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Report by the Québec Ombudsman

The consequences of the increase in intermittent sentences in Québec
correctional facilities

Québec City, March 21, 2018

The mission of the Québec Ombudsman

The Québec Ombudsman ensures that the rights of citizens are upheld by intervening with Québec government departments and agencies and the various bodies within the health and social services network to request redress of situations that are prejudicial to a person or group of persons. Appointed by the elected members from all political parties and reporting to the National Assembly, the Québec Ombudsman acts independently and impartially, whether an intervention is undertaken in response to a complaint or series of complaints or on the institution's own initiative.

Pursuant to the powers conferred upon it, it can propose amendments to acts and regulations and changes to directives and administrative policies with a view to improving them in the best interest of the people concerned. Respect of users and their rights and the prevention of harm are at the heart of the Québec Ombudsman's mission. Its preventive role is exercised in particular through its systemic analysis of situations that cause harm to a significant number of citizens.

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Table of contents

Summary.....	4
1. Mandate of the correctional ombudsman and goals of the intervention.....	6
2. Portrait of intermittent sentences	7
3. Problems related to intermittent sentences	11
3.1 Management difficulties starting at admission.....	12
3.2 Inadequate infrastructure and shortage of space.....	15
3.3 Acute problems for women.....	19
3.4 Adverse effects for all detainees.....	19
3.5 Multiple and problematic transfers	21
3.6 Disparities in the sanctions for being unlawfully at large	22
4. Promising solutions	23
4.1 More effective use of temporary absences after one sixth of a sentence	23
4.2 Foster social reintegration	25
4.3 Give priority to alternatives to incarceration	26
4.4 General issues.....	29
Appendix 1 – Glossary	31
Appendix 2 – List of recommendations.....	32
Bibliography.....	34

Summary

Background

The Québec Ombudsman's mandate is to ensure that the rights of detainees in correctional facilities under provincial jurisdiction are upheld in accordance with acts, regulations and administrative standards.

Portrait of intermittent sentences

When a court hands down sentences of less than 90 days, it may, in certain circumstances, allow the person to serve the sentence intermittently, usually Saturdays and Sundays. Intermittent sentences are granted to people who present a low risk to society.

In Québec, in 2016-2017, the number of intermittent sentences managed by correctional facilities rose by 91.5% over figures for 2010-2011. This increase is not unrelated to certain amendments to the *Criminal Code* in the last ten years, which have led to an increase in the number of offences with a mandatory minimum prison sentence and a decrease in the number of offences with conditional sentences of imprisonment. This has also exacerbated the problem of overcrowding that affects most correctional facilities, especially during weekends. The fallout from this increase includes difficult detention conditions and security problems.

The Québec Ombudsman has seen the number of complaints from people serving intermittent sentences rise substantially. In 2016-2017, the number of complaints almost doubled from the figures for the previous year.

Findings

The problems of people serving intermittent sentences are numerous. Given the shortage of staff during peak periods (Saturdays and Sundays), often there are no information sessions or documents for these detainees. As a result, their management is often inadequate.

Furthermore, detention areas are limited or poorly adapted because of the large number of people there at the same time. As a result, they must sleep on mattresses on the floor, crammed into gymnasiums or visiting rooms. Sometimes these areas do not have washrooms.

Overcrowding can also lead to inter-facility transfers when the number of detainees exceeds the maximum occupancy rate. This means that there are more strip searches, a procedure that detainees must undergo when they enter and leave a facility.

Women serving intermittent sentences in outlying regions are usually detained at the male correctional facility closest to where they live. Since, most of the time, the gymnasiums and other detention areas are set aside for male inmates, the women are housed under poor conditions, in holding cells or visiting rooms, for example.

Recommendations

The Québec Ombudsman made 17 recommendations, most of them to the Ministère de la Sécurité publique and two to the Ministère de la Justice.

Their primary purpose is to ensure that:

- The people serving intermittent sentences are taken in charge properly when they arrive at the correctional facility and that they have the information they need so that their incarceration is without incident.
- There are no inter-facility disparities in terms of treatment.
- The rights of detainees with intermittent sentences are upheld at all times and that the detainees have access to washrooms and appropriate premises.
- The presence of these detainees does not hinder the correctional facility's regular inmate population.
- The use of temporary absences is favoured.
- The reintegration of offenders with intermittent sentences and the prevention of recidivism are encouraged.
- Alternatives to incarceration for people with intermittent sentences are encouraged, as is the case for Alberta and Ontario.

1. Mandate of the correctional ombudsman and goals of the intervention

- 1 The Québec Ombudsman's mandate includes ensuring that detainees' rights are upheld in accordance with laws, regulations and administrative standards under provincial jurisdiction. As Québec's correctional ombudsman, the Québec Ombudsman intervenes as soon as it becomes aware or has reason to believe that correctional facility authorities, the Direction générale des services correctionnels of the Ministère de la Sécurité publique, or the Commission québécoise des libérations conditionnelles is not fulfilling its obligations towards detainees or when it sees that detainees' residual rights are being breached. The Québec Ombudsman also intervenes on its own initiative to make recommendations aimed at preventing and rectifying situations that are harmful to detainees.
- 2 Correctional services are obliged to protect society by providing safe detention for offenders as well as facilitating the reintegration of offenders into the community. Note that Québec correctional facilities are responsible for the detention of offenders given sentences of less than two years and of those detained at the instruction of a court pending or during trial. Federal penitentiaries are intended for offenders handed down sentences of two years or more.
- 3 The findings in this report stem partly from information gathered by the Québec Ombudsman in the context of its investigations further to complaints from people serving intermittent sentences. In recent years, these complaints have increased substantially. In 2016-2017, they practically doubled from figures for the previous year. They mainly concern difficult detention conditions and the violation of rights.

Table 1: Number of Québec Ombudsman files concerning intermittent sentences

2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017
3	1	1	25	23	20	31	28	39	77

- 4 Other observations were made within the framework of the Québec Ombudsman's periodic visits of correctional facilities. Between April 2015 and March 2017, the time frame for this report, the Québec Ombudsman visited the Hull, Leclerc de Laval, Montréal, New Carlisle, Québec (women), Québec (men), Rimouski, Roberval, Saint-Jérôme, Sherbrooke, Sorel and Trois-Rivières correctional facilities.¹ During most of these visits, issues concerning inmates serving intermittent sentences were noted.
- 5 The purpose of this report is to:
 - ▶ Expose the problems experienced by citizens incarcerated in correctional facilities caused by massive reliance on intermittent sentences;
 - ▶ Heighten the awareness of those concerned—judges, criminal and penal prosecuting attorneys (Crown prosecutors), defense lawyers, police officers

¹ The Québec Ombudsman visited several areas where people serving an intermittent sentence are housed. Note that the Percé and Rivière-des-Prairies correctional facilities, given their mission, do not handle intermittent sentences.

and Ministère de la Justice representatives—to the difficulties of managing this kind of sentence within Québec correctional facilities;

- ▶ Encourage concerted action among these players and the Ministère de la Sécurité publique and its Direction générale des services correctionnels;
- ▶ Propose possible solutions, notably by exploring certain best practices in correctional facilities in Québec and elsewhere in Canada;
- ▶ Recommend that the Ministère de la Sécurité publique implement initiatives to improve detention conditions for people serving intermittent sentences and for other detainees who must deal with the fallout from this phenomenon.

2. Portrait of intermittent sentences

2.1 Definition

- 6 In theory, detainees serve sentences on consecutive days. However, in Canada, when a tribunal hands down a sentence of under 90 days, it may, in certain circumstances, authorize the person to serve the sentence intermittently.² The main purpose is to allow offenders to keep their jobs or take care of their family. Intermittent sentences may also be granted for medical reasons.
- 7 Inmates are therefore confined at the times set out in the judgement and the warrant of committal. They must also comply with probation order conditions while they are not incarcerated. Detention continues until the entire sentence has been served or until the offenders have been granted a temporary absence.³
- 8 Here are a few recent figures concerning the detainees in Québec’s 17 operational correctional facilities.⁴

Table 2: Number of admissions by detention status in Québec correctional facilities in 2016-2017⁵

Status	Number	Percentage	Average duration of prison term
Admission further to a conviction – <i>Detainees with sentences served on consecutive days</i>	5 119	11.7%	69.9 days
Admission further to a conviction – <i>Detainees with intermittent sentences</i>	6 361	14.6%	11.9 days

² While a sentence may be served any day of the week, intermittent sentences are commonly called “weekend sentences”. In prison jargon, citizens with this status are often called “weekenders” to distinguish them from other detainees.

³ *Criminal Code*, R.S.C. (1985), c. C-46, section 732; *Code of Penal Procedure*, CQLR, c. C-25.1, section 242.

⁴ Legally, Québec has 19 correctional facilities. However, Maison Tanguay, in Montréal, is empty and Havre-Aubert, on the Magdalen Islands, only houses inmates sporadically. In fact, it is basically a holding cell.

⁵ Ministère de la Sécurité publique (hereinafter “MSP”), Direction générale des services correctionnels (hereinafter “DGSC”), data transmitted in July 2017.

