

First Session, Thirty-sixth Parliament,
46-47-48 Elizabeth II, 1997-98-99

Première session, trente-sixième législature,
46-47-48 Elizabeth II, 1997-98-99

THE SENATE OF CANADA

BILL S-29

An Act to amend the Criminal Code (Protection of
Patients and Health Care Providers)

SÉNAT DU CANADA

PROJET DE LOI S-29

Loi modifiant le Code criminel (protection des patients et
des soignants)

First reading, April 29, 1999

Première lecture le 29 avril 1999

THE HONOURABLE SENATOR LAVOIE-ROUX

L'HONORABLE SÉNATRICE LAVOIE-ROUX

SUMMARY

This enactment amends the *Criminal Code* in order to protect from criminal responsibility health care providers who act in accordance with their patients' instructions and the standards and guidelines established by the Minister of Health in the areas of life-sustaining treatment and alleviation of pain and serious physical distress. The enactment requires the Minister to establish these standards and guidelines in consultation with provincial governments and health care professionals no later than one year after the enactment receives royal assent.

SOMMAIRE

Le texte prévoit une modification au *Code criminel* qui met à l'abri de la responsabilité pénale les soignants qui respectent les instructions de leurs patients tout en agissant en conformité avec les normes et lignes directrices établies par le ministre de la Santé en matière de traitement de survie et de soulagement de souffrances et autres symptômes physiques graves. Ces normes et lignes directrices seront établies par le ministre au plus tard un an après la sanction royale du projet de loi, en collaboration avec les gouvernements provinciaux et les professionnels de la santé.

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An Act to amend the Criminal Code
(Protection of Patients and Health Care
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Loi modifiant le Code criminel (protection
des patients et des soignants)

R.S., c. C-46;
R.S., cc. 2, 11,
27, 31, 47, 51,
52 (1st
Supp.), cc. 1,
24, 27, 35
(2nd Supp.),
cc. 10, 19,
30, 34 (3rd
Supp.), cc. 1,
23, 29, 30, 31,
32, 40, 42, 50
(4th Supp.);
1989, c. 2;
1990, cc. 15,
16, 17, 44;
1991, cc. 1, 4,
28, 40, 43;
1992, cc. 1,
11, 20, 21, 22,
27, 38, 41, 47,
51; 1993, cc. 7,
25, 28,
34, 37, 40, 45,
46; 1994, cc.
12, 13, 38, 44;
1995, cc. 5, 19,
22, 27, 29, 32,
39, 42; 1996,
cc. 7, 8, 16, 19,
31, 34; 1997,
cc. 9, 16, 17,
18, 23, 30, 39;
1998, cc. 7, 9,
15, 30, 34, 35,
37; 1999, c. 5

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

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

L.R., ch. C-46;
L.R., ch. 2, 11,
27, 31, 47, 51,
52 (1^{er} suppl.),
ch. 1, 24, 27,
35 (2^e suppl.),
ch. 10, 19, 30,
34 (3^e suppl.),
ch. 1, 23, 29,
30, 31, 32, 40,
42, 50, (4^e
suppl.); 1989,
ch. 2; 1990, ch.
15, 16, 17, 44;
1991, ch. 1, 4,
28, 40, 43,
1992, ch. 1, 11,
20, 21, 22, 27,
38, 41, 47, 51;
1993 ch. 7, 25,
28, 34, 37, 40,
45, 46; 1994,
ch. 12, 13, 38,
44; 1995, ch. 5,
19, 22, 27, 29,
32, 39, 42;
1996, ch. 7, 8,
16, 19, 31, 34;
1997, ch. 9, 16,
17, 18, 23, 30,
39; 1998, ch. 7,
9, 15, 30, 34,
35, 37; 1999,
ch. 5

1. The *Criminal Code* is amended by
adding the following heading before
section 45:

PROTECTION OF PATIENTS AND HEALTH CARE
PROVIDERS

2. The Act is amended by adding the
following after section 45:

1. Le *Code criminel* est modifié par
ajonction, avant l'article 45, de l'inter- 5
titre qui suit :

PROTECTION DES PATIENTS ET DES SOIGNANTS

2. La même loi est modifiée par adjonction, après l'article 45, de ce qui suit :

Definitions “health care provider” “soignant”	<p>45.1 The definitions in this section apply in it and in sections 45.2 to 45.5.</p> <p>“health care provider” means</p> <ul style="list-style-type: none"> (a) a medical practitioner duly qualified under the laws of a province who has a responsibility for providing medical or surgical treatment and care to a person; (b) a nurse or other health care professional who, acting under the supervision and on the instructions of a medical practitioner described in paragraph (a), is involved in providing treatment or care to a person; or (c) a person who provides treatment or care to a person under the supervision of and in accordance with the instructions given by a person described in paragraphs (a) or (b). <p>“life-sustaining medical treatment” means any medical or surgical practice or procedure intended to sustain, restore or supplant a vital function in order to postpone death.</p>	Définitions « soignant » “health care provider”
Withholding or withdrawing treatment	<p>45.2 A health care provider is protected from criminal responsibility for withholding or withdrawing life-sustaining medical treatment from a person if the health care provider acts in compliance with the relevant standards and guidelines established under section 45.5 and pursuant to</p> <ul style="list-style-type: none"> (a) a free and informed request made by the person in the presence of a witness, in writing, by words or by signs; or (b) a written directive that appears to the health care provider, after reasonable inquiry, to have been made by the person, in accordance with the laws of the province, and not to have been revoked. 	« traitement de survie » “life-sustaining medical treatment”
Administering medication	<p>45.3 A health care provider is protected from criminal responsibility for administering medication to alleviate the pain or other symptoms of serious physical distress of a person if:</p>	Traitement de survie Médicaments
		45

