



LE PROTECTEUR DU CITOYEN

Assemblée nationale
Québec

Justice

Fairness

Respect

Impartiality

Transparency

Intervention Report

Admission of a foreign national to Royal Victoria Hospital of McGill University
Health Centre

Québec City, May 16, 2014

Notice

This report documents an intervention conducted by the Québec Ombudsman in accordance with Chapter IV of the *Act respecting the Health and Social Services Ombudsman* (C.Q.L.R., c. P-31.1). Its communication or distribution is governed by that Act and the *Act respecting access to documents held by public bodies and the Protection of personal information* (C.Q.L.R., c. A-2.1).

This report may be communicated by the Québec Ombudsman in accordance with sections 24 and 25 of the *Act respecting the Health and Social Services Ombudsman*.

Under this Act, certain receivers may see the complete version of this report. Otherwise, it may happen that some passages are expunged in accordance with the *Act respecting access to documents held by public bodies and the Protection of personal information*, (sections 53, 54, 83 and 88 in particular) because they contain personal information that would allow a person to be identified. In order for the passages to be communicated, this person's consent is required pursuant to section 59 of the latter Act.

The mission of the Québec Ombudsman

The Québec Ombudsman sees to it that citizens' rights are respected by intervening with regard to Québec government departments and agencies and the various bodies within the health and social services network to request that situations injurious to citizens or groups of citizens be corrected. Appointed by Members of the National Assembly from every political party and reporting to the National Assembly, the Québec Ombudsman is independent and impartial, whether it acts in response to a complaint or a series of complaints or on its own initiative.

Acknowledgements

Pursuant to the powers conferred on her, the Ombudsperson entrusted the investigation to one of her delegates, Micheline Lynch. To this end, the delegate gathered the testimonies of McGill University Health Centre authorities and the viewpoints of the representatives of the bodies concerned. She also examined the legal framework and all applicable documentation.

In this task, she was assisted by the following people: Lori-Lynn Guy, Research Technician; Michel Clavet, Expert Delegate, Health and Social Services; Marie-Claude Ladouceur, Atty., Coordinator, Systemic Interventions; Pierre Bourbonnais, Atty., Secrétariat général and Direction des affaires juridiques; Pierre Alarie, Atty.; Jocelyne DuVerger Villeneuve and Marise Lapointe, Direction des enquêtes en santé et services sociaux; Francine Legaré, Information Officer; and Marie-Natacha Saintéus Vaval, Secretary.

Table of contents

Acronyms.....	i
Summary.....	1
1 Context of the request for intervention.....	5
1.1 Act respecting respecting the health and social services ombudsman.....	5
1.2 The intervention.....	5
1.3 The body concerned.....	6
1.4 Summary description of the health system in the country of origin, Kuwait.....	6
1.5 Information provided to the media by the MUHC representative.....	6
2 Conducting of the intervention.....	8
2.1 Bodies interviewed.....	8
2.1.1 Québec and Canadian government departments and agencies.....	8
2.1.2 McGill University Health Centre.....	8
2.1.3 MMI Montreal Medical International Inc.....	8
3 International outreach and expertise sharing.....	9
3.1 The contract between MUHC, McGill University and the Ministry of Health of the State of Kuwait: expertise sharing.....	10
3.1.1 An effect of execution of the contract between MUHC and the State of Kuwait: transfer of a patient.....	12
3.1.2 Assignment of MUHC's rights and responsibilities to a private company, MMI Montreal Medical International Inc.....	13
3.2 Approval of expertise-sharing agreements by Québec authorities.....	14
3.2.1 Minister of Health and Social Services's approval of the initial agreement binding MUHC and the State of Kuwait with respect to expertise sharing.....	14
3.2.2 Minister of International Relations and La Francophonie's authorization of the initial agreement binding MUHC and the State of Kuwait with respect to expertise sharing.....	15
3.3 The acceptability of assigning MUHC's rights and responsibilities to a private company.....	16
3.4 Propriety of the transactions.....	17
4 Admission of foreign nationals to Québec's public health institutions.....	18
4.1 The rules governing the temporary admission of foreign nationals to work, study or receive medical treatment.....	18
4.1.1 Authorization for temporary admission to Québec: the Québec Acceptance Certificate (CAQ).....	18
4.1.2 Authorization to enter the country – Entry visa for Canada.....	19
4.2 Reception of the woman from Kuwait.....	20

4.2.1	Obtaining prior authorization for the woman from Kuwait's admission from Québec's Minister of Health and Social Services.....	20
4.2.2	MSSS's versions as to the need for prior authorization from the Minister	20
4.2.3	Ground for admitting the woman from Kuwait to MUHC: distinctions between concepts	21
4.2.4	Looking ahead: the sequence for obtaining authorizations	25
4.2.5	Citizenship and Immigration Canada and the authorization to enter the country granted to the woman from Kuwait.....	26
4.2.6	MUHC's omission in obtaining the Québec Acceptance Certificate	27
5	The woman from Kuwait's stay at MUHC.....	27
5.1	Facts surrounding the decision to agree to admit the woman from Kuwait to MUHC	28
5.2	The clinical grounds for the decision to admit the woman from Kuwait to MUHC	29
5.3	Ambulance transportation in Québec	29
5.3.1	First instance of ambulance transportation	29
5.3.2	Second instance of ambulance transportation	29
5.4	The financial impact of the care and services provided to the woman from Kuwait	30
5.4.1	Fees charged by MUHC to the Kuwait Embassy Health Office.....	31
5.4.2	Fees in connection with the woman's visits to the emergency room of Royal Victoria Hospital	31
5.4.3	Fees related to cardiac surgery and staff presence	32
5.4.4	Fees for occupying a private room or a room with one bed only at the intensive care unit and the cardiac surgery unit.....	33
5.4.5	Second hospitalization: re-admission to the cardiac surgery unit.....	36
5.4.6	An additional amount equivalent to 30% of the total invoice?	37
5.4.7	Invoice payment and entry.....	38
5.4.8	Service costs assumed by MMI	41
5.4.9	The other services offered to the family by MUHC.....	41
5.5	Organizational or administrative impact	42
5.5.1	The operating room chosen and no postponement of other scheduled surgeries	42
5.5.2	Availability and remuneration of physicians and residents	42
6	Conclusion	45
	APPENDIX 1 - Recommendations of the Québec Ombudsman.....	47
	APPENDIX 2 - Timeline	52

Acronyms

CIC	Citizenship and Immigration Canada
MIDI	Ministère de l'Immigration, de la Diversité et de l'Inclusion
MMI	MMI Montreal Medical International <i>Inc.</i>
MRIF	Ministère des Relations internationales et de la Francophonie
MSSS	Ministère de la Santé et des Services sociaux
MUHC	McGill University Health Centre
QAC	Québec Acceptance Certificate
RAMQ	Régie de l'assurance maladie du Québec
RUIS	Réseau universitaire intégré de services

Summary

In December 2011, a woman from Kuwait was admitted to McGill University Health Centre (MUHC) for elective care and services. At the time, the event drew media attention, raising the following question: could this kind of openness to providing care to foreign nationals affect the service offering available to users of Québec's health and social services network?

The Québec Ombudsman considered it appropriate to examine various aspects of this situation more closely, especially the public interest issues raised.

From an individual case to common practice

The purpose of this report is not to second-guess why the Kuwaiti woman came to MUHC. Rather, the circumstances surrounding this event and the services she received are starting points for elucidating examination of:

- ▶ why the MUHC physicians admitted the woman to Royal Victoria Hospital;
- ▶ how her transfer from Kuwait to Québec occurred;
- ▶ the administrative rules governing the admission of foreign nationals to Québec's public health institutions;
- ▶ the fees charged by MUHC;
- ▶ the State of Kuwait's payment of these fees;
- ▶ MUHC's receipt of payment and use of the amount received.

It was also fitting to examine the supervision of intake of foreign nationals from the vantage point of international health cooperation for all public health institutions in Québec. In short, if a similar situation arose, would we act the same way or do things differently?

The following four main issues stood out in the analysis that the Québec Ombudsman conducted:

- ▶ The supervision of international outreach activities and of expertise sharing;
- ▶ The acceptability of assigning a public institution's rights and responsibilities to a third party which is not subject to the *Act respecting health services and social services*;
- ▶ The impact on Québec healthcare users, with respect to waiting lists, for example, if the admission of foreign nationals to Québec health institutions becomes standard;
- ▶ MUHC's compliance with the applicable rules when the Kuwaiti foreign national was admitted.

Overview of events and context

From the outset, the Québec Ombudsman noted that the foreign national's coming to Québec occurred within the framework of an expertise-sharing agreement entered into by MUHC and the State of Kuwait. The Ministère de la Santé et des Services sociaux and the Ministère des Relations internationales et de la Francophonie approved this agreement in June 2010. According to the MUHC's representatives, the sole incentive for MUHC's decision was compassion and the desire to provide the young woman with the most effective treatment.

MUHC and McGill University entered into an expertise-sharing contract with the Ministry of Health of the State of Kuwait aimed in particular at assisting the Kuwait Chest Diseases Hospital. Basically, the contract stipulates that:

- ▶ MUHC experts provide on-site support to the Hospital's physicians and personnel;
- ▶ An international panel of experts be available to assist the Kuwait Chest Diseases Hospital in analyzing individual medical cases should the need arise.

For more clearly defined guidelines concerning international outreach

Other Québec institutions intend to enter into agreements for the exchange of expertise with health institutions in other countries, especially those that stand to benefit from being assisted in developing their health system. Certain Québec health institutions are already engaged in this process. However, it is crucial that the Ministère de la Santé et des Services sociaux (MSSS) lay down the rules governing these activities.

These rules must apply to all health network institutions if they are to prove meaningful, especially with regard to giving priority to services provided to Québec healthcare users and to ensuring that committed Québec resources are fully and adequately compensated.

For agreements that comply with the obligation to be accountable

MUHC decided to assign to MMI Montreal Medical International Inc. (MMI) the rights and responsibilities incumbent on it under the contract entered into with the Ministry of Health of the State of Kuwait. In order to implement assignment, two complementary agreements were signed in April 2010 by MUHC, McGill University and MMI setting out their respective roles.

MMI is a private corporation founded in 2005. Dr. Michael Churchill-Smith, who is the President of MUHC International, is also the Chair of the Board of Directors and the Chief Executive Officer of MMI. He is also the Vice President of Optimal Health Care Foundation, a charitable organization dedicated to supporting health research and public health institutions. The Foundation is MMI's single shareholder. Dr. Renzo Cecere, the Kuwaiti woman's attending physician at MUHC, is the clinical director of MMI's satellite office in Kuwait. He is also the Vice President of Clinical Operations.

The mission of MMI is to provide expert assistance to the countries, governments and healthcare centres with which it has signed agreements. MMI donates its proceeds to the Optimal Health Care Foundation, which, in turn, re-invests them in training health professionals and in projects aimed at improving treatments.

So, even though MUHC has its own division of international affairs, the responsibilities stemming from an international agreement were delegated to a private company.

Since MMI, unlike Québec's public health institutions, is not bound by the prescriptions of the *Act respecting health services and social services* with respect to reporting, transparency, management and accountability, the Québec Ombudsman has made two recommendations to the Department so that:

- ▶ henceforth it refuse to authorize such assignment of rights and responsibilities;
- ▶ it require that MUHC fully account for the amounts paid by Kuwait in accordance with the contract so as to ensure that this money was indeed re-invested in the care and services provided by MUHC.

For appropriate guidelines concerning admission of foreign nationals to Québec's public health institutions

In investigating, the Québec Ombudsman discovered that the woman's entry from Kuwait occurred completely outside normal channels, without government supervision and contrary to the principle of universal access to healthcare.

First of all, the Minister of Immigration, Diversity and Inclusion (at the time, the Ministère de l'Immigration et des Communautés culturelles) did not issue a Québec Acceptance Certificate, an official document usually granted to foreign nationals seeking to enter Québec to receive, on a temporary basis, healthcare and health services delivered by a Québec public institution. This certificate is mandatory in order for an entry visa to be issued by Citizenship and Immigration Canada (CIC). In the case at hand, the visitor visa was issued without go-ahead from Québec.

The admission of foreign nationals for the purpose of their receiving care and services delivered in a public institution in Québec presents a challenge—accepting them without Québec healthcare users being penalized. These admissions must be circumscribed by government guidelines and subject to agreements negotiated between governments, or, at least, have been given prior approval by the Minister of Health and Social Services. It is not legal for an institution to make decisions about such admissions unilaterally as MUHC did.

The Québec Ombudsman considers that only the Minister of Health and Social Services is empowered to authorize planned intake of foreign nationals who receive health services in non-emergency situations. It is therefore up to the Minister to work in tandem with the Minister of International Relations and La Francophonie to establish policy in this regard. The Minister must also provide for communication with the Ministère de l'Immigration, de la Diversité et de l'Inclusion so that the Québec Acceptance Certificate is not issued until the Minister of Health and Social Services has approved admission of a foreign national, designated the host institution and set the conditions of hospitalization.

For adequate financial rigour and transparency

The investigation conducted by the Québec Ombudsman shows that MUHC failed to plan how much the care and services required for the Kuwaiti woman would cost.

Analysis of the care and services delivered by MUHC, of the invoice issued to cover their cost and the amount paid by Kuwait has enabled the Québec Ombudsman to ascertain that Kuwait was not charged for certain care and services. MUHC stated that it had planned for these costs and that Kuwait had agreed to pay a supplementary amount—30% of the total invoice—for any unforeseen or unbilled expenses. The Québec Ombudsman noted that this amount received by MUHC is entered under an accounting heading distinct from the other

entries for the amounts paid by the Kuwait Embassy Health Office and was informed that part of this amount was paid to MMI.

So far, \$10,000 of the \$45,226.80 paid by Kuwait as a supplement has been used by MUHC for training and quality improvement. MUHC informed the Québec Ombudsman that use of these monies was suspended when the investigation began.

The Québec Ombudsman recommends that:

- ▶ the Minister of Health and Social Services verify the conformity of the entries for the cheque issued by the Kuwait Embassy Health Office in payment of the care and services provided to the Kuwaiti woman and the use of these cash inflows for the sole benefit of MUHC care and services;
- ▶ the Minister of Health and Social Services and MUHC together determine how this supplementary amount is used.

This intervention report gives a detailed account of the situation and presents the Québec Ombudsman's comments and recommendations for a model supervised by the Ministère de la Santé et des Services sociaux so that fair delivery of services is not compromised. Its purpose is to enable international health cooperation that is structured, supervised, fair and defensible and to ensure rigorous and transparent management of the monies that public health institutions will receive within the framework of this cooperation.

1 Context of the request for intervention

1.1 Act respecting respecting the health and social services ombudsman

The Québec Ombudsman exercises the functions conferred by the *Act respecting the Health and Social Services Ombudsman*,¹ which stipulates that it shall, by any appropriate means, see to it that users are respected and that their rights, as defined in the *Act respecting health services and social services*² and in any other Act, are enforced. It may intervene, for example, if it has reasonable grounds to believe that a natural person or a group of natural persons has been or may likely be wronged by an act or omission by a body within the health and social services network.³

The respect of users and their rights is at the heart of the Québec Ombudsman's mission.

1.2 The intervention

The Ombudsperson decided to intervene pursuant to section 20 of the *Act respecting the Health and Social Services Ombudsman*. The situation brought to her attention stems from a decision by McGill University Health Centre (MUHC) to admit a Kuwaiti foreign national to Royal Victoria Hospital for elective⁴ care and services.

