Persons with mental health problems: full citizens

RESPECT FOR THE RIGHT TO INTEGRITY

An Act respecting the protection of persons whose mental state presents a danger to themselves or to others is a law of exception because its measures authorize the confinement of a person against his will. Without these provisions of exception, there would be unjustified infringement of fundamental human rights, including the right to freedom and integrity. The conditions of the application of this law must be respected.

A person's right to integrity and inviolability is provided for in the Civil Code of Québec. It is a fundamental right granted by the Québec and Canadian charters of human rights. In health care institutions, staff must obtain the free and informed consent of the user for treatment or intervention. If the user cannot consent, staff must obtain the consent of the person responsible for representing him. In the user's interest, if there is an emergency that places his life or integrity in danger, the institution may proceed without this consent. In the same spirit, the user cannot be confined to a health care institution without his consent. Only courts or express provisions of the law allow for the confinement of a person to an institution against his will.

The law provides for three types of confinement: preventive confinement, temporary confinement and regular confinement. Preventive confinement allows a physician to exceptionally confine a person for up to 72 hours. The physician may decide that he believes that the mental state of the person presents a grave and immediate danger to himself or to others. The two other types of confinement require the authorization of the court in the absence of the person's consent.

Furthermore, the law requires the institution to provide certain information to the person placed or held in confinement and grants him the right of recourse to contest decisions made on his behalf before the Tribunal administratif du Québec.

THE QUÉBEC OMBUDSMAN'S PERSPECTIVE

The Québec Ombudsman is regularly called upon to intervene and ensure that the rights of citizens who suffer from mental health problems are respected. Some 15 complaints and a number of reports are received in any given year, which shows that some hospital workers have difficulty seeing that the provisions of the law are applied. And yet, these difficulties compromise the respect of the rights of the citizens involved.

THE APPLICATION OF THE LAW

For institutions, the application of the law is a daily challenge that involves the practices, attitudes and culture of those who work there. It also raises the question of the physical organization of facilities and the organization of services. In reviewing complaints, the Québec Ombudsman has noted that the conditions of preventive confinement are not always respected and that treatment is given without the user's or the representative's consent. The review also revealed that citizens are billed for services received against their will while other users are refused services based on the sectorization of services.

PREVENTIVE CONFINEMENT: CONDITIONS ARE NOT ALWAYS RESPECTED

Preventive confinement is a medical decision that must be duly documented by the physician. The conditions of this type of confinement are set out in law. The file must in particular mention the date and the time when the decision becomes effective. It should also indicate that the period of confinement cannot exceed 72 hours and that the director of professional services must be advised immediately.

In light of complaints it has received, the Québec Ombudsman has realized that worrisome clinical practices have developed outside of the prescriptions of the law.

In some cases, the use of vague terminology allows institutions to delay the beginning of the 72-hour period until the moment the patient physically attempts to leave. Rather than using the official term "preventive confinement," some files include statements such as "restrictive course of treatment," "the patient may not leave without seeing the doctor" or "patient under close, constant surveillance." Only once the user tries to get away or in some other way clearly demonstrates his desire to leave the emergency room will he be prevented from doing so by staff. Then he is placed in confinement or isolation, which marks the beginning of the patient's official confinement, even though it actually began much earlier.

In reality, these users are kept in a locked area without their knowledge. They are watched and cannot leave the institution during the period determined by the physician, although they have not been formally placed in preventive confinement. Aside from the ambiguity of their true status, these users are not informed that they have been placed in confinement, the reasons for this confinement or of their right to contact someone close to them or a lawyer. And yet they are entitled to this information by law.

CARE WITHOUT CONSENT

A user's blood taken against his will

A user who was in preventive confinement complained to the Québec Ombudsman because staff collected blood in spite of his repeated refusal, when there was no urgent reason for doing so. And yet, the right to keep a person against his will authorizes only confinement and surveillance. In such circumstances, the institution must obtain the user's consent for examinations, the collection of samples, treatment or other interventions.

A psychiatric evaluation on the basis of presumed consent

The Québec Ombudsman also reviewed the complaint of a user who submitted to a psychiatric evaluation without having given his express consent. The institution took the consent for granted to some extent and did not inform the user of the consequences of the assessment for his rights. The effect of this omission was that the user was switched from preventive confinement to regular confinement, without court authorization to perform his psychiatric evaluation.

Institutions followed almost all of the Québec Ombudsman's recommendations with regard to complaints about the application of *An Act respecting the protection of persons whose mental state presents a danger to themselves or to others*. Nevertheless, the Québec Ombudsman sees the same grounds for complaint arise year after year. It believes that this breach in the application of the law on a day-to-day basis points to a major problem. While this type of complaint generally includes a medical component, namely questions regarding the decisions of psychiatrists, the Québec Ombudsman remains vigilant. To ensure that users' rights are respected, it intends to ensure that institutions and their directors of professional services accept their obligations and responsibilities with regard to the respect of rights.

THE NICOTINE PATCH: ANOTHER SITUATION WITH A RISK OF TREATING A PERSON WITHOUT CONSENT

Since the entry into force of the *Tobacco Act* in May 2006, health care institutions have policies and action plans to limit or prohibit the use of tobacco. Specific situations must be managed so as not to endanger the health of those who smoke. The Collège des médecins du Québec indicated in a guideline regarding the prevention and cessation of tobacco use published in 1999 that quitting smoking is as difficult as quitting drugs such as cocaine and heroine. According to certain specialists, many patients who suffer from mental health problems smoke more than the population in general.

