OVERTIME

MEANS

OF ACTION

FÉDÉRATION
INTERPROFESSIONNELLE
DE LA SANTÉ DU QUÉBEC

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HISTORY AND CONTEXT

The problem of overtime has been a central concern of the FIQ for many years. Since the creation of the Federation in 1987, the dangers and harmful consequences of reliance on voluntary or compulsory overtime were fundamental issues, on which the negotiating priorities were closely based.

On June 25, 1998, the *Essential Service Council (ESC)* ordered the establishment of a province-wide working group, in which the FIQ participated actively. Then in 2000, this working group was transformed into the Québec Workforce Planning Forum. The Forum's mandate consisted of pooling staffing-related expertise, concerns and information and proposing orientations and action plans to the *Ministère de la Santé et des Services sociaux* (MSSS) based on consensus on the different problems and common visions for the solutions to promote.

The FIQ was very active in the development of the Forum's action plan transmitted to the Minister of Health and Social Services in February 2001. The Federation even succeeded in including all of the solutions it had requested during the previous negotiation period. In its report, the Forum did not hesitate to affirm that major changes were needed in the organization of work and care. It argued that an appropriate workload and restructuring of work time were among the key factors likely to improve the quality of life in the workplace.

This approach was scarcely surprising, given that, for years, compulsory or voluntary overtime had been used as a measure to reduce the impact of the nursing shortage in the institutions. While the rationale for relying on overtime is usually based on the employers' obligation to respond to an excessive workload, an unforeseen absence of staff or an emergency, overtime has become a means of responding to regular staff shortages, instead of an exceptional measure. As indicated by an MSSS statistical document presented at the November 2006 Federal Council[1], the growing amount of overtime in the past 10 years is alarming.

Some FIQ members work overtime voluntarily for various reasons, including a high commitment to their work, their colleagues and their patients, or the need to increase their income. In other cases, pressure from colleagues, job insecurity, or the employees' feeling that their presence at work is essential to accomplish the organization's mission mean that refusal to work overtime is almost impossible and that, to some extent, it becomes a compulsory choice.

[1] MSSS document, A06-CS-111-D11 (November 28, 29 and 30, 2006), pages 15, 18 and 24.

In such a context, it is extremely difficult to mobilize care professionals and generate support for the proposed solutions. Thus, in many cases, overtime is imposed by the employers which makes employees believe that they simply have no choice.

Since the late 1980s, the phenomenon of compulsory overtime has appeared cyclically, especially in spring when the annual vacations begin. The FIQ has repeatedly denounced the obvious absence of planning by the employers and called on them to establish mechanisms to ensure a better match between their needs and the available care-giving staff. This lack of planning is especially deplorable now that the amendments to sections 231 and 376 of the Act respecting health services and social services, following the adoption of Bill 83, oblige every institution to adopt a staffing plan.

At the local level, these staffing planning exercises must be part of the three-year plan[2]. The Forum's above-mentioned Quebec action plan specifically provided, on page 114, for action to "*analyze the use of overtime and establish the appropriate measures to reduce reliance on this practice*[3]". Today, the FIQ continues to use every forum to insist on the importance of action on this issue, pointing out that the increasing amount of overtime is a threat to workers' health and their ability to provide patients with individualized and risk-free care.

An overview of the literature establishes significant connections between working a large number of overtime hours and an increased rate of absenteeism, illness and injury. It was also found that the physical and mental health of individuals tended to be poorer when they were obliged to work overtime.

A large number of overtime hours also represent a risk to the patients, because it can lead to deterioration of the quality of care provided. One study showed that overtime increased the probability of staff errors. Reliance on overtime based on the obligation to prevent potential harm to patients by guaranteeing an adequate staff-patient ratio does not appear to be synonymous with quality.

LOCAL ACTIONS THAT OFFER SOLUTIONS

The measures adopted by the FIQ are varied and attest to the fact that the investments committed have produced results. Among these approaches, we can include the workforce planning exercises, ILOT (local interventions on the organization of work), the gains made by the intervention of resource people or by arbitration decisions rendered on workload complaints, the gains achieved at the local level due to mobilization actions, concerted work

[2] Synthesis document, A06-CF-I-D10 (March 21, 22 and 23, 2006).
[3] The bold lettering is added by the FIQ.

stoppages and denunciations that often brought the FIQ before the ESC. All these efforts have dejudicialized and accelerated the dispute resolution process.

The stakeholders are unanimous in saying that overtime should not be used to make up for an obvious deficiency in institutional management. The professional orders have taken this position in various missives (see Appendix 1). The following excerpts from various decisions of the ESC, an arbitration board and the Superior Court also attest to this.

- CHRVO v. SIICHRO, E.S.C. 2000T-629, p. 8:

"On the other hand, as previously mentioned, obliging nurses to work overtime by compelling them to work 16 consecutive hours on a regular basis is an unacceptable situation, both for them and for the population."

- Hôpital Maisonneuve-Rosemont v. FIIQ, 2003-A-228, M[e] André Bergeron, arbitrator, p. 48:

"**By establishing the current "on-call service", the employer, in fact, instituted a compulsory overtime system[4].** Not only does this system not respect the overtime assignment procedure stipulated in clause 19.02, but it does not respect the employees' right to refuse to work overtime.

Contrary to what the employer counsel affirmed, overtime cannot be imposed against the employees' will. Not only does the collective agreement contain no provision in this regard, but this is inferred from clause 19.02 of the collective agreement, which provides, in its third paragraph, **that it is up to the employees to state their availability for overtime within a given period.**

The evidence presented gave me a clear understanding of the thorny problem posed for the employer by its Emergency Department. However, it cannot solve this problem by requiring nurses to work more hours than section 16 of the collective agreement provides."

- Caron v. CHUL, Superior Court, June 8, 2006, J.E. 2006-1605:

"45. […] In short, according to this expert, […] it is abnormal that Ms. Fabienne BELLEAU worked the day before, on May 6, 2000, from 8 a.m. to 4 p.m., then the evening shift, from 4 p.m. to midnight, and then came back again to work on May 7 from 8 a.m. to 4 p.m. This is another sign of an unacceptable nursing practice in the nursing environment."

[4] The bold lettering is added by the FIQ.

> "55. The hospital file shows that Ms. BELLEAU came in to work on May 6, 2000, and that she completed two shifts in a row, the day shift and the evening shift. She returned on May 7 for the day shift. **She thus worked 24 hours within a continuous 32-hour period**. In my opinion, this resulted in overwork and lack of rest for an individual who is required to show great attention to detail in the performance of her duties. **I take this as an indication that the defendant failed to meet the standard of quality required in the organization of nursing care. Indeed, fatigue and exhaustion can lead to faulty omissions by a worker in the performance of her work."**

Despite such a finding, the ESC still concludes that the refusal of several employees at the same time to work overtime constitutes a concerted action and thus an illegal action. However, this same *Council* did not penalize individuals or unions, but instead noted that the unions were objecting to the employer solution of relying mainly on overtime to make up for the staff shortage. It accepted the solutions proposed by the FIQ, namely the establishment of rectification committees with the mandate, particularly at the local level, to seek solutions immediately to reduce systematic reliance on overtime. Recalling that the existing mechanisms are ineffective to solve the workload problems, the Conseil took the following position:

- CHRVO v. SIICHRO, E.S.C 2000T-629, p. 9:

> "Notwithstanding all the orders rendered by the Council in this decision, it is well aware that a situation that has deteriorated to this extent cannot be restored for some time; this assumes a commitment by all the parties. The Council thus will actively monitor the progress of the concrete application of the action plan, but it remains certain that the concrete effects cannot be felt for some time to come."

- CHRVO v. SIICHRO, E.S.C 2000T-629, p. 10 :

> "Orders that the mandate of this committee will consist not only of establishing an action plan specifying the concrete ways and means in the short, medium and long term to rectify the situation and ensure the health services to which the population is entitled, but also of ensuring their application and follow-up;

> Orders accordingly that, more concretely, this action plan provide the appropriate solutions, particularly but not exclusively to the following problems:
>
> - *Overtime […].* »

The FIQ intervened on other occasions at the *CHUM (*1998) and *Hôpital du Sacré-Cœur (*1999).

