

THE EXPLOITATION OF THE ELDERLY

Towards a Tightened Safety Net

Report Of the Consultation
and Recommendations

Excerpts : Part Three :
Corrective Measures

Octobre 2001

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PART THREE CORRECTIVE MEASURES

In Part Three of its report the Commission sets out the solutions it advocates to correct the deficiencies observed in the safety net intended to prevent the abuse and exploitation of the elderly. It also makes specific recommendations to various key players.

The Commission considers that the development of a true governmental action plan to address aging will be the cornerstone of the protection set in place to prevent the exploitation and abuse of the elderly. The action plan must include concrete actions to inform the elderly and the general public about the problem of abuse and the recourses available. A broadly-based effort to train all those who work with a vulnerable elderly clientele is also a necessity. Similarly, certain legislative provisions must be amended to ensure better protection against exploitation and abuse.

Other recommendations concern the accessibility and adaptation of the services provided to the elderly. Work in this area must target not only general services, but also the services offered to specific groups or clienteles among the elderly population. The focus must be placed on providing a continuum of care, taking into account the needs of each elderly individual, whether in the field of home care, private residential care or public institutional care. The question of supervision for private residential care is addressed separately.

During the consultation process, the Commission was impressed by several joint action initiatives that have focused on the theme of abuse and exploitation of the elderly. While respecting the specific characteristics of each region or community, the Commission makes a number of recommendations to promote joint action.

Next, the Commission examines the recourses available in cases of abuse or exploitation, in order to make it easier for elderly individuals to obtain redress. The need to ensure better protection against reprisals is considered to be a major issue.

The last section sets out the commitments made by the Commission to improve its ability to intervene in order to prevent exploitation of the elderly.

I ACTION PLAN TO ADDRESS AGING

As mentioned in Part Two, the Commission rejects the idea of an Act to ensure the protection of the elderly, since it would be superfluous and could compromise their autonomy. The Commission considers that a targeted Act should be avoided, and prefers an approach based on respect for the general rights guaranteed by the *Charter of Human Rights and Freedoms*.

However, the Commission believes that there is an urgent need to improve prevention approaches, methods to detect situations of abuse or exploitation, and possible intervention methods. Although there is no need to establish a new structure, such as an Ombudsman for the Elderly, it is essential that the government should exercise its leadership to support the rights of the elderly.

During the consultation process, the Commission noted that many different organizations concern themselves with the exploitation of the elderly and respect for their rights. However, there appears to be no Québec-wide organization exercising leadership to coordinate interventions and resource allocation. In the view of the Commission, this should be the role of the Minister responsible for Seniors. Despite what has been announced, the three-year plan of action on aging (2001-2004) has yet to be adopted by the Government.

The Commission reiterates the urgent need to adopt an action plan defining, in particular, specific measures to eliminate abuse of the elderly, to ensure that the Québec State establishes priorities in connection with aging, and that the priorities are implemented by all the government departments and agencies concerned.

The Commission recommends:

RECOMMENDATION 1

That the Government of Québec adopt, as soon as possible, an action plan to address aging that defines, in particular, specific measures to eliminate abuse of the elderly.

In addition, a government agency should be entrusted with responsibility for coordinating government action, in a concrete way, to ensure the implementation and monitoring of an action plan to address aging. The Secrétariat aux Aînés is in an ideal position to perform this role, provided it is allocated the necessary resources.

The Commission recommends:

RECOMMENDATION 2

That the Government of Québec allocate the necessary resources to the Secrétariat aux aînés to allow it to ensure the coordination, consistency and development of all government actions affecting the living conditions of the elderly, and in particular to see to the implementation and monitoring of an action plan to address aging.

The Commission is pleased to observe that many of the needs of the most vulnerable elderly people seem to be taken into account in a recent set of ministerial guidelines, *Orientations ministérielles sur les services offerts aux personnes âgées en perte d'autonomie* ("Ministerial

guidelines concerning services for elderly people experiencing a loss of autonomy"). The need for steps to integrate services, provide a continuum of care and personalize intervention plans is evident. The ministerial guidelines give a general overview of these aspects, and provide an indication of how measures could be implemented in response. It is clear that measures of the kind proposed would prevent many of the encroachments of fundamental rights denounced by the elderly, their families and other stakeholders during the consultation process. For this reason, the Commission urges the Minister of Health and Social Services to take concrete action in keeping with the guidelines.

However, it must be remembered that while some victims of exploitation are elderly people who are physically and mentally autonomous, others experiencing a loss of autonomy can also be exploited, even if they are receiving appropriate care and effective technical support. From this point of view, the proposed guidelines are not sufficient, alone, to combat the exploitation and abuse of the elderly.

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2 FOUR-TIER PREVENTION

"Prevention is better than cure." This precept applies especially in connection with the exploitation and abuse of the elderly. The Commission proposes that work should proceed on several fronts: informing the elderly and the general public about abuse and the recourses available, amending certain legislative provisions to improve the existing safety net, and training all those who work directly with a vulnerable elderly clientele.

2.1 INFORMATION

2.1.1 Fighting prejudice against aging and the elderly

The prejudices many people have against the elderly, a problem whose scope and insidiousness were discussed during the consultation process, can lead to the emergence of "ageism", which in turn leads to a form of exclusion based on the real or supposed characteristics of the elderly as a group. This type of exclusion distances the elderly from the activity of society, prevents them from being productive and reduces the value society places on them as individuals.

Since the circulation of theoretical or technical information is not particularly effective in this type of situation, the Commission urges the Minister of State for Education to ensure that family and intergenerational solidarity becomes one of the underlying messages of the general education dispensed by elementary and secondary schools. The "citizenship education" component of the current education reform would provide the most appropriate platform for the transmission of these values.

As reflected in local and regional initiatives, there are several ways of fighting ageism in school, for example by setting up intergenerational twinning projects. Current projects are designed to give young people an opportunity to understand the realities faced by the elderly and, through intergenerational activities, to prevent the development of prejudices against the elderly. These projects, often launched at the local level by associations of the elderly, meet a real need but are not widely known or centrally listed

If they were explained and publicized, they could act as a model for new initiatives by other local communities and institutions.

The Commission recommends in this respect:

RECOMMENDATION 3

That the Secrétariat aux aînés be assigned the task of listing and circulating information on programs, initiatives and activities designed to promote intergenerational solidarity.

2.1.2 Taking steps to ensure a family presence

Family members can help in several ways and at several levels to ensure that the rights of elderly relatives are respected. Whether the elderly individual lives in his or her own home or with a family member, or is in private or public residential care, regular visits are the best way of preventing isolation.

Sometimes, families can play a part by taking an elderly person into their home. A family that takes on this kind of responsibility must ensure that the elderly person receives the health services and social services required by his or her state of health.

Families also play an essential role in the life of an elderly relative in residential care. First, the family must ensure that their relative is living in the best possible conditions. In addition, regular visits, especially unexpected ones, by family members are the best way of detecting signs of abuse. A visit to an elderly relative in care also provides an opportunity to observe the situation of other residents who do not benefit from this type of support.

The Commission recommends:

RECOMMENDATION 4

That the Minister responsible for Seniors launch an information campaign to make families aware of their obligation to help protect and ensure the safety of elderly relatives who need their assistance.

2.1.3 Informing the elderly, their relatives and the general public

The Commission has received many different suggestions on ways to raise public awareness of exploitation and abuse. Any information campaign must primarily target those directly affected by the situation in question.

The campaign should, for example, explain what exploitation and other forms of abuse are and why they are unacceptable, explain ways to denounce and stop exploitation and abuse, and list existing sources of help. It should also explain why victims should not feel guilty about their situation.

The various types of information campaign suggested during the consultation process included:

- articles in publications that target an elderly audience, such as the magazine *Le bel âge*, and in neighbourhood newspapers;
- a media campaign (print, radio and television) to publicize the range of resources available to help elderly people avoid exploitive situations;

- circulation of information by placing posters or flyers in places used by the elderly (drug stores, banks, shops);
- distribution of information by means of brochures left in the offices of health professionals (doctors, dentists), hospital waiting rooms, drug stores, senior citizens' clubs and financial institutions, and via parish newsletters;
- information sessions held in health care institutions and residential facilities, and in public venues such as shopping malls and places of worship; besides providing information on the rights, responsibilities and recourses of the elderly, the sessions can offer an opportunity to discuss prevention methods, for example to guard against the extortion of money from an elderly person by a relative;
- information sessions on theft, fraud, intimidation and verbal threats, with advice on prevention; similar programs already exist in certain communities, organized by the community prevention section of the local police force;
- distribution of information through small discussion groups, video presentations and lectures;
- an increased focus on rights and recourses in pre-retirement courses;
- depiction of situations of abuse in theatrical productions;
- phone calls from the local CLSC or regional health board to the homes of the housebound or other people unable to gain information through other channels, and home visits by volunteers.

