

# ***The Exploitation of the Elderly***

A Working Paper

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## **I**NTRODUCTION

The *Commission des droits de la personne et des droits de la jeunesse* is a public agency. Its members are appointed by the National Assembly, and its mission is to oversee the implementation of rights and freedoms defined in the *Québec Charter of Rights and Freedoms* and in the *Youth Protection Act*. The Commission has been given various powers and can, among other things, investigate, initiate court action, analyse Québec laws, conduct research work and co-operate with other organizations. The Commission is also specifically responsible for hearing suggestions and recommendations concerning rights and freedoms, notably by inviting interested persons and groups to submit publicly their observations.

Our experience leads us to believe that the exploitation of the elderly is a fairly widespread phenomenon, and suggests that we do need to gain a better understanding of this phenomenon in order to develop more efficient solutions. We hope this initiative will result in a collective assumption of the problem, leading to concerted efforts towards finding solutions.

With its emphasis on promoting the awareness concerning the elderly, the International Year for the Elderly looks like an excellent opportunity to initiate this consultative process.

Therefore, the Commission is undertaking this public consultation, under the mandate attributed by the *Québec Charter of Human Rights and Freedoms* to take appropriate measures for the promotion and respect of the principles of the Charter.

This working document was prepared by the Commission des droits de la personne et des droits de la jeunesse du Québec and is aimed at all persons and organizations concerned by the well-being of elderly people and who work for them, in one way or another.

Whether you are a person with personal or professional opinions on the subject, or the spokesperson for an association of elderly people or of recipients, or the representative of a CLSC, of a hospital or of any other institution devoted to the well-being of the aged, of a professional corporation, of a police force, of a health and social services union, or a manager of an institution in that network, this document is likely to concern you.

The Commission's objective is dual :

- Gain a better understanding of exploitation of the elderly cases and of the difficulties encountered in trying to stop the phenomenon;
- Increase the efficiency of ways and means to stop this phenomenon.

In this regard, the Commission believes it is necessary to create a forum for the exchange of ideas concerning exploitation and the Commission has an obligation to ask you for your expertise and your competence concerning certain relevant aspects of the problem.

You will note, on the one hand, that we did not define in precise terms the concept of elderly persons, in order not to limit the scope of this initiative. On the other hand, this document does not concern all aged persons, since a majority of them do enjoy a large degree of autonomy in the organization of their life, and can count on the active support of their family and friends. Victims of exploitation are to be found among the most vulnerable persons, or among persons dependent upon others for their basic needs.

This consultation is aimed at persons concerned with the fate of the elderly who are most at risk of becoming victims of exploitation because of the fact that they are vulnerable or dependent.

### **The rules of the consultation**

In concrete terms, the consultation process starts with the mailing of this document to the persons, groups and organizations most likely to provide some insights into the problem of exploitation of the elderly, and most likely to be in a position to contribute to its solution.

You are therefore invited to participate in this public consultation by reacting to the questions being asked and by submitting a brief that should be delivered to the Commission no later than February 11, 2000.

Briefs should, in principle, deal with the themes proposed in this document. You can comment the whole document, or address one or more specific questions that would seem more important or more related to your specific jurisdiction or competence.

On the other hand, since the purpose of this public consultation is to provide a where specific cases will be solved. Individual examples must be used only for illustrative purposes, and their description should respect full confidentiality.

to be held in Montréal and Québec City, in the spring of 2000. Dates and places will be announced later.

Commission will also submit recommendations to the competent authorities.

The following pages describe the Commission's perception of the exploitation of consult the public.



# PART ONE

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:

A PHENOMENON THAT MUST BE STOPPED

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## 1 WHAT IS THE EXPLOITATION OF THE ELDERLY?

Since 1975<sup>1</sup>, the *Québec Charter of Human Rights and Freedoms* recognises the fact that, in addition to the rights guaranteed to every person, the aged and the handicapped must enjoy specific rights related to their own specific circumstances :

*"48. Every aged person and every handicapped person has a right to protection against any form of exploitation.*

*Such a person also has a right to the protection and security that must be provided to him by his family or the persons acting in their stead. "*

According to the interpretation of the *Commission des droits de la personne et des droits de la jeunesse*, the Charter thus provides that an elderly person<sup>2</sup> may have to be protected against exploitation if that person is psychologically, socially, economically or culturally vulnerable, or if that person is dependent upon another person for her or his basic needs.