Further to the publicity the affair generated and the potential impact on Québec users—including the effect on waiting lists for elective surgery—should such practices become common, the Ombudsperson considered that the events brought to her attention called for an examination of the situation from every angle.

This intervention has nothing to do with the foreign national personally, whom we refer to respectively throughout this report as the "woman from Kuwait" or the "Kuwaiti woman." She agreed to be treated outside her country in good faith. She did not demand to be transferred to Québec; it was MUHC that agreed to accept her for treatment. Her situation was examined solely with a view to understanding what convinced the MUHC physicians to admit her, how her transfer to Québec occurred, the administrative rules that govern or should govern admission of foreign nationals to Québec public health institutions, the fees charged by MUHC, their payment by Kuwait, and the receipt, deposit and use of payment by MUHC.

After completing the investigation into this elective admission, it was necessary to also examine the supervision of intake of foreign nationals from the vantage point of international health cooperation for all public health institutions in Québec. If a similar situation arose, would we act the same way or do things differently?

¹ C.Q.L.R., c. P-31.1, ss. 1 and 7.

² C.Q.L.R., c. S-4.2.

³ Op. cit. note 1, s. 20 and following.

⁴ In his comments on the content of the draft report submitted by the Québec Ombudsman, the Director General and CEO of MUHC pointed out that the word "elective" was used inaccurately and warranted qualification. The case at hand was a semi-urgent one in which surgery would have to occur in the weeks following the decision to operate. The Québec Ombudsman considers that, since the decision to admit the woman from Kuwait to MUHC was made on November 15, 2011, admission was on December 16 and surgery on December 19, 2011, her admission was planned and that "urgent" is a misnomer. That said, the clinical reasons for her admission to MUHC are not being called into question.

1.3 The body concerned

The institution concerned is McGill University Health Centre, affiliated with McGill University's Faculty of Medicine. Its member institutions, which merged in 1997, are the Montreal General, Montreal Children's and Montreal Neurological hospitals, the Montreal Chest Institute, Lachine Hospital, Camille-Lefebvre Pavilion (since 2008) and Royal Victoria Hospital, the Kuwaiti woman's host institution. The Royal Victoria, which includes the Allan Memorial Institute, offers general, specialized and superspecialized care. MUHC is a leader in fundamental and clinical research.

MUHC has international ambitions. To reach abroad, one of its teams, headed by Dr. Michael Churchill-Smith, President of MUHC international,⁵ works to strengthen international relations. MUHC intends to offer its and McGill University's resources for use by various countries through clinical partnerships with Africa, Caribbean countries, the Middle East and Asia. The main means for achieving this are knowledge transfer and expertise sharing.

1.4 Summary description of the health system in the country of origin, Kuwait

The investigation by the Québec Ombudsman confirmed that MUHC has special ties with Kuwait. In fact, they have a formal agreement in the form of a contract, which will be discussed later.

Kuwait's health system is among the most developed of the Persian Gulf countries. All Kuwaitis (2.5 million inhabitants) have access to public or private healthcare. Furthermore, Kuwait funds the organization of healthcare in a number of neighbouring Islamic countries.

Primary or front-line care is provided through 74 healthcare centres. The country is divided into six health regions, each of which has a regional hospital (total capacity of 2,500 beds). Nine specialized hospitals (2,075 beds) provide secondary and tertiary coverage in four specialities: obstetrics, infectious diseases, mental health and cancer.

According to a prospective study on the planning of workforce needs in the field of healthcare,⁶ in which the ratios of developed countries are used for comparative purposes, the disparity between physician supply and demand was 70% in 2013. Kuwait needed 8,371 physicians in 2013, but only had 2,504 who were domestically trained, therefore requiring the recruitment of 5,867 physicians from abroad. The more multidisciplinary and specialized the service required, the less it is available in Kuwait. This holds true for all superspecialized medical teams.

Given these statistics, it comes as no surprise that Kuwait is eager to recruit health professionals and purchase specialized and superspecialized services from outside the country.

1.5 Information provided to the media by the MUHC representative

Alerted to the situation concerning the woman from Kuwait, the media were quick to demand details. In response to their questions, MUHC mandated a communications officer to shed light on the situation based on the information at his disposal.

⁵ McGill University Health Centre, MUHC International - *Le Partenariat pour une meilleure santé dans le monde*, p.5, <http://MUHC.ca/files/international/MUHC_brochure_Fr.pdf> (consulted on May 7, 2014).

⁶ Health Vision 2020: Workforce Needs of Health Professionals in Kuwait, Kuwait Institute for Medical Specialization, (KIMS), 2006, 44 pp.

The investigation by the Québec Ombudsman showed that several of the statements given on behalf of MUHC were incomplete or inaccurate. The result is that the citizens of Québec were unaware of the whole truth at the time. Here are a few examples:⁷

MUHC statements	Findings of the investigation
<p>Authorization from the Minister of Health and Social Services was obtained before the woman from Kuwait arrived in Québec.</p>	<p>The Assistant Chief of Staff of the Minister of Health and Social Services was informed a few days after the fact that a woman from Kuwait had been admitted and just undergone surgery.</p>
<p>The operating room where the woman from Kuwait underwent surgery was closed because it was not funded by the Ministère de la Santé et des Services sociaux (MSSS).</p>	<p>The operating room was made available. However, the woman from Kuwait's surgery was added to scheduled surgeries without cancelling a previously scheduled surgery. Furthermore, the surgeon, after operating on the woman from Kuwait, went on to perform another surgery already scheduled for that operating room.</p>
<p>The bed occupied by the woman from Kuwait was closed because it was not funded by MSSS and this is common in Québec.</p>	<p>When admitted to MUHC and after surgery and intensive care, the woman from Kuwait occupied a room in the cardiac surgery unit of Royal Victoria Hospital provided for in the institution's permit. The room is identified as a possible isolation room for users with infectious conditions. It was therefore available.</p>

The Québec Ombudsman considers that MUHC must review its ethics respecting communication with the media so that the public is provided with accurate information at all times.

⁷ The elements presented here are examined in depth in upcoming sections.

2 Conducting of the intervention

2.1 Bodies interviewed

2.1.1 Québec and Canadian government departments and agencies

The Québec Ombudsman wishes to thank everyone who was interviewed as part of this intervention: personnel of the Ministère de la Santé et des Services sociaux (MSSS), the Ministère de l'Immigration, de la Diversité et de l'Inclusion (MIDI) (the Ministère de l'Immigration et des Communautés culturelles at the time of the investigation), the Ministère des Relations internationales et de la Francophonie (MRIF) (the Ministère des Relations internationales, de la Francophonie et du Commerce extérieur at the time of the investigation), the Direction des enquêtes of the Régie d'assurance maladie du Québec (RAMQ) and Corporation d'Urgences-santé. It also wishes to thank Citizenship and Immigration Canada (CIC) for its collaboration.

2.1.2 McGill University Health Centre

The Québec Ombudsman wishes to extend a special word of thanks to MUHC's Local Service Quality and Complaints Commissioner, Lynne-Marie Casgrain.

The following people at MUHC were interviewed:

- ▶ The Associate Director of Professional Services;
- ▶ The President of the Council of Physicians, Dentists and Pharmacists (at the time). He was also the Kuwaiti woman's surgeon and attending physician;
- ▶ The manager of Admitting and Registration Services;
- ▶ The head nurse of the intensive care unit;
- ▶ The head of Accounts Receivable;
- ▶ The head nurse of the surgical unit;
- ▶ The head nurse of the cardiology unit;
- ▶ The Associate Director General, Clinical Operations and Nursing Affairs;
- ▶ The Director for Legal Affairs;
- ▶ The Associate Director for Legal and Government Affairs.

2.1.3 MMI Montreal Medical International Inc.

The Coordinator of MMI Montreal Medical International Inc.⁸ (MMI) was also interviewed because she played an active role throughout the Kuwaiti woman's hospitalization. Her involvement will be detailed later.

⁸ MMI's mandate is described at 3.1.2.

3 International outreach and expertise sharing

The investigation by the Québec Ombudsman made it possible to establish that the terms and conditions for expertise sharing between MUHC and a health institution in Kuwait were first applied to the exchanges that led to signature and ratification of the Kuwait Chest Diseases Hospital Cardiology Redevelopment Services Agreement,⁹ a contract entered into by MUHC, McGill University and the Ministry of Health of the State of Kuwait on April 12, 2010. It is valid for five years.

MUHC decided to assign to MMI Montreal Medical International Inc. (MMI) the rights and responsibilities incumbent on it under the contract entered into with the Ministry of Health of the State of Kuwait. However, because the Ministry required that the contract be between it and McGill University and MUHC, and not MMI,¹⁰ two agreements were entered into in order to implement the assignment of the rights and responsibilities contemplated:

- ▶ A first tripartite agreement (service agreement) was signed on April 9, 2010.¹¹ It is binding upon the Royal Institution for the Advancement of Learning/McGill University, McGill University Health Centre (MUHC) and MMI Montreal Medical International Inc.:
 - It provides for the sharing of the rights and responsibilities stemming from the future contract for each of the parties;
 - It establishes that the responsibilities entrusted to MUHC in the contract with the State of Kuwait will be assumed by MMI Montreal Medical International Inc.;
- ▶ A second agreement was therefore entered into on April 9, 2010.¹² Its purpose was to assign MUHC's rights and responsibilities provided for in the preceding agreement to MMI (Assignment Agreement). The signatories are the Director General of MUHC (at the time), Dr. Arthur Porter, and Dr. Michael Churchill-Smith, President of MUHC International¹³ and Chair of the Board of Directors¹⁴ and Chief Executive Officer of MMI.¹⁵
- ▶ Both agreements, signed in **April 2010**, were submitted to the Minister of Health and Social Services and the Minister of International Relations and La Francophonie for ratification, which both ministers did in **June 2010**.

⁹ Also called the MOH Contract by the parties. "MOH" signifies Ministry of Health of the State of Kuwait.

¹⁰ "WHEREAS MOH has required that the MOH Contract be entered into by MUHC and McGill (and not MMI)," Tripartite Agreement between the Royal Institution for the Advancement of Learning/McGill University, McGill University Health Centre and MMI Montreal Medical International Inc, April 9th, 2010, p. 2.

¹¹ Idem.

¹² Assignment Agreement between MUHC and MMI Montreal Medical International Inc.

¹³ Op. cit., note 5.

¹⁴ Revenu Québec, Registraire des entreprises, Registration of MMI Montreal Medical International Inc. <https://www.registreentreprises.gouv.qc.ca/ROAnonymeGR/GR/GR03/GR03A2_19A_PIU_RechEnt_PC/PageEtatRens.aspx?T1.JetonStatic=da3d454e-e277-4bce-915e-a7599a2b55c4&T1.CodeService=S00436>, (consulted on May 7, 2014).

¹⁵ According to the information on the MMI Montreal Medical International Inc. website <http://www.mmihealth.ca/english/about_us_board.htm> (consulted on May 7, 2014).

- ▶ It was stipulated that MUHC had 45 days to have the contract with Kuwait ratified by the Ministère de la Santé et des Services sociaux and the Ministère des Relations internationales et de la Francophonie.

In the course of the investigation, it became clear to the Québec Ombudsman that it was imperative that it understand the context surrounding the planned, and therefore elective, admission of a foreign national who was not covered by Québec's health insurance. In addition, certain provisions of the contract entered into with the Ministry of Health of the State of Kuwait and of the execution agreements had to be examined, even though they were not part of the Québec Ombudsman's intervention per se.

3.1 The contract between MUHC, McGill University and the Ministry of Health of the State of Kuwait: expertise sharing

The contract between MUHC, McGill University and the Ministry of Health of the State of Kuwait is a service contract with the Kuwait Chest Diseases Hospital, a health institution administered by the Minister of Health of the State of Kuwait.¹⁶ It stipulates in particular that MUHC will provide experts to design service quality improvement and development programs in the area of complex cardiac surgery.

The contract not only involves MUHC physicians, but also its professional staff (including nurses, perfusionists, and respiratory therapists) who could be deployed to Kuwait. However, at present, in acting within the framework of the agreement and in providing training, these employees have the status of self-employed workers. On their return from Kuwait, they must hand in a consulting timesheet for the time they were away.

The contract provides that in the five years of the contract, McGill University will host 40 Kuwaiti residents for the postdoctoral studies that their specialty requires.

The contract also provides that in order to assist the teams at the Kuwait Chest Diseases Hospital in analyzing individual cases, an international panel of experts is available when required. The panel includes Dr. Renzo Cecere, MMI's Vice President of Clinical Operations and Clinical Director of its satellite office. These experts hold videoconferences to discuss the best clinical course of treatment for certain patients.

According to the explanations to the Québec Ombudsman by MUHC's Associate Director of Professional Services and MMI's Vice President of Clinical Operations, this panel advises the local team on decisions as to treatment and where it should be given. The experts generally decide on one of the three following courses of action:

- ▶ The local team is advised as to the treatment to provide and dispenses it in their institution;

¹⁶ In commenting on the draft report submitted by the Québec Ombudsman to the Director General and Chief Executive Officer of MUHC, he stated that "the Kuwait Chest Diseases Hospital [was] not the only institution concerned in the contract with the Ministry of Health of the State of Kuwait" [translation] (letter of the Director General and Chief Executive Officer of MUHC to the Deputy Ombudsperson on May 2, 2014). Two documents were enclosed with the letter: an unpaginated legal section and a clinical section. This letter was in response to the Québec Ombudsman's request for verification of the draft report's factual data by MUHC.

- ▶ The experts offer their assistance: physicians and other professionals go to Kuwait to participate in providing care;
- ▶ A request is drawn up for the transfer of a patient to a centre of excellence abroad in the field related to the specialty required by the patient's clinical condition.

They also explained that a specific purpose of the contract was to reduce the foreign referral rate by empowering Kuwaiti teams through the exchange of expertise and through training of Kuwaiti physicians and other health professionals.

In commenting on the content of the draft report submitted by the Québec Ombudsman, the Director General and Chief Executive Officer of MUHC stated that "the CDH (Chest Diseases Hospital) established a 'Boarding Committee' to discuss requests for treatment abroad for financing by Kuwaiti authorities. The Ministry of Health of the State of Kuwait is part of these deliberations, along with medical experts on occasion. The final decision to transfer a patient for treatment abroad is the purview of the Ministry of Health of the State of Kuwait."¹⁷ [translation]

Comment by the Québec Ombudsman

Solidarity is an important value for the Québec Ombudsman, so it considers agreements for the exchange of expertise between Québec health institutions and those of other countries worthwhile, mainly when the purpose is to help countries develop their healthcare system. The Québec Ombudsman was informed that certain health institutions in Québec are already engaged in this process and others are considering undertaking international exchange projects.

In commenting on the content of the draft report submitted by the Québec Ombudsman, the Director General and Chief Executive Officer of MUHC goes even further, adding that "all major academic institutions active on the international stage, including MUHC, have a certain number of humanitarian aid activities (funded through various means) and revenue-generating activities."¹⁸ We are therefore given to understand that international outreach activities are common.

The Québec Ombudsman is concerned by the fact that in order to implement agreements for the exchange of expertise, as in the contract between MUHC and the State of Kuwait, physicians and other health professionals are given release time and make themselves available abroad. Even though, theoretically, the employees must make up this time, their absence may have deprived MUHC users of their expertise.

In commenting on the content of the draft report submitted by the Québec Ombudsman, the Director General and Chief Executive Officer of MUHC pointed out that "MUHC meets the service production targets set by MSSS and the Agency and uses its unfunded surplus capacity towards projects for which it can be compensated, as in the case at hand. We reiterate yet again that the care provided to Quebecers was not affected. For their part, the physicians had contractual responsibilities to fulfil and participated in such projects while contributing what was expected of them by MUHC."¹⁹ [translation]

¹⁷ Idem.

