



The Québec
Ombudsman **50** YEARS
With you for
quality public services

2018
2019

**ANNUAL
REPORT**



2018
2019

ANNUAL
REPORT

Québec City
September 2019

Mr. François Paradis
President of the National Assembly
Parliament Building
Québec (Québec) G1A 1A4

Mr. President:

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 49th Annual Report of the Québec Ombudsman for fiscal year 2018-2019.

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

Yours respectfully,



Marie Rinfret
Ombudsperson

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Notice

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

MESSAGE FROM THE OMBUDSPERSON



Put yourself in their shoes

The Québec Ombudsman's 2018-2019 Annual Report paints a disturbing picture of cases in which government programs exclude some of the people for whom they are intended. Our investigations show that in planning or applying certain programs, the authorities do not make a habit of walking through the process that citizens must navigate in order to obtain the services they need. Given the obstacles in gaining access to programs and in all subsequent steps, people may have to fend for themselves.

Obtaining the solidarity tax credit managed by Revenu Québec is an apt illustration of this obstacle course. Even though the credit is supposed to be for people with low incomes, every year more than 40,000 social assistance recipients do not receive the amount they are entitled to because they are required to file a tax return in order to get it. For many of these people, who are among society's most destitute citizens, such a requirement is impossible to fulfill.

The social solidarity program of the Ministère du Travail, de l'Emploi et de la Solidarité sociale is aimed at providing last-resort financial assistance benefits to people with an illness, disability or personal condition that prevents them from working. We have seen that recipients may be deprived of crucial amounts because the procedure imposed on them is too complex. For example, the Department expected a person with a severe mental disorder to check with Retraite Québec about her eligibility for a retirement pension or else her benefit would be significantly reduced. Obviously, in analyzing her file, the agency should have taken the recipient's illness into account.

Under the *Labour Code*, the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) is tasked with representing workers free of charge before the Tribunal administratif du travail. Some people summoned by the Tribunal were informed that there was no CNESST attorney

available to represent them. Did anyone question what the repercussions of this situation would be for these people?

In another vein, major corrections must be made to immigration procedures that leave thousands of applicants without feedback pending an answer from the Ministère de l'Immigration, de la Diversité et de l'Inclusion. Among other complaints, the Québec Ombudsman handled one from a candidate who had been waiting to hear the outcome of her application for more than seven years.

For the health and social services network, "putting yourself in their shoes" means understanding what the following people experienced:

- an elderly person who languished on a waiting list for months, if not years, before gaining access to a residential resource that suited his or her needs;
- a hospital emergency room user who fell repeatedly because his or her condition had not been assessed accurately;
- a family who had just lost a loved one and was pressured by the hospital to leave the premises, contrary to rules which give grief-stricken families a few hours with their deceased relative;
- a person with reduced autonomy whose home-support hours were reduced based solely on the bottom line.

In this context, some of the questions we should be asking ourselves are:

- What are the necessary procedures?
- Are the procedures adapted to the people concerned, especially society's most vulnerable citizens?
- Are people given all the information they need, in language they understand, and in a means of communication accessible to them?
- What are the wait times?

These shortcomings are even more glaring and deplorable because they contrast with the practices of other public service sectors where thought is given to the red tape which citizens must untangle. Special care is taken to simplify processes, to earmark resources for assisting the client population, and to achieve results that are generally to service users' satisfaction. This concern of some public bodies should become the standard.

In other words, public bodies must always take the trouble to go over the sequence of their programs' conditions and requirements. To do otherwise especially affects society's most disadvantaged citizens.

MORE THAN 850,000 REQUESTS IN 50 YEARS

On May 1, 1969, the Québec Ombudsman was instituted to ensure that the rights of people are upheld in their interactions with Québec public services. Since then, it has handled more than 850,000 requests. People who turn to the Québec Ombudsman are assured independent, user-friendly, cost-free and effective recourse for asserting their rights vis-a-vis public services.

Fifty years after its creation, the institution still relies on a competent, dedicated, creative but rigorous, empathic and respectful team. I have the good fortune to carry out a far-reaching mission while surrounded with people who espouse respect, justice and fairness. I extend my heartfelt thanks to each of them.



Marie Rinfret
Ombudsperson

VALIDATION REPORT FROM THE INTERNAL AUDITOR

Madam Marie Rinfret
Ombudsperson

In accordance with the mandate entrusted to me, I have conducted an examination of the results, explanations and information presented in the Québec Ombudsman's Annual Report for the fiscal year ending on March 31, 2019. The Ombudsperson is responsible for the accuracy, completeness and disclosure of the data.

I am responsible for evaluating the plausibility and consistency of the information, based on the work I have done within the framework of the process of validation.

This examination was performed in accordance with the international standards of the Institute of Internal Auditors for the professional practice of internal auditing. My efforts were focused on the meaningful figures provided. My work consisted of obtaining information and supporting documents, using analytical procedures, documenting the operation of compilation mechanisms, reviewing calculations and discussing the information provided. This examination does not constitute an audit.

Further to this examination, I find nothing to suggest that the results, explanations and information contained in the Québec Ombudsman's 2018-2019 Annual Report are not plausible and consistent in every substantive respect.



Jean Gamache, Internal Auditor, CPA, CA
August 2019

THE QUÉBEC OMBUDSMAN

Our status

The Québec Ombudsman is an independent and non-partisan institution headed by Madam 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. We 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.

The Québec Ombudsman's logo symbolizes the search for balance between competing rights. It is a variation on the classic scales of justice. The scale on the left evokes justice, while the "P" (for "Protecteur du citoyen") that replaces the right-hand scale refers to fairness.



LE PROTECTEUR DU CITOYEN

Assemblée nationale
Québec

IN A NUTSHELL

① Public service (pp. 20-56)

- In 2018-2019, the Québec Ombudsman intervened concerning 53 of the 79 government departments and agencies within its area of jurisdiction.
- The following departments and agencies accounted for the greatest number of substantiated complaints: Commission des normes, de l'équité, de la santé et de la sécurité du travail, Ministère du Travail, de l'Emploi et de la Solidarité sociale, Agence du revenu du Québec and Société de l'assurance automobile du Québec.
- The main reason for substantiated complaints was lengthy wait times (45.9% of cases).

Agence du revenu du Québec (Revenu Québec)

- To enable taxpayers to file an objection to an assessment, Revenu Québec had to clarify its policy on the admissibility of testimonial evidence.
- Revenu Québec lacked rigour in its use of alternative audit methods.

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

- Progress was made in terms of access to income replacement indemnities for pregnant operators of intermediate or family-type resources who are prescribed preventive withdrawal.

- Direction de l'indemnisation des victimes d'actes criminels (DIVAC)

- Sometimes DIVAC interprets rules too narrowly, and, as a result, deprives crime victims of amounts for which they qualify, including those for having crime scenes cleaned.
- Crime victims' burden of proof, which is increasingly demanding, is often too much for people already grappling with the events they experienced.
- Further to a report by the Québec Ombudsman in 2016, DIVAC made changes to its compensation system. However, the Ministère de la Justice is slow to give DIVAC clear guidelines about the notion of "victim."

- Labour standards

- The CNESST has committed to ensuring that approximately 70 workers who were deprived of representation by an attorney will receive this service to which they have the right at no cost.

Curateur public

- Reassessment of the protective supervision of people deemed incapacitated must be carried out at the frequency prescribed by law. The Curateur public's delays go far beyond these timeframes.

Ministère de l'Éducation et de l'Enseignement supérieur

- Many students who want information about their loans and bursaries are not able to reach the Department by phone.
- Concerning educational services in Nunavik, the Department must fully assume its responsibilities vis-à-vis Kativik School Board and give it the support it needs to achieve its mission.
- Despite the recommendations of a special report by the Québec Ombudsman on the handling of complaints within the education system, so far the Department has not presented any action plan to improve the procedure.

Ministère de l'Immigration, de la Diversité et de l'Inclusion

- When the Department announced in a bill that thousands of immigration applications would be destroyed, the Québec Ombudsman recommended that the applications of people already living in Québec be excluded and that their files be processed as priorities.

Ministère des Finances

- In 2018, more than 40,000 last-resort financial assistance recipients did not receive the solidarity tax credit to which they were entitled. In order to obtain the credit, claimants must file a tax return, but people in need are not always able to meet this requirement.

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

- The Social Solidarity Program, intended for those whose limitations prevent them from working, is sometimes applied too rigidly. This means that people are unjustly deprived of amounts they need.

- Directeur de l'état civil

- The Directeur de l'état civil must do a better job of informing citizens about the real wait times for entering a life event (birth, marriage, civil union, divorce, death) in the register of civil status.

Régie du bâtiment du Québec

- The issuance of licences to contractors must occur within legal timeframes. The Québec Ombudsman will remain attentive to the introduction of the required corrective measures.

Retraite Québec

- Sometimes Retraite Québec is inflexible in applying the family allowance and supplement for handicapped children programs. This deprives families in precarious situations of the support they need.

Société de l'assurance automobile du Québec (SAAQ) - Compensation

- The Québec Ombudsman had to intervene to have the medically recognized injuries of traffic accident victims entered in SAAQ's system because these injuries had been omitted.

② Correctional services (pp. 58-70)

- The Québec Ombudsman acted regarding the Commission québécoise des libérations conditionnelles, the Ministère de la Sécurité publique and the 18 correctional facilities within the Department's purview.
- The percentage of substantiated complaints was 41.1%, up 3.4 points from last year's figure.
- Lengthy wait times and failure to uphold detainees' rights accounted for the greatest number of substantiated complaints (67.5% of them).
- The rules governing the use of physical restraints (handcuffs and chains) in correctional facilities go back more than 20 years. They must be updated so that there is better oversight of this practice in keeping with detainees' rights.
- Too often, correctional facilities resort to solitary confinement for extended periods and without any specific instructions to follow. The Québec Ombudsman recommended that solitary confinement be limited to 15 days pending a new provincial instruction in this regard.
- During its visits, the Québec Ombudsman witnessed the dilapidated conditions at Leclerc de Laval and Baie-Comeau correctional facilities.
- In the past three years, a large number of complaints from detainees to the Québec Ombudsman have concerned health services in correctional facilities.
- In recent years, the increase in intermittent sentences has led to prison overcrowding, use of inadequate detention spaces and more transfers and searches.

③ Health and social services network (pp. 72-100)

- The Québec Ombudsman intervened regarding 39 of the 51 institutions of the health and social services network, 14 associated institutions, 40 private seniors' residences, 18 community organizations and 8 pre-hospital emergency services.
- More than 42.3% of closed complaints, reports and requests for assistance had to do with hospital centres. The percentage of substantiated complaints is relatively high (50.2%), a slight increase over last year's figure (48.6%).
- Wait times (18.5%) and poor service quality (17.6%) made up 36.1% of substantiated complaints and reports—one third of all grounds for complaint.

Disabilities

- Many people with a disability struggle to find a residential resource adapted to their situation, age and special needs. Others remain on waiting lists for years.
- School-age children with a language impairment are deprived of the professional resources they need for their development.
- Two special reports by the Québec Ombudsman (2009 and 2012) on public services for people with an autism spectrum disorder have led to advances. These include a more streamlined process for parents stemming from the harmonization of education and health network requirements for obtaining a diagnosis. Since other corrective measures remain to be implemented, the Québec Ombudsman will remain alert.

Troubled youth

- At times, proper screening for the suicide risk of troubled youth in rehabilitation centres does not occur. The result is that the required level of supervision is not put in place.
- In some cases, the means of control employed are based on obsolete guidelines and applied without an intervention plan.
- In the area of youth protection, difficulties managing supervised parent-child visits lead to cancellation or postponement, which affects the families.

Régie de l'assurance maladie du Québec

- Even though they were born in Québec, the children of parents whose migratory status is precarious are not eligible for the public health insurance plan. As a result, these children are unjustly deprived of healthcare.

Mental health

- In private boarding houses that take in clients with mental disorders, information-sharing among the various stakeholders and vigilance on their part is crucial in preventing breaches of these people's rights and safety.
- Wait times are too long for people who want to contest the continuance of their institutional confinement before the Tribunal administratif du Québec. In a special report, the Québec Ombudsman made recommendations aimed at improving access to this means of recourse for these people.

Physical health

- Deficient triage at the emergency rooms of health institutions can lead, for example, to inaccurate assessment of people's health condition or failure to gauge seniors' risk for falling.
- The members of a family spoke out about the lack of regard for them by the staff at the hospital where their father had died: rough handling of the body of the deceased patient and less time than normal for them to grieve privately. The institution's practices were reviewed.
- Mistakes were detected in how people are put on a waiting list for surgery at a hospital. The institution had to review the order of priority of the people on the list in question, and as a result, the rank of more than 240 people was corrected.

Home support

- Institutions have set average times for carrying out various home support tasks, even though certain kinds of services do not lend themselves to precision timing. These indicators should never be a substitute for the workers' clinical judgement.
- Year after year, the Departmental policy in effect misses the mark of making living at home the option of choice. The Québec Ombudsman has noted the resulting commitments and will closely monitor their outcomes.

Support for elderly autonomy

- In some residential and long-term care centres (CHSLDs), staff shortages have major consequences in terms of cancellation or postponement of care and services.
- Conflicts between families and healthcare staff may affect people who live in CHSLDs. The health network and healthcare staff alike must make extra efforts to form relationships with families, better equip them to deal with the situation and foster dialogue.

Service support

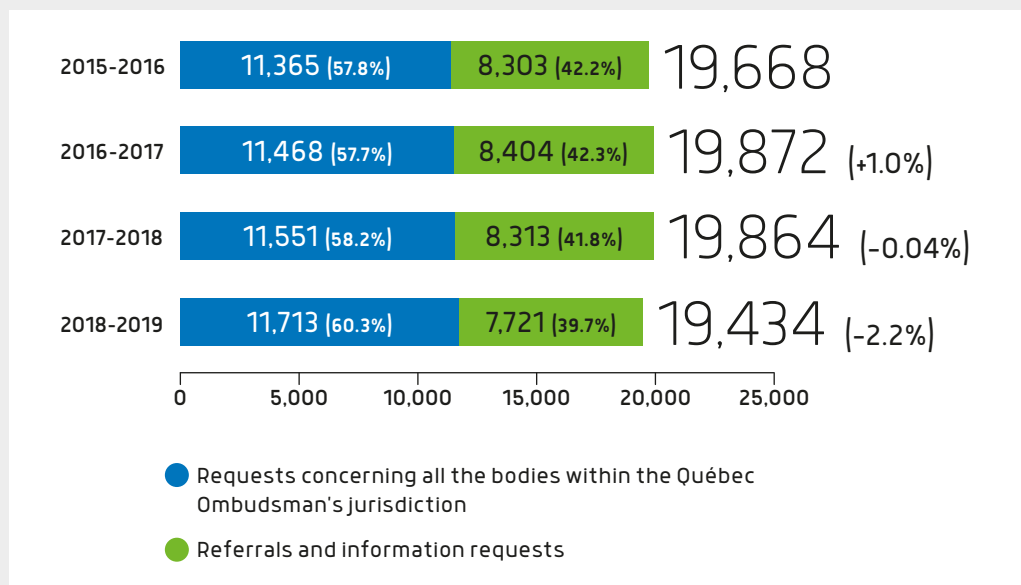
- A fee of \$15 a day is billed to people in hospital centres whose active care has been terminated, but who continue to occupy a short-term care bed until a posthospital bed opens up. However, there are no rules for billing in such circumstances. The Québec Ombudsman therefore convinced the institution to cancel these invoices and to review its practices.
- Institutions must use reasonable means to ensure that the belongings of its client population are protected, especially when subcontracted workers are employed.

④ Public integrity investigations (pp. 102-113)

- In 2018-2019, the Québec Ombudsman received 271 requests, including 182 disclosures, 68 requests for assistance and 10 requests for access to legal advice.
- The Québec Ombudsman conducted several audits and investigations concerning disclosures of wrongdoing, including serious breaches of standards of ethics and professional conduct, misuse of funds or property belonging to a public body, and gross mismanagement within a public body.
- A senior executive within a public agency billed for personal transportation costs, namely, 65 rides in 11 months. The Québec Ombudsman recommended, among other things, that appropriate measures be taken to prevent the recurrence of such misuse and that the wrongdoer reimburse the amounts. The corrective measures were put in place.
- The Québec Ombudsman conducted an investigation within a childcare centre (CPE) and saw that the executive director had committed serious violations: substantially flawed management practices, toxic control over the board of directors, as well as employee selection totally inconsistent with all rules of ethics and professional conduct. The Québec Ombudsman made recommendations to the CPE and the Ministère de la Famille. It remains watchful regarding their implementation.

A FEW STATISTICS

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.

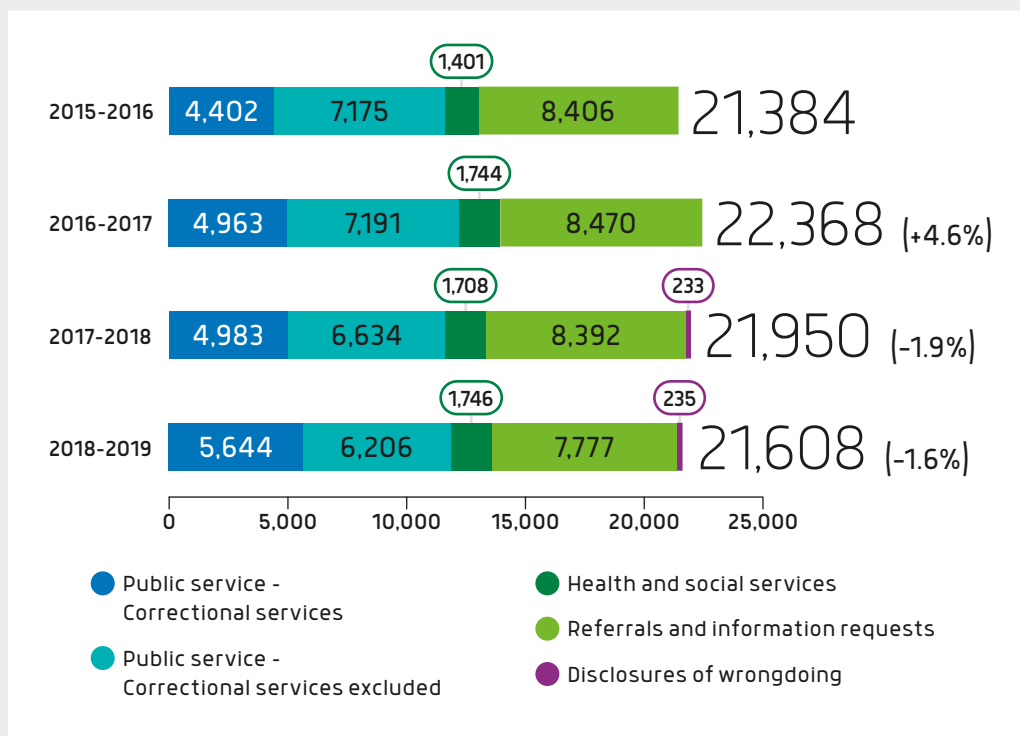
Requests that may give rise to an investigation pursuant to one of the three acts that govern the Québec Ombudsman's action (*Public Protector Act*, *Act respecting the Health and Social Services Ombudsman* and *Act to facilitate the disclosure of wrongdoings relating to public bodies*) are presented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

In 2018-2019, the percentage of requests subject to the Québec Ombudsman's jurisdiction increased by 1.4% compared to last year. This year, these requests accounted for 60.3% of the total number of requests.

The results in green do not fall within the institution's area of jurisdiction. They have decreased in comparison to previous years. One of the reasons for this trend is that means of communication were introduced to better inform people of the Québec Ombudsman's areas of jurisdiction.

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 the grounds. For 2018-2019, there were 21,608 grounds among the 19,341 closed requests for service.



The total number of closed requests for service decreased by 1.6% compared to last year. However, the number of closed grounds for complaint under the Québec Ombudsman's area of jurisdiction increased by 2.0%.

- There was a 6.5% decrease in closed requests concerning government departments and agencies.
- In terms of correctional services, we noted an increase in closed requests of 13.3% compared to last year.
- For the health and social services network, the number of closed requests increased by 2.2%. The total number of complaints and requests for assistance increased by 6.9%, whereas a decrease of 21.1% for reports and requests for assistance was noted.
- As for the number of closed requests concerning the mandate stemming from the *Act to facilitate the disclosure of wrongdoings relating to public bodies*, the amount has remained relatively stable over the past 11 months.¹

1. The Québec Ombudsman reviewed the classification of requests pertaining to its Direction des enquêtes sur les divulgations en matière d'intégrité publique. As a result, the number of requests within the institution's purview for 2017-2018 decreased in relation to last year's data.



PUBLIC SERVICE

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

The 79 departments and agencies within the public service 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 sees to compliance with the provisions of the *Act respecting administrative justice*.

In 2018-2019, the Québec Ombudsman intervened regarding 53 of the 79 departments and agencies (67.1%) subject to its jurisdiction.



1 Closed requests for assistance and complaints

TRENDS IN CLOSED REQUESTS FOR ASSISTANCE AND COMPLAINTS

	2015-2016	2016-2017	2017-2018	2018-2019
Requests for assistance	656	700	645	494
Substantiated complaints	818	853	829	772
Mediation	30	66	40	18
Unsubstantiated complaints	2,690	2,988	2,790	2,713
Could not take a definitive position	38	49	40	60
Redirected complaints	307	223	169	161
Suspended complaints	2,636	2,312	2,121	1,988
TOTAL	7,175	7,191	6,634	6,206
Difference with the preceding year	-	+0.2%	-7.7%	-6.5%

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 at the end of an investigation.

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 **redirected**. 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

The decrease in closed requests for assistance and complaints was 6.5% compared with last year's figure and 11.3% compared with the average for the past three years. The most notable decreases concerned the Agence du revenu du Québec (26.4%), the Société de l'assurance automobile du Québec (11.2%), the Ministère du Travail, de l'Emploi et de la Solidarité sociale (5.5%) and the Ministère des Transports (53.6%).

DEPARTMENT/AGENCY	Variation	2017-2018	2018-2019	Number
Agence du revenu du Québec	Decrease	1,178	867	-311
Société de l'assurance automobile du Québec	Decrease	670	595	-75
Ministère du Travail, de l'Emploi et de la Solidarité sociale	Decrease	1,109	1,048	-61
Ministère des Transports	Decrease	112	52	-60
Ministère de la Sécurité publique - Correctionnal services excluded	Increase	153	231	78
Commission des normes, de l'équité, de la santé et de la sécurité du travail	Increase	1,168	1,240	72
Commissaire à la déontologie policière	Increase	64	96	32
Ministère de l'Environnement et de la Lutte contre les changements climatiques	Increase	37	67	30

The bodies for which there was a noticeable increase were the Ministère de l'Environnement et de la Lutte contre les changements climatiques (81.1%), the Ministère de la Sécurité publique (excluding correctional services) (51.0%) and

the Commissaire à la déontologie policière (50.0%). A slight increase was also noted for the Commission des normes, de l'équité, de la santé et de la sécurité du travail (6.2%).

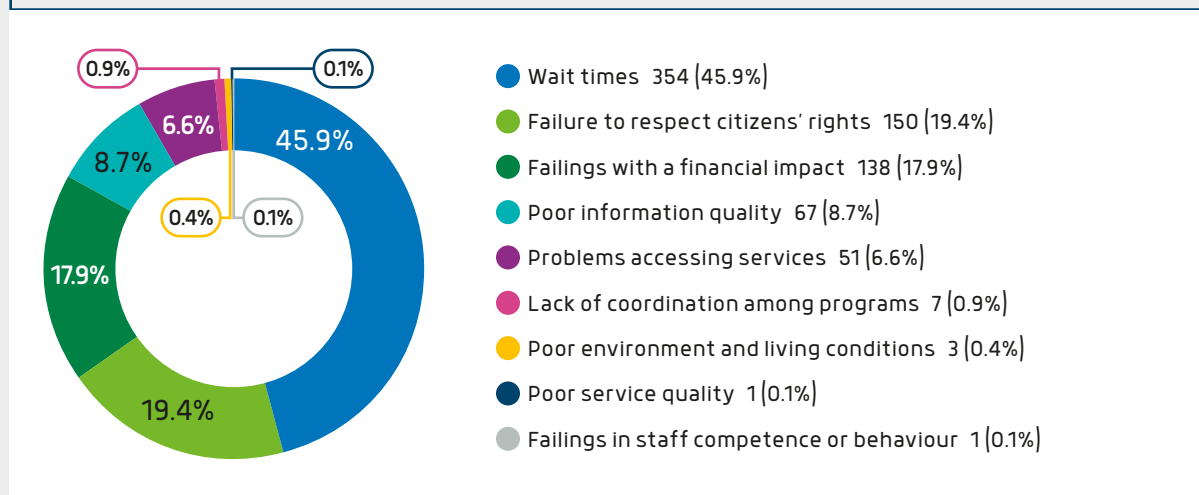
2 Substantiated complaints

The proportion of substantiated complaints is established as follows: Number of substantiated complaints/Number of substantiated and unsubstantiated complaints. This proportion has been relatively stable since 2015-2016.

PROPORTION OF SUBSTANTIATED COMPLAINTS

2015-2016	2016-2017	2017-2018	2018-2019
23.3%	22.2%	22.9%	22.2%

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 and failings with a financial impact accounted for the majority of substantiated complaints (83.2%).

DEPARTMENTS AND AGENCIES WITH AT LEAST 10 SUBSTANTIATED COMPLAINTS

DEPARTMENT	Substantiated complaints			
	2015-2016	2016-2017	2017-2018	2018-2019
Travail, Emploi et Solidarité sociale	121	111	100	128
Sécurité publique - Correctional services excluded	6	7	54	65
Éducation et Enseignement supérieur	38	33	45	45
Immigration, Diversité et Inclusion	36	40	28	35
Justice	14	12	6	10

AGENCY	Substantiated complaints			
	2015-2016	2016-2017	2017-2018	2018-2019
Commission des normes, de l'équité, de la santé et de la sécurité du travail	124	161	161	182
Agence du revenu du Québec	136	130	103	62
Société de l'assurance automobile du Québec	86	108	121	58
Retraite Québec	80	68	41	33
Régie de l'assurance maladie du Québec	24	22	27	23
Curateur public	7	10	8	15
Commissaire à la déontologie policière	10	25	16	11
Commission d'accès à l'information	4	13	5	11
Régie du bâtiment du Québec	7	6	2	10
Tribunal administratif du travail	1	1	2	10
Other departments and agencies	124	106	110	74
TOTAL: Departments and agencies	818	853	829	772

This year, an increase in substantiated complaints was noted concerning mainly the Commission des normes, de l'équité, de la santé et de la sécurité du travail, the Curateur public, the Ministère de l'Immigration, de la Diversité et de l'Inclusion, the Ministère de la Sécurité publique, the Ministère du Travail, de l'Emploi et de la Solidarité sociale and the Régie du bâtiment du Québec.