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Some of these approaches have already been implemented. Work to raise awareness and provide information should take a variety of forms to achieve maximum impact on people in different situations.

While it notes that some initiatives have already been successfully introduced by public organizations, associations or private bodies, the Commission nevertheless considers that a single organization should be made responsible for listing and publicizing all similar work. The organization should also have responsibility for ensuring that campaign promoters have sufficient support, that campaigns are launched when necessary and that they are coordinated to avoid duplication.

The Commission recommends:

RECOMMENDATION 5

That the Secrétariat aux Aînés be made responsible for listing and publicizing different methods of informing the elderly about exploitation and abuse, about available resources and about their own rights and recourses.

In a broader perspective, it is now time to make the population in general aware of the fact that exploitation of the elderly is unacceptable. It is the duty of the State to instigate public awareness campaigns to present this position using the media (print, radio, television). The participants in the consultation process suggested, among other things,

- that the media option should include an advertising campaign; several participants pointed out that advertising campaigns have been successful in connection with other social behaviour patterns that are either undesirable (driving whilst impaired; conjugal violence) or desirable ("ParticipAction");
- that the advertising campaign should also focus on the rights and responsibilities of the elderly, and should target prime-time broadcasts;
- that the media-based approach should include information on and discussion of the issues raised, via current affairs programs and articles in the print media;
- that a Québec day against violence toward the elderly be created to raise public awareness of the problem.

The people most directly concerned are not always in a position to understand the information made available or to use it correctly. Even informed victims of abuse are often unwilling to disclose their predicament. This is why it is essential that the people close to them are made aware of and receive information about exploitation and other forms of abuse, the fact that it is unacceptable, and the various ways of stopping it. The information campaigns should have a dual objective: to reach the people in the immediate circle of an elderly person who are in a position to help, and also to reach potential abusers.

The Commission recommends:

RECOMMENDATION 6

That the Minister responsible for Seniors design an awareness and information campaign to inform elderly people and those close to them about exploitation and abuse, the fact that it is unacceptable, and the various ways of stopping it.

2.1.4 Informing the elderly about the risk of economic exploitation and ways to avoid it

Financial institutions can play a preventive role by providing information, especially concerning the nature, advantages and disadvantages of giving power of attorney over a bank account. The Caisse Populaire Saint-Dominique in Québec City² currently does this. In addition, the elderly and those close to them must be better informed about ways of avoiding certain forms of exploitation. For example, the recipient of a pension paid by the Régie des rentes du Québec can authorize the direct deposit of the pension in any account opened by the recipient in a Canadian or American financial institution.

The Commission recommends:

RECOMMENDATION 7

That the Régie des rentes du Québec specifically inform elderly people and those close to them about the advantages of and procedure for depositing benefits directly in a bank account.

In addition, participants in the consultation process reported cases in which sales personnel, often travelling salespersons, took advantage of the vulnerability of the elderly to exploit them economically. To prevent this type of occurrence, the

² Information from the TABLE DE CONCERTATION SUR LA VIOLENCE, L'ABUS ET LA NÉGLIGENCE ENVERS LES AÎNÉS DE QUÉBEC (1998).

Commission recommends:

RECOMMENDATION 8

That the Office de la protection du consommateur specifically inform the elderly and those close to them of the risks of and remedies against the type of abuse that occurs during door-to-door or telephone transactions.

2.2 Amendments to legislative and regulatory provisions

In order to provide better protection for the elderly against exploitation and abuse, certain legislative provisions need to be amended.

2.2.1 AMENDMENTS TO THE CIVIL CODE

The suggested amendments to the *Civil Code of Québec* affect the rules on mandates, especially mandates given in anticipation of incapacity, the rules governing the donation of all a person's property, and the rules prohibiting legacies or donations to certain persons.

Closer supervision should be required for mandates given in anticipation of incapacity, especially since some individuals in private residential care designate the owner of the facility as their mandatary. This is why the mandatary should be required to account to the Public Curator, on demand and at least once per year, for his or her management.

The Commission recommends:

RECOMMENDATION 9

That the Minister of Justice introduce amendments to the Civil Code of Québec and the Public Curator Act to ensure that all mandataries under a mandate given in anticipation of incapacity are required to file a standard report with the Public Curator, on demand and at least once a year, in order to reveal any irregularities in their administration of the mandate.

Only the mandatary can apply for the homologation of a mandate given in anticipation of incapacity. To ensure that the person giving the mandate, once incapacitated, is adequately protected, it must be made clear that the mandatary is required to apply for homologation without delay.

RECOMMENDATION 10

That the Minister of Justice introduce amendments to the Civil Code of Québec to ensure that mandataries are required, once the person giving the mandate has become incapacitated, to apply for homologation of the mandate given in anticipation of incapacity.

The Commission was also made aware of other situations in which elderly people were exploited after they had donated their home or other property to another person in return for a promise that all their needs would be provided for. The promise made is not always kept, and the elderly person is left with no assets and with no income from property. Of course, the elderly person can always begin proceedings to have the act of donation cancelled, but in some cases the donee has already disposed of the property and is insolvent. Elderly people sometimes also relinquish property to reduce the amount they have to pay for

residential care in a long term-care centre or a private, accredited residential care facility. The Commission decided to look at how such situations could be avoided.

First, it is important to remember that the *Act respecting health services and social services* prohibits users from renouncing rights, or from alienating assets or property without due consideration or squandering them, in the two year period before going into care³.

In addition, since 1994, all universal donations of property (for example, a donation by a person of “all my movable property” or “all my immovable property”) have been prohibited, and any legal document containing a universal donation is absolutely null⁴. The legislator clearly considered that this type of donation had become exceptional, and indeed that it no longer served any purpose⁵. However, it is still possible for a person to give away all his or her property while still alive provided the donation is by particular title, in other words a donation in which each item is listed and identified precisely. In this way, it is considered that the donor will have “*the opportunity to properly weigh the scope and import of the action*”⁶ (translation).

To be valid, a donation must be notarized, except where movable property is delivered into the immediate possession of the donee⁷. Notaries therefore have an increased advisory role to play, given the risk to which the elderly are exposed. Situations of abuse could be avoided by advising the donor to retain enough property to cover his or her needs or to retain a right of residence. Although these limitations are currently in place, they appear to be insufficient in many cases. For this reason, the Commission recommends:

RECOMMENDATION 11

That the Minister of Justice introduce amendments to the Civil Code of Québec (article 1824) 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 provides for the retention of enough property to cover the needs of the donor and the donor's dependents, if any.

As we pointed out in Part Two of the report, the rules contained in the *Civil Code* and in the *Act respecting health services and social services*, governing the legacies and donations that a user of health or social services or a person in residential care may make, should be harmonized in order to solve some of the problems created by donations and legacies.

There is an on-going legal debate as to whether or not the rules apply to people in private residential care. A strict reading of the provisions indicates that private facilities are not covered. The Montréal-Centre regional health and social services board reports that some complaints concerning facilities operating without a permit concern acceptance by the owners of donations or gifts from vulnerable residents.

Most of the residents in private residential facilities are autonomous individuals whose physical and mental state does not fall within the scope of the protected group, namely “*generally elderly people, sometimes with disabilities, almost always in a weakened state, totally or partially dependent on the people from whom they receive essential care*”⁸

³ *Act respecting health services and social services*, section 516.

⁴ *Civil Code of Québec*, article 1823.

⁵ QUÉBEC, MINISTÈRE DE LA JUSTICE (1993), t. I, p. 1144, art. 1823.

⁶ QUÉBEC, MINISTÈRE DE LA JUSTICE (1993), t. I, p. 1144, art. 1823.

⁷ *Act respecting health services and social services of Québec*, article 1824.

(translation). A prohibition automatically covering everyone living in private residential care would limit their freedom to dispose of their property even though many may have a legitimate wish to make a donation or gift and would be able to do so “*freely and with full knowledge of the consequences*”⁹ (translation). It should be reminded that the codes of professional conduct already prevent the members of a professional order, including those practising in a private residential facility, from accepting a gift or legacy from a resident.

