ONTARIO NURSES' ASSOCIATION

SUBMISSION

ON

BILL 106, *An Act to enact two Acts and amend various other Acts*

Standing Committee on Finance and Economic Affairs

April 6, 2022

ONTARIO NURSES' ASSOCIATON
85 Grenville Street, Suite 400
Toronto, ON M5S 3A2
Phone: (416) 964-8833
Web site: www.ona.org

Contents

OVERVIEW 3

Summary of ONA's proposed amendments to Bill 106 5

PART I SETTING THE CONTEXT OF BILL 106 5

PART II SCHEDULE 7, *Supporting Retention in Public Services Act, 2022,* is unconstitutional. 7

(i) Schedule 7 lacks transparent operative definitions. 7

(ii) ONA members unconstitutionally denied access to meaningful collective bargaining, to file a grievance or complain to the Labour Board regarding unfair labour practices. 8

(iii) Women's *Charter* pay equity rights overrode and undermined. 9

(iv) Section 7 Bill 124 carve out when Bill 124 should be repealed entirely 15

(v) ONA's recommended amendment: Repeal Schedule 7 entirely 16

Part III Schedule 1 amendments required to ensure consistency with SARS Commission recommendations 16

Part IV Schedule 5, *Personal Protective Equipment Supply and Production Act, 2022,* enshrine the precautionary principle into the Act with specific planning and accountability measures 18

Part V Schedule 6, *Regulated Health Professions Act and human rights* 20

(i) Canadian experience must be compliant with *Human Rights Code* 21

(ii) Requiring Colleges to create regulations that establish time limits for making certain registration decisions 21

(iii) English and French proficiency 22

(iv) Establishing an emergency class of registration 22

Table 1: ONA's Proposed Amendments to Schedule 1 23

Table 2 ONA's Proposed Amendments to Schedule 5 25

Appendix A 27

OVERVIEW

1. The Ontario Nurses' Association (ONA) is the union representing more than 68,000 registered nurses (RNs), registered practical nurses (RPNs) and health-care professionals, including personal support workers (PSWs), as well as over 18,000 nursing student affiliates, providing care in hospitals, long-term care facilities, public health, the community, clinics and industry.

2. ONA welcomes the opportunity to provide the Standing Committee on Finance and Economic Affairs with the ONA's analysis of Bill 106, "*An Act to enact two Acts and amend various other Acts.*"

3. Over 90 per cent of ONA members are women. Many are racialized and immigrant women. Their work is care work on the front lines of this pandemic. Many are in workplaces with the worst RN-to-population ratio in Canada. Nurses are now exiting the system in droves.

4. The Bill was introduced into the legislature as the *Pandemic and Emergency Preparedness Act, 2022*. It appears that the title of the Act used in the legislature was merely a pretense, in ONA's view, for the government to claim it learned lessons from the pandemic.

5. In fact, Bill 106 is an omnibus bill. It is a bill which legislates what are essentially budgetary decisions in a manner that overrides and undermines nurses' constitutional rights.

6. If Bill 106 is truly this government's view of what is required to prepare for a future pandemic, ONA members face a challenging and difficult time ahead. It is a future that continues to disrespect and undervalue ONA members and their work, and the bargaining agent who represents them.

7. Bill 106 continues the current government's unconstitutional approach to dismantling workers' rights and women's equality rights. This Bill is unconstitutional. ONA makes six main points regarding Schedule 7, Schedule 1, Schedule 5 and Schedule 6:
    a. Bill 106 violates ONA's members right to free collective bargaining.
    b. Bill 106 undermines ONA members' right to equality and pay equity rights, which ONA just had affirmed by the Supreme Court of Canada in *ONA v Participating Nursing Homes*. ONA was successful in this 15-year-long battle to maintain pay equity rights for RNs working in nursing homes. Bill 106 attempts to erase nurses' hard-won rights and violates women's equality rights guaranteed by s. 15 of the *Charter*.
    c. Bill 106 does not repeal the infamous and unconstitutional wage suppression legislation – Bill 124. Nurses have been called heroes by this government,

including during second reading of Bill 124, which has contributed to nurses leaving the profession by the hundreds. Bill 106 leaves wage suppression in place generally, but permits the government to unilaterally impose enhanced compensation for a few unknown employee groups, to be defined by regulation later.

d. Schedule 1 requires amendments to ensure consistency with SARS Commission recommendations.
e. Schedule 5 must enshrine the precautionary principle into the Act with specific planning and accountability measures.
f. Schedule 6 is required to be consistent with the *Human Rights Code*.

8. Keep in mind that the successful outcome of care for the sick and vulnerable depend on excellent conditions of work. ONA members are advocates for their patients, residents and clients. Our members are increasingly alarmed by what they see happening in Ontario's public health-care system.

9. A disrespected, undervalued, burned out and understaffed nursing workforce will negatively affect care for all Ontarians. The government's failure to address the nursing shortage and redress the systemic inequalities in compensation and working conditions means that our members' patients, residents and clients are not getting the quality care they need and deserve.

10. To be very clear, ONA fully supports the implementation of the PSW compensation increase on their base salary structure. PSWs are undervalued and underpaid.

11. There have been ongoing challenges in improving wages and creating permanent positions in the private long-term care sector. The nursing homes denied all staff pay equity and fought legal battles against pay equity for years up to 2021. It took the pandemic, with thousands of deaths and many more thousands sick, as well as ONA's multiple legal challenges, for the government to take action to introduce a general wage increase for this one group. But the government has left behind many other undervalued health-care professionals, including RNs.

12. Bill 106 is not transparent about the permanent or temporary wage enhancements. The government's compensation enhancement program is not defined in the Act and left to a regulation that no one has seen.

13. It is ONA's position that in order to fix the staffing issues, and to recruit and retain staff in the health-care sector, the government must fund employers to ensure wage parity across all sectors. There must also be an increase in full-time positions, as well as enhanced benefits and pensions through the collective bargaining process. The

government must demonstrate that it has learned the lessons of the COVID-19 pandemic. Bill 106 fails to do so.