Within the context of the mechanisms instituted by order of the ESC and then by Bill 72, the parties filed complaints with the arbitrators concerning the insufficiency of personnel, material and equipment, as well as the physical layout of the workplaces. The arbitrators then ordered the posting of positions. On several occasions, the arbitrators accepted workload complaints and ordered the parties to comply with the recommendations of the resource people regarding the addition of staff, sometimes even coming from other bargaining units (for example, patient attendants). On other occasions, the decisions of the resource people made it possible to restructure the workplaces, introduce new tools and review each person's roles and responsibilities.

The arbitration boards also have not hesitated to suggest that the employers find means other than relying on overtime to solve their management problems. For example, in FIIQ v. HMR, M^{e} André Bergeron (2003A-228) concludes on page 48:

> "As the witnesses Paquet and Gendron acknowledged, the problem in the emergency room does not result from the fact that too many patients are coming there. If this were the case, the Regional Agency would have no other choice than to increase the number of beds registered in the permit once again. The problem instead is due to the fact that the patients stay in emergency too long, as all the witnesses heard on the subject acknowledged.
>
> Thus, the administration's efforts must focus on reducing the patients' length of stay in emergency, and not on means to make the nurses work more without increasing the number of positions."

In the case of SIIIEQ (CSQ) and CSSS de la Côte-de-Gaspé, 2009A-89, the union contested the fact that the employer continuously requires nurses and licensed practical nurses to work overtime when they have not expressed their availability for this purpose. It called for the cessation of this practice and damages for the nurses and licensed practical nurses who were obliged to work overtime.

Four cases were presented to the arbitrator to illustrate the problem covered by the grievance. Two of these cases concerned a nurse and a licensed practical nurse who were obliged to stay on duty after their shift for 4 hours and 30 minutes and 8 hours respectively, representing 16 hours per day for two consecutive days in the latter case. The other two cases concerned nurses who had to work full overtime shifts, namely 16 hours per day for three consecutive days, on two occasions for one nurse and 16 consecutive hours on two occasions for the other nurse.

The union argued that overtime is optional. The meaning of the verb "to offer" necessarily implies that the person to whom the offer is made has the right to refuse it. By obliging nurses or licensed practical nurses who are not available or who do not wish to work overtime to do so, the employer violates the collective agreement. It also contravenes the Act respecting labour standards, which sets a ceiling on the number of daily hours that an employee can be required to work. This practice of the employer represents a management style, such as it appears from a document proving that in a three-month period, nurses and licensed practical nurses were forced to work overtime on 30 occasions.

The employer maintained that under its management rights, it can force employees to stay at work on overtime. It must first offer this work to employees who are available to do so, but if it does not find any, nothing prohibits it from forcing an employee to stay at work. Since it is in charge of a hospital institution, it must ensure that patients receive health care as it is obliged to do by the Charter of Human Rights and Freedoms and the Act respecting health services and social services. It thus cannot accept that patients are deprived of their necessary care. It must ensure the continuity of this care. By doing this, it does not contravene either the collective agreement or the Act respecting labour standards, because the number of daily hours they stipulate is subject to certain exceptions, one of which concerns the code of ethics. The nurses' code of ethics and that of the licensed practical nurses include the obligation not to abandon patients without ensuring the continuity of care.

Decision and grounds:

a) Collective agreement

Article 34.08 of the collective agreement deals with the equitable distribution of overtime.

> "This equitable distribution presupposes an "offer" to the person available. This offer can be refused or accepted and the distribution done accordingly. This is the basis for the argument that overtime is

> only offered. But when the offer of overtime is refused by everyone, the employer, under its management rights, may require an employee to work overtime. The only restriction on this management right is not to exercise it in an abusive, arbitrary, unreasonable or discriminatory manner.
>
> "On the other hand, there is no provision against a nurse working overtime to replace a licensed practical nurse. When no employee is available to work overtime, there is nothing to prevent the employer from going outside the bargaining unit, especially when nurses and licensed practical nurses are part of the same bargaining unit."

b) Act respecting labour standards and ethical obligations

The collective agreement does not prohibit the employer from forcing nurses to work overtime, the Act respecting labour standards dictates public order standards, from which even a collective agreement cannot derogate (cf. Section 93). Thus, under Section 59.0.1 of this Act, an employee may refuse to work beyond a certain standard. Section 59.0.1 does not prohibit an employer from requiring the services of an employee past this standard, but it creates a right to refuse once the standard is reached. Thus, an employee may agree to work past the accepted standard, but he-she may not be compelled to do so.

However,this section *does not apply where there is a danger to the life, health or safety of employees or the population, […] of if the refusal is inconsistent with the employee's professional code of ethics.*

The codes of ethics of the nurses and licensed practical nurses contain provisions obliging these professionals to ensure the continuity of care and services to the patients under their responsibility. On the other hand, these codes also provide for the obligation to abstain from practicing in the profession in a state likely to compromise the quality of care and services. In the opinion of the court, a state of extreme fatigue (excess work and lack of rest) in a field as specialized as nursing is likely to compromise the quality of care and services.

> "The court considers that 16 consecutive working hours, worked once occasionally, does not necessarily result in such a state of fatigue that it compromises the quality of services, especially if the performance of this work is followed by a rest period of equivalent length. But the situation is completely different when an employee is required to work 16 consecutive working hours two days in a row, or even three days in a row."

c) Exercise of management rights

Although the institution has the duty to ensure quality care to the patients, it cannot discharge this obligation by requiring nurse and licensed practical nurses to perform an exaggerated quantity of work. Ad hoc situations may arise when the employee will be forced to assign an additional shift, but this must not become a management style.

Conclusion:

1) The employer may occasionally require nurses and licensed practical nurses to work an additional shift on overtime;

2) A nurse may be obliged to work overtime to replace an absent licensed practical nurse;

3) nurses and licensed practical nurses may refuse to work overtime when they have worked an overtime shift the previous day.

THE LEGAL ASPECTS

The issue of compulsory overtime raises several questions for workers regarding their rights and their obligations as professionals, as employees and as members of a labour organization.

The Code of Ethics

The members of the FIQ are professionals whose activities are governed by codes of ethics specific to each profession. These codes set out all of the professional's duties and all the obligations to the patient, within a perspective of individual professional responsibility.

Appendix 2 presents a comparative table of the relevant provisions according to the codes of ethics of the professional orders of nurses, licensed practical nurses and respiratory therapists. Perfusionists and child nurses who are members of one of these three professional orders should refer to their own code of ethics, as the case may be.

Each of these codes subjects the care professionals to certain obligations, including those of ensuring the continuity of care while waiting for a competent replacement and providing quality care by refraining from practicing in a condition likely to compromise this care. Every employee who finds herself in a situation where she is obliged to work overtime must consider the protection of the public when making an individual decision. The patient's condition, the type of centre of activity and the availability of qualified staff must be evaluated.

Employers should not only refer to the codes of ethics to oblige an employee to work overtime. However, the practice shows that they make little effort to ensure that they have a sufficient workforce and that they quickly fall back on this argument. This is an easy and shortsighted solution, which shows little appreciation for the work of care professionals.

The question of compulsory overtime has already been the subject of many debates. The *Ordre professionnel des inhalothérapeutes du Québec* (OPIQ) and the *Ordre des infirmières et infirmiers du Québec* (OIIQ) have responded to their members through various communications.

The Decree

Article 19 of the Decree deals with overtime. It should be noted that clause 19.02 of the 2000-2002 collective agreement, entitled "Equitable distribution", is now a matter for local negotiation.