Status	Number	Percentage	Average duration of prison term
Admission during legal proceedings – <i>Remandees</i>	32 185	73.7%	27.5 days
Total	43 665	100.0%	

- 9 The time at which offenders must report to the correctional facility and at which they may leave is at the discretion of the judge who rendered the sentence. Since the terms and conditions of the sentence generally take into account the person’s commitments (e.g. work schedule), they vary from individual to individual. Nonetheless, more than 80% of intermittent sentences are served on Saturdays and Sundays.⁶

Examples of detention

Citizen A is incarcerated in a correctional facility every Saturday from 9 a.m. to Sunday 5 p.m. He sleeps at the facility;

Citizen B serves her sentence from Saturday 8:30 a.m. to 4 p.m., and from Sunday 8:30 a.m. to 4 p.m. She does not sleep at the facility;

Citizen C is incarcerated every week from Monday 9 a.m. to Tuesday 4:30 p.m. He sleeps at the facility.

- 10 In assigning this kind of sanction, the tribunal must take into account factors such as:
- ▶ the person’s age;
 - ▶ the nature of the offence;
 - ▶ the circumstances under which the offence was committed;
 - ▶ the availability of an adequate facility where the sentence can be served.⁷
- 11 When a tribunal takes similar criteria into consideration in imposing probation orders or conditional sentences, offenders serve their sentence within the community, with certain prescribed conditions, rather than being incarcerated.
- 12 Intermittent sentences have existed in Canada since 1972.⁸ They are generally short-term sentences given to offenders who present a low risk to society. They reflect the objective of rehabilitating offenders and their purpose is to prevent job loss or family dislocation stemming from the imprisonment, mainly for first-time offenders (i.e.

⁶ MSP, DGSC, data for 2015-2016, transmitted in September 2016.

⁷ *Criminal Code*, note 3 cited above, section 732. Intermittent sentences are among the penological goals set out in section 718 of the *Criminal Code*. Sections 718 to 718.2 delineate the criteria for sentencing and the objectives pursued, notably, to denounce the offender’s unlawful conduct, deter the offender and other persons from committing offences, assist in rehabilitating offenders, provide, where possible, reparation for harm done, and promote a sense of responsibility in offenders and acknowledgment of the harm done. Note that a sentence may favour one or several of these objectives. Sentences must be adapted to the circumstances surrounding the commission of the offence and to the offender’s specific circumstances. It must also be proportionate to the gravity of the offence and the offender’s degree of responsibility. Lastly, a sentence should be similar to sentences imposed on offenders for similar offences committed in similar circumstances. The importance of the principle of proportionality was reiterated by the Supreme Court in *R. v. Ipeelee*, [2012] 1 SCR 433. The sentence must reflect the gravity of the offence, and thereby be closely tied to the objective of denunciation and not exceed what is appropriate, given the moral blameworthiness of the offender; *R. v. Nasogaluak*, [2010] 1 SCR 206; *R. v. Middleton*, [2009] 1 SCR 674; *R. c. Daoust*, 2012 QCCA 2287.

⁸ Barreau du Québec, *Letter by the Bâtonnier to the Minister of Justice of Canada*, November 2004.

offenders without a criminal record⁹ or a history of incarceration). This type of sentence may, for example, also allow a person to undergo a drug treatment program. In this respect, the goal of intermittent sentences and conditional sentences alike is, as much as possible, to enable offenders to serve their sentence within the community.¹⁰

- 13 When possible, intermittent sentences also strike a balance between the principles of deterrence, denunciation and reintegration.¹¹ However, when compared to conditional sentences, intermittent sentences contain an element of severity insofar as, "despite the positive features of the respondent's character and background, principles of deterrence and denunciation require a period of incarceration".¹²
- 14 Note that if the offender's situation changes while he or she is serving the sentence, the offender may petition the tribunal for permission to serve the sentence on consecutive days.¹³

2.2 Profile of people with intermittent sentences

- 15 As a rule, people with intermittent sentences are different from other detainees. They are younger, more educated, and have fewer physical and mental health problems.¹⁴ According to data from the Ministère de la Sécurité publique, the typical portrait is the following: a male (93%) aged 25 to 40 (63%). The person has a job at the time of the offence (64%), a percentage practically double that of the prison population as a whole.¹⁵ The offender is already active within society (family life, personal life and occupational life).
- 16 In addition, in 2015-2016, most people serving intermittent sentences had no criminal record (64%) at the time of sentencing. A significant number of intermittent sentences are related to impaired driving (18.9%), drug trafficking (14.4%), failure to comply with a probation order (9.4%) and failure to comply with a condition (7.9%).¹⁶

2.3 A phenomenon on the rise

- 17 In Québec, in 2016-2017, the number of intermittent sentences managed by correctional facilities rose by 91.5% over figures for 2010-2011.

⁹ R. c. Belaieff, J.E. 82-732 (C.S.B. Québec); Dumont Hélène, *Pénologie, le droit canadien relatif aux peines et aux sentences*, Les Éditions Thémis, 1994, p. 407.

¹⁰ R. v. Middleton, note 7 cited above, paragraph 39.

¹¹ R. c. Daoust, note 7 cited above.

¹² R. v. Middleton, note 7 cited above, paragraph 51 and following; R. v. Lyver, 2007 ABCA 369; R. v. Proulx, [2000] 1 RCS 61, para. 55.

¹³ *Criminal Code*, note 3 cited above, section 732(2). Where a court imposes a sentence of imprisonment on a person who is subject to an intermittent sentence in respect of another offence, the unexpired portion of the intermittent sentence shall be served on consecutive days unless the court otherwise orders. *Criminal Code*, section 732(3); Denis, Michel F., [La sanction et le traitement du délinquant : l'imposition de la sentence et les principes juridiques pertinents applicables](#), Annual Convention of the Barreau du Québec (2007).

¹⁴ MSP, DGSC, *Profil des personnes condamnées à une peine discontinue en 2012-2013*, 2016, p. 6.

¹⁵ *Ibid.*, p. 4 and 14.

¹⁶ MSP, DGSC, data transmitted in September 2016.

Table 3: Number of intermittent sentences per year¹⁷

	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Number	1620	1764	1974	2377	2652	2727	3103

- 18 The Québec Ombudsman has noted that Québec courts hand down more intermittent sentences than courts anywhere else in Canada. In 2015-2016, when the percentage of admissions of offenders with an intermittent sentence was 14% in Québec, the proportion for the other provinces with available data ranged from 3% to 9%.¹⁸
- 19 Everything points to the fact that the combination of several amendments to the *Criminal Code* by the federal government between 2008 and 2012 has contributed to the increase in intermittent sentences.
- 20 Clearly, the coming into force in 2012 of the *Safe Streets and Communities Act*,¹⁹ federal legislation which amended the *Criminal Code* to make minimum prison sentences mandatory for certain offences, was the measure that garnered the most public attention and media coverage.
- 21 The fact that there can be no conditional sentences for certain offences has also contributed to the increase in the number of intermittent sentences. The Ministère de la Sécurité publique ventured the following hypothesis in a document from 2016: "The increase in the number of intermittent sentences was felt as of 2012-2013. It is therefore possible that the legislative changes had an impact on this phenomenon. The number of intermittent sentences began increasing as soon as the number of conditional sentences began decreasing."²⁰ [translation]
- 22 Available data seem to indicate that in cases in which minimum prison sentences must be imposed, some judges, often further to a joint recommendation by the defence attorney and the Crown prosecutor, hand down intermittent sentences because they cannot impose a more customized sentence or a conditional sentence.

¹⁷ MSP, DGSC, data transmitted in September 2016 and August 2017. The proportion of intermittent sentences compared with all detention sentences (intermittent sentences, consecutive-day sentences and custody pending trial) is as follows: 10.1% (2010-2011), 10.8% (2011-2012), 11.6% (2012-2013), 12.9% (2013-2014), 14.4% (2014-2015), 15.1% (2015-2016) and 16.2% (2016-2017).

¹⁸ MSP, DGSC, data transmitted in September 2016; Statistics Canada, Canadian Centre for Justice Statistics, Integrated Correctional Services Survey, 2015-2016, *Initial entry of adults into correctional services, by type of supervision and by province*.

¹⁹ S.C. 2012, c. 1 (C-10).

²⁰ MSP, DGSC, [Analyse prospective de la population carcérale des établissements de détention du Québec de 2013-2014 à 2023-2024](#), 2016.

Table 4: Number of intermittent sentence admissions and number of community program admissions under conditional sentences²¹

	2012-13	2013-14	2014-15	2015-16	2016-17
Intermittent sentences Admissions	4104	4942	5564	5828	6361 (+55.0%)
Conditional sentences – Admissions to community programs	3292	3016	2457	1889	1815 (-44.9%)

3. Problems related to intermittent sentences

²³ According to Ministère de la Sécurité publique data, the average daily prison population serving an intermittent sentence that includes an overnight stay in a correctional facility went from 15 in 2003-2004 to 103.5 in 2016-2017, a sevenfold increase. Since most intermittent sentences are served during the weekend, the average daily population is particularly high on Saturday night and, for the same period, rose drastically from 30.8 to 517.7 people (roughly 17 times more).²²

Table 5: Average daily prison population serving an intermittent sentence with overnight stays²³

	2003-2004	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017
Every day	15.4	15.2	17.1	18.6	32.9	41.7	47.5	53.6	57.0	67.5	78.1	86.5	91.7	103.5
Satur-days	30.8	37.2	42.8	56.8	148.7	198.4	229.2	260.9	269.9	320.4	396.4	438.5	455.5	517.5

²⁴ Faced with this staggering increase on weekends, the people in charge at numbers of correctional facilities must solve the space shortage problem. In 2016-2017, almost every Québec correctional facility grappled with overcrowding, regardless of the type of sentence. The average occupancy rate based on operational capacity for correctional facilities as a whole was 114.8%.²⁴

²¹ MSP, DGSC, data transmitted in January, August and October 2017.

