states that where warranted by a serious family or humanitarian situation, the Minister of Education may, upon a reasoned request and on the recommendation of the language of instruction examining committee (the Committee), declare eligible for instruction in English a child who has been declared non-eligible by a person designated by the Minister.

The Québec Ombudsman received complaints from parents who applied to the Committee so that their child could be

declared eligible for instruction in English on humanitarian grounds. The parents felt that it was taking much too long, in some cases, months, for their application to be processed. Coming up to the beginning of the school year and even once it had started, these parents had yet to receive a decision about their child's eligibility.

Analysis of these complaints and of the data which the Department sent to the Québec Ombudsman showed that the average processing time was three months. This lengthy wait time for families may have a significant impact on the schooling of the students concerned.

The Québec Ombudsman therefore recommended that the Department implement a lasting solution for reducing processing times so that decisions are made within a reasonable timeframe. The Department assured the Ombudsman that work was underway for that purpose. The Québec Ombudsman will closely follow the implementation of its recommendation and of the Department's intended solutions.



ELIMINATE UNREASONABLE DELAYS IN ORDER TO PREVENT SERVICE INTERRUPTION

A secondary-level student had been attending English school since 2017. However, for the 2020-2021 school year, the Department considered that she was no longer eligible for instruction in English because her father's immigration status had changed. In June 2020, the father sent the examining committee an application arguing on humanitarian grounds for his daughter to continue in English in her last year of secondary school.

The school year began and the father had still not received any news. This was even more worrisome because the English school had informed him that his daughter could not attend classes until the Department confirmed that she was eligible for instruction in English. The man contacted the Québec Ombudsman.

After investigating, the Québec Ombudsman noted that in August, the committee had recommended that the young girl continue her schooling in English. The very next day, the file was forwarded to Department authorities for a decision. However, come late September, the Department had not yet responded to the recommendation.

The Québec Ombudsman intervened to speed things up. The same day, the Department sent the family the required authorization.

Handling complaints about bullying in private schools

In its 2018-2019 Annual Report, the Québec Ombudsman spoke out against flaws in how the Department's private education section (Direction de l'enseignement privé) handled complaints from parents whose children had been bullied. After investigating, the Québec Ombudsman made five recommendations to the Department.

It bears noting that the Québec Ombudsman acknowledges the progress made by the Department to prevent bullying in private schools:

- Development of tools;
- Hiring of a full-time resource person to support the schools and provide training;
- Validation of the application of anti-bullying plans in private educational institutions a few times every year.

However, the Department has not yet implemented three of the Québec Ombudsman's recommendations:

- Design and implement a policy for handling complaints regarding private educational institutions by providing specifically for the procedure that applies when bullying occurs;
- Produce guidelines enabling the private education section to determine when it has reason to forward a file to the Minister for a decision as to whether an investigation should be conducted;
- Systematically send the complainant an acknowledgement of receipt providing clear and detailed explanations about the Department's role, powers and limits regarding the handling of complaints concerning private educational institutions.

In 2019, the Department informed the Québec Ombudsman that work was underway to broaden the mandate of Student Ombudsmen to include private educational institutions and to table a bill before the end of the year. The Department also indicated that its powers were limited regarding these institutions and that the extent of these limits would be specified in Department policy.

Since then, no bill has been tabled and the Department has reiterated that, in the absence of the required policy concerning Student Ombudsmen, it cannot implement the three recommendations concerned.

The Québec Ombudsman is critical that:

- Despite its numerous reminders, the Department is holding to its position;
- Its recommendations, that could have been implemented a long time ago, alongside eventual tabling of a bill, are lagging.

MINISTÈRE DE L'ÉNERGIE ET DES RESSOURCES NATURELLES

Recourse for questions of cadastral reform

The cadastre is a public register containing representations of properties in the form of a plan to which land rights apply. Produced in 1860, over time this register became incomplete and obsolete. As a result, the government decided to reform it, namely, update and computerize it. The reform was entrusted to the Ministère de l'Énergie et des Ressources naturelles. The Department must ensure that the land surveyors mandated for the reform provide sufficiently substantiated professional opinions and maps in keeping with standard practice and the general instructions for surveys (instructions stemming from the applicable legislation).

In 2010, a cadastral revision committee was struck to respond to recommendations by

Quebec's Auditor General and the Committee on Public Administration, both of which had noticed flaws in the existing contestation process. The committee consists of three expert surveyors who are neutral and independent. The purpose of the committee is to provide an additional form of specific, objective and impartial recourse for owners who disagree with the results of the cadastral reform or with the outcome of their application to have changes made. Owners can use this recourse if they applied to have the results reviewed, then filed a complaint at the first level and the result was that the land surveyors' opinions differed. Another possibility is that the elements produced are insufficient for the Department to conclude that the cadastre must be amended.



BE GIVEN THE CHANCE TO PRESENT ARGUMENTS TO THE REVISION COMMITTEE

Following the cadastral reform, a landowner challenged the Ministère de l'Énergie et des Ressources naturelles about how his property was represented. He argued specifically that part of his lot had been mistakenly attributed to his neighbour. At the end of the contestation process, the revision committee heard his arguments and it recommended that the Department change the delimitation between the two properties as indicated on the plan, to the applicant's satisfaction. The change was made without the owner of the neighbouring property being informed and therefore without his having been heard.

After receiving a notification (a notice sent to an owner once the cadastre has been modified), the neighbour tried to contest the fact that the line separating the two lots had been moved. He also asked to be heard by the revision committee, but the Department refused.

This was the first time that an owner affected by a revision committee recommendation approached the Department to contest a decision.

After the Québec Ombudsman intervened, the Department allowed the owner concerned to argue his case before the revision committee. The committee also revised its process so that henceforth, it would be possible for owners who contest a revision committee recommendation in which they were not included to be entitled to this recourse.



MINISTÈRE DE L'ENSEIGNEMENT SUPÉRIEUR

Verifying by Student Financial Assistance concerning applicants' declared income

Every year, Student Financial Assistance (AFE) cross-references the income declared by students with Revenu Québec. If there is a discrepancy, the AFE can send the student a notice and suspend payment. The person must then send:

- A letter explaining the discrepancy;
- Their tax returns;
- Any relevant document.

The AFE then analyzes the file to determine whether the income declared to it constituted misrepresentation for the purpose of receiving more student assistance or for qualifying for it.

The AFE informed the Québec Ombudsman that in carrying out this analysis, generally its staff did not contact the students for further details or documents. Students therefore do not have the

opportunity to complete their file before a decision is made, a decision which could have major consequences for their studies. Also, the Québec Ombudsman has noted that the AFE is particularly stringent in such cases. Even though it must be assumed that the students who are being audited have acted in good faith, the AFE puts the onus on them to give written justification for the discrepancy between the declared incomes and to provide the relevant documents.

If the AFE concludes that the student has deliberately misrepresented their situation, the financial assistance is suspended for two years as of the date at which the AFE became aware of it. Furthermore, suspension may continue until the student has reimbursed the amount overpaid because of the false statement if reimbursement does not occur within the two years.



ASSUME GOOD FAITH AND ALLOW THE PERSON TO PROVIDE THEIR VERSION OF THE EVENTS

During an audit, the AFE noticed a discrepancy between the income declared by a student in her application for financial assistance and that in her income tax return. A notice of suspension of the financial assistance was sent to her. She wrote to the AFE explaining that during her studies, she worked without pay, but her employer gave her taxable benefits. Depending on the situation, a parking space paid for by an employer or access to group insurance, for example, may be taxable benefits.

In the case at hand, the student did not think that these benefits were considered income. In fact, she specified that she had received a retroactive amount from the Société de

l'assurance automobile du Québec during the school year and had declared it in her application for student financial assistance for the following year.

After analyzing the information, the AFE concluded that misrepresentation had occurred.

In the Québec Ombudsman's opinion, the student had been sincere and her explanations, plausible. What had occurred was a mistake, and not a deliberate omission. On this basis, the Québec Ombudsman asked the AFE to cancel the two-year suspension and reinstate the student's eligibility for financial assistance. The AFE agreed to do so.

The Québec Ombudsman intervenes to ensure fairness

The Québec Ombudsman can intervene to ensure fairness if it feels that a public service decision is unreasonable even though it complies with the applicable legislation. A decision, albeit legal, is said to be unreasonable if it defies common sense and immediately seems inappropriate because the consequences are so disproportionate for a person or group of people. The Québec Ombudsman considers interventions to ensure fairness exceptional, as are the situations that prompt them. Fairness plays a triple role with respect to rules:

- It corrects them if they are too strict;
- It completes them if there are gaps;
- It interprets them if they are obscure.

Before intervening to ensure fairness, the Québec Ombudsman examines the file based on the following requirements:

- Are the consequences for the person what the legislator intended?
- Is the harm to the person significant and real?
- Is the solution under consideration feasible?
- From the collective perspective, is the solution financially sustainable?

If all these requirements are met, the Québec Ombudsman can make a recommendation to ensure fairness.



HANDLE AN APPLICATION FOR STUDENT FINANCIAL ASSISTANCE WITH A VIEW TO FAIRNESS

Under certain conditions, students may be considered “presumed enrolled” for financial assistance purposes for a maximum period of four months even if they are not enrolled full-time between two sessions.

In the case at hand, the AFE granted a student presumed enrolled status for the summer of 2019, pending the start of the fall session. To remain eligible, the student had to begin classes no later than November 16, 2019. Due to a shortage of enrolments, the courses were postponed repeatedly and finally began only on November 18 of the same year. Because of the two-day gap, the student no longer qualified for presumed enrolled status. His financial assistance decreased by

about \$3,600. Even though the decision complied with the rule, postponement of the courses was beyond the student’s control. Furthermore, he was unemployed until classes started.

The financial consequences of the AFE’s decision were difficult to reconcile with the goal of the student financial assistance program—in such cases, presumed enrolled status between two study sessions is intended to foster academic perseverance. The Québec Ombudsman therefore intervened with the AFE to ensure fairness by requesting that the student be recognized as having presumed enrolled status for July to October. The AFE agreed to do so.

MINISTÈRE DE L'ENVIRONNEMENT ET DE LA LUTTE CONTRE LES CHANGEMENTS CLIMATIQUES

Issuing a notice of non-compliance regarding a wetland

Pursuant to the *Environment Quality Act*, any intervention in wetlands and bodies of water must receive prior authorization from the Minister of the Environment.

“Wetlands and bodies of water:”

- Are natural or man-made;
- Are characterized by the permanent or temporary presence of water;
- Are where the water may be diffused, occupy a bed or saturate the ground, or be stagnant or flowing;
- Mainly contain vegetation that lives in stagnant water.

When the Department sees that an unauthorized intervention has occurred in such an environment, it issues a notice of non-compliance and orders remediation. The Department directives also specify that its own sections must have a full grasp of the circumstances surrounding the breach and impose adapted and fitting remedial measures as needed. Certain factors can be taken into account, for example, if the offender was misinformed by a third party such as a municipality that granted authorization that violated the Department's rules.



TAKE INTO ACCOUNT A CONTEXT THAT COULD JUSTIFY A BREACH

In 2015, a municipal employee told a citizen that a project to relocate the road would go through her property. The operation would involve backfilling. The citizen was offered soil and applied to the municipality for a backfilling permit. A municipal inspector then told her that a permit was not needed and that the area was not a wetland. The citizen carried out the backfilling.

In 2019, following an inspection, the Department sent the citizen a notice of non-compliance informing her that she had carried out backfilling activities in a peat bog without authorization. The Department ordered her to remove the backfill, at a cost of several thousand dollars. She contacted the municipality and the Department with her version. The Department stood its ground despite a letter of support from the municipality.

In the Québec Ombudsman's opinion, the municipality had misinformed the citizen. The inaccurate information had led her to proceed with backfilling in good faith to facilitate the relocation of the road. Moreover, as part of the steps she had taken, she had a letter of support from the municipal authorities. Consideration of the circumstances surrounding the backfilling required that these various factors be taken into account, as well as calculation of the financial harm to the citizen.

After the Québec Ombudsman intervened, the Department studied the file again and offered to plant native plants and shrubs where the backfill had been, which was a less costly option. The Department and the citizen came to an agreement about this solution.

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

Loss of documents in the context of the Québec Experience Program (PEQ)

This year, the Québec Ombudsman noted a marked increase in the number of complaints about documents which the Department had lost, including those sent by mail. This was especially true of cases involving the PEQ. This phenomenon is one which the Québec Ombudsman already denounced in its 2020-2021 Annual Report.

Standard procedure is that one section of the Department receives and opens the mail, then forwards it to the section concerned. However, some mail was lost before it was opened, while in other cases, it was opened but never found its way to its destination.

Clearly, the COVID-19 pandemic amplified the problems. Since most agents worked from

home, they no longer had access to physical files. In certain cases, documents and even entire files were not digitized and therefore could not be sent to the agent in charge.

Under these circumstances, the Department had to allow candidates grappling with such difficulties to re-submit their documents so that processing of their file could resume.

Note that since January 26, 2021, candidates must submit their application for permanent selection under the Québec Experience Program (PEQ) by means of the ARRIMA platform. As a result, these candidates can pay the required fees directly and upload their documents to the portal. The loss of documents should decrease with the use of the new method. The Québec Ombudsman will pay close attention to this.



WHEN DOCUMENTS ARE LOST, BE OPEN TO SOLUTIONS

In January 2020, a candidate applied for a Québec Selection Certificate (CSQ) under PEQ. She phoned the Department's information centre several times to inquire about her file. Every time, she was told that it was being processed.

In late May 2020, an agent informed the candidate that in March 2020, she had been emailed a request for documents that were missing. The candidate replied that she had indeed received an email, but that it had only contained the identifiers for taking the Québec Values test. She mailed in the required documents without delay.

A month later, she received a final notice asking her to provide certain documents. They were precisely the ones she had mailed in the month before. She phoned the information service again. An agent confirmed that the Department had received the documents she had sent in early June and that processing of her file had resumed.

In August, she spoke to an agent who told her that the Department had never received the documents. She sent him the package tracking number and proof of delivery from Canada Post. Two weeks later, the documents had yet to be found.

The candidate contacted the Québec Ombudsman. In late August, the Department confirmed that it had never received the mailing. At the Québec Ombudsman's request, it allowed the candidate to submit the documents electronically, which she did that same day. The certificate was issued two weeks later.

The employment requirement for a Québec Selection Certificate (CSQ) / IMPACT OF COVID-19

Candidates who want to obtain their CSQ under PEQ must meet several requirements, including having a job on the date of their application. As we know, since the beginning of the pandemic, many workers, including immigration candidates, have lost their job. Many of them submitted their application during this period. The Department's information service had told some of them beforehand that they could apply while they were laid off. Subsequently, given the delays in PEQ application processing, file analysis only began a few months later. Most candidates had found a job by then.

As a result, the Department considered these people unemployed at the time of filing, when this was one of the requirements for PEQ eligibility. Some candidates, who were back at work, cancelled their initial application and submitted a new one, thereby paying the required \$812 fee a second time. Others let the first application stand and were turned down. The Department held to its position whereby candidates must be employed at the time of filing their Québec Selection Certificate application, and information service clerks were

reminded not to inform candidates that they could apply while they are unemployed.

In November 2020, the Québec Ombudsman asked the Department to consider as employed the candidates who were laid off at the time of their application, but who subsequently went back to work for the same employer. It also asked that they be reimbursed for the fees paid for the second application.

Further to this intervention, the Department reviewed how it interpreted the employment requirement. Seeing as how there are several months between the date of filing and the date when the application is examined, candidates will now be considered as employed if they had a job on either of these dates.

The Department also acted on the Québec Ombudsman's recommendation by correcting similar files that the organization had submitted to it. In this way, the Québec Ombudsman made it possible for approximately ten people to obtain their CSQ, some of whom were reimbursed for the fees for their second application.

So far, the Department has found 32 candidates in its own files who were turned down because they were unemployed at the time of filing. The Québec Ombudsman asked the Department to make the necessary corrections in these files that would be approved under the new interpretation. The Québec Ombudsman will follow up on this.



TAKE AN EXCEPTIONAL SITUATION INTO ACCOUNT IN APPLYING REQUIREMENTS

A worker was laid off in early April 2020. The next day, he applied for permanent selection under PEQ. In July, he went back to work for the same employer.

In September, the candidate received a letter of intended refusal from the Department.

Letters of intended refusal are different from letters of refusal because they inform candidates that the Department intends to refuse their application for a specific reason. This means that candidates have the opportunity to provide other documents to complete their file and possibly prove that they meet the requirements taken into consideration.

The candidate learned through the letter of intent that he did not qualify for the program because he did not have a full-time job on the date of filing. He therefore decided to cancel the application and pay the required \$812 again, but this time for processing of the second application, which he submitted in mid-September. When he did not hear back about the application, he contacted the Québec Ombudsman.

At the Ombudsman's request, the Department decided to consider the candidate employed because he had a job at the time of the second filing (September). The Department also agreed to reimburse the candidate for the fees he paid when he submitted his second application. The man was informed about the reimbursement and obtained his CSQ.

PEQ processing delays

In its service statement, the Department has long committed to making a selection decision within 20 business days after receiving a complete file. However, on July 22, 2020, the timeframe became six months. The Department claimed that the number of applications had increased and that there were not enough staff to deal with them.

In the summer of 2020, processing delays were four times longer than the 20 business-day timeframe. This generated a significant rise in the number of complaints to the Québec Ombudsman (nearly 220 complaints in 2019-2020; more than 800 complaints in 2020-2021).

For applications received as of January 1, 2020, candidates had to have obtained an attestation of learning about democratic values and Québec values. This new requirement created problems, most of them computer-related, which caused delays in processing certain files. Among others, the following situations arose:

- As part of application processes involving a main applicant and a spouse, only one of them received the identifiers for taking the values test;
- If two candidates obtained their attestation of values at the same time, the Department received confirmation from only one of them.

Add to this the effects of the pandemic on operations. A reduced on-site staff meant, for example, that there were longer delays for opening mail, lost documents, and delays for mailing out Québec Selection Certificate (CSQ).

Faced with this fact, and after the Québec Ombudsman intervened, the Department implemented measures to absorb the backlog. It added resources and authorized extra hours. A greater number of employees were dispatched to work on site for tasks that they could not do from home. In January 2021, almost all the applications to which the 20-day timeline had applied had been processed.

Because PEQ applications are now made online via the ARRIMA portal, delays for transmitting documents should decrease.



PROCESS FILES EFFICIENTLY AND AVOID UNREASONABLE DELAYS

In January 2020, a man applied for permanent selection. In February, he received correspondence from the Department asking him to provide additional documents and providing the identifiers for taking the Québec Values test. The candidate obtained the attestation of learning democratic values and Québec values in mid-February and the Department received the requested documents a month later.

Not having heard back, the candidate phoned the Department in September to find out about his file. The agent replied that an error code had been added in June.

The candidate reached the Department several times to have his file corrected, but to no avail. He complained to the Québec Ombudsman. The same day, the Ombudsman intervened with the Department and learned that the problem was with the computer system—a new electronic file should have been opened in June so that processing could continue, but the conversion never occurred. Three days later, processing was completed and the CSQ was issued. More than ten months had elapsed since the application had been submitted.

MINISTÈRE DE LA JUSTICE



Time limits for civil actions in sexual assault cases: follow-up to the Québec Ombudsman's opinion

In the past, someone who wanted to file suit against the person who assaulted them sexually had to do so within three years at most after the assault. In 2013, this deadline was extended to 30 years.

The Québec Ombudsman felt that all time limits should be abolished in certain specific cases. This is what it argued in an opinion in 2017 titled *Abolish any prescription for civil actions in case of sexual assault, violence suffered during childhood, or violence by a spouse or an ex-spouse*.

The opinion contained four recommendations to the Ministère de la Justice mainly aimed at:

- Abolishing any prescriptive period for this type of recourse;
- Establishing retroactivity without any time limit.

Subsequently, discussions took place between the Department and the Québec Ombudsman as part of the process of monitoring the implementation of the Ombudsman's recommendations. The Department went on to table Bill 55,

Act to amend the Civil Code, in particular to make civil actions for sexual aggression, suffered during childhood and spousal violence imprescriptible. To the Ombudsman's great satisfaction, the Bill, which was assented to and came into force on June 12, 2020, addressed three of its recommendations. They concerned:

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

The Québec Ombudsman had also recommended that the Ministère de la Justice inform victims and advocacy groups about the legislative amendments concerning imprescriptibility and the impact on the exercise of victims' rights. The Québec Ombudsman will remain attentive to the follow-up to this recommendation.



The opinion is available at protecteurducitoyen.qc.ca.

MINISTÈRE DES FORÊTS, DE LA FAUNE ET DES PARCS

Investigations by wildlife protection officers

The Ministère des Forêts, de la Faune et des Parcs and its wildlife protection officers are mandated to supervise hunting activities in Québec. Violation of legal hunting conditions is an offence under the *Act respecting the conservation and development of wildlife*. The poaching that occurs when hunters act irresponsibly or with intent is investigated by wildlife conservation officers. For some serious infractions, hunting certificates or permits can be suspended or cancelled.

After investigating, wildlife protection officers may forward files to the Director of Criminal and Penal Prosecutions so that charges can be laid against the offenders. A conviction for violation of a provision of the Act or its regulations may, at the judge's discretion, lead to cancellation of the offender's permit or certificate and the imposition of a fine.

Given that there may be serious repercussions when someone is accused of an infraction, the Québec Ombudsman recommended that when an investigation is completed and no charges have been laid, the Department notify the people who were under investigation.

The Department's position is that it is up to individuals to follow-up on their file. They can contact the wildlife protection officer responsible for their file or their regional wildlife protection office. The contact information is available on the Department website.



WHEN AN INVESTIGATION IS COMPLETED, INFORM THE CITIZEN

After a citizen was misinformed by a Department employee, he went hunting for big game off season. When he was caught in the act, he learned that he had committed an offence because he had hunted outside the prescribed period. His hunting permit was revoked and an investigation was opened.

Several months later, the wildlife protection officer assigned to the file completed the investigation and concluded that because a Department employee had misinformed the hunter, the Director of Criminal and Penal Prosecutions would not be notified. However, the citizen was not kept

informed about the investigation. Fearing the possible consequences, the man complained to the Québec Ombudsman.

When the investigation by the Québec Ombudsman was completed, it concluded that the Department should have informed the citizen that the charges had been dropped by the wildlife protection officer and that the incident would not have a negative effect on his next hunting season. Despite the Department's position to the effect that individuals are responsible for following up on their file, it agreed to send the citizen a written explanation.



MINISTÈRE DES TRANSPORTS

Take into account situations that are harmful to citizens

One of the mandates of the Ministère des Transports is to monitor the conformity of accessways leading to properties along regional and provincial roads. The Minister must authorize any new accessways and determine where and how construction will be carried out so that any additions are functional and safe. In other words, someone who wants to use land requiring access to a road must obtain permission from the Minister before building or modifying an accessway.

To supervise accessway management, the Department has standards and directives which specify its interventions when it sees that accessways do not comply. It ensures that the required changes are made and must inform citizens about mandatory conditions and methods when they carry out authorized construction work.

The Québec Ombudsman noted that people have difficulty convincing the Department to take their specific situation into account in processing applications that involve roadwork.



LISTEN TO WHAT CITIZENS SAY ABOUT THEIR SPECIFIC SITUATION

A citizen contacted the Ministère des Transports for authorization to expand and improve the entranceway to his cottage along a regional road. When the Department representative visited the site, they noticed that the neighbour's entranceway encroached on the citizen's property so that the space between the two entranceways was too narrow. Based on this finding, the Department refused to allow the citizen to make the requested change and instructed him to make the necessary arrangements with his neighbour to change the encroaching accessway.

However, the neighbour had been living abroad for several years. The condition of the accessway (fallow and overgrown) made it clear that he never used it anymore. The citizen was therefore at an impasse and could not improve his entranceway which did not comply with standards because of the lack of space between the two accessways.

The Québec Ombudsman intervened with the Department so that the citizen would not be without a solution. The Department agreed to allow the citizen to either expand or relocate the accessway, provided it did not interfere with the public road.

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

Necessary adaptation of services / IMPACT OF COVID-19

First, the Québec Ombudsman would like to point out that, through certain programs, the Ministère du Travail, de l'Emploi et de la Solidarité sociale was able to adapt to the situation experienced by its client population dealing with the fallout from the COVID-19 pandemic. The health crisis made certain flexibility measures necessary and they were implemented based on needs and resources, for example:

- Suspension of recovery measures;
- Fewer required documents;
- Longer period of coverage for a temporarily limited capacity for employment;
- Suspension of claim notices.

Excluding child support payments in calculating last-resort financial assistance: progress has been made

In April 2018, the Québec Ombudsman recommended to the Committee on Labour and the Economy (parliamentary committee) that child-support payments be excluded from calculable income in determining last-resort financial assistance benefits. The following November 30, a motion in favour of this exclusion was adopted unanimously by the National Assembly of Québec. The same exclusion was recommended for eligibility for legal aid, student financial assistance and housing assistance.

