LE PROTECTEUR DU CITOYEN
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Problems with the application of the Act respecting the protection of persons whose mental state presents a danger to themselves or to others (R.S.Q., c.P-38.001)

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The Québec Ombudsman thanks everyone who was interviewed during the investigations, including users and health and social services network personnel, for their contributions to the process of reflection.

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Individuals are entitled to their freedom, unless they give permission for it to be restricted or are legally required to accept such a restriction. Exceptionally, civil law allows for them to be deprived temporarily of their freedom in cases where their mental state presents a danger to themselves or to others. The Civil Code of Québec, the Code of Civil Procedure and the Act respecting the protection of persons whose mental state presents a danger to themselves or to others (hereinafter P-38.001) govern the confinement of individuals in health and social services institutions. Because these laws place limitations on a fundamental right, they must be applied strictly and monitored rigorously.

However, the Québec Ombudsman has observed a number of problems in connection with the way in which P-38.001 is applied, in particularly by health and social services network stakeholders. In the last few years, it has made a large number of recommendations to various institutions, and has presented its observations on several occasions in its annual reports.

Given the significant discrepancies between the provisions of the Act and they way in which they are implemented, the Québec Ombudsman has decided to submit this report to the Minister of Health and Social Services, who is responsible for the application of P-38.001. The report sets out some general and specific problems with the Act's implementation.

Many people from different sectors may be involved in applying the Act. They include peace officers, ambulance attendants, lawyers, physicians including psychiatrists, crisis intervention unit members, professionals from health and social services institutions and directors of professional services in hospitals. Unfortunately, they do not all have the same training, information or instructions concerning the application of the Act.

During its investigations, the Québec Ombudsman observed a lack of consistency in the way the Act is applied by all these stakeholders. This is true in particular of how they interpret the notion of danger. For example, an individual may be deprived of his or her freedom by one stakeholder who decides that the behaviour in question represents a danger, while another stakeholder may perceive that same behaviour as being nothing more than a disturbance.

Similarly, the legislative framework stipulates that people under confinement are entitled to information, among other things concerning their rights and recourses and the opportunity to make confidential telephone calls, for example to a lawyer. However, the Québec Ombudsman has observed a number of situations in which information is not given at the proper time, or where certain rights are simply not respected by health and social services

institutions. The notes in users' records are often incomplete and are insufficient to prove that users' rights have been upheld.

As far as the application of the three types of confinement (preventive, temporary and institutional) is concerned, the problems observed include failure to obtain the user's consent for a psychiatric evaluation prior to institutional confinement, failure to comply with the maximum period of 72 hours for preventive confinement against the person's will, and failure to notify the institution's director of professional services that preventive confinement has been ordered. Moreover, some institutions allow users under confinement – whose mental state is implicitly considered to be a danger to themselves or to others – to leave the premises temporarily. This practice, not sanctioned by law, clearly calls into question the relevance of confining the individual to an institution in the first place.

The Québec Ombudsman considers that the Ministère de la Santé et des Services sociaux, the health and social services agencies and the boards of directors of the institutions covered by P-38.001 are all responsible for remedying these problems. It is up to them to ensure that users' rights are upheld in every case, and that every single stakeholder in the health and social services network, or any other network, applies the law in a consistent and compliant way.

In the Québec Ombudsman's opinion, the stakeholders' lack of training and information concerning the principles and application of the Act has led to a number of discrepancies in the way it is enforced. To remedy this situation, it recommends that the Minister of Health and Social Services prepare orientations to guide stakeholders and institution managers.

Among other things, the orientations should cover the three types of confinement, the notion of grave and immediate danger, and the notion of good reason to believe that danger exists. They should include the obligation to obtain prior consent for a psychiatric examination from the user or his or her representative, as well as the right of users to be given adequate information. In addition, they should provide for the creation of a collaborative relationship between crisis intervention units and peace officers, a requirement to make proper notes in the user's record, and a clear definition of what it means for an institution to take charge of a user.

The Québec Ombudsman is also of the opinion that the Ministère de la Santé et des Services sociaux should prepare a training course for all stakeholders throughout Québec, with a view to ensuring consistency in the application of the Act. Because such a wide range of people are likely to be involved at some time or another in the confinement process, the training should be prepared in collaboration with the Ministère de la Sécurité publique and the Ministère de la Justice.

Because the Act is applicable in exceptional cases only and may violate certain fundamental rights, the Minister of Health and Social Services should introduce a means of assessing its implementation. The task of gathering information on this aspect is complex. Provisions are needed in P-38.001 to regulate the assessment process if effective action is to be taken in respect of problems with the application of the Act.

With regard to the boards of directors of the institutions responsible for ensuring that users' rights are upheld, the Québec Ombudsman feels they should be legally bound to adopt an internal by-law governing the way in which their personnel apply and report on the use of confinement.

In addition, the Québec Ombudsman recommends that the health and social services agencies be required to consolidate the range of crisis services available within their regions, and to ensure that the various stakeholders in their respective regions work in partnership.

The Act respecting the protection of persons whose mental state presents a danger to themselves or to others has now been in force for more than 12 years. Clearly, some problems have arisen in its application, with significant consequences for the people concerned. In the Québec Ombudsman's opinion, the proposed amendments need to be implemented as quickly as possible.

1 Background

The Act respecting the protection of persons whose mental state presents a danger to themselves or to others (hereinafter P-38.001) sets out the rules governing the process of confining individuals in health and social services institutions. The Act is applicable in exceptional circumstances only, and allows for people to be deprived temporarily of their freedom, provided their mental state presents a danger to themselves or to others.

In the last few years, experts have observed problems with the application of P-38.001, and several studies[1], including some by mental health rights groups, have identified problems with its implementation.

In 2006, the Direction de la santé mentale at the Ministère de la Santé et des Services sociaux began to collect the information needed to assess compliance with the Act's provisions by health and social services network stakeholders. In the spring of 2010, as follow-up to the recommendations made in the Québec Ombudsman's 2009-2010 Annual Report, the Ministère de la Santé et des Services sociaux informed the Québec Ombudsman that it had just finished drafting the conclusions to its study.

Between 1998 and 2010, the Québec Ombudsman observed a number of discrepancies between the Act's provisions and the way in which they were implemented, particularly with regards to:

- the perception of the notion of danger;
- the placing of notes in users' files;
- the deprivation of freedom for health and social service network users who frequent confined users;

[1] Lauzon, Judith, Près de dix ans d'application de la Loi sur la protection des personnes dont l'état mental présente un danger pour elles-mêmes ou pour autrui – Notre constat: le respect des libertés et droits fondamentaux toujours en péril, Barreau du Québec, Obligations et recours contre un curateur, tuteur ou mandataire défaillant 2008, Cowansville (QC), Yvon Blais.

Droits-Accès de l'Outaouais, Portrait des gardes en établissement et étude des audiences de la cour du Québec – District of Hull, Gatineau, 2010, 185 p.

Droits et recours Laurentides, Lorsque les pratiques bâillonnent les droits et libertés étude menée dans la région des Laurentides sur l'application de la Loi sur la protection des personnes dont l'état mental présente un danger pour elles-mêmes ou pour autrui –District of Terrebonne, 62 p.

Action Autonomie, Nos libertés fondamentales... dix ans de droits bafoués, étude sur l'application de la Loi sur la protection des personnes dont l'état mental présente un danger pour elles-mêmes ou pour autrui – District of Montreal, Montreal, 2009, 113 p.

- the respect for the right to information;
- the taking in charge of users brought to hospitals by police officers;
- the respect for confidentiality;
- the information to be given to legal representatives;
- the need to obtain consent from users or their legal representatives;
- the application of the rules of law concerning the different types of confinement: preventive, temporary and institutional.

The Québec Ombudsman is well aware of this situation, and notes that the legal framework is understood and interpreted in different ways by the people responsible for applying it. The many discrepancies in its implementation can certainly be explained by a lack of information and training. However, and although the Legislator has made the Minister of Health and Social Services responsible for overseeing the implementation of P-38.001, discrepancies are also likely to be caused by the absence of ministerial orientations and by the fact that the institution's board of directors have not been given specific responsibilities in connection with the rights of users under confinement. These aspects are addressed in the following pages.

This report is intended for the Minister of Health and Social Services, and has been produced pursuant to the Public Protector Act, which allows the Québec Ombudsman to call to the attention of the Government any prejudicial situations noted in the course of its interventions, so as to remedy them and avoid future recurrence[2].

1.1 The Québec Ombudsman

1.1.1 Mission and role

The mission of the Québec Ombudsman is to ensure that the rights of individual citizens, organizations and associations are upheld in their dealings with public authorities and with the health and social services network. The Québec Ombudsman's role as a mediator is based on the values of justice, fairness, respect, impartiality and transparency. Its actions are guided by these values, and its employees are required to demonstrate integrity, rigour and empathy.

The Québec Ombudsman has had jurisdiction over government departments and agencies since 1969, and in April 2006 it was given the additional responsibility of administering the Act respecting the Health and Social Services Ombudsman. To fulfill this task, it generally

2. *Public Protector Act*, R.S.Q., c. P-32, s. 27.3.

acts as a second level of recourse for users' complaints, and may also carry out investigations, either on its own initiative or as follow-up to a report.

The Québec Ombudsman does not have the power to examine complaints concerning physicians, dentists or pharmacists. However, it is responsible for ensuring that the processes, rules, directives and policies implemented by the institutions are in compliance with the provisions of law.

1.1.2 Investigations and interventions connected with problems related to the application of P-38.001

The Québec Ombudsman has carried out several investigations into the application of P-38.001, and has identified a number of problems, some of which have been described in its annual reports. It has intervened repeatedly with the institutions to remind them of their obligations and to make recommendations.

For example, between April 1, 2007 and December 16, 2009, the Québec Ombudsman examined 170 grounds for complaint in connection with the application of P-38.001. The complaints involved all the regions of Québec except for Northern Québec, Nunavik and Terres-Cries-de-la-Baie-James. Almost 40% of the complaints examined concerned the Montreal and Montérégie regions.

The main grounds for complaint were hospitalization without the consent of the person concerned, interpretation of the notion of danger, the psychiatric evaluation, the right to leave the institution during confinement, and ambulance transportation expenses. Most of the substantiated grounds led to recommendations with collective impacts, i.e. impacts likely to benefit all other users of the institution concerned.

Over the years, the Québec Ombudsman has informed the Ministère de la Santé et des Services sociaux of these problems, and has invited it to become more involved in the confinement process.

In addition, the Québec Ombudsman has performed a systemic analysis of the situation, and elected to include some of its recommendations to the Ministère de la Santé et des Services sociaux in its 2009-2010 Annual Report. Those recommendations are presented in Schedule 1 to this report.

1.2 The legislative framework

1.2.1 The legal basis for confinement

The Act respecting the protection of persons whose mental state presents a danger to themselves or to others came into force on June 1, 1998, replacing the Mental Patients Protection Act, originally assented to in 1972. A review of the legislation in this area had become necessary due to the emergence of the notion of personal protection, following the introduction of the charters of human rights and freedoms and the new Civil Code of Québec.

