The Government "Plan d'action en santé mentale 2005-2010"

Action plan does not offer adequate guarantees with regard to the quality of reception, quality of services and quality of life for users

The Québec Ombudsman is extremely concerned with the reception public services reserve for vulnerable persons, as well as the ability of these services to adapt to their specific circumstances and needs.

Through its various investigations, it has noted that improvements which would greatly benefit these citizens are late in coming. Over the last year, we primarily focused on persons with mental health problems.

One out of every five people

According to the Rapport national sur l'état de santé de la population du Québec[37] :

"One of our every five people will at one point in their life have a mental health problem".

For some of these citizens, services are available within a favourable context and they remain socially integrated. For others, their condition requires that they cope with one of various realities : exclusion, sense of isolation, inactivity and marginalization, poverty, vagrancy, deterioration of their physical condition, crises, frequent hospitalization or removal to a prison facility. To this lack of resources must be added the various types of abuse they may be subject to because of their vulnerability.

Oftentimes these persons have no knowledge of their rights or the available recourse. They are often represented by health and social services network actors or by community or advocacy organizations. At times, they are supported by close relatives doing what they can.

The Québec Ombudsman is cognizant that a large percentage of the citizens who suffer from mental health problems are not aware of their situation or are unable to ask it to intervene. Yet, it can act on their behalf also, under the authority conferred to it by the Public Protector Act and the Act respecting the Health and Social Services

37 *Rapport national sur l'état de santé de la population du Québec : Produire la santé*, Summary document, Santé et Services sociaux, Québec, 2005, p. 13.

Ombudsman. We therefore opted to act in order to better understand their situation and to become more visible in the environments in question by meeting with members of the health and social services network.

The Québec Ombudsman's investigations were a response to the complaints received as well as numerous exchanges with the Ministère de la Santé et des Services sociaux. Discussions with health and social services network actors, moreover, enabled the Québec Ombudsman to become aware of the complexity of mental health services and the challenge involved in the organization of these services.

In 2005, the Ministère de la Santé et des Services sociaux delineated its service organization objectives, orientations and methods in its *Plan d'action en santé mentale 2005-2010 : La force des liens*. This action plan focused, among other issues, on mental health as a national priority and on a commitment to jointly mobilize the actors concerned to improve the assistance we as a society offer persons with mental health problems[38]. The department's objective is to provide Québec citizens with access to mental health resources that acknowledge users' ability to act to improve their situation. Also in the limelight : structured and efficient services, an ongoing quality offer, and partnerships between service providers and community resources.

The first section of our analysis briefly recalls that two previous initiatives to reorganize mental health services were the object of an in-depth report drafted in 1997, *Défis de la reconfiguration des services de santé mentale*[39]. Published under the aegis of the Ministère de la Santé et des Services sociaux's mental health committee, the Comité de la santé mentale, the report is as pertinent today as it was at the time of its publication, providing useful information on the conditions for a successful restructuring. We have based ourselves on elements of this report to prepare our recommendations for action plan follow-up. Indeed, the Ministère de la Santé et des Services sociaux's responsibilities include establishing orientations and approving action plans. As specifically regards the Plan d'action en santé mentale 2005-2010, it undertook to evaluate its implementation at the end of it five years of enforcement in 2010[40].

The second section of our analysis concerns complaints and reports which enabled us to ascertain that the fundamental rights of persons with mental health problems continue to be significantly infringed. Our interventions in these specific cases allowed us among other things to observe that the quality of services delivered to these citizens was at times flagrantly far from being a priority.

Persons with mental health problems, regardless of their physical location - the street, the community, a hospital - must all have access to similar services.

The Québec Ombudsman's actions in response to complaints and reports indicate that there are still practices that infringe on their rights and that the Plan d'action en santé mentale's implementation is still proving to be a huge challenge.

This present case file aims to emphasize these challenges, with the aim of finding solutions that can be implemented before the 2010 deadline.

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38 *Plan d'action en santé mentale 2005-2010 : La force des liens*, Ministère de la Santé et des Services sociaux, Québec, 2005, p. 8.
39 *Défis de la reconfiguration des services de santé mentale*, Comité de la santé mentale du Québec, Ministère de la Santé et des Services sociaux, Québec, 265 pp.
40 *Plan d'action en santé mentale 2005-2010 : La force des liens*, Ministère de la Santé et des Services sociaux, Québec, 2005, pp. 87-88.

