Federal Court

Cour fédérale

Date: 20080606

Docket: T-2834-96

Citation: 2008 FC 713

Ottawa, Ontario, June 6, 2008

PRESENT: The Honourable Mr. Justice de Montigny

BETWEEN:

ATTORNEY GENERAL OF QUEBEC

Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION....................2
I. NATURE OF THE ACTION....................4
II. CANADA ASSISTANCE PLAN....................10
III. CONTEXT....................20
(a) History of cost-shared programs....................22
(b) Context in which CAP was enacted....................24
(c) CAP's philosophy....................27
(d) Circumstances surrounding CAP's repeal....................42
SERVICES PROVIDED TO JUVENILE DELINQUENTS DURING THE PERIOD FROM 1979 TO 1984....................47
I. POSITION OF THE GOUVERNEMENT DU QUÉBEC....................58
II. POSITION OF THE GOVERNMENT OF CANADA....................60
III.THE EVIDENCE....................63
(a) Plaintiff's evidence....................63
(b) Defendant's evidence....................81

IV. ANALYSIS 96
SOCIAL SERVICES IN SCHOOLS DURING THE PERIOD FROM 1973 TO 1996..........111
I. POSITION OF THE GOUVERNEMENT DU QUÉBEC 111
II. POSITION OF THE GOVERNMENT OF CANADA 115
III. THE EVIDENCE...117
(a) Evidence of the Gouvernement du Québec 117
(b) Evidence of the Government of Canada 132
IV. ANALYSIS 148
SOCIAL SERVICES PROVIDED TO PERSONS WITH DISABILITIES LIVING IN RESIDENTIAL RESOURCES DURING THE PERIOD FROM 1986 TO 1996 162
I. ISSUES AND POSITION OF THE PARTIES 162
II.THE EVIDENCE...168
(a) Evidence of the Gouvernement du Québec 168
(b) Evidence of the Government of Canada 187
III. ANALYSIS 194
JUDGMENT 207

INTRODUCTION

[1] On December 23, 1996, the Attorney General of Quebec commenced an action against the Government of Canada seeking a declaratory judgment based on certain provisions of the *Act to authorize the making of contributions by Canada toward the cost of programs for the provision of assistance and welfare services to and in respect of persons in need* (S.C. 1966-67, c. 45; R.S.C. 1970, c. C-1; R.S.C. 1985, c. C-1). That Act created the Canada Assistance Plan (CAP), known in French as the “Régime d’assistance publique du Canada” (RAPC).

[2] The action was commenced under section 19 of the *Federal Courts Act* (R.S.C. 1985, c. F-7) and the *Act respecting the Supreme Court of Canada and the Exchequer Court of Canada*, S.Q. 1906, c. 6, which give the Federal Court jurisdiction to determine disputes between the Government of Canada and the government of a province. Specifically, the Gouvernement du Québec is challenging the refusal of the Government of Canada to share the cost of certain services that it paid for at various times over CAP's lifespan.

[3] Although the action was commenced in 1996, it was not until 10 years later (in December 2006 and January 2007) that the hearing was finally held. The reason why so many years passed between the commencement and the hearing of the action was that the parties were trying to reach an agreement. However, the negotiations, on both an administrative and a political level, were unsuccessful, which means that it is now up to the judicial authorities to decide the merits of the action brought by the Gouvernement du Québec.

[4] The issue underlying this action is novel in the sense that no other province seems to have turned to the courts to resolve a disagreement over CAP's application during the 30 or so years that program was in effect. Resolving this dispute therefore requires the interpretation of complex legislative provisions that were part of the tumultuous development of cost-shared programs in Canada, with the whole federal-provincial dynamic this implies. Moreover, the questions raised in this action cannot be answered without a good understanding of social services in Quebec during a period when the organization of those services and the philosophy that imbued them underwent profound changes.

[5] I must say at the outset that the hearing, which lasted fifteen days over a period of four months, was marked by the professionalism of counsel, their cooperation and courteousness with one another and even their clear camaraderie. This attitude is a real credit to them given the importance of this case and the workload it involved. It greatly facilitated the Court's work and assisted the Court in properly understanding the case.

[6] Moreover, I would be remiss if I did not also emphasize the quality of the witnesses called by both sides. The expert witnesses provided highly indispensable insight into the questions to be decided; their reports and testimony made it possible to place the debate in a historical perspective and provided a better understanding of the nature of the services in issue, their development and the administrative structure of which they are a part. The lay witnesses clearly described the nature of the work they do every day and generally answered the questions openly. Their enthusiasm, devotion and empathy for the persons to whom they provide services are impressive, to say the least, and one cannot help but conclude from their testimony that, beyond the disputes that may arise in the administration and management of these services, the citizens who use them are in good hands.

I. NATURE OF THE ACTION

[7] As stated above, these proceedings originate in the refusal of the Government of Canada to share the cost to the province of Quebec of three types of services provided at various times over

CAP's lifespan. Those services, which Quebec considers to be essentially welfare services, are as follows:

a. services provided to juvenile delinquents between 1979 and 1984, that is, during the period when the *Youth Protection Act* (S.Q. 1977, c. 20), which came into force on January 15, 1979, coexisted in Quebec with the *Juvenile Delinquents Act* (R.S.C. 1970, c. J-3), which on April 2, 1984, was repealed and replaced by the *Young Offenders Act* (R.S.C. 1985, c. Y-1);

b. social services provided in schools between 1973 and 1996, that is, between the time when Quebec, in organizing its network, formally transferred responsibility for delivering those services from the Ministère de l'Éducation to the Ministère des Affaires sociales and the time when CAP was repealed; and

c. support services provided to adults with disabilities living in residential resources between the time when that type of accommodation became part of the health and social services network and the time when CAP was repealed.

[8] The Gouvernement du Québec is challenging the Government of Canada's interpretation of certain provisions of the Act creating CAP and feels aggrieved by the refusal of the Government of Canada to pay 50 percent of the cost to the province of the above-mentioned services.

[9] Although this is a declaratory action, it is of some interest to mention the amounts in issue, if only to provide a rough idea of the potential consequences of this judgment. The figures referred to here are taken from the summary table filed by counsel for Quebec as Exhibit PGQ-1; they are

substantially the same as the figures found in the reamended statement of claim dated December 23, 1996, although they are not consistent in every respect.

[10] Quebec's claim for services provided to juvenile delinquents between 1979 and 1984 is $59,276,530, to which another $50,690,276 must be added to take account of the financial impact that Quebec's claim would have from 1984 on in the context of the agreement entered into under the *Young Offenders Act*. It appears that the Government of Canada estimated its contribution pursuant to its agreement with Quebec under the *Young Offenders Act* based on its decision of May 16, 1983, to exclude from cost sharing the services not considered eligible under the *Youth Protection Act* and the *Juvenile Delinquents Act*.

[11] Quebec's claim for social services in schools is $160,418,324, while its claim for support to beneficiaries in residential resources is $57,688,154. As with the services provided to juvenile delinquents, these amounts represent half of the expenses incurred by Quebec during the relevant years. To these amounts, $110,275 and $2,479,692, respectively, must be added (according to the arguments of the Gouvernement du Québec) to take account of the impact of the spending cap imposed by the federal government in the *Budget Implementation Act, 1994* (S.C. 1994, c. 18). Under that Act, the contributions to each province in respect of a year ending after March 31, 1995, could not exceed the contributions to that province in respect of the year ending on March 31, 1995. Since the Government of Canada had excluded $32,093,812 and $25,142,339 in 1994-1995 for the cost of residential resources and social services in schools, respectively, it made the same cuts in 1995-1996. Yet the cost of those services was lower in 1995-1996 than the previous year, with the

result that Quebec was deprived of amounts greater than the real cost of those services for 1995-1996.

[12] Finally, according to the Gouvernement du Québec, account should also be taken of the financial impact that its interpretation of CAP, if valid, would have on the contributions paid to it subsequently, for 1996-1997 to 2000-2001 inclusive, in the context of the *Canada Health and Social Transfer* (CHST) (*Federal-Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8, Part V, as amended by the *Budget Implementation Act, 1995*, S.C. 1995, c. 17). Since the total envelope to be divided among the provinces and territories was based, *inter alia*, on a percentage representing the amounts received by each province and territory under CAP for 1994-1995, Quebec estimates that it was deprived of $63,800,000 under the CHST because the cost of services excluded under CAP was not considered in establishing its share under the CHST.

[13] If all these amounts are added together, Quebec's total claim is therefore $394,463,251. Once again, the purpose of these proceedings is not to establish the correctness of these figures but only to determine which of the two conflicting interpretations of CAP proposed by the Gouvernement du Québec and the Government of Canada must be accepted. The magnitude of the amounts in issue nonetheless demonstrates quite eloquently the very real impact of the case for both parties.

[14] Needless to say, the Government of Canada disputes Quebec's arguments and submits that CAP did not authorize it to contribute to the cost of the services at issue in this action for the

following reasons. First, it is argued that the services provided to juvenile delinquents were for a clientele not covered by CAP and were expressly excluded as correctional services. It is argued that the services provided in schools were universal services expressly excluded as educational services. Finally, it is alleged that the cost of services provided to adults with disabilities living in residential resources was already shared with the province under another federal statute, the *Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, 1977* (S.C. 1976-77, c. 10; R.S.C. 1985, c. F-8).

[15] In an order made on October 1, 2004, following a pre-trial conference concerning these proceedings, the questions to be decided at trial were worded as follows:

> [TRANSLATION]
>
> (a)Was the Government of Canada [Canada] required under the *Canada Assistance Plan* [CAP] to share the cost of expenses incurred by the Gouvernement du Québec [Quebec] for pre-disposition and post-disposition services provided to juvenile delinquents during the period from January 1979 to March 1984?
>
> (b) If so, does the contribution paid to Quebec by Canada under the financial agreement entered into under the *Young Offenders Act* that came into force on April 2, 1984, have to be adjusted accordingly?
>
> (c) Was Canada also required under CAP to share the cost of expenses incurred by Quebec between 1973 and 1996 for social services provided in schools?
>
> (d) Is Quebec in any event precluded from now claiming cost sharing for expenses it incurred for social services provided in schools?
>
> (e) As well, was Canada required under CAP to share the cost of expenses incurred by Quebec between 1986 and 1996 for support services provided to adults with disabilities living in residential resources?

> (f) Finally, insofar as Canada is required under CAP to share the cost of expenses incurred by Quebec for [1] social services provided in schools and [2] support services provided to adults with disabilities living in residential resources, do the financial contribution paid to Quebec by Canada under CAP for the 1995-1996 fiscal year, at the end of which CAP was repealed, and the contribution paid since then under the *Canada Health and Social Transfer* have to be adjusted accordingly?

[16] During the hearing, Mr. Leblanc (for the defendant), without beating around the bush, admitted the last three conclusions in the reamended statement of claim. The Government of Canada thus conceded that, if Quebec's declaratory action were allowed, it would have to reassess its contribution under the agreement entered into under the *Young Offenders Act* as well as its CHST contribution and its CAP contribution for the 1995-1996 fiscal year. Mr. Leblanc took great care to stress that such a review would not necessarily lead to the payment of additional amounts. Indeed, this is not how I understand questions (b) and (f) of the prothonotary's order, and I therefore find that this admission has the effect of disposing of those questions. Mr. Leblanc also stated that he was withdrawing the argument that Quebec is precluded from making a claim for social services in schools. This eliminates question (d), with the result that the only questions still in issue are the ones relating to the interpretation of CAP as such, namely, questions (a), (c) and (e).

[17] Before dealing with the merits of the questions submitted to this Court, a clarification must be made with regard to the documentary evidence. In his order of October 1, 2004, Prothonotary Morneau noted that the parties were agreeing to file, without any other formality, all the documents referred to in their affidavits of documents and supplementary affidavits of documents but were reserving the right to object to the relevance or weight of those documents at

trial. That order was later clarified during the trial, *inter alia* to take account of a second supplementary affidavit of documents filed by the defendant. An exhaustive list of the documentary evidence placed in the Court file for this case can therefore be found in my order of November 17, 2006. Of course, only the documents used as evidence were marked as exhibits (using the letters "PGQ" for the documents introduced in evidence by the plaintiff and the letter "D" for those introduced by the defendant), and they will be referred to as such in these reasons.

II. CANADA ASSISTANCE PLAN

[18] The Act establishing CAP was assented to on July 15, 1966, and came into force the same day. The entire Act is in an annex hereto, but I will quote the most relevant passages to assist in understanding these reasons. The Act was part of the federal government's anti-poverty plan, as its preamble indicates:

> WHEREAS the Parliament of Canada, recognizing that the provision of adequate assistance to and in respect of persons in need and the prevention and removal of the causes of poverty and dependence on public assistance are the concern of all Canadians, is desirous of encouraging the further development and extension of assistance and welfare services programs throughout Canada by sharing more fully with the provinces in the cost thereof;

[19] The Act had nine parts, but only Part I, General Assistance and Welfare Services, is at issue here. Part II, Indian Welfare, provided that an agreement could be entered into with a province with respect to the extension of provincial welfare programs to Indians to whom the Act applied and for the payment by Canada of any portion of the cost to the province of extending provincial welfare programs to such Indians. Part III provided that an agreement could be entered into with a province that had already signed an agreement under Part I to provide for the payment by Canada of an

amount equal to fifty percent of the cost of a work activity project undertaken in the province. Part IV allowed provinces that so desired to have payments made by way of mothers' allowances included in unemployment assistance costs for the purposes of the *Unemployment Assistance Act* and to align CAP with the *Established Programs (Interim Arrangements) Act* if the province had previously entered into an agreement under that Act. Finally, Part V contained various legislative provisions making amendments to other Acts.

[20] Part I had only seven sections. Section 4 of the Act authorized the Government of Canada to enter into an agreement with provinces that so desired to provide for the payment of contributions in respect of the cost to the province of (a) "assistance provided by or at the request of provincially approved agencies" and (b) "welfare services provided in the province by provincially approved agencies", pursuant to provincial law. That contribution was set at fifty percent of the eligible cost to the province of providing assistance or welfare services (subsection 5(1) of the Act). Eligible costs did not include any cost that Canada had shared or was required to share pursuant to any other Act of Parliament (paragraph 5(2)(*c*) of the Act). Also excluded were, with respect to assistance, any payment in respect of the purchase of land, buildings, equipment or furniture (paragraph 5(2)(*a*) of the Act and paragraph 3(*c*) of the *Canada Assistance Plan Regulations* (SOR/86-679) (the Regulations) and, with respect to welfare services, any plant or equipment operating cost (paragraph 5(2)(*b*) of the Act and paragraph 3(*d*) of the Regulations).

[21] However, the key definitions for operationalizing CAP were in section 2 of the Act. Thus, **assistance** was defined as aid "in any form" for the purpose, *inter alia*, of enabling "persons in

need" to meet their basic requirements (food, shelter, clothing, household supplies, utilities, etc.). For the purposes of this case, the most relevant form of assistance was care provided in "homes for special care", which were themselves defined as residential welfare institutions prescribed for the purposes of the Act and listed in a schedule to an agreement entered into with a province; section 8 of the Regulations set out the kinds of institutions prescribed for the purposes of the Act, the most relevant of which for our purposes were "child care institutions" and institutions "the primary purpose of which is to provide residents thereof with supervisory, personal or nursing care or to rehabilitate them socially". Hospitals, correctional institutions and institutions whose primary purpose was education were explicitly excluded from this type of institution. For greater convenience, I will reproduce these provisions in full:

Interpretation	Définitions
2. "assistance" means aid in any form to or in respect of persons in need for the purpose of providing or providing for all or any of the following:	2. « assistance publique » Aide sous toutes ses formes aux personnes nécessiteuses ou à leur égard en vue de fournir, ou de prendre les mesures pour que soient fournis, l'ensemble ou l'un quelconque ou plusieurs des services suivants:
(*a*) food, shelter, clothing, fuel, utilities, household supplies and personal requirements (hereinafter referred to as "basic requirements"),	*a*) la nourriture, le logement, le vêtement, le combustible, les services d'utilité publique, les fournitures ménagères et les services répondant aux besoins personnels (ci-après appelés « besoins fondamentaux »);
(*b*) prescribed items incidental to carrying on a trade or other employment and other prescribed special needs of any kind,	*b*) les articles réglementaires, accessoires à l'exercice d'un métier ou autre emploi, ainsi que les services répondant aux autres besoins spéciaux réglementaires de toute nature;
(*c*) care in a home for special	

care,
(*d*) travel and transportation,
(*e*) funerals and burials,
(*f*) health care services,
(*g*) prescribed welfare services purchased by or at the request of a provincially approved agency, and
(*h*) comfort allowances and other prescribed needs of residents or patients in hospitals or other prescribed institutions;

“home for special care” means a residential welfare institution that is of a kind prescribed for the purposes of this Act as a home for special care and that is listed in a schedule to an agreement under section 4, but does not include a hospital, correctional institution or institution whose primary purpose is education, other than that part of a hospital that is used as a residential welfare institution and that is listed in a schedule to an agreement under section 4.

8. For the purposes of the definition “home for special care” in section 2 of the Act, the

c) les soins dans un foyer de soins spéciaux;
d) les déplacements et moyens de transport;
e) les obsèques et enterrements;
f) les services de santé;
g) les services réglementaires de protection sociale dont l’acquisition est faite par un organisme approuvé par une province ou à la demande d’un tel organisme;
h) les allocations de menues dépenses et autres services réglementaires répondant aux besoins des résidents ou malades des hôpitaux ou autres établissements réglementaires.

« foyer de soins spéciaux » Établissement de protection sociale qui est d’un genre défini par règlement, pour l’application de la présente loi, à titre de foyer de soins spéciaux et qui figure dans la liste d’une annexe à un accord conclu en vertu de l’article 4. Sont exclus de la présente définition d’hôpitaux, les établissements correctionnels et les établissements dont le principal objet est l’enseignement, à l’exception de la partie d’un hôpital utilisée à titre d’établissement résidentiel de protection social et qui figure dans la liste d’une annexe à un accord conclu en vertu de l’article 4.

8. Aux fins de la définition de « foyer de soins spéciaux » de l’article 2 de la Loi, les

following kinds of residential welfare institutions are prescribed for the purposes of the Act as homes for special care:	catégories suivantes d'établissements résidentiels de bien-être social sont prescrites aux fins de la Loi comme étant des foyers de soins spéciaux:
(*a*) homes for the aged,	*a*) les foyers de vieillards,
(*b*) nursing homes,	*b*) les maisons de repos,
(*c*) hostels for transients,	*c*) les auberges pour les indigents ambulants,
(*d*) child care institutions,	*d*) les établissements de soins pour enfants,
(*e*) homes for unmarried mothers, and	*e*) les foyers pour mères célibataires, et
(*f*) any residential welfare institution the primary purposes of which is to provide residents thereof with supervisory, personal or nursing care or to rehabilitate them socially,	*f*) tout établissement de bien-être social dont le principal objet est de fournir à ses résidents des soins personnels ou infirmiers ou de les réadapter socialement,
the standards of which (except for the purposes of clause 5(1)(*b*)(i)(B) of the Act) are, in the opinion of the provincial authority, in accordance with the standards generally accepted in the province for residential welfare institutions of that kind.	dont les normes (sauf aux fins de la disposition 5(1)*b*)(i)(B) de la Loi) sont, de l'avis de l'autorité provinciale, confirmes aux normes généralement agréées dans la province relativement aux établissements de bien-être social de ce genre.

[22] **Welfare services** were defined as services having as their object "the lessening, removal or prevention of the causes and effects of poverty, child neglect or dependence on public assistance"; they included casework, rehabilitation, counselling, assessment, adoption, homemaker, day-care and community development services. A complete definition was in paragraph 2(*m*) of the Act, which read as follows:

2. "welfare services" means services having as their object the lessening, removal or	2. « services de protection sociale» Services qui ont pour objet d'atténuer, de supprimer

prevention of the causes and effects of poverty, child neglect or dependence on public assistance, and, without limiting the generality of the foregoing, includes

(*a*) rehabilitation services,

(*b*) casework, counselling, assessment and referral services,

(*c*) adoption services,

(*d*) homemaker, day-care and similar services,

(*e*) community development services,

(*f*) consulting, research and evaluation services with respect to welfare programs, and

(*g*) administrative, secretarial and clerical services, including staff training, relating to the provision of any of the foregoing services or to the provision of assistance,

but does not include any service relating wholly or mainly to education, correction or any other matter prescribed by regulation or, except for the purposes of paragraph of the definition “assistance”, any service provided by way of assistance;

ou de prévenir les causes et les effets de la pauvreté, du manque de soins à l’égard des enfants ou de la dépendance de l’assistance publique et notamment:

a) services de réadaptation;

b) services sociaux personnels, services d’orientation, d’évaluation des besoins et de référence;

c) services d’adoption;

d) services ménagers à domicile, services de soins de jour et autre services similaires;

e) services de développement communautaire;

f) services de consultation, de recherche et d’évaluation en ce qui concerne les programmes de protection sociale;

g) services administratifs, de secrétariat et de commis aux écritures, y compris ceux de formation du personnel, relatifs à la fourniture de tout service mentionné ci-dessus ou de l’assistance publique.

Sont exclus de la présente définition les services qui concernent uniquement ou principalement l’enseignement, la correction ou tout autre domaine réglementaire ou, sauf pour l’application de la définition de « assistance publique », les services fournis sous forme d’assistance publique.

[23] Finally, it is important to specify the target clientele. As stated above, **assistance** was only for “persons in need”, that is, persons who, by reasons of inability to obtain employment, loss of the principal family provider, illness, age or other cause of any kind acceptable to the province, were found to be unable to provide adequately for themselves or their dependants. For the purposes of the Act, the provinces determined whether a person was in need and thus eligible for provincial assistance programs on the basis of parameters that had to take into account the person’s budgetary requirements and the income and resources available to the person to meet such requirements. For the purposes of the claim for services provided to juvenile delinquents, it is relevant to note that a person in need was also defined as a person under the age of 21 years in the care or under the supervision of a child welfare authority or a foster-child whose parents were unable to support him or her. The definition read as follows:

Interpretation	Définitions
2. “person in need” means	2. « personnes nécessiteuse » Selon le cas:
(*a*) a person who, by reasons of inability to obtain employment, loss of the principal family provider, illness, disability, age or other cause of any kind acceptable to the provincial authority, is found to be unable, on the basis of a test established by the provincial authority that takes into account the budgetary requirements of that person and the income and resources available to that person to meet such requirements, to provide adequately for himself, or for himself and his dependants or any of them, or	*a*) personne qui, par suite de son incapacité d’obtenir un emploi, de la perte de son principal soutien de famille, de sa maladie, de son invalidité, de son âge ou de toute autre cause acceptable pour l’autorité provinciale, est reconnue incapable -sur vérification par l’autorité provinciale qui tient compte des besoins matériels de cette personne et des revenus et ressources dont elle dispose pour satisfaire ces besoins- de subvenir convenablement à ses propres besoins et à ceux des personnes qui sont à sa charge ou de l’une ou plusieurs d’entre

	elles;
(*b*) a person under the age of twenty-one years who is in the care or custody or under the control or supervision of a child welfare authority, or a person who is a foster-child as defined by regulation,	*b*) personne âgée de moins de vingt et un ans qui est confiée aux soins ou à la garde d'une autorité chargée de la protection infantile ou placée sous le contrôle ou la surveillance d'une telle autorité, ou une personne qui est un enfant placé en foyer nourricier selon la définition des règlements.
and for the purposes of paragraph (*e*) of the definition "assistance" includes a deceased person who was a person described in paragraph (*a*) or (*b*) of this definition at the time of his death or who, although not such a person at the time of his death, would have been found to be such a person if an application for assistance to or in respect of him had been made immediately before his death;	Pour l'application de l'alinéa *e)* de la définition de « assistance publique », est assimilée à une personne nécessiteuse une personne décédée qui était une personne visée par l'alinéa *a*) ou *b*) de la présente définition au moment de son décès ou qui, bien qu'elle ne fût pas une telle personne au moment de son décès, aurait été reconnue être une telle personne si une demande d'assistance publique avait été faite pour elle ou à son égard immédiatement avant son décès.

[24] **Welfare services** were intended for a slightly broader clientele. Paragraph 2(*n*) of the Act stated that "welfare services provided in the province", which could be the subject of a cost sharing agreement under CAP, were welfare services provided to or in respect of persons in need "or persons who are likely to become persons in need unless such services are provided". This idea of "imminence of need" was not defined anywhere in the Act or the Regulations. It seems that it was instead explained in guidelines developed under CAP over the years.

[25] As mentioned above, Canada was required to contribute to the eligible cost to a province of the assistance and services covered by CAP only if it had an agreement with the province for that purpose (section 4 of the Act) and the province submitted a claim for a given year at the proper time, in support of which it had to give Canada all the information Canada considered necessary to review the claim (subsection 13(2) of the Regulations). The terms of such agreements were provided for in section 6 of the Act.

[26] Moreover, the federal contribution was payable only if the assistance and welfare services were provided (1) by a provincially approved agency or, as the case may be, in a home for special care previously approved by Canada under the agreement with the province, and (2) pursuant to provincial law, also previously approved by Canada under the same agreement, providing for such assistance or services under conditions consistent with CAP (section 4 of the Act). All the agreements therefore had three schedules listing homes for special care (Schedule A), provincially approved agencies authorized to provide welfare services (Schedule B) and provincial Acts governing assistance and welfare services in the province (Schedule C). The schedules were, of course, updated regularly after the provincial and federal authorities consulted and came to an agreement (it seems that there were 59 amending agreements in all).

[27] Quebec signed such an agreement on August 21, 1967, and it was subsequently amended several times to update the schedules. All the provinces availed themselves of CAP by signing

agreements for that purpose. However, it seems that these proceedings are the only ones ever brought by a province concerning CAP's financial sharing rules.

[28] In retrospect, it can be said that CAP broke new ground in several respects and went far beyond a mere consolidation of existing programs. As Professor Banting aptly explained in his report (to which I will return later), the support granted to the provinces by the federal government was increased in various ways. First, aid was given to persons in need no matter what the underlying causes of their economic problems. Second, federal support no longer applied only to assistance measures but also covered welfare services. Third, the federal government agreed for the first time to share the cost of developing the provincial administrative structures responsible for providing assistance and services to persons in need. Fourth, the federal contribution extended to aid provided by the provinces to persons who were working but still in need if it could be shown that their income was insufficient to meet their needs. Finally, CAP formally prohibited the provinces from requiring a period of residence to be eligible for assistance (paragraph 6(2)(*d*) of the Act).

[29] CAP was repealed on March 31, 1996, with the coming into effect of the CHST, a program under which the federal contribution to the cost of provincial assistance and welfare services programs was to gradually become a per capita grant. However, CAP continued to have effect until March 31, 2000, to allow for the final settlement of outstanding provincial claims, the 1995-1996 fiscal year being the last year for which the provinces could make claims under CAP.

III. CONTEXT

[30] Before the parties' arguments on each of the three components of Quebec's claim are examined in detail, it is appropriate to situate CAP in its more general historical and legislative context. Counsel for Quebec submitted that CAP's wording clearly favours their position and that the restrictive interpretation given to it by the government officials responsible for implementing it can be explained first and foremost by a desire to control the unforeseen explosion of costs resulting from this cost-shared program for the federal public purse. Obviously, counsel for Canada vigorously contested these arguments and countered that neither the wording of the Act nor the external context supports Quebec's position. What is the true situation?

[31] It is now settled law that statutory interpretation cannot be based solely on the wording of an enactment. Professor Driedger wrote the following on this point in his book *Construction of Statutes* (2nd ed. 1983), at page 87, as cited by the Supreme Court in *Rizzo & Rizzo Shoes Ltd. (Re)* (1998), 36 O.R. (3d) 418, [1998] 1 S.C.R. 27, at paragraph 21:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> See also: *R. v. Jarvis*, 2002 SCC 73, [2002] 3 S.C.R. 757, paragraph 77; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, paragraph 26; *Barrie Public Utilities v. Canadian Cable Television Assn.,* 2003 SCC 28, [2003] 1 S.C.R. 476, paragraph 20; *Alberta Union of Provincial Employees v. Lethbridge Community College*, 2004 SCC 28, [2004] 1 S.C.R. 727, paragraph 25.

[32] The soundness of this method of statutory interpretation favoured by the Supreme Court is confirmed, so to speak, by section 12 of the *Interpretation Act*, R.S.C. 1985, c. I-21, which provides

that every enactment "is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects".

[33] Contextual analysis must be viewed from a very broad perspective so that the legislature's intention can be sought by taking account not only of the entire wording of the Act in question but also of a number of external factors, such as the overall legislative framework of which the Act is a part, the values and characteristics of the legal system as a whole and social, cultural, economic, political and historical realities at the time of the Act was passed. Professor Ruth Sullivan wrote the following in this regard:

> External context consists of the setting in which the law was enacted and the setting in which it currently operates. The key assumption here is that legislation is not an academic exercise. It is a response to circumstances in the real world and it necessarily operates within an evolving set of institutions, relationships and cultural assumptions.
>
> *Sullivan and Driedger on the Construction of Statutes*, 4th ed., Butterworths, 2002, pages 260-261. To the same effect, see also *A.G. v. Prince Ernest Augustus of Hanover*, [1957] A.C. 436, 461; *Prassad v. Canada (Minister of Employment and Immigration)* (1989), 57 D.L.R. (4th) 663, [1989] 1 S.C.R. 560.

[34] In the pages that follow, I will therefore look briefly at the development of cost-shared programs in Canada, the economic, social and political context in which CAP originated, the various attempts to amend it and the circumstances in which it was repealed. In doing so, I will rely largely on the expert reports and testimony of Professor Keith Banting for the defendant and Professor Yves Vaillancourt for the plaintiff. That exercise will provide a better idea of CAP's objective, and the provisions at the heart of this case can then be analyzed against that backdrop.

(a) History of cost-shared programs

[35] In 1867, assistance to those most in need was still in the very early stages and was a very limited instrument of social policy. Social policy development in the 20th century therefore involved establishing more appropriate, predictable programs based on the rights of the affected individuals. First, various social assistance programs were developed and formalized. This trend began during the interwar period with the introduction of various needs-based benefits that enabled several groups to count on structured assistance from the government rather than the discretionary, uneven, unpredictable and sometimes stigmatizing assistance provided by local agencies. These programs were initially established to help persons in need who were considered the most deserving, such as elderly persons, widows and abandoned mothers, but this particularized approach was gradually replaced during the post-war period by social assistance programs for everyone in need.

[36] At the same time as this first trend, other social security programs were also introduced with the goal of providing a certain form of protection to all Canadians. Those programs quickly became the main source of expenditures in the Canadian income security system and ensured that most Canadians would never have to turn to social assistance even during the most economically trying times, such as unemployment and retirement. With the development of those programs, social assistance gradually became a program of last resort that provided financial assistance to individuals and families who were not eligible for any other social security program or whose benefits under other programs were not sufficient to meet their needs. The federal government played a role in the development of both types of programs by contributing through its spending power to provincial

social assistance programs and taking on a key role in the creation of several universal social security programs during the decades following World War II.

[37] Although the provinces were the first to play a role in establishing social programs of all kinds, the federal government was quickly pressured to support those programs. The reasons for this were very simple: not only did the provinces have limited and unequal tax resources, but there was no mechanism that allowed them to share the risks arising out of the economic conditions specific to each province. Moreover, the mobility of labour and capital in a federal state was liable to accentuate those regional inequalities. The Rowell-Sirois Commission therefore recommended that the Constitution be amended to give Parliament jurisdiction to legislate on these matters to ensure that employers in provinces where social programs were less developed were not disadvantaged compared with employers in more affluent or interventionist provinces: see Royal Commission on Dominion-Provincial Relations, Report (1940), Book II, page 35.

[38] The federal authorities at the time did not respond very enthusiastically to this proposal. The only cost-shared program that existed at the time was the old age pension program adopted in 1926. That program was highly centralized, since the eligibility conditions, the level and method of calculating the benefits and the property and income of recipients that had to be taken into account in determining the amount of benefits were established by the federal authorities for the entire country by regulation. The provinces took several years to follow this lead, and it was nine years before the program was applied nation-wide.

[39] The only other time the federal government attempted to ease the consequences of the economic crisis through a cost-shared program was when it passed unemployment insurance legislation in 1935 (*Employment and Social Insurance Act*, S.C. 1935, c. 38). However, in a reference by the federal government, the Supreme Court held that that legislation encroached on provincial jurisdiction and was therefore *ultra vires* Parliament: *Reference re: Employment and Social Insurance Act (Canada)*, [1936] 3 D.L.R. 644, [1936] S.C.R. 427, aff'd *Attorney-General for Canada v. Attorney-General for Ontario*, [1937] A.C. 355 (P.C.).

[40] It was thus not until the post-war years that social programs really took flight in Canada and the federal government assumed a leadership role. It would take too much time to look at the many reasons for this profound transformation. What is indisputable is that the federal government had access to fields of taxation much more lucrative than those available to the provinces. In any event, the provinces agreed to amend the Constitution to give Parliament the power to make laws in relation to unemployment insurance and old age pensions (*Constitution Act, 1940* (U.K.), 3-4 Geo. VI, c. 36, section 91(2A); *Constitution Act, 1951* (U.K.), 14-15 Geo. VI, c. 32, section 94A, amended by *Constitution Act, 1964* (U.K.), 12-13 Eliz. II, c. 73). Those amendments, combined with the fact that the provinces (aside from Quebec) were favourable to more active participation by the federal government in social affairs, had two consequences.

(b) Context in which CAP was enacted

[41] The first consequence of these significant changes in the federal-provincial dynamic was the introduction of several major income security programs. The first of those universal social

insurance programs was unemployment insurance, which was adopted the same year the Constitution was amended. It was followed by family allowances in 1944 and finally old age security in 1952, to which the guaranteed income supplement was added in 1965 to provide additional allowances for low-income and middle-class elderly persons. Those programs, unlike previous ones, were not for limited categories of persons in need but for entire categories of the population, regardless of their income or means; as such, they can be described as true universal programs. They became the main income security instruments for all Canadians and had the effect of reducing dependence on social assistance programs.

[42] Although the federal government ultimately became heavily involved in universal income security programs, it was much more hesitant to become involved in the field of social assistance. Not only was it thought that assistance would be reduced to a bare minimum when the new income security programs were fully operational, but the federal government refused to interfere in what was thought to be basically a provincial responsibility. All the same, the federal government gradually increased its contributions to provincial programs and enacted the *Blind Persons Act* (R.S.C. 1952, c. 17) and the *Disabled Persons Act* (S.C. 1953-54, c. 55). It also agreed to strengthen the *Unemployment Assistance Act* (S.C. 1956**,** c. 26) in 1956 by agreeing to share 50 percent of the cost of provincial assistance programs (with no ceiling on its contribution) for persons who were employable and considered in need based on a needs test (and no longer a means test) and leaving it up to the provinces to determine the eligibility criteria.

[43] It was in this context that CAP was enacted in 1966. It was part of the federal government's anti-poverty plan, and it followed firmly in the footsteps of the selective federal social assistance programs that had begun with the old age pensions introduced in 1927. The new statute consolidated, so to speak, the selective assistance programs that already existed (assistance for elderly persons, pensions for blind and disabled persons and unemployment insurance). Far from being a universal plan, CAP was therefore a selective program. It was residual in nature, since it was meant to be a last resort for persons in a precarious financial situation that, in principle, was supposed to be temporary. This was made clear by the fact that a provincial program was not eligible for cost sharing unless it provided assistance to persons in need, that is, persons who, for whatever reason, were found to be unable to provide for themselves on the basis of a test established by the provincial authority that took into account their budgetary requirements and the income and resources available to them (section 2 of the Act, definition of "person in need").

[44] It is true that CAP also provided for funding for welfare services and even encouraged the further development and extension of such services. Those services (which, it will be recalled, had as their object the lessening, removal or prevention of the causes and effects of poverty, child neglect or dependence on public assistance) were eligible for cost sharing if they were delivered to persons in need or "persons who are likely to become persons in need". Should this broadening of the target clientele be seen as a departure from CAP's residual and selective nature?

(c) CAP's philosophy

[45] According to Professor Yves Vaillancourt, who was asked to provide an expert report for the Attorney General of Quebec in response to the reports of Professor Banting and Jean-Bernard Robichaud, CAP's philosophy was not as selective as has been suggested. Contrary to what he maintained in his doctoral thesis on CAP (*Le régime d'assistance publique du Canada : perspective québécoise*, Université de Montréal, 1992), Professor Vaillancourt's current position is that CAP, or at least its welfare services component, was not as selective as has been claimed. Relying on new research he conducted for his report and a rereading of certain interviews granted to him by senior federal and provincial officials when he was writing his doctoral thesis in the late 1980s, Professor Vaillancourt expressed the view that the federal authorities' use of CAP in later years, both in the field of assistance and in the field of welfare services, was not as generous as CAP's potential would have allowed. He explained this restrictive interpretation as follows.

[46] First, he explained that CAP had been thoroughly transformed while in the preparatory stages. When CAP was originally designed in 1962, it provided for cost sharing only in the field of social assistance and was above all like a restructuring of the old federal cost-shared programs. However, after certain provincial governments requested improvements, a more generous place ended up being given to cost sharing for social services for a clientele broader than just persons in financial need. Yet the abbreviated name remained the same and had the effect of narrowing the program's true nature. Although the concept of "assistance publique" in the French name is broader in meaning than the concept of "assistance" in English, the English acronym CAP established the program's trademark, and that name, because of its simplistic nature, contributed to limiting CAP's

scope. According to Professor Vaillancourt, the name lent credence to the idea that CAP was a federal tool for sharing only the cost of selective provincial programs of last resort, which was not in keeping with the nature of CAP as enacted in 1966.

[47] According to Professor Vaillancourt, the "shrinking" of CAP can also be explained by the power struggle between officials from the Department of Finance and officials from the Department of National Health and Welfare. The latter, who were more reformist, were in favour of cost-shared programs as an invaluable lever for broadening and developing social policies in Canada in fields in which the federal government could not legislate directly. By subjecting transfer payments to national standards, cost-shared programs allowed the federal government to take structuring initiatives in the configuration of social programs under provincial jurisdiction and thus contribute to the development of Canadian citizenship. Finance officials, on the other hand, favoured capped transfer payments so they could foresee and control expenditures better. That fear was all the more real given that Quebec, like all the other provinces, had obtained a right to opt out with compensation from cost-shared programs in the field of welfare and hospital insurance in 1965 (see the *Established Programs (Interim Arrangements) Act*, S.C. 1964-65, c. 54), which later applied to CAP when it came into force. Although the provinces that availed themselves of that right had to meet all the administrative requirements imposed on the other provinces during a transitional period that was supposed to end in 1970 but was extended to 1975 in Quebec, there was still a fear of losing control over tax resources, not to mention the possible ripple effect of a decision to accept cost sharing for a particular new initiative in a province. Although the Department of Finance lost the battle when CAP came into force in 1966, Professor Vaillancourt maintained that Finance

officials had then constantly tried to limit costs under CAP by promoting a narrow interpretation of CAP until they could eventually bring it back into the fold of transfer payment programs.

[48] This position developed by Professor Vaillancourt seems suspect to me for several reasons. First, no trace of the arguments he made in court can be found in his doctoral thesis (filed in evidence as Exhibit D-25). In that thesis submitted to the faculty of graduate studies of the Université de Montréal in 1992 to obtain a Ph.D. in political science, the author assigned himself the task of studying CAP from a Quebec perspective. As he himself stated in a preliminary note, the thesis was made up of six articles published in three different refereed journals that were well known in the discipline of social policy. I read the thesis carefully but did not find any trace of the main points around which the expert report he submitted in support of Quebec's claim is structured, namely: (1) CAP had two components, assistance and welfare services, with different objectives; (2) while social assistance was highly selective, the same was not true of welfare services, whose role was much broader and which fell midway between universality and selectivity; and (3) the restrictive interpretation given to CAP was the work of senior federal officials and was in no way dictated by the Act itself. In fact, the only constant between his previous work and his expert report is his theory that Quebec made a breakthrough with the right to opt out after the *Established Programs (Interim Arrangements) Act* was passed in 1965, a breakthrough that fizzled out because the federal authorities rallied and were quick to trivialize the significance of this development and thus deprive Quebec of the special status that could have resulted from it. Although interesting, this theory does not strike me as very helpful in the context of this case.

[49] At the outset of his doctoral thesis, Professor Vaillancourt set out the five hypotheses that were central to his work. The most relevant one for our purposes is the fourth, which he worded as follows:

> [TRANSLATION] There is a fundamental contradiction between CAP's selective and residual philosophy and the more universal philosophy running through the social legislation and policies of the Gouvernement du Québec that interfaced with CAP, particularly in the social services field, in the 1970s.

[50] During his cross-examination, Mr. Leblanc emphasized the following passage from the Rochon committee's report (*Rapport de la Commission d'enquête sur les services de santé et les services sociaux*, Quebec, 1988, at page 368), which Professor Vaillancourt quoted at pages 55-56 of his thesis:

> [TRANSLATION] As we have stated, the disharmony observed between the two levels of government with regard to social services can be explained in large part by a fundamental difference in the social philosophies guiding their respective legislation. In Quebec, access to a social service is, in principle, based on a professional assessment of need and not on financial means, as is the case under CAP. Since the logic of CAP is to fight poverty, socioeconomic criteria determine the concepts of need or imminence of need, whereas Quebec law is governed by psychosocial criteria.

[51] Professor Vaillancourt commented as follows (still at page 56 of his thesis):

> [TRANSLATION] In short, according to the Rochon report, the Castonguay-Nepveu reform implemented starting in 1972 was curbed by CAP, which allows costs to be shared only in the case of services for persons who are duly found – through a means and needs test – to be socioeconomically poor.

[52] Summarizing English Canadian literature on CAP, Professor Vaillancourt then wrote the following (still in the same chapter of his thesis, at page 67):

> [TRANSLATION] The other criticism made by progressive social policy analysts [the first being the minimal nature of the conditions identified in the Act and agreements and the fact that the federal government was overly hesitant in making provinces that did not meet these conditions toe the line] relates to the contradiction between the residual and selective philosophy of a program of last resort like CAP – which was initially designed for social assistance and broadened late in the day to encompass certain welfare services – and the desire of some provinces, at least at certain times, to develop more universal social services.

[53] The similarity between this conclusion and the one in the Rochon report is striking. Going by Professor Vaillancourt's thesis alone, it seems that there was a consensus at the time about the contradiction that existed between CAP's selective and residual philosophy and the universal nature of a growing number of provincial programs. It can be seen from another chapter of Mr. Vaillancourt's thesis ("Un bilan québécois des 15 premières années du RAPC : la dimension sociale") that, at the time, he did not distinguish between the field of social assistance and the field of social services when he was talking about CAP's highly selective and residual approach. In both cases, he stated that poor persons were the target population and that, despite last-minute initiatives to broaden welfare services, CAP remained a law of last resort designed above all to share the cost of financial social assistance.

[54] When confronted with these extracts from his thesis, Professor Vaillancourt launched into a series of unconvincing and often convoluted explanations. In particular, he replied that this unanimity on the nature of CAP shows that he was not the only one who did not distinguish the higher level of selectivity for assistance services from the lower level for welfare services. When asked whether the pre-1992 literature contains any denunciation of the unduly restrictive interpretation of CAP by government officials, the witness was evasive and stated that, to answer

the question, he would have to reread the literature from that perspective. He added that this interpretation can be documented, but he was unable to give any examples of relevant documents.

[55] Finally, he reiterated that he would now tone down his characterization of CAP as a program of last resort and place greater emphasis on the welfare services component, which was not as selective as the assistance program. He added that in 1992 he did not have as good a grasp of the distinction between selectivity of programs and selectivity of clients. In his opinion, CAP's very nature required some selectivity by the provinces with regard to the eligible clients, which Quebec accepted by claiming from the federal government only the cost of eligible services in proportion to the clients for whom need or imminence of need was identified. However, in his opinion, the fact that the clients of an eligible program were not all eligible did not mean that the program ceased to be eligible for cost sharing.

[56] This client/program distinction that Professor Vaillancourt seems to be the only one to have made strikes me as a diversion that adds nothing to the debate. It is not in dispute that the only services for which cost sharing was possible were those delivered to persons in need and, in the case of welfare services, persons for whom imminence of need was identified. Moreover, the evidence shows that the proportion of eligible clients for each service for which cost sharing was claimed was determined using a complex mechanism for dividing them up, as mutually agreed by the parties. This was no doubt an operational challenge given the differing philosophies and eligibility criteria of CAP and the provincial programs. For costs to be shareable in whole or in part (depending on the nature of the clientele), the program itself also had to be approved by the federal authorities and the

provincial Act creating it had to be in Schedule C of the agreement. In other words, the program established by the provincial Act had to be considered a "welfare service" to be eligible for cost sharing. It is on this point that the two parties disagree.

[57] In his oral argument, counsel for Quebec submitted that CAP's selectivity could come into play only when dividing up the clientele. In other words, the fact that a service was offered to the entire population was not a ground for exclusion *per se*, provided that costs were claimed only for the eligible portion of the clientele. It seems to me that such a distinction cannot be accepted; not only is there no trace of it in the discussions surrounding the introduction of CAP or the discussions between the two levels of government generated by that program, but Professor Vaillancourt himself admitted that he is the only one to have made this distinction. Given CAP's logic, it seems to me that there is no doubt that the very objective of a service had to be fighting poverty, for otherwise the program as a whole could not be eligible for cost sharing, even for the portion of users who might have been eligible based on need. Indeed, the very existence of a Schedule C in the agreements entered into by the federal government and the provinces cannot be explained in any other way.

[58] In short, I am of the opinion that CAP, in its very philosophy and rationale, was not meant to provide funding for all social programs that might be established by the provinces regardless of the target clientele. The objective was more modest and more focused, namely, to allow the provinces to provide those who were most disadvantaged with services having as their object "the lessening, removal or prevention of the causes and effects of poverty, child neglect or dependence on public

assistance" (section 2 of the Act, definition of "welfare services"). Obviously, operationalizing this objective could involve complex administrative mechanisms and even give rise to disputes about the interpretation of the eligible clients and services, as this case demonstrates. However, the selective nature of CAP, in its very essence, does not seem open to dispute. Nor did I understand from the submissions of counsel for Quebec that they were challenging CAP's very nature; what they objected to was the way the plan's selectivity had been implemented.

[59] As for Professor Vaillancourt's position that CAP was given an unduly restrictive and small-minded interpretation dictated by a desire to curb the explosion of costs rather than by the wording of the Act itself, I think that it is simply not corroborated by the legislative debates that preceded the passage of the Act and that it is based on only a few interviews conducted with senior government officials at the time. Moreover, those officials testified during the hearing and rejected Professor Vaillancourt's interpretation of their words.

[60] A careful reading of the parliamentary debates and ministerial statements preceding CAP's enactment makes it clear that CAP was presented first and foremost as an anti-poverty instrument. During a speech in the House of Commons on April 6, 1965, a few days before the federal Minister of Health and Welfare presented what was to become CAP to his provincial counterparts, the then Prime Minister, the Right Honourable Lester B. Pearson, described the plan as a consolidation of existing assistance programs designed to help economically disadvantaged groups, namely, unemployed persons who were unable to re-enter the labour market, elderly persons in need, blind

persons and disabled persons. After noting that the plan made a major change by introducing a needs test rather than an income test for assistance to elderly persons, he added the following:

> In addition to this major change in the scope of assistance for elderly people, the proposals provide for three major extensions of the federal sharing of assistance costs. These are: assistance to needy mothers; health care services for assistance recipients; and the costs of sharing in the strengthening and expansion of welfare services for assistance recipients.