²² *Ibid.*

²³ *Ibid.*

²⁴ The most overcrowded facilities in 2016-2017: Saint-Jérôme, Amos, Rivière-des-Prairies, Sorel, Rimouski, Montréal (Bordeaux) and Québec (men). MSP, DGSC, data transmitted in October 2017.

3.1 Management difficulties starting at admission

3.1.1. Unwieldy admission process

- 25 When a person reports to a correctional facility, he or she must be admitted. Unlike processing which is valid for the entire term of detention,²⁵ the admission process for people with an intermittent sentence is repeated every week.²⁶
- 26 For instance, take the case of a citizen sentenced to serve 90 days intermittently from Saturday 9 a.m. to Sunday 4 p.m. The first Saturday, the citizen reports to the correctional facility at the same time as other detainees with intermittent sentences. Correctional services staff begin the admission process. First the citizen is pat-searched and then strip-searched and escorted to the detention area assigned based on his or her profile. The citizen's unauthorized personal belongings are consigned to a place for that purpose. Any medication is left at Admissions until it is checked by the nurse. The medication is given back to the inmate by an officer. This process will be repeated every Saturday for the entire sentence.
- 27 The length of the admission process varies from one facility to another, but can easily take a few hours every weekend, depending on the number of people who report for admission at the same time. Paradoxically, the high number of admissions on Saturdays and Sundays usually coincides with a decrease in the number of available correctional officers. This puts extra pressure on the staff on duty, increases the chance of administrative errors and lengthens mandatory activities such as searches.
- 28 Correctional facility directors and the staff responsible for admission are only informed about the number of people who will be detained at their facilities a few days or hours beforehand. As a result, there is no way of knowing whether they will be able to accommodate the detainees adequately.

²⁵ MSP, DGSC, Instruction 1 0 V 01, *Lexique des termes utilisés dans les politiques, instructions, procédures administratives et les autres documents de référence*, Québec, 2003 (updated in 2013).

²⁶ For a 60-day sentence, detainees would have to report for detention at least eight times if they are granted a temporary absence after serving one sixth of their sentence. People with a 90-day intermittent sentence may spend an entire year of weekends in the correctional facility if they are not granted a temporary absence.

Table 6 – Number of intermittent sentence admissions from 2010-2011 to 2016-2017²⁷

Facilities	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Amos	9	18	33	54	47	60	70
Baie-Comeau	16	8	8	17	23	18	41
Chicoutimi	73	65	101	108	107	67	<i>Closed</i>
Havre-Aubert	1	1	-	1	1	-	-
Hull	164	254	196	252	239	230	286
Leclerc de Laval (women)						17	392
Montréal	1370	1386	1471	1945	2241	2284	2447
New Carlisle	6	6	4	2	9	9	14
Québec (women)	47	47	55	74	90	106	166
Québec (men)	500	496	626	682	722	785	1012
Rimouski	54	65	80	85	135	114	134
Rivière-des-Prairies	128	114	150	145	177	176	117
Roberval	26	46	31	55	81	95	181
Sept-Îles	10	13	11	10	43	72	43
Sherbrooke	362	342	303	460	508	472	302
Sorel	150	160	205	276	210	207	236
St-Jérôme	289	439	441	433	580	679	696
Tanguay	122	167	231	211	180	227	<i>Inactive</i>
Trois-Rivières	120	125	158	132	171	210	224
Valleyfield	32	<i>Closed</i>	<i>Closed</i>	<i>Closed</i>	<i>Closed</i>	<i>Closed</i>	<i>Closed</i>
Total	3479	3752	4104	4942	5564	5828	6361

29 The Québec Ombudsman has noted that the profile of people with intermittent sentences is increasingly diversified. Thus, people with incompatible profiles must now be kept apart as soon as they are admitted. According to facility directors, the criminal backgrounds of some people with intermittent sentences have become more serious. As a result, many of them are considered too dangerous to be housed with others serving intermittent sentences, for example, because of a history of incarceration in a federal penitentiary or crimes with violence. Other inmates serve intermittent sentences for sexual offences.²⁸ For their safety and that of others, the latter are put under protection and are separated from the main group. Finding areas where they can be detained is a genuine challenge, especially when the facility is overcrowded to begin with.

3.1.2 Diversity of intermittent sentence procedures

30 When the staff enter an intermittent sentence into the computerized detainee management system at admission, the detention schedule as ordered by the judge, and any changes, must be included.²⁹

31 As indicated previously, incarceration days and times may vary. For example, while most weekend detainees are released at 4 or 5 p.m., the log received from the

²⁷ MSP, DGSC, data transmitted in January and August 2017.

²⁸ MSP, DGSC, data transmitted in September 2016 concerning the week of July 15-21, 2016.

²⁹ MSP, DGSC, Instruction 2 1 | 01, *Prise en charge d'une personne incarcérée et gestion des documents légaux*, Québec, 2007 (updated in 2016), sub-section 5.1.5.2.

Ministère de la Sécurité publique shows that release times vary:³⁰ 4, 4:01; 4:30; 5; 5:01; and 7 p.m., etc. The situation is the same for admission times. This makes intermittent sentence management more difficult and increases the probability of errors.

Inadvertently released, a person is accused of being illegally at large

A person with an intermittent sentence was released 30 minutes too early by a correctional services officer. The citizen had told the officers that he was part of the 4:30 p.m. group and not the 4 p.m. group, but they had not listened to him. The next day, the citizen's probation officer called him to inform him that he had been absent for the 4:30 roll call and would be accused of being illegally at large.

The facility director explained to the Québec Ombudsman that, according to his interpretation of the normative framework,³¹ as soon as an inmate is not at the facility when he or she should be, the Director of Criminal and Penal Prosecutions(DPCP) must be informed of this fact. Even if, in the case at hand, the DPCP was informed that it was an officer's mistake, an arrest warrant was issued. The citizen had to take legal action to finally be acquitted. The Québec Ombudsman intervened with the facility to prevent inmates from being released ahead of schedule. Nonetheless, with the marked increase in the number of intermittent sentences and the diverse procedures associated with them, the risk for error remains real.

- 32 According to the information gathered by the Québec Ombudsman, efforts by correctional facility administrators to sensitize the judiciary—notably through a regional justice roundtable—have already borne fruit. In some regions, intermittent sentence procedures are more uniform, thereby making admission and release management easier. The Québec Ombudsman urges the correctional facilities that wish to harmonize the admission and departure times of people with intermittent sentences to discuss the issue with the judiciary in their region, as advocated in Recommendation 15 of this report.

3.1.3 Inadequate information and processing

- 33 As soon as inmates are taken in charge, they are assessed and informed of their rights and obligations.³² In accordance with the normative framework in force,³³ people with intermittent sentences must also, as soon as they arrive, be given the facility's rules,³⁴ which does not always happen. Generally speaking, there are no arrangements for information sessions or documents for these people on Saturdays and Sundays, nor do they usually have access to an employee who could inform them.
- 34 Note, however, that certain facilities systematically distribute information documents to people with intermittent sentences (e.g. short version of the rules of conduct) outlining what they can bring with them while imprisoned, their eligibility for a temporary absence and the procedure for access to their medication. Other

³⁰ MSP, DGSC, data transmitted in September 2016 concerning the week of July 15-21, 2016.

³¹ MSP, DGSC, Instruction 2 1 L 01, *Libération d'une personne incarcérée*, Québec, 2003, sub-section 5.14.

³² *Act respecting the Québec correctional system*, CQLR c. S-40.1, section 12 and following.

³³ *Ibid.*, sections 12, 42, 53, 54 and 55; MSP, DGSC, Instruction 2 1 L 01, *Prise en charge d'une personne incarcérée et gestion des documents légaux*, note 29 cited above, sub-section 5.2.5.

³⁴ United Nations, *Standard Minimum Rules for the Treatment of Prisoners* (hereinafter "Mandela Rules"), 2015, Rule 54.

facilities, including Hull, manage to remedy the lack of information by ensuring that a correctional officer meets everyone with an intermittent sentence individually at admission or no later than the second episode of incarceration. The person is then assessed and given the relevant information concerning eligibility for temporary absences.

Given the preceding, the Québec Ombudsman recommends:

R-1 That the Ministère de la Sécurité publique ensure that correctional facilities that house people with intermittent sentences give them, at their first admission, documents concerning:

- ▶ their rights and obligations;
- ▶ the procedure for access to their prescribed medication;
- ▶ a list of authorized personal effects;
- ▶ the steps for obtaining a temporary absence;
- ▶ the information for reaching a reintegration contact within the correctional facility who takes calls during the week (see R-10);
- ▶ a list of reintegration programs in the region.

