

THE EXPLOITATION OF THE ELDERLY

**Report on the implementation
of the recommendations
made in the report**

Towards a Tightened Safety Net

Report adopted at the 501st meeting of the commission,
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I N T R O D U C T I O N

On December 6, 2001, the Commission released a consultation report on the exploitation of the elderly, published in an abridged English version as *Towards a Tightened Safety Net*.

The consultation process led the Commission to realize that vulnerable elderly people were exposed not just to exploitation, especially economic exploitation, but also to a number of other common situations which could result in infringements of their fundamental rights.

The Commission's observations focused on living conditions for the elderly, and also on the care and services that must be provided if their rights are to be respected. Among other things, the Commission's report highlighted grave deficiencies in the training provided for people and organizations working with the elderly, a lack of understanding of the rights of the elderly and the recourses available in cases of abuse, neglect or exploitation, and the obstacles that prevent the elderly from exercising recourse.

After analysing various situations, the Commission made a set of recommendations that targeted a number of players: the government of Québec and public bodies, professional orders, financial institutions, and the managers of public and private residential facilities.

The Commission gave an undertaking to ensure that its recommendations were implemented, and to report on the results obtained. To this end, the Commission set up a monitoring committee, composed of members of its personnel, and asked the authorities to which its recommendations were addressed to designate respondents to provide information on the measures implemented in the wake of the consultation report. The Commission expresses its thanks here to all who participated.

This report presents all the information gathered, whether from oral or written communications between the committee members and the respondents, or from an analysis of various documents, including governmental guidelines, commitments and action plans.

The report addressed the five main themes that underlay the Commission's recommendations: care and services for the elderly, training for people working with the elderly, legal concerns, recourses, and information. Under each heading, a short review of the problems identified during the consultation process and the related recommendations is given. Next comes a list of the responses made and, in some cases, a description of the current situation. Last, other observations are made and new recommendations may be presented.

In the consultation report, the Commission undertook to publish a report on the implementation of its recommendations, and also to step up its efforts to provide information and training, update its position on the gender-based assignment of positions in health and social services institutions, and provide guidelines for care workers to help them assess the need to report a possible exploitation situation of an elderly person to the Commission. This report also covers the response made to all these commitments.

CHAPTER ONE CARE AND SERVICES FOR THE ELDERLY

1.1 ORGANIZATION AND DELIVERY OF CARE AND SERVICES

In December 2003, the National Assembly passed the *Act respecting local health and social services network development agencies*¹, which established the local health and social services development agencies and made them responsible for setting up, in each region of Québec, an integrated health and social services organization. In addition, the agencies took over the powers and duties of the former regional health and social services boards.

The Act also provided for the creation of local authorities, generally known as “health and social services centres” (centres de santé et de services sociaux, or CSSS), resulting from the merger of CLSCs (local community service centres) and CHSLDs (residential and long-term care centres) and, where applicable, hospital centres providing general and specialized care, which however retain their respective functions.

Each CSSS is at the centre of a local health and social services network (réseau local de services, or RLS), that includes all the partners in a given territory: *medical clinics, pharmacists, community organizations, social economy enterprises, and private resources in the territory, such as those providing residential services*. The local network is expected to provide a more complementary offer of services, and to make it easier for people to move through the system of primary, secondary and tertiary care offered by the partners in the network.

The new structures are intended to provide users with services where they are needed, and to ensure continuity in the delivery of care and services.

On December 10, 2004, the Minister of Health and Social Services tabled Bill 83² in the National Assembly to support and specify certain aspects of the reform, not only in connection with service and care delivery structures, but also with regard to users’ rights and recourses³.

1 S.Q. 2003, c. 21.

2 *Act to amend the act respecting health services and social services and other legislative provisions*, 1st session, 37th legislature, Québec, 2004.

3 Press release issued on December 10, 2004, by Philippe Couillard, Minister of Health and Social Services. Public hearings on the Bill have been scheduled for February 9, 2005.

1.2 HOME CARE SERVICES

PROBLEMS IDENTIFIED DURING THE CONSULTATION PROCESS

- ▶ Elderly people experiencing a loss of autonomy do not have access to a set of homecare services that respond adequately to their needs, in either quantitative or qualitative terms.
- ▶ Not enough services are provided for natural caregivers.
- ▶ Businesses and organizations providing home care services for the elderly require supervision.

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RECOMMENDATIONS OF THE COMMISSION

- ▶ Take steps to allow CLSCs, effectively and as quickly as possible, to dispense the services required by elderly people experiencing a loss of autonomy.
- ▶ Adopt measures to guarantee sufficient information, training, support, self-help and time-out services to meet the needs of natural caregivers.
- ▶ Adopt measures to ensure that private sector firms, social economy enterprises and community agencies providing homecare services to the elderly are subject to control mechanisms and standards, in particular with regard to personnel training.

CURRENT SITUATION

▶ Delivery of services to the elderly

The ministerial orientations of the Ministère de la Santé et des Services sociaux (MSSS)⁴ state that a review of the way in which services are delivered to the elderly has been scheduled. In the short term, in other words within five years, the MSSS intends to meet the needs created by disabilities. Over the long term, in other words within ten years, the MSSS undertakes to *reorganize social and health services to adjust them to the new needs of an aging population, taking the age pyramid into account*⁵ (our translation).

One of the first priorities set out in the ministerial orientations is support for elderly people living at home or, in other cases, in private residential facilities, where the facility becomes their new home.

Needs assessment and service organization

Continuity must be ensured in services adapted to the needs of the elderly, with monitoring provided by a CLSC, family medicine group or community organization. The MSSS has created the new position of “case manager”, in other words a person responsible for monitoring an individual’s progress through the system and gaining access to the required services. According to information received from the MSSS, the measure has already been implemented in several regions and will be gradually extended to other regions.

4 MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *Orientations ministérielles sur les services offerts aux personnes âgées en perte d'autonomie*, Québec, February 2001.

5 *Id.*, p. 5.

In addition to this new position, the “multi-clientele tool”⁶ will be used to assess client needs and is one of the fundamental components in the reorganization of resources and their allocation⁷ (see point 1.5 concerning the allocation of budget and resources, on p. 14).

The MSSS plans to improve access to primary services, extend home support services, and offer the same range of services in all CSLCs. It also plans to extend and coordinate the services provided in the community: day centres and day surgery, support for families and non-institutionalized accommodation. While giving priority to home support and the related integration of services, the MSSS has planned a substantial increase in the number of beds available in residential and long-term care centres⁸. The reorganization of home care services was announced in a policy on support services in the home adopted in 2003⁹, which will be followed by a plan of action.

Under the new policy, presented as a *province-wide strategy for home-based support (Politique, p. 12 – our translation)*, the first option for the elderly should always be for them to remain in their homes, even if they need minor surgery or surgery that can be performed in a day centre. However, individuals must be left free to choose, based on their home environment, and their choice must be neutral for them in financial terms.

As stated in the document, if access to services is to be simple and fair, the implementation of the policy will involve consolidating the CLSC as the single access point to services, adopting clear and universally-applicable eligibility criteria, specifying public service coverage, and harmonizing intervention approaches.

To ensure the continuity and proper coordination of services, implementation will also involve assigning clinical responsibility for coordination to primary care providers, establishing formal links between the sites where care is provided, and adapting communication methods.

Last, to ensure the provision of high-quality services, the implementation of the policy will involve improving basic and ongoing training for personnel members by integrating in better ways the human and technical aspects of home care, implicating users in assessing the quality of the services provided, and better access to the recourse mechanisms established under the *Act respecting the health and social services ombudsman*.

Investment through public-private partnerships

In February 2003, in an opinion¹⁰ presented to the Minister of Health and Social Services, the Health and Social Services Ombudsman, Lise Denis, recommended that the money required to reorganize home care services be invested immediately. She observed that, even though residential accommodation should be seen as a last resort, admission to an institution was often the only way to give patients access to the services they required, because of the lack of home care resources.

6 The “case manager” position and introduction of the “multi-clientele tool” may help address the Commission’s concerns about consideration for the particularities of people from ethno-cultural or Native communities when meeting their needs.

7 MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *L’allocation des ressources et la budgétisation des services de CLSC et de CHSLD – Rapport du Comité sur la réévaluation du mode de budgétisation des centres locaux de services communautaires (CLSC) et des centres d’hébergement et de soins de longue durée (CHSLD)*, Québec, 2002.

8 MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *Plan de la santé et des services sociaux – Pour faire les bons choix*, Québec, 2002.

9 MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *Chez soi: le premier choix. La politique de soutien à domicile*, Québec, 2003. This policy replaces the *Cadre de référence sur les services à domicile de première ligne* of 1994.

10 PROTECTEUR DES USAGERS EN MATIÈRE DE SANTÉ ET DE SERVICES SOCIAUX, *Les services à domicile – Vivre parmi les siens, en sécurité et dans la dignité. Les attentes des usagers et de leurs proches à l’égard des services à domicile, telles qu’exprimées par les plaintes adressées au Protecteur des usagers en matière de santé et de services sociaux*. Brief presented to François Legault, Minister of State for Health and Social Services by Lise Denis, February 2003.

In July 2004, in a press release, the Minister of Health and Social Services announced the injection of recurrent funding of \$12 million for the program “Pour un nouveau partenariat au service des aînés” (*a new partnership to help the elderly*).

The new partnership is between health and social services centres and private partners such as municipal housing bureaus, community organizations and home care cooperatives. Under the program, the MSSS will make it possible for elderly people with a severe loss of autonomy to remain in their homes or in an equivalent type of accommodation that suits their needs, rather than be automatically directed to a residential and long-term care centre. In all cases, health services will be dispensed by the health and social services network. In 2004, funding was provided for 12 pilot projects in ten different regions.

6

► **Support for family members providing care for an elderly person**

The home care policy states from the outset that it is *founded on recognition for the contribution made by natural caregivers and families that [...] provide three-quarters of the assistance required by the disabled* (*Politique*, p. 3 – our translation). The status of natural caregivers will be recognized and they will be given access to a range of services: time-out measures, care by third persons, and information and training tools.

► **Services offered by businesses and organizations**

With regard to care providers outside the CLSC network, such as community organizations, social economy enterprises, private agencies and individually-contracted workers, the MSSS undertakes in its home care policy (*Politique*, p. 27) to impose quality standards that will apply throughout Québec. The MSSS also undertakes to design tools to help users and their families choose care providers effectively.

