



**LE PROTECTEUR DU CITOYEN**

Assemblée nationale  
Québec

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## **Report by the Québec Ombudsman**

Guarantee the procedural fairness of the disciplinary process for detainees  
(summary)

Québec City, March 31, 2015

## Summary

In Québec, a person incarcerated in a provincial correctional facility must obey certain rules designed to foster a safe and orderly living environment. Detainees who fail to comply face a disciplinary process.

One of the goals of the disciplinary process is to make detainees aware of the consequences of their actions. Therefore, when determining the sanction to be imposed, the discipline committee must emphasize the individual's assumption of responsibility for the offence and apply a personalized sanction. Furthermore, a fair sanction consistent with the offending behaviour may have positive outcomes in terms of detainees' social reintegration.

As Québec's correctional ombudsman, the Québec Ombudsman monitors respect of detainees' basic rights, particularly in a context in which certain disciplinary sanctions may infringe upon inmates' residual freedoms. In recent years, a number of recurrent problems have caught our attention. Indeed, the Québec Ombudsman has detected failings in terms of the normative framework and of the application of disciplinary rules alike.

The analysis of comparable normative frameworks (federal rules and rules in other Canadian provinces) has brought into focus certain inconsistencies within the disciplinary process employed in Québec. Furthermore, the application of standards in some correctional facilities was found to be inadequate. The interviews conducted with the people in charge of discipline in certain correctional facilities and the analyses of the complaints handled by the Québec Ombudsman confirmed our findings.

Decisions by correctional facility discipline committees may have major effects on detainees' living conditions. These decisions may also violate detainees' basic rights, in particular, their residual freedoms. Hence, the importance of guaranteeing respect of the principles of procedural fairness throughout the disciplinary process.

Every detainee who receives a disciplinary report has a right to be heard and present his or her arguments. Even though correctional facility staff do not deliberately set out to breach this right, in practice, certain elements converge to considerably dilute it. These include lack of access to documents, ignorance of the rules that govern the disciplinary process, arbitrary reporting of violations, insufficient details as to maximum deadlines, failure to summon detainees and restrictive interpretation of the right to a witness or to legal counsel.

Every detainee must also be treated impartially and without discrimination. Currently, the composition of the discipline committee provided for in the normative framework does not guarantee impartiality or the appearance of impartiality. For example, the fact that sometimes correctional officers who sit on the discipline committee "guard" or "control" detainees on a daily basis seems inconsistent with detainees being treated impartially. It can even happen that an officer involved in the alleged offence by a detainee is a member of the discipline committee. In federal penitentiaries and correctional facilities in other Canadian provinces, there are guarantees that employees in regular contact with detainees cannot sit on the discipline committee. This prevents any appearance of lack of impartiality and

enhances the discipline committee's credibility in the eyes of detainees and the general public.

To ensure respect of the principles of procedural fairness in Québec correctional facilities, the Québec Ombudsman submitted fifteen recommendations to the Ministère de la Sécurité publique, including the following:

- ▶ Regardless of the nature or severity of the offence, lack of daily contact with detainees must be a baseline requirement for discipline committee members.
- ▶ To foster consistent application of rules in matters of discipline, each correctional facility must appoint a person to be in charge of the disciplinary process. This person would sit on the discipline committee for a specific term of office and would be supported by a professional who has no daily contact with detainees.
- ▶ When possible and relevant, there should only be one discipline committee per correctional facility. When this is impossible, it is crucial that the people responsible for discipline within the correctional facility work together so that there are no adverse effects on detainees of the kind caused by a silo approach.
- ▶ When a detainee is accused of a major breach of the rules, the discipline committee should include a manager and a professional. In cases of serious transgressions (escape attempts, severe violence, riots), the director could sit on the discipline committee. The review would be then entrusted to the assistant director general concerned from the Direction générale des services correctionnels of the Ministère de la Sécurité publique.

These recommendations take into account the real risks in settings in which freedom is limited and the specific realities of correctional facilities. They are aimed at improving the disciplinary process as well as its application by correctional staff so that disciplinary sanctions contribute to the penal system's primary mission: detainees' accountability and social reintegration.