3.2 Inadequate infrastructure and shortage of space

- 35 Most Québec correctional facilities predate the year 2000, a time when intermittent sentences were relatively uncommon. Even though there has been a slight increase in the space used for detainees with intermittent sentences, it remains insufficient given that in the last ten years this population has risen and continues to grow. Of the 17 operational correctional facilities, at least five have no specific area³⁵ for people with this type of sentence.
- 36 Since several correctional facilities are already overcrowded, very few directors manage to free up space for weekend detainees. In these circumstances, managers turn to non-traditional spaces. This can mean that the detainees are placed in gymnasiums, rooms for visitors and attorneys, holding cells, classrooms or areas for cultural activities. In some places, people with intermittent sentences are housed at courthouse holding areas in their region.
- 37 These areas are unsuitable because there are no cells or beds. They do not comply with the Ministère de la Sécurité publique's *Guide d'aménagement des infrastructures carcérales*.³⁶ The guide stipulates that people with intermittent sentences must be housed in dormitories specially equipped for that purpose, with bunkbeds, and off limits to the regular prison population at all times.³⁷ Currently, this is not the case, apart from some facilities that opened since the guide was written in 2010.

³⁵ Given their mission, Percé and Rivière-des-Prairies correctional facilities do not take in people with intermittent sentences. The facilities in Rimouski, Trois-Rivières and Hull do not have a specific area for them.

³⁶ MSP, DGSC, *Guide d'aménagement des infrastructures carcérales*, 2010, sub-section 13.3.

³⁷ People with intermittent sentences are choice targets for smuggling contraband items into prison. Since most of the areas used to house them are occupied by the regular prison population during the week, the areas must be searched when the weekend is over.

- 38 In these non-traditional spaces, people are often crammed into the same room, where air quality is poor, heating is inadequate and overcrowding is such that it is difficult to move about, especially when there are mattresses on the floor.

Difficulty accessing toilets and hygiene products

More than 80 people incarcerated in a correctional facility's gymnasium had to share a single toilet for an entire weekend. Other confinement areas, such as visiting rooms, had no washroom, in which case, detainees had to wait until the officers make their rounds before they had access to basic amenities. This violates the Charter of Human Rights and Freedoms, which states that every person arrested or detained must be treated with humanity and with the respect due to the human person. This also breaches international rules that provide, among of things, for reasonable access to sanitary installations and the toiletries required for detainee health and cleanliness.³⁸

- 39 In all correctional facilities, people with intermittent sentences, women and men alike, must have sufficient access to sanitary installations and to basic toiletries at all times. This requirement should be specified in a provincial instruction concerning intermittent sentence management, as advocated in Recommendation 16. Keeping people with diverse profiles and, at times, extensive criminal backgrounds and troubled behaviour, together in confined spaces may:

- ▶ lead to an escalation of tensions, and even episodes of violence;
- ▶ create dangerous situations for the detainees as well as for the people who guard, transport or escort them;
- ▶ contribute to criminalizing certain people who would otherwise have excellent potential for reintegration.

Assaulted because of refusal to smuggle in contraband substances

A man with an intermittent sentence claimed to have been pressured by fellow inmates to smuggle in drugs. Having refused, and fearing reprisal, he failed to check in the following weekends, in violation of the conditions of his sentence. Because of his absence, an arrest warrant was issued for him, and he was taken into custody. When he returned, he was beaten by fellow inmates. According to him, the assault was clearly related to his refusal to provide contraband substances.

- 40 Clearly, overcrowding and intermingling of profiles have an impact on the effectiveness of surveillance, and on the risk incurred by detainees and correctional services employees.

Insufficient surveillance that endangers safety

During an intervention, the Québec Ombudsman noted that there was only one officer to supervise nearly 40 people in a gymnasium for an entire weekend. Supervision was basically carried out by means of a camera, which reduced direct contact between jail staff and the offenders. However, as much as possible, "relations between correctional officers and inmates shall be

³⁸ Charter of Human Rights and Freedoms, COLR c. C-12, section 25. Mandela Rules, note 34 cited above, Rule 15: "The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner." See also Rules 12 and 13. MSP, DGSC, Procédure administrative 3 11 05, Guide de rédaction du régime de vie, Québec 2005 (updated in 2012), sub-sections 1.5 and 1.6.

established with a view to providing assistance and support to such persons while observing their behaviour."³⁹

- 41 The Québec Ombudsman is also critical that the accommodation capacity of many areas used to house people with intermittent sentences (the maximum number of people for a given space) has not been evaluated. Note, however, that there are ratios for regular areas.
- 42 In certain areas used for people serving intermittent sentences which were visited by the Québec Ombudsman, each individual had less than 3 m² of living space. By way of comparison, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) considers that a multiple-occupancy cell must provide at least 4 m² of living space per person. Note that the CPT questions "whether large-scale dormitories accommodating dozens and even up to one hundred inmates"⁴⁰ should even exist.
- 43 Ways of evaluating the accommodation capacity of non-traditional detention areas varies widely from one facility to another.⁴¹ For lack of a formal evaluation method, capacity is often determined based on the floor space available for mattresses or on the number of officers on duty. The Québec Ombudsman feels that this lack of uniformity is due in particular to the absence of Ministère de la Sécurité publique orientations in this regard.
- 44 It was also noted that in most situations where non-traditional detention areas were evaluated, the accommodation capacity was lowered from what it was before. For example, the maximum capacity of an area that held up to 124 inmates was reduced to 90. In another facility, the accommodation capacity for an admission cell that could hold four people was reduced to one person.

Unacceptable overcrowding

When the Québec Ombudsman visited, more than 40 men with intermittent sentences had been put in the gymnasium of a correctional facility from Saturday morning to Sunday afternoon. In the preceding weeks, the number had shot up to more than 60.

The facility had not officially determined the maximum number of temporary occupants. Some 20 men slept on foldaway beds attached to the gymnasium wall, while others lay on mattresses placed on the floor. Since there were not enough chairs, the mattresses were kept on the floor during the day so the

³⁹ *Act respecting the Québec correctional system*, note 32 cited above, paragraph 2 of section 4.

⁴⁰ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Living space per prisoner in prison establishments: CPT Standards*, 2015, CPT/Inf (2015). The CPT's minimum standard for personal living space in prison establishments is 6 m² of living space for a single-occupancy cell (+ sanitary facility) and 4 m² of living space per prisoner in a multiple-occupancy cell (+ fully-partitioned sanitary facility). "As regards large-scale dormitories, accommodating dozens and sometimes even up to one hundred inmates, the CPT has fundamental objections which are not only linked to the question of living space per inmate, but to the concept as such." Note that pursuant to Rule 13 of the *Mandela Rules*, note 34 cited above, "all accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation."

⁴¹ Thus, in some correctional facilities, the municipal fire safety service or the occupational health and safety committee evaluated the maximum capacity of these areas, while in others, it was not done or considered. In further cases, the municipality did not want to address the issue of maximum capacity whatsoever. Note that even for the areas that were evaluated, the ratios that were used varied (from 3.3 m² to 4.6 m² per person).

detainees could sit on them. Between rounds, surveillance was basically carried out by means of cameras.

In another case, detainees complained to the Québec Ombudsman about meals (quantity and distribution). Inmates were being taxed by fellow detainees for food. After the Québec Ombudsman intervened, the facility director and the Direction générale adjointe des services correctionnels assessed the gymnasium's maximum capacity. In the meantime, extra furniture was added and certain ringleaders were placed in another area.

- 45 Lastly, the Québec Ombudsman has noted that there is some disagreement as to the "yardstick" for calculating the accommodation capacity of non-traditional places of detention. For example, after receiving an unsatisfactory opinion from the municipal fire department that reduced the capacity of a dormitory to 12 people, the correctional facility decided instead to use the assessment provided by the Direction de l'expertise de la Société québécoise des infrastructures, which set the number at 61 for the same area.

Insufficient living space per person

In the summer of 2015, the Québec Ombudsman visited a correctional facility in which 98 people serving intermittent sentences were crammed into the same area. In addition to validating certain claims about poor air quality,⁴² the visit also revealed severe overcrowding. It was difficult to move about between the mattresses on the floor. The investigation by the Québec Ombudsman revealed that during the summer, the area had held more than 120 people at one point, a ratio of roughly 2.56 m² per person. No maximum accommodation capacity had been determined for this area.

In January 2016, the municipal fire department had set the capacity at 27 people at all times. The Ministère de la Sécurité publique advised the Société québécoise des infrastructures, which negotiated an agreement with the municipal fire department to have the capacity set at 96 people instead pending a more thorough assessment.

Further to the assessment, the Société québécoise des infrastructures experts determined that the area's maximum capacity should be 90 people. The experts had used an occupation coefficient of 3.3 m² based on what the American Life Safety Code⁴³ considers appropriate for a daycare centre, thereby comparing this type of use for young children to that of an area intended for adults.

