

# “As Of Right” Legislation – Bill 60

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Julie Maciura  
Rebecca Durcan

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# Before we begin...

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- If listening by phone:
  - Phone access (Toronto): (647) 497-7729, PIN: 332966384#
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  - [jmaciura@sml-law.com](mailto:jmaciura@sml-law.com)
  - [rdurcan@sml-law.com](mailto:rdurcan@sml-law.com)

# Initial Announcement

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- On January 19, 2023, Ontario Premier's office announced that gov will allow health care workers registered in other provinces/territories to immediately start working in Ontario without registering with the Ontario regulator
- Press release said such workers can only do that if they have "provided safe, competent and ethical care" in their home province or territory



# Bill 60

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Legislative  
Assembly  
of Ontario



Assemblée  
législative  
de l'Ontario

1ST SESSION, 43RD LEGISLATURE, ONTARIO  
1 CHARLES III, 2023

## Bill 60

**An Act to amend and enact various Acts with respect to the health system**

**The Hon. S. Jones**  
Minister of Health

**Government Bill**

- March 1, 2023, Bill 60 passed second reading; referred to Standing Committee
- The “As of Right” legislation will only apply (as of now) to doctors, nurses, respiratory therapists and medical laboratory technologists

# What we are not addressing

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- This session is not addressing political and equity considerations, such as:
  - Draining practitioners from already underserviced areas
  - Draining practitioners from rural areas
  - Funding competition (wealthiest/most generous provinces “win”)

# Bill 60

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- Mechanism for implementing these changes
- Proposal to amend those four specific health profession acts to allow Minister to pass regulations exempting a person from the “holding out” and “protected titles” sections of those acts
- What about controlled acts?
  - The RHPA already has a provision that allows exemptions (O. Reg. 107/96)

# Current Labour Mobility Context

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- Government says the changes will “help health-care workers overcome bureaucratic delays that have made it difficult to practice in Ontario”
- But existing labour mobility laws already allow a practitioner currently registered elsewhere in Canada to register in Ontario in an equivalent class, subject to providing proof of “professional suitability” (i.e., letter of standing)
  - Anecdotally, most regulators can process a labour mobility candidate within a week



# Labour Mobility

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- Early discussions seem to suggest that practitioners working under the Ministerial exemption will ultimately have to register in Ontario
- If so, how would Bill 60 achieve anything substantively different from the current labour mobility rules (other than a short interim period of not being registered)?



# Confusion

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- Bill 60 currently impacts four professions but has implications for all regulators because of the precedent it sets
- And the proposal raises many questions



# Prior “Competent” Care

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- “Good standing” generally means nothing other than that fees have been paid and practitioner can currently practise (i.e., it does not mean the practitioner does not have a prior history)
- What does the Ministry mean by “safe, competent, ethical care”?



# Prior “Competent” Care

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- Who will determine that the practitioner has provided safe, competent and ethical care in their home province or territory? (or even that they are simply in “good standing”?)
- Ontario government?
- Employer/hospital?
- Ontario regulator?

# Prior “Competent” Care

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- How much info will other jurisdictions be able to share with Ontario government or an Ontario employer?
  - Most provincial legislation imposes onerous confidentiality rules on regulators and limits what they can share/ who they can share it with
  - If they can't share info with gov or employers, will gov insist that Ontario regulator get involved?

# Prior “Competent” Care

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- If it turns out that practitioners will ultimately have to register with the Ontario college, what if that regulator disagrees that the applicant has provided prior competent, ethical and safe care?
- Can the earlier decision of employer/government be overridden?
- Will the initial decision to allow the practitioner to work here because they are deemed to be in “good standing” impact the regulator’s later decision?

# Race to the Bottom?

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- Will jurisdiction-shopping for registration occur if no need to be registered in Ontario to work here?
- Will applicants register where there are:
  - Lowest fees
  - No criminal record check
  - No professional liability insurance requirement
  - Least rigorous CPD/QA/currency hour requirements
- This will really only be a concern if there is no requirement to ultimately register in Ontario