1.3 PRIVATE RESIDENTIAL FACILITIES FOR THE ELDERLY

PROBLEMS IDENTIFIED DURING THE CONSULTATION PROCESS

- Some elderly people with a severe loss of autonomy are housed in private residential facilities, whereas their condition requires them to be admitted to more adequate accommodation.
- There are problems connected to the supervision of residential facilities operating without an MSSS permit, whose clientele includes elderly people with a severe loss of autonomy. Corrective measures cannot be imposed if a complaint is filed and proved; currently, the only measure that can be applied is to evacuate the home and move all the people living there to other accommodation.
- There is a shortage of intermediate residential resources and family-type resources known as homes for the elderly, and of social housing with services adapted to the needs of elderly people with a loss of autonomy.
- There are disparities between the residential facilities in terms of services, care and physical layout, and some residential facilities do not offer a safe living environment.
- There are no Québec-wide standards for private residential facilities for the elderly, except construction standards for facilities of 10 bedrooms or more, which require a permit from the Régie du bâtiment.
- Users do not properly understand the standards and conditions governing the residential accommodation provided by each home.

RECOMMENDATIONS OF THE COMMISSION

- Provide a clear definition of the status and role of private facilities, including a guarantee that the elderly people living in the facilities will receive, like all elderly people living at home, services that meet their needs.
- Introduce a mandatory accreditation procedure for private facilities offering accommodation to elderly people experiencing a loss of autonomy, based on assessment criteria such as a private facility's ability to manage aging and a gradual loss of autonomy among its clients, as well as its knowledge of users' rights, and including control measures.
- Require, under the accreditation standards, that private facilities sign a basic service contract with users, and that the facility's code of ethics form part of the contract.
- Enhance the AccèsLogis Program by giving it permanent status and adding the number of housing units required to meet actual needs.

CURRENT SITUATION

• Status and supervision of private residential facilities

The status and supervision of private residential facilities covers three aspects that can affect the lives of the elderly: the quality of the facilities in terms of the care and services they provide; the state of the buildings and building safety; and the relationship between the tenants (elderly people) and the landlords (the private facilities). Each aspect comes under the responsibility of a different authority.

Care and services provided by private residential facilities

8 | The Ministère de la Santé et des Services sociaux (MSSS) is responsible for health services and social services, and has rejected the Commission's recommendation that the operation of private residential facilities be made subject to a compulsory accreditation process.

However, two other measures have been implemented. The first concerns the establishment, in all regions of Québec, of a register of private residences for the elderly, in accordance with section 346.0.1 of the *Act respecting health services and social services*. All the agencies¹¹ have, since 2002, set up a register of private residences for the elderly, and must update them annually. The registers – which list around 2,500 residences, including 1,200 that house nine or fewer elderly people – contain quantitative information on each residence, providing an overview of the number of places available. A private residence for the elderly must, when it accepts its first resident (and subsequently on April 1 every year), file a declaration with the regional agency containing certain specific information (section 346.0.2 of the Act).

Bill 83 of 2004 (*An Act to amend the Act respecting health services and social services and other legislative provisions*) proposes a certification process for residences for the elderly, applied on a regional basis. Its parameters are based on the program “Roses d’or” developed by the Fédération de l’âge d’or du Québec.

A certificate of compliance will not be compulsory¹², but the Bill specifies that *before referring a user to a residence for the elderly, a public institution must ascertain that the operator of the residence holds such a certificate* (section 346.0.3 of the Act, introduced by section 128 of the Bill).

As set out in the Bill, a “certificate of compliance” will be issued by an agency on two conditions: that the residence complies with the health and social criteria determined by regulation, and that it holds an assessment certificate issued by an organization recognized by the Minister, with which the agency has entered into an agreement. The certificates will be issued for two years, and may be suspended or revoked.

Bill 83 gives agencies and the Health and Social Services Ombudsman new powers of supervision. They will be able to receive complaints and intervene with residences for the elderly (Bill 83, sections 23 and 28). Agencies will have powers of inspection

11 The agencies were established in 2003 by the *Act respecting local health and social services network development agencies*. In Bill 83 they are referred to as “agencies”.

12 When originally proposed, the Minister of Health and Social Services stated that the measure was expected to have a snowball effect and encourage private residential facilities to comply with the new social and health standards.

(sections 346.o.09 and 346.o.10 of the Act, introduced by section 128 of the Bill), exercised when a certificate is issued or during its period of validity. In addition, if an agency receives a complaint it will be able to order corrective measures and set a deadline for compliance (sections 346.o.13 and 346.o.15 of the Act, introduced by section 128 of the Bill).

Buildings and safety

Following the amendments to the *Act respecting land use planning and development*¹³ that came into force on June 14, 2002, municipalities now have the power to make by-laws concerning the construction of residences for the elderly.

Under the new section 118.1 of the Act, a municipality may make by-laws for residences for the elderly in connections with various matters under its responsibility: layout and architecture, fire prevention and safety, and accessibility. A municipality that receives an application for a building permit must check whether it concerns a private residence for the elderly. If this is the case, section 120.o.1 of the Act specifies that the statement made by the owner must be forwarded by the municipality to the development agency on April 1 each year, to allow the agency to update its register of residences for the elderly.

In a document entitled *Les résidences pour personnes âgées : guide sur les bonnes pratiques municipales*, published in 2003, the Ministère des Affaires municipales et de la Métropole issued a warning to municipalities that had previously passed by-laws in this area, to check their validity and, where needed, pass a new by-law to exercise their new powers.

Tenant/landlord relationships

The MSSS considers that questions concerning the contracts residences and elderly people come under the sole authority of the Régie du logement.

• Improvements to the AccèsLogis Program

The Program has been extended until 2007. For 2002-2003, government funding amounted to \$50 million. It is expected that, during each year of the Program, around 275 housing units will be constructed for elderly people with a loss of autonomy.

In addition, elderly people with a slight loss of autonomy may benefit from the grants made under the “social and community” component of the Affordable Housing Québec Program. The Program has been in force since February 2002, and is administered by the Société d’habitation du Québec.

Both programs also target elderly people with no loss of autonomy.

¹³ Act to amend various legislative provisions concerning municipal affairs, S.Q. 2002, c. 37.

1.4 PUBLIC RESIDENTIAL FACILITIES

PROBLEMS IDENTIFIED DURING THE CONSULTATION PROCESS

- ▶ The approach of many institutions is based more on management objectives than on user needs.
- ▶ The human and financial resources allocated to residential and long-term care centres to help improve services have been delayed because of government budget cuts.
- ▶ Elderly people with a severe loss of autonomy are provided with a minimum, or production-line, level of care, as a result of problems in the allocation of budgets and resources, placing their fundamental rights at risk.
- ▶ The quality of service standards drawn up for institutions by the MSSS are not well known and, as a result, not applied.
- ▶ There are no standards or procedures governing the use of physical restraint, and chemical restraint is applied almost automatically.

RECOMMENDATIONS OF THE COMMISSION

- ▶ Adopt clear guidelines and concrete measures to meet the needs of residents and ensure that their rights are respected.
- ▶ Increase institutional budgets, to ensure that the “floor rate” of response to user needs is not set at a level so low that it leads to infringements of users’ fundamental rights, such as their right to integrity, dignity and respect for privacy.
- ▶ In the matter of restraint, specify ministerial guidelines and apply precise, mandatory directives in accordance with the *Act respecting health services and social services*.
- ▶ Ensure that the MSSS establish a committee to make recommendations concerning overmedication in public facilities.

CURRENT SITUATION

▶ Ministerial guidelines on service quality and resource allocation

In 2001 and 2002, the Ministère de la Santé et des Services sociaux (MSSS) published two documents: a set of ministerial orientations on services for elderly people with a loss of autonomy¹⁴ and a budget and resource allocation plan¹⁵. In its 2003 strategic plan, the MSSS also announced a substantial increase in the number of places available in residential and long-term care centres¹⁶.

In 2003, the MSSS published orientations on the quality of services dispensed in residential and long-term care centres¹⁷, that established the general criteria underlying the provision of high-quality services, and the procedure for drafting and implementing uniform standards in residential facilities. These, or equivalent, criteria were used for the quality inspections of residential facilities carried out

¹⁴ MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *Orientations ministérielles sur les services offerts aux personnes âgées en perte d'autonomie*, Québec, February 2001.

¹⁵ MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *L'allocation des ressources et la budgétisation des services de CLSC et de CHSLD – Rapport du comité sur la réévaluation du mode de budgétisation des centres locaux de services communautaires (CLSC) et des centres d'hébergement et de soins de longue durée (CHSLD)*, Québec, 2002.

¹⁶ MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *Plan de la santé et des services sociaux – Pour faire les bons choix*, Québec, 2002.

¹⁷ MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *Un milieu de vie de qualité pour les personnes hébergées en CHSLD – Orientations ministérielles*, Québec, 2003.

in 2004¹⁸, and the Minister of Health and Social Services recently announced that the inspections would continue on a permanent basis¹⁹.

According to the 2003 orientations, quality of life in residential facilities depends on the personalization of services and the *creation of an environment able to respond as far as possible to residents' needs* (*Orientations*, p. ii – our translation).

The MSSS states that it is aware of the extent of the changes that must be made to the customary practices of stakeholders, and it intends to achieve this objective by basing its actions and proposals on principles of interdisciplinarity, service integration and continuity of care for residents and patients with special needs linked to their loss of autonomy. Residents will be supported as they become accustomed to their new living environment, and their needs will be assessed on an overall and continuous basis and addressed in an individualized intervention plan. All of this will require, according to the MSSS, greater flexibility of the part of all those involved in providing care, including managers (*Orientations*, p.15).

• Restraint measures

In late December 2002, the MSSS published its orientations and a plan of action on restraint measures²⁰.

The orientations define the means of control provided for in section 118.1 of the *Act respecting health services and social services* and set out principles to guide their use. The principles state that means of control:

- must only be applied as a safety measure in situations of imminent danger;
- must only be applied as a last resort;
- must be applied under close supervision, with respect and in a manner consistent with dignity and security, and in a way that ensures the person's comfort;
- must be used in conjunction with control procedures, to ensure that the protocols are respected;
- must be assessed and monitored by the board of directors of each institution.

Means of control are expected to be applied in two types of situation:

- as a planned intervention in cases of recurrent disorganization; the stakeholders must discuss the means of control with the person or the person's representative and record them in the intervention plan or service plan;
- as an unplanned intervention in response to unusual behaviour; the situation must be analysed to include replacement preventive measures, where applicable, in the intervention plan.

It is also stated that *the person, or the person's representative, must be informed and involved in the decision-making process leading to the exceptional use of means of control, in order to give free and enlightened consent* (*Orientations*, p. 19 – our translation).

18 MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *Un milieu de vie de qualité pour les personnes hébergées en CHSLD – Visites d'appréciation de la qualité des services*, Québec, 2004.

19 MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *Bilan des visites des centres d'hébergement et de soins de longue durée – Le ministre Philippe Couillard annonce une première série de mesures pour améliorer les milieux de vie des personnes âgées*, Communiqué, Québec, June 22, 2004.

20 MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *Orientations ministérielles relatives à l'utilisation exceptionnelle des mesures de contrôle : contention, isolement et substances chimiques*, and *Plan d'action*, Québec, 2002.

The plan of action proposes measures to reduce the use of means of control, and sets deadlines. Three main objectives are targeted.

