

How Quebec's "Universal" Health System Excludes Its Most Vulnerable Citizens

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November 20, 2020 was [World Children's Day](#). But one would have been hard-pressed to find reasons for self-congratulation in Quebec, at least as far as a certain group of young Canadians is concerned. Hundreds of infants and young children born in Quebec, who are Canadian citizens, have been denied access to one of the most important public goods in our society: public health insurance.

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Quebec considers itself an inclusive society, giving rhetorical significance to its brand of national citizenship. Quebec distinguishes itself from Canada's multiculturalism through its distinct approach to integrating migrant communities and minorities in general, which is referred to as "[interculturalism](#)." But the central planks of interculturalism, which focus on integrating newcomers into Quebec society by securing the cultural identity of the majority group, do not engage directly with access to public goods like health care. Research shows that immigrants experience poorer health outcomes than non-immigrants in Canada generally, while [factors such as language and culture increase social isolation and operate to decrease health literacy](#). Not surprisingly, a major factor in poorer outcomes is lack of access to healthcare, but [little of the research has focused on impacts on children](#).

This article will discuss children's exclusion from access to public health insurance in Quebec and the cascading series of individual, family and social hardships that have resulted, not only for the children themselves, but also for their parents, caregivers and healthcare professionals. [Medical organizations](#) that usually offer

their services in developing countries have been working hard in Quebec to provide and advocate for health services to patients and their parents for whom Covid-19 has added another, dangerous layer of vulnerability.

The *Régie de l'assurance maladie du Québec* (RAMQ), the administrative agency with the responsibility for assessing the eligibility of insured persons, has been systematically excluding this group of Canadian children from access to healthcare for more than two decades despite statements from elected officials to the contrary. While there have been various explanations from government officials as to why these children have been excluded, there has been little political incentive to fix the problem. The direct victims, very young children and their parents, cannot yet vote, albeit for different reasons.

A Case Study

The practice of excluding these young Canadian citizens has been going on for decades, operating well below most radar screens, and with complete impunity in terms of the Quebec government's failure to comply with the basic principles of the [Canada Health Act](#).

Children like little Psalm have been among the victims of RAMQ's bureaucratic intransigence and of the failure of successive governments in Quebec to address the problem despite periodic reassurances to the public that the matter is being dealt with. (Both of Psalm's parents have agreed to have their story told, not only for the sake of their own son, but also to highlight publicly a problem that affects hundreds of children and thousands of people in Quebec. Surnames have been withheld to protect their privacy.)

Psalm is nine months old. His parents are from Ethiopia. He has lived here every day of his life. His dad is an award-winning PhD student and a former Sauvé Scholar, now in his third year at Concordia University. His mom holds a valid work

permit and was on maternity leave until recently. Both are lawfully in Quebec and would like to stay. For now, both parents pay for their own medical care and are willing and able to continue doing so until their status changes.

Psalm, like any child, needs his regular checkups. He also has specialized medical needs following a shoulder injury that was sustained at birth. The costs are beyond his parents' financial means.

Understanding Psalm's story requires an overview of how Quebec's rules fit into the policy framework for public health care in Canada and how that framework has been implemented in Quebec.

The Policy Framework

The [Canada Health Act](#) sets out national standards of accessibility and universality (among other central values) for health care policy in this country. The primary objective under Section 3 of the Act is to "protect, promote and restore the physical and mental well-being of residents of Canada and to facilitate reasonable access to health services without financial or other barriers." Provinces (including Quebec) are required to provide insured health services to all residents of a province, and residents are defined in the Act as:

... a person lawfully entitled to be or to remain in Canada who makes his home and is *ordinarily present* in the province, but does not include a tourist, a transient or a visitor to the province; (habitant) provided they have met the minimum waiting period set out by law. [Emphasis added.]

RAMQ is the administrative body [created by law](#) to determine eligibility for public health insurance as described in Quebec's [Health Insurance Act](#) (among its other functions). Indeed, the Quebec's [Health Insurance Act](#) reflects the Canada Health Act's legal concept of residence, at least superficially.

All Canadian citizens who live in a province for the minimum prescribed period of time (which cannot exceed three months) should be considered as eligible residents. Under Quebec law, Canadian citizens must be domiciled in Quebec (that is, habitually residing here) and meet the conditions in the regulations in order to be registered for public health insurance. But over the years, RAMQ has refused to register many children whose *parents* did not have stable immigration status, despite the citizenship of the child and the plain language in the *Canada Health Act*.