Summary of ONA's proposed amendments to Bill 106

14. After careful review, ONA proposes several amendments to Bill 106.

15. ONA respectfully submits that these amendments are required to ensure the government builds a fully constitutional approach to prepare for any future emergency. In ONA's view, these amendments respect nurses' and other health-care professionals' right to free collective bargaining and their Charter equality rights. These amendments are:

    a. Delete Schedule 7 in its entirety from Bill 106. Schedule 7 is not constitutional;
    b. Schedule 1 amendments must ensure consistency with SARS Commission recommendations. Table 1 below outlines ONA's detailed amendments to specific language.
    c. Schedule 5 must enshrine the precautionary principle into the Act with specific planning and accountability measures. Table 2.
    d. Schedule 6 must be consistent with the Ontario Human Rights' Commission's policy on "Canadian experience." See Appendix A for a summary of the Commission's foundational principles.

16. ONA's submissions below start by setting the context of nursing in the pandemic. It is within this context that Bill 106 is introduced and is why ONA cannot support Schedule 7. ONA examines Schedule 7 in detail. In addition, ONA makes a number of further comments and amendments regarding Schedules 1 and 5, as well as Schedule 6.

PART I SETTING THE CONTEXT OF BILL 106

17. In February 2020, ONA appeared before the Finance Committee to make a pre-budget submission. In that presentation, ONA detailed the actions the government must take to address the nursing shortage crisis. We will not repeat those extensive submissions here and ONA continues to advocate for the entire action plan to be implemented. ONA requires the Committee to consider the following key facts in deliberation of Bill 106.

18. According to data from the Canadian Institute for Health Information (CIHI), Ontario has had the lowest RN-to-population ratio in Canada for years.[1] Decades of underfunding have left Ontario at least 22,000 nurses short – and the situation is only becoming worse with the Omicron variant.

1

19. Across all sectors, nurses and health-care professionals are facing crushing workloads, dangerous working conditions, endless shifts and overtime, and they are being denied time off they desperately need. The government's wage suppression legislation, Bill 124, is fueling an exodus from the profession.

20. Nurses and health-care professionals are advocates for their patients, residents and clients. Our members are increasingly alarmed by what they see happening in Ontario's public health-care system. The government's failure to address the nursing shortage means that our members' patients, residents and clients are not getting the quality care that they need and deserve.

21. A further key contextual factor is that ONA recently won the right to maintain pay equity in female-dominated workplaces both at the Divisional Court and the Ontario Court of Appeal. The Supreme Court of Canada dismissed the for-profit Nursing Homes' and the Attorney-General of Ontario's application for appeal, released on October 14, 2021.

22. ONA took the position that the nursing homes failed to maintain pay equity, given the significant pay equity gap that has emerged in the compensation for nurses working in nursing homes compared to nurses working in municipal homes for the aged. After a 15-year legal fight, ONA secured for its members working in nursing homes the right to close the pay equity gap.

23. As we outline below, Schedule 7 erases the right for nurses to access their full pay equity adjustments, and as a result is unconstitutional.

PART II SCHEDULE 7, *Supporting Retention in Public Services Act, 2022,* is unconstitutional.

24. In ONA's submission, Schedule 7 is unconstitutional because it:

    a. overrides existing collective agreement language, whether that compensation program is permanent or a temporary enhancement;
    b. denies a trade union the ability to file a grievance or unfair labour practice under the *Labour Relations Act* ("LRA)" regarding the compensation enhancement program;
    c. undermines and undercuts fundamental pay equity by wrongly treating enhanced compensation as remedies for achieving or maintaining pay equity;

25. The purpose of Schedule 7 is to "support the provision of public services" and the Minister "may" provide funding to enhance compensation. ONA notes this is the role of the Minister of Health, for example, and is not a new role. It is the budgetary role required by the provincial government. A new piece of legislation was not required for what is essentially a budgetary decision – the provision of funds for wages.

26. However, Bill 106 has two other real purposes: (i) overriding ONA members' constitutional rights to free collective bargaining, and (ii) undermining ONA members' pay equity human rights remedies.

27. ONA notes that these submissions do not constitute a full and complete legal analysis of Bill 106, particularly in light of the fact that the main operative measures of the Bill are left to regulation. ONA draws the Committee's attention to the most obvious violation of ONA members' constitutional rights.

(i) Schedule 7 lacks transparent operative definitions.

28. Schedule 7 is a mere shell of an Act. Schedule 7 Section 1 and Section 2 (2) leave the operative phrase "compensation enhancement program" completely undefined. These definitions will appear at some later date through regulation.

29. Schedule 7 Section 3 (1) does not include a definition of a "temporary" or "permanent" enhancement. There is no definition of the "different class of employees" to which the Act will apply. There is no definition of the "different eligibility rules" for access to the enhancement programs.

30. ONA is deeply concerned with Bill 106's lack of transparency, definition and clarity of the central elements of the legislation, which are fundamental to the Act's purpose. ONA is unable to support Schedule 7 without first seeing the operative terms clearly and transparently defined. It is entirely inappropriate, arguably undemocratic, for the government to leave the key sections of the Act left to regulation only.

31. ONA fully supports permanent compensation enhancements for PSWs. PSWs are one of the lowest paid classifications of health-care workers. The start rate for a PSW classification in ONA's contracts was around $18.93 per hour in 2021. Many PSWs work part-time or casual shifts and for multiple employers in an attempt to make ends meet. PSW are and have worked for less than a living wage. These are some of the conditions and systemic discrimination that led ONA, with SEIU, to launch a pay equity challenge in 2010.

32. Without a clear definition in Schedule 7, ONA does not know how and who the compensation enhancement program actually applies to.

33. It is ONA's longstanding position that any compensation enhancement program following the pandemic should apply to all health-care professionals. It appears that Schedule 7 may continue to exclude important health-care professionals with no wage increases. ONA does not support the government's approach to give to some and exclude others.

(ii) ONA members are unconstitutionally denied access to meaningful collective bargaining, to file a grievance or complain to the Labour Board regarding unfair labour practices.