Within the meaning of the Charter, **the exploitation of elderly person occurs whenever one takes advantage of the vulnerability or dependent condition of a person to deprive that person of his/her rights, physical and psychological integrity, his/her dignity, or of his/her freedom to dispose of his/her own possessions. For instance, exploitation can take the form of squeezing money from an elderly person, mistreating that person, or depriving that person of proper care, safety or well-being.**

All persons have a right to equality and to the enjoyment of their fundamental rights such as dignity, integrity, privacy and free disposal of their possessions. Discrimination against persons because of old age can sometimes prevent them from fully enjoying their rights. Exploitation consists of depriving vulnerable persons of their rights, whether through the acts of a person or through the shortcomings of a system that controls their existence. It must be noted that older people in need of such protection are those persons who are most

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<sup>1</sup> *Charter of Human Rights and Freedoms*, 1975, c. 6, art. 48.

<sup>2</sup> This document deals strictly with elder exploitation; similar situations can also affect the handicapped, but such cases are not within the scope of this document.

vulnerable and less able to defend themselves or who are dependent upon others for their basic needs.

In certain cases, exploitation can constitute a form of discrimination within the meaning of the Charter. However, section 48 is a self-sufficient provision; it protects against exploitation towards the aged as well as towards the handicapped. For instance, a person who, because of age, has lost part of his/her physical and/or mental faculty, is indeed protected, like the person who, without being handicapped because of age, finds himself/herself in a state of vulnerability or dependency.

Exploitation therefore includes economic exploitation, as well as various other types of exploitation resulting in a diminished recognition and exercise of their rights.

In the Brzozowski case<sup>3</sup>, the *Quebec Human Rights Tribunal* has confirmed this interpretation and defined the nature of forbidden exploitation within the meaning of the *Québec Charter of Rights and Freedoms* :

*"In section 48, the word "exploitation" must be interpreted as designating all forms of exploitation and is not limited to financial exploitation (financial profit). Therefore, exploitation can take the form of physical, psychological, social or moral exploitation."*

In this case, the owner of a home for the aged, for which she did not have any license, was accommodating incapacitated elders, the majority of which had been born in East Europe. Upon complaints from two CLSCs and one hospital, the Commission conducted an inquiry of its own. The facts demonstrated that the defendant placed her victims in isolation, severing contacts with all social workers, and appropriating their possessions, keeping them in her residence without providing the services warranted by their condition<sup>4</sup>.

The Court concluded that the defendant had violated paragraph 1 of section 48 by operating her residence *"in conditions that enabled her to take advantage of the vulnerability, dependence, isolation and incapacity of certain residents, in order to steal*

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<sup>3</sup> *Commission des droits de la personne du Québec c. Brzozowski* (T.D.P.Q.), [1994] R.J.Q. 1447.

<sup>4</sup> *Brzozowski, ibid.*, 1475.

*their savings and deprive them of their fundamental rights under the Charter and prevent them from exercising other rights such residents should have enjoyed under the law.*"<sup>5</sup>

We insist on the fact that elders do hold rights and freedoms bestowed by the Charter to all persons. Here is a short list of rights.

They are entitled to their safety, their integrity and their freedom. They also have juridical personality, which means that they can decide for themselves and act on their own, unless, exceptionally, administration of their assets or decisions concerning their person (or both) has been assigned to a third party by a specific legal procedure.

The right to adequate help when one's life is endangered is a fundamental right, like the right to privacy and the right to dignity and security of the person. Any person has the right to the inviolability of his/her residence and the right to enjoy and dispose of his/her possessions.

Basic freedoms are to be enjoyed by all persons, regardless of their age : such freedoms do include freedom of opinion and freedom of expression.

In their relationship with professionals (doctors, therapists, social workers), the elders, just like any other person of any age, are protected by the professional rules of confidentiality.

Furthermore, the right to equality without discrimination based on age cannot be limited, unless the law states otherwise.

However, the Commission wishes to express the following important caveat : in no way do we pretend that all elders are potential victims of exploitation. On the contrary, the Commission is of the opinion that the majority of elders are not in situations where they are exploited. What we are talking about here are exceptional situations, which may nevertheless prove more common than anybody would expect. This is what must be stopped.

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<sup>5</sup> *Brzozowski, ibid., 1472.*

## 2 THE VARIOUS RECOURSES AVAILABLE TO THE COMMISSION

Being responsible for the implementation of the rights spelled out in the Charter, the *Commission des droits de la personne et des droits de la jeunesse* can, among other things, make inquiries concerning discrimination-related infringements, as well as exploitation-related infringements. Such inquiries are initiated following a complaint or following the submission of objective data justifying action on the part of the Commission.

Victims of discrimination or exploitation can obviously file a complaint with the Commission.

A complaint can also be filed on behalf of a group of victims experiencing similar types of discrimination or exploitation.

Any organization advocating rights and freedoms or dedicated to the well-being of a group of persons can file a complaint on behalf of eventual victims, with their consent. However, in cases of exploitation, it may be impossible for a victim to file a complaint or to consent to an enquiry, because of his/her own vulnerability or dependency, because of his/her own insecurity, or for fear of retaliation. In such cases, the Commission may inquire into the situation, even without the consent of the victim.

