

# OPINION

TABLED AT THE COMMITTEE ON LABOUR  
AND THE ECONOMY  
FEBRUARY 1, 2024

## **Opinion on Bill 42, *An Act to prevent and fight psychological harassment and sexual violence in the workplace***



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# Introduction

The Fédération interprofessionnelle de la santé du Québec-FIQ which represents almost 90% of the nurses, licensed practical nurses, respiratory therapists and clinical perfusionists in the health and social services network, welcomes the legislative amendments proposed by Bill 42, *An Act to prevent and fight psychological harassment and sexual violence in the workplace*.

The Federation, 90% of whose members are women, is a feminist organization and wants, with this in mind, to ensure that the bill is consistent with changes in Québec society. Since its creation in 1987, the FIQ has positioned itself as a player fighting against all forms of violence and advocated a “zero tolerance” approach<sup>1</sup>. In this context, for the FIQ members and representatives, workplaces should quickly introduce preventive measures in line with legal developments in the area of gender-based and sexual violence.

For the Federation, a number of legislative amendments affecting labour laws and worker protection regimes were absolutely essential in order to protect victims of psychological or sexual violence in workplaces. The Federation believes that the bill could go further on this.

The FIQ will comment on the bill based on the laws governing collective labour relations in the health and social services network, where over 80% of workers are women of diverse origins. The FIQ will ask the following questions: is the bill consistent with respect for workers’ fundamental rights? Does the bill help victims of psychological harassment or sexual violence to find their way through the process? What amendments could be made to the bill to facilitate this process? The FIQ will propose several recommendations and will focus on the spirit of the *Act respecting occupational health and safety* (OHS Act) in which prevention is the main objective. The FIQ thinks that the legislator should take this opportunity to reform labour laws by using the levers available to it and linking the application of the law with structuring preventive measures.

The FIQ also draws attention to the quality of the report produced prior to the drafting of the bill by the Comité chargé d’analyser les recours en matière

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<sup>1</sup> In 1997, the Fédération des infirmières du Québec (FIQ) adopted the principle of zero tolerance, which meant that in situations of violence, after an inquiry, the Federation would not represent the perpetrator of this violence. FIQ, 2014, *Towards well-being at work: A policy for fighting against violence!* p. 3.

de harcèlement sexuel et d'agressions sexuelles au travail<sup>2</sup> (Committee responsible for analyzing appeals in cases of sexual harassment and sexual assault in the workplace) because it bases its analyses on evidence, places the victim at the centre of its approach and takes account of both gender and intersectional analysis. The report proposes 82 recommendations for changing labour laws. The Federation has drawn inspiration from it on several occasions.

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<sup>2</sup> COMITÉ CHARGÉ D'ANALYSER LES RECOURS EN MATIÈRE DE HARCÈLEMENT SEXUEL ET D'AGRESSIONS SEXUELLES AU TRAVAIL, Prof. Rachel COX (UQAM), Prof. Dalia GESUALDI-FECTEAU (Université de Montréal), Prof. Anne-Marie LAFLAMME (Université Laval), *Rapport final : Mettre fin au harcèlement sexuel dans le cadre du travail : se donner les moyens pour agir*, mars 2023.

# Current situation in the health and social services network

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Workers in the health and social services network encounter a series of risks throughout their career which may affect their physical and mental health. The FIQ cannot avoid drawing up a portrait of the current situation in its members' workplaces.

## THE HEALTH AND SOCIAL SERVICES NETWORK: A HIGH-RISK ENVIRONMENT FOR WOMEN

The members of the FIQ work in conditions that have deteriorated over the last 30 years. This situation increases the psychosocial risks in care settings. The work overload, the little recognition that healthcare professionals feel, mandatory overtime and management decisions which cause poor organization of work are unfortunately part of every day. These situations are conducive to workplace violence whether it is physical, psychological or sexual, from patients, visitors, people in positions of authority or colleagues. Protecting workers who incur these risks and preventing them are a priority for the FIQ and healthcare professionals.