[61] He then stated the following about the social services component:

> The third new element in the assistance plan is the support it will provide to the provinces for strengthening public assistance administration and for improving and extending social welfare services for public assistance recipients. This will help provincial and municipal welfare departments to recruit more effective service to assistance recipients. In this way, we intend that assistance should be much more effectively linked to other programs, including vocational training, rehabilitation and job placement. The aim is to enable assistance recipients to move on to achieve the greatest possible measure of self-support. This is one of the sound and constructive weapons to be used in combating both rural and urban poverty.

[62] Two federal-provincial conferences later, the government introduced CAP in the House. It was presented as a program designed to fight poverty and to ensure that those most in need were better able to make ends meet and put their lives in order. Indeed, this objective was never really called into question. A good part of the discussions instead concerned the choice of the appropriate test (needs or means) for determining who was eligible and the advisability of establishing national standards rather than leaving it up to the provinces to specify the eligible clientele. Nowhere in the debates was any distinction drawn between assistance measures and welfare services.

[63] Thus, parliamentarians obviously recognized CAP as an anti-poverty measure designed to support provincial programs that sought to assist the clientele of economically disadvantaged persons. It is no doubt from this general perspective, namely, the lessening, removal and prevention of the causes and effects of poverty and dependence on public assistance, that we must understand the inclusion of services for neglected children as welfare services and the inclusion, in the definition of persons in need, of persons under the age of 21 years who were in the care or under the supervision of a child welfare authority or whose parents were unable to support them and who therefore became foster-children.

[64] It is true that the concept of "imminence of need" broadened the clientele eligible for cost sharing under social programs to some extent. Indeed, Professor Vaillancourt relied largely on the late introduction of this concept into CAP's wording to argue that this federal program was not as selective as implied. However, the legislative debates contain no trace of this alleged desire to make CAP something other than an anti-poverty instrument. It therefore seems that this new concept was intended as nothing more than a tentative attempt to prevent poverty and its effects, much more so than as a first step toward the universality of eligible services. After all, "imminence of need" clearly refers to an economically precarious situation. Professor Vaillancourt recognized in his doctoral thesis that "need" in the concept of "person in need" had a purely socioeconomic meaning (page 280), that "imminence of need" was merely a [TRANSLATION] "slight opening" (page 280) and that [TRANSLATION] "[t]he provinces can still provide assistance services to a clientele above the poverty line that can be 'harmonized' with CAP's provisions, but on condition that they not count on federal aid and pay 100 percent of the cost" (page 281).

[65] It seems that the guidelines used to interpret this concept over the years may have had the effect of substantially broadening the eligible clientele; however, their purpose could not have been to distort the very essence of CAP. Although none of the guidelines was filed in evidence, the principal witness for the federal government stated (without being contradicted on this point) that imminence of need had initially been set at the level of income required to receive social assistance plus 10 percent. It is true that Mr. Daudelin also testified that the concept of "imminence of need" was later replaced (in the early 1980s) by the concept of "likelihood of need", which had the effect of raising eligibility levels significantly. However, no matter how this concept was actualized, there is no reason to think that the purpose of the Act was anything other than "the lessening, removal or prevention of the causes and effects of poverty", as stated in the definition of "welfare services" in section 2.

[66] Indeed, it was not understood otherwise by the main actors and commentators of the time, starting with Professor Vaillancourt himself in his doctoral thesis. This was confirmed by Professor Banting and Jean-Bernard Robichaud, who was also called as an expert witness by the defendant. Mr. Robichaud, who himself has a master's degree and Ph.D. in social administration, has been, among other things, the general manager of the largest social service centre in Quebec (the Montréal métropolitain centre, better known by the acronym CSSMM), a senior social policy advisor for the Canadian Council on Social Development and a scientific advisor to the Rochon committee. In his opinion, there is no doubt about the residual nature of CAP. As already noted, CAP was merely the end result of a long process in which the major universal programs were

established, namely, family allowances, old age security and health and hospital insurance. In this context, CAP could play only a residual role in relation to both social assistance and welfare services, the purpose of which was to assist those who fell through the cracks with other social security measures. With regard to social services in particular, Mr. Robichaud's report states the following (at pages 21-22):

> [TRANSLATION] Generally speaking, the conditions for financing social services were very restrictive. The principle governing this type of cost sharing was tied to the very nature of the Plan (a residual, selective program). The services had to be for "persons in need" as defined by the Act or had to have a preventive aspect (imminence of need), that is, they had to prevent such persons from needing financial assistance. In these situations, what justified cost sharing for certain social services, as defined in section 2 of the Act, was that the services could prevent reliance on social assistance or help social assistance recipients become financially self-sufficient by no longer having to rely on social assistance to meet their basic needs. To justify cost sharing for social services under the Plan, provinces had to show that the said services, in addition to being consistent with CAP, contributed to preventing need (based on the concept of imminence of need) as defined by CAP or to rehabilitating social assistance recipients or helping them end their dependence on assistance and become financially self-sufficient. There was no question of adopting a universal approach to social services, nor was there ever any question of doing so during the entire history of planning and implementing CAP.

[67] In light of all the foregoing, the theory that CAP was distorted and given an unduly restrictive interpretation by the government officials responsible for implementing it simply does not hold water. In a democratic system, it is only natural for the public service to respect the will of elected representatives; it would have been contrary to every principle of sound public administration for government officials to try to extend CAP's scope to encompass social services provided on a universal basis without regard for the wording of the Act or the intention of Parliament, solely on the basis of a concept as vague as "imminence of need".

[68] Moreover, this theory was vigorously disputed by the two senior government officials whom Professor Vaillancourt interviewed for his Ph.D. work. When called to testify for the federal government, Desmond Byrne, who was CAP's Director General from 1977 to 1982, reiterated what he had already told Mr. Vaillancourt in 1990. That interview, filed as Exhibit D-28, includes the following exchange between Mr. Vaillancourt and Mr. Byrne:

> Q. After 1978, the federal government entered in a period of financial constraints. Did this variable influence your freedom to manoeuvre within CAP?
>
> A. People used to say it did. It didn't really. I do not recall being told not to approve something, or to cut back on approvals, in order to comply with the deficit, projections, etc. In other word the open ended nature of CAP continued.

[69] What Ronald Yzerman stated during the interview he granted Professor Vaillancourt in 1988 (filed in evidence as Exhibit D-29) does not add much weight to his theory either. Mr. Yzerman was involved in all aspects of implementing CAP from 1980 to 1988, first as the director of the consultants responsible for determining the eligibility of costs claimed by the provinces for welfare services and then as the Acting Director General. Professor Vaillancourt used extracts from the interview that, in his opinion, showed that CAP had been given an unduly restrictive interpretation and not applied in a way that took account of its full potential. The following passages clearly illustrate the nature of Mr. Yzerman's comments as reproduced in the transcript of his 1988 interview and cited by Professor Vaillancourt in his expert report:

> It [the social security review] was officially withdrawn in 1978. What took place then was because of the recession and government austerity, was that a multiple of controls were put upon the CAP which was be careful to expand, because it means greater expenditures from the federal government. So it was a different type

> of restriction [compared to the political restrictions from the period of social services reform], but nonetheless it was a restriction. So to answer your question, when the social security or the *Social Services Financing Act* was withdrawn, in the CAP administration, there were a sense of maybe now CAP will be able to do what it is meant to do, make changes that can bring it in to the 20th century so to speak. But very quickly, we found that there was still limitations on expansion because now we were going to be economic. And I don't think CAP ever recovered from that. (page 7 of his interview; reproduced at page 79 of Mr. Vaillancourt's expert report)
>
> I think I would word it this way: It is that, because we were dealing on a day to day basis with provincial people, we were aware of new ways that provinces were going, new concerns that they had, new ways of delivering services and, what we were saying, it is that in the administration of CAP, if CAP is going to really fulfill its mandate, it is going to have to change, not necessarily change the act in terms of amendments, but out policies, our ways of doing business would have to change. It also meant we would be considering extending cost sharing in the areas we previously said no to. But that would mean greater expenditures under CAP. The message that you get in so many ways was: Be careful to hold the line. We don't want to be going off, because the one thing fortunately or unfortunately under CAP is that, when you make a decision to share, it always have national implications; and so you may note a decision to share a 10 million $ program in a province and for the point of view of the CAP, it is 10 plus the extended costs. So that was always difficult because when I was negotiating with your provincial peoples, quite frankly, my concern was your province plus the implication for nine others plus two territories. So, the cost implications were a consideration and I think that could not help but slow down or prevent the orderly and the natural expansion of this type of a program. And I think that has been the case with CAP, virtually from it's inception. (pages 7-8 of his interview, reproduced at page 80 of the expert report)

[70] Professor Vaillancourt saw these extracts as evidence of [TRANSLATION] "control over the team administering CAP within the federal government" that "prevented CAP from meeting the pressing challenges raised by the provinces and territories" (report, page 80). Although Mr. Yzerman's words are not without ambiguity, they do not seem to me to substantiate the

argument that the government, in managing CAP, deliberately introduced restrictions that were not part of CAP. On the contrary, the passages quoted above reflect the normal tension that may exist in managing a program as complex as CAP, a healthy desire to manage public funds with rigour and, ultimately, some disappointment by those who would have preferred to amend CAP rather than scrapping it in favour of other legislative measures. Moreover, it might be asked why Professor Vaillancourt did not interpret Mr. Yzerman's comments as he wants to now when he was writing his doctoral thesis.

[71] During his testimony, Mr. Yzerman stated that what he had wanted to emphasize during his interview with Professor Vaillancourt was that changes could have been made to streamline the processing of provincial requests and that legislative amendments might even have been made to CAP if social service reform projects had not monopolized all energies. He reiterated several times that the CAP managers had never tried to violate the mandate imposed on them by the Act, that the provinces' claims had always been assessed based on the parameters established by Parliament, that there had never been any question of denying a request solely to limit costs and that the directorate responsible for administering CAP had never sought authorization from the Department of Finance or the Treasury Board before approving a claim.

[72] Although the statements made by Mr. Yzerman in 1988 may not be as clear as his interpretation of them after the fact, I must conclude that the two versions are not inconsistent. On the contrary, the explanations given by Mr. Yzerman during his testimony seem to be the only ones consistent with the role that a government official must play in our political system. The mission of

the public administration is to implement the policies of the government in power and the laws duly enacted by Parliament. The fact that the explosion of costs may have been a concern at times and that government officials may have wanted and even recommended legislative amendments or administrative changes to improve the plan is quite normal. However, to say that CAP was deliberately diverted from its objectives because of budgetary considerations is a big step that cannot be taken without clear evidence to this effect. Yet there is not a shred of evidence in support of such an argument in this case.

(d) Circumstances surrounding CAP's repeal

[73] In fact, it seems that the problems in reconciling CAP with certain provincial programs starting in the early 1970s resulted more from the burgeoning desire of certain provinces to establish social programs for the entire population rather than just for low-income individuals. In Quebec in particular, there was a major reorganization of health and social services in 1971, and one of the objectives of the reorganization was to integrate those services into a single network. Following that reform, it was expected that the entire population would have access to those services regardless of income. Indeed, paragraph 3(*b*) of the *Act respecting health services and social services* (S.Q. 1971, c. 48) made this one of its objectives:

> 3. The Minister shall exercise the powers that this act confers upon him in order to:
>
> . . .
>
> (*b*) make accessible to every person, continuously and throughout his lifetime, the complete range of health services and social services, including prevention and rehabilitation, to meet the needs of individuals, families and groups from a physical, mental and social standpoint;

[74] This universal approach did not present significant problems for health services, since federal legislation on health insurance and hospital insurance favoured the same approach. However, the same was not true at all of social services because of CAP's selective nature. This was stated unequivocally by Professor Vaillancourt in his doctoral thesis:

> [TRANSLATION] This wording [in paragraph 3(*b*) cited above] implied that social services, just like health services, had to be for "every person" regardless of income. In other words, the target population of the health and social services system, unlike CAP, was not made up solely of persons who were socioeconomically weak in financial terms. (page 299)

He added the following later in the conclusion of his thesis:

> [TRANSLATION] . . . I think I have shown convincingly that there was a sort of collision in the 1970s between the selective philosophy inherent in CAP and the more universal philosophy inherent in several development initiatives of the Gouvernement du Québec, under both Bourassa and Lévesque, in the field of social services and income security at the time of the Castonguay-Nepveu reform. (page 348)

[75] Professor Vaillancourt was not the only one to make this observation. Mr. Yzerman reached the same conclusion in the interview he granted Professor Vaillancourt in 1988 (Exhibit D-29, page 6). As well, in the chapter of his thesis entitled "Un bilan québécois des quinze premières années du Régime d'assistance publique du Canada : La dimension sociale", Professor Vaillancourt quoted the deputy minister and an assistant deputy minister of the Quebec's Ministère des Affaires sociales at the relevant time, who were of the same opinion (Exhibit D-32, page 300).

[76] This trend in favour of universality for social services, although more obvious in Quebec because it resulted from an overall, systemic approach, was nonetheless visible in other provinces as well. Professor Banting's report states the following about this:

> In effect, Canada was edging towards a more universalistic conception of social services, an evolution that could not be accommodated within the CAP. In the province of Quebec, this broader orientation was embedded in "Chapter 48", a new legislative framework for health and social services adopted in 1971, which committed the province to a universalistic conception in the development of social services. While other provincial governments did not set out such a comprehensive vision of the future, several of them were moving in the same direction in particular areas such as nursing homes and day care. The result was a growing incompatibility between the CAP and provincial priorities, a tension described nicely by one analyst in the case of Quebec as [TRANSLATION] "the contradiction between the universality of 'Chapter 48' and the selectivity of CAP". (Exhibit D-32, page 44. The Quebec analyst referred to by Professor Banting is Professor Vaillancourt, and the quote is from page 299 of his thesis.)

[77] Another phenomenon was to increase this tension between universality and selectivity. Starting in the early 1970s, a trend toward the deinstitutionalization of social services could be seen in the provinces. In Quebec as elsewhere in Canada, it was wagered that elderly persons and persons with disabilities could have a better quality of life if they were integrated into their community rather than living in an institution, provided that they were given the necessary services. This transition also caused many problems for cost sharing, since CAP was not designed from that standpoint. I will come back to this point when I discuss the component of Quebec's claim relating to residential resources.

[78] Faced with these growing problems, the first response was to try to fix CAP on a piecemeal basis. In 1976, following lengthy federal-provincial discussions about reviewing social security

programs in Canada, the government introduced a first bill that went far beyond CAP in terms of eligibility for cost sharing. It included various types of models ranging from universal free services to the selective application of user fees to access to services based on need or income. However, the bill was ultimately withdrawn by the federal government because of growing opposition by the provinces, especially Quebec, to cost-shared programs.

[79] In 1977, the federal government tried again by tabling Bill C-55 (*Social Services Financing Act*). That bill was innovative, since the government's contribution became a block cash transfer based on each province's population rather than being calculated on a cost sharing basis. Such an approach would have eliminated the need to distinguish between social services that were eligible for cost sharing and those that were not. Like its predecessor, this bill was also withdrawn, this time because the federal government was dealing with a worrisome budget situation that made it curb its spending. Ultimately, only the financing of programs in the fields of health and post-secondary education was changed under the *Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, 1977*, which was passed in 1977. That Act was the first step in the transformation of cost-shared programs into per capita transfer payments, which culminated in the adoption of the CHST in 1996.

[80] For the purposes of this case, what must be kept in mind about that period is not so much the repeated failures to reform or replace CAP but rather the fact that these various failed attempts illustrate CAP's inherent limitations. Although not everyone agreed on how to remedy those shortcomings, and although the proposed alternatives changed over time, there was unanimous

agreement about the growing difficulty of reconciling CAP's selective and residual philosophy and the universal approach increasingly advocated by the provinces in delivering their social services. There is every reason to believe that, if the main political actors had considered CAP flexible enough to accommodate the provinces' new demands, a whole round of negotiations to find a replacement for CAP would have been avoided.

[81] Following this lengthy overview of the circumstances surrounding CAP's creation and development, it thus seems to me that there is no doubt that the purpose of this instrument was indeed to fight poverty. Despite the last-minute addition of the cost of welfare services as eligible expenses and the broadening of the clientele for whom the federal government accepted cost sharing for such services, CAP remained resolutely selective in its philosophy and was certainly not designed to finance universal programs that took into account only the psychosocial needs of users. In this respect, CAP clearly differed from resolutely universal programs such as health insurance and hospital insurance. I therefore have no hesitation in rejecting the argument made to the Court by Professor Vaillancourt, who stated that CAP could have been a cost sharing mechanism that was much more flexible and respectful of the choices made by the provinces had it not been interpreted in an overly narrow manner by the government officials responsible for applying it. The interpretation of CAP by Professor Banting and Mr. Robichaud (as well as Professor Vaillancourt in his doctoral thesis), namely, that CAP's limitations were genetic, so to speak, and resulted from its residual nature, strikes me as much closer to reality and consistent with the understanding that the vast majority of authors and political actors had at the time.

[82] I will therefore examine Quebec's arguments concerning each of the three components of its claim against this backdrop.

SERVICES PROVIDED TO JUVENILE DELINQUENTS DURING THE PERIOD FROM 1979 TO 1984

[83] The first component of the Gouvernement du Québec's claim relates to the various services provided to young persons suspected of, charged with or convicted of violating a federal statute (including the *Criminal Code*), a provincial statute, federal or provincial regulations or a municipal by-law. The relevant period is only 1979 to 1984, when the *Youth Protection Act*, S.Q. 1977, c. 20 (YPA), which came into force on January 15, 1979, applied in Quebec at the same time as the *Juvenile Delinquents Act*, R.S.C. 1970, c. J-3 (JDA), which on April 2, 1984, was repealed and replaced by the *Young Offenders Act*, S.C. 1980-81-82-83, c. 110 (YOA). Since the YOA provided that an agreement could be entered into with the provinces to share the costs associated with its implementation (see section 70), CAP thereby ceased to apply (see paragraph 5(2)(*c*) of CAP).

[84] It should be stated at the outset that the cost of services provided to young persons in need of protection are not at issue in this case, since the defendant agreed to share them in their entirety. The YPA distinguished between young persons whose security and development were in danger (young persons under protection) and young persons who were suspected of committing a delinquency. Sections 38 and 40 of that Act provided the following in this regard:

38. For the purposes of this act, the security or development of a	38. Aux fins de la présente loi, la sécurité ou le développement

child is considered to be in danger where, in particular,

d'un enfant est considéré comme compromis si :

(*a*) his parents are dead, no longer take care of him or seek to be rid of him and no other person is taking care of him;

a) ses parents ne vivent plus, ne s'en occupent plus ou cherchent à s'en défaire, et qu'aucune autre personne ne s'en occupe ;

(*b*) his mental or emotional development or his health is threatened by the isolation in which he is maintained or the lack of appropriate care;

b) son développement mental ou émotif ou sa santé est menacé par l'isolement dans lequel on le maintient ou l'absence de soins appropriés ;

(*c*) he is deprived of the material conditions of life appropriate to his needs and to the resources of his family;

c) il est privé de conditions matérielles d'existence appropriées à ses besoins et aux ressources de sa famille ;

(*d*) he is in the custody of a person whose behaviour or way of life creates a risk of moral or physical danger for the child;

d) il est gardé par une personne dont le comportement ou le mode de vie risque de créer pour lui un danger moral ou physique ;

(*e*) he is of school age and does not attend school or is frequently absent without reason;

e) il est d'âge scolaire et ne fréquente pas l'école ou s'en absente fréquemment sans raison ;

(*f*) he is the victim of sexual assault or he is suggest to physical ill-treatment through violence or neglect;

f) il est victime d'abus sexuels ou est soumis à des mauvais traitements physiques par suite d'excès ou de négligence ;

(*g*) he has serious behaviour disturbances;

g) il manifeste des troubles de comportement sérieux ;

(*h*) he is forced or induced to beg, to do work disproportionate to his strength or to perform for the public in a manner that is unacceptable for his age;

h) il est forcé ou induit à mendier, à faire un travail disproportionné à ses forces ou à se produire en spectacle de façon inacceptable eu égard à

(*i*) he leaves a reception centre, a foster family or his own home without authorization.

40. If a person has reasonable cause to believe that a child has committed an offence against any act or regulation in force in Québec, the director shall be seized of the case before the institution of any judicial proceeding.

son âge ;

i) il quitte sans autorisation un centre d'accueil, une famille d'accueil ou son propre foyer.

40. Si une personne a un motif raisonnable de croire qu'un enfant a commis une infraction à une loi ou à un règlement en vigueur au Québec, le directeur est saisi du cas avant qu'une poursuite ne soit engagée.

[85] It is not in dispute that all services (both pre-disposition and post-disposition) provided to young persons under protection ("38s", to use the jargon of the witnesses from that setting) were accepted for cost sharing by the Government of Canada. Therefore, this case concerns only part of the cost paid by the province in respect of young persons suspected or convicted of committing a delinquency ("40s").

[86] Section 20 of the JDA provided that, where a child violated the *Criminal Code*, a federal or provincial statute, federal or provincial regulations or a municipal by-law, the court could take a wide range of courses of action to get the child back on the straight and narrow. That provision read as follows:

20. (1) In the case of a child adjudged to be a juvenile delinquent the court may, in its discretion, take either one or more of the several courses of action hereinafter in this section set out, as it may in its judgment deem proper in the

20. (1) Lorsqu'il a été jugé que l'enfant était un jeune délinquant, la cour peut, à sa discrétion, prendre une ou plusieurs des mesures diverses ci-dessous énoncées au présent article, selon qu'elle le juge opportun dans les circonstances,

circumstances of the case:
(*a*) suspend final disposition;
(*b*) adjourn the hearing or disposition of the case from time to time for any definite or indefinite period;
(*c*) impose a fine not exceeding twenty-five dollars, which may be paid in periodical amounts or otherwise;
(*d*) commit the child to the care of custody of a probation officer or of any other suitable person;
(*e*) allow the child to remain in its home, subject to the visitation of a probation officer, such child to report to the court or the probation officer as often as may be required;
(*f*) cause the child to be placed in a suitable family home as a foster home, subject to the friendly supervision of a probation officer and the further order of the court;
(*g*) impose upon the delinquent such further or other conditions as may be deemed advisable;
(*h*) commit the child to the charge of any children's aid society, duly organized under an Act of the legislature of the province and approved by the lieutenant governor in council, or, in any municipality in which there is no children's aid society, to the charge of the superintendent, if there is one; or
(*i*) commit the child to an industrial school duly approved by the lieutenant governor in council.

a) suspendre le règlement définitif ;
b) ajourner, à l'occasion, l'audition ou le règlement de la cause pour une période déterminée ou indéterminée ;
c) imposer une amende d'au plus vingt-cinq dollars, laquelle peut être acquittée par versements périodiques ou autrement ;
d) confier l'enfant au soin ou à la garde d'un agent de surveillance ou de tout autre personne recommandable ;
e) permettre à l'enfant de rester dans sa famille, sous réserve de visites de la part d'un agent de surveillance, l'enfant étant tenu de se présenter à la cour ou devant cet agent aussi souvent qu'il sera requis de le faire ;
f) faire placer cet enfant dans une famille recommandable comme foyer d'adoption, sous réserve de la surveillance bienveillante d'un agent de surveillance et des ordres futurs de la cour ;
g) imposer au délinquant les conditions supplémentaires ou autres qui peuvent paraître opportunes ;
h) confier l'enfant à quelque société d'aide à l'enfance, dûment organisée en vertu d'une loi de la législature de la province et approuvée par le lieutenant-gouverneur en conseil, ou, dans toute municipalité où il n'existe pas de société d'aide à l'enfance, aux soins du surintendant, s'il en est un ; ou

	i) confier l'enfant à u ne école industrielle dûment approuvée par le lieutenant-gouverneur en conseil.

[87] Under section 21 of the same Act, provinces that so wished could assume responsibility for a young person in respect of whom an order under paragraphs 20(1)(*h*) and (*i*) had been made:

21. (1) Whenever an order has been made under section 20 committing a child to a children's aid society, or to a superintendent, or to an industrial school, if so ordered by the provincial secretary, the child may thereafter be dealth with under the laws of the province in the same manner in all respects as if an order has been lawfully made in respect of a proceeding instituted under authority of a statute of the province; and from and after the date of the issuing of such order except for new offences, the child shall not be further dealt with by the court under this Act.	21. (1) Chaque fois qu'on ordre est rendu en exécution de l'article 20, à l'effet de confier un enfant à une société d'aide à l'enfance, ou à un surintendant, ou à une école industrielle, si le secrétaire de la province l'ordonne, l'enfant peut ensuite être traité en vertu des lois de la province de la même manière, à tous égards, que si un ordre eût été légalement rendu concernant une procédure intentée sous le régime d'un statut de la province ; et à partir de la date de l'émission de cet ordre, sauf le cas de nouvelles infractions, l'enfant n'est plus traité par la cour sous le régime de la présente loi.
(2) The order of the provincial secretary may be in advance and to apply to all cases of commitment mentioned in this section.	(2) L'ordre du secrétaire de la province peut être fait à l'avance et de manière à s'appliquer à tous les cas d'incarcération mentionnés au présent article.

[88] On the day the YPA came into force, the Minister of Social Affairs issued an order in accordance with that provision (Serge Audet's affidavit, document no. 55). The relevant paragraph of that order read as follows:

> [TRANSLATION] ACCORDINGLY, IT IS HEREBY ORDERED under subsection 21(2) of the *Juvenile Delinquents Act* that children in respect of whom an order has been made under section 20 of the *Juvenile Delinquents Act* committing them to a children's aid society, superintendent or industrial school shall hereafter be dealt with under the *Youth Protection Act* in the same manner and in all respects as if an order had been lawfully made in respect of a proceeding instituted under that Act.

[89] It is not in dispute that the federal government shared the cost of services covered by a placement order under paragraphs 20(1)(*h*) and (*i*) of the JDA. The federal government also agreed to pay its share of the cost of services provided to young persons in need of protection. However, the plaintiff alleges that he was justified in claiming reimbursement for all services provided to young persons suspected or convicted of a delinquency and not only for post-disposition placements ordered under the above-mentioned provisions.

[90] It is not in dispute that social services provided in Quebec to young persons suspected of committing an offence or adjudged to be juvenile delinquents were provided by social service centres and reception centres under both the JDA and the YPA. A director of youth protection (DYP) was responsible for those services in each social service centre (sections 1 and 31 of the YPA).

[91] The *Act respecting health services and social services* (S.Q. 1971, c. 48) defined "social service centre" and "reception centre" as follows in 1971:

> 1. . . .
>
> (*i*) "social service centre": facilities in which social action services are provided by receiving or visiting persons who require specialized

> social services for themselves or their families and by offering to persons facing social difficulties the aid necessary to assist them, especially by making available to them services for prevention, consultation, psycho-social or rehabilitation treatment, adoption and placement of children or aged persons, excluding however a professional's private consulting office;
>
> (j) "reception centre": facilities in which persons are received for lodging, maintenance, keeping under observation, treatment or rehabilitation, when by reason of age or physical, personality, psycho-social or family deficiencies, they must be treated or kept in protected residence or, if need be, for close treatment, including nurseries and day nurseries, except facilities maintained by a religious institution to receive its members and followers; (emphasis added)

[92] It is not in dispute that, for the period at issue, all reception centres that served juvenile delinquents, among others, were listed in Schedule A of the CAP agreement and that all social service centres for which the Government of Canada shared eligible costs were listed in Schedule B of the same agreement (see the follow-up to the examination for discovery of Jean-Bernard Daudelin, defendant's representative, Undertakings JBD-5 and 6).

[93] Were it not for the refusal of the federal authorities to consider pre-disposition and post-disposition services shareable and therefore to include the YPA in Schedule C of the agreement entered into with Quebec, there is no doubt that the federal government would have had to pay half the cost of those services. It was in a letter written on May 16, 1983, to the Gouvernement du Québec by CAP's Director General that the federal government first explained its reasons for refusing to include the provisions of the YPA on services provided to juvenile delinquents in Schedule C. After stating that the sections of the Quebec Act concerning children whose security or development was in danger did not present a problem, Mr. Kent wrote the following:

> [TRANSLATION]
> However, the Act giving effect to the Canada Assistance Plan and the guideline thereunder are more complex in their application to services provided to children who are taken charge of following a violation or alleged violation of the law. These services are considered correctional services and are therefore excluded from cost sharing under the Plan, regardless of their rehabilitative nature, even if they are provided by a child welfare authority under legislation concerning social services for children. Large parts of the *Youth Protection Act* that apply to young offenders are therefore excluded, and the cost of the related services cannot be shared under the Plan.
>
> . . .
>
> Accordingly, all services provided to young offenders under the *Juvenile Delinquents Act* before they are committed to a child welfare authority are considered correctional services, and their cost cannot be shared under the Canada Assistance Plan even if they are provided by child welfare authorities. It follows that the cost of services provided to young offenders under provincial legislation dealing with correctional services, including the provisions of the provincial children's aid legislation relating to correctional services, is not any more shareable under the Plan. This means that the Plan excludes cost sharing for services provided to young offenders before their cases are disposed of under paragraphs 20(1)(*h*) and (*i*) of the *Juvenile Delinquents Act* as well as the subsequent transfer of such young persons to the child welfare authority's custody and care. Services for which there is no cost sharing include selection, diversion, including informal or out-of-court decisions, admission, reception, detention and referral to court, the judgment process itself, pre-disposition assessments, other assessments and reports, services provided under provisions other than paragraphs 20(1)(*h*) and (*i*) of the *Juvenile Delinquents Act* involving fines, probation and the placement of young persons put on probation and services provided as a condition of probation, including returning home or registering for community service programs.
>
> Exhibit PGQ-46, pages 1-2, 5-6.

[94] As mentioned above, the Gouvernement du Québec estimates that it was thus deprived of about $59 million, to which must be added the amount by which this cut changed the calculation made under the YOA and the *Youth Criminal Justice Act*, S.C. 2002, c. 1 (YCJA). The Government

of Canada argued that this component of Quebec's claim represents barely six percent of all the costs claimed by the province during the period at issue for services provided to young persons in need of protection and juvenile delinquents transferred to provincial child welfare authorities in accordance with the mechanism set out in section 21 of the JDA. However, no evidence was adduced on this point, and it is not my role to determine the exact amount that might ultimately be claimed by Quebec in the context of this declaratory action.

[95] Before briefly summarizing the parties' positions and looking at the evidence submitted by both sides, it is appropriate to clearly specify the services whose cost is at issue here. First, there are **pre-disposition** services, which basically include selection, the preparation of medical, psychological and pre-disposition reports, pre-disposition placement in a reception centre and voluntary measures.

[96] The YPA set out the actions that could be taken in relation to a child suspected of committing an offence even before a charge was laid with the court of competent jurisdiction and sometimes without a charge necessarily being laid at all. First, section 40 provided that the child's case had to be brought to the attention of the DYP. This led to a series of measures, possibly culminating in the reporting of the child to the judicial authorities.

[97] The DYP first had to take charge of the child and assess the child's situation (paragraphs 33(*a*) and (*d*), section 45) ("selection"). This step involved an analysis of the child's case by a social worker and could require the involvement of other humanities specialists

(psychologist, criminologist) or medical specialists (psychiatrist or other physician) ("assessment" and "pre-disposition reports"). The DYP could immediately take the urgent measures required by the situation or required for the child's care or protection (paragraph 33(*b*) and section 46). Among those measures, the Act authorized secure placement for children who represented a danger to themselves or society or who were likely to attempt to elude the application of the law (paragraph 46(*c*)) ("pre-disposition placement"). The length of the placement could not exceed 24 hours unless the court so ordered (section 47).

[98] Once the analysis of the child's situation was complete, the DYP, together with a person designated by the Minister of Justice for that purpose, had to decide what action to take in relation to the child (paragraph 60(*a*)). They could decide to close the record immediately. They could also agree to commit the child back to the care of the DYP so the DYP could identify the voluntary measures appropriate to the child's case and try to reach an agreement with the child and the child's parents on those measures (paragraph 61(*a*) and sections 52 *et seq.*) ("voluntary measures"). Up to that point, all measures were taken under the YPA.

[99] The judicial process began when charges were laid against a child. Various pre-disposition services were provided to young persons, and the court could order various measures. In particular, this included the pre-disposition placement of a young person, since the JDA provided that no child awaiting a hearing could be held in confinement in a jail or other place in which adults could be imprisoned (section 13) ("pre-disposition placement"). Section 86 of the YPA also required the DYP to make such assessments and provide such psychological, medical or other reports as the

court might require before rendering a decision on the applicable measures (“assessment” and “pre-disposition reports”).

[100] As well, section 31 of the JDA provided that it was the duty of a probation officer, who was in fact a provincial authority integrated into a social service centre, to make such investigation as might be required by the court (“assessment” and “pre-disposition reports”) and to take such charge of any child, before or after trial, as might be directed by the court (“assessment” and “probation”).

[101] Finally, pre-disposition services also included transportation costs and the cost of services provided by the Comité de protection de la jeunesse under the YPA.

[102] **Post-disposition** services included all the courses of action the court could take when a young person was convicted, as set out in section 20 of the JDA. This might involve suspending the case, placement in a foster home, placement in a reception centre (“post-disposition placement”) or care and custody by a probation officer or any other suitable person (“probation”).

[103] Since the defendant shared nearly all of the cost of post-disposition placement of juvenile delinquents in reception centres, the post-disposition services claimed here are basically probation services provided by the province following a decision by the court finding that a child was a “juvenile delinquent”, that is, guilty of an offence provided for in the JDA. Those services, which were provided by societal actors who were mainly social workers, were incorporated into the social service centres in each region of Quebec starting in 1976.

I. POSITION OF THE GOUVERNEMENT DU QUÉBEC

[104] Quebec's main position is that the services provided to young persons suspected of committing an offence (pre-disposition services) or adjudged to be juvenile delinquents and placed on probation (post-disposition services) were basically social services, including counselling and rehabilitation services that were not correctional in nature, let alone wholly or mainly correctional in nature. Those services were provided by professionals (social workers, psychologists, rehabilitation counsellors) whose mission was to encourage the rehabilitation of young persons in an environment that cannot be equated with a correctional institution.

[105] In support of this position, the plaintiff made several arguments. First, Quebec argued that the exclusion at issue here must be given a restrictive interpretation and that the concept of "correction" must be interpreted in the narrow sense of "punishment". The plaintiff added that the federal government agreed to share the cost of the post-disposition placement of young persons convicted of an offence under the JDA without claiming that the services in question were correctional services. Unless it is argued that the transfer of a young person to the province under paragraphs 20(1)(*h*) and (*i*) and section 21 of the JDA transformed correctional services into non-correctional services, this must, in Quebec's view, be seen as an admission that those services were not correctional in nature. If this is indeed the case, there is even less reason to characterize as "correctional" the pre-disposition social services provided when a young person had not even been charged and was going through a process of being assessed and directed, possibly leading to the closing of the record or the application of voluntary measures.

[106] Finally, another of Quebec's textual arguments was that it would be contrary to the letter of the CAP Act and the agreement to try to exclude such services based on the exception for correctional institutions. The CAP Act defined "assistance" in a "home for special care", a concept that did not include a "correctional institution". However, all reception centres were identified as "homes for special care for children" in the CAP agreement. Therefore, CAP explicitly recognized that a reception centre was not a "correctional institution".

[107] Relying on the object and purpose of the YPA, the Attorney General of Quebec also argued that services provided to young persons suspected of committing an offence were not services relating wholly or mainly to correction or services provided in a correctional institution. On the contrary, the social intervention process provided for in the Act, which did not necessarily include reporting children to the judicial authorities, basically sought to provide children with the care and services they needed and to which they were entitled under Quebec legislation.

[108] The judicial intervention process provided for in the YPA and the JDA also focused on prevention, assistance and rehabilitation for young persons, not correction. Referring to the wording of the JDA and the case law thereunder, Quebec argued that, even when the judicial process was initiated, the objective was not so much to punish as to rehabilitate, assist, bring up and protect young persons. The same was true under the YPA, whose provisions reflected a concern with protecting children more than punishing them, not to mention the fact that the services provided to young persons under the YPA were incorporated into the province's social service network.

[109] In short, Quebec argued that all the services provided to young persons suspected of committing an offence or adjudged to be juvenile delinquents were shareable under the CAP Act because they did not relate wholly or mainly to correction and were not provided in a correctional institution. The plaintiff submitted that this argument was corroborated by the lay witnesses and expert witnesses, who told the Court that young persons suspected of committing an offence or adjudged to be juvenile delinquents had been provided with the same services as young persons taken into protection.

II. POSITION OF THE GOVERNMENT OF CANADA

[110] In response to Quebec's arguments, the Government of Canada submitted that the services for which cost sharing is claimed were for a clientele not covered by CAP and were expressly excluded as correctional services.

[111] With regard to the first argument, the defendant submitted that it is not enough to focus on the nature of the services at issue to decide whether they were eligible for cost sharing. The type of clientele covered by CAP must also be considered in the case of young persons. When CAP referred to such persons, it talked about neglected children (section 2, definition of "welfare services") or "a person under the age of twenty-one years who is in the care or custody . . . of a child welfare authority" (section 2, definition of "person in need"). It thus applied only to young persons in need of protection, a logical extension of Parliament's desire to support assistance for the poor.

[112] Young persons in need of protection and juvenile delinquents were groups with fundamentally different historical, legal and social connotations: the former were victims of a situation and had to be protected from society, while the latter broke the law and harmed society. In the former case, the state intervened through its welfare legislation; in the latter, it intervened by exercising its criminal law powers. Although the JDA was not centred around punishment, the fact remains that the interests of children were not its only objective; it also sought to make young persons accountable.

[113] As regards the argument based on cost sharing for young persons committed to the provincial authority under paragraphs 20(*h*) and (*i*) and section 20 of the JDA, the federal party submitted that this was merely an accommodation and not a recognition that post-disposition services were shareable under CAP. The reason the federal government agreed to share the cost of welfare services and institutional services for children committed to the provincial authorities by the court under the above-mentioned provisions was basically because such children were then considered to be in need of protection. After being committed to the provincial child welfare authority, young persons convicted of an offence were given the same care and services as children taken charge of under provincial children's aid legislation and therefore fell within CAP's definition of "person in need".

[114] In short, what was determinative for the purposes of cost sharing was not the clinical characterization of the service but rather what made the service necessary, namely, the fact that a young person was in trouble with the law, a context that had little to do with the object and scheme

of CAP. In other words, correctional services were services provided following a confirmed or alleged violation of the law, and their cost could not be shared regardless of their rehabilitative nature, the legislative authority or the departmental scheme governing them.

[115] The defendant also submitted that there is no justification for limiting the term “correctional” to its punitive aspect. On the contrary, the Government of Canada argued that this term is much broader in scope and can encompass that which is designed to reform or rehabilitate a young person in trouble with the law.

[116] Expressing the opinion that there is no rule of statutory interpretation requiring an exception to be interpreted in its narrowest sense, the defendant submitted instead that the exception must be given the ordinary meaning most harmonious with the object and scheme of the Act and the intention of Parliament. Relying on dictionary definitions of the term “correctional”, the defendant argued that the ordinary meaning of this term goes well beyond the idea of punishment and includes the action of improving and reforming, a meaning perfectly compatible with the purpose of the JDA, which was above all to reform and not to punish. Accordingly, the ordinary meaning of the word “correctional” easily justifies the interpretation that the services at issue here were correctional in nature, even assuming that they had no punitive objective.

[117] Moreover, the defendant added that there is a fundamental structural difference, deeply rooted in the precepts of our law, between young persons in need of protection and juvenile

delinquents. The constitutional basis for the legislative action underlying the treatment of these two groups is also different, as the courts have recognized time and time again.

[118] The Government of Canada added that the Supreme Court has always refused to equate treatment methods, even those furthest removed from the traditionally punitive approach of the criminal law, with child protection or welfare measures. This need to distinguish the clientele of juvenile delinquents from the clientele of young persons in need of protection, as well as the nature of the services intended for each, is also borne out in practice. Relying on the report of a Quebec parliamentary committee (*Rapport de la commission parlementaire spéciale sur la protection de la jeunesse*, November 1982 (Charbonneau report)) and its own expert witness, the Government of Canada argued that this distinction between delinquency and protection is not only based on their different rationales but also could be seen in practice during the relevant period.

III. THE EVIDENCE

(a) Plaintiff's evidence

[119] Quebec called five lay witnesses and one expert witness on this component of the case. It should be noted immediately that counsel for the defendant requested the exclusion of witnesses, which the Court granted. The lay witnesses were all social workers who had worked with young persons in need of protection and juvenile delinquents. As I have already stated, their professionalism, expertise and even devotion gave me no reason to doubt the truthfulness of their testimony. Their testimony can be summarized briefly by saying that the services offered to the

two groups of young persons were basically the same and were dictated by their needs and by the goal of rehabilitation rather than by the reason they had been referred to the DYP.

[120] The first witness, Florian Gaudreault, worked in the social affairs network from 1962 to 1995 and was the DYP at the Richelieu social service centre from 1978 on. After describing a youth protection branch and explaining how a young person was referred to the DYP and the steps that followed, he stated that the situation was the same for young persons with a behaviour disturbance (paragraph 38(*h*) of the YPA) and young persons suspected of committing an offence. The fact that the parents rather than the police brought the situation to the DYP's attention was not significant, in his opinion, since a young person with a behaviour disturbance could very well have committed delinquencies without being caught, while a police officer's report had to be considered a [TRANSLATION] "symptom of something wrong". Mr. Gaudreault stressed that a young person who had committed a delinquency was a young person in need of assistance, in accordance with the philosophy of the YPA, which gave social intervention precedence over judicial intervention. Therefore, the DYP's intervention process with young persons in need of protection did not differ much from the process used for juvenile delinquents. The young persons ended up in the same units, and the role of workers was the same.

[121] On cross-examination, counsel for the federal government drew the witness' attention to several passages in the Charbonneau report in which the two groups were clearly distinguished. The witness reiterated that, in practice, the approaches taken by educators and psychologists were often the same. Despite the statement in the Charbonneau report that [TRANSLATION] "the approaches and

intervention methods used with the clientele of delinquents are very different in practice from those used in protection cases" (page 35), the witness said that, in the field, the role of workers was to help a young person get through things, regardless of whether the young person was a "38" or a "40".

[122] The witness confirmed that the DYP could seize the court not only when a young person had committed a delinquency (YPA, section 40) but also when the young person had serious behaviour disturbances (section 38(*g*)). The witness conceded that a specific analytical grid had been developed to determine whether or not a delinquency had to be dealt with judicially (Exhibit D-21). That grid did not apply to behaviour disturbances. However, he added that the central concern was not the offence committed or the protection of society but rather the young person's interests. Although the Charbonneau report states that the grid was developed to correct what the committee described as the phenomenon of [TRANSLATION] "unbridled diversion" during the first year of the new Act's application (Charbonneau report, page 11), the witness stated that the percentage of cases reported to the DYP that were referred to the courts remained about 25 percent throughout the period of 1979-1984. Finally, the witness confirmed that workers developed special expertise in delinquency where the volume of clients made this possible and that the protection of society was a consideration in the DYP's intervention.

[123] The second witness, Daniel Gauthier, is a psychologist by training and worked for the DYP at the Centre-du-Québec social service centre between 1979 and 1984. He confirmed that all young persons referred to the DYP had their situations assessed by the same professionals using the same

resources. The only notable difference had to do with reviewing the accuracy of the reported facts; that review had to be more rigorous for young persons referred to the DYP under section 38, since young persons suspected of committing a delinquency were referred by a police officer and the materiality of the facts was therefore easier to establish. The witness repeated that delinquency was seen as a symptom of another ailment and that the philosophy of intervention in every case involved identifying the problem to induce the young person, the young person's family and those close to the young person to get involved in the treatment.

[124] After the situation was assessed, the DYP had three options. First, the record could be closed if the child's security and development were not in danger and the parents had taken the necessary steps to correct the situation. The DYP could also apply voluntary measures (listed in section 54 of the YPA) with the consent of the young person and the young person's parents. Finally, the DYP could refer the case to the court with the consent of the person designated by the Minister of Justice under section 60 of the YPA. These three options were available for both children in need of protection and juvenile delinquents. The witness said that a minority of cases were referred to the court; when asked to specify what he meant by a minority, he suggested 20 percent, but he admitted on cross-examination that this figure was [TRANSLATION] "uncertain" because he had not seen the statistics.

[125] When questioned by counsel for the federal government, the witness stated that he was referring above all to cases involving behaviour disturbances (paragraph 38(*g*) YPA) when he said that the assessment process was similar for young persons in need of protection and juvenile

delinquents; for the other cases covered by section 38, the facts that triggered the DYP's intervention were quite different. He also acknowledged that the analytical grid used to determine whether a case should be referred to the court was applied only to juvenile delinquents even though the same type of questions might arise for young persons in need of protection. He added that the voluntary measures chosen by the DYP were the same for both types of clients and sought to meet the same protection and assistance needs, with the exception of community service, which was used mainly for juvenile delinquents.

[126] The third witness, Paul Bédard, a criminologist by training, also worked for the Centre-du-Québec social service centre during the relevant years. In particular, he was responsible for writing pre-disposition reports for the court and providing supervision when a probation order was made. He also stated that the two clients groups were similar even though they came into the network through different doors; in his opinion, what distinguished them was the fact that some of them had been caught and others had not. The symptom was different, not the underlying problem. This was why the psychosocial reports written in the context of section 38 were, for all practical purposes, similar to the pre-disposition reports written for the court and included the same information. It would therefore be wrong to think that greater emphasis was placed on the protection of society in the case of juvenile delinquents and on protection for young persons referred under section 38; moreover, he added, behaviour disturbances could sometimes be more serious than delinquencies. This was why the measures chosen were based on needs rather than the delinquency committed; what was important was working on the young person's problem, in cooperation with the young person's environment, to prevent further offences in the future.

[127] In short, the witness said that the work with young persons in need of protection and juvenile delinquents was carried out the same way. The workers and the follow-up were the same. When a probation order was made, the DYP's delegate worked with the parents to provide the young person with assistance and advice so the young person could meet the conditions of the order, regardless of whether probation resulted from a report under section 38 or under section 40.

[128] On cross-examination, the witness confirmed that the profile of a young person with behaviour disturbances was similar to that of a juvenile delinquent. He admitted that a pre-disposition report looked at the delinquency and the facts surrounding it as well as its objective seriousness (early commission of delinquency, criminal history, number of delinquencies, violence and severity, etc.). However, the witness specified that the nature and seriousness of behaviour problems were also considered in a psychosocial report. Moreover, the reason why the young person's history and the seriousness of the delinquency were examined was not to protect society and ensure that the young person did not reoffend but rather to ensure that unsuccessful measures taken in the past were replaced with more appropriate measures. Ultimately, society would be protected automatically if the young person's problems were solved. When asked to comment as well on the passage in the Charbonneau report (at page 133) stating that the DYPs adopted specific analytical grids for juvenile delinquents and developed increasingly specific practical criteria and expertise with regard to delinquency, the witness answered that this had not been his experience in his social service centre and that there had been no specific criteria for young persons who committed delinquencies.