⁴² In several areas intended for people serving intermittent sentences, the Québec Ombudsman noticed a strong odour of tobacco and of other contraband substances. Despite strip searches, these detainees manage to hide and smuggle tobacco or drugs into the facility. This alters air quality and increases the risk of regular inmates being supplied with contraband substances. Unlike what is applied for the regular prison population, administrative segregation measures, which consist of isolating an inmate suspected of hiding contraband for up to 72 hours or until the inmate expels the contraband object, are rarely applied to people with intermittent sentences. Recourse to these measures is incompatible with the length of their stay in detention and would deprive the facility of the use of the areas for this purpose by the regular prison population.

⁴³ National Fire Protection Association, NFPA101, *Life Safety Code 2015 edition*, 7.3.1.2.

Given the preceding, the Québec Ombudsman recommends:

R-2 That the Ministère de la Sécurité publique prescribe an occupation rate for the common spaces of all areas intended for the detention of people with intermittent sentences and that the rate be no less than 4m² per person, in keeping with the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

R-3 That the Ministère de la Sécurité publique ensure that the correctional facilities concerned assess the maximum capacity of all the areas that house people with intermittent sentences and comply with the rate prescribed further to Recommendation 2.

3.3 Acute problems for women

- 46 The Québec Ombudsman has observed that women with intermittent sentences must deal with particularly difficult detention conditions. It should be noted that only two correctional facilities house a majority of female inmates—Leclerc de Laval and Québec (women). As a rule, because of the distances and short detention periods involved, women serving intermittent sentences in outlying regions are not transferred. Instead they are held at the men’s correctional facility nearest them. However, in some cases, women are at a disadvantage as soon as they arrive because they are processed after the men. They must wait for more than an hour surrounded by men in line to be searched. Furthermore, lack of equal access to certain advantages granted to male detainees was observed in at least one facility visited (access to the vending machine, television access, etc.).
- 47 Since gymnasiums and other bigger non-traditional detention areas are generally reserved for men, some women with intermittent sentences are kept under poor conditions, for example, in admission holding cells or visiting rooms.

Women under deplorable detention conditions

During a weekend, the authorities at a correctional facility placed eight women with intermittent sentences as follows:

- ▶ *Two in one of the admission holding cells (a single metal bench, a toilet with a separator, no window or access to running water). One of the women slept on the bench and the other on a mattress on the floor;*
 - ▶ *Six others in two cells in a regular area meant to accommodate four people. One of them was 70 years old and another was six months pregnant. Furthermore, because of a problem with the heating, the temperature had plummeted and the women had had to cover themselves with their coats.*
- 48 The Québec Ombudsman considers that the Ministère de la Sécurité publique must solve the problems encountered by women incarcerated in predominantly male correctional facilities and asks that it take this into account in the provincial instruction referred to in Recommendation 16.

3.4 Adverse effects for all detainees

- 49 When facility directors manage to free up an area for people with intermittent sentences, often the regular prison population bears the brunt, whether those serving sentences on consecutive days, or remandees awaiting trial.

- 50 Moreover, resorting to the use of visiting rooms and gymnasiums as detention areas deprives the regular prison population of family visits or physical activity.⁴⁴ Closure of visiting rooms on weekends is especially harmful to detainees whose families are only available then. Furthermore, use of areas intended for instructional or cultural activities for detention purposes deprives the regular client population of pursuits that foster their social reintegration.

Harm for women serving sentences on consecutive days

The regular inmate population in a female detention area was sent to solitary cells when women with intermittent sentences arrived, the former being housed in the living area for part of the day. As the facility's management saw it, this "solution" made it possible to avoid putting women in the visiting rooms where attorneys met with their clients, which have no toilets.

- 51 As mentioned previously, a facility's management must separate people with intermittent sentences from the regular client population for security reasons. At times, in some facilities, both kinds of detainees share space.
- 52 Arguing a lack of monitoring mechanisms, correctional facilities move people serving intermittent sentences to regular living areas for the night.
- 53 Also due to a shortage of space and resources, especially at peak periods, sometimes people with intermittent sentences are placed in isolation cells and even offices. This procedure generally has the effect of depriving these inmates of recreational activities.

People unjustly placed in isolation

A facility that did not have an appropriate area for housing women with intermittent sentences during the week systematically put them in the isolation area intended for people given disciplinary or administrative sanctions. These women found themselves isolated for the two days of their incarceration near a particularly problematic prison population (mostly, frequent screams). After the Québec Ombudsman intervened, they were placed in an area designated for them.

In another facility, people with intermittent sentences were placed in isolation in their cells from 9 a.m. Saturday to 4 p.m. Sunday for several weeks due to a shortage of staff. At the Québec Ombudsman's request, periods when they could leave their cells were organized.

⁴⁴ Note that visiting rooms or gymnasiums may be closed not only because of the need for additional space, but also due to a shortage of staff. For example, the correctional services officers assigned to guard people serving intermittent sentences are not available to supervise the family visits of the regular prison population in the visiting rooms or sports in the gymnasium.

Given the preceding, the Québec Ombudsman recommends:

R-4 That the Ministère de la Sécurité publique prohibit combining people serving sentences on consecutive days with detainees serving intermittent sentences in order to mitigate the shortage of space or staff;

R-5 That the Ministère de la Sécurité publique prohibit recourse to isolation cells to house people with intermittent sentences who should not be put there;

R-6 That the Ministère de la Sécurité publique ensure that every correctional facility concerned introduce mechanisms so that visiting rooms, gymnasiums, workshops, classrooms and rooms for instructional and cultural activities are not used to house people serving intermittent sentences.

3.5 Multiple and problematic transfers

- 54 Many detainees, regardless of the kind of sentence, grapple with the vagaries of overcrowding that often give rise to inter-facility transfers. In some regions, people with intermittent sentences are sent to a facility far from home.
- 55 Every inmate thus transferred is given an "S4" level of restraint (i.e. handcuffs, a handcuff security box and ankle shackles). This standard applies to all inmates, including those with intermittent sentences. This type of transfer is:
- ▶ a direct consequence of the shortage of space;
 - ▶ a violation of residual freedoms;
 - ▶ very costly (transportation costs, salaries of the staff assigned to transfers).
- 56 Note that when the "host" facility transfers a detainee serving an intermittent sentence to another facility, he or she must undergo not just two, but three and even four strip searches per weekend. If it is considered that these people serve an average sentence of 24 days, that is, 12 weekends, the number of estimated strip searches that they will undergo if they are systematically transferred is at least 36. It is important to know that strip searches consist of a visual examination of the naked body during which detainees must open their mouth and show their nostrils and ears. They must remove any hearing aids, dentures, hairpiece or other orthotic device, show the soles of their feet, pull their fingers through their hair, show the palms of their hands, spread and lift their arms, in the case of women, lift their breasts, and, in the case of men, their penis and testicles, and bend over for a visual examination of the anal and vaginal openings. The people undergoing a strip search must allow all the folds of their body to be examined visually. Furthermore, all clothing and belongings must be searched. Barring an emergency, strip searches must be conducted by a person of the same sex as the detainee.⁴⁵
- 57 While there is an obvious problem with the availability of premises and space, the Québec Ombudsman considers that all transfers must be the exception to the rule in order to limit the negative consequences thereof, including those related to strip searches.

⁴⁵ MSP, DGSC, Instruction 2 11 09, *Fouille des personnes incarcérées, des lieux et des véhicules*, Québec, 1985 (updated in 2016), sub-section 5.1.2.1.

Repeated transfers with harmful consequences

People with consecutive-day sentences may also be severely inconvenienced because they are repeatedly transferred to make room for detainees with intermittent sentences. Vulnerable detainees have also paid the price when some of them who were serving consecutive-day sentences were transferred several times to a facility located an hour away by van. These were men with mental disorders who could be particularly perturbed by a move or a change of environment.

To illustrate the organizational shortcomings, take the case of correctional facility A, which contacted the fire department for an assessment of its capacity to house people with intermittent sentences. The assessment showed that the maximum occupancy rate was being exceeded. Some people with intermittent sentences were therefore transferred to facility B. However, because this facility already had a problem with serious overcrowding in the area used for these detainees, it was decided to transfer part of the group to facility C. Since the first two facilities had to foot the bill for the transfers, after a few weeks of operating this way, facility A ended up transferring the overflow directly to facility C.

Given the preceding, the Québec Ombudsman recommends:

R-7 That the Ministère de la Sécurité publique establish a mechanism for coordination among correctional facilities to reduce transfers and searches stemming from the detention of people with intermittent sentences;

R-8 That the Ministère de la Sécurité publique prohibit the transfer of the most vulnerable inmates stemming from the detention of people with intermittent sentences, especially those whose physical or mental health is precarious.

3.6 Disparities in the sanctions for being unlawfully at large

58 Sometimes people with intermittent sentences do not report to the designated correctional facility when they should, with minimal consequences. In certain correctional facilities, the prison staff simply reset the clock that tracks the number of days served to when the offender reports to the facility when he or she sees fit. In such cases, the Québec Ombudsman wonders about the effectiveness of intermittent sentences and their genuine dissuasive effect.⁴⁶

59 The Québec Ombudsman welcomes the initiatives of certain correctional facilities which have developed practices aimed at systematically reporting unlawful absences of people with intermittent sentences to the Sûreté du Québec or the Director of Criminal and Penal Prosecutions.⁴⁷ With a view to consistency and fairness,

⁴⁶ Here, "being at large" is meant broadly and includes escapes and unlawful absences. In 2015-2016, unlawful absences accounted for 38% of the people at large with intermittent sentences. Note that unlawful absences also accounted for 39% of the grounds for detention for these people. In 51% of cases, release occurred because the sentence had expired. MSP, DGSC, data transmitted in September 2016. Note that overcrowding could dissuade certain facilities from reporting instances of being at large unlawfully, given the lack of space and the fact that reporting could prolong the detainee's incarceration.

