



NATIONAL ASSEMBLY

SECOND SESSION

THIRTY-SIXTH LEGISLATURE

Bill 27

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

Introduction

**Introduced by
Mr Rémy Trudel
Minister of Health and Social Services**

**Québec Official Publisher
2001**

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 resigned.

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 regarding a medical, dental or pharmaceutical act: 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 either make an inquiry or seek a settlement between the interested parties, and require that the person submit a report within a specified time.

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

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), are enforced.

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

The Health Services Ombudsman shall ensure that the complaint handling process in institutions and regional boards is in conformity with sections 29 to 69 of the Act respecting health services and social services.

By way of exception, the Health Services Ombudsman may intervene specifically with the authorities concerned in cases described in section 19.

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 7 of the second paragraph of section 63 of that Act, or deemed to have been transmitted to the person under section 69 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 59 of that Act, or deemed to have been transmitted to the person under section 69 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 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 all details allowing the Health Services Ombudsman to be contacted promptly ;

(2) 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 ; provide that the Health Services Ombudsman 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 ;

(3) provide that a copy of any complaint addressed to the Health Services Ombudsman is to be sent to the institution or the regional board concerned, and to the highest authority of any other organization, resource or partnership or to any other person if the complaint pertains to the services they provide ;

(4) allow the complainant and the institution, the regional board or the highest authority of any other organization, resource or partnership or to any other person whose services are the subject of the complaint to present observations ; and

(5) require the Health Services Ombudsman to examine the complaint and to communicate his or her conclusions, including reasons, without delay to the complainant together with any appropriate recommendations to the institution or the regional board and to the highest authority of the organization, resource or partnership or to any other person whose services are the subject of the complaint; require the Health Services Ombudsman to forward a copy of his or her conclusions, including reasons, to the institution or the regional board and to any other authority or person concerned.

11. Within five days after receiving a copy of a complaint, the institution or the regional board must forward a copy of the entire complaint record to the Health Services Ombudsman.

12. 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 examination 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 one year has 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 69 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.

13. 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 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.

14. 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, 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.

15. If, after having made a recommendation as referred to in section 14, 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

16. 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.

17. The Health Services Ombudsman shall, in the exercise of his or her functions, ensure that the process for handling the complaints addressed to an institution or a regional board is in conformity with the law.

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.

18. The Health Services Ombudsman shall report to the Minister, as part of the report submitted at least once a year pursuant to section 36, 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

19. The Health Services Ombudsman may, on his or her own initiative, intervene if the Ombudsman has reasonable grounds to believe that a natural person or a group of natural persons has 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 58 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 attitude of resignation of the targeted clientele, or in any other case envisaged in the intervention procedure established by the Ombudsman under section 21 which 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.

20. 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.

21. The intervention of the Health Services Ombudsman shall be conducted privately, in a non-adversarial mode and in accordance with the intervention procedure established by the Ombudsman.

Sections 9, 13 and 27 to 35 apply the intervention, with the necessary modifications.

22. The Health Services Ombudsman must without delay communicate his or her conclusions, including reasons, to the body concerned, together with any appropriate recommendations. The Health Services Ombudsman may also communicate the conclusions, reasons and recommendations to the person or to each of the persons on whose behalf the Ombudsman intervened.

23. 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.

24. If, after having made a recommendation referred to in section 23, 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

25. The Health Services Ombudsman may, whenever necessary, advise the Minister or any body referred to in section 19 on any matter relating to the respect shown to users and the enforcement of their rights and remedies under Title II of Part I of the Act respecting health services and social services 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.

26. Thirty days after transmitting any advice, recommendation or report under section 15, 24 or 25 to the Minister, the Health Services Ombudsman may make the document public.

CHAPTER VI

VARIOUS PROVISIONS

27. 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 intervene without delay upon being apprised of reprisals or of an attempt to take reprisals.

28. 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.

29. No legal proceedings may 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.

30. 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 29 acting in their official capacity.

31. A judge of the Court of Appeal may, on a motion, summarily annul any writ, order or injunction issued or granted contrary to section 29 or 30.

32. 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 or quasi-judicial proceeding, except at a hearing held by an authority exercising quasi-judicial functions within an institution or at a hearing before the disciplinary committee of the professional order to which the person belongs concerning an alleged misrepresentation or false statement made knowingly by the person with intent to deceive.