The new Act:

- identifies the professionals able to perform the necessary examinations;
- lists the elements to be included in the psychiatric report completed by a physician;
- sets out the rules applicable to confinement;
- indicates the types of institutions to which people may be referred;
- sets out the rules to be followed when a person is placed in confinement by a court;
- provides for periodic examinations and sets conditions for transfers to other institutions;
- provides for preventive confinement in emergency situations, without court authorization;
- imposes various procedural rules to ensure that people are given all the information they need, including information on their rights and recourses;
- grants the Administrative Tribunal of Québec the right to review any decision made in connection with a person in confinement, either on request or on its own initiative;
- introduces two new categories of actors: peace officers and members of crisis intervention units.

In June 2002, when P-38.001 came into force, some articles of the Civil Code of Québec were again amended to clarify the court's power of assessment for institutional confinement. As a result, the courts may now decide whether or not confinement should be authorized, regardless of the evidence presented and even in the absence of a second opinion. Article 30.1 of the Civil Code was also introduced to regulate the duration of institutional confinement.

Institutional confinement involves compliance with several Acts, at different times in the process. P38.001 completes the provisions of the Civil Code of Québec (articles 26-31) concerning the psychiatric evaluation and confinement in a health and social services institution. Provisions of the Code of Civil Procedure (articles 762 to 785), the Québec Charter of Human Rights and Freedoms and the Canadian Charter of Rights and Freedoms also apply.

1.2.2 The specific features of the Act: Applicable only in exceptional circumstances

P-38.001 interferes with personal freedom, and is applicable in exceptional circumstances only. Every person is entitled to personal integrity and freedom, and no one may interfere with these rights without the person's free and enlightened consent[3]. Deprivation of freedom is therefore authorized for exceptional reasons only. Because P-38.001 permits this fundamental right to be overridden, it must be applied in a limited way.

2 An overview of the different forms of confinement

P-38.001 provides for three different types of confinement: preventive confinement, temporary confinement and institutional (or authorized) confinement. In each case, a health and social services institution may, on certain conditions, confine people against their will if their mental state presents a danger to themselves or to others.

2.1 Preventive confinement

A physician may order preventive confinement for a maximum period of 72 hours, without court authorization or prior psychiatric examination, where he or she believes the person's mental state presents a **grave and immediate** danger to self or to others. As soon as the person is taken into care or is able to understand, he or she must be informed immediately of the location of and reason for the confinement, and of the right to contact family members and a lawyer.

2.2 Temporary confinement

The Court of Québec can authorize temporary confinement of a person against his or her will, for a psychiatric evaluation, where it has good reason to believe that the person's mental state presents a danger to self or to others. If the person is already in preventive confinement, the institution concerned must ask the court to order temporary confinement. Otherwise, the request may be made by a physician or other interested person.

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[3] *Civil Code of Québec*, a. 10
Québec Charter of Human Rights and Freedoms, s. 1
Canadian Charter of Rights and Freedoms, s. 7

The psychiatric evaluation authorized by the court consists of two complete psychiatric examinations within a 96-hour period. The person must be released immediately if a physician decides that confinement is no longer necessary. If both psychiatric examinations conclude that confinement is necessary, the person may be confined against his or her will for no more than 48 hours.

2.3 Institutional confinement

Even when two psychiatric examination reports confirm the need for confinement, a court can only order that a person be confined in a health and social services institution against their will if it has good reason to believe that the person's mental health presents a danger to self or to others. The person's capacity to take care of herself/himself or administer property is also evaluated, along with the appropriateness of putting the person under protective supervision. If the confinement lasts for more than 21 days, the person must undergo periodic examinations to determine whether or not the measure is still required.

During confinement, the person maintains all his or her other rights, including the right to accept or refuse care and services.

3 The Québec ombudsman's observations

During its investigations, the Québec Ombudsman observed a number of deficiencies in the general implementation of the Act, as well as problems with all three types of confinement. It has raised these difficulties on several occasions in past annual reports, and a review of its findings will be presented in the second part of this section.

Following a systemic analysis of the problems, the Québec Ombudsman notes several significant omissions, including the absence of precise orientations from the Ministère de la Santé et des Services sociaux, the lack of accountability for institution managers and board members regarding the implementation of P-38.001, and the fact that there is no obligation for them to report on their practices in this respect. In the following paragraphs, the Québec Ombudsman identifies a number of avenues to help structure compliance with P-38.001.

3.1 The need to structure the application of the Act

3.1.1 The responsibilities of the Ministère de la Santé et des Services sociaux

- **Ministerial orientations**

During the confinement process, a number of people are required to make judgments, including peace officers, ambulance attendants, lawyers, physicians, members of crisis intervention units, professionals in institutions, and directors of professional services. Because there are no ministerial orientations, some of these groups have attempted to clarify the situation by issuing notices, opinions and reference frameworks on what they consider to be good practice and how they think the Act should be applied. They have based all this input on their own knowledge and experience.[4] Some have also interpreted rulings handed down by the courts.

As for the Ministère de la Santé et des Services sociaux, it has produced and issued an updated version of a guide to mental health rights, intended for the families and friends of users with mental health problems. It has also issued an emergency management guide for institution employees[5]. These two documents briefly address P-38.001 but do not constitute guidelines for all health and social service network staff.

The Québec Ombudsman considers that the Minister of Health and Social Services, who is responsible for the application of P-38.001, should provide an intervention philosophy and orientations on which the institutions may base their actions. It is up to the Minister to direct practices in such a way as to prevent abuse, and to provide answers that the institutions can use to prepare a reference framework or application protocol or include as principles in their codes of ethics. These orientations will help to standardize practices and reduce inter-institutional and inter-regional discrepancies.

When requirements concerning the use of isolation and confinement were first introduced into the Act respecting health services and social services, the legislator ordered the Minister of Health and Social Services to prepare orientations, and the institutions to adopt an application protocol based on those guidelines. Section 118.1 of the Act stipulates that:

4. Examples include presentations and training sessions offered by jurists, physicians, mental health rights groups, the Conseil de la protection des malades, and institutions such as the Centre hospitalier Pierre-Janet, which offers training on institutional confinement in the Outaouais region and publishes a document entitled *Guide d'application: La garde de la personne dont l'état mental présente un danger pour elle-même ou pour autrui*, AQESSS, June 2006, 54 p.

5. MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX and ASSOCIATION QUÉBÉCOISE D'ÉTABLISSEMENTS DE SANTÉ ET DE SERVICES SOCIAUX, *Guide de gestion de l'urgence*, Québec, 2006, 159 p.

> *"Force, isolation, mechanical means or chemicals may not be used to place a person under control in an installation maintained by an institution except to prevent the person from inflicting harm upon himself or others. The use of such means must be minimal and resorted to only exceptionally, and must be appropriate having regard to the person's physical and mental state.*
>
> *Any measure referred to in the first paragraph applied in respect of a person must be noted in detail in the person's record. In particular, a description of the means used, the time during which they were used and a description of the behaviour which gave rise to the application or continued application of the measures must be recorded.*
>
> *Every institution must adopt a procedure for the application of such measures that is consistent with ministerial orientations, make the procedure known to the users of the institution and evaluate the application of such measures annually."*

Because the impact of being deprived of their freedom is at least as significant for people placed in confinement as for those who are isolated or restrained, the Québec Ombudsman believes the Act respecting health services and social services should be amended by including a requirement for the Minister to prepare and circulate orientations for confinement similar to those for isolation and restraint. These orientations, combined with a ministerial plan of action, would most certainly provide support for the people involved in the process. In addition, if the Ministère de la Santé et des Services sociaux, the Ministère de la Justice and the Ministère de la Sécurité publique were to work together to prepare the orientations, they could ensure that the various steps leading to confinement were coordinated.

- **Province-wide training**

The legislative framework surrounding confinement is complex. The various stakeholders are able to apply several different types of confinement, each with its own timeframe and procedural rules. An adapted training session is required for all these stakeholders, to help give them a better understanding of the purpose of the Act and ensure that its provisions are applied consistently.

The Québec Ombudsman believes a province-wide approach to training is required. The Ministère de la Santé et des Services sociaux, the Ministère de la Sécurité publique and the Ministère de la Justice must work with the health and social agencies and with the key front-line stakeholders to establish the training content. This will enable the Ministère de la Santé et des Services sociaux to offer the same training not only to its own network, but also to the different partners involved in the process, thereby ensuring the consistency required to apply the legislative framework with due regard for users' rights. The Ministère de la Santé

et des Service sociaux should then prepare and approve regional training plans and make sure they are available throughout Québec.

The role played in the confinement process by legal stakeholders (lawyers and judges) is key. It is their task to judge the situation and ensure that people who are confined are properly represented. Unfortunately, however, a number of studies have reported findings that are somewhat worrying in this respect. For example, a report presented by the Québec Bar Association's "task force on mental health and justice" in March 2010[6] recommends a number of amendments, some of which are designed to ensure that vulnerable people are better informed of their rights and are automatically represented before the court. It also recommends that specific training on P-38.001 should be given to lawyers and judges.

- **A reliable profile of the Act's application**

The Québec Ombudsman notes that while the legal framework governing confinement should be followed rigorously and used only in exceptional circumstances, it is extremely difficult to obtain information on how it is implemented. Very few data are available on the way the process is applied by the various stakeholders. The information that is available is not collated systematically, and there is no obligation for this to be done.

More information is certainly required in connection with a number of aspects of the Act's application, in particular by the institutions, the agencies and the Ministère de la Santé et des Services sociaux – for example, the number of pre-hospital transportations carried out under P-38.001, the main reasons for involvement of crisis intervention units, the number of police interventions, the number of preventive confinements and temporary confinements ordered, and the durations of any institutional confinements.

The Québec Ombudsman believes that information such as this needs to be collected and examined, so that the process can be improved quickly if necessary. To do this, the institutions called upon to apply the Act should be required to submit periodic reports to their boards of directors, and should then include the information in their annual reports, along with an assessment of how the Act has been implemented. The information would then be public, and both the Ministère de la Santé et des Services sociaux and the health and social services agencies could adjust the supply of services required to take charge of people whose mental state presents a danger.

Similarly, it would be interesting for the health and social service agencies to collect data from the crisis intervention units, so that they have an overview of the way in which P-38.001 is applied in the health and social services network.

6. BARREAU DU QUÉBEC, *Rapport du Groupe de travail sur la santé mentale et justice du Barreau du Québec*, March 2010, 26 p.

All this information, combined with that collected by the Ministère de la Sécurité publique and the Ministère de la Justice, could be made public, and the stakeholders would then be able to remedy any deficiencies and adjust the supply of services required to take charge of people whose mental state presents a danger to themselves or to others.

3.1.2 The responsibility of the boards of directors of health and social service network institutions

In recent years, the Québec Ombudsman has noted that many institutions have taken the initiative of developing their own internal procedures, based on their own interpretations of the rules of law. However, its investigations have also revealed some significant differences, from one institution to the next and from one region to the next, in both the content of these procedures and the way in which they are implemented.

P-38.001 does not require an institution's board of directors to tell its physicians and staff how the Act should be applied within the institution. The only obligation the Act imposes is for the physician to notify the director of professional services, and even then, only in cases of preventive confinement. Moreover, although notification is expressly required by P-38.001, it is not always given.

The Act respecting health services and social services regulates the operations and obligations of institutional boards of directors, and entrusts them with the responsibility of ensuring that the services offered are relevant, of good quality, safe and effective, and that users' rights are respected[7]. It stipulates that they may adopt by-laws for this purpose. With regard to the use of restraint and isolation[8], the institutions are required to adopt a by-law and must assess the application of such measures on a yearly basis.

