

BY EMAIL

December 20, 2019

Madam Danielle McCann
Minister of Health and Social Services
Édifice Catherine-De Longpré
1075, chemin Sainte-Foy, 15^e étage
Québec (Québec) G1S 2M1

Madam Sonia Lebel
Minister of Justice
Édifice Louis-Philippe-Pigeon
1200, route de l'Église, 9^e étage
Québec (Québec) G1V 4M1

Subject: **Bill 31 – An Act to amend mainly the Pharmacy Act for the purpose of facilitating access to certain services and to authorize the communication of personal information concerning certain missing or deceased Aboriginal children to their families**

Madam Ministers:

Within the framework of its mandate, the Québec Ombudsman sees to the respect of persons' rights by intervening with Government of Québec departments and agencies, as well as with the various bodies of the health and social services network, to request that situations prejudicial to individuals or groups of individuals be rectified. Furthermore, 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 deems to be in the public interest.

The Québec Ombudsman is closely monitoring the implementation of the calls for justice of the *Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (MMIWG), as well as those of the calls to action of the report of the *Public Inquiry Commission on relations between Indigenous Peoples and certain public services in Québec: listening, reconciliation and progress* (Viens Commission).

1. Background

On June 25 and 27, 2019, Mr. Brian Eyolfson, an MMIWG Commissioner, sent ten letters to the Minister of Health and Social Services. Describing various situations experienced by Indigenous families bereaved by the disappearance of children, these letters specified that the Commission had reasonable grounds to believe that there is misconduct in connection with the health services and social services provided to users from First Nations communities. In the letters, the Minister was asked to respond to the concerns expressed, according to which the Ministère de la Santé et des Services sociaux (MSSS) allegedly had not communicated adequately with certain families concerning the state of their children's health and the circumstances surrounding their death. The Minister of Justice and the Québec Ombudsman were copied to these letters.

On July 16, 2019, concerned about the situation of these users and the families, I wrote to Minister McCann to ask to be informed about the follow-up to these requests no later than August 15, 2019.

On September 4, 2019, Deputy Minister Yvan Gendron replied that the institutions concerned were working with the Unité québécoise de liaison et d'information aux familles (UQLIF), a body that coordinates the process of disclosure to families. During later exchanges with the Ministère de la Justice (MJQ) on October 24 and November 11, 2019, the Québec Ombudsman let it be known that it wanted to be kept up to date on the solutions considered in response to the need for information of all Aboriginal families bereaved by the disappearance of children. My team and I were not provided any follow-up after this.

Last December 3, I was therefore surprised to see the adoption of the amendments introduced within the framework of the clause-by-clause consideration of Bill 31 – *Act to amend mainly the Pharmacy Act to facilitate access to certain services*. According to the Minister of Health and Social Services, these amendments were in response to the call for justice number 20 of the MMIWG's Supplementary Report on Québec, which reads as follows:

WE CALL UPON the Quebec government to provide Indigenous families with all the information it has about children who have been apprehended following admission to a hospital or any other health center in Quebec.

Firstly, I applaud the will of the Government of Québec to resume action in response to the calls for justice of the MMIWG report. The discussions during the clause-by-clause consideration of the Bill indicate that the MNAs of the Committee on Health and Social Services (CSSS) were unanimously in favour of accelerating a process seen as conducive to the transmission of information to bereaved families, which is a laudable intention.

However, the consequence of this desire to proceed promptly was that the First Nations and Inuit as well as their representatives, or any other body, such as the Québec Ombudsman, were unable to voice their opinion on the content of the legislative provisions to the MNAs. The special consultations and public hearings concerning Bill 31 only dealt with the activities reserved to pharmacists, which were subject to the Bill as introduced. The amendments concerning the transmission of information to Indigenous families were not included in this exercise.

It bears remembering that here we are discussing amendments aimed at the accessibility of personal information concerning missing or deceased children, information held in particular by health institutions—amendments aimed at allowing families to be given the facts surrounding the disappearance of their children. Consequently, it goes without saying that the sensitive nature of the amendments to the bill to amend the *Pharmacy Act* require consultation of the Indigenous communities by MSSS and MJQ to ensure that these proposals truly take their needs into account. According to information obtained by the Québec Ombudsman, only certain Aboriginal community representatives were informed or consulted, briefly, concerning the intention to implement call to justice number 20 of the MMIWG's Supplementary Report on Québec. As the Québec Ombudsman sees it, this consultation—if indeed it can be called one—is insufficient.

The Québec Ombudsman is of the opinion that MSSS and MJQ must bring about a lasting and full solution to the needs of the families concerned. Given that the Bill is about to be passed, I am sending my recommendations concerning this Bill directly to you, Madam Ministers.