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It is true that there are several categories of persons who are not Canadians and who do not have permanent residence who are nonetheless eligible for public health insurance in Quebec. However, the differences between them for the purposes of granting eligibility appear arbitrary. Had Psalm been born while his father was a Sauvé Scholar, for instance, the child would have been eligible for public health insurance. What is more, his father's visa as a Sauvé Scholar was of even shorter duration than the one he currently holds as a doctoral candidate at Concordia University and therefore his status then was even more unstable than it is now.

The history of this issue also underscores the arbitrariness of the situation in which Psalm's family and many like them have found themselves. In 1999, the Parti Québécois (PQ), with Pauline Marois at the helm, attempted to deal with the impasse by amending Section 5 of Quebec's [Health Insurance Act](#) so that children indeed would be considered "domiciled" and thus eligible if "settled" in Quebec. The

amendment was specifically intended to ensure that children would receive access to health insurance based on their own independent status, regardless of that of their parents. This legislative intent can be inferred from debates in the National Assembly on the bill, which demonstrates that the bill was explicitly designed to distinguish the status of children (“unemancipated minors”) born in Quebec from that of their parents. (In Canada, parliamentary debates are admissible as extrinsic evidence of legislative intent.)

Nonetheless, the practice of refusing health care to those in Psalm’s situation persisted under the PQ, then under the next government, the Quebec Liberal Party, and then continued under the Coalition Avenir Québec.

RAMQ’s position is based on provisions buried in [regulations](#) that describe the status of the parents, but not of the child, as the criterion used to assess the child’s eligibility. Those regulations, as interpreted by RAMQ, are incompatible with the principle of universality under the *Canada Health Act*.

Advocates argue that RAMQ’s position fails to respect the Quebec Civil Code, Quebec’s human rights statute, the [Charter of Human Rights and Freedoms](#), and the Canadian *Charter of Rights and Freedoms* which guarantees both the right to equality and to life, liberty and security of the person. For example, Canadian citizens in Psalm’s situation who were born in the province and who are Canadian citizens are now [fully eligible for healthcare coverage in Ontario](#), whereas an identically-situated child in Quebec is currently not eligible. In fact, as of March 19, 2020, the Ontario program waived the three-month waiting period for medical coverage and now provides that for babies born in an Ontario hospital, parents just have to complete a form, confirm that the baby’s main residence is in Ontario, and that the baby will be in Ontario for at least 153 days in any 12 month period. It is worth noting that the status of the parents, or their intentions, is not the direct factor.

Finally, the [United Nations Convention on the Rights of the Child](#), which Canada has ratified, provides that states are required to respect and ensure the rights of children, including the child’s national, social origin, or other status, irrespective of the parents’ status.

According to [civil society groups](#), including health care groups, RAMQ's practice of placing the child's status downstream from that of the parents has consequences that extend beyond law or even the national policy framework. It also runs contrary to recognized good practices in child development and policies that support successful integration of migrant families.

Denying Access to Justice

After two decades, the situation for this population has worsened. *The Tribunal administratif du Québec*, the tribunal responsible for adjudicating complaints about RAMQ, has been upholding RAMQ's decisions to exclude these children from public health insurance based on the restrictive interpretations of the Quebec regulations.

As well, as more migrants have arrived in Quebec and had children, more people are affected by these measures. And yet there is little reliable data. The Quebec government does not collect data in a systematic manner regarding this population. There are of, course, legitimate concerns with respect to privacy and social vulnerability for those parents whose immigration status is precarious, but there are [human rights-based procedures for collection of such data](#) in a manner that does not jeopardize families' security.

The result is that policymakers and civil society organizations working in this area can only rely on manually-collected information coming from organizations providing free healthcare like Doctors of the World Canada, based on the numbers of people who come into their clinics for care.

The Ombudsperson's Report

In 2018, Quebec's ombudsperson Marie Rinfret issued an [investigative report](#) urging RAMQ to register all children born in Quebec for public health insurance, provided that the children are "settled" and residing here, based on the normal

meaning of those words. The ombudsperson specified that residents should meet the rules that all Canadians must respect: physical presence in the province for 183 days of the year.

The government did not respond. A year later, the ombudsperson mentioned the matter again in her [annual report](#). Importantly, it was noted that no legislative change was required to address her proposals.