Section 118.1 of the Act respecting health services and social services stipulates that every institution must adopt a procedure for the application of control measures (isolation and restraint) that is consistent with ministerial orientations, make the procedure known to the users of the institution and evaluate the application of the measures annually.

The Québec Ombudsman believes the Act should contain an identical provision for confinement. The Organization and Management of Institutions Regulation would also have to be amended, to require the institution's board of directors to adopt an internal by-law concerning the application of exceptional measures to confine a person against his or her will in an institution covered by P-38.001[9].

7. *Act respecting health services and social services*, R.S.Q., c. S-4.2, s. 172.
8. *Organization and Management of Institutions Regulation*, c. S-5, r. 3.01, s. 6 (18).
9. The Québec Ombudsman suggests that section 6 of the *Organization and Management of Institutions Regulation*, R.R.Q. c. S-5, r.3.01, should be amended to add the requirement for the board of directors of an institution [...] contemplated in section 6 of the *Act respecting the protection of persons whose mental*

3.1.3 The responsibilities of the health and social service agencies

The health and social service agencies coordinate the introduction of health services and social services in their respective regions, and are responsible in particular for financing, human resources and specialized services, as well as for the organization of certain crisis support services and emergency pre-hospital services.

The mental health action plan stipulates certain targets for the supply of services in crisis intervention centres[10]. The agencies must therefore consolidate their range of crisis support services and ensure that they are available to the populations in their respective regions. To do this, they should offer a mobile crisis intervention service.

However, even though the crisis intervention units are called upon to play a key role in the process leading to confinement, there is no requirement for the agencies to report on the creation of these units, even though this task falls under their responsibility.

If the rights of people in confinement are to be respected, the partners concerned, including peace officers, the health and social services institutions and the agencies responsible for the crisis intervention units, must all work together. Accordingly, the ministerial orientations recommended by the Québec Ombudsman should stipulate that the agencies must provide an adequate supply of crisis support services, not only pursuant to P-38.001, but also through collaborative agreements between the various stakeholders.

3.1.4 A periodic review of the application of P-38.001

To ensure that both the Minister of Health and Social Services and the National Assembly are able to appreciate the problems with the application of the Act and make any corrections required to ensure that users' rights are respected and that the institutions fulfill their obligations, the Québec Ombudsman considers that P-38.001, like the Youth Protection Act, should be subjected to a statutory review every five years.

A task force could be asked to assess the problems periodically, and then submit its findings to the Ministère de la Santé et des Services sociaux, along with a description of the situation in Québec as a whole, proposed recommendations, and suggested amendments to the Act if necessary. Since the confinement process assessment would be multi-faceted, and because it is likely to be difficult, in the current situation, to assess its overall application, the task force could establish a list of priorities and submit findings at each stage.

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state presents a danger to themselves or to others, to adopt a regulation concerning the implementation and control of confinement against the person's will in its facilities.

10. MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *Plan d'action en santé mentale 2005-2010 – La force des liens,* Québec, 2005, 96 p.

3.2 General problems with the application of the Act

In the following sections, the Québec Ombudsman presents the results of its investigations into P-38.001 compliance by health and social services institutions, for each type of of confinement.

3.2.1 The notion of danger: The need for guidelines

The notion of danger forms the cornerstone of the legislative framework governing the different types of confinement. The Civil Code of Québec and P-38.001 both refer to this notion, and it is up to the various stakeholders and the courts to assess the danger that a person's mental state presents to self or to others.

The problem here lies in the fact that the Act does not define this notion, but refers instead to two concepts:

- In the case of preventive confinement, the danger must be "grave and immediate";
- In the case of temporary confinement and institutional confinement, the court must have "good reason" to believe that the person's mental state presents a danger.

But what exactly are these "grave and immediate" dangers and "good reasons" to believe that a person's mental state presents a danger within the meaning of P-38.001? In recent years, the courts have made rulings to guide the stakeholders. However, each case is specific, and it may be difficult, in an emergency, to implement the concepts of danger proposed by the courts. The Québec Ombudsman therefore believes guidelines and other tools should be drawn up and made available to the people working in the field.

The *Practical Guide to Mental Health Rights*, updated in 2009 and prepared for the Ministère de la Santé et des Services sociaux, defines the concept of "grave and immediate danger" as follows:

> *"A grave and immediate danger arising from a mental health problem is considered an emergency that requires* ***quick action****. If there is a risk for the life or integrity of yourself or others, you can contact the crisis intervention unit in your region for help*[11]*." [Boldface added]*

The Guide does not address the "good reasons" for temporary or institutional confinement. It simply states that the request for a psychiatric examination filed with the court must show, through recent facts and observable behaviours (suicide threats, violence, threats towards others, etc.), that the person's true and present mental state is a danger to self or

11. GOUVERNEMENT DU QUÉBEC, *Practical Guide to Mental Health Rights: Answers to Questions by Family and Friends of Individuals with Mental Health Problems*, 2009, p. 38.

to others. It is then up to the court to assess this evidence and decide if it is sufficient to justify temporary or institutional confinement.

The Québec Ombudsman notes some significant differencies in the way the notion of danger may be interpreted by the various stakeholders. The *Practical Guide to Mental Health Rights* is intended for the families and friends of people with mental health problems. The Québec Ombudsman believes guidelines should also be made available to the stakeholders, in order to overcome differences in interpretation.

- **The large number of actors may lead to inconsistent interpretations of the notion of danger**

It will not necessarily be the courts that assess the danger presented by a person; there are many other stakeholders who are likely to make such an assessment at different times during the confinement process.

Since P-38.001 came into force, peace officers and crisis intervention unit members are also required to assess the existence of grave and immediate danger in order to decide whether or not to take a person to a health institution, where only a physician can make the decision to order confinement against the person's will, due to the grave and immediate danger presented by his or her mental state. The circumstances in which a peace officer may take a person to a health or social services institution against his or her will are as follows:

- at the request of a member of a crisis intervention unit who considers that the mental state of the person presents a grave and immediate danger to self or to others;

- at the request of the person having parental authority, the tutor to a minor, the spouse or a relative, where no member of a crisis intervention unit is available in due time to assess the situation.

In this latter case, the peace officer must have good reason to believe that the mental state of the person concerned presents a grave and immediate danger to self or to others[12].

It is therefore important for the notion of danger to be structured, shared and applied by the various stakeholders with due respect for the underlying values of P-38.001.

The Québec Ombudsman notes that in some cases, people whose mental state was judged by a peace officer or crisis intervention unit member to present a grave and immediate danger were not in fact placed in preventive confinement by a physician when they first arrived at the emergency room to which they were taken, but were discharged instead.

12. *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*, R.S.Q., c. P-38.001, s. 8.

There are therefore some significant differences in how the notion of danger is assessed by the people concerned. Perceptions of danger and expertise levels vary, not only due to changes in the condition of the person between evaluations, but also because of differences in how the person's behaviour is interpreted.

With regard to temporary confinement and institutional confinement, it is up to the courts to decide whether the "good reason" stipulated in the Civil Code of Québec is in fact present. To do this, they base their judgment on the facts and evidence available. In the case of institutional confinement, they also base their decision on the two psychiatric assessment reports recommending confinement. In the latter case, however, the judges may only authorize confinement if they themselves have good reason to believe that the person is dangerous and needs to be confined.

In recent years, the desire to ensure greater consistency and facilitate collaborative efforts between the various parties involved has led regions such as Québec City and Montreal to give identical training to everyone who is likely to become involved in the application of P-38.001. Having received the same training, these people are then able to develop a shared vision of how the Act should be implemented in their respective fields.

The task of assessing the level of danger for the purpose of ordering confinement inevitably involves assessing the risk that a suicidal person will actually attempt suicide. In the fall of 2010, the Ministère de la Santé et des Services sociaux produced a good practice guide for case workers in health and social services centres. The Guide states:

> *"The use of tools to assess suicidal individuals appears to be extremely important. A tool that offers a systemic approach can help reduce errors of judgment, and in addition it facilitates interventions with suicidal individuals. Not least, using a tool to support a clinical judgment helps to ensure that informed decisions are taken with respect to the actions required during the intervention. The mental health plan of action emphasizes the importance of using effective tools when assessing suicidal individuals."*[13] (Free translation from the French)

To overcome the difficulty of assessing the danger of suicide, the Ministère de la Santé et des Services sociaux suggests a grid designed specifically for that purpose.

Because each case must be judged individually, and because every assessment of danger involves a high degree of subjectivity[14], the Québec Ombudsman suggests that an assessment tool similar to the existing suicide risk assessment grid should be made available and used systematically to examine the facts or actions in each case, and to support the decision in the case at hand. Some institutions already have their own "in-house" forms,

13. MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX, *Prévention du suicide, guide des bonnes pratiques à l'intention des intervenants des centres de santé et services sociaux*, Québec, 2010, p. 30.

14. J.D. v. Centre hospitalier Robert-Giffard, [2001] T.A.Q. 330 (Summary) (T.A.Q. 2001AD-22).

which physicians and other professionals use to obtain a more objective assessment of danger.

The Québec Ombudsman also considers that confinement assessment training, similar to that for suicide prevention, is required for everyone concerned. It should be combined with the use of standardized evaluation tools applicable throughout Québec.

- **Incomplete notes in users' records**

What grounds were used to assess the level of danger and place a person in confinement? What was the grave and immediate danger or other reasons justifying the confinement? The only way of gleaning facts such as these is to read the notes written in the user's record, which should be complete enough to describe the clinical process and subsequent decisions. The professionals concerned should therefore write down their observations from the beginning of the process until confinement is terminated.

However, some of the records examined by the Québec Ombudsman were laconic at best. For example, the decision of the physician who ordered preventive confinement was clearly indicated, but the reasons for depriving the person of his or her freedom were not. In all likelihood, the person presented a danger at the time. However, the record contained no indication of this.

The Québec Ombudsman considers that all the professionals concerned, including physicians, should be more aware of the importance of making exhaustive notes in users' records.

The physician's decision to confine a person in a health institution should normally be made in collaboration with the team working on the case, and it should therefore be based on a clearly documented status. This is all the more important in the present context, where staff turnover tends to be high and many institutions use personnel from private nursing agencies.

The Collège des médecins du Québec has this to say about medical records:

> *"A medical record should provide an accurate profile of the patient's status, including all the care provided and any event that may have occurred. It serves as an important checklist for the provision of quality care. It is difficult to over-emphasize the need for physicians to strive for excellence in the record-keeping process, since these documents are used for a wide variety of purposes and provide a record of their conduct*[15]*."* (Free translation from the French)

15. COLLÈGE DES MÉDECINS, *Guide d'exercice: La tenue des dossiers par le médecin en centre hospitalier de soins généraux et spécialisés*, December 2005, p.6.

The Québec Ombudsman considers that the Act respecting health services and social services, like the legislation governing the use of control measures, should be amended to require that a detailed note be placed in a user's record, in a separate section to which access is limited. The note in question should describe the facts and reasons for the decision, along with the specific period for which the person was confined, and should include a description of the behaviour that caused the confinement to be maintained, where that was the case. The psychiatric assessment reports should also be placed in the user's record, along with copies of motions filed with the court and the ensuing rulings.