However, decreases were recorded for the Agence du revenu du Québec, the Commissaire à la déontologie policière, the Régie de l'assurance maladie du Québec, Retraite Québec and the Société de l'assurance automobile du Québec.

3 Monitoring of corrective measures

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

ACCEPTED CASE-SPECIFIC MEASURES

2015-2016	2016-2017	2017-2018	2018-2019	2018-2019	
				Accepted	Refused
97.0%	97.7%	97.7%	98.6%	341	5

ACCEPTED MEASURES WITH A COLLECTIVE IMPACT

2015-2016	2016-2017	2017-2018	2018-2019	2018-2019	
				Accepted	Refused
92.2%	96.2%	100.0%	98.0%	50	1

4 Closed requests by department or agency, by processing outcome²

AGENCY/BRANCH	Requests received in 2018-2019	Closed requests in 2018-2019							Total
		Requests for assistance	Complaints					Suspended	
			Substantiated	Unsubstantiated	Mediation	Could not take a definitive position	Redirected		
Agence du revenu du Québec									
Provisional administration of unclaimed property	12	1	1	4			1	3	10
Taxation	746	100	52	327	15	2	5	257	758
Support-payment collection	79	4	9	40			11	17	81
General	18	4		7				7	18
Total: Agence du revenu du Québec	855	109	62	378	15	2	17	284	867
Autorité des marchés financiers	12		1	4				9	14
Bureau d'audiences publiques sur l'environnement	2							2	2
Bureau des enquêtes indépendantes	4			1				2	3
Bureau du coroner	12		1	2				8	11
Centre de services partagés du Québec	18			13				4	17
Comité de déontologie policière	3	1						1	2
Commissaire à la déontologie policière	96		11	51		1	2	31	96
Commissaire à la lutte contre la corruption	1							1	1
Commission d'accès à l'information	39	8	11	8			1	16	44
Commission de la fonction publique du Québec	5			1				3	4
Commission de protection du territoire agricole du Québec	11	1	3	3			1	4	12
Commission des normes, de l'équité, de la santé et de la sécurité du travail									
Pay equity	1			3				1	4
Compensation	609	30	59	277		5	20	224	615
Crime victims compensation	529	36	114	189		14	14	127	494
Labour standards	104	8	7	43		2	8	32	100
General	28	2	2	11			1	11	27
Total: Commission des normes, de l'équité, de la santé et de la sécurité du travail	1,271	76	182	523		21	43	395	1,240
Commission des transports du Québec	6			2				4	6
Commission municipale du Québec	4		1	4					5
Conseil de la justice administrative	10	1	1	2		1	1	6	12

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.

AGENCY/BRANCH	Requests received in 2018-2019	Closed requests in 2018-2019							Total
		Requests for assistance	Complaints					Suspended	
			Substantiated	Unsubstantiated	Mediation	Could not take a definitive position	Redirected		
Conseil de la magistrature	1							1	1
Curateur public	188	13	15	95	2	1	12	73	211
Directeur des poursuites criminelles et pénales	9			1				7	8
La Financière agricole du Québec	7			2				2	4
Office de la protection du consommateur	12		6	4		1		5	16
Office des personnes handicapées du Québec	5			5			1	1	7
Office des professions du Québec	5		1	4				1	6
Office québécois de la langue française	3			2					2
Régie de l'assurance maladie du Québec	201	13	23	113		1	8	29	187
Régie des alcools, des courses et des jeux	1								0
Régie du bâtiment du Québec	39	3	10	16			5	11	45
Régie du logement	134	18	5	13			3	100	139
Retraite Québec									
Québec Pension Plan and Child Assistance	265	25	30	127		5	5	106	298
Public-sector pension plans	28	2	2	18		1		10	33
General	1		1						1
Total: Retraite Québec	294	27	33	145		6	5	116	332
Secrétariat du Conseil du trésor	3			1					1
Service administratif de rajustement des pensions alimentaires pour enfants	1			1					1
Société de l'assurance automobile du Québec									
Highway Safety Code	174	9	24	128			5	31	197
Compensation	396	34	34	159		12	6	151	396
General	2			1				1	2
Total: Société de l'assurance automobile du Québec	572	43	58	288		12	11	183	595
Société d'habitation du Québec	49	3	3	15			1	29	51
Transition énergétique Québec	13		4	3				4	11
Tribunal administratif du Québec	31	4	10	2			2	13	31
Tribunal administratif du travail									
Occupational diseases and industrial accidents	5		1					5	6
Labour relations	15	1		1			1	13	16
General	3		1	1					2
Total: Tribunal administratif du travail	23	1	2	2			1	18	24
TOTAL : Agencies	3,940	321	443	1,704	17	46	114	1,363	4,008

DEPARTMENT/BRANCH	Requets received in 2018-2019	Closed requests in 2018-2019							
		Requets for assistance	Complaints						Total
			Substantiated	Unsubstantiated	Mediation	Could not take a definitive position	Redirected	Suspended	
Affaires municipales et Habitation	26	3	9	17			1	3	33
Agriculture, Pêcheries et Alimentation	30		2	12			1	13	28
Conseil exécutif	1								0
Culture et Communications	13		1	9				3	13
Environnement et Lutte contre les changements climatiques	59	2	8	30			1	26	67
Économie et Innovation	7		2	1	1			1	5
Éducation et Enseignement supérieur									
Student financial assistance	204	12	32	102			1	77	224
Education	75	3	10	35			3	39	90
Higher education	8	2	1	2					5
General	14	1	2	3				6	12
Total: Éducation et Enseignement supérieur	301	18	45	142			4	122	331
Énergie et Ressources naturelles	39	1	8	22		1	1	12	45
Famille	70	4	4	24			2	29	63
Finances	5	1	1	1			1	3	7
Forêts, Faune et Parcs	21	1	3	4				11	19
Immigration, Diversité et Inclusion	200	8	35	69			4	19	135
Justice	64	6	10	13		4	1	38	72
Santé et Services sociaux	53	5	3	19			4	18	49
Sécurité publique									
Civil security	159	3	45	68		6	2	42	166
General	75	1	20	10		2		32	65
Total: Sécurité publique	234	4	65	78		8	2	74	231
Transports	52	1	5	26		1		19	52
Travail, Emploi et Solidarité sociale									
Directeur de l'état civil	75		30	28			5	13	76
Employment	76	10	6	51			1	6	74
Québec Parental Insurance Plan	30	4	2	16			1	5	28
Registraire des entreprises	10	2	1	4			1	3	11
Secrétariat du travail	10		1	3				7	11
Services Québec	8		2	3				2	7
Social solidarity	806	103	85	432			17	193	830
General	10		1	5				5	11
Total: Travail, Emploi et Solidarité sociale	1,025	119	128	542			25	234	1,048
TOTAL : Departments	2,200	173	329	1,009	1	14	47	625	2,198
TOTAL : Departments and agencies	6,140	494	772	2,713	18	60	161	1,988	6,206

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 et de l'Enseignement supérieur;**
- **Ministère de l'Énergie et des Ressources naturelles;**
- **Ministère de l'Immigration, de la Diversité et de l'Inclusion;**
- **Ministère des Finances;**
- **Ministère des Transports;**
- **Ministère du Travail, de l'Emploi et de la Solidarité sociale;**
- **Office de la protection du consommateur;**
- **Régie du bâtiment du Québec;**
- **Régie du logement;**
- **Retraite Québec;**
- **Société de l'assurance automobile du Québec.**

Agence du revenu du Québec (Revenu Québec)

Admissibility of testimonial evidence

Taxpayers who want to file an objection to a notice of assessment from Revenu Québec must apply to the Direction principale des oppositions for an administrative review. However, the Québec Ombudsman has noted disparities in the processing of applications for review. Objection agents' positions differ on the admissibility of testimonial evidence. Testimonial evidence is based on statements by someone who saw or heard the reported events firsthand. Some agents feel that it is admissible and others do not.

The Québec Ombudsman considers it crucial that taxpayers be able to seek recourse by means of administrative review, which is a useful avenue for arguing their point of view. Furthermore, it is the last step before turning to the courts. The Québec Ombudsman therefore asked Revenu Québec about its position on the admissibility of testimonial evidence in the context of applications for review.

Leaning on the *Civil Code of Québec*, Revenu Québec first made the case that testimonial evidence is not admissible when someone objects to a notice of assessment because such proof can never be used to contradict or change the terms of a valid written document. After discussions with the Québec Ombudsman, Revenu Québec agreed that the provision of the *Civil Code* it had cited did not apply in the case of objections to notices of assessment. At the time these lines were being written, Revenu Québec indicated that the work instructions for staff would be changed to specify this. As a result, henceforth, the testimonial evidence provided by taxpayers could be uniformly taken into account by all agents.



ACCEPT AN EYEWITNESS'S VERSION AS EVIDENCE



A company objected to a notice of assessment. To make its case, it had to demonstrate that the condominium it owned was indeed used for commercial purposes. The company immediately provided the Revenu Québec agent with testimony from four people who solemnly declared that they had met the company representative there and that commercial activities took place at that building. Sworn statements are testimonial evidence. Revenu Québec refused to take the testimonies into account, arguing that this fact-establishing method is inadmissible in the context of a review recourse option.

After the Québec Ombudsman intervened, the testimonies were accepted as evidence and in fact, because of this, the company's notice of assessment was cancelled.

Use of indirect, or alternative, audit methods

When a taxpayer's accounting does not conform to standard practice, Revenu Québec may use indirect audit methods—also called alternative methods—to determine whether any income has been hidden from tax authorities. Jurisprudence clearly establishes that this method must only be used as a last resort in situations of deficient accounting or lack of cooperation by the audited taxpayer.

The Québec Ombudsman received several complaints from people who questioned the use of such methods. Sometimes its investigations showed that the means employed by the tax authorities were legitimate, but in some cases, application of alternative methods was not thorough. Furthermore, citizens had trouble making themselves heard during the audit process or when there was a dispute during the administrative review process. This year, after the Québec Ombudsman intervened, Revenu Québec cancelled sizable assessments.

AUDITS WITHIN COMPANIES: USE **ALTERNATIVE METHODS** RIGOROUSLY



As part of a restaurant audit, Revenu Québec used an alternative method which consisted of sending auditors on-site to check the payment methods used by the clients. Based on these observations, Revenu Québec recalculated the sales that the restaurant should have declared according to the proportions obtained (the percentage of cash transactions vs. card transactions). Predicated on the results obtained, it considered that the restaurant was hiding income. It therefore established a new assessment going back five years.

The investigation by the Québec Ombudsman showed that Revenu Québec had based its figures on just four days of observation. In fact, one of its own statisticians had already given his opinion to the effect that this alternative method was not very reliable on a methodological and statistic level because it did not comply with certain sampling rules. It was clear that the number of observations was insufficient. This opinion notwithstanding, at

first Revenu Québec maintained the assessments. The Québec Ombudsman finally convinced it to cancel them.

At another restaurant, the audits by Revenu Québec were based on the number of cardboard take-out boxes used compared to the number of meals eaten on-site. Faced with an outcome that was not in his favour, the restaurant owner wanted to submit a video showing the real number of clients who left with boxes. However, the auditor refused to consider this piece of evidence.

The Québec Ombudsman felt that the taxpayer was being prevented from expressing his opinion and providing the proof in support of his point. This violated the *Act respecting administrative justice*. As a result, it stepped in to have Revenu Québec agree to consider the restaurant owner's evidence. The assessment was cancelled.

RECOMMENDATIONS BY THE QUÉBEC OMBUDSMAN CONCERNING THE USE OF INDIRECT, OR ALTERNATIVE, AUDIT METHODS



Considering the preceding, the Québec Ombudsman recommends that Revenu Québec:

- Draft work directives concerning the use of indirect audit methods, commonly called alternative methods, and specify therein that:
 - alternative methods must be used only when there are no other audit options,
 - the statistical validity of the method must be established before it is applied as well as when the results are assessed,
 - citizens' explanations must be taken into account when they are based on valid proof,
 - the reasons for using an alternative method must be indicated in the audit report so that the taxpayer or the mandatary can understand why Revenu Québec had to resort to it;

- Provide audit agents with training in the use of alternative methods and their application;
- Produce a timeline for carrying out these actions and send it to the Québec Ombudsman before December 1, 2019.

Reply from Revenu Québec

[Translation]

"Revenu Québec has noted the Québec Ombudsman's recommendations. Similar concerns were expressed by the Bureau de la protection des droits de la clientèle in its 2016-2017 annual report. Revenu Québec listens to its client population and has proactively implemented all the Québec Ombudsman's recommendations. Our agency pledges to provide the Québec Ombudsman with the details of the improvements and changes as soon as possible."

Applying the rules of unseizability

Under the *Tax Administration Act*, Revenu Québec can require a financial institution to remit to it all the money in a tax debtor's bank account. However, the Act provides that this must be done in accordance with the *Code of Civil Procedure*, which specifies that certain amounts are unseizable, even by Revenu Québec.

The Québec Ombudsman noted that certain recovery agents refused to cancel Revenu Québec's seizure of unseizable amounts. Investigations by the Québec Ombudsman revealed that the work instruction by Revenu Québec's Direction

du recouvrement violated the legal provisions in force. The instruction specifies that before cancelling seizure, even of unseizable amounts, negotiations with the debtor with a view to reaching a payment agreement had to be undertaken.

Following the Québec Ombudsman's intervention, Revenu Québec changed its work instruction in order to comply with the Act by removing the obligation to negotiate a payment agreement before releasing seized amounts. As soon as Revenu Québec notices that an amount is unseizable, it must return it the citizen concerned.

In processing tax returns, take into account third-party documents

Based on the principle of self-assessment, the tax system provides that all taxpayers must declare their income and claim the credits and other social and tax benefits they consider they are entitled to. In some cases, the information transmitted by the taxpayers is corroborated by documents from third parties, such as statements of employment from employers or the attestation provided by service suppliers.

When the information provided by a citizen differs from that reported by a third party, Revenu Québec must rigorously assess the probative value of the citizen's version as proof before handing down a decision on the assessment established. The Québec Ombudsman has seen that it is sometimes difficult for a person to defend his or her point of view and contest the validity of documents and the information they yield when provided by a third party.

As a result, citizens who want to prove to Revenu Québec that the salary indicated in their statement of employment is not what they really earned, or that an employer has entered unearned income, have no recourse either with Revenu Québec or the Commission des normes, de l'équité, de la santé et de la sécurité du travail. The same holds true for someone who wants to claim a credit, but who cannot get a supplier to provide the document required by Revenu Québec.

In the Québec Ombudsman's opinion, the government should consider the information presented by taxpayers for whom providing a given document is impossible.

RECOGNIZE THE **VALIDITY OF THE INFORMATION** PROVIDED BY TAXPAYERS



A citizen felt that the amounts indicated by her employer in her statement of employment were inaccurate. She tried several times to have the employer change them, but to no avail. Revenu Québec explained that only her employer could correct the statement.

The Québec Ombudsman pointed out that the law did not stipulate that statements of employment are necessarily considered valid. This meant that citizens' calculations, supported by valid documents, could also be taken into account. In the end, Revenu Québec accepted the figures provided by the taxpayer and considered that the statement of income by the employer contained an error.

IN THE ABSENCE OF A DOCUMENT THAT SHOULD BE PROVIDED BY A THIRD PARTY, ALLOW OTHER RELEVANT DOCUMENTS



The purpose of the RénoVert refundable tax credit is to encourage owners who are considering renovating their home to do so in an eco-friendly manner. Applicants may claim up to \$10,000.

Applicants must provide the *RénoVert tax credit* form along with a certificate attesting that the material used meets environmental standards. The certificate must be signed by the contractor responsible for the work.

A citizen who required this certificate, duly completed and signed by his contractor, could not

manage to obtain it because of a conflict with the contractor. Revenu Québec refused to grant the citizen the tax credit because of the missing document and would not allow him to provide other documents useful for assessing his eligibility.

As the Québec Ombudsman saw it, Revenu Québec, which had the detailed work contract and other relevant documents, had enough information to grant the citizen the tax credit. Using this line of reasoning, the Québec Ombudsman convinced Revenu Québec to examine the citizen's claim. Revenu Québec went on to give him the tax credit.

Commission des normes, de l'équité, de la santé et de la sécurité du travail

Reimbursement for roof snow removal and de-icing costs

Under the *Act respecting industrial accidents and occupational diseases*, the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) may reimburse injured workers for the cost of ordinary maintenance work on their residence, such work being included in the social rehabilitation measure category. Workers must meet the following conditions:

- Have sustained severe permanent physical impairment;
- Demonstrate that their functional limitations prevent them from doing such maintenance work;
- Establish that they would have done the work themselves were it not for their permanent impairment;
- Prove that a service supplier was paid for this work.

However, roof snow removal was excluded from eligible expenses. The CNESST used as justification the Régie du bâtiment du Québec's position which recommends that people hire a company that

provides roof snow removal services. The CNESST therefore felt that because of the dangers of such work, it could not approve the choice made by workers to do their own snow removal before they sustained their work-related injury or who would do it themselves were it not for the injury.

Consequently, such claims were systematically turned down without any analysis based on legal criteria. Citizens who disagreed with such refusals had no choice but to turn to the Tribunal administratif du travail (TAT) to have their claim for reimbursement of roof snow removal costs re-examined.

In the large majority of cases, the Commission des lésions professionnelles, now called TAT, considers that workers can be reimbursed by the CNESST for roof snow removal costs if eligibility requirements are met.

At the end of an investigation, the Québec Ombudsman asked the CNESST to change its policy by withdrawing the exclusion of snow removal and de-icing, which the agency agreed to do.

REIMBURSE WORKERS FOR ROOF SNOW REMOVAL AND DE-ICING COSTS



After a work-related accident, a woman had an amputation, which limited a series of activities (e.g. outdoor work in cold weather and work involving climbing a ladder) from that point on. As a result, she could no longer remove snow and ice from her roof as she had done in the past. The CNESST refused to reimburse her for the fees she had already paid to a specialized company for the work.

The Québec Ombudsman acknowledges the preventive role that the CNESST plays when, for safety reasons, it advises people not to remove snow

and ice from their roof themselves. However, its opinion is that this position does not prevent the agency from granting the benefits covered by the *Act respecting industrial accidents and occupational diseases*. Given that administrative tribunals share this opinion, the Québec Ombudsman recommended that the injured worker be entitled to reimbursement for the fees. After it intervened, the agency changed the policy accordingly, making it possible to reimburse the worker. This outcome not only benefited her, but will benefit any other citizen in the same situation.

Indemnities for pregnant operators of residential resources

Intermediate resources and family-type resources take in people who must live in a substitute environment due to illness or disability, among other things. Both these types of residential resources are bound by contract to a health and social services institution.

This year, the Québec Ombudsman turned to the issue of pregnant operators of such resources who had applied for indemnities under the Safe Maternity Experience Program. The program provides that expectant mothers who have a job that could constitute a hazard to them or to their unborn child may, barring certain exceptions, be put on preventive withdrawal and receive income replacement indemnities.

In these particular cases, the CNESST argued that the residential resources in question were subject to a specific act, the *Act respecting the representation of family-type resources and certain intermediate resources and the negotiation process for their group agreements*. That being the situation, as

far as the agency was concerned, these operators should be compensated pursuant to a regulation that was, however, slow to be enacted. Pending implementation of the regulation, the CNESST went no further than to grant them indemnities based on the minimum wage. And yet, the Act provided for a transitional measure until the regulation came into force: the method of determining the indemnity under the circumstances should be established in accordance with the *Act respecting industrial accidents and occupational diseases*. The CNESST refused to do this.

The Québec Ombudsman recommended that the CNESST recognize that the situation of the owners of these residential resources can be addressed by aligning both applicable acts so that their real income is considered when they are issued income replacement indemnities. In the end, the agency produced a method of calculation that satisfied the Québec Ombudsman, and it is now being used in these specific kinds of cases.



GIVE PREGNANT WOMEN ON PREVENTIVE WITHDRAWAL THEIR FAIR SHARE OF INDEMNITIES



A person in charge of a family-type resource had a few residents with an intellectual disability. Newly pregnant, she was told by her physician that her job could be hazardous to her pregnancy and that she must opt for preventive withdrawal. The expectant mother qualified for the For a Safe Maternity Experience Program. However, the CNESST informed her that her indemnity would be based on the minimum wage, which did not match her real income.

The Québec Ombudsman noted that the CNESST applied a restrictive interpretation of the legal provisions allowing residential resource owners to be compensated based on a salary above minimum wage.

Subsequently, the CNESST informed the Québec Ombudsman that it had decided to henceforth base its calculations on the real remuneration paid to those in charge of residential resources by the Ministère de la Santé et des Services sociaux.

Given the amount involved, which rose to more than \$65,000, the CNESST issued more than \$11,000 retroactively.

Because of the Québec Ombudsman's intervention, the amounts owed to seven other women in the same situation as the person concerned were adjusted, with increases ranging from \$3,500 to more than \$13,000.

Costs that can be reimbursed to workers undergoing rehabilitation

When workers are left with permanent after-effects from a job-related injury, whether physical or psychological, they are entitled to the rehabilitation required by their condition. On this basis, they can gain access to a physical, social or occupational rehabilitation program.

Physical rehabilitation is aimed at eliminating or mitigating workers' physical impairment and enabling them to develop their abilities to make up for their limitations. Programs may therefore include medical care, a prosthetic or orthotic device, or any other care or treatment deemed necessary by the physician.

The goal of social rehabilitation is to help workers overcome the personal and social consequences of their job-related injury, to adapt to their new situation and to regain their autonomy in carrying out their usual activities. The CNESST may reimburse workers admitted to rehabilitation for the cost of adjusting certain equipment to enable them to engage in the same recreational activities as before.

FOSTER INJURED WORKERS' AUTONOMY AND QUALITY OF LIFE



A man who had a work accident which left him with a permanent impairment was dependent on the use of a four-wheeled electric scooter or a wheelchair for his mobility.

His physician recommended purchase of a hybrid hand bike to increase the man's autonomy and improve his physical condition. However, the CNESST refused to reimburse him for this equipment because it considered that it could not authorize it with a view to his physical rehabilitation. According to the agency, the bike did not constitute medical care or treatment, or exercise aimed at adapting to a prosthetic device. It added that purchase of the bike could not be considered in the context of social rehabilitation because the policy only included adaptation of equipment that the worker had before the accident.

As the Québec Ombudsman saw it, the CNESST interpreted the *Act respecting industrial accidents and occupational diseases* too narrowly—it should have included the cost of the bike as medical care or treatment insofar as it arrested the decline of the citizen's physical condition by, among other things, preventing muscle atrophy.

CNESST agreed to review the file. Based on the opinion of an occupational therapist, it went on to reimburse the worker for the bicycle, considering that:

- The worker had cycled before his accident;
- The reimbursement could henceforth be considered a social rehabilitation measure;
- In the case at hand, cycling could mitigate the consequences of a work-related injury.

Commission des normes, de l'équité, de la santé et de la sécurité du travail – Direction de l'indemnisation des victimes d'actes criminels

Reimbursement for the cost of cleaning a crime scene

Under the *Crime Victims Compensation Act*, when crime victims die as a result of the violence they suffered, the Direction de l'indemnisation des victimes d'actes criminels (DIVAC) reimburses the person who covered the cost of cleaning the crime scene in a private residence.

The agency also provides that if victims survive the events and they themselves have paid to have the crime scene cleaned, they can be reimbursed. In such cases, the conditions that apply are governed by the policy on special fees. However, victims must be able to demonstrate that there is a direct correlation between the costs and the crime. Furthermore, cleaning must contribute to restoring the victim's emotional balance.

GIVE CRIME VICTIMS THEIR DUE



A woman was assaulted in her home. Further to this, DIVAC agreed to issue her compensation for the violence she had suffered. Because signs of the assault remained in the apartment, blood stains in particular, she applied to the agency for reimbursement for the cleaning costs to return the apartment to its original condition. DIVAC refused, arguing that the fees in question are only reimbursable if the victim dies.

During the investigation, the Québec Ombudsman noted that DIVAC had not analyzed the claim from the vantage point of its own special fees policy. It considered that the person's claim fell within that category. After analyzing it, DIVAC reimbursed the woman more than \$3,000.

The proof crime victims must provide

Victims who claim for medical care or indemnities from DIVAC must prove that they sustained a crime-related physical or psychological injury. This demonstration may be based on a medical assessment after the crime, versions provided by the victims or witnesses, or any other evidence accepted by DIVAC.

When the injury is deemed to be a result of the crime, in order to receive indemnities for a total temporary incapacity, victims must also prove that the injury in question has made them unable to go back to work.

If victims were unemployed when the crime occurred, they may receive compensation provided they prove that they cannot carry out their usual, daily, and domestic activities because of the crime-related injury. This evidence must be corroborated by a health professional. Furthermore, care or treatment has to be underway. When the claim is approved, victims must, every 8 to 10 weeks, continue to provide proof of their incapacity stemming from the crime.

RECOGNIZE THAT THE CRIME TRULY CAUSED THE INJURY



A woman was the victim of an attempted murder. She survived, but two family members were killed. Arguing that the trauma was the direct cause of her major depression, she filed a total incapacity claim with DIVAC. However, the agency turned it down, deeming that her condition stemmed from the death of family members (which is not covered by the compensation system), and not from the attempted murder.

The Québec Ombudsman intervened to point out that the woman's psychological injuries could have stemmed from either the loss of her loved ones or the murder attempt, of which she was the personal target. That in itself qualified her.

DIVAC finally recognized the causes of the person's mental condition and granted her the expected compensation, namely a lump-sum payment of approximately \$2,500.

For effective and prompt management of crime victims: follow-up to the Québec Ombudsman's report

In September 2016, the Québec Ombudsman published an investigation report containing 33 recommendations aimed at effective, humane and fair application of crime victim compensation system conditions.