2. Intervention by the Québec Ombudsman regarding Bill 31

Analysis of the legislative provisions as adopted during the clause-by-clause consideration by the Committee raises certain questions as to the kind of information that could be conveyed to families. The Québec Ombudsman wonders whether the information contained in youth protection files is covered by the Bill. Even if it is, doubt remains as to whether these legislative provisions will enable families to obtain information about placements between 1950 and 1977, before the Directeur de la protection de la jeunesse existed.

In addition, the title of Bill 31, as amended,¹ suggests that all personal information concerning missing or deceased Aboriginal children can be communicated to their families. However, the adopted provisions only envision the transmission of information contained in the records of users of health and social services network institutions. The Québec Ombudsman feels that the transmission to families of documents held by other Government of Québec departments and agencies, including the Directeur de l'état civil and the Bureau du Coroner, or by a police force, must be allowed by means of the same mechanism for access to personal information because these documents provide a complete picture of what occurred.

The Québec Ombudsman also notes the lack of recourse for anyone who wishes to gain access to a user's record if he or she is dissatisfied with the extent of the information transmitted. The Québec Ombudsman also notes that it is impossible for these citizens to benefit from the health and social services complaint examination procedure if they are dissatisfied with the support services received. I consider it essential that they be able to seek recourse by means of a review by the Commission d'accès à l'information, even in cases of verbal requests for access, as well as the possibility of availing themselves of the health and social services complaint examination procedure.

Furthermore, given the nature of the Bill's provisions, the Québec Ombudsman considers that access to the user's record of an Aboriginal child suspected of being missing or deceased should not be limited to five years. If ever there was an area in which the time factor must be eliminated, it is precisely when suffering drags on and families are often paralyzed in their ability to undertake administrative steps. The mechanism for access to personal information that is

¹ Modified title (amendment 27): *Act to amend mainly the Pharmacy Act for the purpose of facilitating access to certain services and to authorize the communication of personal information concerning certain missing or deceased Aboriginal children to their families*

proposed to families must send a clear message affirming the sustained will of the Government of Québec to play an active role in the process of reconciliation.

The Québec Ombudsman considers that the accountability provided at section 5.3 is insufficient. The Québec Ombudsman feels that to foster the transparency and accountability of the government, it is important that provisions be made for annual reporting and not just reporting at the end of the process when adjustments can no longer be made.

Lastly, in light of the questions submitted, the scope of the Québec Ombudsman's recommendations concerning Bill 31 and the will of the government to implement the calls for justice, the Québec Ombudsman recommends that the Minister of Health and Social Services remove sections 5.1 to 5.6, and instead introduce a new bill that deals exclusively with the mechanism for access to personal information. The mechanism should allow the families of missing or deceased Aboriginal children to gain access to the personal information held by all Québec departments and public agencies regarding these children. This way, the communities concerned, as well the regional organizations of the First Nations and Inuit, could be duly consulted on the legislative provisions of the new Bill so that they are consistent with their needs.

3. The Québec Ombudsman's recommendations

Considering the preceding and in order to rectify the deficiencies observed, the Québec Ombudsman recommends that the Minister of Health and Social Services, in conjunction with the Minister of Justice:

1. remove sections 5.1 to 5.6 introduced by the amendments to Bill 31;
2. after consulting the representatives of the First Nations and Inuit, introduce a distinct Bill establishing a mechanism for the access of families to the personal information held by the departments and agencies of the Government of Québec concerning missing or deceased Aboriginal children;
3. within the Bill, provide for recourse with the Commission d'accès à l'information even in cases of verbal requests for access, as well as the possibility of availing oneself of the health and social services complaint examination procedure in cases of dissatisfaction with the support services received;
4. provide for annual reporting regarding application of the projected mechanism for access to information;

5. provide for establishing culturally adapted measures to ensure that applicants and their families are given support in their language in addition to cultural support if the need for it is expressed;
6. draft a communication plan so that First Nations and Inuit families are rapidly apprised of the new mechanism for access to personal information and of the available support measures.

Please inform me of the intended follow-up to these recommendations no later than January 30, 2020.

Yours respectfully,

(ORIGINAL SIGNED)

Marie Rinfret
Ombudsperson

c.c.: Madam Sylvie D'amours, Minister Responsible for Indigenous Affairs
Mr. Luc Provençal, Chair, Committee on Health and Social Services
Members of the Committee on Health and Social Services
Mr. Yvan Gendron, Deputy Minister of Health and Social Services
Ms. France Lynch, Deputy Minister of Justice
Mr. Simon Jolin-Barrette, Government House Leader
Mr. Marc Tanguay, Official Opposition House Leader
Mr. Gabriel Nadeau-Dubois, Leader of the Second Opposition Group
Mr. Martin Ouellet, Leader of the Third Opposition Group
Ms. Sabine Mekki, Secretary, Committee on Health and Social Services
Mr. Dominic Garant, Secretary, Committee on Institutions