⁴⁷ As stipulated by MSP's DGSC until 2016, anyone who does not report to the correctional facility at the time stipulated in the warrant of committal must be reported to the Attorney General's Prosecutor for being unlawfully at large. MSP, DGSC, Instruction 3A4, *Administration des sentences intermittentes*, 1993, sub-section 4.3. *Criminal Code*, note 3 cited above, section 145.

the Québec Ombudsman feels that it would be appropriate to specify a procedure for such situations in all of the facilities concerned, while ensuring that people released due to an error by a correctional facility employee are not penalized (see page 14).

Given the preceding, the Québec Ombudsman recommends:

R-9 That the Ministère de la Sécurité publique, in conjunction with law enforcement and legal community stakeholders (judiciary, Ministère de la Justice, Director of Criminal and Penal Prosecutions), prescribe guidelines applicable to all correctional facilities in order to ensure a fair and consistent procedure for reporting instances of people with intermittent sentences being at large unlawfully. The guidelines must provide in particular for measures to address detainees' late reporting or for errors by correctional staff.

4. Promising solutions

60 Between 2014 and 2017, four new facilities became operational, namely, Roberval, Leclerc de Laval, Sept-Îles and Sorel-Tracy. The Amos facility is slated to open in 2018. However, it is likely that these new facilities will not solve the problem of a shortage of space. In fact, Ministère de la Sécurité publique statistics show that in the next few years, the prison population will continue to rise substantially, especially in western Québec.

61 More specifically, the Department expects "a prison population of at least 5,448 in 2023-2024, a 6.8% increase over actual figures for 2013-2014." [translation] While in 2013-2014, overcrowding (117%) evenly affected men and women remanded or given consecutive-day sentences, 260% overcrowding was observed for women serving intermittent sentences and 111% for men.⁴⁸ According to a Department study, the addition of these new facilities will therefore not enable the correctional system to adequately house everyone sentenced by the court or detained while on trial.

62 Moreover, everything points to an increase in the number of people given intermittent sentences. Ministère de la Sécurité publique data reveal that the average daily prison population of people serving intermittent sentences "could reach 698 in 2023-2024."⁴⁹ [translation] Even if added spaces for this client population in the new facilities is factored in, 149% overcrowding is expected for people with intermittent sentences (men and women alike).

4.1 More effective use of temporary absences after one sixth of a sentence

63 Generally, the maximum length of detention in a provincial correctional facility is a fraction of the court sentence and cannot exceed two thirds of the sentence. Beyond this mark, every detainee must be released automatically.

⁴⁸ MSP, DGSC, [Analyse prospective de la population carcérale des établissements de détention du Québec de 2013-2014 à 2023-2024](#), note 20 cited above.

⁴⁹ *Ibid.*

- 64 As of one sixth of their sentence, people with intermittent sentences⁵⁰ may, on request, be granted a temporary absence for reintegration purposes.⁵¹ In other words, if the detainee does not personally request a temporary absence, none will be granted, and he or she will not be released until the sentence expires. Absences cannot exceed 60 days but are renewable.⁵² In real terms, this allows detainees to serve only a part of their sentence in a correctional facility provided they comply with their temporary absence conditions.
- 65 Before a temporary absence for reintegration purposes is authorized, the temporary absence examining board, which makes a recommendation to the facility director, must consider a set of criteria such as the protection of society, the offender's ability to work, the appropriateness of the reintegration plan, and the degree to which the offender assumes responsibility for his or her criminal behaviour.⁵³
- 66 Currently, certain files of detainees with intermittent sentences who qualify for a temporary absence after serving one sixth of their sentence are not examined within the prescribed deadline.
- 67 For people with intermittent sentence to avail themselves of a temporary absence, they must obtain the required information about their eligibility as of their arrival and, if necessary, help drafting their request. Necessary information and adequate assistance would encourage requests and increase the rate of authorization. Not only do people with intermittent sentences usually have excellent potential for reintegration, but prolonged detention is costly.

A worthy example

A correctional facility works with a community resource to inform people with intermittent sentences about the procedure for being granted a temporary absence and the reintegration services offered to them. This facility has reported an increase in temporary absence requests since this resource became involved. Obviously, not everyone with an intermittent sentence qualifies for a temporary absence, but information and support are key factors.

⁵⁰ For people detained after they have been given an intermittent sentence—which cannot exceed 90 days—correctional facility directors (or designated staff) may authorize or deny a temporary absence. The Commission québécoise des libérations conditionnelles is never approached in the context of intermittent sentences because it only examines the files of those given sentences of six months or more. In 2016-2017, the average duration of intermittent sentences handed down by judges was 60.2 days. In the same period, the average number of days these inmates spent in custody was 11.9 days. MSP, DGSC, data transmitted in August 2017.

⁵¹ *Act respecting the Québec correctional system*, note 32 cited above, section 53.

⁵² *Ibid.*, section 55.

⁵³ *Ibid.*, section 14. In 2016-2017, the average daily population of detainees with intermittent sentences granted temporary absences was 96.6 people out of an average daily population of 103.5 people during the week and of 517.7 on weekends (average number of people who sleep at a facility Saturday night). MSP, DGSC, data transmitted in August and October 2017.

Given the preceding, the Québec Ombudsman recommends:

R-10 That the Ministère de la Sécurité publique take measures so that all detainees given intermittent sentences receive, as soon as they are incarcerated, the relevant information about their eligibility for a temporary absence, as well as the required support for drafting their request within the prescribed deadline;

R-11 That the Ministère de la Sécurité publique, in order to encourage the timely use of temporary absences, systematically assess people with intermittent sentences in the correctional facilities concerned, prior to their having served one sixth of their sentence.

4.2 Foster social reintegration

- 68 The Direction générale des services correctionnels of the Ministère de la Sécurité publique and its partners must foster offenders' social reintegration. The purpose is to enable offenders to develop an awareness of the consequences of their behaviour and to find means of changing it and become law-abiding citizens. The Direction générale des services correctionnels is therefore obliged to facilitate offenders' access to specialized programs and services offered by community-based resources to foster their reintegration into society and support their rehabilitation. Such programs and services are designed to initiate the process of solving the problems associated with the delinquency of the offenders, in particular problems of domestic violence, sexual deviance, pedophilia, alcoholism and substance abuse."⁵⁴
- 69 Currently, people with intermittent sentences do not necessarily have access during their incarceration to programs or workshops likely to foster their social reintegration or prevent recidivism. It seems that the staff of several facilities focus on the social reintegration of people with a sentence of six months or more. The Québec Ombudsman nonetheless feels that a short term of incarceration and the multiplicity of profiles of the people with intermittent sentences should not hinder their participation in programs adapted to their needs.⁵⁵
- 70 Hence, many people with intermittent sentences leave the facility without having received useful support while imprisoned. Efforts must be made to foster these people's access to the community resource programs in their region. Any initiative of this kind during custody, even short-term incarceration, could decrease the social costs stemming from incarceration and recidivism.
- 71 More than half of all detainees (consecutive-day or intermittent sentences) are imprisoned for less than one month. More sustained social reintegration efforts at the outset could prevent repeated prison terms. The possible advantages include a

⁵⁴ *Act respecting the Québec correctional system*, note 32 cited above, sections 1 and 22.

⁵⁵ People serving sentences on consecutive days also experience difficulties accessing social reintegration programs. In its 2016-2017 annual report to the National Assembly, the Auditor General of Québec pointed out several remaining deficiencies with regard to the Ministère de la Sécurité publique reintegration process. Auditor General of Québec, *Report of the Auditor General of Québec to the National Assembly for 2016-2017*, Fall 2016, Chapter 5, Performance Audit, Correctional Services: Reintegration.

decrease in the prison population and in custody costs, as well as improved detention conditions for the other people who must be incarcerated.

- 72 Note that several Canadian provinces already have programs and workshops that foster the social reintegration of people with intermittent sentences. In Ontario, special programs have been created for women with intermittent sentences and substance abuse offences.⁵⁶ Thanks to these programs, offenders receive customized support (information on healthy lifestyles, demonstration of the impact of their behaviour on society, etc.).
- 73 In Québec, certain facilities work with community resources and actively encourage people with intermittent sentences to join addiction treatment and drug relapse prevention programs in their territory. In the Québec Ombudsman's opinion, this kind of initiative must extend to all facilities.
- 74 Certain communities already have a number of programs, in particular, those intended for people with problems of addiction. The correctional facility in Rimouski uses the services of a community resource⁵⁷ in the field of addiction treatment. Recently, programs started being offered over several weekends. There are also programs for women.
- 75 In light of these experiences, the Québec Ombudsman feels that workshops and programs are conducive to enhancing these people's awareness and accountability regarding the offences committed.

