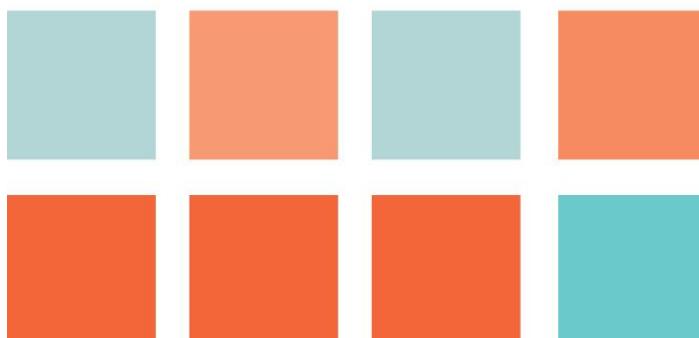


Registered Nurses' Association of Ontario (RNAO)

**Bill 122, An Act to amend the *Mental Health Act*  
and the *Health Care Consent Act, 1996***

Written Submission to the Standing Committee on  
General Government

November 30, 2015



## **RNAO Recommendations**

- Ensure adequate time for research, thought, and meaningful consultation for complex pieces of legislation that fundamentally impact health and human rights.
- Pass Bill 122, with amendments, so that the *Mental Health Act* will be in compliance with Charter rights.
- Revise Bill 122 to amend section 15 of the *Mental Health Act* so that NPs are authorized, as are physicians, to complete an Application for Psychiatric Assessment or Form 1.
- In addition to enabling NPs to serve as clinical panel members of the Consent and Capacity Board (CCB), amend Bill 122 to also utilize RNs with expertise in mental health in the same capacity.
- Amend Bill 122 to enable RNs and NPs to participate as clinical members of the CCB for continuation certificate hearings.
- Update the *Mental Health Act* to address gaps identified by the Select Committee on Mental Health and Addictions, Ontario Human Rights Commission, and people with lived experience and their advocates, including family members.

## **Introduction**

The Registered Nurses' Association of Ontario (RNAO) is the professional association representing registered nurses (RN), nurse practitioners (NP), and nursing students in all roles and sectors across Ontario. Since 1925, RNAO has advocated for healthy public policy, promoted excellence in nursing practice, increased nurses' contributions to shaping the health system, and influenced decisions that affect nurses and the public they serve. RNAO appreciates the opportunity to provide feedback to the Standing Committee on General Government on *Bill 122, an Act to amend the Mental Health Act and the Health Care Consent Act, 1996*.

The *Mental Health Statute Law Amendment Act, 2015* (to use the short title) was introduced on September 23, 2015 by the Minister of Health and Long-Term Care as the government's response to the Ontario Court of Appeal decision in *P.S. v. Ontario, 2014*.<sup>1</sup> The court gave the province one year to comply with its decision that found a provision in the *Mental Health Act* was in breach of section 7 of the *Charter of Rights and Freedoms*. Bill 122, if passed, would align the *Mental Health Act* with the charter and "enhance the rights of involuntary patients

who have been committed to psychiatric facilities for longer than six months.<sup>2</sup> This bill was ordered to the Standing Committee on General Government on November 18, 2015 after motion for closure.<sup>3</sup> The November 30 deadline for public submissions is only three weeks prior to the December 22 deadline required to support the continued detention of the approximately 330 long-term involuntary patients in a way that is compliant with the court decision.<sup>4</sup>

The tremendous health, social, and economic toll of mental illness and our society's inadequate response to it is not well served by such a brief opportunity to provide feedback on proposed changes to the *Mental Health Act*. In the context of limited time available for research and consultation, RNAO has identified key improvements that will enhance the effectiveness of the Bill for Ontarians.