Section I -

The "plan d'action en santé mentale 2005-2010"

The Ministère de la Santé et des Services sociaux's *Plan d'action en santé mentale 2005-2010* aims to ensure that the entire population has access to the wide variety of services offered on a continuous basis. The first issue addressed in the action plan is restoring people to their true selves and developing methods for giving people hope and facilitating their active contribution to society[41]. In line with this goal, one of the plan's guidelines is to acknowledge the ability of persons with mental health problems to make choices and be actively involved in the decisions that concern them.[42] This will be achieved through the creation of front-line teams who provide basic mental health services. These teams will work closely with all of the local health and social services network resources, hailing from community organizations, health and social service centres (CSSSs) and family medicine groups.

The plan's success will also require cooperation between these teams and second- and third-line groups, both specialized and super-specialized (general hospitals with a psychiatric department and psychiatric hospitals). In 2002-2003, the Québec Auditor revealed in its report to the National Assembly that numerous persons willing to live in another environment had to remain hospitalized, a situation which was extremely costly. It had also underscored[43] the fact that people whose health condition did not warrant it were occupying beds while others were waiting for access to psychiatric services and a hospital room.

Conditions for a successful restructuring of services

In its 1997 report entitled *Défis de la reconfiguration des services de santé mentale*, the Ministère de la Santé et des Services sociaux's mental health committee set out the conditions for a successful deinstitutionalization. These conditions included:

- The involvement of users and family members or close relatives in decisions concerning them;
- Support measures for actors in community and hospital environments;
- Planning of the unavoidable transition costs: funds - or an important portion thereof - must accompany users from the hospital to the community as well as enable the implementation of alternate resources before hospital beds are closed;
- Teams must be created to carefully monitor the effects of deinstitutionalization;
- Intersectoral cooperation initiatives must be introduced to facilitate access to accommodations, leisure activities, therapy, work and any necessary legal support;

41 *Plan d'action en santé mentale 2005-2010 : La force des liens*, Ministère de la Santé et des Services sociaux, Québec, 2005, p.11.
42 Idem, p.12.
43 *Le Rapport du vérificateur général du Québec à l'Assemblée nationale 2002-2003*, p.16, Tome I.

- Support must be available for the development of local and community assistance and social support resources ;
- The abolition of deeply rooted prejudice in society towards persons suffering from mental health problems.

The Québec Ombudsman notes that the Plan d'action en santé mentale 2005-2010 incorporates certain lessons learned from past actions. For example :

- The creation of special front-line teams as well as mobile emergency units ;
- The introduction of social integration services[44] focused on offering support for education, employment integration and access to residential services ;
- The existence of intensive follow-up measures and support - of varying intensity - in the community ;
- The definition of the responsibilities of the various actors.

The Québec Ombudsman notes that the plan is also contingent on a widespread buy-in from the medical community, including :

- Psychiatrists whose practices will be called to change, notably as responding psychiatrists for front-line teams ;
- General practitioners who agree to treat users who no longer require psychiatric care[45].

Once the plan has been fully implemented, in 2010, the restructuring of services should in theory have allowed for reducing the waiting lists for mental health services and significantly increasing service availability, continuity and quality.[46] Coordination between front, second- and third-line teams should ensure the seamless transition of users from one service level to the next. The development of intensive and varied follow-up services, combined with social integration, should provide improved conditions for community integration.

With this plan, the ultimate goal is not merely to improve people's health, but also to provide them with an enhanced quality of life.[47]

The Québec Ombudsman observed that :

- The various follow-up mechanisms provided for in the plan[48] are quantitative : numerous of users having received such and such a service, services available locally, forecast expenditures and activity volume ;
- The assessment of results vis-à-vis implementation of the action plan and change management does not consider the quality of services or users' quality of life. Yet these two elements are key and critical elements.

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44 *Cadre de référence sur le soutien communautaire en logement social : Une intervention intersectorielle des réseaux de la santé et des services sociaux et de l'habitation*, Ministère de la Santé et des Services sociaux, Société d'habitation du Québec, 2007.

45 *Plan d'action en santé mentale 2005-2010 : La force des liens*, Ministère de la Santé et des Services sociaux, Québec, 2005, pp. 46, 67 and 89

46 In January 2008, the persons in charge of coordinating access to services at the Direction des services de réadaptation et d'hébergement dans la communauté indicated that demand for community accommodations was still strong, given the foreseeable drop in the number of long-term spots and the lengthy waiting list for legal psychiatric services.
Source : Bisson, J. Alexandre, H. Cadorette, S. Boies, and R. Morissette, *Mécanismes de coordination de l'accès aux services de la Direction des services de réadaptation et d'hébergement dans la communauté*, Montréal, Hôpital Louis-H. Lafontaine, 2008, pp. 1-2.

47 *Plan d'action en santé mentale 2005-2010 : La force des liens*, Ministère de la Santé et des Services sociaux, Québec, 2005, p. 8.

48 Idem., pp. 87-88.

We reiterate, as was stated by the mental health committee (1997 report[49]), that if quality of services and community life are not the key aspects, objectives may very well focus solely on quantitative elements.