In his 2019-2020 Budget, the Minister of Finance announced a significant increase in the amounts excluded from child-support payments for the purpose of calculating last-resort financial assistance (from \$100 to \$350 per child). According to the data provided by the Ministère du Travail, de l'Emploi et de la Solidarité sociale, this measure:

- Has benefited 9,100 children (5,600 households) since October 1, 2019;
- Has made it possible for 80% of recipient households to access their entire child-support payment (25% before October 1, 2019).

While applauding this gain, the Québec Ombudsman also argued that the amount should be fully excluded because support is paid for the benefit of children.

The Department is currently analyzing the impact of the measure to determine whether the exclusion of child-support payments contributes to program retention and program attraction.

- Retention refers to the possibility that recipients remain on last-resort assistance rather than re-entering the labour market because they consider that their situation would not improve sufficiently to make employment worthwhile.
- Attraction refers to the possibility that people decide to apply for last-resort assistance programs because they did not qualify when their child-support payments were factored in.

The analysis was supposed to be completed in the spring of 2020, but the deadline was pushed back due to the COVID-19 pandemic. The Department hopes to have finished this work by the spring of 2021.

Canceling a debt under exceptional circumstances: the Department displays openness

In its 2016-2017 Annual Report, the Québec Ombudsman recommended that, under the Minister's discretionary power, the Department cancel certain last-resort financial assistance debts when the person cannot make the required reimbursements within a reasonable timeframe. The debts in question are repaid over lengthy periods of time. Sometimes they would have been repaid in full were it not for the accrued interest.

In July 2020, the Department gave the Québec Ombudsman confirmation that in September 2019, its recommendation would be implemented retroactively. Nearly 40 files have now been reviewed based on the new requirements, a quarter of which have led to cancellation of the outstanding balance.

Taking into account compensation amounts in calculating last-resort assistance: slow corrective measures

In March 2013, the Québec Ombudsman recommended to the Department that the *Individual and Family Assistance Regulation* be amended so that amounts received by recipients as compensation for a loss of physical or psychological integrity be excluded in calculating last-resort financial assistance benefits. Given the importance of this matter, the Québec Ombudsman reiterated its recommendation in its 2020-2021 Annual Report.

What is at issue here are reparatory amounts, which are not issued in lieu of income, but rather to help recipients deal with the cost of a permanent impairment. As a result, these amounts should not be calculated as subsistence income.

At a meeting with the Québec Ombudsman in November 2020, the Department confirmed that it was working to create solutions in response to its recommendation. The Québec Ombudsman will remain attentive to the outcome of this work.

Special benefits: updates and indexation pending

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

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

In his 2020-2021 Budget Plan, the Minister of Finance confirmed that the government intended to act upon the Québec Ombudsman's recommendation by announcing an increase in special health benefits as of January 1, 2022, and their indexation as of January 1, 2023.

The Québec Ombudsman will remain attentive to the introduction of the necessary corrective measures.

RETRAITE QUÉBEC

Eligibility for a disability pension

To qualify for a disability pension within the meaning of the *Act respecting the Québec Pension Plan*, applicants must prove that they are suffering from a severe and prolonged mental or physical disability.

- Severe: the disability makes the person incapable of regularly carrying out a gainful occupation.
- Prolonged: the disability is likely to result in death or to be of indefinite duration.

In conducting a medical disability evaluation of severity and duration, Retraite Québec may also take social and occupational factors into

account. A case in point is when a person's medical condition produces objective functional limitations (validated by a physician by means of tests) that do not make the person incapable of holding any kind of job but that are considered medically severe.

In these situations, the severity requirement may be met if the applicant has a set of unfavourable social and occupational characteristics, which, combined with severe functional limitations, makes the person incapable of regular gainful employment. Here, factors such as education, rehabilitation and social integration efforts are also taken into consideration.



TAKE AN APPLICANT'S SOCIAL AND OCCUPATIONAL REALITY INTO ACCOUNT

A person contacted the Québec Ombudsman after Retraite Québec refused to grant her a disability pension. She felt that, given her medical condition, she was unable to go back to being a waitress in a restaurant and was also incapable of doing any other job.

The Québec Ombudsman's investigation showed that the health professionals who had given their medical opinion considered that her functional limitations were severe but that she could nonetheless carry out a sedentary job in keeping with her condition.

According to the Québec Ombudsman, Retraite Québec's evaluation should also have taken into account social and

occupational factors that argued against gainful employment: low educational level, limited work experience and the fact that the applicant had been out of the workforce for several years. None of this had been considered when the decision was made.

The Québec Ombudsman intervened to request a new medical evaluation that included these various factors. Further to the new evaluation, Retraite Québec granted the applicant a disability pension of more than \$700 a month, plus a retroactive amount of approximately \$31,000.

SOCIÉTÉ D'HABITATION DU QUÉBEC

The Société d'habitation du Québec's intervention with housing cooperatives and non-profit housing agencies

Recent legislative amendments have broadened the power of the Société d'habitation du Québec (SHQ) to intervene with the housing agencies it funds. Under the *Act respecting the Société d'habitation du Québec*, there are new situations in which the Minister of Municipal Affairs and Housing, with the SHQ's assistance, may temporarily suspend the powers of the directors of a housing agency and appoint provisional administrators. For example, this may happen if the directors or other officers of the agency have intimidated, harassed or mistreated any occupant. The Québec Ombudsman has seen that the SHQ remains inactive in situations when there were problems it could have addressed.



INTERVENE IMMEDIATELY IN CASES OF ALLEGED INTIMIDATION, HARASSMENT OR MISTREATMENT

The Québec Ombudsman received complaints from the occupants of a housing cooperative about abuses by its director and manager. The complaints concerned harassment and bullying of the occupants by the director, as well as about mismanagement.

The Québec Ombudsman noted that the SHQ had already been contacted by three of these people. However, SHQ had not investigated all the problems reported. Their allegations were sufficiently serious and substantiated to suggest irregularities within the cooperative:

- The way of attributing apartments did not comply with the applicable rules;
- Governance problems;
- Exclusions or suspensions of members of the cooperative without just cause.

Given the events, the Québec Ombudsman recommended that the SHQ conduct an investigation concerning the problems reported by the occupants and that it account for them to the Ombudsman. At first the SHQ refused on the pretext that it had no investigative powers, that bullying and harassment are difficult to prove, and that it had already looked into the matter. Instead, it had proposed mediation for the parties concerned, arguing that there was a personality conflict between an occupant and the board of directors of the cooperative. However, the Québec Ombudsman had received complaints from nine people, which suggested that the problem was more extensive.

Continuing to intervene, the Québec Ombudsman made the point that in such cases, the SHQ held back when, in fact, it was legally authorized to act. In the end, the SHQ agreed to study the complaints which the Québec Ombudsman had received in order to take the necessary steps if the alleged bullying and harassment proved to be founded.



RECOMMENDATION BY THE QUÉBEC OMBUDSMAN

Given the preceding, the Québec Ombudsman recommends that the Société d'habitation du Québec:

- Establish a standardized and clear mechanism or procedure for examining complaints concerning the cases specified in section 85.2 of the *Act respecting the Société d'habitation du Québec* regarding intimidation, harassment and mistreatment;
- Appoint a respondent tasked to handle these complaints (management consultant, member of the complaints bureau, or an auditor);
- Produce a guide for staff defining the notions of intimidation, mistreatment and harassment as well as explaining the scope and limits of the Minister's powers in the cases specified in section 85.2 of the *Act respecting the Société d'habitation du Québec*;

- Distribute the information about the complaint examination procedure to the directors and managers of housing agencies and to the public;
- No later than December 31, 2021, send the Québec Ombudsman a plan for follow-up to the recommendations.

Reply by the Société d'habitation du Québec:

[Translation]

"The Société d'habitation du Québec has noted the findings by the Québec Ombudsman and particular attention will be paid to its recommendations. The Société pledges to tailor its interventions to your recommendations and ensure the required follow-up and communications, all of which will be indicated in a work plan that will be sent to you."

Financial assistance program accessibility for the target population / IMPACT OF COVID-19

When the Government of Québec declared a state of emergency in March 2020, it quickly put several programs in place to deal with the major effects of the virus, as well as the consequences of shielding measures such as confinement and the halt to entire sectors of the economy. However, one government program had shortcomings that prevented the target population from accessing it.



BE MORE REALISTIC ABOUT CONSTRUCTION PROJECT SCHEDULES

On April 29, 2020, the Minister of Municipal Affairs and Housing announced a new relief measure for temporary accommodation to support households whose plans to move into their main residence (as owners or tenants) were delayed due to the COVID-19 pandemic. This was the fifth component of an emergency relief program established in 2005 for households without a home and municipalities with a shortage of rental units (PURG V5).

One of the program's eligibility requirements was that construction for the property or apartment had to have begun before March 25, 2020, for delivery between April 1 and August 31, 2020, inclusively.

In the Québec Ombudsman's opinion, the requirement regarding the date on which construction began was too

restrictive and excluded many of the people for whom the program was intended. Furthermore, according to the information sent to the Québec Ombudsman, as at July 7, 23 applications had been refused because of the start of construction date, even though as at July 20, less than 1% of the total budget (\$50 million) had been awarded under PURG V5.

After the Québec Ombudsman intervened, the requirement concerning the start date for construction (before March 25, 2020) was changed to that of having a lease or contract signed before that date.

Because 73 applications had been rejected as at September 21, 2020, due to the construction date requirement, the SHQ contacted the people concerned in order to review their files based on the new guidelines.

The housing crisis that has raged in Québec in recent years was exacerbated by the pandemic, making signature of the long-awaited Canada-Quebec Housing Agreement urgent. In October 2020, the agreement was jointly signed by the SHQ and the Canada Mortgage and Housing Corporation. One of

the components of the agreement concerns updating of the Shelter Allowance program. The Québec Ombudsman made recommendations to ensure that the program is accessible for the intended recipients.

Updating the Shelter Allowance Program's eligibility requirements

The Shelter Allowance Program provides financial assistance to members of low-income households who spend too much of their budget on rent. The program, which dates back to 1997, has undergone very few changes since then:

- The application form has to be requested by phone;
- The amounts awarded have barely been indexed. The maximum amount has been \$80 a month for the past 23 years. The maximum calculable income has gone from \$16,480 to \$22,000 (it should be nearly \$25,000 based on cost inflation indexes).

Moreover, retroactive financial assistance is not possible, even if all eligibility requirements were met before the application was made.

Considering the preceding, the Québec Ombudsman recommended that:

- Access to the Shelter Allowance Program be simplified, notably by making the application form available in digital form and on paper, without having to request it by phone;
- The Shelter Allowance application form be enclosed with social assistance application forms and tax returns so that more people are reached;

- Shelter Allowances be retroactive for up to four years or until the date of eligibility for the program;
- The program provide for automatic annual indexation of the allowance based on the province's consumer price index, applied to program eligibility thresholds and the allowance amount;
- The Shelter Allowance Program harmonize its eligibility requirements with those of social assistance. This would allow the same exclusions to be applied in calculating income and assets (such as class action settlement amounts or government compensation) while adjusting them as needed;
- The possibility be examined of integrating Shelter Allowance Program amounts into an existing program that already contains a housing component, such as the solidarity tax credit.

The SHQ authorities were receptive to the Québec Ombudsman's recommendations and pledged to take them into account in drafting the new program. However, the program is still not in place and no date for implementation has been set so far.

SOCIÉTÉ DE L'ASSURANCE AUTOMOBILE DU QUÉBEC

The formalities when registering a name change made abroad

People born outside Québec who had changed their name abroad approached the Québec Ombudsman because when they wanted to have their new name registered with the Société de l'assurance automobile du Québec (SAAQ), the agency asked them for Directeur de l'état civil (DEC) documents which they were unable to provide.

The SAAQ agents, obeying the directive, asked them to provide a semi-authentic birth certificate (a certificate issued to someone born outside Québec) and a letter confirming their name change.

In most cases, DEC can provide these documents. However, sometimes certain situations do not figure in the applicable directive, for example, when a judgement concerning a name

change made abroad was homologated by a Québec tribunal. The DEC enters the judgment in the register of civil status and issues the person an authentic birth certificate. Since the certificate confirms the validity of the name change, no explanatory letter is produced.

At the Québec Ombudsman's request, DEC designated a person whom the SAAQ can contact when someone is unable to provide required documents.

The SAAQ informed its staff that it must cross-check with DEC, notably, to validate the information concerning authentic certificates before refusing a citizen's request. It also improved its directive in that regard.

Intervening with both agencies, the Québec Ombudsman made it easier for a practical solution to be introduced which simplifies an administrative procedure.



PREVENTING INTERACTION BETWEEN TWO AGENCIES FROM CREATING AN IMPASSE FOR A CITIZEN

A Québec citizen wanted his name changed, so he applied to the government in his native country. The name change was granted and he was sent the judgment. The man forwarded the judgment homologated by a Québec tribunal to DEC, which entered it in the register of civil status and issued a birth certificate under the new name.

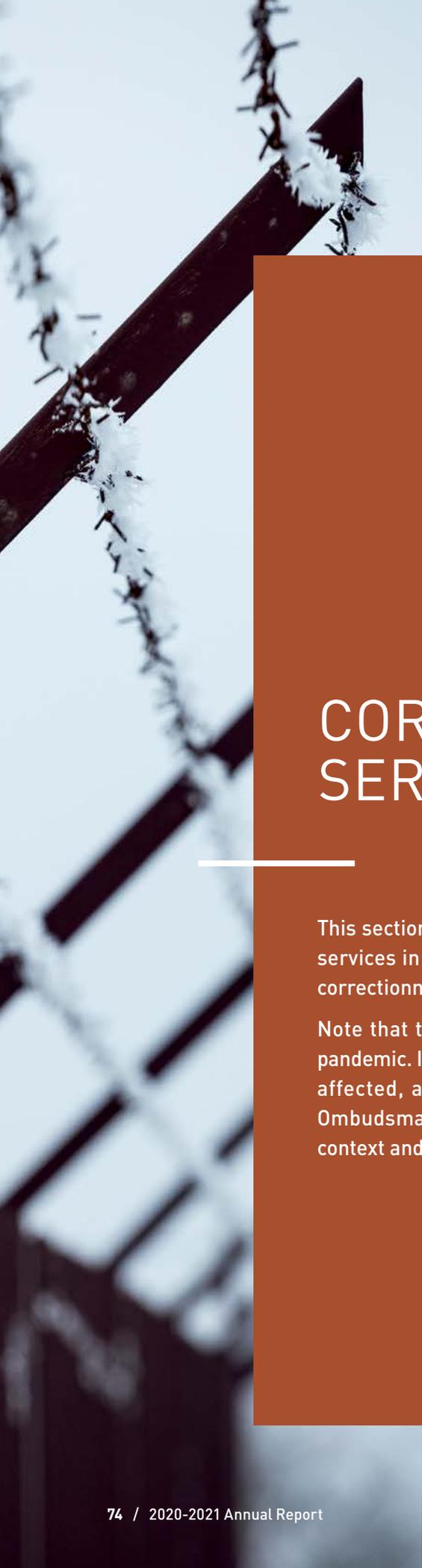
Then the man went to the SAAQ to have his file changed to reflect his new identity. He presented his most recent birth certificate and a French translation of the judgment issued by his native country. The SAAQ denied his request. In addition

to the two official documents that he had already provided, it required an explanatory letter from DEC, which informed the citizen that it did not have to provide a letter because it had already issued an authentic birth certificate.

The Québec Ombudsman intervened with the SAAQ to argue that the documents submitted by the citizen were sufficient and that the imposed requirement put the citizen at an impasse. In the end, the SAAQ changed the name in the citizen's file.

CORRECTIONAL SERVICES





CORRECTIONAL SERVICES

This section outlines the Québec Ombudsman's main findings regarding correctional services in the correctional facilities for which the Direction générale des services correctionnels of the Ministère de la Sécurité publique is responsible.

Note that this end-of-year also coincides with the first full year of the COVID-19 pandemic. It goes without saying that the daily operations of correctional services were affected, as were detainees' priorities during this difficult period. The Québec Ombudsman's findings in its 2020-2021 Annual Report must therefore be taken in context and understood in light of this exceptional situation.

The Québec Ombudsman has jurisdiction concerning provincial correctional facilities that detain people in custody during trial and for offenders sentenced to serve fewer than two years. It may also intervene regarding courthouse holding areas as well as the supervision of sentences served within the community. The Québec Ombudsman acts further to complaints or on its own initiative. It also visits correctional facilities.

The Commission québécoise des libérations conditionnelles is another of the agencies within the Québec Ombudsman's jurisdiction.

In 2020-2021, the Québec Ombudsman intervened regarding the Commission québécoise des libérations conditionnelles, the Ministère de la Sécurité publique and the 18 correctional facilities for which the Department is responsible.

1 CLOSED REQUESTS FOR ASSISTANCE AND COMPLAINTS

Trends in closed requests for assistance and complaints

	2017-2018	2018-2019	2019-2020	2020-2021
Requests for assistance	113	194	180	242
Substantiated complaints	462	545	433	287
Mediation	0	0	0	1
Unsubstantiated complaints	763	782	574	480
Could not take a definitive position	66	57	64	51
Referred complaints	2,147	2,454	2,128	2,027
Suspended complaints	1,432	1,612	1,675	1,532
TOTAL	4,983	5,644	5,054	4,620
Difference with the preceding year	-	+13.3%	-10.5%	-8.6%

Explanatory notes

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

Requests for assistance do not lead to investigations. They may, for example, concern requests for information about the complaint examination procedure, detainee rights or a correctional facility's obligations when a detainee is released.

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

In certain situations, especially in the absence of proof or when faced with two contradictory versions, the Québec Ombudsman **cannot take a definitive position**.

There are different investigative outcomes. Some investigations may not be completed because the Québec Ombudsman refers the person to another resource. The complaint is then considered as being **referred**. It may also be that a complaint is **suspended**, notably because the citizen does not respond or withdraws the complaint, or because the situation is resolved on its own during the Québec Ombudsman's investigation.

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

If the complaint proves substantiated, the Québec Ombudsman asks for corrective measures and monitors their implementation. A file is closed only after implementation has been monitored, when the Québec Ombudsman is sure that the corrective measures were taken.

2 SUBSTANTIATED COMPLAINTS

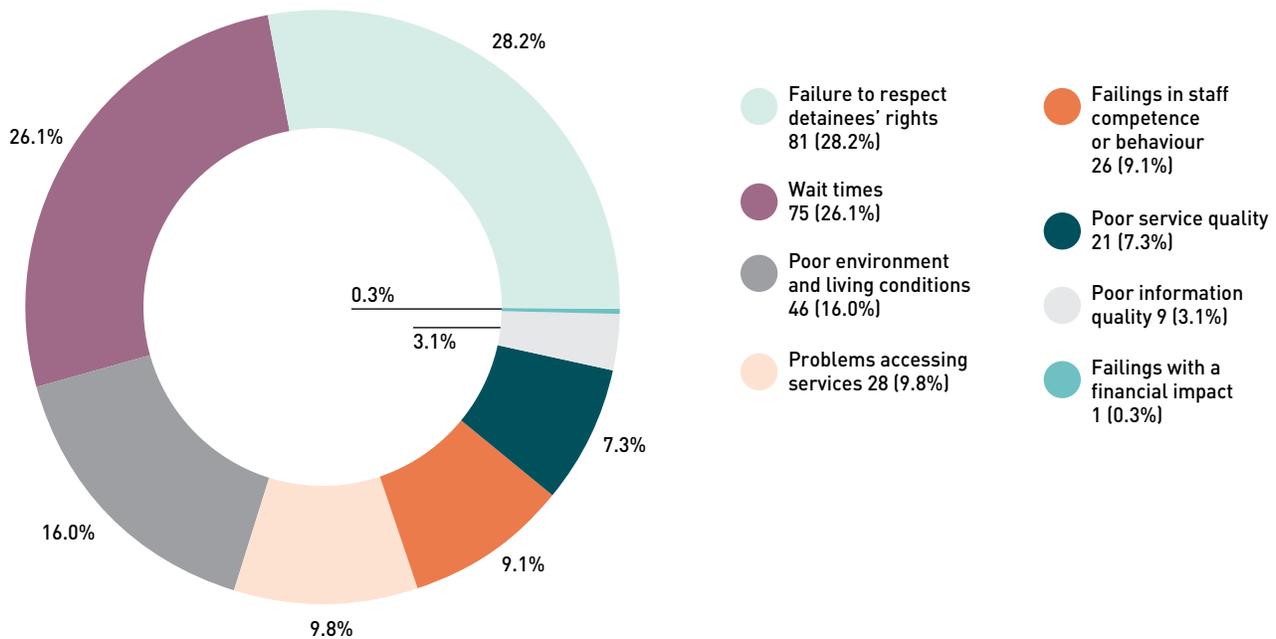
The proportion of substantiated complaints is established as follows: Number of substantiated complaints/Number of substantiated and unsubstantiated complaints. It decreased by 5.6 percentage points compared to last year, bringing it to 37.4% in 2020-2021.

The number of closed requests for assistance and complaints decreased by 8.6% compared to last year and by 11.6% compared to the average for the last three years.

Proportion of substantiated complaints

2017-2018	2018-2019	2019-2020	2020-2021
37.7%	41.1%	43.0%	37.4%

Portrait of substantiated complaints



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

Shortcomings in respecting detainees' rights, wait times and the environment and living conditions represented 70.4% of substantiated complaints.

Failure to respect detainees' rights occurred in the complaint examination procedure; application of rules or procedures established by a law or a regulation or an order-in-council; discipline; the use of force, as well as the right to general healthcare. These subjects represented 62.9% of substantiated complaints about the failure to respect detainees' rights.

Failings regarding wait times occurred regarding delays in obtaining personal belongings, compensation for the loss of personal belongings, or tobacco substitutes. The complaint examination procedure was also an area in which shortcomings involving lengthy wait times occurred. These subjects represented 56.0% of substantiated complaints about wait times.

Substantiated complaints about failings regarding the environment and living conditions concerned housing conditions, hygiene and classification. These subjects represented 50.0% of substantiated complaints in this category of failings.

3 MONITORING OF CORRECTIVE MEASURES

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

Accepted case-specific measures

2017-2018	2018-2019	2019-2020	2020-2021	2020-2021	
				ACCEPTED	REFUSED
100.0%	100.0%	98.4%	97.9%	46	1

Accepted measures with a collective impact

2017-2018	2018-2019	2019-2020	2020-2021	2020-2021	
				ACCEPTED	REFUSED
98.8%	98.6%	100.0%	100.0%	41	0

4 CLOSED REQUESTS BY GOVERNMENT DEPARTMENT OR AGENCY, BY PROCESSING OUTCOME²

DEPARTMENT AND AGENCIE	REQUESTS RECEIVED IN 2020-2021	CLOSED REQUESTS IN 2020-2021							TOTAL
		REQUESTS FOR ASSISTANCE	COMPLAINTS					SUSPENDED	
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED		
Commission québécoise des libérations conditionnelles	28	14	2	2	0	0	6	4	28
Sécurité publique – Correctional services	4,510	228	285	478	1	51	2,021	1,528	4,592
TOTAL	4,538	242	287	480	1	51	2,027	1,532	4,620

2/ The number of requests processed in one year (and thus the number of closed requests) does not necessarily match the number of requests received because at the beginning of each year, investigations concerning requests received previously are still being processed.

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE

DIRECTION GÉNÉRALE DES SERVICES CORRECTIONNELS

The effects of the quarantine and of confinement measures on living conditions / IMPACT OF COVID-19

The health measures implemented in correctional facilities due to COVID-19 were developed by the Ministère de la Sécurité publique after consulting the Ministère de la Santé et des Services sociaux's public health directorate (Direction générale de la santé publique). In correctional facilities where outbreaks occurred, the directorate acted as an adviser for operational decisions and health measures tailored to that highly specific environment.

As a result, regular living conditions were severely affected. Visits, activities, programs and classes were either cancelled or suspended. Medical appointments outside the walls of the correctional facilities were reduced substantially, or even limited to emergencies.

For the detainees admitted at the beginning of the pandemic, one of the measures applied to limit the spread of COVID-19 was to quarantine them. This measure applied to every new detainee, whether from the community at large, from another correctional facility or from a hospital.

The people who were put in quarantine had to remain in their cell 24 hours a day for at least 14 days, in designated sections, before joining the general detainee population and having a more normal routine. This meant that the right to at least one hour of yardtime per day, as well as to a shower at least twice a week, as prescribed in the *Regulation under the Act respecting the Québec correctional system*, was suspended. Phone conversations, visits, and access to living areas were also suspended for detainees in quarantine. The lack of contact with family caused great concern for detainees and families alike. Later, these same measures were applied in sections where outbreaks occurred. Detainees' only human contact was limited exchanges with correctional and health-care staff. Given all the uncertainty caused by COVID-19, meaningful contact barely existed. The time which detainees in cold zones were allowed to spend outside their cells was reduced in order to contain the outbreaks.