Any person aware of a case of exploitation (family member, friend, neighbour, volunteer worker or other) can report it to the Commission. The Commission will then decide if the situation justifies an immediate inquiry. In such circumstances, the anonymity of the person who has reported the case can be respected.

The Commission can secure emergency arrangements fairly quickly from the *Tribunal des droits de la personne* in order to cut short anything that could threaten the life, health or safety of an elderly person being exploited. The Commission can also take legal action in order to stop all acts of retaliation against victims, informants or witnesses in cases of exploitation or discrimination.

All those provisions concur to impose upon the Commission a distinctive mandate in the fight against elder exploitation.

### 3 EXPLOITATION : A COMMON OCCURRENCE IN OUR SOCIETY?

#### 3.1 The elders in our population

In 1996, persons aged 65 and over represented 12% of the population in Québec<sup>6</sup>. However, the geographical distribution of those people went from 3% in New-Québec to 14.9% in the Montréal-Centre area (14.7% for the city of Montréal<sup>7</sup>).

In the Montréal area, 62.7% of elders were women. Furthermore, since the proportion of women amongst the aged population increases with age, the women represented 67.4% in the 80-84 age group, and 75.3% of persons aged 85 and over.<sup>8</sup>

The proportion of persons aged 65 and over will not decrease over the next decades. On the opposite, a lower birth rate, combined with an increasing life expectancy, will cause an unprecedented increase among this age group. In this regard, a recent publication from the Québec Bureau of Statistics demonstrated that, regardless of the scenario concerning population projections, the number of persons over 65 could well be multiplied by 2.1% in 2031, and by 2.5% in 2051. Projections also indicate that, by 2051, persons aged 65 and over will go from the actual proportion of 12% to 29.4%, while persons aged 85 and over, who represent at present 8.9% of persons aged 65 and over, will represent 24.1%<sup>9</sup>.

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<sup>6</sup> Normand THIBAUT and Hervé GAUTHIER, « Perspectives de la population du Québec au XXI<sup>e</sup> siècle : changement dans le paysage de la croissance », in *Statistiques, données sociodémographiques en bref*, Vol 3-n° 2, février 1999, Bureau de la statistique du Québec.

<sup>7</sup> Total population according to sex and age groupings, CITY OF MONTRÉAL, 1996, Site : [http://www.ville.montreal.qc.ca/urb\\_demo/recensem/images/population/seage\\_mtl.gif](http://www.ville.montreal.qc.ca/urb_demo/recensem/images/population/seage_mtl.gif) (99-07-20).

<sup>8</sup> Diane MARTEL, *La violence envers les gens âgés Recension des écrits*, Document de travail, Régie régionale de la santé et des services sociaux de Montréal-Centre, Direction de la santé publique, mars 1997, p.5

<sup>9</sup> Thibault and Gauthier, *ibid.*, p. 5.

Most aged persons are in good health. A recent survey by Santé Québec<sup>10</sup> indicated that, after elimination of cases requiring special help or services, a large majority (70%) of persons aged 65 and over did not need any assistance and were autonomous and in good health.

However, any person advancing in age is more likely to become sick or invalidated, physically or otherwise, or to see his/her spouse and friends die. For some, this is the origin of anxiety caused by a certain awareness of the fact that they are indeed getting old.

Certain social phenomena can affect a percentage of elders and increase their vulnerability.

Here are some factors that affect older persons :

- Physical isolation (in 1991, one third of aged persons living within a private household in Montréal were living alone);
- Affective isolation resulting from the death or departure of a spouse;
- The fact that 25% of persons aged 65 and over live below the poverty line in Québec;
- Psychological distress resulting from mental disorders, chronic illnesses, excessive or insufficient use of drugs, or multiple drug exploitation, change in the material or cultural environment (in the case, of immigrants) etc.;

The following factors can also influence their environment :

- Impoverishment of certain groups in our society, while the relative material situation of several older persons has stabilised;
- Addiction can lead persons closely related to elders to behave in ways that are tantamount to exploitation;
- Prejudices towards the aged.

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<sup>10</sup> SANTÉ QUÉBEC, *Aspects sociaux reliés à la santé : rapport de l'enquête sociale et de santé 1992-1993*, Montréal, Ministère de la santé et des services sociaux, Gouvernement du Québec, 1995, volumes 1,2,3.

All those factors result in aged people being forced into situations of vulnerability and/or dependency that can lead to exploitation.

### **3.2 Age discrimination**

Very often, it is the so-called “youthfulness” of the aged that is valued and most appreciated, which is tantamount to ignoring the fact that they are indeed getting older.