The framework for clinical CSSS projects does indeed allude to the "quality" of services, also mentioning that a manager must be designated to ensure this quality in the living environments of vulnerable persons. It also mentions that taking into account the qualitative aspect, which notably incorporates actors' personal and relational skills, requires the participation of the population in general and users in particular.[50] Yet the evaluation of the Plan d'action en santé mentale 2005-2010 which the department plans to conduct after five years of implementation does not incorporate such a quality aspect ; quality, in other words, is not among the plan's priority objectives.

2007-2008 recommendations

Recommendation 1

Given that the Plan d'action en santé mentale 2005-2010 states that once the ambitious project proposed is completed, persons with mental problems and their close relatives will enjoy easier access to services that will improve their health condition and quality of life[51] ;

Given that unless quality of life standards are rigorously and continuously monitored and evaluated, this objective may well be neglected and even forgotten, despite it being at the heart of the restructuring of mental health services ;

Given that section XII of the Plan d'action en santé mentale 2005-2010, which addresses the follow-up and evaluation process, does not include any monitoring of the quality of services and quality of life of mental health users ;

Given that an overall view of the quality of services and quality of life of mental health users is necessary ;

THE QUÉBEC OMBUDSMAN RECOMMENDS :

That the follow-up of the action plan under the responsibility of the Ministère de la Santé et des Services sociaux[52] include an evaluation of the quality of services and quality of life of users, regardless of the site of service delivery or type of services.

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49 *Défis de la reconfiguration des services de santé mentale*, Ministère de la Santé et des Services sociaux, October 1997, p. 84 : Should the objective involving the quality of services and their availability in the community not be the central focus, as it should, it must be replaced by objectives that are even more instrumental, whose achievement could not offer a sufficient guarantee. This would be the case, for example, if a decrease in the number of beds and psychiatric stays were to become the primary goal and as such, considered a sufficient condition for improving the availability and quality of services.

50 Idem, pp. 22-23.

51 *Plan d'action en santé mentale 2005-2010 : La force des liens*, Ministère de la Santé et des Services sociaux, Québec, 2005, p. 8

52 *Plan d'action en santé mentale 2005-2010 : La force des liens*, Ministère de la Santé et des Services sociaux, Québec, 2005, p. 88..

This evaluation could, among others, take into consideration the responsibilities assigned to CSSSs as regards quality of services in the clinical project, and pay particular attention to quality via-à-vis :

- the manner in which users are greeted in service resources, notably at the emergency room[53] ;
- support measures[54] ;
- living environments[55].

Comments from the department

The following statement from the department was issued by its Deputy Minister :

“The department has in fact foreseen an evaluation phase for identifying the impacts of the Plan d'action en santé mentale 2005-2010, *La force des liens*.

Reply from the Québec Ombudsman

The Québec Ombudsman notes that the Ministère de la Santé et des Services sociaux has not made any commitment as regards quality.

Recommendation 2

Given that the quality of services and quality of life of persons suffering from mental health problems also depends on the degree to which they are accepted by society ;

Given that these citizens have the potential and ability to participate in and make a useful contribution to society ;

Given that the Plan d'action en santé mentale acknowledges that :

“mental illnesses, treatment organizations and even actors in the sector are still negatively perceived by the general public and other healthcare professionals, and fears vis-à-vis mental illnesses restrict the access of persons with mental health problems, to the help they need as well as hindering their social integration[56]” ;

Underlining the relevance and quality of the Ministère de la Santé et des Services sociaux's initiative over the last few months in undertaking an information campaign in this regard ;

53 *Plan d'action en santé mentale 2005-2010 : La force des liens*, Ministère de la Santé et des Services sociaux, Québec, 2005, p. 29.
54 *Plan d'action en santé mentale 2005-2010 : La force des liens*, Ministère de la Santé et des Services sociaux, Québec, 2005, p. 26.
55 *Plan d'action en santé mentale 2005-2010 : La force des liens*, Ministère de la Santé et des Services sociaux, Québec, 2005, p. 15
56 *Plan d'action en santé mentale 2005-2010 : La force des liens*, Ministère de la Santé et des Services sociaux, Québec, 2005, p. 17

THE QUÉBEC OMBUDSMAN RECOMMENDS:

That the Ministère de la Santé et des Services sociaux, based on the impact of this campaign, continue its initiative in this vein, and even intensify its efforts, particularly in those environments that the department considers the most prejudiced with regard to mental health problems.

Comments from the department

The following statement from the department was issued by its Deputy Minister:

"In cooperation with partners from the mental health sector, the next step in our communication intervention will target specific environments, as recommended."