33. Notwithstanding any inconsistent legal provision, the Health Services Ombudsman, a mandatory 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 or quasi-judicial proceeding 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.

34. 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.

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

CHAPTER VII

ANNUAL REPORT

36. 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 18.

Moreover, the report shall list the interventions of the Health Services Ombudsman pursuant to section 19 as well as the principal conclusions of the Ombudsman and any related recommendations.

Furthermore, the report may contain advice formulated by the Health Services Ombudsman and 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 19 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.

37. 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

38. 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

39. The Act respecting health services and social services (R.S.Q., chapter S-4.2) is 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 Divisions I and 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 comes under the authority of the board of directors.

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

To that end, the board of directors must ensure that the local commissioner is assigned exclusively to the exercise of the functions conferred by section 33.

Nevertheless, the local commissioner may 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 take on as an assistant or 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. The functions of the local service quality commissioner may not be 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 applicable to the institution personnel, 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 49 ; providing on request any information on the application of the complaint examination procedure, and informing users of the legal protection afforded pursuant to section 75 to any person who cooperates in the examination of a complaint ;

(4) on receiving a complaint from a user, examining it as diligently as possible in a non-adversarial mode ;

(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 under the first paragraph of section 34, bringing these questions to the attention of the human resources department or manager within the institution or the highest authority of the organization, resource or partnership or to any other person whose services 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 60 days after receiving a complaint under the first paragraph of section 34, communicating his or her conclusions, including reasons, in writing in the case of a written complaint, to the user, together with any appropriate recommendations to the department or service manager concerned within the institution and, where applicable, to the highest authority of the organization, resource or partnership or any other person whose services 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 any other authority concerned ;

(7) supporting 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 to the highest authority of any organization, resource or partnership or to any other person whose services 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 76.6, incorporating into the report the annual summary of the activities of the local service quality commissioner, the report of the medical examiner under section 48 and the report of the review committee under section 55, and submitting 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 or ought to have received from the institution, an intermediary or family-type resource or any other organization, partnership or person to which or whom the institution has recourse for the provision of certain 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 all details allowing the local service quality commissioner to be contacted promptly ;

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

(3) establish a procedure for the examination of complaints regarding medical, dental or pharmaceutical acts in accordance with Division II ;

(4) provide for the prompt referral of any complaint regarding a medical, dental or pharmaceutical act, or in which such an act is involved, to the medical examiner designated under section 41 ;

(5) provide that a copy of any written complaint or the substance of any verbal complaint regarding the services provided by any organization, resource, partnership or person referred to in the first paragraph be sent or communicated to the highest authority concerned ;

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

(7) allow the user and the highest authority of the organization, resource or partnership or any other person whose services are the subject of a complaint referred to in the first paragraph to present their observations ; and

(8) require the local commissioner to examine the complaint and 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 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 human resources department or manager within the institution or the highest authority of the organization, resource or partnership or to any person whose services 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 any person whose services 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 60 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 REGARDING MEDICAL, DENTAL OR PHARMACEUTICAL ACTS

“41. For the purposes of the examination procedure applicable to complaints regarding medical, dental or pharmaceutical acts, 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.

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

Where a single council of physicians, dentists and pharmacists has been established for the group of institutions administered by the board of directors, the board shall, 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 institutions administered by the board of directors, a physician who does not practise in such a centre may, by way of exception, be designated as medical examiner.

“42. 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 regarding a medical, dental or pharmaceutical act made by any person other than a user or the representative of a user.

“43. Where a user makes a complaint regarding a medical, dental or pharmaceutical act, the local service quality commissioner shall without delay refer the complaint for investigation to the medical examiner designated pursuant to section 41 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. The medical examiner must nevertheless collaborate to find solutions to the administrative or organizational problems underscored by the complaint.

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

(1) examine the complaint in a non-adversarial mode in accordance with this division ;

(2) refer the complaint to the council of physicians, dentists and pharmacists for a disciplinary investigation by a committee formed by the council, and transmit a copy of the complaint to the professional concerned ; if there is no council of physicians, dentists and pharmacists, the complaint shall be handled according to the procedure determined by a regulation under paragraph 2 of section 506 ; or

(3) 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 or 3, the medical examiner must inform the user and the local service quality commissioner.

