



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SIXTH LEGISLATURE

Bill 27

(2001, chapter 43)

An Act respecting the Health and Social Services Ombudsman and amending various legislative provisions

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EXPLANATORY NOTES

This bill creates the office of Health and Social Services Ombudsman to replace the office of complaints commissioner. The Health Services Ombudsman must see to it that users are respected and that their rights as defined by law are enforced. The main function of the Health Services Ombudsman is to examine user complaints. In addition, the Health Services Ombudsman must ensure that the complaint handling process in institutions and regional boards is in conformity with the law and may, by way of exception, intervene on behalf of certain individuals or groups, especially where they are particularly vulnerable or abandoned.

Amendments are made to the Act respecting health services and social services in order to speed up the handling of user complaints by establishing an examination process comprising two levels instead of three, the institutions generally being the first level and the Health Services Ombudsman being the second and final level. As for regional boards, they are to continue to exercise the first level of jurisdiction over complaints regarding services or activities coming under their authority.

To consolidate the first level of the complaint examination process, the bill introduces new provisions regarding the handling of complaints both as regards health and social services institutions, which are required to appoint a local service quality commissioner, and as regards regional boards, which are required to appoint a regional service quality commissioner. The functions of these service quality commissioners are defined, as is the minimum content of the complaint examination procedure that must be established by every institution and regional board.

Moreover, a special process is provided for the examination of any complaint concerning a physician, dentist or pharmacist, or a resident: the complaint is to be handled by a medical examiner and later possibly referred, on certain conditions, to a review committee.

Finally, the bill contains provisions to facilitate the transition between the former system and the new system as well as amendments for concordance to the Act respecting health services and social services and the Act respecting health services and social services for Cree Native persons.

LEGISLATION AMENDED BY THIS BILL :

- Act respecting health services and social services (R.S.Q., chapter S-4.2);
- Act respecting health services and social services for Cree Native persons (R.S.Q., chapter S-5).

Bill 27

AN ACT RESPECTING THE HEALTH AND SOCIAL SERVICES OMBUDSMAN AND AMENDING VARIOUS LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

CHAPTER I

ESTABLISHMENT

1. The Government shall appoint a Health and Social Services Ombudsman.

The abbreviated title “Health Services Ombudsman” may be used to designate the Health and Social Services Ombudsman.

2. The Health Services Ombudsman shall be appointed for a maximum term of five years and, on expiry of this term, shall remain in office until reappointed or replaced. The salary or fees and the other conditions of appointment of the Health Services Ombudsman shall be determined by the Government.

3. If absent or temporarily unable to act, the Health Services Ombudsman may be replaced by a person appointed by the Government to exercise the Ombudsman’s functions and powers for the duration of the absence or inability to act. The Government shall determine the person’s salary or fees and other conditions of appointment.

CHAPTER II

ORGANIZATION

4. The personnel needed by the Health Services Ombudsman shall be appointed in accordance with the Public Service Act (R.S.Q., chapter F-3.1.1).

The Health Services Ombudsman shall define the duties of the personnel and direct their work. The exercise of any of the powers of the Health Services Ombudsman may be delegated in writing.

5. The Health Services Ombudsman may give a person who is not a member of the Ombudsman’s personnel a written mandate to examine a complaint and, where applicable, conduct an inquiry, or any other specific written mandate related to any of the Ombudsman’s functions. The Health

Services Ombudsman may delegate the exercise of any of the Ombudsman's powers to such a person.

The second paragraph of section 9, with the necessary modifications, applies to such a person conducting an inquiry.

6. Before beginning to exercise their functions, the Health Services Ombudsman, any mandatary of the Ombudsman and any personnel member to whom the exercise of powers of the Ombudsman are delegated shall take the oath provided in Schedule I.

The oath shall be received by the Minister in the case of the Health Services Ombudsman and by the Ombudsman in the other cases.

CHAPTER III

FUNCTIONS

7. The Health Services Ombudsman shall, by any appropriate means, see to it that users are respected and that their rights, as defined in Title II of Part I of the Act respecting health services and social services (R.S.Q., chapter S-4.2) and in any other Act, are enforced.

The main function of the Health Services Ombudsman is the examination of complaints made by users.

It is also the function of the Health Services Ombudsman to ensure that institutions and regional boards handle the complaints addressed to them in conformity with the procedures set out in Chapter III of Title II of Part I of the Act respecting health services and social services.

In addition, the Health Services Ombudsman may intervene specifically with the authorities concerned in cases described in section 20.

DIVISION I

EXAMINATION OF COMPLAINTS

8. It is the function of the Health Services Ombudsman to examine any complaint

(1) from a user who disagrees with the conclusions transmitted to the user by the local service quality commissioner pursuant to subparagraph 6 of the second paragraph of section 33 of the Act respecting health services and social services, or deemed to have been transmitted to the user under section 40 of that Act, or is dissatisfied with the actions taken as a result of the related recommendations ;

(2) from any person who disagrees with the conclusions transmitted to the person by the regional service quality commissioner pursuant to subparagraph 6 of the second paragraph of section 66 of that Act, or deemed to have been transmitted to the person under section 72 of that Act, or is dissatisfied with the actions taken as a result of the related recommendations ; and

(3) from any person who disagrees with the conclusions transmitted to the person by Corporation d'urgences-santé de Montréal Métropolitain in accordance with section 61 of that Act, or deemed to have been transmitted to the person under section 72 of that Act, or is dissatisfied with the actions taken as a result of the related recommendations.

It is also the function of the Health Services Ombudsman to examine any complaint from the heirs or the legal representatives of a deceased user regarding the services the user received or ought to have received, provided that the complaint was first submitted to the examination process provided for in Division I or Division III of Chapter III of Title II of Part I of that Act.

9. If deemed expedient by the Health Services Ombudsman, an inquiry may be held as part of the examination of a complaint. In that case, the Health Services Ombudsman shall determine the rules of procedure applicable to the inquiry and transmit them to any person who will be required to give evidence before the Ombudsman.

For the purposes of an inquiry, the Health Services Ombudsman is vested with the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (R.S.Q., chapter C-37), except the power to order imprisonment.

10. The Health Services Ombudsman shall establish a complaint examination procedure.

The procedure must in particular

(1) include the necessary details allowing rapid access to the services of the Health Services Ombudsman ;

(2) provide that the Health Services Ombudsman must give the necessary assistance or see to it that the necessary assistance is given to users or persons who so require for the formulation of a complaint or for any further step related to the complaint, in particular by the community organization in the region to which a user assistance and support mandate has been given pursuant to section 76.6 of the Act respecting health services and social services ;

(3) provide that complaints must be made in writing and filed together with the conclusions transmitted by the local commissioner or the regional commissioner, if any ;

(4) provide that the Health Services Ombudsman is to inform the institution or the regional board in writing of the receipt of a complaint in its regard or, if the Ombudsman is of the opinion that no prejudice will be caused to the user, send a copy of the complaint to the institution or regional board; provide that such information is also to be sent in writing to the highest authority of any other organization, resource or partnership or to any other person holding the position of highest authority, if the complaint pertains to services they are responsible for;

(5) allow the complainant and the institution or regional board and, where applicable, the highest authority of the organization, resource or partnership or any other person holding the position of highest authority responsible for the services that are the subject of the complaint, to present observations; and

(6) provide that the Health Services Ombudsman, after examining the complaint, is to communicate his or her conclusions, including reasons, without delay to the complainant together with any recommendations made to the institution or the regional board and, where applicable, to the highest authority of the organization, resource or partnership or to any other person holding the position of highest authority responsible for the services that are the subject of the complaint; provide that the Ombudsman is also to forward a copy of his or her conclusions, including reasons, to the institution or regional board and to any other authority concerned.

Where the examination of a complaint referred to the Health Services Ombudsman pursuant to subparagraph 1 or 3 of the first paragraph of section 8 raises a matter that comes under a responsibility of regional boards listed in section 340 of the Act respecting health services and social services, including access to services or the organization or financing of services, the regional board may also be allowed to present observations under the procedure, in which case the Health Services Ombudsman shall inform the regional service quality commissioner of the elements of the complaint the Ombudsman considers relevant to the objects of the regional board and identify the authority concerned. The Ombudsman shall allow the board to present observations in all cases where the Ombudsman intends to make a recommendation to the board following the examination of the complaint.

11. The Health Services Ombudsman may make a memorandum of agreement with any regional board for the purposes of

(1) the application of the complaint examination procedure, within the scope of the functions of the board;

(2) the communication of his or her conclusions, including reasons, subject to the protection of any nominative information they contain; or

(3) any other activity of a regional board with a view to the improvement of the services provided to the population in the region, the satisfaction of the clientele and the enforcement of their rights.

12. Within five days after receiving a written communication under subparagraph 4 of the second paragraph of section 10, the institution or the regional board must forward a copy of the entire complaint record to the Health Services Ombudsman.

13. The Health Services Ombudsman may, upon summary examination, dismiss a complaint if, in the Ombudsman's opinion, it is frivolous, vexatious or made in bad faith.

The Health Services Ombudsman may also refuse or cease to examine a complaint

(1) if, in the Ombudsman's opinion, the Ombudsman's intervention would clearly serve no purpose ;

(2) if the length of time having elapsed between the events that gave rise to the dissatisfaction of the user and the filing of the complaint makes it impossible to examine the complaint ; or

(3) if more than two years have elapsed since the user received the conclusions and reasons of the local service quality commissioner or the regional service quality commissioner, or since the date on which negative conclusions are deemed to have been transmitted to the complainant under section 40 or 72 of the Act respecting social services and health services, unless the complainant proves to the Health Services Ombudsman that it was impossible for him or her to act sooner.

