

Ontario Nurses' Association

**Submission to the Standing Committee
on Finance and Economic Affairs**

**On Bill 70 – *Building Ontario Up for Everyone Act
(Budget Measures), 2016*
(*Schedule 16 - Occupational Health and Safety Act*)**

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INTRODUCTION

The Ontario Nurses' Association (ONA) is the union representing 62,000 front-line registered nurses (RNs) and allied health professionals, and more than 16,000 nursing student affiliates, providing care across the Ontario health sector in hospitals, long-term care facilities, public health, the community, clinics and industry.

Statement of Beliefs: Occupational Health and Safety

ONA believes that 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 the largest health-care union 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.

Bill 70 (1977) Giveth and Bill 70 (2016) Taketh Away...

In November 2016, the Ontario government introduced Bill 70, the *Building Ontario Up for Everyone Act*. The alarming irony of the title is buried deep in the bill in 679 brief words in Schedule 16 that threatens to tear down Ontario's occupational health and safety system and trigger a seismic shift in labour relations across this province.

Another sad irony is that the 1977 bill, also known as Bill 70, introduced the promise of a new dawn in Ontario workplace safety. Now, the new bill flies in the face of the principles of that ground-breaking 1977 act, including the fundamental right of workers to participate in their own health and safety.

Failure to Consult on and Provide Notice of Bill 70

Despite the fact that ONA has been optimistically and in good faith frequently meeting with all levels of Ministry of Labour (MOL) and Ministry of Health and Long-Term Care (MOHLTC) staff and devoting significant resources to the health care violence prevention tables, no one mentioned Bill 70, Schedule 16, to us prior to an e-mail communiqué received from the Minister of Labour and Chief Prevention Officer on November 29, 2016 at 6:49 p.m. We did not receive direct notice from the ministry before the bill was tabled and only learned of the ministry's intentions through one of our labour colleagues. We also cannot find any mention of these significant changes on the MOL website.

We are deeply disappointed with Bill 70 (Schedule 16) given the productive, collaborative relationship we thought we were building with the MOHLTC and MOL, as well as employers, in our collective violence prevention efforts. After raising this concern on Bill 70 to the Deputy Minister of Labour, she has identified that ONA will be consulted after this bill has passed, a bill that we believe will cause a fundamental upheaval of Ontario's health and safety system. This message of "robust consultation" is repeated in the Minister's November 29th e-mail communiqué.

In discussing this with our labour colleagues, it is our understanding there has been no discussion with them either prior to Bill 70 being tabled. We are therefore requesting that Schedule 16 be removed and appropriate discussion take place with ONA, representing the very workers this legislation is supposed to protect.

Issues with Content in Bill 70 (Schedule 16)

An important proposal in the bill is a newly defined Health and Safety Management System (HSMS).

The Chief Prevention Officer's (CPO) powers are to be broadened to set standards for and accredit the HSMS. There is no mention of worker or union or Joint Health and Safety Committee (JHSC) input or review.

As indicated, the intent of these amendments was articulated in an email from the Labour Minister's office, dated November 16, that was shared with us by labour colleagues:

*"This program would recognize employers who implement superior occupational health and safety management systems, highlighting the great work they are doing to protect Ontario workers and reduce the **burden of unnecessary processes, such as routine inspections** (bolding added). We would still investigate complaints and incidents."*

Ontario's Health and Safety System... Dr. James Ham: Prevention, Inspection and the Worker's Right to Participate

The key to workplace health and safety is prevention, and that principle is well explained in Dr. James Ham's 1976 ground-breaking report that prompted the enactment of the *Occupational Health and Safety Act (OHSA)*. Unfortunately, today's proposed amendments prevent two of the very aspects Ham agreed are essential to workplace safety success, i.e., objective government oversight by way of inspections and worker participation in their own health and safety.

External auditing of workplace safety performance has long been accepted as a cornerstone of health and safety success. On page 152 of his "Royal Commission on the Health and Safety of Workers in Mines" report, Dr. Ham wrote:

"Any internal system of direct responsibility will be imperfect and requires audit, not because of any inherent defect in form but because it is a human organization in which conditions of work and concern for the well-being of persons create grounds for tension... External audit can keep the basic internal system alert and responsive...."