Given the preceding, the Québec Ombudsman recommends:

R-12 That the Ministère de la Sécurité publique and the directors of the correctional facilities concerned develop a slate of services, programs or workshops to foster social reintegration and prevent the recidivism of people handed down intermittent sentences.

4.3 Give priority to alternatives to incarceration

- 76 In Québec, detainees generally serve their intermittent sentences in correctional facilities.⁵⁸ To free up detention space, facility directors have had to adopt temporary solutions such as those described in section 3 of this report.
- 77 More than 20 years ago, further to concerns expressed in particular by detention staff in several Canadian provinces, the *Criminal Code* was amended by adding the following condition for handing down an intermittent sentence: "the availability of appropriate accommodation to ensure compliance with the sentence."⁵⁹ The purpose of the addition is to encourage the judiciary to consider the space available within the region where the sentence is to be served before passing sentence.

⁵⁶ Correctional and Justice Services Ottawa, Salvation Army, Intermittent Community Work Program and Intermittent Community Work Program Substance Use Program.

⁵⁷ In Rimouski in January 2017, between 6 and 8 people participated in the program through Arc-en-soi.

⁵⁸ Due to a shortage of space, people with intermittent sentences are sometimes housed in a courthouse cell block. However, this alternative means that great numbers of staff guard these premises, which is not always financially advantageous.

⁵⁹ *Criminal Code*, note 3 cited above, section 732(1).

- 78 In the early 2000s, consultations also took place between the federal government and stakeholders from the Canadian provinces to propose changes to the intermittent sentence system. Legislative amendments were suggested, notably to incite the judiciary to verify whether a correctional facility has place for an offender before passing an intermittent sentence.⁶⁰
- 79 At the same time, Justice Canada seemed receptive to the idea of the provinces developing alternatives to imprisonment in a correctional facility for people with intermittent sentences.⁶¹ It proposed modifying the intermittent sentence system so that people could serve their sentence through regular community programs.⁶² This proposal stemmed, at least partly, from the concerns of facility directors, who already foresaw difficulties with applying this kind of sentence. Today, we know that these proposals did not yield concrete results, but they remain of interest nonetheless.
- 80 Since the early 2000s, several Canadian provinces⁶³ have implemented measures to enable people with intermittent sentences to serve their sentence outside correctional facilities. In addition to reducing the prison population and improving the detention conditions of other detainees, the programs that were developed foster these people's social reintegration. They are now provided with follow-up and can become involved in their milieu, notably through participation in community work.

Examples from Alberta and Ontario

In 1994, Alberta established a supervised, community-based work program⁶⁴ for people with intermittent sentences. There are strict eligibility requirements for admission to the program.

The participants report to the correctional facility to be assessed. Then a committee ensures that the steps proposed for the offender are appropriate by conferring with a prospective employer, educational institution or the family. The committee goes on to make a recommendation to the facility director, who approves the offender's temporary absence to carry out certain activities in the community.

These temporary absences are also used to allow offenders to participate in other social reintegration programs. One of them includes house arrest. The participants agree to stay home according to a pre-determined schedule and

⁶⁰ Justice Canada Roundtable Consultation on Intermittent Sentences, *Report of proceedings*, Toronto, 2002. This legislative amendment was not passed and the legislative requirements for handing down an intermittent sentence remained unchanged. Note, however, that there are many more intermittent sentences now than there were then and correctional facility managers in Québec have similar concerns.

⁶¹ *Ibid.* While, at the time, the federal government and certain Canadian provinces preferred maintaining this type of sentence, most provinces would have preferred to opt out, which would have enabled them to avoid handing down such sentences in their jurisdiction.

⁶² Barreau du Québec, *Letter by the Bâtonnier to the Minister of Justice of Canada*, note 8 cited above. The proposal consisted in explicitly allowing the provinces to implement correctional programs outside an institutional setting in their jurisdiction or a portion thereof.

⁶³ For example, in Manitoba, very few people given intermittent sentences serve them in a correctional facility. When detainees have served one sixth of their sentence, they may go home to sleep after community work or treatment. After one sixth of the sentence has expired, the correctional facility director may also grant a temporary absence to people with intermittent sentences with a view to rehabilitation or to enable them to work outside the facility. However, they must go back to the facility to sleep or remain at the treatment centre concerned.

⁶⁴ Work varies and includes upkeep of local parks, cemeteries and campgrounds, painting and repairing community spaces, grooming hiking and ski trails, and removing litter from highways. The detainees may also mow lawns or shovel snow for seniors or people with disabilities.

to report to a local centre for community work or addiction treatment, as the case may be. Everything is closely supervised. Offenders are informed about this program as soon as they are admitted to the facility. The same options are also available prior to one sixth of their sentence.

Ontario also created community programs for people with intermittent sentences. Eligible participants are chosen based on strict requirements⁶⁵ and only if they acknowledge their offences and display a certain degree of accountability. They do supervised community work such as housekeeping, repairs or support for the elderly or people with disabilities. The purpose of the program is to foster ties between offenders and their community. The Ministry of Community Safety and Correctional Services therefore signed an agreement with Springboard.⁶⁶ Offenders report to the facility the first weekend and can ask to be part of the community work program instead of being imprisoned. They are assessed and if they qualify, they are granted a temporary absence to go to a designated location to do work on Saturdays and Sundays. Generally, the participants commit to staying home weekend nights. There are spot checks to ensure that the participants abide by their commitments. The facility monitors the participants rigorously, notably to assess their work. Participation is terminated if the person displays unacceptable behaviour or is absent.

- 81 Another solution would be to house people with intermittent sentences elsewhere than at correctional facilities. This is what the Ministère de la Sécurité publique du Québec provided for in its former instruction concerning the administration of intermittent sentences: "lodging in a community resource or other location outside the facility under the supervision of correctional staff." [translation] This instruction also specified that lodging should be chosen based on "the facility's capacity, the number of people with intermittent sentences and their distribution in the territory served."⁶⁷ [translation]
- 82 Certain forms of alternative custody, including supervised days within a community resource, would make it possible to strike the balance⁶⁸ sought in handing down this kind of sentence.⁶⁹ This is what certain Canadian provinces have opted for. Alternatives could be more effective than a short time in custody in solving the problems that led to these people's criminalization.
- 83 For now, in Québec, this kind of community program is only accessible when the detainee has served one sixth of the sentence, unless exceptional circumstances exist. Amendments to the *Act respecting the Québec correctional system*

⁶⁵ People incarcerated for more serious offences such as those of a sexual nature or involving spousal violence are not eligible for this type of program.

⁶⁶ Springboard is an organization mandated in 2005 by the Government of Ontario to manage community programs available to qualifying male detainees serving intermittent sentences in 15 correctional facilities. An equivalent for women serving intermittent sentences is offered by the Elizabeth Fry Society.

⁶⁷ MSP, DGSC, Instruction 3A4, *Administration des sentences intermittentes*, note 47 cited above. This Instruction has not been in effect since December 2016 due to its "lack of operational feasibility." "The increase in the use of intermittent sentences by the courts has led to problems different from those at the time of the former instruction." [translation] Extract of a conversation between the Québec Ombudsman and DGSC, March 6, 2017.

⁶⁸ *R. v. Middleton*, note 7 cited above, paragraph 45, citing *R. v. Fletcher* (1982), 2 C.C.C. (3d) 221: "Intermittent sentences strike a legislative balance between the denunciatory and deterrent functions of 'real jail time' and the rehabilitative functions of preserving the offender's employment, family relationships and responsibilities, and obligations to the community."

⁶⁹ The detainees would not necessarily have to sleep at the resource's facilities but could go home after their time in the program in question.

concerning the requirements for obtaining a temporary absence would bolster such initiatives.

Given the preceding, the Québec Ombudsman recommends:

R-13 That the Ministère de la Sécurité publique, in collaboration with the Ministère de la Justice, the judiciary, the Director of Criminal and Penal Prosecutions and the Ministère de la Santé et des Services sociaux, carry out an analysis to determine the best alternatives to incarceration of people with intermittent sentences that could be implemented in Québec;

R-14 That the Ministère de la Sécurité publique establish alternatives to the incarceration of people with intermittent sentences in every region of Québec and, if necessary, request an amendment of the *Act respecting the Québec correctional system* to enable the inmates who meet the requirements that will have been determined to serve their time outside a facility as soon as detention begins.

4.4 General issues

- 84 Recommendations 1 to 14 are intended to respond to specific issues. However, the numerous problems brought to light in this report concerning the use of intermittent sentences cannot be resolved without a comprehensive view of the situation and sustainable solutions.
- 85 In this respect, it is crucial that the Ministère de la Sécurité publique (provincial level) and each correctional facility (regional level) begin or continue the dialogue with the legal community—judges, crown attorneys, defence attorneys, police officers, Ministère de la Justice representatives—to make them aware of the reality of prison life and to deliberate on solutions together. This, in fact, is what facility directors in certain regions have already done. The positive effects of this exchange of information and viewpoints are undeniable.
- 86 Furthermore, the lack of provincial rules concerning the management of intermittent sentences necessarily leads to substantial disparities among facilities, which in turn creates inequalities between people depending on where they are imprisoned. A provincial instruction must be drafted and prescribed by the Ministère de la Sécurité publique to guide correctional facility staff adequately in this regard.
- 87 As we saw in section 2.3, the number of *Criminal Code* offences for which a minimum mandatory sentence must be handed down and for which a conditional sentence can no longer be given has risen substantially in the last decade. These legislative amendments have contributed to the increase in intermittent sentences imposed by the courts.
- 88 The Ministère de la Justice du Québec would be well advised to inform the federal government and make it aware of the consequences of some of these legislative amendments. This could be achieved within the framework of the federal, provincial and territorial coordinating committee of senior officials for criminal justice. By informing the federal government about the many stumbling blocks encountered by people given this type of sentence, it would be able to gauge the relevance of a review of the *Criminal Code* to give judges greater discretion in sentencing, as was the case before.