The Commission’s conclusion is that there is no need to enact a total prohibition on donations and legacies to a person working in a private residential facility. However, people living in private residential care and their families, as well as the people working in the facilities, should be more aware of the current rules. Furthermore, there is a need to harmonize the provisions of the *Civil Code of Québec* with those of the *Act respecting health services and social services*, to ensure that the prohibition on donations and legacies made to staff members also covers the staff of family-type resources within the meaning of the Act¹⁰.

The Commission recommends:

RECOMMENDATION 12

That the Minister of Justice introduce amendments to the provisions of the Civil Code of Québec that prohibit the making of certain legacies and donations by the users of health services and social services (namely articles 761 and 1817), to cover donations and legacies made to staff members of “family-type resources” within the meaning of the Act respecting health services and social services.

The provisions of the *Civil Code* and the *Act respecting health services and social services* prohibiting legacies and donations in certain situations are designed as a remedy, but could play a stronger preventive role if they were better known among both service receivers and service providers. The same applies to the provisions barring a person who has mistreated or acted in a reprehensible way towards the deceased from inheriting. In addition, a better understanding of the rules among the members of an elderly person’s family could have an important dissuasive effect.

2.2.2 Institutional policies to be implemented

“Urgent action is required to end the verbal and physical victimization of the elderly in long-term care centres. Zero tolerance must be applied. The pact of silence must be broken. The safety of all those who call attention to violence against the elderly must be assured. Priority must be given to providing assistance for care-givers who, faced with the many difficulties involved in providing care to individuals experiencing a loss of physical, cognitive or psychological autonomy, react in a violent way.” (Ordre des infirmières et infirmiers du Québec; translation)

⁸ *Fiset c. Boisvert*, p. 601.

⁹ *Dupaul c. Beaulieu*, p. 1197.

¹⁰ *Act respecting health services and social services* (R.S.Q., c. S-4.2), sections 310 to 314.

Various situations of abuse that occur in health care facilities were brought to the attention of the Commission during the consultation process. This area should be regulated more effectively by means of a policy applicable to institutions. The management of individual facilities must undertake, with the collaboration of the unions and users' committees, to fight abuse by employees or volunteers.

The legislation in effect in Manitoba can be cited as an example; it requires the managers of health care facilities, including personal care homes, to ensure that patients are not mistreated, and guarantees patients an acceptable level of security".

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Although Bill 27, *An Act respecting the Health and Social Services Ombudsman and amending various legislative provisions* (referred to here as Bill 27), makes it compulsory for the board of directors of every health care institution to draw up a complaint examination procedure and give a local service quality commissioner responsibility for applying it, the Commission considers that the provisions are not sufficient to attain an acceptable level of prevention.

The Commission therefore recommends:

RECOMMENDATION 13

That the administrators of each health care institution adopt an in-house policy, drawn up jointly with the unions and users' committees, specifically designed to prevent abuse of users by employees or volunteers, and that a manager or, if Bill 27 is passed, the local commissioner for service quality, be made responsible for the implementation of the policy.

2.3 A broad-based focus on training

"We have learned from experience that health care institutions must make a constant, regularly-renewed effort, using awareness-raising campaigns in particular, to ensure that their employees retain a humane attitude to the provision of care and services." (Commissaire aux plaintes en matière de santé et services sociaux; translation)

"Work with an aging or severely impaired clientele cannot be improvised. A lack of training affects both workers and the elderly people with whom they work." (Ordre des infirmières et infirmiers du Québec; translation)

"Education should be continuous to the staff that deal with the elderly. Staff members often report that they are not being respected and are being abused by the elderly. Those providing care need to be sensitized to the feelings of vulnerability and dependence the elderly experience due to their loss of autonomy and their dignity, they are so dependent on others for their care." (CHSLD St. Margaret)

As these comments so eloquently show, any standards implemented must be made known to and integrated into the tasks of employees working with people in care. Respect for the rights of users therefore depends on training and information for all staff, whether physicians, nurses, nursing assistants, attendants or social workers, and other staff.

The information received from many different sources indicates a generalized lack of training and awareness among employees and caregivers working in gerontology, and also a lack of knowledge about the remedies available in cases of abuse and exploitation.

It is important that all those working with the elderly recognize the signs of exploitation and other types of abuse, and know where to refer the victim and what type of process or action to implement to ensure that the exploitation or abuse ends. Better awareness of the problem among caregivers in hospital emergency services would also help in detecting cases of abuse. Similarly, family physicians should be trained to provide information and assistance to the elderly when a situation of abuse is detected. All the above training should be provided as part of the “on-going professional development” provided for in the 2001 ministerial guidelines concerning services for elderly people experiencing a loss of autonomy.

The Ministère de la Santé et des Services sociaux must take responsibility for all actions undertaken within the health and social services network.

The Commission recommends:

RECOMMENDATION 14

That the Minister of Health and Social Services ensure that training on the detection of abuse and exploitation and available recourses be made a compulsory components of training programs as part of the on-going professional development provided for in the 2001 ministerial guidelines concerning services for elderly people experiencing a loss of autonomy.

The 2001 ministerial guidelines provided for “on-going professional development”, first to ensure the quality of the care and services provided to the elderly, and second to monitor changes in needs and responses. The on-going professional development is examined in its clinical, administrative and organizational aspects, but the guidelines do not specify which categories of personnel would benefit from the training, other than health care professionals and managers at all levels (the government department concerned, along with regional boards and institutions).

In addition, the *Act respecting health services and social services* requires public institutions and private institutions under agreement to establish a plan of action for personnel development with their employees. The plan must contain measures relating in particular to the maintenance of professional standards and professional development¹².

The Commission recommends:

RECOMMENDATION 15

That the Ministère de la Santé et des Services sociaux design a framework training program in gerontology adapted to the various personnel categories, including a component on the physical, psychological and psychosocial aspects of aging and the loss of autonomy, a component on the rights of users and a component on the prevention of abusive behaviour.

¹² *Act respecting health services and social services*, section 231.

RECOMMENDATION 16

That the Ministère de la Santé et des Services sociaux ensure that the training program is made compulsory for personnel in institutions who work with the elderly, and that it is offered to the regional boards so that they can adapt it to the needs observed within their territories.

However, providing caregivers with training and information is not the exclusive responsibility of the MSSS; the professional orders also have a duty to ensure the on-going professional development of their members and promote training, information and the quality of professional services¹³. The publication of a new guide by the Ordre des infirmières et infirmiers du Québec, *L'exercice infirmier en soins de longue durée*¹⁴, is especially noteworthy. The guide contains a detailed list of quality indicators for the nursing component of long-term care, including a series of indicators concerning respect for the rights and wishes of the client.

The Commission recommends:

RECOMMENDATION 17

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 des travailleurs sociaux, provide on-going training on the physical, psychological and psychosocial aspects of aging and the loss of autonomy, including a component on the rights of the elderly and a component on the prevention of abusive behaviour.

Given the essential role played by community groups in providing support for the elderly, information and training sessions for volunteer workers are also appropriate. For this reason, the Commission recommends:

RECOMMENDATION 18

That community organizations ensure that all volunteers working with the elderly take part in training sessions including a component on the physical, psychological and psychosocial aspects of aging and the loss of autonomy, a component on the rights of users, and a component on the prevention of abusive behaviour.

Several testimonies suggested that it would be appropriate for the owners and staff of private residential facilities to receive a minimum amount of basic training in gerontology. The Commission supports this proposal, since it would improve the ability of staff working in private residential facilities to respond to the specific needs of residents.

RECOMMENDATION 19

That the owners of private residential facilities caring for the elderly ensure that all staff members working with the elderly take part in training sessions including a component on the physical, psychological and psychosocial aspects of aging and the loss of autonomy, a component on the rights of users and a component on the prevention of abusive behaviour.

¹³ Professional Code, section 86, subparagraph j of the first paragraph and section 86.o.1, paragraph 6.

¹⁴ ORDRE DES INFIRMIÈRES ET INFIRMIERS DU QUÉBEC (2000).

Police officers whose work requires them to intervene with the elderly, especially with the new focus on community policing, should be trained to detect abuse and be aware of the recourses available to the elderly. The success of certain initiatives in this area that were brought to the attention of the Commission during the consultation process must be recognized.

