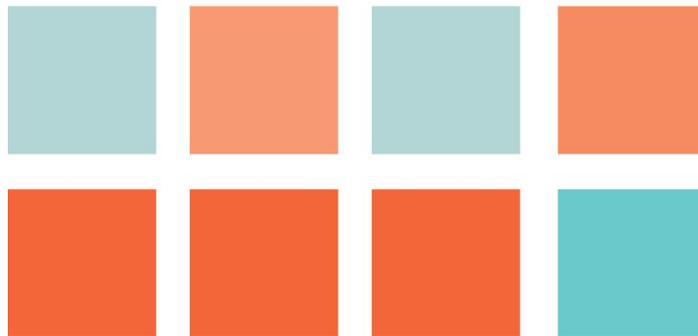


Bill 55: Taking Deficits Seriously

Submission:
Standing Committee on Finance and Economic
Affairs

June 12, 2012



RNAO is the professional association for registered nurses who practise in all roles and sectors in Ontario. Our mandate is to advocate for healthy public policy and for the role of registered nurses in enhancing the health of Ontarians. Bill 55 is a major piece of legislation that not only implements Budget 2012 but also a series of related and unrelated measures. RNs have concerns about the health and nursing impacts of many elements of the Bill, and are pleased to have this opportunity to present our considered views on the matter.

Overview of RNAO Response to Bill 55.

This is the first formal occasion for consultation or input on any matter related to Budget 2012, and the scope of our submission has been accordingly expanded beyond that for a normal budget bill.

No Budget Consultations. We wish to first register our dismay that there were no formal prebudget consultations or hearings prior to Budget 2012. This was a major departure from the normal process, and that represents a diminution of public participation in the decision-making process, and a diminution in transparency. Worse, the changes proposed in the budget are dramatic and thus in much greater need of public discussion.

Furthermore, this budget was guided by the recommendations of the Drummond Commission. While the Drummond Commission met twice with the RNAO, there were no public consultations conducted by the Commission, nor have there yet been consultations on the Commission's wide-ranging recommendations, in spite of the fact that Commissioner Drummond termed the proposed spending cuts "unprecedented". That is alarming because provincial fiscal policy to 2017-18 (and not just this budget) is being guided by the Drummond recommendations; these recommendations will radically restructure what public services Ontarians continue to receive and how they will pay for them. It is utterly unacceptable that radical policy changes take place without a full public debate. We have had no formal public debate. This makes a mockery of democracy. The disappointment is all the greater because the government in its first two mandates had a very good record of open and broad consultation with the public on legislative and regulatory issues.

Wrong Focus in Budget: In addition to the unacceptable consultation process, RNAO is also concerned about the general direction of the budget itself. The focus is on aggressively fighting

the deficit, principally through cutting expenditures. These cuts will take place in an already tight budget: by its own reckoning, Ontario's current per capita program spending (2011-12) is the lowest of all provinces and at \$8,560 is 11 per cent below average program spending of the rest of the provinces.¹ Nevertheless, the government says it will not increase taxes, in spite of the fact that its tax revenue, again by its own reckoning, has fallen almost 15 per cent as a share of GDP since 1994.² Budget 2012 seeks to minimize the loss of public services due to these cuts; RNAO does support delivering the maximum quality and volume of public services for any given expenditure – that is in the best interest of both the public and of the public sector itself. However, it is difficult to imagine that cuts of the proposed magnitude would not result in a significant loss of essential public services and foregoing of services that ought to be provided, such as comprehensive home care and pharmacare. And the austerity budget does put further stresses on an economic recovery that has been comparatively weak and which has left far too many Ontarians out of work. RNAO was encouraged to see that negotiations between the government and the NDP did result in a step in the direction of resolving government's revenue problem, and that the negotiations did reduce the impact on vulnerable populations. As May 2012 elections in France and Greece have shown, voters are very concerned about the effects of a single-minded focus on deficits to the exclusion of concerns about unemployment and falling access to public services.

Too Many Inappropriate Schedules in the Budget Bill. As with many budget bills, this is an omnibus bill with multiple schedules – 69 in the case of Bill 55. Omnibus bills in general risk abridging the democratic process by rushing important legislative matters through the legislature without sufficient scrutiny and debate by the public and its elected representatives. While many of the schedules in Bill 55 plausibly relate to Ontario Budget 2012, a number of others are only tangentially related. For example, proposed shortcuts in environmental protection should receive scrutiny under separate legislation. Another example is schedules on labour arbitration which would sharply alter collective bargaining rights.