“45. Where the medical examiner chooses to proceed pursuant to subparagraph 1 of the first paragraph of section 44, 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 60 days of its referral and attempt to conciliate the interests involved. The medical examiner may take on as an assistant or consult any person whose expertise the medical examiner requires, including, with the authorization of the board of directors, calling on 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 49. The conclusions, reasons and recommendations must also be communicated to the local service quality commissioner.

“46. If, during the examination of the complaint, 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 acts, the complaint ought to be referred for a disciplinary investigation by a committee formed 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. The medical examiner must inform the user, the professional concerned and the local service quality commissioner of the decision to so refer the complaint.

“47. If the medical examiner fails to communicate his or her conclusions to the user within 60 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 49.

“48. 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 acts performed within 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 76.6.

“49. A review committee shall be established for each institution where five or more 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 of each institution concerned or, where there is no such council in one or more of the institutions, with the physicians, dentists and pharmacists of the institution or institutions concerned.

However, where a single council of physicians, dentists and pharmacists has been established for the group of institutions administered by the board of directors, the board of directors shall establish a single review committee for the group of institutions.

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 members of the board elected among the public. The other two members shall be appointed from among the members of the council or councils of physicians, dentists and pharmacists established for the institution or institutions administered by the board of directors, on the recommendation of the executive committee of the council or councils concerned or, if there is no such council, 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 institutions administered by the board of directors, the other two members of the review committee may, by way of exception, be appointed, based on their expertise, from outside a centre operated by the institution or institutions, after consulting with the physicians, dentists and pharmacists concerned and, where applicable, on the recommendation of the executive committee of the council or councils of physicians, dentists and pharmacists concerned.

The board of directors shall determine the term of appointment of the members of the review committee.

“50. 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 complete the examination of the complaint within the time specified and transmit his or her new conclusions to the user and a copy to the review committee ;

(3) forward a copy of the complaint and of the complaint record to the council of physicians, dentists and pharmacists for a disciplinary investigation by a committee formed by the council ; or

(4) based on the conclusions of the medical examiner, recommend any action to the parties that is likely to resolve the matter between them.

“51. A user who disagrees with the conclusions transmitted by the medical examiner, or deemed to have been transmitted by the medical examiner under section 47, 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 47. 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.

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.

“52. 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.

“53. The review committee must allow the user to present observations. If necessary, the review committee may request 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.

“54. 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.

“55. 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 acts performed 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 76.6, and to the Health Services Ombudsman.

“56. Subject to the following, where pursuant to subparagraph 2 of the first paragraph of section 44, section 46 or subparagraph 3 of the second paragraph of section 50, 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.

“57. 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

“58. 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 home 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 residence ;

(2) subject to section 59, 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 who uses the services of an organization, partnership or person with which or whom a service agreement has been made by the regional board for the provision of services ; such an agreement must recognize the jurisdiction of the regional service quality commissioner as regards the examination of such a complaint ; or

(6) by any natural person who uses the services of any institution, resource, organization, partnership or person whose services or activities are financed in whole or in part by a subsidy, an allowance or any other financial assistance granted by the regional board and who cannot otherwise apply to an institution under Division I, regarding the services the person received or ought to have received.

“59. 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.

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

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

The regional service quality commissioner comes under the authority of the 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 administrative organizational plan of the regional board.

“62. 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.

In the exercise of his or her functions, the regional service quality commissioner may take on as an assistant or consult any person whose expertise the regional commissioner requires, including, with the authorization of the board of directors, calling on an expert from outside the regional board.

“63. 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 and making it readily available on request;

(3) seeing to it that every board of directors administering an institution establishes and applies a complaint examination procedure;

(4) 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; 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 75 to any person who cooperates in the examination of a complaint;

(5) on receiving a complaint, examining it as diligently as possible in a non-adversarial mode;

(6) 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 under section 58, bringing these questions to the attention of the human resources department or manager within the regional board or the highest authority of the organization, resource or partnership or to any person whose services 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;

(7) not later than 60 days after receiving a complaint under section 58, communicating his or her conclusions, including reasons, in writing in the case of a written complaint, to the complainant, together with any appropriate recommendations to the department or service manager concerned within the regional board and to the highest authority of the organization, resource or partnership or to any person whose services 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 any other authority concerned;

(8) supporting any action to improve the quality of services, clientele satisfaction and the enforcement of the rights of the clientele, and recommending such action to any department or service manager within the regional board or to the highest authority of the organization, resource or partnership or to any person whose services may be the subject of a complaint under section 58;

(9) 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;

(10) 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;

(11) seeing to it that the board of directors of every institution in the region prepares a report under section 76.6 and submits it to the regional board;

(12) preparing the report referred to in section 76.8, incorporating into the report the annual summary of the activities of the regional service quality commissioner and all other reports referred to in section 76.6, and submitting the report to the board of directors for approval; and

(13) subject to section 62, carrying out any other function provided for in the organizational plan of the regional board.

