

## HEALTH LAW BULLETIN

May 2004

### MOVING FROM “ACCOUNTABILITY” TO GOVERNMENT “CONTROL” IN HEALTH CARE

A number of significant events are occurring that could affect the future of patient care in Ontario and the level of government control on the mission and objectives of health care organizations in Ontario, such as hospitals. This Bulletin reviews some of these initiatives and the potential effect they may have on Ontario hospitals.

### IS IT PRUDENT TO SET THE PUBLIC FINANCIAL WATCHDOG LOOSE ON ONTARIO'S HOSPITALS?

On December 9, 2003, Ontario Finance Minister Greg Sorbara introduced Bill 18, *An Act Respecting the Provincial Auditor*. If passed, the legislation will significantly expand the role and powers of the Provincial Auditor, to be known as the Auditor General. The Auditor General will be able to conduct value-for-money audits of various institutions, including public hospitals.

When introducing Bill 18, Minister Sorbara announced that “[the Ontario government] will allow the public watchdog to shine a light on more of those organizations that spend taxpayer dollars as a key means of ensuring that Ontarians are getting value for the money they invest in their public services.”

Increased accountability in government is a desirable objective. However, the proposed value-for-money audits could result in increased governmental intervention and subsequent control over the activities of hospitals, and a corresponding loss of hospital autonomy and community governance.

### OBJECTIVES

In keeping with the Liberal government’s “positive change agenda”, Minister Sorbara stated that Bill 18 will make the entire public sector more transparent and accountable to the people of Ontario.

Approximately 80% of total government expenditures, excluding debt servicing, are composed of transfers to public sector organizations and individuals. Given this breakdown in expenditures, increased accountability for government suggests the need for increased accountability of those who receive transfer payments.

The Provincial Auditor believes his powers are too limited since he can only do inspection audits to determine whether grant recipients spent funds for their intended purposes. He has pleaded for power to conduct full-scope, value-for-money audits of grant recipients to “better serve” the Legislative Assembly. His prayers are answered by Bill 18.

### PROPOSED AMENDMENTS

Bill 18 will give the Auditor General the authority to conduct full audits of the SUCH sector (school boards, universities, colleges and hospitals), crown corporations and their related subsidiaries.

These so-called value-for-money audits are intended to address two main questions:

- whether funds were spent with appropriate consideration of economic and efficiency concerns; and
- whether appropriate procedures exist that measure and report on the effectiveness of programs.

## IMPACT ON HOSPITALS

Bill 18 is not designed to be a direct control mechanism over the institutions subject to its requirements. However, a significantly increased level of control is inherent in many of the proposed requirements and objectives.

The proposed legislation increases the likelihood of confusion between accountability and control in at least two respects:

- having the Auditor General audit hospitals would place too much emphasis on hospital performance from a narrow financial perspective, while fundamentally ignoring community needs and clinical and quality of care objectives; hospital decisions are more than just financial, they encompass patient care and community care needs; and
- detailed value-for-money audits by the Auditor General would lead to increased micro-management of hospitals by government which would further erode hospital autonomy and governance in Ontario.

## HOSPITALS AS GOVERNMENT REPORTING ENTITIES?

The Public Sector Accounting Board recently announced a proposal to amend the government reporting entities section of the CICA Public Sector Accounting Handbook. The recent initiatives of the Canadian Institute of Chartered Accountants with regard to public sector accounting guidance could result in the full consolidation of hospitals into the Ontario government's financial statements.

The Provincial Auditor's 2003 Annual Report suggested that the Ontario government conduct an assessment to determine whether hospitals are sufficiently controlled by the government to warrant their inclusion in the Government of Ontario accounting entity.

The recently released 2004 Ontario Budget reports that the Ontario government has concluded its assessment and has determined that it is appropriate to include hospitals in the government reporting entity. In the government's view, the only question that remains to be determined is how, and to what extent, this consolidation will take place.

The implementation of the Public Sector Accounting Board proposal would require an eventual move to full consolidation of organizations that meet the CICA criteria for control. This would require that hospitals adopt the same accounting policies as the Province of Ontario, as opposed to the generally accepted accounting standards appropriate for not-for-profit organizations. In addition, each item of hospital revenue, spending, assets and liabilities would be included on the government's financial statements.