Section II -

Infringement of fundamental rights of persons suffering from mental health problems still an issue

The implementation of the action plan incorporates objectives aimed at improving the availability and quality of mental health services. The Québec Ombudsman emphasizes that respect for citizens' rights must, alongside access to services, be a core issue of concern to all members of the network.

In 2007-2008, the Québec Ombudsman received 18 complaints and reports regarding practices of hospital centres offering psychiatric services (including one concerning a CLSC) which infringed upon the rights and liberties of persons suffering from mental health problems. Some of these complaints had been filed on behalf of several citizens. They addressed a handheld number of the activities involved in mental health practices. This being said, we must bear in mind that the persons involved often lack the energy and ability to express their opinion or take advantage of available review tribunals. We can also easily assume and understand that the persons who are cured will not want to revisit the agony that was their former life in order to formulate a grievance. Again this year, one complaint was sufficient to allow us to identify the ongoing practices of actors who were violating the fundamental rights of users.

Lastly, a report from an advocacy organization enabled the identification of a collective problem. Taken together, these factors appear to represent the tip of an iceberg that may prove larger than anticipated.

The complaints received this year indicate, among other things, that **a good number of the situations condemned in the Québec Ombudsman's previous annual report still exist.** Reproachable behaviour continues, despite the guarantees provided for under

the Charter of Human Rights and Freedoms, the Civil Code of Québec and the Act respecting health services and social services. All of these legal bases serve to protect the dignity and inviolability of individuals. The Act respecting the protection of persons whose mental state presents a danger to themselves or to others has a similar purpose, prescribing specific measures authorizing the confinement of a person against his or her will. It can only be applied in exceptional circumstances, for in other situations, such a forced initiative constitutes an infringement of the law.

Sectorization in mental health : still present...

Sectorization consists of limiting the psychiatric services provided within a given territory to the residents of that territory. Under such an approach, a person's postal code becomes the access criteria for institutions responsible for providing services. This approach was developed at the same time as the deinstitutionalization initiative in the 1960's.

It was initially devised as a " positive " measure for users, with the ultimate goal being to force institutions to take responsibility for persons within their regions, based on a strict delineation of the territory. Under the Act respecting health services and social services, however, users were and still are free to choose the health professional and institution from which they wish to receive services.

Sectorization was strictly an administrative measure, and never a regulatory or legislative standard. Over the years, we nonetheless observed that its application infringed on the freedom of choice provided users under the Act. The Plan d'action en santé mentale 2005-2010 clearly specifies that the Act respecting health services and social services enables persons to select their service provider and has in all instances precedence over any territorial conditions.[57] In 2006, department authorities sent regional agencies a reminder that all instances of sectorization were to be abandoned.

This year again, the Québec Ombudsman observed that postal codes could still open and close doors.

While the Act respecting health services and social services was amended significantly over the past few years, the legislature has always maintained users' rights to freedom of choice with regard to health professionals and institutions. Institutions that refuse access to users requiring mental health services on the basis of their postal code are directly violating this right.

The Québec Ombudsman's investigations again illustrated that sectorization was still being practiced in the institutions about which we had received reports. We immediately recommended that this practice be brought to an end, notifying the department of our observations and recommendations.

In addition to the principle of freedom of choice vis-à-vis an institution, the Québec Ombudsman considered the fundamental issue : why should persons suffering from mental health problems want to obtain services from an institution outside of their territory ? The most often heard explanation from medical actors was that this frequently observed trend is part of such a patient's pathology. The user either contests the diagnosis or treatment approach and wishes to obtain a second opinion from another psychiatrist, or the user, apprised of the key elements of his problem by specialists,

57 *Plan d'action en santé mentale 2005-2010 : La force des liens*, Ministère de la Santé et des Services sociaux, Québec, 2005, p. 25.

refuses to delve deeper and prefers to see another physician. Regardless of circumstances, the Québec Ombudsman reiterates that sectorization infringes on a citizen's rights and violates the law.

Over the following year, the Québec Ombudsman will closely monitor the purported elimination of all forms of sectorization.

Scattered emergency psychiatric resources for vagrants

Vagrants with a severe and persistent pathology are among those who suffer from mental health problems. These persons don't complain to the Québec Ombudsman. They are in essence defenceless, and either have no knowledge of existing public structures or avoid them altogether. Health and social services institutions and community organizations which seek to help and support them are best able to describe the problems they may be experiencing. The Québec Ombudsman obtained a greater appreciation for vagrancy subsequent to spending time with various of these sector actors.

Vagrants are accommodated by various community resources such as shelters, soup kitchens and day centres. Others shy away from all such resources, while yet others rely on such assistance on a regular basis but undergo acute crises that cannot be treated by community-based services. In both cases, hospitals are another type of shelter, while emergency psychiatric services are a lifeline. Vagrants are often brought to hospital emergency rooms by ambulance personnel or police officers.