34. While Bill 106 leaves the key operative concepts undefined, Schedule 7, Section 5 is crystal clear on four key points:

    a. The undefined compensation enhancement program overrides ONA collective agreements;
    b. Bargaining agents are denied the ability to negotiate expanded eligibility to compensation enhancement programs;
    c. ONA members are, as are all bargaining agents, denied access to file a grievance about the compensation enhancement program;
    d. ONA is denied the right to complain to the OLRB and file an unfair labour practice regarding "the *payment of compensation* under a prescribed compensation enhancement program."

35. Not only does ONA not know what a compensation enhancement program actually entails, but the new and yet-to-be defined program overrides ONA members' collective agreement. ONA members are not able to negotiate over the eligibility and access to compensation enhancement programs. ONA members are denied the independence to choose the priorities for their collective agreement and a meaningful process of collective bargaining.

36. For example, ONA members are denied the ability to ensure that a compensation enhancement program is built into the base wage structure and would therefore also not include benefits that attach to the wage structure, such as pensionable earning.

37. At the same time, Bill 106's language is extremely broad and forecloses ONA members and their bargaining agents from relying upon their fundamental right to have an issue adjudicated by the neutral third party, either a labour arbitrator or at the OLRB. If ONA and its members identify that a compensation enhancement program was not appropriately paid, they are denied access to filing a grievance or an unfair labour practice.

38. ONA members have a guarantee under the *Charter of Rights and Freedoms*, Section 2 (d) *freedom of association*.

39. As the Supreme Court of Canada stated in *Mounted Police,* union members' right to the s. 2(d) guarantee of "freedom of association" protects a meaningful process of collective bargaining that provides employees with a degree of choice and independence, sufficient to enable them to determine and pursue their collective interests free from management interference. The government cannot enact laws that interfere with that purpose. [2]

40. The Supreme Court continued that where a government enacts laws or impose a labour relations process that *substantially interferes* with the right of employees to associate for the purpose of meaningfully pursuing collective workplace goals, it impairs freedom of association.

41. According to the Supreme Court, a labour relations process that substantially interferes with the possibility of having meaningful collective negotiations on workplace matters is unconstitutional. Similarly, a process of collective bargaining will not be meaningful if it denies employees the power to pursue their goals.

42. The Schedule 7, Section 5 labour relations regime denies trade union members a choice. The government *imposes* on ONA members a compensatory scheme that does not permit them to identify and advance their workplace concerns free from management's influence. The new regime denies ONA members access to a neutral third party to adjudicate their claims.

43. It is for these reasons that Schedule 7 is premised on an unconstitutional basis. ONA request that Bill 106, Schedule 7 is repealed in its entirely.

(iii) Women's *Charter* pay equity rights overrode and undermined.

[2] Mounted Police Association of Ontario v. Canada (Attorney General), 2015 SCC 1 see paras 81-91.

44. Schedule 7, Section 6 makes profound and unconstitutional changes to the *Pay Equity Act*. Schedule 7 overrides key *Pay Equity Ac*t provisions and the entire human rights basis of the Act to *redress systemic discrimination in compensation*.

45. Section 6 of Schedule 7 takes women's wage increases, under the compensation enhancement program, and deems these basic wage increases to be human rights pay equity adjustments.

46. Section 6(2) requires that the wage enhancement program offset and be counted towards closing any pay equity gap.

47. Women, under Schedule 7, Section 6 of Bill 106 now see their pay equity adjustments discounted by the amount of the compensation enhancement program. Schedule 7 cuts the women's human rights damages awards which were put in place to redress systemic discrimination.

48. Schedule 6 fundamentally undercuts the long-standing principle to treat pay equity adjustments and economic increases separately. Section 6 will have the adverse effect of overriding sections of the *Pay Equity Act*, which guarantee that general wage increases are not pay equity adjustments and the two must be treated separately. Sections 5.1, 8 (1) e, 13(10), 22.11(3) and Section 22.22(3) of the *Pay Equity Act* all work together to guarantee women this right. Each of these sections constitutes a critical protection to ensure that pay equity adjustments of the Act were maintained and fully recognized as human rights remedies for systemic gender discrimination. Women are left short-changed on their pay equity adjustments.

49. With a wave of a legislative pen, Schedule 7 profoundly overrides the *Pay Equity Act*'s key sections that apply to women in female-dominated workplaces, such as nursing homes and home-care establishments, and other female-dominated workplaces, which ONA fought to protect for 15 years in the courts.

50. What is very shocking is that the government did not speak to these profound changes during the second reading of this *Act.* ONA was not consulted about these changes. It now appears that the third reading of Bill 106 will be on Equal Pay Day – April 12th. Not only is the government lacking transparency in clearly stating the actual impact of this legislation, but Bill 106 undermines and erases women's access to their basic human rights remedies.

51. ONA notes that in 1997 the Ontario government attempted to undermine and reduce women's pay equity rights, particularly the pay equity rights of women working in female-dominated workplaces, that overriding of women's rights was held to be

unconstitutional by the Ontario court.[3] It appears the Ontario government is implementing this unconstitutional tactic again.

a. Pay Equity is a fundamental human right

52. ONA requests that the Committee keep the following basic legal requirements and pay equity obligations in mind during its deliberations of Schedule 7.

53. Section 15(1) of the Charter enshrines that *"every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on… sex.* The Charter prohibits governments from enacting a law that has the adverse effect of denying women's equality. Section 15 does require the government to ensure that whatever actions it does take do not have a discriminatory impact. However, Schedule 7 has an adverse and discriminatory effect.