The Decree does not provide for a situation where there is a lack of volunteers to work overtime. In the opinion of some arbitrators, when the collective agreement is silent on the obligation to work overtime, this is a management right. Moreover, the employer can require an employee to work overtime when this is the only possible measure to provide the services generally offered. In the HMR decision cited above, arbitrator André Bergeron instead expressed the opinion that an employer cannot oblige an employee to work beyond the regular work day or the regular work week. This is also the position of the FIQ, especially when overtime has become systematic.

Moreover, if a refusal to work overtime leads the employer to impose a disciplinary measure and the arbitrator concludes that the employer could require the employee to work overtime, he will have to examine each of the following factors to ensure that the employer has not exercised its right in an abusive, unreasonable or discriminatory manner. The employer must:

- have exhausted all the other means provided in the agreement (replacement team, availability list, etc.) and will have to prove that resorting to overtime was the only possible measure to provide the services normally offered;

- have distributed the overtime equitably;
- have given a clear and precise order;
- have ensured that the number of overtime hours required is not excessive;
- have accounted for the legislation limiting its right to require overtime;
- have accounted for the grounds of refusal.

Among the legislation limiting the employer's right to require overtime, we should mention the Act respecting labour standards and the Act respecting occupational health and safety. The arbitrator will have jurisdiction to apply the relevant provisions of these Acts.

The Act respecting labour standards

The Act respecting labour standards applies both regarding unionized employees and employees who are not subject to a collective agreement. It sets a general limit on the duration of work. Section 59.0.1 limits the employee's obligation to work overtime beyond a certain number of daily or weekly hours. Section 122 (6) allows the employee to refuse to work overtime because her presence is necessary to perform obligations related to the care, health or education of a member of her family.

In the first place, section 59.0.1 clearly provides for a right to refuse to work beyond the number of hours stipulated in that section. Thus, an employee could exercise her right to refuse to work:

- daily after:
  - more than 4 hours beyond her regular daily working hours or more than 14 hours per 24-hour period, whichever period is shorter;
- weekly after:
  - more than 50 hours or;
  - more than 60 hours for an employee who works in an isolated area or who carries out work in the James Bay territory.

Concerning the subject under study, two situations limit this right:

1. if there is a danger to the life, health or safety of the workers or the population;
2. if this refusal is contrary to the employee's professional code of ethics.

According to the FIQ, professionals benefit from this right of refusal. However, since they are governed by a code of ethics, they cannot automatically refuse to work and must evaluate the context.

Secondly, section 122 (6) of the *Act respecting labour standards* (R.S.Q., c. N-1.1) states that no employer may dismiss, suspend or transfer an employee, practice discrimination or take reprisals against her or impose any other sanction upon her.

> *"122 (6). on the ground that the employee has refused to work beyond his regular hours of work because his presence was required to fulfil obligations relating to the care, health or education of the employee's child or the child of the employee's spouse, or because of the state of health of the employee's spouse, father, mother, brother, sister or one of the employee's grandparents, even though he had taken the reasonable steps within his power to assume those obligations otherwise."*

This provision encourages reconciliation of work and family. When the need is foreseeable, an employee who is asked at the last minute to work overtime will be able to prove that she could not make arrangements to organize her time.

The Act respecting occupational health and safety

Finally, another law, the *Act respecting occupational health and safety*, could allow an employee to refuse work when the performance of that work, due to its excessive duration, would expose her to danger to her health, safety or physical well-being or would expose another person to a similar danger. In this context, the employee could also request the intervention of a CSST inspector. This same Act allows the CSST to determine a maximum number of hours per day or per week for performance of certain occupations (s. 233(12)).

CONCLUSION

The problem of overtime is complex and is increasingly likely to arise, given the context of the staff shortage. To avoid this problem, we must carry out collective actions on several fronts at the local level. Different means are possible:

- increase the members' awareness of the risks to health and those caused by fatigue which can potentially lead to professional errors;
- encourage the members to document the situations and report them by means of disengagement (denial of liability) forms (see Appendix 3), requests to a professional order for an inquiry (see Appendix 4) and filing of grievances;
- analyze the problem situations, identify the different possible solutions to take concrete action on them and use the Committee on Care to discuss them as quickly as possible (ILOT table);
- adopt a local action plan to denounce this problem as widely as possible by different means:
  - letter to the Director of Nursing or the Director of Professional Services (see Appendix 5);
  - letter to the Executive Director (see Appendix 5);
  - letter to the Board of Directors (see Appendix 5);
  - visibility and mobilization actions;
  - public denunciation of any situation of intimidation;
  - grievance (see Appendix 5);
  - etc.

These different actions have already produced results in some institutions. The FIQ thus encourages their use to act locally to put a stop to these situations, which hinder retention of care professionals. Overtime should not be a management solution, but an exceptional solution in the work environments. The FIQ reiterates its availability to support you politically. All the consulting staff will also be happy to support you in your local actions.

In a context in which the Federation is preparing to implement the new provisions introduced in the last negotiations, specifically incumbency and use of the amounts obtained for training (HRDP), it will then be possible to obtain solutions in addition to those already mentioned in the report of the Quebec Nursing Workforce Planning Forum.

APPENDIX 1

Décembre 2001

À tous les inhalothérapeutes,

Objet : Pénurie de main-d'œuvre

Chers(ères) inhalothérapeutes,

Comme nous le savons tous et toutes, depuis un certain temps la profession connaît une pénurie réelle de ressources. Cette problématique entraîne immanquablement un surcroît de travail qui se manifeste de différentes façons : du temps supplémentaire sur une base volontaire, un service de garde alourdi, ... Toutefois, ces alternatives ne semblent pas suffisantes. On voit apparaître de plus en plus, l'obligation d'accomplir ce surplus de travail et cette pratique devient une façon systématique de pallier au manque flagrant d'effectifs.

De nombreux appels d'inhalothérapeutes joints aux informations recueillies lors des visites d'inspection professionnelle, nous indiquent un épuisement croissant des professionnels touchés par cette situation. Plusieurs d'entre vous s'interrogent sur l'obligation ou non d'accomplir ce temps supplémentaire de plus en plus fréquent et ce, dans des conditions qui présentent des risques accrus autant pour le bénéficiaire que pour l'inhalothérapeute. Votre questionnement démontre un professionnalisme de votre part qui est tout à l'honneur de la profession.

Le mandat de l'Ordre professionnel des inhalothérapeutes du Québec étant d'assurer la protection du public par une pratique de qualité, nous sommes grandement préoccupés de l'impact de cette situation sur les soins prodigués. Certes, les obligations déontologiques existent mais la référence au code de déontologie des inhalothérapeutes doit être utilisée de façon prudente. Chaque situation devrait être analysée individuellement. On ne peut émettre une opinion générale et universelle. Certaines obligations extérieures, soient familiales ou autres peuvent limiter la disponibilité d'un professionnel en dehors de sa plage horaire de travail.

En aucun temps, l'inhalothérapeute ne peut se dégager de sa responsabilité professionnelle cependant, soyons prudents. Cette obligation ne peut être interprétée comme obligeant l'inhalothérapeute à assurer sa propre relève en temps supplémentaire surtout si cette situation est prévisible et répétitive.

Vous vous devez d'informer les autorités concernées de toute situation récurrente obligeant l'inhalothérapeute à fournir des services en temps supplémentaire.

L'Ordre souhaite ardemment que tous les acteurs se réunissent afin de trouver une solution qui permette au public de recevoir les soins requis. Il est évident que des situations ponctuelles peuvent toujours survenir et qu'il n'y a pas de solution miracle. Par contre, il en revient à chaque établissement d'établir une politique satisfaisante pour toutes les parties. Ce que nous pouvons prévoir et planifier ne fera qu'améliorer le contexte et finalement c'est le bénéficiaire qui en sera que mieux traité.

Malgré toutes ces situations difficiles, je vous encourage tous et chacun à continuer de faire preuve de professionnalisme.

Recevez, chers(ères) inhalothérapeutes, mes salutations les plus distinguées.

