

**ONTARIO NURSES' ASSOCIATION**

**Submission on Bill 177  
*Stronger, Fairer Ontario Act (Budget Measures), 2017*  
*Schedule 45 – Workplace Safety and Insurance Act, 1997***

**Standing Committee on Finance and Economic Affairs**

**Room 151  
Queen's Park**

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## Introduction

The Ontario Nurses' Association (ONA) is the union representing 65,000 registered nurses and health-care professionals, as well as 16,000 nursing student affiliates, providing care in hospitals, long-term care facilities, public health, the community, clinics and industry.

Our comments focus exclusively on Schedule 45. ONA strongly endorses the amendments to the *Workplace Health and Safety Act (WSIA)* in Schedule 45 of Bill 177.

The addition of section 13(4.1) brings mental stress injuries directly in line with physical injuries – occupational disease – in terms of the grounds for entitlement. This will permit nurses and health care professionals to submit claims for mental stress injuries with a strong basis in legislation.

The proposed amendment on “retroactivity” is a significant advance. It means that ONA members who have suffered work-related mental stress injuries – depression, anxiety, adjustment disorder, and other conditions – on or after April 29, 2014, which is the specific date of the ONA WSIAT decision regarding our charter case, can file a claim and have it adjudicated under the new provisions. Taken together, the proposed amendments are a step forward for nurses and health care professionals to receive benefits for mental stress injuries.

## Proposed Amendments

The *Workplace Safety and Insurance Act* was previously amended by Schedule 33 of Bill 127, which resulted in the following new legislative provisions:

Sections 13 (4) & (5) state that:

(4) Subject to subsection (5), a worker is entitled to benefits under the insurance plan for chronic or traumatic mental stress arising out of and in the course of the worker's employment.

Same, exception

(5) A worker is not entitled to benefits for mental stress caused by decisions or actions of the worker's employer relating to the worker's employment, including a decision to change the work to be performed or the working conditions, to discipline the worker or to terminate the employment.

In our submissions to Labour Minister Kevin Flynn and to the Bill 127 Standing Committee in May 2017, we explicitly warned of the danger to the rights of injured workers by allowing WSIB (with the new powers granted them under Section 159 of the *Workplace Safety and Insurance Act*) to create, by policy, different rules of causation and evidentiary requirements for certain types of injuries. ONA warned that it would undo any benefit of the changes to Section 13 of the Act allowing entitlement to chronic mental stress.

The new policies introduced by WSIB on Friday October 6, 2017 confirmed ONA's concerns as these new policies placed even more barriers for workers with work-related mental stress to access benefits to which they should be entitled.

In response to these new policies, the government has rightfully adopted a new course of action with these proposed amendments where workers in this province who suffer a mental injury will be treated similarly to workers who suffer physical injury and/or occupational exposure.

Schedule 45 in Bill 177 proposes the following helpful amendment:

1. Subsection 13(4.1) is added, which specifies that a worker is entitled to benefits ***“as if the mental stress were a personal injury by accident.”***

This brings mental stress injuries more in line with physical injuries in terms of the definitions of insurable injuries and accidents under the Act and Board Policy. Under the Act and Board policy, insurable injuries are those that are due to chance events, willful and intentional acts, not the acts of the worker, and disablements that arise gradually over time due to the nature of or as an unexpected result of job duties.

While workers still have to work within the Chronic Mental Stress and Traumatic Mental Stress policies, having this explicit reference in the Act provides guidance to the Board to align their policies with legislative direction or face challenges to the policies themselves as contrary to the Act and Constitution. As an example, a mental stress injury might occur after a “chance event” accident – when a completely healthy patient undergoing surgery suddenly starts “bleeding out.” The event is completely unexpected and the surgical team, including the nurse, are not able to stop the bleeding. This injury can be seen initially as a chance event accident to which the presumption of work-relatedness applies unless the contrary is proven; and in the alternative, can be seen as a gradual onset disablement as an unexpected result of working duties. The amendments provide excellent guidance for this type of claim.

2. A further positive change is the retroactivity amendment proposed under Schedule 45 in Bill 177. This will make the new mental stress provisions that come into effect on January 1, 2018 retroactive to April 29, 2014 – the date the WSIAT released its decision on ONA’s Charter Challenge to the Bill 99 stress provisions, Decision No. 2157/09. The retroactivity provisions are similar to those found in the section 14 provisions related to the post-traumatic stress presumption.

While the effects for ONA members are significant in that these changes provide greater coverage for ONA members, workers suffering from mental injuries are still subjected to restrictive and discriminatory mental stress policies, requiring ONA and other injured worker advocacy groups to challenge these policies so as to ensure they are aligned with new legislative provisions.

The amendments mean that any worker whose mental stress occurred on or after April 29, 2014 and has not filed a claim prior to January 1, 2018 may file a claim and have it adjudicated under the new mental stress provisions (s. 13). The claim must be filed on or before July 1, 2018.

ONA will have some of our cases – at least one pending at WSIAT – returned to the WSIB to be adjudicated under the new provisions – if the amendments are passed. Currently, ONA has appeal files for mental stress claims, which may have to be “reconsidered” by WSIB under the new provisions and policies.

3. A further amendment is proposed regarding the composition of WSIAT panels – five person panels are introduced. The precise composition is to be determined by the Chair in each case. The fruitfulness of this new panel structure remains to be seen.

## **CONCLUSION**

The government is right to listen to stakeholders as it relates to mental stress injuries, and are doing the right thing by moving forward with these amendments to ensure mental stress injuries are treated equally with physical injuries.

Should a nurse – or any Ontario worker – get injured in the course of their work, they deserve access to appropriate WSIB benefits. This access to benefits should not be complicated by any additional barriers because the injury they have endured is a mental and not a physical injury.

All workers deserve nothing less. It is for this reason, we thank the government for doing the right thing for all workers with these proposed amendments.