The fact of getting older is far less popular. In our Western societies, dominant values concerning the fact of getting old are the source of stereotypes, prejudices, and marginalisation of elders, as well as of all sorts of abuse. So much so, in fact, that social sciences have introduced the concept of “ageism”, similar to the concept of “sexism”, that designates prejudices based on sex.

In this regard, the *Conseil des aînés* provides this description of the situation :

*“Much elder exploitation is based on age discrimination, which can be defined as a set of stereotypes and discriminatory attitudes based on the age of a person. Such negative attitudes dehumanise the image of all elders to the point that some people will abuse them without any sense of guilt or remorse. In this perspective, denying elder abuse, along with various phenomena such as the attitudes of society towards elders, the lack of structures and support for persons willing to help, the lack of accessible services, and the absence of social policies for elders, all have strong marginalising effects.”<sup>11</sup>*

Cultural factors are one of the most important sources of stereotypes and prejudices, and of marginalisation of elders :

*“The main stereotypes against elders are related to images of weakness, vulnerability, dependency, lack of interest, sickness, submissiveness, apathy, isolation, insecurity and unproductivity.”<sup>12</sup>*

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<sup>11</sup> CONSEIL DES AÎNÉS, Sept. 1995, *Avis sur les abus exercés à l’égard des personnes aînées* p. 26. (Our translation)

<sup>12</sup> CONSEIL DES AÎNÉS, January 1997, *La réalité des aînés québécois*, p. 5.

The key stereotype could very well be the widespread belief that they form a homogeneous group or category that can be considered “unproductive”, and therefore “useless” and “a burden to society”.<sup>13</sup> Such categories can become labels that condemn all individuals of the category, causing them to become victims of even more stereotypes and prejudices.

In such conditions, one can understand the kind of cynicism that brings some people to take advantage of the vulnerability of elders in their environment and to exploit them and deprive them of their rights.

### **3.3 Systemic discrimination**

Cases involving the exploitation of one or several persons by one exploiter are relatively simple to define, even if remedial action requires custom-made interventions that take into account the needs of the victims. Cases of systemic discrimination where infringements are the result of a process, or of processes, having direct and indirect impacts are much more insidious in nature, and much harder to identify :

*“... systemic discrimination is often unintentional. It is a result of standard practices and policies that, in real life, have negative implications [...] for a particular group. An additional factor is the attitudes of management and administrators who share stereotyped views as to the skills and “appropriate role” of the group in question, when such views automatically lead to the firm (and utterly false) belief that all members of the group are incapable of certain things.”<sup>14</sup>*

The *Commission des droits de la personne et des droits de la jeunesse* has brought such a case before the *Tribunal des droits de la personne*; that case involved mentally impaired persons living in a reception centre<sup>15</sup>. Even though the center

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<sup>13</sup> CONSEIL DES AÎNÉS, 1997, *op. cit.* See also MINISTÈRE DES AFFAIRES SOCIALES, *Pour mieux vieillir au Québec*, Québec, 1980. In a similar train of thought, it could be said that our societies are basically individualistic, finding answers to questions involving responsibilities towards others in formal structures based on various categories of persons (see, for example, Didier Lapeyronnie, *L'individu et les minorités. La France et la Grande Bretagne face à leurs immigrés*, PUF, 1993).

<sup>14</sup> *Action travail des femmes c. C.N. S.C.C.*, 8 C.H.R.R. (1987) D/4230.

<sup>15</sup> *Commission des droits de la personne c. Coutu*, (1995) R.J.Q. 1628 (T.D.P.).

had a license and certification recognised by the Ministère des Affaires sociales, the operations at the “Pavillon Saint-Théophile” were organised in order to maximise the owner’s profit, without consideration for the minimum levels of health and therapeutic services for beneficiaries. This case is worth reviewing, even if it does not involve the elderly, since it concerns states of dependency and vulnerability.

Four instances of exploitation could be observed. First of all, beneficiaries’ accounts were billed for services and products they would never receive. Second, there were no appropriate educational or cultural services, adapted to their needs. Their activity or recreation periods were exclusively designed with the objective of increasing the profitability of the organization. Beneficiaries were not always treated with respect and dignity, and no attention was paid to the daily minor humiliations they suffered, provided the whole operation was profitable. Finally, almost none of the persons in charge or working for the establishment had any previous qualification or experience.

Presently, with budgets cuts everywhere, organizations can indeed, for financial reasons, adopt practices that can be prejudicial to the dignity of elders. Policies can be developed in order to provide services to more people at lower costs, without determining what constitutes minimal acceptable levels, in quantity as well as in quality. For instance, understaffing at meal time, within an organization, could lead to chronic malnutrition problems among beneficiaries.