Céline Beaulieu

Céline Beaulieu, inh.
Présidente,

CB/cc

c.c. : Aux responsables des services d'inhalothérapie

Les heures supplémentaires : pour une prise de décision éclairée

Le recours aux heures supplémentaires soulève beaucoup d'interrogations de la part des infirmières en regard de leurs obligations déontologiques et ce, quelle que soit la fonction qu'elles occupent.

Cependant, et comme vous le savez sans doute, le recours aux heures supplémentaires est une question complexe qui est intimement liée aux questions d'insuffisance d'effectifs et de fardeau de tâche et qui relève avant tout du domaine de la gestion et des relations de travail.

Les heures supplémentaires posent rarement problème si elles sont faites sur une base volontaire. Certaines infirmières acceptent d'ailleurs d'en faire à l'occasion ou même régulièrement. C'est surtout lorsqu'elles sont imposées ou obligées que nous sommes sollicitées pour nous prononcer sur ce sujet et nous devons le faire en tenant compte de la mission de protection du public de l'Ordre et des obligations déontologiques infirmières qui en découlent.

Ces dispositions ont trait à des notions telles que :

- l'obligation de prendre les moyens raisonnables pour assurer la continuité des soins[1] ;
- le devoir de toute infirmière de s'abstenir d'exercer sa profession lorsqu'elle est dans un état susceptible de compromettre la qualité des soins et des services[2].

Dans les paragraphes qui suivent, nous préciserons la portée de ces dispositions du code qui réfèrent aux obligations déontologiques de toute infirmière à qui l'on demande de faire des heures supplémentaires, obligatoires ou non.

Une infirmière à qui l'on demande de faire des heures supplémentaires se heurte à un dilemme : l'obligation de prendre des moyens raisonnables pour assurer la continuité des soins aux patients dont elle a la responsabilité et celle de s'abstenir d'exercer sa profession lorsqu'elle est dans un état susceptible de compromettre la qualité des soins et des services ou la sécurité des patients.

Assurer la continuité des soins

- L'infirmière est responsable de fournir des soins sécuritaires et de qualité aux patients qui lui ont été assignés. Avant de quitter son quart de travail, elle doit être certaine que le suivi des soins requis par l'état de santé des patients sera assuré.

Évaluer sa capacité à exercer

- L'infirmière est la seule personne qui peut juger si elle est apte à exercer sans causer de préjudice ni aux patients, ni à ses collègues, ni à elle-même. Son évaluation doit toutefois être honnête. En cas de plainte, c'est l'infirmière qui devra démontrer qu'elle n'était pas en état d'exercer.
- Après avoir évalué le contexte dans lequel on lui demande de faire des heures supplémentaires, tels la complexité des soins, l'état des patients, etc., l'infirmière peut décider de poursuivre son travail. Si elle juge qu'elle n'est pas en état d'exercer, elle a alors le droit et le devoir de se retirer du travail ou de refuser de faire des heures supplémentaires. Toutefois, avant d'agir, elle doit :
  - avertir son supérieur de sa décision;
  - indiquer combien de temps elle peut continuer d'exercer en attendant une relève. Le délai doit être raisonnable pour laisser au supérieur le temps de trouver une solution.

En fait, une infirmière qui décide de ne pas faire d'heures supplémentaires parce qu'elle juge que son état est susceptible de compromettre la qualité des soins ou la sécurité des patients ne porte pas atteinte à ses obligations déontologiques si elle a pris des mesures appropriées avant de quitter l'unité de soins. Ces mesures peuvent varier selon le type d'unité de soins, la complexité des soins requis par les patients et les ressources humaines disponibles.

Aussi, le Code de déontologie précise les devoirs et les obligations des infirmières envers le client, le public et la profession et ce, dans une perspective de responsabilité professionnelle individuelle. L'employeur ne doit pas s'en servir comme prétexte pour gérer une situation prévisible de manque de ressources. À l'inverse, les infirmières ne doivent pas utiliser le code comme moyen de pression pour signifier leur refus de principe de faire des heures supplémentaires ou pour cautionner un geste collectif concerté à cet effet.

Le recours aux heures supplémentaires obligatoires est une mesure qui devrait toujours être envisagée dans le but de rendre à la population des soins et des services de qualité et en toute sécurité. Dans cette optique, nous encourageons l'employeur à communiquer aux infirmières l'ensemble des démarches qu'il a effectuées avant que cette mesure devienne incontournable. Nous encourageons aussi les infirmières à discuter avec les gestionnaires afin de trouver des solutions satisfaisantes au niveau de l'organisation du travail et des règles d'attribution des heures supplémentaires.

La Syndic

[1] *Code de déontologie des infirmières et infirmiers*, (2003) 135 G.O. II, 98, art. 44[3]
[2] *Code de déontologie des infirmières et infirmiers*, (2003) 135 G.O. II, 98, art. 16

Marcel Le Haye

Mandatory overtime: This has gone on too long!

The use of this administrative measure to maintain services despite the nursing shortage is forcing thousands of nurses to sacrifice their family lives and their health. It is clearly an unacceptable response, one that is causing growing dissatisfaction and in the long term will end up worsening the shortage.

The phenomenon of overtime work by nurses has grown exponentially and spread to all regions of Quebec. It has now reached three million hours. **Between 1997-1998 and 2005-2006, the average annual increase in overtime hours across the province was 17.4%. In some regions, it was even worse: 24.5% in Lanaudière, 19.5% in Laval, 20.9% in Laurentides, 20.7% in Montérégie, and 28.1% in Nord-du-Québec.** In 2000-2001, it rose by 28.9%; in Montréal-Centre, an increase of 33%, and in the Eastern Townships, 56%. The rate of increase has been less steep in the past two years, but the phenomenon persists. The proof is in the requests for help that I regularly receive – such as those that recently arrived from nurses at Hôpital Sainte-Justine, Hôpital Sainte-Croix in Drummondville and the CSSS Sud-Ouest-Verdun. In addition, the newspapers are full of criticism of the situation.

I can't help but be surprised by the general lack of response to such a critical issue. It is as if everyone has given up on trying to find a solution. In fact, to me it is a disease eating away at the profession and a time bomb that threatens the entire healthcare system. The Order is not a union, and in theory is not supposed to intervene in matters relating to working conditions. But given the seriousness of the situation, I feel that I must speak out. I believe it is also a matter of public interest. Not only has the overtime problem taken on tremendous proportions, but it has become a mandatory practice in many cases. The profession may never recover from this abuse of power targeting a group of professionals, mainly women, who should not be obliged to pay for past administrative errors. The massive retirements in 1997 can no longer serve as an excuse for government inaction. That was almost ten years ago, after all!!

Individual and collective ethics

I am appalled by the threats directed at nurses. They are threatened with being reported to the Syndic of the OIIQ if they refuse to work overtime. On March 10, 1999, in a personal letter to all members of the Order concerning overtime work, I wrote that nurses can no longer be asked to bear the brunt of this situation on grounds of their professional responsibility, when it is up to society and the government to solve it. Nurses, I said, cannot be released from their professional responsibility for providing the care required by their clients. But **this obligation cannot be interpreted as requiring nurses to stay on if there is no one to replace them on overtime shifts and cannot be used as an excuse when coping with a predictable shortage of professional resources.**

I believe that our profession's *Code of Ethics* must not be used to unduly threaten nurses. The Code specifies their duties and obligations toward patients, from the perspective of individual responsibility. Employers may not use it as a pretext for managing a foreseeable

lack of resources.[1] In other words, employers may not invoke the *Code of Ethics* to force nurses to work overtime hours planned in advance, sometimes even by several weeks. But what will happen to patients who cannot be operated on or hospitalized because of a shortage of nurses? This is a serious problem, but it is not the **individual nurse's responsibility.** It is a collective responsibility, one that properly falls to local administrations and government authorities. The more visible the consequences of the nursing shortage, the more urgent and necessary the search for alternative solutions will become, rather than an issue that can be avoided and shunted aside for the time being.

