

Submission on Bill 56
Brendan Kilcline
Local 444 Kingston General Hospital
OPSEU Hospital Professionals Division

Our division of OPSEU represents a broad range of diagnostic, therapeutic, and technical professionals that are a vital part of the multi-disciplinary healthcare team.

We have a number of concerns regarding Emergency Management and Bill 56.

Possibility of Conscription of Healthcare workers

The definitions and powers in the act are very broad regarding the “medical services” that our members provide. The powers to procure, distribute and fix the price of such services may be interpreted to give powers that essentially amount to the conscription of civilian healthcare workers. Such conscription would be under the duress of the grave penalties of the Bill. We believe such power is extreme in a democracy. Such power is also unnecessary. In all true emergencies healthcare workers have a proud history of rising to the occasion to protect their communities, even at great personal risk. There is no basis to believe that they will do so again voluntarily. If it is not the intent of this Bill, to envision the conscription of healthcare workers, we urge you to make this clear within the Bill.

Effect on Collective Agreements.

During the SARS Crisis, it was the uncertainty of the obligations of the parties that contributed to the chaotic nature of the response. Since then many of our Collective Agreements have negotiated provisions for emergency situations. The Central Agreement reached with many of Ontario’s hospitals has just such provision.

ARTICLE 30 – EMERGENCY SITUATIONS – LOCAL CONSULTATION

30.01 The parties agree to develop and establish a local consultation process to deal with future emergency situations of an unexpected nature that challenges the Hospital’s ability to delivery safe health care and requires a temporary change to the Hospital’s normal operating procedures. Such consultation shall include, but is not limited to, issues of redeployment and reassignment of staff (including

voluntary reassignment of staff), planning of additional sessions of consultation, personal protective equipment, and the temporary waiver of terms of conditions of the collective agreement, as agreed to by the parties.

There shall be no loss of earnings, service or benefits for committee members attending the committee meetings. The total number of committee members shall be established at the local level.

Agreement on Issues such as the training, deployment, scheduling, pay rates and accommodation of healthcare workers with particular needs, are vital to the operation of facilities in an emergency. These issues and the framework for dealing with them are best resolved by the workplace parties in advance of an Emergency and with the full consultation and participation of all workplace parties throughout an emergency

The legislation should support this process. A provision that Emergency Orders take full account of these agreements between the workplace parties, to the fullest extent possible, should be included in the Bill.

Occupational Health & Safety

Whilst the Occupational Health & Safety Act is not eroded by the Bill, we are concerned that the Act itself will not give sufficient protection to healthcare workers during an Emergency. Indeed this was our experience during SARS. Healthcare workers have only a limited right to refuse and it is in an Emergency that these workers will most likely be encountering those limits. It is precisely because of this that the roles of both the Internal Responsibility system, and the activity of the Ministry of Labour, in enforcing the Occupational Health & Safety Act, must be enhanced. The recent outbreak of Legionnaires disease at a Toronto facility is a case in point. Workers were given conflicting directions on the type of respiratory protection equipment required. It must be made clear that the Ministry of Labour determines what constitutes compliance with the requirement of taking “all reasonable precautions” for the protection of workers under the Act and not other Ministries.

To facilitate the protection of workers with limited rights of refusal, the involvement of both the workplace Joint Health & Safety Committees and the Ministry of Labour needs to be expanded in an Emergency. The Joint Health & Safety Committees provide a

critical forum for addressing worker concerns in the measures taken in the preparation for emergencies. The involvement of the joint committees is also crucial for monitoring the application of such safety measures, and in monitoring the effectiveness of the facilities Health & Safety program. However these committees are only required to meet as little as once every three months.

When an emergency is declared there should be a requirement to cause the JHSC's to meet immediately to consider the Emergency and regularly throughout the Emergency.

In particular, if Emergency Orders are issued that may impact on the Health & Safety of workers the Joint Committees should be required to consider such orders immediately.

Such orders should be immediately sent to the Director (Occupational Health & Safety) of the Ministry of Labour for immediate review. The Ministry of Labour should also be sent, and promptly review, any recommendation made by a Joint Committee with respect to the Order.

Indemnity of Employees.

As well as the common law requirements for duties of care, many of our members are regulated under the Regulated Health Professions Act by colleges which have standards and scopes of practice. The Bill offers some protection against liability for our members' good faith actions undertaken during an Emergency but those protections need to be expanded. The cost of defending those good faith actions in litigation can be ruinous. We note that police officers have protection from the costs of these actions under the Police Services Act. Our members deserve no less consideration, particularly when operating in an Emergency.

Employment Protection.

Whilst some protection is offered in the Bill for workers temporarily reassigned during an Emergency, the protections are not fully adequate. The Bill should contain a provision guaranteeing that the worker returns to their pre-emergency position. After an Emergency it is likely that many healthcare workers will be exhausted, and may have to attend to family matters put on hold during an Emergency. The employment protections provided to such workers should not end with the Emergency, but be extended to a reasonable time thereafter.