3.2.2 Unnecessary deprivation of freedom

In some cases users are forced to remain in a health institution against their will, even though the provisions of the Act concerning preventive confinement have not been formally applied. The Québec Ombudsman, in consulting the records of these users, found that hospital emergency rooms used terms such as "cannot leave" or "cannot leave without seeing a physician", even though the people concerned had refused care and clearly said they wanted to leave the institution, and even though the confinement process had not been started. Similarly, in consulting care plans and nursing treatment plans, the Québec Ombudsman found that some users had been deprived of their right to freedom of movement, even though their mental state was not considered dangerous.

In some cases the users did not know they had been placed in confinement until they tried to leave the institution's premises temporarily (e.g. to smoke). In fact, they did not know they were in preventive confinement at all. Moreover, before being deprived of their freedom, they had not even been asked if they were willing to remain in the institution voluntarily. And because these users had not been informed of their rights, they did not know about the recourses available to them. In other cases, users were deprived of their freedom even though their mental state was not considered dangerous, simply because they did not comply with one of the care unit's internal rules (e.g. "did not arrive on time", "did not make his bed", "talked too loudly").

During its investigations, the Québec Ombudsman also found that some institutions tended to treat all users with mental health problems in the same way, regardless of whether they were there voluntarily, under confinement or following a decision by the Administrative Tribunal of Québec. The same applied to some emergency units, where users were kept in enclosed spaces, with no opportunity to leave, even temporarily. People who were admitted voluntarily and who consented to receive care were treated in the same way as those whose mental state presented a danger and who were not permitted to leave. As a result, some were confined against their will, for no reason, in violation of their right to freedom.

The Québec Ombudsman believes the institutions should adjust their rules to ensure that the rights of all users are respected.

3.2.3 Violation of the right to information

As soon as people are taken in charge by an institution, or as soon as they appear able to understand, they should be told of the location of and reason for the confinement, and of their right to contact relatives or a lawyer without delay[16]. They should also be informed as soon as the confinement period ends[17].

The Québec Ombudsman notes that users (or their representatives) are often deprived of their right to be informed. The Ministère de la Santé et des Services sociaux has produced a document for users, entitled *Rights and Recourses of Persons Placed Under Confinement*. In some health and social services institutions, this document is handed out only before filing a motion with the court or following a judge's decision to authorize confinement, but not always to people in preventive confinement. As a result, some users may be confined for several days and still not know their rights.

A document such as this should be handed to all users in preventive confinement, as soon as they seem able to understand its content. However, this alone is insufficient to fulfill the obligation to provide information, and professionals are still required to inform users beforehand of all decisions made in their regard, including those relating to the confinement process.

The Québec Ombudsman has in fact made recommendations to some institutions, asking them to fulfill this legislative requirement and write a note in the user's record indicating the time at which the information was provided. Given the vulnerable position of people under confinement, it is vital that the facts be explained clearly, at the appropriate time. The document mentioned earlier completes this process.

Similarly, and although not expressly required by law, people should also be informed of the maximum time for which they may be confined without their consent.

In addition, P-38.001 stipulates that institutions must inform users or their representatives when confinement ends. This should be done in writing if the court has appointed a legal representative for the person[18]. In the Québec Ombudsman's opinion, this information should also be entered in the user's record.

Institutions must rigorously uphold this right, which is expressly stipulated in the Act.

16. *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*, R.S.Q., c. P-38.001, s. 15.

17. *Ibid.*, s. 18.

18. *Ibid.*, s. 19.

3.2.4 Lack of information for legal representatives

For users who are legally represented, P-38.001 stipulates that institutions must notify the representative when confinement begins and ends[19]. However, the Québec Ombudsman has observed that they do not always do this.

Protective supervision is ordered in the interests of the individuals concerned, to provide protection and ensure that they can continue to exercise their civil rights[20]. In cases involving individuals under protective supervision, the Québec Ombudsman believes institutions should, whenever possible, inform the tutor, curator, mandatary or any other person responsible for the individual concerned before asking a court to authorize temporary or institutional confinement. The involvement of a legal representative is important, since he or she may be asked to consent to or refuse other measures, including the use of isolation and restraint and the psychiatric evaluation that is required to obtain institutional confinement.

A register of protective supervision, homologated protection orders and tutorships is available on the Public Curator's website. It lists the people of full age and minors who are under legal protection, and gives the names of their legal representatives.

In the Québec Ombudsman's opinion, this register should be consulted systematically by institution staff, and internal procedures should require that this be done prior to any action concerning confinement.

3.2.5 The problem of ensuring timely "taking in charge"

Some sections of P-38.001 refer to the notion of "taking in charge" by institutions[21], and this appears to be a source of some confusion. As is the case for the notion of danger, it seems to be interpreted in different ways by different stakeholders in the process.

The Act stipulates that a peace officer who takes a person to an institution remains responsible for that person until he or she is taken in charge by the institution[22]. Some peace officers believe their involvement terminates when the person is examined by the triage nurse. However, emergency room triage nurses do not believe people are taken in charge until the physician has examined them and decided whether or not confinement is required. They believe the peace officer should continue to be responsible until that time.

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19. *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*, R.S.Q., c. P-38.001, s. 19.
20. *Civil Code of Québec*, a. 256.
21. *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*, R.S.Q., c. P-38.001, ss. 8, 14, and 15 *and Civil Code of Québec*, a. 28.
22. *Act respecting the protection of persons whose mental state presents a danger to themselves or to others*, R.S.Q., c. P-38.001, s. 14, par. 2.

In the Québec Ombudsman's view, these differences of opinion concerning the moment of "taking in charge" may arise from the interpretation of sections 8 and 15 of P.38.001.

Section 8 of P-38.001 is clear, and states that:

> *"Subject to more pressing medical emergencies [...] the institution to which the person is brought must take charge of the person upon arrival and have the person examined by a physician."*

Section 15 of P-38.001 states that:

> *"As soon as the person has been taken in charge by the institution, or as soon as he seems able to understand the information, the institution must inform him of the place where he is being confined, of the reasons for the confinement and of his right to contact his close relatives and an advocate immediately."*

Section 8 of P-38.001 states that "taking in charge" begins when the person arrives at the institution. Section 15, however, states that the person must be informed upon arrival of his or her legal rights in connection with confinement, suggesting that the person is already in confinement at that time, when in fact only a physician can make such a decision. In reality, a person may be examined by a physician in the minutes following arrival.

The notion of "taking into charge" must also be clarified because the time limit specified in the Civil Code of Québec for temporary confinement prior to a psychiatric examination is calculated from the time the person is taken in charge by the institution[23].

The Québec Ombudsman considers that the Ministère de la Santé et des Services sociaux should clarify the time at which a person is taken in charge by an institution, in order to remove any ambiguity. Agreements between police forces and health and social services institutions should then be harmonized.

3.2.6 Violations of confidentiality

P-38.001 stipulates that users under confinement have a right to communicate confidentially with the people of their choice. Exceptionally, a physician may decide to prohibit or restrict certain communications on a temporary basis, in the interests of the person. Where this is done, the physician must give reasons for the decision, in writing. In addition to noting the prohibition or restriction in the user's record, the physician must also notify the individual. However, communications between a person under confinement and his or her representative, the person qualified to give consent to the care required, a lawyer, the Public Curator or the Administrative Tribunal of Québec may not be restricted.

23. *Civil Code of Québec*, a. 28.

Although some institutions have special rooms where users may go to call the people of their choice confidentially, the Québec Ombudsman observed, during its investigations, that this particular right is often not respected, especially in cases where users ask to contact a close relative or lawyer. For example, users who are in emergency rooms may not be able to find a telephone from which they can have a private conversation. This is equally true in the care units, where the only available telephone is often located at the nursing station, meaning that the personnel on duty are likely to hear the conversation.

The Québec Ombudsman considers this situation to be unacceptable, and feels the right to communicate confidentially with another person must be respected. The orientations to be drawn up by the Ministère de la Santé et des Services sociaux should remind institutions of their duty to comply with this requirement.

3.2.7 Dissatisfaction with the cost of ambulance transportation

Contrary to popular belief, ambulance transportation is not usually covered by the public health insurance plan, and citizens must meet specific eligibility criteria to qualify for free service.

Under P-38.001, people may be taken to hospital against their will, at the request of a police officer or a crisis intervention unit member, and then be required to pay the cost of the ambulance. The Québec Ombudsman has been asked to examine a number of complaints from people who were upset at having to pay for a service they did not want because they felt it was not necessary. It informed the Ministère de la Santé et des Services sociaux of these complaints, and was told in return that ambulance payments are currently under negotiation as part of the new service contract between the regional health and social services agencies and the ambulance companies.

3.3 Specific problems with the application of the Act

This section sets out some specific problems with the application of the Act, as observed by the Québec Ombudsman, for each type of confinement.

3.3.1 Problems relating to preventive confinement

Preventive confinement begins when a physician believes a person's mental state presents a danger to herself/himself or to others, and is applied without the person's consent, and without court authorization or a psychiatric examination. A person may be confined in a facility maintained by a health and social services institution for a maximum of 72 hours.

- **Consent not sought**

The Québec Ombudsman was asked to examine a situation where a person went to a hospital emergency room voluntarily, for care, but was immediately placed in preventive confinement without being informed of this fact. In such a case, if the user agrees to remain in the institution for care, there is no need to order confinement. It is unnecessary and is likely to breach the relationship of trust.

In some situations, people may go voluntarily to an institution, and then refuse care. Here, preventive confinement should only be applied after the person has refused care and expressed a wish to leave the institution, and even then, only if his or her mental state is considered to present a grave and immediate danger. Both elements must be present for preventive confinement to apply; in other words, the person must refuse to remain in the institution, and his or her mental state must present a grave and immediate danger.

- **Failure to comply with the 72-hour limit**

A physician may place a person under preventive confinement for a maximum of 72 hours. At any time during that period, the physician must terminate the confinement if the crisis is resolved. Otherwise, the person may leave the institution after 72 hours, unless:

- a court orders an extension of confinement for the purpose of performing a psychological evaluation;

- the 72-hour period ends on a Saturday or on a non-juridical day, no judge having jurisdiction in the matter is able to act, and termination of confinement would result in danger. In these circumstances, confinement may be extended until the end of the following juridical day.

During its investigations, the Québec Ombudsman noted that the time at which preventive confinement begins is not always written in the user's record, making it impossible to calculate the 72-hour period stipulated by law. As a result, people may be confined against their will after the end of the period, which is against the law.

In one of the situations it examined, the Québec Ombudsman also found that preventive confinement continued after the 72-hour period had expired, because there was no psychiatrist available during the weekend to perform the psychiatric evaluation. However, it is against the law to extend preventive confinement beyond the 72-hour deadline.

- **Failure to inform the director of professional services**

The Act provides that a physician who orders preventive confinement must notify the institution's director of professional services or, if not, the executive director.

Some institutions have drawn up a procedure for notifying the director of professional services, and have provided an internal form for that purpose. The physician uses the form to give reasons for the decision and indicate the time at which confinement began, and also notes that the person has been informed of the decision. However, although a number of institutions have forms such as these, the Québec Ombudsman did not always find them in the users' records. It is impossible to say whether or not the notification required by the Act was actually given in these cases.