In such a case, the Health Services Ombudsman shall inform the complainant in writing.

14. The complainant, any other person and the institution or regional board, including any person working or practising on behalf of any organization, resource or partnership or person other than the institution or the regional board must supply all information and, subject to the second paragraph of section 190 and section 218 of the Act respecting health services and social services, all documents required by the Health Services Ombudsman for the examination of a complaint, including, notwithstanding section 19 of that Act, access to and the communication of the information or documents contained in the user's record ; all such persons must also, unless they have a valid excuse, attend any meeting called by the Health Services Ombudsman.

15. Within 30 days of the receipt of a recommendation from the Health Services Ombudsman, the institution or the regional board or the highest authority of the organization, resource or partnership or any other person to which or whom the recommendation is addressed must inform the Ombudsman and the complainant in writing of the actions to be taken as a result of the recommendation or, if it has decided not to act upon the recommendation, of the reasons for such a decision.

16. If, after having made a recommendation as referred to in section 15, the Health Services Ombudsman considers that no satisfactory action has been taken or that the reasons given for not acting upon the recommendation are unsatisfactory, the Ombudsman may advise the Minister in writing. The Health Services Ombudsman may also, if he or she sees fit, report the case in the Ombudsman's annual report or make it the subject of a special report to the Minister.

DIVISION II

CONFORMITY OF COMPLAINT HANDLING PROCESS

17. An institution or a regional board must transmit the complaint examination procedure established by the board of directors to the Health Services Ombudsman on request.

18. The Health Services Ombudsman shall ensure that the institutions and regional boards establish and apply a complaint examination procedure in accordance with the provisions of sections 29 to 72 of the Act respecting health services and social services.

The Health Services Ombudsman may recommend to the board of directors of an institution or a regional board any corrective action to ensure such conformity.

Within 30 days of the receipt of a recommendation for corrective action from the Health Services Ombudsman, the institution or the regional board must inform the Ombudsman in writing of the actions to be taken as a result of the recommendation or, if it has decided not to act upon the recommendation, of the reasons for such a decision.

19. The Health Services Ombudsman shall report to the Minister, as part of the report submitted at least once a year pursuant to section 38, on the nature of the corrective action the Ombudsman has recommended to institutions and regional boards during the year in order to ensure that their complaint handling process is in conformity with the law.

The report shall also identify any institution or regional board that has decided not to act upon a recommendation for corrective action made by the Health Services Ombudsman.

CHAPTER IV

INTERVENTION

20. The Health Services Ombudsman may, on his or her own initiative, intervene if the Ombudsman has reasonable grounds to believe that the rights of a natural person or a group of natural persons have been or may likely be adversely affected by an act or omission

(1) of any institution or any organization, resource, partnership or person to whom or which an institution has recourse for the provision of certain services ;

(2) of any regional board or any organization, resource, partnership or person whose services may be the subject of a complaint under section 60 of the Act respecting health services and social services ;

(3) of Corporation d'urgences-santé de Montréal Métropolitain in the provision of pre-hospitalization emergency services ; or

(4) of any person working or practising on behalf of a body referred to in subparagraph 1, 2 or 3.

The Health Services Ombudsman shall only intervene with respect to an act or omission of a body referred to in the first paragraph if, in the Ombudsman's opinion, recourse to the process provided for in Division I or Division III of Chapter III of Title II of Part I of the Act respecting health services and social services would likely be compromised, serve no purpose or be illusory, either owing to possible reprisals against the person or group of persons concerned, the special vulnerability or abandonment of the targeted clientele, or in any other case which, in the opinion of the Ombudsman, warrants an immediate intervention of the Ombudsman, especially where problems may interfere with the well-being of users and the recognition and enforcement of their rights.

Nothing in this section shall be construed as conferring jurisdiction on the Health Services Ombudsman over the supervision or assessment of medical, dental or pharmaceutical acts performed in a centre operated by an institution.

21. Where the Health Services Ombudsman sees fit to intervene, the Ombudsman shall inform the highest authority of the body concerned, specifying the act or omission that is the subject of the intervention and the facts or reasons warranting the intervention.

The body concerned must collaborate with the Health Services Ombudsman and be invited to present its observations.

22. The intervention of the Health Services Ombudsman shall be conducted equitably and in accordance with the intervention procedure established by the Ombudsman.

Sections 9, 14 and 29 to 36 apply to the intervention, with the necessary modifications.

23. The Health Services Ombudsman must advise the Public Curator immediately upon being apprised of the presence of a person represented by the Public Curator appointed under the Public Curator Act (R.S.Q., chapter C-81) in a facility maintained by a body that is the subject of an intervention under this chapter.

24. The Health Services Ombudsman must without delay communicate an intervention report, together with any recommendations, to the body concerned. The Ombudsman must also communicate the result of the intervention with diligence to the person or each of the persons on whose behalf the Ombudsman intervened, and to the Public Curator where one of those persons is represented by the latter. Lastly, the Ombudsman may communicate the result of the intervention to any other interested person.

25. Within 30 days of the receipt of a recommendation from the Health Services Ombudsman, the body concerned must inform the Ombudsman in writing of the actions to be taken as a result of the recommendation or, if it has decided not to act upon the recommendation, of the reasons for such a decision.

26. If, after having made a recommendation referred to in section 25, the Health Services Ombudsman considers that no satisfactory action has been taken or that the reasons given for not acting upon the recommendation are unsatisfactory, the Ombudsman may advise the Minister in writing. The Health Services Ombudsman may also, if he or she sees fit, report the case in the Ombudsman's annual report or make it the subject of a special report to the Minister.

CHAPTER V

ADVICE, RECOMMENDATIONS AND REPORTS

27. The Health Services Ombudsman may, whenever necessary, advise the Minister or any body referred to in section 20 on any matter relating to the respect shown to users and the enforcement of their legal rights and remedies or to the improvement of the quality of the services provided to the public and, if necessary, make recommendations for the appropriate corrective action.

If he or she sees fit, the Health Services Ombudsman may report the situation in the Ombudsman's annual report or make it the subject of a special report to the Minister.

The Health Services Ombudsman may, in any advice or report, identify any institution or regional board that has decided not to act upon a recommendation for corrective action made by the Ombudsman.

28. Thirty days after transmitting any advice, recommendation or report under section 16, 26 or 27 to the Minister, the Health Services Ombudsman shall release the document if the Ombudsman considers that the interest of the users involved so requires.

CHAPTER VI

VARIOUS PROVISIONS

29. No person shall take reprisals or attempt to take reprisals in any manner whatever against any natural person who files or intends to file a complaint under section 8 or otherwise applies to the Health Services Ombudsman under this Act.

The Health Services Ombudsman must act immediately upon being apprised of reprisals or of an attempt to take reprisals.

30. No civil action may be instituted by reason or in consequence of a complaint made in good faith under this Act, whatever the conclusions of the Health Services Ombudsman, or by reason or in consequence of the publication, in good faith, of any advice or report of the Ombudsman under this Act or of an extract from or summary of any such advice or report.

Nothing in this Act shall operate to restrict the right of any person or the person's successors to exercise a remedy based on the same facts as those on which a complaint is based.

31. No legal proceedings may be brought against the Health Services Ombudsman, a mandatary of the Ombudsman within the meaning of section 5 or a member of the Ombudsman's personnel exercising the powers of the Ombudsman for an act or omission made in good faith in the exercise of their functions.

32. Except on a question of jurisdiction, no extraordinary recourse under articles 834 to 846 of the Code of Civil Procedure (R.S.Q., chapter C-25) may be exercised and no injunction may be granted against any of the persons referred to in section 31 acting in their official capacity.

33. A judge of the Court of Appeal may, on a motion, summarily annul any writ, order or injunction issued or granted contrary to section 31 or 32.

34. The answers given or statements made by a person during the examination of a complaint, including any information or document supplied in good faith by the person in response to a request of the Health Services Ombudsman, a mandatary of the Ombudsman within the meaning of section 5 or a member of the Ombudsman's personnel exercising the powers of the Ombudsman, may not be used or be admitted as evidence against the person in a judicial proceeding or a proceeding before a person or body exercising adjudicative functions.

35. Notwithstanding any inconsistent legal provision, the Health Services Ombudsman, a mandatary of the Ombudsman within the meaning of section 5 or a member of the Ombudsman's personnel exercising the powers of the Ombudsman may not be compelled to make a deposition in a judicial proceeding or a proceeding before a person or body exercising adjudicative functions.

concerning any confidential information obtained in the exercise of their functions, or to produce a document containing such information, except to confirm its confidential nature.

36. Nothing contained in a user's complaint record, including the conclusions with reasons and any related recommendations, may be construed as a declaration, recognition or extrajudicial admission of professional, administrative or other misconduct capable of establishing the civil liability of a party in a judicial proceeding.

37. The provisions of sections 17 to 28 of the Act respecting health services and social services apply to all user's complaint records kept by the Health Services Ombudsman for the purposes of the functions of the Ombudsman under this Act.

CHAPTER VII

ANNUAL REPORT

38. The Health Services Ombudsman must submit an activities report to the Minister once a year and whenever so required by the Minister.