“64. The complaint examination procedure must enable any person referred to in section 58 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 all details allowing the regional service quality commissioner to be contacted promptly;

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

(3) provide that a copy of any written complaint or the substance of any verbal complaint regarding the services provided by any organization, resource, partnership or person other than the regional board is to be sent or communicated to the highest authority concerned;

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

(5) allow the complainant and the highest authority of the organization, resource or partnership or any person whose services are the subject of a complaint under section 58 to present observations; and

(6) require the regional service quality commissioner to examine the complaint and to communicate his or her conclusions, including reasons, to the complainant within the time prescribed in subparagraph 7 of the second paragraph of section 63, together with the procedure for applying to the Health Services Ombudsman.

“65. 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.

“66. 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 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.

“67. If, pursuant to subparagraph 6 of the second paragraph of section 63, 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 human resources department or manager within the regional board or the highest authority of the resource, organization or partnership or any person whose services are the subject of a complaint under section 58, 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.

“68. 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 any person whose services are the subject of a complaint under section 58 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 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.

“69. If the regional service quality commissioner fails to communicate his or her conclusions to the complainant within 60 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

“70. 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, 42, 43, 51 or 58.

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

“71. 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.

“72. 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 of a local service quality commissioner, a consultant or an outside expert referred to in section 32, a medical examiner, an assistant of a medical examiner, a consultant or an outside expert referred to in section 45, a review committee established under section 49 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 or an assistant of a regional service quality commissioner or a consultant or outside expert referred to in section 62.

“73. 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 72 acting in their official capacity.

“74. A judge of the Court of Appeal may, on a motion, summarily annul any writ, order or injunction issued or granted contrary to section 72 or 73.

“75. 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 of such a commissioner, a consultant or an outside expert referred to in section 32 or 62, a person acting under the authority of a regional service quality commissioner, a medical examiner, an assistant of a medical examiner, a consultant or an outside expert referred to in section 45, a review committee established under section 49 or a member of such a committee may not be used or be admitted as evidence against the person in a judicial or quasi-judicial proceeding, except at a hearing held by an authority exercising quasi-judicial functions within an institution or at a hearing before the disciplinary committee of the professional order to which the person belongs concerning an alleged misrepresentation or false statement made knowingly by the person with intent to deceive.

“76. 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 of such a commissioner, a consultant or an outside expert referred to in section 32 or 62, a person acting under the authority of a regional service quality commissioner, a medical examiner, an assistant of a medical examiner, a consultant or an outside expert referred to in section 45, a member of a review committee established under section 49, a member 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.

“76.1. Notwithstanding any contrary legal provision, a local service quality commissioner or a regional service quality commissioner, an assistant of such a commissioner, a consultant or an outside expert referred to in section 32 or 62, a person acting under the authority of a regional service quality commissioner, a medical examiner, an assistant of a medical examiner, a consultant or an outside expert referred to in section 45, a review committee established under section 49 or a member of such a committee may not be compelled to make a deposition in a judicial or quasi-judicial proceeding 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.

“76.2. 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

“76.3. The Minister, after consulting with the regional board, the users’ committees of the institutions in the region and interested organizations, shall give a community organization in the region the mandate to assist and accompany, on request, users wishing to address a complaint to an institution in the region, to the regional board or to the Health Services Ombudsman.

“DIVISION VI

“USER’S COMPLAINT RECORD

“76.4. 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.

“76.5. 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

“76.6. 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.

“76.7. 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 48 and the review committee’s report referred to in section 55.

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.

“76.8. 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 regarding medical, dental or pharmaceutical acts, 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 10 of the second paragraph of section 63, 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 action recommended by local service quality commissioners and by the regional service quality commissioner and of the most significant action 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.

“76.9. 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 76.7 or 76.8 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 regarding a medical, dental or pharmaceutical act.

“76.10. 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.”