A brief overview of the data compiled<sup>3</sup> by the Commission des normes, de l'équité, de la santé et de la sécurité du travail du Québec (CNESST) shows that in 2022, more than three quarters of the injuries occur in the healthcare and social assistance sectors. Among these injuries, 54.4% are attributed to physical violence and 29.7% to psychological violence, which includes sexual harassment and sexual assaults. Moreover, women workers are over-represented for these types of injuries, and almost one-fifth of healthcare workers report having suffered a sexual assault. Men working in female-dominated jobs also experience more sexual assaults than men working in

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<sup>3</sup> COMMISSION DES NORMES, DE L'ÉQUITÉ, DE LA SANTÉ ET DE LA SÉCURITÉ DU TRAVAIL DU QUÉBEC (CNESST), *Statistiques sur la violence, le stress et le harcèlement en milieu de travail 2019-2022*. [Online], <https://www.cnesst.gouv.qc.ca/sites/default/files/documents/portrait-violence-stress-harcelement.pdf>, (Viewed on January 20, 2024).

male-dominated sectors, although the proportion is lower than for women.<sup>4</sup> These findings are forcing organizations to take note of these unacceptable situations in order to prevent them and support the victims.

## INVISIBILITY OF CERTAIN FORMS OF VIOLENCE AND THE CODE OF SILENCE

It is difficult to obtain a complete and precise picture of the violence suffered by workers in the health and social services network. Society's evolution in terms of sexual assault, triggered in particular by the international #MeToo movement in 2017, is so recent that it does not provide a true picture of the situation.

At present, a number of factors, such as the taboos that still prevail in the workplace around these issues, the lack of training for the various players involved, the impact of whistleblowing on working environments and the long and complex process for victims who suffer injuries and choose to lodge a complaint, mean that the path to having their rights respected is sometimes improbable and traumatic. When it comes to psychological harassment and sexual violence, victims need courage and determination to take action, which can take a variety of forms, in situations that affect their psychological and physical health. Above all, the FIQ believes that workplaces and institutions such as the CNESST and the courts should be protective and respectful of victims from the outset. The players who interact with the victims should not perpetuate myths and biases about them. These myths and biases create false and stereotypical representations of the victims<sup>5</sup>. The lack of training of the different stakeholders may lead to secondary victimization during inquiries and the claims process, as explained by the Comité chargé d'analyser les recours en matière de harcèlement sexuel et d'agressions sexuelles au travail: "Victims may be subject to evidential requirements that go beyond even those of criminal law, the violence they have experienced may be trivialized, and violence perpetrated by colleagues and employers in the workplace may be wrongly excluded from the scope of

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<sup>4</sup> STATISTICS CANADA. Marta BURCZYCKA, *Workers' experiences of inappropriate sexualized behaviours, sexual assault and gender-based discrimination in the Canadian provinces*, 2020, [Online], [<https://www150.statcan.gc.ca/n1/fr/pub/85-002-x/2021001/article/00015-fra.pdf?st=q3ruWRcA>], (Viewed on January 20, 2024).

<sup>5</sup> *Among the myths and biases are found statements such as: sexual violence is perpetrated by strangers; she had it coming; when you don't say no, it's a yes; men are not victims of sexual assault.* (our translation)

the Act. Many myths and stereotypes about sexual violence are at work.”<sup>6</sup>  
(our translation)

In addition, as revealed in a survey by Statistics Canada, workers who are victims of sexual assault in the workplace have difficulty talking about what happened to them. As such, more than half the women (53%) who are sexually assaulted do not talk about the assault to a contact person in the workplace, whether it is the employer, the union or a person responsible for the employees’ well-being. And a minority of women (9%) lodge a complaint or a grievance<sup>7</sup>. Several reasons explain this silence: the assault is perceived as not very serious (34%), they felt embarrassed or ashamed (27%), they believe that reporting it won’t change anything (26%) and they are afraid of not being believed or not being able to prove the assault (25%)<sup>8</sup>.