The report shall describe the reasons for the complaints received by the Health Services Ombudsman under section 8 and shall indicate in respect of each type of complaint

(1) the number of complaints received, dismissed upon summary examination, examined, refused or abandoned since the last report; and

(2) the actions taken following the examination of the complaints.

The report shall specify the nature of the corrective action recommended and any institution or regional board identified pursuant to section 19.

Moreover, the report shall list the interventions of the Health Services Ombudsman pursuant to section 20 as well as the principal conclusions of the Ombudsman and any related recommendations.

Furthermore, the report must contain advice formulated by the Health Services Ombudsman and any appropriate recommendations for corrective action regarding any matter within the Ombudsman's purview, including the following:

(1) the action to be taken to improve the degree of satisfaction of the users or clientele of any body referred to in subparagraph 1, 2 or 3 of the first paragraph of section 20 and the enforcement of their rights;

(2) the application of the complaint examination procedure established by institutions and regional boards;

(3) the improvement of the quality of services ; and

(4) the standardization of the form and content of the annual reports issued by the boards of directors of institutions and regional boards.

39. The Minister shall table the annual report of the Health Services Ombudsman in the National Assembly within 30 days of receiving it or, if the Assembly is not in session, within 30 days of resumption.

CHAPTER VIII

FINAL PROVISION

40. The Minister of Health and Social Services is responsible for the administration of this Act.

SCHEDULE I

Oath

“I declare under oath that I will fulfil the duties of my office with honesty, impartiality and justice. I further declare under oath that I will not reveal or disclose, unless authorized by law, any confidential information that may come to my knowledge in the exercise of my functions.”

AMENDING PROVISIONS

41. The Act respecting health services and social services (R.S.Q., chapter S-4.2), amended by section 242 of chapter 8 of the statutes of 2000 and sections 1 and 2 of chapter 24 of the statutes of 2001, is again amended by replacing Chapters III and IV of Title II of Part I, comprising sections 29 to 76, by the following chapter :

“CHAPTER III

“USER COMPLAINTS

“DIVISION I

“EXAMINATION OF COMPLAINTS BY INSTITUTION

“29. The board of directors of every institution must make a by-law establishing a complaint examination procedure for the purposes of Division I and, after consulting with the council of physicians, dentists and pharmacists or the medical service concerned, for the purposes of Division II of this chapter.

“30. A local service quality commissioner must be appointed by the board of directors of every institution, on the recommendation of the executive director. If a board of directors administers two or more institutions, the local commissioner shall handle the complaints from the users of all the institutions administered by the board.

The local service quality commissioner reports to the executive director or directly to the board of directors, according to the organization plan of the institution.

On the recommendation of the executive director and after having obtained the opinion of the local service quality commissioner, the board of directors may, whenever necessary, appoint one or more assistant local service quality commissioners.

An assistant local service quality commissioner shall exercise the functions delegated by and act under the authority of the local service quality commissioner. In the exercise of his or her functions, an assistant local commissioner is vested with the same powers and immunity as a local service quality commissioner.

“31. The board of directors must take steps to preserve at all times the independence of the local service quality commissioner and the assistant local service quality commissioner in the exercise of their functions.

To that end, the board of directors must ensure that the local commissioner and the assistant local commissioner, having regard to the other functions they may exercise for the institution, are not in a conflict of interest situation in the exercise of their functions.

The local commissioner or assistant local commissioner may also exercise the same functions on behalf of any other institution, subject to the terms and conditions determined by agreement between the institutions concerned and approved by their boards of directors.

“32. In the exercise of his or her functions, the local service quality commissioner may consult any person whose expertise the commissioner requires, including, with the authorization of the board of directors, calling on an expert from outside the institution. Subject to the fourth paragraph of section 30, the functions of the local service quality commissioner may not be otherwise delegated.

“33. The local service quality commissioner is answerable to the board of directors for the enforcement of user rights and for the diligent handling of user complaints.

To that end, the functions of the local service quality commissioner shall include

(1) applying the complaint examination procedure in keeping with the rights of users ; if necessary, making recommendations to the board of directors for any appropriate action to improve the handling of complaints in the institution, including a revision of the complaint examination procedure ;

(2) promoting the independent nature of the role of the local service quality commissioner within the institution, the rights and obligations of users and the code of ethics referred to in section 233, and publishing the complaint examination procedure ;

(3) giving assistance or seeing to it that assistance is given to users who require assistance for the formulation of a complaint or for any further step related to the complaint, including an application to the review committee established under section 51 ; informing users of the possibility of being assisted and supported by the community organization in the region to which a user assistance and support mandate has been given pursuant to the provisions of section 76.6 ; and lastly, providing on request any information on the application of the complaint examination procedure, and informing users of the legal protection afforded pursuant to section 76.2 to any person who cooperates in the examination of a complaint ;

(4) on receiving a complaint from a user, examining it with diligence ;

(5) if questions of a disciplinary nature in relation to a practice or the conduct of a personnel member are raised during the examination of a complaint, bringing these questions to the attention of the department concerned or the human resources manager within the institution or the highest authority of the organization, resource or partnership or the person holding the position of highest authority responsible for the services that are the subject of the complaint, for a more thorough investigation of the complaint, follow-up action or any other appropriate action ; making any appropriate recommendation to that effect in his or her conclusions ;

(6) not later than 45 days after receiving a complaint, communicating his or her conclusions, including reasons, in writing in the case of a written complaint, to the user, together with any recommendations made to the department or service manager concerned within the institution and, where applicable, to the highest authority of the organization, resource or partnership or the person holding the position of highest authority responsible for the services that are the subject of the complaint, and informing the user of the procedure for applying to the Health and Social Services Ombudsman appointed under the Act respecting the Health and Social Services Ombudsman and amending various legislative provisions ; communicating the same conclusions, including reasons, in writing in the case of a written complaint, to the department or service manager concerned within the institution and to the highest authority concerned ;

(7) supporting, on his or her own initiative, any action to improve the quality of the services provided to users, user satisfaction and the enforcement of user rights, and recommending such action to any department or any

service manager within the institution or, as the case may be, to the highest authority of any organization, resource or partnership or to the person holding the position of highest authority responsible for the services that may be the subject of a complaint under the first paragraph of section 34 ;

(8) giving advice on any matter within the purview of the local service quality commissioner submitted by the board of directors, any council or committee created by the board under section 181 or any other council or committee of the institution, including the users' committee ;

(9) at least once a year and as needed, drawing up a summary of the activities of the local service quality commissioner together with a statement of any action recommended by the local commissioner to improve the quality of services, user satisfaction and the enforcement of user rights ;

(10) preparing the report referred to in section 76.10, incorporating into the report the annual summary of the activities of the local service quality commissioner, the report of the medical examiner under section 50 and the report of the review committee under section 57, and presenting it to the board of directors for approval ; and

(11) subject to section 31, carrying out any other function provided for in the organizational plan of the institution, provided that it is related to the enforcement of user rights or the improvement of the quality of services and the satisfaction of the clientele.

“34. The complaint examination procedure must enable a user to address a verbal or written complaint to the local service quality commissioner regarding the health services or social services the user received, ought to have received, is receiving or requires from the institution, an intermediary or family-type resource or any other organization, partnership or person to which or whom the institution has recourse, in particular by an agreement under section 108, for the provision of those services.

The procedure must also allow the heirs or the legal representatives of a deceased user to make a complaint regarding the services the user received or ought to have received.

The complaint examination procedure must in particular

(1) include the details allowing rapid access to the services of the local commissioner ;

(2) provide that the local commissioner must give the necessary assistance or see to it that the necessary assistance is given to users who require assistance for the formulation of a complaint or for any further step related to the complaint, in particular by the community organization in the region to which a user assistance and support mandate has been given pursuant to section 76.6 ;

(3) ensure that the user receives a written notice of the date on which the verbal or written complaint is received by the local commissioner;

(4) establish a procedure for the examination of complaints regarding a physician, dentist or pharmacist, or a resident, in accordance with Division II, except the procedure to be followed by the board of directors in taking disciplinary measures in accordance with a regulation under paragraph 2 of section 506;

(5) provide for the prompt referral of any complaint concerning or involving a physician, dentist or pharmacist, or a resident, to the medical examiner designated under section 42;

(6) provide that, where a complaint is received regarding the services provided by a resource, organization, partnership or person referred to in the first paragraph, the local commissioner is to inform the authority concerned in writing of the receipt of the complaint or, if the local commissioner is of the opinion that no prejudice will be caused to the user, forward a copy of the complaint to the authority; provide that, if the complaint is verbal, the authority concerned is to be informed verbally;

(7) specify what communications must be made in writing in the case of a written complaint;

(8) allow the user and the highest authority of the organization, resource or partnership or the person holding the position of highest authority responsible for the services that are the subject of a complaint referred to in the first paragraph to present their observations; and

(9) provide that the local commissioner, after examining the complaint, is to communicate his or her conclusions, including reasons, to the user within the time prescribed in subparagraph 6 of the second paragraph of section 33, together with the procedure for applying to the Health Services Ombudsman.

“35. The local service quality commissioner may, upon summary examination, dismiss a complaint if, in the commissioner’s opinion, it is frivolous, vexatious or made in bad faith.

The local service quality commissioner shall so inform the user, in writing in the case of a written complaint.