The Québec Ombudsman also found that the director of professional services is sometimes notified by a coordinator, patient navigator or head nurse. And yet, the Act is explicit: notification must be given by a physician.

In other institutions there is no procedure, no form and no register. In these cases it is often impossible to trace the notification to the director of professional services.

It is extremely important that the director of professional services be notified. Not only is notification required to satisfy administrative requirements, but it also ensures that the institution's management, and ultimately its board of directors, is aware that a person has been deprived of his or her freedom, in exceptional circumstances, following a decision by a physician, and that the person has been confined on preventive grounds against his or her will. Once it knows this, the institution is formally aware that it must fulfill a number of obligations towards the person in question.

3.3.2 Problems relating to temporary confinement

- Failure to obtain consent for the psychiatric evaluation

Temporary confinement may only be applied if it is ordered by a court. Its purpose is to allow a physician to perform a psychiatric evaluation of the person in question, even though he or she has refused to be evaluated.

The Civil Code of Québec states that every person is inviolable and may not be made to undergo care or evaluation without his or her consent. As for any other medical examination, the physician must obtain consent for the psychiatric evaluation required for the confinement process.

A legal representative or mandatory assigned by the court cannot consent to the evaluation if the person himself or herself objects.

Accordingly, unless expressly stated in the Act, or unless ordered to do so by a court, a physician cannot perform a psychiatric evaluation without first obtaining consent from the person or from the legal representative if the person is unable to give consent. This rule is clearly set out in the *Practical Guide to Mental Health Rights* published by the Ministère de la Santé et des Services sociaux:

> "Preventive confinement does not permit the institution to submit the person to a psychiatric assessment against his or her will. If the person does not consent to the assessment or is opposed to it, the institution must obtain authorization for the assessment from the Court of Québec within the deadline set out in the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others* (P-38.001)."[24]

In the cases brought to its attention, the Québec Ombudsman found that some people whose mental state had been assessed as presenting a danger to themselves or to others were presumed to be incapable of consenting to the psychiatric examination solely on that basis. It intervened with the institutions in question, asking them to add a requirement to their internal policy, if they had one, to ensure that the person's capacity to consent is evaluated and consent is obtained before a psychiatric evaluation takes place.

The Québec Ombudsman points out that the obligation to evaluate a person's capacity to give consent is maintained even when the person is under protective supervision. It is imperative for the physician not to rely solely on the fact that the person has been declared incapable of exercising his or her rights and administering his or her own affairs. Capacity is assessed on the basis of the person's ability to make decisions at the time the psychiatric evaluation is needed[25].

Similarly, the Québec Ombudsman considers that cases in which the person consents to a psychiatric evaluation should not be sent to court for a temporary confinement order. However, some institutions, for a variety of reasons, systematically file motions with the court, without checking first to see if the person will give consent. Consent should always be sought by the physician; it is his or her responsibility to do so. Systematic recourse to the court may unduly increase the length of time for which a person is deprived of his or her freedom, and will also force that person to pay lawyers' fees.

3.3.3 Problems relating to institutional confinement

Institutional confinement is ordered by a court, which also sets the timeframe.

- **Institutional failure to comply with the timeframe set by the court**

A physician who thinks it is necessary to extend a period of institutional confinement set by the court at 21 days or less must perform a new psychiatric evaluation at the end of that period. In some cases, however, the Québec Ombudsman found that the evaluation was

24. GOUVERNEMENT DU QUÉBEC, *Practical Guide to Mental Health Rights: Answers to Questions by Family and Friends of Individuals with Mental Health Problems*, 2009, p. 39.

25. ÉCOLE DU BARREAU DU QUÉBEC, *Personnes, famille et successions*, Collection de droit 2008-2009, vol. 3, Éditions Yvon Blais, 2009, p. 63.

carried out after the period had elapsed. As a result, the people concerned were confined against their will after the period set by the court.

If a period of institutional care extends beyond 21 days, the Act provides for periodic examinations to ascertain whether continued confinement is necessary. The first report must be produced 21 days after the date of the court's decision to place the person in confinement, and every three months thereafter. The Québec Ombudsman found that some institutions did not fulfill these obligations, meaning that in some cases users were confined against their will.

3.3.4 "Remote confinement", a measure not stated by law

In examining the users' records, the Québec Ombudsman found that some people under confinement had been permitted to leave the institution for a given period of time. Although the notion of "remote confinement" does not exist in the Act, it is nevertheless used by some institutions to allow people to leave the premises for a period of several hours or several days, even though their mental state is considered to present a danger to themselves or to others.

At the parliamentary standing committee that examined the original draft bill in 1997, the Minister of Health and Social Services said:

> "[…] after considering the situation, we accept the argument to the effect that people are either dangerous or not dangerous. If dangerous, they are confined to an institution. If not, they are released[26]." (Free translation from the French)

Today, the Québec Ombudsman emphasizes the fact that institutional confinement can only be ordered if the court has good reason to believe that the person presents a danger to self or others, and that he or she must be confined in an institution. If this cannot be shown, the person must be released. The law does not allow for "remote confinement" or any other form of "provisional freedom" that would allow a person to be released on weekends or to leave the institution occasionally during the period of confinement. This is contrary to both the letter and the spirit of the law, and the institutions must cease this practice.

26. NATIONAL ASSEMBLY, *Journal des débats de la Commission des affaires sociales*, [Online], 1997, Québec, [http://www.assnat.qc.ca/fr/travaux-parlementaires/commissions/cas-35-2/journal-debats/CAS-971128.html] (September 23, 2010).

4 Recommendations

The structure governing the implementation of the legislative rules concerning confinement needs to be improved. Although several different actors are involved at some time or another in the confinement process, the legislator has entrusted the Minister of Health and Social Services with the responsibility of overseeing the application of the Act respecting the protection of persons whose mental state presents a danger to themselves or to others.

Accordingly, the Québec Ombudsman makes the following recommendations with a view to ensuring that the measures are applied consistently.

RECOMMENDATION 1 - AMENDMENTS TO THE ACT RESPECTING HEALTH SERVICES AND SOCIAL SERVICES AND ITS IMPLEMENTING REGULATION

Whereas freedom is a fundamental right and violations of that right are not permitted without justification;

Whereas the Minister of Health and Social Services is responsible for implementing the Act respecting health services and social services and the Act respecting the protection of persons whose mental state presents a danger to themselves or to others;

Whereas the board of directors of an institution is required to ensure that users' rights are upheld in the facilities under its authority;

Whereas there is currently no requirement for the boards of directors of the health and social services institutions mentioned in section 6 of the Act respecting the protection of persons whose mental state presents a danger to themselves or to others to adopt a by-law concerning the confinement of persons against their will in its facilities;

Whereas all measures involving confinement against the person's will, regardless of whether it is preventive, temporary or provisional in nature, must be entered systematically in the user's record, with reasons, due to their exceptional nature and the fact that they directly violate the person's freedom;

The Québec Ombudsman recommends:

- **That the Act respecting health services and social services should be amended in order to ensure:**

  That the Ministère de la Santé et des Services sociaux is required to issue ministerial orientations concerning the confinement process;

That every institution covered by section 6 of the Act respecting the protection of persons whose mental state presents a danger to themselves or to others should be required to adopt a by-law concerning the implementation and control of confinement against the person's will in their facilities;

That every institution covered by section 6 of the Act respecting the protection of persons whose mental state presents a danger to themselves or to others should be required to inform users of this by-law and perform a yearly assessment of its implementation;

That the Act stipulates that, where such a measure is applied to a person, it should be described in detail in the person's record, along with the facts and reasons justifying the decision, the specific period for which the measure was applied, the behaviour that led to the introduction or maintenance of the measure, the psychiatric assessment reports and the procedures used by the institution, including any judgments made as a result.

RECOMMENDATION 2 - MORE SPECIFIC ORIENTATIONS FROM THE MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX

Whereas the Minister of Health and Social Services is responsible for implementing the Act respecting health services and social services and the Act respecting the protection of persons whose mental state presents a danger to themselves or to others;

Whereas there is a need for ministerial orientations to direct the implementation of preventive, temporary and institutional confinement;

Whereas it is necessary for all stakeholders to work closely together and be given common training on the implementation of confinement;

Whereas it is important to have reliable data on confinement;

Whereas guidelines must be issued to structure the notion of danger;

Whereas the director of professional services or, if no such director exists, the executive director of the institution, must be notified immediately when a person is placed in preventive confinement;

Whereas users or their representatives must be given proper information on confinement;

Whereas the health and social services institutions must respect the users' right to confidentiality;

Whereas the right of users or their representatives to consent to a psychiatric evaluation must be respected;

Whereas the remote confinements currently authorized by the institutions are contrary to law;

Whereas a new Action Plan is required to ensure that the ministerial orientations are implemented;

The Québec Ombudsman recommends that the Ministère de la Santé et des Services sociaux should:

- **Issue ministerial orientations to structure the confinement of individuals, which address the implementation problems mentioned in this report and make the following provisions among others:**

  With regard to the notion of danger:

  - **Guidelines explaining the notion of danger, and tools that can be used to assess danger;**

  With regard to accountability:

  - **A requirement for boards of directors to report annually, in their annual reports, on the implementation of confinement;**
  - **The role played by the health and social services agencies in implementing crisis intervention units and compiling the data collected by those units;**

  With regard to the various stakeholders involved in implementing the Act:

  - **Guidelines setting out the role of the legal representative and the requirement for stakeholders to consult the register maintained by the Public Curator, which identifies protective supervision, protection mandates and tutorships for minors;**
  - **Guidelines concerning the collaborative relationships to be established between peace officers, crisis intervention units and institutions, and clarifying the exact time at which a person is taken in charge by an institution;**

  With regard to the different types of confinement:

  - **The need to obtain the user's consent before performing a psychiatric evaluation;**

- **In the case of preventive confinement, the exact time at which confinement begins, so as to comply with the 72-hour time limit;**
- **In the case of preventive confinement, the process for notifying the director of professional services;**
- **The notification to be given to users or their representatives at the end of the confinement;**
- **A provision to prohibit "remote confinement".**

With regard to health and social services network personnel:

- **Guidelines for health and social services network personnel regarding respect for the right to personal freedom and freedom of movement for all users, including those frequenting people in confinement;**
- **A reminder of the right to information and the right to confidentiality;**
- **Instructions concerning the keeping of notes in the user's record.**

- **Introduce province-wide training for stakeholders in the health and social services network and those under the authority of the Ministère de la Sécurité publique and the Ministère de la Justice.**
- **Provide a method of collating and analyzing data on the implementation of the Act, and of adapting the care and services offered to the general public.**
- **Lastly, provide a Action Plan to ensure the implementation of the ministerial orientations.**

That the Ministère de la Santé et des Services sociaux should report to the Québec Ombudsman, with a Action Plan and a timeframe for implementation of the chosen measures, by March 31, 2012.