# Race to the Bottom?

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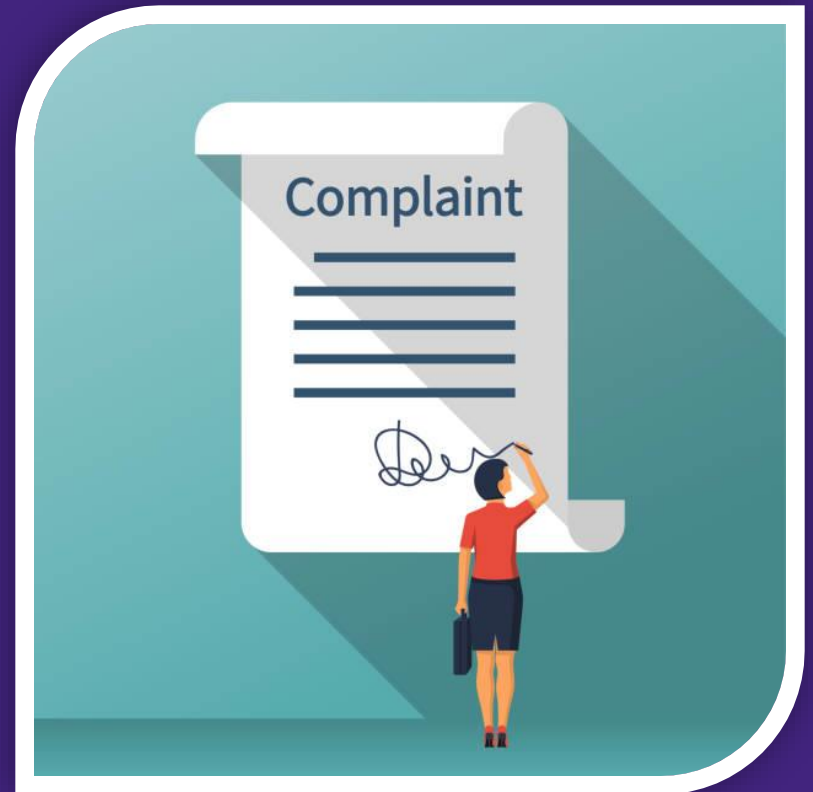
- Regulators have seen examples of labour mobility applicants seeking to be registered in Ontario because of conduct issues in their home jurisdiction – this will likely increase under Bill 60



# Complaints

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- How will another province handle complaints for conduct that occurs in Ontario?
- Will they handle such complaints at all?
- A regulator's ability to summons documents and force cooperation from witnesses only applies in the originating jurisdiction
  - E.g., a regulator in BC cannot enforce a summons in Ontario (provincial jurisdiction)