These recommendations mainly concerned:

- Quality of information to victims;
- Wait times at the various stages of application processing;
- Access to the system or to certain services or indemnities;
- Communication with certain victims for needs assessment purposes;
- Rigour of the decisional process;
- Explanations for decisions in the first instance;
- DIVAC's openness to correcting its errors.

Now, at the end of 2018-2019, the Québec Ombudsman wishes to highlight DIVAC's substantial work to implement 26 of its recommendations. Seven recommendations remain to be implemented. The Québec Ombudsman remains particularly concerned with the Ministère de la Justice's slowness to clarify the notion of "victim" and to produce orientations that favour a broader and more inclusive interpretation by DIVAC.

As at March 31, 2019, DIVAC was still awaiting these guidelines, which means that it still applies a restrictive interpretation of the notion of victim.

The Québec Ombudsman continues to monitor this situation closely.

 The Québec Ombudsman's report is available at protecteurducitoyen.qc.ca.

Commission des normes, de l'équité, de la santé et de la sécurité du travail – Labour standards

The CNESST's representation of workers before the Tribunal administratif du travail

January 1, 2016, marked the creation of the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST). As its name indicates, the agency now provides all services related to labour standards, pay parity and occupational health and safety. Its mission is to promote labour rights and obligations and ensure that they are respected by Québec employers and workers alike.

One of the CNESST's mandates is to investigate complaints by workers concerning:

- A prohibited practice by an employer;
- Psychological harassment;
- Dismissal without just and sufficient cause.

At the end of the investigation, if the parties involved have not reached a settlement, it may forward the file to the Tribunal administratif du travail (TAT) and represents the worker free of charge. Note that:

- Even if the complaint is deemed inadmissible, the CNESST may refer it to TAT anyway. In such cases, however, it does not represent employees;
- To be represented by the CNESST, workers cannot be part of an association of employees certified under the *Labour Code*.



A citizen was waiting for a TAT hearing at which she had to be represented by the CNESST. A few weeks before the scheduled date for the hearing, the agency sent her a letter informing her that there was no attorney available to represent her, and that 73 other people whose hearings were slated for the following month were in the same situation.

The unavailability deprived all these people of the free recourse to which they had the right.

The Québec Ombudsman contacted the CNESST, which intervened quickly to rectify the situation. It committed to having an attorney to represent the woman before TAT as well as the 73 other workers who had initially not been given an attorney.

Curateur public

Periodic reassessment of protective supervision

Protective supervision may be instituted to protect a person's interests, enable the person to exercise his or her civil rights, and administer his or her property. The opening of protective supervision requires that the person's incapacity and need for protection must be formally defined and proven.

Given the restrictive nature of protective supervision, the *Civil Code of Québec* establishes the timeframe for reassessing it: every three years for tutorship and every five years for curatorship. Tutorship is applied to people who maintain a certain degree of autonomy and whose situation requires assistance rather than full management, whereas curatorship is intended for people who are completely incapable of taking charge of their own affairs. Here we are referring to society's most vulnerable members.

When protective supervision is reassessed, the protected person must undergo a medical assessment and a psychosocial assessment, conducted by a physician and a social worker respectively. In its capacity as a tutor or curator, on a yearly basis the Curateur public informs the health and social services institutions of the reassessments to be conducted that year. The delegate curator entrusted with the file must then ensure that the reassessment is carried out at the frequency determined by law.

During the ensuing reassessment, a physician and a social worker from the health and social services network evaluate the person's need for protection and the extent to which he or she is unable to take care of himself or herself or to manage his or her

property. This analysis makes it possible to produce an intervention plan or intervention strategies. Hence the importance of making sure that reassessment is carried out in a timely manner.

The Québec Ombudsman noticed that frequently the deadlines for reassessment were not met. As a result, in September 2018, some 180 people were awaiting reassessment and delays could be more than 500 days long. During this period, people whose condition could have warranted a change to their protective supervision were not reassessed or the required follow-up on services they needed did not occur.

The Curateur public agrees that these reassessments and adherence to the timeframe are important. In fact, it has created a committee to analyze the situation and find possible solutions. One of these intended measures consists of giving priority to the files of people who could benefit from easing or lifting of protective supervision. The Curateur also commits to follow up more closely on the requests for reassessment sent to the health and social services network. Changes will be made to the work instructions of the staff concerned and distributed as of April 2019.

The Québec Ombudsman has taken note of the measures introduced and the Curateur's commitments going forward. The Québec Ombudsman is aware that some delays may be due to the health and social services network's resource situation, but it nevertheless reminds the Curateur public that processing of these pending files, many of which are sorely overdue, is urgent.

Ministère de l'Éducation et de l'Enseignement supérieur

Phone access to student financial assistance

For several years now, the Québec Ombudsman has received numerous complaints from students about the lengthy wait times for reaching the Ministère de l'Éducation et de l'Enseignement supérieur's student financial assistance section by phone. Some complaints even report that accessing the phone line is simply impossible.

In its Service Statement, the Department pledges to offer accessible services to all. However, the latest statistics from the section show that in 2018-2019, fewer than 30% of phone calls were handled. Autumn is an important period for students, and in September 2018, the rate of call handling was a mere 9%.

The Québec Ombudsman has drawn attention to this recurrent problem twice before (its Annual Reports for 2016-2017 and 2017-2018). Subsequently, the Department pledged to reduce wait times. However, the problem persists. No noticeable improvement was seen this year.

In the Québec Ombudsman's opinion, it is unacceptable that clients of the student financial assistance program cannot contact by phone those responsible for informing them or acting with regard to files. Even though the Department cites the argument that there is a shortage of staff for this service, it seems urgent to assign more resources without further delay.

RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING PHONE ACCESSIBILITY AT STUDENT FINANCIAL ASSISTANCE

Considering the preceding, the Québec Ombudsman recommends that the Ministère de l'Éducation et de l'Enseignement supérieur:

- By December 20, 2019, put in place a detailed action plan to significantly reduce phone wait times that includes in particular a timeline, performance targets and specific measures for the addition of human resources, with a view to phone access within a reasonable length of time.

Reply from the Ministère de l'Éducation et de l'Enseignement supérieur

[Translation]

"To improve wait times, the Department has introduced a phone accessibility strategy. Sixteen positions were therefore re-allocated and staff assigned directly to the call reception unit. This strategy includes ten-or-so measures to decrease the number of calls and increase call intake capacity. The Department is currently recruiting with a view to stabilizing and increasing its call centre staff."





A student with a severe functional impairment asked that the financial assistance issued by the Department as a loan be converted into a bursary, which the Department agreed to do.

When the financial assistance was issued, she wondered whether the payment had indeed been paid as a bursary, as agreed upon. For two months, she tried unsuccessfully to obtain information on the subject from the student financial assistance section's information service. At times she simply could not get the phone line and at others, she was put on hold for long periods before an automatic message kicked in stating that because of high volume, the call would be terminated.

The intervention by the Québec Ombudsman enabled contact to finally be made.

Education services in Nunavik: a special report by the Québec Ombudsman

On October 24, 2018, the Québec Ombudsman released an investigation report entitled *For quality educational services in Nunavik that respect Inuit culture*. It recommended that the Ministère de l'Éducation et de l'Enseignement supérieur fully take up its obligations towards Kativik School Board. The Québec Ombudsman considered that the Department interpreted its role restrictively and that it failed to provide the school board with the tools it needed to fulfill its mandate.

A few figures attest to the reality of school life in Nunavik:

- Nearly 80% of Nunavik students leave the school system without diplomas or certification—4 times higher than elsewhere in Québec;
- The graduation rate is 25.9%, compared to 77.7% for Québec as a whole;
- More than half of Inuit³ have no certificate, diploma or degree, compared to 13% elsewhere in Québec.

The investigation by the Québec Ombudsman showed that several factors make it more difficult for Inuit youth throughout their schooling. Starting in Grade 4, subjects from the curriculum (mathematics, sciences, social studies, etc.) are taught in French or English, even though, up to that point,

Inuktitut has been the language of instruction. Another obstacle: the pedagogical program is not fully adapted to the culture and realities of Inuit youth, for whom Secondary V science and mathematics are also not available. Furthermore, access to postsecondary education and general education in the adult sector is very limited. Lastly, services for students with difficulties or disabilities are sparse.

The Québec Ombudsman also saw that Kativik School Board struggles to recruit and retain teaching staff. As a result, some classes are cancelled every day. In addition, there is a high rate of teacher and student absenteeism.

At the end of the investigation, the Québec Ombudsman identified various corrective measures so that Inuit receive the educational services to which they are entitled. The Québec Ombudsman felt that improvement necessarily hinged on concerted action by the Department and Kativik School Board.

The Québec Ombudsman's report contained 14 recommendations to the Ministère de l'Éducation et de l'Enseignement supérieur. One of them, which concerned services for students with difficulties or disabilities, was also intended for the Ministère de la Santé et des Services sociaux. Another recommendation, aimed at countering the shortage of housing in Nunavik, was made to the Société d'habitation du Québec.

3. In Inuktitut, the word *Inuit* means men or human beings and is the plural of the word *Inuk*. The corresponding adjective, *Inuit*, is invariable. The Québec Ombudsman has chosen to respect these linguistic principles.

The Ministère de l'Éducation et de l'Enseignement supérieur proceeded to draft a work plan for follow-up to the Québec Ombudsman's recommendations. The actions already undertaken by the Department and those to come respond to the recommendations made. The Québec Ombudsman remains attentive as to the achievement of concrete

results. Follow-up by the Ministère de la Santé et des Services sociaux and the Société d'habitation du Québec is expected to occur in the coming months. As at March 31, 2019, the 15 recommendations had been accepted. The Québec Ombudsman will follow their implementation closely.

 The Québec Ombudsman's report is available at protecteurducitoyen.qc.ca.

Handling of bullying complaints in the private education system

Under the *Act respecting private education*, educational institutions are obliged to adopt an anti-bullying and anti-violence plan. The Minister of Education and Higher Education ensures application of the Act and the handling of any complaints.

People approached the Québec Ombudsman because they were dissatisfied with the Department's handling of their complaint concerning instances where their children were subjected to bullying in private educational institutions.

During the investigation it carried out, the Québec Ombudsman noted that the Department had been unable to identify the staff person who had handled the complaint and which steps had been taken. In fact, the file contained very few notes or documents showing that the case had been analyzed with appropriate rigour. There were no analysis criteria and no report justifying the Department's decisions.

Note that except in the case of disclosures of wrongdoing, the Québec Ombudsman has no jurisdiction over education, but only regarding the quality of the Department's services. In the context of the investigation conducted, certain flaws were seen:

- There is no specific departmental policy for the processing of complaints concerning private schools;

- Complaints and audits are not systematically committed to writing by Department staff;
- There are no guidelines for determining when Department staff are justified in forwarding the case to the Minister for a decision as to whether an investigation is warranted.

The Québec Ombudsman made four recommendations to the Minister aimed at standardizing the process for handling such complaints and ensuring coherent action. It recommended in particular that the Department produce a complaint handling policy so that record-keeping is adequate. The Department should also ensure that it has written copies documenting the handling of complaints and that all complainants are systematically sent acknowledgements of receipt explaining the Department's role, powers and limits in handling such complaints.

In the case at hand, the Québec Ombudsman also recommended that the Department re-examine the merits of sending the file in question to the Minister for a decision as to whether to conduct an investigation. The file was forwarded.

The Department pledged to implement these recommendations. The Québec Ombudsman is monitoring the Department's progress on this front on an ongoing basis.

Handling of complaints within the public school system: follow-up to the Québec Ombudsman's special report

The Québec Ombudsman has noticed that school boards' and public schools' complaint examination procedures need improvement in order to ensure simple, accessible and effective recourse.

Currently, little is known about recourse mechanisms, complainants must deal with too many people and steps, and therefore processing delays are

lengthy. Student Ombudsmen generally have no particular training or opportunities to share their expertise. Their independence in relation to educational bodies needs strengthening. The Québec Ombudsman is also critical that Student Ombudsmen cannot act on their own initiative. Lastly, their accountability is deficient and follow-up on their recommendations is difficult.

In a special report entitled *Handling of complaints within the education system: For a simple, quick, effective and impartial procedure*, released in October 2017, the Québec Ombudsman described various failings and made 19 recommendations. One of them was that Student Ombudsmen be the gateway to the complaint examination procedure. In addition, the Québec Ombudsman recommended that it be empowered to act as a neutral and independent second level of redress, as it does regarding the health and social services network, for parents and students who are dissatisfied with the Student Ombudsman's conclusions or follow-up by the council of commissioners.

Despite repeated requests by the Québec Ombudsman and the commitments reiterated by the Department, the latter still has no action plan for implementing the report's 19 recommendations. Furthermore, no concrete measures have been

established to improve the situation, increase the powers of Student Ombudsmen, expand their role and better ensure their independence.

On March 31, 2019, the Department affirmed yet again that it welcomes the findings of the report and subscribes to the overarching objectives governing the recommendations it contains. It specified that it had undertaken work based on the departmental orientations known to date, with a view to tabling a bill no later than December 2019.

In light of past experience, the Québec Ombudsman is concerned about this status quo, given the flaws pinpointed in the current system for handling complaints. On May 16, 2018, Bill 183, aimed at bolstering Student Ombudsmen and their independence, was introduced in response to the report's recommendations. However, the Bill was never passed.

 The Québec Ombudsman's report is available at protecteurducitoyen.qc.ca.

Ministère de l'Énergie et des Ressources naturelles

The criteria surrounding sale of land in the public domain

In its 2016-2017 Annual Report, the Québec Ombudsman indicated that it had intervened regarding the Ministère de l'Énergie et des Ressources naturelles because of its refusal to sell land in the public domain to interested citizens. This was the context: when these citizens had applied for purchase months, and even years, before, the Department had cited non-compliance with current rules which it applied retroactively to these preceding applications.

The Québec Ombudsman argued that it was unreasonable to apply the new rules to earlier requests. Furthermore, the investigation showed that the Department had been responsible for delays in file processing. Agreeing to act on the Québec Ombudsman's request, the Department:

- Proceeded to study the files again based on the criteria in effect at the time of the applications;
- Produced an intervention plan to reduce the handling times of such applications for purchase.

Subsequently, the Québec Ombudsman noted that in applying these corrective measures, the Department had grouped together the sales criteria from all regional directorates rather than using those of the regional directorate concerned. This had led to unwarranted refusals.

After the Québec Ombudsman intervened a second time, the Department reviewed 45 files that had been turned down initially. A quarter of them enabled the sale of land in the public domain.

ANALYZE APPLICATIONS FOR THE PURCHASE OF LAND IN THE PUBLIC DOMAIN BASED ON THE CRITERIA THAT APPLY



A citizen owned a cottage on a piece of land under rental for vacation purposes with the Department. Wanting to acquire this land, he sent the Department an application for purchase in 2013. Nearly four years later, the Department analyzed the file based on criteria that had not been in effect when the application was filed. Subsequently, the Department informed the man that his application had been turned down.

After the Québec Ombudsman intervened, the Department proceeded to analyze the application again based on the criteria in effect when the application was received. However, it failed to abide by the conditions imposed by the particular regional directorate concerned. Hence, the Department rejected the application for purchase on the basis of the value of the building constructed on the land, a criteria that had not been used by this

regional directorate at the time the application was filed.

After a second intervention by the Québec Ombudsman, the Department agreed to review the file again, to consider the guidelines of the regional directorate concerned, and to authorize the sale of the land to the citizen.

Ministère de l'Immigration, de la Diversité et de l'Inclusion

The destruction of 18,000 pending applications for the Regular Skilled Workers Program

For several years now, the Ministère de l'Immigration, de la Diversité et de l'Inclusion has had a backlog of immigration applications under the Regular Skilled Workers Program. Too many applications had been filed compared with the number of skilled workers who could be selected every year.

In its 2016-2017 Annual Report, the Québec Ombudsman sounded an alarm about this. It wondered what would happen to the 10,000 online applications sent to the Department in the summer of 2016 and the 21,000 paper applications received before December 31, 2015, and still pending.

In 2019, based on new eligibility thresholds, the Department envisages selecting between 12,000 and 15,000 candidates, roughly 10,000 less than in 2018. This target includes applicants under one of the following programs:

- The Québec Experience Program, intended for people who are already living in Québec as temporary workers, are Québec graduates, plan to settle in Québec and have sufficient knowledge of French according to specific standards;

- The Regular Skilled Workers Program, which is the main economic immigration gateway.

The decrease in the number of candidates selected in 2019 compared with the figures for 2018 will necessarily mean that wait times for the Regular Skilled Workers Program, which are substantial to begin with, will increase. As at January 1, 2019, 18,000 files were on the waiting list (45,000 people, 6,000 of whom currently live in Québec). Of these 18,000 files, 4,500 were submitted before December 31, 2015. This year, these lengthy wait times accounted for most of the complaints about this Department to the Québec Ombudsman.

In August 2018, the authorities announced the introduction of a new system called ARRIMA based on candidates' expressions of interest. The purpose of this formula is to secure a better match between candidates' skills and Québec's labour market needs, as well as to reduce processing times. While the system is promising, it is not yet being used.

On February 7, 2019, given the enormous backlog, the Minister introduced Bill 9 (*Act to increase Québec's socio-economic prosperity and adequately meet labour market needs through successful immigrant integration*) in the National Assembly. The Bill specifies that all applications presented to the Minister under the Regular Skilled Workers Program before August 2, 2018, will be destroyed. Applicants will be reimbursed for the required fees, without interest.

The Québec Ombudsman subscribes to the goals of the Bill, namely to:

- Ensure a better fit between economic immigration and Québec's labour market needs;
- Shorten application processing wait times;
- Resolve the backlog problem.

However, the Bill and the destruction of files stemming from it will affect all individuals and families who planned a life for themselves in Québec. The impact will be even greater for those who already live here, have a job and participate in Québec society.

With this in mind, in February 2019, the Québec Ombudsman stood before the Committee on Citizen Relations to recommend that Bill 9 be amended so that the destruction of files does not apply to

the applications of people already living in Québec. It also proposed that the Department prioritize and fast-track these applications for processing.

Concerning the people who do not live in Québec, given the many steps they had to take to put together their file, and the ensuing fees, the Québec Ombudsman recommended that the Department pay them back, with interest, and reimburse them for the fees paid for language tests. The Québec Ombudsman also asked the Department to send a letter to every principal applicant explaining the context for the destruction of files and to apologize.

Lastly, the Québec Ombudsman noted before the Committee the pledge that with ARRIMA, the candidacies of those invited to apply for a Québec selection certificate would be processed within six months. It also duly noted that the Government of Québec promised to give candidates who live in Québec priority invitations. The Québec Ombudsman will follow the implementation of the new immigration application management system closely.

As at March 31, 2019, Bill 9 had not yet been passed into law.

AFTER SEVEN YEARS, FINALLY FINISH STUDYING A CANDIDATE'S FILE



In 2011, a candidate applied for a Québec selection certificate. More than three years later, the Department informed her that the application had been turned down. The person exercised her right to reconsideration (administrative review of the decision) and the refusal was upheld.

The following year, given the candidate's arguments proving the validity of the documents she submitted, the Québec Ombudsman recommended that the Department study her file again, which it agreed to do. In 2018, the Department sent her a

letter instructing her to provide proof of language test results. The candidate took the tests in the summer.

In early 2019, more than seven years after her initial application, the candidate received a letter informing her that because of the tabling of a bill in the National Assembly, the Department would not be making Regular Skilled Worker Program decisions until parliamentary proceedings were completed.

Subsequently, pursuant to a Superior Court decision on

February 25, 2019, an injunction compelled the Department to resume the processing of files and to render selection decisions for 10 days. The Department finally confirmed that it would continue to render decisions until the Bill was passed.

The analysis of the file of the person who had complained to the Québec Ombudsman was therefore resumed. At the time this Annual Report was being written, the analysis was still underway.

Ministère des Finances

Last-resort financial assistance recipients and the QST component of the solidarity tax credit

The solidarity tax credit (STC) is a refundable tax credit intended for low-and middle-income families. It has three components: the housing component, the component for people living in Northern villages, and the Québec Sales Tax (QST) component. Until 2011, the QST component was included with last-resort financial assistance recipients' benefits. As of 2011, new conditions took effect and henceforth, recipients had to claim the credit by means of their tax return and a specific Schedule therein.

Filing a tax return is not always easy for much of the client population concerned, who number the most vulnerable people within society.

According to data from Revenu Québec, every year since 2012, some 45,000 recipients have not received the QST tax credit to which they are entitled. In November 2017, the final report of the committee of experts on the guaranteed minimum income, established by the Minister of Employment and Social Solidarity and the Minister of Finance, drew attention to the same situation. Not long after, the Minister of Finance tabled his updated Québec Economic Plan and announced changes concerning certain financial assistance payments, including the STC. Citizens would now receive the QST component of the STC without having to produce Schedule D of their tax return. In the Québec Ombudsman's opinion, clearly, this measure was insufficient because citizens would still have to produce a tax return to benefit from the claim. In the Québec Ombudsman's opinion, "automatic transfer" was a misnomer.

In January 2018, the Ombudsperson intervened with the Minister of Finance, indicating that she recognized the efforts of the various players and

noted the changes announced the year before. However, she pointed out that years after the introduction of the STC, a significant number of recipients were still unable to produce, or did not always produce, a tax return. This deprived them of the QST tax credit. The Ombudsperson therefore recommended that a real automatic transfer mechanism be put in place.

Instead, in April 2018, the Minister of Finance reiterated his support for the means already being employed, namely:

- A personalized letter sent twice a year to recipients who have not produced their tax return;
- An increase in the budget allocated to Revenu Québec's volunteer program, aimed at assisting people who need help filing their tax return.

In 2018, more than 40,000 recipients had still not received the STC, which tends to confirm that current methods are not working.

The Québec Ombudsman wishes to issue a reminder that the STC is a right whose purpose is to assist society's most destitute citizens. It therefore insists on the need for a measure that enables all last-resort financial assistance recipients to benefit from the crucial assistance afforded by the QST tax credit. This would be consistent with achievement of the anti-poverty objectives of the Québec Economic Plan for economic inclusion and social participation.

The Ministère des Finances, the Ministère du Travail, de l'Emploi et de la Solidarité sociale and Agence du revenu du Québec must implement a solution so that all last-resort financial assistance recipients really do have access to the refund to which they are entitled.

Ministère des Transports

The consequences of contracts between the Department and towing companies with exclusive contracts

The *Act respecting the Ministère des Transports* empowers the Department to enter into contracts with companies designated as exclusive suppliers for all towing activities on certain roads. This type of agreement is used in the case of roads where a rapid response is needed in order to ensure safety if a vehicle breaks down or an accident occurs. Confirming this exclusivity, the government passed the *Regulation respecting the provision of road service or towing on certain roads and autoroutes and on certain bridges or other infrastructures*. The Regulation prohibits companies which do not have an exclusive contract of this kind from carrying out road service or towing on the listed roads. The fees billed to citizens by the towing companies are set out in the contract and vary depending on what was done.

Following the Québec Ombudsman's intervention, there are plans to make changes to these contracts in order to more clearly define the terms imposed for charging for towing.

CHARGE TOWING FEES THAT COMPLY WITH THE PROVISIONS OF THE LAW



A citizen's truck got stuck in a ditch along a road under the jurisdiction of the Ministère des Transports. Consequently, a company under exclusive contract for towing on that stretch of road pulled the truck out of the ditch. The person who did the towing asked the driver for immediate payment of \$1,034.78 if he wanted his truck back. If he did not pay, the vehicle would be impounded by the towing company. The tone employed put pressure on the citizen to pay on the spot.

In the course of investigating, the Québec Ombudsman noted that the driver had been charged a fee that complied with the towing company's contract with the Department. Possible impoundment of the vehicle for failure to pay the fee immediately was not specifically prohibited according to the terms of the agreement.

The *Civil Code of Québec* and the *Highway Safety Code* provide for conditions in which a vehicle can be impounded by the authorities if the driver does not fulfill his or her obligations. However, there is

no legal provision that allows impoundment in the context of an exclusive towing contract.

As it turned out, the citizen paid immediately, but feeling nonetheless that the situation should be rectified, he considered it useful to file a complaint with the Québec Ombudsman. After the Québec Ombudsman intervened, the Department agreed to:

- Issue a notice of non-compliance to the towing company in question concerning the misconduct of its employees who had implied that the truck would be impounded if the amount owing was not paid, which was illegal. The notice was issued in late 2018;
- Modify exclusive contracts to specify the terms of payment for towing.

Regarding the last point, the Department indicated that it had begun the required work to make the changes to the exclusive towing contract. The new contract is slated to take effect in the winter of 2019.

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

The application of procedures for a program to assist society's most disadvantaged citizens

Among the programs managed by the Ministère du Travail, de l'Emploi et de la Solidarité sociale, the Social Solidarity Program is aimed at providing last-resort assistance benefits to people with severe limitations (illness, disabilities, personal situation) that prevent them from working. This is referred to as a "severely limited capacity for employment." The program's client population—more than 130,000 people—consists of society's most vulnerable citizens.

Complaints showed that the procedures for implementing the Social Solidarity Program were sometimes applied too rigidly. When this happened, people found themselves unjustly deprived of money they needed for their daily subsistence. The Québec Ombudsman feels that the Department should be more open, while still abiding by the rules: the decisions made must not only comply with the rules, but also be reasonable and tailored to the cases submitted.

TAKE BETTER ACCOUNT OF MENTAL DISORDERS



A report to the Québec Ombudsman from a worker at a residential resource concerned a person with a severe mental disorder. Found on the street by police officers, she was a Social Solidarity Program recipient due to her severely limited capacity for employment.

Three years before, the Department had instructed her to check to see whether she qualified for a disability pension from Retraite Québec, as prescribed by law. In such cases, the pension either fully or partly replaces last-resort financial assistance. She received \$1,035 a month from the Department, but because of her health condition, she never completed the process for obtaining the pension. In 2018, the Department learned that she qualified for a Retraite Québec pension of \$740 but that she was not receiving it because her file was incomplete. It was therefore aware that she was not getting the pension. It decided to reduce her social solidarity benefit by that amount anyway. This meant that she had less than \$295 a month to live on. Because she could no longer pay rent, she was evicted from her apartment where she had lived for more than 10 years.

