FIQ | SECTEUR PRIVÉ

BY EMAIL

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BILL 11
AN ACT TO AMEND THE ACT RESPECTING END-OF-LIFE CARE AND OTHER LEGISLATIVE PROVISIONS

COMMENTS OF THE FÉDÉRATION INTERPROFESSIONNELLE DE LA SANTÉ DU QUÉBEC-FIQ AND THE FIQ | SECTEUR PRIVÉ-FIQP IN THE CONTEXT OF THE SPECIFIC CONSULTATIONS HELD BY THE COMMISSION DES RELATIONS AVEC LES CITOYENS (COMMISSION ON CITIZEN RELATIONS)

To the members of the Commission on Citizen Relations,

The Fédération interprofessionnelle de la santé du Québec–FIQ and the Fédération interprofessionnelle de la santé du Québec | Secteur privé–FIQP are labour organizations representing 80,000 nurse, licensed practical nurse, respiratory therapist and clinical perfusionist members working in the health and social services network.

Composed of nearly 90% women, the FIQ and FIQP are the voice of a large majority of women, both healthcare professionals, workers in the public and private network and users of care and services. They aim, by their orientations and their decisions, to preserve social gains, greater equality and greater social justice.

Therefore, it is in line with these values that the FIQ and FIQP are involved in the discussions on end-of-life care. The Federations have participated since the work began on the draft bills on medical assistance in dying (MAD). They are happy to participate again this year. In 2021, the healthcare professionals were consulted for the writing of a brief submitted to the Commission spéciale sur l'évolution de la Loi concernant les soins de fin de vie (Special Commission on the Evolution of the Law on End-of-Life Care). During this participation, several recommendations were made. One was to allow specialized nurse practitioners (SNP) to administer medically assisted dying.

In reading this bill, the Federations are pleased to see that the expertise and skills of these healthcare professionals have been recognized. With the amendments made by this bill to the *Nurses Act*[i] and the *Act respecting end-of-life care*[ii], the SNPs will now be able to determine if a patient may receive continuous sedation or medical assistance in dying as well as administer it as permitted in the *Criminal Code*[iii] since 2016.

Nurses will also be able to certify a patient death and complete the necessary documents. Remember that they were able to perform these activities during the pandemic under the health emergency decrees. The Federations are pleased to see that this practice is now standardized.

In short, the FIQ and FIQP want to point out that Bill 11 is part of a long democratic, transparent and public process. In this respect, the Federations welcome the participation of several experts and community groups in the debate in this societal project.

The impact of the courts on this bill

The bill incorporates the most recent teachings of the Superior Court on medical assistance in dying into the *Act respecting end-of-life care*[iv]. With the removal of the "end-of-life" requirement as a prerequisite for receiving medial assistance in dying, the Québec legislation complies with the recent Truchon-Gladu decision[v] which struck down the provisions of the *Criminal Code*[vi] and the *Act respecting end-of-life care*[vii] requiring a "reasonably foreseeable natural death" or to be "at the end of life".

The Truchon-Gladu decision[viii] clearly confirms the essence of the Carter[ix] Supreme Court decision that it is unconstitutional to prohibit resorting to medical assistance in dying to people with serious and irreversible health problems (including a condition, illness or disability) causing them persistent suffering that is intolerable in relation to their condition and who clearly consent to ending their life.

By allowing advance requests for medical assistance in dying for serious and incurable illnesses leading to incapacity and by specifying the inclusion of serious and incurable neuromotor disabilities as a medical condition giving access to medical assistance in dying, the new bill respects the guidelines imposed by the Superior Court of Québec and the Supreme Court of Canada.

The FIQ and FIQP also point out that the Bill integrates several guidelines[x] governing these early requests. The Federations are also pleased to see that the bill maintains that no healthcare professional will be forced to administer medical assistance in dying and will ensure that the patients in question are still referred to other competent professionals who will be able to administer this.