Despite their best intentions, nurses who agree to work overtime hours often live in fear of making mistakes because of their fatigue. Remember that the Code of Ethics requires them to refrain from practising when they are in a state liable to impair the quality of care and services or patients' safety.[2] A nurse's job calls for a great degree of concentration, in particular for assessing clients, clinical monitoring and administering drugs.

Juggling work and family

Nurses who have children and do not know when they walk into the hospital how many hours they will have to work are faced with a serious ethical dilemma. Why should they care more for patients than for their own children? I myself have three children, who have now grown into young adults. I often wonder how I could have coped had I never been sure, during their elementary school years, how much time I would be able to spend with them, because of overtime imposed by the hospital. Later, when our children have grown, we would like to spend time with our grandchildren or with our parents, a sick sister ... or just enjoy life!

Nurses must not be asked to choose between their right and duty to care for their families and their professional obligations. Otherwise the logical choice is to change profession. In fact, this may explain the growing popularity of private recruitment agencies as a way of escaping these demanding schedules. Given the mandatory nature of overtime work, one might think that nurses do not have the same civil rights as other people. Yet there is certainly legislation somewhere banning forced labour in our Western societies.

Baby boomers are coming up to retirement, that much is obvious, and the entire approach to planning and managing the nursing workforce must be reconsidered. We can no longer accept the status quo, and even less stand for more errors to be made. Errors such as the recent case of offering a lower hourly wage for the first eight levels of a clinical nurse position. This must be corrected as soon as possible. If we want to maintain nursing services at an acceptable level in the healthcare system, it is essential to avoid discouraging any group within the profession.

I will be asking the Minister of Health to focus as much as possible on the question of overtime, and especially mandatory overtime. No one can say for sure just how many overtime hours are forced on nurses, in what institution or clinical sector, whether it is younger or more experienced nurses who are the most affected, what impact they have on absenteeism, retention and retirement rates, etc. A study should be done by a reliable independent party. The mandate should include a plan for eliminating mandatory overtime. I sometimes wonder if the money spent on overtime wouldn't be better used to attract new people to the profession.

Some other immediate, concrete measures should also be put forward – for instance, setting a maximum number of overtime shifts per month and per week, and a maximum number of hours of work in a 36-hour period. Similarly, the right to refuse overtime work on personal and family grounds should be recognized. I feel that nurses have long since proven their commitment, and they should never be accused of abdicating their responsibilities because they refuse to work overtime.

Mandatory overtime has gone on too long. It is time nurses were given the respect they deserve. ●

Gyslaine Desrosiers
President

1. 2. The OIIQ Syndic, "Making enlightened decisions about overtime." *The Journal*, Vol. 2, No. 1, Sept./Oct. 2004, p. 7.

POSITION OF THE
ORDRE DES INFIRMIÈRES ET INFIRMIERS AUXILIAIRES DU QUÉBEC (OIIAQ) REGARDING COMPULSORT OVERTIME (OUR TRANSLATION)

The OIIAQ has on many occasions been solicited by its members to inquire about their rights when they are faced with an obligation to work overtime by their employers.

The OIIAQ has subscribed to the following principles since the positions taken by its Board of Directors in 2007:

- By virtue of section 3.03.02 of the Code of Ethics for licensed practical nurses, a licensed practical nurse must fully commit his-her personal civil liability when practising his-her profession and is prohibited from excluding in whole or in part the said liability;

- In addition, working overtime does not systematically indicate that the person is in a condition or state likely to compromise the quality of the services as per section 3.01.07 of the Code of Ethics;

- Moreover, it is stipulated in section 4.01.01 k) that a licensed practical nurse may not abandon a patient requiring supervision or refuse […] to provide care without ensuring that he-she has a competent replacement;

- However, the threat by the employers to use the Code of Ethics of the licensed practical nurses or to file a request for an inquiry with the OIIAQ, is not the appropriate means to deal with such a situation and the solution is not found in the laws and regulations governing the practice of the profession

- The OIIAQ believes that the use of compulsory overtime by the employer needs to be supported by specific rules and initiatives in the applicable collective agreements, which are silent on this subject;

- Given that only 34% of licensed practical nurses hold full-time positions (PFT), the OIIAQ believes that the fragility of employment that affect some of these employees must be improved and that the employers must create more PFT positions;

- And, the OIIAQ hopes that the reorganization of work currently in progress will speed up and relieve the shortage and consequently, the recourse to compulsory overtime. The OIIAQ also recommends the development of elements to attract and retain nursing staff, including licensed practical nurses.

APPENDIX 2

EXCERPTS FROM THE CODES OF ETHICS

Code of ethics of nurses *(R.S.Q., c. I-8, r. 4.1)*	***Code of ethics of nursing assistants*** *(R.S.Q., c.C-26, r. 111)*	***Code of ethics of respiratory therapists*** *(R.S.Q., c.C-26, r. 121.1.0001)*
DIVISION I **DUTIES INHERENT TO THE PRACTICE OF THE PROFESSION** ***§ 3. Condition liable to impair the quality of care and services*** **16.** In addition to the circumstances contemplated by Section 54 of the Professional Code (R.S.Q., c. C-26), a nurse shall refrain from practising her or his profession when she or he is in a state that is liable to impair the quality of care and services. In particular, a nurse is in a state that is liable to impair the care and services if she or he is under the influence of alcoholic beverages, drugs, hallucinogens, narcotic or anaesthetic preparations or any other substance which may cause intoxication, a diminution or disruption of the faculties or unconsciousness. D. 1513-2002, a. 16. **DIVISION III** **QUALITY OF CARE AND SERVICES** ***§ 2. The therapeutic process*** **44.** A nurse shall not be negligent in the care and treatment provided to the client or the research subject. In particular, a nurse shall: 1° intervene promptly when the client's state of health so requires; 2° ensure the supervision required by the client's state of health; 3° take reasonable measures to ensure the continuity of care and treatment. D. 1513-2002, a. 44; D. 579-2005, a. 10	**DIVISION III** **DUTIES AND OBLIGATIONS TOWARDS THE PATIENT** ***§1. General provisions*** **3.01.07.** The member must not practise under conditions or in situations likely to impair the quality of her or his services. R.R.Q., 1981, c. C-26, r. 111, a. 3.01.07. **DIVISION IV** **DUTIES AND OBLIGATIONS TOWARDS THE PROFESSION** ***§ 1. Acts derogatory to the dignity of the profession*** **4.01.01.** In addition to the acts referred to in section 59 of the Professional Code, an act referred to in section 59.1 of that Code and any act determined pursuant to paragraph 1 of the second paragraph of section 152 of that Code, the following acts are derogatory to the dignity of the profession: (…) *k)* voluntarily leaving without sufficient reason a *patient* requiring supervision or refusing without sufficient reason to provide care and not making sure that competent relief personnel will take over where the nursing assistant can reasonably assure such relief; (our underline) (…) R.R.Q., 1981, c. C-26, r. 111, a. 4.01.01; D. 550-84, a. 2; D. 594-98, a. 5.	**DIVISION II** **DUTIES AND OBLIGATIONS TOWARDS CLIENTS** ***§ 1. General provisions*** **8.** A respiratory therapist shall refrain from practising his profession under conditions or in situations likely to impair the quality of his services or the dignity of the profession. D. 451-99, a. 8. **DIVISION III** **DUTIES AND OBLIGATIONS TOWARDS THE PROFESSION** ***§ 1. Derogatory acts*** **38.** In addition to the acts mentioned in sections 59 and 59.1 or actions that might be in breach of section 59.2 of the Professional Code, the following constitute acts that are derogatory to the dignity of the profession: (…) 2° voluntarily abandoning a client who requires supervision, or refusing to provide care without sufficient cause and without ensuring competent relief in those cases where he can reasonably do so; (…)

APPENDIX 3

Disengagement Form - Nurses

_____
Date

_____
Director of Nursing

_____
Institution

Subject: Complaint regarding the obligation to work overtime

Madam, Sir,

WHEREAS *Section 5 of the Act respecting health services and social services stipulates that every person is entitled to receive, with continuity and in a personalized and safe manner, health services and social services which are scientifically, humanly and socially appropriate;*

WHEREAS *Section 172 of the same Act stipulates that the board of directors for every institution must ensure the pertinence, quality, safety and effectiveness of the services provided;*

WHEREAS *for every health-care institution, Sections 206 and following of the Act respecting health services and social services stipulate that the director of nursing or the nurse in charge of nursing, under the authority of the executive director, is responsible for coordinating and evaluating nursing care in the institution, and for the control and operation of the management, discipline and distribution of staff according to the needs;*

WHEREAS *Section 16 of the Code of Ethics of Nurses stipulates that the nurse shall refrain from practising her or his profession when she or he is in a state that is liable to impair the quality of care and services;*

WHEREAS *the inequitable distribution of compulsory overtime between the employees on my centre of activity and the nurses from the private healthcare employment agencies;*

I NOTIFY YOU *that on* _____, _____,
(date and time) *(superior's name)*

obliged me to work overtime, which risked impairing the quality of care and services to which the patients are entitled.

