

OHA Summer Legislative and Regulatory Summary

In Summer 2023, the Ontario Hospital Association (OHA) was engaged in a wide range of legislative and regulatory areas including community surgical centres, privacy, procurement practices and long-term care. In advance of the Legislature's return on September 25, 2023, the OHA has prepared a summary of recent legislative and regulatory engagement and anticipated legislative and regulatory activity for fall/winter 2023.

OHA Submissions

Bill C-295, An Act to amend the Criminal Code (neglect of vulnerable adults)

Bill C-295 (Bill) is a federal private member's bill that proposes to amend the *Criminal Code* to create an offence for long-term care facilities, their owners and their managers who fail to provide necessities of life to residents of the facilities. The Bill was introduced on June 20, 2022. In introducing the Bill, Honourable Hedy Fry noted that the COVID-19 pandemic "exposed clear evidence of abuse of seniors in care facilities across the country. With the lack of appropriate care and protection, as well as negligence and failure to follow accepted protocols, this situation resulted in appallingly high rates of COVID transmission in many long-term care facilities and led to increased mortality rates." The Bill is aimed to prevent the recurrence of those outcomes.

The proposed Bill appeared to have garnered support by government members and was referred to the Standing Committee on Justice and Human Rights in March 2023. The proposed broad language in the Bill attracted some scrutiny, as the interpretation of "long-term care facility" may inadvertently include non-long-term care environments including rehabilitation housing, assisted living and complex continuing care.

The OHA provided [written submissions](#) to the Standing Committee, reiterating many of the concerns shared by key stakeholders, such as the Canadian Association for Long Term Care, AdvantAge Ontario and the Ontario Long Term Care Association. Before breaking for the summer, the Standing Committee presented its report to the House of Commons on June 19, 2023, with minor amendments to the Bill. It is anticipated that consideration of the Bill will continue when the House returns in September.

Personal Health Information Protection Act, 2004 – Administrative Monetary Penalties

The Ministry of Health (Ministry) proposed to amend the General Regulation under the *Personal Health Information Protection Act, 2004* (PHIPA), to enable the application of Administrative Monetary Penalties (AMPs). These regulatory amendments follow the legislative amendments to PHIPA in March 2020, which provided the Information and Privacy Commissioner of Ontario (IPC), with the authority to impose AMPs on any person or organization that contravenes PHIPA or its regulations.

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The proposed regulation sets out the criteria the IPC must consider when determining the amount of the penalty and the maximum amounts allowed. Specifically, the draft regulation proposes to create maximum penalty amounts of \$50,000 for individuals and \$500,000 for organizations; enables the IPC to increase a penalty “by an amount equal to the economic benefit derived from a contravention”; designates mandatory criteria that IPC would use to determine a penalty amount; and enables the consideration of any other criteria that IPC finds relevant.

The OHA consulted with hospital privacy leads, which informed the [OHA's submissions](#) provided to the Ministry on July 25, 2023.

Bill 60, *Your Health Act*, Schedule 1: *Integrated Community Health Services Centres Act, 2023*

Legislative Submissions – Standing Committee on Social Policy

The OHA has been actively monitoring the government’s commitment to expand community surgical centres since it was formally announced on January 16, 2023. Bill 60, *Your Health Act* (Bill 60) was introduced on February 21, 2023 and was referred to the Standing Committee on Social Policy on March 1, 2023. The OHA provided [written submissions](#) to the Standing Committee and offered support for the government’s introduction of Bill 60. The OHA reinforced that hospitals were looking forward to working closely with proponents in developing new partnerships, while ensuring equity, access, and mitigating unintended consequences, particularly in relation to health human resources (HHR). The OHA highlighted and included the recommendations made in the OHA’s policy brief previously provided to the Ministry. Bill 60 was passed on May 8, 2023 and received Royal Assent on May 18, 2023. Schedule 1 of Bill 60 (the *Integrated Community Health Services Centres Act* (ICHSCA)) is anticipated to be proclaimed into force on September 25, 2023.

Regulatory Submissions – Phase I

On June 9, 2023, the provincial government filed its first proposed regulation under ICHSCA. The proposed regulation is aimed at carrying over the regulatory requirements that exist under the *Integrated Health Facilities Act* (IHFA) and is aimed at supporting ICHSCA once proclaimed into force.

On July 7, 2023, the OHA made a [submission](#) to the government based on the feedback received from its Members. The OHA consulted with a wide range of Member networks, including the OHA’s Physician Leaders Network; Small, Rural and Northern Hospital Network; Complex Continuing Care/Rehabilitation Network; Medium-Sized Hospital Network; Toronto Academic Health Science Network, and the OHA’s Chief Nursing Executive Table.

The OHA’s recommendations reiterated the need for a legislative scheme that contemplates the evolution of the health system in delivering further integrated and connected care. The OHA recommended that applicants be required to consult with local public hospitals to ensure prospective integrated community health services centres (ICHSCs) and local hospitals have created the necessary partnerships and pathways to ensure patient safety and system coordination.

