

**Comments from CUPE Ontario
and the
Ontario Council of Hospital
Unions/CUPE on the
Proposed Regulations Pertaining
to the
Health and Supportive Care Providers
Oversight Authority**

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The Canadian Union of Public Employees is the largest union in Ontario, with over 270,000 dues paying members. We represent workers in practically every town, city, county, district social service board, and unincorporated area in the province. With over 75,000 health care members in Ontario, we are also the largest health care union in the province. The Ontario Council of Hospital Unions/CUPE is the bargaining council for 40,000 CUPE hospital workers in the province. CUPE represents approximately 30,000 Personal Support Workers (PSWs) employed by long-term care homes (LTC), home and community care organizations, and hospitals in Ontario. Personal support work is the largest single category of work carried out by CUPE members in Ontario.

We write in response to the request for comments on the Proposal to Inform Regulations of the *Health and Supportive Care Providers Oversight Authority Act, 2021*. OCHU/CUPE has previously made submissions about this legislation, and we note that many of our prior concerns remain unaddressed in the current proposal. We rely on our 2021 Submission to the Standing Committee on Social Policy, which is attached for ease of reference, but wish also to highlight some of the key problems we see with the current Proposal to Inform Regulations.

Grandparenting: We are pleased to see that our concerns regarding those who have years of experience as PSWs but may not meet the current educational background requirements of PSW programs have been partially addressed in the Proposal. It is our view that the Regulation should be clear that the “assessment” required by Legacy Registration Pathway “C” should only be an assessment of hours worked in a PSW equivalent role providing health and supportive care services. With respect to the

number of hours required, OCHU/CUPE recommends that 1000 hours over a 5 year period would be a reasonable amount of experience to require for a Legacy Registration.

Fees: We reiterate what we said in our 2021 submissions: PSWs are not well paid. The profession is characterized by low wages and the lack of full-time work. These workers cannot be expected to take on extra costs, particularly in an economic reality of entrenched and extreme inflation. While we understand that a request has been made for the Ministry to continue funding the Oversight Authority for another 2 years, but after that the registrants will bear the cost of funding the Authority, including the newly introduced Funding for Therapy and Counselling. While we support the creation of funding for this purpose, to expect PSWs who can barely pay their bills to fund this endeavour is not sustainable. We strongly recommend that the Ministry reconsider this aspect of the Oversight Authority's funding model.

Due process: As we identified in our previous Submission, the right to due process is a key issue. Under the proposed legislation, the Board appoints a CEO, an employee of the Authority with extraordinary power to make unilateral decisions about whether to register, deregister, or impose conditions on registrants at initial registration or renewal. This power, which we identified as problematic, has been confirmed by the Proposal. Most of our other concerns about the legislation have also gone unaddressed in this Proposal which will form the basis of the upcoming Regulations.

For example, there still appears to be no full right to appeal to the Health Professions Appeal and Review Board (HPARB) on these decisions about registration, only a written

review. This is in contrast to the self-regulatory system, where individuals denied registration have the option of appealing that decision and requiring that the HPARB hold a review or full hearing, with specified rules of procedure to ensure a fair testing of the evidence on such a critical issue. While we recognize registration is not mandatory at this time, employers can make it mandatory and so we reiterate that this is an extraordinary power to give to the CEO of the Authority without a corresponding right to a full appeal.

In terms of complaints, the CEO may appoint investigators, but the Proposal is completely unclear as to whether the investigator is an independent third party or just another employee of the Authority. As we have outlined before, in order to ensure procedural fairness for registrants, we believe investigators should be independent third parties.

From the Proposal and accompanying webinar, it is clear that the CEO can unilaterally decide to do a number of things following a complaint being lodged – they can try to mediate or resolve the complaint, issue a written warning, require further education or training, impose conditions, or refer the complaint to the Discipline Committee. In addition to the fact that the CEO wields this power with no apparent check or balance, there also does not appear to be any mechanism to challenge the CEO's determination of how a complaint is addressed (again, in contrast to the College system, where these decisions are subject to review).