### **3.4 Violence as a sign of exploitation**

No study has been made so far that would make it possible to evaluate with some accuracy the proportion of elders who are victims of exploitation within the meaning of the Québec Charter, in Québec or elsewhere in Canada.

There are nevertheless some studies outlining in a more general way the question of abuse or violence against elders. Such studies could provide some indication as to the infringements upon the rights of older persons.

***Violence within households***

One Canadian study suggests that 4% of elder persons living alone or within a household are victims of violence.<sup>16</sup>

Since elders are very reticent to talk about their relationships with a child or a spouse who could physically abuse or exploit them, or even to recognise the phenomenon, the 4% figure could very well underestimate the prevalence of the problem within families. Nevertheless, even on a basis of 4%, this would represent 6,000 out of the 150,000 elders living in the city of Montréal in 1996.

Amongst aged persons considered in this study to have been victims of exploitation, it should be noted that 50% were subjected to financial or material exploitation, 30% to chronic verbal assault, 10% to physical assault, 8% to negligence, while 19% were subjected to more than one form of exploitation.

The elder abuse detection and prevention project launched by the CLSC René-Cassin in downtown Montréal has demonstrated that 7% of elders served by this CLSC are victims of abuse<sup>17</sup>. At the CLSC Notre-Dame-de-Grâce/Montréal-Ouest, where researchers have been conducting a study on the subject since 1992, from 8% to 13% of persons helped by that CLSC have been found to be victims of abuse by persons close to them who were caregivers<sup>18</sup>.

***Violence in institutions***

*As for institutions*, some studies conducted on samples supplied by professionals suggest that there are numerous cases of abuse in institutions in Canada<sup>19</sup>. A Québec study underlines the great difficulty observed in detecting and controlling cases of violence in institutions, since major physical sequels are very seldom mentioned by intervenors; they tend to report instead cases of harassment,

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<sup>16</sup> E. PODNIEKS et K. PILLEMER, 1990. *Une enquête nationale sur le mauvais traitement des personnes âgées au Canada*. Institut polytechnique Ryerson, Toronto.

<sup>17</sup> CONSEIL DES AÎNÉS, 1995, p. 11.

<sup>18</sup> This was a study conducted by Myrna REIS and Daphné NIAMIASH, from Concordia University and McGill University.

<sup>19</sup> D. MARTEL, pp. 21-22.

intimidation, financial exploitation and cases of poor hygiene care and inadequate food.<sup>20</sup>

However, some authors indicate that cases of exploitation in institutions create double victimisation, because such closed environments make other residents insecure to the point that they remain silent. Instead of stopping, such cases of exploitation go on and on, and often intensify. Repeated physical or psychological abuse against persons living in institutions can constitute a form of exploitation by certain employees who, in some cases, impose total silence concerning their behaviour.<sup>21</sup>

In the recent past, the repetition of instances of sexual abuse against persons confined to institutions, whether they are children, old or handicapped persons, shows to what extent such vulnerable groups can be mistreated in institutions that are supposed to protect them.

#### **4 THE EXPERIENCE OF THE COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE**

Over a recent period we surveyed, between 1994 and 1998, the Commission received 147 requests concerning exploitation of the elderly.

After reviewing those requests, formal investigations were initiated in 75 cases.

In two-thirds of those 75 cases, the alleged exploitation affected women, while 28% of cases involved men and 3.3% involved men and women.

The alleged perpetrators (those persons accused of exploiting one or several older persons) could be divided according to the following categories.

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<sup>20</sup> RÉGIE RÉGIONALE DES SERVICES SOCIAUX ET DES SERVICES DE SANTÉ MONTRÉAL-CENTRE, 1995. État de la situation de santé et de bien être des personnes âgées de Montréal-Centre et inventaire régional des principaux services et ressources, Montréal, repris par D. MARTEL, *op. cit.*, pp. 20-21.

<sup>21</sup> M. BEAULIEU, 1990. Comment faire face aux situations abusives en institution, in *Viellir sans violence* (collectif d'auteurs sous la direction de J. Carette et L. Plamondon), Presses de l'Université du Québec, Québec, pp. 115-129 repris par D. MARTEL, *op. cit.*, pp. 20-21.

Two-thirds of alleged perpetrators were private persons. On the whole, three-quarters of alleged perpetrators included private individuals and a few owners, with the last quarter representing mostly private or public organizations.

During the same period, 60 files dealing with cases of elder exploitation were closed, with 12 (20%) cases being closed after an agreement had been concluded. In 16 cases (27%), complainants decided to withdraw their complaints, while 32 files (53%) were closed after a decision rendered by the Complaints Committee (the inquiry was closed either because the exploitation had stopped, because there was no exploitation, or because of insufficient evidence, etc.).