54. The Supreme Court of Canada clearly stated in its pay equity jurisprudence that:
    a. pay equity is a fundamental human right;
    b. the very premise underlying pay equity legislation is that women have suffered discrimination in the way they are compensated in the workforce
    c. pay equity makes it discriminatory for employers to pay different wages for men and women performing work of equal value;
    d. the purpose of the *Pay Equity Act* is to proactively *redress* systemic gender discrimination in compensation for work performed by employees in female job classes;
    e. employers are required to maintain pay equity;
    f. employees and unions are required to receive the necessary information they need to challenge the decisions employers make as a result of an employers' pay equity maintenance activities
    g. the law may not perpetuate the pre-existing disadvantage of women.[4]

55. Recently, the Ontario Court of Appeal affirmed in *ONA v Participating Nursing Homes* pay equity rights for women working in female-dominated workplaces. The *Pay Equity Act* itself requires a comparison and that comparison is the method to identify systemic discrimination. Pay equity is achieved when the required comparison is done. Inequality arises when compensation for female employees is not tied to that for males on an ongoing basis.[5]

---

[3] Service Employees International Union, Local 204 v. Ontario (Attorney General), 1997 CanLII 12286 (ON SC)
[4] See, for example, Quebec (Attorney General) v. Alliance du personnel professionnel et technique de la santé et des services sociaux, 2018 SCC 17.
[5] Ontario Nurses' Association v. Participating Nursing Homes, 2021 ONCA 148 (CanLII).

56. Schedule 7, Section 6 denies each of these foundational rights and places significant "barriers along the path" to access their human rights remedies and full equal pay for women.

b. The Pay Equity Act separates wage increases from pay equity adjustments.

57. The entire scheme of the *Pay Equity Act* is premised on the notion that wage increases are not the same as pay equity adjustments.

58. Pay equity adjustments are human rights remedies to redress systemic gender discrimination. The purpose clause of the *Pay Equity Act* sets out that the purpose is to redress systemic gender discrimination. Any adjustments in compensation identified serve a human rights purpose.

59. There are several sections of the *Pay Equity Act* which secure this principle. However, the language of Section 6(2) erases access to those sections which protect pay equity adjustments as human rights remedies.

60. Section 8 (1)(e) exempts calculating wages which are part of a wage enhancement program due to "*a skills shortage that is causing a temporary inflation in compensation because the employer is encountering difficulties in recruiting employees with the requisite skills for positions in the job class*." In the past, this section has been applied to wage increases to male-dominated jobs, such as information technology jobs during Y2K in the early 2000's. What is clear is that men benefited from this exemption in the *Pay Equity Act* for years. As well, other wage enhancement programs relied upon by the provincial government have been exempt from the pay equity calculations.

61. The wage enhancement programs are exempt because they are viewed as a wage increase necessary to recruit staff. A general wage increase is not a remedy for human rights violations.

62. Section 13(10) of the *Pay Equity Act* requires the pay equity plan "prevails over all relevant collective agreements" and the "adjustments to rates of compensation required by the plan shall be deemed to be incorporated into and form part of the relevant collective agreements." Pay equity adjustments as human rights adjustments supersede wage increases.

63. The courts have long held that wage increases are "on top of pay equity adjusted rates." Section 13 (10) makes clear that women are entitled to both a pay equity adjustment and an economic increase.[6] However, Schedule 7 Section 6 now applies

[6] See for example, CUPE L 1348.1 v Essex County Board of Education, [1996] O.J No . 2540.

the economic adjustment to the pay equity adjustment total, which reduces the pay equity adjustment.

64. Further and most critically for women working in female-dominated workplaces, Section 21.11 (3) of the *Pay Equity Act* guarantees that a wage increase is separate from a pay equity adjustment as follows:

> If the *job rate for a female job class* of the seeking employer is increased by a percentage or dollar amount, a*nd the increase is not made for the purpose of achieving pay equity*, the *pay equity job rate* for any job class with which that female job class was compared *shall be deemed to have been increased* by the same percentage or dollar amount, as the case may be.

65. Section 21.22 (3) of the *Pay Equity Act* further separates wage increase in situations where pay equity has not been fully achieved, as follows:

> … a seeking employer shall increase the job rate for a female job class for which pay equity has not been achieved by the dollar amount of any deemed increase in the pay equity job rate for the job class with which the female job class of the seeking employer was compared that is required by subsection 21.11(3).

66. Simply put, particularly in female-dominated workplaces such as nursing homes, Schedule 7 Section 6 completely eradicates these important provisions.

67. The compensation increases under the enhancement plan are now counted as pay equity increases contrary to provisions such as s. 21.11(3). Under Schedule 7, wage increases are used to offset and discount the human rights pay equity adjustments.

68. Schedule 7 ultimately undercuts the long-standing principle to treat pay equity adjustments and economic increases separately and to short-change female dominated groups to their right to pay equity.

c. PSWs lose pay equity adjustments they are entitled to

69. For example, PSWs are one of the lowest paid classifications of health-care workers. The start rate for a PSW in ONA's contracts was around $18.93 per hour in 2021. Many PSWs work part-time or casual shifts and for multiple employers, in an attempt to make ends met. PSWs are and have worked for less than a living wage. These are some of the conditions and the systemic discrimination which led ONA, with SEIU, to launch the nursing home pay equity maintenance challenge in 2010.

70. With the legal determination that PSWs, working in female-dominated workplaces, may now maintain pay equity with reference to the male comparator, PSWs' job rate

in the nursing homes is compared to the pay equity compliant wages of the comparator in the municipal homes for the aged. If there is a pay differential between these classes of equal value, a pay equity adjustment is required.

71. Based on the Act's current language, s, 21.11 (3) protects a PSW wage increases. These increases are kept out of the calculation of pay equity adjustments. If there is a wage increase, it is applied to the pay equity gap so that the appropriate differential remains in place and pay equity adjustments remain for the purpose of redressing systemic discrimination. The rationale, as outlined by the Supreme Court, is that "men receive higher compensation as a matter of course."[7] Women have not seen similar higher compensation as a result of systemic gender discrimination.

72. Women, under Schedule 7 Section 6 of Bill 106, now see their pay equity adjustments discounted by the amount of the compensation enhancement program. Schedule 7 cuts the women's human rights damages awards, which were put in place to redress systemic discrimination.