We have established a relatively common profile[58] of vagrants. A large number of them:

- Experience severe mental health problems, including paranoid schizophrenia, bipolar disease, delusional disorders or major depression, yet few of them have ever been diagnosed;
- Have major problems adapting to life in society;
- Behave in a manner that is at odds with the public services structure and find their access to various forms of social assistance subsequently limited;
- Suffer from physical health problems and age prematurely;
- Resist the traditional health services approach;
- Live a daily life that is precarious in every sense;
- Have or have had problems with the law;
- Live an isolated existence in a hostile environment, namely on the street.

Vagrants often present multiple problems, constituting complex cases for the service providers that see them return, time and again...

In Montréal, where there are more vagrants than elsewhere in Québec, a majority of vagrants can be found in the city's central districts. The hospital centre where they tend to show up the most for assistance is therefore the CHUM (Centre hospitalier de l'Université de Montréal). Given the significant demand and the system's limited capacity, the sector implemented a distribution system around ten years ago. Eleven Montréal hospitals offering psychiatric services must assume this responsibility for

58 The data used to prepare this profile were culled from an article entitled "La pratique outreach auprès des personnes itinérantes souffrant de troubles mentaux graves et persistants : observations, réalités et contraintes", Équipe itinérance, Montréal, published in *Santé mentale au Québec*, 2000, volume XXV, no 2, pp. 179-194.

alternating periods of one week. A first glance, this formula may appear to be an effective solution to the problem of excessive demand. In reality, given the current context, we wonder to what degree quality treatment and respect for patient rights is ensured.

Because hospitals are "on call" for one week, we sometimes see cases where actors put off taking care of a vagrant with mental health problems so that he or she can be taken in hand by the institution slated to be "on call" several hours later or the next day. Such an attitude by institutions results in citizens being shuffled back and forth. This is particularly unacceptable given that these vagrants need to be so that their condition can be stabilized. Such an approach also results in citizens being denied their choice of institution. A hospital that is not "on call" is indeed not made to feel reassured required to treat such a citizen, and can opt to indicate which institution he or she should turn to, depending on the schedule established.

Despite its recurrent allocation of $1 million to agencies working with vagrants, the Ministère de la Santé et des Services sociaux has not taken a stance on vagrancy, nor has it put forth structuring solutions with regard to the development of adequate resources in this regard. The Québec Ombudsman is anxious to be apprised of the reference framework on vagrancy which is in the process of being established.

Isolation measures

Who decides? On what grounds? For how long? And, whose consent is necessary?

One of the complaints investigated by the Québec Ombudsman this year was sufficient to illustrate the problems related to isolation and the need to remind institutions to correct persistent deficiencies. The situations reported are not isolated cases, as confirmed by other complaints.

A citizen was placed in isolation while in the emergency psychiatric unit of a hospital centre because she refused to take a specific drug. She had notably never taken this particular medication and had sought to obtain further information on its effects, to no avail. The decision to place her in isolation was taken without her consent or that of her representative. Called to the rescue, her attorney had to vehemently insist and invoke his authority before being allowed to access her record.

The Act respecting health services and social services provides specific grounds justifying the recourse to isolation measures. These are to prevent a user from harming him or herself or others. In light of this and other complaints, we are concerned by the apparent use of isolation measures without the existence of such a risk. As regards the time during which users are kept in isolation, we have observed that it often exceeds the time needed for a person to calm down.

We would like to reiterate that isolation measures can only be prescribed by a physician. The Québec Ombudsman learned, among others, of the protocol for the application of control measures – physical and chemical restraints and isolation - used by the institution in question. We noted that the hospital centre, contrary to the provisions of the Act, formally authorized actors other than doctors (nurses, physical therapists and occupational therapists) to proceed to isolation measures. This practice was addressed by a

recommendation from the Québec Ombudsman which incited the institution to make the necessary changes and modify its protocol so as to comply with the provisions of the Act and ensure that henceforth isolation measures could only be prescribed by physicians.

For isolation measures and the taking of drugs, the Act clearly specifies that the enlightened consent of the user or an appointed person is required. Institutions can only take action in the absence of such consent when a user's life is at risk or his or her integrity is threatened and consent by the user or his or her legal representative could not be obtained in a timely manner.

In the circumstances discussed herewith, actors did not attempt to obtain the necessary consent, which hence explains the Québec Ombudsman's recommendation in this regard. The notion of "enlightened" consent notably obliges physicians to provide users or their representatives with information that can be easily understood. This can be difficult, given the scientific and pharmaceutical terminology often used in the medical services sector. Because the average citizen may have a hard time understanding these medical terms, the Québec Ombudsman reminded the institution of its duty to adequately inform users or their legal representatives and ensure that the information imparted was properly understood.