The Commission recommends:

RECOMMENDATION 20

That the Minister of Public Security ensure that the members of police forces are trained to detect abuse of the elderly and are aware of the recourses available.

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RECOMMENDATION 21

That the Minister of Education ensure that students in police technology are trained to detect abuse of the elderly and are aware of the recourses available.

Banks and credit unions have a key role to play in connection with financial exploitation. In several cases, testimony given during the consultation process related to the abusive use of a power of attorney over a bank account, or the difficulties caused by financial transactions. Although no financial institution testified individually before the Commission, several took part as members of a group.

Financial institutions can play a key role in detecting financial exploitation. Staff members can observe transfers of money, withdrawals of large amounts or suspect behaviour, and can detect irregularities, and where necessary they can refer the elderly person concerned to an appropriate resource. If these responsibilities are to be fulfilled, financial institutions must be aware of signs of exploitation, and some institutions have already appointed a person to be specifically responsible for cases where financial abuse is suspected¹⁵.

The Commission recommends:

RECOMMENDATION 22

That financial institutions train their personnel to detect signs of financial exploitation and to be aware of the recourses available, including the power of the Commission des droits de la personne et des droits de la jeunesse to undertake an inquiry on its own initiative.

Advocates and notaries who advise the elderly, in particular with regard to wills, donations and mandates including mandates given in anticipation of incapacity, should also have basic training in the various aspects of aging and the loss of autonomy. Currently, notaries accredited for the imposition or review of protective supervision or a mandate in anticipation of incapacity must have been trained in the psychological and psychosocial aspects of their work, and be aware of the family problems connected with the incapacity of a close relative¹⁶.

"A notary who considers that an elderly person may be acting under the influence of or under threat from a third person should not agree to draw up the deed. The notary should meet with the elderly person alone to receive the person's instructions

¹⁵ Such as the Caisse Populaire Saint Dominique in Québec City. Information from the TABLE DE CONCERTATION SUR LA VIOLENCE, L'ABUS ET LA NÉGLIGENCE ENVERS LES AÎNÉS DE QUÉBEC (1998).

¹⁶ Regulation respecting the conditions for the certification of notaries as regards the institution or review of protective supervision and mandates in anticipation of incapacity, section 2.

concerning the preparation of the will, unless the person insists on being accompanied. In the latter case, the notary must pay particular attention to the way in which the meetings are conducted, especially concerning the intervention, general attitude and behaviour of the elderly person. The notary must also observe the behaviour of the person accompanying the elderly person, especially if the will confers a benefit on that person.” (Chambre des notaires; translation)

The Commission recommends:

RECOMMENDATION 23

That the Barreau du Québec and the Chambre des notaires design a training module and ensure that their members have sufficient knowledge concerning the physical, psychological and psychosocial aspects of aging and the loss of autonomy, the resulting family and social problems, and the applicable legal rules.

2.4 TARGETED TRAINING

“If the training given to workers does not include training on the historical aspects of the Native peoples as a whole and on aspects specific to the Nation they work with, then it will be difficult for them to properly understand the causes that clearly contribute to the psychological distress of elderly Native people and of their children.” (Québec Native Women; translation)

Workers must be able to deal with users’ needs on the basis of their specific social and cultural characteristics.

Staff working in institutions must also be aware of cultural factors such as special diets and religious or traditional feast days. Awareness-raising programs are beginning to appear, and the community to which the elderly people belong can make a useful contribution in this respect¹⁷. One example is the work carried out by the Montreal Centre regional health and social services board¹⁸.

With regard to interventions in Native communities, the Commission believes the question of abuse of the elderly must be examined from the standpoint of the specific features of each Nation and community. Similarly, no abuse prevention program will be effective unless the community is actively involved in its design, application and assessment.

Because alcohol and drug abuse is particularly prevalent and widespread in some Native communities, support (in the form of human and financial resources) must be provided for the disintoxication work of community groups.

Concerning the language barrier, it is not always enough for an institution to rely on the services of an interpreter, since translation may not accurately relay all the subtlety of the emotional or physical distress felt by the patient. Training on the impact of cultural difference is necessary to make professionals and caregivers, as well as volunteers, aware of the problem, and to equip them to improve their communications with elderly people in Native communities. The question of mentoring as a risk factor, should also be dealt with as part of the training.

Concerning the specific problems that elderly people may experience in Native and

¹⁷ BECKER, Darren (2000).

¹⁸ RÉGIE RÉGIONALE DE LA SANTÉ ET DES SERVICES SOCIAUX DE MONTRÉAL-CENTRE (1998b), p. 18, 47.

ethnocultural communities, the Commission recommends:

RECOMMENDATION 24

That training programs for personnel working in institutions and the owners and personnel of private residential facilities include, where relevant, a component on elderly people living in Native or ethnocultural communities, to be designed in close and constant collaboration with resource people from those communities.

Other situations entail specific needs among the elderly, for example in the case of elderly people with disabilities. In order to avoid inequalities or inconsistencies in access to certain services by elderly people and by elderly people with disabilities, the Commission recommends:

RECOMMENDATION 25

That training programs for personnel working in institutions and the owners and personnel of private residential facilities include a component on elderly people with disabilities, to be designed in close and constant collaboration with resource people experienced in working with the disabled.

The Commission is also concerned about the situation of the elderly in the gay and lesbian communities, about whom conclusive data does not currently exist. The information that is available tends to indicate that sexual orientation can act as a strong isolating factor, and lead to situations in which the fundamental rights of elderly gay and lesbian individuals are placed in jeopardy. The Commission considers that workers must be made aware, immediately, during their training, of the realities faced by elderly gay and lesbian individuals living in public or private care facilities, in order to prevent any form of discrimination against them.

3 ACCESSIBLE, NEEDS-BASED SERVICES

The question of service accessibility was discussed in detail during the consultation process, and deficiencies in certain specialized services were also mentioned. The Commission made several recommendations concerning the adaptation of services to take into account the disabilities of many elderly people.

3.1 BETTER ACCESS TO SERVICES

Major regional disparities in service accessibility were reported. Given the increased difficulty in certain regions of gaining access to care, rehabilitation, residential and other services, and problems connected with remoteness, poverty and the difficulty of transporting the elderly, the Commission recommends:

RECOMMENDATION 26

That the Government draw up a policy for the regions to reduce inequality in access to services, in particular for elderly people living in isolation in outlying regions.

Similarly, several participants in the consultation process, including the Office des personnes handicapées du Québec, stressed the inequality and inconsistency of service accessibility for elderly people with disabilities, as compared to those without disabilities. The Office recommended the establishment of a mechanism allowing various organizations to cooperate in coordinating and integrating services.

To further this objective, the Commission recommends:

RECOMMENDATION 27

That the Government ensure the harmonization of the policies relating to adapted transportation, home service delivery, rehabilitation services and fiscal services, in particular for elderly people and elderly people with disabilities.

3.2 ACCESS TO CERTAIN SPECIALIZED SERVICES

Other observations concerned the lack of certain specialized services. To reduce the vulnerability of elderly people suffering from alcohol or drug addiction or compulsive gambling, the Commission recommends:

RECOMMENDATION 28

That the Minister of Health and Social Services ensure that elderly people suffering from problems including alcohol addiction, over-consumption of medication or compulsive gambling be informed about the assistance programs available to them, whether those programs are adapted to or specially developed for the elderly, and be told that they have access to the programs.

An addiction to alcohol or other substances makes an elderly person especially vulnerable to abuse, and in addition, family members who have a alcohol or drug problem are more likely to neglect, mistreat or financially exploit an elderly relative or spouse, underlining the importance of ensuring broader access to disintoxication programs.

It was also brought to the Commission's attention that current support services for the victims of conjugal violence do not meet the special needs of elderly victims. Current resources, such as sheltered accommodation, must be made more aware of the specific problems experienced by older victims.

3.3 SERVICES ADAPTED TO THE LIMITATIONS OF THE ELDERLY

The services provided to the elderly must be designed to take into account their functional limitations, especially relating to communication, so as not to contribute further to their exclusion. The difficulty of using the voice-mail systems of many government departments and agencies, for instance, was mentioned during the consultation process.

The very real problem of unequal access will require many organizations, including governments, to reassess the automated services they provide for the general public, as compared to a more user-friendly, efficient approach that will meet communications objectives while making allowance for the limitations of some users, including the elderly.

The Commission urges the authorities concerned, and businesses that exercise leadership in the field of communications with the general public, to make a sustained effort to address this issue.