Since the nursing staff levels currently on duty are insufficient to meet the demand for care, I hereby confirm that the workload currently assigned to me exceeds what I can assume within my human and professional limits.

I request that the administrator responsible for allocation of the staff levels and the means to be used to provide the clientele with quality services take the necessary corrective actions to assure the beneficiaries of adequate services.

_____
Nurse

encl. Description of the situation

c.c. Signatory nurse
Union officer
Office of the syndic

Disengagement Form – Licensed Practical Nurses

_____
Date

_____
Director of Nursing

_____
Institution

Subject: Complaint regarding the obligation to work overtime

Madam, Sir,

WHEREAS *Section 5 of the Act respecting health services and social services stipulates that every person is entitled to receive, with continuity and in a personalized and safe manner, health services and social services which are scientifically, humanly and socially appropriate;*

WHEREAS *Section 172 of the same Act stipulates that the board of directors for every institution must ensure the pertinence, quality, safety and effectiveness of the services provided;*

WHEREAS *for every health-care institution, Sections 206 and following of the Act respecting health services and social services stipulate that the director of nursing or the nurse in charge of nursing, under the authority of the executive director, is responsible for coordinating and evaluating nursing care in the institution, and for the control and operation of the management, discipline and distribution of staff according to the needs;*

WHEREAS *Section 3.01.07 of the Code of Ethics of Nursing Assistants stipulates that the nursing assistant must not practice under conditions or in situations likely to impair the quality of his or her services;*

WHEREAS *the inequitable distribution of compulsory overtime between the employees on my centre of activity and the licensed practical nurses from the private healthcare employment agencies;*

I NOTIFY YOU *that on* _____, _____,
(date and time) *(superior's name)*

obliged me to work overtime, which risked impairing the quality of care and services to which the patients are entitled.

Since the staff levels of the nursing assistants currently on duty are insufficient to meet the demand for care, I hereby confirm that the workload currently assigned to me exceeds what I can assume within my human and professional limits.

I request that the administrator responsible for allocation of the staff levels and the means to be used to provide the clientele with quality services take the necessary corrective actions to assure the beneficiaries of adequate services.

_____
Licensed Practical Nurse

encl. Description of the situation

c.c. Signatory licensed practical nurse
Union officer
Office of the syndic

Disengagement Form – Respiratory Therapists

_____
Date

_____
Director of Nursing, or
Director of Professional Services

_____
Institution

Subject: Complaint regarding the obligation to work overtime

Madam, Sir,

WHEREAS *Section 5 of the Act respecting health services and social services stipulates that every person is entitled to receive, with continuity and in a personalized and safe manner, health services and social services which are scientifically, humanly and socially appropriate;*

WHEREAS *Section 172 of the same Act stipulates that the board of directors for every institution must ensure the pertinence, quality, safety and effectiveness of the services provided;*

WHEREAS *for every health-care institution, Sections 206 and following of the Act respecting health services and social services stipulate that the director of nursing or the nurse in charge of nursing, under the authority of the executive director, is responsible for coordinating and evaluating nursing care in the institution, and for the control and operation of the management, discipline and distribution of staff according to the needs;*

or, as the case may be:

WHEREAS *for every health-care institution, Sections 188 and following of the Act respecting health services and social services stipulate that the director of professional services under the authority of the executive director, is responsible for coordination of professional and scientific activities, and that the had of a clinical department is responsible for supervising the activities referred to in the second paragraph of Section 31 of the Medical Act;*

WHEREAS *Section 8 of the Code of Ethics of Respiratory Therapists stipulates that a respiratory therapist shall refrain from practising his or her profession under conditions or in situations likely to impair the quality of his or her services or the dignity of the profession;*

WHEREAS *the inequitable distribution of compulsory overtime between the employees on my centre of activity and the respiratory therapists from the private healthcare employment agencies;*

…/2

I NOTIFY YOU *that on* _____, _____,
(date and time) *(superior's name)*

obliged me to work overtime, which risked impairing the quality of care and services to which the patients are entitled.

Since the staff levels of the respiratory therapists currently on duty are insufficient to meet the demand for care, I hereby confirm that the workload currently assigned to me exceeds what I can assume within my human and professional limits.

I request that the administrator responsible for allocation of the staff levels and the means to be used to provide the clientele with quality services take the necessary corrective actions to assure the beneficiaries of adequate services.

_____
Respiratory Therapist

encl. Description of the situation

c.c. Signatory respiratory therapist
Union officer
Office of the syndic

Disengagement Form - Nurses

_____
Date

_____
Executive Director

_____
Institution

Subject: Complaint regarding the obligation to work overtime

Madam, Sir,

WHEREAS *Section 5 of the Act respecting health services and social services stipulates that every person is entitled to receive, with continuity and in a personalized and safe manner, health services and social services which are scientifically, humanly and socially appropriate;*

WHEREAS *Section 172 of the same Act stipulates that the board of directors for every institution must ensure the pertinence, quality, safety and effectiveness of the services provided;*

WHEREAS *for every health-care institution, Sections 194 and following of the Act respecting health services and social services stipulate that the executive director, under the authority of the board of directors, is responsible for the administration and operation of every institution under the administration of the board and is responsible for the day-to-day management of its activities and resources;*

WHEREAS *Section 16 of the Code of Ethics of Nurses stipulates that the nurse shall refrain from practising her or his profession when she or he is in a state that is liable to impair the quality of care and services;*

WHEREAS *the inequitable distribution of compulsory overtime between the employees on my centre of activity and the nurses from the private healthcare employment agencies;*

I NOTIFY YOU *that on _____, _____,*
(date and time) (superior's name)

obliged me to work overtime, which risked impairing the quality of care and services to which the patients are entitled.

Since the nursing staff levels currently on duty are insufficient to meet the demand for care, I hereby confirm that the workload currently assigned to me exceeds what I can assume within my human and professional limits.

I request that the administrator responsible for allocation of the staff levels and the means to be used to provide the clientele with quality services take the necessary corrective actions to assure the beneficiaries of adequate services.

_____
Nurse

encl. Description of the situation

c.c. Signatory nurse
Union officer
Office of the syndic

Disengagement Form – Licensed Practical Nurses

_____
Date

_____
Executive Director

_____
Institution

Subject: Complaint regarding the obligation to work overtime

Madam, Sir,

WHEREAS *Section 5 of the Act respecting health services and social services stipulates that every person is entitled to receive, with continuity and in a personalized and safe manner, health services and social services which are scientifically, humanly and socially appropriate;*

WHEREAS *Section 172 of the same Act stipulates that the board of directors for every institution must ensure the pertinence, quality, safety and effectiveness of the services provided;*

WHEREAS *for every health-care institution, Sections 194 and following of the Act respecting health services and social services stipulate that the executive director, under the authority of the board of directors, is responsible for the administration and operation of every institution under the administration of the board and is responsible for the day-to-day management of its activities and resources;*

WHEREAS *Section 3.01.07 of the Code of Ethics of Nursing Assistants stipulates that the nursing assistant must not practice under conditions or in situations likely to impair the quality of his or her services;*

WHEREAS *the inequitable distribution of compulsory overtime between the employees on my centre of activity and the licensed practical nurses from the private healthcare employment agencies;*

I NOTIFY YOU *that on* _____ *(date and time)*, _____ *(superior's name)*,

obliged me to work overtime, which risked impairing the quality of care and services to which the patients are entitled.