Civil Society Steps Up

In the face of this systemic inertia, civil society organizations began to apply pressure through community-based groups, healthcare providers along with academics to advocate for meaningful and immediate change, an initiative that was rendered more urgent because of the pandemic.

In April 2019, the Montréal-based civil society organization, *Observatoire des tout-petits*, published [an extensive report](#) that documented the impacts of lack of access to healthcare for children, for women, for families, for healthcare providers and for Quebec society at large. It confirmed the medical research showing that children without access to healthcare or whose mothers have not received appropriate medical treatment during pregnancy are at greatest risk of long-standing, lifelong problems.

Following the publication of this research, Quebec's Commission of human rights and youth rights also issued [a communiqué](#) which denounced the lack of access to healthcare for children of migrant families and the direct connection to the violation of human rights under Quebec's *Charter of Human Rights and Freedoms*.

In April 2020, the Caring for Social Justice Collective, a coalition of doctors, medical students and health activists, launched its [#RAMQpourTLM](#) ("[RAMQ pour tout le monde](#)") campaign at the beginning of the first wave of the pandemic. The

organization Doctors of the World Canada also launched a [public petition](#), demanding access to healthcare for everyone living in Quebec, regardless of their immigration status, just as Ontario had done in March 2020.

On July 9, 2020, the Montreal law firm Trudel Johnston & Lespérance [filed a class action lawsuit](#) on behalf of Canadian children excluded by RAMQ's discriminatory practice. According to an email from M^e Claude Provencher, one of the lawyers whose firm launched the class action lawsuit, a concrete and devastating impact for the parents of these Canadian children, in addition to the underlying exclusion from public health care, is that they have been receiving hospital bills for tens of thousands of dollars for costs associated with childbirth and care for the newborn child. The hospitals generating these bills have subcontracted the collection of their receivables to collection agencies which are applying "all available means of pressure" to obtain payment from families already financially and socially vulnerable.

During the hearing before Quebec's Superior Court regarding the class action in October 2020, the lawyer for the Quebec attorney general argued that the Court should dismiss the matter on a preliminary basis, in part because the parties should have applied first to the Tribunal prior to initiating the class action. But the Tribunal has had a consistent history of dismissing applications in these very cases over a period of many years. Insisting on adding yet another step to the expensive and lengthy process of trying to obtain justice for these children—one that is doomed to fail—has significantly diminished access to justice for these families.

Following the filing of the class action lawsuit, the Quebec Minister of Health and Social Services, Christian Dubé, issued a [public announcement](#) on July 23, confirming that RAMQ would reverse its practice and recognize the rights of these children.

But, celebrations appeared to have been premature just as they were in 1999.

Eligible in Principle, Not in Practice

In early August 2020, the week after the government's public announcement, Psalm's parents received a letter from the RAMQ in response to their formal application for health insurance coverage. RAMQ refused access to public health insurance. The parents filed a request for revision of the August decision with RAMQ, hopeful that the decision might change in light of the July announcement. They received a response on October 26, 2020 confirming the earlier decision to refuse access to the public health insurance scheme for the children.

It is worth reproducing one section of the letter to illustrate the reasoning behind the decision and its incoherence in light of the broader policy objectives of both the Canada *Health Act*, and even the Quebec *Health Insurance Act* (unofficial translation):

... even though Psalm ... is a Canadian citizen, the statute does not automatically confer the right to be a beneficiary of the health insurance scheme of Quebec. As far as the evaluation of eligibility is concerned with respect to a minor child, the situation of the parents with whom the child lives must be considered.

On October 28, 2020, the government of Quebec announced again—this time during a [hearing before the Public Administration Committee](#)—that new legislation would be tabled. The impending bill is presumably designed to address exactly the same need that led to the legislative changes back in 1999. But it allows the government to avoid the awkward situation of simply issuing directives to correct the interpretation of Quebec law, which would indicate that RAMQ had not been complying with the law in the past.

As previously mentioned, the Quebec government filed a motion to dismiss the class action on a preliminary basis on both procedural and substantive grounds. The case was heard by the Superior Court of Quebec on Thursday, October 29, the day after the October 28 announcement.

As at the date of writing, no decision had been rendered.