“36. The user and any other person, including any member of the personnel of the institution, any midwife having entered into a service contract with the institution under section 259.2 and any member of the council of physicians, dentists and pharmacists, must supply all information and, subject to the second paragraph of section 190 and section 218, all documents required by the local service quality commissioner for the examination of a complaint, including, notwithstanding section 19, access to and the communication of the information or documents contained in the user’s record; all such persons

must also, unless they have a valid excuse, attend any meeting called by the local commissioner.

“37. If, pursuant to subparagraph 5 of the second paragraph of section 33, the local service quality commissioner brings a practice or the conduct of a personnel member that raises questions of a disciplinary nature to the attention of the department concerned or the human resources manager within the institution or the highest authority of the organization, resource or partnership or the person holding the position of highest authority responsible for the services that are the subject of a complaint under the first paragraph of section 34, the department, manager, authority or person must investigate and follow up the case diligently and report periodically to the local commissioner on the progress of the investigation.

The local service quality commissioner must be informed of the outcome of the case and of any disciplinary measure taken against the personnel member concerned. The local commissioner must in turn inform the user.

“38. The local service quality commissioner may bring any report or recommendation regarding the improvement of the quality of services, user satisfaction and the enforcement of user rights to the attention of the board of directors, in particular where the department or service manager concerned within the institution or the highest authority of the organization, resource or partnership or the person holding the position of highest authority responsible for the services that are the subject of a complaint under the first paragraph of section 34 has decided not to act upon a recommendation accompanying the conclusions and reasons communicated by the local commissioner.

The local commissioner must bring such a report or recommendation to the attention of the board of directors if warranted by the gravity of the complaint, in particular where the commissioner has been informed by the department concerned of a disciplinary measure taken against a personnel member of the institution.

The executive director of the institution must transmit to the board of directors any report or recommendation transmitted for that purpose by the local commissioner.

“39. If warranted, in the opinion of the board of directors, by the gravity of a complaint against an employee of the institution who belongs to a professional order or against a midwife, the board shall transmit the complaint to the professional order concerned.

If any disciplinary measure is taken against the professional, the executive director must inform the professional order in writing. The local commissioner must also be informed and in turn must inform the user in writing.

“40. If the local service quality commissioner fails to communicate his or her conclusions to the user within 45 days after receiving a complaint from

the user, the commissioner is deemed to have communicated negative conclusions to the user on the date of expiry of the time limit.

Such failure gives rise to the right to apply to the Health Services Ombudsman.

“DIVISION II

“EXAMINATION OF COMPLAINTS CONCERNING A PHYSICIAN, DENTIST OR PHARMACIST

“41. In this division, unless the context indicates otherwise, the word “professional” includes a resident.

“42. For the purposes of the examination procedure applicable to complaints concerning a physician, dentist or pharmacist, or a resident, the board of directors of every institution shall designate a medical examiner, possibly the director of professional services, on the recommendation of the council of physicians, dentists and pharmacists.

Where an institution operates two or more centres or maintains two or more facilities, the board of directors may, where necessary and on the recommendation of the council of physicians, dentists and pharmacists, designate one medical examiner for each centre or facility.

Where a board of directors administers two or more institutions, it may, on the recommendation of the council of physicians, dentists and pharmacists, designate a single medical examiner for the group of institutions it administers.

If no council of physicians, dentists and pharmacists has been established for an institution, the board of directors shall designate a medical examiner after consulting with the physicians, dentists and pharmacists practising in the centre or centres operated by the institution.

In the cases described in the preceding paragraphs, if there are fifteen or fewer physicians, dentists and pharmacists practising in the centre or centres operated by the institution or group of institutions administered by the board of directors, a physician who does not practise in any of those centres or exercise other functions for any of those institutions may, by way of exception, be designated as medical examiner.

“43. The board of directors must take steps to preserve at all times the independence of the medical examiner in the exercise of his or her functions.

To that end, the board of directors must ensure that the medical examiner, having regard to the other functions he or she may exercise for the institution, is not in a conflict of interest situation in the exercise of his or her functions.

“44. In addition to his or her functions relating to the complaint examination procedure provided for in this division, the medical examiner

shall examine in the same manner any complaint concerning a physician, dentist or pharmacist, or a resident, made by any person other than a user or the representative of a user.

This division applies to every such complaint and the word “user” includes any person referred to in the first paragraph, with the necessary modifications.

“45. Where a user makes a complaint concerning a physician, dentist or pharmacist, or a resident, the local service quality commissioner shall without delay refer the complaint for investigation to the medical examiner designated pursuant to section 42 and shall inform the user in writing, indicating the date of the referral.

However, where a user makes a complaint regarding administrative or organizational problems involving medical, dental or pharmaceutical services, the complaint shall be examined by the local service quality commissioner in accordance with the provisions of Division I unless the local service quality commissioner, after consulting with the medical examiner, is of the opinion that one or more physicians, dentists or pharmacists, or residents, are the subject of the complaint, in which case the commissioner shall proceed in accordance with the first paragraph.

Any complaint that involves the supervision or assessment of medical, dental or pharmaceutical acts remains within the jurisdiction of the medical examiner.

Where a complaint is examined by the local commissioner, the medical examiner must collaborate to find solutions to the administrative or organizational problems underscored by the complaint.

“46. According to the nature of the facts and their significance in terms of the quality of medical, dental or pharmaceutical care or services, the medical examiner, on receiving a complaint, must decide whether to

- (1) examine the complaint in accordance with this division ;
- (2) where the complaint concerns a physician, dentist or pharmacist who is a member of the council of physicians, dentists and pharmacists, refer the complaint to that council for a disciplinary investigation by a committee established for that purpose, and transmit a copy of the complaint to the professional concerned; if there is no such council, the complaint shall be handled according to the procedure determined by a regulation under paragraph 2 of section 506 ;
- (3) where the complaint concerns a resident and raises questions of a disciplinary nature, refer the complaint, with a copy to the resident, to the authority determined by a regulation made under paragraph 2 of section 506 ;
or

(4) dismiss the complaint if, in the medical examiner's opinion, it is frivolous, vexatious or made in bad faith.

Where the medical examiner chooses to proceed pursuant to subparagraph 2, 3 or 4, the medical examiner must inform the user and the local service quality commissioner.

“47. Where the medical examiner chooses to proceed pursuant to subparagraph 1 of the first paragraph of section 46, the medical examiner shall send a copy of the complaint to the professional concerned.

The user and the professional must be allowed to present observations during the examination of the complaint. The professional shall have access to the user's complaint record.

The obligations set out in section 36 apply, with the necessary modifications, to any information required or meeting called by the medical examiner.

The medical examiner must examine the complaint within 45 days of its referral and attempt to conciliate the interests involved. The medical examiner may consult any person whose expertise the medical examiner requires, including, with the authorization of the board of directors, an expert from outside the institution. Before the expiry of the time limit, the medical examiner must transmit his or her conclusions, including reasons, in writing to the user and the professional concerned, together with any appropriate recommendations, and inform the user of the conditions and procedure for applying to the review committee established under section 51. The conclusions, reasons and recommendations must also be communicated to the local service quality commissioner.

“48. If, during the examination of a complaint concerning a physician, dentist or pharmacist who is a member of the council of physicians, dentists and pharmacists, the medical examiner is of the opinion that, owing to the nature of the facts under examination and their significance in terms of the quality of medical, dental or pharmaceutical care or services, the complaint ought to be referred for a disciplinary investigation by a committee established for that purpose by the council of physicians, dentists and pharmacists, the medical examiner must send a copy of the complaint and of the record to the council. If there is no such council, the complaint shall be handled according to the procedure determined by a regulation under paragraph 2 of section 506.

However, where the complaint concerns a resident and raises questions of a disciplinary nature, the medical examiner must refer a copy of the complaint and of the record to the authority determined by a regulation made under paragraph 2 of section 506.

The medical examiner must inform the user, the professional concerned and the local service quality commissioner of the decision to so refer the complaint.

“49. If the medical examiner fails to communicate his or her conclusions to the user within 45 days after being referred a complaint, the medical examiner is deemed to have communicated negative conclusions to the user on the date of expiry of the time limit. Such failure gives rise to the right to apply to the review committee established under section 51.

“50. At least once a year and whenever warranted in his or her opinion, the medical examiner must submit a report to the board of directors and to the council of physicians, dentists and pharmacists, describing the reasons for the complaints examined since the last report, and the medical examiner’s recommendations, in particular for the improvement of the quality of medical, dental and pharmaceutical care or services provided in a centre operated by the institution.

A copy of the report shall also be sent to the local service quality commissioner so that its contents may be incorporated into the report submitted under section 76.10.

“51. A review committee shall be established for each institution operating one or more centres where physicians, dentists or pharmacists practise.

If a board of directors administers two or more institutions, the board may establish a single review committee for the group of institutions it administers, after consulting with the council of physicians, dentists and pharmacists or, where there is no such council, with the physicians, dentists and pharmacists concerned.

The review committee shall be composed of three members appointed by the board of directors. The chair of the review committee shall be appointed from among the elected or co-opted members of the board of directors. The other two members shall be appointed from among the physicians, dentists and pharmacists who practise in a centre operated by an institution administered by the board of directors, on the recommendation of the council of physicians, dentists and pharmacists or, where no such council has been established for an institution, after consulting with the physicians, dentists and pharmacists concerned.

However, if there are fifteen or fewer physicians, dentists and pharmacists practising in the centre or centres operated by the institution or group of institutions administered by the board of directors, the other two members of the review committee may be recruited among physicians, dentists and pharmacists who do not practise in any of those centres or exercise other functions for any of those institutions.