Assimilation of the ministerial orientations by the health and social services network

Following the publication of the MSSS orientations, a respondent was appointed at each regional board (now development agency), with responsibility for cooperating with the MSSS in disseminating and raising awareness about the orientations (deadline: fall 2002).

To ensure adequate training for stakeholders in the health and social services network, steps must be taken to:

- prepare a list, by client group, of existing methods, approaches and training connected with the use of alternative measures other than restraint (deadline: December 2002);
- update or define training content; updating is the responsibility of the MSSS, in collaboration with institutions, associations and regional boards (deadline: April 2003);
- set up a team to define content for special client groups (deadline: June 2003).

Each institution in the network is responsible for providing training for its stakeholders according to the schedule set out in the regional plan (deadline: June 2004), following which the regional boards are to file a report with the MSSS.

An inter-departmental committee will be set up to monitor the progress of the work until June 2005.

Supervision for the use of restraint measures

The plan of action specifies that:

- each institution must draft one or more protocols in accordance with the Act, with a follow-up mechanism, and the regional board must approve them after checking that they comply with the established criteria (deadline: September 2003);
- each institution must set up a follow-up mechanism and file with its board of directors, annually, an assessment of the situation using a standardized data collection form (deadline for the filing of the first report: April 2004);
- the MSSS must establish a working committee including representatives from the Collège des médecins, the Ordre des pharmaciens and the Ordre des infirmières et infirmiers, with the task of setting guidelines for the use of chemical substances as a control measure (deadline for the publication of the guidelines: June 2003).

Evaluation of the impact of the ministerial orientations on practices in the field

To ensure that the follow-up mechanisms and assessments implemented by the various institutions are comparable, and to compile the results of an overall evaluation, the plan of action provides for:

- the design and implementation, by a working committee made up of representatives from institutions in the network dealing with each client group, of a standardized tool for data collection (deadline: fall 2002), and an evaluation of the cost of its use by the MSSS (deadline for implementation: June 2003);
- the establishment, by the MSSS, of a Québec-wide monitoring committee to evaluate the impact of the orientations in longitudinal terms (deadline for the preparation of the evaluation grid and the development, validation and dissemination of indicators: June 2003).

13

The time frame set for the establishment of the first complete set of data is 2004-2005. The first overall evaluation is to cover the period 2004-2005.

Progress

According to the information obtained by the Commission from the MSSS in July 2004, all the stages of the plan have been completed, except one: the expert committee established to draft guidelines on chemical restraint failed to submit its report as scheduled in June 2003, because of the need to harmonize the committee's terms of reference with the regulations concerning medical practice in institutions in the health and social services network.

1.5 BUDGET AND RESOURCE ALLOCATION

PROBLEMS IDENTIFIED DURING THE CONSULTATION PROCESS

- Regional disparities compromise access to services.

RECOMMENDATIONS OF THE COMMISSION

- Draft a government policy on the regions to reduce unequal access to services, especially for elderly people living in isolation.

CURRENT SITUATION

¹⁴ In 2002, an expert committee was asked by the MSSS authorities to examine this question and make recommendations based on a philosophy of real needs, including a population-based approach as required by the *Act respecting health services and social services*.

The budget and resource allocation process

The committee examined the resource allocation and budget process for the services provided by CLSCs and residential and long-term care centres²¹. Its approach was based on four fundamental rules: equivalency of services and resources, performance, coherence and transparency (*Rapport de budgétisation*, pp. 49-50). Equivalency and coherency are especially relevant to the recommendation originally made by the Commission.

According to the equivalency rule, the *budget process must ensure that, for populations with comparable needs, the services provided are comparable and that, for similar services, the resources available are equivalent* (*Rapport de budgétisation*, p. 48 – our translation). This rule applies to the two main funding levels, namely the MSSS and the development agencies. It requires both the general needs of the population and the specific needs of groups within the population to be taken into account.

According to the coherency rule, *the budgetary process must integrate, in a coherent way, the factors that affect the operation of the social services and healthcare network* (*Rapport de budgétisation*, p. 49 – our translation). This rule targets the MSSS, development agencies and institutions, whose budgetary decisions must be coordinated to match regional and local needs. The rule also makes it necessary to take into account the socio-economic environment in which institutions operate and to which they must adapt. This environment includes, more specifically, inflation, distance, population dispersion and social characteristics that have consequences for service demand, whose financial impact must be compensated for by a fair budget process that is consistent with reality.

The resource allocation processes analysed by the MSSS expert committee could not provide a satisfying response to the ground rules which it had set. The MSSS and the regional boards, at the time, only had global envelopes that were not

²¹ MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *L'allocation des ressources et la budgétisation des services de CLSC et de CHSLD – Rapport du Comité sur la réévaluation du mode de budgétisation des centres locaux de services communautaires (CLSC) et des centres d'hébergement et de soins de longue durée (CHSLD)*, Québec, 2002.

broken down, and the budget approach was based on historical patterns for regional boards and institutions, which failed to take into account the actual needs and characteristics of the population served. From now on, the processes will have to match new parameters, including the allocation of budget envelopes broken down by program, at all decision-making levels, and normative approaches based on needs, normalized consumption (population-based approach) and services provided (volume and complexity)²².

Current state of work

The orientations and priority measures identified by the expert committee include improving the information system for the beneficiaries of services for adults with a loss of autonomy, which will reveal the extent of needs and required services, and the services actually provided. Based on the information obtained from the MSSS when this report was drafted, the current situation is as follows:

- the MSSS is working to regionalize services and allocate resources to ensure inter-generational equity, and to establish budgets for loss of autonomy, in other words a closed overall budget for each region, established on the basis of the population experiencing a loss of autonomy, that will include an obligation to make the required services accessible for all people with a loss of autonomy within the time fixed on the basis of need, and will ensure a harmonized response to needs.

The computer tools needed to support the assessment of people with a loss of autonomy and draft intervention and service allocation plans have not yet been installed, but should be ready during 2005.

- The “client information system for residential and long-term case centres” (système d’information clientèle en centre d’hébergement et de soins de longue durée, or SICHELD), designed to lead to the establishment of a central database, is now computerized and used in 80% of institutions. The system has been designed to ensure that the compiled data is compatible with other newly implemented tools, or tools under development, and will be completed by validation and control mechanisms.
- A “multi-client assessment tool” (outil d’évaluation multientèle, or OEMC) will be used in almost all the network in a paper-based version. It will be computerized in several stages, the first of which will be completed during 2005. The computerization of this tool will be part of the overall computerization plan for the network as a whole.
- The functional autonomy measurement system (système de mesure de l’autonomie fonctionnelle, or SMAF), part of the OEMC, will allow the assessment of a person’s physical and mental health and functional capacity²³ and should help to determine the nature and level of services in intervention plans in a standardized, network-wide way. The tool will, in addition, be used

²² For a complete view of the proposed changes, see *Rapport sur la budgétisation*, Table 11, p. 67.

²³ *Ibid.*, p. 95 ss.

to determine levels of loss of autonomy and criteria for access to services. Currently, in all places where the OEMC is used, the SMAF has been completed.

- All the development agencies have already completed, or are in the process of completing, their plan of action for the implementation of the orientations “Milieu de vie de qualité en CHSLD”. Under the management agreements, they must file a report with the MSSS concerning the implementation of their plan of action in each of their institutions before March 2005.

CHAPTER TWO

TRAINING

2.1 TRAINING FOR PERSONNEL WORKING IN PUBLIC FACILITIES

PROBLEMS IDENTIFIED DURING THE CONSULTATION PROCESS

- Stakeholders in the health and social services network lack training in the area of abuse, especially in residential and long-term care centres.
- Stakeholders are not aware of the needs of the elderly.
- Stakeholders lack understanding of the physical, mental and behavioural features of aging.
- Stakeholders have difficulty identifying the cases of abuse they observe.
- Stakeholders commit abuse themselves: psychological and physical abuse, behaviour that infringes the fundamental rights of the elderly (right to integrity, dignity and privacy).
- Stakeholders are unaware of the recourses available in cases of abuse.

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RECOMMENDATIONS MADE TO THE MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX (MSSS)

- Change the professional development framework contained in the ministerial orientations concerning the elderly, to ensure that training programs for stakeholders include a compulsory component on the detection of abuse and exploitation of the elderly.
- Ensure that the MSSS design a framework training program in gerontology, adapted to the personnel categories, including a component on the physical, psychological and psycho-social aspects of aging and the loss of autonomy, a component on the rights of users and a component on the prevention of abusive behaviour.
- Make the application of the framework program compulsory for personnel in institutions who work with the elderly, and offer it to the regional boards so that they can adapt it to the needs observed in their territories.

CURRENT SITUATION

• Framework program

In 2001, the Minister of State for Child and Family Welfare, Minister responsible for Seniors and Minister responsible for the Status of Women, Linda Goupil, released the first government action plan designed to meet the needs of the elderly. The document, *Le Québec et ses aînés: engagés dans l'action*²⁴, set out the government's

24 GOUVERNEMENT DU QUÉBEC,
*Le Québec et ses aînés : engagés
dans l'action*, Québec,
September 2001.

intentions and commitments for the period 2001-2004, and outlined a series of sectorial actions that would be taken as part of the commitments.

One of the “structural interventions” in the plan is to *establish a training plan to better equip stakeholders to provide help and support and identify cases of abuse or violence* (*Le Québec et ses aînés*, p. 32 – our translation). However, it is important to note that the government orientations do not specifically address the question of exploitation of the elderly.

18 The document describes a series of “sectorial actions” to be taken by the government to ensure that *all stakeholders in the health care network are able to act to combat abuse of the elderly* (p. 10 – our translation). This commitment involves the drafting of a plan of action for the network as a whole, whose objectives include *determining actions to allow stakeholders to act in a timely way to solve the problems of elderly people who are neglected or abused and to improve the services provided for them* (*Actions sectorielles*, p. 13 – our translation). In addition, the government orientations specify training measures for personnel working in public facilities concerning the use of restraint measures²⁵.

The Public Protector made a commitment to *train and inform people working with the elderly concerning protective regimes and the programs offered by the Public Curator, especially with regard to the provisional administration of an elderly person’s property following a report of abuse, violence or neglect. The Public Protector will provide relevant information on the protective regime for victims of abuse, and for care workers, to any organization or institution providing a single access point for the fight against abuse of the elderly* (*Actions sectorielles*, p. 13 – our translation). The creation of “single access points” is scheduled as part of the integration of services throughout the health and social services network²⁶.

► **Orientations concerning the quality of life in residential and long-term care centres**

In October 2003, the Ministère de la Santé et des Services sociaux (MSSS) published a document setting out its orientations concerning the quality of life in residential and long-term care centres²⁷ and defined, among other things, what it meant by the “high-quality intervention” that would become compulsory in all actions taken with regard to residents in residential and long-term care centres.

The document set out, as one of its basic principles, that high-quality intervention must take into account the constant development of knowledge in the fields of gerontology and geriatrics, and that it must *result in an approach that is global, adapted, positive, personalized, participatory and inter-disciplinary* (p. 10 – our translation). The document also states that a specific program must be developed, in accordance with the basic principles, to match the characteristics of each client group housed in residential and long-term care centres.