¹⁸ Idem.

¹⁹ Idem.

Despite the preceding, the Québec Ombudsman remains concerned about the possible effects of such activities on personnel and on the care and services provided to users. MUHC has made jobs cuts as announced in its budget reduction plan adopted in March 2013. It seems to us that as a result, it will need all its personnel if it is to provide its users with the required care and services.

The Québec Ombudsman considers that in order to prevent excesses, the rules governing international outreach through expertise sharing must be defined and include execution conditions established by Québec's Minister of Health and Social Services.

Given the preceding:

Concerning international outreach and expertise sharing by physicians and other health professionals working within public health and social services institutions:

Whereas the time spent by physicians and other health professionals on activities abroad necessarily effects service and care provision to Québec users;

Whereas currently there is no government supervision of these activities;

Whereas the rules that apply to these kinds of activities must be the same for all network institutions;

The Québec Ombudsman recommends:

R.1 That the Ministère de la Santé et des Services sociaux establish a framework for international expertise-sharing exchanges for all health and social services network institutions so that the time spent abroad by physicians and other health professionals within this context does not make waiting lists longer for users.

3.1.1 An effect of execution of the contract between MUHC and the State of Kuwait: transfer of a patient

By studying the contract binding MUHC and the State of Kuwait, an answer was provided to one of the main questions raised by its ratification: was MUHC authorized to admit a Kuwaiti citizen and, if so, what were the terms and parameters?

The contract does not explicitly provide for the transfer of Kuwaiti patients to MUHC, but it does not prohibit it either. When the expert panel that advises the Kuwait Chest Diseases Hospital medical team considers that the best course of treatment is to transfer a patient abroad, and when the Vice President of Clinical Operations, who is also a cardiac surgeon at MUHC, participates in these discussions and knows he is able to provide the required care in an MUHC institution involved in a major business project with that country, it is certainly difficult to argue against the taking in charge of the patient.

Yet, in an interview with the newspaper *Les Affaires*, April 9, 2011 edition, MUHC International President and MMI Chair of the Board and Chief Executive Officer stated that MUHC did not intend to admit Kuwaiti patients as part of the expertise-sharing agreement because [they] want to avoid controversy."²⁰ Seven months later, in accordance with the recommendation of

²⁰ *Les Affaires*, April 9, 2011 issue, p.18.

the expert panel that had examined the case of the woman from Kuwait, the MUHC's representatives, who also represented MMI, agreed to her admission.

Given the importance of this decision by MUHC and the potential consequences for users of this hospital institution, the Québec Ombudsman will examine this issue in depth in section 4 of this report (Admission of foreign nationals to Québec's public health institutions).

3.1.2 Assignment of MUHC's rights and responsibilities to a private company, MMI Montreal Medical International Inc.

The agreement entered into on April 9, 2010, by MUHC, McGill University and MMI stipulates that MUHC may assign its rights and responsibilities stemming from the contract with the Ministry of Health of the State of Kuwait to MMI. This assignment was provided for in another agreement signed the same day.

MMI Montreal Medical International Inc., registered as an enterprise since February 15, 2005, has a satellite office in Kuwait. The President of MUHC International is also MMI's Chair of the Board of Directors and Chief Executive Officer. He is also the Vice President of Optimal Health Care Foundation, MMI's sole shareholder.²¹ The Kuwait woman's attending physician while she was an MUHC patient is the Clinical Director of MMI's satellite office. He is also its Vice President of Clinical Operations.

MMI's mission is to provide professional assistance to countries, governments and healthcare institutions with which it has signed agreements. To carry out this mission, MMI educates the main stakeholders of these different countries, develops medical technologies and offers assistance with budget development, risk assessment and analysis of facility requirements, including equipment and human resource planning.

MMI has a single shareholder—Optimal Health Care Foundation, a Canadian registered charity dedicated to supporting research and public healthcare institutions.

MMI must donate its proceeds to this foundation, which, in turn, re-invests them in training health professionals and in projects aimed at improving treatment. The proceeds are also used for scholarships and financial support to physicians, physicians in training, nurses or other health care professionals, as well as research.

Comment by the Québec Ombudsman

MUHC's executives told the Québec Ombudsman that neither MMI nor Optimal Health Care Foundation took in any of the money paid by Kuwait for the services that MUHC provided to the woman from Kuwait.²² The investigation by the Québec Ombudsman made it possible to establish that MUHC took in the money paid by Kuwait. However, in order to be assured that this money was indeed reinvested solely in MUHC care and services, it recommends that MSSS verify the conformity of the entries.²³

²¹ Revenu Québec, Registraire des entreprises, Registration of Optimal Health Care Foundation, <https://www.registreentreprises.gouv.qc.ca/ROAnonymeGR/GR/GR03/GR03A2_19A_PIU_RechEnt_PC/P ageEtatRens.aspx?T1.JetonStatic=da3d454e-e277-4bce-915e-a7599a2b55c4&T1.CodeService=S00436> (consulted on May 7, 2014).

²² See 5.4 for further details on the costs billed by MUHC, their payment and their entry.

²³ See Recommendation 3 at 3.4.

3.2 Approval of expertise-sharing agreements by Québec authorities

3.2.1 Minister of Health and Social Services's approval of the initial agreement binding MUHC and the State of Kuwait with respect to expertise sharing

Before approving the sharing of expertise on which MUHC and the State of Kuwait had already agreed, the Minister of Health and Social Services (the Minister) specified in a letter to MUHC's Director General, Dr. Arthur Porter, on June 15, 2010, that "as prescribed in the Act, the Minister of Health and Social Services must determine the conditions that apply to execution of this agreement."²⁴ [translation]

The Minister begins by pointing out that "the Minister of International Affairs must give prior approval to this agreement in writing."²⁵ [translation] He goes on to say that the main purpose of the agreement is to enable MUHC physicians and other health professionals to have an international presence by giving them the opportunity to acquire work experience abroad.

The Minister sees the agreement is part of a larger vision of expertise sharing. However, he makes it clear that MUHC's involvement must not reduce Quebecers' access to the tertiary and quaternary cardiac services offered at MUHC, but he does not go into specifics. The Minister also indicates that the institution must be able to terminate the agreement without prejudice.

Furthermore, the Minister cautions that MUHC must not participate financially in the carrying out of the project. He insists that MUHC be the sole beneficiary of any financial considerations and that it invest the amounts thus obtained in the care and services it provides.

He also said that the agreement must not interfere with MUHC's or McGill University's mission, including the mandate to give priority in its enrolment ratio to Québec specialist and family medicine residents. The Minister terminated the letter of authorization by adding that the agreement "must not jeopardize MUHC's capacity and operation with regard to the services it must offer its *Réseau Universitaire Intégré de Services* (RUIS)."²⁶ [translation]

Comment by the Québec Ombudsman

The Québec Ombudsman has observed that, in June 2010, the Minister authorized the contract entered into by the parties in April 2010, therefore *a posteriori*. Furthermore, the Minister did not explicitly address the question of the assignment of MUHC's responsibilities to MMI, even though it was part of the agreement submitted for his ratification. The Minister of International Relations and La Francophonie did likewise.

In commenting on the content of the draft report submitted by the Québec Ombudsman, the Director General and Chief Executive Officer of MUHC specified that "in ratifying the agreement, in which assignment of responsibilities is clearly indicated, authorization applies to

²⁴ Letter from the Minister of Health and Social Services to MUHC's Director General, June 15, 2010.

²⁵ Authorization by the Minister of International Affairs (now the Minister of International Relations and La Francophonie) is described later.

²⁶ RUIS: Fosters joint action, dovetailing and integration of the care, teaching and research missions of health institutions designated universities and institutions' affiliate universities.

all the documents referred to in said agreement. It is untrue to say that assignment of responsibilities was not ratified.”²⁷ [translation]

The Québec Ombudsman is not claiming that the Minister of Health and Social Services did not ratify the contract binding MUHC to the Ministry of Health of the State of Kuwait, but rather that he did not specifically address the implications of assignment of MUHC’s rights and responsibilities to a private company—MMI.

3.2.2 Minister of International Relations and La Francophonie’s authorization of the initial agreement binding MUHC and the State of Kuwait with respect to expertise sharing

The first paragraph of section 24 of the *Act respecting the Ministère des Relations internationales*²⁸ stipulates that:

No public agency, nor any legal person or agency to which a public agency appoints the majority of the members or contributes over one-half of the financing, nor any group of public agencies or of such legal persons or agencies may, without the prior written authorization of the Minister, conclude any agreement with a foreign government or any of its departments, with an international organization or with any agency of such a government or organization. (Our underlining)

The Minister of International Relations and La Francophonie examined the agreements signed on April 9, 2010, rather than the definitive contract entered into with the State of Kuwait on April 12, 2010, which provided that it was invalid without the Minister’s authorization, given on June 15, 2010.

The Minister of International Relations and La Francophonie authorized MUHC and McGill University to enter into an agreement with the Government of the State of Kuwait, represented by its Minister of Health. Similarly, he explicitly endorsed MUHC’s amendment to the agreement, namely, assignment of MUHC’s rights and responsibilities to MMI. He points out that it is a substantial amendment and therefore must be authorized pursuant to section 24 of the *Act respecting the Ministère des Relations internationales*.

Comment by the Québec Ombudsman

The Québec Ombudsman has noticed that the contract with the State of Kuwait was signed on April 12, 2010. The Minister’s “prior” authorization, prescribed in the first paragraph of section 24 of the *Act respecting the Ministère des Relations internationales*, was given on June 15, 2010.

The investigation has shown that MUHC engaged in exchanges with Kuwait without the required prior ministerial authorizations. The contract contains a clause stipulating that the contract is not valid unless it is ratified by the Departments concerned within the 45 days of the date of signature. We could be forgiven for believing that the Departments were presented with a *fait accompli*. They could have refused to grant authorization, but they chose to allow MUHC to commit and to complete the project.

²⁷ Op. cit., note 16.

²⁸ C.Q.L.R., c. M-25.1.1.

3.3 The acceptability of assigning MUHC's rights and responsibilities to a private company

Even though MUHC has an international affairs division, this public institution assigned its responsibilities, provided for in an international agreement, to MMI, a private company.

Given that the final contract, entered into in 2010 with the Ministry of Health of the State of Kuwait on behalf of the Kuwait Chest Diseases Hospital, is valid for five years and is therefore still effective, the Québec Ombudsman considers that MSSS must monitor the situation closely. Furthermore, in the future, MSSS must intervene with regard to such assignment of rights and responsibilities to a third party which is not subject to the *Act respecting health services and social services*.

Furthermore, since MUHC agreed by contract to assign its right and responsibilities stemming from a contract entered into with Kuwait to MMI, the arrangement was that Kuwait pay MMI directly for services provided. MMI would then turn over the amounts agreed to in the contract to MUHC. Therefore the amounts received from Kuwait show up in MMI's financial statement, and MMI is not bound by the prescriptions of the *Act respecting health service and social services* with respect to reporting, transparency, management and accountability as are public health and social services institutions.

The contract provides that MMI report on its activities at least once a year, at McGill University's discretion, and twice a year to MUHC mandatorily. The contract contains confidentiality clauses. It is feared that MSSS may not be able to obtain a full report from MMI/MUHC for this component of their activities as if could require if it were dealing solely with MUHC's mission as a public health institution pursuant to the *Act respecting health services and social services*, unless all parties consent to such disclosure.

The Québec Ombudsman considers that in order to clear up any ambiguity and clarify this matter, MSSS must require and obtain access to any data and information needed to ensure compliance with the *Act respecting health services and social services*.

Given the preceding:

Concerning the assignment of rights and responsibilities entrusted to a public health and social services institution to a private company:

Whereas in his letter of authorization the Minister of Health and Social Services does not explicitly indicate that he was ratifying the assignment of MUHC's rights and responsibilities to MMI Montreal Medical International Inc.;

Whereas the business model that MUHC chose in delegating its rights and responsibilities creates an intermediary that is not a public institution within the meaning of the *Act respecting health services and social services* and is therefore not subject to its prescriptions regarding transparency and accountability;

Whereas MUHC foresees entering into other agreements of this nature;

Whereas other university institutions are considering entering into expertise-exchange agreements;

The Québec Ombudsman recommends:

R.2 That the Minister of Health and Social Services ensure that public health institutions be prohibited from assigning their rights and responsibilities to a private company, as MUHC did with MMI Montreal Medical International Inc.

3.4 Propriety of the transactions

MUHC insists that there is no connection between execution of the expertise-exchange contract and the taking in charge of the woman from Kuwait, but several elements of the investigation by the Québec Ombudsman compel us to believe the opposite. These include the fact that the salary of the MMI Coordinator for all the services provided to the woman from Kuwait and her family before and during her hospitalization was paid by MMI and not MUHC.²⁹ This was confirmed by MUHC's Associate Director of Professional Services and the MMI Coordinator in a meeting at which they briefed the Québec Ombudsman on the Coordinator's contribution with respect to the woman from Kuwait and her family. The profits generated by the expertise-exchange contract between MUHC and Kuwait were not to be used to pay for individual services to people chosen for treatment at an MUHC institution.

The Québec Ombudsman considers that MSSS must proceed to analyze the services billed and the amount taken in by MUHC within the framework of the expertise-sharing contract. According to MUHC's Associate Director of Professional Services, more than \$85 million must be paid to MUHC by Kuwait. In commenting on the content of the draft report submitted by the Québec Ombudsman, the Director General and Chief Executive Officer of MUHC pointed out that this information is inaccurate.³⁰

Given these contradictory statements by MUHC authorities, it seems that an analysis by MSSS is crucial because, as we have seen, MUHC and MMI are interlinked and it is necessary to ensure the propriety of the transactions.

Given the preceding:

Concerning the ties between MUHC and MMI Montreal Medical International Inc. and the difficulty separating the money paid by the State of Kuwait for expertise sharing from that issued in payment of the care and services provided to the woman from Kuwait:

Whereas the expertise-exchange contract signed in 2010 by MUHC, McGill University and the Ministry of Health of the State of Kuwait was ratified by the Minister of International Relations and La Francophonie and the contract is binding upon the parties until 2015;

Whereas in his letter authorizing the contract, the Minister of Health and Social Services explicitly required:

That there be no financial participation expected of MUHC in the carrying out of the project;

That MUHC reap the financial benefits;

That MUHC invest the amounts obtained in its care and services;

²⁹ See 5.4.8.

³⁰ Op. cit., note 16.

The Québec Ombudsman recommends:

R.3 That the Minister of Health and Social Services require MUHC to fully account for the cash amounts already paid to MUHC/MMI by Kuwait with regard to expertise sharing and all future transactions within the framework of the execution of the contract binding it to Kuwait, so as to be assured that the money received has been re-invested solely in MUHC care and services.

4 Admission of foreign nationals to Québec's public health institutions

According to MUHC's Associate Director of Professional Services, the woman from Kuwait's attending physician, who was also MMI's Vice President of Clinical Operations, and MUHC representatives, the case of the woman from Kuwait was the first time that a foreign national from Kuwait had been admitted on an elective basis. MUHC intends to continue its exchanges with Kuwait and enter into new agreements with other countries. Any profits would go toward extending this practice. The Associate Director claimed that had been given the go ahead by the Minister of Health and Social Services.

The Québec Ombudsman, concerned about these statements, was curious as to their basis, so it examined the rules governing the admission of foreign nationals to Québec's public health institutions.