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The OHA also reinforced the need to leverage existing hospital capacity and recommended that applicants be required to outline a plan for mitigating any HHR impacts on local health system partners.

Lastly, the OHA recommended consistency in legislative and regulatory requirements between hospitals and ICHSCs to ensure patient safety and regulatory clarity across the health care system. The OHA was successful in demonstrating the need for regulatory consistency, and the Ministry amended its original proposed regulation to bring records retention and imaging media requirements in line with those under the *Public Hospitals Act*.

Bill 60, *Your Health Act*, Schedule 2: “As of Right” Rules

Legislative Feedback

As noted above, Bill 60 was introduced on February 21, 2023. Schedule 2 of Bill 60 creates “as of right” rules that allow certain health professionals that are registered in another Canadian jurisdiction to practice in Ontario without first registering with an Ontario regulatory college. The OHA provided preliminary feedback to the Ministry of Health which acknowledged the OHA’s support for the creation of innovative solutions to address HHR capacity issues, but also emphasized that such solutions must balance the need for patient safety. Bill 60 was passed on May 8, 2023 and received Royal Assent on May 18, 2023.

Regulatory Submissions

On June 9, 2023, the provincial government announced proposed regulatory amendments that would enable the “as of right” rules under Schedule 2 of Bill 60. The OHA engaged with Members on the proposed regulatory amendments, which included consulting with its Physician Leaders Network and Nursing Advisory Group, to gather insight on the government’s proposal.

On July 7, 2023, the OHA made a [submission](#) to the government based on the feedback received from its Members. In its submission, the OHA identified key areas where additional clarity is needed (for example with respect to the privileging, oversight, and complaints process for out-of-province health care professionals). The submission also reiterated the need for a consistent regulatory approach to ensure alignment with existing legislation and patient safety.

Schedule 2 of Bill 60 was proclaimed into force on July 24, 2023 and the regulatory amendments to enable the “as of right” rules simultaneously came into effect. The Ministry of Health (MOH) also prepared a [guidance document](#) for the sector on the proposed “as of right” rules. The OHA provided feedback to the MOH on this guidance document, reiterating the need for clear guidance on how processes for these out-of-province professionals will interact with the existing legislative regime.

Building Ontario Businesses Initiative Act, 2022

In July 2023, the provincial government posted regulations for consultation under the *Building Ontario Businesses Initiative Act, 2022* (BOBIA). The BOBIA is the first step of the provincial government’s Building Ontario Businesses Initiative (BOBI), which is intended to strengthen the province’s supply chain security and economic growth. The BOBIA will require “public sector entities” to give preference to Ontario businesses when conducting a procurement process for prescribed goods and services,

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the value of which are under a prescribed threshold amount. Hospitals fall within the definition of “public sector entities” and therefore will be subject to the BOBIA and its regulations.

The government’s proposed regulations prescribe the circumstances under which the BOBIA framework would apply (for example, the determination of what is an “Ontario business” and the monetary thresholds for procurement) and what type of preference is to be given to Ontario businesses.

The OHA attended, and invited its Members to attend, virtual consultation sessions hosted by the Ministry of Public and Business Service Delivery on the BOBIA and the proposal for potential regulations. The OHA utilized feedback from these sessions as well as from Member engagement to inform its [submission](#) to the government on the proposed regulatory framework under the BOBIA, which was submitted on August 8, 2023. The BOBIA received Royal Assent in 2022, but the Act itself and regulations under the Act have not yet been proclaimed into force. It is anticipated that they will come into effect in January 2024.

Police Record Checks Reform Act, 2015

The Ministry of the Solicitor General (Ministry) conducted a legislative review of the *Police Record Checks Reform Act, 2015* (PRCRA). A review of the legislation is statutorily required every five years. The purpose of the review was to determine if the PRCRA is achieving its policy intent of “standardizing the police record check process while balancing public safety and privacy rights.” The OHA made a [submission](#) that was informed by Member feedback and focused on the challenges experienced by some in obtaining vulnerable sector checks from local police agencies. The OHA advocated for regulatory clarity to ensure hospitals can obtain checks readily and efficiently.

OHA Legal Resources and Backgrounders

A Practical Guide to Mental Health and the Law

On June 19, 2023, the OHA published the fourth edition of *A Practical Guide to Mental Health and the Law in Ontario* (Guide), in collaboration with Borden Ladner Gervais LLP. The Guide is one of the OHA’s most frequently cited and used resources. The Guide aims to provide health care professionals with a general understanding of mental health law and the newest edition includes legislative and case law updates, refreshed content, and new resources to assist in preparing for virtual hearings and recommendations on the use of restraints. The OHA held a virtual session to launch the Guide that included a moderated discussion with BLG Partner and Co-Author of the Guide, Katharine Byrick. A copy of the Guide can be found [here](#).

Bill S-211, An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff

On May 3, 2023, the federal government passed Bill S-211: *An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff* (Bill S-211), and it subsequently received Royal Assent on May 11, 2023. Bill S-211, which will come into force on January 1, 2024, will impose annual reporting obligations on many Canadian entities, potentially including some Ontario hospitals, in an attempt to minimize the risk of forced labour and child labour in supply chains. The OHA prepared a backgrounder outlining the criteria to determine which entities

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will be subject to the legislation, which was shared with its Members on May 25, 2023 and can be found [here](#). The OHA continues to work with government and sector stakeholders to understand the scope and application of this legislation.