These figures prove that certain myths and biases perceived by the victims are at work in workplaces and are also found in the answers to a questionnaire<sup>9</sup> addressed to the labour relations consultants at the FIQ. The majority of respondents stated that they rarely handle (77%) or never (23%) grievances or other recourses linked to complaints of sexual violence. And a very large majority of respondents considered it difficult for victims to understand their rights (85%), that recourses for obtaining redress are difficult (91%) and that there are unreasonable delays to obtain redress (90%).

The FIQ believes that the legislator and employers must make workplaces safer and make the process easier for victims in order to reverse these statistics. Even if progress has been made on workplace harassment and violence in recent years, the invisibility and taboos that persist argue in favour of a change of culture in terms of intervention and prevention. The FIQ believes that, to promote victims to speak out, they must be welcomed, believed and clearly informed of their rights. The reporting and complaints processes should not systematically lead to secondary victimization.

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<sup>6</sup> Op. cit., *Rapport final : Mettre fin au harcèlement sexuel dans le cadre du travail : se donner les moyens pour agir*, Comité chargé d’analyser les recours en matière de harcèlement sexuel et d’agressions sexuelles au travail, p. v.

<sup>7</sup> Op. cit., *Workers’ experiences of inappropriate sexualized behaviours, sexual assault and gender-based discrimination in the Canadian provinces*, p. 56.

<sup>8</sup> Ibid., p. 32.

<sup>9</sup> FIQ. *Questionnaire for union consultants as part of the specific consultations and public hearings on Bill 42, An Act to prevent and fight psychological harassment and sexual violence in the workplace*, January 2024.

# Comments and recommendations of the FIQ to proposed legislation amended by Bill 42

In light of the findings described above, the FIQ welcomes several legislative amendments proposed in the bill and would like to broaden some of them. The FIQ believes that the legislator and workplaces should take this opportunity they have been given to make significant changes to labour laws to ensure that psychological or sexual violence is no longer tolerated and that victims are treated fairly and humanely, by making it easier for them to move forward.

## AMENDMENTS TO THE *LABOUR CODE*

### *Training on sexual violence*

The FIQ welcomes the fact that Bill 42 introduces the obligation, for an arbitrator hearing a psychological harassment grievance, to take a course on sexual violence. However, the FIQ recommends that this training is also offered to the lawyers and representatives likely to intervene in such cases.

The FIQ believes that this training will provide a more comprehensive defense of workers' interests and put all stakeholders on an equal footing, particularly with regard to the favourable bias approach, which must be adopted. It will also promote a better understanding of the factual situations in each case and will help to identify the approach that should be prioritized in order to recognize the victim's rights.

### *Time limit for sexual violence grievances*

The bill amends section 81.20 of the *Act respecting labour standards* (ALS) by adding: "The time limit referred to in section 123.7 applies to the recourses and the parties are required to indicate the time limit in the collective agreement".

Section 123.7 of the ALS states that "Any complaint concerning psychological harassment must be filed within two years of the last incidence of the offending behaviour."



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**Recommendation 1**

The FIQ recommends amending section 123.7 of the ALS by adding “or sexual violence” after “psychological harassment”.

By amending this section in this way, it will be easy to understand that all victims of sexual violence, whether their after-effects are psychological, physical or both, have the same rights.

The FIQ adds that this will be consistent with the two-year time limit for producing a CNESST claim, under the *Act respecting industrial accidents and occupational diseases* (AIAOD).

**AMENDMENTS TO THE *ACT RESPECTING INDUSTRIAL ACCIDENTS AND OCCUPATIONAL DISEASES* (AIAOD)**

***Definition of sexual violence***

Bill 42 introduces a definition of “sexual violence” in section 2 of the AIAOD. This section refers to the definition of the same concept in the *Act respecting occupational health and safety* (OHS Act).

The FIQ points out that a large number of workers represent themselves before the Administrative Labour Tribunal. It believes that moving this to another law makes the law harder to read and understand. This does not promote simplified access to justice.

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**Recommendation 2**

The FIQ recommends explicitly including the terms of the definition of “sexual violence” in Section 2 of the *Act respecting industrial accidents and occupational diseases*.