The Québec Ombudsman stepped in to ask the Department to restore the citizen's benefit retroactively pending completion of the steps to be taken regarding Retraite Québec. She was issued payment in an amount of \$4,000. Furthermore, the staff were reminded to pay particular attention to the files of people with mental disorders and to make sure that decisions take better account of their condition.

Thanks to the worker who approached the Québec Ombudsman about the woman in question, the application for the Retraite Québec pension was successful. Now the woman gets a disability pension of \$740 plus the Social Solidarity Program benefit.



USE JUDGEMENT IN ASSESSING RECIPIENTS' EVIDENCE



A citizen who was a Social Solidarity Program recipient was told to pay back \$45 in the following context:

- Because of his serious health problems, the citizen had to travel by cab to his medical appointments;
- The Department had no proof on file confirming that he had attended his last appointment;
- The Department nonetheless received a bill from the taxi company in the amount of \$45.

One of the family members of the citizen provided the Department with proof from the Régie de l'assurance maladie du Québec (RAMQ) confirming that a medical appointment for that day had been

scheduled for the citizen and that he had seen the physician. Considering this proof insufficient, the Department upheld its decision. Following this, the same family member applied to the Department for review of the claim. The application was refused because the deadline had not been met. He then turned to the Department's complaints office, which upheld the refusal and recommended that he contact the Tribunal administratif du Québec.

The Québec Ombudsman, deeming that the RAMQ document was sufficient to prove that the citizen had indeed gone to his appointment, intervened to request cancellation of the claim. The Department agreed to act on the Québec Ombudsman's request and to cancel the claim.

Exercise the vigilance needed to ensure the assistance vulnerable citizens require

The Department adjusts the basic amount of last-resort financial assistance benefits for parents with dependent children. At age 18, if a child has a disability, he or she may qualify for the Social Solidarity Program, which is aimed at providing financial assistance to people with a severely limited capacity for employment. These limitations must be corroborated by a medical report.

At the age of majority, it is more financially advantageous for young people in this position to have their own file at the Department instead of being included in their parents' file. In 2018, a Social Solidarity Program recipient received \$1,035 a month, whereas the amount received as a supplement for handicapped children and the amount for a dependent child was \$565.08, a shortfall of \$469.92.

According to its directives, it is up to the Department to verify young people's eligibility for the

program and, when required, to change their status so they are recognized as independent adults in order to obtain their own benefits. At the close of an investigation showing that the Department had not done the required checking, the Québec Ombudsman asked that it review a series of files to see whether there were similar cases. It was found that 103 young people who had reached the age of majority were not getting Social Solidarity Program benefits. The Québec Ombudsman asked the Department to examine all 103 files and assess the young people's eligibility for the program. Given the financial considerations at stake, it is crucial that the Department exercise the vigilance required to enable these people, who are among society's most vulnerable citizens, to obtain the benefits to which they have the right.

The Québec Ombudsman will follow developments closely.



A citizen who was a last-resort financial assistance recipient had a dependent child with a severe disability. In 2017, he realized that his son, who had turned 18 three years before, qualified for the Social Solidarity Program. He therefore asked the Department to recognize his son as an independent adult retroactive to his 18th birthday. The Department refused, arguing that the father had never returned the required application for financial assistance. It added that an undated and unsigned self-adhesive note in the file indicated that the father had been given the form in question. However, the man said that he had never been informed that he had to fill out such a form.

The Department had known since 2014 that the citizen's son qualified for the program because, in the past, the father had submitted a medical report concerning his son in connection with other steps he had taken.

After the Québec Ombudsman intervened, the Department agreed to:

- Recognize the child's 18th birthday as the date at which his eligibility for the program began;
- Issue a retroactive payment of \$8,000.

Ministère du Travail, de l'Emploi et de la Solidarité sociale – Directeur de l'état civil

Delays for registration and issuance of official documents

The Directeur de l'état civil website specifies that the time period for entering a life event (birth, marriage, civil union, divorce, death) in the register of civil status is 15 business days. It takes another 10 business days for the document to be issued. However, in certain files, the Québec Ombudsman noted that there could be a wait time of up to three months.

In the wake of an increase in the number of complaints on this subject, the Québec Ombudsman asked the Department to take stock of the situation. The picture that emerged showed that complaints to its own sections had more than tripled compared with the figures for the preceding year, especially concerning the entering of life events in the register of civil status.

The Department primarily attributed this increase in wait times to the following factors:

- Reassignment of several members of the registration section staff to the shared operations section for processing of firearms registration applications;
- Lack of space for hiring students;

- A marked increase in death events, which involve the greatest number of verifications.

The Québec Ombudsman has taken note of the concrete efforts by the Directeur de l'état civil to rectify the situation, the result being:

- The hiring of extra registration section staff;
- Offering overtime;
- Moving some of the staff to free up work space;
- Producing an action plan to improve the efficiency of operations.

Given the various measures put in place, in particular the addition of staff, including students, the Directeur de l'état civil has assured the Québec Ombudsman that it will be able to clear the backlog and respect processing times as of December 2019.

Meanwhile, and further to the Québec Ombudsman's recommendation, the Directeur de l'état civil also made changes to its website in order to inform citizens about the wait times for registration. The information conveyed by the agents was also adapted to reflect the real situation. The Québec Ombudsman is following the situation closely.

RESPOND MORE QUICKLY TO APPLICATIONS FOR CERTIFICATES



A person contacted the Directeur de l'état civil in the summer of 2018 for her sister's death certificate. A few weeks later she was still without news, so she complained to the Québec Ombudsman. She pointed out that the document was necessary for the will search and the various stages of liquidating the succession.

At the time the Québec Ombudsman intervened, the file had been completed for two months, with no further developments. The Québec Ombudsman convinced the Directeur de l'état civil to agree to process the application immediately. The person received the requested document.

Recognizing filiation when a parent dies before his or her child is born

Currently, the filiation of a common-law spouse who dies before his or her child is born must be established before the Superior Court of Québec. In other words, to have the filiation of the parent who was a common-law spouse recognized, the other spouse must undertake legal proceedings. Without this legal acknowledgement, the repercussions are significant for the child whose parent died. These are some of the disadvantages:

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

The processes are much simpler for couples who are married or in a civil union because the surviving

parent simply has to make a declaration to the Directeur de l'état civil.

As of 2017, after the Québec Ombudsman intervened, the Directeur de l'état civil advised parents in this situation about the possibility of legal aid on the child's behalf in order to limit legal costs. In the meantime, so that the child can benefit promptly from the various government programs and services, such as child tax benefits, the surviving parent may have the child entered in the register of civil status by indicating only the surviving parent's name in the act of birth. That of the deceased parent may be added when the process is completed.

In the Québec Ombudsman's opinion, the steps imposed on these parents to have their deceased spouse recognized as their child's parent are needlessly difficult and because of their complexity, may compromise the child's rights.

MAKE IT EASIER TO ESTABLISH FILIATION



A woman gave birth to her second child a few weeks after the sudden death of her common-law spouse. She wanted to declare him as the father of her infant and give the child his family name, as she had done for her first child. Since the parents were common-law spouses, both had to be alive to declare their parental bond. In other words, if

the father dies before his child's birth, it is impossible to establish paternal filiation. The only way of registering the deceased father on the birth certificate is by petitioning the Superior Court, with all the steps, costs and delays inherent in such a procedure. In the end, this was the solution to which the mother had to resort.



RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING RECOGNITION OF FILIATION WHEN A PARENT DIES BEFORE HIS OR HER CHILD IS BORN

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

- Propose an amendment to the *Civil Code of Québec* whereby declaration of filiation by a parent whose common-law spouse died before their child was born may be

carried out without a judicial procedure.

Reply from the Ministère de la Justice

[Translation]

“The filiation of a common law spouse who dies after the birth of his or her child is a particularly sensitive issue. That is why it is

being analyzed by the Ministère de la Justice within the framework of the reform of family law. In a context in which the modernization of family law is a priority and the accessibility of justice must be promoted, the Ombudsman’s recommendation will certainly contribute to the Minister’s deliberations.”

Office de la protection du consommateur

Indication of a formal notice on merchants’ Web profiles

A person who wishes to file a complaint against a merchant with the Office de la protection du consommateur may obtain a formal notice form from the agency to send to the merchant concerned. The consumer is also invited to send a copy to the Office.

The agency then analyzes the complaint based on 11 criteria, in particular whether the complaint is governed by the legislation under the Office’s responsibility, as well as ensuring that the complaint is not frivolous or malicious. There are no criteria on the merit of consumers’ claims.

If the form satisfies all 11 of the Office’s criteria, indication of the formal notice is posted on the merchant’s Internet profile on the Office website.

In the Québec Ombudsman’s opinion, this practice creates an imbalance between the consumer’s and the merchant’s rights because the merchant:

- Is not notified by the Office that an indication of the formal notice has been posted on his or her profile;
- Cannot have his or her version of the events published.

Furthermore, the indication may suggest that there is substance to the formal notice because it figures on the Office website. However, this is not necessarily true.

At the end of the investigation by the Québec Ombudsman, the Office said that it planned to establish various measures by the autumn of 2020 to uphold the rights of all parties.

It intends to create a subscription mechanism for enabling merchants to be notified when a new piece of information appears in their profile, including indication of a formal notice. The way of going about this remains to be determined.

The Office also wishes to clarify the wording of the merchant’s section in the formal notice form. The purpose is to ensure that, henceforth, it will be clear to merchants that if the form satisfies the 11 criteria, this will be mentioned in their profile. The Office will add information about the proposed subscription.

Another improvement: the Office will allow merchants who have received a formal notice to issue a rebuttal contesting the events described in the form.

Lastly, it will make an agreement form available in the profile to encourage consumers and merchants to come to an understanding. The same form could be used for the parties to apply to have an indication of a formal notice withdrawn.



A merchant contacted the Québec Ombudsman because he felt that the publication of the indication of a formal notice in his profile on the Office website unjustly caused him harm. He explained that he had responded to his customer's formal notice, tried to talk with him twice, and sent him two letters. These attempts were fruitless because he never managed to talk with the complainant. The merchant considered that the formal notice was frivolous. He felt that he had lost customers

because of the indication and was worried about it still being in his profile.

After the Québec Ombudsman intervened, the Office decided to allow the merchant to post a rebuttal concerning the claims in the "objective facts" section of the formal notice form. Now when third parties consult the profile, they will have a fuller picture of the facts.

Régie du bâtiment du Québec

Delays for issuing licences to contractors

The Régie du bâtiment is a government agency tasked with issuing licences to contractors. To do so, it must first ensure that applicants comply with the legal requirements. Some cases are forwarded to the investigations branch for further verification. Whether or not there is an investigation, the legal deadline for issuing the licence is 60 days. From year to year, the Régie receives 7,000 licence applications.

The Québec Ombudsman noted that in 20% of applications, the Régie does not comply with the 60-day deadline, especially when a compliance investigation is necessary. For example, a contractor who applied to the Régie for a licence had to wait two months for confirmation that he had passed the required exams. When he contacted the agency to find out about the status of his application, the answer was that it was being processed and that no other information was available. The 60-day deadline came and went, so he complained to the Québec Ombudsman, which discovered that the application had been sent to the investigations branch for further verification and that the contractor had not been informed. The Québec Ombudsman asked the Régie to notify the applicant.

As for the other late files, the Régie told the Québec Ombudsman that it was aware of the problem with tardiness and was working to review processing procedures for a more prompt response.

The Québec Ombudsman is not questioning the need for investigating when necessary so that licences are not issued illegitimately. However, it considers that the people concerned must be systematically advised of how their file is proceeding. From now on, they will be informed about the status of their file and, where applicable, therefore be prepared to cooperate with the investigator who contacts them.

The Québec Ombudsman has taken note of the Régie's efforts, while insisting on the fact that contractors need a licence in order to work. Any unwarranted delay is therefore very burdensome.

The Québec Ombudsman remains attentive to the timely introduction of the required corrective measures.

The information given to people who complain to the Régie

Another responsibility of the Régie is to receive complaints from citizens who:

- Are dissatisfied with a contractor's work;
- Learn that a contractor with whom they are doing business does not have the prescribed licences;
- Fear that a construction-related situation jeopardizes public safety.

The Régie sends an acknowledgement of receipt to everyone who files such a complaint and, under certain circumstances, a request for additional information. Sometimes it does not follow up, if for example, a file is not within its purview or the limitation period has expired.

The Régie told the Québec Ombudsman that in such cases, it does not contact the complainant because it feels that the information on the processing of the file is confidential. As the Québec Ombudsman sees it, information about a complaint's admissibility is not confidential as long as personal details are not provided. It therefore asked the Régie to send a letter of explanation to every person whose complaint is deemed inadmissible. The Régie agreed to do so. At the time these lines were being written, the Régie was reviewing these kinds of letters and foresees finishing this exercise soon.

EXPLAIN WHAT IS HAPPENING WITH A **FILE** TO THE CITIZEN CONCERNED



A citizen complained about gas and electrical equipment which he felt could endanger the customers in a restaurant. However, the Régie has no jurisdiction over these aspects of a building. There was no follow-up on the complaint.

When the man did not hear back, he contacted the Québec Ombudsman. After it investigated, it concluded that the Régie had shirked its duty to inform

the complainant. The Québec Ombudsman asked the agency to send the person a letter indicating that his complaint had been inadmissible and the reasons why.

In obtaining this information, the citizen was able to direct his complaint to the proper authority without waiting needlessly for the Régie to intervene with the restaurant owner.

Régie du logement

Phone access at the Régie du logement

In the past year, the Québec Ombudsman has received numerous complaints from people who could not reach the Régie du logement by phone. The Québec Ombudsman conducted its own test by calling the agency many times at different times of day over a five-day period. Each time, it was impossible to get through.

When people phone the Régie, they hear a recorded message telling them to press 0 to talk to an agent. A second message says that all the lines are busy and suggests that the person call back later. Then the line cuts off. Some people said that they had had to wait 45 minutes.

According to the information provided by the Régie to the Québec Ombudsman:

- The phone service has worsened over the past eight years;
- Phone access problems are mainly due to staff shortages;
- The average wait time for reaching an agent has gone from four minutes in 2010-2011 to nearly 19 minutes in 2017-2018, even though the Régie entered into an agreement with Services Québec for its team to answer calls when there is an overload during the busiest period of the year (January to March);
- For the first seven months of 2018-2019, the average phone wait time was nearly 22 minutes;
- In its statement of services, the Régie pledges to answer the phone within 20 minutes;
- The Régie does not foresee being able to achieve its goal in 2018-2019.

Since 2016, the Québec Ombudsman has collated 86 complaints related to phone access problems in order to question the Régie on possible solutions and the means being considered for giving citizens genuine phone access within a reasonable amount of time.

In the Budget it tabled last March 21, the government announced that supplementary amounts had been earmarked to enable the Régie du logement to add phone-answering staff. The Québec Ombudsman remains attentive to implementation of the expected improvements.

Retraite Québec

Determining the amount of child assistance and the supplement for handicapped children

Child assistance payments (now called the “family allowance”) and the supplement for handicapped children are issued as tax credits. They make it possible for numerous families, who are often in a precarious financial situation, to provide for their children’s care and education. Since these payments are calculated based on family income, Retraite Québec establishes taxpayers’ eligibility and sets the amount allocated based on the income declared annually by taxpayers in the tax return they send to Revenu Québec.

Sometimes Revenu Québec’s processing of the return is longer than usual, especially when additional verification is required. In such cases, the notice of assessment is not produced within the usual timeframe. As a result, Retraite Québec issues the family allowance and the above supplement to those who qualify, but only for three months. It calculates the payments based on the tax return from the year before so that the amount established is as accurate as possible.

ABIDE BY THE SPIRIT OF A SOCIAL PROGRAM AND AVOID INFLEXIBILITY



A couple with a low income received family allowance and supplement for handicapped children payments from Retraite Québec. However, the agency did not receive the notice of assessment from Revenu Québec by the date necessary to establish the payment amounts for the coming year. The delay was due to additional verification by Revenu Québec of the declared childcare expenses in the couple’s tax return.

As provided for in such cases, Retraite Québec issues an advance on both payments for a maximum of three months, conditional on presentation of the notice of assessment. For this couple, the amount was more than \$4,000. Subsequently, the payments were suspended for nine months. Furthermore, nearly a year after the conditional payment, Retraite Québec claimed reimbursement of the amount, arguing that the notice of assessment was still unavailable.

The investigation by the Québec Ombudsman showed that Revenu Québec had contacted Retraite Québec to confirm the declared amount of family income, specifying that the verification of childcare expenses did not affect the calculation. For its part, Retraite Québec maintained that it needed the notice of assessment in order to resume the payments. This was in fact not required by law. Instead, the requirement was purely administrative.

The Québec Ombudsman intervened with Retraite Québec and Revenu Québec by arguing that humanitarian considerations should be taken into account given the family’s impoverished circumstances. Retraite Québec cancelled its reimbursement claim and retroactively issued the couple the amount to which it was entitled. They therefore received more than \$27,000.

The legal deadline for modifying the amount of a retirement pension

The law provides that in order to correct a miscalculation, Retraite Québec may reduce the pension amount of government and public employees retirement plan (GPERP) participants. The review must occur within a legal deadline of three years. Sometimes, however, Retraite Québec exceeds this deadline and the person is only informed about the new calculation at a later date. This violates the laws that govern the agency and harms retirees. Not only do they have to deal with the decrease in their pension, but they must also reimburse Retraite Québec for the overpayments that had amassed over time.

As part of its intervention, the Québec Ombudsman recommended that Retraite Québec:

- Establish measures to ensure compliance with the deadlines set out in the law for reviewing pension amounts;
- Change its administrative policies and its rulebook accordingly.

After several reminders by the Québec Ombudsman and two tribunal decisions confirming that Retraite Québec's practice was illegal, the agency put measures in place to ensure review of pension amounts within the prescribed deadlines. It also undertook consultations to change its administrative policies and rulebook. The Québec Ombudsman is following the implementation of its recommendations closely.

COMPLY WITH LEGAL DEADLINES IN REVIEWING RETIREMENT PENSION AMOUNTS



A man contacted the Québec Ombudsman to contest a Retraite Québec decision which involved him. More than five years after he retired, he was informed that his pension would be reduced and that he would have to reimburse the agency for the overpayments he had received.

The agency explained that it had failed to correctly apply certain federal tax provisions in calculating the pension. This led to a yearly decrease of more than \$400 and a claim of roughly \$1,300.

Despite the Québec Ombudsman's intervention, Retraite Québec refused to cancel its decision. The citizen had no choice but to approach the Tribunal d'arbitrage, which ruled in his favour. Retraite Québec therefore had to abide by the decision and maintain the initial pension calculation without applying the tax limits and claiming the overpayments.

Société de l'assurance automobile du Québec – Compensation

Recognizing traffic-accident related injuries

The Société de l'assurance automobile du Québec (SAAQ) can issue various types of compensation to people who are victims of a traffic accident. This compensation consists of an income replacement indemnity or a lump-sum indemnity aimed at compensating for the permanent after-effects suffered by the victim.

Accident victims must prove that their injuries are directly related to the incident. Once the SAAQ recognizes the medical diagnosis and it is entered in the person's computer file, determination of the compensation to be issued can begin.

When the connection between the injury and the accident is established, it is crucial that the SAAQ proceed quickly so that accident victims can obtain compensation as soon as possible. Furthermore, all injuries must be entered in the system, even if they do not make the person eligible for compensation immediately. If there is a relapse or the injury worsens, the person could then perhaps qualify for compensation.

This year, the Québec Ombudsman had to intervene several times to have omitted injuries entered in an accident victim's file. This despite the fact that these files contained medical documents attesting to the injuries which, in certain cases, had even been recognized by the SAAQ following a medical opinion, a transaction between the parties concerned (out-of-court settlement, contract, etc.) or a tribunal decision.

PROCEED PROMPTLY TO **ENSURE** MEDICALLY RECOGNIZED INJURIES ARE ENTERED IN THE SYSTEM



As a result of an automobile accident, a person suffered several injuries which were diagnosed by a physician. However, the SAAQ refused to recognize the connection between the accident and one of the diagnoses. The woman contested the SAAQ's decision before the Tribunal administratif du Québec (TAQ).

Within the framework of the recourse being sought and before a decision was rendered, the SAAQ finally agreed to recognize the diagnosis that it had rejected at first. It pledged to act on its new decision, in accordance with the *Automobile Insurance Act*. The agency and the woman signed an agreement which was entered in the TAQ file. Several months elapsed.

Still without any news, the woman complained to the Québec Ombudsman, which discovered the

following at the very beginning of its investigation: more than eight months after the agreement had been made, there was no sign of the recognized medical diagnosis in the SAAQ system. Meanwhile, the agency had rendered a decision concerning the accident victim and, deeming that she was fit to work, had ended her income replacement indemnity payments. However, the SAAQ had not considered the previously refused diagnosis which it had ended up recognizing.

After the Québec Ombudsman intervened, the SAAQ acknowledged the omission and promptly processed the file, taking into account the diagnosis concerned. It went on to assess her after-effects and changed its decision regarding her ability to work. The income replacement indemnity was restored retroactively. Furthermore, the recognized after-effects were reviewed, and the woman received an amount of more than \$60,000.

Examining medical proof

Given the importance of medical proof in assessing accident victims' files, it is paramount that the agents in charge go over all the documents with a fine-toothed comb in order to base their decisions on solid grounds. However, this is not always the case.

EXAMINE ALL DOCUMENTS ON FILE METICULOUSLY



An accident victim had sustained several injuries, including one to his knee. Despite the diagnosis to that effect entered in an orthopedist's medical report two months later, the SAAQ refused to recognize the connection between the injury and the accident. The agency maintained that the citizen had reported the injury too late and that it had not occurred at the time of the accident.

After analyzing the proof on file, the Québec Ombudsman saw that the documents produced several days after the accident mentioned the

leg injury. The claim form completed by the citizen clearly indicated the injury. A few days later, during a post-accident medical appointment, the driver once again reported persistent knee pain, and the physician added a special note in that regard.

After the Québec Ombudsman intervened, the SAAQ acknowledged that in fact there was proof on file confirming the diagnosis of the injury and it agreed to take it into account in the final settlement of the file.

Use of video surveillance

In 2012, the Québec Ombudsman released a report entitled *Tailing of traffic accident victims by the Société de l'assurance automobile du Québec using video surveillance*. The report concluded that this investigative method must be used only when the need for it has been established beyond the shadow of a doubt. Since this method may infringe on the privacy of the people concerned, the Québec Ombudsman recommended using any other

appropriate method before resorting to video surveillance. It also insisted on the need to make the content of these video recordings available to the citizens concerned before rendering a decision so that they have the opportunity to express their point of view. The Québec Ombudsman noted that there is an internal directive with that intent, but that the people being monitored are not always informed that this is happening.

INFORM THOSE CONCERNED THAT THEY ARE UNDER VIDEO SURVEILLANCE



A woman sustained injuries during an automobile accident and was diagnosed with accident-related post-traumatic stress disorder. She was recognized as being unable to work and she received an income replacement indemnity.

Subsequently, the citizen underwent several psychological assessments which did not clearly establish that she was permanently incapable of working. Furthermore, the SAAQ had received two reports of fraud about her. The agency decided to investigate by means of video surveillance and tailing. Another assessment was requested so that the recordings could be taken into account for the purpose of analyzing the file. Based on the new expert assessment, the SAAQ concluded that the person was able to work and it therefore terminated her indemnity.

At the end of the investigation it conducted, the Québec Ombudsman considered that the decision to monitor the woman by means of video surveillance was warranted. However, it noted that before rendering its decision, the SAAQ had not informed her that it had used this method. As a result, the citizen was unable to express her point of view on the content of the video recordings.

In the case at hand, the decision to terminate the income replacement indemnity was appropriate. The Québec Ombudsman nevertheless reminded the SAAQ of the importance of always giving citizens the opportunity to view the recordings and provide explanations before a decision is rendered. The staff concerned were reminded of this.



CORRECTIONAL SERVICES

This section outlines the Québec Ombudsman's main findings regarding correctional services in the 18 correctional facilities for which the Direction générale des services correctionnels of the Ministère de la Sécurité publique is responsible.

The Québec Ombudsman has jurisdiction concerning provincial correctional facilities that detain people in custody during trial and 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 2018-2019, the Québec Ombudsman intervened regarding the Commission québécoise des libérations conditionnelles, the Ministère de la Sécurité publique and the 18 correctional facilities for which it is responsible.



1 Closed requests for assistance and complaints

TRENDS IN CLOSED REQUESTS FOR ASSISTANCE AND COMPLAINTS

	2015-2016	2016-2017	2017-2018	2018-2019
Requests for assistance	99	91	113	194
Substantiated complaints	499	646	462	545
Mediation	0	0	0	0
Unsubstantiated complaints	839	935	763	782
Could not take a definitive position	37	75	66	57
Redirected complaints	1,746	1,741	2,147	2,454
Suspended complaints	1,182	1,475	1,432	1,612
TOTAL	4,402	4,963	4,983	5,644
Difference with the preceding year	-	+12.7%	+0.4%	+13.3%

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.

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 **redirected**. 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.

The number of closed requests for assistance and complaints increased by 13.3% compared to last year. Requests for assistance accounted for the highest increase this year (71.7%).

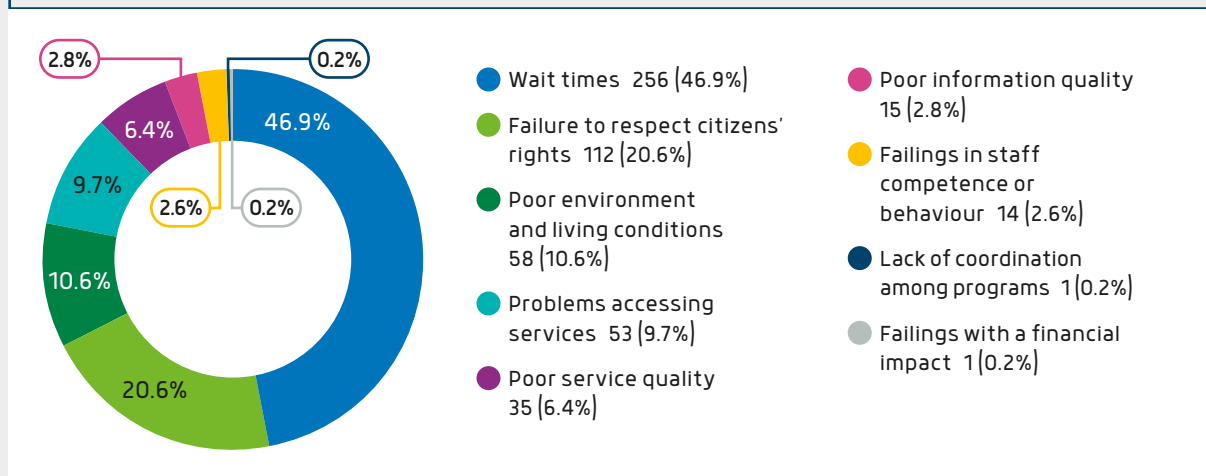
2 Substantiated complaints

The proportion of substantiated complaints is established as follows: Number of substantiated complaints/Number of substantiated and unsubstantiated complaints. It increased by 3.4 percentage points compared to last year, bringing it to 41.1% in 2018-2019.