Building Ontario Businesses Initiative Act, 2022 – Proposed Regulatory Framework

As noted above, in July 2023 the provincial government posted regulations for consultation under the BOBIA. The OHA prepared a legal backgrounder on the BOBIA and the regulatory proposal, which was shared with its Members on July 13, 2023 and can be found [here](#).

Integrated Community Health Services Centres Act, 2023 – Proposed Regulatory Framework

As noted above, the provincial government filed its first proposed regulation under the ICHSCA on June 9, 2023. The OHA shared a legal backgrounder with its Members on June 23, 2023, which can be found [here](#).

Looking Forward: Fall/Winter Legislative and Regulatory Activity

The OHA is monitoring a number of potential regulatory and legislative developments expected in the fall and winter season, including the following:

Integrated Community Health Services Centres Act, 2023: Subsequent Regulations

The Ministry of Health (Ministry) has indicated that it intends to propose a subsequent and more comprehensive set of regulatory amendments under the ICHSA in late fall 2023. It is anticipated that the second regulatory proposal will offer guidance on the most novel aspects of the government's initial proposal, including the further expansion of ICHSCs. The Ministry has indicated that the second proposal will include additional guidance on quality assurance, safety and inspections within ICHSCs.

Building Ontario Businesses Initiative

As noted above, the BOBIA, which will come into effect on January 1, 2024, is the first step in the provincial government's BOBI initiative. It is unclear at this time when the next stages of the BOBI will be announced. The OHA will continue to monitor and advise Members of any developments with respect to the BOBI. In the interim, the OHA is working with the Ministry of Public and Business Service Delivery to ensure OHA Members are aware of and have access to BOBI information sessions and BOBIA training sessions that the Ministry is hosting.

Expansion to Medical Assistance in Dying

On March 9, 2023, legislation to extend by one year the temporary exclusion of eligibility for MAID where a person's sole medical condition is a mental illness (Bill C-39) received Royal Assent and immediately came into force. This means that persons suffering solely from a mental illness will be eligible for MAID as of March 17, 2024. The OHA is actively monitoring this issue and has been engaged with the Ministry of Health, Health Canada, the Federal Minister of Health's Office and system partners to support Members in advance of March 2024.

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Federal Indigenous Health Legislation

The federal government, as part of its commitment to reconciliation with Indigenous peoples, is currently working to [co-develop distinctions-based Indigenous health legislation](#) that aims to address the challenges faced by Indigenous peoples in accessing adequate and culturally safe health care. The term “distinctions-based” is used to acknowledge that each Indigenous community has a unique culture, territory, history and relationship with Canada and that a “one-size-fits-all” approach is not appropriate.

The first stage of the development of this legislation, which involved broad engagement with many stakeholders, was launched on January 28, 2021 and is now complete. The second stage involves the co-development of federal legislative options with Indigenous partners which are complementary to existing provincial and territorial health care systems and do not infringe upon provincial or territorial jurisdiction. It is unclear at this time what role provinces and territories will have in the new legislation. It is anticipated that this new legislation will be tabled late in Winter 2024.

Legislation Implementing a National Universal Pharmacare Program

As noted in media coverage, the federal government has [announced](#) that legislation to implement a universal pharmacare program will be tabled in Fall 2023 with the hope that it will be passed by the end of the year. A formal legislative announcement has not yet been made. The OHA will monitor the development of this legislation and what implications, if any, it will have on OHA Members.

Upcoming Proclamations

Integrated Community Health Services Centres Act, 2023

On [September 25, 2023](#), Schedule 1 to Bill 60, *Your Health Act (Integrated Community Health Services Centres Act, 2023 (ICHSCA))*, will come into force. On that date, the *Independent Health Facilities Act* will be repealed and replaced with ICHSCA. The Phase I regulation made under ICHSCA will also come into effect on this date.

Amendments to Ontario's Not-for-Profit Corporations Act, 2010

On [October 1, 2023](#), Schedule 22 of Bill 91, *Less Red Tape, Stronger Economy Act, 2023* will come into force and will make amendments to the Ontario *Not-for-Profit Corporations Act, 2010 (ONCA)*. The amendments are mostly focused on making permanent changes to the governance rules on the use of virtual meetings, electronic records and notice of adjourned meetings. The OHA is currently working with BLG to revise its Hospital Prototype Corporate By-Law given the amendments.

Regulated Health Professions Act, 1991 (Emergency Class Requirement)

On April 14, 2022, the provincial government passed the *Pandemic and Emergency Preparedness Act, 2022* that amended the *Regulated Health Professions Act, 1991 (RHPA)*. The amendment requires all health regulatory colleges to establish an emergency class of registration through regulation by August 31, 2023. Changes to related college regulations have been approved as of August 31, including the *Nursing Act, 1991* and the *Medicine Act, 1991*.

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