We first address some specifics of Bill 55 before returning to our commentary on the budget itself.

Specific Schedules of Concern

Weakening Environmental Legislation Measures to weaken environmental protection in a budget bill are misplaced and inappropriate. A number of environmental protection acts are affected by the following schedules: Schedule 15, the *Crown Forest Sustainability Act, 1994*; Schedule 19, the *Endangered Species Act, 2007*; Schedule 23, the *Fish and Wildlife Conservation Act, 1997*; Schedule 34, the *Lakes and Rivers Improvement Act*; Schedule 58, the *Provincial Parks and Conservation Reserves Act, 2006*; and Schedule 59, the *Public Lands Act*.

The public is very fortunate that a careful analysis of the environmental implications of Bill 55 has been done by two leading environmental law associations, Ecojustice and the Canadian Environmental Law Association.³ That analysis points out how the Bill will abridge normal public consultation. First, the inclusion of environmental amendments in the budget bill skirts requirements for public participation under the Environmental Bill of Rights, 1993, which assumes that the environmental impacts of proposed changes are not significant. This reliance on omnibus bills to amend environmental legislation has been criticized by the Environmental Commissioner of Ontario (ECO):

The ECO has long expressed concerns about the use of omnibus legislation to reform environmental laws. As far back as 1996, the ECO recommended that omnibus-style legislation only be used for housekeeping matters. Nevertheless, the Ontario government has continued to use omnibus bills to make substantive changes to the province's environmental laws, and the ECO has continued to identify problems with this approach.⁴

In an on-line comment, the ECO specifically warned about interference in the public's right to participate in environmental decisions due to environmental amendments appearing in Bill 55.⁵

Furthermore, as the environmental law analysis points out, the Bill would expand regulatory discretion, which further erodes "transparency, certainty and predictability."⁶ The extended analysis details risks of significant environmental harm, contrary to the assumptions for inclusion of environmental provisions in Bill 55.

Moreover, the context for the weakening of the Ontario environmental legislation is a very aggressive move by the federal government to use its own omnibus budget bill to greatly weaken environmental legislation.^{7 8} As the Globe and Mail noted, "The 430-page budget bill contains

170 pages of amendments on environmental assessment – not counting a few sections aimed at environmental charities – and amends a half dozen laws, including the National Energy Board Act, the Canadian Environmental Assessment Act, the Fisheries Act and the Species at Risk Act.”⁹ It would be an unhappy and, we trust, unintended coincidence for Ontario’s budget bill to provide cover to an anti-environment bill at the federal level.

RNAO accordingly endorses the May 10, 2012 call by 58 environmental, health, legal and other organizations to withdraw Schedules, 15, 19, 23, 34, 58 and 59 from Bill 55.¹⁰

Schedule 28: *Government Services and Service Providers Act*. This schedule provides Cabinet with open-ended power to contract out or privatize government services. The provisions of Schedule 28 were understood by many to be limited to Service Ontario. However, they extend to any government service or services for the broader public sector. Section 2 gives a blanket right to Cabinet to contract out or privatize any Ontario Government service:

“2. (1) The Lieutenant Governor in Council may, by order, authorize the Minister (on behalf of the Crown) to enter into one or more agreements with any person or entity for the provision of Ontario government services under this Act, and may impose conditions and restrictions on that authority.”

Section 10 would also allow designated service providers to provide services for the broader public sector (municipalities, local municipal boards, other municipal bodies, post-secondary institutions, school boards, hospitals and any other persons or entities specified under regulation). Cabinet would be empowered to establish designated service providers by regulation under Part V (Sections 22 to 25), and these service providers would be known as Part V service providers. While Cabinet may establish corporate providers by regulation, under Part V (Section 22. (2), Cabinet would also be empowered to authorize, by order, the Minister to enter into partnerships; this would presumably include public/private (P3) partnerships. Section 22. (3) would grant similar power to establish other Part V service providers.

Section 29 would, *inter alia*, empower Cabinet to grant, by order, authorization to the Minister:

“To acquire, hold, dispose of and otherwise deal with the securities, assets, liabilities, rights, obligations, revenues and income of a corporation established or acquired under Part V.” (29. (1) 1.)