73. Schedule 7 Section 6 places barriers along "the path to equal pay for women. And it correspondingly tolerates undervaluation of women’s work whenever women cannot clear the specific hurdle of proving that they should be paid equally not merely because they are equal, but because their employer acted improperly."[8] Working women are told they must simply live with the reality that they have not been paid fairly. In this way, Schedule 7 reinforces one of the key drivers of pay inequity: the power imbalance between employers and female workers.

74. While the government may claim that Section 6 purports to assist women in low paid jobs. In fact, it codifies the denial to women of benefits routinely enjoyed by men. Namely, men as a matter of course, receive general wage increases and higher wages; women, under this scheme, lose their access to general wage increases because it is counted towards their human rights remedies.

d. *Women denied ability to negotiate pay equity adjustments*

75. Schedule 7 Section 6 further undermines ONA members the right to negotiate pay equity adjustments and plans.

76. Currently under the *Pay Equity Act,* s. 5.(1) explicitly requires that in order to achieve pay equity in a workplace, one of the Act's three comparison systems must be applied. Each of those comparison systems clearly involves the bargaining agent in the negotiation of pay equity plans and pay equity adjustments, if any.

[7] Alliance ibid at para 38.
[8] Alliance, ibid at para 38.

77. However, Section 6 deems that pay equity adjustments for the purpose of achieving pay equity, ONA members' rights under s. 5.1(1) of the Act are eradicated. This has the effect of denying ONA members the right to negotiate the pay equity plans and pay equity adjustments. This is unconstitutional.

e. Purpose of Bill 106 to recruit and retain staff – not override pay equity

78. As noted above, the pandemic shone a bright light on the conditions of women's work. Nurses' and other health-care professional wages were limited by Bill 124 to general wage increases at one per cent and less than inflation. Low wages, particularly for PSWs, combined with high levels of part-time work and women holding multiple jobs meant that employers were unable to recruit staff during the pandemic. The health-care sector faced and continues to face an extreme retention and recruitment issue. There are not enough staff to do the work.

79. The government's purported purpose for the compensation enhancement programs under Bill 106 is *to support public services by "enhancing compensation paid to employees.*" The purpose of the program is to enhance the *basic* floor of wages of health-care staff to ensure staff may be recruited and retained. Without this increase in the floor of the wages, employers in the health-care system will face severe recruitment and retention issues in the immediate future.

(iv) Section 7 Bill 124 carve out when Bill 124 should be repealed entirely

80. Section 7 of Schedule 7 implements a specific exemption from Bill 124 – the ONA government's unconstitutional wage suppression legislation.

81. Section 7 specifically identifies that a prescribed compensation enhancement is not deemed to be a "salary rate increase, an increase to an existing compensation entitlement or a new compensation entitlement" for the purposes of Bill 124.

82. This Committee is well aware that it is ONA's position that Bill 124 is unconstitutional and should be repealed.

83. The government's tinkering with Bill 124 under Section 7 simply does not go far enough to protect ONA members. It is ONA's position that Section 7 should not stand.

84. ONA further asks if this proposed Bill can protect a compensation enhancement program from a negative effect under Bill 124, then there is no reason why fulsome pay equity rights cannot be protected as well. The government's line drawing displays the government's true intent to erase women's equality rights and deny ONA members their right to collective bargaining.

(v) ONA's recommended amendment: Repeal Schedule 7 entirely

85. Upon review of Schedule 7, it is apparent to ONA that no amount of tinkering or minor amendments with this schedule will ensure that it is fully compliant with the Charter rights of ONA members.

86. It is ONA's submission that Schedule 7 of Bill 106 simply needs to be repealed entirely.

87. The implementation of wage enhancement policies should be dealt with by the direct parties, the employer and the bargaining agent, at their respective bargaining tables. ONA members' pay equity human rights remedies will be preserved in their entirety.

Part III Schedule 1 amendments required to ensure consistency with SARS Commission recommendations

88. Schedule 1 of Bill 106 makes amendments to the *Emergency Management and Civil Protection Act*

89. As stated by Hon. Rudy Cuzzetto in the Second Reading debate on March 30, the intent of these amendments is to “strengthen Ontario’s overall resilience and capacity to plan, prepare, respond and recover for our economy”.[9]

90. While ONA welcomes moves to strengthen the Province’s capacity to respond to emergencies in a manner consistent with the *Charter* rights of Ontarians, we submit that the proposed amendments do not include key structural changes required to address persistent issues identified by the SARS Commission and the Auditor General.

91. The Office of the Auditor General of Ontario has conducted critical reviews of Ontario’s emergency preparedness and management both before and since the onset of the COVID-19 pandemic.[10] Prior to the Auditor General’s Reports, the SARS Commission also set out a range of recommendations following its detailed study of lessons learned from the Ontario’s 2003 SARS crisis.[11]

92. Each of these reviews identified systemic weaknesses in coordination and planning for pandemic emergencies that require structural change to correct.

---

[9] Hansard, March 30, 2022, https://www.ola.org/en/legislative-business/house-documents/parliament-42/session-2/2022-03-30/hansard#para662

[10] Auditor General of Ontario, *COVID-19 Preparedness and Management: Special Report on Emergency Management in Ontario – Pandemic Response*

[11] SARS Commission Final Report (2006), Vol 1 Recommendations, pp 58-62; SARS Commission Second Interim Report (2005), Chapter 11 “Emergency Legislation”

93. In particular, the proposed amendments do not implement these key recommendations of the SARS Commission and Auditor General:

   - Establish clear leadership, duties and accountability for key figures at the provincial level[12]

   - Establish clear requirements for ministries and other bodies to regularly maintain, update and ensure readiness to implement those plans[13]

   - Establish a requirement for emergency plans to provide for advance consideration of potential occupational health and safety issues and to incorporate the precautionary principle.[14]

94. ONA submits that the following changes to Schedule 1 are required to address the gaps and systemic failures identified by the Auditor General and SARS Commission, and support the government's purpose of strengthening Ontario's capacity to "plan, prepare, respond and recover" from similar emergencies in future:

   - ADD amendment to Section 1 of the *Emergency Management and Civil Protection Act* to include a requirement for advance consideration of occupational health and safety issues in emergency management plans