The board of directors shall fix the term of appointment of the members of the review committee and determine its operating rules.

“52. Except where a complaint is referred for a disciplinary investigation, the function of the review committee is to review the handling of a user

complaint by the medical examiner. To that end, the review committee must acquaint itself with the entire complaint record and examine whether the complaint was examined properly, diligently and equitably and whether the reasons for the medical examiner's conclusions, if any, are based on the enforcement of user rights and compliance with standards of professional practice. At the conclusion of its review and within 60 days after receiving a review application, the review committee must communicate a written opinion, including reasons, to the user, to the professional concerned and to the medical examiner. The local service quality commissioner must also be given a copy.

In its opinion, and the reasons therefor, the review committee must either

- (1) confirm the conclusions of the medical examiner;
- (2) require that the medical examiner carry out a supplementary examination within the time specified and transmit his or her new conclusions to the user and a copy to the review committee and to the professional concerned as well as to the local service quality commissioner;
- (3) where the complaint concerns a physician, dentist or pharmacist who is a member of the council of physicians, dentists and pharmacists, forward a copy of the complaint and of the record to that council for a disciplinary investigation by a committee established for that purpose; if there is no such council, the complaint shall be handled according to the procedure determined by a regulation under paragraph 2 of section 506;
- (4) where the complaint concerns a resident and raises questions of a disciplinary nature, forward a copy of the complaint and of the record to the authority determined by a regulation made under paragraph 2 of section 506;
- (5) recommend any action that is likely to resolve the matter to the medical examiner or, if appropriate, to the parties themselves.

“53. A user who disagrees with the conclusions transmitted by the medical examiner, or deemed to have been transmitted by the medical examiner under section 49, may apply in writing for a review of the complaint by the review committee.

The review application must be filed within 60 days after receipt of the medical examiner's conclusions or after the date on which the conclusions are deemed to have been transmitted to the user under section 49. The time limit is definitive, unless the user proves to the review committee that it was impossible for him or her to act sooner.

The local service quality commissioner must give assistance or see to it that assistance is given to users who require assistance for the formulation of their application for review or for any further step related thereto, in particular by the community organization in the region to which a user assistance and support mandate has been given pursuant to section 76.6.

The user shall address the application to the chair of the review committee and include the conclusions and reasons transmitted by the medical examiner, if any.

The chair must give the user a written notice of the date of receipt of the application for review and send a copy to the medical examiner, the professional concerned and the local commissioner.

“54. Within five days after receiving a copy of a review application, the medical examiner shall forward a copy of the entire complaint record to the chair of the review committee.

“55. The review committee must allow the user, the professional concerned and the medical examiner to present observations.

The obligations set out in section 36 apply, with the necessary modifications, to any information required or meeting called by the review committee or a member of the review committee.

“56. Subject to the information that must be transmitted to the user where the complaint is referred to the council of physicians, dentists and pharmacists, the opinion of the review committee is final.

“57. At least once a year and whenever warranted in the opinion of the review committee, the review committee must submit a report to the board of directors, sending a copy to the council of physicians, dentists and pharmacists, in which it describes the reasons for the complaints having given rise to an application for review since the last report, sets out its conclusions and reports on the speed of its review process; the committee may also make recommendations, in particular for the improvement of the quality of medical, dental and pharmaceutical care or services provided in a centre operated by the institution.

A copy of the report shall also be sent to the local service quality commissioner so that its contents may be incorporated into the report submitted under section 76.10, and to the Health Services Ombudsman.

“58. Subject to the provisions of the second and third paragraphs, where pursuant to subparagraph 2 of the first paragraph of section 46, section 48 or subparagraph 3 of the second paragraph of section 52, a complaint is referred to the council of physicians, dentists and pharmacists for a disciplinary investigation by a committee formed by the council, the procedure determined by a regulation under paragraph 2 of section 506 shall be followed.

During the investigation of the complaint, the user must be allowed to present observations. The medical examiner shall be kept informed of the progress of the investigation on a regular basis or at the very least on completion of each of the key stages of the investigation. The medical examiner must inform the user periodically. Every 60 days from the date on which the user

was informed of the referral of the complaint until the completion of the investigation, the medical examiner must inform the user in writing on the progress of the investigation.

If, following the investigation of the complaint, the council of physicians, dentists and pharmacists is of the opinion that no disciplinary measures are called for, it shall communicate its conclusions, including reasons, to the professional concerned and the medical examiner. If the complaint was referred to the council by the review committee, the council shall also communicate its conclusions to the review committee. If the council of physicians, dentists and pharmacists is of the opinion that the board of directors should impose disciplinary measures, the executive director of the institution shall notify the professional concerned and the medical examiner of the decision of the board of directors and the reasons therefor. If the complaint was referred to the council by the review committee, the executive director shall also notify the review committee. In all cases, the medical examiner must inform the user, in writing in the case of a written complaint. The medical examiner must also inform the local service quality commissioner.

“59. If warranted, in the opinion of the board of directors, by the gravity of the complaint, the board shall transmit the complaint to the professional order concerned.

If the board of directors takes disciplinary measures against a physician, a dentist or a pharmacist, the executive director must notify the professional order in writing. In such cases, the medical examiner shall inform the user and the local service quality commissioner in writing.

“DIVISION III

“EXAMINATION OF COMPLAINTS BY REGIONAL BOARD

“60. A complaint may be addressed directly to the regional board

(1) by any person who uses the services of a community organization within the meaning of section 334 or resides in a nursing home operated by a person accredited for the purposes of subsidies within the meaning of section 454, regarding the services the person received or ought to have received from the organization or nursing home;

(2) subject to section 61, by any person who requires or uses the pre-hospitalization emergency services required or provided in the person’s region as part of the system provided for in Division VI.1 of the Act respecting health services and social services for Cree Native persons (R.S.Q., chapter S-5), regarding the services that the person received or ought to have received;

(3) by any natural person regarding a function or an activity of the regional board by which the person is personally affected owing to the fact that the person receives or ought to receive services provided by institutions, intermediary resources, family-type resources, community organizations or residences accredited for the purposes of subsidies within the meaning of section 454;

(4) by any natural person regarding any clientele assistance provided by the regional board itself as part of its functions as regards services to the public and user rights;

(5) by any natural person requires or uses services provided by an organization, partnership or person whose services or activities relate to the field of health and social services and with which or whom a service agreement has been made by the regional board for the provision of services, and who cannot otherwise apply to an institution under Division I. Such an agreement must provide for the carrying out of the provisions of Divisions III to VII of this chapter and of the Act respecting the Health and Social Services Ombudsman and amending various legislative provisions (2001, chapter 43) concerning such services.

“61. Any person who requires or uses the services provided under the pre-hospitalization emergency system of Corporation d’urgences-santé de la région de Montréal Métropolitain established under subdivision 1 of Division VI.1 of the Act respecting health services and social services for Cree Native persons shall address a complaint regarding any service the person received or ought to have received from the Corporation to the Corporation.

The board of directors of Corporation d’urgences-santé de la région de Montréal Métropolitain must appoint a member of its personnel to exercise the functions of regional service quality commissioner and make a by-law establishing a complaint examination procedure; Divisions III to VII of this chapter apply, with the necessary modifications, to complaints referred to in the first paragraph.

“62. The board of directors of every regional board must make a by-law establishing a complaint examination procedure for the purposes of this division.

“63. A regional service quality commissioner shall be appointed by the board of directors, on the recommendation of the president and executive director.

The regional service quality commissioner comes under the authority of the president and executive director. The regional service quality commissioner alone is answerable to the board of directors for the application of the complaint examination procedure. A member of the personnel of the regional board may act under the authority of the regional service quality commissioner provided that it is permitted by the organization plan of the regional board.

“64. The board of directors must take steps to preserve at all times the independence of the regional service quality commissioner in the exercise of his or her functions.

To that end, the board of directors must ensure that the regional commissioner, having regard to the other functions he or she may exercise for the regional board, is not in a conflict of interest situation in the exercise of his or her functions.

“65. In the exercise of his or her functions, the regional service quality commissioner may consult any person whose expertise the commissioner requires, including, with the authorization of the board of directors, an expert from outside the institution.

“66. The regional service quality commissioner is answerable to the board of directors for the enforcement of the rights of persons who apply to the regional commissioner pursuant to this division and for the diligent handling of their complaints.