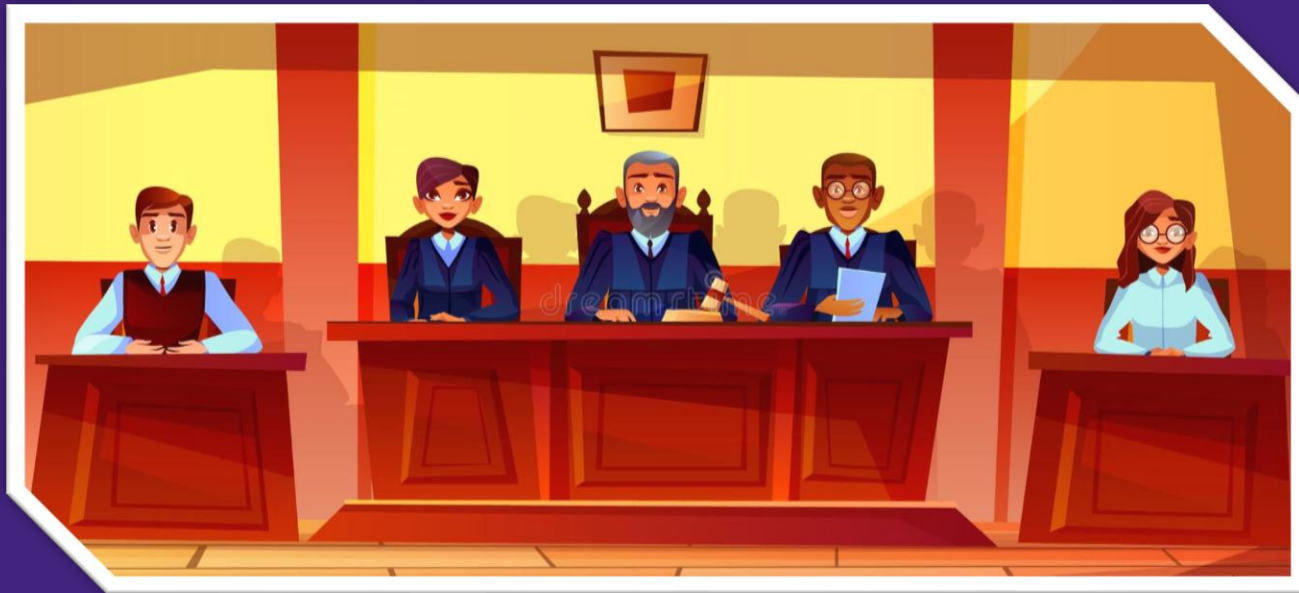




# Complaints

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- Will patients have to travel to the other jurisdiction to testify in a discipline proceeding (assuming the regulator is able to obtain the other evidence it needs to prove the case)?
  - Perhaps less of an issue now that most hearings are done virtually



# Complaints

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- RHPA provides considerable rights to complainants in complaints and discipline process that other provincial legislation may not
- Will Ontario patients have a “two-tier” complaint system (i.e., with fewer rights if the practitioner is not registered in Ontario)?

# Other Jurisdictions

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- What if other regulators prohibit their members from practising in Ontario?
- Can they do that?
- Will regulators have to prohibit anyone? (i.e., are there large numbers of practitioners in Canada who would have moved to Ontario but for having to pay fees to a regulator?)

# Scope of Practice

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- What if the scope of practice of practitioner's home jurisdiction is different than that of the Ontario profession?
- Does practitioner get to practise to the (broader) scope in Ontario even if they had no training in that area?
- Or will their practice be limited beyond what they can normally do if the scope in Ontario is narrower?

# How will Restrictions be Addressed?

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- What if there are restrictions on the practitioner in their home jurisdiction (either restrictions on that entire class of certificate or TCLs on that particular registrant)?
- Who will identify those?
- Who will enforce those?



# Employer Issues

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- Most of the four professions are covered by hospital liability insurance (i.e., it does not “travel” with the practitioner)
- Will Ontario hospital liability insurance cover practitioners not registered in Ontario?
- Will employers/hospitals be willing to hire practitioners who are not registered in Ontario?

# Emergency Class of Registration?

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- How does Bill 60 intersect with the emergency class changes just drafted by regulators?

# Facilitating Cooperation

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- Instead of acting unilaterally, does it make more sense to facilitate cooperation amongst regulators?
- Canadian lawyers can practise in all common law provinces up to 100 days each year without being licensed in the other jurisdiction pursuant to the National Mobility Agreement.





# Facilitating Cooperation

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- Atlantic provinces recently announced the “Atlantic Physician Register” expected to launch May 1
- Opting into the registry will allow them to work in any Atlantic province without additional licensing



# Consequences of Unilateral Action

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- Unilateral legislation like Bill 60 arguably reduces opportunities for regulators to work out issues such as:
  - National register
  - Registration-fee sharing
  - Information sharing
  - Common rules about telepractice
  - Common CPD, QA and currency hours
  - Common definition of “good standing”
  - Ensuring registrants comply with TCLs and other restrictions
  - Ensuring registrants notify their “home” jurisdiction when working elsewhere

# What should Ontario Regulators Do?

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- Provide feedback to Ministry regarding the regulations?
- Should the impacted regulators advise public (and employers) that they will have no authority over practitioners practising here under a Ministerial exemption?
- Be prepared to field calls about practitioners who are not your members. Will you be expected to obtain information about those practitioners from your counterpart in another jurisdiction?

# What should Ontario Regulators Do?

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- Consider highlighting the existing labour mobility rules and encourage practitioners to apply using that process? (especially if the regulations require them to register in Ontario eventually)
- Consider incentivizing the current labour mobility process (such as reducing fees for the first year of practice, on the theory that the applicant might also be paying full dues elsewhere until they get settled in Ontario)?



# Closing

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- We recognize that we asked more questions than we answered
- The devil is in the detail (regulations)
- Until those are passed nothing will happen
- This may simply be a public relations exercise

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**Steinecke Maciura LeBlanc**  
Barristers & Solicitors  
401 Bay St., Suite 2308  
[www.sml-law.com](http://www.sml-law.com)

Blog: [sml-law.com/blog-regulation-pro/](http://sml-law.com/blog-regulation-pro/)  
 @SMLLawToronto

Julie Maciura

Tel: 416-234-0123

Email: [jmaciura@sml-law.com](mailto:jmaciura@sml-law.com)

Rebecca Durcan

Tel: 416-644-4783

Email: [rdurcan@sml-law.com](mailto:rdurcan@sml-law.com)