   - Amend Section 2 to include an annual review of emergency management programs by every Ministry required to develop one

   - Amend Section 4 to provide role clarity for the Commissioner of Emergency Management with respect to the provincial emergency management plan

   - Amend Section 4 to require progressively complex multi-year testing in keeping with best practices to ensure responsiveness of provincial emergency management plan and readiness for implementation upon an emergency being declared[15]

   - Amend Section 5 to provide role clarity for the Commissioner of Emergency Management with respect to the emergency management plans and programs required of municipalities and provincial government bodies by Sections 2.1 and 5.1 of the Act

[12] Auditor General of Ontario, *COVID-19 Preparedness and Management: Special Report on Emergency Management in Ontario – Pandemic Response*, pp 4-6

[13] Auditor General of Ontario, *COVID-19 Preparedness and Management: Special Report on Emergency Management in Ontario – Pandemic Response*, p 1

[14] SARS Commission Final Report (2006), Vol 1 Recommendations, p 62

[15] Auditor General of Ontario, *COVID-19 Preparedness and Management: Special Report on Emergency Management in Ontario – Pandemic Response*, p 5

- Amend Section 5 to provide for development of further role clarity and governance of provincial emergency management within the legislative framework through regulation

Part IV Schedule 5, *Personal Protective Equipment Supply and Production Act, 2022, e*nshrine the precautionary principle into the Act with specific planning and accountability measures

95. ONA believes all of its members have the right to work in a healthy and safe work environment. ONA further believes in the pursuit of the highest degree of physical, mental and social well-being of workers in all occupations. As one of the largest health-care unions in the country, ONA exercises a strong leadership role in achieving progressively greater gains in the fields of occupational health and safety and human rights.

96. We appreciate the opportunity to provide input on the government's efforts to implement effective pandemic and emergency preparedness.

97. However, such discussions should begin with efforts to bridge the silos of Health and Safety with Infection Prevention and Control (IPAC). There are many instances of a disconnect between infectious experts' guidance and the on-the-ground reality faced by health-care workers in their workplaces.

98. This is not the first time Ontario has experienced the effects of a pandemic, in December 2006, the Honorable Mr. Justice Archie Campbell wrote:

> "This was a system failure. The lack of preparation against infectious disease, the decline of public health, the failure of systems that should protect nurses and paramedics and others from infection at work – all these declines and failures went on through three successive governments of different political stripes. So too, in a sense, we as citizens failed ourselves because we did not insist that these governments protect us better. SARS taught us lessons that can help us redeem our failures. If we do not learn the lessons to be taken from SARS, however, and if we do not make present governments fix the problems that remain, we will pay a terrible price in the face of future outbreaks of virulent disease."[16]

99. A key concept that arose of the SARS commission was the precautionary principle, that is "action to reduce risk should not await scientific certainty."[17] The proposed amendments should use the precautionary principle as a foundational principle to guide pandemic planning for infectious biological agents. The precautionary principle also extends to other pandemic containment measures, like border closings and public

[16] SARS Commission Executive Summary: Volume One – Spring of Fear, December 2006
[17] ibid

masking: when the evidence is not conclusive, it's best to err on the side of caution and safety.

100. Lastly, health-care workers and their workplaces are the front line[18] in any response to the emergence of pandemics and other emergencies. It has been reported that nurses and health-care workers generally experienced COVID-19 infection rates some 3-4 higher than the general public. Therefore, the regulatory framework to empower this act ought to address sectors individually but provide comprehensive preparedness planning for health care and other front-line responders.

101. The recent COVID-19 pandemic shone a light on the gaps in PPE supply chains.

a. **The Canadian supplies of PPE**. This legislation is an opportunity to ensure Ontario invests in domestic production and supply of PPE. The Guardian reported in April 2020 multiple incidents of the US hijacking shipments of masks,[19] and in another incident, the National Post reported that five million medical masks destined for Canada were rerouted[20].

b. **The quality of PPE, both foreign and domestic was difficult to ensure**. We should ensure that a rolling reference to quality standards are included in this legislation to ensure innovative improvements of PPE are made available to workers. The Government of Canada issued a public advisory in July 2020[21] to alert the public to counterfeit respirators.

c. **Stewardship of PPE failed and caused significant constraints in supply**[22]. An accountability framework should be incorporated. Ideally, a framework would include legislative committee oversight or Auditor General oversight but must be more robust than annual inventory of PPE. However, the annual

---

[18] Sacrificed: Ontario Healthcare Workers in the Time of COVID-19. (DOI: 10.1177/1048291120974358)

[19] US hijacking mask shipments in rush for coronavirus protection - https://www.theguardian.com/world/2020/apr/02/global-battle-coronavirus-equipment-masks-tests

[20] What happened when five million medical masks for Canada's COVID-19 fight were hijacked in China - https://nationalpost.com/news/what-happened-when-five-million-medical-masks-for-canadas-covid-19-fight-were-hijacked-at-an-airport-in-china

[21] https://recalls-rappels.canada.ca/en/alert-recall/counterfeit-respirators

[22]Roughly 55 million N95 masks in Ontario expired before coronavirus hit, March 9, 2020 - https://globalnews.ca/news/6651402/ontario-coronavirus-masks-medical-supplies-expired/

Ontario stockpiled 55 million face masks – then destroyed them, March 26, 2020 https://www.toronto.com/opinion/ontario-stockpiled-55-million-face-masks-then-destroyed-them/article_e7e33f66-6282-54ce-86dd-1e32013d7470.html

reports requirements under Section 11 should, at least be tabled to a Legislative Standing Committee where the responsible authorities could be questioned.
Example: Reuters reported that the preparatory stockpile amassed by Ontario only budgeted storage and not management of the masks[23].

102. ONA welcomes steps to enhance the stability and security of domestically produced PPE and critical supplies, which we believe will help address the issues identified above.