The promised new legislation, [*An Act respecting mainly the health insurance plan and prescription drug insurance plan eligibility of certain children whose parents' migratory status is precarious*](#) was tabled by the government on December 10, 2020. Among other things, the Bill purports to create new rights for children who are Canadian citizens and, presumably, put an end to this policy farce. But upon reading the actual changes to the law, it is difficult not to be cynical. Consider, for example the proposed change to the substantive section of the [*Health Insurance Act*](#) dealing with eligibility. Here is the relevant portion of the current text of s. 5 of the [*Health Insurance Act*](#):

... an unemancipated minor who is not already domiciled in Québec for the purposes of article 80 of the Civil Code is considered to be domiciled in Québec, if the minor has settled in Québec.

And compare it to the new text proposed in Bill 83:

...an unemancipated minor who is not already domiciled in Québec under article 80 of the Civil Code is considered domiciled in Québec in the cases and on the conditions determined by regulation.

While there are some more substantial changes in the regulations, none of them merit or explain what has happened to date or why it has taken twenty years. The apparent pointlessness of the Bill (other than serving as a fig leaf for so that RAMQ can extend health care to these children) is cause for further cynicism. And given that the Bill was tabled on International Human Rights Day, the government's timing is an irony that should be lost on no one.

Policy Gaps, Policy Problems, and Impunity

This case is unusual for many reasons. It demonstrates a failure of the political system to determine a coherent policy framework for the most vulnerable residents of the province, especially during a time of a pandemic. It highlights the inability or unwillingness of the executive branch to control the actions of one of its most powerful and important administrative agencies. It has been a situation that many human rights organizations and health care providers in Quebec consider to be a breach of human rights and principles of fundamental justice. It has been a spectacular failure of access to justice that very few people care about because the affected populations are so marginalized.

Even with Bill 83, problems remain. There is no current indication as to what will happen to the many children or their parent who have fallen between the cracks of well-intentioned announcements before the Bill. Many families continue to be pursued by aggressive collection agencies.

On November 19, 2020, on the eve of [World Children's Day](#), more than 25 leading human rights NGOs and centres, community organizations, activists, lawyers and academics [sent a letter](#) to the Quebec government. They demanded the following legal and policy measures, on an urgent basis, to address ongoing systemic discrimination against migrants, Canadian citizens, and the vulnerable and marginalized groups all of whom have been disproportionately affected by these measures:

- immediate measures during the interim period pending the enactment of a new law to ensure immediate coverage for public health insurance for children born in Quebec;
- retroactive reimbursements or the creation of a public fund for families who, for 20 years, have been forced to pay for essential health care services to which they should have had a right under the public health system;
- the urgent study of health care insurance coverage not only for these children but also for all persons living in Quebec.

In addition, concrete steps are needed to develop data on these populations, collected in a manner that respects privacy and confidentiality. These steps would fulfil a central responsibility of government to ensure that it is capable of providing reliable data that can inform indicators of socioeconomic well-being in a manner that respects human rights principles. Taking such steps would also constitute concrete evidence that the government of Quebec has finally begun to meet its responsibilities to its youngest citizens, to the principles in the *Canada Health Act*, of Quebec law, and to its legal commitments under the Canadian Charter and international law.

About the author

Pearl Eliadis is a Montreal lawyer working with Julius Grey and Arielle Corobow of the firm Grey, Casgrain to provide pro bono assistance to Psalm's family. This post draws on earlier publications that she has written or contributed to, including ["All children in Quebec should have health coverage"](#) and the [public letter of November 19, 2020](#) to the government of Quebec.

She has successfully led complex, global projects for the UN, the European Commission, governments and NGOs, as well as in-country missions in China, Ethiopia, Nepal, Sri Lanka, Sudan, Tajikistan and Timor Leste. In Canada, her clients include human rights institutions and governments. She serves as President of the Quebec Bar Association's specialized working group on human rights.

Pearl also has more than a decade of public policy experience in government, including as Director of Policy at the Ontario Human Rights Commission and Senior Director at the Policy Research Initiative (Privy Council Office) in Ottawa. From 2000-2003, she served on several UN missions to establish the National Human Rights Commission and the Unity and Reconciliation Commission in that country.

She has taught at the Faculty of Law at McGill University since 2012, where she serves as adjunct professor. Pearl also is a Full Member of the Centre for Human Rights and Legal Pluralism.

Pearl has written extensively on human rights, public policy and evaluation in the social justice context. Her 2014 monograph, *Speaking Out on Human Rights* (MQUP) won the Huguenot Society of Canada Award. The book examines the role of human rights commissions and tribunals and their contributions to democratic governance and the rule of law. She has also published several book chapters and articles on public policy evaluation, international human rights, democracy and dissent, and women's rights.



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