Where the communication is with a financial institution, a clear and immediate risk of financial exploitation is added to the risk of isolation created by automated information systems. The Commission believes that financial institutions must find valid alternatives to the use of automated banking machines, for instance by introducing service counters reserved for certain groups such as the elderly.

4 SERVICE CONTINUITY AND SATISFACTION OF NEEDS

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Participants in the consultation process were virtually unanimous in noting the existence of serious deficiencies in the continuity of services for the elderly, and on the fact that those services are often insufficient to meet the needs of the elderly, their family caregivers and the private facilities that now provide accommodation due to a shortage of places in the public network. Their comments revealed a number of significant deficiencies to be corrected in Québec, at a time when the elderly population is growing, life spans are increasing and new medical techniques are extending life expectancy. Thus, not only must the Québec government adjust its policy to meet current needs, it must also allow for sufficient flexibility to meet additional needs in the near future.

In its 2001 guidelines, the Ministère de la Santé et des Services sociaux¹⁹ states its intention to review the organization of services for the elderly. Its goal in the short term, i.e. in the next five years, is to meet needs arising from disabilities. However, in the longer term (i.e. in the next ten years) it also hopes “to proceed with a reorganization of health and social services adjusted to the varying needs of an ageing population and reflecting the age pyramid”²⁰ (translation).

It is also worth underscoring the central goal of the MSSS guidelines, namely to maintain elderly people in their natural living environment, i.e. in the home, “which is the best place to provide services” (translation), or if necessary in private facilities offering home-like conditions.

In doing this, the MSSS hopes to ensure continuity of service regardless of place of residence. In theory, elderly individuals should be monitored by CLSCs, family medical teams and local community associations, thus receiving continuous services tailored to their specific needs.

However, some elements of the situation described by participants in the consultation process are clearly not covered, and the guidelines skate quickly over others. Our concern is to ensure that the fundamental rights of elderly people in difficulty are upheld, and to prevent exploitation. We will therefore divide our recommendations according to the type of residential accommodation to which they apply, i.e. individual homes, private residential facilities and public residential facilities.

¹⁹ QUÉBEC, MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, February 2001.

²⁰ QUÉBEC, MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, February 2001, p. 5.

4.1 HOMECARE SERVICES

The comments made during the consultation process confirm that, contrary to the aims set out by the Ministère de la Santé et des Services sociaux in 1994²¹, 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. The new guidelines are designed to correct this. Similar guarantees were also given following the shift to ambulatory care, but in the end they were not sufficiently supported by concrete measures, with consequently disappointing results. The Commission therefore questions the real impact of the new MSSS guidelines for the elderly. To what extent will they actually be implemented? And how quickly?

The Commission recommends:

RECOMMENDATION 29

That, in accordance with the ministerial guidelines of the Ministère de la Santé et des Services sociaux concerning services for elderly people experiencing a loss of autonomy, the Minister of Health and Social Services take the steps required to allow CLSCs, effectively and as quickly as possible, to dispense the services required by this clientele and guaranteed by the Act respecting health services and social services.

At the same time, action is needed to counter the isolation sometimes experienced by natural caregivers. Caregivers need information and training as well as psychological support, and this need must be met, among other things by the creation of support and self-help groups. Initiatives such as these should be able to count on sufficient material resources, especially as the home care policy promoted by the Department's 2001 guidelines is likely to increase the burden on family caregivers, and in such conditions the promised aid may not be enough.

The Commission recommends:

RECOMMENDATION 30

That the Ministère de la Santé et des Services sociaux ensure that the future homecare service policy guarantees sufficient information, training, support, self-help and time-out services to meet the needs of natural caregivers.

In addition, the Commission believes that, if the future homecare service policy continues to rely on private enterprise, social economy businesses and community agencies for certain services, these organizations should be subject to standards and control mechanisms in order to prevent and, where appropriate, punish cases of abuse..

The Commission recommends:

RECOMMENDATION 31

That the Ministère de la Santé et des Services sociaux ensure that the private sector firms, social economy businesses and community agencies providing homecare services to the elderly are subject to control mechanisms and standards, in particular with regard to staff training.

Given the current review of the reference framework for homecare services (Cadre de référence sur les services à domicile), it is also important to assess the impact on service use of transferring responsibility for service provision from the CLSCs to private businesses and the social economy sector. For example, it would be interesting to see whether elderly individuals with diminishing autonomy are able to locate and manage the services they need. The Commission has been informed that, where homecare services are provided by social economy businesses, access can be compromised by the amount of paperwork involved. The impact of tax benefits (e.g. the refundable tax credit for home support services) on service access, in particular for low-income individuals, must also be considered.

4.2 PRIVATE RESIDENTIAL FACILITIES

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4.2.1 Needs-tailored accommodation

Two separate elements come into play here. First, participants in the consultation process mentioned many deficiencies in the care and services dispensed in private facilities to elderly people, especially those experiencing a loss of autonomy. And second, the guidelines published in 2001 by the Ministère de la Santé et des Services sociaux treat private facilities as though they were the person's domicile, referring to the provision of services in a group home setting regardless of whether that home is public or private: "Where an individual resides permanently in a group home that offers board and lodging as basic principles, that home should be considered as the person's domicile"²² (translation).

The Commission points out that nowhere in the guidelines is there a reference to the thousands of people with reduced autonomy who should be in specialist institutions but are in fact in facilities not equipped to provide the care they need, due to a shortage of resources in the public network. By not raising this question and by allowing health care to be dispensed to the residents of private facilities as though they were in their own homes, the Department confirms the current function of the private facilities but makes no decision as to the status or recognition of that function.

The 2001 MSSS guidelines do, however, offer an overview of how needs will be met in private facilities. Only professional care and services "in ambulatory mode or in an institution" will be offered to residents by CLSCs, "as is the case for all citizens of Québec under the principal of universality"²³ (translation). The MSSS takes it as given that personal support services "are the responsibility of the residence and are generally included in the fees paid by the individual or his or her family" (translation). Moreover, some facilities may not be able to provide personal support services requiring basic training because they lack the necessary resources (visiting homemakers, case aids, attendants, nursing assistants). Where this is the case, the residence "may enter into an agreement with the CLSC to make those services available" (translation).

The Commission believes the State must make a clear choice between two possible scenarios.

²² QUÉBEC, MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX (February 2001), p. 33.

²³ QUÉBEC, MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX (February 2001), p. 33.

First, it could maintain the present rule preventing private facilities from accepting elderly people experiencing a loss of autonomy. In this case, the Ministère de la Santé et des Services sociaux would have to develop resources to house these people, including intermediary and family-type resources (residential care facilities). Indeed, these two types of resources were recognized in the Act respecting health services and social services precisely to “allow for the closure of facilities considered inadequate and to incorporate resources considered valid into network institutions” (translation), and to supervise them²⁴. In giving priority to homecare and community care along with integrated service networks, the MSSS has not opted for this first choice, although it has not explicitly rejected it either.

²⁰ According to its guidelines for services to elderly people experiencing a loss of autonomy (2001), the MSSS has opted instead for a second scenario by implicitly recognizing the role currently played by private facilities and treating them as the elderly person’s domicile, guaranteeing residents with reduced autonomy the right to receive care dispensed by the CLSCs and care teams. This choice should improve access to CLSC and care team services and allow for the creation of integrated service networks within CLSC territories. However, it also means the State must modify the current rule by recognizing that private facilities may fulfil this role, and then by taking into account the consequences of this choice when allocating resources. The Commission believes this is the approach that should be taken.

Accordingly, the Commission recommends:

RECOMMENDATION 32

That, in the new policy respecting integrated service networks, the Québec government clearly define the status and role of the private facilities and ensure that the elderly people living in the facilities receive, like all elderly people living at home in the same conditions, services that meet their personal care and service needs.

The Commission believes the new policy should also foster respect for personal choice while protecting the right of the elderly to obtain fair access to health services and social services. At the same time, the Commission would not be in favour of any provision in the policy that would force private facilities to accommodate individuals experiencing a loss of autonomy if they are unwilling or unequipped to do so.