4.1 The rules governing the temporary admission of foreign nationals to work, study or receive medical treatment

4.1.1 Authorization for temporary admission to Québec: the Québec Acceptance Certificate (CAQ)

The admission of foreign nationals seeking temporary admission to Québec to work, study or receive medical treatment is governed by section 3.2 of the *Act respecting immigration to Québec*:³¹

3.2 Excepting the classes of foreign nationals excluded by regulation, every foreign national seeking temporary admission to Québec to work, study or receive medical treatment must hold a certificate of acceptance issued by the Minister. He must file an application in accordance with the procedure prescribed under paragraph f of section 3.3.

The Minister shall issue a certificate of acceptance to the foreign national who meets the conditions determined by regulation.

Notwithstanding the second paragraph, the Minister may, in cases provided for by regulation, exempt a foreign national from the application of the conditions contemplated in the second paragraph and issue a certificate of acceptance to him.

³¹ C.Q.L.R., c. I-0.2.

Concerning the last paragraph of this section, section 2.3 of the *Guide des procédures de l'immigration*,³² used to apply the Act and the Regulation, specifies that "thus far, the Regulation has not provided for any situation in which a person was exempt from application of section 3.2 of the Act where medical treatment in a public institution was involved." [translation]

The Act respecting immigration to Québec and the Regulation respecting the selection of foreign nationals³³ under it sets out the procedure for admitting these persons:

- ▶ Filing of an application with the Minister of Immigration and Cultural Communities. The application must include the following documents:
 - A letter from the attending physician in Québec indicating the nature of the illness, the expected duration of the treatment, and his or her honoraria amounts. This letter must specify, among other things, either that any delay would seriously compromise the applicant's state of health or that the required care can be administered without adversely affecting the interests of Quebecers;
 - A letter from the hospital that agreed to admit the applicant indicating the cost involved;
 - If the funder is a sponsor, a declaration that the costs related to treatment and hospitalization (if required) and visit-related costs, will be covered, or proof of the applicant's ability to pay the required amounts in full;
 - A letter from the attending physician abroad certifying that the medical treatment required cannot be obtained in the applicant's country of origin.
- ▶ Issuance of a Québec Acceptance Certificate: The Minister of Immigration and Cultural Communities issues a Québec Acceptance Certificate to a foreign national who meets the conditions and criteria of selection determined by regulation. It bears repeating that a CAQ can be issued by Québec only if the treatments cannot be obtained in the applicant's country of origin and that person's admission will not deprive Quebecers of care or delay their admission.

4.1.2 Authorization to enter the country – Entry visa for Canada

Once the applicant has obtained authorization for temporary admission to Québec to receive healthcare, the person must then obtain an entry visa by applying to Citizenship and Immigration Canada (CIC). Article 22c of the *Canada-Québec Accord Relating to Immigration and Temporary Admission of Aliens*³⁴ states that Québec's consent is required in order to admit into the province any foreign visitor entering Québec to receive medical treatment.

³²Ministère de l'Immigration et des Communautés culturelles du Québec, *Guide des procédures de l'immigration*, composante 4, Les séjours temporaires au Québec, Chapter 3, Les traitements médicaux temporaires (GPI-4-3), February 2009, <http://www.micc.gouv.qc.ca/publications/fr/gpi-npi/composantes_4/gpi-4-3.pdf> (consulted on May 7, 2014).

³³C.Q.L.R., c. I-0.2., r. 4, s. 4.

³⁴ *Canada-Québec Accord relating to Immigration and Temporary Admission of Aliens*, April 1, 1991. Also known as the Gagnon/Tremblay/McDougall Accord.

4.2 Reception of the woman from Kuwait

The Québec Ombudsman analyzed the intake procedure used in the case of the woman from Kuwait to determine whether all the rules described earlier had been followed. It also looked into current prescribed procedure for assurance that the process makes it possible to, in a timely manner, take into account all the issues raised when a decision is made to admit a foreign national for medical treatment at a public institution.

4.2.1 Obtaining prior authorization for the woman from Kuwait's admission from Québec's Minister of Health and Social Services

Contrary to what the MUHC spokesperson said during a televised interview,³⁵ the institution had not obtained prior authorization from the Minister of Health and Social Services before agreeing to the intake of the woman from Kuwait. Instead, it contacted MSSS a few days after she arrived in Québec. The Special Adviser to MUHC's Director General and CEO informed the Assistant Chief of Staff of the Minister of Health and Social Services that the foreign national had just undergone surgery.

This was not a request for authorization, but rather information transmitted to MSSS after the fact. The Minister did not give MUHC any pre-authorization for future cases of a similar nature.

4.2.2 MSSS's versions as to the need for prior authorization from the Minister

Questioned about MUHC's obligation to obtain prior authorization from the Minister before deciding to admit a foreign national into one of its institutions, MSSS's representatives indicated that MUHC was not required to obtain it because MUHC had acted on humanitarian grounds. According to MSSS, MUHC was authorized to act pursuant to sections 263.2 and 265 of the *Act respecting health services and social services*:

▶ 263.2. No public institution or private institution under agreement may, without having obtained prior authorization from the Minister, lease its facilities to a non-participating professional within the meaning of the Health Insurance Act (chapter A-29) or otherwise allow such a professional to use its facilities to provide medical services.

▶ 265 No public institution may:

[...] (4) dispose gratuitously of property, except in the case of property of small value or, with the prior authorization of the agency, where the property is disposed of in the interest of the institution or its mission, in favour of another institution or for humanitarian purposes.

Since these sections of the *Act respecting health services and social services* do not appear to apply to the woman from Kuwait, the Québec Ombudsman returned to question MSSS. MSSS's Assistant Deputy Minister, Direction générale de la planification, de la performance et de la qualité du MSSS replied as follows:

Authorization from the Minister of Health and Social Services is mandatory for issuance of the Québec Acceptance Certificate (CAQ). Since issuance of the CAQ is the responsibility of the

³⁵ <http://ici.radio-canada.ca/emissions/24_heures_en_60_minutes/2012-2013/Entrevue.asp?idDoc=271706> (consulted on May 7, 2014).

Minister of Immigration and Cultural Communities, the former must approach the Minister of Health and Social Services regarding authorization, and not the institution. When the institution is notified of the arrival of a case of this kind, it must inform the Minister of Immigration and Cultural Communities in order for the Minister to issue the required CAQ.³⁶

Comment by the Québec Ombudsman

In the initial answer given by MSSS, it cited the principle of humanitarian assistance as the ground for its decision to admit the woman from Kuwait and claimed that, in such a case, the Minister's authorization is not required.

Its second answer had to do with obtaining of the CAQ, which MSSS thought was adequate. Note that the CAQ is issued by the Ministère de l'Immigration, de la Diversité et de l'Inclusion in order to meet immigration requirements, that is to say, to enable a foreigner to obtain a visa issued by Citizenship and Immigration Canada and to lawfully go through Canadian Customs. The Ministère de l'Immigration, de la Diversité et de l'Inclusion produces the acceptance document after obtaining authorization from MSSS.

The Québec Ombudsman considers these answers from MSSS unsatisfactory. They appear to be attempts to justify its actions after the fact. It is the Québec Ombudsman's opinion that it was the responsibility of the Minister of Health and Social Services to address the matter of the admission of a foreign national to a Québec public health institution before that person began steps to enter the country. Given the importance of this issue, it will be examined at 4.2.4.

4.2.3 Ground for admitting the woman from Kuwait to MUHC: distinctions between concepts

When the media uncovered this story, the grounds for the decision to admit—or not admit—foreigners to public hospital centres in Québec were at the heart of the debate.

On one side were those who felt it important that Québec remain open and available to receive victims of war, disaster or cataclysm and that humanitarian aid must take precedence in such circumstances. Others argued that compassion should be the only ground for decisions to offer medical and hospital services to people in need, regardless of the context. Others said they feared the unintended effects of medical tourism and that the admission of foreign nationals should be avoided, with rare exceptions. Others felt that only people who held a Québec Acceptance Certificate issued by Citizenship and Immigration Canada beforehand—diplomats, tourists and students—should qualify for healthcare administered in public institutions. Others who learned that Québec had entered into reciprocity agreements with certain countries took the position that only foreign nationals from these countries should be admitted to a Québec hospital centre because, in return, Québec healthcare users could be admitted to a healthcare institution in these countries.

It is necessary to sort out these concepts in order to verify the rules that apply to each of them and their correlation, if any, with the situation of the woman from Kuwait.

- ▶ Reciprocity agreements between Québec and certain countries

³⁶ Letter by the Assistant Deputy Minister, Planification, performance et qualité, Ministère de la Santé et des Services sociaux, to the Deputy Ombudsperson, Services aux usagers et aux citoyens, August 16, 2013.

Sections 10 and 10.1 of the *Act respecting the Ministère de la Santé et des Services sociaux*³⁷ provide for the possibility of entering into reciprocity agreements on social security containing a chapter on health services. Under these agreements, foreign nationals are extended the benefits acquired under certain Québec legislation, thereby extending to Quebecers the same benefits in the countries with which the agreement was signed.³⁸

MSSS has entered into reciprocity agreements on social security containing a chapter on health services, with the governments of the following countries: France, Denmark, Sweden, Finland, Norway, Luxembourg, Belgium, Greece and Portugal.

These agreements are particularly intended for certain workers who will be taking up a job in Québec, students registered full time at a recognized college or university and participants in cooperation programs between France and Québec. As soon as these persons arrive in Québec, they must register with the Régie de l'assurance maladie du Québec (RAMQ) by presenting the documents required for them to obtain their health insurance card.

Kuwait is therefore not a country with which Québec has a reciprocity agreement, so the hospital fees of Kuwaitis are not reimbursed by RAMQ or MSSS.

The admission of the woman from Kuwait was not covered by a reciprocity agreement.

- ▶ Humanitarian aid

The underlying principle for humanitarian interventions is solidarity. The purpose of cooperation agreements entered into on humanitarian grounds is to respond to emergency situations that exceed the ability of the countries that suffer disaster to meet pressing and basic needs. This aid is provided unconditionally to those in great distress. This aid is free and is aimed at enabling these people to leave their community temporarily to receive the assistance they need. According to the International Committee of the Red Cross, four principles underpin humanitarian action: universality, impartiality, independence and neutrality.³⁹ Generally, emergency assistance is provided as the need arises, and there are sound guidelines worldwide.

According to the MSSS representatives, approval of humanitarian cases is at the sole discretion of the Minister. There are no rules or criteria and no register is kept by MSSS's administrative staff.

There are cases on a much bigger scale when the Government of Québec decides to come to the assistance and support of groups of people in need when catastrophes occur anywhere in the world. MSSS collaborates in such assistance but has no decisional power.

The care and services delivered to the woman from Kuwait by MUHC were not of a humanitarian nature.

- ▶ Medical tourism

³⁷ C.Q.L.R., c. M-19.2.

³⁸ MSSS, *Normes et pratiques de gestion, tome II, Répertoire, Circulaire 2011-015 : Ressortissants étrangers admissibles en vertu d'ententes de réciprocité entre le Québec et certains pays.*

³⁹ International Review of the Red Cross, June 2001, Vol. 83, No. 842, André Pasquier, Political Adviser, International Committee of the Red Cross, *Humanitarian action: constructing legitimacy*, pp. 314-315.

Generally there is a negative perception of medical tourism when it refers to travel to receive specialized medical care that is not covered by the country of origin's public health insurance system or is not available for its citizens within a timeframe deemed acceptable. Treatment is therefore offered by physicians and institutions dealing only with this client population, to the detriment of that of their own country.

There are also situations in which wait times and costs for care that is not insured in Québec are better elsewhere. In such cases, medical care is delivered more quickly or treatment is delivered to strangers who can afford advanced and higher quality technology. Some travel agencies organize these kinds of trips and facilitate access to care.

In the Québec Ombudsman's opinion, the case of the woman from Kuwait was not one of medical tourism.

► Compassion

The Canadian Oxford Dictionary defines compassion as "pity inclining one to help or be merciful."

The MUHC physicians said that compassion was the operative factor in their decision to admit the woman from Kuwait after being thoroughly briefed on her clinical condition. There are no rules governing this course of action.

Comment by the Québec Ombudsman

The Québec Ombudsman is of the opinion that in all fairness to Québec citizens living with the effects of waiting lists, the planned intake of foreign nationals into public health institutions in Québec must be strictly supervised. It must be reserved for people who cannot get the care they require in their country of origin. Their circumstances must be exceptional. Currently there are certain directives regarding admission for emergency care when the foreign nationals are already authorized to be in Québec. This was not the case of the woman from Kuwait. Her admission was not subject to any standards. This must be rectified for future cases.

Foreign nationals cannot be allowed to jump the queue on waiting lists just by offering to pay for the cost of services, given that "since June 1, 2007, every institution operating a hospital centre is obliged to establish a central management mechanism for access to specialized and superspecialized services, which includes rules for registering users on the waiting list and the methods for determining the foreseeable date at which the user will obtain the required services."⁴⁰ [translation]. Furthermore, the Ministère de la Santé et des Services sociaux has put in place a Québec-wide system for service access management (SGAS) intended in particular for tertiary cardiology. The purpose of this computerized system is to guarantee, according to their health condition, equitable access for all those waiting for care.

Admission of Québec users is managed according to case severity and the resulting priority assigned to the case, as established by a medical admissions coordinator who reports to the institution's director of professional services. Admission of the woman from Kuwait, even though planned, occurred outside these access mechanisms.

⁴⁰ MSSS, *Normes et pratiques de gestion, tome 11, Circulaire 2009-019*. A person is considered to be awaiting services when an application for services has been duly completed, signed and forwarded to the institution's admissions office by the attending physician. In the case of the woman from Kuwait, this was not done.

The Québec Ombudsman considers that elective admissions of foreign nationals must be carefully thought out and prudently managed. These admissions pose a challenge—admit foreign patients without penalizing Québec users. Since the premise is that Québec users should not be penalized, admissions should be subject to ministerial policy and handled with complete transparency. The Québec Ombudsman also believes that the admission of foreign nationals must be subject to agreements between governments or, at the very least, be given prior approval by the Minister of Health and Social Services. An institution cannot lawfully decide to proceed with such admissions unilaterally.

Before agreeing to allow a Québec health institution to admit foreign nationals, MSSS must have all the information required for it to make a decision. This includes elements that must currently be provided to the Ministère de l'Immigration et des Communautés culturelles for issuance of the CAQ:

- ▶ Diagnosis by the physician in the country of origin of the person's clinical condition, its severity and the reasons for the transfer to Québec;
- ▶ An attestation by the representative of the country of origin to the effect that the required care is not available in that country;
- ▶ An estimate of the costs set by the institution designated by MSSS as capable of admitting the foreign national for the care and services to be provided;
- ▶ A description of the mechanisms implemented by the host institution so that users are affected as little as possible;
- ▶ Proof of the foreign national's ability to assume the cost of care and services or, if the person cannot assume the cost, a decision from MSSS, along with the terms of conditions for the reimbursement of costs to the institution.

Since these elements are already required for issuance of the CAQ, no other procedure is required. All that is needed is that the country of origin put together the paperwork for the admission application and send it to MSSS for a decision as to whether or not to admit the foreign national. If the answer is positive, then MSSS forwards the paperwork to the Ministère de l'Immigration, de la Diversité et de l'Inclusion, which could issue the CAQ if the foreign national satisfies the other admission requirements.