“To acquire, hold, dispose of and otherwise deal with an interest in a Part V service provider other than a corporation and to acquire, hold, dispose of and otherwise deal with the assets, liabilities, rights, obligations, revenues and income of such a service provider.” (29, (1) 2.)

“To cause a corporation to be established or acquired for a purpose described in paragraph 1 or 2.” (29. (1) 3.)

“To enter into a partnership (including a limited partnership or a limited liability partnership) for a purpose described in paragraph 1 or 2.” (29. (1) 4.)

“To cause a trust or other entity to be established or acquired, or any other arrangement to be made, for a purpose described in paragraph 1 or 2.” (29. (1) 5.)

“To enter into any agreement or arrangement that the Minister considers necessary or advisable for the purpose of exercising the powers described in paragraphs 1 to 5.” (29. (1) 6.)

Combined with Part V, this would appear to empower Cabinet to enter into partnerships by order; to create designated providers by regulation and order; to privatize designated providers by order; and to sell government assets by order through first transferring them to designated providers. Section 30 would allow the Treasury Board to transfer assets to Part V providers “with or without consideration.”

Furthermore, as international trade law expert Steven Shrybman has pointed out, the Schedule is all the more dangerous because once a service is privatized, international trade agreements such as the World Trade Organization *General Agreement on Trade in Services* will make it very difficult to make it public again, as foreign service providers would be able to file claims for violation of their commercial rights.¹¹

The upshot is that Schedule 28 would become a powerful irreversible privatization act – the *Government Services and Services Providers Act, 2012*. It would come without the normal constraint of a stated purpose, with extraordinary powers for Cabinet to proceed by order and

regulation, with no limits on which services could be privatized, and with no requirements for transparency or accountability. It would confer these extraordinary powers on current and future governments. And as the Ombudsman of Ontario warns, the Schedule would remove his oversight of these services.¹²

Schedule 28 is a far-reaching piece of legislation that RNAO cannot support. It certainly should not appear in an omnibus bill, and we urge it to be withdrawn in its entirety.

Schedule 16: *Delegated Administrative Authorities Act, 2012*. From the summary of Schedule 16

“The Schedule enacts the Delegated Administrative Authorities Act, 2012, which expands on and replaces the Safety and Consumer Statutes Administration Act, 1996, providing a framework for the delegation of the administration of specified legislation to delegated administrative authorities by means of regulations made by the Lieutenant Governor in Council. Consequential amendments to other Acts are also included.”

Any delegation of administrative authority of legislation carries with it the risk of reduced responsiveness, transparency and accountability. That is certainly the case with Schedule 16, as the Ombudsman of Ontario warns that his office would lose its oversight of delegated programs and services.¹³

As per the Ombudsman’s proposed solution, at a minimum, all delegated administrative authorities providing public programs and services must be subject to the *Ombudsman Act*.¹⁴ Better still, Schedule 16 should be withdrawn in its entirety.

Schedule 30: *Hospital Labour Disputes Arbitration Act (HLDA)*. This schedule will affect the many RNs working in hospitals. The schedule is similar to Schedules 1, 22, 52, and 68. It would impose additional constraints on the existing arbitration process in collectively bargained settings. The Ontario Nurses’ Association (ONA), which represents the vast majority of hospital RNs, opposes changes to the HLDA on the grounds that:

- a) HLDA timelines are already more expeditious than those proposed in Bill 55; and,

- b) proposed imposition of further criteria for “proper consideration” of criteria could delay awards due to unnecessary judicial review; a proposed referral to the Ontario Labour Relations Board (OLRB) of delayed awards is redundant, given that the Minister already has the authority to issue orders and given that neither employers nor unions have yet to resort to that route; moreover, ONA is concerned that the OLRB decision would be based solely on written submissions.

ONA argues that HLDAA has worked well since enactment in 1964. If the government believes that it has a case to make for changing interest arbitration in the public sector, it should make that case in a separate piece of legislation. We urge dropping Schedule 30 (and Schedules 1, 22, 52, and 58) from Bill 55.

The 2012 Ontario Budget

The 2012 Budget is a watershed document, yet it has not been subject to public hearings, nor was it preceded by pre-budget consultations as has been customary. As this is the first opportunity for RNAO to respond formally to the budget, the Budget 2012 is a significant portion of our submission on Bill 55.

