

February 8, 2017

Mr. Richard Merlini
Chair
Committee on Health and Social Services
Hôtel du Parlement
1045, rue des Parlementaires, bureau RC.24
Québec (Québec) G1A 1A4

Subject: Bill 130 – An Act to amend certain provisions regarding the clinical organization and management of health and social services institutions

Mr. Chair:

Within the framework of its mandate, the Québec Ombudsman reviews all bills and draft regulations introduced in the National Assembly or published in the *Gazette officielle du Québec*. When it deems necessary, it intervenes under section 27.3 of its constituting act, which empowers it to call the attention of the government or a chief executive officer of a public body to legislative, regulatory or administrative reforms it considers to be in the public interest.

I therefore examined Bill 130, *An Act to amend certain provisions regarding the clinical organization and management of health and social services institutions*, introduced by the Minister of Health and Social Services on December 9, 2016. Further to analyzing it, I am conveying my comments on the following two subjects:

- The complaint examination system
- The role of institutions in cases of confinement

1. The complaint examination system

The reorganization of the health and social services network on April 1, 2015, led to a change in the structure of complaint processing offices within integrated health and social services centres. Since then, in many institutions, advisers (or delegates) assist the service quality and complaints commissioner or the assistant commissioner in their functions.

Feeling that gathering information, compiling elements and analyzing complaints and reports are exclusive functions that cannot be assigned to anyone but the

complaints commissioner or the assistant complaints commissioner, on February 23, 2016, the Québec Ombudsman recommended to the Ministère de la Santé et des Services sociaux that the *Act respecting health services and social services* (the Act) be amended so that a new structure for the complaint examination procedure respect users' rights.

Current section 30 of the Act provides that the service quality and complaints commissioner report to the board of directors and that it, after obtaining the opinion of the commissioner, may appoint one or more assistant commissioners, who exercise the functions delegated by the commissioner and act under the commissioner's authority.

Section 11 of Bill 130 amends section 30 of the Act by adding the following: "A member of the institution's personnel may act under the authority of the local commissioner or the assistant local commissioner." As worded, the amendment to section 30 does not make it mandatory for advisers to be appointed by the board of directors and does not expressly ensure exclusivity of function.

Among other things, the Bill does not provide for the addition to section 31 of the Act of the function of "adviser" or of the "person who acts under the authority of the commissioner or assistant commissioner." This is why this section edicts that the board of directors must take steps to preserve at all times the independence of the commissioner or assistant commissioner in the exercise of their functions, and, to that end, must ensure that exercise of the functions provided for at section 33 is exclusive to them.

Also, although the amendments proposed by Bill 130 ensure that persons acting under the authority of a commissioner or an assistant commissioner must take an oath, that legal proceedings cannot be taken against them for an act or omission made in good faith in the exercise of their functions, and that they enjoy protection as to the confidentiality of the information obtained in the exercise of their functions, I see that their independence or the exclusivity of their functions is not secured.

Consequently, the Québec Ombudsman recommends:

R-1 That Bill 130 – *An Act to amend certain provisions regarding the clinical organization and management of health and social services institutions* provide for an amendment to section 31 of the *Act respecting health services and social services* so as to ensure the independence and exclusivity of the functions of persons who act under the authority of the commissioner or assistant commissioner.

2. The role of institutions in cases of confinement

The Québec Ombudsman notes that section 15 of the Bill provides for the insertion into the Act of section 118.2, which edicts in particular that any institution described in section 6 or 9 of the *Act respecting the protection of persons whose mental state presents a danger to themselves or to others* (hereinafter P-38.001) must adopt a procedure to regulate the confinement of persons in its facilities.

In short, this section introduces the obligation for the boards of directors of an institution to “regulate the confinement of persons in its facilities.” This procedure must be consistent with ministerial orientations¹ and must be made known to the institution's personnel and health professionals practising in the institution's facilities, as well as to the users concerned and their significant family members. This section also provides that the executive director of the institution must report on the implementation of the procedure to the board of directors at least once every three months.

In the Québec Ombudsman's opinion, this section addresses several of the major deficiencies observed in recent years regarding the difficulties of applying P-38.001. It also responds to one of the Québec Ombudsman's recommendations to the Minister of Health and Social Services in its report on the subject in February 2011.² In addition to ensuring that users' rights are upheld, these amendments would enable institutions to provide in their annual management reports a true picture of the application of P-38.001 in Québec according to the types of confinement and legal redress. By the same token, the Québec Ombudsman understands that the ministerial orientations must be made available quickly so that the procedure enshrined in the section can be implemented.

However, as section 15 of the Bill is currently worded, the word “institution” refers to either an integrated health and social services centre or an unamalgamated institution. Hence, it needs to be understood that the legislative amendment provides that a single procedure per institution must be adopted, which, clearly, will ensure uniform application of the procedure. However, the Québec Ombudsman feels that the reporting that must be carried out by the executive director at least once every three months and include a summary report in a separate section of the annual management report must be carried out not only by the institution, but also by each of the facilities that can implement confinement. Several facilities of the same institution may be authorized to

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1. Section 35 of Bill 130 provides for a harmonization amendment to paragraph 9 of the second paragraph of section 431 of the Act so that the minister also determines the orientations that the institutions must take into account when they adopt, among other things, the procedure contemplated in section 118.1 of the Act.
 2. Québec Ombudsman. *Problems with the application of the Act respecting the protection of persons whose mental state presents a danger to themselves or to others*, February 2011. [online: <https://protecteurducitoyen.qc.ca/en/investigations-and-recommendations/special-reports/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->]

implement confinement. Reporting by each facility and not only by the institution would make it possible to obtain more accurate data. Similarly, it would be relevant that the report presented by the executive director to the board of directors provide quantitative data not only about the number of confinements but about their duration as well.

Lastly, concerning the "summary report" which must figure in every institution's annual management report, it must not allow an approximation of the real quantitative data that has to be provided to the board of directors at least once every three months. For example, since the content of these summary reports may vary from institution to institution, the absence of quantitative data could make it difficult to conduct a comparative analysis of the practices within the facilities of the same institution or between institutions. It is therefore easy to understand the importance of at least preserving real quantitative data.

Consequently, the Québec Ombudsman recommends:

R-2 That section 15 of Bill 130 – *An Act to amend certain provisions regarding the clinical organization and management of health and social services institutions* be amended to provide that the information contained in the report that the executive director must produce also include the duration of the different instances of confinement.

R-3 That section 15 of Bill 130 – *An Act to amend certain provisions regarding the clinical organization and management of health and social services institutions* be amended to provide that the information contained in the report be broken down by facilities.

Yours respectfully,

Original signed

Claude Dussault
Acting Ombudsman

c.c.: Mr. Gaétan Barrette, Minister of Health and Social Services
Mr. Jean-Marc Fournier, Government House Leader
Mr. Pascal Bérubé, Official Opposition House Leader
Mr. François Bonnardel, Leader of the Second Opposition Group
Mr. Michel Fontaine, Deputy Minister of Health and Social Services
Ms. Louise Cameron, Secretary, Committee on Health and Social Services
Mr. Maxime Perreault, Secretary, Committee on Institutions