PROPORTION OF SUBSTANTIATED COMPLAINTS

2015-2016	2016-2017	2017-2018	2018-2019
37.3%	40.9%	37.7%	41.1%

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.

Wait times was the category with the greatest number of substantiated complaints (nearly one out of two). They consisted, for the most part, of wait times required to have personal belongings returned, the result of a claim for the loss of personal belongings, money, tobacco substitutes, medication or healthcare. These sub-categories represented 76.6% of substantiated complaints related to wait times.

Failure to respect citizens' rights, which ranked second for grounds for substantiated complaints, consist of the failure to apply a regulation, an order in council, rules or procedures, or constraints or obligations that exceed established requirements or standards.

3 Monitoring of corrective measures

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

ACCEPTED CASE-SPECIFIC MEASURES

2015-2016	2016-2017	2017-2018	2018-2019	2018-2019	
				Accepted	Refused
100.0%	100.0%	100.0%	100.0%	161	0

ACCEPTED MEASURES WITH A COLLECTIVE IMPACT

2015-2016	2016-2017	2017-2018	2018-2019	2018-2019	
				Accepted	Refused
100.0%	100.0%	98.8%	98.6%	70	1

4 Closed requests by government department or agency, by processing outcome⁴

AGENCY AND DEPARTMENT/BRANCH	Requests received in 2018-2019	Closed requests in 2018-2019							Total
		Requests for assistance	Complaints						
			Substantiated	Unsubstantiated	Mediation	Could not take a definitive position	Redirected		
Commission québécoise des libérations conditionnelles	18	4	5		1	3	7	20	
Sécurité publique - Correctional services	5,593	190	545	777	56	2,451	1,605	5,624	
TOTAL	5,611	194	545	782	57	2,454	1,612	5,644	

4. 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

Use of handcuffs and chains for an indefinite period

The rules for the use of physical restraints in correctional facilities, handcuffs and legcuffs in particular, date back to 1996. Nowhere in these rules is there mention that detention authorities must periodically reassess the relevance of imposing more severe physical restraints than usual. This means that some detainees are shackled when moved, without the measures being reassessed—a situation that may persist for weeks or even months. For logistical reasons, some facilities put all the detainees thus restrained in small high-security wings where they are allowed out of their cells only a few hours a day. Often these detainees have no access to rehabilitation programs. Furthermore,

their time outside the cell for maintaining meaningful social contact with other people, especially for phone calls with their families, is shorter.

As early as in its 2013-2014 Annual Report, the Québec Ombudsman recommended updating the rules on physical restraints. In recent years, the Department has begun to review the rules in question. In 2015, the Québec Ombudsman commented on a draft amendment of the provincial instruction and asked that every decision to impose more severe restraints on a detainee be reassessed at predetermined intervals. Since then, no updating of the rules has occurred.

RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING THE IMPOSITION OF PHYSICAL RESTRAINTS

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

- By December 2019, bring into force an instruction providing for systematic reassessment of the use of restraints after a maximum of two weeks in order to prevent their unwarranted use.

Reply from the Ministère de la Sécurité publique

[Translation]

“The imposition on detainees of means of control is a security measure that applies within all correctional facilities. These means are reassessed when there is a significant change in a detainee’s situation and that the safety of the detainee or others will not be compromised if imposition of the means of control is lifted.”

Comment by the Québec Ombudsman

The Québec Ombudsman notes the Department’s reply but remains convinced of the need to provide that reassessment must occur after a maximum of two weeks.





A detainee complained about being allowed out of his or her cell only three hours a day. The investigation by the Québec Ombudsman showed that several people subject to more severe restraints (handcuffs, handcuff cover, legcuffs and connector chains) were all kept in the same wing and were imposed the same cell-confinement measures. In the complainant's case, it was found that the authorities had prescribed these restraints for several months without reassessing the reasons for the initial decision, such as whether the violent behaviour persisted.

After the Québec Ombudsman intervened, the facility administrators decided to make it standard practice to reassess every two weeks whether use of the restraints is still necessary, for the entire detainee population subject to such measures.

Solitary confinement of detainees

Solitary confinement consists of keeping detainees in their cell for 22 hours a day or more. It can be applied for different reasons, notably when inmates do not comply with duties or rules of conduct.

Solitary confinement may also have to do with inmates' classification. The instruction on this subject provides for different kinds of classification—administrative segregation and classification described as restrictive—which come with obligations that facilities must fulfill. Administrative segregation is imposed by the manager and has the effect of protecting inmates from themselves or of protecting their fellow detainees. Under restrictive classification, detainees are segregated when they require stricter supervision for a certain period, generally due to violent behaviour. The Québec Ombudsman has observed that often the correctional system misunderstands these classifications and obligations. The consequence is that correctional authorities do not always fulfill the obligations inherent in each kind of classification, whether in terms of duration or monitoring.

In the Québec Ombudsman's opinion, correctional facilities resort to extended solitary confinement too often, without any specific guidelines. Note that the United Nations' Mandela Rules state that solitary confinement for a period of more than 15 days is prohibited. Further to certain court rulings, the federal government announced that it intended to restrict, if not eliminate, solitary confinement, an intention actualized with the tabling of Bill C-83.

Since 2016, the Québec Ombudsman has been asking the Department to create guidelines for using solitary confinement. However, the Department has been slow to do so. Further to commitments by the Department, the Québec Ombudsman indicated in its 2017-2018 Annual Report that a draft provincial instruction was being developed. Since then, the Department has made it known that it is working on the question but cannot provide an end date. Meanwhile, detainees may find themselves unjustly placed in solitary confinement.



RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING SOLITARY CONFINEMENT

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

- Pending a new provincial instruction governing solitary confinement, apply the provisions of the Mandela Rules on solitary confinement so that, as of December 1, 2019, it is limited to a maximum of 15 days.

Reply from the Ministère de la Sécurité publique

[Translation]

“The Ministère de la Sécurité publique has introduced several measures to mitigate the adverse effects of solitary confinement and, in March 2019, informed the Québec Ombudsman that work concerning the instruction would be completed in August 2019. The instruction will take effect on September 30, 2019.”

RESPECT THE CONDITIONS ASSOCIATED WITH DETAINEE CLASSIFICATIONS



A citizen had been kept in his cell 22 hours a day for two weeks in an administrative segregation wing. Since he did not know why he had been classified this way or the reason for the length of confinement, he complained to the Québec Ombudsman.

The manager in charge explained that, for safety reasons, the man could not be kept with other inmates under protective segregation, but he did not admit that the protective measure had been imposed on the inmate.

The provincial instruction on classification defines administrative segregation as protection imposed on a detainee for security purposes. The

instruction specifies that in such cases, the reasons for the measure must be indicated on a form and reassessed once a week. This had not occurred in the case of the complainant.

Since the manager would not cooperate, the Québec Ombudsman contacted his superiors, who confirmed that the detainee was indeed under administrative segregation, and that the instructions concerning reassessment of the measure and use of the form had not been followed. The facility authorities told the Québec Ombudsman that these practices would be reviewed so that managers understand and apply the instruction correctly.

Detainees' right to outdoor physical exercise

The *Regulation under the Act respecting the Québec correctional system* provides that every inmate has the right to at least one hour of walking or physical exercise outdoors every day. This year, the Québec Ombudsman received numerous complaints that showed that this right is not always respected. Its investigations identified various causes that prevented or limited outdoor time.

- Staff shortages: because of staff absences, on certain days some facilities had to close their exercise yards in addition to confining the

detainees to their cell. Even though this situation was an exception to the rule, the Québec Ombudsman is critical that no measures were put in place so that detainees were not unjustly penalized.

- Failure to offer time outside: despite the fact that correctional officers must give detainees the opportunity for time outdoors every day, it is not always done. After the Québec Ombudsman intervened, the staff members were issued reminders and follow-up tools were put in place.

- Winter conditions: in Montréal, detainees could not go outdoors because snow removal by an external contractor was delayed. Another time, the exercise yard was closed because a manager felt that the conditions—visibility, snow, ice—were hazardous. His decision had not been approved by the correctional facility’s authorities, which should have been the case. The manager was given a reminder.

Cases of misconduct by staff

In the past year, the Québec Ombudsman has received several complaints concerning the behaviour of members of the staff at correctional facilities. Its investigation showed that several of the complaints were substantiated, notably that verbal attacks had occurred. In other cases, detainees were exposed to negligence:

- An inmate was left for more than 24 hours without a sweater, cover or mattress in a solitary cell;
- Another remained naked in a cell for almost 24 hours. Despite an internal investigation, the administrators could not provide an explanation as to why such a situation had been necessary;
- A detainee was injured and taken to hospital as a result of an altercation after an officer mistakenly unlocked the doors of the cells of several inmates with incompatible classifications;
- Several officers who had used force on a detainee forgot to fill out an accident report or did so incompletely. This breaches the provincial instruction and prevents authorities from having all the information about events, especially if there are no cameras.

Detainees also suffered reprisal. After a detainee had filed several complaints about various causes for dissatisfaction and the Québec Ombudsman had intervened with the correctional facility, the staff transferred the inmate to another wing for no reason. The Québec Ombudsman contacted the person in charge of the section concerned, who could not explain the administrative grounds for this decision. A reminder was issued by the administrators to all managers likely to encounter such a situation and to the manager who had ordered the transfer. The reminder specified that the reason for the transfer decision must always be indicated in the detainee’s file.

The Québec Ombudsman deplores these restrictions which run counter to the Regulation, that has a specific provision on the subject, as well as to international standards, which insist on the importance of outdoor time for detainee populations. The Québec Ombudsman intervened so that the Department ensures compliance with the Regulation with all the rigour required to make it a priority. It urged the Department to define effective and lasting measures for enabling daily outside time in all weathers, even when there are fewer staff.

In another case, a detainee was kept for nearly three hours in a police van rather than in a courthouse cell because he or she had expressed displeasure at having to stay at the courthouse until the end of the day even though the hearing was in the morning.

The Québec Ombudsman also learned of situations in which the use of force proved unwarranted. In one instance, an officer pushed a detainee and delivered blows to the person’s body and face. In another, the manager of a unit was relieved of his duties for beating a detainee in the person’s cell. A third detainee was thrown on the ground by a group of officers and suffered a cut above the eye even though he or she had not put up a fight.

In addition, during a full body search, officers removed an object from a detainee’s body cavity themselves, despite this being formally prohibited in the provincial instruction.

Even though the Department made corrections further to these cases of misconduct (measures with regard to the officers and reminders about good practice), the Québec Ombudsman remains concerned about the impact of this inappropriate behaviour on detainees. Furthermore, when the victims of such behaviour by staff want to file a complaint despite their fear of reprisal, often they have trouble obtaining the complaint form that these same staff must make available to them.

Anyone who wishes to speak out against misconduct may do so at any time to the Québec Ombudsman, which ensures that the complaint and the investigation are confidential. Complaints may be filed by detainees themselves or third parties may submit a report.



A detainee had borne the brunt of several instances of misconduct by staff (anti-suicide smock even though he posed no suicide risk, abusive video surveillance, illegal strip and use of excessive force).

In another case, video camera recordings showed an officer constantly clicking a detainee's cell light off and on. After the Québec Ombudsman intervened, the administrator took the required measures to deal with the officer's harassing behaviour.

Housing conditions in two correctional facilities

The Québec Ombudsman visits correctional facilities regularly, to, among other things, observe the detainees' living conditions. In this respect, the situation of women at Leclerc de Laval correctional facility is particularly disturbing.

In February 2016, the women incarcerated at Maison Tanguay, in Montréal, were transferred to Leclerc de Laval correctional facility, a federal penitentiary for men which was vacated because of the dilapidation of the premises. In October of the same year, Department authorities announced that the women could not be kept there long term because the building did not provide adequate detention conditions and did not meet the specific needs of woman, e.g. the premises were not designed to take into account that incarcerated women generally require less safety supervision than men.

The Québec Ombudsman visited the facility on several occasions since it was taken over by Québec's correctional services and witnessed its dilapidated condition. Furthermore, in 2018, it received complaints about things such as insufficient heating, poor water quality, mould and bedbugs.

In 2016, the Minister entered into a partnership agreement with the Elizabeth Fry Society in order to improve the detention conditions of the women incarcerated at Leclerc de Laval correctional facility, and to craft what the Department itself called an "innovative model" of female detention management. Since then, work has been done and action taken to solve certain problems. Following the Québec Ombudsman's request, in April 2019,

the Minister of Public Security reiterated her commitment to this issue which was deemed a priority and produced an action plan for management that is better adapted to the female detainee population.

The Québec Ombudsman will follow developments attentively.

A visit by the Québec Ombudsman to Baie-Comeau correctional facility in October 2018 showed that there too, dilapidation and disrepair prevail. It must be remembered that the building dates from 1964 and, initially, was not intended for long-term incarceration. The general condition of the premises leaves much to be desired, especially the washrooms, where there is mould and broken equipment (urinals and sinks). The layout of the cells precludes any privacy because the cells are across from each other and the toilets are near the barred cell doors. People serving intermittent sentences and women placed temporarily in the facility must sleep on mattresses on the floor.

In both of the solitary cells, a bucket replaces the toilet. As there is no sink, water is provided on request. The detainees must sleep on a mattress on the floor because there is no bed. A plan to renovate solitary cells goes back to 2009. The Department's 2016-2017 list of major initiatives indicates that the projected renovation is underway, but, in fact, the situation has not changed. The Québec Ombudsman is concerned about the resulting violation of the detainees' dignity and rights.



RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING BAIE-COMEAU CORRECTIONAL FACILITY

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

- By December 31, 2019, provide it with an action plan and timeline aimed at improving the detention conditions of the inmates at Baie-Comeau correctional facility.

Reply from the Ministère de la Sécurité publique

[Translation]

“The problems raised are currently being addressed in a follow-up plan co-produced with the Québec Ombudsman. Concrete actions were quickly undertaken to carry out the required changes. Detainees may be transferred to Sept-Îles correctional facility if need be.”

Comment by the Québec Ombudsman

Certain measures were indeed put in place but the condition of the solitary confinement cells and sanitary facilities continue to violate detainees’ dignity and have done so for several years.

Management of personal belongings

This year, the Québec Ombudsman noted an increase in the number of complaints about the management of detainees’ personal belongings at several correctional facilities.

The provincial instruction specifies that the reasonable time limit for giving back personal belongings to detainees after their arrival is 48 hours. However, often this delay is longer.

In several facilities, no one is assigned to carry out standard searches of personal belongings on weekends. The result is that someone who is admitted on a Friday night cannot get his or her clothes back until Monday afternoon. In the meantime, this person only has the clothing and underwear he or she was wearing at intake.

When detainees are transferred to another facility, sometimes their belongings are not transferred, or they are forgotten at the facility the detainees came from. In other cases, the clothing storage staff

refuse to check detainees’ bags on the pretext that the detainees will soon be transferred to another facility, even if there is no firm transfer date. Similarly, when there are staff shortages, inspection of belongings is postponed because clothing storage is not considered a priority service.

Clothing management also poses problems when detainees are destitute, in other words, poor or homeless, or when people’s clothing is not allowed into the facility because it does not comply with regulations (clothing in a colour similar to officers’ uniforms, hoodies that hide detainees’ faces, footwear with metal parts, etc.). The Québec Ombudsman has seen that the wait times and conditions for access to personal belongings vary depending on the facility. For example, in some places, detainees are allowed to wear their winter boots, no matter the height. In other places, boots are prohibited for security reasons (physical restraints cannot be used), which deprives some detainees of their daily outdoor time.

In a file handled by the Québec Ombudsman, a destitute citizen had to wait 14 days before he could ask for his clothing. Subsequently, seven other working days elapsed before his request was granted. At the time of the Québec Ombudsman's intervention, this person had been wearing the same clothing for a month.

In addition to unreasonable delays for providing access to personal belongings, the Québec Ombudsman noted mismanagement of this property,

causing items to be lost, and, by extension, generating a high number of claims.

And yet, there are two provincial instructions governing the management of detainees' belongings. The first concerns the management of personal belongings. The second, reviewed this year, concerns claims for lost or damaged items. The Québec Ombudsman considers that the same review exercise must be carried out in the short term for the instruction concerning management of personal belongings.



RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING RETURNING PERSONAL BELONGINGS TO DETAINEES

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

- By March 31, 2020, modify the provincial instruction concerning the management of personal belongings to specify that if detainees are not given back their street clothing within a maximum of 48 hours, they be given a change of clothing.

Reply from the Ministère de la Sécurité publique

[Translation]

"The Ministère de la Sécurité publique is well aware of the problem of the management of the personal belongings of detainees in correctional facilities. In the spring of 2019, a committee was struck to propose actions and find possible solutions in response to the difficulties identified. The provincial instruction concerning the management of detainees' personal belongings will be reviewed based on the committee's recommendations."

GIVE DETAINEES BACK THEIR CLOTHING AS SOON AS POSSIBLE



A detainee arrived at a correctional facility with bags containing his or her personal belongings. The bags were taken from the detainee for the usual search and the person was told that they would be given back later. In the meantime, the person was lent a gown and underwear. Soon after arriving, the person asked to be transferred to another facility.

At the time of the inmate's complaint to the Québec Ombudsman, namely, 12 days after admission, the person was still waiting for his or her personal belongings. During the investigation, the Québec Ombudsman learned that the items had not been searched as required because it was thought that the transfer was imminent.

The person was transferred the day the Québec Ombudsman intervened but had still not been given his or her bags. However, a manager acknowledged the mistake and issued his staff a reminder on the subject.

Healthcare provision and management in correctional environments

In the past three years, more than 20% of the complaints sent to the Québec Ombudsman by detainees have concerned healthcare in correctional facilities. This percentage is high.

As early as 2011, the Québec Ombudsman released a report entitled *Toward services that are better adjusted to detainees with mental disorders* highlighting the substantial flaws concerning healthcare. The report recommended transfer of this responsibility from the Ministère de la Sécurité publique to the Ministère de la Santé et des Services sociaux.

Since 2016, responsibility for healthcare in correctional facilities has gradually been assumed by the Ministère de la Santé et des Services sociaux. As at April 1, 2019, healthcare in only two facilities was still within the purview of the Ministère de la Sécurité publique.

The Québec Ombudsman noted that despite the importance of the issues at stake, the transfer of healthcare responsibilities occurred without any substantive work on role-sharing or transition planning. Within the correctional facilities concerned, because there were no clear instructions, the various staff involved did not always have a firm

grasp of their respective roles and responsibilities or interpret their new tasks the same way.

The Québec Ombudsman also noted disparities and problems in healthcare organization:

- In certain facilities, physicians are on site every day, whereas in others, only weekly or monthly;
- The lack of coordinating rules when inter-facility transfers of detainees occur causes interruptions in medical follow-up and medication-taking;
- Access to psychosocial or rehabilitation services varies from one facility to another.

Such situations create confusion, not only among the detainees, who must work even harder to assert their needs, but also among the correctional and nursing staff.

In recent years, the two Departments concerned have worked together to produce guidelines for facilitating the transfer of responsibilities to the Ministère de la Santé et des Services sociaux and to clarify respective roles in this new context. However, as at March 31, 2019, the guidelines had not yet been adopted. This delay jeopardizes detainees' right to healthcare equivalent to that provided to the general population with comparable needs.



The Québec Ombudsman's report is available at protecteurducitoyen.qc.ca.



RECOMMENDATIONS BY THE QUÉBEC OMBUDSMAN CONCERNING THE TRANSFER OF HEALTHCARE RESPONSIBILITIES IN CORRECTIONAL FACILITIES

Considering the preceding, the Québec Ombudsman recommends that the Ministère de la Sécurité publique and the Ministère de la Santé et des Services sociaux:

- Complete the transfer of responsibilities for all correctional facilities as soon as possible;
- Establish and disseminate clear guidelines to standardize practices in correctional facilities and put in place mechanisms for ensuring that the staff from the Ministère de la Sécurité publique as well as that of integrated health and social services centres and of integrated university health and social services centres understand and apply these guidelines;

- Ensure that detainees have access to health services equivalent to those provided to the general population with comparable needs.

Reply from the Ministère de la Santé et des Services sociaux and the Ministère de la Sécurité publique

[Translation]

“The dissemination of updated concrete guidelines regarding the transfer will occur shortly. The guidelines are based in particular on the principle that all detainees have the right to the health services available to the population at large.”

The increase in intermittent sentences in correctional facilities

When a court hands down sentences of fewer than 90 days, it may allow the person to serve the sentence intermittently, usually Saturdays and Sundays. In Québec, use of this type of sentence has more than doubled since 2010-2011. This increase has led to various problems.

Due to staff shortages, there are often no information sessions or documents for these detainees and, as a result, their management is often inadequate. Furthermore, detention areas are poorly adapted to the influx. Thus, some detainees must sleep on mattresses on the floor, crammed into gymnasiums or visiting rooms. Overcrowding also leads to inter-facility transfers of detainees with continuous sentences to make room for those with intermittent sentences. These transfers generate more strip searches. Lastly, women serving intermittent sentences in outlying regions are usually detained at the male correctional facility closest to where they live. Often, the women are housed under poor conditions, in holding cells or visiting rooms, for example.

In March 2018, the Québec Ombudsman produced a report entitled *The consequences of the increase in intermittent sentences in Québec correctional facilities*. The document contains 17 recommendations aimed primarily at improving the management and treatment of people serving such sentences. In June 2018, the Department sent the Québec Ombudsman an action plan, drafted with the Ministère de la Justice du Québec and the Director of Criminal and Penal Prosecutions. The Department must, among other improvements, prepare an information document for people serving intermittent sentences. The detainees will be given the document as soon as they arrive. It will provide information on their rights and obligations as well as on the procedure for applying for a temporary absence. As at March 31, 2019, the document was being written.

The Department also pledged to draft an instruction establishing standards with respect to intermittent sentences, and, by extension, guide correctional officers in managing this specific population. The Québec Ombudsman expects the document to, among other things, limit:

- The sharing of space between detainees serving continuous sentences and those serving intermittent sentences;
- Use of solitary cells as substitute detention areas;
- Transfer of vulnerable detainees, especially those with mental disorders, in order to make room for detainees serving intermittent sentences.

The Department told the Québec Ombudsman that it would be sent the draft instruction in the summer of 2019. The Department considers that the opening of new correctional facilities in recent years and certain changes in the organization of the detainee population will remedy the flaws identified in the Québec Ombudsman's report. While these general and longer-term actions may have a positive impact on some people who serve intermittent sentences, the Québec Ombudsman's opinion is that concrete measures must be put in place immediately. What happened in the past must be prevented: more than 120 people crammed

into a gymnasium for an entire weekend. This major violation of these people's dignity was witnessed by the Québec Ombudsman during the investigation that gave rise to its report. Hence, the need to establish a maximum occupancy rate for the non-traditional spaces used for people with intermittent sentences.

The Québec Ombudsman also asked the Ministère de la Sécurité publique and the Ministère de la Justice to study and implement options other than incarceration for people serving intermittent sentences, such as those served outside correctional facilities, as is done in Alberta and Ontario, for example. Both Departments began deliberations on the subject in the spring of 2019.

Even though a year has elapsed since publication of the report and the recommendations stemming from it, most actions required to improve the situation have not been carried out. The Québec Ombudsman will closely monitor its recommendations.



The Québec Ombudsman's report is available at protecteurducitoyen.qc.ca.



HEALTH AND SOCIAL SERVICES NETWORK

This section reports the Québec Ombudsman's main findings about the requests regarding Québec's health and social services network. 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 2018-2019.

Notably, it was shown that wait times (18.5%) and poor service quality (17.6%) accounted for 36.1% of the grounds for substantiated complaints and reports (more than one out of three grounds).

During this same period, the Québec Ombudsman intervened regarding:

- 39 of the 51 health and social services network institutions;
- 14 of the 90 other network-affiliated institutions;
- 40 private seniors' residences;
- 18 community organizations;
- 8 pre-hospital emergency services.



① Trends in closed requests for assistance, complaints and reports

TRENDS IN CLOSED REQUESTS FOR ASSISTANCE AND COMPLAINTS

	2015-2016	2016-2017	2017-2018	2018-2019
Requests for assistance	13	15	14	18
Substantiated complaints	401	560	465	478
Mediation	2	0	0	2
Unsubstantiated complaints	527	651	635	632
Could not take a definitive position	11	21	31	19
Redirected complaints	77	92	85	93
Suspended complaints	210	224	193	279
TOTAL	1,241	1,563	1,423	1,521
Difference with the preceding year	-	+26.0%	-9.0%	+6.9%

TRENDS IN CLOSED REQUESTS FOR ASSISTANCE AND REPORTS

	2015-2016	2016-2017	2017-2018	2018-2019
Requests for assistance	2	0	0	4
Substantiated reports	43	44	102	74
Mediation	16	27	24	26
Unsubstantiated reports	21	28	45	29
Could not take a definitive position	0	0	3	1
Redirected reports	10	10	12	16
Suspended reports	68	72	99	75
TOTAL	160	181	285	225
Difference with the preceding year	-	+13.1%	+57.5%	-21.1%

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 occurs in cases in which the Québec Ombudsman proposes a conciliatory solution at the end of its investigation.

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 redirected**. 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 2018-2019, the number of closed complaints and requests for assistance increased by 6.9% compared to last year. It was up by 8.0% compared with the average for the past three years. Despite the fact that the number of closed reports and requests for assistance decreased by 21.1% compared to 2017-2018, it was still 7.8% higher than the average of the last three years.