End-of-life care: an increased contribution from healthcare professionals

The FIQ and FIQP see that the Bill includes certain measures significantly increasing the healthcare professionals' contribution to end-of-life care. With the objective of improving access to this care which is so important for the dignity of patients and to enrich the professional

practice of its members**, the Federations welcome two of the main changes introduced in Bill 11, the right for SNPs to administer continuous palliative sedation and medical assistance in dying, and authorizing nurses to certify deaths.**

Medical assistance in dying and continuous palliative sedation

First, it should be noted that there are more and more SNPs in Québec[xi] and high time that they can play a role commensurate with their expertise in end-of-life care. By allowing SNPs to administer continuous palliative sedation and medical assistance in dying, the Bill is entirely consistent with the reflections of the Commission spéciale sur l'évolution de la Loi concernant les soins de fin de vie. In fact, the Commission suggested a larger role for SNPs in medical assistance in dying. This suggestion had "strong support from people who were involved in the work of the Commission".[xii]

Allowing SNPs to administer continuous palliative sedation and medical assistance in dying also complies with the amendments made to the *Criminal Code*[xiii] in 2016 explicitly authorizing SNPs as well in the spirit of the *Act to amend the Nurses Act and other provisions*[xiv] to promote access to health services, went into force in 2021. In fact, the legislative changes over the last few years have ensured SNPs can perform new activities, including diagnosing illnesses. The legislator has greatly increased their level of autonomy, to the benefit of patients and their professional practice. It is therefore consistent that the contemporary practice of SNPs is also reflected in end-of-life care. This is perfectly in line with the interventions of the Federations which have been asking for years for the role of the SNPs to be expanded and fully deployed throughout Québec.

Because of their competence, level of training and presence in many practice settings, both front-line and institutional, SNPs can certainly make an important contribution to the accessibility of continuous palliative sedation and medical assistance in dying. This is an important gain for the population. For patients who wish to obtain this care, it is desirable that the SNP who has supported them throughout their care trajectory and with whom they have developed a relationship of trust can play a central role in this final stage of life.

Considering their competency, it would also seem relevant that Québec SNPs have a practice comparable to that in other Canadian provinces for medical assistance in dying. At the federal level, the regulations in place already allow the administration of medical assistance in dying by nurse practitioners[xv]. Provinces like British Columbia[xvi], Manitoba[xvii] and Ontario[xviii] have already made the SNP's role in medical assistance in dying official. When we know that Québec's SNPs have longer and more complete training than those elsewhere in Canada[xix], it seems legitimate and more than urgent that medical assistance in dying be part of their professional activities. Such a practice by Québec SNPs is necessary for the population to benefit from their skills at all stages of life. The Federations also believe that this will help retain Québec SNPs who want the Québec legislative framework updated to enable professional practice at its full potential.

Certifying deaths

Healthcare professionals are an integral part of the care team essential to all stages of end-of-life care. Therefore, the amendments to the *Civil Code*[xx] in the Bill as well as to the *Public Health Act* allow nurses to certify a death, draw up the death certificate and complete the death certificate. Since 2015[xxi], while waiting for legislative changes, the professional orders concerned agreed on transitional measures for a physician to complete the necessary documentation remotely, using the death certificate drawn up by the nurse. In 2020, the government allowed nurses practising in a public institution to certify the death of a person of legal age, draw up the death certificate and complete the death certificate. The government had introduced this measure during the early stages of the COVID-19 pandemic[xxii], but it expired with the end of the health emergency. It is highly relevant that the Bill perpetuates the role of nurses in registering a death.

For the FIQ and FIQP, allowing a nurse to certify deaths is a fair recognition of their assessment skills. It is also a way of making the post-death process much smoother. In fact, if the situation lends itself to it, the nurse will be able to establish the death more quickly, without waiting for the intervention of other professionals. This can only be helpful to the family at a time when they are particularly vulnerable.

Lastly, it should be noted that the Bill demonstrates a certain openness to interdisciplinarity, which is welcomed by the FIQ and FIQP. In particular, it recognizes that the care team in regular contact with the patient may be consulted in the context of an anticipated request for medical assistance in dying. An interdisciplinary group may also support the professionals participating in providing end-of-life care. The Bill also fosters the promotion of a vision of the health and social services network where many professionals and stakeholders can contribute their experience and expertise for the benefit of patients.