25 See point 1.4 above, on *Public residential facilities*, p. 10.

26 MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *Orientations ministérielles sur les services offerts aux personnes âgées en perte d'autonomie*, Québec, February 2001, Tableau récapitulatif, p. 27.

27 MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *Un milieu de vie de qualité pour les personnes hébergées en CHSLD – Orientations ministérielles*, Québec, 2003.

In the view of the MSSS, the principles must underlie any approach taken in a residential and long-term care centre, which must also *recognize the potential of all individuals and promote their functional autonomy, besides reviewing its organizational practices* (*Orientations* p. 11 – our translation).

The MSSS recognizes implicitly in its document that the chosen approach cannot be implemented without major changes, especially concerning intervention practices, autonomy and the responsibilities given to stakeholders, to create the conditions needed to achieve its objectives. Employee mobilization and an emphasis on the value of the tasks they perform will also be necessary. It is clear, from this document, that the government orientations will only be achieved if the competencies required for specific tasks are acquired at all intervention levels.

A plan of action is being prepared by the MSSS and a consultation version is expected to be published by the fall of 2004.

2.2 TRAINING FOR OTHER INDIVIDUALS WORKING WITH THE ELDERLY

PROBLEMS IDENTIFIED DURING THE CONSULTATION PROCESS

- ▶ There is a general need for more information and training about the physical, psychological and psychosocial aspects of aging and the loss of autonomy, the rights of the elderly, the signs used to detect cases of abuse, and available recourses. Groups which were identified included: lawyers and notaries, police officers, stakeholders belonging to a professional order, the owners and personnel of private residential facilities for the elderly, and volunteers providing support for the elderly.
- ▶ The use of banking powers of attorney is too widespread, and banks and savings and credit unions must be made aware of the problem of exploitation and help detect cases of abuse.

RECOMMENDATIONS OF THE COMMISSION

- ▶ Ensure that the Barreau du Québec and the Chambre des notaires du Québec establish a training component on aging, the related family and social problems, and the applicable legal framework.
- ▶ Ensure that the professional orders whose members work with the elderly, including the Collège des médecins, the Ordre des infirmières et infirmiers, the Ordre des infirmières et infirmiers auxiliaires, the Ordre des psychologues and the Ordre professionnel des travailleurs sociaux, provide programs on the physical, psychological and psychosocial aspects of aging and the loss of autonomy, the prevention of abusive behaviour, and the rights of the elderly.
- ▶ Ensure that financial institutions train their personnel to detect signs of financial exploitation and to be aware of the recourses available.
- ▶ Train the members of police forces and students in police technology to detect abuse of the elderly and to be aware of the recourses available.
- ▶ Ensure that community organizations provide training sessions for volunteers.
- ▶ Ensure that the owners of private residential facilities provide training for their personnel.

RESPONSE MADE TO THE RECOMMENDATIONS

▶ **The Barreau du Québec and the Chambre des notaires du Québec** **Barreau**

In response to the recommendations made by the Commission, the Barreau organized a training and development day for its members in November 2002 on the exploitation of the elderly. The Barreau intends to repeat the training each year for its new members.

The Barreau du Québec has not organized any training sessions since then specifically on the topic of exploitation. However, some aspects of the problem are dealt with in the training organized each year on the protection of the incapacitated.

In addition, the Québec section of the Canadian Bar Association, a professional organization which lawyers, judges, notaries, and law faculty and students can join voluntarily, has set up a National Elder Law Section that offers a training program on legal problems affecting the elderly.

Chambre des notaires

The president of the Chambre, M^e Denis Marsolais, has sent the Commission the following information. To obtain accreditation for the institution or revision of protective supervision for a person of full age, or the preparation of a mandate given in anticipation of incapacity, notaries must take a minimum seven-hour course focusing on all the aspects of interviewing the person concerned, including psychosocial aspects, awareness of the family problems created by the incapacity, and the interpretation of medical and psychosocial assessments.

Notaries accredited for family mediation receive six hours of training to make them more aware of the problem of intra-family violence.

In a more general way, the Chambre provides ongoing information about the types of abuse that may affect the elderly, in particular through its website and its monthly journal *Entracte*²⁸.

• Professional orders

Collège des médecins du Québec

The president of the Collège, D^r Yves Lamontagne, has told the Commission that the physical, psychological and psychosocial aspects of aging and the loss of autonomy are a subject of concern for the Collège, for physicians and for the medical organizations that represent them. In recent years, many professional development activities have been organized for physicians on this topic, and they will continue. In addition, the Conseil de l'éducation médicale continue, which brings together representatives from the four faculties of medicine in Québec, has been made aware of the Commission's concerns.

Ordre des psychologues du Québec

In a letter dated January 16, 2003, the professional development advisor wrote to the Commission to say that:

- the professional development committee of the Ordre had agreed to advise its members, through the magazine *Psychologie Québec*, of the recommendations made in the consultation report and of the possibility of taking part in the awareness workshop offered by the Commission;

²⁸ See, for example, Poulin, Nicole, "L'exploitation des personnes âgées", *Entracte*, Vol. 13, n^o 1, January 15, 2004, pp. 14-15.

- the Ordre presumes that psychologists working with the elderly have the relevant expertise, as required by their *Code of ethics*;
- the Ordre has not scheduled any specific activity on aging for the foreseeable future, but it intends to survey its members concerning their training needs.

A recommendation has also been sent by the Ordre to its inspection committee and all its inspectors, asking them to be especially vigilant when inspecting psychologists working with the elderly. In its letter to the Commission, the Ordre stated that it was studying the possibility of giving priority to the question of inspection in the scheduled activities of the inspection committee.

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Ordre des infirmières et infirmiers du Québec

The Ordre offers its members regular training activities in connection with their work with the elderly, either at its annual conventions or as part of its professional development program. Since 2000, the training has focused on the effects of the reorganization of health and social services on nursing, the application of physical restraint, the use of neuroleptics, the system for integrated services for vulnerable seniors (Système de services intégrés aux personnes âgées vulnérables, or SIPA²⁹, the repercussions of moving an elderly person in a residential and long-term care centre, the effects of an alternating residential program for elderly people with a loss of autonomy on their natural caregivers, the detection and prevention of violence against elderly people in public facilities, and the rights and freedoms of the elderly³⁰.

Ordre des travailleurs sociaux du Québec

A workshop was held during the annual professional development day organized by the Ordre in May 2003. It was given by the home care coordinator at the René-Cassin local community services centre and focused on detection and intervention with the elderly, and the requirements of the Québec Charter of Human Rights and Freedoms and the *Code of ethics* of the Ordre.

Financial institutions

Fédération des caisses Desjardins

The Fédération des caisses Desjardins has taken advantage of the training offered by the Commission des droits de la personne et des droits de la jeunesse, by organizing a session for the personnel of two of its divisions focusing on *Managing the risk of exploitation and security* and *Work organization and process optimization*. The training centred on the detection of signs of exploitation and recourses, including investigations by the Commission.

Canadian Bankers Association

The public relations division of the Association acknowledged receipt of the Commission's recommendation in April 2002 and stated that it would be forwarded to its members³¹.

²⁹ The SIPA was a research project conducted in Montréal from 1999 to 2001. Its objective was to establish whether better coordination between institutions could lead to better health and improved quality of life for elderly patients with a loss of autonomy, and also reduced costs. In addition to researchers from the Université de Montréal and McGill University, the project involved the regional board (the project manager), the CLSC Côte-des-Neiges, the Jewish General Hospital, the Maimonides Geriatric Centre, the Jewish Rehabilitation Hospital and the Richardson Hospital Centre.

³⁰ A workshop based on this theme was given during the Order's 2002 convention by a representative from the Commission des droits de la personne et des droits de la jeunesse and a clinical nurse specializing in geriatric care.

³¹ It is important to note that the Commission des droits de la personne et des droits de la jeunesse only has authority over organizations under Québec jurisdiction.

• Police forces

In a framework program published in 2001, the government undertook to ensure that the Sûreté du Québec would provide professional development for police officers intervening with the elderly³².

More generally, the Minister of Public Security issued a press release in May 2002, addressed to all police forces in Québec, asking that police officers who intervene in situations involving the elderly check to see whether they are the victims of abuse or various forms of exploitation (violence, harassment, intimidation or neglect), help those facing problems to obtain protection, and inform them of their recourses and the resources available to them.

The Sûreté du Québec has developed awareness-raising tools for the elderly, including information sheets on various problems and a video called “Vieillir en liberté et en toute sécurité”. According to the information given to the Commission, several municipal police forces have used these tools during prevention and awareness-raising campaigns as part of a community policing approach and a strategic approach to problem resolution. Most police forces have also developed local initiatives, and some have signed agreements with partners in their community.

An *ad hoc* committee has been set up by the Minister of Public Security, bringing together representatives from the Sûreté du Québec, the Service de police de Montréal, the École nationale de police du Québec and the Association des directeurs de police du Québec. The committee’s objects include advising and suggesting appropriate tools for preventing, detecting and fighting exploitation of the elderly, examining locally-developed initiatives, and publicizing the most effective initiatives for use by all police forces.

One of the initiatives is a pilot project involving several partners, including the Sûreté du Québec, in Bellechasse county. The goal of the project is to draft a memorandum of agreement on collaboration and joint action by various organizations to deal with cases of abuse, neglect or violence against the elderly. The memorandum proposes the creation of an inter-sectorial intervention group, in order to set up joint approach and intervention strategies. It also addresses the need to systematize and standardize the information needed to ensure the safety of victims. The *ad hoc* committee has recommended that the memorandum be offered to all police forces in Québec to allow them to adapt it to the realities in their regions. At the same time, a training project on the detection of abuse has been launched. The training is provided by seniors who have been specially trained, and is offered to volunteers, nurses and orderlies, social workers, police officers, and 500 elderly people.

The Ministère de la Sécurité publique is currently looking at the possibility of setting up an in-house website to inform police forces on various topics, including the best local initiative in the area of protection of the elderly.

32 GOUVERNEMENT DU QUÉBEC,
*Le Québec et ses aînés: engagés
dans l'action – Actions
sectorielles*, Québec, September
2001, p. 11.

Last, the Ministère de la Sécurité publique, the Service de renseignements criminels du Québec and the Sûreté du Québec, which has overall responsibility, have begun a joint strategic analysis of the impact of the aging of the population on the way police services are provided. This involves describing the types of violence directed at the elderly, listing the resources and services devoted to preventing and responding to this type of crime, assessing their use, forecasting future abuse of the elderly, and suggesting possible types of police intervention. The analysis has been documented in an internal report.

• Volunteers

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Funding for community organizations

The Ministère de la Santé et des Services (MSSS) offers funding for community organizations working with the elderly. The program lasts three years, and has annual funding of \$1 million. In 2003, out of 185 project applications made, 59 received funding. The program was extended for a fourth year in 2004³³.