It should be noted that several requests were quickly dealt with by the Commission, in order to rectify situations without proceeding with a formal inquiry.

Globally, the complainants' allegations dealt mostly with housing conditions, health care and financial management.

In many cases, the Commission managed to negotiate an arrangement with the family or its equivalent in order to improve the quality of life of the victim. Such interventions can require regular visits by a social worker to the person's home, with the permission of the family as to the type of care to be provided, or with the co-operation of a financial institution for the direct deposit of pension cheques. Other measures can always be considered, such as requests to the Régie du logement when a tenant is harassed because of his/her age. There is always the possibility of alerting the Curateur public in cases that fall under his jurisdiction.

Two cases of elder exploitation were referred to the *Tribunal des droits de la personne*, with the *Commission* winning both cases. The first case, which was the *Brzowski*<sup>22</sup> case, has already been described.

In the other case<sup>23</sup>, the complaint was filed with the Commission by the victim, an elderly lady who was becoming progressively incapacitated, who had assigned the

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<sup>22</sup> *Commission des droits de la personne du Québec c. Brzowski* (T.D.P.Q.), [1994] R.J.Q. 1447.

<sup>23</sup> *Commission des droits de la personne et des droits de la jeunesse c. Fiset*, T.D.P.Q., 200-53-000002-985, December 2<sup>nd</sup>, 1998, j. M. Sheehan.

administration of her affairs to her nephew. According to the Quebec Human Rights Tribunal, the nephew had :

*"taken advantage of her old age, [...], her vulnerability, her dependency and her isolation to get her to renovate a house that he knew he would inherit, to take full possession of her personal belongings, and, mainly, to take control, illegally, of all her life savings. [...] He betrayed her trust, took advantage of the helping relationship he had established with her, and also took advantage of the state of dependency she found herself in."*<sup>24</sup>.

However, these cases cannot be considered to be indicative of the extent of the problem of elder exploitation. We could very well find ourselves in the presence of the tip of an iceberg, the importance of which we are barely starting to recognise. In this regard, the present consultation could help in the appraisal of the situation.

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<sup>24</sup> *The Fiset case*, op.cit., para. 34 of the judgement.



## **P**ART TWO

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THE THEMES SUBMITTED FOR CONSULTATION

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Here are the questions on which we wish to consult you. They address certain aspects of elder exploitation, without exhausting the subject.

We insist on the fact that this exercise is about exploitation, about **situations where persons or organizations take advantage of the elder's vulnerability or dependency to deprive them of their rights, by, for instance, stealing money from them, by mistreating them, or by depriving them of care essential to their health, safety or well-being.**

The Commission is mandated to protect the elderly against exploitation.

According to the Charter, the Commission is under the obligation to guarantee the respect of the basic rights of a person whenever the Commission takes action in order to bring an end to cases of exploitation. Taking into account the fact that some interventions require a high degree of tact and diplomacy, it must be kept in mind that the priority of the Commission is to guarantee the safety of the exploited person, while doing whatever is necessary to end the exploitation. However, the Commission cannot act alone.

In real life situations, the Commission undertakes joint actions, notably with health care and social services workers. However, such actions are not performed according to standard procedures that would make it possible to improve and generalise them. Such joint actions are also fraught with problems.

On the one hand, once the person is safe, the victim may well stay in the same environment, if such is her desire. On the other hand, remedial actions are hard to enforce in real life situations. The latter course of action often implies a breach of confidentiality. Indeed, information concerning the victim and her entourage are generally shared by the intervenors implementing the joint action. This specific problem raises questions concerning the procedure to be followed by all organizations involved in any joint action.

Furthermore, since cases of exploitation can take various forms according to the circumstances, it is obvious that specific circumstances require specific approaches.

For example, what is the impact of budget cuts of recent years? The whole population is affected by budget cuts, but it may be that elders are suffering more than other categories. They are the ones who need more health and social

services. Prejudices against them, as well as the scarcity of resources created by budget cuts, could well result in increased isolation for those persons, who would find themselves at the very bottom of the list when it comes to available services and resources.

**In this regard, this consultation will provide a sharing of experiences that will serve a double purpose :**

- First, it will make it possible to inventory the various types of exploitation and to gain a better understanding of the most frequent and most severe cases;
- Second, it will make it possible to refine and co-ordinate interventions in order to eradicate elder exploitation.

## **SITUATIONS THAT SHOULD BE IDENTIFIED AND UNDERSTOOD**

### **1 THE SIGNS OF EXPLOITATION**

The Commission is periodically notified about cases of elder exploitation : within the family itself, when the victim is exploited, mistreated or neglected by a relative; in private residences, when services are inadequate or when persons are neglected; in institutions, when employees take advantage of the dependency of patients to exploit them, physically or emotionally, etc.