[129] The fourth witness called by the Gouvernement du Québec was André Lanciault, a psychologist and psychoeducator. He was an educator and then the activities unit head at the Cartier reception centre from 1979 to 1984. The reception centre was a transition centre (and thus not a medium- or long-term treatment centre), and the young persons there were brought by the police following an alleged offence or by parents who no longer knew what to do about their behaviour problems. The centre therefore provided a front-line service, and the average stay was no more than three months. According to the witness, 70 percent of the young persons at the centre were pre-disposition placements and were therefore waiting for a placement order by the court; he said that the juvenile delinquents were considered pre-disposition placements even after being convicted, until their placement type was determined. For the others, an order had generally been made, and they were simply waiting for a medium- or long-term placement. During their stay at the Cartier reception centre, the young persons were placed in a reception unit based on their age, behaviour and aggression profile and on whether they had ever stayed at a reception centre before. The fact that they had been reported under section 38 or under section 40 was generally not taken into account, especially since young persons with serious behaviour disturbances could be more difficult to handle than young persons who had committed delinquencies. Like the other witnesses before him, he confirmed that the educators' intervention did not distinguish between the two groups of young persons and that the young persons did not draw any distinctions among themselves.

[130] On cross-examination, Mr. Lanciault confirmed that the reception centre where he had worked was unique in the sense that placements there were mostly pre-disposition placements and

that most of the young persons there who were in need of protection had very serious behaviour disturbances. Contrary to what this expert witness wrote in his report, he reiterated that there were no specific, separate units for young persons with behaviour disturbances and juvenile delinquents but that they were grouped together based on other criteria.

[131] The final lay witness called to testify by the Gouvernement du Québec was Yves Lemay, a criminologist by training. Mr. Lemay was a clinical counsellor in youth centres from 1979-1984. He worked at the Cité des Prairies centre, where fewer than 50 percent of clients were pre-disposition placements, and at the Tilly centre, a secure centre where 70 percent of clients were post-disposition placements. He explained that the clinical executive committee examined problematic cases to determine what could be done to help young persons in difficulty. In this regard, the reason why a young person had been committed to a youth centre was not relevant. The same was true for the residence committee, which was responsible for directing young persons to the various units, and the multidisciplinary committee, whose role was to set the objectives of an intervention plan for each young person.

[132] His description of the two centres where he worked was entirely consistent with the description given by the previous witness in terms of unit organization, activities and supervision. The witness confirmed that, in all these respects, there was not necessarily any correlation between a young person's origin (as a "38" or "40") and the seriousness of the young person's case and that age was the determining factor in the various decisions made. Whether young persons were juvenile delinquents or in need of protection, it was the significance of their delinquencies or behaviour

disturbances that was addressed so they could change their values through treatment, therapy, meetings and so on.

[133] Mr. Lemay stated that a young person in need of protection usually arrived at a reception centre after it was reported that the young person had a behaviour disturbance. If the report indicated that the young person was in danger (e.g. suicide attempt), the young person was immediately directed to a more specialized, secure centre. If the young person agreed to remain there on a voluntary basis while being assessed by a psychologist or psychiatrist, the case was not referred to the court. However, if the assessments were not completed after 30 days and the young person refused to stay at the centre voluntarily, the court was seized and decided whether the young person had to be committed to the DYP's care after hearing the experts who had examined the young person. If the young person was committed to the DYP's care, a centre was chosen based on his or her dangerousness. Conversely, a juvenile delinquent could be directed to a less secure centre if he or she had made progress and become less dangerous.

[134] On cross-examination, Mr. Lemay stated that the clinical executive committee was multidisciplinary in nature and was made up of psychologists, sometimes psychiatrists, physicians, a Crown prosecutor and sometimes defence counsel and any other person considered necessary to help understand the young person's situation. Despite his own training in criminology, he added that he also used his clinical knowledge of personality development.

[135] Finally, the plaintiff also called Pierre Foucault as an expert witness. Mr. Foucault, who has a Ph.D. in clinical psychology, is a member of the Ordre des psychologues. He has been a clinical management consultant for many institutions, agencies and departments since 1988 and, as such, has had the opportunity to write several documents about the YPA and the YOA. He also worked for the Association des centres d'accueil du Québec as an advisor for professional services in the rehabilitation sector from 1979 to 1988, and he has done private consulting since 1973. He was asked to provide the Court with a clinical analysis of the nature of the services provided to juvenile delinquents in Quebec and the philosophy on which intervention was based, specifically between 1979 and 1984. He therefore described what he did at the time, going beyond principles, interpretations and legislation. All in all, the purpose of his report was not to conduct a theoretical or legal analysis but to describe the choices made by the Gouvernement du Québec for dealing with young persons in difficulty, whether they were delinquents or in need of protection.

[136] According to Mr. Foucault, the passage of the YPA in Quebec in 1977 marked a fundamental change in the approach taken to youth protection: until then, the state had substituted itself for the parents and raised children in their place. This approach, which was implicit in the JDA and various Quebec statutes on youth protection prior to the YPA, was radically transformed in 1977 to give children, even those in difficulty, the same rights as any other person and not only the rights the state was willing to recognize. As he wrote in his report entitled *La réadaptation : au cœur de la philosophie d'intervention auprès des jeunes délinquants du Québec entre 1979 et 1984*, filed as Exhibit PGQ-56, at page 36:

> [TRANSLATION] From a new upbringing, which both legislatures entrusted to judges and their mandataries,

> there was a shift to rehabilitation in the space of a few months. The difference can be summed up in a few words: rather than ensuring that young persons in difficulty were well brought up and meeting all of their needs, which could take a very long time and sometimes be arbitrary, intervention was minimized and limited to that which was necessary to ensure that their security or development was no longer in danger or, if you will, to ensure that they were able to live a socially adjusted life in their parental environment, at school and with their friends, having regard to society's rules.

[137] Intervention between 1979 and 1984 therefore sought to rehabilitate and not punish young persons with adjustment problems, whether they were protection cases or delinquency cases. The DYP no longer sought to meet all the needs of young persons but sought instead to help parents resume their role. According to Mr. Foucault, this basic philosophy did not depart from the spirit of the JDA. Based on this logic, young persons in need of protection and juvenile delinquents were all considered young persons to be protected, but only for the specific needs their parents could no longer meet. Between 1979 and 1984, both groups were therefore dealt with using the same clinical and legal parameters. This being said, young persons in major urban centres were grouped together based on the legal reason why they were in the social service network because the volume of cases allowed for this. Moreover, the passage of the YOA in 1984 reintroduced segregation for the two groups based on two different types of intervention with specific characteristics, rules and limits.

[138] According to Mr. Foucault, deviant behaviour was not, *de facto*, what determined the nature of the intervention. Rather, such behaviour was the starting point. It was a symptom of a problem, distress, suffering or an ailment for both young persons in need of protection and juvenile

delinquents. The extent to which young persons were in difficulty therefore varied based on their level of social disintegration, regardless, ultimately, of the specific act that led to them being reported. The author identified four areas of social disintegration: family disorganization, maladjustment at school or work, membership in a marginal peer group and social maladjustment.

[139] Young persons in difficulty in one of the four areas of integration could be reintegrated without a placement with the support of their parents; in delinquency cases, a voluntary measure might be appropriate. If two of the four areas were affected, it was sometimes possible to provide assistance without a placement, but a temporary placement in an alternative environment was sometimes necessary; in delinquency cases, there would be probation with minimal supervision. When three of the four areas were affected, consideration had to be given to placement in a group home or in open custody for a relatively short time, followed or accompanied in delinquency cases by probation with very specific conditions. When the four areas were affected, a great deal of time and resources were required; in delinquency cases, a placement was mandatory; it was sometimes for a long time and in a secure environment. In short, the capacity for social integration in the available organizations was used as the basis for directing young persons, both in the recommendations made to the court and in the DYP's decisions. The level of social disintegration was the key: the young person's behaviour, without being denied, was only one of the relevant variables.

[140] The witness continued by explaining that rehabilitation involved three steps in both delinquency and protection cases. First, the deviant behaviour had to be stopped. Young persons

were asked to take responsibility for their actions, were penalized and made amends for the harm they had caused. Second, young persons had to internalize customary prohibitions through relatively strict adult supervision. They had to learn to obey rules, initially to please the adult accompanying them and then by recognizing the appropriateness of the norm and the risk to themselves and others of not complying with it. In this regard, the relationship with the young person was the key to moving from external control to internal control; the young person's needs determined the nature of the intervention and the methods to be used, regardless of whether the young person was in need of protection or a delinquent. Finally, in the protection process, young persons had to learn certain things. To learn and then stabilize their learning, they had to understand what needed to be done and what was being asked of them (knowledge, or the "what"). They also had to find some meaning, significance, pleasure or satisfaction in doing or not doing the act in question (behavioural skills, or the "why"). Finally, they had to learn to express their aggression, anger or rage in an appropriate manner (know-how, or the "how"). During this entire process of learning, educators ensured that there was a constant adult presence for young persons. Young persons were grouped by sex, ideally by age and by their specific needs. Between 1979 and 1984, the Act under which they were referred was not a determinative criterion.

[141] Social workers played a crucial role, since they were responsible for assessing young persons so that an informed decision could be made about whether their security or development was in danger and whether action had to be taken. The assessment was based on the reasons for intervention, the report to the DYP or the arrest, the young person's acknowledgement of the facts, determination to deal with things and likely cooperation, the influence of the young person's parents

on the facts or their resolution, the young person's functioning at school, the type of friends the young person had and their influence. The four major areas of social integration therefore served as a reference framework in assessing the situation. For both young persons under protection and juvenile delinquents, workers thus focused from the outset on rehabilitation based on the young person's needs. Between 1979 and 1984, juvenile delinquents and young persons in need of protection were, in practice, dealt with similarly for intake, assessment and directing purposes. The work was based first and foremost on their needs and their capacity for rehabilitation, ultimately without regard to the act that justified intervention.

[142] Between 1979 and 1984, the Gouvernement du Québec chose to make a single person, the DYP, responsible for applying the YPA and the JDA. This indicates that it wanted to give one social decision-maker the ultimate responsibility for helping young persons in difficulty, whatever the legal grounds for intervening in their lives. The result was that all young persons in the network of social service centres and reception centres were dealt with the same way. The same staff, the same premises, the same programs, the same activities and, in short, the same rehabilitative philosophy applied to all of them.

[143] The author concluded as follows in his report:

> [TRANSLATION]
>
> Intervention between 1979 and 1984 sought to rehabilitate and not punish young persons with adjustment problems, whether they were protection cases or delinquency cases. The learning areas proposed to a young person were based on the logic of protection (YPA) and thus on the young person's needs, and this did not depart from the spirit of the JDA.

> In short, rehabilitation was both an intervention philosophy and a group of methods developed to ensure that young persons receiving services (probation, placement, etc.) met the objectives being pursued by both the YPA and the JDA: ensuring their social reintegration by rehabilitating the way they functioned with their family, school and peers, in keeping with social norms.

[144] In her cross-examination, the defendant relied extensively on the Charbonneau report and endeavoured to show that its principal conclusions differed from Mr. Foucault's findings. Given the importance assumed by that report in these proceedings, it is appropriate to pause briefly to say a few words about it immediately.

[145] In accordance with a motion passed by the National Assembly of Quebec on December 19, 1981, a special parliamentary committee chaired by Jean-Pierre Charbonneau, then the MNA for Verchères, was instructed to assess the application of the YPA and the consequences thereof [TRANSLATION] "in light of the fundamental objectives of respecting and protecting the rights of young persons and legitimately protecting the public from offences and acts of delinquency". The committee, which was made up solely of members of the National Assembly, was supported by an impressive research team and travelled across Quebec to take evidence from more than 1,000 people, most of whom were workers, specialists, parents and even young persons who had concrete experience with the YPA. In addition to those public meetings, the committee members paid a few visits to reception centres to talk to management, staff and the young persons themselves. Although the committee's report is, strictly speaking, hearsay and was not introduced in evidence by a witness who had been involved in drafting it, I consider it highly relevant. It is a key element in the evolution of the treatment of young persons in need of protection and juvenile

delinquents in Quebec. Although its weight must be assessed in light of all the available evidence, I am of the opinion that the Court cannot do without the insight it provides into the situation that existed in the early 1980s.

[146] When asked whether the Charbonneau committee had not been established in response to what was perceived to be excessive diversion, Dr. Foucault stated that the committee had actually been created because of complaints by counsel that the rights of young persons were being violated when voluntary measures were taken without establishing whether there was enough evidence to find them guilty of an offence. According to the witness, the fact that such young persons could not consult counsel was criticized for both protection and delinquency cases, and this was what led the government to establish a parliamentary committee.

[147] Counsel for the defendant drew the witness' attention to several passages in the Charbonneau report, which read as follows:

> [TRANSLATION]
>
> Therefore, the ambiguity of the current legislation does not relate mainly to the definition of each concept's scope. Rather, it relates to the process whereby protection cases and delinquency cases are both dealt with the same way. Indeed, the very operationalization of this single intervention process has been questioned in many clinical and legal debates.
>
> Thus, the *Youth Protection Act* has made it possible to separate protection and delinquency, at least when defining the phenomena involved. (page 31)
>
> We consider it important to state today that, following a delinquent act, with a view to preventing reoffending, attention must therefore be devoted not only to family and social reintegration and the

> security or development of the child but also to making the young person accountable and protecting society. Young persons can be made accountable by being made to realize and then assume the consequences of their actions. Society can be protected by using supervision, temporary removal, placement or probation measures where necessary. (page 32)
>
> Fortunately, the limits of the legislation have not precluded an abundance of experiences and initiatives based on this principle of making young persons accountable for their actions and accountable to society. Indeed, such accountability must be acknowledged to properly begin intervention. (page 33)
>
> With regard to social intervention, it is recognized that needs and authority figures differ for juvenile delinquents and young persons in need of protection; moreover, the types of approaches and intervention used with the clientele of delinquents are very different in practice from those used in protection cases. (page 35)
>
> In practice, the work methods and methods of organization are often different. Workers have told us that each group requires special knowledge and specific types of approaches, if only in terms of the authority that is so necessary and so difficult to exercise in the delinquency context. (page 41)

[148] When confronted with all these extracts from the Charbonneau report, the witness made the following comments. First, he reiterated that accountability for young persons and the protection of society were not central to the YPA's concerns, contrary to the situation that existed later under the YOA, which came into force in 1984. Between 1979 and 1984, the protection of society was not the objective but rather a consequence of the DYP's intervention, a variable that had to be considered in the young person's process of social reintegration. When the committee wrote at page 32 of its report that young persons had to be made accountable, it was suggesting that a change of course was necessary, thereby confirming, according to Dr. Foucault, that the protection of society was not being sufficiently considered. In the same way, he viewed the extract from page 31 as stating not

that there was a clear and real distinction between protection and delinquency but rather that there was a dichotomy between the recognition of these two phenomena in sections 38 and 40, at least in the definition of concepts, and the failure to operationalize this distinction through methods and objectives. In short, according to Dr. Foucault, the committee was describing the situation that existed in 1981; its comments on the necessary dichotomy between protection and delinquency, on the need to make young persons accountable and to protect society better and on the special knowledge and intervention required by the two client groups reflected not what was being done at the time but rather what the committee was recommending.

[149] With regard to the famous court referral grid mentioned in the Charbonneau report and already referred to above, the witness confirmed that it was solely for the clientele of delinquents. However, he added that the purpose of the grid, which had been developed out of a concern for fairness and uniformity, was basically to remind social workers that they had to contact court workers when it was suspected that a delinquency had been committed. He stated that the grid was not intended to be exhaustive in setting out the criteria that could be taken into account. He also said that the various reception centres had developed equivalent grids for young persons in need of protection.

[150] Counsel for the Government of Canada also quoted for the witness the following extract from the brief submitted to the Charbonneau committee by the Association des centres de services sociaux du Québec:

> [TRANSLATION] There may have been some abuses in this sense which we were not always able to control, you understand. We have

> never seen any ambiguity in this; we have always considered intervention in the protection context and intervention in the delinquency context to be two very different things, even if the concept of protection may apply to some young persons who commit delinquent acts.

[151] Once again, Dr. Foucault acknowledged that the Association, like many other stakeholders, had criticized the single intervention model for both client groups. However, he added that he had been asked to describe a situation, not to assess it. Ultimately, the committee accepted those criticisms and made recommendations for better operationalizing the distinctions that existed between young persons in need of protection and juvenile delinquents. In his opinion, this clearly shows that this was not the situation that existed in 1982. He reiterated what other witnesses had said before him, namely that the starting point was always an act committed by a young person, whether the young person was reported for having a behaviour disturbance or for violating a statute or regulations; the process that then was started in order to meet the young person's needs was the same in both cases.

(b) Defendant's evidence

[152] The Attorney General of Canada called only two expert witnesses to testify about this component of the claim.

[153] I have already referred to the testimony of Jean-Bernard Robichaud in the first part of these reasons. Suffice it to mention that he was, among other things, the professional services manager (1974-1976) and then the general manager (1977-1983) of the largest social service centre in Quebec, the Montréal métropolitain centre. Mr. Robichaud acknowledged that, following the

enactment of the YPA, the DYPs tried to use the same approach to deal with young persons in need of protection and young persons who had committed or were suspected of committing a delinquency, believing that they were "young persons in difficulty". However, this ideology and approach quickly encountered problems despite all the efforts made to deal with both categories the same way.

[154] Yet the Act included mechanisms that made it impossible to deal with both categories of clients the same way. For example, when a delinquency was reported, the DYP had to consult a person designated by the Minister of Justice before deciding whether the case should be referred to the court. It was therefore in administrative processes and practices that the lines became blurred. The problems encountered when the YPA was implemented also quickly led to the creation of the Charbonneau committee.

[155] In his expert report, the witness quoted several extracts from the Charbonneau report (some of which are reproduced at paragraph 147 of these reasons) and maintained that the committee had thought it necessary to go beyond recognizing the differences between these two types of clients and change the operationalization of intervention procedures, which had to be specific both for delinquency and for protection. He added that the two client groups had been directed to two different assessment units during the time he was the CSSMM's general manager, but he admitted that other social service centres might not have had the critical mass needed to make this classification.

[156] The witness added that, in his opinion, it was not enough in delinquency cases to recognize the principles enshrined in the YPA, particularly recognition of young persons' rights and the need to provide them with assistance in their own environment as much as possible, with the diversion efforts that followed. Other principles not found in that Act also had to be applied, namely, making young persons accountable and protecting society. From this standpoint, he expressed the view that the services provided to juvenile delinquents were clearly part of the state's mission to administer justice, which had nothing to do with CAP's mission.

[157] The second expert witness called by the federal government was Professor Nicholas Bala, who has been teaching at the Queen's University Faculty of Law since 1980 and specializes in the law of family and children. In cooperation with researchers in other disciplines, he has published many books and articles on young offenders, child welfare and subjects related to children's testimony in court, divorce and child custody. He was also involved in the National Study on the Functioning of Juvenile Courts funded by the Department of the Solicitor General of Canada between 1981 and 1985. The purpose of that Canada-wide study (there were research teams in six provinces, including Quebec) was to better understand how the JDA was applied in the field by observing what happened in court and interviewing the main actors (judges, Crown and defence counsel, police officers, probation officers, etc.). The project led to the collection of a great deal of information and data and to numerous publications, the most important of which was the one co-edited by the author in 1985 and published by the Department of the Solicitor General itself, which was entitled *Juvenile Justice in Canada: A Comparative Study*. Finally, it is important to note

that Mr. Bala has testified as an expert witness in four cases (including two in the Supreme Court) and before two commissions of inquiry.

[158] Counsel for the plaintiff objected to the qualification of Professor Bala as an expert on the ground that he would basically be testifying about the law. In support of this argument, counsel referred to extensive case law finding that questions of domestic law are not questions on which a court will admit expert evidence: *Parizeau v. Lafrance*, [1999] R.J.Q. 2399 (Sup. Ct.); *Pan American World Airways Inc. v. The Queen and Minister of Transport*, [1979] 2 F.C. 34 (T.D.); *Riendeau v. Brault & Martineau Inc.*, [2005] J.Q. No. 10165 (Sup. Ct.) (QL); *Les Entreprises Emerco Inc. v. Langlois*, [2004] J.Q. No. 437 (Sup. Ct.) (QL); *R. v. Marquard*, [1993] 4 S.C.R. 223.

[159] During the hearing, I decided this objection by agreeing to allow Professor Bala to testify about his report, with the exception of parts 4 and 9. At that time, I stated the principles that had guided me in making that decision. I believe it is appropriate to elaborate a little on those principles in these reasons.

[160] It is settled law that the role of an expert witness is to enlighten the court in assessing scientific or technical evidence. Of course, the expert's testimony must be relevant to deciding the issue and must help the court assess the facts before it. The Supreme Court, *per* Mr. Justice Sopinka, clearly summarized the applicable criteria in *R. v. Mohan*, [1994] 2 S.C.R. 9, at page 20 of its reasons:

> Admission of expert evidence depends on the application of the following criteria:

(a) relevance;
(b) necessity in assisting the trier of fact;
(c) the absence of any exclusionary rule;
(d) a properly qualified expert.

[161] The question becomes more complicated when the expert whose testimony is sought is a legal professional. In such a case, there will necessarily be a greater temptation, whether conscious or not, to express an opinion on questions of law that, in principle, are within the court's expertise. The role of experts is not to substitute themselves for the court but only to assist the court in assessing complex and technical facts. It must never be forgotten that, ultimately, it is the court that must decide questions of law. As the British Columbia Supreme Court wrote in *Surrey Credit Union v. Wilson* (1990), 45 B.C.L.R. (2d) 310, cited by my colleague Mr. Justice Teitelbaum in *Samson Indian Nation and Band v. Canada* (2001), 199 F.T.R. 125 (F.C.), at paragraph 21:

> Expert opinions will be rendered inadmissible when they are nothing more than the reworking of the argument of counsel participating in the case. Where an argument clothed in the guise of an expert's opinion is tendered it will be rejected for what it is.

[162] Authors J. Sopinka, S.N. Lederman and A.W. Bryant express the same idea in their treatise on the law of evidence (*The Law of Evidence in Canada*, 5th ed., Butterworths, Toronto), at page 546:

> In the final analysis, the closer the experts' testimony both in opinion and in words comes to the very issue that the court has to decide, the more jittery it becomes in receiving such evidence. This is so because the evidence then begins to overlap not only the fact-finding function of the court but the legal analysis that must be applied to the facts in rendering the ultimate decision.

[163] Does this mean that legal professionals can never testify as experts and that their testimony (and expert reports) must always be excluded from the evidence? I do not think so. If an expert does not try to answer the legal question at issue in the proceedings but instead seeks to shed light on the debate by providing insight into the political, historical and social context of which the relevant legislative provisions are a part, the expert's testimony may be admissible. There are illustrations of this principle in the case law.

[164] For example, a notary's testimony was admitted in a professional liability case not to determine whether the appellant had committed an error of law in doing a title search but solely to enlighten the judge on notarial practice so the judge could determine whether the appellant was at fault: see *Roberge v. Bolduc*, [1991] 1 S.C.R. 374. As well, a law professor's testimony about prison subculture and the power structure within the inmate population was admitted because that expert evidence was relevant to assessing the defence of duress raised by accused persons charged with taking part in a prison riot and committing mischief to property: see *R. v. Anderson* (2005), 67 W.C.B. (2d) 756; 2005 BCSC 1347 (B.C.S.C.). Finally, in the context of an Aboriginal claim against the Crown, a university professor's report providing a historical overview of Crown/Aboriginal relations and policy and their evolution over time was also admitted in evidence: see *Samson Indian Nation and Band v. Canada*, above, paragraph 161.

[165] In short, the question came down to whether the purpose of Professor Bala's report and his testimony based on the report was to answer the very question submitted to the Court or rather to

place the debate in its true historical and sociopolitical perspective. Professor Bala's report has eleven parts, six of which are substantive and have the following titles:

> Part 4: The constitutional authority to legislate regarding youth criminal justice and child welfare
> Part 5: Background on the principles and philosophy of the *Juvenile Delinquents Act*
> Part 6: The years leading up to 1984 and the coming into force of the *Young Offenders Act*
> Part 7: The application of the *Juvenile Delinquents Act* in six provinces in the early 1980s
> Part 8: The interaction of the juvenile justice and child welfare systems before the *Young Offenders Act*
> Part 9: The approach to juvenile justice in Quebec from 1979 to 1984
> Part 10: The impact of the coming into force of the *Young Offenders Act*

[166] Based on a careful reading of Professor Bala's report, I concluded that the witness was not trying to answer the questions to be decided by the Court, particularly the question of whether the amounts paid by the province for pre-disposition and post-disposition services for juvenile delinquents were shareable under CAP, but was instead seeking to provide a better understanding of the philosophy underlying the JDA and the YPA, the interaction between those two statutes, the reasons why Parliament replaced the JDA with the YOA and the way the JDA was applied in the field, not only in Quebec but also in the rest of the country. This information was relevant, useful, based on an empirical and multidisciplinary analysis of the situation that existed at the time and, subject to the comments I will make in the paragraphs that follow, did not encroach on this Court's role in disposing of the legal issues.

[167] However, I had to make two exceptions to this finding. Part 4, which basically concerns the division of powers over youth criminal justice, is strictly legal in nature and corresponds precisely to

the type of argument that should be made by counsel for each party rather than by a witness. I would add that the Court was in at least as good as position as the witness to make this analysis.

[168] The same applied to Part 9, but for different reasons. I did not really consider this part of the report helpful, since it largely reproduces the conclusions in the Charbonneau report. Since the Charbonneau report was already in evidence and had already been used extensively by counsel for the defendant, I did not think it was really necessary to revisit it indirectly by paraphrasing it in an expert report.

[169] In light of these two reservations, I therefore concluded that Professor Bala could testify on the basis of his report, it being understood that counsel for the plaintiff would have an opportunity to make more specific objections if they felt that Professor Bala was going outside the parameters set by the Court. I also stated that there was nothing to prevent counsel for the Government of Canada, during their oral argument, from adopting Professor Bala's arguments that had been excluded from the evidence. Therefore, based on these premises, I will summarize the admissible portions of Professor Bala's testimony as faithfully as possible.

[170] In his own overview of his report, Professor Bala wrote the following:

> 23. In my opinion, the child welfare and juvenile justice systems in Canada were and continue to be legally and constitutionally distinct from one another. State intervention is justified under child welfare laws when children are in need of protection and under juvenile justice laws when children are suspected of having committed an offence. The legal processes and the consequences experienced by children in these two situations were, and are, separate, although in

> some situations, the therapeutic treatment the children receive may be similar.
>
> 24. Although Quebec's *Youth Protection Act* was different in some ways from child welfare legislation in the other provinces, the response to young people who were suspected of having committed an offence or found guilty of an offence in Quebec was substantially similar to the response in the rest of the country.

[171] Professor Bala testified that there has always been some overlap between the two systems, since young persons who break the law have sometimes been abused or neglected, which may explain their behaviour. Historically, the two systems have therefore intersected at times, and the same workers have often looked after both groups. This overlap and the controversy about exactly where to draw the line between the two phenomena are not new and have existed since the JDA was enacted in 1908. This question is still being debated not only in Quebec but also throughout Canada. The fact remains that, in practical terms, young persons who break the law are initially apprehended by the police and treated differently than those who have been abused or neglected and who, to some extent, are victims of circumstances.

[172] When the JDA was enacted in 1908, a different approach was chosen to deal with children who were alleged to have broken the law or to be guilty of immorality or other vices. The choice was made to entrust them to a judicial and correctional system that was different and separate from the adult system and that emphasized treatment, rehabilitation and informality. Despite relatively clear guidelines in the JDA, it was applied very differently in the various provinces of the country.

[173] There was much criticism of the JDA over the years. Tension arose between those who considered the juvenile justice system unfair and unduly harsh and those who believed that judges

were being too soft and not protecting society adequately. A reform of the system was therefore embarked upon in 1965, but it took two decades before the YOA finally came into existence. There were several reasons for this long delay. In particular, the federal government wanted the new Act to continue to apply to the violation of all statutes, regulations and by-laws, but the provinces objected to this. Ultimately, the scope of the YOA was limited to offences under federal criminal legislation. There was also disagreement about the age of the young persons to whom the YOA was to apply.

[174] More fundamentally, however, there was disagreement about the philosophy of the new Act. It has always been difficult to achieve a balance between the need to protect society and make young persons accountable for their wrongdoing and the equally great need to respect their rights and rehabilitate them, and this is something that continues to divide society. The YOA was undeniably meant to be closer to the criminal law than to youth protection legislation, and it therefore marked a radical departure from the JDA. Finally, financial considerations also delayed the coming into force of the YOA. The provinces were concerned about the monetary implications of some of the proposed changes, like raising the age at which ordinary criminal legislation applied and limiting the scope of the YOA to criminal offences. Although they basically agreed with those changes, they worried that they would now have to pay the costs associated with this new clientele of young persons who had committed offences but were no longer under federal authority.

[175] It is also of interest to note that, in the late 1970s and early 1980s, there was an increasingly clear commitment to dealing differently with young persons in need of protection and young

persons who had committed offences. Professor Bala referred in particular to the training schools in Ontario, where the placement of young persons who were not delinquents was prohibited as of 1977. In Quebec, placement in security units was also restricted to young persons over the age of 14, but the Act did not provide for a strict separation between children in need of protection and juvenile delinquents. According to a study cited by Professor Bala in his report, it seems that the other provinces wanted complete separation between the federal and provincial methods of dealing with young persons, while Quebec wanted to absorb the federal legislative provisions into provincial programs.

[176] During the period just before the YOA came into force, there was also a growing interest in alternative measures. In practice, police officers and Crown counsel referred young persons to community programs rather than the courts. In his report, the author gave the example of programs of this type in Ontario, British Columbia and Alberta. Voluntary measures under section 54 of the YPA were comparable to these types of alternative measures. On this point, Professor Bala maintained that Quebec's experience influenced the formulation of the alternative measures found in the YOA.

[177] Relying on the study on the functioning of juvenile courts sponsored by the Department of the Solicitor General, in which he had participated in the early 1980s, Professor Bala described the system during the relevant years as follows. At that time, there was some overlap between the juvenile justice system and the welfare system for young persons. In some cases, the path into the system had little effect on the way a young person was dealt with. The same court often had

jurisdiction, and the same judge had the powers conferred by the JDA and provincial welfare legislation. The dividing line between the two systems was especially blurred for young persons between the ages of 12 and either 16, 17 or 18 (each province was free to set the maximum age for the JDA to apply to young persons). This overlap between the two systems was particularly obvious in Quebec, since the legislature dealt with both phenomena in the same Act and made a single administrative body, the DYP, responsible for both groups. In the other provinces, separate legislation and bodies existed for the two categories; there was nonetheless a significant degree of overlap, especially with regard to the institutions and facilities where young persons were placed.

[178] More specifically, Quebec reception centres at the time took in young persons from both the "juvenile delinquents" stream and the "young persons in need of protection" stream (or, in the jargon used in that field, "38s" and "40s", referring to the sections of the YPA). They had different rights and a different legal status, but they lived in the same physical place and had to obey the same rules. This situation existed throughout Canada, and it still does today. Of course, this approach raised concerns, which was precisely why the Charbonneau committee was established in Quebec. In some provinces, clear policies were adopted to prohibit the placement of children in need of protection with children who had been convicted of breaking the law.

[179] Still relying on the national study referred to above, the author also noted that the courts had made little use of the possibility of committing a child adjudged to be a juvenile delinquent to a children's aid society (paragraph 20(1)(*h*) of the JDA). In fact, it seems that Quebec was one of the provinces in which this type of alternative measure was used the least.

[180] After examining the various practices used across the country for psychological/psychiatric assessments, the availability of duty counsel, selection and alternative measures, Professor Bala concluded in his report that the juvenile justice system in Quebec clearly emphasized a formal alternative measures program (diversion program). He added that the unique procedures and structures governing the role of the police, the admission process, assessment by multidisciplinary teams and the more limited role of the prosecution were among the most innovative and distinctive changes in juvenile justice in Canada. That being said, he reiterated the conclusion reached by the study group in which he had participated and expressed the view that, despite these structural differences, it is not clear that a young person’s experience in Quebec was fundamentally different from the experience a young person might have had in other provinces in which there had been little or no development of formal alternative measures programs.

[181] In the part discussing the intersection between the youth criminal justice system and the welfare system prior to the coming into force of the YOA, Professor Bala expressed the opinion that the two systems were separate not only constitutionally and legally but also in terms of the legal process and its consequences for young persons. If there was some confusion in people’s minds, it was partly because both legal schemes claimed to make the best interests of the child the predominant concern in decision-making. However, despite this apparent similarity in the legislation, judges and other professionals applied this concept of “best interests of the child” very differently when they were dealing with juvenile delinquents rather than young persons in need of

protection. Moreover, the children themselves clearly understood the difference between "protection" and "correction".

[182] Given the importance of the following analysis to this case, I am taking the liberty of reproducing in full Professor Bala's comments at paragraphs 107 to 109 of his report:

> Generally, the first contact with the justice system for a child suspected of having committed an offence was with the police. The child might then be diverted out of the juvenile justice system or might end up in Juvenile Court. In court, at least at the initial stage of the process, the focus of the proceedings would relate to a specific event – the alleged offence(s). The parent(s) would be notified of the proceedings, but it was the juvenile who was charged with the alleged offence. A plea of guilty or proof beyond a reasonable doubt would be required for the child to be found guilty of a delinquency and state intervention justified. It is only at the sentencing stage that a court may take into account the best interests of the child. Even at that stage, a child's best interests were to be balanced against other factors. Pursuant to s. 20(1), *Juvenile Delinquents Act*, there were a number of possible dispositions which the court could choose to impose, ranging from a fine of $25; requiring the child to report to probation officer; placing the child in foster care or an industrial school; or committing the child to the care of a children's aid society.
>
> In contrast, a child protection case could come into the justice system through a variety of pathways – through the police, school truancy officers, social workers, teachers, community outreach workers, etc. If it was felt that the child needed to be removed from his or her home, the case would be prepared for court by a provincially-mandated child welfare agency. Often, the evidence would be based on a series of events or an assessment of the child's overall situation. The parent(s) would be a party to the proceeding. Proof would only need to be made on a balance of probabilities that the child was in need of protection and should be placed within the state's childcare system, with the welfare of the child being a central concern throughout the process.
>
> Although it might well be in a child's best interests to be removed from home and placed in an institutional setting, in the juvenile justice context, it was, and is, a punishment.

[183] Finally, the witness noted that the data gathered for the Canada-wide study in which he had been involved revealed that few juvenile delinquents were placed in foster homes even though this was allowed by paragraph 20(1)(*f*) of the JDA. In the same vein, it seems that a very small proportion of young persons convicted of an offence were committed by judges to children's aid societies even though paragraph 20(1)(*h*) of the JDA explicitly allowed judges to take this course of action to get such young persons out of the criminal justice system and into the welfare stream.

[184] All the same, Professor Bala noted that most institutions had admission criteria and programs based on children's real needs and problems rather than the legal distinctions made by courts and legislatures. This meant that young persons in need of protection and juvenile delinquents were often in the same institutions. In 1981, he wrote that the great similarity in treatment was not surprising, since children who had been abused or neglected by their parents were more likely to develop behaviour problems that might result in the commission of offences. However, the two groups could not be equated, and the Charbonneau report noted in this regard that the overlap rate (the proportion of delinquency cases with a protection history) was about 10 percent. Be that as it may, children came to the authorities' attention either because they needed protection or because they had committed an offence. In Quebec, the YPA also provided that every person had a duty to report the case of a child in need of protection, whereas there was no such duty in relation to a child suspected of committing an offence.

IV. ANALYSIS

[185] As mentioned above when discussing the foundations of CAP, this federal government initiative was intended first and foremost to be an anti-poverty instrument. Far from being a source of financing for universal programs, CAP was based on a clearly selective philosophy, and in no way did it seek to meet all the psychosocial needs the provinces might identify. This seems even more obvious from CAP's "youth" component. A careful reading of the Act creating CAP shows that it uses expressions such as "child neglect", "person under the age of twenty-one years who is in the care or custody . . . of a child welfare authority", "foster child", "child care institution", "child welfare authority" and "law of the province relating to the protection and care of children" (see the definitions of "child welfare authority", "person in need" and "welfare services" in section 2 of CAP).

[186] It seems to me that all of these concepts are a clear expression of Parliament's intention to target young persons in need of protection as opposed to young persons who might be in trouble with the law. These two groups are, without a doubt, very different, and the provincial and federal legislatures have historically dealt with these social phenomena on the basis of very different premises.

[187] In fact, our constitutional structure imposes limits on both levels of government, and they cannot go beyond those limits when they seek to deal with the fate of young persons. While the welfare of young persons is primarily a provincial matter, only Parliament can intervene in the field of criminal justice, whether the offence was committed by a young person or an adult.

[188] It is true that the JDA, which was enacted in 1908 and not replaced by the YOA until 1984, may have created some ambiguity by seeming to emphasize the welfare of children and the need to provide them with aid and guidance. Section 38 of that Act read as follows:

This Act shall be liberally construed in order that its purpose may be carried out, namely, that the care and custody and discipline of a juvenile delinquent shall approximate as nearly as may be that which should be given by his parents, and that as far as practicable every juvenile delinquent shall be treated, not as a criminal, but as a misdirected and misguided child, and one needing aid, encouragement, help and assistance.	La présente loi doit être libéralement interprétée afin que son objet puisse être atteint, savoir : que le soin, la surveillance et la discipline d'un jeune délinquant ressemblent aunant que possible à ceux qui lui seraient donnés par ses père et mère, et que, autant qu'il est praticable, chaque jeune délinquant soit traité, non comme un criminel, mais comme un enfant mal dirigé, ayant besoin d'aide, d'encouragement et de secours.

[189] The JDA was nonetheless found to be valid on the basis that it was within federal jurisdiction over criminal law. When called upon to decide whether the JDA was *intra vires*, the Supreme Court wrote the following in *British Columbia (Attorney General) v. Smith*, [1967] S.C.R. 702 [*Smith*], at page 712:

> Nor am I able to accept, as being well-founded, the contention that, in pith and substance, the Act is legislation in relation to *welfare and protection of children* within the purview of the *Adoption Act* case *supra*. The true objects and purposes of the statutes considered in the latter case are quite different from the true object and purpose of the *Juvenile Delinquents Act*. They are, as pointed out by Bull J.A., directed to the control or alleviation of social conditions, the proper education and training of children, and the care and protection of people in distress including neglected children. Obviously, one can say that the Act gives a special kind of protection to misguided

> children and that it should incidentally operate to ultimately enhance their welfare. A similar view may also be taken of the following provisions of s. 157 of the *Criminal Code* [now section 172]; yet, no one has ever questioned that they were enactments in relation to criminal law.

[190] It was sometimes claimed that the JDA gave priority to the interests of the child and relegated the protection of society to a position of secondary importance, a situation that changed radically with the introduction of the YOA, which was more resolutely focused on accountability for young persons who had committed offences. It is undoubtedly true to say that the YOA was more closely related to the criminal law than the JDA. However, care must be taken not to exaggerate the difference between the two statutes to the point where the YOA is seen as a change of paradigm, as it were, compared with the JDA.

[191] In *Smith*, the Supreme Court noted that the role of judges was not one-dimensional and that they had to balance the interests of the child and the interests of the community in applying the JDA:

> A very wide discretion is given to the judge, under the Act, and it is significant that, in the exercise of such discretion, the interest of the child is not the sole question to consider. On the contrary, the matters which, in principle, must receive the attention of the judge and which he must try to conciliate are the child's interest or own good, the community's best interest and the proper administration of justice.
>
> (*Smith*, at page 712)

[192] This idea was taken up again by the Supreme Court in one of its last decisions on the JDA. Writing for the Court, Chief Justice Dickson stated the following in *Ontario (Attorney General) v. Peel (Regional Municipality)*, [1979] 2 S.C.R. 1134, at page 1138:

> None the less, there are guiding considerations in the present Act [the JDA] which are intended to establish a regime and associated sanctions emphasizing rehabilitative objects. They enjoin the Courts to a liberal construction of the Act and a socially-oriented approach to juvenile delinquency under which a balance would be achieved between the interests of a delinquent juvenile and the interests of the community to which the juvenile belongs.

[193] On the other hand, it would be wrong to argue that the YOA completely eliminated the rehabilitation aspect and emphasized only accountability for young persons. In *Reference re Young Offenders Act (P.E.I.)*, [1991] 1 S.C.R. 252, the Supreme Court noted that several of the YOA's provisions reduced to a minimum the stigma attached to the commission of a criminal offence (pages 272-273). Discussing the difficult balance between retribution, rehabilitation and the protection of society, Chief Justice Lamer stated the following:

> It is clear therefore that the *Young Offenders Act* does not generally recognize any proportionality between the gravity of the offence and the range of sanctions. It rather recognizes the special situation and the special needs of young offenders and gives to the judges different sentencing options that are not available for adults. It is still primarily oriented towards rehabilitation rather than punishment or neutralization.

[194] In short, the differences were in degree more than in kind. There was not really any break between the JDA and the YOA. At the most, there was a change of emphasis and a clearer connection between the objectives pursued by Parliament and federal jurisdiction over criminal law.

[195] It therefore seems to me that there is no doubt about the criminal nature of the JDA even though the treatment of young persons adjudged to be juvenile delinquents under that Act differed in some respects from the punishment normally reserved for adults. Indeed, I think it is significant

in this regard that the alternative measures provided for in subsection 4(1) of the YOA were equated with punishment even though they were used to replace judicial proceedings. If such measures could be considered punitive, the same must, *a fortiori*, be true of the courses of action the court could take under subsection 20(1) of the JDA. On this point, the words of Dickson C.J. in *R. v. S. (S.)*, [1990] 2 S.C.R. 254, at pages 281-282, strike me as highly relevant:

> Section 4(1) of the *Young Offenders Act* more closely resembles s. 20(1) of the *Juvenile Delinquents Act* in that both deal with the "punishment" of young persons found to have contravened the law. . . .
>
> Although I agree with the argument of the appellant that s. 4(1) differs from most criminal law remedial statutes in that the focus is on alternatives to more traditional criminal sanctions, I do not find this factor to be dispositive. While resort to non-judicial alternatives in the correction of young offenders may not resemble the criminal law model envisioned by Lord Atkin, this Court has held repeatedly that the legislative power over criminal law must be sufficiently flexible to recognize new developments in methods of dealing with offenders. . . .
>
> . . .
>
> In my opinion, the discretion to create an alternative measures program pursuant to s. 4 represents a legitimate attempt to deter young offenders from continued criminal activity. In this regard, I agree with Tarnopolsky J.A.'s characterization of s. 4 as demonstrating a "concern with a curative approach, rather than the traditionally punitive approach of the criminal law. There is a concern with preventing recidivism and with balancing the interests of the offending 'young person' with those of society" (p. 270). Although I do not intend to define the limits of the "prevention of crime" doctrine, s. 4 of the *Young Offenders Act* is well within its scope.

[196] Thus, the Supreme Court has always refused to equate methods of dealing with offenders, even those furthest removed from the traditionally punitive approach of the criminal law, with child

protection or welfare measures. Moreover, the Quebec legislature explicitly recognized that young persons in need of protection and juvenile delinquents were two very different groups, since it dealt with these phenomena in two separate provisions of the YPA, namely, sections 38 and 40. This distinction was even clearer when the YOA came into force in 1984, since its scope was more limited and it applied only to violations of the *Criminal Code* and federal statutes. Commenting on this distinction between the two concepts in the two statutes, the Charbonneau committee wrote the following in 1982:

> [TRANSLATION]
>
> This legislative development reflects the evolution of scientific knowledge and clinical practice, from which we have learned that children who break the law must be distinguished from children who are victims of a situation. In general, lawbreakers injure a victim and are characterized by deficient socialization, whereas children who are victims are subjected to the deficiencies of others or do not get the attention they need, as clearly illustrated by the basic data on children at risk and juvenile delinquents in Appendix II of the report.
>
> . . .
> Based on this evolution of knowledge and practice, as actualized in legislation, we can reaffirm that the offence is the starting point for intervention in delinquency cases. Because of the harm it causes the victim or the violation of social norms it represents, and because of the fear and reprobation it elicits, the offence is the catalyst for social and judicial intervention with the juvenile delinquent.
>
> (Charbonneau report, page 41)

[197] It is true that the Charbonneau committee stressed that this differentiation of the reasons for state intervention was not always accompanied by different treatment and caused [TRANSLATION] “some confusion when intervening with young persons in difficulty” (page 18). After suggesting a

few reasons why the Quebec legislature might have wanted to deal with the two phenomena using the same methods and a shared philosophy, the committee made the following observation:

> [TRANSLATION]
>
> Therefore, the ambiguity of the current legislation does not relate mainly to the definition of each concept's scope. Rather, it relates to the process whereby protection cases and delinquency cases are both dealt with the same way.
> . . .
> Where the *Youth Protection Act* has sustained confusion is instead with regard to objectives and methods. It is generally accepted that the legitimacy of state intervention is not the same in protection cases and in delinquency cases. In the former, it originates with the family or environment of a child whose rights have been violated; in the latter, its source is the very conduct of the young person who violates other people's rights. Thus, there should normally be specific objectives for delinquency cases and protection cases, but this is not what is in the *Youth Protection Act*, which sets out only one substantive objective: ensuring the protection and family and social reintegration of all young persons in exceptional situations, whether they have committed a delinquency or their security and development are in danger.
>
> We consider it important to state today that, following a delinquent act, with a view to preventing reoffending, attention must therefore be devoted not only to family and social reintegration and the security or development of the child but also to making the young person accountable and protecting society. Young persons can be made accountable by being made to realize and then assume the consequences of their actions. Society can be protected by using supervision, temporary removal, placement or probation measures where necessary.
>
> Fortunately, the limits of the legislation have not precluded an abundance of experiences and initiatives based on this principle of making young persons accountable for their actions and accountable to society. Indeed, such accountability must be acknowledged to properly begin intervention.
>
> (Charbonneau report, pages 30-33)

[198] Of course, counsel for the Gouvernement du Québec emphasized that the services provided to young persons suspected of committing an offence and juvenile delinquents were the same as the services provided to young persons in need of protection and that the philosophy of intervention was basically the same in both cases. They also stressed that the services were provided by the same staff in the social service network, namely, agencies and institutions qualifying as "provincially approved agencies", "child welfare authorities" or "homes for special care" within the meaning of CAP. The witnesses called by the plaintiff largely corroborated this position.

[199] However, I do not think that this similarity of treatment, methods and staff is determinative in deciding whether the cost of services provided to young persons suspected of committing or convicted of an offence must be shared under CAP, for at least three reasons. First, the overlap between the two client groups, which the plaintiff discussed at length, seems to have been a phenomenon observed in every province of Canada, as Professor Bala noted in his report (*Juvenile Justice and Child Welfare in Canada. An Overview: With a Particular Emphasis on Quebec between 1979 to 1984*, pages 25 *et seq.*), but only for cases of "serious behaviour disturbances" covered by paragraph 38(*g*) of the YPA. Indeed, it is difficult to see how a child described in the other paragraphs of section 38 who was the victim of a situation that put his or her security and development in danger could have been treated the same way as a juvenile delinquent. The mechanisms provided for in the YPA and the methods used to deal with such situations had little to do with the arsenal deployed to deal with situations in which children did not need the state's protection and care but had placed themselves on the margins of society through their own actions.

[200] Quebec's witnesses, all of whom were directly involved in the social affairs network, also acknowledged that the dividing line between juvenile delinquents and young persons in need of protection was much clearer when a young person was referred to the DYP for a reason other than the one set out in paragraph 38(*g*) of the YPA: see, for example, Mr. Gaudreault's testimony, volume 8 of the transcript, at page 161; Mr. Gauthier's testimony, volume 8 of the transcript, at pages 236-238. In fact, the situations described by those workers to illustrate the similarities in the way these two groups were taken charge of all involved young persons with serious behaviour disturbances.