To that end, the functions of the regional service quality commissioner shall include

(1) applying the complaint examination procedure established by by-law of the board of directors in keeping with personal rights ; if necessary, making recommendations to the board of directors for any appropriate action to improve the handling of complaints, including a revision of the complaint examination procedure ;

(2) promoting the independent nature of the role of the regional service quality commissioner within the regional board, and publishing the complaint examination procedure for the public in the region ;

(3) giving assistance or seeing to it that assistance is given to persons who require assistance for the formulation of a complaint or for any further step related to the complaint ; informing users of the possibility of being assisted and supported by the community organization in the region to which a user assistance and support mandate has been given pursuant to the provisions of section 76.6 ; and lastly, providing on request any information on the application of the complaint examination procedure of the regional board and on the other remedies provided for in this chapter, and informing users of the legal protection afforded pursuant to section 76.2 to any person who cooperates in the examination of a complaint ;

(4) on receiving a complaint, examining it with diligence ;

(5) if questions of a disciplinary nature in relation to a practice or the conduct of a personnel member are raised during the examination of a complaint, bringing these questions to the attention of the department concerned or the human resources manager within the regional board or the highest authority of the organization, resource or partnership or the person holding the

position of highest authority responsible for the services that are the subject of the complaint, for a more thorough investigation of the complaint, follow-up action or any other appropriate action ; making any appropriate recommendation to that effect in his or her conclusions ;

(6) not later than 45 days after receiving a complaint, communicating his or her conclusions, including reasons, in writing in the case of a written complaint, to the complainant, together with any recommendations made to the department or service manager concerned within the regional board and to the highest authority of the organization, resource or partnership or to the person holding the position of highest authority responsible for the services that are the subject of the complaint, and informing the complainant of the procedure for applying to the Health Services Ombudsman ; communicating the same conclusions, including reasons, in writing in the case of a written complaint, to the department or manager concerned within the regional board and to the highest authority concerned ;

(7) supporting, on his or her own initiative, any action to improve the quality of the services provided to the clientele, clientele satisfaction and the enforcement of the rights of the clientele, and recommending such action to any department or any service manager within the board or, as the case may be, to the highest authority of any organization, resource or partnership or to the person holding the position of highest authority responsible for the services that may be the subject of a complaint under section 60 ;

(8) giving advice on any matter within the purview of the regional service quality commissioner submitted by the board of directors, any council or committee created under section 407 or any department or service or other council or committee of the regional board ;

(9) at least once a year and whenever necessary, drawing up a summary of the activities of the regional service quality commissioner, together with a statement of any action recommended by the regional commissioner to improve the quality of services, clientele satisfaction and the enforcement of the rights of the clientele ;

(10) seeing to it that the board of directors of every institution in the region prepares a report under section 76.10 and submits it to the regional board ;

(11) preparing the report referred to in section 76.12, incorporating into the report the annual summary of the activities of the regional service quality commissioner and all other reports referred to in section 76.10, and presenting the report to the board of directors for approval ; and

(12) subject to section 64, carrying out any other function provided for in the organization plan of the regional board.

“67. The complaint examination procedure must enable any person referred to in section 60 to address a verbal or written complaint to the regional service quality commissioner.

The procedure must also allow the heirs or the legal representatives of a deceased person to make a complaint regarding the services the person received or ought to have received.

The complaint examination procedure must in particular

(1) include the details allowing rapid access to the services of the regional commissioner;

(2) provide that the regional commissioner must give assistance or see to it that assistance is given to users or persons who require assistance for the formulation of a complaint or for any further step related to the complaint, in particular by the community organization in the region to which a user assistance and support mandate has been given pursuant to section 76.6;

(3) ensure that the complainant receives a written notice of the date on which the verbal or written complaint is received by the regional commissioner;

(4) provide that, where a complaint is received regarding the services provided by a resource, organization, partnership or person other than the regional board, the regional commissioner is to inform the authority concerned in writing of the receipt of the complaint or, if the regional commissioner is of the opinion that no prejudice will be caused to the user, forward a copy of the complaint to the authority; provide that, if the complaint is verbal, the authority concerned is to be informed verbally;

(5) specify what communications must be made in writing in the case of a written complaint;

(6) allow the complainant and the highest authority of the organization, resource or partnership or the person holding the position of highest authority who is responsible for the services that may be the subject of a complaint under section 60 to present observations; and

(7) provide that the regional commissioner, after examining the complaint, is to communicate his or her conclusions, including reasons, to the complainant within the time prescribed in subparagraph 6 of the second paragraph of section 66, together with the procedure for applying to the Health Services Ombudsman.

“68. The regional service quality commissioner may, upon summary examination, dismiss a complaint if, in the commissioner’s opinion, it is frivolous, vexatious or made in bad faith.

The regional service quality commissioner shall so inform the complainant, in writing in the case of a written complaint.

“69. The complainant and any other person, including any person working or practising on behalf of any institution, resource, organization, partnership or person other than the regional board, must supply all information and,

subject to the second paragraph of section 190 and section 218, all documents required by the regional service quality commissioner for the examination of a complaint, including, notwithstanding section 19, access to and the communication of the information or documents contained in the user's record; all such persons must also, unless they have a valid excuse, attend any meeting called by the regional service quality commissioner.

“70. If, pursuant to subparagraph 5 of the second paragraph of section 66, the regional service quality commissioner brings a practice or the conduct of a personnel member that raises questions of a disciplinary nature to the attention of the department concerned or the human resources manager within the regional board or the highest authority of the resource, organization or partnership or the person holding the position of highest authority responsible for the services that are the subject of a complaint under section 60, the department, manager, authority or person must investigate and follow up the case diligently and report periodically to the regional commissioner on the progress of the investigation.

The regional service quality commissioner must be informed of the outcome of the case and of any disciplinary measure taken against the personnel member concerned. The regional commissioner must in turn inform the complainant.

“71. The regional service quality commissioner may bring any report or recommendation regarding the improvement of the quality of services provided to the public, clientele satisfaction and the enforcement of the rights of the clientele to the attention of the board of directors of the regional board, in particular where the department or service manager concerned within the regional board or the highest authority of the resource, organization or partnership or the person holding the position of highest authority responsible for the services that are the subject of a complaint under section 60 has decided not to act upon a recommendation accompanying the conclusions and reasons communicated by the regional commissioner.

The regional commissioner must bring such a report or recommendation to the attention of the board of directors if warranted by the gravity of the complaint, in particular where the commissioner has been informed of a disciplinary measure taken against a personnel member of the department or authority concerned.

The president and executive director of the regional board must transmit to the board of directors any report or recommendation transmitted for that purpose by the regional commissioner.

“72. If the regional service quality commissioner fails to communicate his or her conclusions to the complainant within 45 days after receiving a complaint, the commissioner is deemed to have communicated negative conclusions to the complainant on the date of expiry of the time limit.

Such failure gives rise to the right to apply to the Health Services Ombudsman.

“DIVISION IV

“OTHER PROVISIONS

“73. No person shall take reprisals or attempt to take reprisals in any manner whatever against any person who makes or intends to make a complaint under section 34, 44, 45, 53 or 60.

The person responsible for examining the complaint must intervene without delay upon being apprised of reprisals or of an attempt to take reprisals.

“74. No civil action may be instituted by reason or in consequence of a complaint made in good faith under this chapter, whatever the conclusions issued following its examination.

Nothing in this provision shall operate to restrict the right of any person or the person’s successors to exercise a remedy based on the same facts as those on which a complaint is based.

“75. No legal proceedings may be brought against the following persons or entities for an act or omission made in good faith in the exercise of their functions :

(1) a local service quality commissioner, an assistant local commissioner, a consultant or an outside expert referred to in section 32, a medical examiner, a consultant or an outside expert referred to in section 47, a review committee established under section 51 or a member of such a committee, a council of physicians, dentists and pharmacists or a member of such a council, an outside expert referred to in section 214 or the board of directors of an institution or a member of such a board;

(2) a regional service quality commissioner, a person acting under the authority of a regional service quality commissioner or a consultant or outside expert referred to in section 65.

“76. Except on a question of jurisdiction, no extraordinary recourse under articles 834 to 846 of the Code of Civil Procedure (R.S.Q., chapter C-25) may be exercised and no injunction may be granted against any of the persons referred to in section 75 acting in their official capacity.

“76.1. A judge of the Court of Appeal may, on a motion, summarily annul any writ, order or injunction issued or granted contrary to section 75 or 76.

“76.2. The answers given or statements made by a person for the purposes of the examination of a complaint, including any information or document supplied in good faith by the person in response to a request of a

local service quality commissioner or a regional service quality commissioner, an assistant local commissioner, a consultant or an outside expert referred to in section 32 or 65, a person acting under the authority of a regional service quality commissioner, a medical examiner, a consultant or an outside expert referred to in section 47, a review committee established under section 51 or a member of such a committee may not be used or be admitted as evidence against the person in a judicial proceeding or a proceeding before a person or body exercising adjudicative functions.

“76.3. Before beginning to exercise their functions under this Title or in accordance with the procedure determined by a regulation under paragraph 2 of section 506, a local service quality commissioner or a regional service quality commissioner, an assistant local commissioner, a consultant or an outside expert referred to in section 32 or 65, a person acting under the authority of a regional service quality commissioner, a medical examiner, a consultant or an outside expert referred to in section 47, a member of a review committee established under section 51, a member of a committee of a council of physicians, dentists and pharmacists, an outside expert referred to in section 214 and a member of the board of directors of an institution must take the oath provided in Schedule I.

“76.4. Notwithstanding any inconsistent legislative provision, a local service quality commissioner or a regional service quality commissioner, an assistant local commissioner, a consultant or an outside expert referred to in section 32 or 65, a person acting under the authority of a regional service quality commissioner, a medical examiner, a consultant or an outside expert referred to in section 47, a review committee established under section 51 or a member of such a committee may not be compelled to make a deposition in a judicial proceeding or a proceeding before a person or body exercising adjudicative functions concerning any confidential information obtained in the exercise of their functions, or to produce a document containing such information, except to confirm its confidential nature.

“76.5. Nothing contained in a user’s complaint record, including the conclusions with reasons and any related recommendations, may be construed as a declaration, recognition or extrajudicial admission of professional, administrative or other misconduct capable of establishing the civil liability of a party in a judicial proceeding.