103. In order to ensure that the Act meets these objectives and does not result in unintended consequences, we propose the amendments set out in the Table 2 below, which are designed to:

- Ensure there is a plan and accountability for a plan of active management of each type of stockpiled supply of PPE and CSE to avoid circumstances such as those following the SARS Commission recommendations, where Ontario allowed its stockpile of N95 respirators to expire and be destroyed such that they were not available to respond to the COVID-19 pandemic.
- Clarify the circumstances in which the Ministry can take over control of supply chains for government entities and public sector entities. We believe that Ministry control of supply chain management should be the exception and available in emergency situations and/or upon request and in consultation with the affected entity. This will help to avoid unintended consequences that could flow from public sector employers losing control over their supply chains and contracting which could, for example, impact their ability to meet their obligations to workers under the *Occupational Health and Safety Act* or collective agreements.

Part V Schedule 6, *Regulated Health Professions Act and human rights*

104. As with other Schedules in Bill 106, it is difficult for ONA to assess Schedule 6 because the proposed amendments contain little substance.

105. In essence, Schedule 6 is a mere shell, where the crucial definitions and operative sections have yet to be given substance by regulations. Nonetheless, we will provide brief input.

106. Schedule 6 proposes the following amendments to the *Regulated Health Professions Act (RHPA)*

1. prohibiting Colleges from requiring Canadian experience as a qualification for registration, subject to any exemptions provided in the regulations;

[23] Millions of masks stockpiled in Canada’s Ontario expired before coronavirus hit – Reuters - https://www.reuters.com/article/us-health-coronavirus-canada-supplies-ex-idUSKBN20W2OG

2. creating regulations that establish time limits for making certain registration decisions, instead of requiring that those decisions be made within a "reasonable time";
3. requiring Colleges to comply with the regulations for their English or French language proficiency requirements;
4. requiring the Councils of the Colleges to establish an emergency class of registration.

(i) Canadian experience must be compliant with *Human Rights Code*

107. Section 16 (3) states, "A College shall not require as a qualification for registration that a person's experience be Canadian experience **unless an exemption is provided for in any regulation**…"

108. The bar on requiring Canadian experience should, in theory, allow more internationally educated nurses to successfully enter Ontario's health-care system. However, the exemption to this bar is undefined and is being left to non-public regulation.

109. It is essential the regulations created comply with the *Ontario Human Rights Code* and that the criteria relate to bona fide occupational requirements.

110. The Ontario Human Rights Commission policy and best practices guidelines on removing the Canadian experience barrier provide guidance (Appendix A). If the exemptions to Canadian experience are not defined in compliance with human rights legislation and principles, certain groups of internationally educated nurses may be disadvantaged.

111. ONA supports Bill 98, *"Fairness for Ontario's Internationally Trained Workers Act."* This is a private members' bill that seeks to establish an advisory committee with representatives from government, regulatory bodies, employers, academic programs and health-care unions. This advisory committee would develop pathways to practice, provide relevant clinical experience, and establish fair and non-discriminatory hiring practices for internationally trained health-care professionals.

(ii) Requiring Colleges to create regulations that establish time limits for making certain registration decisions

112. ONA supports the creation of specific timelines for registration decisions. The College of Nurses of Ontario (CNO) has a history of responding extremely slowly to matters that are of great urgency to Ontario nurses, whether it is CNO investigations of complaints and reports or the resolution of fitness to practice matters. ONA has

recently launched two judicial reviews of matters in which CNO investigations were delayed by more than four years. We support regulations that require Colleges to make their registration decisions within specific time limits, thereby avoiding the ambiguity of “reasonable” timelines.

(iii) English and French proficiency

113. ONA takes no position on this proposed amendment

(iv) Establishing an emergency class of registration

ONA is unable to provide helpful comments on this proposed amendment, given the lack of information provided. We are concerned that the regulations may create a situation where, during an emergency, health- care professionals who are not able to practice competently, for example nursing students who have not yet completed their placement, will be pulled into practice prematurely.

Table 1: ONA's Proposed Amendments to Schedule 1

ADD amendment to s 1 definition of "emergency plan" the *Emergency Management and Civil Protection Act*	"emergency plan" means a plan formulated under Section 3, 6, 8 or 8.1 **and shall include advance consideration of potential occupational health and safety issues with regard to the precautionary principle**;
Amend s 2	**2 Subsection 5.1 (2) of the Act is repealed and the following substituted:** **Hazard and risk assessment and infrastructure identification** (2) In developing an emergency management program, every minister of the Crown and every designated agency, board, commission and other branch of government shall identify and regularly monitor and assess the various hazards and risks to public safety that could give rise to emergencies and identify the facilities and other elements of the infrastructure for which the minister or agency, board, commission or branch is responsible that are at risk of being affected by emergencies. **Same, identification of necessary goods, services and resources** (2.1) The emergency management program must include an identification of the necessary goods, services and resources that would be required to respond to the hazards and risks identified under subsection (2) and the availability and readiness of those necessary goods, services and resources. **Same, annual review and provision upon request** (2.2) Every minister of the Crown and every designated agency, board, commission and other branch of government shall **review the emergency management program annually to assess its responsiveness to** the hazards and risks identified under subsection (2) and **availability of the necessary goods, services and resources** described in subsection (2.1) **and provide such information on the status of its emergency program** to the Chief, Emergency Management Ontario annually and at any other time requested by the Chief.
Amend s 4	**4 The Act is amended by adding the following section:** **Provincial emergency management plan** 6.0.1 (1) The Solicitor General shall formulate a provincial emergency management plan that describes how Ontario will coordinate the response to any emergency that requires coordination at the provincial level. **The Solicitor General shall further develop a multi-year progressive strategy to test the provincial emergency management plan.**

