

The use of force, isolation and chemical substances as a means to control people

THE SPIRIT OF THE LAW

The use of isolation and restraints is defined in article 118.1 of *An Act respecting health services and social services*. This article governs the use of force, isolation, or mechanical means or chemicals to place a person under control. It specifies that the use of such methods must be minimal and resorted to only exceptionally. The means used must take into account the physical and mental state of the person, and be used solely to prevent the person from hurting himself or someone else. The law requires that professionals who use such means include in the user's file a detailed description of the way the person was acting and the circumstances of the event. All institutions are required to have a protocol for applying such measures and must distribute it to their staff.

MINISTERIAL ORIENTATIONS AND ACTION PLAN

In 2002, four years after the adoption of article 118.1, the Ministère de la Santé et des Services sociaux made public its orientations regarding the exceptional use of control measures such as restraints, isolation and chemical substances. It set out the principles that must guide institutions as they develop a protocol for their use. The ministerial orientations specify that control measures must be used as a last resort and in a manner that is the least constraining possible for the patient, and that they be carefully supervised. The objective is to reduce as much as possible, or even eliminate, the use of physical and chemical restraint and isolation.

The same year, the Department produced an action plan to encourage institutions and workers to adopt its orientations, to refer to them for the appropriate use of control measures, and to measure their effect on the practice of restraint and isolation. This action plan contains concrete measures, particularly with regards to staff training. The Department involved regional agencies in this operation and consulted the Québec Ombudsman on the content of the program.

COMPLAINTS REVEAL A LACK OF RIGOUR

Complaints to the Québec Ombudsman about measures to place people under control come mainly from users within psychiatric units of general and specialized hospitals and from users who live in residential and long-term care centres. Reviews of these complaints point to the inappropriate application of certain aspects of ministerial orientations and the law. In a

few instances, the Québec Ombudsman noted that the measures used were not the least constraining under the circumstances. It also found situations in which file notes regarding the incident were incomplete and noticed that protocols for control measures are not always in line with ministerial orientations.

The recommendations the Québec Ombudsman made to institutions relate mainly to updating the policy on the use of restraints. It recommends providing staff training regarding maintaining a file and the use of restraints in a manner that respects article 118.1 of the Act.

THE TRAINING PROGRAM

In September 2005, the Ministère de la Santé et des Services sociaux gave a committee of experts the mandate to develop a training program for employees who work with clients in general or specialized hospitals, psychiatric hospitals, and residential and long-term care centres. The training is for managers, clinicians and other members of staff who may need to use control measures. In June 2006, the Ministère asked the Québec Ombudsman for its opinion on the document entitled *Formation sur la réduction de l'utilisation de la contention et de l'isolement*.

The Québec Ombudsman underlined the quality of the training material and made a few proposals regarding the fundamental rights of users. It asked that the training program further develop the legal aspects of using control and isolation measures. It believes it is essential to remind staff of the user's rights under the Charter of Human Rights and Freedom, the Civil Code of Québec and *An Act respecting health services and social services*.

It also believes that in terms of the rules of user consent, training should mention the risks of control measures and their prevalence. It should also cover alternative approaches to control measures, and their advantages and drawbacks with respect to a person's physical or psychological integrity. It believes it is important to include these elements in the list of information necessary for a free and informed decision. It also suggested clarifying the legal status of the user and rules regarding verbal refusal, the categorical refusal of a person of full age who is unable to consent to treatment, and the obligations of the institution when such a refusal occurs.

According to the Québec Ombudsman, the training program should define parameters to help staff identify situations that are a risk to the user or others; these parameters should be re-evaluated periodically. It pointed to the importance of the distinction between a legal emergency¹ and a medical emergency. It believes that the program would be more complete if it covered what constitutes an emergency. This suggestion was adopted.

The final point it raised relates to camera surveillance. It would like the Department to define the parameters for the use of video surveillance of people in isolation or under restraint.