***Creation of a presumption for cases of sexual violence***

The FIQ welcomes the introduction of a presumption in favour of the victims of sexual violence. However, it feels that the proposed text should be amended to target all perpetrators of sexual violence.

The current text of Section 28.0.1 limits this presumption to cases where the sexual violence was committed by the employer, one of the employer’s directors, in the case of a legal person, or one of the workers whose services are used by that employer within the same institution. The FIQ points out that workers can also be victims of sexual violence, including, but not limited to, users, customers, patients or any other person present in the workplace. These victims are entitled to fair, equitable and non-discriminatory treatment compared to victims of acts committed by the employers themselves or their employees.

The FIQ points out that the aim of the law remains the compensation of employment injuries and the consequences that they entail for the beneficiaries (section 1). Moreover, the AIAOD is a no-fault liability regime. However, the proposed wording of section 28.0.1 limits the application of the presumption to targeted cases where the employer, a director or one of their employees is responsible for the acts committed.

The FIQ feels that such a restriction creates a two-tier system for victims depending on the identity of the aggressor, which is not the aim of the law. It also points out that the amendment proposed in section 81.19 of the *Act respecting labour standards* (ALS) stipulates inserting “from any person” after “to prevent psychological harassment”. The FIQ maintains that the presumption set out in section 28.0.1 of the AIAOD should also have this option.

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### Recommendation 3

The FIQ recommends that the presumption in section 28.01 of the AIAOD apply in cases of sexual violence committed by any person.

#### ***The strictly private context of sexual violence***

The definition in section 28.0.1 of the AIAOD includes an exclusion when the violence occurs in a strictly private context. The FIQ argues that a person who is subjected to sexual violence at the hands of his or her spouse or his or her ex-spouse at his or her workplace should be able to benefit from the same rights as other victims.

The FIQ points out that section 28.0.1 is a procedural means. It is not this presumption that confers entitlement to benefits. In short, the wording of the section only complicates the case of the person trying to have an employment injury recognized if the person committing the assault is his or her spouse. This section simply adds a further burden to an already extremely difficult situation.

The FIQ wants to add that the employer has an obligation, in section 51 (16) of the OHS Act to take the measures to ensure the protection of a worker exposed to physical or psychological violence, including spousal, family or sexual violence, in the workplace. The employer therefore has the obligation to protect workers for facts that are explicitly excluded from the application of the presumption in section 28.0.1 of the AIAOD. The FIQ feels that there must be consistency between laws and that the current wording of section 28.0.1 is discriminatory. The FIQ repeats that all victims of sexual violence must be treated fairly. Using the words “arising out of or in the course of his or her work” makes it possible to achieve the objective of compensating employment injuries.

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**Recommendation 4**

The FIQ recommends removing the mention of “unless the violence arises in a strictly private context” in section 28.0.1 of the AIAOD.

***Three-month time limit to apply the presumption applicable in cases of illness***

The FIQ points out first that sections 270, 271 and 272 of the AIAOD are amended to extend the time limit for submitting a claim in cases of employment injuries suffered as a result of sexual violence. In short, in cases other than those provided in section 28.0.2, the worker will be entitled to the presumption, as long as his or her claim is submitted in the two-year time limit.

However, when the illness occurs after the incident of sexual violence, section 28.0.2 limits the right to benefit from the presumption, since it applies only if the illness occurs within three months.

The FIQ wonders about the cases covered by the application of this section. Does this section cover the cases where the person who committed the acts is a third party not covered by section 28.0.1? If yes, the FIQ argues that section 28.0.2 would create a two-tiered system depending on the perpetrator of the violence. Does this section cover psychological illnesses, physical illnesses or the two? Is the aim to restrict the application of the presumption for victims who learn more than three months after the attack that they have contracted an illness (for example, HIV, hepatitis, etc.)? Is the aim to restrict the application of the presumption to victims for psychological diagnoses (diagnosis of delayed post-traumatic stress disorder made more than three months after the incidents, for example)?

If the answer is “yes” to one of these questions, the FIQ submits that psychological diagnoses are no less important than physical diagnoses and that victims must have the same rights. In any case, the FIQ believes that this three-month time limit violates the principle of fairness.