In examining the facts, the Québec Ombudsman noticed that the observation notes in the records of this user were often incomplete or nonexistent, and concluded the existence of negligence vis-à-vis respect for individuals as required by the rules of good practice. A user must be able to access the data which should notably appear in her record. This information, moreover, should provide an accurate overview of the applicable situation and treatment. User representatives must also be able to refer to such notes, as must close relatives or an attorney, as the case may be.

In this particular situation, the user's attorney met with significant resistance from the institution's personnel before he was able to obtain access to his client's record, when the user's authorization and the circumstances of her hospitalization should have in fact made such access easier. The Québec Ombudsman raised another point where it recommended that changes be made to current practices.

The behaviour of the employees concerned - medical and nursing staff in the emergency room and psychiatric care unit – resulted from a lack of information on confinement or isolation measures, including the notion of free and enlightened consent, the surveillance to be conducted and the recording of observation notes in the record. The Québec Ombudsman asked the institution to correct these problems, organize training sessions for its employees, and lastly, report back to it on the results of these sessions.

A user suffers alone because of a lack of service continuity and rigour

The condition of persons afflicted with mental health problems requires that the various health resources' responsibilities vis-à-vis service delivery be coordinated and consistent, as well as carried out in conjunction with users and their close relatives whenever possible. This concern, critical to users' well-being, is included in the Act respecting health services and social services.

A user's family doctor refers him to an institution-related clinic for an evaluation. The young man was diagnosed with multiple problems, including attention deficit disorder, behavioural, language and learning problems, and a drug problem. An agreement was reached whereby

the clinic in question would continue to provide the user with services. The attending physician also prescribed a psychological follow-up in a CLSC. A first clinic psychiatrist begins to treat the user, but was quickly replaced because of relational problems with the young man's mother.

The user was seen by a social worker from the CLSC for his psychosocial follow-up. At this point, several months went by without the citizen being able to meet with the clinic's psychiatrist or renew his medication within the specified time period. His prescription was eventually renewed sporadically, by different physicians. As part of his therapy, the social worker paired the young man with another citizen who had once had a drug problem. The two began sharing an apartment. Those living arrangements quickly proved problematic and a source of conflict between the two young men. In addition, a drug dealer living in the same building represented a true risk of relapse. The social worker, apprised of these issues, did - for all intents and purposes - nothing. The young man, who had not benefited from any true psychiatric follow-up, found himself without a place to stay, at which point his mother filed a complaint with the Québec Ombudsman.

The Québec Ombudsman illustrated that the social worker and physician failed to coordinate their efforts to ensure a specific and efficient treatment program.

In the Québec Ombudsman's opinion, the user's failure to strictly follow various approaches and attend meetings could be attributed to the mental health problems which had prompted him to seek treatment, and were thus not the cause of his treatment's failure. Rather, this case revealed a lack of professional competency by the social worker and a lack of clinical supervision of her work by her superiors, as well as a lack of coordination of the psychiatric and psychosocial resources that should normally have collaborated to ensure the application of the measures prescribed by the user's original psychiatrist The recommendations aimed at preventing such a situation to be repeated were accepted, notably ensuring clinical supervision and elaborating a policy to this effect.

Consent for a psychiatric evaluation

The Civil Code of Québec establishes the inviolability of the person and the right to one's integrity, hence denoting that no one may be subject to care without consent, whether the care comprise treatment, an examination or sampling. Under the law, a psychiatric evaluation constitutes care, and submitting a person to such an examination without consent is a violation of this person's integrity. Hence, a psychiatric evaluation cannot be conducted in the absence of valid consent or a court order.

The Québec Ombudsman received a report from an advocacy organization regarding the validity of a form used within the framework of the Act respecting the protection of persons whose mental state presents a danger to themselves or to others. Our analysis of the practices in the institution in question illustrated that current practices bypassed the law, particularly with regard to preventive confinement.

Preventive confinement consists of hospitalization for a period of up to 72 hours. A user in preventive confinement can be kept against his will if his or her mental condition represents an immediate threat to him or herself or to others. The implementation of

preventive confinement is subject to strict conditions : under the law, resorting to such an act only allows for confining and monitoring users. Any care that must be given during this 72-hour period requires the clear and enlightened consent of the user or a legal representative.

The Québec Ombudsman's investigation allowed for observing that there are often two psychiatric examinations - conducted by two different psychiatrists - while a user is in preventive confinement, and this without the latter's valid consent. This behaviour essentially bypasses the legal provisions governing requests for preventive confinement. Such confinement, which can only be authorized by the Court of Québec, orders a person, even if he or she so refuses, to undergo two psychiatric evaluations to determine if he or she must be placed in regular confinement.