The Québec Ombudsman received numerous complaints about detention conditions during the pandemic. Among other things, there was a 70% increase in the number of complaints about detention conditions and hygiene. These complaints were mainly from detainees who had completed their quarantine. Other complaints came from the families of detainees because they had no contact with them and correctional staff were not providing any information.

With the current health crisis as a backdrop, the World Health Organization recommended screening newly admitted detainees rather than putting them in quarantine for 14 days because "unnecessary medical isolation has negative impacts on mental health."³

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment indicates that "in cases of isolation or placement in quarantine of a detained person who is infected or is suspected of being infected by the SARS-CoV-2 virus, the person concerned should be provided with meaningful human contact every day."⁴

The Québec Ombudsman intervened with the Ministère de la Sécurité publique, pointing out that it was extremely concerned about the restrictions on detainees and the harmful effects of isolation on their mental health.

At the same time, the Québec Ombudsman is fully aware of:

- Correctional services' obligation to protect the health of detainees and staff;
- The difficulty of applying the measures recommended by the health directorate (for example, individual yardtime);
- The inherent limits of life in a correctional facility (for example, sufficient staff to properly supervise detainees).

However, despite the extent of these challenges, the Department must uphold detainees' basic and residual rights.

This year, the Québec Ombudsman held weekly meetings with the correctional directorate (Direction générale des services correctionnels) to encourage, for example, the use of screening tests. It also visited two correctional facilities during the first wave and witnessed the psychological distress the detainees were experiencing due to their isolation and the uncertainty created by the pandemic. It also saw a high level of tension within facilities. The fact is that the crisis exacerbated detainees' usual feelings of loss of control of their health, life and themselves.

To mitigate these adverse effects, the Department took several initiatives, for example:

- A phone hotline on COVID-19;
- Newspapers with activity pages and information on management of the health crisis;
- Greater use of technology for legal proceedings;
- Temporary absences to reduce the detainee population;
- Distribution of calling cards;
- Virtual visits with family.

3 / World Health Organization (WHO): <https://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/focus-areas/prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention/faq-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention>.

4 / Statement of principles relating to treatment of persons deprived of their liberty in the context of the coronavirus (COVID-19), European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT): <https://www.coe.int/en/web/human-rights-rule-of-law/-/covid-19-council-of-europe-anti-torture-committee-issues-statement-of-principles-relating-to-the-treatment-of-persons-deprived-of-their-liberty->

As time went on, pandemic-related restrictions were progressively relaxed or partially lifted. Detainees put in quarantine or medical isolation had access to cell phones, yardtime, showers and virtual visits.

At the time this report was being written, the 14-day quarantine was still mandatory for newly admitted detainees, whether symptomatic or not. Access to showers and outdoor space remains problematic, mainly because detainees must travel through common areas, which is not allowed.



DESPITE COVID-19, MAINTAIN ACCEPTABLE DETENTION CONDITIONS

A person contacted the Québec Ombudsman to complain about her father's quarantine conditions in a correctional facility.

The woman reported that her father was placed in isolation for 14 days in a 2 × 3 metre cell as part of the measures to stop the spread of COVID-19.

During this period, he could not shower even though there was a bathroom at the end of the hallway near his cell. He did

not have a change of clothes for two weeks. He was not allowed out of his cell at all, not even to stretch his legs. His meals were served to him on a tray that was slipped through an opening in his cell door.

This snapshot of the situation revealed inhuman detention conditions, even for a time of pandemic. This is only one of many similar situations which the Québec Ombudsman brought to the attention of Department authorities.

Newly admitted detainees have trouble getting their personal belongings / IMPACT OF COVID-19

As stated earlier, since the onset of the health crisis (March 2020), anyone who begins a period of incarceration or who is transferred into another correctional facility must be isolated for 14 days. This means that they do not have immediate access to their personal belongings, including clothing that could be contaminated with COVID-19. Ordinarily, detainees are given back their personal belongings no more than 48 hours after they are admitted, which enables staff to carry out the required searches.

To avoid the risk of contagion, the Department established a procedure whereby all the personal belongings of newly admitted detainees are put aside for nine days, as well as anything brought in by visitors. The required 48 hours set aside for searches are added to this. The result is that, generally, detainees' personal belongings are returned to them at the earliest 11 days after they are admitted.

The Department indicated that during this period, detainees were given a change of clothing (jogging suit). However, in certain facilities, some detainees wore their own clothing (the clothing they had on when they arrived) for more than 10 days. These same detainees could not have a shower and therefore had to give themselves sponge baths. Those who wanted to wash the only clothing they had, had to do so by hand and wait until it dried before being able to get dressed.

The Québec Ombudsman intervened to put an end this situation. It contacted the correctional services directorate, which made sure that all correctional facilities gave every detainee placed in isolation due to COVID-19 an extra set of clothes.

Knowledge about the risk of contamination has advanced since then. In July 2020, the wait time for getting personal belongings back was reduced to 72 hours (in principle), and this is still the case. However, the Québec Ombudsman is still receiving complaints from detainees who say that they only got a change of clothes after several days in isolation. The Québec Ombudsman is following this situation attentively.



ENSURE THAT CHANGES OF CLOTHING ARE DISTRIBUTED QUICKLY

When the pandemic began, a detainee was placed in isolation as soon as he arrived. He was then confined to his cell 24/7 without a change of clothing and without being able to have a shower.

The managers of the facility corroborated that in such cases, detainees did not have a change of clothes because there had been a shortage when COVID-19 measures were introduced.

Ten days after the citizen was admitted, the facility finally received clothing and made sure it was distributed to every person isolated because of the virus.

After the Québec Ombudsman intervened with Department authorities, they contacted all the facilities so that changes of clothing were available and distributed to those concerned.

Reducing detainee populations in a time of pandemic / IMPACT OF COVID-19

While penal environments must grapple with the COVID-19 pandemic, one of the main risk factors for the spread of the virus is overcrowding. The international consensus is that measures to reduce detention populations are effective means of prevention. Since the beginning of the health crisis, the Department has used three main strategies for achieving this goal.

First, people serving intermittent sentences, commonly called “weekend sentences”, were allowed to have their sentence suspended provided they respected certain conditions. According to order-in-council 222-2020 dated March 20, 2020, this solution will remain in force as long as the health crisis exists.

Furthermore, correctional facility administrators normally have the power to grant temporary absences to detainees under certain conditions. This measure was used by some directorates whereas others decided not to.

The third measure, which is administrative, was the one used the most frequently by detainees, their families and advocacy groups alike. The measure stems directly from a decision by a minister, in this case, the Minister of Health and Social Services, by means of ministerial order 2020-033 dated May 7, 2020 (two months after the pandemic began). The document authorizes the release of detainees based on strict requirements, mirroring the position of the Institut national de santé publique du Québec’s position on the subject. It proposes considering the release of detainees who are vulnerable to COVID-19 in order to reduce the occupancy rate of correctional facilities. The following groups of detainees are targeted:

- People over age 65;
- People who, if they were to remain incarcerated, would be at particular risk for COVID-19 (the risk must be confirmed by a physician);
- Pregnant women;
- Detainees who would probably be released within 30 days or less.

The other requirements are that they:

- Must have a stable address;
- Show that they are likely to obey societal rules;
- Have not committed disciplinary violations related to physical violence or the use of offensive language towards the staff during their incarceration.

If they meet these conditions, they must pledge to:

- Contact their probation officer within 24 hours of their release;
- Comply with the instructions and monitoring plan produced by the probation officer;
- Remain at home except for food shopping, medical reasons or other reasons authorized by the probation officer;
- Return to the correctional facility within 24 hours of any government notice indicating that the health crisis status no longer exists;
- Return to the correctional facility if instructed to do so by its administrators.

The following are excluded even if they meet all the preceding requirements:

- People awaiting trial;
- People awaiting transfer to a penitentiary (a federal correctional facility);
- People subject to an immigration measure, especially a decision about their migratory status;
- People convicted of domestic or family violence;
- Sexual delinquents;
- People convicted of child or elder abuse, or any other violent crime;
- Members of crime groups or security threat groups such as street gangs.

After the May 7, 2020 ministerial decision was announced, it took several days before the first lists of detainees eligible for release were drawn up. Granted, each case had to be analyzed to ensure that all requirements were met because the computer system used for managing detainees could not extract the required information.

Between May 11, 2020, and April 1, 2021, more than 360 people were released in accordance with the provisions of order-in-council 2020-033. This represented approximately 10% of the detainee population, which ranges from 3,400 to 3,600, depending on the period.

Be that as it may, Department strategies for decreasing the detainee population in light of COVID-19 were slow to be applied and did little to curb the spread of the virus in correctional facilities. The decline of court activity actually did more to lower the number of detainees in provincial correctional facilities and, by extension, limit the spread of the virus.

Management of detainees' yardtime / IMPACT OF COVID-19

As indicated earlier, because of special COVID-19 measures, as soon as detainees begin their incarceration or are transferred from another facility, they are put in isolation for 14 days. During this period, they are not allowed yardtime, even though the *Regulation under the Act respecting the Québec correctional system* and international law⁵ state that detainees have the right to at least one hour outdoors every day.

The Québec Ombudsman is aware that it is difficult for correctional services to comply with this obligation during a health emergency. Even so, what is at stake is the proper balance between individual rights and the measures required for limiting contagion. It took several months (late July 2020) after the start of the pandemic before the Department issued new directives to correctional facilities concerning the resumption of activities. These new directives specified that, if possible, all detainees in the admission and transition sections have yardtime at least once a day for at least an hour. In the ensuing weeks, the Québec Ombudsman noted the gradual resumption of yardtime in most of the sections concerned. However, at some facilities, daily yardtime frequency was not always respected due to a shortage of correctional officers to supervise the detainees outdoors.

In the fall of 2020, the Ministère de la Sécurité publique produced a new guide in collaboration with the Ministère de la Santé et des Services sociaux specifying that detainees in the admission and transition sections, as well as those in cold, warm and hot zones, had to, without exception, have at least one hour outdoors every day. However, in January 2021, several correctional facilities were still unable to comply. Since the public health directorate ordered that the outings be individual because of the risk of contagion, the main reasons cited by the facilities for this inability were staff shortages and lack of available time slots.

Problems regarding yardtime are nothing new. However, they intensified with the second wave of the pandemic that hit Québec in the fall of 2020. This led to an increase in the number of positive cases among correctional officers and detainees. During this second wave, when a given correctional facility was grappling with a COVID-19 outbreak, the regional health directorate concerned sent the facility special directives for the temporary closure of yards.

In addition to continued intervention with certain facilities on this front, the Québec Ombudsman urges the Department to take the measures (e.g. enough time slots) needed so that detainees have the daily hour of outdoor time to which they have a right.

5/ Standard Minimum Rules for the Treatment of Prisoners adopted in Geneva in 1955 by the first United Nations Congress on Crime Prevention and Criminal Justice. Subsequently, it was adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders held at Geneva in 1955 and approved by Economic and Social Council resolutions 663 C(XXIV) of 31 July 1957 and 2076(LXII) of 13 May 1977. The Rules indicate that "every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits."



RESPECT THE RIGHT TO OUTDOOR TIME

In November 2020, the Québec Ombudsman learned that detainees in the admission and transition sections of a correctional facility could only go outdoors for 30 minutes a week, despite the Department's directive sent to the facilities the summer before (July 2020) concerning the resumption of activities in the context of COVID-19. Moreover, detainees in the warm zone (suspected but unconfirmed cases of COVID-19) were not allowed outside because there was no adjoining yard.

After several interventions by the Québec Ombudsman, the facility was supposed to rectify the situation as of

December 21, 2020, so that detainees' right to one hour of outdoor time per day was upheld. However, because of staff shortages, only a second weekly 30-minute period could be added in January, while the facility continued to seek a solution with the Department's help. Finally, since February, schedules and the physical layout have been rearranged so that each detainee from the intake sections has three to four one-hour outdoor periods per week. The Québec Ombudsman will remain attentive to the situation.

Detainees distressed by the staff's lack of compliance with health measures / IMPACT OF COVID-19

Since March 2020, the Québec Ombudsman has noticed an increase (more than 70%) in complaints about the behaviour of correctional facility staff. The Québec Ombudsman is aware of the challenges posed by the health crisis in terms of relations between detainees and correctional employees.

Detainees' living conditions and mental health have been impacted significantly by protective measures such as quarantines, suspension of some training courses, a ban on phone access and showers, as well as the cessation of visits.

In the first months of the pandemic, the Québec Ombudsman received numerous reports concerning the lack of compliance with health measures by correctional employees, especially physical distancing and wearing of gloves and masks. Detainees were afraid that the virus would enter and spread in their living quarters because employees moved about these areas daily, increasing the risk of the virus spreading.

Since the start of the pandemic (March 2020), the Québec Ombudsman has paid particular attention to detainees and their families whose requests indicated that they were experiencing genuine psychological distress and worry about the context and the measures. At times, it intervened to ensure that correctional facility employees obeyed the health measures.



RESPECT DETAINEES' FEARS ABOUT SPREAD OF THE VIRUS

During an investigation about a correctional facility, the Québec Ombudsman saw a video showing that not all employees followed mask-wearing procedure. Some of them (correctional officers and the head of a unit) were not wearing the mask so that it covered their mouth, chin and nose completely.

Before this incident, the facility manager had told the Québec Ombudsman that the staff had been reminded of this several times. The Québec Ombudsman ensured that there would be a briefing on mask-wearing procedures and the necessary checks would be carried out.

Suspension of visits to detainees during the pandemic / IMPACT OF COVID-19

As of March 14, 2020, all visits to detainees were suspended, apart from visits by attorneys. The Department tried to compensate, at least in part, for the inconveniences caused by this exceptional measure. An extra \$30, issued every 14 days, was given to each detainee to make it easier for them to contact family by phone. They could also spend the extra amount on purchases from the canteen. Note that in theory, the detainees who were quarantined for 14 days because of COVID-19, without being allowed out of their cell, had access to a cell or cordless phone which they could use under an employee's supervision.

In mid-June, the extra amount was reduced to \$15 and could only be used for phone calls. In Canada, long-distance calls cost 40 cents a minute, in addition to a basic rate per call of \$1 plus tax.⁶ For local calls, only the basic rate applies. So, the \$15 can buy approximately 10 local calls every two weeks. However, because it often happens that detainees are incarcerated in a facility located outside their home region, many of them must make long-distance calls to keep in touch with their family. The extra \$15 every 14 days buys them around 35 minutes of long-distance time to compensate for normal visiting time of one hour per week.

On July 23, 2020, the Department produced a guide about the resumption of activities in correctional facilities in a time of pandemic. The guide indicates that these facilities were

designated as high-risk environments by the Institut national de santé publique du Québec in terms of coronavirus transmission. As a result, the suspension of in-person visits was maintained and virtual visits were encouraged. The guide specifies that detainees would be able to have virtual visits at least once a week using mobile devices, with each visit lasting at least 15 minutes.

In October 2020, the Department reiterated this policy in a document outlining the incremental series of prevention and protection measures in correctional facilities and professional correctional services in Québec. However, in certain zones, especially ones where outbreaks had occurred, virtual visits would not be possible. In such cases, detainees would only be able to make phone calls in their cells, at least once a week, with the calls lasting 10 to 15 minutes per call, depending on correctional officers' availability.

These various limitations regarding communications with the outside world, albeit with the intent of preventing the spread of COVID-19, have a considerable effect on detainees' relationships with their families. These are the people who will be detainees' social network when the detainees re-enter society. If these ties are ruptured during incarceration, it might compromise their re-entry into the community at large. Furthermore, social contacts have mental health benefits for detainees. As recommended by the Institut national de santé publique du Québec, it is crucial that alternative means of communication be introduced.

6 / Based on the rates charged by Débitel, the phone communications provider to correctional facilities.

In light of these issues, the Québec Ombudsman kept a close eye on the situation and discovered various problems, for example:

- Breach of confidentiality during phone calls between detainees and their lawyer;
- Lack of a provincial standard for a minimum amount of phone time for detainees isolated due to COVID-19;
- Repeated cancellation of virtual visits due to staff shortages.

The Québec Ombudsman intervened a number of times with certain facilities and corrections were made. However, problems persisted, so the Québec Ombudsman brought the situation to the Department's attention in the fall of 2020. After this intervention, the Department issued a reminder to the entire network about the importance of complying with the rules laid out in the document referred to earlier on the incremental series of prevention and protection measures. The Ombudsman continues to follow this situation because certain problems still exist, such as access to means of communication.



EXCLUDE CALLS MADE TO ATTORNEYS AND TO THE QUÉBEC OMBUDSMAN IN TALLYING THE CALLS ALLOWED

In November 2020, certain detainees in isolation due to COVID-19 had trouble getting a phone in order to contact their attorney or the Québec Ombudsman. These calls were counted among the three authorized calls per week.

After the Québec Ombudsman intervened, the facility manager was informed that the calls in question should not

have been included in the calls counted. Furthermore, it was agreed that the pamphlet given out to people in isolation because of COVID-19 would contain a passage explaining the special status for the calls made to attorneys and the Québec Ombudsman. This served as a reminder to the correctional employees.

Access to the complaint-examination procedure in penal environments

Detainees have access to an internal complaint-examination procedure designed to enable them to assert their rights if they feel that these rights have been violated. For example, they may file complaints concerning:

- Searches;
- Use of restraining devices that limit freedom of movement, such as handcuffs and legcuffs;
- Management of their sentence;
- Housing conditions;
- Staff behaviour;
- Punishment.

To resolve a complaint, correctional facilities usually rely on problem-solving. According to this line of reasoning, detainees must try to resolve the situation by first talking with the authorities concerned, for example, a correctional officer, before filing a formal complaint using the complaint procedure. However, if a detainee does not agree to this way of proceeding, or disagrees with the outcome, he or she must be given a complaint form. This is not always done.

In 2020-2021, the Ombudsman received roughly 270 complaints about the procedure and noted recurrent problems concerning:

- Access to the complaint form;
- Trouble getting the form to a correctional employee in order to begin the complaint-examination process;

- Lengthy delays, sometimes several days, before detainees receive a copy of the form (the Québec Ombudsman needs this copy in order to intervene effectively should the detainee be dissatisfied with how the complaint was handled by the facility);
- Failure to respect the two-day deadline for processing complaints.

The Québec Ombudsman had to intervene on several occasions with certain correctional facilities concerning access

to internal recourse because COVID-19 measures were compromising detainees' individual rights.

The Québec Ombudsman urges facilities and their staff to facilitate access to the complaint-examination procedure and to provide detainees with any support they may need in that respect. It bears remembering that the procedure stems from correctional services' desire to ensure the quality of the services delivered to remandees or offenders.



PROVIDE THE COMPLAINT FORM PROMPTLY

The Québec Ombudsman intervened with a correctional facility after receiving a complaint about correctional officers' repeated refusal to provide a detainee with a complaint form. At the Québec Ombudsman's request, managers met with detainees from different sections to gather statements about

this kind of problem. As a result, the managers reminded the correctional officers concerned of the importance of ensuring that the form be given to the detainees and remandees who request one.



RECOMMENDATION BY THE QUÉBEC OMBUDSMAN

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

- By December 31, 2021, issue a written reminder to all employees about how the complaint-examination procedure should be conducted, as specified in Instruction 21 I 04 concerning the processing of complaints from remandees or offenders, with a view to facilitating detainees' access to the procedure and providing any required support.

Reply by the Ministère de la Sécurité publique:

[Translation]

"[...] The MSP subscribes to the Québec Ombudsman's recommendation. No later than December 31, 2021, it will issue a reminder to its staff who work with offenders and people awaiting trial about how to apply the complaint handling system, with a view to facilitating access to it and reiterating the importance of providing support to these people as needed."

Healthcare in penal environments in a time of pandemic

In 2019 and 2020, the Ministère de la Sécurité publique published studies describing the profile of the detainee population. The studies showed that a sizable share of detainees have physical health problems (8.0%), mental health problems (10.3%) or is at risk for suicide (2.1%). Nearly one third take prescribed medication.

The World Health Organization has stated that detainees' health is more fragile than that of the population at large, because, among other things, their immune system may be weakened due to stress, poor nutrition or greater prevalence of various illnesses. This makes it all the more important that they receive healthcare equivalent to that of the general population for comparable needs.

In Québec, healthcare in provincial correctional facilities was the responsibility of the Ministère de la Sécurité publique for many years. The move to gradually transfer healthcare to the Ministère de la Santé et des Services sociaux has been underway since 2016. Today, the only infirmaries that remain to be transferred are those in Montréal (Bordeaux) and Québec City, a delay of particular concern to the Québec Ombudsman, especially during a health crisis. The pandemic has exacerbated problems in the health sections of both these facilities.

For example, there were service ruptures when one facility's nursing staff could not work because they had been in contact with someone who had contracted COVID-19. One of the results was that medication was not distributed or was distributed late.

These health services have been stretched to the limit for some time now. Unfilled positions were abolished pending the transfer of healthcare to the Ministère de la Santé et des Services sociaux. This meant that as soon as the pandemic began, the Montréal and Québec City facilities had to deal with a shortage of nursing staff. Even though the facilities wanted to hire new staff, the general lack of workers due to the health crisis took its toll. The facilities had to redouble their efforts to fill the positions.

COVID-19 also brought into focus flaws in the measures that health sections in these facilities took to contain outbreaks. The support of the integrated university health and social

services centres to which they report proved to be essential because they were able to provide the staff needed for:

- Delivering healthcare to the people infected with COVID-19;
- Monitoring symptomatic cases;
- Carrying out the required clinical follow-up;
- Producing various protocols and procedures;
- Providing correctional officers with the required training on how to wear and remove personal protective equipment safely;
- Demystify COVID-19 and allay fears among the detainees and Department staff.

In recent years, the Québec Ombudsman has insisted that it is urgent that the transfer of healthcare to the Ministère de la Santé et des Services sociaux be finalized. It has made this point particularly in its 2020-2021 Annual Report and as part of the consideration of Bill 61 – *Act to restart Québec's economy and to mitigate the consequences of the public health emergency declared on 13 March 2020 because of the COVID-19 pandemic*.

The Québec Ombudsman is keeping a close eye on the schedule proposed in the action plan which the Ministère de la Santé et des Services sociaux submitted to it. It expects that when the transfers are completed, the detainees will have healthcare equivalent to that of the general population for comparable needs.



COMPENSATE FOR THE SHORTAGE OF NURSING STAFF

A detainee contacted the Québec Ombudsman with a complaint about the distribution of medication being hampered because of staff shortages.

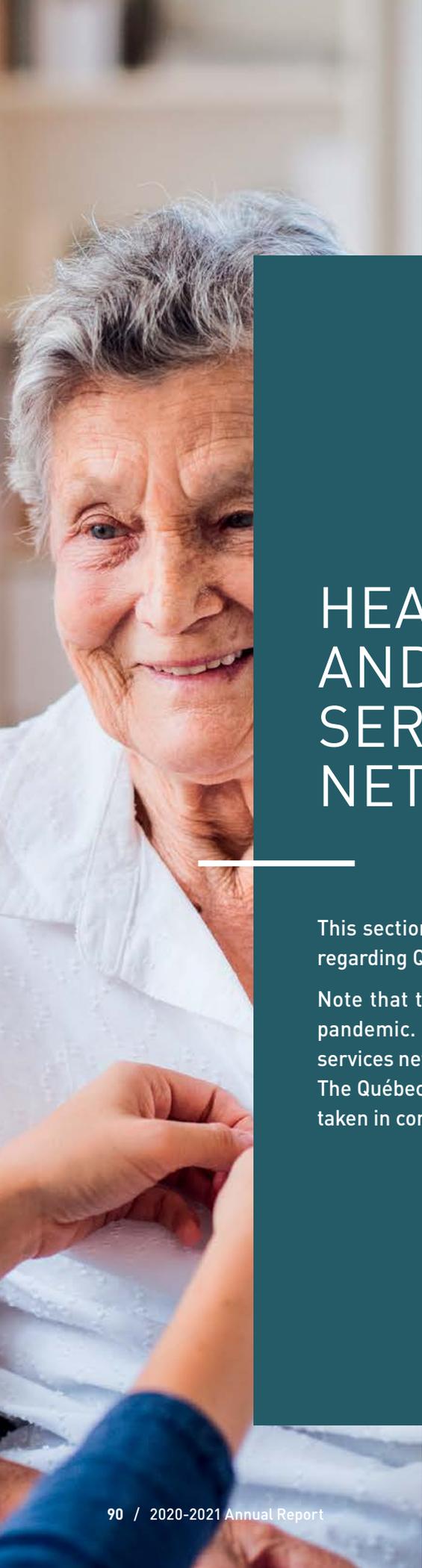
As a result, the Québec Ombudsman intervened with the facility and learned that the distribution of medication had been reorganized because of nursing staff shortages due to

COVID-19. Because of this, an order of priority had to be determined. Similarly, certain work shifts were not covered.