Since the staff levels of the nursing assistants currently on duty are insufficient to meet the demand for care, I hereby confirm that the workload currently assigned to me exceeds what I can assume within my human and professional limits.

I request that the administrator responsible for allocation of the staff levels and the means to be used to provide the clientele with quality services take the necessary corrective actions to assure the beneficiaries of adequate services.

_____

Licensed Practical Nurse

encl. Description of the situation

c.c. Signatory licensed practical nurse
Union officer
Office of the syndic

Disengagement Form – Respiratory Therapists

_____
Date

_____
Executive Director

_____
Institution

Subject: Complaint regarding the obligation to work overtime

Madam, Sir,

WHEREAS *Section 5 of the Act respecting health services and social services stipulates that every person is entitled to receive, with continuity and in a personalized and safe manner, health services and social services which are scientifically, humanly and socially appropriate;*

WHEREAS *Section 172 of the same Act stipulates that the board of directors for every institution must ensure the pertinence, quality, safety and effectiveness of the services provided;*

WHEREAS *for every health-care institution, Sections 194 and following of the Act respecting health services and social services stipulate that the executive director, under the authority of the board of directors, is responsible for the administration and operation of every institution under the administration of the board and is responsible for the day-to-day management of its activities and resources;*

WHEREAS *Section 8 of the Code of Ethics of Respiratory Therapists stipulates that a respiratory therapist shall refrain from practising his or her profession under conditions or in situations likely to impair the quality of his or her services or the dignity of the profession;*

WHEREAS *the inequitable distribution of compulsory overtime between the employees on my centre of activity and the respiratory therapists from the private healthcare employment agencies;*

I NOTIFY YOU *that on* _____, _____,
(date and time) *(superior's name)*

obliged me to work overtime, which risked impairing the quality of care and services to which the patients are entitled.

Since the staff levels of the respiratory therapists currently on duty are insufficient to meet the demand for care, I hereby confirm that the workload currently assigned to me exceeds what I can assume within my human and professional limits.

I request that the administrator responsible for allocation of the staff levels and the means to be used to provide the clientele with quality services take the necessary corrective actions to assure the beneficiaries of adequate services.

_____
Respiratory Therapist

encl. Description of the situation

c.c. Signatory respiratory therapist
Union officer
Office of the syndic

APPENDIX 4

Model of a request for an inquiry against the head nurses to the OIIQ

City, date_____

Ordre des infirmières et infirmiers du Québec (OIIQ)
Attention: the Syndic
4200 Dorchester Blvd. West
Montreal (Quebec) H3Z 1V4

Subject: **Request for an inquiry Institution:** _____

_____

Madam, Sir,

Whereas Section 16 of the Code of Ethics of Nurses stipulates that the nurse shall refrain from practicing her or his profession when she or he is in a state that is liable to impair the quality of care and services;

I notify you that on _____ _____
(Date) (Name of superior)

obliged me to work overtime in a condition of fatigue which risked impairing the quality of care or services to which the patients are entitled.

I request that you intervene with my immediate superior so that she modifies her behaviour and so that she takes the necessary corrective action to assure the beneficiaries of adequate services.

_____ _____
(Nurse's signature) (Date and time)

encl. Description of the Situation

c.c. Director of Nursing

Model of a request for an inquiry against the head nurses to the OIIQ

City, date_____

Ordre des infirmières et infirmiers du Québec (OIIQ)
Attention: the Syndic
4200, Dorchester Blvd. West
Montreal (Quebec) H3Z 1V4

Subject: **Request for an inquiry Institution:** _____

_____

Madam, Sir,

Whereas Section 3.01.07 of the Code of Ethics of Nursing Assistants (Licensed Practical Nurses) stipulates that the nursing assistant must not practice under conditions or in situations likely to impair the quality of his or her services.

I notify you that on _____ _____
(Date) (Name of superior)

obliged me to work overtime in a condition of fatigue which risked impairing the quality of care or services to which the patients are entitled.

I request that you intervene with my immediate superior so that she modifies her behaviour and so that she takes the necessary corrective action to assure the beneficiaries of adequate services.

_____ _____
(Signature of the licensed practical nurse) (Date and time)

encl. Description of the situation

c.c. Director of Nursing

Model of a request for an inquiry against (title of immediate superior)

City, date_____

(Professional order to which the immediate superior belongs)
Attention: the Syndic
(address of the professional order to which the immediate superior belongs)

Subject: **Request for an inquiry Institution:** _____

_____

Madam, Sir,

Whereas Section 8 of the Code of Ethics of Respiratory Therapists stipulates that a respiratory therapist shall refrain from practising his or her profession under conditions or in situations likely to impair the quality of his or her services or the dignity of the profession

I notify you that on _____ _____
(Date) (Name of superior)

obliged me to work overtime in a condition of fatigue which risked impairing the quality of care or services to which the patients are entitled.

I request that you intervene with my immediate superior so that she modifies her behaviour and so that she takes the necessary corrective action to assure the beneficiaries of adequate services.

_____ _____
(Signature of the respiratory therapist) (Date and time)

encl. Description of the situation

c. c. Director (of the immediate superior)

APPENDIX 5

City, date_____

Madam Director of Nursing,
Mr. Director of Nursing,

Subject: Abusive reliance on compulsory overtime

Madam, Sir,

For some time now, despite the individual approaches of our members to their supervisors and our interventions with the managements concerned, care professionals continue to be compelled to work overtime. Our members and we, as a union, are aware that many other institutions in the network are faced with this problem.

Consequently, we are soliciting your intervention regarding this situation, about which we are concerned, given that the *Act respecting health services and social services* gives you the responsibility to cooperate in the supervision of the activities conducted in your institution. This Act also stipulates that you must ensure that rules are determined that take into account the necessity of providing adequate and efficient services to users, and the organization of available resources of the institution.

As you know, overtime work represents a risk for patients, in the sense that it can result in a deterioration of the quality of care provided. However, we find that some of your managers do not shoulder their responsibility, using the argument of deontological duties and responsibilities to compel or oblige our members to work overtime against their will. We collectively refuse to put up with this situation. Enough is enough.

Reliance on overtime should not be a management method but an exceptional measure in the work environments. It is your responsibility and that of your managers to find solutions to this local problem; it is not the individual responsibility of our members.

Moreover, we must remind you that the literature establishes significant connections between the high number of hours of overtime worked and the increased rate of absenteeism, illness and injury. These perverse effects will only worsen our situation. The risk of committing errors and the tensions generated in the units, among colleagues, inevitably harm our capacity to retain and attract staff in our institution.

As stipulated in the *Act respecting health services and social services*, we ask you to begin work, as soon as possible, to find permanent solutions in order to restore the adequacy of the available resources to users' needs, within the context of a staffing plan. It is essential to stop pretending that professionals simply have no choice but to work overtime.

We await a response from you as soon as possible, informing us of the means you are considering to correct this untenable situation for the professionals we represent.

_____

President

c.c. Members of the Board of Directors
Professional order concerned
Ministère de la Santé et des Services sociaux

City, date _____

To the Executive Director,

Subject: Abusive reliance on compulsory overtime

Madam, Sir,

For some time, despite our individual approaches by our members to their supervisors and our interventions with the administrators concerned, we find that the problem of compulsory overtime persists. Our members and we, as a union, are aware that this problem is present in several other institutions.

We request an intervention on this issue, given that the *Act respecting health services and social services* holds you responsible for the day-to-day management of activities and resources. Unfortunately, we find that resorting to overtime is no longer an exceptional measure but rather a means of responding to a regular and foreseeable staff shortage.