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**Recommendation 5**

In this context, the FIQ recommends removing section 28.0.2 from the AIAOD.

***Access to the medical file and rehabilitation file***

The bill prevents the employer from having access to the CNESST's medical file and the physical rehabilitation file on an employment injury. Only the physician appointed by the employer will have access.

A health professional will only be able to provide the employer with the information necessary to summarize the case and give their opinion so that they can exercise their rights under the law. Moreover, if a stakeholder violates these provisions, he or she may be subject to criminal penalties.

The FIQ welcomes the protection of privacy promoted by these amendments to sections 38, 38.1, 39 and 458.1 of the AIAOD.

***Two-year time limit for the worker to file a claim***

The bill extends the current six-month time limit to two years in cases of employment injuries resulting from sexual violence. The FIQ points out that civil law has relaxed the time limit for victims of sexual violence. Criminal law does not impose a statute of limitations on perpetrators. Where sexual assault is concerned, it has been shown that victims are not always in a position to report what they have suffered. Many reasons can explain a delay in reporting and consequently in filing a claim.

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**Recommendation 6**

The FIQ welcomes this extension of the time limits but recommends that a statute of limitations should not apply to such claims.

**AMENDMENTS TO THE *ACT RESPECTING LABOUR STANDARDS***

***Prevention and dealing with psychological harassment***

The bill states that the employer must take reasonable action to prevent psychological harassment by any person. The employer must also adopt and make available a policy to prevent and manage situations of psychological harassment. The FIQ welcomes these amendments.

***Amnesty clause***

In the event of a repeat offence, the bill forces the employer to take into account a disciplinary measure that was previously imposed on an employee for misconduct related to physical or psychological violence, including sexual violence.

The FIQ points out that the perpetrator of the violence in this case will have already been punished for previous acts which he or she will not have contested or for which the punishment will have been upheld in arbitration. This section will therefore make it possible to apply a gradation of penalties when the perpetrator of the violence has changed centre of activities with the same employer and commits new reprehensible acts. This will make it possible to fully assess the situation in terms of reoffending.

The FIQ welcomes this amendment and believes that the objective of preventing sexual violence outweighs any possible disadvantages that might arise from breaching a collective agreement amnesty clause, since it only covers cases of sexual violence.

The FIQ feels that this section is consistent with a policy against violence and the zero-tolerance principle that it promotes, especially when choosing, after an inquiry, to not represent the perpetrators.

The FIQ welcomes the addition of paragraph 97.1 to the *Act respecting labour standards*.

***Protection for the person who makes a report***

The bill adds that no employer may dismiss, suspend or transfer an employee, practice discrimination or take reprisals against the employee, or impose any other sanction upon the employee on the ground that the employee has made a report to the employer concerning psychological harassment behaviour targeting another person or has cooperated in the processing of a report or complaint regarding such behaviour.

The FIQ welcomes the addition of this protection which promotes collaboration in the reporting process.

**AMENDMENT TO THE *ACT RESPECTING OCCUPATIONAL HEALTH AND SAFETY***

In 2021, the legislator passed section 51 (16) of the OHS Act which provides that the employer take the necessary measures to protect the health and ensure the safety and physical and psychological integrity of a worker and take the measures to ensure his or her protection when exposed to physical or psychological violence, including spousal, family or sexual violence, in the workplace.

The FIQ believes that the employers should also be obliged to offer or give training on sexual violence and that they should be obliged to inform the workers about their rights and their recourses.

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**Recommendation 7**

The FIQ recommends amending paragraph 51 (16) of the OHS Act to add these obligations.

# Prevention

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The FIQ would like to highlight the opportunities offered by Bill 42, which amends certain sections of the OHS Act, and by the deployment of the *Act to modernize the occupational health and safety regime* (LMRSST) on handling sexual violence.