Projects may be presented by *provincial, regional or local community organizations working with the elderly, non-profit organizations [...] whose mission includes working with the elderly, and recognized social economy organizations involved in activities for the elderly (Financement, p. 9 – our translation)*³⁴. An organization that has previously received funding may apply again to launch a new project or continue an existing project (*id.*, p. 9).

With regard specifically to *projects designed to counter abuse (violence, neglect, exploitation) of the elderly, they must be part of a concerted approach carried on with regional or provincial working groups. Organizations that present a project of this type must prove that they are collaborating with authorities such as joint action groups against violence, expert groups, the RQCAA, etc. (Financement, p. 21 – our translation).*

Eligible projects must pursue *one of the following objectives: facilitate and promote the participation of the elderly in collective and associative life, support and assist the association of natural caregivers looking after the elderly, support projects to raise awareness about the rights of the elderly, encourage volunteers to train as multiplying agents to transfer their training to specific clientele. The projects presented may follow the priorities for action set by the joint action table on the elderly in each region (Financement, p. 8 – our translation).* The projects submitted must target direct action and concrete results (*id.*, p. 10 – our translation).

Besides the everyday operations of the organizations, projects are not eligible if they are *research projects, projects based on personnel training when it is not necessary for the performance of regular duties; projects to train volunteers or elderly people, when the training is already offered free of charge by other government departments, government or community organizations, or projects that are already receiving funding [...] for which the second application contains no innovative aspect (id., pp. 11-12 – our translation).*

33 GOUVERNEMENT DU QUÉBEC, *Engagés dans l'action pour les aînés du Québec – Le financement de projets d'organismes communautaires intervenant auprès des aînés – 2004-2005*, Québec, 2004.

34 The “tables régionales de concertation des aînés” are partners, along with the Secrétariat aux aînés, in the aspects of this program that concern promotion and assistance for local and regional organizations. They are also asked to *help assess the projects presented, by ranking five projects that meet their regional priorities (Financement, p. 25 – our translation).*

Support for volunteer actions through training programs

In 2003, the government published its orientations concerning volunteer work³⁵, for which one of the main priorities is training for volunteers, especially in outlying regions.

According to this document, *the Secrétariat à l'action communautaire autonome du Québec will have responsibility for setting aside \$150,000 from the envelope for the Programme de soutien aux projets de développement de l'action communautaire autonome, beginning in the 2003-2004 fiscal year, for training projects. It will also have responsibility for listing and assessing volunteer training support programs that exist and presenting new programs to the government of Québec, as needed, to assist in the organization of training activities in the regions between 2003 and 2006. An inter-departmental committee on community action (Comité interministériel de l'action communautaire) will examine the possibility of developing such programs* (Orientations, p. 30 – our translation)³⁶.

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• Personnel working in private residential facilities

Of the 2,519 residential facilities offering services for the elderly listed in March 2004³⁷, 2,191 were private for-profit residences, 227 were run by non-profit organizations, 86 were run by religious communities, 8 were cooperatives, and 7 were low-rental housing complexes.

In 2002-2003, the committee following up on the recommendations made by the Commission was in contact with Robert Chagnon, the president of the Association des résidences pour retraités du Québec, representing 300 of the largest existing residential facilities. Mr. Chagnon told the Commission that the Association would continue its work to define the best training approach for the personnel working in residential facilities, to make them more aware of situations of abuse and develop the appropriate attitudes. It is important to note that many residential facilities are small, with an average of fewer than ten employees.

The Association wished to take advantage of the financial assistance offered by the MSSS (see above) to train people who work with the elderly, but the program excludes the personnel of private residential facilities. Given the circumstances, the president of the Association said that he would continue his work to develop an on-the-job training program adapted to the requirements of work in residential facilities.

The Association no longer exists in the same form, since in July 2003 it merged with the Association des centres d'accueil privés autofinancés du Québec, to form the Association des résidences et des CHSLD privés du Québec (ARCPQ).

The mission of the ARCPQ is to “represent and support members and residents, in order to develop a high-quality network of dwellings and residential accommodation for the elderly.” In 2003, its members represented over 485 residences and residential and long-term care centres with 10 or more beds.

35 SECRÉTARIAT À L'ACTION COMMUNAUTAIRE AUTONOME DU QUÉBEC, *Orientations gouvernementales en matière d'action bénévole*, Québec, 2003.

36 The inter-departmental committee, coordinated by the Secrétariat à l'action bénévole autonome du Québec, brings together representatives from 20 government departments and bodies, including the departments of family and child welfare, justice, health and social services, public security, municipal affairs and Greater Montréal, regions, and relations with citizens and immigration, the Office de la protection du consommateur, the Office des personnes handicapées du Québec, the Secrétariat à la condition féminine, the Secrétariat aux affaires autochtones, the Secrétariat aux aînés and the Société d'habitation du Québec.

37 MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *INFO-RRASPA – Bulletin d'information présentant certaines statistiques extraites du Registre des Résidences avec Services pour Personnes Âgées*, April 2004, Table 1.

CHAPTER THREE

LEGAL PROVISIONS

PROBLEMS IDENTIFIED DURING THE CONSULTATION PROCESS

- Financial exploitation resulting from the abusive use of mandates given in anticipation of incapacity, because of the lack of outside supervision of mandataries and the absence of any requirement to homologate the mandate when the person giving the mandate actually becomes incapacitated.
- The current provisions of the *Civil Code* and the *Public curator act* do not provide adequate protection for people who become incapacitated.
- Exploitation resulting from a donation by an elderly person of all his or her movable and immovable property, in exchange for a promise of care from the person receiving the property, or to reduce the amount the elderly person has to pay for residential care in a public or private long-term care centre. In these cases, it can be difficult for the elderly person to have the donation annulled, since the property may have been dispersed.
- The current provisions of the *Civil Code* and the *Act respecting health services and social services* do not provide adequate protection for elderly people who make donations.

27

RECOMMENDATIONS OF THE COMMISSION

- Amend the *Civil Code* and the *Public curator act* to require mandataries to apply for the homologation of a mandate given in anticipation of incapacity as soon as the person giving the mandate becomes incapacitated, and to file an annual standard report with the Public curator, in order to reveal any irregularities in their administration of the mandate.
- Amend article 1824 of the *Civil Code* to prohibit donations of all a person's property (even by particular title) and to require that any document drawn up to cover a donation of property while the donor is still alive provide for the retention of enough property to cover the needs of the donor and the donor's dependents, if any.
- Amend articles 761 and 1817 of the *Civil Code* to harmonize them with the *Act respecting health services and social services* in order to prohibit donations and legacies to personnel members of "family-type" resources under the authority of the health and social services network.

RESPONSE MADE TO THE RECOMMENDATIONS

► Homologation of mandates given in anticipation of incapacity

The Public Curator³⁸ agrees that the current time limit for the homologation of mandates given in anticipation of incapacity creates a problem, although homologation is already compulsory under the *Civil Code*.

The Minister of Justice, Marc Bellemare, considered that the current provisions of the *Civil Code* creating an obligation to act speedily, and specifying sanctions for non-compliance, are sufficient. The Minister also pointed out that a new amendment to the *Civil Code* (section 2167.1) will protect the person giving the mandate in an urgent situation before the homologation hearing if it is pending. Last, according to the Minister, the implementation of the Commission's recommendations would have created application problems.

► Compulsory filing of report by mandataries

The Public Curator's office has indicated that it does not have the necessary resources to deal with annual reports by mandataries. It finds this solution cumbersome, since the number of deviant mandataries does not appear to be large. In addition, the measure recommended by the Commission would run counter to the reform of the *Civil Code*, which targets the deregulation of the protection of incapacitated persons through a system based on mandates in anticipation of incapacity and greater responsibility for the individuals involved.

However, the Minister of Citizen Relations and Immigration, Michelle Courchesne, has told the Commission that the question would be examined during a general review of protection measures, the results of which would be released during the fall of 2003. The Minister has been assured that the work will lead to a satisfactory response to the concerns of the Commission. The results of this review have not yet been published.

► Donations and legacies

With regard to the Commission's recommendation that article 1824 of the *Civil Code* be amended to prohibit donations and legacies, Minister Bellemare considers that the current provisions, including those that prohibit the transfer of certain revenues, provide adequate protection for the elderly, while respecting their right to dispose freely of their property³⁹.

With regard to the recommended amendments to articles 761 and 1817 of the *Civil Code* concerning donations and legacies to the personnel members of family-type resources, Minister Bellemare did not consider them necessary given the current case law, which is already moving in the direction of the Commission's recommendation⁴⁰.

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³⁸ The comments of the Public Curator were relayed by Nicole Brodeur, appointed as commissioner for the elderly with task of examining the recommendations made by the Commission and reporting to the Minister of Health and Social Services. Madam Brodeur met the Public Curator in September 2002.

³⁹ In its analysis, the Commission examined the advisability of recommending that the prohibition on making donations or legacies apply to all staff working in a private residential facility. It concluded that a blanket prohibition would unduly restrict the rights of residents who had no loss of autonomy.

⁴⁰ The Québec Court of Appeal confirmed, in *Bourque c. Lafortune*, C.A.M. n° 500-09 009856-006, May 20, 2003, REJB 2003-42046, that people experiencing a loss of autonomy are covered by the protection provided by the *Civil Code*.

CHAPTER FOUR

RECOURSES IN CASES OF EXPLOITATION OR ABUSE

PROBLEMS IDENTIFIED DURING THE CONSULTATION PROCESS

- The complaint examination procedure in the health and social services sector lacks transparency.
- There are few recourses available when acts reserved for certain professions are performed by people working in private residential facilities.
- Legal aid coverage has been reduced, limiting access by the elderly to the services of a lawyer or notary, and therefore reducing their recourses before the courts.
- Many elderly people are prevented from reporting abuse through fear of reprisals.
- The recourses that may be exercised by users' committees in institutions are insufficient.

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RECOMMENDATIONS OF THE COMMISSION

- Recognize the right of users' committees, and of any individual or employee who witnesses abuse in an institution, to file a complaint on behalf of the person who suffers the abuse, unless the presumed victim, or the victim's legal representative, opposes the filing of a complaint.
- Amend the *Québec Charter of human rights and freedoms* to require the Health and Social Services Ombudsman, such as is currently the case for the Public Protector⁴¹, to forward to the Commission des droits de la personne et des droits de la jeunesse any information they receive that is within the Commission's sphere of investigation.
- Amend the *Professional Code* to allow the professional orders to institute penal proceedings against employers and the managers of private residential facilities who authorize their personnel to illegally perform acts reserved for certain professions.
- Adjust the legal aid scales to ensure that, at the very least, elderly people whose only source of income is the Old Age Security Pension and the Guaranteed Income Supplement are eligible for legal aid.
- Ensure that the professional orders include provisions expressly prohibiting reprisals in their codes of ethics, similar to those contained in the lawyers' code of ethics.