[201] Moreover, the objectives and intervention differed in practice, even for young persons covered by paragraph 38(*g*), despite the blurring of lines that may have existed during the first few years after the YPA was implemented. This was all the more true in major centres, where the critical mass of young persons referred to the DYP was large enough that the two client groups could be distinguished, as Dr. Foucault himself noted in his report (*La réadaptation : au cœur de la philosophie d'intervention auprès des jeunes délinquants du Québec entre 1979 et 1984*, page 7; see also Mr. Robichaud's testimony, volume 14-B of the transcript, page 138).

[202] In its brief to the Charbonneau committee, the Association des centres de services sociaux du Québec wrote that [TRANSLATION] "we have always considered intervention in the protection context and intervention in the delinquency context to be two very different things, even if the concept of protection may apply to some young persons who commit delinquent acts" (Exhibit D-20, page 14). This was borne out in several respects. Thus, the witnesses explained that

delinquency was generally reported to the DYP by the police, with the result that the materiality of the facts was easier to establish than in protection cases, where ordinary citizens generally reported the case (see Mr. Gaudreault's testimony, volume 8 of the transcript, at pages 125, 212; Professor Bala's testimony, volume 16-B of the transcript, at page 78).

[203] It was also noted that the analytical grids were different for the two groups (Charbonneau report, Exhibit D-9, at page 133; Mr. Gaudreault's testimony, volume 8 of the transcript, at page 181). As well, when there was no agreement between the DYP and the person representing the Ministère de la Justice, the record of the young person suspected of committing an offence was automatically referred to the court, a situation that did not exist when a young person was referred to the DYP because of behaviour disturbances (see Mr. Gaudreault's testimony, volume 8 of the transcript, at page 201).

[204] It also seems that community service, as a voluntary measure, was generally used only for young persons suspected of committing an offence (see Mr. Gauthier's testimony, volume 8 of the transcript, at page 248). Finally, it seems that the rules governing outings for young persons living at a residential centre differed depending on whether the young person was a protection case or a delinquency case (see Professor Bala's testimony, volume 16-B of the transcript, at page 88).

[205] It is apparent from the foregoing that, even in practice, young persons under protection and juvenile delinquents were not dealt with in entirely the same way. Not only did the YPA distinguish between the two phenomena, at least conceptually, but it seems that different practices also

developed over the years, especially in major centres, in recognition of the fact that the two groups (even in the case of young persons with behaviour disturbances) had different characteristics and might have different needs.

[206] In any event, it appears to me that what must be considered to determine CAP's applicability is not the clinical characterization of the service or intervention but rather the reasons why the service was necessary. Otherwise, the nature of the services provided would have to be assessed in each case, a subjective undertaking at odds with the imperatives of predictability and efficiency associated with a statute whose purpose was to share the cost of assistance and welfare services provided by the provinces. This is why an objective criterion, the purpose of the services, which is based on what triggered the DYP's intervention, strikes me as more appropriate in the circumstances.

[207] To summarize, I therefore find that the cost of services provided to juvenile delinquents was not within the scope of CAP. The selective nature and anti-poverty objective of that program did not fit together with the purpose of the services provided to young persons in trouble with the law. Insofar as it applied to young persons, CAP applied only to neglected children or persons under the age of 21 years who were in the care or custody of a child welfare authority, and thus to young persons in need of protection. This was a clientele fundamentally different from juvenile delinquents, no matter what services the province might have provided them after they were reported to the DYP.

[208] This interpretation of CAP is confirmed and reinforced, so to speak, by the exclusions arising out of the definitions of "home for special care" and "welfare services", under which correctional institutions and services were not within the scope of CAP. The Attorney General of Quebec tried to argue that these exclusions had to be interpreted restrictively and that it was up to the defendant to show that the exception applied here. Relying on the definition of the words "correct" in English and "correction" in French, the plaintiff argued that these terms refer to the action of reprimanding, chastising or punishing. From this he inferred that CAP's exclusions could not apply to the services at issue here, especially where charges had not yet been laid, since the actions taken in relation to children sought instead to provide them with the care and services they needed.

[209] It is true that official CAP documents from the Department of Health and Welfare often emphasized the punitive aspect of the mission of correctional institutions (see, for example, document 85 of Jacques Lafontaine's affidavit, *Notes on Homes for Special Care*, published by the federal Deputy Minister of Welfare in 1969 and, in the same document, a 1982 text entitled *Notes on Homes for Special Care*). However, this was not always the case (see, for example, a 1991 text in the same document 85 of Jacques Lafontaine's affidavit entitled *Notes on Homes for Special Care under CAP*, at page 10). In any event, the interpretations that may be found in administrative documents are not binding on the Court in interpreting legislation.

[210] There is no rule of statutory interpretation requiring an exception to be systematically interpreted in its narrowest sense; the cardinal rule of interpretation is rather that an enactment,

including one that creates an exception, must be given the ordinary meaning most harmonious with the object and scheme of the enactment and the legislature's intention: see Côté, P.A., *The Interpretation of Legislation in Canada*, 3rd ed., Carswell, Scarborough, Ont., 2000, pages 466-467; Sullivan, R., *Statutory Interpretation*, Irwin Law, 1996, page 173.

[211] I note first of all that the ordinary meaning of the term "correctional" goes well beyond the idea of punishment. The very definitions cited by the plaintiff refer, *inter alia*, to the idea of reforming and improving, a meaning perfectly consistent with the purpose of the JDA, which was first and foremost to reform juvenile delinquents, not to punish them. The same is true of the French term "correctionnel", which refers to both the action of punishing and the action of trying to improve.

[212] It is worth noting that the concept of "correctional institution" has in fact been interpreted by the courts as including an institution in which offenders may be "educated, trained, reclaimed and assisted to return to the community" and thus whose mandate is not (or not only) to punish but rather (or also) to rehabilitate or reform those staying there: see, for example, *R. v. Turcotte*, [1970] S.C.R. 843; *Re Ahluwalia*, [1989] 3 F.C. 209; *R. v. Degan* (1985), 20 C.C.C. (3d) 293 (Sask. C.A.); *Morin v. Saskatoon Correctional Centre* (1993), 21 W.C.B. (2d) 77; (1993) 112 Sask. R. 289. It is true that these decisions do not concern the JDA, but they nonetheless illustrate the broad meaning that can be given to the word "correctional".

[213] There is more, however. The broader meaning of the term “correctional” is more consistent with the way the JDA was interpreted by the Supreme Court. As already noted, that Act was found to be valid and within federal jurisdiction over criminal law even though its aim was that “juvenile offenders should be assisted and reformed rather than punished”: *Morris v. R.*, [1979] 1 S.C.R. 405, at page 431. It must be presumed that Parliament, in enacting CAP, was aware of the meaning and scope of the JDA and did not intend its exclusion to be so restrictive in scope that it would not encompass the main legislative measure dealing with crime problems among young persons.

[214] Moreover, in light of CAP’s selective purpose, this is the only possible interpretation of the exclusion. The exclusion merely confirms, as it were, the purpose and object of this plan, which was to fight poverty and not to share the cost of universal social services administered by the provinces. Even assuming that most juvenile delinquents were from disadvantaged groups (which no attempt was made to prove), the cost of services provided to them could not be considered eligible because the purpose of such services had nothing to do with the eradication of poverty. From this perspective, it would not be logical to exclude only punitive measures from cost sharing.

[215] This leaves Quebec’s argument based on the federal government’s agreement to share the cost of services under paragraphs 20(1)(*h*) and (*i*) of the JDA when an order had been issued in accordance with section 21 of that Act. In Quebec’s opinion, this decision shows the federal government’s tacit acceptance of the fact that services provided to a young person suspected of committing an offence or adjudged to be a juvenile delinquent were social services rather than correctional services. The fact that the convicted young person was later committed exclusively to

the provincial authority under the above-mentioned two paragraphs of section 20 of the JDA did not change anything about the situation.

[216] In this regard, I consider the explanation given by counsel for the defendant to be a complete answer to Quebec's argument. The interface between the JDA and the various provincial measures designed to help and protect young persons quickly gave rise to discussions between the provinces and the federal government. This question was therefore put on the agenda of a federal-provincial conference of welfare ministers held in January 1969.

[217] Prior to that conference, Canada informed the provinces that granting their requests to share the cost of measures for juvenile delinquents would amount to disregarding one of CAP's basic requirements, namely, that the starting point for the services provided had to be a provincial statute and not a federal statute. Moreover, the federal authorities at the time thought that granting the provinces' request would go against Parliament's clear intention to distinguish between delinquency and protection.

[218] However, in an effort to be accommodating, Canada told the provinces after the federal-provincial conference that it would agree to share the cost of certain services provided to a juvenile delinquent if certain conditions were met. First of all, the services would have to be provided by a child welfare authority and the young person would have to be formally transferred, through the mechanism and in the cases provided for in section 21 of the JDA, from the court's jurisdiction to that of the provincial child welfare authorities. This policy and its basis were later

reiterated many times by CAP managers in their communications with the provinces, including Quebec: see, for example, Exhibit PGQ-45 and documents 504, 525 and 550 of Jean-Bernard Daudelin's affidavit.

[219] As a result, cost sharing was possible where a young person was no longer considered a juvenile delinquent in the formal sense of the term and came under the control of the provincial child welfare authorities in fact and in law, just like a young person in need of protection. It is impossible to extrapolate from this administrative accommodation any recognition by the federal authorities that young persons suspected of committing an offence or found to be juvenile delinquents were receiving social services. On the contrary, this measure was very limited in scope, and its basic purpose was to find some common ground with the provinces. In no way could it change CAP's content or the legal interpretation it had to be given.

SOCIAL SERVICES IN SCHOOLS DURING THE PERIOD FROM 1973 TO 1996

I. POSITION OF THE GOUVERNEMENT DU QUÉBEC

[220] The second component of the Gouvernement du Québec's claim concerns social services provided in schools. Those services, which were originally provided by the school system itself, came under the responsibility of the social affairs network in the early 1970s with the implementation of the new *Act respecting health services and social services* (S.Q. 1971, c. 48; R.S.Q. c. S-5), which brought about a major reform in the organization of health services and social services in Quebec.

[221] The question of the federal contribution to the cost of such services arose when the services were taken over by the new entities resulting from that reform, namely, social service centres at first and then local community service centres in the 1980s. Those bodies were defined as follows in the Act:

> 1. In this act and the regulations, unless the context indicates a different meaning, the following expressions and words mean:
> . . .
> (*g*) "local community service centre": facilities other than a professional's private consulting office in which sanitary and social preventive and action services are ensured to the community, in particular by receiving or visiting persons who require current health services or social services for themselves or their families, by rendering such services to them, counselling them or, if necessary, by referring them to the establishments most capable of assisting them;
> . . .
> (*i*) "social service centre": facilities in which social action services are provided by receiving or visiting persons who require specialized social services for themselves or their families and by offering to persons facing social difficulties the aid necessary to assist them, especially by making available to them services for prevention, consultation, psycho-social or rehabilitation treatment, adoption and placement of children or aged persons, excluding however a professional's private consulting office;

[222] Quebec claimed cost sharing for social services delivered in schools on the basis that such services were "welfare services" eligible under CAP. The federal government replied that the welfare services covered by CAP specifically excluded services "relating wholly or mainly to education" (section 2, definition of "welfare services").

[223] Following much fruitless discussion on this question by federal and Quebec officials, the Government of Canada decided first to make temporary adjustments to the costs claimed by

Quebec. A decision was therefore made to subtract 15 percent of the costs incurred in social service centres, which, in the federal government's view, was the proportion of costs and staff time allocated to the delivery of social services in schools and hospital centres. Another 10 percent was cut for the proportion of clients who were ineligible because they were not in need or likely to become in need (see the letter of D.J. Byrne, CAP's Director General, to the Assistant Deputy Minister of Finance of Quebec, Exhibit 37 of Claude Wallot's affidavit).

[224] Since no common ground could be found, the Deputy Minister of Social Affairs of Quebec wrote to his counterpart in the Department of National Health on October 7, 1981, to explain Quebec's position and obtain a formal answer from the federal authorities. The content of that letter is important, since it outlined the position Quebec was taking at the time, a position it continued to maintain before this Court. The relevant passages are as follows:

> [TRANSLATION]
>
> In Quebec, the question of social services in schools differs from that in certain other provinces, since such services are provided by a "provincially approved agency", in accordance with the provisions of the Canada Assistance Plan, rather than by the Ministère de l'Éducation.
>
> Moreover, in Quebec, social services are delivered in schools only if there is a service contract between the school board and the region's social service centre. If a dispute about programming arises between a school and a social worker, the social service centre can terminate the contract. Currently, there are about a hundred school boards with no service contract with a social service centre.
>
> School social workers differ from non-teaching professionals in that the former are employed by a social service centre and their work reflects the priorities established by the policies of the Ministère des Affaires sociales, while the latter are employed by a school and must pursue the school's objectives.

> Through the psychosocial, screening, reception, assessment and referral services they provide, school social workers act above all upon the child, not the environment; they deal at school with the same problems they encounter in other settings, since children are the focus of their attention. The fact that these services are provided in schools does not mean they are not welfare services within the meaning of the Canada Assistance Plan.
>
> Quebec's position in this regard is supported by the federal-provincial task force that reviewed the Canada Assistance Plan and the *Vocational Rehabilitation of Disabled Persons Act* (the Junk-Murphy Committee), whose final report recommends sharing the cost of welfare services under CAP based on the nature of the service rather than the context or setting in which it is provided.

[225] The Attorney General of Quebec basically reiterated these arguments in these proceedings. Considerable emphasis was placed on the fact that the social affairs network was responsible for hiring, paying, supervising and dismissing the social workers who worked in schools. It was also argued that the social authorities defined social intervention methods and objectives and established social service programs in schools. Social workers' files belonged to the social affairs network, and the staff of the school or school board had no access to them except with authorization.

[226] It was also stressed that social workers dealt with the individual and not the student. The problems of young persons often had many family, personal or social causes, and school was an ideal setting for intervening with them. Although successful social reintegration could contribute to academic success, such success was not the main objective. In this context, it was argued, it cannot be maintained that the type of professionals who provided services, the nature of the services or the methods and objectives related "wholly or mainly to education".

II. POSITION OF THE GOVERNMENT OF CANADA

[227] The federal government's answer to this was always that school social work was generally concerned with problems related to school attendance (absenteeism, dropping out, lateness, suspension, expulsion, running away, inaccessibility of school resources), learning (learning disabilities, declining performance, slow learning, academic failure, lack of motivation), maladjustment or dysfunction in school life (difficulty joining school activities, inhibition, passivity, disruptive behaviour, marginalization, violence, aggressiveness, vandalism, assault, alcoholism, drugs) and the interrelationship between school and the student's family (complete break between school and family, indifference, lack of understanding, mutual bias, difficulty cooperating to address the young person's needs).

[228] In his reply to his Quebec counterpart on December 16, 1981, the Deputy Minister of Health and Welfare Canada wrote the following in this regard:

> [TRANSLATION]
>
> It seems clear to me that the source of the disagreement derives from a question of interpretation relating to the meaning of the expression "but does not include any service relating wholly or mainly to education" found in section 2 of the Canada Assistance Plan. This legislation is from 1966 and, I think, we must refer to the federal-provincial discussions that preceded it to clearly understand the intent and the meaning to be given to the terms and expressions found therein. The authorities at the time certainly could not have foreseen the exceptional development that would occur in the social services field in this short time and above all the various mechanisms that would be used. However, the federal and provincial authorities at the time agreed that services relating wholly or mainly to education, correction, recreation or health would be excluded from cost sharing under the Plan.

> It would, I think, be difficult to argue that the primary objective of social services in schools is not to help children function better in that environment.
>
> Otherwise, why would the school system avail itself of such services? This is why we maintain that, by agreeing to work directly and almost exclusively in a school, the social workers involved inevitably embrace the school's objectives. It seems to me that the service contract to which you refer confirms that the two systems are complementary, since social service centres recognize the importance of social intervention in schools to help students function better in that environment. In our opinion, whether the services are provided on a contract basis with an outside agency or by school board employees does not change anything about the objectives being pursued. It is in this sense that we say that social services in schools relate mainly to education, and I sincerely believe that this was also the meaning that the other originators of the Plan wanted this expression to have.

[229] In her written and oral submissions, the defendant reiterated and substantiated these same arguments. First, it was argued that such services were universal in nature: they were for a clientele (students) that went well beyond the clientele contemplated by CAP (young persons in need of protection) and they were available to all students, whatever their socioeconomic background. In this sense, such services did not fit in with the scheme or object of CAP, which was basically intended to be a selective, residual anti-poverty instrument designed to support the assistance provided by the provinces to economically disadvantaged persons.

[230] As well, considerable emphasis was placed on the fact that the purpose of school social services was to support the school's educational mission, which was not the mission contemplated by Parliament when it enacted CAP. If we are to believe counsel for the Government of Canada, the organizational changes that brought such services under the control of the social affairs network did not affect their specificity. Throughout the period at issue, they therefore remained services

(1) whose primary objective was to help children function better in school, (2) whose general purpose was to help the school meet the specific needs of children with difficulties, and (3) whose distribution framework embraced the school's goals, objectives, purpose and specificity, with the result that they were an important component of both services for students and professional support for the school administration.

III. THE EVIDENCE

(a) Evidence of the Gouvernement du Québec

[231] Quebec called five lay witnesses and one expert witness. As I have already stated about the witnesses who came to describe their experience with juvenile delinquents and young persons in need of protection, the school social workers who came to describe their work with young persons in schools all struck me as very credible, devoted and concerned about providing the Court with objective insight into their role and professional activities.

[232] The first witness, Claude Wallot, had been a legal research officer at the Ministère de la Santé et des Services sociaux since 1985. In that capacity, his duties mainly involved analyzing the legislation, regulations and administrative manuals related to federal cost-shared programs and reviewing the services provided by the province to ensure that they met CAP's criteria and requirements.

[233] He explained the creation of the Ministère de la Santé et des Services sociaux in 1971 and stressed that combining health and social services, two government functions, into a single department had been innovative at the time. Some of the new structures established were mixed, such as local community service centres, while others played a single role, such as social service centres. Social service centres, which were created in 1973, provided second-line (or referral) services and resulted from the merger of various existing social and diocesan agencies. Local community service centres developed more slowly and did not cover all of Quebec until the early 1980s. Social services in schools were taken over by the social service centres starting in 1973 and were later transferred to the local community service centres in 1985 except in Montréal, where the transition took a little longer and was not completed until 1993. The goal of the transfer was to place social workers closer to the environment in which they worked and give them access to all the resources of local community service centres.

[234] According to Mr. Wallot, there were not really any social services in schools prior to 1966. Some school boards and social agencies offered services, but there was no general framework to define the social workers' work. Their number was also limited, and the services offered from one school to another were very uneven. The Ministère de la Famille et du Bien-être became responsible for providing such services in 1966. A system was established to allow social agencies to provide social services in schools under a service contract with the school boards. The agencies were financed not by the government but by private foundations or religious communities, and they provided only very specific services.

[235] During his testimony, Mr. Wallot also introduced in evidence many exhibits showing that officials from the two governments had engaged in what he called a dialogue of the deaf, culminating in an exchange of letters between the two deputy ministers, extensive passages from which are reproduced above (see paragraphs 224 and 228 of these reasons). He also detailed Quebec's claim, which amounts to $206,034,986 and takes account of an exclusion of 10 percent ordered by the federal government for the clientele considered ineligible.

[236] On cross-examination, Mr. Wallot was asked to comment on a program memorandum from the Ministère des Affaires sociales dated November 15, 1973, in which three of the four needs that social workers were called upon to meet in schools were school-related (Exhibit D-2). In reply, the witness did not deny that social workers worked in schools but maintained that their intervention had nothing to do with education and related instead to psychosocial learning (relationship with parents, friends and teachers). In the same vein, he added that a young person's adjustment difficulties or chronic absenteeism were not educational problems but rather behaviour problems. Such problems were diagnosed at school but often went beyond the educational aspect. The role of social workers was to assess the situation and refer the problem to other professionals (guidance counsellor, psychologist, etc.) or, if the problem was an educational problem, to refer it to the educational professionals at the school. The role of social workers was to deal with problems that went beyond the framework of school (personal or family problems) and, from this perspective, their mission was complementary to that of the school and different from the educational mission as such.

[237] According to a guide to the problems that could be encountered in school social work (Exhibit D-5), school social workers [TRANSLATION] “intervene only when the problems affect or may affect the school experience of young persons” (page 1). Mr. Wallot maintained that this point was made to distinguish the role of school social workers from the role of other social workers working in local community service centres or social service centres. He reiterated that the problems affecting the school experience of young persons related not only to their learning experience but also to their psychosocial experience.

[238] The witness was examined at length about a document produced by the Association des centres de services sociaux du Québec entitled *Les services sociaux scolaires dans les Centres de services sociaux* (Exhibit D-6), to which I will have an opportunity to return later. That document clearly suggests that the objective of school social services was to contribute to the fulfilment of the school’s educational mission. Mr. Wallot expressed disagreement with several of the statements in that document and said that he had never seen a statement in an official departmental document like the following one found at pages 11-12 of the document:

> [TRANSLATION]
>
> Most of the problems students have at school relate to factors that disrupt their ability to integrate and function appropriately during the activity of education. School social services work on these factors to reduce their impact.
>
> More specifically, the school social service program groups together activities that seek to help young persons in their role as students in dealing with the problems or obstacles they encounter that seem to be symptoms of a development problem that may compromise their academic performance and their social integration at school. It also seeks to make changes to the school itself or the school board’s

> policies in order to bring about corrective action that can promote the overall development of young persons.

[239] All in all, Mr. Wallot reiterated that school was the setting in which social workers intervened but that their primary mission was not to promote academic success. Learning difficulties were often just the symptom of a personal or family problem, and this was where social workers could contribute. The result was that their work complemented that of educators; by helping to solve certain psychosocial problems experienced by young persons, social workers could no doubt improve their learning capacity, but this was only an indirect consequence of their intervention. Mr. Wallot therefore took issue with certain documents introduced in evidence by counsel for the defendant, saying either that they represented the position of school boards and school principals (Exhibit D-8) or that they set out a previous position that did not reflect the concept the department was to establish (Exhibit D-9). I will have an opportunity to come back to these documents in my analysis of both parties' arguments. Suffice it to say for the moment that Mr. Wallot admitted that he is not himself a social worker and has never worked at a social service centre or local community service centre, or in a school, although he said that he consulted about 80 such workers.

[240] The second witness called by the plaintiff was Louis Lagrenade, who was the manager of school social services at the Outaouais social service centre between 1975 and 1985. He explained that a framework agreement between the social service centre and the various school boards provided for the supply of social services in schools. In consideration of the services rendered, the school boards provided the social workers with a room, filing cabinets and the secretarial services they needed to do their work. The basic objective was to ensure that children could function well

socially and psychosocially by taking preventive or curative action with the children themselves or their families.

[241] Mr. Lagrenade explained that a model framework agreement had been developed by the Ministère de l'Éducation and the Ministère des Affaires sociales. A joint committee made up of representatives of the school board and the social service centre discussed priorities and the attendance schedule for the social workers. After consulting the school boards, the manager established an order of priority and identified the most vulnerable clienteles. The manager of school social services met with the social workers every month to discuss whether the programs offered were consistent with regional programming. The school social workers were involved with the placement committees when a child had to be placed in a foster family. The DYP could also delegate them the task of assessing a young person whose situation had been brought to the DYP's attention, determining voluntary measures with the parents or, failing that, going to court to make the submissions considered necessary.

[242] The manager of school social services assessed the school social workers' work every year. The social workers were governed by a collective agreement between their union, which represented all employees of social service centres, and the social service centres themselves. They worked the same number of hours as other social workers while adjusting to school schedules so they could be accessible to young persons and their families. The school principal was consulted at the time of the assessment and had to agree on the terms and conditions of programs and services, since the principal had complete authority over what happened in the school. However, the school

social workers had a hierarchical relationship with the manager of school social services, not with the school principal. Finally, the witness stated that a school social worker's files were in the worker's office and that no one else had access to them unless written authorization was given by the parents or by the young person if he or she was over 14 years old.

[243] On cross-examination, Mr. Lagrenade admitted that referrals to the social worker were generally made by a teacher or the school administration at the elementary level, whereas young persons in secondary school often went to see the social worker on their own initiative. He also admitted that requests for assessment by the DYP were quite rare. Finally, it was agreed that a program or specific type of intervention could not be used in a school without the principal's consent.

[244] The third witness called by the Gouvernement du Québec was Jean-Pierre Landriault. He worked as a school social worker and then a manager, first at a social service centre and then at a local community service centre. He too stated that the functions of social workers had remained essentially unchanged after they were transferred from social service centres to local community service centres. Their role was to work with young persons who had problems that interfered with their proper psychosocial development (such as problems with interpersonal aggression, loss of motivation at school, social isolation and rejection or boy-girl relationships). In short, social workers worked on problems that emerged at school but had an impact on the social development of young persons. They emphasized psychosocial development (self-esteem, ability to complete a project, ability to make friends and cooperate with others) and could thus take an interest in a student even if

the student had no academic problems. On the other hand, if the problems a young person had with his or her parents had no repercussions at school, the young person would be referred to other resource persons.

[245] Although poor academic performance could often be the trigger for a social worker's intervention at the elementary level, the situation was different at the secondary level, where intervention could be related to problems with fitting in, interpersonal integration, isolation or rejection. The request often came from young persons themselves but could also come from their parents. A social worker who identified a problem assessed the family environment, looked at whether the young person was part of a network of young persons and examined the school environment and the teacher-child relationship. The worker looked at the young person's emotional and social skills and intervened with the family when the problem was caused or magnified by the family environment. The social worker's role was not to develop the young person's learning capacity or intellectual skills but rather to develop the young person's emotional skills (self-esteem, social skills, etc.). The young person could also be referred to other resources of the local community service centre in certain situations that went beyond the school social worker's field of intervention. The witness stated that school social workers could also intervene on a preventive basis, although school administrations gave priority to the curative aspect.

[246] In Mr. Landriault's opinion, it was important for social workers to be at school for three reasons: first because several important things in the life of a child occurred through the school experience, second because young persons would not go to a local community service centre

themselves but would turn more readily to social workers if they were at school, and finally because the school had to be involved in the psychosocial intervention plan, for example by showing recognition for a child who did something good.

[247] Mr. Landriault confirmed what the previous witness had stated about file management and control, the work schedule and working conditions and the school principal's role. He also repeated most of the explanations already provided concerning the way social services in schools were managed (role of the manager of school social services at a social service centre and local community service centre and role of the joint committee in defining priorities and allocating staff, framework agreement, need to obtain the school principal's consent for any intervention by a social worker, etc.).

[248] On cross-examination, Mr. Landriault stated that social workers had to act within parameters that had been discussed with and accepted by the school. The local community service centre could not impose a type of service in a given school, but neither could the principal obtain a service that did not correspond to the approaches discussed.

[249] In the *Guide pour la pratique professionnelle des travailleurs sociaux exerçant en CLSC et en milieu scolaire*, which was produced in 1992 and updated in 1993, the Ordre professionnel des travailleurs sociaux du Québec wrote the following:

> [TRANSLATION] A social worker intervenes with a student and the student's significant others when the interaction between the student's social and emotional factors and the student's family, peer network or school interferes with the satisfactory performance of the

> role of student: academic success, personality development, learning of social roles.
>
> (Exhibit D-10, page 11)

[250] Mr. Landriault, who helped draft that guide, stated that this did not reflect the entire field of intervention; the reason why the work of social workers complemented the educational mission was that the school experience contributed to the psychosocial development of young persons. In other words, social workers had to be close to what was happening at school because it was through school that young persons experienced important things in their personal development.

[251] When asked to comment on a school social work request form (Exhibit D-12), the witness acknowledged that the main reasons listed referred to educational concerns but reiterated that, for social workers, the initial educational problem was merely the symptom of another psychosocial problem and that this was the aspect they addressed. However, he acknowledged that, if a problem had no impact on the young person's school experience, the school social worker referred the young person to the appropriate resource.

[252] The fourth witness for the Gouvernement du Québec was Claudette Forest. She worked as a school social worker first for the Montréal métropolitain social service centre (1979-1991) and then for the Côte-des-Neiges local community service centre (1993-1997). She described the administrative organization of the social service centre and the local community service centre in terms similar to those already used, and she stated that the mandate of school social workers had not changed fundamentally when they moved from social service centres to local community service

centres. She repeated what the previous witnesses had said about the role of school principals, file management, the way cases were referred to her, work schedules and the hierarchical relationship with the social service centre and then the local community service centre on the one hand and the school administration on the other. She also reiterated that it was important to be at school because it was there that social workers could get to know young persons better, identify children who were in difficulty and work on anything that affected their psychosocial development.

[253] She also talked about the three types of intervention by school social workers. Such workers provided individual social services when a student was referred because of a specific problem, group intervention when the goal was to target several children with regard to specific situations (such as behaviour problems) and collective sessions when the objective was more general. In her opinion, individual intervention made up 80 percent of all intervention.

[254] On cross-examination, she read a document on the work of school social workers produced by the Montréal métropolitain social service centre (Exhibit D-13), which seemed to place great emphasis on the educational role of social workers. She answered that the document did not reflect the spirit of the work done by social workers. In her opinion, the school administration expected social workers to deal with students' social problems. If the indirect effect of such intervention was to encourage academic learning, no one complained, but this was not social workers' primary goal.

[255] The fifth and final lay witness for the Gouvernement du Québec was Gisèle Guindon. She too was a school social worker with the Montréal métropolitain social service centre from 1976 to

1993 and the Centre-Sud local community service centre from 1993 to 1996. Her testimony was consistent in all respects with that of the previous witness. On cross-examination, she confirmed that prevention activities had made up a small part of her work (about 20 percent of her time).

[256] The Gouvernement du Québec also called Gilles Rondeau as an expert witness so he could define school social work in Quebec. Mr. Rondeau has a master's degree and a Ph.D. in social work. After doing social work in schools for four years, he joined the Université de Montréal as a professor, where he taught until he retired in 2006. No objection was made to his status as an expert.

[257] Mr. Rondeau began by tracing the history of social work in schools. Although there were social workers in some schools in the 1950s, it was in the wake of the Parent Report in 1964 (report of the Parent Commission, that is, the Commission of Inquiry on Education in the Province of Quebec) that their role really expanded. According to Berthe Michaud, then the manager of school social work at the Montréal Catholic school board (CECM), the Parent Report recommended that there be some autonomy for school social work insofar as social workers should rely on their own judgment rather than trying to satisfy the wishes of school principals. She also maintained that the Parent Report, by permitting social work to go into schools, ultimately encouraged action based on social prevention.

[258] In the wake of the Castonguay-Nepveu Commission, whose purpose was to rethink the entire health and social services system, the National Assembly then passed the *Act respecting health services and social services*. The newly created social service centres became responsible for

administering school social work. In the program memorandum from the Ministère des Affaires sociales referred to above (Exhibit D-2), the goal of social services in schools was defined as follows:

> [TRANSLATION] . . . to promote the social development of students as individuals and the school as a community by providing psychosocial counselling services or, where appropriate, by referring such persons to local community service centres and social service centres and, above all, by providing community action services in the school. (page 14)

[259] In a framework program for determining school social work scales in 1975, the Ministère des Affaires sociales gave priority to prevention and noted that the problems some students had functioning had various sources that were often external to school, such as substance abuse, parental neglect and certain disabilities. On the other hand, the schools continued to ask for intervention centred around the needs of students with educational difficulties or behaviour problems at school. Given the limited resources, the witness stated that the preventive aspect took up about 20 percent of social workers’ time.

[260] Management of school social work was transferred from social service centres to local community service centres in 1984 in the context of budget cuts. The actors involved recognized that social work in schools had to correspond to the mission of local community service centres, which was to provide preventive and curative services to the community, while supporting the school’s educational mission. A document produced by the Ministère de la Santé et des Affaires sociales and the Ministère de l’Éducation stated the following:

> [TRANSLATION]
>
> The purpose of social services in schools is to lead students to situate themselves as persons in constant interaction with their human environment by encouraging their development and adjustment in their relationship with their peers, family and living environment. Their purpose is also to help students who are having problems with their social relationships.
>
> (*Les services de santé et les services sociaux en milieu scolaire*, 1993, at page 5; cited by Mr. Rondeau in his expert report, at page 17)

[261] According to Professor Rondeau, the Quebec model for managing school social work was unique; elsewhere in Canada and in the United States, school social services were provided and administered directly by school boards. Quebec social workers therefore had some autonomy from the school authorities, and their independence limited the ability of school administrations to determine the areas in which such professionals could intervene. Moreover, although school social workers were formally employees of a social service centre and later a local community service centre, their day-to-day practice largely took place outside the walls of those institutions and more in schools or the community, which gave them more freedom of action in relation to their employer. Their special position in a school gave them enough distance and objectivity to distinguish children's interests from the institution's point of view and act as a mediator. Finally, he added that Quebec was distinct in the sense that professions that did not exist elsewhere (such as psychoeducators and remedial teachers) developed there to help children with learning difficulties, a role often played by social workers in other jurisdictions.

[262] When the teaching staff referred a child to a social worker because of the child's educational difficulties, the social worker tried to better understand the school adjustment problems preventing the child from succeeding. The social worker's role was therefore to address factors that affected the appearance or emergence of a student's adjustment problems and could make the student drop out of school. A young person who had cognitive or psychological problems was referred to other specialists. School was also a reflection of the social ills and cultural and economic diversity of the community. The resulting psychosocial problems (prostitution, poverty, substance abuse, suicide, family violence, social exclusion) manifested themselves at school and could have little or no impact on academic performance or behaviour in class. This broader concept of school social work, going beyond simply participating in the school's educational objectives, could be seen not only in Quebec but also in many other countries.

[263] School social workers took a particular interest in certain specific groups (young persons from disadvantaged backgrounds, young immigrants, students with adjustment difficulties) in order to prevent dropping out and asocial behaviour as early as possible. They also provided parents with support to help them better equip their children to deal with the demands of school, and they gave parents advice so they could play their parental role better. Social workers could also meet needs that were unrelated to education or refer the family to specialized outside resources. They could also intervene with a child's peers and significant others. They could contribute to multidisciplinary teams in the school to work on changing the school and making the environment more capable of meeting the child's needs. Finally, they could identify problems related to the community and provide a way for the school and various outside resources to cooperate.

[264] In conclusion, Mr. Rondeau identified seven characteristics of the Quebec model: (1) social workers worked under the Ministère des Affaires sociales and therefore under social service centres and then local community service centres, which gave them more freedom; they nonetheless had to cooperate with the school; (2) social workers did not provide any individual academic support for students in difficulty; educational specialists were responsible for this; (3) social work was always geared to the environment; school was the child's environment, and it was there that school social workers found their field of action; (4) school social workers did not act alone and were integrated into a local community service centre, which could provide young persons with a wide range of social services; (5) school social work had five aspects (taking preventive action, working on changing the environment, establishing ties among the school, family and child, doing community work and helping individuals); (6) the individual assistance provided by social workers encompassed problems with academic achievement and behaviour, but such problems were not the priority; (7) the mission of social workers was separate from but complementary to that of the school.

[265] Counsel for the federal government did not cross-examine this witness.

(b) Evidence of the Government of Canada

[266] On this component of the claim, counsel for the Government of Canada called their main witness, Jean-Bernard Daudelin, as well as one lay witness and one expert witness. Jean-Bernard Robichaud also dealt with this question during his testimony.

[267] Mr. Daudelin explained to the Court that 15 percent of the eligible costs submitted by Quebec for social service centres had been cut by the federal government, which considered that to be the proportion of costs associated with social services in schools and hospitals. The federal government's position was clearly set out in a letter from the federal Deputy Minister of Health and Welfare to his counterpart in Quebec's Ministère des Affaires sociales:

> [TRANSLATION]
>
> School social workers in Quebec, as elsewhere, operate in a system whose goals, objectives, purposes and specificity they embrace. This does not alter or diminish the nature of their intervention or the quality of their professional acts. Far be it from us to claim that school social workers are teaching. Since they are an integral part of services for students, just like psychologists and guidance counsellors, school social workers embrace multifaceted objectives and deal with defined target groups while giving priority to certain methods of intervention.
>
> . . .
>
> All intervention by school social workers is therefore intended to encourage the development of children as students.

[268] Relying on documents 153 and 189 of his affidavit of documents, Mr. Daudelin also noted that the same position had been adopted for the claims made by other provinces for similar services. For example, document 189 explained to the New Brunswick authorities that there could be no cost sharing for services provided by school social workers, who were school board employees, because such workers supported the school's educational mission and also because such services were available to all students and not only those who were in need or for whom imminence of need had been identified.

[269] During cross-examination, counsel for the Gouvernement du Québec relied on a letter written to the New Brunswick authorities by Mr. Byrne, then CAP's Director General (Exhibit PGQ-61), to emphasize that social workers in New Brunswick were employed by school boards, which was not the case in Quebec. Mr. Daudelin, referring to a memorandum prepared by Mr. Yzerman (Exhibit D-42), countered that school social workers were recruited and hired by the Ministère des Services sociaux, which then assigned them to schools based on the needs expressed by the schools. The Ministère des Services sociaux then billed the school boards for the social workers' salaries. Although the assessment plan was designed and implemented by the Ministère de l'Éducation, the Ministère des Services sociaux was nonetheless involved in designing the assessment. In that memorandum from 1978, Mr. Yzerman asserted that social workers were on secondment from the Ministère des Services sociaux and were part of the school board's staff. Their work was determined by the school authorities, and it really involved assisting the school system so that children could make satisfactory progress in their learning.

[270] The Government of Canada also called Lionel-H. Groulx as an expert witness. Mr. Groulx has a master's degree in social work and a Ph.D. in the sociology of education. He taught at the school of social work at the Université de Montréal from 1969 to 2005, but he has never taught any classes on social work in schools or published in that field. However, he has written about the development of social services, and he worked for the Rochon committee, which was responsible for examining the state's role in social services. He testified that he had written his report by reviewing the literature while focusing specifically on the actors themselves and relying on a variety

of credible sources. He also met with eight resource persons who had done school social work. Although the plaintiff was of the opinion that Mr. Groulx's expertise on social services in schools was rather limited, he did not object to the qualification of Mr. Groulx as an expert.

[271] In the introduction to his report, Mr. Groulx stated that school social work in Quebec had constantly sought to differentiate itself from generic social work. This resulted in demands for specific standards for this social practice and led to professional groups being formed in this field of practice. Unlike Professor Rondeau, who viewed social work in generic terms, Professor Groulx expressed the view that social work had to be geared to the organizational context in which it was performed. Whether school social workers were attached to school boards, social service centres or local community service centres, they constantly had to defend their specificity and justify the legitimacy of their intervention. They were linked to social work in their professional capacity and to the organizational environment of education in which they worked by many relationships involving exchange and negotiation. Their practice or ability to act and intervene was built and determined by this dual affiliation.

[272] Professor Groulx summarized his conclusions as follows: (1) social work in Quebec embraced the school's goals, objectives and purposes; (2) school social work was therefore an integral part of the school's educational mission; (3) the main goal of school social work was to help students function better in school and contribute to their academic and educational success; (4) this was why school social workers always refused to replace school psychosocial services with psychosocial services in a social service centre or local community service centre; (5) this was what

accounted for a basic standard or rule in school social work: problems related to the family environment were taken into account if and only if the family dysfunction affected the student's academic success or social integration at school.

[273] Professor Groulx noted that social workers had formed groups based on their fields of practice both in the United States and in the rest of Canada. The same was true in Quebec, where the Ordre des travailleurs sociaux developed a definition of school social work in 1967; there was also a special appendix for school social workers in a practice guide for social workers from local community service centres published in 1997; the only other social workers who had such an appendix were hospital social workers. Finally, the Association des services sociaux scolaires au Québec was established in 1973 and a school social work practitioners' group in 1993.

[274] In his report, the witness traced the evolution of social work in schools and maintained that its mission was closely related to education. He wrote the following:

> [TRANSLATION]
>
> As soon as it emerged in Quebec, school social work identified itself with the school's educational mission and viewed its integration into the school system as a requirement for effective action. It took its place within a modern concept of education in which the school had to look after children's complete development. The school had to try to solve both children's intellectual problems and the emotional, family or social problems that prevented some students from integrating or functioning in a satisfactory manner in school.
>
> The problems identified and taken into account in school social work related to the way students functioned in school: they were mainly problems with performance, behaviour or absenteeism. Academic failure or slow learning was seen as a symptom whose cause had to

> be found in the student's family life. This was why absenteeism topped the agenda for school social work at the time.

[275] However, Mr. Groulx identified the Parent Report as the trigger for the development of school social work. From the time when school attendance became mandatory and free, schools had to take responsibility for students who in the past would not have come or would have been quickly expelled. This explained the importance of social workers, whom the Parent Commission described as collaborators in solving the social problems that could interfere with education. The Commission also insisted that social work be integrated into schools and that the cases referred for social work be approved by the school administration. On the strength of this legitimacy, workers established the Association des services sociaux scolaires du Québec in 1965 and, at a general assembly in 1966, adopted a paper stating that school social workers performed [TRANSLATION] "a specific function determined by their field of action". It was clear to that association that the main purpose of school social work activities had to be to improve the way students functioned in school in terms of both their academic performance and their social behaviour.

[276] When there was talk of transferring school social workers from school boards to the Ministère de la Famille et du Bien-être social in 1966, there was strong resistance in the field because it was feared that the transfer would affect the quality of the services provided to students. It was feared that school social work would lose its specificity and move way from the school environment. Given these objections and the tension that the transfer plan caused among many school administrators and social workers, the two departments involved decided to develop a model contract recognizing that social workers had to remain integrated into schools as much as possible.

Based on a literature review on this topic, the witness stated that, at the end of the 1960s, there was a consensus about the nature and specificity of social services in schools, and there was unanimous agreement that practitioners had to concern themselves with the way students functioned in school.

[277] In 1973, after the *Act respecting health services and social services* was passed, social service centres were given responsibility for providing social services in schools. A guide developed jointly by the Ministère des Affaires sociales and the Ministère de l'Éducation in 1976 gave social service centres occupational responsibility for social service programs and gave school boards the more administrative and educational responsibility of identifying clients and participating in the development of programs and their terms and conditions.

[278] Despite certain fears, the transfer of school social workers from school boards to social service centres actually strengthened school social work. Working under both the school administration and a social service centre gave social workers greater autonomy while allowing them to develop their field of expertise. The result was social intervention in the school context that gave their social action an educational mandate. School social work was concerned first and foremost with young persons whose integration, functioning or experience in school was jeopardized by social and school adjustment problems. Such persons were the most vulnerable clientele in schools. The general objective set by social service centres for school social services was to make an essential contribution to achieving the school's educational mission. A basic rule thus developed whereby family-related problems were taken into account by social workers if and

only if the family dysfunction affected the student's academic success or social integration at school.

[279] At the secondary level, the family environment was less important because young persons defined themselves through their membership in other groups (their peers, their teachers and the school as such). The educational impact of problems was nonetheless important and essential in the performance of the work of social workers, which involved consultation and planning in cooperation with the school, assessment, development and coordination of internal or external resources and facilitation at school. In 1983, the Association des centres de services sociaux scolaires du Québec stated that this work complementing the school's educational mission was the specific difference between school social work and ordinary social work. Since school social work addressed problem situations related to the functioning of students in school, and since this occurred at the request of school staff in a proportion estimated at more than 70 percent, work with the school in its interaction with the student, the student's family and the community became the distinctive feature of school social work.

[280] The various actors expected different things from school social work. The school boards were more in favour of individual, curative intervention, whereas the aims of the Ministère des Affaires sociales were more preventive and group-oriented. Demands or pressures from the school boards stemmed from the increase in the number of students with adjustment or learning difficulties. Professor Groulx wrote the following on this point:

> [TRANSLATION]
>
> In summary, school social services are viewed in educational circles as complementary to the school's educational mission and as part of the personal services provided to students. Their assigned role is to help solve the specific problems of students who have difficulty functioning in school. The logic is institutional. School administrations expect social services to address the specific problems experienced at school through relevant, quick and effective intervention.
>
> In the 1970s and 1980s, the specificity and role of school social work developed on the basis of an affiliation with the school. School social workers thus defined the objectives of their action with reference to creating a successful school experience for students. The specificity of school social work therefore derived from its inclusion in the field of education. In that situation, the transfer from school boards to social service centres did not change the fact that school social work adhered to the objectives of the school system.
>
> (*L'évolution des services sociaux scolaires au Québec*, Exhibit D-44, at page 30)

[281] In the early 1980s, the Ministère des Affaires sociales decided to transfer school social staff to the local community service centres, which served a more limited territory more similar to that of schools. Social workers and school boards reacted to this proposal quite negatively, since they feared that practitioners would be dispersed, with the risk that they would be assigned tasks more related to the mission of local community service centres than to that of school social work.

[282] In 1984, the Regroupement des professionnels en service social scolaire clarified what it considered the minimum conditions for social practice in schools: integration into the school, intervention based on socioacademic problems or needs exhibited by one or more students at school, programs or projects developed with the school, a systemic approach to problems through

individual or group intervention with the student, school, family and community, the making of connections between the school and parents, links with outside agencies and intervention that took account of overall disability issues.

[283] The school boards saw the transfer as a loss of their ability to put forward their own choices and priorities. It was feared that there would be no more cooperation with social service centres or joint committees for negotiating the allocation of staff. It was also feared that the local community service centres would meet only the demand for community prevention, in keeping with their mission, and disregard the fact that the vast majority (90 percent) of intervention requested by schools was curative and individual in nature. In short, the fear was that the educational and school-related specificity of social services would be erased and that the social service needs of schools would be affected in terms of both quality and quantity. Despite these reservations, the Ministère des Affaires sociales went forward with the transfer from social service centres to local community service centres starting in 1985, except in Montréal and Laval, where opposition was too strong. In those two areas, resources were not reallocated until the new social services legislation (S.Q. 1991, c. 42) came into force in 1992.

[284] In 1993, the Montréal regional board, which coordinated school social services provided to students by local community service centres, established programming for school social services for two years. It was reaffirmed therein that school social services were offered to support the educational mission of schools, which sought to promote the complete development of students and their integration into society. This meant that school social work addressed problem situations that

adversely affected the educational experience of students. The framework for school social services was set out in a service contract or agreement signed by the school board and the local community service centre, which specifically identified students as the target population for social work and characterized the problems justifying intervention as dysfunction at school, the signs of which ranged from the student's performance or behaviour to problems with personal adjustment or an acceptable family environment. School social intervention was directed only at strictly socioacademic problems. It was implicitly recognized that the school could not be considered solely a point of service and that the mandate of school social services had to be characterized as school-related or educational. The authority of the school principal, through whom any referrals for school social work had to go, was also reaffirmed. This model contract was accepted by the CECM (Exhibit D-55). Professor Groulx therefore stated that the transition from social service centres to local community service centres ultimately had no impact on the practice of school social workers in the field. The important connection was the one with the school, whatever the administrative structure.

[285] During his testimony, Professor Groulx introduced in evidence a document on school social work prepared in 1993 by the Corporation professionnelle des travailleurs sociaux (Exhibit D-10), a letter written by the Deputy Minister of Social Affairs in November 1992 (Exhibit D-52), a letter from the Montréal-Centre regional board to the president of the Regroupement des professionnels en service social scolaire Montréal-métro (Exhibit D-54) and a report to the council of commissioners of the Montréal Catholic school board (Exhibit D-55) reiterating the need to reaffirm the specificity of school social services and maintain special expertise in that field.