	<u>(2) The Commissioner shall be responsible for overseeing testing and implementation of the provincial emergency management plan, and coordinating among various levels of government and stakeholders engaged in the implementation of the provincial emergency management plan.</u> **Training and exercises** (2) The Solicitor General shall conduct training programs and exercises to ensure the readiness of public servants and other persons to act under the provincial emergency management plan. **Annual report** (3) The Solicitor General shall prepare an annual report detailing the progress that has been made on achieving the objectives of the provincial emergency management plan. **Review and revision of plan** (4) The Solicitor General shall review the provincial emergency management plan and revise it at least every **<u>two</u>** years. **Publication** (5) The Solicitor General shall make the provincial emergency management plan and the annual report described in subsection (3) available to the public on a website of the Government of Ontario or in such other manner as may be prescribed.
Amend s 5	**5 Section 6.1 of the Act is revoked and the following substituted:** **Commissioner and Chief** 6.1 (1) The Lieutenant Governor shall appoint a Commissioner of Emergency Management and a Chief, Emergency Management Ontario. **Commissioner operates under direction of Solicitor General** (2) The Commissioner of Emergency Management operates under the direction of the Solicitor General **<u>and is responsible for providing leadership and oversight for the implementation of the provincial emergency management plan and the responsibilities of the Chief, Emergency Management Ontario.</u>** **Chief operates under direction of Commissioner** (3) The Chief, Emergency Management Ontario operates under the direction of the Commissioner of Emergency Management. **Responsibilities of Chief** (4) The Chief, Emergency Management Ontario is responsible for monitoring, coordinating and assisting in the development and implementation of emergency management programs under sections 2.1 and 5.1 and for ensuring those programs are coordinated as much as possible with emergency management

	programs and emergency plans of the Government of Canada and its agencies. **Transition** (5) The appointments of the Commissioner of Emergency Management and the Chief, Emergency Management Ontario that were in effect immediately before this subsection came into force are continued on the day this subsection comes into force as appointments made under this section.
	Accountability and governance framework 6.1.1 (1) The Solicitor General shall **prescribe in regulation** a written framework for accountability and governance during emergencies. **Contents** (2) The framework shall articulate, (a) the role, authority, powers and responsibilities of the Solicitor General, the Commissioner of Emergency Management and the Chief, Emergency Management Ontario during an emergency; and (b) the roles and responsibilities of each minister of the Crown presiding over a ministry of the Government of Ontario during an emergency.

Table 2 ONA's Proposed Amendments to Schedule 5

Amend s 2	Requirement to maintain supply of PPE and CSE
	2 (1) The Minister shall, in accordance with such requirements as may be prescribed, maintain a supply of personal protective equipment and critical supplies and equipment. **Prescribed requirements** (2) The prescribed requirements referred to in subsection (1) **shall include, as applicable to the form of PPE or CSE,** (a) the quantity of personal protective equipment or critical supplies and equipment that must be maintained; (b) the quality, standards or specifications that the personal protective equipment or critical supplies and equipment must satisfy; (c) the reliability of the supply of personal protective equipment or critical supplies and equipment that must be maintained; or

	(d) the security of the supply of personal protective equipment or critical supplies and equipment that is obtained**;** **<u>(e) requirements for a plan of active management of supply to ensure its readiness to respond to an emergency.</u>**
Amend s 3	**Supply chain management, government entities and public sector entities** **3** (1) **<u>Upon declaration of an emergency under the *Emergency Management and Civil Protection Act*, or upon request of the entity,</u>** the Minister may provide notice to a government entity or a public sector entity stating the Minister will provide or support supply chain management in respect of personal protective equipment and critical supplies and equipment, on behalf of the entity on a specified date. **Government entity to obtain supply chain management** (2) An entity that receives a notice described in subsection (1) shall obtain the supply chain management from the Minister on and after the date specified in the notice. **Notice** (3) The notice given under subsection (1) shall specify, (a) the personal protective equipment or critical supplies and equipment to which the supply chain management will relate; and (b) such arrangements to transition from the entity procuring its own personal protective equipment or critical supplies and equipment to obtaining supply chain management from the Minister. **Same, publicly accessible** (4) The Minister shall ensure that every notice given under subsection (1) is publicly accessible on a Government of Ontario website.
Amend s 5	**Supply chain management, individuals** **5** The Minister may provide or support supply chain management in respect of personal protective equipment and critical supplies and equipment on behalf of an individual **<u>upon request</u>** if the Minister determines that doing so would not negatively impact the provision or support of supply chain management for government entities or public sector entities **<u>and the Minister and the entity enter into an agreement with respect to supply chain management</u>**.

Appendix A

Ontario Human Rights Commission

Policy on Removing the "Canadian Experience" barrier

The Ontario Human Rights Commission highlights several best practices to help ensure fairness and substantive equality for those internationally educated workers:

- Examine their organizations as a whole to identify potential barriers for newcomers; address any barriers through organizational change initiatives, such as by forming new organizational structures, removing old practices or policies that give rise to human rights concerns, using more objective, transparent processes, and focusing on more inclusive styles of leadership and decision-making.
- Review job requirements and descriptions, recruitment/hiring practices and accreditation criteria to make sure they do not present barriers for newcomer applicants.
- Take a flexible and individualized approach to assessing an applicant's qualifications and skills.
- Give an applicant the opportunity to prove his/her qualifications through paid internships, short contracts or positions with probationary periods.
- Provide newcomers with on-the-job training, supports and resources that will enable them to close "skill gaps" (*i.e.,* acquire any skills or knowledge they may be lacking).
- Use competency-based methods to assess an applicant's skill and ability to do the job.
- Consider all relevant work experience – regardless of where it was obtained.
- Frame job qualifications or criteria in terms of competencies and job-related knowledge and skills.
- Support initiatives designed to empower newcomers inside and outside of their organizations (for example, formal mentoring arrangements, internships, networking opportunities, other types of bridging programs, language training, *etc*.).
- Monitor the diversity ratios of new recruits to make sure they reflect the diversity of competent applicants overall.
- Implement special programs,[8] corrective measures or outreach initiatives to address inequity or disadvantage affecting newcomers.
- Supply newcomers and social service agencies serving newcomers with information about workplace norms, and expectations and opportunities within the organization.
- Retain outside expertise to help eliminate barriers to newcomer applicants.
- Form partnerships with other similar institutions that can help identify additional best practices.
- Provide all staff with mandatory education and training on human rights and cultural competence.[9]

https://www.ohrc.on.ca/en/policy-removing-%E2%80%9Ccanadian-experience%E2%80%9D-barrier