“DIVISION V

“ASSISTANCE BY COMMUNITY ORGANIZATION

“76.6. The Minister, after consulting with the regional board, shall give a community organization in the region the mandate to assist and support, on request, users residing in the region who wish to address a complaint to an institution in the region, to the regional board or to the Health Services Ombudsman.

Where a complaint is made by a user regarding the services of an institution or board of another region than the region in which the user resides, the community organization in the region of the user's residence shall provide any assistance and support requested, unless the user requests assistance and support from the community organization in the region of the institution or board concerned.

In all cases, the community organizations involved must collaborate in providing any assistance and support requested by a user.

“76.7. Every community organization to which a mandate under section 76.6 is given shall, on request, assist a user in any step undertaken to file a complaint with an institution or regional board or with the Health Services Ombudsman, and provide support to the user throughout the proceeding. The community organization shall provide information on the complaints process, help the user define the subject of the complaint, draft the complaint where necessary and provide assistance and support on request to the user at each stage of the proceeding, facilitate conciliation between the user and any authority concerned and contribute, through the support so afforded, to the enforcement of the user's rights and the improvement of the quality of services.

“DIVISION VI

“USER'S COMPLAINT RECORD

“76.8. The contents of a user's complaint record shall be determined by a regulation under paragraph 23 of section 505.

Notwithstanding any contrary provision of this Act, no document contained in a user's complaint record may be filed in the record of a personnel member or a member of the council of physicians, dentists and pharmacists.

The preceding paragraph does not apply to the conclusions and reasons of the medical examiner or to any related recommendations.

“76.9. The provisions of sections 17 to 28 apply to all records kept by the institution or regional board in the exercise of their respective functions under Divisions I, II and III.

“DIVISION VII

“REPORTS

“76.10. Once a year and whenever so required by the regional board, the board of directors of an institution must transmit a report on the application of the complaint examination procedure and the improvement of the quality of services to the regional board.

“76.11. The report shall incorporate the activities summary of the local service quality commissioner referred to in subparagraph 9 of the second paragraph of section 33, the medical examiner’s report referred to in section 50 and the review committee’s report referred to in section 57.

The report shall describe the reasons for the complaints received and shall indicate in respect of each type of complaint

- (1) the number of complaints received, dismissed upon summary examination, examined, refused or abandoned since the last report ;
- (2) the time taken for the examination of complaints ;
- (3) the actions taken following the examination of complaints ; and
- (4) the number of complaints that gave rise to an application to the Health Services Ombudsman and the reasons for those complaints.

The report must also give an account of any action recommended by the local service quality commissioner and of any action taken to improve the quality of services, user satisfaction and the enforcement of user rights.

The board of directors shall also include in the report, where required, any mandatory objectives relating to the enforcement of user rights and the diligent handling of user complaints.

“76.12. Once a year and whenever so required by the Minister, the board of directors of a regional board must transmit a report summarizing all the reports received from the boards of directors of institutions.

The report shall describe the types of complaints received, including any complaints concerning physicians, dentists or pharmacists, and shall indicate in respect of each type of complaint

- (1) the number of complaints received, dismissed upon summary examination, examined, refused or abandoned since the last report ;
- (2) the actions taken following the examination of complaints ;
- (3) the names of the institutions concerned ; and
- (4) the time taken for the examination of complaints.

The report shall also incorporate the activities summary of the regional service quality commissioner referred to in subparagraph 9 of the second paragraph of section 66, describe the reasons for the complaints received by the regional board itself and indicate in respect of each type of complaint

- (1) the number of complaints received, dismissed upon summary examination, examined, refused or abandoned since the last report;
- (2) the time taken for the examination of complaints;
- (3) the actions taken following the examination of complaints; and
- (4) the number of complaints that gave rise to an application to the Health Services Ombudsman and the reasons for those complaints.

The report must also give an account of the most significant actions recommended by local service quality commissioners and by the regional service quality commissioner and of the most significant actions taken by the institutions and by the regional board to improve the quality of services to the public in the region, clientele satisfaction and the enforcement of the rights of the clientele.

The board of directors shall also include in the report, where required, any mandatory objectives relating to the enforcement of the rights of persons who apply to the regional service quality commissioner under Division III and the diligent handling of their complaints.

A copy of the report must be sent at the same time to the Health Services Ombudsman.

“76.13. Whenever so required by the Health Services Ombudsman, the board of directors of an institution or a regional board must transmit a report to the Ombudsman regarding any item of information referred to in section 76.11 or 76.12 recorded since the last report and on any matter relating to the application of the complaint examination procedure, including the provisions applicable to any user complaint concerning a physician, dentist or pharmacist.

“76.14. The Minister shall table the reports of the regional boards in the National Assembly within 30 days of receiving them or, if the Assembly is not in session, within 30 days of resumption.”

42. Section 108 of the said Act is amended by inserting the following paragraph after the first paragraph :

“The agreement must recognize the jurisdiction of the local service quality commissioner and that of the medical examiner as regards the examination of the complaints of the clientele concerned by the agreement. The agreement must allow the carrying out of the provisions of Chapter III of Title II of Part I of this Act and of the Act respecting the Health and Social Services Ombudsman and amending various legislative provisions concerning the services covered by the agreement, with the necessary modifications.”

43. The said Act is amended by inserting the following section after section 133 replaced by section 21 of chapter 24 of the statutes of 2001 :

“133.0.1. For the purposes of paragraph 5 of each of sections 129, 131 to 132.1 and 133 and of paragraph 3 of each of sections 129.1 and 130, the persons who perform nursing assistant activities for an institution are deemed to be members of the institution’s multidisciplinary council.”

44. Section 173 of the said Act is amended by replacing paragraph 2 by the following paragraph :

“(2) appoint the local service quality commissioner in accordance with the provisions of section 30;”.

45. Section 177 of the said Act is amended by replacing “referred to in section 68” in the fourth paragraph by “and the improvement of the quality of services referred to in section 76.10”.

46. Section 182 of the said Act is amended by replacing “29, 38 to 41” in the first paragraph by “29 to 34, 38, 39”.

47. Section 212 of the said Act is amended by replacing “Divisions I, II and IV of Chapter III of Title II” in subparagraph 4 of the first paragraph by “Divisions I, II and III of Chapter III of Title II of this Act or the Act respecting the Health and Social Services Ombudsman and amending various legislative provisions”.

48. Section 214 of the said Act is amended by replacing the second paragraph by the following paragraph :

“In exercising the functions described in subparagraphs 1 and 2 of the first paragraph and in exercising functions following the filing of a complaint in a case described in section 249, the council of physicians, dentists and pharmacists may, with the authorization of the board of directors, call on an expert from outside the institution. The expert shall have access to the user's record where the expert needs the information contained in the record for the exercise of his or her functions.”

49. Section 218 of the said Act is amended by inserting the following paragraphs after the first paragraph :

“However, a medical examiner and the members of the review committee established under section 51 may examine the professional record of a member of the council of physicians, dentists and pharmacists where the information contained in the record is needed for the exercise of their functions.

Moreover, the members of the board of directors may have access to relevant extracts from the professional record of a member of the council of physicians, dentists and pharmacists that contain information needed for the

making of a decision regarding possible disciplinary measures against a physician, dentist or pharmacist in accordance with the procedure determined by a regulation under paragraph 2 of section 506.”

50. Section 249 of the said Act is amended by adding the following sentence at the end of the second paragraph: “They may also include a recommendation that the physician or dentist serve a period of refresher training, take a refresher course or both, and may, if necessary, restrict or suspend some or all of the physician’s or dentist’s privileges for the duration of the refresher period.”

51. Section 250 of the said Act is amended by adding the following sentence at the end of the second paragraph: “They may include a recommendation that the pharmacist serve a period of refresher training, take a refresher course or both, and may, if necessary, restrict or suspend the pharmacist’s activities for the duration of the refresher period.”

52. Section 344 of the said Act is amended by replacing “42 to 53.1” in the second line by “60 to 72”.

53. Section 345 of the said Act is repealed.

54. Section 405 of the said Act, amended by section 75 of chapter 24 of the statutes of 2001, is again amended by replacing “and the senior management officers and confirming the designation, made by the executive director, of the complaints officer responsible for applying the users’ complaint examination procedure provided for in section 43” in subparagraph 3 of the second paragraph by “, the senior management officers and the regional service quality commissioner in accordance with the provisions of section 63”.

55. Section 506 of the said Act is amended by adding “or a resident to whom a status has been assigned by the board” after “pharmacist” in the third line of paragraph 2.

56. Section 530.5 of the said Act is amended

(1) by replacing “31” in the first paragraph by “34”;

(2) by replacing “the services that have or should have been provided to him by” in the third and fourth lines of the first paragraph by “the services that have been, should have been or are being provided to the user by or that the user requires from”;

(3) by replacing “complaints officer responsible for the application of the complaint examination procedure” in the first and second lines of the second paragraph and “complaints officer in charge of the application of the complaint examination procedure” in the third and fourth lines of that paragraph by “local service quality commissioner”;

(4) by replacing “in the manner set out in sections 32 to 41” in the fifth line of the second paragraph and in the seventh line of the third paragraph by “in accordance with the applicable complaint examination procedure”;

(5) by replacing “complaints officer” in the sixth line of the second paragraph and in the first, fifth and eighth lines of the third paragraph by “local commissioner”.