Improving organization of work: a winning condition to better care for the Québec population

Increased contribution to end-of-life care, including medical assistance in dying, will require better organization of work. Appropriate work organization will ensure healthcare professionals can provide humane, safe and quality care in a healthy work environment. Organization of work is the immediate work environment in which healthcare professionals carry out their professional activities. In other words, organization of work determines who does what, when, for how long, with whom, with what support and tools, etc. Organization of work consists of several aspects. Among them, clinical support, workload and psychological support are particularly critical for end-of-life care.

Increased clinical support for healthcare professionals

In the wake of the Commission spéciale sur l'évolution de la Loi concernant les soins de fin de vie, the FIQ and FIQP invited all their members to answer a survey[xxiii]. This consultation, conducted in summer 2021 with 83 healthcare professionals revealed that few of them had access to training to prepare them for participating in MAD according to their field of practice. When that training was available, it did not specifically cover the healthcare professionals' role and was very general. A large number of professionals said that they did not feel they were sufficiently equipped to participate in MAD for an incompetent person. They said they needed training on their professional practice in the context of end-of-life care and on the legal and ethical framework of this practice. To feel at ease taking part in MAD, the conditions identified by the largest number of respondents are: training, guidelines and collaboration with at least one other health professional.

Increasing clinical support will be essential, given the role that the Bill foresees for nurses and SNPs. Healthcare professionals will need guidelines and training to properly carry out their new activities. For example, it will be preferable that nurses have access to the information on death certificates, in particular that they are aware of the cases they will have to refer to the coroner. The relevant scientific data should also be given to them. Clinical tools, such as adequate clinical practice guides and protocols, will be required so that death certificates issued by nurses are fully deployed.

A reduced workload for healthcare professionals

Knowing how to proceed is one thing, having the time to do it is another. The workload has been a problem for healthcare professionals for many years. In 2018, the FIQ conducted a major survey with 653 of its members. This revealed that the ability to carry out these activities to the standards of the profession varied between 16.8% and 71.2% depending on the activities. More specifically, only 16.8% of healthcare professionals said they were able to update care plans according to professional standards during their last shift. The other respondents said they carried out this activity too quickly, partially or omitted it completely due to lack of time. The activity that could be adequately performed by the largest proportion of respondents (71.2%) was performing tests as prescribed. The survey showed that 82.4% of the healthcare professionals surveyed strongly or somewhat agreed that workload was the main factor explaining why care was omitted.[xxiv][OBJ].

How to participate in medical assistance in dying professionally, ethically and humanely in such a context? In 2021, the healthcare professionals expressed their need for time to properly support the patient and their relatives throughout the MAD process. However, they were not sufficiently freed from their other tasks to devote themselves fully to it. Three-quarters of the respondents reported that their workload was never reduced to accommodate their participation in MAD. More than half of the healthcare professionals surveyed found that their employer never planned for their participation in MAD. With the changes made by the Bill, the healthcare professionals will need to see their workload reduced in order to increase their participation in medical assistance in dying.

Psychological support available as needed

Supporting patients and their relatives in a MAD process or other end-of-life care is emotionally demanding for the healthcare professionals. Supporting incompetent patients and their relatives could be even more so. Relatives must accept that the patient has reached the MAD stage without being able to express it when the time comes. In such an unprecedented context, it is impossible to predict the psychological impact on the healthcare professionals who will be involved in supporting an incompetent person and who will be receiving medical assistance in dying. This support could cause suffering or psychological distress to the professionals involved. The support will undoubtedly pose a challenge, in these circumstances, to practise one's profession while maintaining a healthy distance from the emotionalism of the persons supported, or from one's own emotions. Therefore, psychological support will be necessary for healthcare professionals experiencing these difficulties. 80% of the 83 members surveyed in summer 2021 stated they had had no access to psychological support after administering medical assistance in dying. Nothing leads us to believe that the situation has improved today. The changes proposed in the Bill make access to psychological support all the more relevant.