40. 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 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, with the necessary modifications.”

41. 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;”.

42. 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 76.6”.

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

44. 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”.

45. 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 his or her functions.”

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

“However, the members of the board of directors may have access to 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 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.”

47. Section 249 of the said Act is amended by adding the following sentence at the end of the second paragraph: “They may require 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.”

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

49. Section 344 of the said Act is amended by replacing “42 to 53.1” in the second line by “58 to 69”.

50. Section 405 of the said Act is 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 61”.

51. Section 530.5 of the said Act is amended

- (1) by replacing “31” in the first paragraph by “34”;
- (2) 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”;
- (3) 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”;
- (4) 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”.

52. 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.

53. Section 530.8 of the said Act is amended

- (1) by replacing “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 “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”;
- (3) 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”.

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

55. Section 530.10 of the said Act is amended by replacing “54” in the first line by “76.3”.

56. Section 530.47 of the said Act is repealed.

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

“530.48. Complaints under section 58 shall be filed with the institution to which this Part applies and shall be examined in accordance with the provisions of sections 29 to 57, 70 to 76.5 and 76.9.”

58. Section 530.49 of the said Act is amended

(1) by replacing “68 to the Minister” in the first paragraph by “76.6 to the Minister. The report must have the contents listed in section 76.7”;

(2) by replacing “71” in the second paragraph by “76.10”.

59. 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.

60. 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.”

TRANSITIONAL AND FINAL PROVISIONS

61. The complaints commissioner in office on (*insert here the date of coming into force of this section*) shall remain in office as the Health and Social Services Ombudsman until the expiry of his or her term of office.

62. 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.

63. Insofar as it is consistent with the provisions of this Act, 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 a new complaint examination procedure is established by the Ombudsman pursuant to the provisions of section 10 of this Act on or before 1 April 2002 or any later date determined by the Government.

64. The examination of any complaint filed with the complaints commissioner before (*insert here the date of coming into force of this section*) shall be continued by the Health Services Ombudsman in accordance with this Act.

65. The records and other documents held by the complaints commissioner on (*insert here the date of coming into force of this section*) shall be transferred to the Health Services Ombudsman without further formality.

66. Notwithstanding section 31 of the Act respecting health services and social services enacted by section 39 of this Act, 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 39 of this Act on or before 1 April 2002 or any later date determined by the Government.

67. Insofar as it is consistent with the provisions of the Act respecting health services and social services enacted by section 39 of this Act, 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 a new complaint examination procedure is established by by-law of the board of directors pursuant to the provisions of section 29 of the Act respecting health services and social services enacted by section 39 of this Act on or before 1 April 2002 or any later date determined by the Government.

68. Subject to the provisions of section 70 of this Act, the provisions of the Act respecting health services and social services enacted by section 39 of this Act apply to the continuation of the examination of a complaint received by the institution before (*insert here the date of coming into force of this section*).

69. On or before 1 November 2001 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 41 of the Act respecting health services and social services enacted by section 39 of this Act.

70. Complaints regarding medical, dental or pharmaceutical acts received after (*insert here the date of coming into force of this section*) shall be examined in accordance with the provisions of sections 41 to 57 of the Act respecting health services and social services enacted by section 39 of this Act.

71. The institutions referred to in section 49 of the Act respecting health services and social services enacted by section 39 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.

72. Insofar as it is consistent with the provisions of the Act respecting health services and social services enacted by section 39 of this Act, 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 a new complaint examination procedure is established by by-law of the board of directors pursuant to the provisions of section 60 of the Act respecting health services and social services enacted by section 39 of this Act on or before 1 April 2002 or any later date determined by the Government.

73. 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 61 of the Act respecting health services and social services enacted by section 39 of this Act on or before 1 April 2002 or any later date determined by the Government.

74. The examination of any complaint received by a regional board before (*insert here the date of coming into force of this section*) 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 (*insert here the date of coming into force of this section*) which, under the provisions of the Act respecting health services and social services enacted by section 39 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.

75. 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 59 of the Act respecting health services and social services enacted by section 39 of this Act.

Until that date, the procedure applicable before (*insert here the date of coming into force of this section*) shall continue to produce its effects.

76. The Government may, by a regulation made before (*insert here the date occurring two years after the date of coming into force of this section*), 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.

77. The provisions of this Act come into force on the date or dates to be fixed by the Government.