After the Québec Ombudsman intervened, the detainee received his medication and the facility confirmed that all healthcare would resume shortly.

HEALTH AND SOCIAL SERVICES NETWORK





HEALTH AND SOCIAL SERVICES NETWORK

This section reports on the Québec Ombudsman's main findings about the requests regarding Québec's health and social services network.

Note that this end-of-year also coincides with the first full year of the COVID-19 pandemic. It goes without saying that the daily operations of the health and social services network were affected, as were citizens' priorities during this difficult period. The Québec Ombudsman's findings in its 2020-2021 Annual Report must therefore be taken in context and understood in light of this exceptional situation.

Pursuant to the *Charter of Human Rights and Freedoms*, the *Civil Code of Québec* and the *Act respecting health services and social services*, users of the public health and social services network enjoy the following rights:

- The right to adequate services;
- The right to be treated with respect to their dignity and privacy;
- The right to the confidentiality of their medical record;
- The right to have access to complete, accurate and relevant information;
- The right to make a complaint.

The Québec Ombudsman’s mission consists mainly of ensuring that these rights are respected and of preventing harm to users by the institutions within the health and social services network.

In accordance with the complaint examination procedure, the Québec Ombudsman usually intervenes as a second level of recourse further to the conclusions issued by the institution’s service quality and complaints commissioner. If the person is dissatisfied with the response received, or if there

was no response within 45 days of filing the complaint, he or she may then contact the Québec Ombudsman, which may also intervene directly further to a report by a third party or on its own initiative.

The following figures provide an overview of citizens’ requests, complaints and reports, as well as the monitoring of the corrective measures recommended by the Québec Ombudsman in 2020-2021.

During this same period, the Québec Ombudsman intervened regarding:

- 34 of the 52⁷ health and social services network institutions;
- 22 of the 90 other network-affiliated institutions;
- 57 private seniors’ residences;
- 16 community organizations;
- 6 pre-hospital emergency services;
- 3 private or community residences for a vulnerable client population.

1 TRENDS IN CLOSED REQUESTS FOR ASSISTANCE, COMPLAINTS AND REPORTS

Trends in closed requests for assistance and complaints

	2017-2018	2018-2019	2019-2020	2020-2021
Requests for assistance	14	18	7	6
Substantiated complaints	465	478	600	468
Mediation	0	2	1	2
Unsubstantiated complaints	635	632	887	778
Could not take a definitive position	31	19	25	20
Referred complaints	85	93	118	188
Suspended complaints	193	279	277	263
TOTAL	1,423	1,521	1,915	1,725
Difference with the preceding year	-	+6.9%	+25.9%	-9.9%

7/ 51 network institutions listed on the Ministère de la Santé et des Services sociaux’s website (<https://m02.pub.msss.rtss.qc.ca/M02ListeEtab.asp#LienRegion17>) and Nunavik Regional Board of Health and Social Services.

Trends in closed requests for assistance and reports

	2017-2018	2018-2019	2019-2020	2020-2021
Requests for assistance	0	4	1	0
Substantiated reports	102	74	51	59
Mediation	24	26	24	13
Unsubstantiated reports	45	29	25	41
Could not take a definitive position	3	1	2	2
Referred reports	12	16	8	19
Suspended reports	99	75	115	142
TOTAL	285	225	226	276
Difference with the preceding year	-	-21.1%	+0.4%	+22.1%

Explanatory notes

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

Even though **requests for assistance** concern bodies subject to the Québec Ombudsman's jurisdiction, they do not lead to investigations. For example, they may be requests for explanations about possible redress or the procedure for obtaining a service.

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

In certain situations, especially in the absence of proof or when faced with two contradictory versions, the Québec Ombudsman **cannot take a definitive position**.

There are different investigative outcomes. Some investigations may not be completed because the facts gathered lead the Québec Ombudsman to refer the person to another resource. When this happens, the complaint or report is then considered as being **referred**. It may also be that a complaint or report is **suspended**, notably because the citizen does not respond or withdraws the complaint, or because the situation is resolved on its own during the investigation by the Québec

Ombudsman. Lastly, further to investigation, a complaint or report is deemed **substantiated** or **unsubstantiated**. In the case of a complaint, the citizen is then informed of the Québec Ombudsman's conclusions.

If the complaint or report proves substantiated, the Québec Ombudsman asks the body concerned to institute corrective measures and monitors their implementation. A file is closed only after implementation has been monitored, when the Québec Ombudsman is sure that the corrective measures were taken.

Detailed results

In 2020-2021, the total number of closed requests (complaints, reports and requests for assistance) concerning the health and social services network decreased by 6.5% compared to last year, but it increased by 7.3% compared to the average of the past three years. As for the number of complaints and requests for assistance, there was a 6.5% increase compared to the average of the past three years. Moreover, compared to last year, the number of reports and requests for assistance increased by 22.1% and 12.5% respectively compared to the average of the past three years.

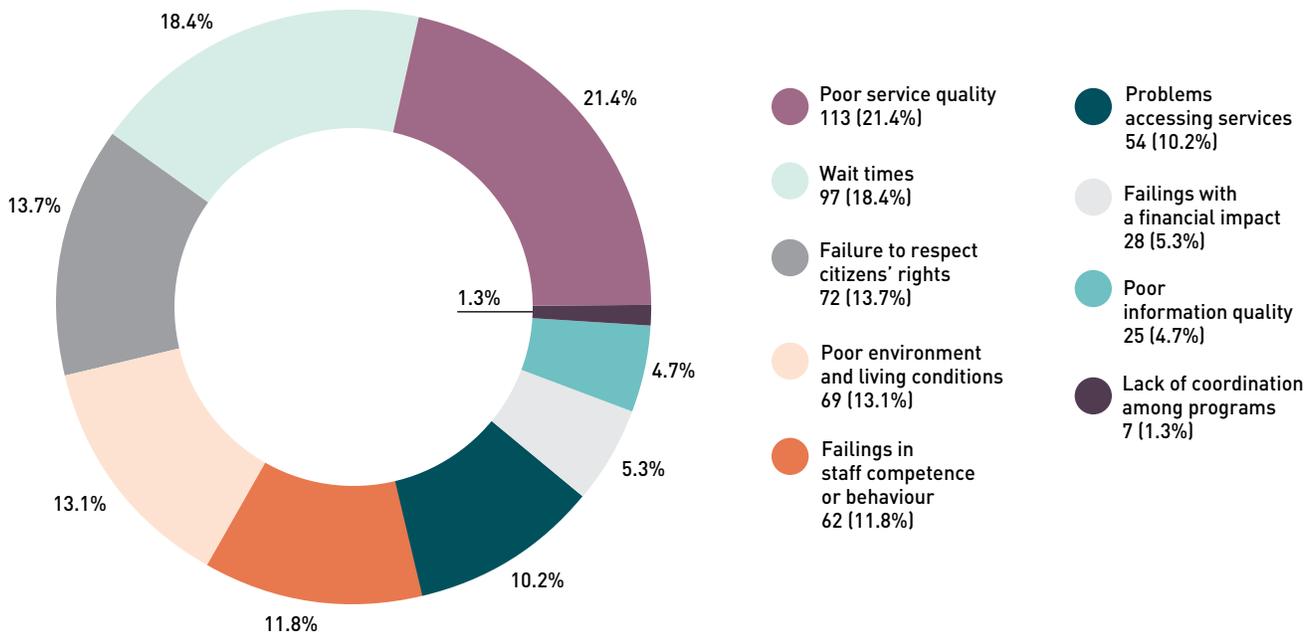
2 SUBSTANTIATED COMPLAINTS AND REPORTS

The proportion of substantiated complaints and reports is established as follows: Number of substantiated complaints and reports/Number of substantiated and unsubstantiated complaints and reports. In 2020-2021, the proportion of substantiated complaints and reports decreased by 2.5 percentage points, as illustrated in the table below.

Proportion of substantiated complaints and reports

2017-2018	2018-2019	2019-2020	2020-2021
45.5%	45.5%	41.7%	39.2%

Portrait of substantiated complaints and reports



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

Poor service quality (21.4%), wait times (18.4%), failure to respect citizens' rights (13.7%), poor environment and living conditions (13.1%) and failings in staff competence or behaviour (11.8%) represented 78.4% of the substantiated grounds for complaint and reports in 2020-2021.

Poor service quality represented 21.4% of substantiated grounds, which mainly concerned the quality of physical and psychosocial care, clinical procedures and protocols, use of restraints, isolation, as well as care and service organization.

This year, wait times represented 18.4% of substantiated grounds, which were mainly linked to the complaint-processing mechanism, obtaining an appointment or access to a service, wait times at the emergency room, transfers, as well as information requests.

Failure to respect citizens' rights represented 13.6% of substantiated grounds, which included lack of compliance with legal obligations, oversights and failure to act within a normal time frame, as well as failure to abide by the right of users to be informed about a health condition, a specific situation, and incident or an accident.

Poor environment and living conditions represented 13.1% of substantiated grounds and mainly concerned personal safety and the safety of premises, food services, equipment, material and living environment rules.

3

MONITORING OF CORRECTIVE MEASURES

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

Accepted case-specific measures

2017-2018	2018-2019	2019-2020	2020-2021	2020-2021	
				ACCEPTED	REFUSED
98.0%	97.8%	100.0%	100.0%	99	0

Accepted measures with a collective impact

2017-2018	2018-2019	2019-2020	2020-2021	2020-2021	
				ACCEPTED	REFUSED
97.0%	98.2%	97.2%	97.6%	316	7

4

CLOSED REQUESTS BASED ON THE MISSION PURSUED⁸

CATEGORY / MISSION	REQUESTS RECEIVED IN 2020-2021	CLOSED REQUESTS IN 2020-2021							TOTAL
		REQUESTS FOR ASSISTANCE	COMPLAINTS AND REPORTS						
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED	SUSPENDED	
Institutions									
Rehabilitation centres	97		32	31		1	8	19	91
Residential and long-term care centres	279		81	86		2	43	89	301
Hospital centres	742	3	231	323	2	7	68	141	775
Youth centres	410		58	233		5	48	58	402
Local community service centres	178	1	70	61		4	12	27	175
Complaints commissioners and others	128	1	25	44	13	2	15	33	133
Total: Institutions	1,834	5	497	778	15	21	194	367	1,877
Community organizations									
Private seniors' residences	66		22	16			9	28	75
Private or community residences for a vulnerable client population	5		2				2		4
Pre-hospital emergency services	19		4	17		1		1	23
TOTAL	1,952	6	529	817	15	22	207	405	2,001

Hospital centers accounted for 38.7% of closed complaints, reports and requests for assistance this year. The percentage⁹ of substantiated complaints and reports was quite high (41.7%).

As for private seniors' residences, there was a 24.6% increase in substantiated complaints and reports, going from 33.3% in 2019-2020 to 57.9% this year.

There was a 4.1% increase in substantiated complaints and reports concerning residential and long-term care centers, going from 44.4% in 2019-2020 to 48.5% this year.

In terms of pre-hospital emergency services, there was a 3.9% increase in substantiated complaints and reports (19.1% this year compared to 15.2% in 2019-2020).

8/ The number of requests processed in one year (and thus the number of closed requests) does not necessarily match the number of requests received because at the beginning of each year, investigations into requests received previously are still being processed.

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

5

CLOSED REQUESTS BASED ON THE PROGRAMS CONCERNED¹⁰

PROGRAM - SERVICE	REQUESTS RECEIVED IN 2020-2021	CLOSED REQUESTS IN 2020-2021							TOTAL
		REQUESTS FOR ASSISTANCE	COMPLAINTS AND REPORTS					SUSPENDED	
			SUBSTANTIATED	UNSUBSTANTIATED	MEDIATION	COULD NOT TAKE A DEFINITIVE POSITION	REFERRED		
Buildings and equipment	2		1	1					2
Intellectual disability/ Autism spectrum disorders	105		19	30		1	11	21	82
Physical disability	52		30	23		5	1	6	65
Addictions	20		3	5			4	3	15
Troubled youth	415		54	235		5	46	59	399
Access to physicians	61	1	37	3			5	17	63
Complaint examination procedure	105	1	26	37	14	1	15	21	115
Mental health	211		35	92			34	47	208
Physical health	474	3	174	202		7	31	98	515
Public health	8		1	3			1	5	10
Support for elderly autonomy	338		109	94	1	2	45	113	364
Service support	145		38	92		1	13	11	155
Total	1,936	5	527	817	15	22	206	401	1,993
Other or does not apply	16	1		2			1	4	8
TOTAL	1,952	6	527	819	15	22	207	405	2,001

As was the case last year, the highest percentage of substantiated requests concerned access to physicians (92.5%), followed by the physical disability program (56.6%) and support for elderly autonomy (53.7%).

¹⁰ / The number of requests processed in one year (and thus the number of closed requests) does not necessarily match the number of requests received because at the beginning of each year, investigations concerning requests received previously are still being processed.



General remark

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

- Disabilities;
- Troubled youth;
- Régie de l'assurance maladie du Québec¹¹;
- Mental health;
- Physical health;
- Home support;
- Support for elderly autonomy;
- Service support.

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

DISABILITIES

Housing options for people with disabilities

People with disabilities who must live in residential resources have a chronic problem finding a suitable option. As far back as its 2016-2017 Annual Report, the Québec Ombudsman pinpointed the difficulties that these people and their families experience. It therefore recommended that within the following year, the Ministère de la Santé et des Services sociaux (MSSS) put together a slate of residential services that meets the needs of people with intellectual disabilities, severe behavioural disorders or conditions that require specific physical care. The Québec Ombudsman was aiming at an action plan being implemented no later than March 31, 2018.

MSSS acknowledged certain shortcomings:

- Residential service continuity for people with disabilities was often compromised;
- The service offering had to be improved so that it was easier for these people to continue living at home;
- Certain types of residences had to be better adapted to the client population's specific needs.

Even though MSSS accepted the Québec Ombudsman's recommendation about an adequate slate of services, implementation is lagging.

On March 11, 2021, MSSS informed the Québec Ombudsman that it no longer intended to produce a structured framework but would give the following objectives priority instead:

- Define and develop new formats for housing and long-term care adapted to the client population's needs, including people with severe behavioural disorders;
- Convert residences that provide continuous assistance into intensive behavioural rehabilitation units in response to the needs of people with severe behavioural disorders;

- Conduct consultations to bring into focus the issues and solutions related to family-type resources and intermediate resources;
- Provide financial support for creating social and community rental units as well as supervised apartments.

The Québec Ombudsman intends to keep a close eye on whether these priorities are implemented and is actively continuing its interventions.



ENSURE SERVICE CONTINUITY FOR A YOUNG PERSON WITH AUTISM IN A RESIDENTIAL RESOURCE

The mother of a child with autism was critical of the poor quality of the services provided to her son who lived in an intermediate resource from which she ultimately removed him. She spoke out in particular about:

- Incomplete basic care (personal hygiene, upkeep of the premises);
- Failure to provide the child with a prescribed diet, despite the subsidy for that purpose;
- The fact that her son was kept in bed without care and in dirty sheets;
- Lack of any activities such as walks, shopping trips or trips to the pool;
- Staff with little training, experience or qualifications for attending to residents severely impaired by autism and with an intellectual disability.

A quality assessment report produced in 2019 by the integrated health and social services centre (CISSS) in charge revealed deficient service quality at the residence. The investigation by the Québec Ombudsman in 2020 corroborated these findings. It also showed that despite the content of the 2019 report, the CISSS had not corrected the situation.

According to the Québec Ombudsman, it appeared that the respective roles and responsibilities of the CISSS and the residence concerned had not been clearly defined or, at any rate, had not been understood in the same way. The CISSS expected the manager of the residence to provide service users with a stimulating living environment and to favour a constructive and empathetic approach towards the families. However, the manager had a more restrictive vision of this role, namely, that it was limited to offering basic care.

As a result, the Québec Ombudsman recommended that the CISSS clarify the rehabilitation centre's roles and responsibilities and those of the intermediate resources under the centre's supervision, including the residence in question. It also recommended that this information be disseminated to staff. This way, everyone's expectations would be better defined.

The Québec Ombudsman went on to recommend that an administrative investigation into the residential resource be conducted in order to assess the care provided to the residents and the approach used with their families.

The CISSS accepted the Québec Ombudsman's recommendations and they are beginning to be implemented.

Access to services for people with an intellectual disability or an autism spectrum disorder

An investigation by the Québec Ombudsman showed that in terms of the care and service continuum for adults with an autism spectrum disorder (ASD), implementation of the plan for access to services for people with a disability¹² is lagging. For one specific region, various factors had complicated access to care, for example:

- Lack of an integrated access mechanism for services intended for this specific client population;
- Lack of an access manager mandated to ensure that the above plan was followed within the institution concerned;
- Lack of a system navigator.

The access rules established by MSSS indicate that after a service request is analyzed, the intellectual disability and autism spectrum disorder (DI-TSA) gateway—or in the situation described below, the social intake section—must inform

the person in writing about the decision regarding their eligibility. Thus, people who qualify and are entered on a waiting list, and whose level of priority ranges from moderate to high, have the right to be informed about their eligibility. This written notice must indicate when the services are likely to begin, as well as the contact information of the access manager of the CISSS or CIUSSS concerned. According to the access plan, this procedure ensures a response adapted to the person's situation during the waiting period and enables the person and their family to inform the access manager about any changes that affect the person's condition and availability. However, as things stand, this is not always the case.

Furthermore, the system navigator must be central to service continuity and quality, a principle which has been reiterated in disability frameworks for years, including the 2017-2022 action plan on autism spectrum disorders. Despite this, the function of system navigator is still not established across the network.



PROPERLY INFORM A PERSON AWAITING SERVICES AND ASSIGN A SYSTEM NAVIGATOR TO HIM

A person with a provisional diagnosis of ASD (a final diagnosis had not yet been determined) wanted services as soon as possible. He was recognized as eligible and his local community service centre (CLSC) put him on its intellectual disability and autism spectrum disorder program waiting list.

However, he was not informed about his eligibility in writing, even though this should have occurred. Believing that he would not be able to receive the services he needed, he experienced increasing stress. The fact that there was no access manager contributed to this lack of information. Even though the man had had suicidal episodes and had significant functional impairments, he had not been assigned a system navigator to help him access services.

Made aware of the events, the Québec Ombudsman recommended that the CISSS:

- Establish a specific DI-TSA gateway in CLSCs;
- Designate an access manager for targeted interventions, in keeping with the service access plan for people with disabilities;
- Assign a system navigator to users as soon as an overall assessment of their needs has been carried out;
- Ensure that every person has an intervention plan.

The CISSS accepted these recommendations and implementation is slated for the summer of 2021 at the latest.

12 / *Plan d'accès aux services pour les personnes ayant une déficience - Afin de faire mieux ensemble*. Québec, MSSS, June 2008.

TROUBLED YOUTH

Management of personal expense allowances by foster families

Young people placed in foster families are allowed a daily allowance of \$5 for their personal expenses. The allowance is provided by the foster family, which is under contract with an integrated health and social services centre (CISSS) or an integrated university health and social services centre (CIUSSS). The agreement stipulates that the CISSS or the CIUSSS is responsible for:

- Ensuring that foster families fulfil their obligations properly;
- Correcting any problems and ensuring that they do not recur.



MAKE SURE THAT AN ADOLESCENT GETS HER ALLOWANCE

It does not happen very often that a person under age 18 contacts the Québec Ombudsman with a complaint. When it does occur, the parents are the ones who file it. However, in the case at hand, it was the adolescent herself who contacted the Québec Ombudsman to criticize her foster family's mismanagement of her personal expense allowances. In the entire two years she lived with the family, she had not received most of the amount to which she was entitled (roughly \$2,000).

The investigation by the Québec Ombudsman showed that irregularities had indeed occurred. The foster family had not accounted to the CLSC about the presumed expenses by the girl or provided supporting documents. Moreover, the family had used allowance amounts for special expenses, including a family trip for which the foster child had unknowingly footed part of the bill by means of the allowance. This type of expense should have been vetted by the youth protection (DPJ) caseworker, which did not happen.

The Québec Ombudsman felt that the CISSS concerned had shirked its responsibilities. It had failed to do any checks or supervise the foster family. In addition, there were discrepancies in how the young girl's allowances had been managed.

Given these facts, the Québec Ombudsman recommended that the adolescent be reimbursed by the CISSS. It also recommended strict monitoring of the foster family.

After the Québec Ombudsman intervened, the CISSS reimbursed the adolescent for the entire amount and did what was required to supervise the foster family.



Parents' right to be part of the decisions concerning their child placed in a foster family

The responsibilities of a foster family that takes in a troubled child and those of the child's parents can be difficult to separate. It bears remembering that just because a child is placed in a foster family does not mean that the child's parents have no responsibilities towards him or her or that they should be deprived of information. The *Youth Protection Act* specifies that parents' involvement must always be nurtured, with a view to encouraging and helping the parents exercise their parental responsibilities.

Foster families must:

- See to all the child's needs;
- Inform the caseworker of any measure applied so that things go smoothly for the child;

- Give the caseworker any relevant information about the child's needs and the child's development while living with the foster family;
- Not make important decisions about the child without discussing them with the caseworker.

Caseworkers must:

- Consult the parents and obtain any required consent from them;
- Petition the court if there are disputes with the parents.

Even if the court has withdrawn certain aspects of parental authority, such as the right to authorize that the child change schools, parents do not lose the right to be informed about their child's education.



RESPECT PARENTS' RIGHT TO BE INFORMED AND CONSULTED

Several months after a child who was living in a foster family had been assessed for and diagnosed with attention deficit hyperactivity disorder (ADHD), the child's father had still not been informed about the process or the outcome. His son was taking prescribed medication, and the father knew nothing about this either. The father had specifically asked the caseworkers to be part of the discussion about the possible use of medication before his son started taking it. He complained to the Québec Ombudsman.

The Québec Ombudsman's investigation showed that the foster family had taken over all aspects of the child's life and development, in particular, making medical appointments and decisions about medication. As a result, the father was not given important information about his son, nor was he told he had the right to attend his son's medical appointments and discuss his son's medication with the physician.

In addition, the youth tribunal had withdrawn the parents' authority regarding their child's education, for example, the

choice of school or bussing. Once more, the Québec Ombudsman showed that the father had not been adequately informed. No one had told him that despite the fact that his parental authority regarding education had been withdrawn, he still had the right to attend parent-teacher meetings, to ask the school about his son's academic progress, and to have a copy of his son's report card.

As a result, the Québec Ombudsman recommended that the CIUSSS:

- Respect the right of parents whose children are in foster care to be informed and be involved in or make decisions;
- Ensure that the foster families under its supervision respect their limits regarding medical, education and social decisions and consent for their foster children.

The CIUSSS accepted the Québec Ombudsman's recommendations and committed to implementing them by March 31, 2021.

Transmission of information to parents about their teenage child when the adolescent refuses to consent to it

Caseworkers are often faced with the challenge of striking the proper balance between the rights of parents' and the rights of their child aged 14 and over when the child refuses

to have information about them conveyed to the parents. When this happens, caseworkers must have decision-making tools to help them. As the Québec Ombudsman sees it, CISSSs and CIUSSSs are responsible for ensuring that these tools are available for staff.



MAKING FAIR DECISIONS ABOUT PARENTS' RIGHT TO INFORMATION BY MEANS OF THE RIGHT TOOLS

An adolescent under the DPJ's care had to be placed in a rehabilitation centre where exceptional measures, such as physical restraints and isolation, may be used if necessary. The centre's policy specifies that parents must be informed about any measure of this kind. However, the adolescent did not give his consent to having the information conveyed to his parents.

Given this situation, the CISSS responsible for the centre considered various options:

- Not to inform the parents;
- Ask the adolescent to petition the Court of Québec Youth Division to request that disclosure be prohibited;
- Give the parents a minimal amount of information.

In part because of the CISSS's hesitation in deciding what to do, the parents' anxiety increased and they complained to the Québec Ombudsman.

The Québec Ombudsman's investigation showed that the CISSS had no clear procedure about transmitting information to parents if a youth aged 14 or over refuses to give their consent. An analysis of Québec legislation showed that the parents should have been given a minimal amount of information about their son's progress, providing this did not work against him.

Considering that the parents had been deprived of this information and that the CISSS had trouble making a decision, the Québec Ombudsman recommended that a handbook be produced for caseworkers. A policy and a handbook are being drafted.

Supervising parents' right to see their children

Several community and family organizations offer services for supervising parents' visits with their children as prescribed in court orders. Even though youth centres also offer this kind of supervision, heavy demand sometimes causes

long delays, and this is particularly trying for families. The organizations that offer these supervisory services must have guidelines and ensure compliance with court orders. Children's and parents' rights are at stake.