[286] However, the witness acknowledged that the specificity of school social work became less explicit in administrative documents after 1996. It therefore seems that the administrative attachment of school social services to local community service centres ended up changing the context of this practice considerably. Decentralization of school social work to local community service centres diversified practises and multiplied organizational and professional arrangements. While the specificity of social work remained, imperatives like the priorities of local community service centres and each school's specific demands intersected more with it. School social work no longer involved the same autonomy in operation and decision-making as had existed in the social service centres.

[287] In conclusion, the witness wrote the following in his report:

> [TRANSLATION]
>
> The practice of social work certainly changed over time. . . . In the 1970s and 1980s, it became more specialized and diverse, with greater attention being paid to the school as a social system and its connection with the family and the student. There was greater interest in the school's operation, with more levels and types of intervention. In the 1980s and 1990s, the preventive dimension and social promotion became more important with projects that saw students as young persons in contact with their social environments, including school, peers, family and the broader social environment. The goal of supporting the educational mandate was broadened to take greater account of the many social dimensions of children as students or young persons.
>
> Problems and intervention methods also became more varied. The administrative framework changed, imposing new mandates such as prevention-promotion and requiring new professional collaborations. New partnerships were established, and new philosophies came into being, such as the normalization and integration of young persons

> with disabilities. Clientele numbers increased in several cases, and schools had to deal with new problems such as drug use, the phenomenon of violence and bullying and suicide attempts. However, school social work remained steadfast and consistent in defending a specificity that gave priority to the school experience of students as subjects and addressed the personal, educational and social factors considered to be obstacles to their functioning in school and development as students. This was why the role of complementing and supporting education was made central to the mandate of school social work, leading to demands for a physical presence at school in the students' environment, functional integration into the school team and consultation with the various agents in the school environment. . . .
>
> A regular physical presence for social workers at school has always been demanded because school is defined as the environment where students learn both socially and academically. Social workers intervene based on the specific context in each school and the needs expressed there. This is why school social workers refuse to intervene to deal with a student's personal or family problems if they do not affect the student's academic achievement or functioning in school. This distinguishing criterion, which is present in texts from the early 1960s and can be found in those from the late 1990s, is a significant indication that the role of school social services in supporting the school's mission is a primary aspect of their nature and their specificity, which has changed little.

[288] The witness was cross-examined, but nothing of significance came out of that exercise.

[289] The third witness for the defendant, Nicole Durocher, was a teacher for about 20 years (1962-1981) and then an educational consultant (1981-1990), a school principal (1990-1993) and a coordinator of educational resources (1993-1999). When she was a teacher, she explained, she always went to see the school administration and never the social worker directly when she became aware of a problem situation. She reported such situations only where the child had academic problems. In her opinion, it was not the social worker as such who was important but rather the social worker's network, which provided access to all kinds of services without which a young

person might be unsuccessful in school life. She even said that, in 98 percent of cases, an academic problem was what led to the referral of a child to the school administration.

[290] The situation was a little different at the secondary level, since a young person 14 years of age or older could go see the social worker directly without going through the school administration. However, if the problem was a social one, the social worker had to refer the young person to the local community service centre so the young person could obtain the appropriate resources.

[291] Social workers were formally under a local community service centre, but when it came to their employment relationship, the school managed their use of time. The school administration was responsible for ensuring that the service they provided was really a school service. If it became apparent that the social worker had time to deal with cases that had nothing to do with school, the administration referred more cases to the social worker and thus made sure the social worker would turn to outside resources to deal with cases that had nothing to do with school.

[292] It was the environment that determined children’s needs, and educational consultants often worked with the social workers. A worker never left with a child or group without the school administration being aware of it and the parents giving their consent. Each child had an individual intervention record in which the workers each noted down what they did; the school administration was responsible for maintaining such intervention plans.

[293] She said that, when she was a school principal, the teachers generally identified problems first. The administration then referred the case to the appropriate worker and made sure the required consents were obtained. If the problem had nothing to do with school and had no impact on the child's school life or marks, the student was referred to the appropriate services. She confirmed that curative problems accounted for 90 percent of the social worker's intervention at her school in the early 1990s but stated that this proportion changed over the years and was closer to about 50 percent in the late 1990s.

[294] On cross-examination, she acknowledged that the social worker was employed by a social service centre and then a local community service centre and could not be dismissed by the school administration. However, she added that, in practice, the school principal was the immediate supervisor when the social worker was at school and had the power to determine what work the social worker did. On the other hand, psychologists were hired by the school board and the school principal was their hierarchical supervisor.

[295] Finally, Jean-Bernard Robichaud pointed out that social services in schools were initially developed by school boards, which, in his view, clearly shows that their role was to support the school's educational mission. He also expressed the opinion that the administrative transfer from school boards to social service centres did not change the nature of or rationale for social services in schools; indeed, the school boards made sure of this in the service agreements they signed with the social service centres.

[296] In principle, any student who attended school and whose personal, family or social circumstances required intervention by a social worker had to have access thereto, subject to the programs in effect and the priorities defined jointly by the school board and the social service centres based on available resources. There was never any question of assessing the financial resources of a student or a student's family to justify granting social services in schools.

[297] Without calling into question the testimony of the social workers who said that they had done real social work in schools, he expressed the opinion that a social worker working in an institution embraces the purposes of that institution. He added that social services were introduced in schools to ensure that problems that were not strictly educational or related to a learning difficulty would not prevent young persons from functioning and benefiting from the school experience and thus to prevent them from dropping out.

[298] On cross-examination, Mr. Robichaud acknowledged that most clients of the Montréal métropolitain social service centre were disadvantaged and had little education and were therefore under the poverty line or likely to become persons in need as defined in CAP. He also confirmed that the social service centre determined the priorities for social work in schools, although it worked closely with the school administration to use resources wisely.

IV. ANALYSIS

[299] After carefully examining the testimonial and documentary evidence submitted by both parties, I have concluded that the cost of services provided by school social workers during the relevant period was not shareable under CAP and the agreement between Quebec and the federal government implementing CAP. I have reached this conclusion essentially for the reasons set out above concerning services provided to juvenile delinquents. In my opinion, such services were not "welfare services" as defined in section 2 of CAP and were also expressly excluded from the definition insofar as they related wholly or mainly to education.

[300] As mentioned above, Quebec argued that the services in question had only a tenuous connection with school because the workers who provided them were part of the social affairs network, because school was, for all practical purposes, merely a point of service where it was more convenient to reach young persons and because the mission of social workers was to treat the individual, not the student. However, this description of the role played by social workers in schools does not stand up to analysis and provides a partial view of reality.

[301] The evidence showed that school social services first developed under school boards in the 1950s. From the start, such services were therefore very closely associated with the educational mission of the educational institutions in which they were provided. As Professor Groulx stated in his report:

> [TRANSLATION]
>
> As soon as it emerged in Quebec, school social work identified itself with the school's educational mission and viewed its integration into

> the school system as a requirement for effective action. It took its place within a modern concept of education in which the school had to look after children's complete development. The school had to try to solve both children's intellectual problems and the emotional, family or social problems that prevented some students from integrating or functioning in a satisfactory manner in school.
>
> Exhibit D-44, page 5, paragraph 10

[302] This is undoubtedly a very clear indication that, at least for the school authorities at the time, such services were created to help the teaching staff with their work. How could it have been otherwise? It is difficult to see how the school boards could have justified the introduction of such a service and the resulting expenditure of public funds if the service had been unrelated to the fulfilment of their primary mission.

[303] However, it was with the Parent Report in 1964 that social services in schools really expanded. Not only did the Parent Commission legitimize the role of school social workers, but it also made that role a direct consequence of the right to education. Without taking a position on the organization of this service, the Commission did argue that it should be integrated into the school system and that its mandate should fit within that of education.

[304] There has been a lot of water under the bridge since then, and much administrative reorganization has taken place. Unlike the situation that existed in the other provinces and, it seems, in other countries, social services in schools were entrusted to the Ministère des Affaires sociales (which itself had various names over the years), first through the network of social service centres and later through the local community service centres. Those transfers did not go smoothly and

revealed considerable tension between the various actors with regard to the role and status of school social workers.

[305] The professionals involved claimed their specificity very early on. In 1965, they established the Association des services sociaux scolaires du Québec. In a document explaining the role of school social work, the emphasis was clearly placed on the socioacademic functioning of students in school, and it was very clearly stated that social workers would intervene only if the reported problem interfered with the way the student functioned in school. The document stated the following:

> [TRANSLATION] It is the role of the student that is the focus of their attention. Their specific function is to add their occupational qualifications to those of the school's other specialists to help children make the fullest possible use of the teaching and education program offered to them. It is a matter of restoring and/or promoting better social functioning but in the school context, the task of schools being to educate and develop the full human potential of the children entrusted to them.
>
> (*Le travail social scolaire*, Exhibit D-9, page 5; cited by L.-H. Groulx in his report, page 8)

[306] Like its American counterpart, the Ordre professionnel des travailleurs sociaux du Québec developed a specific practice guide for social workers working in schools. That 1992 document described the role of social workers using language not much different from the language used 25 years earlier:

> [TRANSLATION] A social worker intervenes with a student and the student's significant others when the interaction between the student's social and emotional factors and the student's family, peer network or school interferes with the satisfactory performance of the

> role of student: academic success, personality development, learning of social roles.
>
> (*Guide pour la pratique professionnelle des travailleurs sociaux exerçant en CLSC et en milieu scolaire*, Exhibit D-10, page 11)

[307] In fact, school social workers mobilized each time they saw a structural change as a threat to their autonomy and the specificity of their work. Thus, after the Ministère de l'Éducation decided to transfer school social work staff to social service centres, it took seven years before the transfer actually occurred. In a document published in 1969, the president of the Association des services scolaires sociaux du Québec pointed out that school social work sought to [TRANSLATION] "help students benefit from their school experience as much as possible and is therefore a service to the school itself as well" (*L'insertion du service social dans le milieu scolaire*, Exhibit D-47, page 6). At the same time, the president worried that school social work could not perform its role if it was no longer an integral part of the school system. As mentioned above when summarizing Professor Groulx's testimony, departmental authorities finally had to yield some ground and accept, among other things, the concept of a service contract negotiated by the social service centre and the school board. Not only did practitioners continue to maintain an active presence in schools by having their offices there, but it seems that, at least in Montréal, the school boards provided offices for the social service centres' school social services departments and division heads.

[308] There was the same outcry in the mid-1980s when the Ministère des Affaires sociales decided to entrust the administration of school social services to local community service centres rather than social service centres. Once again, it was feared that the transfer would inevitably lead to the abandonment of a practice and expertise developed in the school context in favour of a more

generic practice centred around “youth”, with different intervention methods and objectives (see Exhibits D-14, D-50, D-51 and D-52). It was also feared that community prevention work, which was central to the mandate of local community service centres, would take precedence over the individual intervention work emphasized by the school boards. This was to be another opportunity to reaffirm the specific nature of social work in schools. As Professor Groulx stated in his report and his testimony, the Regroupement des services sociaux scolaires du CSS Montréal métropolitain listed seven conditions that it considered essential to maintain that specific nature (Exhibit D-7). In light of these fears, the Ministère des Affaires sociales decided to postpone the transfer in Montréal and Laval until 1993, but not without reiterating that social workers would continue to be located in schools and to support the educational mission (see Exhibits D-53, D-54 and D-55).

[309] In short, the various administrative reorganizations that affected school social work did not have a significant impact on social workers’ role or intervention methods. In their testimony for the plaintiff, Louis Lagrenade, Claudette Forest and Gisèle Guindon confirmed that the transfer of school social services from school boards to social service centres and then local community service centres had not really changed anything in the field (see transcript, volume 2, page 260; volume 3, pages 62 and 181). In fact, it seems that social workers today still continue to defend the specificity of their work. Some even suggested that the preventive aspect of their intervention has taken on greater importance since they became attached to local community service centres. However, I need not express an opinion on this question, since the claim relates only to the costs incurred for services rendered until CAP expired in 1997.

[310] The development of social services in schools and the tension caused by their reorganization over the course of about 40 years certainly indicate a split among the various actors in terms of their expectations. While schools saw social workers as being directly involved in their educational mission, the Ministère des Affaires sociales tended instead to see social work in generic terms. From this latter standpoint, school was merely a point of service, a place where it was more convenient to reach young persons because it was where they lived and forged their identities through the various experiences that marked the passage from childhood to adulthood. Indeed, these two positions were echoed in the testimony given in this Court by the two expert witnesses chosen by the parties.

[311] Obviously, it is not this Court's function to interfere in this academic debate and decide in favour of one of these visions of social work. On the other hand, the evidence undoubtedly shows that school social workers' employment relationship with the Ministère des Affaires sociales and administrative attachment to that department do not seem to have fundamentally affected their work and were much less determinative than their institutional relationship with the world of education. This "two-headed" situation was no doubt a source of tension over the years, but it did not radically change the day-to-day work of practitioners in the field. As Professor Groulx wrote in the introduction to his report:

> [TRANSLATION]
>
> It must also be noted that school social work cannot be thought of exclusively in terms of the administrative categories of public management, since professional stakeholders step in to demand autonomy and their own logic. This is why school social work is characterized by the fact that it belongs to two worlds, the world of social work for professional expertise and the world of education for the performance of work and the definition of its mandate. This explains the constant obligation to decide or negotiate its role and

> mandate in relation to these two worlds. This "two-headed" situation, as the workers themselves call it, is a principle experienced in practice. It often leads to analytical errors that deny or underestimate the educational aspect of school social work by defining it on the basis of general or invariable principles of social work, with the result that school social work becomes social work like any other (generic concept). Conversely, thinking of school social work entirely in terms of the place where it is performed, as a social extension of the school, as it is sometimes thought of in the United States, erases the strictly social nature of this work in schools.
>
> The specificity of school social work is therefore structured around this dual educational and social dimension of its work and mandate.

[312] Several workers who were called to testify by the Gouvernement du Québec stated that social workers were subject to the authority of the school principal, who was the "lord and master" of the school (transcript, volume 2, pages 225-226; volume 3, pages 204-205; volume 4, pages 98-101). Even though social workers who worked in schools were hired and paid by social service centres and later local community service centres, their autonomy from the school administration was therefore quite limited. Intervention with young persons always had to be approved by the administration, as did group projects. School principals supervised their use of time and were closely involved in appraising their performance.

[313] Moreover, the respective priorities and responsibilities of the school and the social worker were described in a framework agreement negotiated by the school boards and the social service centres or local community service centres. Such agreements provided for the creation of a joint committee through which the school boards identified their needs and conveyed them to the representatives of the social service centres or local community service centres, whose role was to meet them to the fullest extent possible, subject to the available staff and budget and the intervention

priorities identified together by both parties (transcript, volume 2, pages 197, 205-206, 247, 311-312; volume 14B, page 143).

[314] As well, the school social workers who testified placed considerable emphasis on the fact that their offices were in the schools to which they were assigned and that they adapted their schedules to the school calendar. Moreover, although managers from the Ministère des Affaires sociales wanted to change their mission somewhat, social workers devoted most of their time (at least during the period relevant to this case) to addressing the individual problems reported to them by teachers and the school community in general (see, *inter alia*, Exhibit D-8, page 4). As one would expect, those problems were closely connected with the school's educational mission: problems related to school attendance (absenteeism, dropping out, lateness, suspension, expulsion, running away, inaccessibility of school resources), learning (learning disabilities, declining performance, slow learning, academic failure, lack of motivation), maladjustment or dysfunction in school life (difficulty joining school activities, inhibition, passivity, disruptive behaviour such as hyperactivity, insolence or isolation, marginalization, violence, aggressiveness, vandalism, assault, alcoholism, drugs) and the interrelationship between school and the student's family.

[315] It is true that the situation may have been a little different at the secondary level, since teenagers often went to see the school social worker on their own initiative. However, the social worker could intervene only if a problem affected the student's academic success or integration into the school. While the role of social workers was not to substitute themselves for the teaching staff or even to deal with cognitive or psychological problems, neither did they have a mandate to encroach

on the role of social workers working in local community service centres or in the network of social service centres, since the role of those workers was precisely to intervene when the identified problem had no impact on school and went beyond the framework of school. On this point, all the witnesses were of the same opinion (see in particular Ms. Durocher's testimony, transcript, volume 15, pages 30, 40-43), although the dividing line between these various situations was not easy to draw and could be assessed differently by different individuals. A very clear administrative demonstration of this can be found in the *Guide d'accueil des demandes en service social scolaire* prepared by the Montréal métropolitain social service centre in 1984 (Appendix 5 of Professor Groulx's expert report, at page 89), which plainly states that [TRANSLATION] "[c]ases or situations covered by school social services are those involving psychosocial problems or needs related to the school experience of young persons" (to the same effect, see Exhibits D-7 and D-13).

[316] In light of the foregoing, I find it difficult to accept that the needs of the child as an individual took precedence over the needs of the student, as argued by the plaintiff. On the contrary, there is every indication that school social services were closely connected with and complementary to the educational mission of educational institutions or, as the Government of Canada put it, that they embraced the goals, objectives, purpose and specificity thereof. Their administrative attachment to the Ministère des Affaires sociales did not alter their specificity or change their role or the scope of their action.

[317] As far back in time as we go, school social services have been seen as complementing education. The Parent Report saw them in these terms, and the various professional groups formed

around such services still define themselves this way, as Professor Groulx very clearly showed in his expert report and his testimony (transcript, volume 17, pages 107-110). Several workers who testified before this Court agreed that the trigger for their intervention was often an educational problem (transcript, volume 2, pages 238 and 266 *et seq.*; volume 3, pages 42-45). In fact, there is every indication that the fundamental goal of school social workers was to enable young persons to benefit as much as possible from the teaching or education program offered by the school they attended (see Professor Rondeau's expert report, Exhibit D-44, pages 29-30).

[318] It is true that, in their testimony, several social workers insisted that they were concerned first and foremost with the psychosocial development of young persons, that their intervention related to social rather than educational problems and that school was an ideal place for them to reach young persons because it was their environment and the place where they had their life experiences and learned various things. In my humble opinion, this description of their role is not inconsistent with the conclusions I have reached in the preceding paragraphs.

[319] In a way, their testimony reflects the tension felt by school social workers because of their dual affiliation and illustrates the difficulty, which was inherent in their function, of drawing a dividing line between their role and that of the teaching staff on the one hand and other social workers on the other. However, one fact remains: their inclusion in the field of education could not help but affect the practice of their profession and their mandate, and the documentary evidence in this regard could not be any clearer.

[320] A number of school social workers would no doubt have liked to be able to address systemic problems and play a greater preventive role rather than dealing with individual cases reported by teachers in response to dysfunctional behaviour or learning difficulties. However, because of limited staff, school boards and school administrations had other priorities and wanted to deal with the most urgent matters. I consider the evidence on this point indisputable; I refer in particular to the testimony of Ms. Durocher, which was very persuasive. Moreover, all the witnesses admitted that the curative aspect definitely predominated and that intervention with students themselves (rather than their families or others around them) took up most of their time.

[321] With regard to the fact that their goal was the psychosocial development of young persons as individuals rather than the improvement of their academic performance, I do not consider this problematic. The federal government did not argue that school social workers were teaching or even that they were helping to improve the learning capacity of young persons by dealing with the cognitive blocks that might affect them, as was done by speech therapists, remedial teachers and psychoeducators, for example. Their role was different and involved working on the personal, family or social factors that might interfere with their functioning in school, their development and their integration into school. Unless the role of schools is to be confined to the transmission of knowledge, it is perfectly natural that social workers took a more general interest in students and ensured that they could learn socially as well as academically at school, which was their living environment. To say that social workers concerned themselves with young persons rather than students when they looked at their relationship with other students or their parents, their substance

abuse problems or their violent behaviour, for example, is to deny that school could be anything other than a place of instruction.

[322] Moreover, it is significant that school social workers always insisted on being physically present in schools. The reason why so much importance was attached to this integration into school structures was that school was the environment where young persons lived. School revealed, so to speak, all the kinds of problems young persons encountered in their development. It is therefore not surprising that a consensus emerged from the testimony on at least one point: the trigger for a social worker's intervention with a student was almost always related to the student's marks or behaviour with peers. Although this could be a symptom of a problem that went beyond the framework of school, it is plausible to think that very few psychosocial problems experienced by young persons had no impact on the learning they had to do in school. Indeed, the witnesses who were asked the question found it very difficult to provide examples of such situations. In short, the distinction sought to be made between the development of a young person and the development of a student strikes me as highly theoretical and ultimately reflects a partial view of education and the mission of schools.

[323] Taking all of this into consideration, I am of the opinion that school social services had nothing to do with CAP's anti-poverty objectives. Rather, they were universal in nature and were meant for a clientele that went well beyond the clientele contemplated by CAP. School social services were not directly or implicitly intended for young persons in need of protection but were available to all students who had problems at school, whatever their socioeconomic background. I

have already concluded that CAP was basically intended to be a selective, residual anti-poverty instrument designed to support the assistance provided by the provinces to economically disadvantaged persons. The services provided by social workers in schools did not fit this logic, and the fact that they were attached to a department with a social rather than an educational role makes no difference in this regard.

[324] In addition, CAP explicitly excluded any service "relating wholly or mainly to education" from the definition of "welfare services" (CAP, section 2). Quebec tried to counter this exclusion by arguing, dictionaries in hand, that the word "enseignement" used in the French version of CAP must be understood as the transmission of theoretical or practical knowledge and has a more restricted meaning than the word "education" in the English version. In light of the rule of interpretation requiring that the meaning common to both versions of bilingual legislation be adopted, the word "enseignement" should therefore be given its most restrictive interpretation.

[325] I do not consider this argument conclusive for several reasons. First, this rule of interpretation is not an absolute one, as Professor P.-A. Côté recognizes in his treatise on the interpretation of legislation, and it must always be ascertained whether this common meaning is harmonious with the object and general scheme of the statute (*The Interpretation of Legislation in Canada*, 3rd ed., Carswell, 2000, pages 328-329; see also *Sullivan and Driedger on the Construction of Statutes*, 4th ed., Butterworths, 2002, pages 87-90; and *R. v. Compagnie Immobilière BCN Ltée*, [1979] 1 S.C.R. 865). In short, the legislature's intention must always prevail.

[326] Moreover, I note that the word “enseignement” also refers, by extension, to the education sector (see, for example, the definition of the word “enseignement” by the Office de la langue française, reproduced in the plaintiff’s book of authorities, volume 2, tab 4; see also the definition in the 1972 *Grand Larousse de la langue française*, reproduced in the defendant’s additional book of authorities, tab 1).

[327] The interpretation proposed by Quebec would have some merit if, as suggested by the Attorney General of Canada, Parliament had used the word “teaching” in the English version, since the scope of that term is much more limited and it better reflects the meaning Quebec wants to give to the word “enseignement”.

[328] It seems to me that, by choosing the word “education” in the English version, Parliament clearly opted for an open concept that encompasses both the idea of traditional academic learning and a more open-ended idea involving a broader vision centred around the complete development of the child. I believe that this interpretation is more consistent with the framework of the statute in which the concept was used; it must not be forgotten that CAP’s purpose was to authorize the sharing of costs incurred by the provinces for the delivery of assistance and welfare services. In such a federal-provincial relations context, it is entirely appropriate to think in institutional rather than substantive terms.

[329] Quebec objected that, if Parliament had wanted to adopt the institutional meaning of the word "enseignement", it would have expressly used the term "établissement" [institution] as it did in defining a home for special care in the French version of CAP. My answer to this would simply be that that definition had to refer to an institution because the concept of a "home" for special care involved a physical location.

[330] I therefore conclude that the exclusion of services relating wholly or mainly to education merely confirms, if need be, that school social services were not "welfare services" as defined in CAP. Since they were closely related and complementary to the educational mission of educational institutions, they were services "relating to education" within the meaning of the exclusion established by Parliament.

SOCIAL SERVICES PROVIDED TO PERSONS WITH DISABILITIES LIVING IN RESIDENTIAL RESOURCES DURING THE PERIOD FROM 1986 TO 1996

I. ISSUES AND POSITIONS OF THE PARTIES

[331] This third and final component of the Gouvernement du Québec's claim originates in the process of deinstitutionalization that began in Quebec, and throughout Canada, in the early 1960s. The public authorities, like the community as a whole, slowly became aware that mentally impaired persons were living in unacceptable conditions. While the state had previously taken complete control over such persons and they had been deprived of all independence, they were gradually recognized as having rights; rather than excluding and ostracizing them, an attempt was then made

to integrate them into society and permit them, as much as possible, to live a normal life integrated into their community. This movement grew with the UN's proclamation of the Declaration on the Rights of Mentally Retarded Persons in 1971 and the Declaration on the Rights of Disabled Persons in 1975, the creation of the Office de la protection des personnes handicapées du Québec in 1978 and the UN's decision to make 1980-1990 the Decade of Disabled Persons.

[332] In Quebec, this movement resulted, among other things, in the physical relocation of persons with disabilities, who were gradually transferred from the psychiatric institutions where they were confined to what were called "residential resources", a generic term referring to residential facilities for adults with disabilities that were generally located in residential urban neighbourhoods. Since their creation in the mid-1980s, these new lodging services have taken several forms and had a variety of names: group homes, group residences, transitional apartments, normalized residences, intermediate residences, supervised apartments, independent apartments, rehabilitation foster families, etc. These various types of resources generally accommodated a maximum of nine persons, who each had their own room. Those persons received social assistance benefits so they could pay their living expenses (rent, food, clothing, recreation, etc.), and they received various rehabilitation and home care services provided by specialized instructors, visiting homemakers and beneficiary attendants. Those employees were hired by a reception and rehabilitation centre to provide services to various residential resources with the goal of enabling such persons to live as normally as possible.

[333] The objective of this relocation was to make mentally impaired persons feel valued. They were integrated into the community as much as possible to allow them to lead as normal a life as possible. They learned to live in a residence, go to public places, dress themselves, use public transportation and so on. In this way, impaired persons were then seen as good neighbours, friends, workers and full citizens.

[334] Until April 1, 1977, the Government of Canada, under CAP, shared the cost of services provided to persons in need and adults with disabilities living in a “home for special care” that was a “residential welfare institution the primary purpose of which is to provide residents thereof with supervisory, personal or nursing care or to rehabilitate them socially” (see section 8, specifically paragraph (*f*), of the *Canada Assistance Plan Regulations*, to which the definition of “home for special care” in section 2 of CAP referred).

[335] However, the cost sharing rules for this type of service were changed greatly by the coming into force of the *Federal-Provincial Fiscal Arrangements and Established Programs Financing Act, 1977* (25-26 Elizabeth II, c. 10) (*Fiscal Arrangements Act, 1977*). Part VI of that Act provided that, from then on, Canada was to finance the cost of established programs (hospital insurance, medical care and post-secondary education) through a block grant calculated using a complex formula that took account of each province’s population. As stated in the first part of these reasons, the avowed purpose of that formula was to create greater flexibility for the provinces.

[336] Not only did the 1977 Act change the financing method for established programs, but it also added a new program, the extended health care services program. That new program, provided for in section 27 of the Act, listed five types of services, including "adult residential care service" (subsection 27(8)), which was defined as follows in paragraph 24(2)(*b*) of the *Federal-Provincial Fiscal Arrangements and Established Programs Financing Regulations, 1977* (SOR/78-587) (*Fiscal Arrangements Regulations, 1977*):

> i. personal and supervisory care according to the individual requirements of residents of the institution,
> ii. assistance with the activities of daily living and social, recreational and other related services to meet the psycho-social needs of the residents of the institution,
> iii. services required in the operation of the institution, and
> iv. the provision of room and board to the extent of the total monthly cost or part thereof except for an amount calculated by subtracting, for each recipient of the service,
>
> (A) the total monthly amount or part thereof that is payable to the recipient of the service under any Acts of the province for comforts allowances, clothing, drugs and biologicals, services required in the provision of drugs and biologicals and medical and surgical goods and services and that is shareable under the *Canada Assistance Plan*,
>
> from
>
> (B) an amount equal to the total monthly amount or part thereof of the old age security pension and maximum supplement payable to a beneficiary under the *Old Age Security Act*, who is not a married person;

[337] As for the concept of "institution", subsection 24(1) of the same *Regulations* equated it with a "home for special care" as defined in the *Canada Assistance Plan Regulations*. It was therefore, *inter alia*, an "institution the primary purpose of which is to provide residents thereof with supervisory, personal or nursing care or to rehabilitate them socially" (section 2 of CAP and

section 8 of the *Canada Assistance Plan Regulations*). As a result, the extended health care services program, particularly when it involved adult residential care service, occupied much of the field of care provided in a home for special care within the meaning of CAP.

[338] From then on, the cost of adult residential care service provided in homes for special care was therefore financed using the formula established by the *Fiscal Arrangements Act, 1977*. In administrative guidelines developed by Canada for the purpose of managing the interface between that Act and CAP, the institutions in which adult residential care service was provided were identified as type I institutions. The financing, which was originally $20 per inhabitant (subsection 27(2) of the Act), increased over the years to about $50, if we go by Mr. Daudelin's testimony.

[339] Relying on paragraph 5(2)(*c*) of CAP, which excluded from cost sharing any cost that Canada was required to share pursuant to any other Act of Parliament, the Government of Canada therefore refused to pay the cost of services delivered in residential resources that provided residents with continuous support, arguing that they were institutions in respect of adults within the meaning of the *Fiscal Arrangements Act, 1977*. As a result, only services provided in residential resources whose clients did not require continuous assistance were cost-shared as welfare services under CAP. This cut (which was gradually increased to 25 percent of the overall claim for services provided in residential resources) is what Quebec is challenging.

[340] Quebec submitted that the services provided to such persons, whatever their intensity level, were covered by the definition of "welfare services" in section 2 of the CAP Act. In particular, counsel for Quebec argued that the services could be considered rehabilitation services, casework services, homemaker services and community development services. The context in which the services were provided meant that they could not be "adult residential care service" within the meaning of the *Fiscal Arrangements Act, 1977* or services from a "home for special care" within the meaning of CAP.

[341] Quebec also argued that the exclusion relied on by the federal authorities applied only to services provided in an institutional setting, whereas the services at issue here were delivered in the user's home. Since a residential resource provided a natural living environment comparable to the living environment of any other citizen, it could not be equated with an institution. Insofar as residents paid their own lodging and food expenses and sometimes even signed a lease, they were in their own home and no longer in an institutional environment. This was true no matter what the residence was called, how many residents lived there, the form of ownership or lease of the residence or the ratio of workers to persons with disabilities.

[342] To decide between these two positions, it is necessary to begin by carefully examining the documentary and testimonial evidence submitted by both parties. Based on the conclusions that can be drawn from that evidence, I will then analyze both parties' arguments more closely.

II. THE EVIDENCE

(a) Evidence of the Gouvernement du Québec

[343] The first witness called by the Gouvernement du Québec was Jacques Lafontaine, a career public servant who was closely involved in preparing Quebec's claims under CAP from 1982 on. He explained the context in which Quebec's claim was made and, in particular, described the process of deinstitutionalization that began in the 1970s in Quebec. Although physically and mentally impaired persons had formerly been institutionalized in the network of rehabilitation centres, an increasing effort was made to integrate them into the community by giving them the services they needed on an outpatient basis. As well, clients were said to be "registered" rather than "admitted", since the required services were no longer provided in an institutional setting. The services also changed, since the goal was no longer the same and was now to make it possible for persons with disabilities to lead a normal life.

[344] Under CAP, it was not necessary to identify the services provided and make separate claims for them, since, as soon as an institution was found eligible for cost sharing, all the services provided there became eligible under the assistance component. The situation changed when the *Fiscal Arrangements Act, 1977* came into force. Post-secondary education, hospital insurance and health insurance were then financed on a per capita basis through a block transfer, and thus without regard to actual expenditures. Adults in homes for special care were no longer covered under CAP except in respect of their basic needs (room and board), which corresponded to the amount of the old age pension and guaranteed income supplement. The federal government no longer contributed to lodging services and compensated the provinces by introducing a payment of $20 per person in

the context of block financing for established programs. However, this new financing formula did not affect the financing of welfare services. Quebec's argument is therefore that the services developed in residential resources that are at issue here (rehabilitation services, casework services of all kinds, visiting homemaker services to help persons with disabilities perform certain activities of daily living, referral and counselling services) were welfare services and therefore had to remain covered by CAP.

[345] The witness then explained that tools were developed in the early 1980s, in cooperation with the federal authorities, to identify outpatient services programs in rehabilitation centres and meet the requirements for making a claim. However, there was no framework for the residential resources program, nor were any claims made in relation to that program, until 1986-1987. That program was mainly for the clientele of persons with mental health disabilities (94 percent), since there were many fewer persons with physical disabilities in that type of resource. The program was submitted to the federal government in 1990, and the costs claimed were essentially for the wages of workers, instructors and beneficiary attendants. Since the beneficiaries who lived in those resources received social assistance benefits, they were able to pay for their rent, food and incidental expenses.

[346] Mr. Lafontaine then explained the origin of the conflict between the two parties. It seems that the CAP authorities required each outpatient services program to be identified in Schedule B of the agreement even if the institution where the staff was from was already listed in Schedule A for its assistance services and Schedule B for its welfare services. The Quebec representatives replied that such services provided in residential resources were indeed welfare services programs, since the

services were not delivered in a group home or institution where the beneficiary was a resident. The federal authorities responded that such services could not be listed when they were provided in a residential resource that corresponded to an institutional setting, that is, in a residential resource where the intensity level of the services (calculated in terms of the staff/beneficiary ratio) was such that the resource was equivalent to an institution. In Quebec's view, this argument was not sound because this concept of intensity of services was nowhere to be found in the Act in relation to welfare services.

[347] After obtaining additional information from Quebec and visiting a number of residential resources, the federal government agreed to recognize the residential resources program as a welfare service generally, but it refused to find that services provided in residential resources in which a staff of specialized instructors had to be continuously present were eligible. In an internal document from Quebec's Ministère de la Santé et des Services sociaux that was sent to the federal authorities, residential resources were classified based on four levels of need: levels 1 and 2 corresponded to lower levels of support, level 3 was for [TRANSLATION] "persons [who] need assistance with and training in self-sufficiency skills and require ongoing support", while level 4 was for [TRANSLATION] "persons [who] need a great deal of assistance with and training in nearly all self-sufficiency activities and require considerable support". Jacques Patry, Acting Regional Director, Cost-Shared Programs Directorate, Department of National Health and Welfare, wrote the following on this subject to Jean-Rock Pelletier from Quebec's Ministère de la Santé et des Services sociaux (Exhibit PGQ-29, page 1):

> [TRANSLATION] I am pleased to confirm the decision I told you about verbally last week, namely, that we are prepared to recognize these

> two programs [residential resources and rehabilitation foster families] as welfare services within the meaning of the Canada Assistance Plan. In the case of residential resources, we have taken into consideration the principle of services designed to promote the independence of persons with disabilities by enabling them to live in their own apartments or dwellings. However, there can be no question of recognizing as welfare services the intensive support services provided at levels 3 and 4 of the table of characteristics of residential resources based on four levels of personal need where such services are provided in "group homes", "pavilions" or other institutions where individuals reside. In other words, the fact that such support services are provided by a reception and rehabilitation centre does not mean they must automatically be considered welfare services. Where such services are provided to group home residents who are not primarily responsible for the home, we are obliged to consider the services part of the assistance costs intended to cover all their needs, and sharing of the costs incurred for adults in these circumstances is subject to the OAS/GIS maximum.

[348] In short, the federal government agreed to recognize the residential resources program as a welfare service, with the exception of resources that provided intensive support (that is, level 3 and 4 resources); in the opinion of the federal authorities, those resources were similar to homes for special care, and their costs were covered by the block financing provided for in the *Established Programs Financing Act*. Quebec never accepted that decision. The resulting cut under CAP, as estimated by the Quebec authorities, amounted to $57,688,154.

[349] On cross-examination, Mr. Lafontaine specified that the *Fiscal Arrangements Act, 1977* provided for the payment of $20 per inhabitant and not per user of the covered services. He also admitted that a person who needed ongoing support might require continuous service, even if such support did not necessarily mean a physical presence 24 hours a day. Finally, Mr. Lafontaine elaborated on the concept of a residential resource as opposed to a group home attached to an institution or establishment. The *Act respecting health services and social services* defined an

"establishment" as a reception centre, social service centre, local community service centre or hospital; a residential resource was not an establishment under that Act. Moreover, the objective of a residential resource was to socially integrate beneficiaries, who, along with their families, could make choices, participate in social and work activities and so on. The witness maintained that residential resources therefore had nothing to do with group homes, although he said that he could not describe in concrete terms how the services differed in the two types of institutions.
Mr. Lafontaine also conceded that a reception and rehabilitation centre was always involved at some point because it provided the services, was responsible for ensuring the welfare and safety of residents, helped them manage their money and stood surety for the leases that beneficiaries sometimes signed.

[350] Quebec's second witness was Michel Langlais, who worked in the field of mental impairment for 35 years, first as an instructor, then as a service manager in various institutions and finally as the general manager (1984-2004) of a life training centre that became a reception and rehabilitation centre after several mergers. He began by describing very emotionally how mentally impaired young persons had formerly been committed to the state, as it were, and at the same time divested of their personality so they became part of a group. He stressed that everything was done collectively in institutions; children were all dressed alike, were under constant observation and had no privacy. Parents were encouraged to forget them and could not see them unless they were invited to visit them.

[351] He then described one of the residences he had established. Physically, it was a house that was the same as the other buildings on the same street. Six young adults resided there. Each of them was mentally impaired, and some of them had a minor physical impairment. Two of them had job placements, and the other four took part in activities at a day centre. They were all from the institution managed by Mr. Langlais prior to deinstitutionalization. According to Mr. Langlais, they all made a great deal of progress (reduction in medication and aggressive behaviour) because of the more individualized and personalized support they received. The vast majority of individuals living in reception centres were thus gradually transferred to residences; as they became able to leave residential resources and live with complete independence, other individuals living with their families could be taken in.

[352] According to Mr. Langlais, the objective of a residential resource was to help the individuals living there equip themselves mentally and physically to lead an ordinary life in society. A service plan was therefore established and goals were set concerning health, intellectual matters, recreation, day-to-day lifestyle and budget management. All the workers referred to the plan. Workers accompanied residents in their daily activities, such as tidying their rooms, preparing breakfast and lunch, dressing, behaving properly at an activity centre and participating in group activities. Medical needs were transferred to the local community service centre, where all the nurses from the reception centre had been reassigned. Finally, the residents also used local resources and public transportation whenever possible.

[353] On cross-examination, Mr. Langlais said that users did not choose a residential resource themselves. In many cases, parents formed a housing corporation and made proposals that the reception centre assessed based on certain standards before giving its approval. Such a corporation was relatively autonomous in managing a residential resource, although the reception centre was always represented on the corporation's board of directors and continued to play a supervisory role. Workers, who were employed by the reception centre, could also report certain unacceptable situations to the centre. There was thus a partnership between the corporation and the reception centre.

[354] Mr. Langlais added that workers could be denied entry by users and had no key to the residence. The institution did not abdicate its responsibilities but offered the same types of services through the workers who went to the home. Thus, what changed was that services were delivered in a more personalized way. Workers continued to ensure that users had basic personal care, accompanied users in the community and also taught basic skills, but in an individualized manner. In short, the services provided by workers and volunteers covered all aspects of a user's day-to-day life. For safety reasons, there was always a supervisor on site at night. Finally, Mr. Langlais stressed that users were not "placed" but were offered a setting and made a decision with their families. Workers continued to be governed by their collective agreement, the only difference being that they were no longer assigned to a position or physical address but rather to cases.

[355] The third witness for Quebec, Rachel Portelance, held various positions in a children's rehabilitation centre and in residential services between 1986 and 1996. She described institutional

life in the same way as Mr. Langlais and emphasized that the state had taken charge of everything, paid all costs and not sought to make beneficiaries more independent. She also corroborated what Mr. Langlais had said about the attitude changes that resulted from deinstitutionalization, the physical appearance of residences, the origin of users (first from residential schools and then from families) and the participation of users in choosing their furniture, clothing, etc. She distinguished between being “admitted” to a residential school and being “registered” in a residential resource. She explained that users paid for their rent, food and telecommunication services themselves and that the lease was in the residents’ name.

[356] She noted that users received their social assistance cheque, a portion of which was deposited in a joint account for the people living in the residence to pay fixed costs (rent, groceries, etc.); they could use the rest as they wished for their incidental expenses. She also reiterated the explanations given by Mr. Langlais about the service plan, which was the focus for workers, volunteers and family members and which was based on each user’s objectives. There were two types of services: the treatment plan was applied by instructors, and support work unrelated to rehabilitation was done by beneficiary attendants. For other matters, local resources were used (hairdresser, dentist, doctor, bank, etc.).

[357] On cross-examination, she again essentially repeated what Mr. Langlais had said about the management of residential resources and the operation of foundations. However, she stressed that children were not “committed” to a residential resource by a local community service centre and that the only responsibility of the institution to which workers were attached was to ensure that the

staff did their work properly. Users were nonetheless given some support in an attempt to make them more independent. In her opinion, the institution therefore had no direct responsibility if a young person ran away, for example. However, the clientele served by Ms. Portelance was made up mainly of persons with mild impairments.

[358] The other three witnesses called by Quebec gave testimony broadly consistent with that of the first two witnesses: Éric Lavoie, who worked first in an institution where 45 individuals with severe mental disabilities resided and then as an instructor in two residences where the clients had mild or moderate impairments; Ginette Prieur, who at the relevant time was a beneficiary attendant and then the manager of a residential resource; and Pierre-François Beaulieu, who was an instructor in an institution and then in a residential resource. Therefore, I will simply refer to the parts of their testimony that were not previously covered by other witnesses.

[359] First of all, I note that five workers were assigned to a residence where seven people lived (one attendant and one instructor during the day and in the evening and one "watchman" at night). One of the witnesses stated that the social assistance cheque was sent to the institution to which the residential resource was attached, which took the portion needed for fixed costs and deposited the rest in the user's account; another said that the rent was paid to the institution, which took care of sending it to the owner. It was also stated that the institution verified the use of personal money and that most users were unable to sign their cheques. Because of the users' mild or moderate impairments, they could not be left alone in a residential resource, and a worker therefore had to be continuously present.

[360] Finally, Quebec called two expert witnesses, Mireille Tremblay and Jacques Rousseau. Ms. Tremblay has a bachelor’s degree and a master’s degree in social psychology and a Ph.D. in applied humanities. During the years relevant to this case, she worked for the Montérégie health and social services council as a mental health counsellor and then for the Montérégie regional health and social services board as a planning coordinator. Mr. Rousseau also has a bachelor’s degree, master’s degree and Ph.D. in sociology. In 1987-1989, he conducted a study on the social reintegration of mentally impaired persons who had lived in institutions on behalf of Quebec’s Ministère de la Santé et des Services sociaux. He has devoted most of his career to teaching and academic management at the Université du Québec à Trois-Rivières.

[361] Ms. Tremblay devoted a large part of her report and her testimony to explaining the process of deinstitutionalization and demonstrating that the change in the quality of life of persons with disabilities resulted from a profound transformation in the way society, public services and the state supported them in their march toward independence and social participation. In her opinion, there was a radical break from the old model, a change of paradigm that resulted in a true cultural, organizational and professional revolution.

[362] Primarily, there was a cultural revolution brought about by awareness of the unacceptable conditions imposed on persons who were committed to psychiatric asylums, deprived of their most basic rights, marginalized and excluded from society. There was a shift from a medical model in which “incapable” and “disabled” persons were taken charge of, protected and “cared for” to a

completely different social intervention model in which the state became responsible for supporting individuals in the process of recognizing their rights and the performance of fulfilling social roles. During that period, three events affected the policy and legislative framework for services for mentally impaired persons: the publication by the Ministère des Affaires sociales in 1988 of its policy on mental impairment, the reform of the *Act respecting health services and social services* in 1991, which merged all institutions providing services to impaired persons into a single body (the rehabilitation centre for mentally impaired persons) and, finally, the publication in 1992 of the health and welfare policy, one of the objectives of which was to decrease handicap situations for persons with disabilities, whatever the origin or nature of their disabilities.

[363] The transformation of services for mentally impaired persons also led to an organizational revolution. The regionalization of services, the community approach and program-by-program management changed centralized institutions into a network of resources spread out in the community. Three programs were thus established. First, a network of residential resources integrated into the community was developed to replace residential schools, pavilions and group homes. In the case of persons "admitted" to residential schools, all their needs were taken care of in an institutional context; they slept in dormitories, ate in common rooms, had very few or no personal effects, had no opportunity to make individual choices about food, clothing, recreation or work and had no access to community services or resources.

[364] With deinstitutionalization and the process of social integration, mentally impaired persons were "registered" for one or more services at a rehabilitation centre for mentally impaired persons

based on the needs identified in the individualized service plan. They voluntarily chose the adjustment, rehabilitation and social integration services they needed and received those services on an outpatient basis, whether they were residential integration services, socio-occupational services or support services. Despite the variety of options, all community residential resources accepted no more than nine persons in a single-family home. Adjustment, rehabilitation and social integration services were provided in a residential setting by employees of rehabilitation centres for mentally impaired persons with a view to developing such persons' coping skills. Their needs, the goals of adjustment and rehabilitation efforts and learning strategies were set out in treatment plans, which were generally prepared by specialized instructors supervised by professionals.

[365] The socio-occupational program encompassed occupational and work-related activities. As with residential resources, such services moved toward structures that were increasingly fragmented in the community, gradually getting away from segregated options that were solely for mentally impaired persons. Finally, the personal support program encompassed adjustment, rehabilitation and social integration activities carried out in the person's living environment. The purpose of such services was to develop coping skills, such as communication, personal care, domestic and social skills, work skills and the use of community, private and public services.

[366] Finally, the process of deinstitutionalization led to a professional revolution; as social integration progressed and community services were established, treatment models developed to meet needs in a community setting and decrease the obstacles to social integration. Improved knowledge of various client profiles or needs led to the emergence of new types of expertise relating

to education and cognitive development methods and strategies for supporting the performance of various fulfilling social roles.

[367] On cross-examination, Ms. Tremblay referred to the typology used in a document she had edited that was prepared on behalf of the Fédération québécoise des centres de réadaptation pour les personnes présentant une déficience intellectuelle ("Le chemin parcouru : De l'exclusion à la citoyenneté", 2000, filed as Exhibit D-16). According to that typology, the differences between group homes and group residences were only administrative in nature (the former were managed by reception and rehabilitation centres, while residents of the latter were financially self-sufficient and responsible for their lease). The document also states that persons in group residences generally required close supervision because of the nature and severity of their impairment.

[368] Ms. Tremblay also admitted that, in describing the various residential resources in her own report, she had drawn inspiration from a document prepared by two researchers for a seminar held in Montréal in 1995 ("Portrait des services aux personnes vivant avec une déficience intellectuelle au Québec", filed as Exhibit D-17). In that study, the description of community residential resources includes not only residential resources with allowances and family-type resources but also group homes administered and financed by a reception and rehabilitation centre and residential resources with continuous assistance, which are at issue in these proceedings. The latter are described as follows: [TRANSLATION] "encompass activities that seek to provide residential assistance and supervision and are carried out by a resource to which an institution pays an allowance to compensate for the support services it provides users".