However, cases of exploitation often go unnoticed by third parties, or are seldom brought to the attention of the Commission by the victims. In fact, any proactive strategy aimed at preventing exploitation requires a systematic framework in order to assess the most common occurrences, whether such cases take place within the family, in institutions, or in private residences for the aged.

Based on official reports within your own organizations, on a study that you have undertaken on the subject, or, in the absence of any such documents, based on your own personal experience as an intervenor, can you identify signs of elder exploitation, as well as the relative frequency of each typical situation?

#### **Question 1**

*According to your experience or to the experience of your organization, what are the most common and the most severe cases of elder exploitation :*

- Within families?*
- In institutions?*
- In private residences for the aged?*

## **2 RISK FACTORS**

Just like other organizations active in this specific area, the Commission is keenly aware that prevention of exploitation is important, since cases of exploitation are not easy to detect and identify.

The development of efficient prevention programs and interventions requires a thorough knowledge of the phenomenon to be controlled, starting with the very factors that contribute to the first signs of exploitation. Some factors are inherent to the potential victim :

- Emotional dependency;
- Physical or mental incapacity, after an illness or because of handicaps (impaired hearing, impaired mobility, loss of memory...);
- Emotional loss and isolation following the loss of a loved one;
- Loss of social autonomy following placement in an institution;
- Ignorance of available services and recourses.

Other factors are to be found in the victim's environment :

- Poverty of the environment and of the family;
- Substance abuse in the environment or in the family;
- Disorder or disturbance in the family, of an emotional, psychological or behavioural nature;
- Lack of community services to assist elders who want to remain autonomous;
- Prejudices towards the aged.

The *Brzozowski* case quoted above has underlined the specific vulnerability that can affect elders belonging to an ethno-cultural minority.

The exploitation of residents under the care of Mrs. Brzozowski was made easier by the fact that they were isolated from the surrounding community.

Since many of them did not speak French or English, they were an easy prey for anybody willing to take advantage of the situation. Mrs. Brzozowski identified her victims while they were in a hospital or a reception centre, and persuaded them to move in with her. After they had moved, residents were denied visits by social workers, friends or members of the family. This isolation became the central theme of this case, and it did slow down efforts to correct the situation, by preventing community workers and professionals from studying and assessing the situation.

## **Q**uestion 2

*Based on your experience or on the experience of your organization, can you identify more precisely factors that could increase the risk of elder exploitation?*

*Are there signs that would lead you to suspect that cultural isolation, and, more precisely, the incapacity to communicate easily with the environment attributable to the fact that one does not speak the language, constitutes a significant risk factor?*

### 3 INSTITUTIONAL EXPLOITATION?

Beyond individual cases, there is a form of elder exploitation that victims are not always able to identify as such because it is a consequence of standard practices and procedures within a society or an institution which most people would consider as being "normal", even though they are based on prejudices against old persons.

For instance, could certain reduction of services (such as personal care, or meals) apparently resulting from budget cuts, sometimes be a way to take advantage of the vulnerability of elders, a way to shift the burden of budget cuts to the persons least likely to complain?

#### **Q**uestion 3

*Are you aware of situations where organizations, institutions or facilities take advantage of elder vulnerability to unduly deprive them of services they are entitled to?*

*If it is the case, could you give us some examples?*

## **WAYS AND MEANS THAT SHOULD BE IMPROVED**

### **4 ESSENTIAL CO-OPERATION**

The *Commission des droits de la personne et des droits de la jeunesse* does have investigative powers that allow it to visit premises, to question witnesses, to require the deposition of documents, to take legal action, even without the victim's consent.

Such powers are usually adequate in the absence of any emotional bond between the parties involved, for instance when an older person is exploited by a paid employee, by a charitable organization, or by a public or a private residence center, even though few cases are brought to the attention of the Commission.

Much more common are delicate situations where alleged cases of exploitation involve people close to the victim, such as members of the family, friends, neighbours, etc.

Indeed, some cases have been referred to the Commission, which, after conducting an inquiry, discovers that all signs justify legal action against the apparent exploiter. However, when the exploiter is a person close to the victim, the victim often prefers to give precedence to emotional or family ties, and informs the Commission of his/her opposition to any form of legal action.

In such cases, the Commission respects the autonomy and the desire of the person, and attempts to improve his/her situation by making sure that social services provide whatever help is needed.

Obviously, in cases where it is appropriate to do so, the Commission will refer a situation to the Curateur public, who can, in turn, implement protection measures for persons incapable of caring for themselves or for their property.

Co-operation between the investigators of the Commission and various partners has often proved essential in the past - and still is. It can be a psychosocial intervention by a CLSC, a more acute awareness on the part of a financial institution, or more frequent visits or phone calls by a community care organization. There are many solutions, but most of them are outside the jurisdiction of the Commission.