Institutions' confinement of persons with mental health problems is obviously assiduously governed by legal provisions. Consent for care is integral to the inviolability of individuals, and each sector actor is personally and professionally responsible for ensuring this right is respected.

The report that prompted the Québec Ombudsman's intervention did not concern any case in particular but alluded to overall practices in the sector. We therefore focused on the tools used and the methods adopted by institutions to apply the law. We first examined the form used by psychiatrists, the *Rapport d'examen psychiatrique pour requête de garde en établissement*. One section of this document referred to the absence of user opposition to an examination, yet there was no direct reference to the notion of consent. Our investigation also focused on the procedure in force for application of the law with regard to regular confinement in institutions.

The Québec Ombudsman deems that the form's title and content both failed to meet the legal requirements in the area of consent. For instance, the text did not directly mention a person's ability to consent to or refuse a psychiatric examination, nor the information users must obtain with regard to the purposes of any examination and their right of refusal. Also missing was any reference to consent by a user's legal representative. The Québec Ombudsman subsequently recommended that the form be modified so as to reflect the rights of users to give their enlightened consent or refuse the care represented by a psychiatric examination or if not possible, that this consent or refusal be given by the user's representative.

In a more general manner, the community organization's report also bore on the lack of information provided persons under institutional confinement with regard to their rights under the Act respecting the protection of persons whose mental state presents a danger to themselves or to others. The Québec Ombudsman proceeded to get information on the internal medical/ administrative procedure adhered to, which effectively failed as regards the necessary information that had to :

- be provided to users or their representatives ;
- be recorded by institution actors ;
- be input into user records.

The Québec Ombudsman's recommendations, targeting both the institution and the regional agency and submitted to the Ministère de la Santé et des Services sociaux, aimed to correct the deficiencies in the existing procedure and fully integrate the

provisions of the law to daily practices. It also recommended that employees receive training on this topic. The institution accepted to implement the recommendations made by the Québec Ombudsman. We will carefully monitor the actual implementation of the new measures.

Other complaints to the Québec Ombudsman concerned the "evaded" consent from users or representatives, be it for medication, a blood sample or the extension of measures after the acute phase had subsided. An employee in an institution's psychiatric unit even explained to the Québec Ombudsman that consent for confinement measures was never obtained because "patients would simply refuse to give it." Such a comment is worrisome, indicating a lack of knowledge of the legal framework and rules governing consent by the very persons responsible for upholding the law.

The inviolability of individuals is a fundamental right that applies to everyone in all circumstances. All the more so in moments of crisis or extreme vulnerability, people must be able to rely on health network actors to respect their rights.

Waiting lists and violation of individual rights

A young girl who had attempted suicide was subsequently seen by a psychiatrist who detected a borderline personality disorder. The hospital where the psychiatrist practiced offered appropriate user services but had a waiting list of one to two years. Over the next few months, the young girl again attempted to kill herself on a number of occasions and despite a general practitioner's efforts, could not obtain an appointment. Her mother, in the interim, contacted the secretary of the medical unit involved as well as the hospital's complaints and quality commissioner. The mother ultimately complained to the hospital directly.

Following this entire process, which went on for two years, the young girl was finally able to benefit from an ongoing assistance program. The mother, hoping to help other families avoid living such situations, asked the Québec Ombudsman to intervene with regard to the issue of waiting lists.

In another instance, a mother requested psychological services for her three-year old daughter from her regional CSSS. She was told that the delay before services could be provided would be anywhere from one to two years. Concerned by the prejudice such a delay could cause her daughter and other users in similar situations, she asked the Québec Ombudsman to intervene.

These two complaints initially emphasize the impacts and risks associated with long waiting lists for mental health services. In one case, a suicidal girl was involved, while the other concerned a child with alarming problems - at an early age - who was deprived of preventive treatment.

This illustrates one of the major challenges in the Plan d'action en santé mentale 2005-2010, namely the deployment of front-line services. We can already presently observe, in compliance with one of the plan's orientations, a strengthening of these

front-line resources responsible for assessing the degree of urgency of individual cases, either in caring for users, or escalating cases to second- or third-line services according to severity. Well structured, triage logically results in improved needs identification and an increasingly better targeted use of specialized resources.

The problems raised also specifically concern the management of various waiting lists. Subsequent to its analysis of the case involving a three-year old child, the Québec Ombudsman, having concluded that other children were in a similar situation, communicated with the health and social services centre in question to insist that the person in charge of the waiting list better coordinate the process. This employee must have a global view of the needs of users on the list, as well as an overview of all the cases treated by the various psychologists.

Properly managing this list will require a clear and concise written procedure for the implementation of priority criteria, ongoing follow-up and regular status updates to users. The institution welcomed the Québec Ombudsman's recommendations. We will measure the tangible observable results that ensue.