The national training plan was finalized in October 2006. To date, 64 regional trainers have the expertise and could be multiplying agents among staff who work in their regions.

SPEED UP THE IMPLEMENTATION OF MINISTERIAL ORIENTATIONS

The Québec Ombudsman noted that although article 118.1 was adopted over eight years ago in 1998, isolation and restraint measures are still used often. It therefore believes that the application of the ministerial orientations should be accelerated.

Over the course of 2006-2007, the Québec Ombudsman observed a propensity to use particularly constraining measures in certain institutions, such as isolation and specific forms of restraint. Often, this approach was favoured over less invasive but more time-consuming approaches that offer greater respect for the dignity and integrity of the person.

An example of particularly constraining measures

A woman went to the emergency room accompanied by police officers. The physician requested protective custody, because she presented a danger to herself on account of her mental state. She was placed in an observation room under the constant surveillance of an orderly. She asked to go to the bathroom and then refused to go back to her room. A “code white”—an emergency measure for situations of aggression—was called immediately. Staff members undressed the patient in the hallway of the emergency room, placed an Argentino restraint jacket and an incontinence brief on her, and

1/ A legal emergency is different from a medical emergency. A legal emergency requires two concurrent conditions. It is defined as a situation in which “the life of the person is in danger or his integrity is threatened and his consent cannot be obtained in due time” (art. 13 of the *C.C.Q.*). For a situation to be considered a legal emergency, action must be required quickly, and it must also be impossible to obtain the consent of the person or his representative to proceed.

put her in isolation. A few days later, in the psychiatric care unit, the same patient took a soft drink from a visitor. The nursing staff again called a “code white” and isolated her because of her unacceptable behaviour.

After examining the complaint regarding these events, the Québec Ombudsman noted that the file did not mention aggressive behaviour during the “code white.” It also remarked that the restraints remained in place for four hours, while the observation notes state that the woman was calm. It recommended to the Centre de santé et de services sociaux that it stop using the Argentino jacket. This form of restraint must be used only in extreme circumstances, because there is a very high risk that it will hinder breathing.

The Québec Ombudsman asked the Centre to update the knowledge of nursing staff and the emergency and psychiatric care unit medical staff regarding:

- the policy of exceptional use of measures of control;
- consent of the user or his representative;
- alternative measures;
- evaluation tools for the potential for danger and risk of suicide;
- observation notes when a person is restrained or put in isolation.

The Québec Ombudsman insisted that the institution comply with the board of director’s policy and implement a monitoring mechanism for control measures which includes feedback to the treatment team.

It also recommended that health care staff who work in emergency and in the psychiatric care unit be trained in the Omega approach. This approach is recognized for its effectiveness in crises. The Québec Ombudsman recommended that there be sufficient staff trained in this approach on each shift. It also required that the Centre distribute the “code white” procedure regarding aggressive and dangerous behaviour from the emergency plan to all staff.

THINGS ARE MOVING

Following the intervention of the Québec Ombudsman, the institution took several corrective measures. In particular, it stopped using Argentino restraint jackets.

The board of directors approved an action plan for implementing its policy on the exceptional use of control measures. The Centre also held awareness sessions for managers and staff. The policy was distributed to staff, and 20 training sessions have taken place for day, evening and night staff.

As part of the *Programme national de formation sur l'utilisation des contentions et de l'isolement* disseminated in fall 2006 by the Department, the institution designated two people as trainers.

The Centre has acquired surveillance tools for the use of control measures and implemented them in care units in December 2006. It has also designed statistical forms to better track the use of these measures.

Finally, the institution started basic Omega training for emergency and psychiatric care unit staff. Nursing staff will soon be trained on the escalation of potential dangers and the risk of suicide.

The Centre showed a clear desire to correct problems in this situation and to improve the quality of services. The Québec Ombudsman is following up on its recommendations closely.