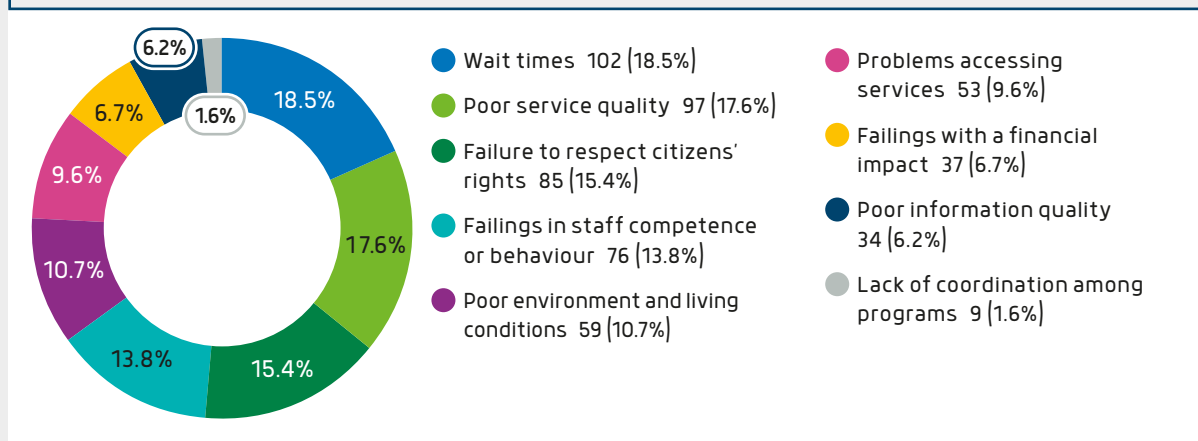
2 Substantiated complaints and reports

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. It was identical to last year, as illustrated in the table on the right.

PROPORTION OF SUBSTANTIATED COMPLAINTS AND REPORTS

2015-2016	2016-2017	2017-2018	2018-2019
44.8%	47.1%	45.5%	45.5%

PORTRAIT OF SUBSTANTIATED COMPLAINTS AND REPORTS



NOTE: Because the numbers in this chart have been rounded off, it is possible that the percentages do not add up to 100.

Wait times accounted for 18.5% of the grounds for substantiated complaints and reports and topped the list this year. These wait times mainly concerned file processing and clinical aspects, the complaint process, transfers, relocations, and classifying and obtaining information.

In second place was poor service quality, which represented 17.6% of the grounds for substantiated complaints and reports. These substantiated grounds concerned, among other things, the quality of physical and psychosocial care, the organization of care and services, means of control and solitary confinement, clinical procedures and protocols, and medication.

3 Monitoring of corrective measures

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

ACCEPTED CASE-SPECIFIC MEASURES

2015-2016	2016-2017	2017-2018	2018-2019	2018-2019	
				Accepted	Refused
99.2%	98.8%	98.0%	97.8%	135	3

ACCEPTED MEASURES WITH A COLLECTIVE IMPACT

2015-2016	2016-2017	2017-2018	2018-2019	2018-2019	
				Accepted	Refused
98.2%	98.8%	97.0%	98.2%	321	6

4 Closed requests

CLOSED REQUESTS BASED ON THE MISSION PURSUED⁵

CATEGORY/MISSION	Requests received in 2018-2019	Closed requests in 2018-2019							Total
		Requests for assistance	Complaints and reports						
			Substantiated	Unsubstantiated	Mediation	Could not take a definitive position	Redirected	Suspended	
Institutions									
Rehabilitation centres	90	1	60	43		1	5	8	118
Residential and long-term care centres	244	3	42	68	2	3	14	77	209
Hospital centres	826	10	283	281	5	4	45	111	739
Youth centres	277	1	18	92		3	23	67	204
Local community service centres	262	4	100	82	1	5	17	38	247
Complaints commissioners and others	87	3	19	13	20		3	19	77
Total: Institutions	1,786	22	522	579	28	16	107	320	1,594
Community organizations	34		7	20				2	29
Private seniors' residences	81		18	36		4	1	24	83
Private or community residences for a vulnerable client population	8								0
Pre-hospital emergency services	44		5	26			1	8	40
TOTAL	1,953	22	552	661	28	20	109	354	1,746

5. 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.

More than 42.3% of the closed complaints, reports and requests for assistance concerned hospital centres. The percentage of substantiated complaints was relatively high (50.2%⁶), a slight increase compared to last year (48.6%).

CLOSED REQUESTS BASED ON THE PROGRAMS CONCERNED⁷

PROGRAM	Requests received in 2018-2019	Closed requests in 2018-2019							Total
		Requests for assistance	Complaints and reports					Suspended	
			Substantiated	Unsubstantiated	Mediation	Could not take a definite position	Redirected		
Buildings and equipment	4		2					1	3
Intellectual disability/Autism spectrum disorders	55	1	42	13		4	4	5	69
Physical disability	94	1	34	40			6	9	90
Addictions	22		3	4			1	2	10
Troubled youth	281	2	14	91		3	24	67	201
Access to physicians	82		53	4			2	12	71
Complaint examination procedure	94		30	17	23		4	11	85
Mental health	209		61	118		2	23	33	237
Physical health	533	15	186	162		3	16	85	467
Public health	2							1	1
Support for elderly autonomy	356	2	76	117	2	8	19	103	327
Service support	200	1	52	92			10	20	175
Total	1,932	22	551	660	25	20	109	349	1,736
Other	21		1	1	3			5	10
TOTAL	1,953	22	552	661	28	20	109	354	1,746

The highest percentage of substantiated requests concerned access to physicians (93.0%) and the intellectual disability/Autism spectrum disorders program (76.4%). These percentages were higher than they had been in 2017-2018 (85.7% and 65.6% respectively).

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

7. 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.

General remark

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

- **Disabilities;**
- **Troubled youth;**
- **Régie de l'assurance maladie du Québec;**⁸
- **Mental health;**
- **Physical health;**
- **Home support;**
- **Support for elderly autonomy;**
- **Service support.**

Disabilities

Long-term residential services for people with disabilities

Year after year, the Québec Ombudsman receives substantiated complaints from people with disabilities or from their families, who criticize the lack of residential resources adapted to their needs.

For example, people with severe disabilities are placed in residential and long-term care centres (CHSLDs) even though they do not belong to the usual target population. Often they are younger than the other residents, but there are no resources adapted to their condition available to accommodate them. Bear in mind that CHSLDs are already hard-pressed to adequately address specific needs, especially in terms of lifestyle, interpersonal relations and recreational activities.

In other cases, problems arise because the people in intermediate resources live with residents whose clinical profiles are incompatible with theirs, and they become victims of violence by their peers.

Other people may find themselves on waiting lists for years. Meanwhile, their families—often aging parents—keep them at home, sometimes at the cost of their own health, until the situation becomes untenable and the young adult requires emergency placement.

Many people housed in CHSLDs are isolated and cannot count on their families to help them file a complaint or make a report. This client population is especially vulnerable.

The Ministère de la Santé et des Services sociaux promised a report which must provide concrete solutions for the lack of residential resources for people with disabilities. March 31, 2018 was the last announced date. At the time these lines were being written, there was no sign of the report despite the urgency to act.

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



PROVIDE A LIVING ENVIRONMENT THAT MEETS PEOPLE'S NEEDS



A citizen's daughter who had an autism spectrum disorder lived in an intermediate resource (private owner under contract with an institution). When those in charge of the resource decided to admit minors only, the young girl, who had reached the age of majority, had to leave. Her father brought her home temporarily but told the workers that he did not have the capacity to care for her in the long term. As he saw it, the most appropriate solution would be a supervised apartment. However, this option was unavailable in his region.

During the investigation by the Québec Ombudsman, the institution concerned acknowledged the lack of continuity in its slate of services and pledged to continue to look for housing adapted to the young girl's needs by working with their partners within the community. At the time this report was being written, the process was ongoing.

Language impairment services for school-age children

Most health and social services institutions have specialized services for 2-to-5 year-olds with language impairments. As a rule, these services are offered by rehabilitation centres for physical disabilities, which taper off services or terminate them as soon as the child starts school. The institutions argue that the school system takes over at that point.

The Québec Ombudsman wishes to remind the Ministère de la Santé et des Services sociaux that the services offered by the school community, if available, are intended to support the school's educational mission. At this stage, they cannot replace those of health and social services network institutions, whose mission is to foster the greatest autonomy possible for people in their activities of daily living and within society.

In 2017, the Ministère de la Santé et des Services sociaux released its reference framework for the organization of physical disability, intellectual disability and autism spectrum disorder services. One of the objectives of the framework is to make users' care and service experience as positive as possible through services that are adapted,

available and diversified, and that are beneficial for the long term. The Québec Ombudsman hails such a stance. However, recent years have shown that in the context of increased requests for speech therapy services, existing resources in local community service centres (CLSCs) and in rehabilitation centres are insufficient to meet actual needs.

Note that according to standard institutional practice, children age 2 to 5 with a language impairment are referred to specialized public services in a rehabilitation centre. According to the Institut national d'excellence en santé et services sociaux, children with this clinical profile must first be referred to local services, called "first-line" (in CLSCs and community organizations, among other places). Subsequently, their care may be assumed by these local services, or if their needs are more severe, they may be referred to specialized services, called "second-line." The optimal use of available means depends on it.

The Department reference framework provides that first-line services must be further developed to better meet the needs of people with disabilities, to which the Québec Ombudsman fully subscribes.

ENSURE SPEECH THERAPY SERVICES AFTER CHILDREN START SCHOOL



A child with a language impairment had access to speech therapy services in a rehabilitation centre until recently. His mother contacted the Québec Ombudsman when she learned that when her child began kindergarten, he would no longer be eligible for the services.

The investigation by the Québec Ombudsman showed that in a context of a marked increase in requests for speech therapy services, the institution had no additional resources. Given this lack of resources, and assuming that the school would pick up where the institution had left off, it had no choice but to give priority to early intervention (children age to 2 to 5).

This finding prompted the Québec Ombudsman to recommend that the Ministère de la Santé et des Services sociaux support the institution so that students with language impairments are assured access to an array of services—local or specialized, according to needs—throughout their time in school.

At the time this Annual Report was being written, the Ministère de la Santé et des Services sociaux informed the Québec Ombudsman that work was underway to define the slate of disability services of health and social services network institutions, with a view to optimizing interventions for users, notably those with language impairments.

Public services for people with an autism spectrum disorder: follow-up to the Québec Ombudsman's two special reports

The Québec Ombudsman released the two following special reports:

- *Looking towards greater continuity in service delivery, approaches, and human relations* (2009);
- *Services provided to young people and adults with a pervasive developmental disorder: From government commitment to cold hard facts* (2012).

In 2018, all the government departments and agencies concerned—Ministère de la Santé et des Services sociaux, Ministère de l'Éducation et de l'Enseignement supérieur, Ministère de la Famille, Ministère du Travail, de l'Emploi et de la Solidarité sociale and the Office des personnes handicapées du Québec—delivered their reports on their achievements further to the recommendations of these two reports. The Québec Ombudsman has taken note of the actions undertaken, most of which were made possible due to cooperation among the various players.

On the education front, since the beginning of the 2018 school year, major strides have been made. From now on, the parents of the children concerned

can count on harmonization of education system and health network requirements for obtaining or confirming an autism spectrum disorder diagnosis. Concretely, this means that parents whose children are starting school no longer have to—as was the case until now—repeat numerous steps accompanied by lengthy delays before obtaining medical confirmation from an expert of a diagnosis that had already been received before the children started school. This is genuine progress for these parents, who must get everything done before their child enters the school system. In the education community, the outcome is that the process of assessment is quicker, giving the child access to funding for the specialized services needed.

As for health services and social services, a new family support program proposes resources for people with an autism spectrum disorder and their families, and respite for the latter.

The Office des personnes handicapées has created a mechanism for more direct access to its slate of support services. This is a major improvement arising from the Québec Ombudsman's recommendations.

The Québec Ombudsman will remain alert concerning the implementation of several other measures whose timeframes may extend into 2022, for example, those stemming from the 2017-2022 action plan on autism spectrum disorders, which includes structuring initiatives for individuals and families. These consist of:

- Measures to reduce service breakdowns;
- Adoption of departmental guidelines for organizing day activities for people with an autism spectrum disorder;
- Creation of new places in day facilities;
- Assessment of housing needs for people with an autism spectrum disorder.

In addition, the Québec Ombudsman remains attentive to the progression of the work of the interdepartmental committee on family support program harmonization, which has led to the production of a single child eligibility form. This new

tool, which will have to be put in place in all the government departments concerned, should streamline the process for access to programs for people with disabilities.

It is also paying great attention to implementation of Retraite Québec's action plan to improve access to the supplement for handicapped children requiring exceptional care.

Finally, the Québec Ombudsman is also keeping an eye on redefinition of the role of the system navigator in an inter-sector context, that is to say, when more than one government department or agency is involved, or when more than one section within the same government body is concerned. This exercise, which is of paramount importance, will reduce the number of steps required of citizens and ensure better dovetailing of services for people with an autism spectrum disorder and for their families.



The Québec Ombudsman's reports are available at protecteurducitoyen.qc.ca.

Troubled youth

The safety of young people lodged in rehabilitation centres

In the past year, the Québec Ombudsman has noted that there are significant shortcomings in the services offered in rehabilitation centres for troubled youth. Among other things, it saw flaws in suicide risk management, application of means of control and medication management.

For example, sometimes suicide risk is not properly detected because the workers who should be part of risk assessment are not called in or are called in late. Consequently, establishing the appropriate level of supervision takes too long. The Québec Ombudsman also observed that in other behaviour management situations, means of control had been applied too stringently, without an intervention plan having been drafted beforehand.

The Québec Ombudsman noted that in certain centres, there was no policy or procedure regarding workers' respective roles, or the guidelines were obsolete or were in the process of being adopted. It must be remembered that institutional merging in 2015 led to the pooling of policies and procedures. Since then, the attendant adjustments have not necessarily been made and many documents still need to be updated. In this context, it is even more important that the roles of the various workers be clarified, especially considering that in these centres, the turnover rate of the staff responsible for ensuring a safe living environment for the youth lodged there is very high.

INCREASE THE SUPERVISION OF YOUTH AT **RISK FOR SUICIDE**



The parents of a teenager entrusted to a youth rehabilitation centre told the caseworkers that they were worried about their child, who was dealing with a relationship breakup. No one had met with him to enquire about his emotional state and screen for suicidal ideation. In less than 48 hours, he tried to commit suicide twice. It was only after the second attempt that the staff contacted the nurse in charge of assessing suicide risk and a suitable treatment plan was produced.

The parents' complaint to the Québec Ombudsman was about the lack of supervision of their child under the circumstances.

The investigation showed that there was no detailed and updated best-practice procedure for suicide risk. The Québec Ombudsman recommended that the integrated health and social services centre (CISSS):

- Draft and distribute an intervention procedure of this kind;
- Ensure that each caseworker is trained for the role assigned to him or her in the procedure document and that the caseworker can therefore assume this role.

The institution accepted the Québec Ombudsman's recommendations. Their implementation is being monitored.

Management of supervised visits between parents and their children

In the area of youth protection, services for supervision of visits between a parent and his or her child may be established when no other solution can ensure an appropriate and safe setting. The purpose of these services is to maintain the parent-child relationship in the best possible environment. The services also enable the caseworker who attends the visits to observe how the parent and child interact and to report on it. As a rule, these contacts stem from a court order that sets the parameters.

The Québec Ombudsman noted difficulties in the management of these visits in certain institutions because of staff shortages and logistical and organizational factors. These drawbacks are such that visits between parents and children are cancelled or must be postponed. The institutions may therefore be in breach of a court order. The situations take a heavy toll on families which are already weakened by the events that have occurred.

ENSURE THAT **SUPERVISED VISITS** OCCUR AT THE SET FREQUENCY



Even though a father had the right to a supervised visit with his son once a week, the planned visits were regularly postponed or cancelled.

The investigation by the Québec Ombudsman showed that other parents had experienced similar problems with the same youth centre, which was itself grappling with a shortage of stable staff.

At the time of the Québec Ombudsman's intervention, the CISSS responsible for the youth centre

had already introduced an action plan for improving the situation. The plan's provisions are aimed at hiring extra staff qualified to supervise these visits. Considering it is crucial that parents and children see each other under suitable conditions, the Québec Ombudsman recommended that the CISSS keep a close eye on the implementation of its plan to improve the situation. This recommendation was acted on to the Québec Ombudsman's satisfaction.

Review of the financial contribution for the placement of minor children: follow-up to the Québec Ombudsman's special report

In March 2013, the Québec Ombudsman published a special report on the unfairness in calculating and collecting the financial contribution required of parents whose child lives in a substitute environment. At the time, the Québec Ombudsman made 11 recommendations, most of them to the Ministère de la Santé et des Services sociaux, which is responsible for applying the legal and regulatory framework that determines how this contribution is calculated.

In the past six years, the Department and its partners (the Ministère des Finances and Retraite Québec) have stepped up their work aimed at responding to the Québec Ombudsman's recommendations. However, Department authorities have made no decisions as to implementation. And yet, according to the information transmitted to the Québec Ombudsman in 2018, the Department still favours a review of parents' financial contribution based on the following objectives, as agreed with the Ministère des Finances in February 2016:

- Stop requiring a financial contribution from parents at the low-income cut-off;
- Stop considering payment of parents' contribution as a prerequisite for obtaining the refundable tax credit for child assistance;
- Stop issuing the refundable tax credit for child assistance to parents whose child has been

placed permanently and who no longer have parental authority.

As at May 2018, no decision had been made about possible legislative and regulatory amendments aimed at changing the way of calculating and collecting parents' contribution. At this point, the Québec Ombudsman asked the Department to adopt transitional measures to exclude the income used to calculate the contribution from the child support paid to a spouse or from the benefits and allowances for handicapped children. In October 2018, the Department acted on its request. However, the corrective measures were limited in scope and did not constitute an overhaul of the way that parents' financial contribution is calculated and collected.

The Québec Ombudsman continues to receive complaints about the harm addressed in the special report. For example, after investigating, one of the things it found was that some children placed in residential resources in fact spent most of their time with their family, which caseworkers considered an encouraging gain. However, the financial contribution that parents had to pay for their child's placement was not adjusted accordingly.

Considering that action is urgently needed, the Department and its partners, based on numerous studies they have carried out in recent years, must make the lasting changes called for.



The Québec Ombudsman's report is available at protecteurducitoyen.qc.ca.

Régie de l'assurance maladie du Québec

Access to health insurance for children born in Québec whose parents have a precarious migratory status

Even though they were born in Québec and are therefore Canadian citizens, the children of parents whose migratory status is precarious are not entitled to the public health insurance plan. And yet, within the meaning of the *Health Insurance Act* and the *Regulation respecting eligibility and registration of persons in respect of the Régie de l'assurance maladie du Québec*, they are in fact residents of Québec.

In a report released in May 2018, the Québec Ombudsman noted that the Régie de l'assurance maladie du Québec (RAMQ) correlates these children's eligibility with their parents' migratory status. As the Québec Ombudsman sees it, this is a restrictive and even a faulty interpretation of the Act and the Regulation. The Québec Ombudsman argued that the Act makes these children eligible as of birth when they are settled in Québec, even if their parents are not residents here.

If parents with a precarious migratory status cannot afford healthcare costs, as is often the case, their children, whose eligibility is tied to their parents' status, run the risk of being deprived of the health services and social services they need. The fact of not being able to see a physician when it is necessary may, in many cases, cause symptoms (fever or another symptom) to worsen, leading to much more serious problems later. Consequences can be physical and psychological, and hinder these children's integration at school or in the community.

The Québec Ombudsman understands that RAMQ exercises all due caution to ensure that free healthcare is reserved for the people who qualify. However, the *Health Insurance Act* and the *Regulation* already provide RAMQ with the instruments needed to counter abuse. For instance, every insured person is subject to the *Regulation*, notably regarding the maximum allowable time spent outside Québec.

The Québec Ombudsman recommended that, in applying the legislative and regulatory framework in force and pursuant to Canada's and Québec's international commitments in matters of children's rights, RAMQ and the *Ministère de la Santé et des Services sociaux* consider these children as

insured persons. It also recommended that RAMQ make the necessary changes, upon which the agency agreed to act. These consisted of taking the measures required so that:

- Any birth declared to the *Directeur de l'état civil* leads to a study of the child's eligibility;
- All decisions on eligibility be in writing, and in the event of refusal, that the reasons be indicated;
- The information transmitted when applications for access to the public plan are made remain strictly confidential and be used solely for determining the child's eligibility for coverage under the Québec Health Insurance Plan.

Regarding the first recommendation, even though RAMQ continues to refuse to recognize these children's eligibility for the public plan, an interdepartmental committee was established at the request of the Minister of Health and Social Services to assess the healthcare coverage to be provided to these children. The committee's recommendations are slated for the fall of 2019. Meanwhile, the Minister may use her discretionary power under the *Act respecting the Ministère de la Santé et des Services sociaux* to authorize issuance of health insurance cards in exceptional circumstances.



RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING ACCESS TO THE PUBLIC INSURANCE PLAN FOR CHILDREN OF PARENTS WITH A PRECARIOUS MIGRATORY STATUS

Considering the preceding, the Québec Ombudsman recommends that the *Régie de l'assurance maladie du Québec*:

- Give full effect to the provisions of the *Health Insurance Act* and of the *Regulation respecting eligibility and registration of persons in respect of the Régie de l'assurance maladie du Québec* by considering as residents of Québec for the purposes of eligibility for the public health insurance plan all unemancipated minor children:
 - who are born in Québec,
 - for whom Québec is their regular place of residence,
 - who are in Québec more than 183 days per calendar year.

Reply from the *Ministère de la Santé et des Services sociaux*

[Translation]

"The MSSS is sensitive to the concerns regarding the eligibility for the public health insurance plan of children born in Québec whose parents have a precarious migratory status. Given that this is a recent phenomenon that is difficult to quantify, the MSSS recently mandated an interdepartmental task force coordinated by RAMQ to document these occurrences, propose possible solutions and identify the potential impact of this coverage. A preliminary report is expected for the fall of 2019."

The administrative link between an adult child and the “address-bearing” parent

In Québec, when people move, they must notify the various public services of their new address. The *Service québécois de changement d'adresse* (Québec change-of-address service) can be used to do this. The change of address is registered automatically by several government departments and agencies. This is the case for RAMQ. For administrative purposes, RAMQ created an indicator called the *porteur d'adresse* (“address bearer”) designed to link a person, often a minor, to the person with whom he or she lives. These people are, administratively speaking, living at the same address. As a rule, for administrative purposes, children are linked to their mother.

The Québec Ombudsman noticed that when someone moves, the address change made to RAMQ by the parent who bears the address has the effect of automatically changing his or her children's address even if the children are of the age of majority. Furthermore, since these young people have not authorized the change, they are not informed of it. If the children do not move to the same place as the address bearer, this may cause communication problems with the agency, notably

for receiving their health insurance card on time or for access to care or services.

The consequences of RAMQ's designation of the address-bearing parent when a move occurs extends to other government departments and agencies, including the Directeur général des élections for determining polling stations ahead of an election. The agency collates its own data based on the information provided by RAMQ. The only way for a young person to have an address registered other than that of his or her parent was to notify RAMQ, a formality little known by most people.

At the time the Québec Ombudsman intervened, RAMQ was aware of the situation. No statistics concerning the number of cases in question were available, and no corrective measures had been put in place. At the Québec Ombudsman's request, RAMQ pledged to make changes to its computer system. The changes were implemented in the fall of 2018 so that the address of a young person who has reached age 18 is independent from that of his or her parent. Henceforth, these young people are responsible for notifying RAMQ of any change of address.

Mental health

Use of chemical substances as means of control

Chemical substances as means of control are defined as a way of limiting a person's ability to act by administering a medication. These means may be used on people at risk of harming themselves or others in a context of imminent danger. As with isolation or physical restraints, this means of control must not be used unless other options have been attempted and have failed. Furthermore, the use of chemical means of control must be detailed in the person's file. In this respect, every institution must:

- Adopt an application protocol for these measures, taking into account departmental policy;
- Distribute the protocol document to users;
- Evaluate the application of these means of control annually.

Since 2015, the Ministère de la Santé et des Services sociaux's reference framework for drafting protocols for applying means of control has included the notion of chemical substances. However, the Québec Ombudsman has noted that certain institutions that employ medication as means of control still do not have a mechanism for their proper use, four years after the Department made a decision on the matter.

Even if the court acts to authorize use of a means of control for an individual, the terms and requirements of the framework still apply. All the court order does is waive the need for consent, which in normal circumstances is necessary for applying any means of control as part of a planned intervention. This year, the Québec Ombudsman saw that use of means of control in compliance with the law was not always systematic.

OVERSEE THE USE OF MEANS OF CONTROL IN A MANNER THAT RESPECTS USERS AND THE LAW



A user complained to the Québec Ombudsman after she was administered a medication against her will as a means of control. The institution had no protocol for the use of such a substance. Staff members only had to fill out a form declaring that a chemical substance had been used as a means of control. They were satisfied with simply indicating this by means of a note in the file. Also, the file made no mention of whether other measures had been tried beforehand and had failed.

In the Québec Ombudsman's opinion, without a protocol for the use of these measures or a declaration form, institutions cannot monitor applied means of control rigorously.

At the end of the investigation, the Québec Ombudsman recommended the following to the institution:

- Create guidelines for the use of chemical substances in its own protocol for applying means of control;
- Make forms available for declaring the application of means of control that include mention of the use of chemical substances;
- Ensure that any use of a means of control is indicated in the person's file.

The institution agreed to act on the Québec Ombudsman's recommendations and implementation is underway.

Private boarding houses for a client population with mental health disorders

Even though private residences offer rooms and services to a vulnerable clientele, some of whom have mental health disorders, no explicit Department certification that would provide oversight is required for these residences. The result is that some boarding house owners may be negligent concerning services (meals, laundry, housekeeping or medication distribution) to their residents.

It bears mentioning that people in this situation would sometimes rather live in an environment that has shortcomings, but where there are no strict rules or specific obligations. Living in places of this kind helps them avoid homelessness without imposing supervision that would be as structured as in a public residential resource.