### **Role of NPs**

NPs have legislated authorities that position them as pivotal health providers to improve Ontarians' access to quality and effective health services. NPs possess an expanded and autonomous scope of practice. Over the past decade, RNAO's collaboration with government and opposition parties has led to significant enhancements to the scope of practice utilization of NPs, including open prescribing capabilities (with the exception of controlled substances due to previous federal barriers) and the ability to order and interpret a range of diagnostic testing. NPs have either a post-baccalaureate certificate or graduate degree (masters or doctorate). They possess a minimum of two years of experience as an RN before applying to the NP program. However, research has shown that the average NP has practised for 16 years before becoming an NP.<sup>5</sup>

The public holds nursing among the most trusted of all professions.<sup>6 7 8</sup> It comes as no surprise that NPs are embraced by Ontarians and increasingly found in all health settings. Through RNAO's insistence, Ontario's health system has increased access to high-quality primary care through the establishment of 25 NP-led clinics.<sup>9</sup> In addition, thousands of Ontarians have an NP as their primary care provider either in a Community Health Centre or a Family Health Team. Ontarians are seeing NPs delivering care in emergency departments, in their homes, at clinics, in long-term care homes and on the street. Working again with RNAO, the McGuinty government authorized NPs through legislative changes, to treat, transfer, and discharge hospital in-patients on July 1, 2011. A year later, NPs were granted the authority to admit hospital in-patients.<sup>10</sup> Ontario has much to be proud of as the first Canadian jurisdiction to authorize NPs to admit, treat, transfer, and discharge hospital inpatients. RNAO's advice was again heeded by Premier Kathleen Wynne who announced the role and funding commitment for attending NPs in Ontario's nursing homes - enabling these professionals to be the most responsible provider (MRP).<sup>11 12</sup> RNAO now insists that the *Mental Health Act* be amended to give NPs the authority they need to safely and

effectively fulfill their clinical responsibilities. Not doing so undermines the safety of individuals, families, and communities.

### **Application for Psychiatric Assessment (Form 1)**

The *Mental Health Act* was first passed in 1990. While some enhancements have been made over the years, the statute has not kept pace with dramatic evolution of the health system. Today, the treatment of mental illness has transitioned away from a biomedical-focus to one that is person- and family-centred, holistic and recovery-focused. The best possible outcomes for persons suffering from mental illness are produced through a team of providers working together from different professions. While the government indicates the intent of Bill 122 is narrowly focused on the implementation of a court decision, RNAO is compelled to identify a serious patient/public safety risk outside of this decision and the opportunity to remedy it through an amendment to Bill 122.

At present, Section 15 of the *Mental Health Act* authorizes a physician to complete an Application for Psychiatric Assessment (Form 1) under specific conditions where there is a reasonable cause to believe that individuals are at serious risk of harm to themselves or others related to an apparent mental disorder. Once signed, the form is valid for seven days and provides authority for the individual to be taken to a psychiatric facility where the person may be detained, restrained, observed, and examined in the facility for not more than 72 hours.<sup>13</sup>

Given that NPs also serve as entry-points to the health system, RNAO argues that restricting the ability to initiate a Form 1 to physicians presents a significant safety hazard. At present, if a client who appears to be suffering from a mental illness presents to an NP indicating he/she is at risk of harming himself/herself or someone else, the NP is severely limited in their response. They would need to locate a physician in a timely manner to initiate a Form 1, which is not always possible. This leads to an inefficient use of resources and ineffective transitions for the patient. While waiting for a physician, the patient, who may be in a compromised state of mind, is able to leave on his or her own free will. Alternatively, an NP could appear before a justice of the peace to seek a Form 2, however, this is time intensive and incredibly unrealistic when a patient is in immediate distress.

The final option involves summoning the assistance of the police. This approach can have a significant negative impact on a therapeutic NP-patient relationship. In the community, a family member or other person may also contact the police when concerned about an individual. A disincentive for family members to call police is fear related to interactions with police or police/correctional custody. When called, some law enforcement officers are reluctant to act due to the prospect of spending hours waiting with an individual to be assessed in an emergency room. In the best of all circumstances, those in need of mental health

assistance will receive it through the health system, including through care by NPs, rather than the criminal justice system that increases risk of death, injury, and stigmatization.

Authorizing NPs to initiate a Form 1 aligns with the evolution of the health system and NP role. It promotes the public interest, improves access to greatly needed care and is consistent with the scope of practice that NPs already have. It will increase safety for individuals, families, and communities.