It would also be useful to consider the place of social housing with responsive services for elderly people experiencing a loss of autonomy²⁵. An example would be the type of housing developed under the AccèsLogis program²⁶. The Commission considers this program to be of great interest, since it helps foster affordable access to quality housing offering services for elderly individuals experiencing a loss of autonomy who would be unable, because of their income level, to obtain the equivalent in a private facility. However, the Commission also deplores its extremely limited scope. The program, including the rent supplement provision, has been approved for a period of five years and provides for the creation of only 365 housing units per year

²⁴ FÉDÉRATION QUÉBÉCOISE DES CENTRES D'HÉBERGEMENT ET DE SOINS DE LONGUE DURÉE (1996), pp. 5 et 7.

²⁵ See GROUPE DE TRAVAIL SUR L'ÉCONOMIE SOCIALE (1996), pp. 19-20 et 55-56; VAILLANCOURT, Yves (1997), pp. 192-198.

²⁶ See section 3.1 *Housing support Programs*, in Part 2.

The Commission recommends:

RECOMMENDATION 33

That the Québec government enhance the AccèsLogis Program by giving it permanent status and adding the number of housing units required to meet actual needs.

4.2.2 Standards applicable to private facilities

"While many owners are aware (of the problem of financial insecurity among residents) and try to make suitable arrangements, they cannot be expected to absorb the costs of their less well-off residents' dependency. It is important to remember that 75% of private facilities house fewer than 30 tenants, and are thus themselves in a fragile financial position. The rates of sale, abandonment and bankruptcy are very high in the private residential care sector, and this volatility has tremendous repercussions for residents, generating a great deal of insecurity."²⁷

Michèle CHARPENTIER (translation)

Several participants in the consultation process recommended that private residential resources should be regulated, principally by an accreditation or operating permit system combined with a monitoring mechanism. Many suggestions were made in this respect:

- Power of accreditation granted to a regional or local public authority associated with the health network;
- Broader powers of inspection and recommendation for the regional health and social services boards;
- Power of supervision over the private residential network by the long-term care centres (CHSLDs);
- Operating permit allocated directly by the Ministère de la Santé et des Services sociaux;
- Power of accreditation granted to the municipalities;
- Regulatory powers granted to the regional county municipalities (RCMs);
- Issuing of a permit by the MSSS upon a joint recommendation by a CLSC and a municipality.

The Conseil des aînés also suggested that elderly people themselves should be involved in both the implementation and the monitoring of the measures selected.

In passing, it is worth mentioning a continuous qualification pilot project for private facilities that is currently being tested in some areas of the Québec City and Chaudière-Appalaches regions, as explained by the Groupe privilégié d'intervention La Source. The facilities are assessed by a joint local committee composed of representatives from the FADOQ, the local CLSC, the municipality and an association of private facilities.

Although unable to comment on the structure of the accreditation authority, the Commission feels such an authority should have the power to assess compliance with municipal and health and social services standards. The Commission also believes that, to be consistent with

its implicit acceptance of the right of private facilities to house individuals experiencing a loss of autonomy, the government, in addition to formally acknowledging that private facilities may fulfil this role if they so wish, should make the health and social services network responsible for supervising those facilities, since they would become part of a continuum of services offered to elderly people experiencing a loss of autonomy.

Measures introduced to correct access-related and qualitative deficiencies in the care and services offered to the elderly in private facilities (as reported during the consultation process) should also take into account the delicate balance currently existing between supply and demand.

22 In the Commission's view, it is not necessarily the residence management's good faith that is at issue here, but the current situation in the public residential care network, along with the level of poverty that continues to prevail among the elderly and, in some cases, a certain laxness in service provision.

With this reservation in mind, the Commission recommends:

RECOMMENDATION 34

That the regional health and social services boards introduce a mandatory accreditation procedure for private facilities offering accommodation to elderly people experiencing a loss of autonomy.

At the same time, and as we saw earlier, unlicensed residences are not subject to any kind of training standard, even though the conclusions of a recent study suggest that care quality is better when the residence manager has a university degree and is trained as a nurse²⁸.

RECOMMENDATION 35

That, in its assessment criteria for private facility accreditation, the regional board consider the facility's ability to manage ageing and a gradual loss of autonomy among its clients, as well as its knowledge of users' rights.

Whichever authority is chosen, its mandate should include the processing of complaints from residents. It must also be given decision-making powers, in particular with regard to corrective measures for cases of abuse, and must be able to intervene quickly. For example, facilities could be checked without prior warning and permits withdrawn if serious lapses are observed. The authority should also have the power to order measures aimed at improving conditions in defective facilities; under the current rules, if a complaint against a facility is upheld, its residents are simply evacuated and moved elsewhere.

The Commission recommends:

RECOMMENDATION 36

That the regional health and social services boards, before automatically deciding to close a private residential facility and moving its residents elsewhere, be given the power to order the facility concerned to take appropriate remedial measures to correct any deficiencies.

²⁸ BRAVO, Gina, Michèle CHARPENTIER, Marie-France DUBOIS, Philippe DEWALS et Aline ÉMOND (1997), p. 42.

Where deficiencies are observed, the regional board should take steps to offer training tailored to the facility's needs. Similarly, one of the conditions for renewing private facility accreditation should be a basic knowledge of gerontology, and an assessment process would be required for this.

During the consultation process, participants mentioned the need to ensure that users are aware of residential standards. This is one of the roles of the code of ethics that every private facility should have.

There are, however, deficiencies in the formulation and application of the codes of ethics, as well as in their circulation. It should be clear that the code of ethics is an instrument to assert and apply users' rights, not a means of imposing sanctions. One way of ensuring that an institution's code of ethics truly reflects users' rights and has the support of the people to whom it applies, namely the employees, is to involve both the users and the employees in drafting a code.

Some participants suggested that the code of ethics should form part of the facility's service contract, while others recommended posting it on the institution's walls. The Commission believes there is some merit in the signature of a basic service contract similar to a rental lease, setting out the rights and obligations of both parties and the exact nature of the services to be rendered by the facility, since this would provide basic information for the elderly residents and their families.

The Commission recommends:

RECOMMENDATION 37

That, under the new accreditation standards, private facilities be required to sign a basic service contract with users, and that the residential facility's code of ethics should necessarily form part of that contract.

4.3 PUBLIC RESIDENTIAL FACILITIES

4.3.1 Standards of care and accommodation based on individual needs and rights

In its Consultation Document, the Commission asked the following question: *"If the Government were to define standards for decent living institutions for the aged, what should the basic criteria be and, if necessary, what monitoring mechanisms should be set up?"*

In response to this question, there was a clear consensus on one principle in particular, which can be summarized as follows: **"Standards should be established on the basis of residents' needs, not available resources".**

According to the many comments made during the consultation process, institutional standards should encompass the following aspects:

- Respect for the right to integrity, security, freedom, dignity, privacy and free disposition of property; the exercise of those rights should include respect for the

individual and his or her privacy, and respect for his or her choices;

- Healthcare quality;
- Access to rehabilitation services such as physiotherapy and recreational therapy;
- Hygiene care quality;
- Pharmaceutical service quality;
- The quality of nutritional and dietary care; food should be nutritious and meals should be tailored to users' tastes, habits and diets;
- Quality and accessibility of the facilities, including adequate lighting and regular cleaning, especially when users have respiratory problems, and more generally to prevent the spread of infection;
- Safety of the premises and facilities;
- Good quality interpersonal relations, based on knowledge of the individual, his or her values and the period of mourning he or she may be experiencing, among other things;
- Social and recreational activities;
- Staff qualifications, competency, supervision and support, in particular through continuous, recurrent, dynamic training in gerontology and, in some cases, geriatrics, adequate salaries and an enjoyable, stimulating working context for staff;
- Recognition of the role played by family members, in particular through the introduction of mechanisms to include them in interventions.

Some participants said the Ministère de la Santé et des Services sociaux has already enacted institutional quality standards, but their application appears to be problematical. Other participants, including the Ombudsman, pointed out that the approach currently used in many institutions is based on the goals of management rather than the needs of users.

Participants from the Montérégie regional health and social services board made the following recommendations to upgrade quality standards:

"That everyone should be concerned with the quality of life of elderly people in a substitute environment;

That the institutions should develop a quality standard application framework in their environment;

That the Ministère de la Santé et des Services sociaux and the regional boards should fulfil their responsibilities, equip themselves with monitoring and control tools, notify the institutions of the existence of those tools, and adopt mechanisms to ensure compliance." (translation)

The Commission recommends:

RECOMMENDATION 38

That the Minister of Health and Social Services oversee the preparation and application of standards designed to meet the needs and uphold the rights of elderly people living in institutions.