57. Section 530.7 of the said Act is amended

(1) by replacing “complaints officer responsible for the application of the complaint examination procedure of the regional board referred to in section 530.25” in the third, fourth and fifth lines of the first paragraph by “Health Services Ombudsman, who shall examine the complaint in accordance with the Act respecting the Health and Social Services Ombudsman and amending various legislative provisions”;

(2) by striking out the second and third paragraphs.

58. Section 530.8 of the said Act is amended

(1) by replacing “complaints officer responsible for the application of the complaint examination procedure” in the sixth and seventh lines of the first paragraph by “regional service quality commissioner”;

(2) by replacing “the services that have or should have been provided to the person by” in the eighth and ninth lines of the first paragraph by “the services that have been, should have been or are being provided to the person by or that the person requires from”;

(3) by replacing “complaints officer” in the first, second and third and sixth lines of the second paragraph and in the first and fifth lines of the third paragraph by “regional commissioner”;

(4) by replacing “in the manner set out in sections 73 to 76” in the fifth line of the second paragraph and in the sixth and seventh lines of the third paragraph by “in accordance with the applicable complaint examination procedure”.

59. The said Act is amended by replacing “COMPLAINTS COMMISSIONER” in the heading of Division III of Chapter II of Title I of Part IV.1 by “HEALTH SERVICES OMBUDSMAN”.

60. Section 530.9 of the said Act is amended by replacing “complaints commissioner” in the first line by “Health Services Ombudsman”.

61. Section 530.10 of the said Act is amended by replacing “54” in the first line by “76.6”.

62. Section 530.47 of the said Act is repealed.

63. Section 530.48 of the said Act is replaced by the following section :

“530.48. Complaints under section 60 shall be filed with the institution to which this Part applies and shall be examined in accordance with the provisions of sections 29 to 59, 73 to 76.9 and 76.13.”

64. Section 530.49 of the said Act is amended

(1) by replacing “68 to the Minister” in the first paragraph by “76.10 to the Minister. The report must contain the items listed in section 76.11”;

(2) by replacing “71” in the second paragraph by “76.14”.

65. Section 530.91 of the said Act, enacted by section 1 of chapter 33 of the statutes of 2000, is amended

(1) by replacing “31 and 42” in the first line of the first paragraph by “34 and 60”;

(2) by replacing “the services that have or should have been provided to the user by” in the fourth and fifth lines of the first paragraph by “the services that have been, should have been or are being provided to the user by or that the user requires from”;

(3) by replacing the second and third paragraphs by the following paragraphs :

“Where such a complaint is filed, the local commissioner who receives the complaint must transmit it with diligence to the local commissioner of the institution concerned or, as the case may be, the regional commissioner of the regional board concerned, who shall then examine the complaint and communicate with the local commissioner of the institution referred to in section 530.89, who shall in turn inform the user with diligence of the action taken following the user’s complaint.

If a complaint concerning an institution situated outside the territory described in section 530.89 is filed directly with the local commissioner of the institution or, as the case may be, the regional commissioner of the regional board, the complaint shall be examined by that local or regional commissioner, who shall inform the local commissioner of the institution referred to in section 530.89. Any information relating to the follow-up of the complaint shall be communicated to the local commissioner of the latter institution, who shall communicate the information to the user with diligence.”

66. Section 530.92 of the said Act, enacted by section 1 of chapter 33 of the statutes of 2000, is amended by replacing “complaints commissioner” in the first line by “Health Services Ombudsman”.

67. Section 530.93 of the said Act, enacted by section 1 of chapter 33 of the statutes of 2000, is amended by replacing “68” in the second line by “76.10”.

68. The said Act is amended by adding the following schedule at the end:

“SCHEDULE I

“Oath

“I declare under oath that I will fulfil the duties of my office with honesty, impartiality and justice. I further declare under oath that I will not reveal or disclose, unless authorized by law, any confidential information that may come to my knowledge in the exercise of my functions.”

69. Section 149.32.1 of the Act respecting health services and social services for Cree Native persons (R.S.Q., chapter S-5) is repealed.

TRANSITIONAL AND FINAL PROVISIONS

70. The complaints commissioner in office on 1 January 2002 shall remain in office as the Health and Social Services Ombudsman until the expiry of his or her term of office.

71. The personnel of the complaints commissioner referred to in section 65 of the Act respecting health services and social services shall become the personnel of the Health and Social Services Ombudsman, and delegations made under section 65 shall be deemed to be delegations made under section 4 of this Act.

72. The complaint examination procedure established by the complaints commissioner pursuant to the provisions of section 57 of the Act respecting health services and social services shall continue to apply to the Health Services Ombudsman until 1 April 2002 or any later date determined by the Government; the new complaint examination procedure established by the Health Services Ombudsman under the provisions of section 10 of this Act shall apply from that date.

73. The examination of any complaint filed with the complaints commissioner before 1 January 2002 shall be continued by the Health Services Ombudsman in accordance with this Act.

74. The records and other documents held by the complaints commissioner on 1 January 2002 shall be transferred to the Health Services Ombudsman without further formality.

75. The complaints officer responsible for the application of the complaint examination procedure designated by the executive director of an institution under section 29 of the Act respecting health services and social services shall be deemed to be the local service quality commissioner of the institution until the board of directors makes the appointment provided for in section 30 of the Act respecting health services and social services enacted by section 41 of this Act on or before 1 April 2002 or any later date determined by the Government.

76. The complaint examination procedure established by an institution pursuant to the provisions of section 29 of the Act respecting health services and social services shall continue to apply to the institution until 1 April 2002 or any later date determined by the Government; the new complaint examination procedure established by by-law of the board of directors under the provisions of section 29 of the Act respecting health services and social services enacted by section 41 of this Act, shall apply from that date.

77. The provisions of sections 29 to 40 of the Act respecting health services and social services enacted by section 41 of this Act shall apply to the continuation of the examination of a complaint received by the institution before 1 April 2002 or any later date determined by the Government.

78. On or before 1 April 2002 or any later date determined by the Government, the board of directors of every institution must designate a medical examiner as provided for in section 42 of the Act respecting health services and social services enacted by section 41 of this Act.

79. Complaints concerning a physician, dentist or pharmacist received from 1 April 2002 or any later date determined by the Government shall be examined in accordance with the provisions of sections 41 to 59 of the Act respecting health services and social services enacted by section 41 of this Act.

80. The institutions referred to in section 51 of the Act respecting health services and social services enacted by section 41 of this Act shall have until 1 April 2002 or any later date determined by the Government to establish a review committee as provided for in that section.

81. The complaint examination procedure established by a regional board pursuant to the provisions of section 43 of the Act respecting health services and social services shall continue to apply to the regional board until 1 April 2002 or any later date determined by the Government; the new complaint examination procedure established by by-law of the board of directors under the provisions of section 62 of the Act respecting health services and social services enacted by section 41 of this Act shall apply from that date.

82. The complaints officer responsible for the application of the complaint examination procedure designated by the executive director of a regional board pursuant to the provisions of section 43 of the Act respecting health services and social services shall be deemed to be the regional service quality

commissioner of the regional board until the board of directors makes the appointment provided for in section 63 of the Act respecting health services and social services enacted by section 41 of this Act on or before 1 April 2002 or any later date determined by the Government.

83. The examination of any complaint received by a regional board before 1 April 2002 or any later date determined by the Government shall be continued by the regional board pursuant to the provisions of sections 42 to 53.1 of the Act respecting health services and social services as they read before that date, in accordance with the complaint examination procedure and time limits applicable at that time.

Any complaint received by a regional board on or after 1 April 2002 or any later date determined by the Government which, under the provisions of the Act respecting health services and social services enacted by section 41 of this Act, is within the purview of the Health Services Ombudsman shall be referred without delay to the Health Services Ombudsman in accordance with this Act.

84. Corporation d'urgences-santé de la région de Montréal Métropolitain shall have until 1 April 2002 or any later date determined by the Government to appoint a member of its personnel to exercise the functions of regional service quality commissioner and to make a by-law establishing a complaint examination procedure in accordance with the provisions of section 61 of the Act respecting health services and social services enacted by section 41 of this Act.

Until that date, the applicable procedure shall continue to produce its effects.

85. The employees of a regional health and social services board within the meaning of the Act respecting health services and social services who are in office on 1 November 2001 and are assigned duties relating to the complaint handling process or the promotion of users' rights, shall become members of the personnel of the Health Services Ombudsman insofar as they are covered by a decision of the Conseil du trésor made before the date that is one year after the date of coming into force of this section, in conformity with the conditions and procedure determined in the decision. Employees so transferred are deemed to have been appointed in accordance with the Public Service Act (R.S.Q., chapter F-3.1.1).

The Conseil du trésor may determine the classification, remuneration and any other condition of employment applicable to the employees referred to in the first paragraph.

86. The Government may, by a regulation made before 1 January 2004, adopt any other transitional provision to rectify any omission and ensure the carrying out of this Act.

A regulation under this section is not subject to the publication requirement provided for in section 8 of the Regulations Act (R.S.Q., chapter R-18.1). Notwithstanding section 17 of that Act, it comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date fixed therein.

87. The provisions of this Act come into force on 1 January 2002, except the provisions of sections 7 to 9, 12 to 28, 38 and 39 and the provisions of sections 33, 35 to 40, 44 to 50, 52 to 61, 66, 68 to 72 and 76.8 to 76.14 of the Act respecting health services and social services enacted by section 41 of this Act, which come into force on the date or dates to be fixed by the Government.