Restructuring by Stealth: Time for a Public Debate about the Full Economic Toolkit

The triple whammy of the Drummond Commission, Ontario Budget 2012 and federal budget 2012 are a wake-up call to Ontarians. They herald a radical restructuring of the Ontarian economy. The Drummond Report has many recommendations worthy of support, but the Commission was constrained to eliminate Ontario’s large deficit with no mandate to raise tax rates. Hence, its recommendations were obliged to rely almost entirely on spending cuts, which would cumulatively amount 16.2 per cent from Ontario program spending by 2017-18, which Mr. Drummond correctly termed “unprecedented”. Ontario Budget 2012 implemented significant cuts, although not as aggressive as recommended by Drummond. The federal budget would compound the effects of those cuts with cuts of its own. It will not be possible to maintain current levels of service, leave alone attend to pressing needs in poverty reduction, housing, home care, long-term care, child care, and environmental protection. These are economic policy choices that radically depart from prior patterns; alternatives must be thoroughly discussed with the citizens of Ontario before we are launched on a potentially dangerous path.

Ontario is beset with major social and economic challenges:

- The poverty rate resumed its upward climb with the onset of the 2008 recession, reflecting the deteriorating income distribution in the province. On the upside, the measured child poverty rate dropped to 14.6 per cent, a 4.6 per cent drop (by 19,000) in the children living in poverty.¹⁵
- Ontario was disproportionately hit by the increasingly overvalued Canadian dollar, which has helped transform the Canadian economy from a net exporter to a net importer of goods and services, with huge losses of good jobs. The dollar has been over 20 per cent overvalued in recent years, which puts Ontarian and Canadian manufacturers at a huge disadvantage. This demands action.
- Unemployment remains stubbornly high, especially among young people.
- Past tax cuts have hamstrung the capacity of government to balance the books and to deliver the services essential to a healthy society. Ontario's tax revenue has dropped as a share of GDP by almost 15 per cent since 1994, and that contributes to the huge deficit and to the low level of per capita program spending (11 per cent lower in Ontario than in the other provinces).

Ontario has not had comprehensive prebudget public consultations this year, and that is very disturbing, particularly given the sweeping changes proposed in Budget 2012. It is time to consult Ontarians on:

- What services they want government to provide.
- How those services are to be paid for.
- How to reverse the adverse trends in the Ontario economy. They are the result of policy decisions taken largely at the federal level, and Ontarians cannot afford to be passive recipients of these decisions.

RNAO Budget Recommendations

Recommendation 1. Give Ontarians proper consultations on the proposals of the Drummond Commission, and more broadly on what services government should provide and how those services should be paid for. On the agenda must be fiscal capacity and the ability to generate

revenue by socially useful means. As part of this public discourse, review all options to raise the revenue necessary to maintain a healthy society in ways that are fair and provide incentives to socially beneficial activities. For example, fairness must weigh ability to pay, while efficiency and equity points to charges on harmful activities such as environmental destruction and release of greenhouse gases.

Recommendation 1a. Review with provincial and federal partners all means necessary to restore the exchange rate to a level that gives Ontario's traded sector a level playing field (targeting a fair exchange rate of about 82 cents US). A key tool must be monetary policy and a Bank Rate that supports a more reasonable exchange rate.

Recommendation 2. As a first step to maintaining income for the most marginalized populations, raise social assistance and disability support payments by at least two per cent, and then peg them to the Ontario Consumer Price Index. The negotiated increase of one per cent in amending the budget is a first step. Keep promised increases in the Ontario Child Benefit on time.

Recommendation 3. As a step to help the working poor, raise the minimum wage by 75 cents to \$11 per hour, and appoint the promised minimum wage advisory committee.¹⁶

Recommendation 4. Commit to moving Ontario RN-to-population ratios towards the national average. As interim steps, complete the government's 2007 undertaking to increase nursing employment by 9,000 positions, and commit to raising RN employment by 9,000 positions over the coming four years. The announced creation of 922 nursing positions is a step in the right direction.¹⁷ Even if all 922 positions were new RN positions, that would still represent a growth rate (less than one per cent) slower than the growth rate of the Ontario population (about 1.2 per cent), meaning that the Ontario RN/population would continue to decline.

Recommendation 5. Expand the capacity of colleges and universities to educate more nurses, as per Drummond Recommendation 5-21. Ensure that 9,000 of the 60,000 post-secondary seats announced in the 2011 Budget go to nursing students, as originally indicated by the government.