Given the preceding:

Concerning the rules that should govern admission of foreign nationals to Québec public health and social services institutions:

Whereas execution of the expertise-exchange contract between the State of Kuwait and MUHC led to the admission of a foreign national for healthcare and health services;

Whereas the purpose of international outreach and of the intake of foreign nationals is completely different and therefore the rules governing them should be distinct and clearly established;

Whereas there are no rules governing the planned intake of foreign nationals in situations that are not emergencies;

Whereas the first paragraph of section 24 of the *Act respecting the Ministère des Relations internationales* stipulates that prior written authorization is required when any public agency enters into any agreement with a foreign government or any of its departments;

The Québec Ombudsman recommends:

R.4 That only the Minister of Health and Social Services be empowered to authorize planned intake of foreign nationals who receive health services in non-emergency situations and that he establish policies governing the intake process that include standards with regard to:

Establishing, with the Minister of International Relations and La Francophonie, rules that govern the negotiation of any agreement, in accordance with the first paragraph of section 24 of the *Act respecting the Ministère des Relations internationales*;

Providing for the circumstances justifying the planned admission of foreign nationals who can receive healthcare in Québec;

Designating the institutions allowed to admit these foreign nationals and determining agreement terms and conditions with them;

Determining, with the institutions concerned, the approximate number of foreign nationals who can be admitted each year;

Determining the documents that the health institution in the country of origin, the attending physician and the citizen must submit to the Minister of Health and Social Services so that he can make an informed decision;

Imposing the adoption of internal rules by the boards of directors of the public institutions authorized to admit foreign nationals on an elective basis;

Stipulating that the agreements between foreign nationals and authorized institutions concerning the payment of care and services be confirmed in writing and given prior authorization by the Minister of Health and Social Services before admission occurs;

Providing that the payments received are re-invested in Québec healthcare and health services.

4.2.4 Looking ahead: the sequence for obtaining authorizations

The Québec Ombudsman does not share MSSS's opinion that obtaining the CAQ is sufficient for undertaking transfer of a foreign national to a Québec health institution and therefore prior authorization is not required.

The Québec Ombudsman considers that, in all cases, prior authorization must be obtained from the Minister of Health and Social Services before the procedure intended to fulfil immigration requirements is undertaken. This way, the Minister can make an informed decision after considering the waiting list in the clinical department of the host institution and the mechanisms implemented by the institution so that users are affected as little as possible. It is the opinion of the Québec Ombudsman that it is up to the Ministère de la Santé et des Services to advise the Ministère de l'Immigration, de la Diversité et de l'Inclusion that it can begin the process of issuing the CAQ, and not the other way around.

Given the preceding:

Concerning the authorization that a foreign national must obtain before undertaking the procedure for admission into a Québec public health and social services institution:

Whereas currently, the procedure to transfer a foreign national to a Québec begins with issuance of the Québec Acceptance Certificate (CAQ);

Whereas the Minister of Health and Social Services must give prior authorization for the planned intake of foreign nationals who can receive healthcare;

Whereas the decision to admit foreign nationals to Québec health institutions must take into account waiting list at the institution's clinical department and the mechanisms implemented by the institution so that its users are affected as little as possible;

Whereas the information needed for the Minister of Health and Social Services to study the file of a foreign national is the same as that required by the Ministère de l'Immigration, de la Diversité et de l'Inclusion for issuance of the Québec Acceptance Certificate;

The Québec Ombudsman recommends:

R.5 That the Ministère de la Santé et des Services sociaux provide for communication with the Ministère de l'Immigration, de la Diversité et de l'Inclusion:

to ensure that the Québec Acceptance Certificate is not issued until the Minister of Health and Social Services has approved admission of a foreign national, designated the host institution and set the conditions of hospitalization;

to ensure transfer of the documents produced by applicants in their admission application so that they do not have to provide both Departments with the same documents.

4.2.5 Citizenship and Immigration Canada and the authorization to enter the country granted to the woman from Kuwait

The investigation by the Québec Ombudsman into admission of the woman from Kuwait showed that there was a breach in the delivery of the entry visa for Canada.

On November 21, 2011, Citizenship and Immigration Canada (CIC) issued an entry visa for Canada. The investigation revealed that it was issued without the CAQ being obtained beforehand, as required under the *Canada-Québec Accord Relating to Immigration and Temporary Admission of Aliens*.⁴¹ Absolutely no exceptions are provided for—before issuing a visa, CIC must obtain Québec's authorization first.

Comment by the Québec Ombudsman

The Québec Ombudsman was satisfied to learn from an authorized representative of the Ministère de l'Immigration et des Communautés culturelles that In order to prevent the recurrence of situations in which entry visas for Canada are issued by CIC without prior authorization from Québec in the form of the CAQ, the members of the Joint Committee

⁴¹ Op. cit., note 34.

would be reminded of the provisions of the Accord. This was also confirmed by the CIC's authorized representative.

The Québec Ombudsman received confirmation that CIC had made corrections to its internal directives on June 4, 2013, and that, as agreed, the subject had been discussed at the Joint Committee meeting held on June 13, 2013.

4.2.6 MUHC's omission in obtaining the Québec Acceptance Certificate

In certain situations, it is not necessary to have the CAQ before receiving medical care in Québec. For example, while visiting, a person may become ill or have an accident that requires them to receive care or undergo treatment or a person may enter with visitor status and declare that he or she is here to receive medical treatment, as in the case of the woman from Kuwait. These people must apply for the CAQ within five days of the accident, onset of the illness or arrival in Québec.⁴²

On December 19, 2011, MUHC's Admissions Office was informed of the woman from Kuwait's admission, three days after her arrival at the cardiac surgery unit of Royal Victoria Hospital. It could still have taken steps to have the CAQ issued by the Ministère de l'Immigration et des Communautés culturelles, which it failed to do.

In commenting on the content of the draft report submitted by the Québec Ombudsman, the Director General and Chief Executive Officer of MUHC stated that "it is clear that it was Kuwait's responsibility to take steps to obtain the visa on behalf of its citizen through the Canadian Embassy. The visa was issued on November 25, 2011, and neither MUHC nor the attending physician were ever asked for the CAQ. It therefore stands to reason that MUHC assumed that the requirements for obtaining the visa had been met."⁴³ [translation]

Comment by the Québec Ombudsman

The Québec Ombudsman has noted MUHC's comment. However, it is of the opinion that MUHC cannot let the application of Canadian and Québec legislation slide when it admits foreign nationals to one of its institutions.

5 The woman from Kuwait's stay at MUHC

This chapter describes the specific situation of the woman from Kuwait.⁴⁴ After examining the reasons given by MUHC and MMI representatives for the decision to admit her, the Québec Ombudsman verified the relation between the costs charged by MUHC for the care and services she received, payment by the Kuwait Embassy Health Office, headquartered in Washington, its entry and its use by MUHC. It did so by assessing the financial impact of the care and services administered to the woman from Kuwait and the organizational or administrative impact on MUHC.

⁴² Op. cit., note 32, section 4.1.3 (2).

⁴³ Op. cit., note 16.

⁴⁴ To make this chapter easier to understand, Appendix 2 presents a timeline of the main events examined during the investigation.

5.1 Facts surrounding the decision to agree to admit the woman from Kuwait to MUHC

The decision to accept the woman from Kuwait was made at a videoconference on November 15, 2011, by an expert panel that included two MUHC physicians:

- ▶ In Kuwait at the time, MUHC'S Associate Director of Professional Services;⁴⁵
- ▶ In Québec, the Clinical Director of MMI's satellite office, acting in the capacity of MMI's Vice President of Clinical Operations and MUHC surgeon. He would be the Kuwaiti woman's attending physician while she was hospitalized at MUHC. He was the President of the Council of Physicians, Dentists and Pharmacists at the time.

The following information was given to the Québec Ombudsman by MUHC'S Associate Director of Professional Services. The decision to bring the woman from Kuwait to Québec was made forthwith during the discussion of the case in which the international experts participated. Neither the woman from Kuwait nor any of her family was at the meeting. The medical experts assessed her condition based on her medical record alone. Kuwait, assisted by the MMI Coordinator, was then supposed to take steps to obtain the authorizations for the woman to leave the country, for her safe transfer and for her entry into Québec.

The woman from Kuwait was therefore selected from among other Kuwait Chest Diseases Hospital patients upon recommendation by the international panel of expert. In commenting on the content of the draft report submitted by the Québec Ombudsman, the Director General and Chief Executive Officer of MUHC specified that "further to the assignment of responsibilities to MMI, MUHC did not propose that Ms. Y.D. be treated at its institution. The physicians on site in Kuwait in their capacity as experts working for MMI and based on the protocols of the service agreement made this recommendation to the State of Kuwait. Subsequently, and outside the context of the agreement, various health institutions submitted proposals for treating this woman to the State of Kuwait."⁴⁶ [translation]

Comment by the Québec Ombudsman

In his comment, MUHC's Director General and Chief Executive Officer confirmed that the MUHC physicians in Kuwait represented MMI at the time. His comment also shows that despite what MUHC claims, there was a connection between the expertise-sharing service contract and the woman from Kuwait's admission. The Québec Ombudsman has gathered that the purpose of the service agreement was not to admit patients from Kuwait, but that admission occurred through the mechanism provided in the agreement (expert panel). Furthermore, as MUHC'S Director General and Chief Executive Officer said, "the service agreement stipulates that MMI must provide a consultant for a panel of experts who must analyze individual cases

⁴⁵ During the investigation by the Québec Ombudsman, MUHC'S Associate Director of Professional Services said that he had been in Kuwait to assist the expert panel on behalf of MMI. The investigation by the Québec Ombudsman does not include examination of the reasons why he was in Kuwait, the body he represented (MUHC, MMI or both), or whether he satisfied the requirements of the *Act respecting health services and social services* or of the *Regulation respecting certain terms of employment applicable to officers of agencies and health and social services institutions* (c. S-4.2, r. 5.1) with regard to exclusivity.

⁴⁶ Op. cit., note 16.

and recommend, or not, that a patient receive treatment outside of Kuwait. The Kuwaiti panel analyzed a multitude of applications, including that of Ms. Y.D.”⁴⁷ [translation]

5.2 The clinical grounds for the decision to admit the woman from Kuwait to MUHC

The transfer of the woman from Kuwait to a specialized or superspecialized hospital that provides multidisciplinary care, such as MUHC, was necessary because of her general condition and her age.

The patient definitely had heart disease. However, there was also major comorbidity, in other words, the presence of several other conditions. Her condition as a whole had to be addressed for the surgery to be successful. As the attending physician explained, she had to receive several different treatments simultaneously and be polymedicated. Analysis of her record showed that this statement was true. The overall prognosis was bleak if she were not entrusted to a multidisciplinary team, which was fairly unstructured at the Kuwait Chest Diseases Hospital. MUHC’s Associate Director of Clinical Operations and Associate Director of Professional Services added the following: “You have to understand that even if the country has a high standard of living and healthcare, it is not able to provide certain complex courses of treatment and in certain cases, foreign experts cannot perform surgery there because of deficient postoperative care. This is especially true when there is major comorbidity.”⁴⁸ [translation] In fact, the service exchange contract with MUHC is aimed at improving team work in the Kuwait institution where the woman was hospitalized.

We must point out that this was not someone of the social rank or means to demand to receive healthcare abroad or to enjoy special privileges. Compassion and the conviction that MUHC was able to address the young mother’s comorbidity was central to the decision to admit her.

5.3 Ambulance transportation in Québec

5.3.1 First instance of ambulance transportation

On December 15, 2011, on the eve of the woman’s departure from Kuwait, Air Ambulance Specialist Inc.⁴⁹ hired Corporation d’Urgences-santé (Urgences-santé) to transport the woman from Kuwait from Montréal-Trudeau Airport to MUHC. The cost was \$425.68, including the surcharge to non-residents of Canada (x 200 %). Urgences-santé invoiced Air Ambulance, in the United States. The bill was paid in full.

5.3.2 Second instance of ambulance transportation

The woman from Kuwait was permanently discharged by MUHC and left the institution in the afternoon of January 11, 2012. That evening, just a few hours after her release, she returned to the emergency room of Royal Victoria Hospital. An Urgences-santé ambulance was dispatched to take her from the apartment where she was staying. After a short while in the emergency room, she was re-admitted to the hospital’s cardiac surgery unit.

⁴⁷ Idem.

⁴⁸ Letter of October 3, 2013, to the Québec Ombudsman.

⁴⁹ A private American company that provides international transport of patients in their private medical jets. It also offers a medical escort service on commercial airlines. It does not provide emergency transport.

The cost of transportation by ambulance was \$407 including the surcharge to non-residents. This balance remained unpaid. In accordance with in-house procedure, Urgences-santé sent the statement of account directly to the woman at her address in Kuwait. Receiving no reply, Urgences-santé sent the notice of payment two more times, but to no avail.

During the investigation, the Québec Ombudsman informed MUHC's Director of Professional Services about the omission. He committed to obtaining payment of the invoice from the State of Kuwait.

On August 22, the Regional Service Quality and Complaints Commissioner of Urgences-santé informed the Québec Ombudsman that it had received a cheque issued by MMI Montreal Medical International Inc. covering the outstanding balance in full. On September 5, 2013, the Commissioner contacted the Québec Ombudsman again to inform it that it had received another cheque, this time in the amount of US\$393.57 (Bank of America) or CAN\$407 from the Kuwait Embassy Health Office. The Commissioner wanted to know which of the two cheques had to be cancelled, so the Québec Ombudsman then asked MUHC'S Local Service Quality and Complaints Commissioner to contact the Urgences-santé Commissioner to find out who should be approached at MUHC for an answer to this relevant question.

Comment by the Québec Ombudsman

As the Québec Ombudsman sees it, this event is one of many demonstrating that MUHC and MMI have direct ties and it is difficult to untangle which is which.

5.4 The financial impact of the care and services provided to the woman from Kuwait

► A verbal agreement

After the MUHC representatives agreed to admit the woman from Kuwait, there was a verbal agreement between them and the Kuwait representatives setting out the terms and conditions for the reimbursement of the costs in connection with her hospitalization. There was no document formalizing this verbal agreement. This was confirmed by the MUHC's senior management: "We confirm that there were discussions held on this subject. There was no written agreement before admission."⁵⁰ [translation]. It was therefore understood that Kuwait would assume all the costs related to the surgery and hospitalization. However, according to the MUHC's Associate Director of Professional Services, it had been agreed with the Kuwait representatives that there would be a supplement added to the prescribed tariffs. On numerous occasions, the Director told the Québec Ombudsman that a supplement (\$45,2267.80) equivalent to 30% of the total was charged to Kuwait, which enabled MUHC to post a profit. We will return to this issue at 5.4.6.

The investigation shows that no request was submitted to MUHC's Admitting and Registration Services with a view to mounting the financial file for the admission of the woman from Kuwait, as required by in-house policy.⁵¹ The admissions manager confirmed having been informed of the woman's December 16 admission only the Monday morning (December 19, 2011) after her arrival.

⁵⁰ Op. cit., note 48.

⁵¹ MUHC, *Policy: Admission of patients/registration of patients, Admitting & Registration Services*.

Comment by the Québec Ombudsman

The clinical issues surrounding the condition of the woman from Kuwait were taken into account by MUHC physicians in deciding to admit the woman, but the financial impact of her admission were not considered at the time.

No agreement formalizing the nature of the costs, no estimate of the costs of the care and services to be provided and of the costs to be reimbursed by Kuwait was signed. The agreement was verbal and did not involve the MUHC's Admitting and Registration Services or Accounts Receivable.⁵²

5.4.1 Fees charged by MUHC to the Kuwait Embassy Health Office

MUHC sent three invoices to the accounting department of the Kuwait Embassy Health Office, dated June 18, 19 and 20, 2012 respectively, five months after the woman from Kuwait left MUHC for good.