[369] The second expert witness called by Quebec, Jacques Rousseau, maintained in this Court that the residential resources created during the 1980s and 1990s were completely different in their philosophy and practice from the institutional settings they replaced. This difference could be seen at three levels: (1) adherence to the new principle of normalization and social role valorization; (2) fundamental changes in day-to-day activities; and (3) improvement in the quality of life of persons with disabilities.

[370] Mr. Rousseau explained that the institutionalization of persons with a mental illness or impairment delayed healing or adjustment. It was also realized that the stigmatization associated with exclusion added to the perception of incompetence and marginalization; the feeling of dependence and alienation prevented progress toward adjustment and led to regression rather than improvement. This realization gave rise to the principle of normalization, which can be defined as engaging in behaviour and having attitudes that do not depart too much from the norm, from what is socially acceptable or desirable and from what is valued. The actualization of this principle means that, as much as possible, a person should have access to the same life experiences as most members of society (living in a normal residence, having exclusive ownership of property, experiencing work, meeting friends, acquiring some independence, using businesses and public services, acting one's age, etc.). The logical extension of the principle of normalization is the principle of valorization, under which it is essential for mentally impaired persons to acquire skills that allow them to perform certain valued social roles, such as work or recreation in the community. In practice, this involves living in dwellings of good quality in the community, acquiring some

independence in day-to-day tasks, getting an education or working in the same places as other people, using public transportation and, in short, sharing the same activities in a common space in the community.

[371] In Quebec, the principle of normalization was first reflected in the enactment in 1972 of the *Act respecting health services and social services*, which provided for the creation of a public network of reception and rehabilitation centres for persons with disabilities. The move from a psychiatric hospital to a regional reception centre could be considered a first step toward such integration into the community; the obligation to provide more individualized services was also a break from institutional culture. However, it was the passage of the *Act to secure the handicapped in the exercise of their rights*, S.Q. 1978, c. 7, that marked the beginning of profound changes in the organization of services for impaired persons. It was at that time that reception and rehabilitation centres began deinstitutionalizing persons who were not as severely impaired and sending them to community residential resources or family-type resources. The publication in 1984 of "On Equal Terms: The Social Integration of Handicapped Persons: A Challenge for Everyone" by the Office des personnes handicapées was an indication of this desire for integration based on the recognition of fundamental individual rights and served as a joint exercise to change the way people thought and gain acceptance for the principle of normalization.

[372] The application of the principle of social role valorization was made official in 1988 in the departmental policy on mental impairment, which was entitled: "L'intégration des personnes présentant une déficience intellectuelle : un impératif humain et social". That document stressed the

importance of moving from physical integration to social integration. The report demanded the irreversible closing of residential schools and reception centres so that resources and services could be provided exclusively in the community. This social integration was to occur through the place of residence, the school system and the workplace. In all, Quebec's Ministère de la Santé et des Services sociaux estimates that the number of persons in residential institutional services (10 or more spaces) at reception and rehabilitation centres went from 4,400 in 1980 to 700 in 1998.

[373] The application of the principle of normalization to persons with disabilities had the same consequences in the other provinces of Canada and in the United States around the same period of time. Like other provinces and states, Quebec accepted the principle of normalization; in response to this objective, the model for services provided to persons with mental disabilities changed radically despite resistance, which was quite strong at times, from employees' unions or even parents who feared a reduction in care.

[374] According to Professor Rousseau, the new residential resources had nothing to do with the institutions they replaced. Relying on two research studies in this field, he wrote the following in his report (filed as Exhibit PGQ-35, at page 10):

> [TRANSLATION] These resources must not be considered small, fragmented institutions even if the persons staying there come from institutions, sometimes have severe disabilities and, as a result, receive continuous support. There is one deciding factor that prevents us from considering them institutions, namely, that these new residential resources, whatever their name (group homes, supervised apartments, transitional apartments, etc.), whatever the number of residents (between one and eight, generally fewer than six), whatever the form of ownership or lease (rented by the persons with disabilities themselves, rented or purchased by an instructor,

> managed by a rehabilitation centre), whatever the ratio of workers to persons with disabilities (which can as high as 1:1), in short, whatever the variations that can be observed, what these resources have in common is that they adhere to the principle of normalization and use programs based on that principle with the goal of reintegrating residents physically and socially.

[375] Relying on an assessment tool developed to evaluate normalization and social role valorization (PASSING), those studies also concluded that persons with mental disabilities living in residential resources with continuous supervision were greatly ahead of those living in institutions. This conclusion was based on a large number of integration-related variables. It also seems that the number of persons living in such resources (fewer than three or between four and eight) had little impact on these results.

[376] In addition to the development of residential resources in the community, another method was used as an essential tool of normalization and integration, namely, the individualized service plan, which was a break from the standardized delivery method that characterized institutional settings. The individualized service plan made it possible to plan and coordinate services and resources based on a person's real needs, the goal being not so much to control the person as to make the person independent. The plan also made it possible to identify environmental constraints, the skills to be acquired for integration and the persons who had to be involved if the objectives of normalization were to be achieved.

[377] The programs or activities offered to impaired persons in residential resources in the community provide another illustration of the fundamental difference between such resources and

institutional settings. Persons with disabilities who were in group homes and dwellings saw their families more often. They had more outside activities, they made greater use of public services and they had more opportunities to meet persons who did not have disabilities. They therefore had a social network that was not made up solely of impaired persons or professional practitioners, which was an important criterion for normalization. Finally, although a large proportion of the persons in such resources had moderate or severe impairments, their skills were nonetheless very different from those of institutionalized persons. The main differences related to independence as well as domestic, communication, academic, socialization and work skills.

[378] Finally, the specificity of community residential resources was also apparent in the important process of professionalization that could be seen among the staff working in such new resources. Workers had to be more autonomous in their actions, more independent and capable of working with community organizations. This required different training. The first step was to offer training so that workers could move from institutions into the community. At the same time, the centres and organizations involved began increasing the training requirements for their employees, relying increasingly on specialized instructors and those holding a bachelor's degree in psychoeducation.

[379] Finally, according to Professor Rousseau, all of the empirical research illustrates the fact that persons with disabilities who left institutions to stay at smaller residential resources integrated into the community experienced a significant improvement in their quality of life, both objective and subjective. The principle of normalization not only provided the necessary theoretical and ethical

basis for the changes that occurred from 1985 to 1995 but also led to a profound transformation in day-to-day life and in the method of delivering services to such persons.

[380] On cross-examination, Professor Rousseau confirmed certain observations made in a document published by Quebec's Ministère de la Santé et des Services sociaux in 1996 ("Où est Phil, comment se porte-t-il et pourquoi? Une étude sur l'intégration sociale et sur le bien-être des personnes présentant une déficience intellectuelle", filed as Exhibit D-18), to which he referred frequently during his testimony. In particular, he confirmed that the resources at issue in this case are the ones characterized by the document as "strata" 2 and 3, that is, resources in which one to three and four to eight residents lived under continuous supervision. He also admitted, as stated in that document (page 20), that there was a fairly close connection between the severity of a person's mental impairment and degree of institutionality of the setting in which the person resided; for example, strata 2 and 3 resources were predominantly for persons with moderate impairments. However, while the clientele of stratum 1 resources (one to four residents under discontinuous supervision) and stratum 4 resources (eight or more residents under continuous supervision) was relatively homogeneous, there was a more diversified clientele in strata 2 and 3 resources, which had quite a high proportion (a little over 40 percent) of persons with severe or profound impairments (page 22). According to Professor Rousseau, this can be explained by the philosophy underlying deinstitutionalization, which was to place persons in residences based not only on their level of disability but also on their integration potential.

[381] Still referring to the same document (page 25), counsel for the defendant also noted that 20 to 50 percent of integration activities took place in the residence in the case of strata 2 and 3 resources. The witness explained this by saying that those activities were not merely for entertainment but also related to domestic and hygiene skills, etc. Moreover, the percentage of activities carried out under group supervision in strata 2 and 3 residences was much closer to the proportion in stratum 4 residences (institutional settings) than in stratum 1 residences. In this regard, the witness said that he was not really sure how the concept of supervision should be understood. Finally, counsel for the Government of Canada stressed that the percentage of activities carried out in the company of friends who were not impaired and family members was between one and ten percent for strata 2 and 3, which the witness confirmed, adding that there was indeed little community response to integration efforts.

(b) Evidence of the Government of Canada

[382] The federal government's main witness, Jean-Bernard Daudelin, explained how the interface between CAP and the *Fiscal Arrangements Act, 1977* was managed. In 1985, following discussions with the provinces, the Department of National Health and Welfare adopted guidelines (filed as Exhibit D-62) stating that, under the extended health care services program, block (per capita) financing applied to the cost of long-term care provided to adults, including in type 1 institutions, which were described as follows in that document (at page 21):

> [TRANSLATION]
>
> An adult care institution (type 1 institution) is an environment for adults in which residents receive the following services, usually for an extended period of time:

i. Personal care in the proper form, including the assistance required for residents to perform the usual activities of living, based on the needs of each resident, as well as occasional direct or preventive nursing care for a limited period of time, or
ii. A structured program of responsible supervisory care, normally provided day and night by qualified staff, and
iii. Social services, recreational services and the other services required to meet residents' psychosocial needs, and
iv. Lodging and meals in an institutional or custodial setting.

[383] The guidelines also stated that [TRANSLATION] "the level of care and services provided is the most important criterion for determining an institution's category" (page 22) and that the main factor for determining whether an institution was in this category was "the undertaking to provide services made by the institution, not the administrative arrangements for providing the services" (page 23). Finally, "residents should not be able to come and go as they please" and the institution "normally has an admission and departure policy" (page 24).

[384] Mr. Daudelin also introduced in evidence a letter written on January 14, 1991, by the Gouvernement du Québec to the director of social assistance programs and social services under CAP (filed as Exhibit D-62), which first set out the claim for residential resources. On January 15, 1992, in response to requests for additional information, the Gouvernement du Québec sent the CAP authorities a grid that classified residential resources into four levels based on the needs of the persons residing there (Exhibit PGQ-28). I have already referred to that table and the federal authorities' response at paragraph 347 of these reasons: basically, the federal government refused to

recognize as welfare services the intensive support services at levels 3 and 4 of the table showing the characteristics of residential resources provided by the Gouvernement du Québec.

[385] After visiting a number of residential resources, the federal authorities confirmed their decision. In a letter to the federal authorities on December 11, 1992 (Exhibit D-15), a representative of Quebec's Ministère de la Santé et des Services sociaux wrote the following:

> [TRANSLATION]
>
> Representatives of our directorate, accompanied by CAP representatives, recently visited certain residential resources operated as part of the social integration programs run by our reception and rehabilitation centres.
>
> These visits showed us that such resources may sometimes provide their beneficiaries with considerable support and supervision, to the point where they become comparable to institutional assistance-type services rather than outpatient services that are welfare services.
>
> In this context, it becomes necessary to determine for such resources at what point the shift occurs between an assistance cost and a welfare cost, the reference point being the level of services required by the clientele. This distinction is fundamental but particularly difficult to draw given the various intensity levels of the services that may be provided by a single resource when it has clients whose needs vary considerably (some residential resources place relatively independent cases with highly dependent ones).

[386] The same letter contained a cost sharing proposal. Discussions and exchanges continued until 1996, but no agreement could be reached. Mr. Daudelin also emphasized that the federal government maintained the same position with the other provinces.

[387] On cross-examination, Mr. Daudelin reiterated that level 3 and 4 residential resources (on the grid developed by Quebec) were comparable to adult residential care service and were therefore covered by the extended health care services program created as part of established programs financing. Since there was ongoing support in such resources and most of the persons providing services were employees of a reception and rehabilitation centre, the services could not be welfare services covered by CAP. Counsel for Quebec then referred to a memorandum dated December 11, 1995 (Exhibit PGQ-62), in which the author asserted that the Department of Health and Welfare, which was responsible for administering the extended health care services program, had never given CAP officials a clear answer about exactly what was covered by that program. Mr. Daudelin countered that the guidelines sent to the provinces were consistently applied and that the dissatisfaction expressed by the author of the memorandum over the answers provided by his colleagues from the Department of Health and Welfare changed nothing.

[388] Mr. Daudelin stated that the cut made by the federal government was gradual. Since the mildest cases were deinstitutionalized first, the adjustments were not as great initially. More severe cases were then deinstitutionalized and a greater adjustment was made, reaching 25 percent. That cut, which was intended to be a temporary arrangement, was applied to all the costs claimed by Quebec for residential resources; according to the witness, the federal government did not identify each resource and specifically exclude level 3 and 4 resources because it did not have the information to do so.

[389] The federal government also called one expert witness, Jacques Pelletier. He has been an organizational development consultant as well as a consultant in the field of human services and social policy development for persons with disabilities for more than 30 years. During his career, he has held senior management positions in public sector institutions and regional, provincial and national organizations. He has also published or contributed to the publication of several works and done consulting and assessment work for the Office des personnes handicapées du Québec, several regional health and social services councils and Quebec’s Ministère de la Santé et des Services sociaux. Finally, he has also served as the director of the National Institute on Mental Retardation and the Canadian and Quebec mental impairment associations.

[390] Mr. Pelletier began by maintaining that the reports of Mireille Tremblay and Jacques Rousseau did not address the real issue, namely, whether and to what extent it is possible, as argued by Quebec, to distinguish between the services provided in residential resources from 1986 to 1996 and the services provided in homes for special care. He concluded that, beyond the objectives of normalization and social integration that their introduction sought to achieve, the services provided by reception and rehabilitation centres in residential resources during the relevant period were ultimately comparable to a very large extent (probably for more than 90 percent of the clientele of such resources) to the services provided in homes for special care.

[391] Mr. Pelletier traced the evolution of the deinstitutionalization process in Quebec back to the creation in the early 1960s of life training centres, the objective of which was to replace many large mental institutions and residential schools. In the early 1970s, they were replaced by reception and

rehabilitation centres, which established smaller residential units designated by the name "group homes". In the early 1980s, even smaller units were created, including residential resources. From then on, services were delivered in residential resources through the staff of reception and rehabilitation centres, who had the same collective agreements as before. They continued to provide services that included room and board, personal or nursing care and social rehabilitation services.

[392] This witness too stated that the deinstitutionalization of impaired persons and the actualization of the principle of normalization were not phenomena specific to Quebec; they could also be observed elsewhere in Canada and in the United States starting in the 1960s. Although the pace of deinstitutionalization may have varied from one jurisdiction to another, the models for taking charge and providing services and accommodation were substantially the same. They were all centred around principles related to recognition of the rights of impaired persons as full citizens, access to free services of good quality and community integration.

[393] When considered in generic terms, residential resources were institutions for impaired persons which were generally located in a residential neighbourhood and were served by reception and rehabilitation centres to ensure, from the perspective of normalization, that their residents could remain in the community. They were therefore a type of specialized accommodation in which continuous support and supervision were provided to individuals who, for the most part, would have been unable to live there on their own without them. These resources took various forms over the years. The specific resources at issue in this case (which the witness called community or group residences) were similar to group homes except that the building housing such a resource was

usually owned not by a reception and rehabilitation centre but rather by a foundation controlled by the centre or by individuals with whom the centre negotiated a residential lease. According to the witness, this was why the residents were “registered” rather than “admitted”, since the reception and rehabilitation centre did not own the premises.

[394] Based on a detailed analysis of the organizational structure and range of services provided by reception and rehabilitation centres in residential resources, Mr. Pelletier stated that there were significant similarities between most residential resources and the services provided in life training centres and group homes. Residents were given continuous support and supervision, which were necessary for them to remain in the community. As in life training centres, that support ranged from personal care and the learning of basic skills to nursing and paramedical care to special education and rehabilitation services designed to develop social skills. As in the case of life training centres, reception and rehabilitation centres were ultimately responsible for the welfare and safety of the residents of such resources, which basically depended for their existence on the financial support and services provided by reception and rehabilitation centres. Whether they were recorded as “admitted” or “registered”, residents of residential resources were “placed” there by reception and rehabilitation centres and depended entirely on the services provided there to be functional. Reception and rehabilitation centres took charge of them and, when all is said and done, determined all aspects of their day-to-day lives. Ultimately, the main difference between residential resources and life training centres had to do with the procedures for delivering services, particularly the location where certain services were delivered. The services provided in residential resources were therefore comparable to services provided in homes for special care.

[395] During his testimony, Mr. Pelletier maintained that the names of the persons with disabilities were on the lease so they could prove that they were registered and no longer admitted and could thus receive their welfare cheques. However, the reception and rehabilitation centre remained responsible for the house and could move residents and close a residence even if the residents' names were on the lease. In any event, a curator, tutor or relative usually signed the lease because such persons were incapable of doing so. Thus, the change may have been important in symbolic terms, but in practice, the reception and rehabilitation centre continued to manage the residence, place individuals there and move them; this was simply a convenient way of developing services without increasing the institution's budget. He also maintained that the general manager of the reception and rehabilitation centre remained responsible for the residents of residential resources. In short, Mr. Pelletier admitted that assistance for persons with disabilities was more successful in a smaller environment than in an institutional setting, but he said that the service envelope and social mission remained the same.

III. ANALYSIS

[396] As already stated, Quebec's position is that the services provided to persons with disabilities living in residential resources were "welfare services" as described in section 2 of CAP and could not be equated with services provided in "homes for special care" as defined in the same legislative provision. Accordingly, they could not be considered "adult residential care service" for the purposes of the *Fiscal Arrangements Act, 1977* and thus could not be excluded from cost sharing under paragraph 5(*c*) of CAP.

[397] All of Quebec's arguments are based on the premise that the concept of "residential resource" reflects a philosophy diametrically opposed to the one underlying the practices observed in institutional settings. The phenomenon of deinstitutionalization, which to some extent dates back to the early 1960s but which picked up speed in the late 1970s, resulted in a change of paradigm, as it were. The standardized approach commonly used in large mental institutions was gradually abandoned in favour of a more individualized approach because of a concern to recognize the fundamental rights of persons with disabilities, of which they had often been deprived in the past, integrate them better into the community and improve their standing.

[398] This profound transformation in our way of dealing with mental (and physical) impairment and this commitment to seeing persons with disabilities as full citizens and individuals whose autonomy had to be respected could not be put into effect in large institutions. In Quebec as elsewhere in Canada, it was therefore quickly realized that the institutions in which thousands of individuals were "parked" had to be replaced by smaller living units wherever possible. Pursuing the goals of integration, individualization and valorization in an institutional setting quickly became inconceivable. This development gave rise to various types of community resources, particularly the residential resources at issue in this case. This awareness, and the resulting organizational changes that have occurred over the past 40 years in Quebec, were described very well by both parties' expert witnesses, making it possible to place this debate in its proper context.

[399] If we are to believe the plaintiff, a common feature of all the types of accommodation for adults with disabilities that were created over the years to replace residential schools and mental institutions was that they adhered to the principle of normalization, whatever their name (group home or residence, residential resource with continuous assistance, family-type resource, supervised apartment, independent apartment, etc.), the number of residents (between one and eight), the form of ownership or lease of the residence (rented or purchased by the reception and rehabilitation centre, rented by an instructor from the reception and rehabilitation centre or by the persons with disabilities themselves) and the ratio of workers to persons with disabilities (which could be as high as one worker for each resident).

[400] In the case of residential resources in particular, it was argued that they provided a natural living environment comparable to the living environment of any other citizen. Residents, whatever their level of disability, were "at home" there insofar as they paid their own lodging and food expenses; they sometimes even signed the lease. Such resources were therefore more similar to a home than an institution. Residents were not "admitted" as to an institution but were simply "registered" on the list of beneficiaries of outpatient services provided by a reception and rehabilitation centre. They therefore did not receive adult residential care service within the meaning of the *Fiscal Arrangements Act, 1977*.

[401] Although appealing, this position does not stand up to analysis. Although I am prepared to admit that the residential resources with continuous assistance at issue in this case differed from residential schools and did not share their essential features, I am nonetheless of the opinion that

they must be considered institutions in respect of adults and homes for special care for the following reasons.

[402] Counsel for the Gouvernement du Québec placed considerable emphasis on the fact that residential resources made it possible to provide persons with disabilities with support that was much more personalized than in an institution, thus allowing them to become more independent and integrate into their environment as they could never have done before. I think there is no doubt that a smaller living environment more similar to a single-family dwelling created more potential for normalization than a residential school, which the defendant did not deny. Although institutions for persons with mental disabilities were undoubtedly no longer in 1986 what they had been previously, I have no difficulty accepting that they were unsuited to the objectives of integration and normalization that had been established and that they were, so to speak, locked into a mould and bound by the limitations associated with the number of beneficiaries staying in them, not to mention the secular culture that permeated them.

[403] The various workers who testified for the Gouvernement du Québec all stressed the advantages that residential resources offered persons with disabilities, particularly the fact that they could make choices, they were entitled to more privacy, they were no longer dressed alike or given the same hairstyle, they saw their parents more and there were fewer group activities. The witnesses also noted that their behavioural disorders tended to decrease, resulting in lighter medication. These were all very positive developments, and I have no reason to think that these observations made by the witnesses do not reflect reality. I therefore have no difficulty accepting that residential resources

differed radically from reception and rehabilitation centres and the other institutions that preceded them and that they cannot be considered mere dismemberments that reproduced, on a smaller scale, the institutional living environments from which they sprang.

[404] However, is this enough to conclude that such residential resources, when providing continuous services, were not "homes for special care" in which "adult residential care service" was offered? The evidence showed that the services provided to persons with disabilities in residential resources were much more similar to the services described in paragraph 24(2)(*b*) of the *Fiscal Arrangements Regulations, 1977* (quoted at paragraph 336 of these reasons) than to welfare services as defined in section 2 of CAP.

[405] All of Quebec's witnesses listed the services provided to beneficiaries in relatively similar terms. They mentioned help with personal hygiene and meal preparation, dressing, accompaniment to social activities or workshops, the development of socialization skills and supervision. In fact, one of the witnesses said that the institution provided essentially the same services as before, the only difference being that workers went to the place where beneficiaries resided to provide the services (see the testimony of Michel Langlais, volume 6 of the transcript, pages 61-64). In short, the services covered all aspects of daily living, although they could vary a little from one residence to another based on the nature and severity of the residents' disabilities. Without a doubt, the services corresponded to the definition of "adult residential care service" in the *Fiscal Arrangements Regulations, 1977* and to the description of that service found in the Department of National Health guidelines to which I have already referred (see paragraph 382 of these reasons).

[406] I also note that the services could not be considered outpatient welfare services provided by the institution as submitted by the Gouvernement du Québec. An attempt was made to argue that the services provided to persons with disabilities in residential resources were “casework, counselling, assessment and referral services” and “homemaker, day-care and similar services” under the definition of “welfare services” found in paragraphs (*b*) and (*d*) of section 2 of CAP. First of all, it was not proved that the services provided to persons with disabilities had as their object “the lessening, removal or prevention of the causes and effects of poverty, child neglect or dependence on public assistance”, as required by the introductory paragraph of the definition of “welfare services”. As with the other two components of the claim, counsel for Quebec therefore come up against the fact that CAP had a selective purpose that stood in contrast to the universal nature of Quebec’s *Act respecting health services and social services*. Moreover, the correspondence between the services provided to persons living in residential resources and the various services referred to in the definition of “welfare services” strikes me as problematic in some respects, to say the least. The definition of “adult residential care service” is much more consistent with the nature of the services in question.

[407] However, I believe that the greatest obstacle the plaintiff must overcome to succeed derives from the intensity of the services provided. The evidence showed that persons living in residential resources with continuous assistance required continuous support to be able to function and could not be left alone because some of them had quite serious behavioural disorders. It also seems that the ratio of workers to beneficiaries was generally quite high; some witnesses stated, for example,

that for seven beneficiaries, there were two teams of two people (one worker and one attendant) that took turns during the day as well as one “sleeper” who provided supervision during the night.

[408] It is true, as counsel for Quebec argued, that this concept of intensity of services was not explicitly referred to anywhere in CAP or the regulations thereunder. However, I believe that it was inherent and implicit in the very concept of adult residential care service provided in an “institution”, the definition of which referred to the definition of “home for special care” in CAP. As already noted, the kinds of residential welfare institutions that could be recognized as homes for special care were specified in section 8 of the *Canada Assistance Plan Regulations* (reproduced at paragraph 21 of these reasons). All the institutions listed in that section were clearly places where services were provided on an ongoing, continuous basis and not on an as-needed basis. Paragraph 8(*f*) in particular referred to “any residential welfare institution <u>the primary purpose of which</u> is to provide residents thereof with supervisory, personal or nursing care or to rehabilitate them socially” (emphasis added).

[409] It therefore seems to me that the intensity of the services provided in-house at a residential resource is indeed most relevant in determining the resource’s status for the purposes of cost sharing under CAP. To establish that the services provided to residents of residential resources were outpatient welfare services provided by the institution, a little like the visiting homemaker services provided by local community service centres, Quebec had to show that the instructors, workers and attendants delivered services to persons with disabilities on an as-needed basis only, thus providing support without their continuous presence being indispensable. This is not what the evidence shows.

[410] In fact, the vast majority of services to persons with disabilities were provided by unionized employees of reception and rehabilitation centres and the rehabilitation centres for mentally impaired persons that replaced them in 1991. Not only did they deliver substantially the same services they had provided in institutions (although more individualized), but they also worked shifts and maintained a continuous presence for beneficiaries. It is also significant how the needs of persons living in the residential resources at issue in this case were described in a table provided by the Gouvernement du Québec in response to a request for information from the federal authorities, to which I have already referred at paragraph 347 of my reasons. The table indicated that persons residing in level 3 residential resources [TRANSLATION] "need assistance with and training in self-sufficiency skills and require ongoing support", while persons residing in level 4 residential resources [TRANSLATION] "need a great deal of assistance with and training in nearly all self-sufficiency activities and require considerable support". These characteristics can be contrasted with the needs of persons living in levels 1 and 2 residential resources, who were more independent and required assistance and supervision only from time to time.

[411] Counsel for Quebec tried to argue that the table was merely an internal document that did not necessarily reflect actual practice. This argument does not seem very credible given that the document was provided to the Director, Cost-Shared Programs at the Department of National Health and Welfare in response to a request for clarification concerning residential resources. It was also argued, without much conviction, that the level of need did not necessarily correspond to the level of services; this argument strikes me as fallacious and, indeed, was not developed at length. In

any event, the table is quite consistent with the evidence relating to the services provided in residential resources with continuous assistance that were excluded from cost sharing by the federal authorities.

[412] A document to which I have already referred (see paragraph 368 of these reasons) was also filed in evidence to show the unit cost of different types of accommodation. It is significant to note that costs in family-type resources were much lower than costs in residential resources with continuous assistance and that the latter were, on the other hand, similar to costs in residential schools and group homes. Once again, this tends to confirm the high intensity level of the support provided in residential resources with continuous assistance, which the same document described as resources in which services were provided 24 hours a day, seven days a week.

[413] The Gouvernement du Québec also argued that residential resources could not be considered institutions or establishments because such bodies were regulated by the *Act respecting health services and social services* (S.Q. 1971, c. 48; S.Q. 1991, c. 42) and had to have a permit to operate (1971 Act, section 136; 1991 Act, section 437). Residential resources did not have a permit, nor were they listed in the institutional permit of the reception and rehabilitation centre or rehabilitation centre for mentally impaired persons to which they were attached. In support of this argument, the plaintiff cited a few cases in which it was concluded that residential resources were not institutions.

[414] I do not think that a Quebec statute can be used to interpret a federal statute. The administrative organization of a province’s social affairs network cannot influence the scope of the

concepts used by Parliament in the context of CAP. Unless provincial legislation is explicitly referred to by incorporation or otherwise, as was the case in section 21 of the JDA, it cannot influence the interpretation of federal legislation and limit or extend its scope. Nor is the case law relied on by Quebec of any use to it, since it relates to legislation or regulations that have nothing to do with CAP.

[415] It is very clear from reading CAP, the *Fiscal Arrangements Act, 1977* and the regulations thereunder that the concepts of "home for special care" and "institution" did not refer to the number of residents, the size of a place of accommodation or the legal status or administrative structure of an institution. These two expressions referred first and foremost to the nature of the services provided. Even assuming that Quebec's *Act respecting health services and social services* can be considered, it can therefore be of only limited utility in determining whether residential resources with continuous assistance must be considered homes for special care for the purposes of CAP or institutions under the *Fiscal Arrangements Act, 1977*.

[416] Counsel for Quebec argued that residential resources were more similar to homes than institutions. This argument conflicts with the intensity and nature of the services provided, as I tried to show above based on the evidence submitted to the Court, and also with the close relationship between residential resources and the institution on which they depended for the services they received. The evidence shows that reception and rehabilitation centres were very involved in choosing a residence and determining who would live together and were also responsible for the staff that delivered services to persons with disabilities. Although users themselves sometimes

signed the lease, it was not unusual for a worker to be legally responsible for the rent or for the reception and rehabilitation centre to stand surety for the lease. It also seems that the social assistance cheques received by users were often managed by a worker and were sometimes even sent directly to the address of the reception and rehabilitation centre to which the residential resource in which they lived was attached. It was also mentioned that the residential resource was the workplace of the instructors and workers; they had a filing cabinet and logbook there, and they had a bulletin board where union announcements and internal memos were posted. The management of the reception and rehabilitation centre was also represented on the boards of directors of the non-profit organizations that sometimes owned the residential resources. In short, reception and rehabilitation centres (and subsequently rehabilitation centres for mentally impaired persons) remained accountable to the users of residential resources; institutions did not abandon their residents, as the various workers who testified made a point of noting, and continued to closely supervise the services and living environment of persons with disabilities, if only to reassure their parents. Thus, it is not really possible to talk about homes where residents received only limited assistance on an as-needed basis, even if every effort was made to ensure that residential resources were as similar as they could be to normal dwellings where users could live like their neighbours as much as possible.

[417] I believe that one final point needs to be made before concluding. The plaintiff, through his principal witness, Jacques Lafontaine, conceded that group homes were type 1 institutions within the meaning of the *Fiscal Arrangements Act, 1977* and therefore had to be excluded from all claims under CAP (see transcript, volume 5, page 206). Yet group homes differed from residential

resources only in their administrative arrangements. One of the main differences was that group homes were listed on the institutional permit of the reception and rehabilitation centre with which they were associated; users were therefore “admitted” rather than “registered” in that type of dwelling, contrary to the situation in residential resources. The other distinction that was stressed was that group home residents did not receive social assistance benefits; the reception and rehabilitation centre therefore paid the cost of room and board in such homes, whereas the users of residential resources paid those expenses out of their social assistance cheques.

[418] I consider these distinctions to be of very little significance given that the services provided in these two types of institutions were very similar. In fact, the documentary evidence filed in this Court, to which I have already referred (see, *inter alia*, paragraphs 367 and 368 of these reasons) identifies only the registered/admitted distinction and the eligibility of persons living in residential resources for social assistance benefits to demarcate what are otherwise considered two examples of community resources. In the same vein, I note that the document filed as Exhibit D-18 (to which I have already referred at paragraph 380) defines the various strata of residential structures in terms of supervision and the number of users rather than their legal status. This confirms, if need be, that legal status and mere administrative arrangements were the essential differences between group homes and residential resources.

[419] On the other hand, group homes and residential resources were similar in terms of their number of residents, their location, their physical appearance, their objectives and the services provided there. I consider this much more conclusive, at least in deciding whether residential

resources were institutions within the meaning of the *Fiscal Arrangements Act, 1977*. If group homes were type 1 institutions whose services could not be cost-shared under CAP because of the exclusion in paragraph 5(2)(*c*) of CAP, the same must therefore be true of residential resources with continuous support.

[420] Accordingly, for all these reasons, I conclude that the refusal by the Government of Canada to pay half the cost of services provided in residential resources, at least for the clientele in need of continuous assistance, was well founded in fact and in law. Such services were already covered by the extended health care services program created by the *Fiscal Arrangements Act, 1977* and were therefore excluded from CAP by paragraph 5(2)(*c*) of CAP.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the questions set out in an order made on October 1, 2004, be answered, as follows:

1. Was Canada required under CAP to share the cost of expenses incurred by Quebec for pre-disposition and post-disposition services provided to juvenile delinquents during the period from January 1979 to March 1984?

   Answer: No

2. If so, does the contribution paid to Quebec by Canada under the financial agreement entered into under the *Young Offenders Act* that came into force on April 2, 1984, have to be adjusted accordingly?

   Answer: Moot

3. Was Canada also required under CAP to share the cost of expenses incurred by Quebec between 1973 and 1996 for social services provided in schools?

   Answer: No

4. Is Quebec in any event precluded from now claiming cost sharing for expenses it incurred for social services provided in schools?

   Answer: No

5. As well, was Canada required under CAP to share the cost of expenses incurred by Quebec between 1986 and 1996 for support services provided to adults with disabilities living in residential resources?

   Answer: No

6. Finally, insofar as Canada is required under CAP to share the cost of expenses incurred by Quebec for (1) social services provided in schools and (2) support services provided to adults with disabilities living in residential resources, do the financial contribution paid to Quebec by Canada under CAP for the 1995-1996 fiscal year, at the end of which CAP was repealed, and the contribution paid since then under the *Canada Health and Social Transfer* have to be adjusted accordingly?

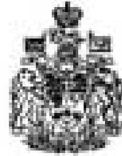
   Answer: Moot

With costs to the defendant.

"Yves de Montigny"
Judge

Certified true translation
Susan Deichert, Reviser

SCHEDULE A



REVISED STATUTES OF CANADA, 1985

Prepared under the authority of the Statute Revision Act

VOLUME I

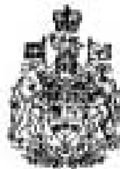
©
QUEEN'S PRINTER FOR CANADA
OTTAWA, [illegible]

LOIS RÉVISÉES DU CANADA (1985)

Révision réalisée sous le régime de la Loi sur la révision des lois

VOLUME I

©
IMPRIMEUR DE LA REINE POUR LE CANADA
OTTAWA, [illegible]



CHAPTER C-1

An Act to authorize the making of contributions by Canada toward the cost of programs for the provision of assistance and welfare services to and in respect of persons in need

Preamble

WHEREAS the Parliament of Canada, recognizing that the provision of adequate assistance to and in respect of persons in need and the prevention and removal of the causes of poverty and dependence on public assistance are the concern of all Canadians, is desirous of encouraging the further development and extension of assistance and welfare services programs throughout Canada by sharing more fully with the provinces in the cost thereof;

THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Canada Assistance Plan*. R.S., c. C-1, s. 1.

INTERPRETATION

Definitions

2. In this Act,

"assistance" «assistance publique»

"assistance" means aid in any form to or in respect of persons in need for the purpose of providing or providing for all or any of the following:

(*a*) food, shelter, clothing, fuel, utilities, household supplies and personal requirements (hereinafter referred to as "basic requirements"),

(*b*) prescribed items incidental to carrying on a trade or other employment and other prescribed special needs of any kind,

CHAPITRE C-1

Loi autorisant le Canada à contribuer aux frais des régimes visant à fournir une assistance publique et des services de protection sociale aux personnes nécessiteuses et à leur égard

Préambule

Considérant que le Parlement du Canada, reconnaissant que l'instauration de mesures convenables d'assistance publique pour les personnes nécessiteuses et que la prévention et l'élimination des causes de pauvreté et de dépendance de l'assistance publique intéressent tous les Canadiens, désire encourager l'amélioration et l'élargissement des régimes d'assistance publique et des services de protection sociale dans tout le Canada en partageant dans une plus large mesure avec les provinces les frais de ces programmes,

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

TITRE ABRÉGÉ

Titre abrégé

1. *Régime d'assistance publique du Canada*. S.R., ch. C-1, art. 1.

DÉFINITIONS

Définitions

2. Les définitions qui suivent s'appliquent à la présente loi.

«année» "year"

«année» Période de douze mois se terminant le 31 mars.

«assistance publique» "assistance"

«assistance publique» Aide sous toutes ses formes aux personnes nécessiteuses ou à leur égard en vue de fournir, ou de prendre les mesures pour que soient fournis, l'ensemble ou l'un quelconque ou plusieurs des services suivants :

a) la nourriture, le logement, le vêtement, le combustible, les services d'utilité publi-

(*c*) care in a home for special care,

(*d*) travel and transportation,

(*e*) funerals and burials,

(*f*) health care services,

(*g*) prescribed welfare services purchased by or at the request of a provincially approved agency, and

(*h*) comfort allowances and other prescribed needs of residents or patients in hospitals or other prescribed institutions;

"child welfare authority" «autorité chargée...»

"child welfare authority" means any provincially approved agency that has been designated by or under the provincial law or by the provincial authority for the purpose of administering or assisting in the administration of any law of the province relating to the protection and care of children;

"health care services" «services de santé»

"health care services" means medical, surgical, obstetrical, optical, dental and nursing services, and includes drugs, dressings, prosthetic appliances and any other items or health services necessary to or commonly associated with the provision of any such specified services, but does not include insured health services within the meaning of the *Canada Health Act* or any other prescribed hospital care services;

"home for special care" «foyer...»

"home for special care" means a residential welfare institution that is of a kind prescribed for the purposes of this Act as a home for special care and that is listed in a schedule to an agreement under section 4, but does not include a hospital, correctional institution or institution whose primary purpose is education, other than that part of a hospital that is used as a residential welfare institution and that is listed in a schedule to an agreement under section 4;

"Minister" «ministre»

"Minister" means the Minister of National Health and Welfare;

"municipality" «municipalité»

"municipality" means an incorporated city, metropolitan authority, town, village, township, district or rural municipality or other incorporated municipal body however designated, and includes any other local government body that is established by or under a law of a province and that is prescribed for the purposes of this Act as a municipality;

"person in need" «personne...»

"person in need" means

(*a*) a person who, by reason of inability to obtain employment, loss of the principal

que, les fournitures ménagères et les services répondant aux besoins personnels (ci-après appelés «besoins fondamentaux»);

b) les articles réglementaires, accessoires à l'exercice d'un métier ou autre emploi, ainsi que les services répondant aux autres besoins spéciaux réglementaires de toute nature;

c) les soins dans un foyer de soins spéciaux;

d) les déplacements et moyens de transport;

e) les obsèques et enterrements;

f) les services de santé;

g) les services réglementaires de protection sociale dont l'acquisition est faite par un organisme approuvé par une province ou à la demande d'un tel organisme;

h) les allocations de menues dépenses et autres services réglementaires répondant aux besoins des résidents ou malades des hôpitaux ou autres établissements réglementaires.

«autorité chargée de la protection infantile» "child..."

«autorité chargée de la protection infantile» Tout organisme approuvé par une province qui a été désigné par la législation provinciale ou sous son régime ou par l'autorité provinciale pour appliquer ou pour aider à appliquer toute loi de la province relative à la protection et au soin des enfants.

«autorité provinciale» "provincial authority"

«autorité provinciale» Le ministre provincial ou une autorité ou un organisme autre spécifié par la province dans un accord conclu en vertu de l'article 4 comme chargé de l'application de la législation provinciale.

«foyer de soins spéciaux» "home..."

«foyer de soins spéciaux» Établissement de protection sociale qui est d'un genre défini par règlement, pour l'application de la présente loi, à titre de foyer de soins spéciaux et qui figure dans la liste d'une annexe à un accord conclu en vertu de l'article 4. Sont exclus de la présente définition les hôpitaux, les établissements correctionnels et les établissements dont le principal objet est l'enseignement, à l'exception de la partie d'un hôpital utilisée à titre d'établissement résidentiel de protection sociale et qui figure dans la liste d'une annexe à un accord conclu en vertu de l'article 4.

«législation provinciale» "provincial law"

«législation provinciale» Les lois provinciales qui prévoient à des conditions compatibles

family provider, illness, disability, age or other cause of any kind acceptable to the provincial authority, is found to be unable, on the basis of a test established by the provincial authority that takes into account the budgetary requirements of that person and the income and resources available to that person to meet those requirements, to provide adequately for himself, or for himself and his dependants or any of them, or

(*b*) a person under the age of twenty-one years who is in the care or custody or under the control or supervision of a child welfare authority, or a person who is a foster-child as defined by regulation,

and for the purposes of paragraph (*e*) of the definition "assistance" includes a deceased person who was a person described in paragraph (*a*) or (*b*) of this definition at the time of his death or who, although not such a person at the time of his death, would have been found to be such a person if an application for assistance to or in respect of him had been made immediately before his death;

"prescribed" *Version anglaise seulement*

"prescribed" means prescribed by regulation;

"provincial authority" «autorité provinciale»

"provincial authority" means the provincial Minister or other official or body specified by the province in an agreement entered into under section 4 as being charged with the administration of the provincial law;

"provincial law" «législation...»

"provincial law" means the Acts of the legislature of a province that provide for

(*a*) assistance, or

(*b*) welfare services in the province,

under conditions consistent with the provisions of this Act and the regulations, and includes any regulations made under those Acts;

"provincially approved agency" «organisme...»

"provincially approved agency" means any department of government, person or agency, including a private non-profit agency, that is authorized by or under the provincial law or by the provincial authority to accept applications for assistance, determine eligibility for assistance, provide or pay assistance or provide welfare services and that is listed in a schedule to an agreement under section 4;

"welfare services" «services de protection sociale»

"welfare services" means services having as their object the lessening, removal or preven-

avec les dispositions de la présente loi et des règlements :

a) soit l'assistance publique;

b) soit des services de protection sociale dans la province.

Est visé par la présente définition tout règlement pris en vertu de ces lois.

«ministre» "*Minister*"

«ministre» Le ministre de la Santé nationale et du Bien-être social.

«municipalité» "*municipality*"

«municipalité» Ville constituée en personne morale, autorité métropolitaine, municipalité d'une ville, d'un village, d'un canton, d'un district ou d'une région rurale ou autre organisme municipal constitué en personne morale quelle qu'en soit la désignation. Est visé par la présente définition tout autre organisme d'administration locale créé par une loi provinciale ou en vertu d'une telle loi et défini par règlement, pour l'application de la présente loi, comme étant une municipalité.

«organisme approuvé par la province» "*provincially...*"

«organisme approuvé par la province» Tout ministère gouvernemental, toute personne ou tout organisme, y compris un organisme privé sans but lucratif, que la législation ou l'autorité provinciale autorise à accepter des demandes d'assistance publique, à déterminer l'admissibilité à une telle assistance, à fournir ou à payer cette assistance ou à fournir des services de protection sociale et qui figure dans la liste d'une annexe à un accord conclu en vertu de l'article 4.

«personne nécessiteuse» "*person...*"

«personne nécessiteuse» Selon le cas :

a) personne qui, par suite de son incapacité d'obtenir un emploi, de la perte de son principal soutien de famille, de sa maladie, de son invalidité, de son âge ou de toute autre cause acceptable pour l'autorité provinciale, est reconnue incapable — sur vérification par l'autorité provinciale qui tient compte des besoins matériels de cette personne et des revenus et ressources dont elle dispose pour satisfaire ces besoins — de subvenir convenablement à ses propres besoins ou à ses propres besoins et à ceux des personnes qui sont à sa charge ou de l'une ou plusieurs d'entre elles;

b) personne âgée de moins de vingt et un ans qui est confiée aux soins ou à la garde d'une autorité chargée de la protection infantile ou placée sous le contrôle ou la surveillance d'une telle autorité, ou per-

tion of the causes and effects of poverty, child neglect or dependence on public assistance, and, without limiting the generality of the foregoing, includes

(*a*) rehabilitation services,

(*b*) casework, counselling, assessment and referral services,

(*c*) adoption services,

(*d*) homemaker, day-care and similar services,

(*e*) community development services,

(*f*) consulting, research and evaluation services with respect to welfare programs, and

(*g*) administrative, secretarial and clerical services, including staff training, relating to the provision of any of the foregoing services or to the provision of assistance,

but does not include any service relating wholly or mainly to education, correction or any other matter prescribed by regulation or, except for the purposes of the definition "assistance", any service provided by way of assistance;

"welfare services provided in the province" *«services de protection sociale fournis...»*

"welfare services provided in the province" means welfare services provided in the province pursuant to the provincial law to or in respect of persons in need or persons who are likely to become persons in need unless those services are provided;

"year" *«année»*

"year" means a twelve month period ending on March 31. R.S., c. C-1, s. 2; 1984, c. 6, s. 24.

sonne qui est un enfant placé en foyer nourricier selon la définition des règlements.

Pour l'application de l'alinéa *e*) de la définition de «assistance publique», est assimilée à une personne nécessiteuse une personne décédée qui était une personne visée par l'alinéa *a*) ou *b*) de la présente définition au moment de son décès ou qui, bien qu'elle ne fût pas une telle personne au moment de son décès, aurait été reconnue être une telle personne si une demande d'assistance publique avait été faite pour elle ou à son égard immédiatement avant son décès.

«services de protection sociale» *"welfare services"*

«services de protection sociale» Services qui ont pour objet d'atténuer, de supprimer ou de prévenir les causes et les effets de la pauvreté, du manque de soins à l'égard des enfants ou de la dépendance de l'assistance publique et notamment :

a) services de réadaptation;

b) services sociaux personnels, services d'orientation, d'évaluation des besoins et de référence;

c) services d'adoption;

d) services ménagers à domicile, services de soins de jour et autres services similaires;

e) services de développement communautaire;

f) services de consultation, de recherche et d'évaluation en ce qui concerne les programmes de protection sociale;

g) services administratifs, de secrétariat et de commis aux écritures, y compris ceux de formation du personnel, relatifs à la fourniture de tout service mentionné ci-dessus ou de l'assistance publique.

Sont exclus de la présente définition les services qui concernent uniquement ou principalement l'enseignement, la correction ou tout autre domaine réglementaire ou, sauf pour l'application de la définition de «assistance publique», les services fournis sous forme d'assistance publique.

«services de protection sociale fournis dans la province» *"welfare services provided..."*

«services de protection sociale fournis dans la province» Services de protection sociale fournis dans la province en conformité avec la législation provinciale à des personnes nécessiteuses ou à des personnes qui deviendront vraisemblablement des personnes nécessiteu-

ses si de tels services ne sont pas fournis, ou à leur égard.

«services de santé» Services médicaux, chirurgicaux, obstétricaux, optiques, dentaires et infirmiers, y compris les médicaments, pansements, appareils de prothèse et tous autres articles ou services de santé nécessaires pour que soient fournis les services ainsi spécifiés ou communément associés à ces services. Sont exclus de la présente définition les services de santé assurés, au sens de la *Loi canadienne sur la santé*, ainsi que tous autres services réglementaires de soins hospitaliers. S.R., ch. C-1, art. 2; 1984, ch. 6, art. 24.

«services de santé» "health services"

PART I

GENERAL ASSISTANCE AND WELFARE SERVICES

Interpretation

Definitions

3. In this Part,

"agreement" «accord»

"agreement" means an agreement made under section 4;

"contribution" «contribution»

"contribution" means an amount payable by Canada under an agreement. R.S., c. C-1, s. 3.

Agreement Authorized

Agreement authorized

4. Subject to this Act, the Minister may, with the approval of the Governor in Council, enter into an agreement with any province to provide for the payment by Canada to the province of contributions in respect of the cost to the province and to municipalities in the province of

(*a*) assistance provided by or at the request of provincially approved agencies pursuant to the provincial law; and

(*b*) welfare services provided in the province by provincially approved agencies pursuant to the provincial law. R.S., c. C-1, s. 4.

Contributions

Amount of contributions

5. (1) The contributions payable to a province under an agreement shall be paid in respect of each year and shall be the aggregate of

PARTIE I

ASSISTANCE GÉNÉRALE ET SERVICES DE PROTECTION SOCIALE

Définitions

Définitions

3. Les définitions qui suivent s'appliquent à la présente partie.

«accord» "agreement"

«accord» Accord conclu en vertu de l'article 4.