The Québec Ombudsman is not empowered to intervene regarding private boarding houses. However, many people who live there receive services from an integrated health and social services

centre (CISSS), an integrated university health and social services centre (CIUSSS) or community clinics or organizations. Some are also taken in charge by the Curateur public. The Québec Ombudsman has conducted investigations on these residents' environment and living conditions in conjunction with these stakeholders.

The Québec Ombudsman has most often noted that the stakeholders mentioned are concerned about the quality of these people's living environment. Some do home visits and feel free to approach boarding house owners and workers to try to obtain improvements to the premises and to services. However, there is no directive instructing them to collate their findings in one specific place. Information about this type of resource, that could be shared among institutions and various partners to enable joint action, is therefore rarely available. Information-sharing is one of the Québec Ombudsman's recommendations to the Department and to the institutions.

ENSURE GREATER VIGILANCE REGARDING BOARDING HOUSES



Further to information that raised red flags about how the owners of a private boarding house took care of its residents, the Québec Ombudsman decided to conduct an investigation.

Given that it had no jurisdiction concerning private boarding houses, it looked into the quality of the care and services provided by the health and social services network and the role of the Curateur public du Québec, which was responsible for protecting some of the people who lived at the boarding house about which concerns had been raised.

The investigation showed that the stakeholders were well aware of conditions at the house and consequently, no one new was being referred there. However, there was no communication enabling an exchange of information about this between them and the institutions.

According to the Québec Ombudsman, health and social services network staff who provide services in such living environments are, as a rule, well positioned to notice violations of the clientele's safety and rights.

At the end of the investigation, the Québec Ombudsman made the following recommendations to several partners, including the Ministère de la Santé et des Services sociaux, the institutions concerned (CISSS and CIUSSS) and the Curateur public:

- Be vigilant concerning the living conditions of the people housed in this kind of resource;
- For the institutions: establish a procedure for consigning and sharing the information provided by the staff assigned to these boarding houses;
- Follow up on problematic situations in an attempt to remedy the shortcomings detected in such places;
- Inform the Curateur public about the follow-up of people under its protection who live in boarding houses.

The Department, the institutions and the agency agreed to implement the Québec Ombudsman's recommendations.

Delays at TAQ for contesting the continuance of confinement: follow-up to the Québec Ombudsman's special report

In October 2018, the Québec Ombudsman published a special report on lengthy wait times at the Tribunal administratif du Québec (TAQ) for processing applications contesting the continuance of institutional confinement.

People whose mental state presents a danger to themselves or to others may, following a Court of Québec order, be kept against their will in a health institution. If they wish to contest the continuance of confinement, they may approach TAQ, which must hear the motion and rule on its urgency.

In its report, the Québec Ombudsman noted that TAQ's lengthy delays in processing these applications limited genuine accessibility to this form of recourse provided for in the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*. These delays are such that recourse is often purely theoretical. To bolster respect for the rights of people thus confined and to improve access to TAQ, the Québec Ombudsman made seven recommendations, some of them to the Ministère de la Santé et des Services sociaux and some to TAQ, depending on the issue. The recommendations consisted of:

1. Improving training for the staff of health institutions concerning the legal framework for institutional confinement;
2. Improving the information on the recourse available to people under confinement;
3. Quickly providing confirmation of receipt of their motion to people who contest their confinement;
4. Fostering the use of video hearings;
5. Documenting the grounds for postponing hearings or suspending processing of motions;
6. Documenting the causes for these delays in order to tackle them effectively;
7. Providing information about recourse to the Québec Ombudsman to the people who feel they have been harmed by TAQ's processing delays.

During the investigation, the Québec Ombudsman noted that changes in TAQ practices had made it

possible to reduce the processing length for some motions, the average delay for a first hearing going from 14.5 days in 2016-2017 to 10.5 days in 2017-2018. As soon as the report was tabled, TAQ agreed to all the recommendations and made firm commitments aimed at trimming processing delays and establishing new ways of hearing motions urgently when necessary. It also modified a section of its website and its procedure for receiving motions in order to improve the information transmitted to applicants. Furthermore, the Québec Ombudsman applauds TAQ's willingness to put the different stages of motion processing down in writing with a view to improving its practices and fostering access to this form of recourse for people under confinement.

The Ministère de la Santé et des Services sociaux also agreed to act on the recommendations made to it. By 2020, it intends to offer health institution staff training on application of the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*. The Department will also inform service quality and complaints commissioners and the various players about the fact that those who contest the continuance of confinement may turn to the Québec Ombudsman if they are dissatisfied with TAQ's administrative handling of their motion.

While overall the Québec Ombudsman is satisfied with the commitments made, the measures announced and the measures implemented, it will pay close attention to the completion of the work begun by TAQ and the Department.



The Québec Ombudsman's report is available at protecteurducitoyen.qc.ca.

Physical health

Assessment at the emergency room

When someone arrives at a hospital emergency room, his or her condition is assessed by a member of the nursing staff. Questioned by the nurse, the person specifies why he or she is there, possible allergies, medical history and medication. The

nurse must also take the person's vital signs, conduct an examination and assign the person a priority level of 1 to 5 (corresponding to immediate to non-urgent medical management). The wait time varies according to the priority level.



ENSURE **RIGOROUS ASSESSMENT** OF THE PERSON'S CONDITION



A minor went through triage at the emergency room, and the child's parents described the child's symptoms: vomiting, trouble breathing, fever, refusal to eat. The triage nurse assigned the child priority level 3 (urgent). After this, the wait-time to see a physician was long. The child was finally seen by a physician and treated, but the parents felt that the triage assessment had missed some serious issues.

The investigation by the Québec Ombudsman showed that the member of the nursing staff on triage had not done a thorough assessment of the child's situation and had not entered all relevant information. Furthermore, by mistaking the child's age, the nurse had not assigned the child the

correct priority ranking (the case should have been classified as very urgent instead of urgent). When the child's condition was reassessed by the nursing staff after the child had been waiting for some time, these parameters were not checked; as a result, the inaccurate priority level was maintained.

After the Québec Ombudsman intervened, the institution agreed to report every three months on the results of its analysis of the collection of clinical data at triage. This way, the Québec Ombudsman can be sure that triage assessments have improved. It also reviewed the triage practices that needed improving with the nursing staff concerned.

Users' falls while waiting at the emergency room

In a hospital setting, if someone is found on the floor, the situation is treated as a fall. Even in an emergency waiting room, the person's condition must be fully assessed, including screening of the risk for recurrent falls and establishing preventive measures tailored to the person's situation.

TRAIN STAFF CONCERNING EMERGENCY ROOM FALLS



An elderly man went to a hospital emergency room for severe headaches, loss of mobility, garbled speech and vomiting. After being assessed at triage, he returned to the waiting room. In the hours that followed, he repeatedly asked to be reassessed because he continued to feel unwell, but to no avail. Afterwards, the nursing staff found him on the wash-room floor twice. After these two falls, he was put on a stretcher while waiting to be seen by a physician.

The investigation by the Québec Ombudsman showed that a fall-prevention program and a document specifying the role of each staff member was in effect within the institution. Furthermore, the staff's practices normally should have been based on a nursing rule concerning interventions for such events. However, systematic screening for fall risks of each person who goes to the emergency room was not being done, even if it was officially prescribed.

The Québec Ombudsman also noted that the user's condition after the two falls was not described in his file. For her part, the nurse responsible for monitoring the user after his first fall to ensure he did not fall again was unavailable to do so. Lastly, the assessment and post-fall monitoring form was not used as specified in the internal directives.

In terms of training, the staff concerned pointed out to the Québec Ombudsman that they were unaware that monitoring should occur after a fall at the emergency room.

Feeling that the user had not been treated with the professional vigilance needed, the Québec Ombudsman recommended that the institution give the nurses the required training in:

- Fall risk screening;
- Preventive measures;
- Post-fall assessment of the person and the necessary monitoring;
- The write-up in the file.

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

Use of half-doors as means of control

In every institution, means of control must be used only when people are at risk for harming themselves or others. Their use must be minimal and exceptional in addition to taking the person's physical and mental condition into account. A half-door is one of the measures used at times to enable the required supervision. However, when half-doors are used, there may be a risk of injury to the user. According to the Ministère de la Santé et des Services sociaux, this solution must be considered only if no other appropriate means of control is available.

USE OF HALF-DOORS IN KEEPING WITH THE RULES AND WITH THE REQUIRED PRECAUTIONS



An elderly person with Alzheimer's disease was hospitalized. Due to her wandering and aggressiveness towards those around her, her movement had to be limited. With her family's consent, the staff used a half-door. Her file specified that the measure could be applied no more than one uninterrupted hour at a time. The person tried to climb over the half-door regularly, risking injury. Because of the danger and the fact that the means of control was not very effective, the family told the staff that they no longer agreed with its use. Despite this, it continued to be used, even beyond the prescribed limit of one uninterrupted hour. Other means of control were added (bed rails, lap belt, injected medication). The family complained to the Québec Ombudsman.

The investigation confirmed the excessive use of the half-door, and, moreover, without the family's consent. It was also found that the workers resorted to this practice systematically to handle the person's problematic behaviour rather than seeking its causes. In this context, the use of this means of control had not been reassessed and the

associated risk of falling had not been taken into account. The staff clearly lacked the resources to deal with the person's needs.

The Québec Ombudsman recommended in particular that the institution:

- Ensure that intervention plans adapted to people's clinical condition are established;
- Train the staff on the behavioural and psychological symptoms of dementia.

It also recommended that the institution remind the staff to obtain and indicate consent by the patient or the patient's representative before using means of control, and to comply with the conditions for applying or suspending these means. It was also recommended that nurses be reminded about the conditions for using half-doors, the required supervision, and reassessment of the measure based on changes in the person's condition.

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

Death management

When a death occurs in a hospital, the nursing staff carries out certain interventions in keeping with respect for the dignity of the deceased person (hygiene, removal of a catheter or respiratory

device, etc.). Furthermore, the wishes of the family and of significant others must be taken into account as much as possible. They must be given time to grieve privately.

RESPECT THE DECEASED PERSON AND THE FAMILY



The members of a family told the Québec Ombudsman that immediately after their father died at the hospital, the staff had pressured them to quickly contact the funeral home so that the body could be moved as soon as possible. Furthermore, with the family present, the staff had carried out standard post-death care in a rushed and careless manner (the catheters were pulled out quickly and the deceased person almost fell out of bed).

The investigation by the Québec Ombudsman showed that the institution allows families to stay with the deceased person for up to four hours. It is

also expected that the staff urge the family to wait outside the room while the body is being prepared so that they can be spared distress, notably when medical equipment is removed. Lastly, soiled clothing and incontinence briefs must be changed. This was not done.

The Québec Ombudsman recommended that the institution make the staff concerned aware of their various shortcomings (attitude, deficient final care). The institution accepted and implemented the Québec Ombudsman's recommendations.

Calculating surgery wait times

For elective surgery, the wait time is generally calculated from the time the surgeon decides to operate. When the person in charge of registrations receives the surgery instruction, the person's

name must be put on a waiting list. Indication of a user's period of unavailability for personal reasons delays the surgery by as many days.



BE RIGOROUS ABOUT INDICATING **UNAVAILABILITY PERIODS**



A person who had to have surgery was told by her physician that the operation would be done in February, that is, in four months. In March, five months later, she was still without news, so she contacted the surgery office. She was told that her name was indeed on the waiting list, but that, according to her file, she was not available before February, that is to say, the month when she was supposed to undergo surgery. The result was that the surgery was delayed.

The Québec Ombudsman's investigation showed that the institution had not complied with the aims and objectives of the Ministère de la Santé et des Services sociaux, according to which, for calculation purposes, the wait time must begin as soon as the surgeon decides to perform the operation. However, the institution considered that the period taken into account began on the intended date of the surgery. In the time between the date of the surgeon's decision to operate and the scheduled date for the surgery, the file, being associated with user unavailability for personal reasons, was put on pause by the computer system. The person was therefore not on the waiting list.

During the investigation by the Québec Ombudsman, the institution reminded the managers and staff concerned about the procedure for putting people on the waiting list and for calculating wait times in compliance with Department directives.

The Québec Ombudsman recommended that the institution review the files of everyone indicated as unavailable for elective surgery for personal reasons in order to check the validity of their registration and adjust their rank on the waiting list if necessary.

The institution agreed to apply the Québec Ombudsman's recommendation and it was discovered that there were 527 people unavailable. All of them were contacted and it was found that 244 of them had been wrongly considered unavailable for surgery. A new order of priority was therefore adopted.

Now the institution's surgery office contacts everyone as soon as the order for surgery is received in order to verify when they are available.

Home support

A Department policy that consistently misses the mark of making home the first choice

Chez soi: le premier choix (Home: the option of choice) is the title of a policy published by the Ministère de la Santé et des Services sociaux in 2003. The policy emphasized a perfectly natural preference by elderly people and people with disabilities, namely, the desire to keep living at home for as long as possible rather than relying on residential resources. The policy was bolstered by firm home support service objectives. However, year after year, institutions fail to live up to the policy's intentions. Too many people do not have access to the services to which they should be entitled, and families become exhausted while awaiting support that never materializes.

Population aging increases demand for home support services, a demographic fact that is common knowledge and heavily documented. While aware of the pressure that this phenomenon exerts on the health and social services network, the Québec Ombudsman is nonetheless critical that institutions have reached the point of adopting new exclusion criteria in order to lower the number of people who qualify or to decrease service intensity. In the past year, the Québec Ombudsman has had to intervene many times to remind institutions that these restrictions must never be used to compensate for a lack of resources.

In today's context, the main issue is the following: offer adapted, personalized and fair services based on the needs of every eligible person. The Department's home support policy puts this commitment at the heart of decisions. It is imperative that there be concrete follow-up. This is especially true because an inadequate response to requests from people with significant impairments may worsen a situation that is precarious to begin with and adversely affects their network of caregivers.

The Québec Ombudsman has duly noted the statement by the Minister of Health and Social Services specifying that institutions must stop slashing home support and meet demand.

The Government of Québec budget tabled on March 21, 2019, allocated supplementary amounts to home care and services, namely, \$80 million in 2018-2019 and \$280 million in 2019-2020. This is a major financial commitment that opens the door to improvements that the Québec Ombudsman has been recommending for several years. It will be particularly attentive to the return on these investments in order to ensure that users whose condition requires home support services benefit from the fulfilment of the authorities' commitments.

OFFER SERVICES THAT MATCH COMMITMENTS



After examining an institution's home support guidelines, the Québec Ombudsman saw significant gaps between the commitments made in the Department's home support policy and the services actually provided. It therefore recommended that the institution:

- Stop excluding people assessed as having the need for fewer than five hours of services a week;
- Restore free domestic assistance for people with low incomes;
- No longer limit access to services to people who live alone on the grounds that other similar applicants get support from their families. Start by assessing the possible involvement of informal caregivers before cutting services.

The institution accepted the Québec Ombudsman's recommendations and modified its guidelines so that they comply with Department policy.

The time allotted for certain home services

For cost-containment purposes, many institutions have set average times for carrying out various home support tasks. Thus, some of them now offer 3 hours and 30 minutes of housekeeping hours every two weeks. The Québec Ombudsman has noted that for most people who need this type of assistance, the number of hours allotted is sufficient. However, it considers that other kinds of services lend themselves less to precise by-the-clock standards. In all cases, time indicators must:

- Never be a substitute for the workers' clinical judgement;
- Allow the staff leeway to do the job properly while respecting the user.

In this regard, the Québec Ombudsman deems it unacceptable that some institutions determine set amounts of time for taking users to the washroom. This approach violates the person's right to quality services and, furthermore, places the blame on the workers for applying the standard.



PERSONALIZE SERVICES



After time limits for home care tasks were applied by an institution, the amount of time allotted for taking a person with severe disabilities to the washroom was shortened significantly (from 30 minutes to 10 minutes). The investigation by the Québec Ombudsman showed that not only was the new standard incompatible with the person's routine but was also a source of stress for her. Since the user could not change her habits—a fact confirmed by the home care worker—the Québec Ombudsman recommended that the institution return to a more personalized assessment of the time needed by the person. The institution agreed to adopt a more flexible vision of the services required and reallocated the necessary time by taking the person's lifestyle into account.

Adapting services to the reality of newcomers

When immigrants need home services, sometimes cultural or linguistic factors impair workers' understanding of their needs. Inversely, the newcomers do not always understand the slate of services presented to them and how to gain access to them. In such cases, it is important to take time to define their needs properly and explain available services and how to access them, while making sure that the newcomers have understood the proposed slate of services and the attendant obligations.



Newcomers who had a child who required substantial care felt that they could not get the necessary support from the local community service centre (CLSC). They complained about this to the Québec Ombudsman, which noted basic communication problems between the parents and the caseworkers responsible for the child's file. In fact, several interventions were attempted with this family, but they considered that the services offered were insufficient or ill-adapted to their needs.

Given these people's harrowing journey to settle in their new environment and the uncertainty they were experiencing in their host country, the Québec Ombudsman recommended that the institution reassess the family's psychosocial needs. The Québec Ombudsman's recommendation was accepted. Meetings took place between the parents, the managers and the caseworkers concerned with an interpreter present so that it would be easier for everyone in attendance to understand. Weekly follow-up with the family was established, and an individualized intervention plan was produced with a view to better responding to the child's and the family's needs.

Support for elderly autonomy

Reorganizing care and services in CHSLDs in a context of staff shortages

In its 2017-2018 Annual Report, the Québec Ombudsman raised recurrent problems related to the shortage of healthcare staff in some residential and long-term care centres (CHSLDs). This year again, complaints and reports brought into focus the major consequences for users. For example, it was noted that care or services were cancelled or postponed. The institutions must make constant efforts to find short-, medium- and long-term solutions for meeting residents' needs, a response to which they have the right to expect from their living environment. These rights are laid out in the *Act respecting health services and social services*, as well as in the Department document on the aims and objectives for achieving a quality living environment for CHSLD residents.

The Québec Ombudsman noticed that the people in charge at CHSLDs must often cope with incomplete teams and reorganize tasks. Aware of the challenges posed by staff shortages, the Québec Ombudsman acknowledges that reorganizing care

may be unavoidable in order to meet basic needs, such as hygiene, medication and food. However, reorganization must not be the only approach.

With this as a backdrop, all partners, including the Department, must feel called to act. In response to the Québec Ombudsman's recommendations and following an investigation at a CHSLD, the Department informed the Québec Ombudsman of the various measures put in place, for example:

- Pilot projects on nursing staff-resident ratios;
- Creation of a task force bringing together representatives from 11 institutions and from the Department;
- Discussions with various departments aimed at producing a provincial strategy for better recruitment and greater retention of care attendants.

The Québec Ombudsman encourages pursuit of this work and will follow its progress attentively.

ADOPT EFFECTIVE AND INVENTIVE SOLUTIONS TO COMPENSATE FOR STAFF SHORTAGES



The Québec Ombudsman received a report denouncing the lack of continuity of personal care and assistance in a CHSLD.

The investigation showed that the CHSLD in question grappled regularly with staff shortages. Several measures were therefore taken, notably:

- The hiring of more care attendants;
- The involvement of the management staff in care provision;
- The reorganization of job structures in order to improve service continuity.

The Québec Ombudsman applauded these initiatives while recommending that the CHSLD increase its efforts to ensure quality care and keep better track of the postponements and omissions when work must be reorganized because there are not enough staff for a work shift. The CHSLD accepted the recommendations. It pledged to take the appropriate means for indicating postponed or omitted care in order to ensure effective follow-up with the healthcare team.

Conflicts between families and the healthcare team

The health and well-being of CHSLD residents may be greatly affected by conflicts between members of their family and the healthcare staff. Misunderstandings arise when family members are grappling with particularly trying circumstances:

- They are relatively unfamiliar with how the progression of the disease and the physical and cognitive impairments associated with it are experienced by the resident;
- They are not aware of the institution's limits in terms of services;
- Sometimes they tend to blame their relative's deterioration on the shortage of staff, an inadequate physical environment or flawed care;
- They may have expectations concerning the nature and intensity of the CHSLD's care and services that are impossible to meet.

The consequences of these tensions may be major. Here are some examples:

- A CHSLD tried to evict a 90-year-old resident because of the acute tension within his family concerning the care he should receive.
- Elsewhere, the healthcare staff had to deal with a family whose members insisted that in order to eliminate any risk of falling, restraints be permanently used on their relative with advanced dementia.
- In another case, continual criticism of the healthcare team by a user's family member caused the user and the staff added stress.

The Québec Ombudsman noted that CHSLDs do not provide families with much information about their relatives' illness and its progression. The healthcare team must first and foremost offer residents care and services, but families must not be shut out. Efforts must be made by the health network and the healthcare staff to form relationships with families, equip them for the situation and allow dialogue.



IMPROVE **COMMUNICATION** WITH FAMILIES



The members of a family wanted the staff of a private CHSLD to intervene more actively with their mother who had dementia. Some of them wanted the staff to stop her from screaming—one of the expressions of her dementia. Others wanted her suffering to end and her life shortened by means of palliative sedation (use of medication that lowers the level of consciousness and that may hasten death). This form of sedation is usually used only for people at the end of their life, which was not the resident's case. Given available resources, the family's demands ultimately created tension between the family and the healthcare team.

In the Québec Ombudsman's opinion, the CHSLD should have supported the members of the family so that they were better able to grasp what was happening to their mother and therefore better cope with the situation. Conversations informing them about the progression of the disease and the kind of care delivered would have enabled greater mutual understanding.

The Québec Ombudsman considers that institutions must dedicate the necessary time to family members to enable them to understand their parent's situation, thus alleviating their dissatisfaction and preventing possible confrontation. The Québec Ombudsman recommended that the CHSLD produce a protocol for communicating with residents' families. The recommendation was accepted.

Adaptation of CHSLDs to the specific needs of younger residents

Most CHSLD residents are elderly. However, younger people with severe limitations have no choice but to live there. That said, they have very different needs than their elderly co-residents, and this poses a major challenge in adapting services within residential settings. It raises the question of a resource's ability to offer a dynamic

and stimulating environment to this other client population. What comes to mind here are the main components of daily life in a residential resource: service schedule, various activities and personal relationships. The required adaptations may also benefit older users.

DESIGN A LIVING ENVIRONMENT FOR YOUNGER RESIDENTS TOO



A man in his forties lived in a CHSLD following an accident. His behaviour triggered numerous complaints from staff members. The young man felt that his attitude was due to overly rigid supervision.

After investigating, the Québec Ombudsman noted that the well-being of the resident and of people in his situation was a major challenge for their living environment, especially concerning recreation, outings and schedules. Various recommendations aimed at providing greater support for the staff who must deal with the special requests of younger residents were made to the integrated health and social services centre (CISSS) to which the CHSLD reports. The Québec Ombudsman recommended that the CISSS:

- Fast-track processing of the citizen's application for technical aids and any similar applications by other residents;
- Produce a plan for assisting and supporting staff who work with residents with severe behavioural disorders and enlist the expertise of specialists.

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

Respect the rights of tenants in private seniors' residences: follow-up to the Québec Ombudsman's special report

In a special report released in 2016 (*Private seniors' residences: more than just rental businesses*), the Québec Ombudsman recommended various measures to ensure that the rights of tenants in private seniors' residences are upheld. The recommendations were made to the Ministère de la Santé et des Services sociaux, the Secrétariat aux aînés and the Minister of Municipal Affairs and Land Occupancy (whose government department is now the Ministère des Affaires municipales et de l'Habitation).

On March 29, 2018, the National Assembly's Committee on Public Administration held hearings on the follow-up to these recommendations. On this occasion, Department authorities presented a report on the follow-up work to date and answered questions from the Committee's MNAs. The Québec Ombudsman would like to express its appreciation for this first collaborative effort with the Committee concerning follow-up to one of its special reports.

In June, the Committee recommended that both departments and their partners designate a representative from among them to oversee follow-up

on the Québec Ombudsman's recommendations and establish an action plan.

On August 14, the Ministère de la Santé et des Services sociaux, as the designated representative, sent the Committee a document on the various actions planned, produced in collaboration with the Ministère des Affaires municipales et de l'Occupation du territoire and the Secrétariat aux aînés. The purpose of these measures is to:

- As of April 1, 2019, develop and offer a service to assist and support the tenants of private seniors' residences in the event of litigation;
- Improve information on the legal rights and obligations of the tenants and owners of private seniors' residences;
- Design a specific lease agreement to be used by these residences;
- Review the mechanism for indexing the cost of services offered in these residences.

The Québec Ombudsman is closely monitoring the implementation of these measures.



The Québec Ombudsman's report is available at protecteurducitoyen.qc.ca.

Service support

Institutions' liability for loss of or damage to personal belongings

Institutions are not systematically responsible for loss of or damage to the belongings of people who receive services from them. However, they must use reasonable means to ensure that these belongings are protected. If they do not, they may be liable for the loss of or damage to a user's belongings, depending on the person's ability to take care of the items.

The institution's responsibility, if any, may be invoked even if the mistake or omission is caused by a worker employed by a private company with which the institution has entered into a service agreement. In many cases, users are not informed that the worker is not an employee of the institution. The principle at play here is that users must enjoy the same quality of services and have the same rights whether care is delivered by an institution or by a subcontractor.

Similarly, institutions are required to ensure safety in connection with service provision whether the worker is their employee or is from a company under contract with them. For that purpose, it is up to the institution to ensure that contracted service providers do background checks of the people in their employ.

ENSURE SUBCONTRACTORS' INTEGRITY



A woman received home care and services from her local community service centre (CLSC). The day after the care attendant came by she noticed that several objects of value were missing. The care attendant was an employee of a private company with which the CLSC had a service contract.

Even though the care attendant admitted her guilt, the institution, arguing that she was not its employee, refused to reimburse the lady for the losses incurred. And yet, institutions' obligation to provide quality care and services in a safe manner includes all care delivered, including that offered by CLSCs and their various subcontractors.

The Québec Ombudsman recommended that the institution reimburse the lady, which it agreed to do.

In another vein, further to a recommendation by the service quality and complaints commissioner, the institution established a procedure for background checks of the employees of private subcontractors. The Québec Ombudsman recommended that the institution continue this initiative and establish a mechanism for background check follow-ups. Its recommendations were accepted and implemented.