The total for the three invoices was **\$196 531,80** for the following:

- ▶ Daily tariffs (*per diems*⁵³) and the surcharge to non-residents of Canada, including costs related to surgery and intensive care and the salaries of the MUHC professionals. Fees of \$45,226.80 were added and entered as "Department of Surgery;"⁵⁴
- ▶ Emergency room fees;
- ▶ The daily tariffs (*per diems*) in connection with the second hospitalization.

A detailed analysis of the fees charged follows.

5.4.2 Fees in connection with the woman's visits to the emergency room of Royal Victoria Hospital

The woman from Kuwait went to Royal Victoria Hospital's emergency room twice. The tariffs for emergency-room visits are prescribed and include all outpatient services provided within the same 24-hour period, except for diagnostic services.

- ▶ First visit

⁵² The Québec Ombudsman considers that the admission of any foreign national should be preceded by a written agreement approved by MSSS. In fact, it recommends that MSSS provide for this in its policy (Recommendation 4).

⁵³ The *per diem* is the daily tariff that an institution must charge for the services provided to the users it admits, i.e. who occupy one of the beds the institution is licenced to have. The daily tariff includes the medical component (physicians and residents) and all fees for the episode of care, the professional services provided by the staff of the institution (nurse, dietician, physiotherapist, respiratory therapist, etc.) and medication and laboratory tests, apart from diagnostic tests prescribed in the emergency room. The *per diem* is established based on a pan-Canadian average. Any hospitalized user who is a non-resident of Canada is surcharged 200% on the daily tariff.

⁵⁴ This figure worried the Québec Ombudsman—which care and services should be compensated and was it entered into MUHC's Accounts Receivable or given to MUHC? We will come back to this later.

After arriving at the emergency room of Royal Victoria Hospital from Kuwait at around 9 p.m., on December 16, 2011, the woman from Kuwait was admitted almost immediately to the cardiac surgery unit of MUHC's Royal Victoria Hospital.

MUHC did not bill for the emergency room visit. This is standard practice in the case of elective or planned admissions. In this, MUHC acted correctly.

► Second visit

The woman from Kuwait returned to the emergency room on January 11, 2012, after being permanently discharged by MUHC a few hours before.

MUHC charged the Kuwait Embassy Health Office the prescribed fees for outpatient emergency room care (\$549), the amount stipulated in the ministerial circular⁵⁵ and that includes the 200% surcharge. The bill was paid by Kuwait.

At the time of the second visit, the woman from Kuwait was seen by a triage nurse, and then by the physician on duty, who prescribed diagnostic tests, and was re-admitted to the cardiac surgery unit she had left just a few hours before. She occupied a bed in a ward throughout the second period of hospitalization.

MUHC did not charge for the exams and laboratory tests prescribed by the emergency room doctor, as indicated in the emergency room services sheet for January 11, 2012, as it should have done.

Comment by the Québec Ombudsman

To determine billing for laboratory tests and X-rays at the emergency room, it is necessary to know their unitary value and multiply it by the baseline rate established by MSSS. Institutions' Accounting sections have software for identifying prescribed tests and exams carried out in the emergency room under the user's name in order to do the calculations required to add these amounts to the invoice.

The Québec Ombudsman did not intend to recommend that MUHC carry out this calculation in order to determine the amount that should have been claimed from the Kuwait Embassy Health Office because MUHC's Associate Director of Professional Services informed it that an amount in addition to the *per diem* and the surcharge to claim from foreign nationals had been paid and that it covered the uncharged fees. However, it revisited this decision and, in Recommendation 6, asks MSSS to take this component of the invoice into account in examining the fees billed by MUHC.

5.4.3 Fees related to cardiac surgery and staff presence

MUHC did not bill anything extra for surgery because as MUHC'S head of Accounts Receivable explained, the fees for the entire episode of surgery or operating room activities are included in the *per diem* amount (plus the 200% surcharge to foreign nationals.)⁵⁶

The media reported that the women's surgery was performed at night by a healthcare team off duty but that had been called back in for the surgery. This was not the case.

⁵⁵ Appendix to Circular 2012-014 (03.01.42.19).

⁵⁶ However, medical fees (physicians' honoraria) are not included in this amount.

- ▶ The surgery took place on Monday morning, December 19, 2012, at 8:24;
- ▶ The head of the operating room at the Royal Victoria Hospital indicated that available casual staff had been called to work in the surgical unit because the woman from Kuwait's surgery was added on to the operating room schedule. These employees therefore worked more hours than with their usual work schedule. However, they were not paid overtime;
- ▶ This was confirmed by MUHC's senior management: "There was no overtime because the personnel were available to work within the regular schedule and we did not run up any overtime for this case."⁵⁷ [translation]

Comment by the Québec Ombudsman

Since an amount of \$45,226.80 identified "Department of Surgery" appears on the invoice from MUHC to the Kuwait Embassy Health Office, at first the Québec Ombudsman thought that the fees related to the surgery had been billed in addition to the *per diem*. As it turns out, the surgery-related activities were included in the daily tariff. At a meeting at MSSS on May 16, 2013, MSSS representatives indicated that a surgery such as the one performed on the woman from Kuwait costs \$7000. When asked about this again, MSSS then said that the fees for the episode of surgery or operating room activities are included in the *per diem* (plus the 200% surcharge to foreign nationals). However, medical fees (physicians' honoraria) are not included in this amount.

On December 19, 2011, the day of her surgery, the woman from Kuwait occupied a room in the cardiac surgery unit in the morning; she underwent surgery before noon and was then transferred to intensive care. For the day of the surgery, MUHC charged the *per diem* that applied to the intensive care unit, that is to say, the highest daily tariff. The Québec Ombudsman considers that MUHC charged correctly for surgery-related costs.

5.4.4 Fees for occupying a private room or a room with one bed only at the intensive care unit and the cardiac surgery unit

The Québec Ombudsman examined the billing of fees for occupying a private room (or a room with one bed) in the intensive care unit and the cardiac surgery unit. This analysis revealed the following:

- ▶ At the intensive care unit: The woman from Kuwait was admitted twice. The first time, after the surgery performed on December 19, 2011, she was there for three days. On January 2, 2012, she was re-admitted for a day. The *per diem* for intensive care is \$3528 plus the 200% surcharge to non-residents. The cost per day was therefore \$10,584. The total cost for the four hours spent in intensive care was therefore \$42,336. Kuwait was billed for and paid this amount;
- ▶ At the cardiac surgery unit: MUHC billed \$134,076 for the 27 days of hospitalization. In addition to the *per diem*, this amount included the surgery and the time spent in the intensive care unit. It also included the 200% surcharge to foreign nationals.

The investigation by the Québec Ombudsman shows that the invoice sent to the Kuwait Embassy Health Office covers all daily tariffs and the surcharge for foreign nationals correctly

⁵⁷ Op. cit., note 48.

for the entire time spent by the woman from Kuwait in the intensive care unit and the cardiac surgery unit.

The Québec Ombudsman visited the cardiac surgery unit and noted that the room has only one bed, is located across from a nursing station and that it can be used as an isolation room and thus, corresponds to the definition of a private room. The head nurse and intensive care manager confirmed that users who have undergone cardiac surgery are transferred to private rooms in the intensive care unit. This is what happened in the case of the woman from Kuwait.

Since MUHC never told the Québec Ombudsman that the rooms occupied by the woman from Kuwait at the cardiac surgery unit and intensive care unit were not designated by MUHC's Board of Directors as being excluded from application of section 8 of the *Regulation respecting the application of the Hospital Insurance Act*⁵⁸ and there were no additional fees involved, from the Québec Ombudsman's vantage point, the woman from Kuwait had occupied a private room while in intensive care and during her first stay at the cardiac surgery unit.

Yet the MUHC charged the *per diem* for occupation of a ward and did not add the tariff for a private room. According to the MSSS circular⁵⁹ in effect at the time, when users ask for a private room and are transferred to a private room in intensive care, the tariff for a private room applies.

The Québec Ombudsman asked the MUHC representatives about this. MUHC's Associate Director of Professional Services explained that the room occupied by the woman from Kuwait while she was in the cardiac surgery unit was "a room used to isolate patients and prevent the spread of hospital-acquired infections, in accordance with the protocols in effect. The patient was admitted there as soon as she arrived. Even though the room has only one bed, it is not used as a private room."⁶⁰ [translation] In commenting on the draft report submitted by the Québec Ombudsman to the Director General and Chief Executive Officer of MUHC, he specified that "the notion of a private room or a public room does not apply to the care unit, where all the rooms are single rooms rather than private for medical reasons."⁶¹[translation]. In his comments he also explained that "she was placed in isolation on the basis of our infection-control rules. At no point during the patient's stay was this private room needed for another patient." [translation](our underlining)

So, despite the inconsistent information about the nature of the room occupied by the woman from Kuwait, MUHC maintains that they were not private rooms and therefore no supplementary fees had to be charged for the room occupied by the woman from Kuwait in the intensive care unit and cardiac surgery unit.

Comment by the Québec Ombudsman

First, the Québec Ombudsman noted that MUHC had not abided by its own policies with regard to user admission and registrations. The MUHC admission policy stipulates that **before admission**, the person who will be hospitalized must be able to indicate the type of room he or

⁵⁸ C.Q.L.R., c. A-28, r.1, s. 8.

⁵⁹ MSSS, *Tarifs des chambres privées et semi-privées en centre hospitalier (soins généraux et spécialisés) et en centre de santé : contribution du bénéficiaire*.

⁶⁰ Letter from the Associate Director of Professional Services RVH to the delegate of the Ombudsperson, October 9, 2013.

⁶¹ Op.cit., note 16.

she wishes to have. The policy stipulates that a supplementary amount is charged to people who ask for and occupy a private or semi-private room. At the time, certain exceptions were provided for because of the special circumstances—medical reasons, nursing reasons or bed shortages, but the attending physician had to demonstrate that the exceptions were warranted.

There are no requests in the file indicating that the woman from Kuwait qualified for an exception and that she therefore required a private room (or a room with one bed) without additional fees being charged, nor is there any note, as required by internal policy, from the attending physician prescribing that she be isolated for clinical reasons. Certain employees told the Québec Ombudsman that the woman from Kuwait wanted to be in a room on her own. This request appears to have been respected without any additional fees being charged.

In commenting, MUHC's Director General and CEO stated the following: "MUHC's Medical Direction of Infection Prevention confirmed the following again on April 28, 2014: Our policy requires the application of contact precautions for any hospital transfer for a patient who was in another hospital, whether in the United States, elsewhere in Canada or overseas. The spread of germs such as MRSA, VRE and carbapenem-resistant enterobacteriaceae—all of them multi-resistant organisms for which there are very few antibiotics—during transfer is well documented in the literature. In this regard, we follow Québec and international recommendations. These precautions include wearing of gloves and a gown for all contact and a private room upon admission."⁶² [translation]

The Québec Ombudsman did not concur with MUHC's argument, namely, that she had to be isolated in a private room without additional fees for the entire first episode of hospitalization (one month) because of the risk of her having contracted a nosocomial infection in the hospital of origin. It would have accepted the explanation if the woman from Kuwait had remained in the private room only until the results of the tests for detecting a nosocomial infection came back. It considers that when the tests came back negative,⁶³ she should have been transferred to a ward, thereby freeing up the room for other users.

Furthermore, it has noted that MUHC's patient admission and reception policies make no mention of the practice that seems to exist whereby any patient who has undergone cardiac surgery is automatically given a private room for medical reasons (therefore free of charge).

It is therefore the opinion of the Québec Ombudsman that if MUHC wishes to establish a special way of managing application of the rules governing billing for private rooms designated as such by MUHC's Board of Directors, this must be stipulated in its by-laws and compliance with the applicable ministerial circular must be ensured. In the case of the woman from Kuwait, the rules provided for in this regard were not applied because MUHC failed to ask the woman to choose a room before or during her admission. In the circumstances, since the Québec Ombudsman recommends that MSSS examine the conformity of the fees charged by MUHC to Kuwait, the fact that no fees were charged for the private room should be part of this examination.

⁶² *Idem*.

⁶³ The Québec Ombudsman found nothing in the woman from Kuwait's record to indicate that she tested positive for MRSA (methicillin-resistant staphylococcus aureus) or for any other infection.

5.4.5 Second hospitalization: re-admission to the cardiac surgery unit

The woman from Kuwait had been permanently discharged on January 11, 2012, and returned to MUHC a few hours later. It was necessary to find out whether it was common for people who had been permanently discharged from hospital and who showed at the emergency room a few hours later to end up just as quickly at the unit from which they had been released. Would a Québec user in the same situation be placed on a stretcher in the emergency room for observation or be re-admitted directly to the unit, as was done in the case of the woman from Kuwait? She arrived at the emergency room of Royal Victoria Hospital at 7 p.m. after having gone through triage, having been seen by the physician on duty, and undergoing diagnostic tests. At 11 p.m., nearly four hours after her arrival at the emergency room, she was transferred to the unit she had barely left.

In response to the Québec Ombudsman's question, MUHC said that this process was provided for in its internal procedure. When we asked to see the document, MUHC was unable to provide it, so, by default, we could not look into it further.

Comment by the Québec Ombudsman

After asking another institution about its rules, we learned that a patient who goes to the emergency room after being permanently discharged a few hours before is not automatically re-admitted to a care unit. Instead, a medical decision that takes the user's clinical situation into account is made—to keep the patient in the emergency room for observation, to discharge the user, to refer the user to the outpatient clinic, or to re-admit the user to a care unit.

- ▶ The choice of room and the *per diem* charged for the second hospitalization

So after she returned to Royal Victoria Hospital's emergency room, the woman from Kuwait was re-admitted to the cardiac surgery unit. When this occurred, MUHC's Admitting and Registration Services once again did not meet with her to ask her what kind of room she wanted to occupy. Be that as it may, she was admitted to ward S8E 48-03. This was confirmed by MUHC:

Ward 48.03 is a room containing two to three beds, depending on the needs of the unit. When the patient was re-admitted, she was placed in ward 48.03 because by then the unit's personnel knew that she had tested negative for MRSA and VRE.⁶⁴ We can therefore confirm that when she was re-admitted, she was not assigned a private room.⁶⁵

Comment by the Québec Ombudsman

A visit of the premises corroborated the institution's statement. The room was indeed a ward and therefore was not subject to the surcharge to foreign nationals or to addition of a supplementary amount to the *per diem*. The amount charged by MUHC for the entire second period of hospitalization complied with the tariffs prescribed by MSSS. However, the Québec Ombudsman considers that Admitting and Registration Services should have met with her to determine the type of room she wanted to occupy, in accordance with MUHC's internal procedure.

⁶⁴ Vancomycin resistant enterococci.

⁶⁵ Op. cit., note 60.

5.4.6 An additional amount equivalent to 30% of the total invoice?

According to MUHC's Associate Director of Professional Services, pursuant to the verbal agreement with Kuwait, MUHC charged the Kuwait Embassy Health Office a 30 % supplement in addition to the *per diem*. The amount of the supplement was \$45,226.80.

After the investigation was over and the draft report written up, the Québec Ombudsman was informed that the \$45,226.80 had been paid by the Kuwait Embassy Health Office to MUHC, which in turn had to hand it over to MMI under the terms of the service agreement binding them. This matter must be clarified.

Comment by the Québec Ombudsman

The Québec Ombudsman has no reason to doubt the answer given by MUHC's Associate Director of Professional Services. At the time, it was concerned about this percentage—which appeared to it to be arbitrary—being added, and in light of the information received since then, it is even more worried now. Is a public institution allowed to charge a supplementary percentage that is not provided for in a circular or any other document presenting the tariffs prescribed by MSSS? Can an institution require reimbursement of amounts in excess of prescribed daily tariffs? If so, what percentage? The Québec Ombudsman considers that MSSS must examine this practice, not only for the situation at hand, but also for any future situations.