The OHS Act already provides the obligation for employers to identify, control and reduce professional risks. Depending on the economics of the regime, this process must be carried out jointly by employers and unions. With the LMRSST, all employers must deploy prevention mechanisms, create a health and safety committee (JOHSC) and develop and implement a prevention program. Since the LMRSST is in the interim phase, it is difficult to anticipate the importance of sexual violence and harassment among all occupational health and safety issues. Although the LMRSST contains obligations, and its current roll-out represents an opportunity that must be seized to ensure that prevention is integrated in a practical way. To do this, workplaces must mobilize, make a commitment, be aware of the OHS dimension and equip themselves with the necessary tools to prevent violence and sexual harassment in the workplace, which is made possible by the levers of the LMRSST and the Regulation respecting prevention programs and participation in institutions.

For the FIQ, it is also essential that the members of the JOHSC are trained, considering their crucial role, especially in implementing a specific policy, developing the program content, identifying and analyzing the risks for violence and even taking into account women's realities. By adopting measures or priorities for action to eliminate or control risks, the prevention program becomes a resolutely essential tool to optimize. Moreover, the CNESST agreed to apply the recommendations issued by the Comité chargé d'analyser les recours en matière de harcèlement sexuel et d'agressions sexuelles au travail and has undertaken to provide CNESST workers with joint training on sexual violence and assault.

Furthermore, the FIQ welcomes the introduction of the definition of sexual violence in the bill as well as the regulatory power granted to the CNESST to determine the measures for preventing or stopping a situation of sexual violence. In this way, the JOHSC will know and apply best practices related to preventing sexual violence.

Lastly, the FIQ recommends raising awareness and informing workers of the definition of sexual violence and the two-year statute of limitations for cases of psychological harassment (sect. 123.7 and 81.20, ARLS). The aim will be to publicize the employer's policy for preventing and dealing with situations of violence and harassment, which must form an integral part of the institution's prevention program under the OHS Act.

It is vital for victims to be able to easily find out how long they have to file a grievance against sexual violence, especially as this is an exception to the usual time limits for filing grievances. This approach to raising awareness of their rights must be clear, designed jointly and include information and reporting tools as well as training.

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**Recommendation 8**

The FIQ recommends that the members of the joint occupational health and safety committees and the OHS representatives are trained in a continuous manner about sexual violence, especially concerning the risk factors and specific means for identifying them and controlling them.

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**Recommendation 9**

The FIQ recommends that awareness-raising and information strategies on implementing a culture of preventing sexual violence and harassment, of mobilizing the stakeholders and their role and their shared responsibility are provided.

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**Recommendation 10**

The FIQ recommends that the policy for preventing and dealing with situations of violence and harassment, particularly the definition of sexual violence and the statute of limitations for grievances on these subjects are brought to the attention of workers through information and reporting tools and through training.



## Conclusion

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The FIQ wants to point out once again that the legislative advance proposed by Bill 42 is a step forward in the development of labour law. Elements such as the presumption and a longer statute of limitation, in situations of sexual assault in the workplace, will make it easier for victims to use the recourses available to them. Now, victims will be able to be heard from the outset without having to struggle with the burden of proof. Moreover, for the FIQ, the proposed legislative changes are an opportunity to be seized in order to institute practices that promote a healthy and safe work environment. For the FIQ, raising awareness in the workplace through campaigns and training, developing prevention strategies and policies in conjunction with the unions, transforming the culture of organizations, and working to deconstruct myths and taboos are the directions we need to take.

# Recommendations

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**Recommendation 1**

The FIQ recommends amending section 123.7 of the ALS by adding “or sexual violence” after “psychological harassment”.

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**Recommendation 2**

The FIQ recommends explicitly including the terms of the definition of “sexual violence” in Section 2 of the *Act respecting industrial accidents and occupational diseases*.

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**Recommendation 3**

The FIQ recommends that the presumption in section 28.01 of the AIAOD apply in cases of sexual violence committed by any person.

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**Recommendation 4**

The FIQ recommends removing the mention of “unless the violence arises in a strictly private context” in section 28.0.1 of the AIAOD.

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**Recommendation 5**

In this context, the FIQ recommends removing section 28.0.2 from the AIAOD.

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