SUPERVISE VISITATION RIGHTS AND RESPECT CHILDREN'S AND PARENTS' RIGHTS

A parent complained that he could not gain access to the services of the community organization to which he had been referred for exercising his visitation rights, as indicated in the court order. Because he insisted on seeing his children quickly as soon as he was on the waiting list, and his attitude towards caseworkers during phone conversations was considered inadequate, the organization closed his service request file after having him languish on the waiting list for 12 weeks. Moreover, from the outset, the organization had refused to give him an acknowledgement of receipt of his registration specifying the wait times. Without this letter, the father was deprived of any legal recourse for finding an alternative solution in order to see his children.

The organization's closure of the file was a very severe sanction since it prevented the father from seeing his children. The Québec Ombudsman considered that the organization should have used a series of progressive actions before reaching the point where it closed the file for good.

In addition to the consequences for the father, we know that the notion of time may be different for children and a wait of several weeks can seem even longer than that. It is therefore important that the community organization take all necessary measures to establish better guidelines for its interventions.

The Québec Ombudsman recommended that the agency provide parents with a letter confirming that they are registered if they request one and that the letter indicate the approximate wait time for obtaining services. It also recommended that the agency produce a procedure for managing prohibited behaviours, taking into account the principles of neutrality and progressive sanctions. This procedure must allow service users to state their opinion. The agency implemented all the recommendations.

Psychosocial assessment reports must be objective

In matters of child custody, psychosocial assessment is a process whereby an expert makes recommendations to the court concerning child custody and parental visits. Such assessments are carried out when the parents cannot agree on custody arrangements in their child's interest. One of the parents or the court can request an assessment. It is carried out by a professional, such as a psychologist or a social worker who is in private practice or who is affiliated with the youth centre's psychosocial assessment section.

The ultimate goal of this psychosocial assessment is to enlighten the court by presenting recommendations as to the terms and conditions of custody, visitation and parental responsibilities.

It is paramount that the experts concerned do all they can to ensure that their report is completely objective. Even though each expert is bound by their professional order's code of ethics and conduct, CISSSs or CIUSSSs are responsible for the quality of the work by experts mandated by a youth centre.



ENSURE THAT THE PSYCHOSOCIAL ASSESSMENT PROCESS IS RIGOROUS

A young child's mother complained to the Québec Ombudsman because she had doubts about the quality of the psychosocial assessment carried out to evaluate whether the father should have contact with their child. The mother was particularly worried because the assessment authorized unsupervised visits by the father and even broadened his visitation rights, despite the fact that the police had received a complaint against the man for assault and sexual assault.

The investigation by the Québec Ombudsman revealed several flaws in the assessment process, including:

- Insufficient objective evidence;
- Refusal to separate the woman's and the man's versions in cases of dispute;
- Lateness in submitting the report despite the prescribed deadline;
- The CISSS's refusal to question the expert's initial opinion.

The experts recruited by this CISSS were professionals well versed in youth protection. The investigation showed that their opinions and decisions were never discussed or questioned by their immediate superior, and that this increased the risk of subjectivity.

The Québec Ombudsman made various recommendations so that the CISSS's multidisciplinary services section take part in reviewing the clinical processes within the psychosocial assessment section in order to ensure that reports are rigorous and objective. The Québec Ombudsman was pleased to see that the CISSS had reviewed the clinical process and made the required changes.



Abolishing parents' financial contribution towards placement of their children under age 18: follow up to the Québec Ombudsman's special report

In March 2013, the Québec Ombudsman published a report on the inequities in calculating and collecting the financial contribution (CFP) parents must make when their child is placed in a substitute environment. This refers in particular to group homes or foster families. With the aim of seeing these disparities corrected and ended, the Québec Ombudsman made recommendations in large part to the Ministère de la Santé et des Services sociaux, the department responsible for applying the regulatory and legal framework that determines how the CFP is calculated.

In its most recent budget, tabled on March 25, 2021, the government announced that the CFP would be abolished. The Québec Ombudsman is very satisfied with this important gain.

This means that the health and social services institutions responsible for managing these contributions will no longer have to collect this amount from the parents concerned, and, by extension, the harm caused by the following will no longer exist:

- Disparities in how the health and social services institutions concerned handle the CFP;
- Shortcomings in billing and in how information is transmitted, exemptions are calculated, credits for absences are allocated, payment agreements are negotiated and unpaid contributions are collected;

- The fact that certain tax provisions or indemnities that affect family income are ignored.

Another outcome is that parents will no longer have to make this contribution in order to claim the refundable tax credit for the Family Allowance. The Ministère des Finances noted that half the families concerned do not make the required contribution and are therefore deprived of these allowances. Parents whose child is placed temporarily will continue to receive the Family Allowance (which is not the case if the child is placed until adulthood).

In addition to benefiting the most vulnerable families in particular, abolition of the CFP and continued issuance of Family Allowances will smooth the way for children to return to their family. Because of the allowances, many families' financial situation will be more stable and the children's chances of returning home will not be jeopardized.

The Québec Ombudsman will closely follow the implementation of the announced measures, slated to start on September 1, 2021.



The report is available at protecteurducitoyen.qc.ca.

RÉGIE DE L'ASSURANCE MALADIE DU QUÉBEC



Public health plan eligibility for children whose parents have a precarious migratory status

On May 30, 2018, the Québec Ombudsman released a special report titled *Give children born in Québec whose parents have a precarious migratory status access to the Québec Health Insurance Plan*. As the title suggests, the document discusses the situation of Québec-born children who do not qualify for public health insurance because of their parents' uncertain migratory status. In the report, the Québec Ombudsman recommended, among other things, that these children be eligible from birth.

The Régie de l'assurance maladie du Québec (RAMQ) did not accept the recommendation straight away. In the spring of 2019, the Minister of Health and Social Services mandated a committee, under RAMQ's responsibility, to assess how these children could be made eligible. The committee's report proposed solutions.

On October 28, 2020, the Committee on Public Administration (parliamentary committee) heard RAMQ and the Ministère de la Santé et des Services sociaux (MSSS) concerning follow-up to the recommendations in the Québec Ombudsman's report.

On December 8, 2020, the Committee's report pointed out that it was imperative that serious thought be given to RAMQ's governance. According to the Committee members, RAMQ's decisional process lacked transparency, and, as a result, the government corporation had failed to indicate what it was doing regarding these children's eligibility for the Québec Health Insurance Plan. The Committee made three recommendations, insisting on the fact that RAMQ and MSSS had to intervene as quickly as possible to extend access to the Plan to this specific segment of the population.

On December 10, 2020, the Minister of Health and Social Services tabled Bill 83, *Act respecting mainly the health insurance plan and prescription drug insurance plan eligibility of certain children whose parents' migratory status is precarious*. The Bill, on which special consultations will be held in the spring of 2021, responds to the Québec Ombudsman's recommendation. It proposes that Québec-born children whose parents' migratory status is precarious be eligible for health insurance coverage as well as for the prescription drug insurance plan. Under certain conditions, the same would apply to children who were not born in Québec but who are authorized to be in Québec for a period of more than six months. The Québec Ombudsman considers that these changes are beneficial for children, families and society at large.

Under the Bill, only children born outside Québec who are not authorized to be in Québec would not qualify. The Québec Ombudsman intends to tell the Committee on Health and Social Services that the wording of certain sections of the Bill is confusing and must be clarified. It will also point out that the children concerned must be given coverage within a reasonable amount of time, despite administrative procedures that may be lengthy. The Québec Ombudsman will be attentive to the follow-up to the Bill.



The report is available at
protecteurducitoyen.qc.ca.

The information that RAMQ sends to citizens

RAMQ's mandate is to determine whether applicants qualify for the Québec Health Insurance Plan and the prescription drug insurance plan, but its information to service users can sometimes be insufficient or incomplete. The result is that applicants do not understand why they were refused access or which information they need to provide to complete their file. The Québec Ombudsman insists that RAMQ give citizens all relevant information at the time that they need it and in clear language.



CONVEY COMPLETE AND CLEAR INFORMATION

RAMQ informed a man that he did not qualify for the prescription drug insurance plan. Not long afterwards, he complained to the Québec Ombudsman, which read the letter RAMQ had sent him. The letter did not have enough information to enable the man to know why he had been turned down, what he was being blamed for doing, and the amount of the claim. Because he had not been properly informed, he could not understand the basis for the decision. Furthermore, the letter did not indicate that the citizen could request a review.

Without questioning the refusal per se, the Québec Ombudsman asked RAMQ to improve the content of this type of letter or to consider a better-adapted form letter. The agency added a note about the possibility of review to the template. However, other essential additions have yet to be made. The Québec Ombudsman is keeping abreast of developments.

A citizen applied to have his health insurance card renewed. RAMQ replied in a letter requesting proof that he had been in Québec for more than 183 days during the eligibility year of the card that he had. However, the letter did not indicate the dates of the eligibility period.

The man sent in what he thought were the right documents but they were not considered the proof required for the period concerned. RAMQ sent him a new request for information that did not contain any more information than the one before about the dates of the period taken into account. This citizen replied but still did not provide the information for the right period.

After this, he talked to a RAMQ agent and provided new documents, but, once again, they did not apply to the period which

needed to be considered. The man finally contacted the complaints commissioner and it was only after this process that he found out to which period the required documents applied.

Dissatisfied with RAMQ's response and delay after delay (which caused his eligibility to be suspended and a surgery to be postponed), the man contacted the Québec Ombudsman. Once again, it saw that RAMQ's letters (form letters that are frequent when cards are renewed) are not explicit about the eligibility period in question.

The Québec Ombudsman is continuing its efforts in this regard so that RAMQ provides citizens with clear and sufficient information when it requests documents.

MENTAL HEALTH

The rights of mental health facility residents to go out or have visitors during the pandemic / IMPACT COVID-19

In the specific context of the pandemic, the Québec Ombudsman received numerous complaints and reports about management of the right to outings and visitors of people in residential mental health facilities (hospital centres or external resources). Residents, their families, and staff alike had many questions about the measures themselves and their application. Some people who were well, did not have COVID-19, and were not subject to any legal or medical restrictions were no longer allowed to leave their room or unit, or have visitors.

Not long after the pandemic began, the Ministère de la Santé et des Services sociaux (MSSS) published directives and posted them on its website. On May 4, 2020, it issued its instructions concerning people in residential resources, including those in mental health facilities. A week later, the instructions were distributed.

On June 9, 2020, senior health authorities sent institution managers a letter about outings and stays outside their facilities (with families in particular) for people living in psychiatric units. However, alongside these departmental directives, each institution also had to take into account regional policy based on the geographic prevalence of the pandemic Québec-wide. As a result, it was up to integrated health and social services centres (CISSSs) and integrated university health and social services centres (CIUSSSs) to determine, based on the pandemic alert level in their territory, when and how visits and outings should occur.

The Québec Ombudsman saw that despite staff's genuine desire to do their best, a few weeks after the new instructions were issued, the information transmitted did not necessarily result in effective application of the rules by the teams on the ground.

In the Québec Ombudsman's opinion, it is important that directives from health authorities (MSSS, CISSSs and CIUSSSs) are always quickly disseminated across the network and are applied effectively. If this does not occur, the rights of the people concerned may be compromised, and this constitutes a denial of justice that could greatly affect their already-fragile mental health.



INSTRUCTIONS MUST BE MADE KNOWN

In July 2020, the Québec Ombudsman received a report indicating that since late March, the users of a mental health facility were no longer allowed their usual outings, including temporary absences (authorization to leave the hospital centre for more than a day). Some of them were even confined to their rooms. More recently, they were only allowed a short time in a fenced-in yard on a weekly basis. Also, visits were prohibited.

At the time of the Québec Ombudsman's investigation, outings had resumed, in keeping with departmental directives. In addition, temporary absences were allowed again, as were visits.

These changes were consistent with the MSSS letter dated June 9, 2020. However, outings and temporary absences should have resumed sooner. Moreover, in some facilities, the directives in the MSSS letter were not yet being implemented, even beyond mid-July.

After the Québec Ombudsman intervened, the authorities confirmed that they would make sure that information about the rules and their application was adequately distributed within the institution.

Use of means of control

Every year, the Québec Ombudsman receives complaints about the use of means of control with various types of health service users, including those requiring mental health care and services. Overall, in recent years, complaints about this have decreased. However, in 2020-2021, the Québec Ombudsman saw that certain basic principles, which integrated health and social services centres (CISSSs) and integrated university health and social services centres (CIUSSSs) are presumed to know, were not always followed.

This is surprising given that most CISSSs and CIUSSSs have updated their procedures and protocols for applying means of control in order to add chemical substances if these were not already included. Despite training and professional development, some practices do not even comply with the principles of the first reference framework produced by MSSS in 2011.

The Québec Ombudsman also learned about one particular psychiatric facility where people in isolation were systematically made to wear a gown. This practice, which may involve the use of force when the person's clothes are removed, is an unnecessary additional constraint in many cases.

Use of isolation or physical restraints must adhere strictly to the framework governing their application because it is an exceptional intervention that interferes with a person's freedom. If these rules are not obeyed, there is more of a chance that the person may feel they have been assaulted by the staff. This year, the Québec Ombudsman made various recommendations in that regard.



REMINDE STAFF ABOUT HOW TO APPLY MEANS OF CONTROL

The Québec Ombudsman noted that the healthcare staff in a specialized mental health institution had used means of control on a man without trying alternative measures beforehand.

This had occurred despite the fact that the institution had worked with the service user to produce a document outlining other possible measures when his behaviour was likely to become dangerous to himself or the people around him. Instead of using planned means of control, the staff could, for example, use different measures such as suggesting that he listen to music, talk with a staff member, drink something warm, exercise, or watch television.

At another institution with a similar mandate, a service user was left in the isolation room for more than eight hours even though he had calmed down long before. Basic principles dictate that isolation must be an exceptional intervention and be as short as possible, and that alternative measures must be given priority. Even if there are logistical limits and challenges, these principles must be respected.

Another service user in the same institution was also left in an isolation room for a period longer than required. In examining this complaint, it was found that users were systematically obliged to wear a gown when in isolation, despite an internal instruction specifying that this decision had to be analyzed at the clinical level case by case.

Requesting another mental health physician

The *Act respecting health services and social services* states that service users are entitled to choose the professional or the institution from whom or which they wish to receive health services or social services. However, this right is contingent on the availability of resources and the right of professionals to choose their patients. When someone already has a physician or is hospitalized, the procedure for requesting a new physician may vary from place to place, and, in fact, there are no specific rules for implementing such a

The Québec Ombudsman made a recommendation to the specialized institution and healthcare staff were issued reminders.

The Québec Ombudsman wants to point out that this particular institution has markedly improved its practices concerning the use of means of control. This progress highlights the excellent level of collaboration by the various sections and the institution's desire to provide quality care and services. With these gains, a long awaited new internal policy will be implemented in 2021.

The Québec Ombudsman recommended that the institution:

- Use isolation only for the necessary amount of time;
- No longer make gown-wearing mandatory when users are put in isolation.

At the time these lines were being written, some of the recommendations had been implemented. The Québec Ombudsman will keep a close eye on the remaining corrective measures.

procedure. When mental illness is involved, it is particularly important that all the healthcare staff at the various facilities, including physicians, are aware of the procedure to be followed. Service users must know about this procedure because the creation of a therapeutic alliance between patients and their physicians is one of the keys to recovery.

Having intervened regarding a complaint from an individual, the Québec Ombudsman produced a report requesting that such procedures be implemented.



ESTABLISH A CLEAR PROCEDURE FOR REQUESTING A NEW PSYCHIATRIST

The Québec Ombudsman received a report about the confusion surrounding the procedure for switching to another psychiatrist and hospital in an administrative region that grouped together several CISSSs and CIUSSSs. A user had tried repeatedly to request these changes, but no one within the directorate in charge could agree on how to handle the request.

The investigation showed that there was no formal procedure for requesting a new psychiatrist and that staff had trouble knowing where to send the request. Only two local health networks in the entire territory had such a procedure.

Each of the CISSSs and CIUSSSs acknowledged that it was important that there be such a procedure and that it be known, while respecting service users' rights and taking into account the clinical and organizational specifics of the

institutions. Two of them said that they had started drafting a procedure. However, work was still underway. The Québec Ombudsman recommended that, as soon as possible, the CISSSs and the CIUSSSs create and implement a procedure for requesting a new psychiatrist.

Furthermore, there was no intraregional procedure for requesting a new psychiatrist from another CISSS or CIUSSS in the same region. The Québec Ombudsman recommended that the CISSSs and CIUSSSs put together an intraregional cooperation agreement for requests for a new psychiatrist, whether the person is hospitalized or is an outpatient.

The Québec Ombudsman's recommendations were accepted. They were beginning to be implemented at the time this Annual Report was being written.



MAKE ACCESS TO CARE EASIER THROUGH INTER-INSTITUTIONAL SERVICE CONTINUITY

A service user lived in a region where there were two CISSSs (CISSS 1 and CISSS 2). The man received mental health care and services from CISSS 1 because he was in its territory.

After being ordered by the court not to contact his initial healthcare team, the man lost his psychiatrist and was entrusted to a CISSS 2 facility where he lived for several months. However, the facility did not have a psychiatrist affiliated with its multidisciplinary team. CISSS 1 was therefore asked to resume care, but it refused on the grounds that the user now lived at a CISSS 2 facility. Then there was the fact that a CISSS 2 hospital also refused to provide care because his permanent home address was in CISSS 1's territory where he had been treated initially.

In support of their refusal, both CISSSs argued populational responsibility, which consists of giving priority for service provision to people who live in their territory.



As the Québec Ombudsman saw it, it was paramount to ensure access to mental health services and service continuity for all the people of that region. It recommended that MSSS act so that CISSSs and CIUSSSs jointly adopt an inclusive way of operating based on the needs of people whose permanent or temporary place of residence could be an administrative obstacle to the care and service continuity they need.

At the time these lines were being written, the Québec Ombudsman was awaiting MSSS's response.

PHYSICAL HEALTH

When the pandemic began, an order-in-council suspended visits to residential and long-term care centres (CHSLDs). One exception was provided for—visits for humanitarian reasons, especially in end-of-life situations.

The scenario was different in hospital palliative care units and hospices, where visits continued to be allowed. However, at times the directive was not obeyed.



ALLOW FAMILY TO VISIT A PALLIATIVE CARE PATIENT IN A HOSPITAL

In April 2020, for more than five weeks, a person had not been allowed to visit their mother in a hospital's palliative care unit, even though the order-in-council authorized such visits for residents' families. These visits were supposed to be allowed at all times, whether or not end-of-life was imminent. The instruction specified that one person at a time was allowed to visit, for a maximum of three people over 24 hours.

The Québec Ombudsman's investigation showed that hospital visits were only allowed in end-of-life situations, and only from noon to 8 p.m.

After the Québec Ombudsman intervened, the institution revised its practices so that it complied with Department directives, meaning a greater number of authorized visits.

Leaving a residential facility that is grappling with an outbreak / IMPACT OF COVID-19

During the first wave of the COVID-19 pandemic, families could, under certain conditions, bring a CHSLD or private seniors' residence (RPA) resident home with them. However, when there was an outbreak within a living environment,

residents could not leave the facility, even if they had no symptoms of COVID-19.

In investigating, the Québec Ombudsman noted that there were exceptions that were not covered by a departmental directive when hospitals had to adapt to the changes triggered by the pandemic.



ALLOW A PATIENT TO GO HOME

A woman had surgery. Before her release, her physician recommended that she be admitted to a functional rehabilitation unit in another hospital for a few days. When she arrived, a COVID-19 outbreak began on the unit in question. As a result, the staff decided to put her in a long-term care unit, where she was confined to her room immediately.

The woman, who had no cognitive deficits whatsoever, felt that she should not be in that section of the hospital. To make matters worse, she was not receiving any rehabilitation, she was not allowed any visits and she had no change of clothing. She soon asked to go home. The hospital refused, stating that she could not leave until the outbreak ended, even if she tested negative for COVID-19.

The woman's daughter complained to the Québec Ombudsman. She pointed out that in the 18 days her mother had spent in confinement, she had had three screening tests, all of which had come back negative. She argued that her mother should never have been transferred to the long-term care unit in the first place and that she was not a resident there. In addition to being afraid that her mother would be exposed to COVID-19, the daughter feared that her mother might decline physically and lose some of her autonomy.

In investigating, the Québec Ombudsman noted that the patient was fully autonomous and she was only there because of the rehabilitation recommended by her physician. At the Québec Ombudsman's request, the hospital authorized the patient's release after she tested negative for COVID-19.

Redirecting patients to a family doctor

A person who goes to a hospital emergency room may be referred to another resource. This process is called “redirecting.” It is used for people whose health condition has been assessed as priority level 4 or 5, in other words, for minor problems that meet specific criteria. Those who agree to be referred to a family doctor get an appointment at a clinic (family medicine group or network clinic) in their region.

Redirecting helps to limit emergency room overcrowding, and this in turn reduces delays for people who cannot use this option or who choose not to.

The Ministère de la Santé et des Services sociaux (MSSS) informed CISSSs and CIUSSSs that in the context of the pandemic, emergency services can systematically redirect people whose condition does not require a technical platform (equipment for carrying out medical activities, usually at a hospital) or emergency room expertise. However, redirection must be safe and before leaving the emergency room, the person must have an appointment (in person or by phone) with the clinic or family medicine group. Note that emergency services may automatically redirect people to designated COVID-19 screening clinics without an appointment.



OBEY THE INSTRUCTION ABOUT REDIRECTING

A person went to a hospital emergency room. At triage, the nursing staff asked her to leave the emergency section and make an appointment with her family doctor. Even though the person insisted on being treated at the emergency room, the nursing staff made her leave the premises.

According to the hospital, since the start of the pandemic, people with minor health problems had to be redirected to a resource adapted to their needs. Staff did not have to get their consent or ensure that they had an appointment with a family doctor before making them leave the emergency room. However, the staff had to tell them to come back to the emergency room if they could not see a physician at a clinic.

After investigating, the Québec Ombudsman considered that this way of proceeding did not comply with the applicable departmental directive. It therefore recommended that the hospital:

- Ensure that people who are redirected to a family doctor have a confirmed appointment before they leave the emergency room;
- Remind the entire nursing staff that a person may remain at the emergency room even though the nursing staff has proposed to make an appointment for them see a family doctor.

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

Broadening the right to free spinal muscular atrophy medication

On December 18, 2018, the Minister of Health and Social Services announced that people with Type II and III spinal muscular atrophy (SMA) would no longer have to pay for Spinraza, a medication used to maintain and even develop motor functions.



MAKE SPINRAZA AVAILABLE BASED ON THE PROTOCOL

The doctor of a boy who had spinal muscular dystrophy instructed a hospital in the region to give the boy Spinraza based on the new rules for accessing it. However, there was a lengthy delay before treatment began—the physician had prescribed the medication in the spring of 2019, but a year later, the treatment had still not started. The hospital explained that it had to organize the coordination of the specialties involved—neurology, radiology, anesthesia, rehabilitation, etc. This had not been done. In addition, the various staff had to be trained.

Broadening the coverage for this medication meant that the institutions concerned would have to create a multidisciplinary team so that administration of Spinraza would be safe and comply with the protocol in effect. In some cases, service users' treatment was postponed numerous times because of wait times.

After this came the pandemic, which generated new delays. The mother complained to the Québec Ombudsman. As she saw it, if the hospital could not provide treatment soon enough, her son should have been referred to a hospital in another region where Spinraza was available.

While the Québec Ombudsman was investigating, the hospital pledged to finish organizing its services so as to give all the users concerned their Spinraza treatments. The boy's treatments finally began in late summer 2020.

Patient flow within the healthcare system

The Québec Ombudsman regularly speaks out against overcrowding in hospital emergency rooms. One of the solutions is better planning of patient flow within the healthcare system. To illustrate this, in its 2020-2021 Annual Report, the Québec Ombudsman indicated that, in one specific case, shortcomings surrounding users' movement through the system had:

- Contributed to overcrowding of the hospital's emergency room;
- Prevented a user from having timely access to a reanimation room;
- Limited the staff's ability to provide the person with safe care.

It made recommendations to the hospital concerned (Royal Victoria Hospital (MUHC)), as well as to MSSS, which accepted the Québec Ombudsman's recommendations. However, it took some time before they were implemented.

This year again, a similar situation in the same hospital was brought to the Québec Ombudsman's attention and the Ombudsman came to the same conclusions: the institution's systemic problem of emergency room overcrowding persists and is getting worse, despite the hospital's and its professionals' genuine efforts to rectify the situation.



ALLOW AVAILABLE RESOURCES TO BE FULLY EFFICIENT

In early 2020, a man went to a hospital emergency room with significant pain which the triage staff assessed as priority level 2. Due to lack of space, he had to be put in a waiting room after being given a dose of morphine. A central venous catheter was inserted.