The Québec Ombudsman also noticed that the \$45,226.80 presented as an additional percentage was entered by MUHC and appears under an accounting heading distinct from the other entries for the amount remitted by the Kuwait Embassy Health Office. This raises another question—why and how was this money spent?

First, MUHC's head of Accounts Receivable answered as follows: The \$45,226.80 indicated on the invoice and identified as "Department of Surgery" was not deposited because it covered the professional activities of the physicians assigned to provide the medical care delivered during the entire period of the woman from Kuwait's hospitalization. Since these physicians could not apply for reimbursement from RAMQ, MUHC asked the Kuwait Embassy Health Office for reimbursement on their behalf. When MUHC received payment, it gave the money to the physicians.

MUHC's Associate Director of Professional Services and MMI's Coordinator contradicted this information. The latter stated that the physicians had been reimbursed for their honoraria directly by Kuwait through its intermediary. She said that she had sent the physicians' invoices to the Kuwait Embassy Health Office which in turn had transferred the money that she had then passed on to the physicians. The Québec Ombudsman checked with RAMQ's Direction des enquêtes and found that the MUHC physicians had not sent in a claim for their honoraria to either RAMQ or MUHC.

In the course of the investigation, the Québec Ombudsman also asked MUHC's Associate Director of Professional Services how this money had been used. This was his answer:

To date, only \$10,000 of the \$45,226.80 obtained to fund training and quality improvement has been used. \$5000 went towards a perioperative nursing course and another \$5000 towards training in surgical patient nursing. The remaining amount was earmarked for similar projects in anesthesia, critical care and surgery, but use of these amounts was suspended as soon as the

investigation began in order to ensure that your organization could confirm the validity of the process before going any further.⁶⁶ [translation]

The Québec Ombudsman took note of this comment by MUHC. However, given the information obtained as a whole and the unusual character of MUHC's way of proceeding with regard to the situation, it decided to make recommendations to MSSS so it can determine whether public institutions authorized to admit foreign nationals in order to temporarily provide them with the care and services that their condition requires are allowed to bill for amounts in excess of the daily tariffs indicated in circulars or any other ministerial document dealing with tariffs.⁶⁷

Similarly, the Québec Ombudsman considers that MSSS must look into the propriety of the \$45,228.80 described on the MUHC's invoice as "Department of Surgery."

5.4.7 Invoice payment and entry

Three invoices totalling **\$196,531.80** were sent by MUHC/MUHC-Royal Victoria Hospital to the Kuwait Embassy Health Office, Accounting Department, in Washington, in June 2012. All three indicated that the amounts must be paid to McGill University Health Centre. There were no instructions to the effect that the cheque also had to be made out to MMI. And yet, a cheque issued by the Kuwait Embassy Health Office in the amount of **\$197,595.04** was made out to McGill University Health Centre and MMI Montreal Medical Inc. The cheque is dated December 28, 2012, six months after MUHC sent out the bills.

Comment by the Québec Ombudsman

The Québec Ombudsman wanted to know why the fee reimbursement cheque was made out to MUHC and MMI. MUHC's head of Accounts Receivable said that she did not know why. She added that the cheque could not be cashed by MUHC.

MUHC's senior management confirmed this information: "The amount remitted to MUHC was deposited in full without endorsement."⁶⁸ [translation]

⁶⁶ Idem.

⁶⁷ See Recommendation 8.

⁶⁸ Op.cit., note 48.

Summary

- ▶ MUHC sent the Kuwait Embassy Health Office three invoices:

▪ A first in the amount of:	\$179,302.80
▪ A second in the amount of:	\$549.00
▪ A third in the amount of:	\$16,680.00
For a total of:	\$196,531.80

- ▶ On December 28, 2012, the Kuwait Embassy Health Office paid the three invoices with one cheque in the amount of **\$197,595.04**.
- ▶ MUHC entered the amount received under three different accounting headings:

▪ First heading:	\$134,076.00 and \$16,680.00
▪ Second heading: ⁶⁹	\$45,226.80
▪ Third heading:	\$549.00
For a total of :	\$196,531.80

- ▶ MUHC made a bank deposit of **\$199,171.97**⁷⁰ on January 18, 2013.

In light of the new information received and given the preceding:

Concerning the fees charged by MUHC for the care and services provided to the woman from Kuwait during her two episodes of hospitalization at MUHC and their payment by the Kuwait Embassy Health Office:

Whereas there is no formal document with respect to the terms of reimbursement of the costs related to the Kuwaiti woman's hospitalizations;

Whereas the second time that the woman from Kuwait came to the emergency room, MUHC did not charge for the exams and laboratory tests prescribed by the emergency room doctor;

Whereas MUHC did not ask the woman from Kuwait to indicate what kind of room she wanted to have during her stay, as should have been done in compliance with MUHC's internal policy at the time;

⁶⁹ In the course of the investigation, the head of Accounts Receivable stated that she had not deposited this amount.

⁷⁰ MUHC's head of Accounts Receivable told the Québec Ombudsman that the total amount of the deposit included not only the fees paid by Kuwait, but also the amounts received from other users who were not insured by RAMQ. This was confirmed by MUHC's Director General and Chief Executive Officer in his comments on the draft report: "The deposit included cheques received by MUHC other than the one for the fees incurred by patient Y.D."

Whereas the woman from Kuwait occupied a private room or a room with one bed at the intensive care unit and the cardiac surgery unit and that MUHC did not require payment of the fees prescribed in the ministerial circular for the occupation of this type of room;

The Québec Ombudsman recommends:

R.6 That the Minister of Health and Social Services verify the conformity of the amount claimed from the Kuwait Embassy Health Office by MUHC for the care and services delivered to the woman from Kuwait during her two periods of hospitalization at MUHC and, if necessary, that the Minister see to it that the amount due is paid in full.

Concerning the supplementary amount claimed from the Embassy Health Office by MUHC:

Whereas MUHC billed for an amount of \$45,228.80 identified "Department of Surgery;"

Whereas surgery-related fees are included in the daily tariff (*per diem*);

Whereas the Québec Ombudsman obtained information to the effect that part of this amount was earmarked for MMI Montreal Medical International Inc.;

Whereas MUHC's entry for this supplementary amount was under an accounting heading different from that of the other entries;

Whereas MUHC's Associate Director of Professional Services informed the Québec Ombudsman that use of the amount received had been suspended and that he did not know how the remaining amount would be spent;

The Québec Ombudsman recommends:

R7 That the Minister of Health and Social Services examine:

the activities for which the \$45,228.80 was intended as compensation;

its entry by MUHC;

deposit of the entire amount in MUHC's bank account;

and that he work with MUHC to determine how this supplementary amount is used.

Concerning the fees that health and social services institutions are authorized to bill to foreign nationals:

Whereas MUHC affirmed having made an agreement with Kuwait whereby it had agreed to pay a supplementary amount—30% more than the tariff prescribed by the Minister of Health and Social Services—for any unforeseen or unbilled expenses;

Whereas this is an arbitrary percentage that is not consistent with any existing standard prescribed by the Minister of Health and Social Services;

Whereas the charging of amounts in excess of the real cost of the care delivered could lead to unequities because different host institutions could charge different amounts to foreign nationals;

The Québec Ombudsman recommends:

R8 That the Minister of Health and Social Services determine whether public institutions authorized to admit foreign nationals in order to temporarily provide them with the care and services that their condition requires are allowed to bill for amounts in excess of the daily tariffs indicated in circulars or any other ministerial document dealing with tariffs.

5.4.8 Service costs assumed by MMI

The media reported that the woman from Kuwait had an interpreter paid for by MUHC. This is partly true. She had an interpreter, but she was paid by MMI, not MUHC.

At the meeting with the Québec Ombudsman at which MUHC's Associate Director of Professional Services and MMI's Coordinator explained the interpreter's role with regard to the woman from Kuwait and her family, they said that the interpreter had assisted the woman from Kuwait with all the arrangements for her and her family's stay in Québec—getting the required visas, transportation from Kuwait to Québec, finding an apartment for the family and helping them get around town (grocery-shopping, banking, etc.). She was at their disposal throughout the hospitalizations. MUHC did not cover her fees; MMI did.

Comment by the Québec Ombudsman

It is the opinion of the Québec Ombudsman that the interpreter-related costs and the costs for all the services provided by MMI's Coordinator to the woman from Kuwait and her family during their stay in Québec should have been assumed by the Kuwait Embassy Health Office and not by MMI.

This situation is further proof that MUHC failed to plan properly for the services needed because the woman from Kuwait was coming to Québec and the related costs so that the Kuwait Embassy Health Office could cover them.

5.4.9 The other services offered to the family by MUHC

The Québec Ombudsman was interested in knowing whether the woman from Kuwait had received private services or if her family had received hospital services paid for by MUHC. The

head nurse of the cardiac surgery unit at Royal Victoria Hospital stated that the woman from Kuwait had not received any private services during her hospitalizations.

She received the support of her family members, who were by her side the whole time. They were not provided with any services (food or accommodations). This was confirmed by MUHC's senior management: "At any rate, the people who accompanied her were not provided any hospital services."⁷¹ [translation]

5.5 Organizational or administrative impact

5.5.1 The operating room chosen and no postponement of other scheduled surgeries

The surgery was performed in operating room 10 of the surgical unit of Royal Victoria Hospital. The institution pointed out that there were two operating rooms for cardiac surgery. One of the two was made available for the woman from Kuwait's surgeon/attending physician on the morning of December 19, 2011. After operating on her, he went on to perform a surgery scheduled for the same day in the same operating room.

The representative of the institution told the media that no other surgery scheduled for that day had been postponed or cancelled. This information was corroborated by MUHC's senior management: "We can confirm that the cardiac surgeons made sure that no user awaiting cardiac surgery was affected by the additional surgery in the case at hand."⁷² [translation]

Comment by the Québec Ombudsman

Report 1B detailing the number of pending requests for admission from specialists at Royal Victoria Hospital for periods 9 and 10 of 2011-2012 (the periods during which the woman from Kuwait was admitted) was examined. More than 38 users with different priority codes were on the waiting list for cardiac surgery by six cardiovascular and thoracic surgeons.

It is true that MUHC did not bump any user scheduled to undergo surgery on December 19, 2011. It decided instead to add the woman from Kuwait rather than one of the Québec users already listed for surgery. Admission of the woman from Kuwait occurred outside the central channel for access to specialized and superspecialized services and the prescribed rules based on case severity and priorities established by the medical coordinator of admissions. The priority code assigned to her condition was therefore not established as it must be done systematically for Québec users. As a result, it was not possible to determine whether the woman from Kuwait's surgery was a priority in relation to that of other users listed for cardiac surgery.

5.5.2 Availability and remuneration of physicians and residents

► Physicians

Analysis of the record shows that, due to the comorbidity involved, the woman from Kuwait was seen by a string of specialists.

⁷¹ Op. cit., note 48.

⁷² Idem.

Comment by the Québec Ombudsman

It is to be expected that foreign nationals admitted under circumstances similar to those of the woman from Kuwait have complex health problems. This is why MUHC, which offers tertiary and quaternary care delivered by a multidisciplinary team, was chosen to treat her by the international panel of experts. Consequently, patients are seen by several specialists. In addition to ensuring that these physicians are remunerated, it is important to see to it that foreign nationals are added to the list of admitted users. This means that their admission must be planned and supervised by MSSS in order to minimize the impact on users and to make sure that the physicians are available.

► Residents

Analysis of the record put together by MUHC for the woman from Kuwait shows that more than 18 residents⁷³ followed up on her every day. Three of them were there even more throughout her hospitalization. However, this list is not exhaustive because some of the names and licence numbers in the file were illegible. However, the residents had participated in delivering medical care according to their area of expertise.

The investigation by the Québec Ombudsman and its examination of order in council 1146-87 led it to conclude that, unlike the salaries of health professionals, those of residents are not included in the *per diem* claimed from foreign nationals. Other rules seem to apply, that is to say, the residents are remunerated directly by the hospital centres where they practice and the institutions are responsible for sending RAMQ a claim for reimbursement afterwards.⁷⁴

In commenting on the content of the draft report submitted by the Québec Ombudsman to the Director General and Chief Executive Officer of MUHC, he specified that "their services, like those of any other employee, are included in all billing of patients who are not covered, and the margin created by triple billing covers the additional service to a large extent."⁷⁵ [translation]

Comment by the Québec Ombudsman

Residents are physicians who are completing their training. Section 236 of the *Act respecting health services and social services*⁷⁶ stipulates that a physician other than a member of the managerial staff of the institution is deemed not to be a member of the staff of the institution. Therefore, further to the preceding comment by MUHC's Director General and Chief Executive Officer, the Québec Ombudsman is of the opinion that MSSS must clarify the issue of the payment of the residents' salaries for clinical activities carried out with respect to the woman from Kuwait and all foreign nationals. It noted that reimbursement for the residents' salaries was

⁷³ Person under training in an institution for the purpose of obtaining a specialist certificate issued by the Collège des médecins du Québec or who is obtaining further training and who is defined as a resident by the Collège des médecins.

⁷⁴ Under Order in council 1146-87 (1987, G.O. 11), RAMQ is entrusted with the functions with regard to payment of the amounts required for institutions to remunerate residents, in accordance with the conditions stipulated in the agreement between the Minister of Education and MSSS. The budget for remunerating residents was transferred from the Minister of Higher Education and Science to the Minister of Health and Social Services, who delegated this responsibility to RAMQ.

⁷⁵ Op. cit., note 16.

⁷⁶ Op. cit., note 2.

not included in the invoice sent by MUHC to the Kuwait Embassy Health Office. According to MUHC, it did not have to do it.

Consequently, and since university hospital centres are the institutions most likely to admit foreign nationals on an elective basis, and that therefore have residents in training, the time residents spend in caring for these foreign nationals should be entered into the accounts and included in their invoice.

Given the preceding:

Concerning reimbursement of the salaries of residents who provide care to foreign nationals:

Whereas more than 18 residents followed up every day on the woman from Kuwait during the two periods of hospitalization at MUHC;

Whereas the care delivered by residents is not provided free of charge;

Whereas the rules surrounding payment for the care delivered by residents to foreign nationals need to be clarified;

The Québec Ombudsman recommends:

R.9 That the Ministère de la Santé et des Services sociaux clarify the rules surrounding payment for the care delivered by residents to foreign nationals in order to determine if the latter must pay extra for these services or if they are included in the daily tariff (*per diem*).

6 Conclusion

Québec's health and social services network is under pressure on all fronts. The difficulty getting care is the leading ground for substantiated complaints received by the Québec Ombudsman in the health and social services sector and a well-known and documented problem. MUHC's admission, on an elective basis, of a foreign national from a rich country with a gross domestic product that allows it to organize the distribution of care and services through a network of modern facilities raises questions about the fairness of this practice.

The Québec Ombudsman therefore conducted an investigation into how the woman from Kuwait was admitted. The investigation revealed that several of the explanations provided by the institution's representatives in media interviews were incomplete or inaccurate. The Québec Ombudsman considers that MUHC must review its ethics respecting communication so that it does not mislead the media or the public.

In the same vein, during the investigation, the Québec Ombudsman noted many times that various MUHC representatives gave it information that was contradictory or wrong. It must also draw attention to the cryptic answers to its questions and the defensive attitude of certain representatives, making it necessary for it to talk to senior executives for the official position of the institution to be able to put its file together properly. It must also point out that it took a long time for it to get answers to its questions, supposedly because MUHC was accountable to various instances regarding its administration and management.