The Québec Ombudsman is concerned about the effects of institutional choices on this matter on certain categories of users. It is concerned in particular about the equitable treatment of captive client groups, users who are being observed in a psychiatric unit for example. It is also concerned about measures taken to respect the rights of non-smokers.

In psychiatric units of certain hospitals, the alternative offered to smoking is the nicotine patch. However, this practice is not a medical panacea. In fact, the Québec Ombudsman has read guides written for physicians who prescribe the nicotine patch. These guides state that there are medical contraindications to the use of the patch. There is a contraindication for those with allergies to adhesive bandages or skin diseases, who have had a myocardial infarction or stroke in the preceding two weeks, who have arrhythmia or angina, for pregnant or lactating women and for those under 18.

This year, the Québec Ombudsman reviewed complaints it received on this issue.

Offer an alternative to captive client groups

In one situation in which the Québec Ombudsman was asked to intervene, it recommended that the institution propose measures other than the nicotine patch to users under observation in a psychiatric care unit. The institution refused to follow its recommendation. One of the reasons for this was clinical: people who are hospitalized cannot smoke outside because their psychiatric condition prevents them from going out.

Furthermore, the institution claimed that it could not create a smoking section in the unit because of the lack of space and the high cost of ventilation systems. The board of directors had already decided that capital budgets dedicated to health could not be invested to allow visitors, employees or patients to smoke. Finally, employees filed a complaint with the Commission de la santé et de la sécurité du travail asking for a ban on patients smoking to maintain a healthy work environment free of second-hand smoke.

Given that the use of the nicotine patch requires a medical prescription, the Québec Ombudsman considers it treatment. The user therefore has to freely consent to it, a right afforded him in the Civil Code of Québec. Consequently, the Québec Ombudsman recommends that institutions offer captive client groups other choices for meeting their nicotine needs. It believes that other measures must be available to deal with the situation of smokers admitted to a psychiatric unit for observation.

In an exchange of letters and discussions between the Québec Ombudsman and the Ministère de la Santé et des Services sociaux during 2006, it was agreed that the Department would intervene with institutions when it received reports of such situations. In March 2007, the Québec Ombudsman reported a situation involving an institution. The Department agreed to intervene to assess the matter.

AMBULANCE TRANSPORT

Two users contest ambulance fees

This year, the Québec Ombudsman received two complaints from citizens who did not agree with having to pay for ambulance transport. In both cases, it was the peace officer who decided to have them brought to the hospital by ambulance against their will for a psychiatric evaluation. In spite of this, the user is charged for these services.

In accordance with section 8 of the act, police officers have this power. In principle, they must use it when a member of a crisis intervention unit believes that the person's mental state presents a grave and immediate danger to himself or to others. In practice, at least in the greater Montréal area, police officers do not regularly call members of these units because of the number of situations that arise every day. Thus, the ambulance service acts directly on police authority to transport the person to the hospital.

The Québec Ombudsman made the Department aware of this situation. It learned that the Department is currently reviewing the entire law on a set schedule.

The Québec Ombudsman will monitor the review under way and will remain vigilant as to the directions it takes.

THE RIGHT TO CHOOSE A PROFESSIONAL OR AN INSTITUTION: SECTORIZATION IN MENTAL HEALTH

People with mental difficulties represent a particularly vulnerable client group. There are difficulties having provisions of the law respected and the respect of the person's right to choose the professional or institution to provide treatment and services. This freedom of choice is provided for in *An Act respecting health services and social services*.

Sectorization as it has been applied over the years, particularly in the greater Montréal area and in the Montérégie, illustrates this problem well.

Originally, as part of the rationalization of psychiatric services, sectorization was a non-constraining administrative rule to promote access to services to a given population. Thus, the user's postal code—namely his place of residence—determined the institution responsible for providing services. In many cases, sectorization became an obligatory avenue for psychiatric hospitals to systematically refuse users psychiatric services from another institution of their choice outside of their sector based on their place of residence.

Over the years, sectorization has become a topic of controversy and litigation, and its legality is increasingly called into question.

Since the reform initiated in 2003, health and social service centres are responsible for offering the public physical and mental health treatment in a manner that respects the free choice guaranteed by law. This reconfiguration of the health and social service network was to end sectorization. That was the Department's intention in 2003, and it has reaffirmed it since. In fact, on August 25, 2006, at the instigation of users and rights groups, the Department asked all directors general of regional agencies to promote access to services. They were asked to take "stringent measures" so that sectorization would not impede access to services in Québec.

Furthermore, the Québec Ombudsman is currently intervening based on a report by a rights group. The situation brought to its attention suggests that a hospital refused psychiatric services based on the fact that sectorization is no longer in effect. There have been two other recent reports of similar situations in the Montérégie area.

In closing, the Québec Ombudsman recognizes the difficulties involved in applying this law. However, in spite of these, the rights of citizens must be respected. To do so, problem situations must be properly documented and staff must receive ongoing training to change cultures and practices.