While in the normal course, informing a registrant of a complaint within 14 days is required, the CEO is also afforded an extraordinary power to impose conditions on a

registrant with no notice, referred to as “interim urgent action”. The Proposal is vague and provides no details as to what the criteria might be for such extreme action, which would impact the livelihood of a registrant immediately. Needless to say, such draconian rules will have a detrimental impact on registrants’ morale.

If a complaint is sent to the Discipline Committee – a committee which is appointed by the Board and notably devoid of any PSW representation – that Committee will determine whether there has been a breach of the Code of Ethics and can impose orders directing the CEO to revoke, suspend or impose conditions, on the registrant’s registration. Even more problematically, if the CEO or Discipline Committee orders revocation, suspension, or conditions, it takes effect immediately, regardless of any appeal. In the case of urgent interim action, an order can even be made without notice to the registrant.

OCHU/CUPE and CUPE Ontario have consistently argued that in any such disciplinary process there must be a right to a hearing, with robust rules of evidence and procedures, including knowing the case to be met, the right to cross examine witnesses, the opportunity to be represented by a lawyer or other representative, and the right to written reasons. These are the basic tenets of procedural fairness. The Proposal, while noting the Committee will hold a hearing, is devoid of any details around how that hearing will be run to ensure fairness and natural justice are respected.

Again, this is in contrast to the *Health Professions Procedural Code*, enshrined as part of the *Regulated Health Professionals Act*, which sets out very detailed rights of due process applicable to each and every college. We certainly hope that the Regulations,

once drafted, will contain similar details to lend legitimacy to the Discipline Committee processes.

Similarly, there is no detail about what an appeal entails other than noting an Appeals Committee appointed by the Board will convene a hearing. The criteria for being appointed to this committee also exclude PSW representation. It is problematic that there is no independent external review of the critical decisions about the right of PSWs to work in their chosen profession. This is in contrast to the *RHPA*, which contemplates a right of appeal to court.

Finally, we wish to reiterate our concern that in contrast to the *RHPA*, this Proposal still does not contemplate an alternative process to identify where a registrant may be incapacitated — where the individual is suffering from a physical, or mental condition, or disorder that impacts on the individual's ability to practise safely. In our view, it is important that there be a mechanism to identify where a member is incapacitated for a number of reasons, including that individuals should not be subject to discipline where their actions are outside of their control. Again, the lack of such a procedure or mechanism to address a very real and pressing issue in the health care workforce is a glaring omission in the proposed regulatory process. We recommend that the Regulations when written incorporate reference to an alternative process to address incapacity issues.

We remain willing and available to meet with the Ministry to discuss our concerns and hope to engage in meaningful consultation so that they may be addressed in the pending Regulations.

Recommendations:

1. Any of the committees appointed by the Board (i.e., the Discipline Committee and Appeals Committee) should be comprised of a majority of PSW registrants.
2. The rules of procedure applicable to any proceeding should be specified in the Regulation itself and mirror the procedural protections in the *Regulated Health Professions Procedural Code*, not left to bylaws and/or policy. These rules of procedure would address the right to disclosure of relevant information and documents as well as written notice of the case to be met, encompass robust rules of evidence, including the right to cross-examine witnesses, provide the right to representation, and the right to a written decision with detailed reasons.
3. The CEO's unilateral decisions about registration or complaints should be subject to a full right to appeal to the Health Professions Appeal and Review Board, either by "review" or a "hearing", at their election. These proceedings should be governed by the same procedural rules applicable to the Colleges.
4. The draconian power of the CEO to issue conditions through "interim urgent action" should be revoked.
5. There should be a right to a full hearing before the Discipline Committee and the Appeals Committee, with a right to appeal any decision of either Committee to the Divisional Court.