⁴¹ *Charter of human rights and freedoms*, section 75.

RESPONSE MADE TO THE RECOMMENDATIONS

• Recognition of the right to file a complaint

In his response to the Commission's recommendations, the Minister of Health and Social Services, Philippe Couillard, stated that the *Act respecting the health and social services ombudsman*, passed in December 2001, makes it possible for any person to file a report, and specifies the Ombudsman's power to intervene. However, under the *Act respecting health services and social services*, the power to intervene does not extend to the first level of recourse, in other words the local or regional commissioner. This means that the users' committee, or any person who witnesses abuse in an institution, must turn to the Ombudsman rather than to the authorities closer at hand.

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Bill 83 introduces various provisions concerning the complaints procedure:

- a watchdog committee, made up of members of the board of directors, will be established in every institution and agency to improve the quality of services offered in a manner respectful of individual and group rights (sections 83 and 149);
- the establishment of a users' committee will become compulsory in all institutions (section 91);
- an in-patients' committee will be established in institutions offering in-patient services (section 92);
- the mandate of the community organizations providing assistance and support will be extended (section 32);
- the local and regional commissioner will no longer be known as "service quality" commissioner but rather as "complaints commissioner", and will report directly to the board of directors of the institution or agency (sections 8 and 25). He may not take on other administrative duties (sections 9 and 26).

The commissioner will have the power to *take action when apprised of a situation that could be the subject of a complaint under section 60 and that the commissioner considers sufficiently serious to warrant examination* (sections 10 and 28). As a result, any person, including a users' committee, could report a situation of abuse to the local or regional commissioner, in compliance with the rules governing the confidentiality of personal information and professional secrecy.

The functions of Health and Social Services Ombudsman will be exercised by the Public Protector (sections 208 and 237), and complaints may be made verbally. The Minister will be responsible for ensuring that institutions and regional boards handle the complaints addressed to them in conformity with procedure. Following a failure to act on a recommendation, the Ombudsman will advise the Government or report the situation to the National Assembly, rather than to the Minister.

• **Amendment to the *Charter of human rights and freedoms***

Section 75 of the *Charter of human rights and freedoms* states that:

The Public Protector shall transmit to the commission every complaint he receives that is within the sphere of investigation of the commission, unless the complainant objects thereto.

Any complaint transmitted to the commission is deemed to be received by the commission on the day it is filed with the Public Protector.

The Commission's recommendation concerning an amendment to the Charter was made in anticipation of the adoption of Bill 27 (*Act respecting the health and social services ombudsman and amending various legislative provisions*), tabled in the National Assembly on May 15, 2001.

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Bill 83 has changed the situation, since the functions of the Health and Social Services Ombudsman will now be exercised by the Public Protector.

• **Amendment to the *Professional Code***

The president of the Office des professions, Jean-K. Samson, has told Nicole Brodeur⁴² that the professional orders are already empowered to institute penal proceedings against individuals who perform acts reserved for certain professions.

The Commission's recommendation was made on the suggestion of the Ordre des infirmières et infirmiers auxiliaires du Québec. Régis Paradis, the president of the Ordre, has stated that the amendments made in 2002 to the Professional Code have clarified the situation.

• **Adjustment of the legal aid scales**

Without proposing any measures that respond directly to the recommendation made by the Commission, the Minister of Justice, Marc Bellemare, set up a working group in December 2003 to examine the legal aid system in Québec, including the services offered and the eligibility thresholds. The working group's report was filed in June 2004, but had not been made public when this report was drafted.

In addition, an agreement was signed in October 2003 by the Ministère de la Justice and the Chambre des notaires to increase the rates paid to notaries for services provided under the *Legal aid act*. The list of services covered has been extended by the addition, in particular, of mandates given in anticipation of incapacity. The regulation ratifying the agreement was enacted on March 31, 2004.

• **Codes of ethics and protection against reprisals**

According to information obtained from the president of the Office des professions, the Commission's recommendation was brought to the attention of all the professional orders, and some are looking at the possibility of introducing a provision into their code of ethics to ensure better protection against reprisals.

42 See note 38.

This has been done by the Ordre des infirmières et infirmiers du Québec, whose code, since 2002, states that “A nurse who is informed of the holding of an inquiry or who has been served with a complaint concerning her or his professional ethic or competence shall not harass, intimidate or threaten the person who requested the holding of the inquiry or any other person implicated in the events related to the inquiry or complaint.”

Several other codes of ethics contain similar provisions, with different wording, such as the code of ethics for notaries.

³² The Commission’s recommendation targeted the professional orders whose members work with the elderly. The Commission also indicated its support, in the report, for a provision in Bill 27 that granted protection against reprisals for users of health and social services institutions who file complaints, and for any other person who files a complaint on their behalf⁴³.

⁴³ *Act respecting health service and social services*, section 73. In June 2004, a Bill was tabled by the Member for Lotbinière, Sylvie Roy (ADQ), to provide legislative protection against reprisals for salaried employees who report cases in which users are victims of inadequate care. (Bill 198, *Act to amend the act respecting labour standards*, 1st sess., 37th leg., Québec, 2004).

CHAPTER FIVE INFORMATION ACTIVITIES AND PROGRAMS

PROBLEMS IDENTIFIED DURING THE CONSULTATION PROCESS

- The services and programs intended to inform the elderly and those who surround them about exploitation, abuse and recourses are not well known.
- Elderly people do not have enough information about the risks of exploitation and abuse, and ways to avoid them.
- Elderly people are at risk of economic exploitation by relatives and business people.

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RECOMMENDATIONS OF THE COMMISSION

- Ensure that the government adopts an action plan to address aging that defines, in particular, specific measures to eliminate abuse of the elderly.
- Ensure that the Secrétariat aux aînés set up as extensive a database as possible on programs, initiatives and activities designed to protect the elderly and promote intergenerational solidarity, and adopt measures to make the information accessible.
- Ensure that the Minister responsible for Seniors launch general information campaigns on abuse and exploitation, and on existing recourses, and awareness campaigns specifically aimed at the elderly.
- Ensure that Régie des rentes du Québec specifically inform elderly people about the advantages of depositing benefits directly in a bank account as a way to avoid economic exploitation.
- Ensure that the Office de protection du consommateur specifically inform the elderly about the risk of abuse linked to door-to-door or telephone sales.

RESPONSE MADE TO THE RECOMMENDATIONS

Government commitments

The commitments made by the Government for the period 2001 to 2004 encompass a set of measures to meet the Commission's recommendations⁴⁴.

In terms of specific commitments, the Ministère de la Culture et des Communications will set up an Internet portal to give access to information about the various needs and concerns of the elderly. The Government will also, with support from the Fonds de l'autoroute de l'information, promote intergenerational projects to help the elderly use the Internet.

44 See: MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX: *Orientations ministérielles sur les services offerts aux personnes âgées en perte d'autonomie*, Québec, February 2001; *Pour faire les bons choix – Chez soi: le premier choix – La politique de soutien à domicile*, Québec, 2003; *Un milieu de vie de qualité pour les personnes hébergées en CHSLD – Orientations ministérielles*, Québec, 2003; *Plan d'action – Orientations ministérielles relatives à l'utilisation exceptionnelle des mesures de contrôle: contention, isolement et substances chimiques*, Québec, 2002; GOUVERNEMENT DU QUÉBEC, *Le Québec et ses aînés: engagés dans l'action*, Québec, September 2001.

The orientations set out in the document *Le Québec et ses aînés : engagés dans l'action* included a mobilizing project to combat abuse of the elderly, under the responsibility of the Secrétariat aux aînés, with the priority objective of *providing access for the elderly, and for those who surround and support them, to existing or new resources and means to facilitate the solving of problems [...] that, where applicable, will allow them to exercise the appropriate recourses [...]; creating a multi-group concerted approach to detect and combat abuse, and support elderly victims of abuse; making the elderly and the general population more aware of violence against and abuse of the elderly; promoting the sharing of expertise and the spread of knowledge in this area* (*Le Québec et ses aînés*, p. 31 – our translation). For the last two years this project has been on hold because of a lack of resources.

However, various consultation teams exist, bringing together stakeholders in a given region on an ad hoc basis when abuse occurs.

The Conseil des aînés has also published an information guide for the elderly that includes a chapter on their rights and recourses⁴⁵.

► Information networks

Currently, as far as we know, at least two initiatives have addressed the need to create links and circulate information:

- the Quebec Network against Elder Abuse (RQCAA), developed by the Fondation pour le Bien-vieillir du CLSC René-Cassin and around fifty partners, has given itself the mission to *bring together people and groups of people concerned by elder abuse prevention, detection or intervention. Its main objectives are to maximize access to most up-to-date information, to develop a global vision of issues related to elder abuse, as well as to foster efficient and effective action geared toward all Quebec seniors and decision makers*⁴⁶.
- the French-language Internet network *Vieillir et liberté* (RIFVEL) brings together resources from Québec (including the Faculté d'éducation permanente at Université de Montréal), France, Belgium and Switzerland. Its mission and objectives include, among other things, *contributing to the flow of expertise [...] concerning the protection of vulnerable elderly people, highlighting initiatives, research and studies in related fields, and promoting Internet access to resources providing assistance and recourses for the elderly, their families and stakeholders in each community*⁴⁷ (our translation). The section *For People 55 and Over* on the Québec government portal includes a link to the RIFVEL site.

► Régie des rentes

The Régie des rentes has taken steps to inform the elderly about the advantages of direct deposit for benefit cheques. The information is given in several different documents:

- all forms used by the Régie, where a section is provided to set up a direct deposit;

⁴⁵ CONSEIL DES AÎNÉS, *Vivre et vieillir en santé – Guide pratique* (Québec, Publications du Québec, 2004), Chapter 9.

⁴⁶ Information from the RQCAA Web site at www.rqcaa.org/accueil.php.

⁴⁷ Information from the RIFVEL Web site at fep.umontreal.ca/violence/rifvelcest.html.

- the brochures and leaflets produced by the Régie for distribution in credit unions, banks and riding offices, which includes a return envelope for setting up a direct deposit;
- the *Guide du bénéficiaire*, in which the Régie informs new beneficiaries that direct deposit is available in Québec, Canada and 26 other countries;
- the *Petit journal du bénéficiaire*, in which the Régie provides an annual reminder for beneficiaries that they can set up a direct deposit if they have not already done so.

In addition, each beneficiary receives a direct deposit form once a year when cheques are mailed out. Beneficiaries can also receive information on the advantages of direct deposit through the automated call-answer system and the Web site.

According to the information provided by the Régie, the percentage of beneficiaries using direct deposit has risen from 82% in 1985 to over 90% in 2002.

• **Fédération des caisses Desjardins**

In its response to the Commission's recommendation concerning personnel training, the Fédération des Caisses Desjardins has provided information on some of the measures it has implemented to protect the elderly.