How can we guarantee quality services to users by relying on this means alone?

A large number of overtime hours represents a risk for patients because this can lead to deterioration of the quality of the care provided. A study has shown, among other things, that resorting to overtime increases the probability of staff errors. We collectively refuse to be exposed to this situation. Yet, we find that several of your managers use the argument of our ethical duties and responsibilities to compel or oblige our members to work overtime against their will. Enough is enough.

Resorting to overtime must not be a management solution, but an exceptional solution in the work environments. It is your responsibility and that of your managers to find solutions to this local problem, which is tending to get worse. This responsibility is not the individual responsibility of our members.

Moreover, we wish to remind you that the literature establishes significant links between working a high number of overtime hours and an increased rate of absenteeism, illness and injury. These perverse effects will only worsen the situation. The risk of making errors and the tensions generated in the units between colleagues inevitably hinder our ability to retain and attract staff to our institution.

We therefore request that you take steps as soon as possible to find permanent solutions in order to restore the match between the available resources and our users' needs in a workforce planning context, as provided in the *Act respecting health services and social services*. This false argument that professionals simply have no choice but to work overtime must cease immediately.

We await a response from you as soon as possible, indicating what means you intend to take to correct this untenable situation for the professionals we represent.

_____

President

c.c. Members of the Board of Directors
Professional order concerned
Ministère de la Santé et des Services sociaux

City, date_____

Madam Director of Professional Services,
Mr. Director of Professional Services,

Subject: Abusive reliance on compulsory overtime

Madam, Sir,

For some time now, despite the individual approaches of our members to their supervisors and our interventions with the managements concerned, care professionals continue to be compelled to work overtime. Our members and we, as a union, are aware that many other institutions in the network are faced with this problem.

Consequently, we are soliciting your intervention regarding this situation, about which we are concerned, given that the *Act respecting health services and social services* gives you the responsibility to cooperate in the supervision of the activities conducted in your institution. This Act also stipulates that you must ensure that rules are determined that take into account the necessity of providing adequate and efficient services to users, and the organization of available resources of the institution.

As you know, overtime work represents a risk for patients, in the sense that it can result in a deterioration of the quality of care provided. However, we find that some of your managers do not shoulder their responsibility, using the argument of deontological duties and responsibilities to compel or oblige our members to work overtime against their will. We collectively refuse to put up with this situation. Enough is enough.

Reliance on overtime should not be a management method but an exceptional measure in the work environments. It is your responsibility and that of your managers to find solutions to this local problem; it is not the individual responsibility of our members.

Moreover, we must remind you that the literature establishes significant connections between the high number of hours of overtime worked and the increased rate of absenteeism, illness and injury. These perverse effects will only worsen our situation. The risk of committing errors and the tensions generated in the units, among colleagues, inevitably harm our capacity to retain and attract staff in our institution.

As stipulated in the *Act respecting health services and social services*, we ask you to begin working, as soon as possible, to find permanent solutions in order to restore the adequacy of the available resources to users' needs, within the context of a staffing plan. It is essential to stop pretending that professionals simply have no choice but to work overtime.

We await a response from you as soon as possible, informing us of the means you are considering to correct this untenable situation for the professionals we represent.

_____

President

c.c. Members of the Board of Directors
Professional order concerned
Ministère de la Santé et des Services sociaux

City, date_____

To the members of the Board of Directors,

Subject: Abuse of overtime

Ladies and Gentlemen,

This purpose of this letter is to denounce the situation prevailing in our institution concerning reliance on overtime to provide the required care to our clientele.

As you know, the *Act respecting health services and social services* not only obliges our institution to provide health services “with continuity and in a personalized and safe manner”, but to take into account the available resources in determining the services offered.

However, we are obliged to point out that the managers in our institution are not complying with this objective to ensure our users’ safety. This is because, in failing to have a sufficient number of resources available, they are imposing the obligation on many professionals to work overtime shifts.

This is a totally unacceptable situation considering that resorting to a large number of overtime hours represents risks for patients. It can lead to deterioration of the quality of the care provided and increase the probability of staff errors. A review of the literature establishes significant links between working overtime regularly and an increased rate of absenteeism, illness and injury among caregivers.

Despite the approaches made to our managers, we are compelled to note an inertia regarding this situation, which is tending to deteriorate. Unfortunately, we observe that the only solution found by our managers to assure a sufficient workforce is to invoke our members’ ethical obligations and even threaten them with a complaint to the syndic if they refuse to work overtime. This is an easy but short-sighted solution that shows little appreciation for the work of care professionals. Enough is enough.

…/2

As an employer, you must take action to solve the foreseeable shortage of resources. This is the responsibility of the managers and the Board of Directors, not of care professionals. Our members want to be able to provide quality care to patients safely, but we do not believe that the administration is making decisions that will make it possible to reach this objective.

The *Act respecting health services and social services* also stipulates that every institution must draw up a real staffing plan. In our opinion, this is an essential first step in finding concrete solutions that will be promote retention of personnel and the attraction of a new workforce to our institution.

We repeat that this situation has lasted long enough and ask you to take the necessary measures to restore hope to our institution's professionals.

_____

President

encl. Petition, if applicable
Package of disengagement forms

c.c. Professional order concerned
Ministre de la Santé et des Services sociaux

GRIEVANCES CONTESTING THE UNFAIR DISTRIBUTION OF OVERTIME

Union grievance

Contestation

The union contests the unjust and discriminatory treatment, contrary to the collective agreement, which the employer inflicts on its employees by unreasonably and abusively imposing the obligation on them to work overtime. The union also contests the unfair distribution of overtime between employees of the centre of activity _____ and the personnel of the private healthcare employment agencies for the period of _____ 2010.

Claim

The union asks the arbitrator to declare this treatment and the unfair distribution of compulsory overtime unjust, discriminatory, unreasonable and contrary to the collective agreement and the applicable laws. The union thus asks the arbitrator to order the employer to treat its employees justly and to distribute compulsory overtime fairly between the employees of the centre of activity and the personnel of the private healthcare employment agencies. The union also requests that the employees forced to work overtime be compensated for the prejudice suffered due to the employer's practices, the whole with interest and additional indemnity.

Individual grievance

Contestation

I contest the unjust and discriminatory treatment, contrary to the collective agreement, which the employer inflicts on me by unreasonably and abusively imposing the obligation on me to work overtime. I also contest the unfair distribution of overtime between employees of my centre of activity and the personnel of the private healthcare employment agencies for the period of _____ 2010.

Claim

I ask the arbitrator to declare this treatment and the unfair distribution of compulsory overtime unjust, discriminatory, unreasonable and contrary to the collective agreement and the applicable laws. I thus ask the arbitrator to order the employer to treat me justly and to distribute compulsory overtime fairly between the employees of my centre of activity and the personnel of the private healthcare employment agencies. I also request compensation, with interest and additional indemnity, for the prejudice suffered due to my employer's practices in obliging me to work overtime.

GRIEVANCE CONTESTING THE EMPLOYER'S POLICY ON OVERTIME

The_____

(name of union)

contests the employer's practice and policy of systematically resorting to overtime.

The_____

(name of union)

asks the court to declare this policy and practice abusive, unreasonable, discriminatory, illegal and contrary to the collective agreement and to order the employer to stop it. Moreover, the union claims real, moral and exemplary damages for each employee who suffered prejudice.

GRIEVANCE CONTESTING THE FACT THAT THE EMPLOYER OBLIGES AN EMPLOYEE TO WORK OVERTIME WHEN SHE HAS REASONABLE GROUNDS FOR REFUSAL.

I contest the fact that the employer obliged me to work overtime on _____ when I gave reasonable grounds for refusal
(date)

_____ .

(identify it, if applicable)

I request the court to declare the employer's order abusive, unreasonable and discriminatory. I also claim full compensation for real, moral and exemplary damages suffered.