Recommendation 6. In the spirit of the Drummond Report health system vision:

- Place more emphasis on health promotion.

- Shift the main point of contact to primary care.
 - Optimize the use of family practice nurses in primary care.
- Allow all health professionals including RNs and NPs to work to their full scope of practice.
 - As part of this strategy, include RNs and NPs as part of Family Health Teams (see Drummond Recommendation 5-62)
- Maximize opportunities to use nurse practitioners (NPs) with the aim of efficiency, while maintaining excellent care. (Drummond Recommendation 5-20)
 - Fund 50 additional NP-Led Clinics by 2015 (in addition to the 26 that are already announced or up and running), in order to enhance access to primary care in all communities.
 - For best outcomes and cost-effectiveness, NP-Led Clinics must be fully staffed. Invest in existing as well as new NP-Led Clinics, with a minimum of six NPs, two RNs and one RPN in addition to administrative staff within the funding envelope.
- Support the Drummond Commission recommendation that seniors and younger populations with special needs be provided with knowledgeable, integrated care across the continuum. In long-term care, legislate standards guaranteeing funding of no less than an average of .59 RN hours per resident day, with greater acuity requiring more care.
- Support a staff mix in long-term care homes with NPs, RNs and RPNs working to their full scope. This means a staff mix of one NP per LTC Home, with no less than one NP per 150 residents, at least 20 per cent RNs, 25 per cent RPNs and 55 per cent personal support workers (PSWs), subject to increases in line with greater acuity. Having two RNs working 24/7 per 100 beds is established as a minimum.

¹ Duncan, D. (2012). *Strong Action for Ontario: 2012 Ontario Budget*. P. 8. Retrieved May 14, 2012 from: http://www.fin.gov.on.ca/en/budget/ontariobudgets/2012/papers_all.pdf.

² Ibid, p. 8.

³ Canadian Environmental Law Association, Ecojustice. (2012). Environmental Laws Impacted by the Budget Bill. April. Retrieved May 14, 2012 from: http://www.ecojustice.ca/ecojustice-cela-legal-analysis-re-bill-55-ontario-budget-2012/at_download/file.

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- ⁴ Environmental Commissioner of Ontario. (2011). *Engaging Solutions*. P. 137. Retrieved May 14, 2012 from: http://www.eco.on.ca/uploads/Reports-Annual/2010_11/Final-English-Bookmarked-2010-AR.pdf.
- ⁵ Environmental Commissioner of Ontario. (2012). *The Omni-Budget Surprise*. April 2, 2012. Retrieved May 21, 2012 from: <http://www.eco.on.ca/blog/2012/04/02/the-omni-budget-surprise/>.
- ⁶ Ibid, p. 4.
- ⁷ For example, read Canadian Environmental Law Association. (2012). *Federal Budget Bill Will Weaken Canada's Environmental Regulations*, April 26. Retrieved May 15, 2012 from: <http://www.cela.ca/newsevents/media-release/federal-budget-bill-will-weaken-canadas-environmental-laws>.
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- ⁹ McCarthy, S. (2012). Budget bill gives Harper cabinet free hand on environmental assessments, *Globe and Mail*, May 9, 14. Retrieved May 14, 2012 from: <http://www.theglobeandmail.com/news/politics/budget-bill-gives-harper-cabinet-free-hand-on-environmental-assessments/article2428091/>.
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- ¹² Marin, M.. (2012). *Submission to the Standing Committee on Finance and Economic Affairs relating to Bill 55, the Strong Action for Ontario Act (Budget Measures), 2012*. June 11. p. 9-10.
- ¹³ Marin, M. Op. Cit, p. 7-9.
- ¹⁴ Marin, M. Op. Cit, p. 10
- ¹⁵ Ontario Campaign 2000. (2012). *Poverty Reduction in an Age of Uncertainty and Change*. February. P. 2.
- ¹⁶ 25 in 5 Network for Poverty Reduction. (2011). *Common Ground: A Strategy for Moving Forward on Poverty Reduction*, Dec. 5. p. 7.
- ¹⁷ Ontario Ministry of Health and Long-Term Care. (2012). *Ontario Expanding Nursing Care*, May 10. Retrieved May 14, 2012 from: <http://news.ontario.ca/mohltc/en/2012/05/ontario-expanding-nursing-care.html>.