RECOMMENDATION 3 - AMENDMENTS TO THE ACT RESPECTING THE PROTECTION OF PERSONS WHOSE MENTAL STATE PRESENTS A DANGER TO THEMSELVES OR TO OTHERS

Whereas P-38.001 has a significant impact on the fundamental rights of individuals, and whereas a large number of stakeholders are involved in the process;

Whereas there are problems with the application of the Act;

The Québec Ombudsman recommends that the Minister of Health and Social Services should ensure:

- **That the Act respecting the protection of persons whose mental state presents a danger to themselves or to others is amended to ensure that the Minister of Health and Social Services is required to produce a public report, every five years, on the implementation of P-38.001 and, where necessary, to recommend amendments to the Act.**

The Québec Ombudsman asks the Ministère de la Santé et des Services sociaux to make known its intentions regarding these recommendations by March 31, 2011.

CONCLUSION

In Québec, there are very few civil laws that allow for a person to be deprived of his or her freedom. This fundamental right is guaranteed by the charters of rights and freedoms. However, P.38-001 introduces a limitation that is designed to protect individuals and the people around them.

The Québec Ombudsman therefore considers that appropriate measures are urgently required to prevent and correct the violations of P-38.001 described in this report. It is vital that the Act be enforced more rigorously.

The Québec Ombudsman believes measures should be introduced for institutions, physicians and professionals, to help them understand the scope of the Act, and to help them comply with it. Accordingly, the Ministère de la Santé et des Services sociaux should publish a set of orientations as quickly as possible. The institutions' accountability towards individuals under confinement needs to be strengthened in the Act respecting health services and social services. Boards of directors should be in a position to assess the quality of the care and services provided, and to ensure that the rights of users under confinement are respected. The Québec Ombudsman also considers that P-38.001 should be subject to a statutory review, so that ongoing attention is paid to any problems with its application. These various measures should provide greater assurance that the rights of all citizens are duly respected.

SCHEDULES

SCHEDULE 1

Annual Report 2009-2010, p. 105 and 106

RECOMMENDATIONS

WHEREAS the Act respecting the protection of persons whose mental state presents a danger to themselves or to others applies to exceptional situations;

WHEREAS there is a gap between the rights granted by law and respect for these rights in practice;

The Québec Ombudsman recommends that the Ministère de la Santé et des Services sociaux :

> formulate guidelines to direct and standardize the application of the legal framework governing all types of forced confinement;
>
> that it provide practitioners and workers with a standardized form to avoid the abusive interpretation of the rule of law and ensure it is able to monitor practices;
>
> that it require institutions to report on their practices, including the annual number of confinements, the reasons for them, and their duration;
>
> that it inform the Québec Ombudsman by December 31, 2010, of how it intends to implement these recommendations.

COMMENTS FROM THE MINISTÈRE DE LA SANTÉ ET DES SERVICES SOCIAUX

"The Direction de la santé mentale has just completed a report on the application of the Act respecting the protection of persons whose mental state presents a danger to themselves. The report reaches the same conclusions as the Québec Ombudsman and presents similar recommendations, so the MSSS will pay close attention to the response it gives to the Ombudsman's recommendations in this regard."

SCHEDULE 2

R.S.Q., chapter P-38.001

An Act respecting the protection of persons whose mental state presents a danger to themselves or to others

PRELIMINARY PROVISION

1. The provisions of this Act complement the provisions of the Civil Code concerning the confinement in a health and social services institution of persons whose mental state presents a danger to themselves or to others, and the provisions concerning the psychiatric assessment carried out to determine the necessity for such confinement.
1997, c. 75, s. 1.

CHAPTER I
PSYCHIATRIC EXAMINATION

2. The psychiatric examination to which a person is required to submit by law or by a court decision must be carried out by a psychiatrist. However, if it is not possible to obtain the services of a psychiatrist in due time, the examination may be carried out by any other physician.

The person who carries out the examination may not be the spouse, a close relative or relative by marriage or a civil union or the representative of the person undergoing the examination or of the person who requested the examination.
1997, c. 75, s. 2; 2002, c. 6, s. 151.

3. The report made following a psychiatric examination must be signed by the examining physician. He must, in particular, state in the report

(1) that he himself has examined the person;
(2) the date of the examination;
(3) his diagnosis, even if only provisional, concerning the mental state of the person;
(4) in addition to what is provided in article 29 of the Civil Code, his opinion as to the gravity and probable consequences of the person's mental state;
(5) the reasons and facts upon which his opinion and diagnosis are based and, among the facts mentioned, those which he himself has observed and those which have been communicated to him by others.
1997, c. 75, s. 3.

4. Where an institution has been required to administer a psychiatric examination, it is incumbent upon the director of professional services or, where there is no such director, upon the executive director of the institution to transmit the physician's report to the court that ordered the examination.
1997, c. 75, s. 4.

5. The disclosure of the report by the institution is governed by the provisions relating to access to the person's record contained in the legislation respecting health services and social services, and does not require the authorization of the court under article 29 of the Civil Code.
1997, c. 75, s. 5.

CHAPTER II
CONFINEMENT

DIVISION I
PREVENTIVE CONFINEMENT AND TEMPORARY CONFINEMENT

6. Only an institution operating a local community service centre equipped with the necessary facilities or a hospital centre may be required to place a person under preventive confinement or temporary confinement for psychiatric examination.
1997, c. 75, s. 6.

7. A physician practising in such an institution may, notwithstanding the absence of consent, place a person under preventive confinement for not more than 72 hours in a facility maintained by the institution, without the authorization of the court and prior to psychiatric examination, if he is of the opinion that the mental state of the person presents a grave and immediate danger to himself or to others.

The physician who places the person under confinement must immediately inform the director of professional services or, where there is no such director, the executive director of the institution.

On the expiry of the 72 hour period, the person must be released, unless a court has ordered an extension of the confinement for psychiatric assessment. However, if the seventy-two hour period ends on a Saturday or on a non-juridical day, if no judge having jurisdiction in the matter is able to act and if termination of confinement presents a danger, the confinement may be extended until the expiry of the next juridical day.
1997, c. 75, s. 7.

8. A peace officer may, without the authorization of the court, take a person against his will to an institution described in section 6

(1) at the request of a member of a crisis intervention unit who considers that the mental state of the person presents a grave and immediate danger to himself or to others;
(2) at the request of the person having parental authority, the tutor to a minor or any of the persons mentioned in article 15 of the Civil Code, where no member of a crisis intervention unit is available in due time to assess the situation. In such a case, the peace officer must have good reason to believe that the mental state of the person concerned presents a grave and immediate danger to himself or to others.

Subject to the provisions of section 23 and to more pressing medical emergencies, the institution to which the person is brought must take charge of the person upon arrival and have the person examined by a physician, who may place the person under preventive confinement in accordance with section 7.

In this section, "crisis intervention unit" means a unit designed to take action in crisis situations pursuant to the mental health service organization plans provided for by the legislation respecting health services and social services.
1997, c. 75, s. 8.

DIVISION II
CONFINEMENT AUTHORIZED BY A COURT PURSUANT TO ARTICLE 30 OF THE CIVIL CODE

9. Only an institution operating a hospital centre, rehabilitation centre, residential and long-term care centre or reception centre that is equipped with the necessary facilities for receiving and treating mentally ill persons, may be required to place a person under confinement following a court judgment pursuant to article 30 of the Civil Code.
1997, c. 75, s. 9.

10. Where the court has set a duration of confinement exceeding 21 days, the person under confinement must be examined periodically to ascertain whether continued confinement is necessary, and reports of such examinations must be produced at the following times:

(1) 21 days from the date of the decision made by the court pursuant to article 30 of the Civil Code;
(2) every three months thereafter.

The psychiatric examination reports shall be kept by the institution as part of the person's record.

1997, c. 75, s. 10.

11. A person under confinement may, at his request, be transferred to another institution, if the organization and resources of that institution permit of such a transfer. Subject to the same condition, the attending physician may transfer the person to another institution

which he considers better able to meet the person's needs. In the latter case, the physician must obtain the consent of the person concerned, unless the transfer is necessary to ensure the person's safety or that of other persons. The physician's decision in that respect must contain reasons and be filed in the person's record.

No transfer may take place unless the attending physician attests, by way of a certificate containing reasons, that in his opinion such a measure does not present any serious and immediate risks for the person or for others.

Following a transfer, confinement continues in the new institution and a copy of the record of the person under confinement shall be forwarded to that institution.
1997, c. 75, s. 11.

12. Confinement ends, with no further formality,

(1) as soon as a certificate attesting that confinement is no longer justified has been issued by the attending physician;
(2) on the expiry of a time limit prescribed by section 10, if no psychiatric examination report has been produced by that time;
(3) on the expiry of the time fixed in the judgment ordering confinement;
(4) upon a decision to that effect by the Administrative Tribunal of Québec or a court of justice.
1997, c. 75, s. 12.

13. Where a person ceases to be under confinement but must be detained or lodged, otherwise than in accordance with this Act, the institution must take the necessary steps to entrust the person to the care of a person in authority at an appropriate detention centre or lodging facility.
1997, c. 75, s. 13.

CHAPTER III
RIGHTS AND REMEDIES

DIVISION I
INFORMATION

14. A peace officer acting under section 8 or any person who, in accordance with a court order, takes a person to an institution for confinement and psychiatric assessment must inform him of that fact, of the place where he is being taken and of his right to contact his close relatives and an advocate immediately.

The peace officer or person remains responsible for that person until he is taken in charge by the institution.

1997, c. 75, s. 14.

15. As soon as the person has been taken in charge by the institution, or as soon as he seems able to understand the information, the institution must inform him of the place where he is being confined, of the reasons for the confinement and of his right to contact his close relatives and an advocate immediately.
1997, c. 75, s. 15.

16. The institution placing a person under confinement pursuant to a judgment referred to in section 9 must, at the time the person is placed under confinement and after each examination report required by section 10, give the person a document in conformity with the schedule.

If the person under confinement is unable to understand the information contained in the document, the institution shall transmit a copy of it to the person qualified to give consent to the confinement. Should there be no such person, the institution shall make reasonable efforts to transmit the information to a person showing a special interest in the person under confinement.
1997, c. 75, s. 16.

17. A person under confinement must be allowed to communicate freely and confidentially with the persons of his choice, unless the attending physician decides, in the interest of the person under confinement, to prohibit or restrict certain communications.

A prohibition or restriction as to communication can only be temporary. It must be set out in writing and contain reasons, and it must be given to the person under confinement and noted in his record.

No restriction may, however, be imposed on communications between the person under confinement and his representative, the person qualified to give consent to the care required by his state of health, an advocate, the Public Curator or the Administrative Tribunal of Québec.
1997, c. 75, s. 17.

18. The person under confinement must be immediately informed by the institution of the end of the confinement.
1997, c. 75, s. 18.

19. The institution must, in the case of a minor, give the person having parental authority or, if there is no such person, the tutor, or in the case of a person of full age who is represented, the mandatary, tutor or curator, notice of

(1) the decision of a physician to place the person under preventive confinement pursuant to section 7;
(2) the necessity for continued confinement, after each of the examinations required by section 10;
(3) any application presented to the Administrative Tribunal of Québec under section 21 of which the institution has been informed;
(4) the end of the confinement.

Notice must be given in writing, except a notice under subparagraph 1 of the first paragraph.
1997, c. 75, s. 19.

DIVISION II
ADMINISTRATIVE TRIBUNAL OF QUÉBEC

20. The institution in which a person is under confinement must inform the Administrative Tribunal of Québec, without delay, of the conclusions of each of the psychiatric examination reports required by section 10, and of the end of the confinement.
1997, c. 75, s. 20.