«contribution» "contribution"

«contribution» Montant payable par le Canada en vertu d'un accord. S.R., ch. C-1, art. 3.

Accord autorisé

Autorisation de conclure un accord

4. Sous réserve des autres dispositions de la présente loi, le ministre peut, avec l'approbation du gouverneur en conseil, conclure avec toute province un accord prévoyant le paiement, par le Canada à la province, de contributions aux frais encourus par la province et des municipalités de la province, au titre :

a) de l'assistance publique fournie, en conformité avec la législation provinciale, par des organismes approuvés par la province ou à la demande de ceux-ci;

b) des services de protection sociale fournis, en conformité avec la législation provinciale, dans la province par des organismes approuvés par la province. S.R., ch. C-1, art. 4.

Contributions

Montant des contributions

5. (1) Les contributions payables à une province en vertu d'un accord doivent être payées pour chaque année et être le total :

(*a*) fifty per cent of the cost to the province and to municipalities in the province in that year of assistance provided by or at the request of provincially approved agencies, and

(*b*) fifty per cent of either

(i) the amount by which

(A) the cost to the province and to municipalities in the province in that year of welfare services provided in the province by provincially approved agencies

exceeds

(B) the total of

(I) the cost to the province, in the fiscal year of the province coinciding with or ending in the period commencing April 1, 1964 and ending March 31, 1965, of welfare services provided in the province, and

(II) the cost to municipalities in the province, in the fiscal years of those municipalities coinciding with or ending in the period commencing April 1, 1964 and ending March 31, 1965, of welfare services provided in the province,

or

(ii) the cost to the province and to municipalities in the province in that year of the employment by provincially approved agencies of persons employed by those agencies

(A) wholly or mainly in the performance of welfare services functions, and

(B) in positions filled after March 31, 1965,

at the election of the province made at such time or times and in such manner as may be prescribed.

a) de cinquante pour cent des frais encourus par la province et des municipalités de la province au cours de l'année pour l'assistance publique fournie par des organismes approuvés par la province ou à leur demande;

b) de cinquante pour cent :

(i) soit du montant par lequel :

(A) les frais encourus par la province et des municipalités de la province au cours de l'année pour les services de protection sociale fournis dans la province par des organismes approuvés par la province

excèdent

(B) le total :

(I) des frais encourus par la province, au cours de l'exercice de la province qui coïncide avec la période commençant le 1er avril 1964 et se terminant le 31 mars 1965, ou qui prend fin pendant cette période, pour les services de protection sociale fournis dans la province,

(II) des frais encourus par des municipalités de la province, au cours des exercices de ces municipalités qui coïncident avec la période commençant le 1er avril 1964 et se terminant le 31 mars 1965, ou qui prennent fin pendant cette période, pour les services de protection sociale fournis dans la province,

(ii) soit des frais encourus par la province et des municipalités de la province au cours de l'année pour l'emploi, par des organismes approuvés par la province, de personnes au service de ces organismes :

(A) uniquement ou principalement dans des fonctions relevant des services de protection sociale,

(B) dans des postes pourvus après le 31 mars 1965,

au choix de la province fait à l'époque ou aux époques et de la manière réglementaires.

Costs excluded

(2) In this section, "cost" does not include,

(*a*) with respect to assistance, any capital cost as defined by regulation for the purposes of this paragraph;

(*b*) with respect to welfare services, any capital cost or any plant or equipment oper-

Frais exclus

(2) Au présent article, l'expression «frais» ne comprend pas :

a) relativement à l'assistance publique, tous frais de premier établissement définis par règlement pour l'application du présent alinéa;

ating cost as defined by regulation for the purposes of this paragraph;

(*c*) any cost that Canada has shared or is required to share in any manner with the province, or that Canada has borne or is required to bear, pursuant to any other Part or pursuant to any Act of Parliament; or

(*d*) any cost of insurance premiums or of co-insurance or similar charges relating to the provision of

(i) insured health services within the meaning of the *Canada Health Act*, or

(ii) health or medical care services, if at the time the cost is incurred there is in force an Act of Parliament other than this Act, pursuant to which Canada is required to share in any manner with the province the cost of providing those services to the general public.

b) relativement aux services de protection sociale, tous frais de premier établissement ou tous frais d'exploitation, d'installation ou d'équipement définis par règlement pour l'application du présent alinéa;

c) tous frais que le Canada a partagés ou est tenu de partager de quelque manière avec la province, ou que le Canada a supportés ou est tenu de supporter, en conformité avec quelque autre partie ou avec quelque loi fédérale;

d) tous frais de primes d'assurance ou de coassurance ou autres frais du même genre, relatifs à la fourniture :

(i) soit de services de santé assurés, au sens de la *Loi canadienne sur la santé*,

(ii) soit de services de santé ou médicaux, si au moment où sont encourus ces frais il y a en vigueur une loi fédérale, autre que la présente loi, qui oblige le Canada à partager de quelque manière avec la province les frais relatifs à la fourniture de ces services au public en général.

Cost of welfare services

(3) Notwithstanding paragraph (2)(*c*), the cost to the province and to municipalities in the province in a year of welfare services provided in the province as or as part of a project, other than a demonstration or research project as defined by regulation, approved by the Minister pursuant to the rules made by the Governor in Council for the purposes of the National Welfare Grants program shall be included for that year for the purposes of, and be deemed to be a cost within the meaning of, either clause (1)(*b*)(i)(A) or subparagraph (1)(*b*)(ii), depending on the election made by the province under paragraph (1)(*b*), if Canada has not previously made a payment to the province with respect to that cost.

Frais des services de protection sociale

(3) Nonobstant l'alinéa (2)*c*), les frais encourus par la province et des municipalités de la province au cours d'une année pour les services de protection sociale fournis dans la province au titre d'un projet ou d'une partie d'un projet — autre qu'un projet de démonstration ou de recherche, défini par règlement — approuvé par le ministre, en conformité avec les règles établies par le gouverneur en conseil aux fins du régime des subventions nationales à la protection sociale, sont inclus pour ladite année pour l'application de la disposition (1)*b*)(i)(A) ou du sous-alinéa (1)*b*)(ii), selon le choix fait par la province en vertu de l'alinéa (1)*b*), et sont réputés des frais, au sens des dispositions susdites, si le Canada n'a pas précédemment fait un paiement à la province relativement à ces frais.

Obligation to province satisfied

(4) Where any cost is included for the purposes of clause (1)(*b*)(i)(A) or subparagraph (1)(*b*)(ii) by virtue of subsection (3), Canada shall be deemed for the purposes of the rules made by the Governor in Council for the purposes of the National Welfare Grants program to have satisfied all of its obligations to the province with respect to that cost. R.S., c. C-1, s. 5; 1984, c. 6, s. 24.

Exécution des obligations envers la province

(4) Lorsque des frais sont inclus pour l'application de la disposition (1)*b*)(i)(A) ou du sous-alinéa (1)*b*)(ii), en vertu du paragraphe (3), le Canada, pour l'application des règles établies par le gouverneur en conseil à l'égard des objets du régime des subventions nationales à la protection sociale, est censé avoir rempli toutes ses obligations envers la province relativement à ces frais. S.R., ch. C-1, art. 5; 1984, ch. 6, art. 24.

Terms of Agreement

Provisions to be included in agreements

6. (1) An agreement

(*a*) shall include schedules for the purposes of the definitions "home for special care" and "provincially approved agency" in section 2 and a schedule listing the Acts of the legislature of the province referred to in the definition "provincial law" in section 2;

(*b*) shall provide for the exchange between Canada and the province of statistical and other information relating to the administration and operation of this Act and the provincial law;

(*c*) may provide that any home for special care or any provincially approved agency that is listed in a schedule to the agreement shall be deemed to have been so listed as of any specified day before the agreement is made; and

(*d*) shall contain such other terms and conditions as the Minister and the province may agree on or as the regulations may require.

Undertakings by provinces

(2) An agreement shall provide that the province

(*a*) will provide financial aid or other assistance to or in respect of any person in the province who is a person in need described in paragraph (*a*) of the definition "person in need" in section 2, in an amount or manner that takes into account the basic requirements of that person;

(*b*) will, in determining whether a person is a person described in paragraph (*a*) and the assistance to be provided to that person, take into account the budgetary requirements of that person and the income and resources available to that person to meet those requirements;

(*c*) will continue, as may be necessary and expedient, the development and extension of welfare services in the province;

(*d*) will not require a period of residence in the province as a condition of eligibility for assistance or for the receipt or continued receipt thereof;

(*e*) will ensure the provision by law, not later than one year from the effective date of the agreement, of a procedure for appeals from decisions of provincially approved agencies with respect to applications for assistance or the granting or providing of assistance by persons directly affected by those decisions;

Modalités des accords

Dispositions à inclure dans les accords

6. (1) Un accord :

a) doit comporter des annexes pour l'application des définitions de «foyer de soins spéciaux» et de «organisme approuvé par la province» à l'article 2 et une annexe énumérant les lois provinciales mentionnées dans la définition de «législation provinciale» à l'article 2;

b) doit prévoir l'échange entre le Canada et la province de renseignements statistiques et autres relatifs à l'application et à l'exécution de la présente loi et de la législation provinciale;

c) peut porter que tout foyer de soins spéciaux ou tout organisme approuvé par la province qui figure à une annexe est censé y avoir figuré à compter d'un jour spécifié antérieur à la conclusion de l'accord;

d) doit comporter les autres modalités dont le ministre et la province peuvent convenir ou que les règlements peuvent exiger.

Engagements des provinces

(2) Un accord doit prévoir que la province :

a) fournira l'aide financière ou une autre forme d'assistance publique à toute personne de la province qui est une personne nécessiteuse visée à l'alinéa *a*) de la définition de «personne nécessiteuse» à l'article 2, ou à l'égard d'une telle personne, dans une mesure ou d'une manière compatibles avec ses besoins fondamentaux;

b) tiendra compte, en décidant si une personne est visée par l'alinéa *a*) et en déterminant l'assistance publique à fournir à cette personne, de ses besoins matériels et des revenus et ressources dont elle dispose pour les satisfaire;

c) continuera, selon les nécessités et l'occasion, l'amélioration et l'élargissement des services de protection sociale dans la province;

d) n'exigera pas de délai de résidence dans la province comme condition d'admissibilité à l'assistance publique ou à la réception initiale ou continue de prestations;

e) veillera, dans le délai d'un an à compter de la date d'entrée en vigueur de l'accord, à prendre des dispositions législatives établissant une procédure d'appel des décisions prises par les organismes approuvés par la province relativement aux demandes d'assistance publique ou à l'octroi ou à la fourniture

(*f*) will ensure the maintenance and availability, for examination and audit by the Minister or any person designated by the Minister, of such records and accounts respecting the provision of assistance and welfare services in the province as the agreement or the regulations may require; and

(*g*) will provide the Minister with copies of all Acts of the legislature of the province referred to in the definition "provincial law" in section 2 and of all regulations made under those Acts.

de cette assistance, par des personnes directement visées par ces décisions;

f) fera tenir et maintenir disponibles pour examen et vérification, par le ministre ou toute personne qu'il a désignée, les registres et comptes relatifs à la fourniture de l'assistance publique et des services de protection sociale dans la province dont l'accord ou les règlements peuvent exiger la tenue;

g) fournira au ministre des exemplaires de toutes les lois provinciales mentionnées dans la définition de «législation provinciale» à l'article 2 et de tous les règlements pris en vertu de ces lois.

Undertakings by Canada

(3) An agreement shall provide that Canada

(*a*) will pay to the province the contributions or advances on account thereof that Canada is authorized to pay to the province under this Act and the regulations;

(*b*) will make available to the province, from time to time, statistical and other general reports and studies prepared by or under the direction of the Minister relating to assistance or welfare services programs or to related programs; and

(*c*) at the request of the provincial authority, will make available to the province where feasible, through the facilities of the Department of National Health and Welfare, consultative services with respect to the development and operation of assistance and welfare services programs. R.S., c. C-1, s. 6.

Engagements du Canada

(3) Un accord doit prévoir que le Canada :

a) paiera à la province les contributions ou les avances sur les contributions que le Canada est autorisé à payer à la province en vertu de la présente loi et des règlements;

b) mettra à la disposition de la province, de temps à autre, des rapports statistiques et autres rapports et études de portée générale préparés par le ministre ou sous sa direction et concernant des régimes d'assistance publique ou de services de protection sociale ou des régimes connexes;

c) à la demande de l'autorité provinciale, mettra à la disposition de la province là où ce sera possible, par l'intermédiaire du ministère de la Santé nationale et du Bien-être social, des services consultatifs relatifs à l'amélioration et au fonctionnement de régimes d'assistance publique et de services de protection sociale. S.R., ch. C-1, art. 6.

Payment of Contributions

Payment of contributions

7. Contributions or advances on account thereof shall be paid, on the certificate of the Minister, out of the Consolidated Revenue Fund at such times and in such manner as may be prescribed, but all such payments are subject to the conditions specified in this Part and in the regulations and to the observance of the agreements and undertakings contained in an agreement. R.S., c. C-1, s. 7.

Paiement des contributions

Paiement des contributions

7. Les contributions ou les avances sur ces contributions doivent, dès présentation du certificat du ministre, être payées sur le Trésor aux époques et de la manière réglementaires, mais tous ces paiements sont assujettis aux conditions spécifiées dans la présente partie et dans les règlements et à l'observation des conventions et des engagements contenus dans un accord. S.R., ch. C-1, art. 7.

Operation of Agreements

Duration of agreement

8. (1) Every agreement shall continue in force so long as the provincial law remains in operation.

Application des accords

Durée des accords

8. (1) Chaque accord reste en vigueur tant que la législation provinciale est appliquée.

Amendments and termination

(2) Notwithstanding subsection (1),

Modification et résiliation

(2) Nonobstant le paragraphe (1) :

(*a*) an agreement may, with the approval of the Governor in Council, be amended or terminated at any time by mutual consent of the Minister and the province,

(*b*) any schedule to an agreement may be amended at any time by mutual consent of the Minister and the province,

(*c*) the province may at any time give to Canada notice of intention to terminate an agreement, and

(*d*) Canada may, at any time, give to the province notice of intention to terminate an agreement,

and, where notice of intention to terminate an agreement is given in accordance with paragraph (*c*) or (*d*), the agreement shall cease to be effective for any period after the day fixed in the notice or for any period after the expiration of one year from the day on which the notice is given, whichever is the later. R.S., c. C-1, s. 8.

a) un accord peut, avec l'approbation du gouverneur en conseil, être modifié ou résilié en tout temps par consentement mutuel du ministre et de la province;

b) toute annexe à un accord peut être modifiée en tout temps par consentement mutuel du ministre et de la province;

c) la province peut en tout temps donner au Canada avis de son intention de résilier un accord;

d) le Canada peut, en tout temps, donner à la province avis de son intention de résilier un accord.

S'il est donné avis de l'intention de résilier un accord, en conformité avec l'alinéa *c*) ou *d*), l'accord cesse d'avoir effet pour toute période postérieure à la date fixée dans l'avis ou pour toute période postérieure à la date d'expiration d'un délai d'un an à compter du jour où l'avis a été donné, en prenant de ces deux dates celle qui intervient la dernière. S.R., ch. C-1, art. 8.

Regulations

Regulations

9. (1) The Governor in Council may make regulations providing for any matters concerning which he deems regulations are necessary to carry out the purposes and provisions of this Part and, without limiting the generality of the foregoing, may make regulations

(*a*) for the administration of this Part and of agreements;

(*b*) prescribing or defining anything that by section 2 or this Part is to be prescribed or defined by regulation;

(*c*) defining the expressions "personal requirements", "budgetary requirements", "community development services", "wholly or mainly in the performance of welfare services functions" and "positions filled after March 31, 1965";

(*d*) for the purposes of section 5 or any of the provisions of that section, defining the expression "cost to the province and to municipalities in the province" and prescribing the manner in which that cost is to be determined;

(*e*) for the purposes of clause 5(1)(*b*)(i)(B), defining the expressions "cost to the province" and "cost to municipalities in the province" and prescribing the manner in which those costs are to be determined;

Règlements

Règlements

9. (1) Le gouverneur en conseil peut prendre les règlements d'application de la présente partie qu'il estime nécessaires, notamment pour :

a) l'application de la présente partie et des accords;

b) prescrire ou définir tout ce qui, aux termes de l'article 2 ou de la présente partie, doit être prescrit ou défini par règlement;

c) définir les expressions «besoins personnels», «besoins matériels», «services de développement communautaire», «uniquement ou principalement dans des fonctions relevant de services de protection sociale» et «postes pourvus après le 31 mars 1965»;

d) définir, pour l'application de l'article 5 ou de telle de ses dispositions, l'expression «frais encourus par la province et des municipalités de la province» et prescrire la manière selon laquelle de tels frais doivent être déterminés;

e) définir, pour l'application de la disposition 5(1)*b*)(i)(B), les expressions «frais encourus par la province» et «frais encourus par des municipalités de la province» et prescrire la manière selon laquelle de tels frais doivent être déterminés;

f) adapter, modifier ou élargir, pour l'application de la disposition 5(1)*b*)(i)(B), et soit

(*f*) adapting, modifying or extending, for the purposes of clause 5(1)(*b*)(i)(*B*) and either generally or in respect of a particular province, the definitions "welfare services" and "welfare services provided in the province", respectively, as set out in section 2; and

(*g*) respecting the payment to a province of advances on account of any amount that may become payable to the province pursuant to this Part, the adjustment of other payments by reason of those advances and the recovery of overpayments.

Alteration of regulations

(2) No regulation that has the effect of altering any of the agreements or undertakings contained in an agreement entered into under this Part with a province, or that affects the method of payment or amount of payments thereunder, is effective in respect of that province unless the province has consented to the making of such regulation. R.S., c. C-1, s. 9.

d'une façon générale, soit à l'égard d'une province particulière, les définitions de «services de protection sociale» et de «services de protection sociale fournis dans la province» respectivement, établies à l'article 2;

g) le paiement à une province d'avances à valoir sur tout montant qui peut devenir payable à la province en conformité avec la présente partie, l'ajustement de tous autres paiements en raison de telles avances et le recouvrement des plus-payés.

Changement apporté aux règlements

(2) Tout règlement qui a pour effet de modifier l'un des accords conclus, aux termes de la présente partie, avec une province, ou n'importe lequel des engagements qui y sont contenus, ou qui vise la méthode de paiement ou le montant des paiements y afférents, n'entre en vigueur à l'égard de cette province que si elle y a donné son assentiment. S.R., ch. C-1, art. 9.

PART II

INDIAN WELFARE

Definitions

10. In this Part,

"band" «bande»

"band" means

(*a*) a band, as defined in the *Indian Act*, or

(*b*) a band, as defined in the *Cree-Naskapi (of Quebec) Act*, chapter 18 of the Statutes of Canada, 1984;

"council" «conseil»

"council" means

(*a*) the "council of the band", as defined in the *Indian Act*, or

(*b*) the "council", as defined in the *Cree-Naskapi (of Quebec) Act*, chapter 18 of the Statutes of Canada, 1984;

"Indian" «Indien»

"Indian" means an Indian, as defined in the *Indian Act*;

"Indian to whom this Part applies" «Indien auquel...»

"Indian to whom this Part applies", in relation to any province, means an Indian

(*a*) who is resident on a reserve in the province,

(*b*) who is resident on land in the province the legal title to which is vested in Her Majesty or on land in any territory in the province that is without municipal organization, or

(*c*) who is resident in the province and is designated by the Minister charged with

PARTIE II

PROTECTION SOCIALE DES INDIENS

Définitions

10. Les définitions qui suivent s'appliquent à la présente partie.

«bande» "band"

«bande» Selon le cas :

a) bande, au sens de la *Loi sur les Indiens*;

b) bande, au sens de la *Loi sur les Cris et les Naskapis du Québec*, chapitre 18 des Statuts du Canada de 1984.

«conseil» "council"

«conseil» Selon le cas :

a) le «conseil de la bande», au sens de la *Loi sur les Indiens*;

b) le «conseil», au sens de la *Loi sur les Cris et les Naskapis du Québec*, chapitre 18 des Statuts du Canada de 1984.

«Indien» "Indian"

«Indien» Indien, au sens de la *Loi sur les Indiens*.

«Indien auquel s'applique la présente partie» "Indian to..."

«Indien auquel s'applique la présente partie» Par rapport à toute province, Indien qui, selon le cas :

a) est un résident d'une réserve dans la province;

b) réside sur une terre dans la province, dont le titre légal de propriété est dévolu à Sa Majesté ou sur une terre sise dans n'importe quel territoire de la province dépourvu d'organisation municipale;

the administration of the *Indian Act* as an Indian to whom this Part applies,

but does not include an Indian who is designated in or under an agreement entered into with the province pursuant to section 11 as an Indian to whom this Part does not apply;

"provincial welfare program" «régime...»

"provincial welfare program" means a welfare program administered by the province, by a municipality in the province or privately, to which public money of the province is or may be contributed and that is applicable or available generally to residents of the province.

"reserve" «réserve»

"reserve" means

(*a*) a reserve, as defined in the *Indian Act*, or

(*b*) Category IA land or Category IA-N land, as defined in the *Cree-Naskapi (of Quebec) Act*, chapter 18 of the Statutes of Canada, 1984. R.S., c. C-1, s. 10; 1984, c. 18, s. 205.

c) est un résident dans la province et est désigné par le ministre chargé de l'application de la *Loi sur les Indiens* pour être un Indien à qui s'applique la présente partie.

Est exclu de la présente définition un Indien qui est désigné dans un accord conclu avec la province ou sous son régime, conformément à l'article 11, pour être un Indien à qui ne s'applique pas la présente partie.

«régime provincial de protection sociale» "provincial..."

«régime provincial de protection sociale» Régime de protection sociale administré par la province, par une municipalité dans la province ou à titre privé, auquel des deniers publics de la province sont ou peuvent être versés à titre de contribution et qui est applicable aux résidents de la province ou est mis d'une façon générale à leur disposition.

«réserve» "reserve"

«réserve» Selon le cas :

a) réserve, au sens de la *Loi sur les Indiens*;

b) les terres de catégories IA et IA-N, au sens de la *Loi sur les Cris et les Naskapis du Québec*, chapitre 18 des Statuts du Canada de 1984. S.R., ch. C-1, art. 10; 1984, ch. 18, art. 205.

Agreements authorized

11. (1) The Minister and the Minister charged with the administration of the *Indian Act* may, with the approval of the Governor in Council, enter into an agreement with a province with respect to the extension of provincial welfare programs to Indians to whom this Part applies and for the payment by Canada to the province of any portion of the cost to the province of extending provincial welfare programs to those Indians.

Autorisation de conclure des accords

11. (1) Le ministre et le ministre chargé de l'application de la *Loi sur les Indiens* peuvent, avec l'approbation du gouverneur en conseil, conclure avec une province un accord concernant l'extension de régimes provinciaux de protection sociale à des Indiens visés par la présente partie et prévoyant le paiement par le Canada à la province de toute partie des frais encourus par la province en raison de l'extension des régimes provinciaux de protection sociale à ces Indiens.

Consent of council of Indian band required

(2) An agreement entered into under subsection (1) shall provide for the extension of a provincial welfare program to a member of an Indian band who ordinarily resides with that band, only with the consent of the council of that band signified in such manner as may be prescribed by the Governor in Council. R.S., c. C-1, s. 11.

Le consentement du conseil de la bande est requis

(2) Un accord conclu aux termes du paragraphe (1) ne peut prévoir l'extension d'un régime provincial de protection sociale à un membre d'une bande d'Indiens qui réside ordinairement avec cette bande qu'avec le consentement du conseil de cette bande donné de la manière que prescrit le gouverneur en conseil. S.R., ch. C-1, art. 11.

Payments to provinces

12. Where an agreement has been entered into with a province pursuant to section 11, the Minister of Finance shall, on the certificate of the Minister, cause to be paid to the province out of the Consolidated Revenue Fund, when and in the manner required by the agreement, such amounts as are required to fulfil the obligations of Canada to the province under the

Paiements aux provinces

12. Lorsqu'un accord a été conclu avec une province en conformité avec l'article 11, le ministre des Finances doit, dès présentation du certificat du ministre, faire payer à la province sur le Trésor, à l'époque et de la manière requises par l'accord, les montants que requiert l'exécution des obligations du Canada envers la province aux termes de l'accord, mais de tels

agreement, but all those payments are subject to the observance of the agreements and undertakings contained in the agreement. R.S., c. C-1, s. 12.

paiements sont assujettis à l'observation des conventions et des engagements contenus dans l'accord. S.R., ch. C-1, art. 12.

Where no agreement in effect

13. Where, in the case of any province, no agreement is in effect pursuant to section 11, nothing in an agreement entered into with the province under Part I shall be construed to require the provision of assistance or welfare services to or in respect of any Indian to whom this Part applies. R.S., c. C-1, s. 13.

13. Lorsque, dans le cas d'une province, aucun accord n'est en vigueur en vertu de l'article 11, rien de contenu dans un accord conclu avec cette province en vertu de la partie I n'a pour effet d'obliger à accorder des services d'assistance publique ou de protection sociale à l'égard d'Indiens visés par la présente partie. S.R., ch. C-1, art. 13.

Quand aucun accord n'a d'effet

PART III

WORK ACTIVITY PROJECTS

PARTIE III

PROJETS D'ADAPTATION AU TRAVAIL

Definitions

14. In this Part,

"participant" «participant»

"participant" means any person described in the definition "work activity project" who takes part in such a work activity project;

"work activity project" «projet...»

"work activity project" means a project the purpose of which is to prepare for entry or return to employment persons in need or likely to become persons in need who, because of environmental, personal or family reasons, have unusual difficulty in obtaining or holding employment or in improving, through participation in technical or vocational training programs or rehabilitation programs, their ability to obtain or hold employment. R.S., c. C-1, s. 14.

14. Les définitions qui suivent s'appliquent à la présente partie.

Définitions

«participant» Toute personne décrite dans la définition de «projet d'adaptation au travail» qui prend part à un tel projet d'adaptation au travail.

«participant» "participant"

«projet d'adaptation au travail» Projet dont le but est de préparer l'accès ou le retour à l'emploi de personnes nécessiteuses ou susceptibles de le devenir qui, pour des raisons de milieu, des raisons personnelles ou de famille, ont des difficultés exceptionnelles à obtenir ou à conserver un emploi ou à améliorer, en participant à des programmes de formation technique ou professionnelle ou à des programmes de réadaptation, leur aptitude à obtenir ou à conserver un emploi. S.R., ch. C-1, art. 14.

«projet d'adaptation au travail» "work..."

Agreements authorized

15. (1) Subject to this Part, the Minister may, after consultation with the Minister of Employment and Immigration and with the approval of the Governor in Council, enter into an agreement with any province with which an agreement under Part I is in effect, to provide for the payment by Canada to the province of an amount equal to fifty per cent of the cost of a work activity project undertaken in the province.

15. (1) Sous réserve des autres dispositions de la présente partie, le ministre peut, après consultation avec le ministre de l'Emploi et de l'Immigration et avec l'approbation du gouverneur en conseil, conclure avec toute province avec laquelle un accord conclu en vertu de la partie I est en vigueur, un accord qui prévoit le paiement par le Canada à la province d'un montant égal à cinquante pour cent des frais d'un projet d'adaptation au travail entrepris dans la province.

Accords autorisés

Definition of "cost of a work activity project"

(2) In this section, "cost of a work activity project" means the cost to the province and to municipalities in the province of

(*a*) salaries, wages or other remuneration paid to persons for services performed with

(2) Dans le présent article, «frais d'un projet d'adaptation au travail» s'entend des frais encourus par la province et des municipalités de la province :

Définition de «frais d'un projet d'adaptation au travail»

respect to the operation or maintenance of the work activity project,

(*b*) travel and living expenses paid to persons performing services away from their ordinary places of residence with respect to the operation or maintenance of the work activity project,

(*c*) such equipment, materials and operational costs relating to the work activity project as may be prescribed by regulations made by the Governor in Council, and

(*d*) allowances paid to participants,

but does not include any cost that Canada has shared or is required to share in any manner with the province pursuant to Part II.

a) pour les traitements, salaires ou autres émoluments payés à des personnes pour des services accomplis à l'occasion de l'exécution ou de l'entretien d'un projet d'adaptation au travail;

b) pour les frais de déplacement et de séjour payés aux personnes accomplissant des services en dehors de leur lieu ordinaire de résidence relativement à l'exécution ou à l'entretien d'un projet d'adaptation au travail;

c) pour le matériel, les équipements et l'exploitation se rapportant au projet d'adaptation au travail et prescrits par règlement du gouverneur en conseil;

d) pour les allocations payées aux participants.

Sont exclus de la présente définition tous les frais que le Canada a partagés ou est tenu de partager de quelque manière avec la province en conformité avec la partie II.

Provisions to be included in agreements

(3) Every agreement made pursuant to this section shall

(*a*) provide that no person shall be denied assistance because he refuses or has refused to take part in a work activity project;

(*b*) provide that welfare services shall be made available as required to participants;

(*c*) provide that allowances may be paid to participants;

(*d*) provide that a participant shall be eligible for assistance if, notwithstanding any allowance that he receives as a participant, he is a person in need;

(*e*) specify the agency that shall be responsible for the undertaking, operation or maintenance of any work activity project or of any part thereof; and

(*f*) contain such other terms and conditions as the regulations may require. R.S., c. C-1, s. 15; 1972, c. 1, Sch. (NHW) vote 30b; 1976-77, c. 54, s. 74.

Dispositions à inclure dans les accords

(3) Chaque accord conclu en conformité avec le présent article doit :

a) stipuler qu'aucune personne ne doit être privée d'assistance publique parce qu'elle refuse ou qu'elle a refusé de participer à un projet d'adaptation au travail;

b) stipuler que les services de protection sociale doivent être rendus disponibles aux participants dans la mesure des besoins;

c) stipuler que des allocations peuvent être payées aux participants;

d) stipuler qu'un participant est admissible à l'assistance publique si, nonobstant toute allocation qu'il reçoit à titre de participant, il est une personne nécessiteuse;

e) désigner expressément l'organisme qui sera chargé d'entreprendre, d'exécuter et de maintenir tout projet d'adaptation au travail ou toute partie d'un semblable projet;

f) contenir les autres modalités que peuvent exiger les règlements. S.R., ch. C-1, art. 15; 1972, ch. 1, ann. (SNBS), crédit 30b; 1976-77, ch. 54, art. 74.

Payments to provinces

16. Where an agreement has been entered into with a province pursuant to section 15, the Minister of Finance shall, on the certificate of the Minister, cause to be paid to the province out of the Consolidated Revenue Fund, at such times and in such manner as may be prescribed by the regulations or the agreement, such amounts as are required to fulfil the obligations

Paiements aux provinces

16. Lorsqu'un accord a été conclu avec une province en vertu de l'article 15, le ministre des Finances doit, dès présentation du certificat du ministre, faire payer à la province sur le Trésor, aux époques et de la manière prescrites par les règlements ou l'accord, les montants que requiert l'exécution des obligations du Canada envers la province aux termes de l'accord, mais

of Canada to the province under the agreement, but all such payments are subject to the conditions specified in this Part and in the regulations and to the observance of the agreements and undertakings contained in the agreement. R.S., c. C-1, s. 16.

de tels paiements sont assujettis aux conditions spécifiées dans la présente partie et dans les règlements et à l'observation des conventions et des engagements contenus dans l'accord. S.R., ch. C-1, art. 16.

Regulations

17. The Governor in Council may, on the joint recommendation of the Minister and the Minister of Employment and Immigration, make regulations providing for any matters concerning which he deems regulations are necessary to carry out the purposes and provisions of this Part. R.S., c. C-1, s. 17; 1976-77, c. 54, s. 74.

Règlements

17. Le gouverneur en conseil peut, sur la recommandation conjointe du ministre et du ministre de l'Emploi et de l'Immigration, prendre les règlements d'application de la présente partie qu'il estime nécessaires. S.R., ch. C-1, art. 17; 1976-77, ch. 54, art. 74.

PART IV

REPORT TO PARLIAMENT

Annual report

18. The Minister shall, as soon as possible after the end of each year, prepare a report respecting the operation for that year of the agreements made under this Act and the payments made to the provinces under each of the agreements, and shall cause the report to be laid before Parliament forthwith on the completion thereof or, if Parliament is not then sitting, on any of the first fifteen days next thereafter that either House of Parliament is sitting. R.S., c. C-1, s. 19.

PARTIE IV

RAPPORT AU PARLEMENT

Rapport annuel

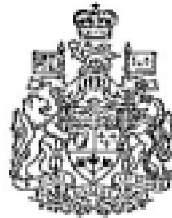
18. Aussitôt que possible après la fin de chaque année, le ministre prépare un rapport sur l'application, pendant cette année, des accords conclus en vertu de la présente loi et sur les paiements faits aux provinces aux termes de chacun de ces accords; le ministre fait déposer devant le Parlement ce rapport dès qu'il est terminé ou, si le Parlement ne siège pas, dans les quinze premiers jours de séance ultérieurs de l'une ou l'autre chambre. S.R., ch. C-1, art. 19.

QUEEN'S PRINTER FOR CANADA © IMPRIMEUR DE LA REINE POUR LE CANADA
OTTAWA, 1985

SCHEDULE B

114
1978
v.4
Ex.E

3e ex.



Consolidated Regulations of Canada

1978

Codification des règlements du Canada

1978

Prepared and published by the
Statute Revision Commission
pursuant to the
Statute Revision Act
(S.C., 1974-75-76, c. 20)
as of December 31, 1977

Établie et publiée par la
Commission de revision des lois
conformément à la
Loi sur la revision des lois
(S.C., 1974-75-76, c. 20)
au 31 décembre 1977

Volume IV

CHAPTER 382

CANADA ASSISTANCE PLAN

Canada Assistance Plan Regulations

REGULATIONS UNDER THE CANADA ASSISTANCE PLAN

Short Title

1. These Regulations may be cited as the *Canada Assistance Plan Regulations*.

Interpretation

2. (1) In these Regulations,

"Act" means the *Canada Assistance Plan*;

"Director" means the Director General, Canada Assistance Plan, Department of National Health and Welfare.

(2) For the purposes of the Act and these Regulations,

"budgetary requirements" means the basic requirements of a person and his dependants, if any, and any other of the items and services described in paragraphs *(b)* to *(h)* of the definition "assistance" in section 2 of the Act that, in the opinion of the provincial authority, are essential to the health or well-being of that person and his dependants, if any; (*besoins matériels*)

"community development services" means services designed to encourage and assist residents of a community to participate or to continue to participate in improving the social and economic conditions of the community for the purpose of preventing, lessening or removing the causes and effects of poverty, child neglect or dependence on public assistance in the community; (*services de développement communautaire*)

"foster child" means a child whose parents are unable, in the opinion of the provincial authority, to support him and who is cared for (by a person or persons standing in *loco parentis* to him) in a private home approved as a suitable place of care by a child welfare authority or by a person designated for that purpose by the provincial authority; (*enfant placé dans un foyer nourricier*)

"personal requirements" means items of a minor nature, other than the ordinary requirements of food, shelter, clothing, fuel, utilities and household supplies, that are necessary in day to day living to a person's health or well-being, and, without limiting the generality of the foregoing, includes items relating to

(*a*) personal care, cleanliness and grooming,

(*b*) the observance of religious obligations, and

(*c*) recreation; (*besoins personnels*)

CHAPITRE 382

RÉGIME D'ASSISTANCE PUBLIQUE DU CANADA

Règlement du Régime d'assistance publique du Canada

RÈGLEMENT DU RÉGIME D'ASSISTANCE PUBLIQUE DU CANADA

Titre abrégé

1. Le présent règlement peut être cité sous le titre: *Règlement du Régime d'assistance publique du Canada*.

Interprétation

2. (1) Dans le présent règlement,

«directeur» désigne le directeur du Régime d'assistance publique du Canada, ministère de la Santé nationale et du Bien-être social;

«Loi» signifie le *Régime d'assistance publique du Canada*.

(2) Aux fins de la Loi et du présent règlement,

«besoins matériels» signifie les besoins fondamentaux d'un individu et des personnes à sa charge, s'il en est, et l'un quelconque des articles ou services décrits aux alinéas *b*) à *h*) de la définition «assistance publique» de l'article 2 de la Loi qui, de l'avis de l'autorité provinciale, sont essentiels à la santé et au bien-être de cet individu et de ces personnes, s'il en est; (*budgetary requirements*)

«besoins personnels» signifie les articles de moindre importance, à l'exclusion des besoins ordinaires en matière de nourriture, de logement, de vêtement, de combustible, de services d'utilité publique et de fournitures ménagères, lesquels articles, dans la vie quotidienne, sont nécessaires à la santé et au bien-être d'une personne et qui, sans limiter la généralité de ce qui précède, ont trait, entre autres,

a) aux soins personnels, à la propreté et à une mise soignée,

b) à l'observance des devoirs religieux, et

c) aux loisirs; (*personal requirements*)

«enfant placé en foyer nourricier» désigne un enfant dont les parents sont incapables, de l'avis de l'autorité provinciale, de subvenir à ses besoins et dont prennent soin une ou plusieurs personnes lui tenant lieu de parents dans une maison privée qu'a jugée convenable une autorité chargée du bien-être social de l'enfance ou une personne nommée à cette fin par l'autorité provinciale; (*foster child*)

«postes pourvus après le 31 mars 1965», pour ce qui concerne les personnes qu'emploient des organismes approuvés par la province, désigne des postes qui ont été remplis pour la première fois après le 31 mars 1965, mais ne comprend pas

a) un tel poste lorsque pratiquement toutes les heures d'une journée ordinaire de travail consacrées aux services

"positions filled after March 31, 1965" in respect of the employment of persons by provincially approved agencies means positions filled for the first time after March 31, 1965 but does not include

(*a*) any such position where substantially all of the time spent in the ordinary working day in the performance of welfare services functions by the person who holds that position is not, in the opinion of the Director, additional to the total time spent in the ordinary working day by employees of welfare agencies in performing the same or similar welfare services functions in the province before April 1, 1965, or

(*b*) any such position filled before April 1, 1965 by an employee of the government of Canada performing welfare services functions in the Northwest Territories; (*postes pourvus après le 31 mars 1965*)

"wholly or mainly in the performance of welfare services functions" in respect of the employment of a person means the employment of that person in a position where he is ordinarily occupied in the provision of welfare services during at least 90 per cent of the ordinary working day. (*uniquement ou principalement dans les fonctions relevant de services de bien-être social*)

(3) For the purposes of the definition "positions filled after March 31, 1965" in subsection (2), "welfare agency" means any department of the government of a province, or any person or agency (including a private non-profit agency) in the province, that at any time on or after April 1, 1965 or at any relevant time prior to that date provided welfare services in or aid to needy persons in the province, if the whole or any part of the cost of providing such services or aid has been or is required to be shared or borne in any manner by the province or by a municipality in the province, and includes a provincially approved agency.

Expressions Defined for the Purposes of Particular Provisions of the Act

3. For the purposes of

(*a*) section 5 of the Act, except paragraph (1)(*a*) and clause (1)(*b*)(ii)(*B*) thereof, "cost to the province and to municipalities in the province" in a year means payments made in the year

(i) by the province, and

(ii) by municipalities in the province,

and includes depreciation allowances, but does not include

(iii) payments by the province to municipalities in the province,

(iv) payments by municipalities in the province to the province,

(v) a payment made in the year by the province or by a municipality in the province in respect of the care of a

de bien-être social par la personne qui occupe le poste ne constituent pas, de l'avis du directeur, un nombre d'heures additionnel au nombre total des heures que consacraient au cours d'une journée ordinaire de travail les employés d'organismes de bien-être social qui, avant le 1er avril 1965, remplissaient dans la province les mêmes fonctions ou des fonctions analogues, ni

b) un tel poste rempli avant le 1er avril 1965 par un employé du gouvernement du Canada exerçant des fonctions dans les services de bien-être social des territoires du Nord-Ouest; (*positions filled after March 31, 1965*)

«services de développement communautaire» signifie les services destinés à favoriser et à aider les résidents d'une collectivité à améliorer ou à continuer d'améliorer les conditions sociales et économiques de la collectivité afin de prévenir, d'atténuer ou de supprimer, au sein de la collectivité, les causes et les effets de la pauvreté, du manque de soins à l'égard des enfants et de la dépendance de l'assistance publique; (*community development services*)

«uniquement ou principalement dans les fonctions relevant de services de bien-être social», en ce qui a trait à l'emploi d'une personne, signifie l'emploi de cette personne à un poste où celle-ci s'adonne ordinairement aux services de bien-être social pendant au moins 90 pour cent de sa journée normale de travail. (*wholly or mainly in the performance of welfare services functions*)

(3) Aux fins de la définition de «postes pourvus après le 31 mars 1965» au paragraphe (2), «organisme de bien-être social» signifie tout ministère d'un gouvernement provincial, ou toute personne ou tout organisme (y compris les organismes privés sans but lucratif) de la province qui, à quelque moment que ce soit, le ou après le 1er avril 1965 ou, à quelque moment pertinent avant cette date, a fourni des services de bien-être social ou de l'assistance aux personnes de la province dans le besoin, si la totalité ou une partie quelconque du coût de la fourniture de tels services ou assistance a été ou devra être partagée ou supportée de quelque façon que ce soit par la province ou par une municipalité de la province, et comprend un organisme approuvé par la province.