He soon lost consciousness and was placed on a stretcher near the triage station. Then he was transferred to a room without equipment and with no way for staff to supervise him adequately. It was only when his condition started to decline further that he was taken to a room that had a heart monitor. At the time, all the reanimation rooms were full and two out of four of them were doubled up. A place finally opened up in one of the rooms, where he died a few hours later.

The Québec Ombudsman's investigation showed that:

- The man should have been monitored in the emergency room's treatment area as soon as he arrived;
- When the man arrived, the emergency room occupancy was at 136% and at 203% the following morning, which speaks volumes about overcrowding;
- The people placed in the reanimation rooms remained there between 60 and 120 hours under the care of the emergency room staff while either waiting to go home or for a bed on a care unit;

In the Québec Ombudsman's opinion, it is unacceptable that MSSS is taking so long to implement the Ombudsman's recommendations. In February 2021, MSSS told the Québec Ombudsman that it was aware of the length of the delays. It added that it was in contact with the directorates concerned but that they were assigned primarily to managing the pandemic and vaccination logistics.

The Québec Ombudsman understands that the pandemic caused some delays. However, it insists on pointing out that its recommendations date back to September 2019, in other

- Priority level 2 and 3 patients account for the most traffic in this emergency unit and there is not enough space to treat them;
- The lack of physicians and the shortage of nursing staff must be taken into account in seeking solutions.

In the fall of 2020, at the end of its investigation, the Québec Ombudsman insisted that MSSS act urgently and speed up the implementation of the existing recommendations indicated in the 2020-2021 Annual Report:

- Review the number of ambulances dispatched to this hospital, and send general cases to other hospital centres;
- Implement measures so that emergency physicians redirect service users to clinics in nearby territories;
- Create service corridors for admitting users whose condition does not require the expertise offered by the hospital concerned;
- Intensify professional services such as physiotherapy and occupational therapy;
- Provide for liaison nurses seven days a week;
- Increase the number of medical overflow beds and ensure sustainable funding for them.

words, before the health crisis. Since the purpose of the recommendations is to solve the major and systemic problem of hospital overcrowding, not only must they be implemented as soon as possible, but, in fact, as a matter of urgency given the pandemic, because the situation could only get worse.

Because the file stems from a multifactorial situation that calls for interconnected measures, the Québec Ombudsman also reminds MSSS of the importance of its full involvement in its capacity as the highest hierarchical authority of the health and social services system.



RECOMMENDATION BY THE QUÉBEC OMBUDSMAN

Given the preceding, the Québec Ombudsman recommends that the Ministère de la Santé et des Services sociaux:

- Without delay, ensure that the recommendations made in 2019 to resolve the problem of overcrowding at Royal Victoria Hospital (MUHC) be implemented in order to make it possible for patients to have timely access to a reanimation room.

Reply by the Ministère de la Santé et des Services sociaux:

The Department did not comment on this recommendation. However, it pointed out that on June 30, 2021, it sent the Québec Ombudsman follow-up to the recommendations.

Comment by the Québec Ombudsman:

The Québec Ombudsman has noted Department's follow-up but considers that part of the Department's response is unsatisfactory. It has not indicated any concrete advances suggesting that the overcrowding at Royal Victoria Hospital (MUHC) will be resolved in the short term or medium term. The Québec Ombudsman is continuing to monitor the file.

Registration with a family doctor

For several years now, the Québec Ombudsman has criticized the long wait times which many people experience for registration with a family doctor. This year again, the Québec

Ombudsman intervened to have the date of registration on the Québec Family Doctor Finder (GAMF) or service users' priority ranking corrected so that the information entered was accurate.



CORRECT GAMF REGISTRATION MISTAKES

A mother and her daughter received a letter informing them that their family doctor was leaving. When this happened, they registered on GAMF in the spring of 2016 using the electronic registration form. In theory, the form indicates the date of the application and the wait time for obtaining a family doctor. In 2019, the women noticed a mistake in their virtual form, indicating that the mother's registration date was January 2019 instead of April 2016. The mother contacted the Québec Ombudsman so that this mistake, which had a huge impact on the wait time, would be corrected.

The Québec Ombudsman's investigation showed that a doctor had been assigned to her in September 2016. However, because he was retiring and had refused to take her as his patient, the only thing the doctor had done in her regard was to renew a prescription. As well, there had been a mistake in the computer system and the mother's name had been taken off the waiting list. In December 2017, she was registered on GAMF again. In July 2018, RAMQ closed the family doctor's registrations and, once again, the mother's name was removed from the GAMF waiting list.

At the Québec Ombudsman's request, the woman's initial registration date (April 2016) was restored.

HOME SUPPORT

Support for informal caregivers

This year, the National Assembly passed the *Act to recognize and support caregivers and to amend various legislative provisions*. The Act provides that a Québec policy and a matching government plan will be adopted shortly.

In the Québec Ombudsman's opinion, as expressed in a brief to a parliamentary committee, it is imperative that informal caregivers be given direct, immediate, useful and appropriate support. They should have this support for the full range of tasks that are crucial to the well-being of the people they assist, as well as to their own physical, mental and financial health.

Further to the Québec Ombudsman's brief, the authorities concerned gave the go-ahead for a First Nations and Inuit representative to be added to the partners' committee for informal caregiver support. The purpose of the committee is to make any recommendations it deems necessary to the Minister concerning Québec's informal caregiver policy, the government action plan or any other matter pertaining to informal caregivers. It is composed of 11 to 17 members.

This year again, the Québec Ombudsman received complaints from exhausted informal caregivers who could not get a few days' respite so they could catch their breath, due to the lack of places that could take in their loved one or the lack of staff available to help informal caregivers.

For the families of people with severe disabilities or elderly persons with significantly reduced autonomy, the situation is especially trying because the public network—intermediate resources (RIs), family-type resources (RTFs), and residential and long-term care centres (CHSLDs)—offer practically no respite places. For its part, the community network struggles to provide services to this residential client population with particular needs.



FIND A RESPITE SOLUTION QUICKLY

A man who had a young child took care of his wife who had severe disabilities. He applied for a respite resource for her and it was approved. Afterwards he learned that the request had been cancelled because there was a shortage of places available at the CHSLD. In terms of access, permanent residency has priority over respite.

The man criticized the fact that he could not be provided this service even though he would have needed a few days off with his son, who was reacting negatively to the situation and had gotten to the point where he was expressing resentment towards his mother. The father complained to the Québec Ombudsman.

The Ombudsman intervened with the family's social worker to mediate between the parties. It was agreed that someone who already knew the woman would take care of her for the following two weekends so that the father and his son could have a few days' vacation together.

The Québec Ombudsman also obtained assurance that the social worker would continue trying to find a stable respite resource consistent with the needs of the woman and of her spouse.

The slate of home support services

Problems persist year after year: the slate of long-term home support services is insufficient and suffers cuts on a regular basis.

The government has expressed its desire to make it easier for people with disabilities and elderly people with reduced autonomy to remain living at home. It has also made major investments in this area in the past two years. Despite this, the goal of enabling these people to continue living at home and receive tailored care and services has not been reached.

Furthermore, there are significant regional disparities. In some places, the criteria for people with disabilities differ from those concerning elderly people with reduced autonomy, even though, under the home support policy, there should be no distinction between these two client populations. That is

why the maximum number of hours allocated may range from a single digit to double digits depending on the region and the client population concerned.

The Québec Ombudsman insists that ongoing efforts are necessary in order to provide service users with what they need to live at home in dignity. If this is to happen, the mind-sets at many institutions must evolve with a view to adopting and promoting a culture of services rather than one of cuts. For example, the past few years have been characterized by the addition of exclusion criteria, which has often meant taking services away from people who were already underserved. A further outcome is that other people become ineligible or do not qualify, even though they need services. The answer they get is that, unfortunately, their needs do not coincide, or no longer coincide, with the institution's new criteria.



LISTEN TO NEEDS AND GRANT THE REQUIRED SERVICES

A woman nearly 90 years old contacted the Québec Ombudsman because the home support services she received due to a stoma were cut. The institution had informed her that they now considered her capable of going to her local community service centre (CLSC). The woman argued that she, like users whose services had not been cut, had health problems too. She also said her son's availability to drive her there was limited. She felt very anxious about this new requirement.

After the Québec Ombudsman intervened, and even though the woman did not meet the confinement requirement (for example, a person's physical inability to get from place to place) as defined in the program, the CLSC acknowledged her distress about the imposed changes. It proposed an alternative—a person paid by the institution to accompany her under the service employment paycheque program. The woman accepted the proposal.

Act on the Québec Ombudsman's recommendations

In its 2020-2021 Annual Report, the Québec Ombudsman recommended that the Ministère de la Santé et des Services sociaux (MSSS):

Concerning home support services

- Inventory the institutions which have set a ceiling for the number of hours of services for people with a significant loss of autonomy in order to measure regional disparities;
- Support the institutions that cannot manage to meet the home support needs of people with a significant loss of autonomy, with a view to shrinking the gap between the cost of public residential resources and the home support subsidy.

Concerning access to home support services for people with mental disorders

- Remind institutions that mental health-related limitations which decrease users' capacity to perform activities of daily living and instrumental activities of daily living must be considered at par with physical or psychosocial impairments for home support eligibility purposes.

Pending MSSS's response, the Québec Ombudsman is pressing the Department to act on its recommendations.

SUPPORT FOR ELDERLY AUTONOMY

COVID-19: acknowledging the exemplary dedication of CHSLD healthcare and management staff

Within the context of the investigations it conducts, the Québec Ombudsman regularly sees disturbing flaws in the quality of healthcare and health services. However, it also receives comments from service users, their families, staff and managers testifying to the dedication of the nursing teams and administrators who work with elderly people.

These accolades were particularly numerous and precious when the Québec Ombudsman conducted its investigation into the COVID-19 crisis in residential and long-term care centres (CHSLDs). In many cases, the narratives attested

to remarkable humanity and generosity by staff who fought valiantly to get through the crisis. Often they risked their own health, worked under extremely trying conditions, and did what they had to do in a climate of genuine confusion about instructions and directives.

These people displayed unwavering solidarity with the residents and the residents' families. Because of their constant commitment, relief was provided to the most urgent cases, with the ongoing concern being the prevention of death. Their actions when death was inevitable enabled those who did succumb to do so in conditions of utmost respect and dignity.



VIRTUAL GOODBYES MADE POSSIBLE BY A HEALTHCARE TEAM

When a CHSLD informed the members of a family that their relative was fast approaching death, they expressed deep sadness at not being able to be there because of distance and fear of the virus. The nursing team therefore decided to immortalize the resident's passing by capturing a moment

that showed the person at peace and surrounded by attentive and caring staff. Afterwards, the family wholeheartedly thanked the CHSLD for such an initiative during a health crisis. This enduring memory that the staff made possible was of great support to the family.

Hasty transfers of vulnerable elderly people / IMPACT OF COVID-19

The health and social services network sometimes hastily transfers vulnerable elderly people. This weakens them and greatly affects their loved ones. Often the purpose of these moves is to free up hospital beds.

In a time of pandemic, when the occupancy rate of hospital rooms is high, transfers prove particularly difficult for elderly patients. The Québec Ombudsman has noted a lack of follow-up with families in order to support and inform them regarding the process.

In the course of its investigations, the Québec Ombudsman has seen that when these transfers occur, it is more difficult for staff to be thoughtful to these fragile and vulnerable service users whose living or care environment and surroundings change abruptly. Pandemic or no pandemic, it is crucial that these people's dignity be respected in these circumstances.



STOP THE HASTY TRANSFER OF 22 ELDERLY PEOPLE

The Québec Ombudsman received a report concerning the imminent and forced transfer of 22 CHSLD residents. The purpose of the operation was to free up places in the same CHSLD for patients awaiting rehabilitation services in hospitals.

The Québec Ombudsman intervened with the integrated university health and social services centre (CIUSSS) in charge, arguing that:

- The transfer did not take sufficient account of these people's precarious health that could easily be compromised by the events;

- Such a change posed a real risk for triggering cognitive and functional loss for people forced to leave an environment to which they had adjusted;
- The move was happening to benefit some people at the cost of others.

Given these various factors, the Québec Ombudsman recommended that the transfer be cancelled, and the CIUSSS agreed to this.

Dealing with symptoms of dementia in CHSLDs

Studies show that 70% to 80% of CHSLD residents have a form of dementia. Its psychological and behavioural symptoms create problems that are especially prevalent in these living environments.

The symptoms take many forms: anxiety, hallucinations, verbal agitation (screaming or repeated demands), physical agitation, wandering and aggressiveness. It stands to reason that the various consequences of dementia interfere with the

privacy and peacefulness of the living environment, in addition to being dangerous for residents or healthcare staff. Some people with dementia refuse to cooperate or resist care and services such as administering medication or providing personal hygiene care. Such behaviours may be detrimental to their integrity and well-being.

The staff's management of symptoms therefore implies that they are properly trained and have mastered basic approaches adapted to each individual. Being able to rely on the staff's skills and qualifications is an ongoing challenge for CHSLDs.



MANAGING DEMENTIA WANDERING, ESPECIALLY THROUGH ENHANCED TRAINING

A CHSLD resident had dementia and one of his symptoms was intrusive wandering (when a resident roams and ends up in other residents' rooms). He was verbally and physically aggressive and likely to cause injury. An employee was assigned to supervise him constantly. At one point, the man's aggressive behaviour posed a risk to the people around him. As a result, the employee decided to overcome him physically and the resident was injured.

The Québec Ombudsman's investigation showed that the employee was not equipped to take care of the resident properly. Not specifically trained to work with CHSLD residents or to deal with symptoms of dementia, he did not know the strategies that could have been used instead of physical means.

In addition, the CHSLD gave only vague instructions and did not provide its staff with alternative ways of intervening.

The Québec Ombudsman recommended that the CHSLD:

- Give priority to measures other than the use of physical restraints, for example, activities to occupy the residents, and better supervision;
- Clarify supervision instructions;
- Properly train any staff assigned to supervise people with symptoms of dementia.

The Québec Ombudsman is keeping a close eye on the implementation of its recommendations.

Supervision of private seniors' residences by CISSSs and CIUSSSs

This year again, the Québec Ombudsman received several complaints about private seniors' residences (RPAs):

- Staff shortages;
- High staff turnover rate;
- Lack of staff trained in hygiene and cleanliness;
- Mistakes in administering medication;
- Insufficient supervision of the premises;
- Service offering ill-adapted to residents' needs.

In 2020-2021, the COVID-19 health crisis exacerbated the weaknesses in many of these living environments.

Note that Québec has approximately 1,700 certified RPAs registered with the Ministère de la Santé et des Services sociaux (MSSS). The integrated health and social services centres (CISSSs) and integrated university health and social services centers (CIUSSSs) that supervise them are empowered to visit them, see how they operate, and carry out detailed

inspections of them. They also have authority to sanction any RPA that does not fulfil its obligations or that refuses to make required corrections. In such cases, CISSSs or CIUSSSs may decide to suspend or revoke the residence's certificate of compliance or refuse to renew it.

The Québec Ombudsman saw that in protecting RPA residents, CISSSs and CIUSSSs were not equally rigorous and vigilant and therefore considered that supervision should be better structured. This presumes:

- Greater knowledge by CISSS and CIUSSS authorities of their responsibilities;
- Increased monitoring of RPA care and service quality;
- Use of means to detect when an RPA is starting to lose control of the situation before it is too late, as occurred this year;
- Continued supervision and follow-up methods implemented by CISSSs and CIUSSSs to ensure that the quality of the care and services provided by the RPAs concerned is maintained long-term and that improvements are sustainable.



ENSURE THAT AN RPA WHOSE RESIDENTS ARE PARTICULARLY VULNERABLE FULFILS ITS MISSION

The Québec Ombudsman received a report about an RPA that violated the regulations on many fronts:

- The owner was away daily, leaving the residents alone;
- The staff were untrained;
- Operating practices were unsafe for the residents;
- The building was infested with bedbugs;
- Care and services were not consistent with the residents' needs.

The non-standard profile of the RPA's residents, who were particularly vulnerable and destitute, was a daunting challenge for the staff. Clearly, their right to a living environment that complied with the regulations was not being respected.

For several years, the operator had shown little interest in taking any steps to improve the RPA, to the point of not fulfilling his own obligations towards the CISSS. Despite these failings, this RPA is where the residents wanted to live.

The Québec Ombudsman also saw that MSSS was aware of the RPA and received complaints and reports about it regularly.

The Québec Ombudsman asked the CISSS to provide the operator with rigorous support and supervision obliging him to make the required improvements and offer quality care and services. If not, the RPA's certificate of compliance would be revoked.

The authorities accepted the Québec Ombudsman's recommendations and the Ombudsman is following up in order to ensure that they will be duly implemented.



Progress report on how COVID-19 was managed in CHSLDs: learning from the first wave and speeding up the response

On December 10, 2020, the Québec Ombudsperson released a progress report on how the government managed the COVID-19 crisis in public and private CHSLDs during the first wave of the pandemic. The report stems from an independent and impartial investigation that will continue until the fall of 2021.

Titled *Learning from the crisis and moving to uphold the rights and dignity of CHSLD residents*, the investigation report gives the floor to witnesses—CHSLD staff, informal caregivers and residents—who were in the thick of the fray. So far, the Québec Ombudsman has collected testimonies from several hundred people during the investigation. Many of the people interviewed described disorganized and exhausted care environments despite the immense dedication of staff.

In its progress report, the Québec Ombudsman defines five priorities for action aimed at correcting the main shortcomings observed during the crisis, with the aim of making CHSLDs into residences that fulfil their mission as living environments which provide ongoing care, while upholding the rights and dignity of the people who live there. These are the priorities:

- Focus CHSLD care and services on the needs of residents in order to respect their rights and dignity, and acknowledge the role of informal caregivers;
- Ensure a stable workforce in CHSLDs and sufficient numbers of staff;
- Continue to deploy a local manager in each CHSLD who can exercise strong local leadership;
- Establish a rigorous culture of infection prevention and control within CHSLDs that is known by all;
- Strengthen local, regional and Québec-wide communication channels in order to convey clear information and directives and facilitate sharing of best practices.

The Québec Ombudsman's systemic investigation is ongoing. Its final report will be released in the fall of 2021.



The progress report is available at protecteurducitoyen.qc.ca.



The rights of tenants in private seniors' residences: follow-up to the Québec Ombudsman's special report

In March 2021, the government acted on two major recommendations made by the Québec Ombudsman in its June 2016 reported titled *Private seniors' residences: more than just rental businesses*.

One of the recommendations was aimed at broadening the scope of Tribunal administratif du logement decisions in litigation involving several tenants of the same private seniors' residence (RPA). The Québec Ombudsman applauds the passage of Bill 67, *Act to establish a new development regime for the flood zones of lakes and watercourses, to temporarily grant municipalities powers enabling them to respond to certain needs and to amend various provisions* because it improves access to recourse before the Tribunal for certain kinds of litigation. The new measures specify that two or more tenants of the same RPA can file a joint petition with the Tribunal on behalf of all the other tenants who want to participate in it.

The Québec Ombudsman wishes to highlight the concerted effort of parliamentarians and the Tribunal, whose proposal will help to prevent and correct the harm noted during its investigation.

In its budget tabled on March 25, 2021, the government announced that the Ministère des Affaires municipales et de l'Habitation (MAMH), the Ministère de la Santé et des Services sociaux (MSSS) and the Ministère des Finances would examine how rent amounts are set and rises in RPA service costs are controlled.

The Québec Ombudsman is satisfied with this commitment. As it noted in its report, the legal and regulatory framework for the cost of RPA services, their indexation and recourse for contesting increases raise important issues. Collaboration between MSSS and MAMH has shown that innovative measures can be implemented to:

- Better prevent disputes;
- Avoid bringing cases to court;
- Strengthen compliance with the rights and obligations of RPA tenants and owners.

The Québec Ombudsman will keep track of developments so that the review of RPA service-cost monitoring will make it possible to protect seniors' rights and ensure sustainability of the services residents are offered.

Furthermore, the Québec Ombudsman intends to pay close attention to continued work to draft a new lease template tailored to RPAs.



The report is available at protecteurducitoyen.qc.ca.

SERVICE SUPPORT

The end of active care (or hospital discharge) means that a patient's attending physician considers the patient's condition stable thanks to the care received. From that point on, the person no longer needs the care and services that can be provided by a hospital, and, as a rule, the person returns to their usual living environment. Sometimes, however, the person needs to be referred to another resource for additional services that are not part of hospital care. If there is no place at the appropriate resource at the time of the request for admission, the person may have to remain in hospital while waiting. The government determines service users' financial contribution by regulation. A contribution is only payable if a person remains hospitalized in spite of having been discharged, while waiting for a place in a resource specified in the regulation, such as a place in a residential and long-term care centre.

For several years, the Québec Ombudsman has complained to the Ministère de la Santé et des Services sociaux (MSSS) about the lack of structure governing payable fees when users are in hospital while waiting for a place at a resource that is not indicated in the regulation. When institutions mistakenly issue invoices, the Québec Ombudsman recommends that they reimburse the person for what they have already paid or cancel the invoice. For its part, MSSS says that it is aware of the situation, but that nothing is planned for solving the issue in the short term.



CLARIFY BILLING RULES

An elderly woman was admitted to a hospital centre in late 2019. After a few weeks, her physician assessed her condition and concluded that, for now, she could not return home. However, at this point, no final decision had been made. A worker assigned to her file suggested that the woman spend some time in a resource with beds reserved for people who require assessment when her physician felt that she no longer required hospital care.

The purpose of such a stay further to a hospitalization is to prevent hasty decisions about where the person should live permanently.

The woman agreed to the transfer. She was given a medical discharge in early 2020. However, she only left the hospital 15 days later. She was billed for her 15 days' wait at the hospital at the rate of an adult living in a residential resource.

The only allowable fees for people who are covered by the Québec Health Insurance Plan and who are admitted to a

hospital centre for active care are the fees charged for a private or semi-private room while active care is being provided, and under certain conditions. A person may also be billed if they are declared waiting for admission to a residential and long-term care facility.

In the case at hand, the woman was waiting to be transferred to a resource that had beds reserved for people requiring assessment. She did not fit into any of the categories indicated in the regulation because the specific purpose of her transfer was to determine which residential resource she would be referred to and for which an application would be made afterwards. As a result, the Québec Ombudsman recommended cancellation of the invoice, which was done. It also recommended that the institution no longer bill people who were waiting for a place in an assessment resource and that it modify the document on this subject in order to clarify the rules. Follow-up is underway.

In the same hospital, a similar situation occurred when a man, who had been there for four months, was discharged. Before returning home, because of his problems with muscle tone, he had to spend time at a CHSLD that had assessment beds. While waiting, he remained in the hospital.

He soon received an invoice billing him at the rate of an adult in a residential resource for the days he spent at the hospital while waiting for a rehabilitation bed to be available.

Again, the Québec Ombudsman recommended cancellation of the invoice, and the recommendation was accepted.



RECOMMENDATION BY THE QUÉBEC OMBUDSMAN

Given the preceding, the Québec Ombudsman recommends that the Ministère de la Santé et des Services sociaux:

- By December 31, 2021, produce and distribute clear guidelines governing billing for service users occupying a bed in a hospital centre who are waiting for a place other than one indicated in the regulation.

Reply by the Ministère de la Santé et des Services sociaux:

[Translation]

"The Ombudsman's comments concerning billing must be qualified. Service users may be billed after 45 days in a

hospital centre if they are no longer receiving active care even if they are not awaiting a place specified in the regulation. Furthermore, MSSS is somewhat uncomfortable about the current rules because they can cause inconsistencies. For example, a person waiting for a place at an intermediate resource (RI) would be billed based on the rules of the residential and long-term care centre and then based on the RI rules when a place opens up for the person. We would like a more comprehensive solution, which will require more deliberation and significant regulatory amendments that cannot be achieved before December 31, 2021."



The financial contribution of adults who live in residential and long-term care centres (CHSLDs)

In June 2020 the Québec Ombudsman issued an opinion on the financial contribution of adult residents of CHSLDs. In it, the Ombudsman argued that there were unfair discrepancies in how the contribution was calculated, that could triple depending on the resident's civil status.

For example, a de facto spouse pays more than someone who is married. Alongside this, certain provisions penalize married residents. The regulation applied in calculating this contribution dates back 35 years and the main exemptions have not been reviewed since then.

Given the preceding, the Québec Ombudsman made three recommendations to MSSS aimed at:

- Replacing current exemptions and deductions by those of the *Individual and Family Assistance Regulation*;
- Providing for a mechanism that allows MSSS authorities to suspend the required contribution or adjust the amount in circumstances deemed exceptional on humanitarian grounds;
- Eliminating the unfairness caused by the civil status of CHSLD residents.

In July, the draft regulation to amend, among other legislation, the Regulation respecting the application of the *Act respecting health services and social services for Cree Native persons* was tabled, changing how the contribution of CHSLD, intermediate resource (RI) and family-type resource (RTF) residents is calculated .