From the outset, the Québec Ombudsman examined the nature of the ties between Kuwait and MUHC. While acknowledging that international outreach in the form of expertise sharing by MUHC representatives can be worthwhile, the Québec Ombudsman remains concerned by the fact that within the framework of an expertise-sharing agreement, MUHC agreed to admit a user hospitalized in a health institution in the State of Kuwait to an MUHC institution. This should not have happened in the first place, as the President of MUHC International said to the newspaper *Les Affaires*.⁷⁷ Since MUHC intends to repeat the experience with Kuwait or undertake similar experiences with other countries, the Québec Ombudsman feels that out of respect for Québec users, standards governing expertise sharing and the admission on humanitarian grounds of people from abroad must be developed by the Ministère de la Santé et des Services sociaux, in collaboration with the Ministère des Relations internationales et de la Francophonie, in compliance with the requirements of the Ministère de l'Immigration, de la Diversité et de l'Inclusion.

Since MUHC assigned the rights and responsibilities provided for in a contract with Kuwait to a private company, MMI Montreal Medical International Inc., and that MMI's proceeds must transit through its foundation, Optimal Health Care Foundation, before being redistributed, and that both MMI and the Foundation are not subject to the provisions of the *Act respecting health services and social services*, the Québec Ombudsman is asking that from now on, MSSS prohibit this business model.

It is the opinion of the Québec Ombudsman that prior authorization from the Minister of Health and Social Services must be obtained before planning for the admission of a foreign national begins. First, MSSS must designate the host institution, its intake capacity must be assessed in light of its waiting list, and an assessment must be made of the mechanisms put in place to prevent Québec users from being penalized.

⁷⁷ Op. cit., note 20.

The investigation by the Ombudsman showed that the rules surrounding the admission of foreign nationals into Canada to receive healthcare and health services on a temporary basis were breached in the case of the woman from Kuwait. Further to the Québec Ombudsman's intervention, Citizenship and Immigration Canada made the appropriate changes. However, it is also counting on the Ministère de l'Immigration, de la Diversité et de l'Inclusion to exercise vigilance so that situations of this kind do not recur.

Using the documents provided by MUHC, the Québec Ombudsman scrutinized the nature of the medical care and professional and hospital services delivered by MUHC to the woman from Kuwait, her family, and her interpreter by seeing whether they matched up with the invoices from MUHC to the Kuwait Embassy Health Office. It also examined the details of the State of Kuwait's payment of the invoice.

The finding was that MUHC did not charge Kuwait for the woman from Kuwait's occupation of a private room at the care unit or at the intensive care, nor was it paid for the laboratory tests and X-rays done at the emergency room of Royal Victoria Hospital and for the salaries of medical residents. The Québec Ombudsman is asking MSSS to examine MUHC's invoices and to verify their conformity. Furthermore, MUHC did not foresee all of the organizational repercussions of the admission of a foreign national. No cost estimate was produced. However, MUHC indicated that it had required Kuwait to pay an additional percentage that is not provided for in any ministerial circular or other document dealing with tariffs prescribed by MSSS to cover unforeseen expenses. This way of proceeding enabled MUHC to cover its costs and post a profit.

The Québec Ombudsman recommends that MSSS take a position on the issue of charging of an extra percentage of this kind that is not found anywhere in its rules. It is also asking MSSS to confirm that MUHC properly entered and deposited the money received from the Kuwait Embassy Health Office and that all of it was used only for the benefit of its health and social services users, an aspect which was not part of the investigation by the Québec Ombudsman.

The admission of foreign nationals to Québec public institutions must take into account the institutions' intake capacity, in other words, admission without reducing Quebecers' access to the care and services they require. For these reasons and for the sake of fairness, the Québec Ombudsman is proposing that these initiatives be subject to strict supervision and transparent reporting and accountability.

APPENDIX 1 - Recommendations of the Québec Ombudsman

Recommendation 1 - Concerning international outreach and expertise sharing by physicians and other health professionals working within public health and social services institutions:

Whereas the time spent by physicians and other health professionals on activities abroad necessarily effects service and care provision to Québec users;

Whereas currently there is no government supervision of these activities;

Whereas the rules that apply to these kinds of activities must be the same for all network institutions;

The Québec Ombudsman recommends:

R.1 That the Ministère de la Santé et des Services sociaux establish a framework for international expertise-sharing exchanges for all health and social services network institutions so that the time spent abroad by physicians and other health professionals within this context does not make waiting lists longer for users.

Recommendation 2 - Concerning the assignment of rights and responsibilities entrusted to a public health and social services institution to a private company:

Whereas in his letter of authorization the Minister of Health and Social Services does not explicitly indicate that he was ratifying the assignment of MUHC's rights and responsibilities to MMI Montreal Medical International Inc.;

Whereas the business model that MUHC chose in delegating its rights and responsibilities creates an intermediary that is not a public institution within the meaning of the *Act respecting health services and social services* and is therefore not subject to its prescriptions regarding transparency and accountability;

Whereas MUHC foresees entering into other agreements of this nature;

Whereas other university institutions are considering entering into expertise-exchange agreements;

The Québec Ombudsman recommends:

R.2 That the Minister of Health and Social Services ensure that public health institutions be prohibited from assigning their rights and responsibilities to a private company, as MUHC did with MMI Montreal Medical International Inc.

Recommendation 3 - Concerning the ties between MUHC and MMI Montreal Medical International Inc. and the difficulty separating the money paid by the State of Kuwait for expertise sharing from that issued in payment of the care and services provided to the woman from Kuwait:

Whereas the expertise-exchange contract signed in 2010 by MUHC, McGill University and the Ministry of Health of the State of Kuwait was ratified by the Minister of International Relations and La Francophonie and the contract is binding upon the parties until 2015;

Whereas in his letter authorizing the contract, the Minister of Health and Social Services explicitly required:

That there be no financial participation expected of MUHC in the carrying out of the project;

That MUHC reap the financial benefits;

That MUHC invest the amounts obtained in its care and services;

The Québec Ombudsman recommends:

R.3 That the Minister of Health and Social Services require MUHC to fully account for the cash amounts already paid to MUHC/MMI by Kuwait with regard to expertise sharing and all future transactions within the framework of the execution of the contract binding it to Kuwait, so as to be assured that the money received has been re-invested solely in MUHC care and services.

Recommendation 4 – Concerning the rules that should govern admission of foreign nationals to Québec public health and social services institutions:

Whereas execution of the expertise-exchange contract between the State of Kuwait and MUHC led to the admission of a foreign national for healthcare and health services;

Whereas the purpose of international outreach and of the intake of foreign nationals is completely different and therefore the rules governing them should be distinct and clearly established;

Whereas there are no rules governing the planned intake of foreign nationals in situations that are not emergencies;

Whereas the first paragraph of section 24 of the *Act respecting the Ministère des Relations internationales* stipulates that prior written authorization is required when any public agency enters into any agreement with a foreign government or any of its departments;

The Québec Ombudsman recommends:

R.4 That only the Minister of Health and Social Services be empowered to authorize planned intake of foreign nationals who receive health services in non-emergency situations and that he establish policies governing the intake process that include standards with regard to:

Establishing, with the Minister of International Relations and La Francophonie, rules that govern the negotiation of any agreement, in accordance with the first paragraph of section 24 of the *Act respecting the Ministère des Relations internationales*;

Providing for the circumstances justifying the planned admission of foreign nationals who can receive healthcare in Québec;

Designating the institutions allowed to admit these foreign nationals and determining agreement terms and conditions with them;

Determining, with the institutions concerned, the approximate number of foreign nationals who can be admitted each year;

Determining the documents that the health institution in the country of origin, the attending physician and the citizen must submit to the Minister of Health and Social Services so that he can make an informed decision;

Imposing the adoption of internal rules by the boards of directors of the public institutions authorized to admit foreign nationals on an elective basis;

Stipulating that the agreements between foreign nationals and authorized institutions concerning the payment of care and services be confirmed in writing and given prior authorization by the Minister of Health and Social Services before admission occurs;

Providing that the payments received are re-invested in Québec healthcare and health services.

Recommendation 5 – Concerning the authorization that a foreign national must obtain before undertaking the procedure for admission into a Québec public health and social services institution:

Whereas currently, the procedure to transfer a foreign national to a Québec begins with issuance of the Québec Acceptance Certificate (CAQ);

Whereas the Minister of Health and Social Services must give prior authorization for the planned intake of foreign nationals who can receive healthcare;

Whereas the decision to admit foreign nationals to Québec health institutions must take into account waiting list at the institution's clinical department and the mechanisms implemented by the institution so that its users are affected as little as possible;

Whereas the information needed for the Minister of Health and Social Services to study the file of a foreign national is the same as that required by the Ministère de l'Immigration, de la Diversité et de l'Inclusion for issuance of the Québec Acceptance Certificate;

The Québec Ombudsman recommends:

R.5 That the Ministère de la Santé et des Services sociaux provide for communication with the Ministère de l'Immigration, de la Diversité et de l'Inclusion:

to ensure that the Québec Acceptance Certificate is not issued until the Minister of Health and Social Services has approved admission of a foreign national, designated the host institution and set the conditions of hospitalization;

to ensure transfer of the documents produced by applicants in their admission application so that they do not have to provide both Departments with the same documents.

Recommendation 6 – Concerning the fees charged by MUHC for the care and services provided to the woman from Kuwait during her two episodes of hospitalization at MUHC and their payment by the Kuwait Embassy Health Office:

Whereas there is no formal document with respect to the terms of reimbursement of the costs related the Kuwaiti woman’s hospitalizations;

Whereas the second time that the woman from Kuwait came to the emergency room, MUHC did not charge for the exams and laboratory tests prescribed by the emergency room doctor;

Whereas MUHC did not ask the woman from Kuwait to indicate what kind of room she wanted to have during her stay, as should have been done in compliance with MUHC’s internal policy at the time;

Whereas the woman from Kuwait occupied a private room or a room with one bed at the intensive care unit and the cardiac surgery unit and that MUHC did not require payment of the fees prescribed in the ministerial circular for the occupation of this type of room;

The Québec Ombudsman recommends:

R.6 That the Minister of Health and Social Services verify the conformity of the amount claimed from the Kuwait Embassy Health Office by MUHC for the care and services delivered to the woman from Kuwait during her two periods of hospitalization at MUHC and, if necessary, that the Minister see to it that the amount due is paid in full.

Recommendation 7 – Concerning the supplementary amount claimed from the Embassy Health Office by MUHC:

Whereas MUHC billed for an amount of \$45,228.80 identified “Department of Surgery;”

Whereas surgery-related fees are included in the daily tariff (*per diem*);

Whereas the Québec Ombudsman obtained information to the effect that part of this amount was earmarked for MMI Montreal Medical International Inc.;

Whereas MUHC’s entry for this supplementary amount was under an accounting heading different from that of the other entries;

Whereas MUHC’s Associate Director of Professional Services informed the Québec Ombudsman that use of the amount received had been suspended and that he did not know how the remaining amount would be spent;

The Québec Ombudsman recommends:

R7 That the Minister of Health and Social Services examine:

the activities for which the \$45,228.80 was intended as compensation;

its entry by MUHC;

deposit of the entire amount in MUHC’s bank account;

and that he work with MUHC to determine how this supplementary amount is used.

Recommendation 8 - Concerning the fees that health and social services institutions are authorized to bill to foreign nationals:

Whereas MUHC affirmed having made an agreement with Kuwait whereby it had agreed to pay a supplementary amount—30% more than the tariff prescribed by the Minister of Health and Social Services—for any unforeseen or unbilled expenses;

Whereas this is an arbitrary percentage that is not consistent with any existing standard prescribed by the Minister of Health and Social Services;

Whereas the charging of amounts in excess of the real cost of the care delivered could lead to inequalities because different host institutions could charge different amounts to foreign nationals;

The Québec Ombudsman recommends:

R8 That the Minister of Health and Social Services determine whether public institutions authorized to admit foreign nationals in order to temporarily provide them with the care and services that their condition requires are allowed to bill for amounts in excess of the daily tariffs indicated in circulars or any other ministeriel document dealing with tariffs.

Recommendation 9 - Concerning reimbursement of the salaries of residents who provide care to foreign nationals:

Whereas more than 18 residents followed up every day on the woman from Kuwait during the two periods of hospitalization at MUHC;

Whereas the care delivered by residents is not provided free of charge;

Whereas the rules surrounding payment for the care delivered by residents to foreign nationals need to be clarified;

The Québec Ombudsman recommends:

R.9 That the Ministère de la Santé et des Services sociaux clarify the rules surrounding payment for the care delivered by residents to foreign nationals in order to determine if the latter must pay extra for these services or if they are included in the daily tariff (*per diem*).

Expected follow-up

As stipulated in the *Act respecting the Health and Social Services Ombudsman and amending various legislative amendments* (S.Q. 2001, c. 43), within 30 days of the receipt of this report and the recommendations it contains, the Ombudsman must be informed of the actions to be taken as a result or, if the body concerned has decided not to act upon the recommendations, of the reasons for such a decision.

APPENDIX 2 - Timeline

November 15, 2011:	MUHC representatives agree to admit the woman from Kuwait to Royal Victoria Hospital;
November 21, 2011:	An entry visa for Canada is issued by Citizenship and Immigration Canada;
December 15, 2011:	Corporation d'Urgences-santé is hired by Air Ambulance (an American company) to take the Kuwaiti woman from Montréal-Trudeau Airport to MUHC;
December 16, 2011:	The woman leaves Kuwait aboard a commercial flight escorted by a physician chosen by Kuwait. She arrives at JFK Airport (New York City) in the evening. She boards Air Ambulance destination Montréal and arrives at Montréal-Trudeau Airport. She is taken by an Urgences-santé ambulance to Royal Victoria Hospital;
December 16, 2011:	She is admitted to the cardiac surgery unit at 10:07 p.m. (S8E room 14-01);
December 17, 2011:	She is discharged temporarily and is authorized to leave the institution temporarily;
December 19, 2011:	At 7:13 a.m., she is admitted to room 10 of the surgical unit for cardiac surgery;
December 19, 2011:	She is admitted to intensive care at 11 a.m., where she remains for three days;
December 22, 2011:	She returns to the cardiac surgery unit;
January 2, 2012:	She is re-admitted to intensive care and returns to the cardiac surgery unit the next day;
January 6, 2012:	She is discharged temporarily and is authorized to leave the institution temporarily from 9 a.m. to 5 p.m.;
January 10, 2012:	She is discharged temporarily and is authorized to leave the institution temporarily from 9 a.m. to 6 p.m.;
January 11, 2012:	She is permanently discharged in the afternoon;
January 11, 2012:	She is taken by an Urgences-santé ambulance to the emergency room of Royal Victoria in the evening. She is seen in triage at 7:12 p.m.;
January 11, 2012:	An orderly takes her to the cardiac surgery unit at 11:23 p.m.;
January 16, 2012:	She receives another permanent discharge and leaves MUHC;
January 18, 2012:	She leaves Québec to return to Kuwait.

www.protecteurducitoyen.qc.ca



LE PROTECTEUR DU CITOYEN

Assemblée nationale
Québec

Bureau de Québec
Bureau 1.25
525, boul. René-Lévesque Est
Québec (Québec) G1R 5Y4
Telephone: **(418) 643-2688**

Bureau de Montréal
10^e étage, bureau 1000
1080, côte du Beaver Hall
Montréal (Québec) H2Z 1S8
Telephone: **(514) 873-2032**

Toll-free: **1-800-463-5070**

Fax: **1-866-902-7130**

Email: protecteur@protecteurducitoyen.qc.ca