	(a) the person has given free and informed consent in the presence of a witness, in writing, by words or by signs;	a) la personne a donné son consentement librement et en connaissance de cause, verbalement, par un geste ou dans un écrit fait en la présence d'un témoin;
	(b) the health care provider administers the medication with the primary intent of alleviating pain or other symptoms of serious physical distress; and	b) le soignant administre le médicament avec l'intention primaire de soulager les souffrances ou autres symptômes physiques graves de la personne;
	(c) the health care provider acts in accordance with the relevant standards and guidelines established under section 10 45.5.	c) le soignant agit conformément aux normes et lignes directrices prévues à l'article 45.5.
Proxyholders	45.4 Where a person is unable to make the request referred to in section 45.2 or is unable to give the consent referred to in section 45.3, a proxyholder, court, board or other authority authorized under the laws of the province to make health care decisions on the person's behalf may make the request and give the consent.	45.4 Dans le cas d'une personne qui est incapable de faire la demande prévue à l'article 45.2 ou de donner le consentement prévu à l'article 45.3, un fondé de pouvoir, un tribunal, un conseil ou une autre autorité habilitée par la loi de la province à prendre des décisions concernant la santé de la personne peut faire la demande ou donner le consentement.
Standards and guidelines	45.5 (1) The Minister of Health shall establish standards and guidelines 20 (a) for identifying the circumstances in which medical and surgical practices and procedures constitute life-sustaining medical treatment; 25 (b) for determining which medical and surgical practices and procedures involve the withholding or withdrawal of life-sustaining medical treatment; (c) for determining reasonable dose limits 30 for medication; (d) for determining the circumstances in which it is ethical to exceed dose limits in order to alleviate the pain or other symptoms of serious physical distress of the 35 person; and (e) in respect of any other matters that are necessary for carrying out the purpose of sections 45.2 to 45.4.	45.5 (1) Le ministre de la Santé établit des normes et lignes directrices pour : a) identifier dans quelles circonstances un acte chirurgical ou médical constitue un traitement de survie; 25 b) déterminer qu'un acte chirurgical ou médical comporte abstention ou interruption d'un traitement de survie; c) fixer des limites raisonnables en matière de dosage; 30 d) déterminer les circonstances dans lesquelles il est acceptable d'excéder les limites en matière de dosage afin de soulager la souffrance ou les autres symptômes physiques graves d'une personne; 35 e) régir toute autre question liée à l'application des articles 45.2 à 45.4.
Consultation	(2) In establishing standards and guidelines under subsection (1), the Minister of Health shall consult the governments of the provinces and national and provincial associations of health care professionals.	(2) Dans l'exercice des fonctions que lui confère le paragraphe (1), le ministre de la Santé consulte le gouvernement de chaque 40 province ainsi que les associations nationales et provinciales de professionnels de la santé.

Provincial standards and guidelines

(3) Where a province has standards and guidelines in respect of matters referred to in subsection (1), the Minister of Health may, in the Minister's discretion, establish them as the standards and guidelines for that province for the purposes of subsection (1).

Publication

(4) The Minister of Health shall publish the standards and guidelines established under subsection (1) in the *Canada Gazette*.

No new obligation

(5) Nothing in this section or section 45.2 imposes a legal duty to provide life-sustaining medical treatment.

3. The Minister of Health shall establish the standards and guidelines referred to in section 45.5 of the *Criminal Code*, as enacted by section 2 of this Act, not later than one year after the day on which this Act is assented to.

Coming into force

COMING INTO FORCE

4. Sections 45.2 to 45.4 of the *Criminal Code*, as enacted by section 2 of this Act, come into force on the day that is one year after the day on which this Act is assented to.

(3) Pour l'application du paragraphe (1), le ministre de la Santé peut établir les mêmes normes et lignes directrices que celles qui ont déjà été établies par une province relativement aux questions visées à ce paragraphe.

(4) Le ministre de la Santé publie dans la *Gazette du Canada* les normes et lignes directrices qu'il a établies.

(5) Le présent article et l'article 45.2 n'ont pas pour effet d'imposer l'obligation légale d'administrer un traitement de survie.

3. Le ministre de la Santé établit les normes et lignes directrices prévues à l'article 45.5 du *Code criminel*, édicté par l'article 2 de la présente loi, au plus tard un an après que la présente loi a reçu la sanction royale.

ENTRÉE EN VIGUEUR

4. Les articles 45.2 et 45.4 du *Code criminel*, édictés par l'article 2 de la présente loi, entrent en vigueur un an après la date de la sanction royale.

Normes provinciales

Publication

Absence d'obligation