The Québec Ombudsman is partly satisfied with the new regulatory provisions, especially the replacement of certain

exemptions and deductions from the 1983 regulation by those of the *Individual and Family Assistance Regulation*, for example:

- The \$226,195 exemption for a property (previously \$40,000) and the \$10,000 exemption for an automobile (previously \$4,000);
- The \$5,000 exemption for liquid assets for a couple or an independent adult with a dependent child (previously \$2,500);
- The exemption of liquid assets in the form of registered retirement savings plan (RRSP) amounts until age 65 and registered disability savings plan (RDSP) amounts that cannot be withdrawn in the short-term without penalties.

However, the amendments proposed in the draft regulation were only a partial response to the Québec Ombudsman's recommendations. The Ombudsman expressed its concerns in a letter to the Minister Responsible for Seniors and Informal Caregivers as well as to the Minister of Health and Social Services. The letter pointed out that:

- No changes had been made to the notion of spouse in order to eliminate the unfairness due to civil status;
- No standardized mechanism had been introduced to enable departmental authorities to suspend or adjust contributions on humanitarian grounds. Such provisions exist in other public service sectors.

The Québec Ombudsman thinks it is unfortunate that the regulatory amendments which came into force in January 2021 do not reflect its concerns, in particular, to take into account inequalities due to residents' civil status.



The opinion is available at protecteurducitoyen.qc.ca.

Insulin Pump Access Program

As its name indicates, the Insulin Pump Access Program refunds participants for the purchase of an insulin pump and supplies needed for its use. This program has been in effect since April 16, 2011. To be eligible, individuals insured by the Régie de l'assurance maladie (RAMQ) must:

- Be under 18 years of age;
- Meet a set of clinical criteria;
- Meet program conditions at the time of each annual re-evaluation.

When the program was introduced, MSSS mandated Centre hospitalier universitaire (CHU) de Québec to:

- Manage the intake of applications from designated pediatric hospital centres;
- Ensure that reimbursement for the purchase of pumps and supplies occurs only after a medical assessment confirms that the applicant qualifies;
- Issue the reimbursement directly to the supplier or to the user who purchased the eligible pump and supplies.

In the Québec Ombudsman's opinion, the procedure for registering for the program as well as the eligibility criteria are not necessarily described clearly to people under age 18 and their parents, especially if the patient uses a clinic that is not a designated pediatric centre. Procedures are more complex, notably because patients and their parents are not given anything in writing. The result is that information may differ from place to place, and this increases the likelihood of administrative errors and miscommunication.

If an application is turned down, there is no formal review process for seeking recourse. CHU de Québec refers the person to MSSS, the service quality and complaints commissioner, or the Québec Ombudsman, which has made recommendations to MSSS this year.



GIVE A YOUNG INSULIN USER ACCESS TO THE PROGRAM

Not long before she was about to turn 18, a young girl who had had diabetes for several years talked to a nurse about participating in the Insulin Pump Access Program. To have access to the Program, the young girl had to apply before age 18. Agreeing to the procedures for registering, she applied.

A few weeks after she reached age 18, she contacted the sections concerned for news about her file. She was told that she did not qualify because CHU had not received her application. She complained to the Québec Ombudsman.

In investigating, the Québec Ombudsman discovered that the girl had been misinformed about registration procedures. Moreover, the nurse who had met with her had not followed standard procedure while the girl was still a minor. Even if the girl had agreed to register when she met with the nurse, the pediatric clinic that could have proceeded with registration in a timely fashion was never contacted.

Given that the girl had met the required formalities, the Québec Ombudsman recommended that CHU grant her eligibility and reimburse her for her purchases (insulin pump and supplies). CHU acted on the recommendation.

The investigation also showed that when a program application is refused, there is confusion about the decision review

process. According to CHU, there are various kinds of appropriate recourse. However, applicants who are turned down are not officially informed about recourse options. Furthermore, MSSS told the Québec Ombudsman that it had never been involved in reviewing decisions in the context of this program.

The Québec Ombudsman recommended that MSSS take the necessary steps so that applicants who feel they have been harmed because they were not admitted to the program have access to a decision review procedure. This recommendation was accepted, and from now on, someone whose application is refused is systematically informed that they can contact the CHU de Québec service quality and complaints commissioner.

The Québec Ombudsman also saw that there was no way to officially inform young people and their parents in a timely fashion that they might qualify for the program. Despite the Québec Ombudsman's recommendation, MSSS refused to produce a tool, for example, an explanatory pamphlet for families. According to MSSS, the necessary information is already on the Quebec.ca website. Note that the recommendation stemmed from a need expressed by healthcare staff who work with these young people and their families.

PUBLIC INTEGRITY





PUBLIC INTEGRITY

This section reports on the Québec Ombudsman's main findings about the requests concerning the *Act to facilitate the disclosure of wrongdoings relating to public bodies*. The Act provides that anyone can disclose a wrongdoing involving a public body to the Québec Ombudsman with complete confidentiality and without fear of reprisal.

Note that this end-of-year also coincides with the first full year of the COVID-19 pandemic. It goes without saying that the daily operations of public services were affected, as were citizens' priorities during this difficult period. The Québec Ombudsman's findings in its 2020-2021 Annual Report must therefore be taken in context and understood in light of this exceptional situation.

Public integrity audits and investigations: the Québec Ombudsman's findings

Pursuant to the *Act to facilitate the disclosure of wrongdoings relating to public bodies* (the Act), a person may file a disclosure with the Québec Ombudsman concerning a wrongdoing involving a public body in total confidence and without fear of reprisal from that body.

As we know, 2020-2021 was marked by the COVID-19 pandemic and by telework for most public servants. Overall, the Québec Ombudsman has seen that the people who contact it in matters of public integrity now understand the scope of the Act and provide it with information that is relevant for analyzing the reported events.

In handling disclosures, the Québec Ombudsman listens to the parties concerned and examines the situation rigorously, objectively and impartially. Its investigators have the powers of commissioners appointed under the *Act respecting public inquiry commissions*. It bears remembering that the purpose of the Act is to strengthen citizens' trust in their institutions. The work carried out during an audit, or pre-investigation, makes it possible to establish whether there are reasonable grounds for launching an investigation. At the investigation stage, the investigators must determine if the alleged wrongdoings are founded or not.

If a wrongdoing is deemed to have occurred, the Québec Ombudsman conveys its recommendations to the authorities concerned so that they can rectify the situation. After its analysis, it may also conclude that no wrongdoing has been committed, while making preventive recommendations. For example, the Québec Ombudsman may recommend that a public body update its code of ethics and disseminate it so that its staff do not put themselves in conflict of interest and thereby commit a serious offence. In certain cases, it may recommend that a public body introduce new administrative mechanisms to counter misuse of public funds or recommend that appropriate measures be taken regarding the wrongdoer.

The Québec Ombudsman plays a key role in matters of public integrity in Québec. This is also true of the organizations to which it transmits information, such as:

- The Anti-Corruption Commissioner;
- The Autorité des marchés publics;
- The Commissaire à l'intégrité municipale et aux enquêtes (CIME) of the Ministère des Affaires municipales et de l'Habitation;
- The Commission municipale du Québec;
- The Office of the Inspector General of the Ville de Montréal.

It discusses best practices with these players on a regular basis within the forum of public integrity partners.

The Québec Ombudsman also handles files in which the sections that carry out audits or investigations within the public body concerned have already begun disclosure processing. For the sake of efficiency, the Québec Ombudsman ensures that the body's intervention is warranted and it liaises with the section to obtain its intervention report. If the Québec Ombudsman is satisfied with the intervention and deems that the action undertaken by the body has ended the wrongdoing and will prevent its recurrence, the file is closed.

Confidential and independent recourse

Disclosure of wrongdoings: definitions and main players

The *Act to facilitate the disclosure of wrongdoings relating to public bodies* mandates the Québec Ombudsman to investigate wrongdoings that have been committed or are about to be committed relating to a public body. The Act also provides for protection against reprisals for whistleblowers. This protection extends to people who cooperate in audits or investigations.

The whistleblower may be:

- A member of the personnel of a body subject to the Act;
- A supplier or subcontractor;
- Anyone else who is aware of a wrongdoing relating to a public body that has been committed or is about to be committed.

THE DIFFERENT CATEGORIES OF WRONGDOINGS

The following breaches may be considered wrongdoings:

- A contravention of Québec law, a federal law applicable in Québec, or a regulation stemming from such a law.
The Québec Ombudsman's role is not to be a substitute for the department or agency tasked with applying the legislation. That said, in matters of wrongdoing, the Québec Ombudsman does take the applicable legislative framework into account. For example, in examining a disclosure involving gross mismanagement, including an abuse of authority, it can look into whether labour laws were broken.
Note that disclosures concerning the tendering, awarding and execution of public contracts are within the Autorité des marchés publics's jurisdiction.
- A serious breach of the standards of ethics and professional conduct.
This consists notably of an act, an omission or a behaviour that deviates markedly from practices or standards of conduct generally accepted in public bodies or from ethical standards or the applicable obligations of professional conduct.
- A misuse of funds or property belonging to a public body.
This consists in particular of expenses incurred without proper authorization or that were authorized but that were exorbitant. This category also encompasses expenses that are illegal or contrary to the applicable law, regulation, policy or procedure, including funds or property that the body manages for others.
- Gross mismanagement within a public body, including an abuse of authority.
This is understood to be an act or omission which, whether intentional or not, displays substantial or significant indifference, negligence or disregard pertaining to the sound management of public resources, whether human or financial.
It may also consist of an arbitrary decision made to harm a person or to further one's personal interests, which includes bad faith and favouritism. The wrongdoing is committed by a person in a position of authority (real or by operation of law) and exceeds the wrongdoer's powers.

- An act or omission that seriously compromises or could seriously compromise a person's health or safety, or the environment.

This may consist of wrongdoings committed during the planning, construction or renovation of public infrastructure or a serious breach involving environmental contamination.

- Directing or counselling a person to commit a wrongdoing.

THE FACTORS TO CONSIDER

In order to evaluate the gravity of the alleged wrongdoing, the Québec Ombudsman considers the following factors: the intention of the wrongdoer, the objective gravity of the act, the position of the alleged wrongdoer within the organization, the recurrence of the conduct and the consequences for the public body.

Disclosures are considered inadmissible in certain situations, notably if the alleged act is before the court or concerns an employment condition only or the personal situation of an individual.

Reprisal complaints

The Act provides that it is forbidden to seek reprisal against a person on the ground that the person has, in good faith, made a disclosure or cooperated in an audit or investigation conducted on the basis of a disclosure. It is also forbidden to threaten to seek reprisal against a person so that the person will abstain from making a disclosure or cooperating in an audit or investigation conducted on the basis of a disclosure.

The offender is liable to a fine of \$2,000 to \$20,000 in the case of a natural person and to a fine of \$10,000 to \$250,000 in other cases. The amounts are doubled for a subsequent offence. In certain situations, the Québec Ombudsman can conduct penal investigations in matters of reprisal.

Requests for access to legal advice

The Québec Ombudsman's access to legal advice services consists of financial assistance used to reimburse fees for legal counsel chosen by the person making the request.

The Québec Ombudsman may grant financial assistance for obtaining legal services to a person who:

- Discloses or wishes to disclose a wrongdoing;
- Cooperates in an audit or investigation stemming from a disclosure;
- Feels he or she has suffered reprisal because of a disclosure or cooperation in an investigation;
- Conveys information to the Autorité des marchés publics or the Commission municipale du Québec;
- Makes a disclosure to the Commissaire à l'intégrité municipale et aux enquêtes (CIME).

A person wishing to obtain this financial assistance must make a request to the Québec Ombudsman prior to retaining legal counsel.

Financial assistance is granted if the person's specific situation warrants legal assistance. The Québec Ombudsman determines the terms for granting access to the service, especially the number of hours of legal counsel, on a case-by-case basis.

Requests for exemption

In accordance with the Act, the Québec Ombudsman may exempt public bodies from the obligation to adopt a procedure to facilitate the disclosure of wrongdoings and to designate an officer responsible for dealing with disclosures. This exemption may be granted particularly if the body's size, available resources or specific context does not enable it to assign someone to be the officer responsible for handling disclosures.

1 REQUESTS RECEIVED

	2017-2018	2018-2019	2019-2020	2020-2021
Requests for assistance	112	68	82	42
Disclosures	135	182	244	190
Reprisal complaints	0	8	16	12
Requests for access to legal advice	4	10	19	11
Requests for exemption	36	3	10	0
TOTAL	287	271	371	255

Note / A request for assistance is a request for information concerning the possibility of making a disclosure, a reprisal complaint or a request for access to legal advice in compliance with the *Act to facilitate the disclosure of wrongdoings relating to public bodies* or for advice about the procedure to follow.

Applications for exemption are not included in the *Requests for service received* table on page 16.

2

STATUS OF DISCLOSURES BEING PROCESSED AS AT MARCH 31, 2021

The following table shows the portrait of processed requests from April 1, 2020 to March 31, 2021.

2.1 Status of disclosures

STATUS	NUMBER
Implementation being monitored as at April 1, 2020	6
Being examined as at April 1, 2020	49
Accepted	190
Closed	162
Being examined as at March 31, 2021	72
Being analyzed for admissibility	7
Being audited	43
Being investigated	20
Completed	2
Implementation being monitored as at March 31, 2021	11

2.2 Status of reprisal complaints

STATUS	NUMBER
Implementation being monitored as at April 1, 2020	0
Being examined as at April 1, 2020	0
Accepted	12
Closed	11
Being examined as at March 31, 2021	1
Being analyzed for admissibility	0
Being audited	1
Being investigated	0
Completed	0
Implementation being monitored as at March 31, 2021	0

2.3 Status of requests for access to legal advice

STATUS	NUMBER
Being examined as at April 1, 2020	22
Accepted	11
Closed	30
Being examined as at March 31, 2021	3

3

BREAKDOWN OF CLOSED GROUNDS FOR COMPLAINTS

A request for assistance, a disclosure, a reprisal complaint or a request for access to legal advice may include several grounds. In 2020-2021, the Québec Ombudsman closed 245 requests that included 259 grounds (171 disclosures, 11 reprisal complaints, 35 requests for access to legal advice, and 42 requests for assistance [see Tables 3.1 and 3.2].

As far as grounds for disclosures were concerned, a decrease of 36.7% was noted compared to last year. There were 11 reprisal complaints this year, whereas there were 18 last year.

Requests for assistance decreased by 51.2% (86 to 42).

3.1 Disclosures and requests for assistance

CLOSED REQUESTS IN 2020-2021	NUMBER
Requests for assistance	41
Substantiated	1
Unsubstantiated	22
Forwarding of information (section 14)	4
Not completed (other)	32
Referred	10
Suspended (section 12)	102
TOTAL	212

} 171 grounds for disclosure

3.1.1 Breakdown of grounds for disclosure, by body category

BODY CATEGORY	NUMBER	% OF TOTAL
Departments	41	24.0%
Agencies	39	22.8%
Health and social services institutions	36	21.1%
Municipal bodies	27	15.8%
School service centres and school boards	12	7.0%
Childcare centres	6	3.5%
Cegeps	4	2.3%
Universities	3	1.8%
Government corporations or other	2	1.2%
People appointed by the National Assembly	1	0.6%
TOTAL	171	100.0%

3.1.2 Breakdown of unsubstantiated and substantiated grounds for disclosure, by category of wrongdoing

BREAKDOWN OF GROUNDS	UNSUBSTANTIATED	SUBSTANTIATED	TOTAL
Serious breach of the standards of ethics and professional conduct	7	0	7
Misuse of public funds or property	4	1	5
Gross mismanagement/abuse of authority	7	0	7
Contravention of an act/regulation	3	0	3
Endangering health and safety	1	0	1
Endangering the environment	0	0	0
TOTAL	22	1	23

In 2020-2021, there were 22 unsubstantiated grounds for disclosure and one substantiated ground, for a total of 23 grounds for disclosure handled. This represents a decrease of 34.3% compared to last year (35 grounds for disclosure were handled).

3.1.3 Follow-up to recommendations

For the files that were closed in 2020-2021, the Québec Ombudsman made four recommendations which were approved and implemented.

3.2 Reprisal complaints and requests for assistance

CLOSED REQUESTS IN 2019-2020	NUMBER
Requests for assistance	1
Substantiated	0
Unsubstantiated	1
Forwarding of information (section 14)	0
Not completed (other)	1
Referred	4
Suspended (section 12)	5
TOTAL	12

} 11 grounds for complaint

3.2.1 Breakdown of reprisal complaints, by body category

BODY CATEGORY	NUMBER	% OF TOTAL
School service centres and school boards	3	27.3%
Public bodies	3	27.3%
Health and social services institutions	3	27.3%
Government departments	2	18.2%
TOTAL	11	100.0%

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

3.3 Requests for access to legal advice

CLOSED LEGAL CONSULTATIONS	NUMBER
Inadmissible	2
Refused	0
Not completed/Approved/not used	11
Approved/paid for	22
TOTAL	35

Note / Among the 22 payments made, 12 occurred in 2019-2020. They appear in this Annual Report because they had not been closed by the end of the preceding fiscal year.

3.4 Requests for exemption

The Québec Ombudsman did not receive any requests for exemption in 2020-2021.

STAGES IN THE QUÉBEC OMBUDSMAN'S HANDLING OF DISCLOSURES



1. RECEPTION OF THE DISCLOSURE

- The purpose of this stage is to gather the required information and to explain the disclosure-processing procedure to the whistleblower.
- The disclosure may be anonymous or not.
- It can be filed by phone, by secure form, by email or in person.
- First contact with the whistleblower is established within two business days of receiving the disclosure.
- An acknowledgement of receipt is sent to the person within five business days of the first contact, unless the person does not want one or if the disclosure is anonymous.

2. ANALYSIS OF THE ADMISSIBILITY OF THE DISCLOSURE

- The purpose of this stage is to determine whether the disclosure is admissible.
- A disclosure is deemed inadmissible if, for example, it is made solely for personal purposes rather than in the public interest, if it questions the merits of government policies or objectives, or if the matter is before a court.
- Analysis of the admissibility of the disclosure is usually completed within ten business days of receiving it.
- If the disclosure is deemed inadmissible, a notice of termination of processing is sent to the whistleblower.

3. AUDIT FOR ESTABLISHING THE ACCURACY OF THE ALLEGATIONS

- The purpose of this stage is to determine whether there are reasonable grounds to believe that a wrongdoing has been committed or is about to be committed within or relating to a public body.
- The Québec Ombudsman writes to instruct any source likely to provide useful audit information to produce documents and information.
- Under normal circumstances, the audit must be completed within 60 days of receiving the disclosure.
- If, after the documents have been analyzed and the audit is completed, it is found that the facts do not warrant a public integrity investigation, a notice is sent to the whistleblower informing him or her that processing has been terminated. This would be the case if:
 - The alleged events prove to be unfounded;
 - The alleged events are under investigation by another organization;
 - The reported situation is being handled, was settled or is being settled;
 - The wrongdoers have left the organization and will not return.
- If an investigation must be conducted, the process continues.

4. INVESTIGATION

- At this stage, a notice of investigation is usually sent to the highest administrative official of the body concerned, or if the circumstances warrant it, to the minister responsible for the body.
- For conducting such investigations, the Québec Ombudsman is invested with all the powers of a public inquiry commissioner.
- Witnesses are summoned to appear before the Québec Ombudsman.
- To respect the rights of alleged wrongdoers and for the sake of procedural fairness, a preparatory document is usually sent to them before a meeting is held.
- Then the Québec Ombudsman meets with the alleged wrongdoers, when possible, to hear their version of the events about the allegations or the evidence collected during the investigation.
- It does its utmost to complete the investigation within 12 months of receiving the disclosure.

5. CONCLUSION

- At this stage, four conclusions are possible:
 - The disclosure is unfounded;
 - The disclosure is unfounded but the Québec Ombudsman makes recommendations;
 - The disclosure is founded and there are no recommendations;
 - The disclosure is founded and the Québec Ombudsman makes recommendations.
- Under normal circumstances, if the disclosure proves founded, a preliminary investigation report is sent for comment to the alleged wrongdoer(s).
- Next, a draft investigation report is sent to the public body's highest ranking administrative official. The draft report includes any recommendations made and takes into account the comments of the alleged wrongdoer(s).
- Then the Québec Ombudsman produces its final investigation report containing comments from the alleged wrongdoer(s) and from the public body. The final report and its preliminary versions remain confidential.
- When a wrongdoing has occurred, a conclusion might be made public. In such cases, usually the conclusion does not include any information that could cause the person or the person's work environment to be identified.

6. RECOMMENDATIONS

- The Québec Ombudsman monitors the recommendations until they have been implemented.
- If the public body has failed to establish any satisfactory measure within the prescribed deadline, the Ombudsperson may inform the minister responsible for the public body in writing.
- The Ombudsperson may also advise the government of this in writing and expose the case in a special report or in the Annual Report tabled at the National Assembly.

The municipal sector: shared responsibilities

Even though the Québec Ombudsman was entrusted with application of the Act in municipal matters, its area of jurisdiction is shared with the Minister responsible for Municipal Affairs and Housing. The Minister has exclusive jurisdiction regarding disclosures whose subject falls under the responsibilities listed in the *Act respecting the Ministère des Affaires municipales, des Régions et de l'Occupation du territoire*.

For example, a disclosure alleging that a municipality disposed of municipal assets free of charge is within the Department's purview because it concerns application of the *Municipal Code of Québec*, one of the laws governing the municipal sphere. Similarly, a disclosure concerning misuse of funds is within the Department's jurisdiction if the funds came from a municipal financial assistance program or municipal funds per se.

However, if it is alleged that a municipality is illegally dumping wastewater into a body of water, the Québec Ombudsman handles the disclosure because the alleged wrongdoing involves legislation for which the Minister of Municipal Affairs and Housing is not responsible.

In the same vein, if a disclosure concerns the Ministère des Affaires municipales et de l'Habitation, the Québec Ombudsman is responsible for handling it. It is also possible that the subject of a disclosure concerns both a municipal body and a public body subject to the Act. In such a case, the Minister of Municipal Affairs and Housing and the Québec Ombudsman confer with each other as to how the disclosure will be handled.

The Act indicates that people who file a disclosure about a municipal body may contact either the Québec Ombudsman or the Minister of Municipal Affairs and Housing (more specifically, CIME). An agreement was entered into by the Québec Ombudsman and CIME for that purpose. The agreement establishes the procedure for forwarding disclosures received by either organization when they are covered by either one, or to both organizations simultaneously. If the disclosure is sent to the Québec Ombudsman, it determines whether the disclosure is within its jurisdiction. If not, it forwards the disclosure to CIME for handling, and vice versa when CIME receives a disclosure it considers as being within the Québec Ombudsman's purview.

DISCLOSURES CONCERNING THE MUNICIPAL SPHERE



AN AUDIT REGARDING A MUNICIPALITY'S FIRE SAFETY SERVICE

A person filed a disclosure alleging that certain lieutenants within the fire safety service of the whistleblower's municipality had not taken the mandatory officer training specified in the *Regulation respecting the conditions governing the exercise of functions within a municipal fire safety service* (hereinafter the Regulation). The 150-hour training is given by the École nationale des pompiers du Québec. Certification is granted if the candidates pass the tests.

When it had completed the audit, the Québec Ombudsman found that people within the municipality's fire safety service (an assistant director and certain lieutenants) did not have the training prescribed in the Regulation. However, the assistant director and one of the lieutenants had begun the training, which had been put on hold due to COVID-19. The Québec Ombudsman also noted that mandatory training did not apply to one of the lieutenants cited in the disclosure because he was considered exempted based on the requirements stipulated in the Regulation.

Despite these shortcomings, the Québec Ombudsman considered that no wrongdoing had occurred within the meaning of the Act for the following reasons:

- Not every contravention of an act or a regulation is a wrongdoing. For it to have been one in this case, the offence would have had to adversely affect the fire safety service's ability to do its job. This was not the case. Even though the people concerned did not have the required certification, they had amassed sizable experience over the years (between 14 to 28 years with the service).
- Two of them had begun the training with a view to the required certification.

As a result, the disclosure was deemed unfounded. However, the Québec Ombudsman remained concerned about certification not being obtained despite the Regulation. With the whistleblower's consent, it sent the findings from its audits and the details of the disclosure to the Ministère de la Sécurité publique and to the Commission des normes, de l'équité, de la santé et de la sécurité du travail so they could decide whether action was warranted. Note that:

- Under the *Fire Safety Act*, the Minister of Public Security is empowered to intervene with a municipality if it does not comply with the Regulation;
- Municipalities are responsible for ensuring that their firefighters have the required training to perform their duties adequately and safely in accordance with the *Act respecting occupational health and safety*.