To conclude, the FIQ and FIQP insist on the fact that end-of-life care, including care related to medical assistance in dying, must be free and accessible. This includes medical assistance in dying which would be administered in a private residence for seniors (RPA), in an intermediate resource (RI), in a private long-term care residential centre (CHSLD), in a palliative care home, in services associated with a family medicine group (GMF) or other.

At this point and according to the context of the health and social services network, the FIQ and FIQP find it prudent and reasonable not to include mental disorders as the only diagnoses eligible for medical assistance in dying. In the absence of a consensus among mental health experts and of accessible, free and sufficient care and services for the population[xxv], it is appropriate to refrain from further reflection and work on this issue at this time.

The Federations welcome several aspects of this Bill and hope that the government will implement the necessary conditions so that medical assistance in dying can be provided under the best conditions for the patients and healthcare professionals. This will ensure that end-of-life care, including medical assistance in dying, is carried out with the utmost dignity and accessibility.

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[i] CQRL, c. I-8.
[ii] CQLR, c. S-32.0001.
[iii] LRC 1985, c. C-46.
[iv] Prev., note ii.
[v] *Truchon* c. *Procureur général du Canada*, 2019 QCCS 3792.
[vi] Prev., note iii.
[vii] Prev., note ii.
[viii] Prev., note v.
[ix] *Carter* c. *Canada (Attorney General)*, 2015 CSC 5.
[x] Bill 11. *Act to amend the Act respecting end-of-life care and other legislative provisions.* sect. 18.
[xi] On March 3, 2022, Québec had 1,097 SNPs and 688 more professionals registered in a training program to become a SNP. Marleau, Daniel. (2022). *Rapport statistique sur l'effectif infirmier et la relève infirmière du Québec.* Ordre des infirmières et infirmiers du Québec.
[xii] Assemblée nationale du Québec. (2021). *Rapport de la Commission spéciale sur l'évolution de la Loi concernant les soins de fin de vie.* p. 61.
[xiii] Prev., note iii.
[xiv] LQ 2020, c. 6.
[xv] *Règlement sur la surveillance de l'Aide médicale à mourir,* DORS/2018-166.
[xvi] *Nurses (Registered) and Nurse Practitioner Regulation,* BC Reg 284/2008.
[xvii] College of Licensed Practical Nurses of Manitoba, College of Registered Nurses of Manitoba, The College of Registered Psychiatric Nurses of Manitoba. (2021). *Medical Assistance in Dying: Guidelines for Manitoba Nurses.*
[xviii] Ontario. *Medical assistance in dying and end-of-life decisions.* Document consulté en ligne le 1er mars 2023 : https://www.ontario.ca/page/medical-assistance-dying-and-end-life-decisions
[xix] Association des infirmières praticiennes spécialisées du Québec. (2019). *Commentaires sur le projet de loi suivant : Projet de loi 43, Loi modifiant la Loi sur les infirmières et les infirmiers et d'autres dispositions afin de favoriser l'accès aux services de santé.*
[xx] RLRQ, c. I-8.
[xxi] Ordre des infirmières et infirmiers du Québec, Collège des médecins du Québec. (5 mars 2015). *Modalités transitoires en matière de constat de décès : un partenariat infirmière/médecin.* Document consulté en ligne : http://www.cmq.org/pdf/activites-partage/lettre-cmq-oiiq-constat-deces.pdf?t=1586785943923
[xxii] Ministerial Order 2020-020 of April 10, 2020.
[xxiii] FIQ (2021). Consultation of FIQ and FIQP members regarding medical assistance in dying.
[xxiv] The firme Repère conducted this survey by means of a telephone survey of 653 healthcare professionals, members of the FIQ, practising in direct patient care. The margin of error is +/-3.8% for all results.

[xxv] Laberge, T. et Lamothe, M. (2022, 25 octobre). SANTÉ MENTALE | Les oppositions dénoncent l'inaction du gouvernement. *Le Soleil*. https://www.lesoleil.com/2022/10/25/sante-mentale--les-oppositions-denoncent-linaction-du-gouvernement-d3b2ab4e605aa2aae8efc8de9d68f874