It is not necessary to adopt new legislative provisions for this, because the Act respecting health services and social services already requires long-term residential care centres to make periodic assessments of individual needs²⁹, and the regulations under the Act require them in addition to take users' needs into account³⁰. Instead, it is a question of adapting institutional operations and interventions to the specific needs and situations of individual users.

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According to many participants, declining levels of user satisfaction in public residential care facilities are mainly the result of human and financial resource shortages in the institutions following the significant budget cuts imposed by the Government. The reductions have come at a time when the needs of users are increasing due to advancing age and greater loss of autonomy.

"A long-term residential care centre can act quickly on the aspects over which it has control within its own organization. However, the wait is often much longer when an improvement to service quality would require additional resources." (translation)
Regroupement des CHSLD de la région de Montréal

Given these conditions, the Commission recommends:

RECOMMENDATION 39

That the Minister of Health and Social services take the steps required, in particular by increasing budgets, to ensure that institutions housing elderly people with reduced autonomy can provide their residents with the services they need, as guaranteed by the Act respecting health services and social services.

The Commission is aware of the practice of establishing "floor rates" of response to user needs, to meet managerial constraints. The Commission, in response to this, believes it is necessary to state that in no case **should the floor rate of response to user needs fall below a threshold that would breach users' rights to integrity, dignity and privacy.**

Some of the ministerial guidelines should also be clarified, and the Ministère de la Santé et des Services sociaux should make a firmer commitment to them.

A case in point would be the standards governing the use of restraint in institutions. Although some guidelines for the use of control measures such as physical or chemical restraints did become law in 1998, their implementation depends among other things on the preparation of clear ministerial guidelines.

The 2001 ministerial guidelines stipulate the need for "questions" concerning the use of physical restraint as a means of enhancing service quality, and make proposals for training, practice guides and research into the effectiveness of physical restraints. However, the

²⁹Act respecting health services and social services, s. 83, par. 2.

³⁰Organization and Management of Institutions Regulation, (1984) 116 G.O. II, 2746, ss. 35, 36 and 37.

Department will need to go one step further than this, by issuing a clear statement of its intention to eliminate misuse of restraints by institutions. The Commission feels the Minister of Health and Social Services should be clearly and firmly supportive of a total ban on unjustified restraining practices.

The Commission recommends:

RECOMMENDATION 40

That the Minister of Health and Social Services reiterate the fact that administrative or punitive grounds must never be invoked to justify the use of restraint by institutions, and, as quickly as possible, establish clear orientations concerning the use of control measures, in accordance with section 118.1 of the Act respecting health services and social services.

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In addition, the ministerial guidelines make no reference to chemical restraint, a practice that some participants in the consultation process suggested was being used excessively. Chemical restraint is akin to the phenomenon of overmedication, which was also criticized. The shortage of pharmacists on institution payrolls is obviously a factor in this situation, since it is one of the pharmacist's responsibilities to supervise and advise care teams on medication frequency and dosage.

Given these circumstances, the Commission recommends:

RECOMMENDATION 41

That the Ministère de la Santé et des Services sociaux constitute a fact-finding committee composed of representatives from the Ordre des pharmaciens du Québec, the Collège des médecins, the Association des pharmaciens d'établissements de santé du Québec and the Association des CLSC-CHSLD, with the mandate of making recommendations on chemical restraint and the reported problems of overmedication in residential care facilities for the elderly.

A number of participants who were in contact with elderly people in residential care facilities, mostly as volunteers but also as caregivers and institution administrators, emphasized the fact that regular visits from family members are by far the best way of preventing abuse in institutions and ensuring that elderly residents receive the attention they need.

The Commission therefore recommends:

RECOMMENDATION 42

That long-term residential care centres, other residential care facilities governed by the Act respecting health services and social services, and private facilities, take concrete steps to promote the provision of information to the families of elderly residents and encourage family members to make regular visits.

5 THE NEED FOR JOINT ACTION

The comments received in response to the Working Paper on Exploitation of the Elderly reveal that coordinating committees exist throughout Québec and that some of these regional committees are very active in their communities. Indeed, the Commission is often cited as one of their partners.

The committees all have different goals, the main one being to intervene in cases of abuse where the proposed solution is joint action involving several community organizations and associations. The committee partners meet to set up a special intervention plan for each case of abuse submitted, and the case is then considered from every angle.

It is vital that the elderly person concerned be included in the process. Associations of the elderly are themselves involved in such interventions, and they can play a vital role on the coordinating committees. For example, they can support the elderly victim throughout the process and liaise between the victim and the committee's institutional members. In addition to detecting cases of abuse and preventing new cases through the application of prevention initiatives, the associations can provide institutional committee members with valuable information on the situation of the elderly, raising awareness of important issues and thus ensuring that decisions are properly informed. They can also work towards prevention goals.

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Most of the existing coordinating committees were initiated and are coordinated by one or more CLSCs in the region. Others, however, were created on the initiative of an association or group of associations. They currently operate on a voluntary basis and often without formal criteria or agreements. Some regions have no coordinating committees.

One of the most important conditions for successful joint action is that it should be firmly rooted in the community; in other words, community needs and resources should drive the type of joint action selected.

The conditions for success also include the presence of prevention and intervention functions, which presuppose common basic training for front-line workers. Lastly, joint action should include decision-makers and actors working "in the field" who play an active role in the general activities of the coordinating committee.

One element mentioned on several occasions was the need for training of players who could sit on the coordinating committees. Training would cover the legal, psychological and social aspects of the types of problems generally encountered.

The Commission therefore recommends:

RECOMMENDATION 43

That the Secrétariat aux Aînés and the regional health and social services boards be responsible for assessing the operations of the various regional coordinating committees; and that, in addition, they draw up a framework agreement and ensure that all regions of Québec, along with certain sub-regions and localities where necessary, have a coordination mechanism in accordance with the framework agreement.

The coordination mechanisms need sufficient resources if they are to be effective. Periodic assessments of their operations should also be conducted, in particular with regard to the outcome of any interventions and the results obtained in the longer term.

It goes without saying that a coordination mechanism must represent the diversity of the client base in its region, sub-region or locality. Committees must therefore ensure active and systematic participation by elderly people from the ethnic, cultural and Native communities present in the region. Similarly, people from those communities should act as resources for interventions in cases where elderly individuals from Native, ethnic or cultural communities are the victims of exploitation or abuse.

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6 EASIER RECOURSES TAILORED TO DIFFERENT NEEDS

6.1 HEALTH AND SOCIAL SERVICE NETWORK RECOURSES

The Commission feels the effectiveness of the health and social service network recourses is compromised by three major factors, namely lack of information, a complex complaints process that involves several different levels (the institution, the regional board and the Social Services Complaints Commissioner), and fear of reprisals following a denunciation.

The Commission has already made recommendations for improving the information aspect, and will discuss protection against reprisals under point 7. A number of additional suggestions were made during the consultation process concerning possible changes to the internal health and social services network complaints system.

Some participants proposed that employees witnessing abuse, as well as service users, should be allowed to file complaints, while others said they would extend the right to users' committees and other organizations and agencies that might witness situations likely to compromise the quality of the care or services offered to users. They also recommended that victim anonymity be protected to encourage complaints and prevent reprisals, but the Commission feels it would be difficult to reconcile this form of protection with the right of the person whose behaviour is at issue to present a defence against a complaint that may lead to disciplinary or other sanctions.

To reinforce the role of institutional users' committees and support elderly people who wish to report situations of abuse, the Commission recommends :

RECOMMENDATION 44

That the right to file a complaint be extended to institutional users' committees and to any individuals or employees who witness abuse in institutions, unless the elderly person presumed to be the victim of the abuse, or that person's legal representative, opposes the filing of a complaint.

- The appointment in every residential care facility of a person responsible for overseeing cases of abuse, with the power to intervene on his or her own initiative or at the request of the victim, a relative of the victim or the victim's legal representative;

- Power given to the person responsible for dealing with institutional complaints to intervene on his or her own initiative and report directly to the institution's board of directors;
- Creation of a watchdog committee composed of people working with the elderly, mandated to meet with elderly residents and their families in order to detect and report cases of abuse.

With regard to the other levels of the complaints system, the Québec Public Protector recommends that the regional board review stage be eliminated, and also proposes to extend the powers of the Complaints Commissioner, who should be able to act systematically and on his or her own initiative. Lastly, the Public Protector recommends that users should, in the last resort, be able to turn to the Ombudsman's own agency for assistance. The Complaints Commissioner has asked the Minister of Health and Social Services to grant an extended mandate, among other things to include the power of intervening on his or her own initiative³¹.