### **Composition of Consent and Capacity Board Panels**

RNAO welcomes provisions in Bill 122 that enable NPs to serve as clinical panel members for the Consent and Capacity Board (CCB). The CCB offers an effective administrative means of expediently managing disputes related to consent and capacity outside of the courtroom. The CCB process connects legal, health and public perspectives to carefully balance human rights with justice for potentially vulnerable persons. NPs will make an exceptional clinical addition to CCB panels to respond to all matters within the CCB's jurisdiction, including matters under the *Mental Health Act*.

Whether through a shortage of psychiatrists<sup>14</sup> or a mismatch in the patterns of service provision and population need,<sup>15</sup> many of the most unwell Ontarians currently struggle to access psychiatric care. For example, the percentage of patients who saw a psychiatrist within 30 days of discharge for a psychiatric hospital admission varied by LHIN from 21 per cent in the South West to 61.3 per cent in Chaplain.<sup>16</sup> Even Toronto Central LHIN, which has the most psychiatrists and highest psychiatrist to population ratio,<sup>17</sup> only had 55.9 per cent access to a psychiatrist visit within 30 days of discharge from a psychiatric hospital.<sup>18</sup> Incorporating NPs into CCB panel will enable psychiatrists to be reserved for the most complex CCB reviews that demand a specialty physician opinion. Equally important, psychiatrists will have more time to address the unmet needs of recently discharged and other high-need Ontarians facing gaps in access to psychiatric services.

In addition to enabling NPs to serve as clinical panel members of the Consent and Capacity Board, consideration must be given to utilizing RNs with expertise in mental health in the same capacity. The role of the RN is rapidly growing. Today's entry-to-practice requirement demands a baccalaureate degree and many RNs are pursuing studies at the graduate level. Responding to RNAO's evidence-based advocacy, the government of Ontario has announced plans to expand the scope of practice of the RN to include prescribing.<sup>19</sup> This scope expansion will significantly improve people's access to care. Ontario also has a large cadre of RNs who are experts in mental health. In 2014, there were nearly 4,000 RN positions focused on mental health.<sup>20</sup> These RNs have developed significant clinical expertise through extensive experience and education. In addition to providing direct care to persons with a mental illness, they are actively

involved in research, education and policy. As of July 2015, there were 1,230 RNs certified in psychiatric and mental health in Ontario by the Canadian Nurses Association.<sup>21</sup>

The current Bill mandates that the CCB panel composition for a continuation certificate hearing includes a psychiatrist, lawyer and another person who is neither a psychiatrist nor lawyer. Given that nurses are the most frequent point of contact for persons receiving in-patient psychiatric care and provide long-term monitoring and treatment of patients with chronic mental illness, it is imperative that the Act be amended to also require that an RN or NP sit on these panels as a clinical member. This would not be in place of a lawyer or psychiatrist, but would complement their perspectives and enhance the overall expertise of the panel.

RNs and NPs are actively leading the comprehensive treatment of persons with complex mental illness through a number of means including regular assessment, monitoring, psychotherapy and pharmacotherapy. There is no evidence to suggest that the addition of RNs and NPs on the CCB will compromise the expertise needed to make effective decisions. RNs and NPs hold the clinical competency and expert judgment needed to effectively inform decisions of the CCB. Moreover, their contributions will enhance the diversity of the CCB and ensure that the CCB is able to offer timely access to justice for those seeking its service. Moreover, any RN or NP who is interested in pursuing the CCB would still be required to progress through the merit-based/competitive public appointments process that ensures they are an effective fit for the board.

### **Conclusion:**

Many Ontarians with mental health and addiction issues are still dying of cold weather on the streets, being shot by police, warehoused in correctional facilities, disappearing from school, work, and social connections and suffering in other ways. That's why the government of Ontario needs to transform the mental health system, including a more thoughtful update of the *Mental Health Act*, with meaningful consultation with a broad range of stakeholders, including people with lived experience and their families. In addition to direct outreach, this can include addressing gaps in human rights, public safety, and equitable access to health and health care found in recommendations by the Select Committee on Mental Health and Addictions<sup>22</sup> as well as the Ontario Human Rights Commission.<sup>23</sup>

Thank you to the Standing Committee on General Government for considering these recommendations.

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