The Fédération states that the close relationship of credit unions with their customers creates an atmosphere of trust that allows them to *detect behaviour or situations that are questionable in terms of exploitation of the elderly* (our translation). In terms of prevention, the following measures are already applied by credit unions:

- periodical canvassing of elderly people to encourage them to deposit benefits directly;
- support to help people learn how to use a debit card and make them more independent for basic financial transactions;
- in some credit unions, meetings with people applying for a debit card in the presence of a third person, to inform the applicant of the consequences of revealing the personal identification number;
- scrutiny in cases where a power of attorney has been authorized; the credit union must ensure that the elderly person is in a position to authorize the power of attorney; some credit unions take the initiative of meeting the elderly person to inform him or her of the consequences of giving a power of attorney.

• **Office de protection du consommateur**

In its strategic plan, *Planification stratégique 2001-2004*, the Office states that it intends to address the problem of elderly people with a loss of autonomy who fall victim to business fraud, and that it will apply a sustained campaign to combat fraud (*Planification*, p. 13). The measures already taken include:

- a thematic week in 2002 on home renovations, leading to several articles and interviews in the print and electronic media;
- a thematic week in 2003 on pre-arranged funeral and burial services that also generated media articles and commentary.

In addition, articles on door-to-door sales and pre-arranged funeral services have been published in the magazine *Le bel âge*, and press kits have been sent to the main seniors' groups and media organizations interested in these topics.

CHAPTER SIX COMMITMENTS BY THE COMMISSION

6.1 INFORMATION AND TRAINING PROGRAMS

In the consultation report⁴⁸, the Commission undertook to launch an information campaign to inform stakeholders and the general public about the role it plays in protecting the rights of the elderly, including the procedure for processing complaints. The following information-related measures have been taken:

- between late 2001 and October 2004, over 81,600 copies of the leaflet *Do you suspect an elderly person may be a Victim of Exploitation? Call us!* were distributed. It provides information on exploitation, possible recourses before the Commission and the procedure for an investigation. Besides supplying the leaflet on request, the Commission has carried out a targeted distribution among health and social services organizations, private and public residential facilities, quality of service personnel and users' committees in institutions, geriatric care clinics, police forces, professional orders, training providers, funeral homes, associations of retired people, the FADOQ, banks, help services, community and volunteer organizations, etc.
- the leaflet was made available online on the Commission's website, along with a virtual guide to facilitate access to the various sections of the site that offer relevant information on the rights of the elderly and the problem of exploitation;
- Commission personnel took part in many different meetings and conferences.

With regard to training, the Commission has intensified its programs for groups of the elderly, and for institutional and community organizations. For example,

- in 2002 and 2003, the Commission organized 115 training sessions as part of two programs, *Sensibilisation aux droits et libertés pour les personnes vieillissantes* (66 sessions) and *À tout âge, des droits, des libertés* (49 sessions), in 13 regions of Québec;
- since June 2000, the Commission's website has offered an on-line training module called *À tout âge, des droits, des libertés*, and since March 2001, an English version of the same module, *Rights and Freedoms for All Ages*. The module attracted immediate interest, and according to the data compiled for the first six months, recorded 7,353 hits.

⁴⁸ Over 2,800 copies of the report were distributed, especially to the authorities and organizations concerned. The report is available on the Commission Web site at www.cdpdj.qc.ca (see the "Publications" section).

In 2002, the data shows 4,320 hits for the French module, and 1,124 hits for the English version. In 2003, the figures were 5,917 hits for the French module and 1,502 for the English module. The module was updated in March 2004.

The measures implemented by the Commission are designed to inform the elderly about their rights, and their recourses in the event of exploitation, and also to equip organizations in a position to detect situation of abuse and exploitation of the elderly and provide them with assistance. The Commission intends to continue its work in this direction.

38] The importance of this approach is illustrated by the fact that the programs may have led to an increase in the number of investigation files opened by the Commission, from 26 in 2001 to 33 in 2002 and 54 in 2003. The investigations have, in turn, led to the development of case law relating specifically to exploitation, including two key decisions made by the Human Rights Tribunal since 2001: *CDPDJ (Joseph Monty) c. Jean-Paul Gagné*, *CDPDJ (Roland Marchand) c. Jeanne Vallée* (decision maintained by the Court of Appeal of Québec) and *CDPDJ (Georgette Céré et al. c. Patrice Hamel et Avantage Mobilité inc.)*⁴⁹.

6.2 GENDER-SPECIFIC POSITIONS

During the public consultations held by the Commission on the exploitation of the elderly, some stakeholders reported facts that indicated that the policies established by public facilities in the area of gender-specific positions could result in infringements of the right of users to privacy and respect for their dignity.

Since these policies were based, partly, on the position and guidelines adopted by the Commission in 1986⁵⁰, the Commission made a commitment to re-examine the issue. The Commission is continuing its work in this area, but did not wish to delay the publication of this report.

6.3 RULES APPLICABLE TO INVESTIGATIONS CONDUCTED BY THE COMMISSION UNDER THE CHARTER

In its consultation report, the Commission undertook to publicize its conclusions concerning the rules that apply, in particular in connection with professional secrecy, when a stakeholder from another organization asks it to investigate an alleged case of abuse or exploitation.

Rights affirmed by the Charter

The *Charter of human rights and freedoms* recognizes that all individuals have fundamental rights, including personal security, inviolability and freedom, the safeguard of dignity, respect for private life, the free disposition of property, and the non-disclosure of confidential information by a professional.

49 The decisions can be found (in French) on the Commission Web site, using the virtual "Guide" called "Personnes âgées".

50 To see this document (in French) on the Commission's Web site. Go to "Publications", "Santé et services sociaux", and select *La sexualisation des postes dans les centres hospitaliers et les centres d'accueil*.

The Charter also affirms the right to be protected against discrimination, especially in terms of access to services ordinarily offered to the public. For discrimination to exist within the meaning of the Charter, and for a Charter recourse to be possible, three elements must be present: the exercise of a right affirmed by the Charter must be compromised, the infringement of the right must be based on one of the grounds under which discrimination is prohibited by section 10, and the infringement must lead to a material or moral damage or both.

The first paragraph of section 48 of the Charter provides for special protection against exploitation for the aged and the handicapped. According to the case law, exploitation means *any form of exploitation and is not limited to economic exploitation, in other words exploitation for financial gain. Exploitation may be, but is not limited to, physical, psychological, social or moral exploitation*⁵¹(our translation).

Exploitation, within the meaning of the Charter, involves two major elements: vulnerability, and an attempt to profit from that vulnerability. Vulnerability, which must not be simply presumed because of the victim's advanced age, is based on a set of factors including isolation, insecurity and the loss of autonomy, and therefore depends on a person's overall situation. The protection provided for in section 48 is not limited to situations of incapacity, although it includes them. Protection against exploitation also covers the living conditions of the elderly, and not only financial profit. It therefore includes abuse of power, infantilization, low service quality and discrimination in the exercise of rights.

In most cases, it is possible to state that an exploitative situation creates age-based discrimination in the exercise of rights, especially the fundamental right to dignity. The opposite, however, is not true. Not every situation of discrimination in the exercise of rights constitutes a case of exploitation simply because the person concerned is elderly.

Complaint filed with the Commission and consent of the victim

Section 71, subparagraph 10, of the Charter requires the Commission to make an investigation, on its own initiative or following receipt of a complaint, into any situation which appears to the Commission to be either a case of discrimination within the meaning of section 10 or a violation of the right of aged or handicapped persons against exploitation enunciated in the first paragraph of section 48.

Section 74 of the Charter provides that any person, or group, who believes he, she or it has been the victim of a violation of rights that is within the sphere of investigation of the Commission may file a complaint with the Commission. A complaint may be filed on behalf of a victim or group of victims by any organization dedicated to the defence of human rights and freedoms or to the welfare of a group of persons. The written consent of the victim or victims is required.

However, the same section specifies that, in the case of exploitation of aged persons or handicapped persons contemplated by the first paragraph of section

⁵¹ *Commission des droits de la personne du Québec c. Brzozowski*, [1994] R.J.Q. 1447 (TDPQ).

48 of the Charter, a complaint made on behalf of a victim may be investigated without the prior consent of the victim. A similar exception is made when investigation leads to court proceedings, since section 83 of the Charter stipulates that where the Commission applies to a tribunal for measures for a person's benefit, it must obtain the person's written consent, *except in the case of a person contemplated by the first paragraph of section 48*.

This is an exception to the normal procedure, not an obligation. The fact that it is possible to launch an investigation without the victim's prior consent does not mean that the Commission should not first attempt to ascertain whether or not the person is able to give consent and, where applicable, obtain the person's opinion on the advisability of conducting an investigation. An investigation without prior consent must remain an exceptional measure.

Right to non-disclosure and the confidentiality of personal information

It can be difficult to report a situation of exploitation or abuse when the information that leads a stakeholder to believe in the existence of exploitation is obtained in the performance of the stakeholder's duties and the stakeholder is bound, by law, to professional secrecy or confidentiality.

Section 5 of the Charter states, as a fundamental right, that "Every person has a right to respect for his private life". Section 9 states that "Every person has a right to non-disclosure of confidential information", and that "No person bound to professional secrecy by law [...] may, even in judicial proceedings, disclose confidential information revealed to him by reason of his position or profession, unless he is authorized to do so by the person who confided such information to him or by an express provision of law. The tribunal must, *ex officio*, ensure that professional secrecy is respected."

The *Professional Code* and the codes of ethics of the various professional orders⁵² regulating the conduct of professionals who work with people protected from exploitation contain similar provisions, stating that a professional may only be relieved of the obligation of professional secrecy with the authorization of the client, or when so ordered by law. As a result, a professional who observes a situation of exploitation cannot file a complaint or report the situation without the victim's authorization.

The same rules apply to stakeholders who, although not professionals, are bound to respect the confidentiality of the personal information contained in a person's file⁵³.

However, in 2001, the National Assembly passed the *Act to amend various legislative provisions as regards the disclosure of confidential information to protect individuals*⁵⁴. The effect of the Act was to introduce into the legislation governing the professional orders, and those governing the protection of personal information, provisions to allow (but not to require) the disclosure of personal information

⁵² See, in particular, *Code of ethics of nurses*, R.R.Q. 1981, c. 1-8, r. 4.1, section 31; *Code of ethics of social workers*, R.R.Q. c. C-26, r. 180, section 3.06.01.

⁵³ *Act respecting access to documents held by public bodies and the protection of personal information*, R.S.Q., c. A-2.1; *Act respecting the protection of personal information in the private sector*, R.S.Q., c. P-39.1; *Act respecting health services and social services*, R.S.Q., c. S-4.2; *Act respecting health services and social services for Cree native persons*, R.S.Q., c. S-5.

⁵⁴ S.Q. 2001, c. 78.

without the consent of the person concerned, in cases where there are reasonable grounds to believe that the person, or a group of persons, are in imminent danger of death or serious injury. The disclosure must be limited to the information necessary to the purpose of the Act. In addition, the information may only be disclosed to the person or persons in danger or to persons able to provide assistance.