Conclusion

All members of the health and social services network must respect users' rights when delivering health services. The Ministère de la Santé et des Services sociaux, must further communicate this precept and ensure that it is well understood. The Québec Ombudsman notes, however, that the action plan does not include any significant measures in this regard, despite giving user advocacy organizations a greater say. These measures are clearly not sufficient, and should not enable the department and health and social services network to presume that they are thereby fulfilling their obligations with regard to the promotion and respect of user rights.

The Québec Ombudsman's investigation of complaints and reports with regard to mental health services rested on the provisions of the Act respecting health services and social services, which notably prescribe that :

"3. For the application of this Act, the following guidelines shall guide the management and provision of health services and social services :

1 the person requiring services is the reason for the very existence of those services ;

2 respect for the user and recognition of his rights and freedoms must inspire every act performed in his regard ;

3 the user must be treated, in every intervention, with courtesy, fairness and understanding, and with respect for his dignity, autonomy, needs and safety ;

4 the user must, as far as possible, play an active role in the care and services which concern him [...]."

These guidelines make each and every actor accountable for understanding and respecting the rights of users, as well as for ensuring, based on their expertise and degree of responsibility, that service organization and delivery benefit and favour

users. The Ministère de la Santé et des Services sociaux is responsible for reminding all health network actors of their duty in this regard.

Respect for users and their rights therefore requires more than a mere mechanism for handling complaints or greater involvement from user rights advocacy organizations. This respect is also broader in scope, extending to encompass an ongoing concern for the planning and implementation of resources and methods adapted to user needs. Such an approach is first visible in the organization of services and the service delivery environment, as well as in the areas of employee and management training and awareness. Respect for user rights also entails keeping accurate records and enabling their access by appointed representatives.

Lastly, professionals working in various capacities in institutions must be apprised through clear directives indicating that the guidelines of the Act respecting health services and social services may never be ignored, whether it be for organizational convenience or for scheduling or other considerations.

No one may manipulate users' fundamental rights, nor apply them only partially. The legislature has defined these rights and clearly delineated the specific circumstances in which they can be violated. Only in these limited circumstances can professional judgment take precedence, albeit still with a focus on a limited violation of user rights.

2007-2008 recommendation :

Recommendation 3

Given that the Act respecting health services and social services sets guidelines for all members of the health and social services network so that they can "guide the management and provision of health services and social services" ;

Given that the Plan d'action en santé mentale 2005-2010 includes a guideline, with its first condition being respect for user rights, for introducing the "power to act" of persons suffering from mental health problems ;

Given that paragraph 2 of section 3 of the Act specifies that "respect for the user and recognition of his rights and freedoms must inspire every act performed in his regard" ;

Given that the rights and liberties of persons suffering from mental health problems are still being flouted in numerous institutions in the health and social services network, and most notably in cases where users are deprived of their freedom ;

Given that all of the professionals working in various capacities within these institutions must be apprised by clear directives that the guidelines of the Act respecting health services and social services may never be ignored ;

Given that the Plan d'action en santé mentale 2005-2010 does not adequately acknowledge the issue of treatment of persons suffering from mental health problems by the network itself and by the department ;

THE QUÉBEC OMBUDSMAN RECOMMENDS:

That the Minister of Health and Social Services confirm that respect for users' rights has priority over all other considerations except those provided for in the Act respecting health services and social services and the Act respecting the protection of persons whose mental state presents a danger to themselves or to others (P-38), notably by preparing and releasing guidelines with regard to chemical substances as a control mechanism, as announced in the *Orientations ministérielles relatives à l'utilisation exceptionnelle des mesures de contrôle : contention, isolement et substances chimiques*[59].

That this statement be clear and unambiguous, like that prohibiting sectorization practices that violate mental health users' rights to choose their provider of services[60].

Comments from the department

The following statement from the department was issued by its Deputy Minister:

"The department has been promoting respect of users' rights in the mental health sector for numerous years. It has also introduced several concrete measures to improve access to specialized and front-line services, better support user committees and groups, increase the training provided to sector actors, and increase funding for services. The department plans to continue with these initiatives."

Reply from the Québec Ombudsman

The Québec Ombudsman will pay particular attention to the actions in support of respect for users' rights in the mental health sector referred to by the department.

The Québec Ombudsman considers that it is a matter of urgency that guidelines for structuring the use of chemical substances as control mechanisms, as announced in the Orientations ministérielles relatives à l'utilisation exceptionnelles des mesures de contrôle en 2002, be put forward and distributed.

59 *Plan d'action, Orientations ministérielles relatives à l'utilisation exceptionnelle des mesures de contrôle : contention, isolement et substances chimiques*, Ministère de la Santé et des Services sociaux, Québec, 2002, 19 pp.
60 Idem, p.25.