



LE PROTECTEUR DU CITOYEN

Assemblée nationale
Québec

Special report by the Québec Ombudsman

**Contesting the continuance of institutional confinement before the Tribunal
administratif du Québec: for prompt, accessible recourse**

Québec City, October 10, 2018

Summary

Under certain very specific conditions, health and social services institutions may keep persons confined against their will if their mental state presents a danger to themselves or to others. Confinement is governed in particular by the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others* (P-38.001) and by the *Civil Code of Québec*.

There are three kinds of confinement:

- 1. Preventive confinement:** maximum duration of 72 hours, decided by a hospital centre physician.
- 2. Temporary confinement:** maximum duration of 96 hours as of the order or of 48 hours if the person is already under preventive confinement. It is ordered by a Court of Québec judge so that the person can undergo psychiatric examination.
- 3. Institutional confinement:** ordered by a Court of Québec judge when the results of the psychiatric examination conducted while the person was under temporary confinement indicate the need to keep the person in an institution because of the level of danger her or she poses. The judge determines the duration and place of confinement. If confinement is ordered for more than 21 days, the person must be examined periodically to ascertain whether continued confinement is necessary.

A person under **institutional confinement** may contest its continuance before the Tribunal administratif du Québec (TAQ). The tribunal must hear the person's motion and rule on it **urgently**.

The investigation by the Québec Ombudsman concerned TAQ's wait times in handling applications contesting continued institutional confinement. It showed that in 2015-2016 and 2016-2017, **only 17% of the cases closed by TAQ had been the subject of a hearing decision**. This means that 83% cases were closed because confinement was lifted or ended or because the applicant withdrew the motion.

In the Québec Ombudsman's opinion, **TAQ's lengthy delays in processing applications contesting the continuance of institutional confinement limit genuine accessibility to this form of recourse for citizens**.

Findings and recommendations by the Québec Ombudsman

- 1. Deficient training of health institution personnel concerning the legal framework for institutional confinement**

Due especially to high staff turnover in health institutions, sometimes personnel are not familiar with the legal obligations and procedure for confinement. Consequently, the Québec Ombudsman recommended that the Ministère de la Santé et des Services sociaux (MSSS) take the measures needed to **improve the training of the personnel of institutions** that provide services to people under confinement (Recommendation 1).

- 2. Shortcomings in the information about recourse through the Québec Ombudsman**

Health institution staff must assist anyone who wishes to file a motion with TAQ. The Québec Ombudsman saw that numbers of health professionals are unaware that people who contest continuance of their confinement may avail themselves of the Québec Ombudsman's services if they feel they have been harmed because of TAQ's processing delays. The Québec Ombudsman therefore recommended that MSSS and TAQ take the measures needed to **ensure that those under confinement and the various persons who represent or assist them be informed about the recourse available through the Québec Ombudsman** (Recommendations 2 and 3).

3. Flaws in the procedure for acknowledging filed motions

TAQ mails its acknowledgements of receipt to the parties. As a result, sometimes the applicants or their representatives receive them several days and even weeks after motions were filed. The Québec Ombudsman therefore recommended that TAQ **take the measures needed to quickly provide applicants or their legal representatives with confirmation that the motion has been filed**. TAQ should at the same time inform the person that he or she will be notified of the date, time and place of the hearing 48 hours ahead of time (Recommendation 4).

4. Deficient file documentation

TAQ's self-imposed deadline for holding hearings is 10 days. Based on the data examined by the Québec Ombudsman from 2015 to 2017, the average wait time for scheduling a hearing was 17 days. This is only an estimate because TAQ does not collect the information that would enable accurate documenting of processing delays. That is why **the Québec Ombudsman recommended that TAQ document the stages in processing contested continuance of institutional confinement as well as the reasons for postponed hearings or suspended processing of motions** (Recommendation 5).

Furthermore, for a better grasp of the causes of delays, the Québec Ombudsman recommended that TAQ carry out an annual analysis of the different elements, including trends in motion volume and the reasons for the cancellation of hearing days (Recommendation 6).

5. Deficient access to recourse

The Québec Ombudsman noted that when hearings are held at health institutions, the average delay for holding them is roughly 22 days. However, when video hearings are used, the delay is nine days. The constraints involved in organizing and holding hearings in health institutions prolongs delays and limits the number of motions heard. That is why **the Québec Ombudsman recommended that TAQ foster the use of video hearings for judges to urgently hear and rule on contested continuance of institutional confinement** (Recommendation 7).