Within the hypothetical framework of a model for concerted action involving organizations working towards the safety, the well-being and the respect of the rights of elders, here are a few questions :

**Question 4**

*How can we help an elder who seems to be exploited but who chooses not to complain for fear or reprisals, out of embarrassment, or in order to protect people close to him/her?*

*Would it be desirable to systemise a model of concerted action, and on what basis should it be done?*

*Taking into account the mission of your organization, would a systematic model present specific difficulties, or would it allow you to get more involved?*

*Within the framework of such a model, what ways and means could be considered in order to share and circulate all the information required for a successful intervention, while limiting the sharing of information to the parties that are directly concerned?*

*What type of personal information would constitute a minimum requirement for the development of an efficient global approach?*

## 5 INSTITUTIONAL WAYS AND MEANS

It may be necessary to adapt the rules and regulations concerning public and private institutions and residences in order to guarantee a higher degree of safety and well-being for elders.

### **Q**uestion 5

*If the Government was to define standards for decent living institutions for the aged, what should be the basic criteria, and, if need be, what monitoring mechanisms should be set up?*

## 6 VARIOUS WAYS TO HELP EXPLOITED PERSONS

Because of the silence around cases of elder exploitation, one of the most important challenges is the detection of such cases.

In this regard, the network of CLSCs has already shown some awareness, along with an interest in co-operative action. One quarter of all investigations undertaken by the Commission over the last five years were initiated after complaints from those organizations

People close to elders (family, friends...) also have a decisive role, since they are in a position, if need be, to blow the whistle on cases of exploitation by informing the *Commission des droits de la personne et des droits de la jeunesse*. The Commission can always take investigative action on its own initiative.

However, there are many incapacitated elders who have nobody close to them concerned with their welfare. Such persons are not necessarily known to public services. The risk of various forms of exploitation is therefore higher.

Should we therefore call upon other resources to facilitate the detection of apparent cases of exploitation? Could advocacy groups, acting on behalf of elders, play a more important role? Should municipal services responsible for public health and hygiene be asked to contribute? Should we appoint people whose responsibility would be to check for cases of abuse in all residences and institutions? Should we make it mandatory, for professionals working with elders, to alert authorities whenever cases of elder exploitation are observed?

### **Q**uestion 6

*According to your experience with elders, what would be the most efficient means to detect cases of exploitation?*

## **7 INFORMATION PROCESSES**

The mandate of the *Commission des droits de la personne et des droits de la jeunesse* is to distribute information concerning basic rights. A significant part of its activities consists in preparing information for various target groups, tailored to their own ways of learning and informing themselves.

One of the most obvious contributions to the eradication of elder exploitation is to better inform the elders themselves, as well as people close to them or persons and organizations looking after them, of all available recourses.

This is quite a challenge, since elders live in very different environments and rely on various channels of information, such as radio, television, newspapers, magazines, relatives, friends, neighbours, etc. It is also possible that some elders may find themselves cut off from any information.

Over the years, several information programs concerning elder exploitation have been developed. The knowledge of communication channels that should be used needs to be updated.

### **Question 7**

*According to your own experience, what would be the most efficient means to inform the various target groups of the rights of elders to protection against all forms of exploitation and of all available recourses?*

### **Question 8**

*Would you have any other suggestion concerning the eradication of elder exploitation?*

*Would you have any other observation to make concerning the eradication of elder exploitation?*

## **C**ONCLUSION

The above questions summarise the main concerns of the *Commission des droits de la personne et des droits de la jeunesse* concerning elder exploitation.

It is obvious that this problem far exceeds the limits of the Commission's mandate. The solutions come from a variety of factors, not just the legal aspect of the problem. The problem raised requires the concerted effort of all persons concerned by the well-being of elders.

We are asking for your co-operation, in order :

- To improve our knowledge of the phenomenon through your own experience;
- To suggest more efficient ways and means of intervention;

We must stress the fact that :

- This is a public consultation;
- Your briefs can, following a short presentation of you or your organization, answer all the questions asked, or only some of those questions, depending upon your concerns and your expertise;
- Your briefs should be sent to us at the address below, no later than February 11, 2000 :

**Consultation on the Exploitation of the Elderly**  
**Commission des droits de la personne et des droits de la jeunesse**  
**575 Saint-Amable, Suite 4.31**  
**Québec (Québec) G1R 6A7**

You will be informed as to the dates and places of public hearings, that should be held in the spring of 2000, in Montréal and Québec City.

For information, please contact Mr. Marc Bilocq or Ms. Nicole Morin at 418-643-1872 or 1-800-463-5621.