The Commission is one of the authorities that may provide assistance. Section 81 of the Charter states that *where the commission has reason to believe that the life, health or safety of a person involved in a case of discrimination or exploitation is threatened or that any evidence or clue pertaining to such a case could be lost, it may apply to a tribunal for any emergency measure capable of putting an end to the threat or risk of loss.*

CHAPTER SEVEN OBSERVATIONS AND RECOMMENDATIONS

Since 2001, in addition to various legislative amendments, numerous documents – orientations and commitments, guidelines and plans of action – have been drawn up and made public by the Québec government, which has also established a number of committees to apply them or oversee their application. This has taken place against the background of a broad reconfiguration of Québec’s health and social services system. At first glance, these projects, some of which are more advanced than others, appear to correct some of the problems brought to the Commission’s attention during the consultations on the exploitation of the elderly. However, more time must pass before concrete effects in everyday life can be measured and conclusions can be drawn.

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Other stakeholders have also taken action, in particular to provide training and information. This report has looked at this area in detail, and the Commission notes a clear improvement in terms of sensitivity to the problems of abuse, neglect and exploitation that are often faced by the elderly.

As it puts the final touches to this report, the Commission observes that an extra effort must be made to provide an even more effective response to the expectations of the individuals and organizations that appeared at the public hearings and spoke on behalf of vulnerable elderly people. This is why the Commission, pursuant to the powers granted by subparagraph 7 of the second paragraph of section 71 of the *Charter of human rights and freedoms*, has decided to make further recommendations.

7.1 CARE AND SERVICES FOR THE ELDERLY

7.1.1 Private residential facilities

In its consultation report, the Commission stated its opinion that the State should make a clear choice between two options: either to prohibit private facilities from housing elderly people with a severe loss of autonomy, or to allow them to do so while ensuring that the elderly people concerned receive the care they require.

The MSSS has opted for the second approach. However, this means that its repercussions on the allocation of resources must be taken into account and that real control measures, as specified in the *Act respecting health services and social services*⁵⁵, must be applied. In its 2001 orientations⁵⁶, the MSSS admitted that certain private residential facilities cannot provide *personal care services that require basic training* (our translation) because they lack the necessary resources (family and social helpers, orderlies or nursing aides), although agreements can be made with CLSCs to provide access to these services.

⁵⁵ *Act respecting health services and social services*, sections 489 and 489.1, and other provisions to be introduced by Bill 83.

⁵⁶ MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *Orientations ministérielles sur les services offerts aux personnes âgées en perte d'autonomie*, Québec, February 2001.

The Commission has noted the choice made by the MSSS, and hopes that the new budget and resource allocation process will generate positive results as soon as possible⁵⁷.

Status and supervision of private residential facilities

The Commission's recommendations were intended to prevent abuse, neglect and exploitation of vulnerable elderly people in inadequate, unsupervised residential facilities. In the view of the Commission, the best solution was to adopt an accreditation procedure along with supervision measures that included, for example, unannounced visits to verify the actual quality of the services provided and the concrete steps taken to correct problem situations. This solution also allowed standards to be established for the contracts signed by elderly residents with private facilities, and supervision to ensure that the standards were respected.

Instead, in Bill 83 tabled in the National Assembly in December 2004, the Minister of Health and Social Services introduced a certificate of compliance managed on a regional basis. Given the complex context to which the health and social service network must adjust, it must be acknowledged that the proposed measures reflect a genuine willingness to improve the current overall situation, while relying on the establishment of adequate services over the longer term.

However, the Commission is not convinced that this approach will be effective, since a certificate of compliance would not be compulsory and would rely on the good faith of owners of private facilities. The Commission therefore recommends:

THAT Bill 83 be amended to make it compulsory for all private residential facilities for the elderly to obtain a certificate of compliance in order to operate.

Municipal regulation of private residential facilities

Municipalities now have the power to make by-laws setting standards for the construction and layout of private residential facilities for the elderly, to ensure that residents receive services that match their condition. This power gives municipalities an opportunity to act that, in the view of the Commission, they should seize immediately to act in favour of the elderly people living in their territories.

The Commission also notes that use of the power by municipalities is optional, although the needs are real. This could lead some municipalities to avoid making by-laws if, for example, certain standards could have a negative impact on the financial capacity of some private facilities, especially those of small size, to meet them without appropriate support.

For these reasons, the Commission recommends:

THAT the Minister of Municipal Affairs, Sports and Recreation introduce an amendment to the *Act respecting land use planning and development*⁵⁸ in the National Assembly to require municipalities to adopt by-

⁵⁷ See point 1.5 above on *Budget and resource allocation*, p. 14.

laws prescribing building standards and layout rules for private residential facilities for the elderly, to ensure that residents receive the services that match their condition.

7.1.2 Use of restraint in public residential facilities

The orientations and principles drawn up by the Ministère de la Santé et des Services sociaux concerning service quality and resource allocation, as well as its orientations and plan of action concerning physical restraint, generally meet the expectations of the Commission.

However, the results cannot be judged before the development agencies file their reports on the implementation of the orientations entitled “Milieu de vie de qualité en CHSLD”, at the latest in March 2005, and the first overall assessment of the implementation of the restraint orientations is made for the period 2004-2005.

In addition, the Commission finds it regrettable that the expert committee asked by the MSSS to draw up guidelines on chemical restraint has failed to complete its work.

As a result, the Commission recommends:

THAT the Ministère de la Santé et des Services sociaux make public, at the earliest opportunity, the results reached in the implementation of its orientations concerning service quality and resource allocation, and concerning physical restraint.

THAT the Ministère de la Santé et des Services sociaux take the necessary steps to complete its work on chemical restraint without delay, to publicize the results of the work and to see that concrete measures reflecting the work are applied, while soliciting the collaboration of all network stakeholders.

7.1.3 Budget and resource allocation

If the recommendations made in the report by the expert committee asked by the MSSS to examine the budgetary and resource allocation framework are implemented rapidly – which partly depends on the information available on the needs in each region – then a fairer balance in the response made to the needs of the population in each region should become established in the near future.

The whole question of budget and resource allocation has a direct effect on access, by the elderly, to the services that allow their rights to be respected, and so the Commission recommends:

THAT the Ministère de la Santé et des Services sociaux make public, within the time frame it has established, namely in 2005, a progress report that sets out the results obtained and their actual effect in terms of expected improvements in access to care and services.

7.2 TRAINING

7.2.1 Training for personnel in public facilities

The Commission has noted the orientations and guiding principles defined by the Ministère de la Santé et des Services sociaux, but considers that only the plan of action will give a true idea of the actual changes and improvements that will be made.

For now, the Commission will make no comments. It will examine the plan of action to identify the concrete measures that may prevent not only abuse and violence, but also all forms of exploitation. The Commission expects the MSSS to ensure that its projects include the implementation of a professional development program for stakeholders in the network dealing with abuse and exploitation.

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7.2.2 Training for personnel in private facilities

People working in private residential facilities are often the primary carers for elderly residents, and it must be assumed that the owners of the facilities check their qualifications on hiring. However, such personnel often has to face the results of the aging process, and may witness abuse, neglect or exploitation that it does not have the knowledge to deal with, especially in terms of the recourses available.

The problem of training will be a determining factor if the certificate of compliance is made compulsory, since private facilities, and volunteer organizations, do not have access to support programs for providing training. As a result, the Commission recommends:

THAT the Ministère de la Santé et des Services sociaux include, in the implementation of its certification program, an awareness-raising and training program for personnel working in private residential facilities.

7.2.3 Training for other people working with the elderly

The professional orders whose members are most likely to work with the elderly, as well as police forces, have responded to the call made by the Commission in its consultation report, to varying degrees. Some positive highlights are the professional development programs drawn up and applied by the Ordre des infirmières et infirmiers du Québec, and the actions of police forces with leadership from the Ministère de la Sécurité publique and the Sûreté du Québec. The Commission therefore recommends:

THAT all professional orders and police forces establish, or continue, professional development programs for their members concerning the types of abuse, neglect and exploitation that affect the exercise of the rights of the elderly.

7.3 RECOURSES IN CASES OF EXPLOITATION OR ABUSE

In its consultation report, the Commission recommended that the *Charter of human rights and freedoms* be amended to require the Health and Social Services Ombudsman, such as is currently the case for the Public Protector, to forward to the Commission any information within the Commission's sphere of investigation.

Bill 83 assigns the current functions of the Health and Social Services Ombudsman to the Public Protector. The Commission therefore assumes that the obligation imposed on the Public Protector by section 75 of the Charter will also apply to complaints received under the *Act respecting the health and social services ombudsman*.

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7.4 INFORMATION ACTIVITIES AND PROGRAMS

Although announced in the government action plan *Le Québec et ses aînés : engagés dans l'action*, the mobilizing project for combating elder abuse, which was to promote joint action by all the stakeholders in a region, the pooling of expertise, and the introduction of measures to inform the elderly, was never implemented because the required funding was not allocated by the government.

The Commission also notes that the government commitments concerning information for the elderly will require the development of Internet-based tools, which has not so far occurred to the best of our knowledge. Some networks already exist, including the French-language Internet network *Vieillir en liberté* and the Quebec Network against Elder Abuse, but these are projects set up by non-profit organizations that cannot function without adequate funding. Although it is necessary to support the mission and objectives of these networks, the service they offer cannot completely take the place of the government's responsibility to provide stakeholders and the general public with accurate, exhaustive and updated information on the protection of the rights of the elderly.

It is also important to note that not all elderly people have access to the new information technologies. The transmission of information from person to person using user-friendly, widely available tools must remain the focus. The Commission therefore recommends

THAT the government undertake, without delay, to implement a planned information campaign on abuse, neglect and exploitation, using the most appropriate tools to reach all the people who need the information, such as elderly people and stakeholders.

CONCLUSION

In light of the general and specific observations made above, the Commission would like to call once again on the cooperation of all the people who intervene,

in whatever way, with vulnerable elderly people, to actively monitor the situation and, where needed, alert the authorities at all levels that are responsible for providing care and services for the elderly, and for protecting their rights, including the Commission.

Within the scope of its mission and mandate, the Commission will continue to intervene in all cases that threaten the exercise or respect of the rights of the elderly, as defined in the *Charter of human rights and freedoms*.

RIGHTS OF THE ELDERLY

All the rights affirmed by the *Québec Charter of human rights and freedoms*,

including the fundamental rights of personal security, inviolability and freedom, safeguard of dignity, respect for private life, free disposition of property, and non-disclosure of confidential information...

and the right to be protected against discrimination based, in particular, on age.

More specifically, the Charter recognizes the right of all elderly people to be protected against any form of discrimination, and the right to the protection and security that must be provided by their family or the persons acting in their stead.

The Charter also states that any unlawful interference with any right or freedom recognized by the Charter entitles the victim to obtain the cessation of such interference and compensation for the moral or material prejudice resulting therefrom.