Further, on page 162, he endorsed the need of an inspectorate to *"make sure the self-regulatory system is working."*

Ham was just as clear about the need for worker participation when on page six he found, *"The worker as an individual and workers collectively in labour unions or otherwise have been denied effective participation... thus the essential duties of openness and natural justice have not received adequate expression."*

Workplace Inspections

Replacing enforcement with the HSMS is controversial and certainly unacceptable to labour for good reason. Research suggests **worker health and safety is better protected and injuries are reduced by "regulatory health and safety inspections that result in a citation or penalty..."** A 2016 study by the non-governmental Institute for Work & Health (IWH) found "Employers do take steps to prevent work-related injuries for employees when there are direct consequences to them."

The lead scientist suggested "The key to making general deterrence more effective may lie in increasing employer awareness about the financial implications of non-compliance or making information public about employers that don't comply."

This is a link to the IWH study: <https://www.iwh.on.ca/at-work/81/inspections-with-penalties-linked-to-lower-injuries-iwh-review>.

When so much points to the need for enhanced inspections, why now does the government propose to eliminate or reduce those very inspections that are intended to keep workers safe?

Worker Participation

While we didn't agree with all of the report of the Expert Advisory Panel on Occupational Health and Safety, chaired by Tony Dean, the panel was a model of consultation that authentically engaged all stakeholders in its examination of the comprehensive Ontario health and safety system. After signaling such a desire to sincerely consult, why now such a substantive change to our comprehensive system buried in a quiet corner of a finance bill that no one has had the opportunity to review?

Had we been given the opportunity to discuss this we would have pointed out that the value of routine monitoring in effecting general and specific deterrence has long been accepted. We would have questioned the ministry's characterization of "routine inspections" as an "unnecessary burden" to be dispensed with, while they would "still investigate complaints and incidents."

As a simple example of how mystified we are by this assertion, we ask if the Minister of Community Safety and Correctional Services plans similar changes. Will the ministry announce that Ontarians who pass the driver exam and are licensed to drive will be relieved of the unnecessary burden of police patrols, but rest easy, the police will respond when you crash?

We see the value of accreditation processes (see below) but only as an enhancement of the internal responsibility system (IRS), and not as a substitute for the necessary external monitoring that helps keep an IRS working. It is our understanding that the spirit and intent of the Dean Panel recommendation about accreditation was in keeping with the workers' right to participate. The concept was intended to be developed with both employer and labour stakeholders' input, and the Dean report talked about accreditation with financial incentives for supply chain improvements. But it was never decided that exemption from ministry inspections would be the "reward" given to successfully accredited employers. See: <https://www.labour.gov.on.ca/english/hs/prevention/report/incentives.php>.

Import and Impact to ONA of Schedule 16

The proposed changes can have significant impact and change the way of doing health and safety in Ontario workplaces. Our members in the health-care system and the people of Ontario can't afford that change.

Workplace health and safety remains dire in the health-care sector, and according to WSIB statistics, much of it is getting worse. Take a look at ONA's infographic (attached) depicting health-care sector performance compared to industry, construction and mining. While injuries in other sectors have had a downward trajectory since the enactment of the *OHSA*, health care has maintained or increased a solid lead in accepted WSIB claims in many areas.

This is costing our members in significant suffering, and is costing the tax-payer funded health-care system in expensive absences, claims and WSIB premium rates. And we know this is not the whole picture. It is widely accepted that violence, exposures and other injuries and illnesses are under-reported in our sector.

Justice Campbell's SARS Commission report marked an important turning point in health and safety consciousness in the health-care system. Since he confirmed a decade ago that hospitals are as dangerous as mines and factories but don't have the safety systems of those

industries, we have seen steady, but very imperfect progress in seeding health and safety cultures in workplaces throughout the sector.

We don't want to have to resort to prosecution as the impetus for progress, but in effecting general and specific deterrence, it offers an effective tool to kick start IRSs. Until the Campbell Commission investigation, we knew of only one prosecution in health care. There have been approximately a couple of dozen in the intervening years, and until the injury rates start to track down in our sector, we will need more MOL help, not less. Remember those highways... when we have increasing accidents do enforcement agencies announce they're pulling patrol cars off the road?

We also have reservations about transferring health and safety obligations by employers and the MOL under the Act to CPO oversight. The CPO's attention has primarily been on other sectors and not health care.

According to an MOL commissioned report last year, the CPO sent substantially more of its funds to other sectors' safe work associations, sectors where there are fewer workers and fewer overall injuries (see Figure 57, Prism Report). We are hoping to see an increased response to the breadth of the safety challenges in health care, one of the province's poorest performing sectors.