21. Any person who is dissatisfied with the continuance of confinement or with a decision made under this Act, with regard to himself or to a person that he represents or in whom he shows a special interest, may contest the continuance of confinement or the decision before the Administrative Tribunal of Québec. A letter to the Tribunal from the person under confinement setting out the subject and grounds of the contestation constitutes a motion within the meaning of section 110 of the Act respecting administrative justice (chapter J-3).

The Tribunal may also act on its own initiative to review the continuance of confinement or a decision made under this Act with regard to any person under confinement.

A proceeding before the Tribunal, or the intervention of the Tribunal on its own initiative, does not suspend confinement or the execution of the decision, unless a member of the Tribunal decides otherwise.
1997, c. 75, s. 21.

22. An institution must, when so required by the Tribunal, forward to it the complete record of a person under confinement.
1997, c. 75, s. 22.

CHAPTER IV
MISCELLANEOUS PROVISIONS

23. Any institution which, owing to its organization or resources, is unable to provide for a psychiatric examination or place a person under confinement, must immediately direct any

person for whom such services are required to another institution equipped with the necessary facilities.
1997, c. 75, s. 23.

24. The Minister of Health and Social Services is responsible for the administration of this Act.
1997, c. 75, s. 24.

CHAPTER V
AMENDING AND FINAL PROVISIONS

25. *(Omitted).*
1997, c. 75, s. 25.

26. In any Act, regulation, order in council, order, contract, agreement or other document, any reference to the Mental Patients Protection Act (chapter P-41) or to a provision thereof is deemed to be a reference to this Act or to the equivalent provision of this Act.
1997, c. 75, s. 26.

27. Until 1 April 1998, a reference to the Administrative Tribunal of Québec in this Act shall be read as a reference to the Commission des affaires sociales.
1997, c. 75, s. 27.

28. *(Omitted).*
1997, c. 75, s. 28.

29. *(Omitted).*
1997, c. 75, s. 29.

30. *(Omitted).*
1997, c. 75, s. 30.

31. *(Omitted).*
1997, c. 75, s. 31.

32. *(Omitted).*
1997, c. 75, s. 32.

33. *(Omitted).*
1997, c. 75, s. 33.

34. *(Amendment integrated into c. C-25, a. 26).*
1997, c. 75, s. 34.

35. *(Amendment integrated into c. C-25, a. 36.2).*
1997, c. 75, s. 35.

36. *(Amendment integrated into c. C-25, heading of Sec. II of Chap. II of Title II of Book V).*
1997, c. 75, s. 36.

37. *(Amendment integrated into c. C-25, a. 778).*
1997, c. 75, s. 37.

38. *(Amendment integrated into c. C-25, a. 779).*
1997, c. 75, s. 38.

39. *(Amendment integrated into c. C-25, a. 780).*
1997, c. 75, s. 39.

40. *(Amendment integrated into c. C-25, a. 781).*
1997, c. 75, s. 40.

41. *(Amendment integrated into c. C-25, a. 783).*
1997, c. 75, s. 41.

42. *(Amendment integrated into c. C-25.1, a. 214).*
1997, c. 75, s. 42.

43. Until 1 April 1998, section 25.1 of the Act respecting the Commission des affaires sociales (chapter C-34) is amended by replacing the words "is confidential" by the words "and the records forwarded to it pursuant to article 782 of the Code of Civil Procedure (chapter C-25) or pursuant to the Act respecting the protection of persons whose mental state presents a danger to themselves or to others (Statutes of Québec, 1997, chapter 75) are confidential".
1997, c. 75, s. 43.

44. *(Amendment integrated into c. C-81, s. 14).*
1997, c. 75, s. 44.

45. *(Amendment integrated into c. M-19.2, s. 10.2).*
1997, c. 75, s. 45.

46. *(Amendment integrated into c. N-2, s. 120).*
1997, c. 75, s. 46.

47. *(Amendment integrated into c. P-29, s. 1).*
1997, c. 75, s. 47.

48. *(Amendment integrated into c. R-0.2, s. 37).*
1997, c. 75, s. 48.

49. *(Amendment integrated into c. S-4.2, s. 118.1).*
1997, c. 75, s. 49.

50. *(Amendment integrated into c. S-4.2, s. 431).*
1997, c. 75, s. 50.

51. *(Amendment integrated into c. S-5, s. 1).*
1997, c. 75, s. 51.

52. *(Amendment integrated into c. S-5, s. 2).*
1997, c. 75, s. 52.

53. *(Amendment integrated into c. S-5, s. 86).*
1997, c. 75, s. 53.

54. *(Amendment integrated into c. S-5, s. 150.1).*
1997, c. 75, s. 54.

55. *(Amendment integrated into c. T-11.01, s. 3).*
1997, c. 75, s. 55.

56. *(Amendment integrated into c. J-3, s. 18).*
1997, c. 75, s. 56.

57. *(Amendment integrated into c. J-3, ss. 22-23).*
1997, c. 75, s. 57.

58. *(Amendment integrated into c. J-3, s. 103).*
1997, c. 75, s. 58.

59. *(Amendment integrated into c. J-3, s. 119).*
1997, c. 75, s. 59.

60. *(Amendment integrated into c. J-3, Sch. I).*
1997, c. 75, s. 60.

61. *(Omitted).*
1997, c. 75, s. 61.

SCHEDULE

INFORMATION DOCUMENT ON THE RIGHTS OF, AND REMEDIES AVAILABLE TO, A PERSON UNDER CONFINEMENT

(*Act respecting the protection of persons whose mental state presents a danger to themselves or to others, s. 16*)

.....

(*name of person under confinement*)

You have been placed under confinement pursuant to a court decision based on two psychiatric examination reports. You have legal rights:

(1) You have the right to be transferred to another institution, if your attending physician is of the opinion that such a transfer presents no serious and immediate risks for you or for others, and if the organization and resources of that institution allow it to receive you.

(2) You have the right to require that you be released from confinement without delay if a psychiatric examination report, confirming the necessity of continuing your confinement, has not been produced within 21 days after the court decision and at least once every three months thereafter.

In your case, the court decision was made on ..... and psychiatric examination reports were produced on the following dates:

.....

(*date of each psychiatric examination report produced*)

(3) You are required to submit to the psychiatric examinations referred to in paragraph 2. However, you may categorically refuse any other examination, care or treatment. If you do, your decision must be respected by the institution and by your physician, except if the examination or treatment was ordered by a judge, or in the case of emergency care or personal hygiene.

(4) Even though you are under confinement, you may communicate confidentially, orally or in writing, with any person of your choice. However, your attending physician may decide, in your own interest, to prohibit you from communicating with certain persons or to impose restrictions on your communications. In such a case, the prohibition or restriction can only

be temporary, and the physician's decision must be given to you in writing and set out the reasons on which it is based.

Your physician may not, however, prevent you from communicating with your representative, the person qualified to give consent to your care, an advocate, the Public Curator or the Administrative Tribunal of Québec.

(5) If you disagree with a decision made to continue your confinement, or with any other decision made in your respect, you may refer your case to the Administrative Tribunal of Québec.

.....

(*address*)

....

(telephone number) *(fax number)*

This is how you proceed:

(a) you yourself may write to the Tribunal or ask a family member or your tutor, curator or mandatary to write on your behalf;

(b) you must explain in your letter, to the best of your ability, why you disagree with the continuance of confinement or the decision made in your respect;

(c) your letter will constitute your application to the Tribunal, and must be sent to the above address within 60 days of the decision with which you disagree, but if you miss this deadline, the Tribunal may still decide to hear you if you give reasons to explain your delay;

(d) the Tribunal may order your release from confinement or overturn the decision made concerning you, but must meet with you before reaching its decision;

(e) you have the right to be represented by a lawyer at the meeting with the Tribunal, and to produce witnesses.

(6) You must be released from confinement

(a) as soon as a certificate concluding that confinement is no longer justified has been issued by your physician;

(b) if a psychiatric examination report is not produced within the time limits set out in paragraph 2, upon the expiry of those time limits;

(c) on the expiry of the period of confinement fixed in the judgment;

(d) upon a decision to that effect by the Administrative Tribunal of Québec; or

(e) upon an order to that effect from a court of justice. The institution where you are being kept under confinement must inform you immediately of your release from confinement.

1997, c. 75, Schedule.

REPEAL SCHEDULE

In accordance with section 9 of the Act respecting the consolidation of the statutes and regulations (chapter R-3), chapter 75 of the statutes of 1997, in force on 1 April 1999, is repealed, except sections 28 to 33 and 61, effective from the coming into force of chapter P-38.001 of the Revised Statutes.

Civil Code of Québec

PRELIMINARY PROVISION

The Civil Code of Québec, in harmony with the Charter of human rights and freedoms (chapter C-12) and the general principles of law, governs persons, relations between persons, and property.

The Civil Code comprises a body of rules which, in all matters within the letter, spirit or object of its provisions, lays down the *jus commune*, expressly or by implication. In these matters, the Code is the foundation of all other laws, although other laws may complement the Code or make exceptions to it.

BOOK ONE
PERSONS

TITLE ONE
ENJOYMENT AND EXERCISE OF CIVIL RIGHTS

1. Every human being possesses juridical personality and has the full enjoyment of civil rights.
1991, c. 64, a. 1.

2. Every person has a patrimony.

The patrimony may be divided or appropriated to a purpose, but only to the extent provided by law.
1991, c. 64, a. 2.

3. Every person is the holder of personality rights, such as the right to life, the right to the inviolability and integrity of his person, and the right to the respect of his name, reputation and privacy.

These rights are inalienable.
1991, c. 64, a. 3.

4. Every person is fully able to exercise his civil rights.

In certain cases, the law provides for representation or assistance.
1991, c. 64, a. 4.

5. Every person exercises his civil rights under the name assigned to him and stated in his act of birth.
1991, c. 64, a. 5.

6. Every person is bound to exercise his civil rights in good faith.
1991, c. 64, a. 6.

7. No right may be exercised with the intent of injuring another or in an excessive and unreasonable manner which is contrary to the requirements of good faith.
1991, c. 64, a. 7.

8. No person may renounce the exercise of his civil rights, except to the extent consistent with public order.
1991, c. 64, a. 8.

9. In the exercise of civil rights, derogations may be made from those rules of this Code which supplement intention, but not from those of public order.
1991, c. 64, a. 9.

TITLE TWO
CERTAIN PERSONALITY RIGHTS

CHAPTER I
INTEGRITY OF THE PERSON

10. Every person is inviolable and is entitled to the integrity of his person.

Except in cases provided for by law, no one may interfere with his person without his free and enlightened consent.
1991, c. 64, a. 10.

DIVISION I
CARE

11. No person may be made to undergo care of any nature, whether for examination, specimen taking, removal of tissue, treatment or any other act, except with his consent.

If the person concerned is incapable of giving or refusing his consent to care, a person authorized by law or by mandate given in anticipation of his incapacity may do so in his place.
1991, c. 64, a. 11.

12. A person who gives his consent to or refuses care for another person is bound to act in the sole interest of that person, taking into account, as far as possible, any wishes the latter may have expressed.

If he gives his consent, he shall ensure that the care is beneficial notwithstanding the gravity and permanence of certain of its effects, that it is advisable in the circumstances and that the risks incurred are not disproportionate to the anticipated benefit.
1991, c. 64, a. 12.