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Although the Commission considers these suggestions to be valid, it also feels Bill 27, if adopted, would address most of the concerns raised by participants in the consultation process. For example, the provisions amending the Act respecting health services and social services would require institutional boards of directors to appoint a local commissioner to be responsible for service quality, whose main function would be to receive and process complaints from users and make the necessary recommendations to the board of directors³².

Moreover, the bill would create a complaints processing structure at two levels, namely the institution or regional board (depending on the case) as the first level and the Health and Social Services Ombudsman as the second and last level. Under Bill 27, the Health and Social Services Ombudsman would have full discretion to investigate any situation falling within his or her jurisdiction.

Although improved, the new complaints procedure would continue to apply exclusively within the health and social services network. In the Commission's opinion, the Health and Social Services Ombudsman should also be required to provide the Commission with a detailed file on matters falling under the Commission's jurisdiction.

For this reason, the Commission recommends:

RECOMMENDATION 45

That, in the event Bill 27, An Act respecting the Health and Social Services Ombudsman and amending various legislative provisions, is adopted, the National Assembly amend section 75 of Québec's Charter of Human Rights and Freedoms to read as follows:

"75. The public protector or the Health and Social Services Ombudsman shall transmit to the commission every complaint he receives that is within the sphere of investigation of the commission, unless the complainant objects thereto.

³¹ COMMISSAIRE AUX PLAINTES EN MATIÈRE DE SANTÉ ET DE SERVICES SOCIAUX (2000), p. II.

³² New section 33 of the Act respecting health services and social services.

Any complaint transmitted to the commission is deemed to be received by the commission on the day it is filed with the public protector or the Health and Social Services Ombudsman.”

Some of the services offered by residential facilities are acts reserved for particular professions, including nurses and nursing assistants, and unqualified people performing reserved acts expose themselves to criminal proceedings for illegal practice of a profession³³. The Ordre des infirmières et infirmiers auxiliaires du Québec has recommended that it should also be possible to file criminal charges against employers and managers of private facilities who encourage or authorize such acts.

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The Commission recommends:

RECOMMENDATION 46

That the Minister of Justice introduce amendments to section 189 of the Professional Code allowing the professional orders to institute criminal proceedings against employers and managers of private facilities who authorize their staff to illegally perform acts reserved for certain professions.

6.2 LEGAL RECOURSES

In its presentation, the Commission des services juridiques pointed out that the limitations on legal aid coverage have had the effect of reducing the number of elderly clients. Indeed, as we saw in Part 2 of this report, elderly people whose only source of income is the State pension do not qualify for free legal aid.

Setting legal aid scales at an adequate level would certainly be one way of giving elderly victims of exploitation access to the advice and services of a lawyer or notary, and allowing them to bring their cases to court. Both these rights are guaranteed by the Charter of Human Rights and Freedoms (sections 23 and 24). In the Commission's view, the scales should, at the very least, be set at a level that grants free access for individuals whose only source of income is the Old-Age Security Pension and the Guaranteed Income Supplement.

The Commission recommends:

RECOMMENDATION 47

That the Minister of Justice ensure that the legal aid scales are set at an adequate level, so that at the very least, individuals whose only source of income is the Old Age Security Pension and the Guaranteed Income Supplement become eligible for gratuitous legal aid.

7 PROTECTION AGAINST REPRISALS

According to some participants in the consultation process, fear of reprisals is a serious obstacle that prevents many elderly people from reporting abuse. Yet, it is only if the victims are prepared to speak out, as the residents of a Rock Forest facility did on television, that situations of abuse will be eliminated. The Commission is nevertheless very aware of the vulnerable situations in which the victims often find themselves — situations that may prevent them from ending exploitation and abuse.

³³ Professional Code, section 189.

The fact remains that responsibility for preventing reprisals lies first and foremost with the organizations and individuals appointed to receive complaints. The right to complain should necessarily be accompanied by the right to be protected from reprisals. For example, the Commission des droits de la personne et des droits de la jeunesse can apply to a court for an appropriate measure against any person who attempts to take or takes reprisals against a person, group or organization having an interest in the handling of a case of discrimination or exploitation or having participated in such a case, as the victim, the complainant, a witness or otherwise³⁴.

Thus, the Commission fully supports the provisions of Bill 27, which provides protection against reprisals for users and anyone else making a complaint on behalf of a user, and also introduces similar protection into the Act respecting health services and social services.

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Moreover, while many codes of ethics prohibit professionals from contacting the complainant once they have been informed that a complaint has been made concerning their conduct or professional competency³⁵, very few expressly prohibit reprisals. A notable exception is the lawyers' code of ethics³⁶.

To prevent reprisals and encourage the elderly to report unacceptable situations, the Commission recommends:

RECOMMENDATION 4.8

That, in their respective codes of ethics, the professional orders whose members work with the elderly adopt provisions similar to those contained in the lawyers' code of ethics, expressly prohibiting reprisals.

8 UNDERTAKINGS MADE BY THE COMMISSION DES DROITS DE LA PERSONNE ET DES DROITS DE LA JEUNESSE

During the consultation process, a number of participants commented on the Commission's own involvement in the question of exploitation of the elderly. In light of these comments, the Commission has made a number of undertakings aimed at enhancing the effect of its actions.

First, it is clear that, despite the efforts of its Education and Cooperation Department in this respect³⁷, the Commission must take further steps to circulate information on the possibility of recourse to the Commission, pursuant to section 4.8 of the Charter, among elderly victims of exploitation, organizations defending victims' rights and welfare, and people working with the elderly. Similarly, the Commission must clarify its guidelines so that they provide a clearer frame of reference for people who must decide whether or not it is relevant to report a given situation to the Commission.

³⁴ Charter of Human Rights and Freedoms, section 82. See also sections 71 and 134.

³⁵ See for example the Nurses' Code of Ethics, s. 4.01.011); the Nursing Assistants' Code of Ethics, s. 4.01.01j).

³⁶ Lawyers' Code of Ethics, 4.02.012): "The following actions by lawyers are harmful to the dignity of the profession: [...]

z) intimidating a person or threatening to take or taking reprisals against the person on the grounds:

i. that the person reported or intends to report damaging conduct or behaviour;

ii. that the person has participated or collaborated in, or intends to participate or collaborate in, an investigation into damaging behaviour or conduct." (translation)

³⁷ See the Web site of the Commission des droits de la personne et des droits de la jeunesse: "Rights and Freedoms for All Ages", <http://www.cdpdj.qc.ca/training/seniors>.

UNDERTAKING 1

The Commission des droits de la personne et des droits de la jeunesse undertakes to institute an information campaign to increase public and stakeholder awareness of its role in protecting the elderly against exploitation, and of the procedure used to process the complaints it receives.

At the same time, participants in the consultation process reported certain facts that suggest that some institutional policies concerning the gender-based assignment of jobs may lead to violations of users' privacy and dignity.

32 | Given that these policies are based in part on a position adopted by the Commission des droits de la personne et des droits de la jeunesse in 1986:

UNDERTAKING 2

In view of certain new facts indicating possible violations of users' dignity in institutions, the Commission des droits de la personne et des droits de la jeunesse will reconsider its position on the gender-based assignment of jobs in health and social services institutions.

It is clear that, if the wishes of the presumed victims of exploitation are to be respected, they or their legal representatives must consent to the transmission of personal information from their files to other organizations. In mediations, joint actions or other initiatives aimed at terminating abuse, any refusal by the elderly person to grant access to personal information concerning him or her or concerning the people he or she wishes to protect will be a major obstacle. The Commission is fully aware of the problem, but also notes the complexity of the situation and feels any solution must be based on an in-depth consideration of its implications.

UNDERTAKING 3

The Commission des droits de la personne et des droits de la jeunesse will assess the impact of the rules of confidentiality applicable under the Charter (especially section 48) on cases where a stakeholder from another organization asks the Commission to investigate a case of apparent abuse, and it will make its conclusions on the subject known.

Lastly, serious follow-up to these recommendations is clearly one of the main conditions in ensuring that the elderly receive better protection against exploitation and abuse.

UNDERTAKING 4

In two years' time, the Commission des droits de la personne et des droits de la jeunesse will follow up on the recommendations made in this report, and will publicize the results.