Billing for a hospital bed when active care is terminated

A “posthospital” bed is a bed made available to users with reduced autonomy whose medical condition is such that they no longer require active care but who are not going home immediately. For example, they may have to go to a specialized centre for rehabilitation. These people are said to occupy a posthospital bed. After obtaining the required services, they may go home, or if this is not possible, be referred to a residential resource that meets their needs. A Department directive provides that a fee of \$15 a day can be charged for occupying a posthospital bed, beginning on the 31st day.

The Québec Ombudsman noted that in hospital centres, people whose active care had been terminated, but who continued to occupy a short-term care bed until a posthospital bed opened up, also had to pay \$15 a day. However, there are no rules for billing for an active-care bed in a hospital centre in such circumstances.

CANCEL UNWARRANTED HOSPITALIZATION FEES



A lady contested an invoice from a hospital where she had received care. She was asked to pay a daily fee of \$15 for a short-term care bed while waiting for a place to open up at an intermediate resource where she was supposed to receive posthospital care.

The investigation by the Québec Ombudsman showed that, during the billing period in question, the woman no longer needed an active care bed for which she was charged the fees. Given that her condition was stable, she had remained in hospital only because of the wait for the intermediate resource. Since there were no billing rules for such situations, the Québec Ombudsman recommended that the institution:

- Cancel the bill;
- Stop charging daily fees to people whose condition is such that they no longer require active care and are waiting for a posthospital bed;
- Maintain a no-charge policy until the Ministère de la Santé et des Services sociaux establishes billing rules for such cases.

The institution agreed to act on the Québec Ombudsman’s recommendations.

Billing by hospital archives

Any citizen can request a copy of his or her medical record. Save for certain exceptions, fees are charged for providing the documents. If someone wants to avoid paying, he or she may consult the file on-site. Since medical records are confidential, only people who must consult them in the performance of their official duties or who have obtained the user’s consent have access to them.

When information entered in the medical record is needed for medical follow-up purposes, a health professional may ask the person to bring a copy of the hospital test results to the next appointment. The *Act respecting access to documents held by public bodies and the Protection of personal information*, as well as the regulations stemming from it, sets out the rules that institutions must obey when transmitting medical records. For example, the *Regulation respecting fees for the transcription, reproduction or transmission of documents or personal information* provides for fees for transmitting a document on diskette.

The scope of the Regulation is described in a Department memo concerning the fees charged for file summaries. It provides that the service must be free when the request is from a dentist or an attending physician, or its purpose is diagnosis or treatment of a patient.

MAKE ACCESS TO **MEDICAL RECORDS** FREE WHILE GOING BY THE RULES



A woman contacted the archives of the hospital centre where she had received care to ask for a CD copy of the X-rays she had recently had. The institution charged her \$10. She contested the invoice.

After investigating, the Québec Ombudsman saw that the reason for the woman's request was to enable the medical specialist to make a diagnosis and to prescribe suitable treatment. Furthermore, the Québec Ombudsman received confirmation that the Department memo should be interpreted broadly: rather than being limited to dentists or attending physicians who request a file summary,

the no-charge principle should apply anytime the request is made for the purpose of diagnosing or treating a patient. Given the rules surrounding the confidentiality of medical records, the application may be made by citizens themselves, by their representative or by anyone authorized to do so by the citizen.

The Québec Ombudsman recommended that the institution reimburse the woman and make sure that such fees are no longer charged. The institution accepted the Québec Ombudsman's recommendations.



PUBLIC INTEGRITY INVESTIGATIONS

This section reports the Québec Ombudsman's main findings about the requests concerning the *Act to facilitate the disclosure of wrongdoings relating to public bodies*, which came into force on May 1, 2017. It provides that, henceforth, anyone can disclose a wrongdoing involving a public body to the Québec Ombudsman with complete confidentiality and without fear of reprisal.

This year, the *Act to facilitate the disclosure of wrongdoings relating to public bodies* was amended by the *Act to amend various legislative provisions concerning municipal affairs and the Société d'habitation du Québec* (2018, c. 8), which puts municipal bodies under the Québec Ombudsman's jurisdiction in matters of public integrity.

The following text outlines the activities of the Direction des enquêtes sur les divulgations en matière d'intégrité publique after its first full year of existence.

Confidential and independent recourse

Disclosure of wrongdoings: definitions and main players

Under the *Act to facilitate the disclosure of wrongdoings relating to public bodies*, which came into force on May 1, 2017, the Québec Ombudsman was mandated to investigate disclosures of wrongdoing, committed or about to be committed, regarding public bodies. The Act also provides for protection against reprisal for whistleblowers, protection which extends to people who cooperate in audits or investigations.

The whistleblower making a disclosure may be:

- A member of the staff of a body subject to the Act;
- A supplier or subcontractor;
- Anyone else who has learned that a wrongdoing regarding a public body has been committed or is about to be committed.

Here are the various categories of wrongdoings:

- A contravention of a Québec law, a federal law applicable in Québec, or a regulation stemming from such a law.

The role of the Québec Ombudsman 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 breached.

- A serious breach of the standards of ethics and professional conduct.

This consists of an act, an omission or a behaviour that deviates markedly from practices or standards of conduct generally accepted in public bodies or from ethical standards or the applicable obligations of professional conduct.

- 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 whose cost is unreasonable. 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 as 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. 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 act, which exceeds the wrongdoer's powers, is committed by a person in a position of authority, real or by operation of law.

- An act or omission that seriously compromises or could seriously compromise a person's health or safety, or the environment.
- Directing or counselling a person to commit a wrongdoing.

A disclosure is considered inadmissible in certain situations, notably if the alleged act is before the court or if it only concerns work conditions or an individual's personal situation.

The Act lists the categories of public bodies subject to its application, which total nearly 5,000 organizations. They consist of:

- government departments and agencies;
- government corporations (e.g. Hydro-Québec, Loto-Québec, Société des alcools du Québec), Commission de la construction du Québec and Caisse de dépôt et placement du Québec;
- school boards;
- cegeps and university institutions;
- public health and social services network institutions as well as private institutions under contract;
- childcare centres (CPEs), subsidized childcare services and home childcare coordinating offices;
- people appointed or named by the National Assembly.

Since October 29, 2018, municipalities and municipal bodies have also been subject to the Act. Note that with regard to municipalities and municipal bodies, the Ministère des Affaires municipales et de l'Habitation's commissioner for municipal integrity and investigations and the Québec Ombudsman share responsibilities concerning the disclosure of wrongdoings.

Complaints related to reprisals

The Act provides that it is prohibited to seek reprisal against a person who made a disclosure in good faith or who cooperated in a related audit or investigation stemming from disclosure. Moreover, threatening someone to prevent him or her from making a disclosure or cooperating in an audit or investigation is also prohibited. The offender is liable to a fine of \$2,000 to \$20,000 and of \$10,000 to \$250,000 for government corporations. The amounts are doubled for subsequent offences.

Requests for access to legal advice

The Québec Ombudsman may grant financial assistance for obtaining legal services to a person who discloses or wishes to disclose a wrongdoing. The same applies to anyone who cooperates in an audit or investigation stemming from a disclosure, or who feels he or she has suffered reprisal, based on the conditions and procedures of the legal advice branch.

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 in particular 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

Requests received	2017-2018 ⁹	2018-2019
Requests for assistance	112	68
Disclosures	135	182
Reprisal complaints	0	8
Requests for access to legal advice	4	10
Requests for exemption*	36	3
TOTAL	287	271

* Applications for exemption are not included in the [Requests for services received](#) table, page 17.

Note: A request for assistance is a request for information concerning the possibility of making a disclosure, a reprisal complaint, a request for access to legal advice or for advice about the procedure to follow.

2 Status of disclosures being processed as at March 31, 2019

The table shows the portrait of processed requests from April 1, 2018 to March 31, 2019.

The first step in handling a disclosure is to determine whether it is admissible. If the Québec Ombudsman deems the request admissible, it carries out the audits it considers appropriate. At the end of these audits, it makes a decision regarding the advisability of conducting an investigation of the alleged wrongdoing or of closing the request. Once the investigation is completed, the Québec Ombudsman may make recommendations, and monitors them until they are implemented.

9. The Québec Ombudsman reviewed the classification of requests pertaining to its Direction des enquêtes sur les divulgations en matière d'intégrité publique. As a result, the number of requests within the institution's purview for 2017-2018 decreased in relation to last year's data.

2.1 Status of disclosures

Status	Number
Implementation being monitored as at April 1, 2018	0
Being examined as at April 1, 2018	35
Accepted	182
Closed	150
Being examined as at March 31, 2019	61
Being analyzed for admissibility	1
Being audited	45
Being investigated	9
Completed	6
Implementation being monitored as at March 31, 2019	6

2.2 Status of reprisal complaints

Status	Number
Implementation being monitored as at April 1, 2018	0
Being examined as at April 1, 2018	0
Accepted	8
Closed	6
Being examined as at March 31, 2019	2
Being analyzed for admissibility	1
Being audited	0
Being investigated	1
Completed	0
Implementation being monitored as at March 31, 2019	0

2.3 Status of requests for access to legal advice

Status	Number
Being examined as at April 1, 2018	4
Accepted	10
Closed	7
Being examined as at March 31, 2019	7
Being analyzed for admissibility	7
Completed	0

3 Breakdown of grounds for closed requests

A request for assistance, a disclosure, a reprisal complaint or a request for access to legal advice may include several grounds. This year, 163 closed requests included 171 grounds and 64 closed requests for assistance.

Disclosures increased by 20.7% over last year's average. There were six reprisal complaints this year, whereas last year, there were none.

Requests for assistance decreased by 43.4%, from 113 to 64.

3.1 Disclosures and requests for assistance

Closed requests in 2018-2019	Number
Requests for assistance	61
Substantiated	1
Unsubstantiated	27
Forwarding of information (section 14)	7
Not completed (other)	32
Redirected	2
Interrupted (section 12)	89
TOTAL	219

158 grounds for disclosure

3.1.1 Breakdown of disclosures, by body category

Body categories	Number	% of total
Government departments	48	30.4
Government agencies	29	18.4
Municipal bodies	19	12.0
Health and social services institutions	16	10.1
School boards	15	9.5
Cegeps	10	6.3
Childcare centres	8	5.0
Government corporations and other	6	3.8
Universities	5	3.2
Persons appointed by the National Assembly	2	1.3
TOTAL	158	100.0%

3.1.2 Breakdown of unsubstantiated and substantiated grounds for disclosure, by category of wrongdoing

Breakdown of grounds	Unsubstantiated	Substantiated	Total
Gross mismanagement/abuse of authority	7	5	12
Contravention of an act/regulation	6	0	6
Serious breach of the standards of ethics and professional conduct	5	3	8
Misuse of a public body's funds or property	6	3	9
Endangering health and safety	2	0	2
Endangering the environment	1	0	1
TOTAL	27	11	38

In 2018-2019, 28 grounds for disclosure (27 unsubstantiated and 1 substantiated) were closed—an increase of 86.7% over last year's figure (15 grounds). There were 10 substantiated grounds among the 6 files that were being monitored for implementation as at March 31, 2019.

3.1.3 Follow-up to recommendations

For the files closed in 2018-2019, the Québec Ombudsman made two recommendations, both of which were approved and implemented, based on substantiated grounds concerning a serious breach of ethics and professional conduct. For the files being monitored for implementation as at March 31, 2019, the Québec Ombudsman made 18 recommendations connected with 10 substantiated grounds for disclosure.

3.2 Reprisal complaints and requests for assistance

Closed requests in 2018-2019	
Requests for assistance	3
Substantiated	0
Unsubstantiated	0
Forwarding of information (section 14)	0
Not completed (other)	0
Redirected	0
Interrupted (section 12)	6
TOTAL	9

3.3 Requests for access to legal advice

Closed requests in 2018-2019	
Inadmissible	1
Refused	1
Not completed	2
Approved	3
Used	1
TOTAL	8

3.4 Requests for exemption

Requests for exemption	
Granted	3
Refused	0
TOTAL	3

WRONGDOING: A SERIOUS BREACH OF THE STANDARDS OF ETHICS AND PROFESSIONAL CONDUCT



The Québec Ombudsman received a disclosure concerning the manager of a government department who, it was alleged, recommended that a private organization of which he was a board member be granted financial assistance. A substantial percentage of the organization's revenue was from this department. According to the disclosure, the manager had also sidestepped the hiring procedure to fill a position.

Civil servants must exercise the greatest prudence when they are on the board of a private organization, even as a representative of their department or agency. As administrators, they must ensure that they remain independent in the performance of their duties so as to avoid conflicts of interest or the appearance thereof.

Concerning the manager in question, the investigation confirmed that no wrongdoing had occurred in

connection with the hiring procedure. However, the person had committed a serious breach of ethical standards by putting himself or herself in a position of conflict of interest.

In the case at hand, the Québec Ombudsman did not recommend any measures with respect to the manager because he had been appointed by his department to sit on the board. However, it recommended that the department:

- Issue clear directives to its staff concerning the obligations stemming from participation on the board of directors of partner organizations;
- Ensure compliance with these directives.

The department accepted and implemented the Québec Ombudsman's recommendations.

 The Québec Ombudsman's investigation result is available at divulgarion.protekteurducitoyen.qc.ca.



WRONGDOING: MISUSE OF FUNDS OR PROPERTY BELONGING TO A PUBLIC BODY



The Québec Ombudsman received a disclosure reporting alleged wrongdoings by a manager within an organization under contract (mandatary) with a Government of Québec agency. According to the disclosure, the person had made improper use of the organization's funds and property, had not obeyed rules governing the awarding of contracts, and had competing personal and professional interests.

After investigating, the Québec Ombudsman concluded that the person had committed three wrongdoings under the Act, namely:

- A misuse of funds or property belonging to a public body.
The mandatary had acquired three motorized devices in the preceding 10 years and had paid for them. The testimonies gathered confirmed that the manager had kept one of the devices for his personal use.
Furthermore, the manager had, for several years, delayed collecting on a hefty debt that a supplier had with the mandatary, for the sole purpose of not harming the supplier's financial situation.
- Gross mismanagement within a public body, including an abuse of authority.

The manager had established irregular practices concerning the administration of at least two contracts, despite warnings from members of his staff. He had awarded a private contract that should have gone through a bidding process, given the estimated amounts for carrying out the work.

- A serious breach of the standards of ethics and professional conduct.

The manager intentionally and repeatedly instructed the members of his staff to use his personal credit card for purchases (e.g. plane tickets) in order to benefit personally. The investigation concluded that in having benefitted personally from the purchases made by the organization, the manager had committed a serious breach of ethical standards.

During the investigation, the manager left the organization. At the end of the investigation, the Québec Ombudsman made three recommendations to the government agency to which the mandatary reports. The agency accepted the recommendations and their implementation is proceeding satisfactorily. The Québec Ombudsman remains attentive to the establishment of corrective measures.

 The Québec Ombudsman's investigation result is available at divulgate.protekteurducitoyen.qc.ca.

WRONGDOING: MISUSE OF FUNDS OR PROPERTY BELONGING TO A PUBLIC BODY



The Québec Ombudsman received a disclosure according to which a senior executive within a public agency had billed for personal transportation costs for eight months.

For the purposes of the investigation, the Québec Ombudsman examined the travel by cab of the person implicated, namely, 65 rides in 11 months. Most of the cab rides were for personal reasons, for an amount of more than \$1,200. Under the applicable directive, the person could not be reimbursed for this travel.

The Québec Ombudsman recommended that the public agency take the appropriate measures regarding the wrongdoer in order to prevent recurrence and that the person be required to pay for the claimed expenses that contravened the applicable rules. It also insisted on the importance of establishing proper oversight. The first two recommendations were carried out. The third, concerning oversight, is in the process of being implemented.

 The Québec Ombudsman's investigation result is available at divulgation.protecteurducitoyen.qc.ca.

WRONGDOING: GROSS MISMANAGEMENT WITHIN A PUBLIC BODY



The Québec Ombudsman was informed that supposed wrongdoings had been committed within a childcare centre (CPE). The person accused of these allegations was the executive director at the time.

After investigating, the Québec Ombudsman concluded that the person had committed three wrongdoings under the Act:

- Gross mismanagement.

The executive director's conduct deviated markedly from the professional standards expected by the Ministère de la Famille. He did not fulfil the obligations set out in his contract in terms of his most important responsibilities. He also violated labour law. Lastly, he engaged in profit-making activities in a non-profit facility.

- Abuse of authority.

The executive director exerted control over the members of the CPE's board of directors, which ran counter to the respective mandates and duties of an executive director and of the

organization in question. His conduct weakened the action of the members of the board and sound governance of the CPE.

- A serious breach of the standards of ethics and professional conduct.

The investigation revealed several failings by the executive director regarding hiring, workplace availability and perks to the parents on the board of directors.

At the end of the investigation, the Québec Ombudsman made four recommendations, one to the CPE and three to the Ministère de la Famille. The first recommendation was implemented by the CPE, whose board members acted promptly. Their questions and findings led to the departure of the executive director.

For its part, the Department introduced measures in response to the Québec Ombudsman's three other recommendations. The Québec Ombudsman is following their implementation closely.

 The Québec Ombudsman's investigation result is available at divulgation.protecteurducitoyen.qc.ca.



A disclosure to the Québec Ombudsman reported alleged wrongdoings within a school board's vocational training centre (VTC). For several years, the principal and a manager of the VTC had used employees to carry out production contracts for commercial purposes, in addition to using material resources for the same reason.

In accordance with the *Education Act* and the regulations stemming from it, production practices must serve the school's main mission—teaching—and its main object must not be the operation of a commercial enterprise. In other words, independent income that may be generated by training activities are authorized in certain contexts, but only if they are consistent with the educational mission handed down to the institution by the *Education Act* and by the school board.

At the end of the investigation, the Québec Ombudsman concluded that the wrongdoers had overestimated the predicted number of students and therefore the revenue-generating activities required for carrying out their educational mission. Their estimates had not factored in the drop in the number of students for several years. Even if a temporary decline could have justified the fact that resourceful managers keep a certain number of employees in anticipation of a quick recovery, this recovery never occurred.

Thus, the authorities assigned certain members of their teaching staff to money-making activities, pending the return of students. At the time of the investigation by the Québec Ombudsman, some teachers had not been in a classroom for two or even three years. In the Québec Ombudsman's

opinion, this situation was inconsistent with the administrators' responsibility to ensure the achievement of the school's educational mission and the sound use of the public funds and property they manage.

The investigation also showed that in acting the way they did, the wrongdoers did not comply with the applicable collective agreement. They used their powers and authority arbitrarily by displaying favouritism towards certain staff members, causing them to fear reprisal if they spoke out against these failings.

Lastly, by allowing certain employees to work alone in an environment where, according to the applicable rules, this was not permitted, those responsible had not used fair and reasonable means to provide the staff in question with working conditions that respected their health, safety, physical integrity and dignity. They also enabled a harmful work environment to persist for the staff members.

At the end of the investigation, the Québec Ombudsman made three recommendations to the school board authorities and to the Ministère de l'Éducation et de l'Enseignement supérieur. The purpose of the recommendations was to prevent recurrence of the denounced events and to ensure compliance with the Act and the collective agreement in force in order to restore a healthy and safe work environment that serves the educational mission.

At the time these lines were being written, the Québec Ombudsman was waiting for the required action plans from those involved.



The Québec Ombudsman's investigation result is available at divulgateur.protecciteurducitoyen.qc.ca.



WRONGDOING: GROSS MISMANAGEMENT WITHIN A PUBLIC BODY



The disclosure received by the Québec Ombudsman concerned irregularities in the subsidy-awarding process managed by a section of a government department. Even if the investigation showed that there was no wrongdoing within the meaning of the Act, problematic situations were nonetheless noted.

Given its mandate of oversight of the quality of public services and respect of citizens' rights in their interactions with government departments and agencies, the Québec Ombudsman made recommendations at the end of its intervention.

The department's section is tasked with providing subsidized businesses with support in carrying out their projects. However, it was shown that several staff members did not fully understand this responsibility, which sometimes meant that they did not grasp the limits of their role in terms of project supervision.

Furthermore, the investigation raised questions as to the objectivity of the criteria for selecting enterprises for funding. The Québec Ombudsman also saw that the section in question neglected to obtain certain accountability data—despite their being mandatory—from the subsidized enterprises.

The Québec Ombudsman made four recommendations to the department concerned with the aim of adopting more objective criteria in order to ensure fair treatment in the awarding of subsidies. It also insisted on formalizing all changes to the normative framework for project assessment and on using qualified staff to carry out auditing. Lastly, the Québec Ombudsman recommended that the department clarify, with the staff concerned, their role and the limits of this role of supporting organizations and supervising projects. These recommendations were accepted and the Québec Ombudsman is monitoring their implementation.

WRONGDOING: DIRECTING OR COUNSELLING A PERSON TO COMMIT A WRONGDOING



The following case illustrates the advisory role that the Québec Ombudsman can play with whistleblowers by providing them with tools for resolving a situation.

An administrator in an educational institution was asked by two people in positions of authority to change the school schedule of one of their family members. This would have entailed removing the student from a compulsory class, without any particular reason.

The administrator refused to grant it, pointing out that the request contravened the applicable directive and what he himself required of the people who report to him. Afterwards, one of his superiors approached him again insistently, which made the administrator feel very uncomfortable. The circumstances prompted him to disclose the situation to the Québec Ombudsman, indicating his fear of reprisal if he continued to refuse. He added that he had had his current position for many years and that this was the first time he had been faced with such a situation.

The Québec Ombudsman suggested that the whistleblower:

- Refuse to grant the change requested by the two people because this arbitrary change could be construed as a wrongdoing within the meaning of the *Act to facilitate the disclosure of wrongdoings relating to public bodies*;
- Notify it immediately if he suffered reprisal from his superiors;
- Inform it promptly if, after this first refusal, another person made the change to the class schedule of the student concerned;
- Brief it on the outcome of the situation.

Not long after, the whistleblower contacted the Québec Ombudsman to confirm that he had refused in writing to change the student's schedule. Subsequent discussion enabled the whistleblower to express his point of view to the authorities, and everything was settled in compliance with the rules in effect. Above and beyond the fact that the situation had been resolved, the whistleblower who came to the Québec Ombudsman expressed his appreciation for having been able to proceed while feeling protected against possible reprisal.

Given the developments, the Québec Ombudsman terminated its intervention.

LIST OF RECOMMENDATIONS

Agence du revenu du Québec (Revenu Québec)



RECOMMENDATIONS BY THE QUÉBEC OMBUDSMAN CONCERNING THE USE OF INDIRECT, OR ALTERNATIVE, AUDIT METHODS

Considering the preceding, the Québec Ombudsman recommends that Revenu Québec:

- Draft work directives concerning the use of indirect audit methods, commonly called alternative methods, and specify therein that:
 - alternative methods must be used only when there are no other audit options,
 - the statistical validity of the method must be established before it is applied as well as when the results are assessed,
 - citizens' explanations must be taken into account when they are based on valid proof,
 - the reasons for using an alternative method must be indicated in the audit report so that the taxpayer or the mandatary can understand why Revenu Québec had to resort to it;
- Provide audit agents with training in the use of alternative methods and their application;
- Produce a timeline for carrying out these actions and send it to the Québec Ombudsman before December 1, 2019.

Ministère de l'Éducation et de l'Enseignement supérieur



RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING PHONE ACCESSIBILITY AT STUDENT FINANCIAL ASSISTANCE

Considering the preceding, the Québec Ombudsman recommends that the Ministère de l'Éducation et de l'Enseignement supérieur:

- By December 20, 2019, put in place a detailed action plan to significantly reduce phone wait times that includes in particular a timeline, performance targets and specific measures for the addition of human resources, with a view to phone access within a reasonable length of time.

Ministère de la Justice



RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING RECOGNITION OF FILIATION WHEN A PARENT DIES BEFORE HIS OR HER CHILD IS BORN

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

- Propose an amendment to the *Civil Code of Québec* whereby declaration of filiation by a parent whose common-law spouse died before their child was born may be carried out without a judicial procedure.

Ministère de la Sécurité publique (Correctional services)



RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING THE IMPOSITION OF PHYSICAL RESTRAINTS

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

- By December 2019, bring into force an instruction providing for systematic reassessment of the use of restraints after a maximum of two weeks in order to prevent their unwarranted use.

RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING SOLITARY CONFINEMENT



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

- Pending a new provincial instruction governing solitary confinement, apply the provisions of the Mandela Rules on solitary confinement so that, as of December 1, 2019, it is limited to a maximum of 15 days.

RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING BAIE-COMEAU CORRECTIONAL FACILITY



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

- By December 31, 2019, provide it with an action plan and timeline aimed at improving the detention conditions of the inmates at Baie-Comeau correctional facility.

RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING RETURNING PERSONAL BELONGINGS TO DETAINEES



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

- By March 31, 2020, modify the provincial instruction concerning the management of personal belongings to specify that if detainees are not given back their street clothing within a maximum of 48 hours, they be given a change of clothing.

Ministère de la Sécurité publique and Ministère de la Santé et des Services sociaux (Correctional services)

RECOMMENDATIONS BY THE QUÉBEC OMBUDSMAN CONCERNING THE TRANSFER OF HEALTHCARE RESPONSIBILITIES IN CORRECTIONAL FACILITIES



Considering the preceding, the Québec Ombudsman recommends that the Ministère de la Sécurité publique and the Ministère de la Santé et des Services sociaux:

- Complete the transfer of responsibilities for all correctional facilities as soon as possible;
- Establish and disseminate clear guidelines to standardize practices in correctional facilities and put in place mechanisms for ensuring that the staff from the Ministère de la Sécurité publique as well as that of integrated health and social services centres and of integrated university health and social services centres understand and apply these guidelines;
- Ensure that detainees have access to health services equivalent to those provided to the general population with comparable needs.

Régie de l'assurance maladie du Québec

RECOMMENDATION BY THE QUÉBEC OMBUDSMAN CONCERNING ACCESS TO THE PUBLIC INSURANCE PLAN FOR CHILDREN OF PARENTS WITH A PRECARIOUS MIGRATORY STATUS



Considering the preceding, the Québec Ombudsman recommends that the Régie de l'assurance maladie du Québec:

- Give full effect to the provisions of the *Health Insurance Act* and of the *Regulation respecting eligibility and registration of persons in respect of the Régie de l'assurance maladie du Québec* by considering as residents of Québec for the purposes of eligibility for the public health insurance plan all unemancipated minor children:
 - who are born in Québec,
 - for whom Québec is their regular place of residence,
 - who are in Québec more than 183 days per calendar year.

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