Expressions définies aux fins de certaines dispositions de la Loi

3. Aux fins de

a) l'article 5 de la Loi, sauf l'alinéa (1)*a*) et la disposition (1)*b*)(ii)(B), «frais encourus par la province et des municipalités de la province», au cours d'une année, désigne les paiements effectués, dans l'année,

(i) par la province, et

(ii) par des municipalités de la province,

et comprend les déductions pour amortissement, sans toutefois comprendre

(iii) les sommes versées par la province à ses municipalités,

(iv) les sommes versées par les municipalités d'une province à cette dernière,

person in any institution that is not a home for special care, or

(vi) where a payment with respect to a depreciation allowance is made by the province to a municipality in the province or by a municipality in the province to the province, the whole of such payment;

(*b*) paragraph 5(1)(*a*) of the Act, "cost to the province and to municipalities in the province" in a year means payments made in the year

(i) by the province, and

(ii) by municipalities in the province,

and includes

(iii) depreciation allowances, and

(iv) payments by way of assistance provided by or at the request of a provincially approved agency to persons who were considered to be persons in need and who are subsequently found to have been ineligible for all or part of such assistance, where the provincially approved agency has implemented a plan to prevent any such payments and to recover any such payments and the plan is satisfactory to the Minister or a person designated by him,

but does not include the payments referred to in subparagraphs (*a*)(iii) to (vi);

(*c*) paragraph 5(2)(*a*) of the Act, "capital cost" means a payment in respect of the purchase of land, buildings, furniture or equipment and includes a depreciation allowance, but does not include

(i) any payment in respect of the rental of a house, apartment or other shelter for a person in need and his dependants, if any,

(ii) any payment in respect of the principal of a mortgage on a home owned by a person in need or the interest on such mortgage,

(iii) any payment in respect of items incidental to carrying on a trade or other employment or special needs of any kind as described in paragraphs 4(*a*) and (*b*) respectively,

(iv) any payment in respect of the purchase of prosthetic appliances provided as a health care service to a person in need,

(v) a depreciation allowance for a year on a residential welfare institution owned or operated by the government of a province or by a municipality in the province and on the furniture and equipment therein where

(A) the residential welfare institution is listed as a home for special care in a schedule to an agreement made under section 4 of the Act,

(B) a payment in respect of one or more of the following projects is made by the province or by a municipality in the province after March 31, 1966:

(I) the construction of or of an addition to the residential welfare institution or the renovation of the institution,

(II) the conversion of a previously existing building to, or the acquisition of a previously existing building to be used as, the residential welfare institution, or

(v) un paiement effectué au cours de l'année par la province ou par une municipalité de la province relativement aux soins fournis à une personne dans tout établissement qui n'est pas un foyer de soins spéciaux, ou

(vi) lorsqu'une somme relative à une déduction pour amortissement est versée par la province à l'une de ses municipalités ou par l'une des municipalités à la province, la totalité de ce versement;

b) l'alinéa 5(1)*a*) de la Loi, «frais encourus par la province et des municipalités de la province», au cours d'une année, désigne les paiements effectués, dans l'année,

(i) par la province, et

(ii) par des municipalités de la province,

et comprend

(iii) les déductions pour amortissement, et

(iv) les paiements effectués à titre d'assistance fournie, par un organisme approuvé par la province ou à sa demande, à des personnes qui étaient considérées comme des personnes nécessiteuses et qui ont par la suite été jugées comme n'ayant pas droit à la totalité ou à une partie de cette assistance, lorsque l'organisme approuvé par la province a mis à exécution un plan pour empêcher que soient effectués de tels paiements et pour en recouvrer le montant, le cas échéant, et que le plan est jugé satisfaisant par le Ministre ou par une personne qu'il désigne,

mais ne comprend pas les paiements dont il est fait mention aux sous-alinéas *a*)(iii) à (vi);

c) l'alinéa 5(2)*a*) de la Loi, «frais de premier établissement» signifie un paiement effectué en vue de l'achat d'un terrain, d'immeubles, de meubles ou d'équipement et comprend une déduction pour amortissement, sans toutefois comprendre

(i) tout paiement effectué relativement au loyer d'une maison, d'un appartement ou de tout autre abri pour une personne nécessiteuse et les personnes à sa charge, s'il en est,

(ii) tout paiement effectué relativement au principal de l'hypothèque prise sur une maison dont le propriétaire est nécessiteux ou relativement au service des intérêts de cette hypothèque,

(iii) tout paiement effectué relativement aux articles accessoires à l'exercice d'un métier ou d'un autre emploi ou aux besoins spéciaux de tout genre décrits aux alinéas 4 *a*) et *b*),

(iv) tout paiement effectué relativement à l'achat de prothèses, fournies à titre de service de santé à une personne nécessiteuse,

(v) une déduction pour amortissement à l'égard d'une année, relativement à un établissement résidentiel de bien-être social possédé ou dirigé par le gouvernement d'une province ou par une municipalité de cette dernière et relativement au mobilier et à l'équipement qui y sont contenus, lorsque

(A) l'établissement de bien-être social figure, à titre de foyer de soins spéciaux, dans l'annexe d'un accord conclu en vertu de l'article 4 de la Loi,

(III) the furnishing of the residential welfare institution with furniture or equipment,

(C) each project described in clause (B), in respect of which an expenditure is made by the province or by a municipality in the province after March 31, 1966, has been or is carried out in accordance with standards acceptable to the provincial authority, and

(D) the depreciation allowance is based on the historical cost of the residential welfare institution and of the furniture and equipment therein,

except that there shall be deemed not to be included as or as part of a depreciation allowance for the purposes of this subparagraph,

(E) where the depreciation allowance exceeds the amount that, according to recognized and generally accepted accounting practice, would be allowed for the year as a depreciation allowance on the residential welfare institution and on the furniture and equipment therein, the amount of such excess, or

(F) where the aggregate of

(I) the amount that would, but for this clause, be included as a depreciation allowance for the year on the residential welfare institution and on the furniture and equipment therein for the purposes of this subparagraph, and

(II) the amounts included for previous years as a depreciation allowance on the residential welfare institution and on the furniture and equipment therein for the purposes of this subparagraph,

exceeds the aggregate of all payments made by the province and by municipalities in the province after March 31, 1966 with respect to projects described in clause (B), any amount that would cause the first-mentioned aggregate to exceed the second-mentioned aggregate, and

(vi) where the home for special care is not owned or operated by a province or a municipality in the province, daily, weekly, monthly or other periodic rates charged by the home for special care in respect of a person in need resident therein;

(*d*) paragraph 5(2)(*b*) of the Act, "capital cost or any plant or equipment operating cost" means every cost relating to the provision of welfare services other than a day-care service referred to in paragraph (*h*) but does not include

(i) payment of salaries, wages, honoraria and other kinds of remuneration, including payment of an employer's contribution in respect of a pension, unemployment insurance or workmen's compensation plan or scheme or other employee's benefit plan or scheme,

(ii) payment

(A) for research or consultation carried out on a contract or fee-for-service basis, and

(B) of operating costs of computer services including rental of equipment, where, as a result of such services, the province is able to provide to Canada such information on the administration and operation of the Act and on the provincial law as the Director requires,

(B) un paiement relatif à l'un ou à plusieurs des projets suivants est effectué par la province ou par l'une de ses municipalités après le 31 mars 1966:

(I) la construction d'un établissement résidentiel de bien-être social ou du rajout à un tel établissement ou sa restauration,

(II) la transformation d'un immeuble existant en établissement résidentiel de bien-être social ou l'acquisition d'un immeuble existant qui sera utilisé comme établissement résidentiel de bien-être social, ou

(III) l'apport de meubles ou d'équipement pour ledit établissement de bien-être social,

(C) chaque projet décrit à la disposition (B), à l'égard duquel la province ou une municipalité de cette dernière effectue une dépense après le 31 mars 1966, a été ou est réalisé conformément à des normes acceptables à l'autorité provinciale, et

(D) la déduction pour amortissement se fonde sur le coût réel d'acquisition de l'établissement résidentiel de bien-être social et du mobilier et de l'équipement qui y sont contenus,

sauf que ne sera pas compris à titre de déduction pour amortissement ou de partie de déduction pour amortissement, aux fins du présent sous-alinéa,

(E) lorsque la déduction pour amortissement dépasse le montant qui, selon les méthodes comptables reconnues et généralement acceptées, serait accordé pour l'année à titre de déduction pour amortissement relativement à l'établissement résidentiel de bien-être social et au mobilier et à l'équipement qui y sont contenus, le montant d'un tel excédent, ou

(F) lorsque le total

(I) du montant qui, n'était cette disposition, serait ajouté à la déduction annuelle pour amortissement relativement à l'établissement résidentiel de bien-être social et au mobilier et à l'équipement qui y sont contenus aux fins du présent sous-alinéa, et

(II) des montants inclus à la déduction pour amortissement, à l'égard d'années précédentes, relativement à l'établissement résidentiel de bien-être social et au mobilier et à l'équipement qui y sont contenus aux fins du présent sous-alinéa,

excède le total de tous les paiements effectués par la province et ses municipalités après le 31 mars 1966 relativement aux projets décrits à la disposition (B), tout montant qui amènerait le premier total à dépasser le second total, et

(vi) lorsque le foyer de soins spéciaux n'est pas possédé ou dirigé par une province ou l'une de ses municipalités, les tarifs quotidiens, hebdomadaires, mensuels ou autres appliqués par le foyer de soins spéciaux à l'égard de l'un de ses résidents nécessiteux;

d) l'alinéa 5(2)*b*) de la Loi, «frais de premier établissement ou frais d'exploitation, d'installation ou d'équipement» signifie tous les frais relatifs à la fourniture de services de bien-être social, sauf un service de garde de jour dont il est question à l'alinéa *h*), mais ne comprend pas

(iii) payment of travelling and related living expenses and allowances,

(iv) payment of registration fees for conferences and seminars, or

(v) payment of instructors and training institutions for the training of welfare services' staff and payment of living allowances to such staff while receiving training,

where any such payment

(vi) is in respect of functions that are

(A) related to and essential for the provision and administration of welfare services that are provided by a provincially approved agency at least one employee of which is ordinarily occupied on a full time basis in the provision of welfare services, and

(B) under the direct control and responsibility of a provincially approved agency, or

(vii) is in respect of administrative support services provided to a provincially approved agency by a province or a municipality through a common or central service agency that is not designated as a provincially approved agency, which services relate only to the assembling, analyzing, classifying, recording and reporting of data provided by a provincially approved agency;

(e) clause 5(1)(b)(i)(B) of the Act,

(i) "cost to the province" in the fiscal year of the province described in subclause (I) of that clause,

(A) means payments in that fiscal year by the province other than payments to a municipality in the province, and

(B) in respect of welfare services in the Northwest Territories, includes the cost to Canada of providing those services, and

(ii) "cost to municipalities in the province" in the fiscal years of such municipalities described in subclause (II) of that clause means payments made in such fiscal years by the municipalities, but does not include any such payment to the province;

(f) subsection 5(3) of the Act, "demonstration or research project" means

(i) a project that is designed to test, in a specified situation, the applicability of new or modified methods of providing welfare services as a means of improving such services, or

(ii) a project that is intended to make a contribution to knowledge by systematically collecting, organizing and evaluating data relating to welfare problems or matters by experimentally testing an hypothesis relating to such problems or matters,

where the project is to be completed within a specified time and has been approved as a demonstration project or as a research project pursuant to the rules made by the Governor in Council for the purposes of the National Welfare Grants program;

(g) section 15 of the Act, "cost" of a work activity project undertaken in a province includes, in addition to the costs described in paragraphs 15(2)(a), (b) and (c) of the Act, the cost to the province or to municipalities in that province of

(i) les montants payés en salaires, gages, honoraires et autres genres de rémunération, y compris la cotisation de l'employeur aux régimes de pensions, d'assurance-chômage ou d'indemnisation des accidents du travail ou à tout autre régime de prestations pour employés,

(ii) les montants payés

(A) à forfait ou à l'acte pour des services de recherche ou de consultation, et

(B) en frais de fonctionnement de services d'ordinateur, y compris la location d'équipement, lorsque ces services permettent à la province de fournir au Canada les renseignements requis par le directeur sur l'exécution et l'application de la Loi et de la législation provinciale,

(iii) les frais et indemnités de voyage et de subsistance,

(iv) les droits d'inscription de conférences et de colloques, ou

(v) le montant payé en rémunération aux professeurs et aux établissements chargés de la formation dispensée aux membres du personnel des services de bien-être social et le montant payé à ce personnel en indemnités de séjour au cours du stage de formation,

lorsque le montant est payé

(vi) à l'égard de fonctions

(A) relatives et essentielles à la distribution et à l'administration de services de bien-être social par un organisme agréé par la province et dont au moins un employé est ordinairement occupé à plein temps à la distribution de services de bien-être social, et

(B) directement sous le contrôle et la responsabilité d'un organisme agréé par la province, ou

(vii) à l'égard de services de soutien administratif fournis par une province ou une municipalité à un organisme approuvé par la province, par l'intermédiaire d'un organisme de service central ou commun qui n'est pas désigné comme organisme approuvé par la province, ces services comprenant exclusivement le rassemblement, l'analyse, le classement, l'enregistrement et la déclaration de données fournies par un organisme approuvé par la province;

e) la disposition 5(1)b)(i)(B) de la Loi,

(i) «frais encourus par la province», au cours de l'année financière de la province décrite à la sous-disposition (I) de ladite disposition,

(A) s'entend des paiements effectués au cours de cette année financière par la province, à l'exclusion des paiements faits à une municipalité de la province, et

(B) pour ce qui concerne les services de bien-être social fournis dans les territoires du Nord-Ouest, comprend les frais encourus par le gouvernement du Canada qui fournit ces services, et

(ii) «frais encourus par des municipalités de la province», au cours des années financières de ces municipalités décrites à la sous-disposition (II) de cette disposition désigne les paiements effectués pendant ces années financières par les municipalités, à l'exclusion de tout paiement versé à la province;

f) le paragraphe 5(3) de la Loi, «projet de démonstration ou de recherche» signifie

(i) rental of equipment, including vehicles,

(ii) either the purchase of or the depreciation on any equipment mentioned in subparagraph (i), where the purchase thereof is more economical than its rental and the cost thereof would normally be amortized during the life of the project,

(iii) materials that will be used and consumed in carrying out the project other than materials to be used in the construction of any new building,

(iv) rental of land or premises, and

(v) other operational costs related to the project,

where the cost is directly attributable to the work activity project, as set out in a project submission that is approved in writing by the Director prior to the incurring of the cost, but does not include any cost that Canada has shared or is required to share in any manner with the province or that Canada has borne or is required to bear pursuant to the Act or any other Act of Parliament passed before or after November 10, 1972; and

(*h*) paragraph 5(2)(*b*) of the Act, "capital cost or any plant or equipment operating cost" in respect of a day-care service means every cost relating to the provision of such service but does not include

(i) costs referred to in subparagraphs (*d*)(i) to (v),

(ii) the cost of rental of equipment, including vehicles,

(iii) the cost of either the purchase of, or the depreciation on, any equipment mentioned in subparagraph (ii) the cost of which is not in excess of $1,000 or, with the prior or subsequent approval of the provincial authority and the Director, the cost of which exceeds $1,000,

(iv) the cost of materials that will be used and consumed in the course of the operations of the day-care service,

(v) the cost of rental of land or premises, or the cost of depreciation on any such premises,

(vi) other operational costs that are directly attributable to the operation of the day-care service, or

(vii) any cost that Canada has shared or is required to share in any manner with the province or that Canada has borne or is required to bear pursuant to the Act or any other Act of Parliament passed before or after November 10, 1972.

(i) un projet qui est destiné à éprouver, dans une situation donnée, l'application de méthodes nouvelles ou modifiées de fournir des services de bien-être social en vue d'améliorer ces services, ou

(ii) un projet qui a pour objet d'apporter une nouvelle contribution à l'ensemble des connaissances sur le sujet en rassemblant, en organisant et en évaluant de façon systématique les données sur les problèmes ou les questions du domaine du bien-être social ou en éprouvant par des expériences une hypothèse qui porte sur de tels problèmes ou de telles questions,

lorsque le projet doit être parachevé dans un délai prescrit et qu'il a été approuvé à titre de projet de démonstration ou de projet de recherche conformément aux règles établies par le gouverneur en conseil à l'égard des objets du programme national de subventions;

g) l'article 15 de la Loi, les «frais» d'un projet d'adaptation au travail entrepris dans une province comprennent, en plus des frais mentionnés aux alinéas 15(2)*a*), *b*) et *c*) de la Loi, les frais encourus par la province ou des municipalités dans la province

(i) pour la location d'équipement, y compris des véhicules,

(ii) pour l'achat ou à cause de la dépréciation de tout équipement mentionné au sous-alinéa (i), lorsqu'il est plus économique de l'acheter que de le louer et que le coût en serait normalement amorti pendant la durée du projet,

(iii) pour des articles qui seront utilisés et consommés au cours d'exécution du projet, à part le matériel devant servir à la construction de tout nouvel édifice,

(iv) pour la location de terrain ou de locaux, et

(v) pour d'autres frais de fonctionnement afférents au projet,

lorsque les frais sont directement occasionnés par le projet d'adaptation au travail, tel qu'il est énoncé dans une présentation de projet que le directeur a approuvée par écrit avant que la dépense soit faite mais ne comprennent pas les frais que le Canada a partagés ou est tenu de partager de quelque manière avec la province, ou que le Canada a supportés ou est tenu de supporter conformément à la Loi ou à toute autre loi du Parlement du Canada votée avant ou après le 10 novembre 1972; et

h) l'alinéa 5(2)*b*) de la Loi, «frais de premier établissement ou frais d'exploitation, d'installation ou d'équipement», en ce qui a trait à un service de garde de jour, signifie tous les frais afférents à la fourniture d'un tel service, mais ne comprend pas

(i) les frais dont il est fait mention aux sous-alinéas *d*)(i) à (v),

(ii) les frais de location de tout équipement, y compris des véhicules,

(iii) les frais encourus pour l'achat ou à cause de la dépréciation de tout équipement mentionné au sous-alinéa (ii), lorsque le montant de ces frais ne dépasse pas $1,000 ou, sous réserve de l'approbation préalable ou subséquente de l'autorité provinciale et du Directeur, lorsque ledit coût est de plus de $1,000,

(iv) le coût des articles qui seront utilisés et consommés en cours de fonctionnement du service de garde de jour,

(v) les frais de location de terrain ou de locaux, ou le coût de dépréciation de tels locaux,

(vi) d'autres frais de fonctionnement directement occasionnés par le fonctionnement du service de garde de jour, ni

(vii) les frais que le Canada a partagés ou est tenu de partager de quelque manière avec la province, ou que le Canada a supportés ou est tenu de supporter conformément à la Loi ou à toute autre loi du Parlement du Canada votée avant ou après le 10 novembre 1972.

Matters Prescribed for the Purposes of Particular Provisions of the Act

4. For the purposes of paragraph (*b*) of the definition "assistance" in section 2 of the Act,

(*a*) the following are prescribed as "items incidental to carrying on a trade or other employment":

(i) mandatory licences,

(ii) fees or permits,

(iii) special clothing, or

(iv) tools and other equipment essential to obtain or continue in employment,

where the licence, fee, permit, clothing, tool or other equipment is not ordinarily supplied to or obtained for the person in need by the employer at the employer's expense and is not readily obtainable by the person in need from other sources at no cost to him, but not including (except for the purposes of clause 5(1)(*b*)(i)(B) of the Act) any item where the cost of providing or providing for that item exceeds $500 in a year, unless, either before or after the item is provided or provided for, the provincial authority and the Director or other person designated by the Minister for the purpose approve the item; and

(*b*) the following are prescribed as "special needs of any kind":

(i) any item necessary for the safety, well-being or rehabilitation of a person in need, including,

(A) essential household equipment and furnishings,

(B) essential repairs, alterations and additions to property, and

(C) items necessary for a handicapped person,

but not including (except for the purposes of clause 5(1)(*b*)(i)(B) of the Act) any item where the cost of providing or providing for that item exceeds $500 in a year, unless, either before or after the item is provided or provided for, the provincial authority and the Director or other person designated by the Minister for the purpose approve the item,

(ii) where they are necessary for the safety, well-being or rehabilitation of a person in need, any of the following items, namely

(A) special food or clothing,

(B) telephone, or

Éléments prescrits aux fins de certaines dispositions de la Loi

4. Aux fins de l'alinéa *b*) de la définition «assistance publique» de l'article 2 de la Loi,

a) les éléments suivants sont prévus comme étant «des articles accessoires à l'exercice d'un métier ou d'un autre emploi»:

(i) licences obligatoires,

(ii) droits ou permis,

(iii) vêtements spéciaux, ou

(iv) outils et autres articles d'équipement essentiels à l'obtention ou à la conservation d'un emploi,

lorsque la licence, le droit, le permis, les vêtements, les outils ou tout autre article d'équipement ne sont pas habituellement fournis ou procurés à la personne nécessiteuse par l'employeur et que la personne nécessiteuse ne peut facilement se les procurer, sans qu'il ne lui en coûte, d'autres sources, sans toutefois comprendre (sauf aux fins de la disposition 5(1)*b*)(i)(B) de la Loi) tout article dont le coût dépasse $500 par année, à moins que, soit avant ou après la fourniture d'un tel article, l'autorité provinciale et le directeur ou toute autre personne nommée à cette fin par le Ministre n'approuvent l'article; et

b) les articles suivants sont décrits comme étant des «besoins spéciaux de toute nature»:

(i) tout article nécessaire à la sécurité, au bien-être ou à la réadaptation d'une personne nécessiteuse, y compris

(A) les fournitures et le matériel ménagers essentiels,

(B) les modifications, les réparations et les rajouts essentiels à la propriété, et

(C) les articles nécessaires aux handicapés,

sans toutefois comprendre (sauf aux fins de la disposition 5(1)*b*)(i)(B) de la Loi) tout article dont le coût dépasse $500 année, à moins que, soit avant ou après la fourniture d'un tel article, l'autorité provinciale et le directeur ou toute autre personne nommée à cette fin par le Ministre n'approuvent l'article,

(ii) les articles suivants lorsqu'ils sont nécessaires à la sécurité, au bien-être ou à la réadaptation d'une personne nécessiteuse:

(A) une alimentation ou des vêtements spéciaux,

(B) le téléphone, ou

(C) rehabilitation allowances and housekeeping allowances, and

(iii) special care necessary for the safety, well-being or rehabilitation of a handicapped person in need.

5. For the purposes of paragraph (*g*) of the definition "assistance" in section 2 of the Act, the following welfare services are prescribed:

(*a*) rehabilitation services,

(*b*) case work, counselling and assessment services, and

(*c*) homemaker, day-care and similar services,

where the services are purchased on a fee-for-service or unit cost basis with respect to a person described in paragraph (*a*) of the definition "person in need" in section 2 of the Act.

6. For the purposes of paragraph (*h*) of the definition "assistance" in section 2 of the Act,

(*a*) the following are prescribed as "other prescribed needs of residents or patients in hospitals or other prescribed institutions", namely, needs of any such person not ordinarily provided for as part of care in the hospital or other prescribed institution in which the person is a resident or a patient; and

(*b*) the following are prescribed as "other prescribed institutions" namely,

(i) homes for special care, and

(ii) tuberculosis sanitoria.

7. For the purposes of the definition "health care services" in section 2 of the Act, the following are prescribed as other hospital care services that are not included in that definition, namely, care ordinarily provided in

(*a*) mental hospitals, or

(*b*) tuberculosis hospitals or sanitoria.

8. For the purposes of the definition "home for special care" in section 2 of the Act, the following kinds of residential welfare institutions are prescribed for the purposes of the Act as homes for special care:

(*a*) homes for the aged,

(*b*) nursing homes,

(*c*) hostels for transients,

(*d*) child care institutions,

(*e*) homes for unmarried mothers, and

(*f*) any residential welfare institution the primary purpose of which is to provide residents thereof with supervisory, personal or nursing care or to rehabilitate them socially,

the standards of which (except for the purposes of clause 5(1)(*b*)(i)(B) of the Act) are, in the opinion of the provincial authority, in accordance with the standards generally accepted in the province for residential welfare institutions of that kind.

9. For the purposes of the definition "municipality" in section 2 of the Act, any local government body established by or under a law of a province for the purpose of administering

(C) des prestations de réadaptation et de soins du ménage, et

(iii) les soins spéciaux nécessaires à la sécurité, au bien-être ou à la réadaptation d'un invalide nécessiteux.

5. Aux fins de l'alinéa *g*) de la définition d'«assistance publique» de l'article 2 de la Loi, les services de bien-être social suivants sont des services prescrits:

a) les services de réadaptation,

b) les services sociaux personnels, les services d'orientation et d'évaluation, et

c) les services ménagers à domicile, les services de soins de jour et autres services du même genre,

lorsque ces services sont payés à l'acte ou au tarif unitaire relativement à une personne décrite à l'alinéa *a*) de la définition de «personne nécessiteuse» de l'article 2 de la Loi.

6. Aux fins de l'alinéa (*h*) de la définition d'«assistance publique» de l'article 2 de la Loi,

a) les besoins suivants sont prescrits comme étant «d'autres services prescrits répondant aux besoins des résidents ou malades des hôpitaux ou autres établissements prescrits», notamment, les besoins de toute personne qui ne sont pas ordinairement comblés au cours de soins dispensés à l'hôpital ou dans un autre établissement prescrit dont cette personne est un résident ou un malade; et

b) les établissements suivants sont prescrits comme étant «d'autres établissements prescrits» notamment,

(i) les foyers de soins spéciaux, et

(ii) les sanatoriums.

7. Aux fins de la définition de «services de soins sanitaires» de l'article 2 de la Loi, les services suivants sont prescrits comme étant d'autres services de soins hospitaliers, non compris dans cette définition, notamment, les soins dispensés dans

a) des hôpitaux psychiatriques; ou

b) des hôpitaux pour tuberculeux ou des sanatoriums.

8. Aux fins de la définition de «foyer de soins spéciaux» de l'article 2 de la Loi, les catégories suivantes d'établissements résidentiels de bien-être social sont prescrites aux fins de la Loi comme étant des foyers de soins spéciaux:

a) les foyers de vieillards,

b) les maisons de repos,

c) les auberges pour les indigents ambulants,

d) les établissements de soins pour enfants,

e) les foyers pour mères célibataires, et

f) tout établissement de bien-être social dont le principal objet est de fournir à ses résidents des soins personnels ou infirmiers ou de les réadapter socialement,

dont les normes (sauf aux fins de la disposition 5(1)*b*)(i)(B) de la Loi) sont, de l'avis de l'autorité provinciale, conformes aux normes généralement agréées dans la province relativement aux établissements de bien-être social de ce genre.

9. Aux fins de la définition de «municipalité» de l'article 2 de la Loi, tout organisme de gouvernement local créé par une loi provinciale ou en vertu d'une telle loi afin d'administrer des

assistance or welfare services programs is prescribed for the purposes of the Act as a municipality.

10. For the purposes of the definition "welfare services" in section 2 of the Act, the following are prescribed as other matters that are not included in that definition:

(*a*) health care services;

(*b*) services relating wholly or mainly to recreation; and

(*c*) any hospital care services specified in section 7.

Modified Definitions of "Welfare Services" and "Welfare Services Provided in the Province" for Certain Purposes

11. (1) For the purposes of clause 5(1)(*b*)(i)(B) of the Act,

(*a*) the definition "welfare services" as set out in section 2 of the Act is modified as follows:

(i) the definition "assistance" as set out in section 2 of the Act shall be read as though

(A) for the expression "person in need" or any equivalent or like expression, wherever it appears in the said definition or in a regulation defining or prescribing anything for the purposes thereof, there were substituted the expression "needy person", and

(B) for the expression "provincially approved agency", wherever it appears in the said definition or in a regulation defining or prescribing anything for the purposes thereof, there were substituted the expression "welfare agency", and

(ii) the definition "home for special care" as set out in section 2 of the Act shall be read as though the words "and that is listed in a schedule to an agreement under section 4" were deleted therefrom; and

(*b*) the definition "welfare services provided in the province" as set out in section 2 of the Act shall be read as follows:

"welfare services provided in the province" means welfare services provided in the province pursuant to a law of the province to or in respect of needy persons or persons who are likely to become needy unless such services are provided.

(2) In this section, "welfare agency" means any department of the government of a province, or any person or agency (including a private, non-profit agency) in the province, that at any time in the period commencing April 1, 1964 and ending March 31, 1965 provided welfare services or aid to needy persons in the province, if the whole or any part of the cost of providing such services or aid has been shared or borne in any manner by the province or by a municipality in the province.

Election by a Province

12. An election by a province under paragraph 5(1)(*b*) of the Act shall be made by the province

programmes d'assistance publique ou de services de bien-être social est prescrit, aux fins de la Loi, comme étant une municipalité.

10. Aux fins de la définition de «services de bien-être social» de l'article 2 de la Loi, les services suivants sont prescrits comme étant des services que n'englobe pas cette définition:

a) les services de soins sanitaires;

b) les services qui concernent uniquement ou principalement les loisirs; et

c) tous les services de soins hospitaliers prescrits à l'article 7.

Définitions révisées, à certaines fins, de «services de bien-être social» et de «services de bien-être social fournis dans la province»

11. (1) Aux fins de la disposition 5(1)*b*)(i)(B) de la Loi,

a) la définition de «services de bien-être social» formulée à l'article 2 de la Loi est modifiée comme suit:

(i) la définition d'«assistance publique» formulée à l'article 2 devra être lue comme si,

(A) à l'expression «personne nécessiteuse» ou à toute autre expression équivalente ou semblable, qu'elle figure à ladite définition de la Loi ou dans un règlement définissant ou prescrivant une mesure à ces fins, était substituée l'expression «personne dans le besoin», et

(B) à l'expression «organisme approuvé par la province», qu'elle figure à ladite définition ou dans un règlement définissant ou prescrivant une mesure à ces fins, était substituée l'expression «organisme de bien-être social», et

(ii) la définition de «foyer de soins spéciaux» formulée à l'article 2 de la Loi devra être lue comme si l'expression «et qui figure dans la liste d'une annexe à un accord conclu en vertu de l'article 4» en était supprimée; et

b) la définition de «services de bien-être social fournis dans la province» telle qu'elle figure à l'article 2 de la Loi doit se lire ainsi:

«services de bien-être social fournis dans la province» désigne les services de bien-être social fournis dans la province, conformément à une loi provinciale, à des personnes nécessiteuses ou à leur égard ou à des personnes qui deviendront probablement nécessiteuses si de tels services ne sont pas fournis.

(2) Dans le présent article, l'expression «organisme de bien-être social» désigne tout ministère du gouvernement d'une province, ou toute personne ou tout organisme (y compris les organismes privés sans but lucratif) de la province qui, à quelque moment que ce soit au cours de la période écoulée du 1er avril 1964 au 31 mars 1965, a fourni de l'assistance ou des services de bien-être social à des personnes dans le besoin de la province, si l'ensemble ou une partie quelconque du coût entraîné par la fourniture de ces services ou de cette assistance a été supporté de quelque façon que ce soit par la province ou une municipalité de la province.

Choix par une province

12. Le choix prévu en vertu de l'alinéa 5(1)*b*) de la Loi devra être fait par la province

(*a*) in respect of any year preceding the year in which an agreement under section 4 of the Act is made with the province, by notice in writing to the Minister when the agreement is signed by the province, or

(*b*) in respect of the year in which the agreement is made with the province, by notice in writing to the Minister on or before the day on which a claim for a contribution or an advance on account thereof is made by the province in respect of that year,

and the election made by the province pursuant to paragraph (*b*) shall apply in respect of any year subsequent to the year specified in paragraph (*b*), unless the province, on or before March 31st of the year preceding the subsequent year, changes its election in respect of the subsequent year by notice in writing to the Minister.

Claims for Contributions and Advances

13. (1) Where a contribution is payable to a province in respect of any year, the province shall deliver to the Minister a statement, in a form satisfactory to the Minister, showing

(*a*) the cost to the province and to municipalities in the province in the year of assistance provided by or at the request of provincially approved agencies, and

(*b*) in accordance with the election made by the province for the year under paragraph 5(1)(*b*) of the Act, either

(i) the cost to the province and to municipalities in the province in the year of welfare services provided by the provincially approved agencies, or

(ii) the cost to the province and to municipalities in the province in the year of the employment by provincially approved agencies of persons employed by such agencies

(A) wholly or mainly in the performance of welfare services functions, and

(B) in positions filled after March 31, 1965,

determined in accordance with the Act, the agreement with the province and these Regulations, and the province shall deliver to the Minister such other information in respect of clause 5(1)(*b*)(ii)(B) of the Act or in respect of any other matter as the Minister may request the province to provide for the purpose of determining the amount of the contribution payable to the province for the year.

(2) The statement referred to in subsection (1) and such other information as the Minister may request the province to provide for the purpose of determining the amount of the contribution payable to the province for the year shall be delivered by the province,

(*a*) where the year to which the statement relates is the year in which the agreement with the province was signed by the province or a year ending after that year, as soon as practicable after the end of such year and, in any event, within one year after the end of such year or within such further period as the Minister may agree to, or

a) pour quelque année que ce soit précédant l'année au cours de laquelle un accord est conclu avec la province en vertu de l'article 4 de la Loi, au moyen d'un avis écrit adressé au Ministre lors de la signature de l'accord par la province, ou

b) pour l'année au cours de laquelle l'accord est conclu avec la province, au moyen d'un avis écrit adressé au Ministre le jour même ou avant le jour où la demande de contribution ou d'avances sur des contributions est présentée par la province pour ladite année,

et le choix fait par la province en conformité de l'alinéa *b*) s'appliquera à chaque année qui suit l'année précisée à l'alinéa *b*), à moins que la province, le ou avant le 31 mars de l'année précédant l'année suivante, ne change ce choix quant à ladite année suivante au moyen d'un avis écrit adressé au Ministre.

Demande de contributions ou d'avances sur lesdites contributions

13. (1) Lorsqu'une contribution est payable à une province pour une année quelconque, la province devra présenter au Ministre un état, dont la forme et la teneur satisfont le Ministre, indiquant

a) les frais encourus par la province et des municipalités de la province au cours de l'année pour l'assistance publique fournie par des organismes approuvés par la province ou à leur demande, et

b) en conformité du choix fait par la province, pour l'année, en vertu de l'alinéa 5(1)*b*) de la Loi,

(i) soit les frais encourus par la province et des municipalités de la province au cours de l'année en question pour les services de bien-être social fournis par des organismes approuvés par la province,

(ii) soit les frais encourus par la province et des municipalités de la province au cours de l'année en question pour l'emploi, par des organismes approuvés par la province, de personnes au service de ces organismes

(A) uniquement ou principalement dans des fonctions relevant des services de bien-être social, et

(B) dans des postes pourvus après le 31 mars 1965,

fixés conformément à la Loi, à l'accord conclu avec la province et au présent règlement, et la province devra présenter au Ministre tous les autres renseignements relativement à la disposition 5(1)*b*)(ii)(B) de la Loi ou relativement à tout autre facteur que le Ministre peut demander à la province de fournir afin de fixer le montant de la contribution payable à la province pour l'année.

(2) L'état dont il est question au paragraphe (1) et tous les autres renseignements que le Ministre peut demander à la province de fournir en vue de déterminer le montant de la contribution payable à la province pour l'année devront être présentés par la province,

a) lorsque l'année sur laquelle porte l'état est l'année au cours de laquelle l'accord avec la province a été signé par la province ou une année prenant fin après cette année, le plus tôt possible après la fin de ladite année, et, de toute façon, moins d'un an après la fin de cette année ou avant la fin de tout autre délai auquel pourra consentir le Ministre, ou

(*b*) where the year with respect to which the statement relates ended before the year in which the agreement with the province was signed by the province, as soon as practicable after the agreement is signed by the province and, in any event, within one year after the agreement is signed by the province or within such further period as the Minister may agree to,

and shall be certified as to the correctness of the information shown therein by the provincial auditor, or other auditor designated by the provincial authority and acceptable to the Director, and by the provincial authority.

(3) Upon the certificate of the Minister that the statement required and any information requested under subsection (1) for the purpose of determining the amount of the contribution payable to the province for the year have been received, the Minister of Finance shall pay to the province an amount equal to the contribution payable to the province in respect of the year minus the total of any advances paid to the province on account of such contribution.

(4) Notwithstanding subsection (3), where the total of any advances paid to a province on account of the contribution payable to the province in respect of the year exceeds the contribution payable to the province in respect of that year,

(*a*) no amount shall be paid to the province pursuant to subsection (3) in respect of that year; and

(*b*) an amount equal to the amount of such excess shall be paid forthwith to Canada by the province and, in the event that it is not so paid, such amount may be recovered at any time by Canada as a debt due to Her Majesty in right of Canada by the province or may be retained, in whole or in part, by the Minister of Finance out of any contribution or advance on account thereof subsequently payable to the province.

(5) A province may obtain an advance on account of contributions for any month in a year in respect of which a contribution is payable to the province by delivering to the Minister a statement, in a form satisfactory to the Minister, showing

(*a*) the cost to the province and to municipalities in the province in the previous month of assistance provided by or at the request of provincially approved agencies, and

(*b*) in accordance with the election made by the province for the year under paragraph 5(1)(*b*) of the Act, either

(i) the cost to the province and to municipalities in the province in the previous month of welfare services provided by provincially approved agencies, or

(ii) the cost to the province and to municipalities in the province in the previous month of the employment by provincially approved agencies of persons employed by such agencies

(A) wholly or mainly in the performance of welfare services functions, and

(B) in positions filled after March 31, 1965,

determined in accordance with the Act, the agreement with the province and these Regulations, and by delivering to the Minister such other information as he may request the prov-

b) lorsque l'année sur laquelle porte l'état a pris fin avant l'année au cours de laquelle l'accord avec la province a été signé par la province, le plus tôt possible après la signature de l'accord par la province, et, de toute façon, moins d'un an après la signature de l'accord par la province ou avant la fin de tout autre délai auquel pourra consentir le Ministre,

et l'exactitude des renseignements qui y sont inscrits devra avoir été attestée par le vérificateur provincial, ou par un autre vérificateur désigné par l'autorité provinciale et acceptable au directeur, et par l'autorité provinciale.

(3) Au reçu du certificat du Ministre selon lequel l'état dont il est question au paragraphe (1) et tous les autres renseignements qu'il aura jugés nécessaires afin de déterminer le montant de la contribution pour l'année ont été reçus, le ministre des Finances versera à la province un montant égal à la contribution payable à la province pour cette année moins le total des avances sur ladite contribution qui auraient pu être accordées à la province.

(4) Nonobstant le paragraphe (3), si le total des avances accordées à la province sur la contribution payable à la province pour l'année dépasse le montant de la contribution payable à cette province pour ladite année,

a) aucun montant ne sera versé à la province en conformité du paragraphe (3) pour ladite année; et

b) un montant égal au montant de l'excédent sera remboursé sans délai au Canada par la province et, au cas où ce montant ne serait pas payé, le Canada pourra le recouvrer en tout temps à titre de dette due à Sa Majesté du chef du Canada par la province, ou le ministre des Finances pourra le retenir, en tout ou en partie, à même toute contribution ou avance sur ladite contribution payable par la suite à la province.

(5) Une province peut recevoir une avance sur lesdites contributions pour n'importe quel mois de l'année à l'égard duquel une contribution est payable à la province en présentant au Ministre un état dont la forme et la teneur le satisfont, indiquant

a) les frais encourus par la province et des municipalités de la province, au cours du mois précédent, pour l'assistance publique fournie par des organismes approuvés par la province ou à leur demande, et

b) conformément au choix fait par la province pour l'année, en vertu de l'alinéa 5(1)*b*) de la Loi,

(i) soit les frais encourus par la province et des municipalités de la province, au cours du mois en question, pour les services de bien-être social fournis par des organismes approuvés par la province,

(ii) soit les frais encourus par la province et des municipalités de la province, au cours du mois en question, pour l'emploi, par des organismes approuvés par la province, de personnes au service de ces organismes

(A) uniquement ou principalement dans des fonctions relevant des services de bien-être social, et

(B) dans des postes pourvus après le 31 mars 1965,

ince to provide for the purpose of determining the amount of the advance for the month.

(6) Upon the certificate of the Minister that the statement required and any other information requested under subsection (5) for the purpose of determining the amount of the advance payable to the province for the month have been received, the Minister of Finance shall, on or after the 20th day of the month, pay to the province for the month out of the Consolidated Revenue Fund, as an advance on account of the contribution payable to the province for the year in which the month occurs, an amount equal to

(*a*) one-twelfth of the most recent estimate made by the Minister of the contribution to which the province is entitled for that year

minus

(*b*) any amount by which the aggregate of the advances paid in respect of prior months in that year exceeds that portion of the estimated contribution payable to the province relating to those prior months.

(7) A statement submitted by a province pursuant to subsection (5) shall be certified by the provincial authority as to the correctness of the information shown therein.

(8) In this section, the words "contribution" and "agreement" have the same meaning as in Part I of the Act.

Claims Relating to Work Activity Projects

14. (1) Where an amount is payable to a province in respect of the cost in any year of a work activity project, the province shall deliver to the Minister

(*a*) a statement, in a form satisfactory to the Minister, shewing the cost to the province and to municipalities in the province in that year of the work activity project determined in accordance with the Act, with the agreement made under section 15 of the Act and with these Regulations; and

(*b*) such other information as the Minister may request for the purpose of determining the amount payable to the province for that year.

(2) The statement referred to in subsection (1) and such other information as the Minister may request for the purpose of determining the amount payable to the province for the year shall be delivered by the province,

(*a*) where the year to which the statement relates is the year in which the agreement with the province under section 15 of the Act was signed by the province or a year ending after that year, as soon as practicable after the end of such year and, in any event, within one year after the end of such year or within such further period as the Minister may agree to, or

(*b*) where the year to which the statement relates ended before the year in which the agreement with the province under section 15 of the Act was signed by the province, as soon as practicable after the agreement is signed by the

fixés conformément à la Loi, à l'accord avec la province et au présent règlement ainsi qu'en soumettant au Ministre tout autre renseignement qu'il pourra demander à la province de fournir afin de déterminer le montant de l'avance sur la contribution pour ce mois.

(6) Dès la réception du certificat du Ministre attestant que l'état dont il est question au paragraphe (5) et tous les autres renseignements qu'il a demandés pour déterminer le montant de l'avance ont été reçus, le ministre des Finances doit payer à la province, le ou après le 20e jour du mois et pour le mois, sur le Fonds du revenu consolidé, à titre d'avance sur la contribution payable à la province pour l'année dans laquelle ce mois est compris, un montant équivalant

a) à un douzième du montant de la dernière évaluation faite par le Ministre de la contribution à laquelle la province a droit pour l'année en cause,

moins

b) le montant que représente l'excédent, s'il en est, du montant global des avances payées à l'égard des mois précédents au cours de l'année en cause sur la partie du montant estimatif de la contribution payable à la province à l'égard de ces mois précédents.

(7) L'exactitude des renseignements renfermés dans toute demande soumise par la province en conformité du paragraphe (5) devra avoir été attestée par l'autorité provinciale.

(8) Dans le présent article, «contribution» et «accord» ont la même signification que dans la partie I de la Loi.

Demandes se rapportant aux projets d'adaptation au travail

14. (1) Lorsqu'un montant est payable à une province à l'égard des frais engagés au cours d'une année quelconque pour un projet d'adaptation au travail, la province devra présenter au Ministre

a) un état, dont la forme et la teneur satisfont le Ministre, indiquant les frais engagés par la province et les municipalités de ladite province, au cours de l'année en question, du projet d'adaptation au travail fixé conformément à la Loi, à l'accord conclu en vertu de l'article 15 de la Loi et au présent règlement; et

b) tout autre renseignement que le Ministre peut demander afin de déterminer le montant payable à la province à l'égard de ladite année.

(2) L'état dont il est question au paragraphe (1) et tous les autres renseignements que le Ministre peut demander en vue de déterminer le montant payable à la province pour l'année doivent être présentés par la province

a) lorsque l'année sur laquelle porte l'état est l'année au cours de laquelle l'accord conclu avec la province aux termes de l'article 15 de la Loi a été signé par la province ou une année prenant fin après cette année, le plus tôt possible après la fin de ladite année et, de toute façon, dans l'année ou avant la fin de tout autre délai auquel pourra consentir le Ministre, ou

b) lorsque l'année sur laquelle porte l'état a pris fin avant l'année au cours de laquelle l'accord conclu avec la province aux termes de l'article 15 a été signé par la province, le plus tôt possible après la signature de l'accord par la province et

province and, in any event, within one year after the agreement is signed by the province or within such further period as the Minister may agree to,

and shall be certified as to the correctness of the information shown therein by the provincial auditor, or other auditor designated by the provincial authority and acceptable to the Director, and by the provincial authority.

(3) Upon the certificate of the Minister that the statement required and any information requested under subsection (1) for the purpose of determining the amount payable to the province for the year have been received, the Minister of Finance shall pay to the province the amount payable to it in respect of the year to which the statement relates minus the total of any advances paid to that province on account of such amount.

(4) A province may obtain an advance for any month on account of the amount payable to it in any year by delivering to the Minister

(*a*) a statement, in a form satisfactory to the Minister, showing the cost to the province and to municipalities in the province for the month in that year in respect of which an advance is requested; and

(*b*) such other information as the Minister may request for the purpose of determining the amount of such advance.

(5) Upon the certificate of the Minister that the statement required and any information requested under subsection (4) for the purpose of determining the amount of the advance payable to the province for the month have been received, the Minister of Finance shall pay out of the Consolidated Revenue Fund to the province as an advance on account of the amount payable to the province for the year in which the month occurs, an amount equal to one-twelfth of the amount to which the province would be entitled for that year if the cost to the province and to municipalities in the province referred to in subsection (4) were projected on an annual basis.

(6) Where the total amount of advances paid to a province in any year pursuant to subsection (5) exceeds the amount payable to the province in respect of that year, an amount equal to the amount of such excess shall be paid forthwith to Canada by the province and, in the event that it is not so paid, such amount may be recovered at any time by Canada as a debt due to Her Majesty in right of Canada by the province or may be retained, in whole or in part, by the Minister of Finance out of any amount payable or advance on account thereof subsequently payable to the province.

Provisions to be Included in Agreements

15. An agreement made under section 4 of the Act shall

(*a*) provide that the province will ensure the maintenance and availability for examination and audit, for a period to be specified in the agreement, by the Minister or any person designated by the Minister of the following records and accounts:

(i) records and accounts relating to the determination of contributions payable to the province pursuant to section 5 of the Act, and

de toute façon, dans l'année qui suivra la signature de l'accord par la province ou avant la fin de tout autre délai auquel pourra consentir le Ministre,

et l'exactitude des renseignements qui y sont inscrits devra avoir été attestée par le vérificateur provincial, ou tout autre vérificateur désigné par l'autorité provinciale et acceptable au directeur, et par l'autorité provinciale.

(3) Sur la foi d'un certificat par lequel le Ministre indique qu'il a reçu l'état et les autres renseignements visés au paragraphe (1) et servant à déterminer le montant payable à la province pour l'année, le Ministre des Finances verse à la province le montant qui lui est payable pour l'année visée par l'état, moins la somme des avances déjà versée à cette province au titre de ce montant.

(4) Une province peut recevoir une avance pour n'importe quel mois de l'année sur le montant qui lui est payable au cours de toute année en présentant au Ministre

a) un état dont la forme et la teneur le satisfont, indiquant les frais engagés par la province et les municipalités de la province pour le mois à l'égard duquel l'avance est demandée; et

b) tout autre renseignement que le Ministre peut demander afin de déterminer le montant de ladite avance.

(5) Sur la foi d'un certificat par lequel le Ministre indique qu'il a reçu l'état et les autres renseignements visés au paragraphe (4) et servant à déterminer le montant payable à la province pour l'année, le Ministre des Finances verse à la province, à même le Fonds du revenu consolidé et à titre d'avance sur le montant payable à la province pour l'année au cours de laquelle ce mois survient, une somme égale à un douzième du montant auquel la province aurait droit pour ladite année si les frais engagés par la province et les municipalités de la province dont il est question au paragraphe (4) avaient été prévus pour une année.

(6) Lorsque le total des avances versées au cours de toute année à une province en conformité du paragraphe (5) dépasse le montant payable à ladite province pour ladite année, un montant égal au montant du plus-payé sera remboursé sans délai au Canada par la province et, au cas où ce montant ne serait pas payé, le Canada pourra le recouvrer en tout temps à titre de dette due à Sa Majesté du chef du Canada par la province, ou le ministre des Finances pourra le retenir, en tout ou en partie, sur tout montant payable ou toute avance sur ledit montant payable par la suite à la province.

Dispositions devant être comprises dans les accords

15. Un accord intervenu en vertu de l'article 4 de la Loi devra

a) porter que la province fera tenir et maintenir pour examen et vérification, pour une période qui sera fixée dans l'accord, par le Ministre ou toute autre personne qu'il a désignée, les registres et comptes suivants:

(i) tous les registres et comptes relatifs à la détermination des contributions payables à la province conformément à l'article 5 de la Loi, et

(ii) records relating to the determination of whether a person is a person in need or a person who is likely to become a person in need unless welfare services are provided to him and to the assistance, if any, provided to such a person;

(*b*) provide that the province will, on and after the effective date of the agreement, in determining whether a person is a person in need, obtain from that person or from a responsible person on his behalf an application for assistance in a form satisfactory to the provincial authority; and

(*c*) provide that, in taking into account a person's income and resources as required by any provision of the Act or the agreement, the province may determine the income and resources of such person on a daily, weekly, monthly or other periodic basis acceptable to the provincial authority.

(ii) tous les registres relatifs à la qualification ou non-qualification, pour une personne, de personne nécessiteuse ou de personne qui deviendrait vraisemblablement personne nécessiteuse si les services de bien-être social ne lui étaient pas fournis et, s'il y a lieu, à la détermination de l'assistance qui lui a été versée;

b) porter que la province se procurera, à la date d'entrée en vigueur de l'accord ou après, en décidant si une personne est une personne nécessiteuse, de cette personne ou d'une personne digne de confiance, en son nom, une demande d'assistance dont la forme et la teneur satisfont l'autorité provinciale; et

c) porter que, en calculant le revenu et les ressources d'une personne, comme l'exige l'une ou l'autre disposition de la Loi ou de l'accord, la province peut déterminer le revenu et les ressources de cette personne par jour, par semaine, par mois ou par toute autre période acceptable à l'autorité provinciale.

16. An agreement under section 15 of the Act shall provide that the province will ensure the maintenance and availability for examination and audit, for a period to be specified in the agreement, by the Minister or any person designated by him, of the following records and accounts:

(*a*) records and accounts relating to the cost of each work activity project;

(*b*) records and accounts relating to the determination of amounts payable to the province pursuant to section 16 of the Act; and

(*c*) records relating to the determination of whether a person is a person in need or a person who is likely to become a person in need unless welfare services are provided to him and to the cost, if any, of participation of that person in a work activity project.

16. Un accord conclu en vertu de l'article 15 de la Loi devra porter que la province fera tenir et maintenir pour examen et vérification, pour une période qui sera fixée dans l'accord, par le Ministre ou toute autre personne qu'il a désignée, les registres et comptes suivants:

a) tous les registres et les comptes relatifs aux frais de chaque projet d'adaptation au travail;

b) tous les registres et comptes relatifs à la détermination des montants payables à la province conformément à l'article 16 de la Loi; et

c) tous les registres relatifs à la qualification ou non-qualification, pour une personne, de personne nécessiteuse ou de personne qui deviendrait vraisemblablement personne nécessiteuse si les services de bien-être social ne lui étaient pas fournis et, s'il y a lieu, à la détermination des frais que représente la participation de ladite personne à un projet d'adaptation au travail.

Indian Welfare

17. For the purposes of subsection 11(2) of the Act, the consent of the council of an Indian band shall be signified by delivery to the Minister of Indian Affairs and Northern Development and to the provincial authority of a copy of a resolution of that band, certified by the chief of the band and another member of the council of the band, authorizing the consent to be so signified.

Bien-être social des Indiens

17. Aux fins du paragraphe 11(2) de la Loi, le consentement du conseil d'une bande d'Indiens devra avoir été manifesté par l'envoi au ministre des Affaires indiennes et du Nord canadien et à l'autorité provinciale d'une copie d'une résolution de ladite bande, certifiée par le chef de la bande et un autre membre du conseil de la bande, autorisant la manifestation du consentement.

QUEEN'S PRINTER FOR CANADA © IMPRIMEUR DE LA REINE POUR LE CANADA
OTTAWA, [illegible]

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2834-96
STYLE OF CAUSE:	THE ATTORNEY GENERAL OF QUEBEC v. HER MAJESTY THE QUEEN IN RIGHT OF CANADA
PLACE OF HEARING:	Québec
DATES OF HEARING:	September 25, 26, 27, 28 and 29, 2006; October 2, 3, 4, 5, 6, 10, 11, 12, 13 and 16, 2006; November 20, 21 and 22, 2006; January 29, 2007
REASONS FOR JUDGMENT AND JUDGMENT:	DE MONTIGNY J.
DATED:	June 6, 2008

APPEARANCES:

Mélanie Paradis / Normand Lavoie	FOR THE PLAINTIFF
René Le Blanc / Guy Blouin / Yannick Landry	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Mélanie Paradis / Normand Lavoie Gouvernement du Québec Direction des affaires juridiques Québec, Quebec	FOR THE PLAINTIFF
René Le Blanc / Guy Blouin / Yannick Landry Department of Justice Canada Ottawa, Ontario	FOR THE DEFENDANT