AN AUDIT CONCERNING THE CONDITIONS FOR CARRYING OUT A HOUSING PROJECT

After receiving two disclosures, the Commissaire à l'intégrité municipale et aux enquêtes (CIME) of the Ministère des Affaires municipales et de l'Habitation (MAMH) undertook audits concerning alleged wrongdoings by a municipality's public office holders. The audits concerned several elements, including acts which would have advanced a housing project, namely, unduly delaying the adoption of urban-planning bylaws consistent with the revised land use and development plan adopted by the regional county municipality (RCM) more than four years earlier.

After CIME started its audits, the whistleblower behind one of the disclosures informed CIME that a MAMH employee who worked within the regional branch covering the municipality concerned was in conflict of interest. More specifically, the public servant had seemingly interfered to have a housing project approved while it was being audited by CIME.

This new allegation compromised the handling of both disclosures. Through CIME, MAMH had supposedly examined a situation involving a member of its own staff, putting it in conflict of interest or the appearance of conflict of interest.

In such situations, the Act specifies that the Québec Ombudsman must handle the disclosure. In accordance with the agreement between it and CIME, it was resolved that the Québec Ombudsman would process the allegation concerning the public servant's conflict of interest first. Depending on whether the allegation was founded or not, the Québec Ombudsman would:

- Continue processing the other components of the disclosures;
- Interrupt the process and allow CIME to continue handling the file.

When its audits were completed, the Québec Ombudsman found no evidence to suggest that the public servant had caused the housing project to move ahead. The allegation proved unfounded.

As agreed, the Québec Ombudsman informed CIME of its conclusions and the Commissaire was able to finish processing the files.





AN AUDIT CONCERNING ALLEGED FAVOURITISM

The Québec Ombudsman received a disclosure to the effect that a civil security director and a mayor had caused the Ministère de la Sécurité publique to fast-track two claim files. According to the disclosure, the citizens had taken advantage of their friendship with the director and the mayor respectively. Their claims were filed under government compensation and financial assistance programs in the wake of the floods in 2017 and 2019.

It was alleged that because the director intervened, his friend received the maximum amount of assistance under the relief program (\$200,000) even though his property had not appeared to have been damaged. The citizen was allegedly allowed to demolish his house and have it rebuilt at the same location, even though this was illegal. Lastly, the disclosure cast doubt on the conformity of the demolition and construction permits issued for both files.

In the public interest, government departments and agencies must fulfil their mandate with complete integrity. Favouritism or misuse of funds stemming from interference by the mayor or the director with a public servant would have constituted a serious breach of the code of ethics and professional conduct, in addition to being a misuse of funds. The disclosure was therefore admissible.

The ensuing audits by the Québec Ombudsman showed that the two claimants' files had not been given priority or fast-tracked by the Department. Moreover, the files showed that the compensation or financial assistance awarded to the citizens was supported by documents attesting to the damage incurred (numerous expert reports, photographs, etc.) in keeping with compensation program requirements. Demolition and reconstruction of the house on the same piece of land was allowed because even though the property was indeed partly located in a special planning zone,¹³ the new residence was located outside this zone.

The disclosure was therefore unfounded.

¹³ / A special planning zone is a temporary measure which the government may use to solve a development or environmental problem whose urgency or seriousness warrants its intervention. This allows the government to prohibit construction of new buildings and reconstruction of buildings destroyed by floods pending the production and implementation of a land use action plan for flood zones.



AN AUDIT DUE TO ALLEGED REPRISAL

As stated earlier, several organizations act concerning public integrity. As a result, if the Québec Ombudsman considers that a disclosure which it received is the responsibility of another public organization, it ensures, with the whistleblower's consent, that the information is transmitted to that organization.

For example, the Québec Ombudsman received a disclosure about a person having suffered reprisal because the person had testified as a witness at a legal proceeding undertaken by the Ministère de l'Environnement et de la Lutte contre les changements climatiques against a municipality.

The allegation was that the mayor of the municipality had discovered the identity of the witness for the Department. Ever since, certain municipal staff had harassed the witness, tried to find the citizen at fault and penalized the witness by issuing statements of offence.

Since the behaviour of municipal staff is the municipality's exclusive domain, the Québec Ombudsman transferred the disclosure to CIME, as provided for in the Act.

Because the disclosure also had to do with a possible breach of ethics by the mayor regarding a resident, the Québec Ombudsman contacted the Commission municipale du Québec, which confirmed that for this aspect of the disclosure, the Commission was indeed the proper authority. With the whistleblower's consent, the Québec Ombudsman transferred the information to the Commission.

Finally, because litigation was already underway regarding alleged environmental breaches, the Québec Ombudsman ceased examining this component of the disclosure.

These various transfers to the organizations concerned, in keeping with set rules, made it possible for the Québec Ombudsman to close its file.

A CASE OF GROSS MISMANAGEMENT



WRONGDOING REGARDING AN EDUCATIONAL INSTITUTION

The Québec Ombudsman received a disclosure whereby alleged wrongdoing had occurred in an educational institution:

- Staff members and representatives of the college reputedly used their position and confidential information for personal purposes. They allegedly manipulated hiring procedures and requirements to renew their or their friends' work contracts and had excluded other candidates;
- A teacher allegedly misrepresented his qualifications and, with the college's knowledge, abused his position to advance his personal interests by manipulating the hiring procedures and requirements for his own job;
- Seemingly, the college representatives had on various occasions refused to intervene or to investigate manipulation of the hiring process;
- The college representatives allegedly allowed workplace harassment and had participated in it, going so far as to threaten certain people to prevent them from speaking out.

The Québec Ombudsman analyzed the various documents, interviewed nearly 30 people and examined the standard college management parameters from three angles: the hiring process and awarding of work contracts, application of rules and policies to staff members, and work environment and relations.

The investigation showed that the college's administrators had made illegitimate decisions and had interfered with hiring knowing that it would cause unfairness and injustice among the staff. The Québec Ombudsman also saw that the acts were repetitive, especially regarding hiring and the renewal of the contracts of teachers who did not meet requirements, as well as approval of arbitrary changes to hiring criteria.

Moreover, college members had made arbitrary decisions in order to further their personal interests, hinder certain people or give themselves an advantage. For example, they had:

- Cancelled a posting and used one containing former requirements that gave an edge to teachers with a general education background and that penalized potential continuing education candidates;
- Applied education requirements to the letter for continuing education candidates, while being flexible with the same requirements for external candidates;
- Been excessively tolerant about certain teachers' inappropriate behaviour while using work conditions to penalize other teachers.

After investigating, the Québec Ombudsman considered that the college's actions and omissions had contributed to creating a toxic work environment. This finding echoed the many statements concerning chronic conflict that had not been addressed. The Québec Ombudsman concluded that in the college's capacity as a legal person governed by public law, it had been responsible for gross mismanagement within the meaning of the Act.

Given the preceding, the Québec Ombudsman recommended that the college draft, adopt and disseminate to its staff an internal procedure concerning the hiring of teachers with a general education background and engage in the same exercise concerning continuing education teachers. It also recommended that the college produce a code of ethics and an action plan to improve the work environment in the department concerned. A timeline for implementing the various measures was also necessary.

The college accepted the Québec Ombudsman's recommendations and took steps to address them. The Québec Ombudsman will remain attentive to their implementation.



The investigation conclusion is available at protecteurducitoyen.qc.ca.

MISUSE OF PUBLIC FUNDS OR PROPERTY



WRONGDOING REGARDING A HEALTH INSTITUTION AND THE MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX

The Québec Ombudsman received a disclosure alleging that public funds had been misused by a person responsible for a family medicine group (GMF).

According to the allegations, the alleged wrongdoer managed the GMF and had devised a scheme to convert local community service centre (CLSC) emergency visits into GMF visits. The purpose was to enable the GMF to achieve attendance rates of at least 80%—the threshold for funding under a specific Ministère de la Santé et des Services sociaux program.

In investigating, the Québec Ombudsman studied the various documents and interviewed some 30 people, including the professional staff at the Régie de l'assurance maladie du Québec (RAMQ) in charge of remunerating physicians, as well as the alleged wrongdoer.

It was found that the person had indeed devised a scheme to ensure that all requirements would be met for continued funding and human resources from the Ministère de la Santé et des Services sociaux. For the scheme to work, users already registered with the GMF who went to the CLSC emergency section for non-urgent care were re-directed. The GMF, the integrated health and social services centre (CISSS) and the Ministère de la Santé et des Services sociaux had made an informal agreement, but nothing had been formalized by the parties.

Subsequently, the person responsible for the GMF changed the referral procedure without informing the CISSS or the Department. As a rule, GMF users who went to the CLSC's emergency section should have been referred to the CLSC's family medicine section. However, a GMF laptop computer had been installed in the CLSC to get around the process approved in the agreement. The medical information of users physically at the emergency section of the CLSC was entered as if they had gone to the GMF. This artificially inflated the GMF's visit ratio.

According to CISSS authorities and the Department, had they been notified about these practices, they would have objected. This way of operating meant that the codes for remunerating physicians did not match up with where the users had actually gone for care. Furthermore, the emergency section of the CLSC was endangered because its numbers were dropping. Moreover, to be recruited and preserve their right to practice at the CLSC, physicians had to become members of the GMF even if they only had one patient there. Participating physicians got a raise.

The Québec Ombudsman concluded that wrongdoing had occurred within the meaning of the Act, namely, a misuse of public funds or property.

Given the preceding, the Québec Ombudsman recommended that no later than December 31, 2020, the CISSS and the GMF enter into a formal agreement, in collaboration with the Department and RAMQ, governing the referral of GMF users to family medicine within the CLSC. Meanwhile, this practice had to cease. This recommendation was implemented to the Québec Ombudsman's satisfaction.

The Québec Ombudsman also recommended that the GMF pay back the cost of the computer installed in the CLSC emergency section. Lastly, the Ombudsman felt that the CISSS must monitor the GMF's activities regarding the funding program for GMFs for the next two years, and that it send the Québec Ombudsman an action plan for following up on the recommendations.

The CISSS accepted the Québec Ombudsman's recommendations and the Ombudsman is keeping an eye on their implementation.



The investigation conclusion is available at protecteurducitoyen.qc.ca.



WRONGDOING REGARDING A PUBLIC BODY

The Québec Ombudsman received a disclosure about an alleged wrongdoing, namely, that a person who had a managerial position within a public body had misused its funds.

According to the events reported, the manager had authorized unworked overtime for a recent hiree so that there would be no pay decrease for him or her. Moreover, human resources had assigned the worker a given pay grade, but the manager had given the worker a higher one.

In investigating, the Québec Ombudsman analyzed several documents. The Ombudsman also interviewed witnesses and alleged wrongdoers. Note that the Québec Ombudsman discovered that other staff members claimed unworked overtime. In these specific cases, managers gave these seemingly highly qualified employees these privileges in order to keep them on the payroll. They were paid unworked overtime while their applications for bonuses as experts were being analyzed. This overtime was granted over a period of about a year.

Given the preceding, the Québec Ombudsman recommended that the public body take the necessary measures regarding the managers who had committed the wrongdoings so that such acts would not recur. It also recommended that the public body put in place ways of monitoring overtime and quickly detecting unworked hours. No later than December 30, 2020, a reminder was to have been issued to the managers concerning remuneration with the public service.

The public body accepted and implemented the Québec Ombudsman's recommendations.



The investigation conclusion is available at protecteurducitoyen.qc.ca.



WRONGDOING REGARDING HEALTH INSTITUTIONS

The Québec Ombudsman received a disclosure alleging that a group of technical employees within health and social services institutions had misused public funds. The disclosure indicated that they added 30 minutes of unworked time to their work schedule every day.

After the Québec Ombudsman intervened with the public body, an internal audit was carried out to verify the allegation. The audit report, which was sent to the Québec Ombudsman,

showed that the alleged wrongdoing had indeed occurred in one of the institutions. Some 20 technicians had falsified information for more than two years, which represented approximately \$200,000.

The public body rectified the situation to the Québec Ombudsman's satisfaction. The Ombudsman sent the public body a letter asking that it receive assurances from its staff that this situation would never recur.

SERIOUS BREACH OF THE STANDARDS OF ETHICS AND PROFESSIONAL CONDUCT



WRONGDOING REGARDING A PUBLIC BODY

The Québec Ombudsman received a disclosure alleging that when a manager had started a job within a public body, he or she had committed a serious breach of the standards of ethics and professional conduct by acquiring property from his or her spouse using public funds. The person had also allegedly been on a panel within the same public body which awarded a prize to someone with whom the manager had had close ties in the past.

During the investigation, the Québec Ombudsman analyzed various documents and interviewed witnesses. The investigation showed that adequate measures had been taken regarding the appearance of conflict of interest. The manager had been excluded from any discussions involving these acquaintances. As a result, the Québec Ombudsman concluded that there had been no breaches of the Act. It

nonetheless recommended that the public body's mechanisms for preventing all conflict of interest be more transparent and better known.

Given the preceding, the Québec Ombudsman recommended that the public body, no later than July 1, 2021, implement a procedure for disseminating its code of ethics to its staff and to everyone on an acquisitions committee or a jury. It also recommended that the public body keep an annual register for staff members to declare any conflict of interest. Furthermore, the public body would have to set a policy for the measures to be applied in cases of conflict of interest.

The public body accepted the Québec Ombudsman's recommendations. The Ombudsman will monitor their implementation.

LIST OF RECOMMENDATIONS

SOCIÉTÉ D'HABITATION DU QUÉBEC

THE SOCIÉTÉ D'HABITATION DU QUÉBEC'S INTERVENTION WITH HOUSING COOPERATIVES AND NON-PROFIT HOUSING AGENCIES

The Québec Ombudsman recommends that the Société d'habitation du Québec:

- Establish a standardized and clear mechanism or procedure for examining complaints concerning the cases specified in section 85.2 of the *Act respecting the Société d'habitation du Québec* regarding intimidation, harassment and mistreatment;
- Appoint a respondent tasked to handle these complaints (management consultant, member of the complaints bureau, or an auditor);
- Produce a guide for staff defining the notions of intimidation, mistreatment and harassment as well as explaining the scope and limits of the Minister's powers in the cases specified in section 85.2 of the *Act respecting the Société d'habitation du Québec*;
- Distribute the information about the complaint examination procedure to the directors and managers of housing agencies and to the public;
- No later than December 31, 2021, send the Québec Ombudsman a plan for follow-up to the recommendations.

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE (CORRECTIONAL SERVICES)

ACCESS TO THE COMPLAINT-EXAMINATION PROCEDURE IN PENAL ENVIRONMENTS

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

- By December 31, 2021, issue a written reminder to all employees about how the complaint-examination procedure should be conducted, as specified in Instruction 21 I 04 concerning the processing of complaints from remandees or offenders, with a view to facilitating detainees' access to the procedure and providing any required support.

MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX

PATIENT FLOW WITHIN THE HEALTHCARE SYSTEM

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

- Without delay, ensure that the recommendations made in 2019 to resolve the problem of overcrowding at Royal Victoria Hospital (MUHC) be implemented in order to make it possible for patients to have timely access to a reanimation room.

BILLING FOR SERVICE USERS WHO OCCUPY HOSPITAL BEDS

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

- By December 31, 2021, produce and distribute clear guidelines governing billing for service users occupying a bed in a hospital centre who are waiting for a place other than one indicated in the regulation.

FOLLOW-UP TO THE RECOMMENDATIONS IN THE QUÉBEC OMBUDSMAN'S 2019-2020 ANNUAL REPORT

PUBLIC SERVICE

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

RECEIPT OF APPLICATIONS FOR THE COLLECTIVE SPONSORSHIP OF REFUGEES

RECOMMENDATIONS IN 2019-2020

ASSESSMENT IN 2020-2021

Change the way in which undertaking applications are transmitted pursuant to the Collective Sponsorship of Refugees Program with a view to finding a procedure that is fair for all applicants and, by extension, all refugees concerned.

THE QUÉBEC OMBUDSMAN:

- **IS SATISFIED** that the Department has changed the way undertaking applications can be transmitted. Applications for groups of 2 to 5 people will be allowed to be sent electronically from April 6 to May 5, 2021. Maximum capacity is 750 applications. Intake of applications for legal entities (organizations) has been suspended until November 1, 2021. The Department is investigating alleged fraud.

Among possible solutions, consider drawing lots if the number of applications exceeds the cap established per sponsor category.

THE QUÉBEC OMBUDSMAN:

- **IS SATISFIED.** If the number of applications exceeds the established cap, lots will be drawn from among eligible applications, under the supervision of an external auditor and in the presence of witnesses.

Inform the Québec Ombudsman of the schedule for implementing the required changes.

THE QUÉBEC OMBUDSMAN:

- **IS SATISFIED.** On October 28, 2020, an order-in-council was published in the *Gazette officielle du Québec* and a news release was posted on the Department website, both announcing a new mechanism for processing collective sponsorship applications and a new reception period. On April 6, 2021, the Department published a note about immigration procedures. The note presented the mechanism for receipt of undertaking applications for groups of 2 to 5 natural persons under the Collective Sponsorship of Refugees Program for 2020-2021.

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE

MANAGEMENT OF DISASTER CLAIM FILES

RECOMMENDATIONS IN 2019-2020

Quickly take all necessary means to improve application and file management, notably by creating an operational procedure for processing these applications and files.

By December 18, 2020, send the Québec Ombudsman an action plan for ensuring uniform file management.

ASSESSMENT IN 2020-2021

THE QUÉBEC OMBUDSMAN:

- **IS SATISFIED** with the action plan which it received from the Department for improving the management of disaster claimants' applications and files. It considers the proposed measures and actions appropriate for ensuring better management of claims, while making it possible for the Department to correct the problems brought to its attention.

THE QUÉBEC OMBUDSMAN:

- **WILL MONITOR** implementation of the measures proposed in the action plan.

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

COMPENSATION FOR LOSS OF PHYSICAL OR PSYCHOLOGICAL INTEGRITY

RECOMMENDATION IN 2019-2020

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

THE QUÉBEC OMBUDSMAN:

- **WILL MONITOR** the situation because at a meeting held in November 2020, the Department representatives provided the Québec Ombudsman confirmation that they were working on a solution in response to its recommendation.

CORRECTIONAL SERVICES

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE

USE OF MEANS OF RESTRAINT IN PENAL ENVIRONMENTS

RECOMMENDATION IN 2019-2020

By March 31, 2021, with the support of the Ministère de la Santé et des Services sociaux, produce an instruction on the use of restraints in penal environments. The instruction should cover the following:

- The circumstances warranting the use of such means;
- The roles and responsibilities of the staff from both Departments when restraints are used;
- The level of supervision required when restraints are used;
- The facility's obligation to report on the use of means of restraint on a regular basis.

ASSESSMENT IN 2020-2021

THE QUÉBEC OMBUDSMAN:

- **IS DISSATISFIED** because the Ministère de la Sécurité publique refused its recommendation to draft a specific instruction on the use of restraints in penal environments with the support of the Ministère de la Santé et des Services sociaux. The version submitted to the Québec Ombudsman for comment fell short of the expectations it expressed in 2019-2020. The Québec Ombudsman commented on the draft instruction in January 2021 and very few of its recommendations found their way into the final version. The instruction came into force on February 4, 2021, but since then, the Department has suspended its application, claiming that it had to carry out certain verifications. The Québec Ombudsman does not know what these verifications consist of and the Department has not indicated when the adjusted instruction will be published. To this day, the instruction that is in force dates back to 1996.

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE

INTERMITTENT SENTENCE MANAGEMENT

RECOMMENDATION IN 2019-2020

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

ASSESSMENT IN 2020-2021

THE QUÉBEC OMBUDSMAN:

- **IS DISSATISFIED.** The Québec Ombudsman received the requested action plan with the new timeline for implementing certain of its recommendations. The Department considers other recommendations as having been implemented. However, the Québec Ombudsman has not come to the same conclusion.

MINISTÈRE DE LA SÉCURITÉ PUBLIQUE AND MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX

TRANSFER OF RESPONSIBILITY FOR HEALTH SERVICES AND SOCIAL SERVICES WITHIN CORRECTIONAL FACILITIES

RECOMMENDATIONS IN 2019-2020

Strike a steering committee for coordinating the transfer of the Montréal correctional facility and ensure that the committee begins meeting before December 1, 2020.

ASSESSMENT IN 2020-2021

THE QUÉBEC OMBUDSMAN:

- **IS DISSATISFIED.** According to the Ministère de la Santé et des Services sociaux, the steering committees were supposed to have been established in the fall of 2020, but the Québec Ombudsman has not received any official confirmation of this. It has, however, been informed that the Ministère de la Santé et des Services sociaux has mandated a coordinator for the transfer of healthcare responsibilities in the two remaining correctional facilities (in Québec City and in Montréal).

Begin the work to determine the service offering of the Montréal correctional facility's infirmary before December 1, 2020.

THE QUÉBEC OMBUDSMAN:

- **IS DISSATISFIED** that the service offering which was supposed to have been analyzed by the steering committees has not been dealt with.

As soon as possible, propose the necessary legislative amendments for completing the transfer of Ministère de la Sécurité publique staff to the Ministère de la Santé et des Services sociaux.

THE QUÉBEC OMBUDSMAN:

- **WILL MONITOR** the situation because action is still underway to implement the transfer of responsibility. It was informed that the Ministère de la Sécurité publique is working closely with the Secrétariat du Conseil du trésor and the Ministère de la Santé et des Services sociaux to resolve the transfer of staff from one Department to the other and to finalize the last phase of the process. The transfer coordinator's mandate is ongoing.

ESTABLISHING A UNIFORM COMPLAINT PROCESSING PROCEDURE ACROSS THE ENTIRE CORRECTIONAL SYSTEM

RECOMMENDATIONS IN 2019-2020

ASSESSMENT IN 2020-2021

By December 31, 2020, inform correctional staff and detainees about the process approved by both Departments for lodging a complaint.

THE QUÉBEC OMBUDSMAN:

- **IS DISSATISFIED** because the complaint processing procedure has still been not standardized across the correctional system. The procedure approved by both Departments in the context of the transfer of responsibilities is not being followed. Detainees continue to be denied access to the Ministère de la Santé et des Services sociaux's complaint processing procedure.

Make the complaint forms available to detainees at all times.

THE QUÉBEC OMBUDSMAN:

- **IS DISSATISFIED** because work is at a standstill. It was informed that discussions between the Ministère de la Sécurité publique and the Ministère de la Santé et des Services sociaux with a view to a procedure for making the form more accessible are ongoing. The Québec Ombudsman attended a few of their meetings. The Ministère de la Santé et des Services sociaux wants complaint processing to be as consistent as possible with the spirit of the procedure prescribed in the Act respecting health services and social services, while taking into account correctional-specific issues. The Department also insists that the procedure remain simple. Discussions between the two Departments to define the required adaptations were planned. However, as at March 31, 2021, discussions were still underway. While it is aware work slowed down due to the pandemic, the Québec Ombudsman does not know why there are such delays.

Review the complaint processing system after a year to better adjust it to penal realities if necessary.

THE QUÉBEC OMBUDSMAN:

- **WILL MONITOR** the fact that this review should be carried out once the procedure has been established within correctional facilities.

HEALTH AND SOCIAL SERVICES NETWORK

MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX

SERVICES TO PEOPLE WITH A SIGNIFICANT LOSS OF AUTONOMY

RECOMMENDATIONS IN 2019-2020

Inventory the institutions which have set a ceiling for the number of hours of services for people with a significant loss of autonomy in order to measure regional disparities.

Support the institutions that cannot manage to meet the home support needs of people with a significant loss of autonomy, with a view to shrinking the gap between the cost of public residential resources (approximately \$65,000 per year) and the home support subsidy.

ASSESSMENT IN 2020-2021

THE QUÉBEC OMBUDSMAN:

- **IS DISSATISFIED** because at the time this report was being written, the recommendation, which the Department had accepted, had yet to be implemented. The Québec Ombudsman is still waiting for the accountability it asked the Department to provide.

THE QUÉBEC OMBUDSMAN:

- **IS DISSATISFIED** because even though the Department accepted this recommendation, at the time of writing, it has still not implemented it.

ACCESS TO HOME SUPPORT SERVICES FOR THE MENTAL HEALTH CLIENT POPULATION

RECOMMENDATION IN 2019-2020

Remind institutions that mental health-related limitations which decrease users' capacity to perform activities of daily living and instrumental activities of daily living must be considered at par with physical or psychosocial impairments for home support eligibility purposes.

ASSESSMENT IN 2020-2021

THE QUÉBEC OMBUDSMAN:

- **IS DISSATISFIED** because even though the Department accepted this recommendation, at the time of writing, it has still not provided the accountability which the Department Ombudsman already requested.



QUÉBEC CITY

800, place D'Youville, 19th Floor
Québec City (Québec) G1R 3P4
(418) 643-2688

MONTREAL

1080, côte du Beaver Hall, 10th Floor
Montréal (Québec) H2Z 1S8
(514) 873-2032

Toll free: 1-800-463-5070

protecteurducitoyen.qc.ca