13. Consent to medical care is not required in case of emergency if the life of the person is in danger or his integrity is threatened and his consent cannot be obtained in due time.

It is required, however, where the care is unusual or has become useless or where its consequences could be intolerable for the person.
1991, c. 64, a. 13.

14. Consent to care required by the state of health of a minor is given by the person having parental authority or by his tutor.

A minor 14 years of age or over, however, may give his consent alone to such care. If his state requires that he remain in a health or social services establishment for over 12 hours, the person having parental authority or tutor shall be informed of that fact.
1991, c. 64, a. 14.

15. Where it is ascertained that a person of full age is incapable of giving consent to care required by his or her state of health, consent is given by his or her mandatary, tutor or curator. If the person of full age is not so represented, consent is given by his or her married, civil union or *de facto* spouse or, if the person has no spouse or his or her spouse is prevented from giving consent, it is given by a close relative or a person who shows a special interest in the person of full age.
1991, c. 64, a. 15; 2002, c. 6, s. 1.

16. The authorization of the court is necessary where the person who may give consent to care required by the state of health of a minor or a person of full age who is incapable of giving his consent is prevented from doing so or, without justification, refuses to do so; it is also required where a person of full age who is incapable of giving his consent categorically refuses to receive care, except in the case of hygienic care or emergency.

The authorization of the court is necessary, furthermore, to cause a minor 14 years of age or over to undergo care he refuses, except in the case of emergency if his life is in danger or his integrity threatened, in which case the consent of the person having parental authority or the tutor is sufficient.
1991, c. 64, a. 16.

17. A minor 14 years of age or over may give his consent alone to care not required by the state of his health; however, the consent of the person having parental authority or of the tutor is required if the care entails a serious risk for the health of the minor and may cause him grave and permanent effects.
1991, c. 64, a. 17.

18. Where the person is under 14 years of age or is incapable of giving his consent, consent to care not required by his state of health is given by the person having parental authority or the mandatary, tutor or curator; the authorization of the court is also necessary if the care entails a serious risk for health or if it might cause grave and permanent effects.
1991, c. 64, a. 18.

19. A person of full age who is capable of giving his consent may alienate a part of his body *inter vivos*, provided the risk incurred is not disproportionate to the benefit that may reasonably be anticipated.

A minor or a person of full age who is incapable of giving his consent may, with the consent of the person having parental authority, mandatary, tutor or curator and with the authorization of the court, alienate a part of his body only if that part is capable of regeneration and provided that no serious risk to his health results.
1991, c. 64, a. 19.

20. A person of full age who is capable of giving his consent may submit to an experiment provided that the risk incurred is not disproportionate to the benefit that can reasonably be anticipated.
1991, c. 64, a. 20.

21. A minor or a person of full age who is incapable of giving consent may not be submitted to an experiment if the experiment involves serious risk to his health or, where he understands the nature and consequences of the experiment, if he objects.

Moreover, a minor or a person of full age who is incapable of giving consent may be submitted to an experiment only if, where the person is the only subject of the experiment, it has the potential to produce benefit to the person's health or only if, in the case of an experiment on a group, it has the potential to produce results capable of conferring benefit to other persons in the same age category or having the same disease or handicap. Such an experiment must be part of a research project approved and monitored by an ethics committee. The competent ethics committees are formed by the Minister of Health and Social Services or designated by that Minister among existing research ethics committees; the composition and operating conditions of the committees are determined by the Minister and published in the *Gazette officielle du Québec*.

Consent to experimentation may be given, in the case of a minor, by the person having parental authority or the tutor and, in the case of a person of full age incapable of giving consent, by the mandatary, tutor or curator. Where a person of full age suddenly becomes incapable of consent and the experiment, insofar as it must be undertaken promptly after the appearance of the condition giving rise to it, does not permit, for lack of time, the designation of a legal representative, consent may be given by the person authorized to consent to any care the person requires; it is incumbent upon the competent ethics committee to determine, when examining the research project, whether the experiment meets that condition.

Care considered by the ethics committee to be innovative care required by the state of health of the person concerned does not constitute an experiment.
1991, c. 64, a. 21; 1992, c. 57, s. 716; 1998, c. 32, s. 1.

22. A part of the body, whether an organ, tissue or other substance, removed from a person as part of the care he receives may, with his consent or that of the person qualified to give consent for him, be used for purposes of research.
1991, c. 64, a. 22.

23. When the court is called upon to rule on an application for authorization with respect to care or the alienation of a body part, it obtains the opinions of experts, of the person having parental authority, of the mandatary, of the tutor or the curator and of the tutorship council; it may also obtain the opinion of any person who shows a special interest in the person concerned by the application.

The court is also bound to obtain the opinion of the person concerned unless that is impossible, and to respect his refusal unless the care is required by his state of health.
1991, c. 64, a. 23; 1998, c. 32, s. 2.

24. Consent to care not required by a person's state of health, to the alienation of a part of a person's body, or to an experiment shall be given in writing.

It may be withdrawn at any time, even verbally.
1991, c. 64, a. 24.

25. The alienation by a person of a part or product of his body shall be gratuitous; it may not be repeated if it involves a risk to his health.

An experiment may not give rise to any financial reward other than the payment of an indemnity as compensation for the loss and inconvenience suffered.
1991, c. 64, a. 25.

DIVISION II

CONFINEMENT IN AN INSTITUTION AND PSYCHIATRIC ASSESSMENT

26. No person may be confined in a health or social services institution for a psychiatric assessment or following a psychiatric assessment concluding that confinement is necessary without his consent or without authorization by law or the court.

Consent may be given by the person having parental authority or, in the case of a person of full age unable to express his wishes, by his mandatary, tutor or curator. Such consent may be given by the representative only if the person concerned does not object.

1991, c. 64, a. 26; 1997, c. 75, s. 29.

27. Where the court has serious reasons to believe that a person is a danger to himself or to others owing to his mental state, it may, on the application of a physician or an interested person and notwithstanding the absence of consent, order that he be confined temporarily in a health or social services institution for a psychiatric assessment. The court may also, where appropriate, authorize any other medical examination that is necessary in the circumstances. The application, if refused, may not be submitted again except where different facts are alleged.

If the danger is grave and immediate, the person may be placed under preventive confinement, without the authorization of the court, as provided for in the Act respecting the protection of persons whose mental state presents a danger to themselves or to others (chapter P-38.001).

1991, c. 64, a. 27; 1997, c. 75, s. 30.

28. Where the court orders that a person be placed under confinement for a psychiatric assessment, an examination must be carried out within 24 hours after the person is taken in charge by the institution or, if the person was already under preventive confinement, within 24 hours of the court order.

If the physician who carries out the examination concludes that confinement in an institution is necessary, a second psychiatric examination must be carried out by another physician within 96 hours after the person is taken in charge by the institution or, if the person was already under preventive confinement, within 48 hours of the court order.

If a physician reaches the conclusion that confinement is not necessary, the person must be released. If both physicians reach the conclusion that confinement is necessary, the person may be kept under confinement without his consent or the authorization of the court for no longer than 48 hours.

1991, c. 64, a. 28; 1997, c. 75, s. 31.

29. A psychiatric examination report must deal in particular with the necessity of confining the person in an institution if he is a danger to himself or to others owing to his mental state,

with the ability of the person who has undergone the examination to care for himself or to administer his property and, where applicable, with the advisability of instituting protective supervision of the person of full age.

The report must be filed with the court within seven days of the court order. It may not be disclosed, except to the parties, without the authorization of the court.
1991, c. 64, a. 29; 1997, c. 75, s. 32.

30. Confinement in an institution following a psychiatric assessment may only be authorized by the court if both psychiatric reports conclude that confinement is necessary.

Even if that is the case, the court may not authorize confinement unless the court itself has serious reasons to believe that the person is dangerous and that the person's confinement is necessary, whatever evidence may be otherwise presented to the court and even in the absence of any contrary medical opinion.
1991, c. 64, a. 30; 1997, c. 75, s. 33; 2002, c. 19, s. 1.

30.1. A judgment authorizing confinement must also set the duration of confinement.

However, the person under confinement must be released as soon as confinement is no longer justified, even if the set period of confinement has not elapsed.

Any confinement required beyond the duration set by the judgment must be authorized by the court, in accordance with the provisions of article 30.
2002, c. 19, s. 1.

31. Every person confined in and receiving care in a health or social services establishment shall be informed by the establishment of the program of care established for him and of any important change in the program or in his living conditions.

If the person is under 14 years of age or is incapable of giving his consent, the information is given to the person who is authorized to give consent to care on his behalf.
1991, c. 64, a. 31.

R.S.Q., chapter C-25

Code of Civil Procedure

SECTION II
CONFINEMENT IN AN INSTITUTION AND PSYCHIATRIC ASSESSMENT
778. An application to obtain that a person refusing to undergo a psychiatric assessment be submitted to such assessment, or that the person be confined against his will in an institution referred to in the Act respecting the protection of persons whose mental state presents a danger to themselves or to others (chapter P-38.001) is heard on the day it is presented, unless the court or the judge decides otherwise.
1965 (1st sess.), c. 80, a. 778; 1973, c. 38, s. 88; 1992, c. 57, s. 367; 1997, c. 75, s. 37.

779. The application may not be presented to the court or to the judge unless it has been served on the person refusing the assessment or confinement at least two days before presentation.

The application is also served on a reasonable person of the family of the person concerned or, where applicable, on the holder of parental authority, tutor, curator, mandatary, on the person having custody of the person concerned or on a person who shows a special interest in the person concerned; otherwise, it is served on the Public Curator.

By way of exception, the judge may exempt the applicant from serving the application on the person concerned if he considers that it would be harmful to the health or safety of the person or of others, or in case of emergency.
1965 (1st sess.), c. 80, a. 779; 1973, c. 38, s. 88; 1992, c. 57, s. 367; 1997, c. 75, s. 38; 2002, c. 7, s. 110.

780. The court or the judge is bound to question the person concerned by the application except if he cannot be found or has fled or if it would clearly be useless to require his testimony owing to his state of health; a further exception is made in the case of an application to obtain that a person be submitted to a psychiatric assessment, where it is proved that there is an urgent need or that requiring the testimony could be harmful to the health or safety of the person concerned or of another person.

The person concerned may be questioned by a judge of the district in which he is at the time, even if the application is made in another district. The examination is taken down in writing and communicated without delay to the court concerned.
1965 (1st sess.), c. 80, a. 780; 1973, c. 38, s. 88; 1992, c. 57, s. 367; 1997, c. 75, s. 39.

781. A judgment ordering the psychiatric assessment and confinement of a person may also order that the person concerned be entrusted, for psychiatric assessment or confinement, to an institution referred to in the Act respecting the protection of persons whose mental state presents a danger to themselves or to others (chapter P-38.001).

The judgment is notified to the persons on whom the application was served and may be executed by a peace officer.
1965 (1st sess.), c. 80, a. 781; 1973, c. 38, s. 88; 1992, c. 57, s. 367; 1997, c. 75, s. 40.

782. The clerk sends a copy of the judgment rendered and a copy of the file to the Administrative Tribunal of Québec without delay and free of charge.
1965 (1st sess.), c. 80, a. 782; 1973, c. 38, s. 88; 1992, c. 57, s. 367; 1997, c. 43, s. 179.