Accreditation... Good and Bad

The good – As mentioned above, the Dean Report recommended examination of accreditation in building a better occupational health and safety system. But an accreditation system is to be an enhancement of the IRS, not a substitute for government monitoring of workplaces. Truly successful employers with an effective HSMS and a robust IRS can expect much shorter visits from the MOL, not NO visits. There are many examples of internal systems that have been helpful but which have never replaced the critical role played by external government monitors. Canadian Standards Association (CSA) and International Organization for Standardization (ISO) standards come to mind. ONA participated in a WSIB accreditation consultation in 2007 and has much to offer in productive discussions about what the details of a truly participative accreditation system might be, and what intrinsic, not SOLE role, it could play in a system.

The bad – The accreditation proposed by Schedule 16 appears to offer much to an employer. However, we are not seeing any health and safety benefits for workers.

Would openness and natural justice that Ham spoke of be served if the MOL buried amendments in a finance bill that gave workers the authority to cite employers for infractions in their workplaces? This approach has been implemented in Australia, and floated in Ontario over the years. Now, if the employer will drive its own accreditation system, and MOL will only attend to investigate a body count, what choice will workers have? Without ministry inspections, we will need to carry out our own preventative enforcement.

Health Care Accreditation Experience

Health-care facilities have been part of a voluntary accreditation process for years. We acknowledge it has been valuable for some areas of business, but has seriously failed in its health and safety application.

Over time we have heard of the small hospital that achieved the highest of ratings in its accreditation review, while simultaneously failing a WSIB Workwell audit of its health and safety system.

The most recent salient example of our concern about relying on an accreditation program without benefit of external review is the Centre for Addiction and Mental Health (CAMH). CAMH's webpage proudly displays an "exemplary" standing from its June accreditation, with one of the four areas of their excellence identified as "prioritizing worker...safety." See: http://www.camh.ca/en/hospital/about_camh/newsroom/CAMH_in_the_headlines/stories/Pages/CAMH-achieves-highest-standard-of-Accreditation.aspx

This is the same hospital that in July received its third conviction and fine for *OHSa* infractions related to serious beatings and critical injuries of workers. Since receiving the exemplary accreditation standing and the latest conviction, there have been several more injuries of workers in further attacks, and the MOL is currently investigating at least two more critical injuries since August. In addition, the hospital has received orders for other violations of the *OHSa*.

At a recent meeting of the Violence Leadership Table, we discussed improved accreditation standards with both Accreditation Canada and Health Quality Ontario (HQO). These discussions are in their infancy, will not be expeditiously enacted, and we are unsure of how effective they will be in improving health and safety in the workplace and reducing incidents of violence. It should be noted that ONA President Linda Haslam-Stroud, RN has been discussing over the last nine months putting more stringent expectations in accreditation standards, expecting that this would be an enhancement. We would never agree to improved accreditation standards as a substitute for proactive MOL inspections, which represent a fundamental safeguard for the health and safety of our members.

ONA has always been open to an accreditation program (if properly established and audited) that rewards employers who demonstrate **real** leadership in health and safety measures and practices that exceed the minimum requirements of the *OHSa*. But we cannot support a program that rewards employers by exempting them from external government inspections.

We believe in, and engage in, authentic consultation whenever it is offered. We had extensive discussions with stakeholders in 2007 when WSIB proposed accreditation, but after months of discussion they never acted on the proposal. And we have had almost a year now of protracted discussion about how to enhance the current hospital accreditation program to work to prevent and respond to burgeoning violence in our healthcare workplace. But even after these many months, we have no resolution.

Schedule 16 will set accreditation in motion before any opportunity to consult. We have no confidence, given the above conversations we have already had, that consultations will be meaningful or productive.

Going forward

We hope you can appreciate how these amendments are not insignificant things to be quietly tucked into an omnibus finance bill and hurtled through the legislature. What the ministry is proposing isn't just a simple tweak of the status quo. The development of content and the expedited, quiet passage of these changes is not in keeping with the history and principles of Ontario's health and safety system, which is underpinned by the worker's right to participate. This government has usually supported a consultative process for such change and we would have expected a similar approach regarding Schedule 16.

Spilt blood and broken bones of workers inspired the history and the hard won principles of our health and safety system. We will never forget that, especially not as the carnage in our health-

care system builds. Passage of Schedule 16 threatens to rock the foundation of labour peace in this province.

We urge you to take out Schedule 16, take a breath, and let's discuss this proposed upheaval of health and safety in this province. We've had meaningful engagement on serious issues. Why change that now? We are mindful of Justice Campbell's sage advice. Health and safety in health care is doubly important. The stakes spread beyond our members and health care. Justice Campbell said that if workers aren't safe, neither are patients. It's that simple.

All Ontarians have a deep interest in what you are about to do to our health and safety.