Given the preceding, the Québec Ombudsman recommends:

R-15 That the Ministère de la Sécurité publique and the Ministère de la Justice ensure that correctional facility authorities as well as the law enforcement and justice communities (representatives of the judiciary, of the Ministère de la Justice, of the Director of Criminal and Penal Prosecution and of defence attorneys) of each region work together to develop solutions for the problems (e.g. inconsistent arrival and departure times) caused by massive reliance on intermittent sentences;

R-16 That the Ministère de la Sécurité publique create and implement, by December 1, 2018, a provincial instruction for correctional facility staff concerning the management of intermittent sentences. The instruction should take into account the recommendations made and issues raised in this report, notably the special situation of female inmates in outlying regions, sufficient access at all times to sanitary installations and essential toiletries, and the minimum space ratio required in detention areas;

R-17 That the Ministère de la Justice du Québec, possibly in collaboration with its counterparts from other provinces and territories, sensitize the federal government to the impact of the increase in the number of *Criminal Code* offences with a minimum mandatory sentence and for which a conditional sentence is no longer possible, on the number of intermittent sentences.

Concerning follow up to the recommendations of this report, the Québec Ombudsman recommends:

That the Ministère de la Sécurité publique, in collaboration with the Ministère de la Justice, no later than June 1, 2018, send it a work plan for the follow up to the recommendations of this report and inform it of the status of the plan as at December 1, 2018, and subsequently, according to a time table to be determined.

Appendix 1 – Glossary

Terms ⁷⁰	Definitions
Admission	Process of registering a person at a correctional facility who has been imprisoned pursuant to a warrant of committal. It is valid for the duration of preventive detention or the prison sentence further to the person being found guilty, except for people with intermittent sentences, who must repeat part of the process at each episode of incarceration.
Cell confinement	Obligation for a detainee to remain in his or her cell.
At large unlawfully	Situation of a person who is at large while, legally, they should be in custody.
Person serving a sentence on consecutive days	Person serving a sentence on consecutive days after being found guilty of breaking a law or a regulation.
Remandee	Person held in a correctional facility pending trial or a verdict.
Person with an intermittent sentence	Person who serves a sentence that does not exceed 90 days within a correctional facility at the times and with the conditions prescribed by order of the court. ⁷¹
Probation	Court order that includes mandatory conditions (e.g. supervision by a probation officer). The maximum length of enforcement of a probation order is three years. For probation orders that involve intermittent sentences, offenders must comply with the conditions prescribed in the order for the duration of their sentence.
Protection	When inmates are segregated from the regular prison population for their protection due to the nature of their offences, behaviour, the job they had before their incarceration or for other safety reasons.
Isolation (administrative segregation)	Obligation for a detainee to remain in a cell in a specific area.
Conditional sentence of imprisonment	Court order enabling a person found guilty of an offence, other than one for which a minimum sentence is provided, and sentenced to two years or less, to serve his or her sentence in the community and abide by the imposed conditions.

⁷⁰ The definitions contained in this glossary are based on the following documents: *Criminal Code*, note 3 cited above; MSP, DGSC, Instruction 1 0 V 01, *Lexique des termes utilisés dans les politiques, instructions, procédures administratives [...]*, note 25 cited above; MSP, DGSC, Instruction 2 1 I 01, *Prise en charge d'une personne incarcérée et gestion des documents légaux*, note 29 cited above; MSP, DGSC, Instruction 2 1 I 03, *Classement d'une personne incarcérée dans un établissement de détention*, Québec, 2014; *Regulation under the Act respecting the Québec correctional system*, CQLR, c. S-40.1, r. 1.

⁷¹ Note that when several intermittent sentences are put back to back, a person may serve an overall sentence of more than 90 days intermittently.

Appendix 2 – List of recommendations

The Québec Ombudsman recommends:

R-1 That the Ministère de la Sécurité publique ensure that correctional facilities that house people with intermittent sentences give them, at their first admission, documents concerning:

- ▶ their rights and obligations;
- ▶ the procedure for access to their prescribed medication;
- ▶ a list of authorized personal effects;
- ▶ the steps for obtaining a temporary absence;
- ▶ the information for reaching a reintegration contact within the correctional facility who takes calls during the week (see R-10);
- ▶ a list of reintegration programs in the region.

R-2 That the Ministère de la Sécurité publique prescribe an occupation rate for the common spaces of all areas intended for the detention of people with intermittent sentences and that the rate be no less than 4m² per person, in keeping with the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

R-3 That the Ministère de la Sécurité publique ensure that the correctional facilities concerned assess the maximum capacity of all the areas that house people with intermittent sentences and comply with the rate prescribed further to Recommendation 2.

R-4 That the Ministère de la Sécurité publique prohibit combining people serving sentences on consecutive days with detainees serving intermittent sentences in order to mitigate the shortage of space or staff;

R-5 That the Ministère de la Sécurité publique prohibit recourse to isolation cells to house people with intermittent sentences who should not be put there;

R-6 That the Ministère de la Sécurité publique ensure that every correctional facility concerned introduce mechanisms so that visiting rooms, gymnasiums, workshops, classrooms and rooms for instructional and cultural activities are not used to house people serving intermittent sentences. **R-7 That** the Ministère de la Sécurité publique establish a mechanism for coordination among correctional facilities to reduce transfers and searches stemming from the detention of people with intermittent sentences;

R-8 That the Ministère de la Sécurité publique prohibit the transfer of the most vulnerable inmates stemming from the detention of people with intermittent sentences, especially those whose physical or mental health is precarious.

R-9 That the Ministère de la Sécurité publique, in conjunction with law enforcement and legal community stakeholders (judiciary, Ministère de la Justice, Director of Criminal and Penal Prosecutions), prescribe guidelines applicable to all correctional facilities in order to ensure a fair and consistent procedure for reporting instances of people with intermittent sentences being at large unlawfully. The guidelines must provide in particular for measures to address detainees' late reporting or for errors by correctional staff.

R-10 That the Ministère de la Sécurité publique take measures so that all detainees given intermittent sentences receive, as soon as they are incarcerated, the relevant information about their eligibility for a temporary absence, as well as the required support for drafting their request within the prescribed deadline;

R-11 That the Ministère de la Sécurité publique, in order to encourage the timely use of temporary absences, systematically assess people with intermittent sentences in the correctional facilities concerned, prior to their having served one sixth of their sentence.

R-12 That the Ministère de la Sécurité publique and the directors of the correctional facilities concerned develop a slate of services, programs or workshops to foster social reintegration and prevent the recidivism of people handed down intermittent sentences.

R-13 That the Ministère de la Sécurité publique, in collaboration with the Ministère de la Justice, the judiciary, the Director of Criminal and Penal Prosecutions and the Ministère de la Santé et des Services sociaux, carry out an analysis to determine the best alternatives to incarceration of people with intermittent sentences that could be implemented in Québec;

R-14 That the Ministère de la Sécurité publique establish alternatives to the incarceration of people with intermittent sentences in every region of Québec and, if necessary, request an amendment of the *Act respecting the Québec correctional system* to enable the inmates who meet the requirements that will have been determined to serve their time outside a facility as soon as detention begins.

R-15 That the Ministère de la Sécurité publique and the Ministère de la Justice ensure that correctional facility authorities as well as the law enforcement and justice communities (representatives of the judiciary, of the Ministère de la Justice, of the Director of Criminal and Penal Prosecution and of defence attorneys) of each region work together to develop solutions for the problems (e.g. inconsistent arrival and departure times) caused by massive reliance on intermittent sentences;

R-16 That the Ministère de la Sécurité publique create and implement, by December 1, 2018, a provincial instruction for correctional facility staff concerning the management of intermittent sentences. The instruction should take into account the recommendations made and issues raised in this report, notably the special situation of female inmates in outlying regions, sufficient access at all times to sanitary installations and essential toiletries, and the minimum space ratio required in detention areas;

R-17 That the Ministère de la Justice du Québec, possibly in collaboration with its counterparts from other provinces and territories, sensitize the federal government to the impact of the increase in the number of *Criminal Code* offences with a minimum mandatory sentence and for which a conditional sentence is no longer possible, on the number of intermittent sentences.

Concerning follow up to the recommendations of this report, the Québec Ombudsman recommends:

That the Ministère de la Sécurité publique, in collaboration with the Ministère de la Justice, no later than June 1, 2018, send it a work plan for the follow up to the recommendations of this report and inform it of the status of the plan as at December 1, 2018, and subsequently, according to a time table to be determined.

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