The 2004 Budget suggests that the Ontario government would prefer a more limited form of consolidation. In their view, this would allow the government to exercise "high-level control" while still recognizing that hospitals and similar organizations operate with a greater degree of autonomy than directly controlled organizations. Despite their expressed preference for a limited form of consolidation, the Ontario government did not take the position that full consolidation would not take place, and instead merely stated that they would work with the PSAB and the Office of the Provincial Auditor to resolve their concerns.

The results of these consultations could be influenced by the enactment of Bill 18 and of Bill 8, *The Commitment to the Future of Medicare Act*, which requires accountability agreements to be signed between hospitals and the Minister of Health and Long-Term Care. Bill 8, which passed second reading on April 14, 2004, has attracted a greater share of attention than has Bill 18, but both bills contain expanded powers that suggest the potential for the Ontario government to exercise greater control over the management, administration and governance of hospitals.

The April 15, 2004 report prepared for the Ontario Hospital Association entitled *From Accountability to Control* notes that the potential for the Ontario government to exercise control pursuant to the powers set out in Bill 18 or Bill 8 could significantly alter the way in which the CICA criteria for reporting entities applies to hospitals.

The OHA Report states that the likely result of the amendments would be the consolidation of the accounts of Ontario hospitals into those of the Province of Ontario. The OHA Report lists the following concerns that were raised with respect to this consolidation of accounts:

- confusion between the respective responsibilities and accountabilities of government and hospitals;
- reduced effectiveness of public sector institutions;
- diminished governance and effectiveness; and
- diminished volunteerism and citizen engagement.

The extent to which hospital books are to be part of the Province's financial statements will likely determine the level of control that will be exercised by the Ontario government over hospitals in the future. Indeed, if hospitals are placed on the books of the government, it is likely that the Legislature will look to the Minister of Health and Long-term Care for direct accountability for all hospital activities, leading to even greater control and micro-management.

### **COMMUNITY GOVERNANCE**

Hospitals are closely tied to the communities they serve. Community volunteers serve on hospital boards and ensure that hospital policies address the concerns of their local communities.

The extent to which the Auditor General's value-for-money audits will interfere in the direct relationship between hospitals and their communities remains to be seen.

The potential for the micro-management of Ontario hospitals by government raises the concern of a loss of local accountability. Ontario hospitals are heavily reliant on local volunteers, both for their service with respect to hospital boards, and in relation to community fundraising.

### **HOSPITAL ACHIEVEMENTS IN ACCOUNTABILITY**

Ontario hospitals have played a leadership role in establishing a framework for accountability, including the development and implementation of the following measures:

- through the Ontario Hospital Association, they created the first hospital data collection organization to monitor hospital activity;
- they have acted as leaders in the development of the formula for hospital funding;
- they publish reports and operating plans that are available to the public; and
- they produce annual hospital report cards that provide for comparative assessment of hospital performance. These hospital report cards are one of the most comprehensive reporting systems in North America.

In addition, the Ontario Hospital Association has prepared an April 2004 policy framework, *Advancing Accountability Through Hospital Funding Reform* that presents a new funding approach directed towards the promotion of accountability. In the Policy Framework, the Ontario Hospital Association advocates an approach that considers the unique attributes of hospitals, and bases its funding on patient care needs.

The paper includes a statement by Senator Michael Kirby, Chair of the Senate Social Affairs Committee, who indicates that top-down control should be rejected in favour of a system of incentives that would ensure and promote efficiency and effectiveness of health care systems. Senator Kirby goes on to credit the initiatives of the Ontario Hospital Association in encouraging debate and consultation through the preparation of the Policy Framework.

The inclusion of Ontario hospitals in value-for-money audits should not happen without recognizing the significant steps that have already been taken by hospitals themselves to promote accountability and without establishing safeguards (in legislation or otherwise) that hospitals, as independently governed entities, will not be fully consolidated into the government's books.

**BALANCING ACCOUNTABILITY AND AUTONOMY**

Accountability must be balanced with a hospital's autonomy. Ontario hospitals are already subject to significant checks and controls, and there are legitimate concerns that the benefits of the amendments will not outweigh problems arising from reduced autonomy. The final policy should combine effective transparent accountability with the maintenance of independent governance.

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*The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.*

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## HEALTH

Our Health Law Group regularly assists hospitals, charitable foundations, pharmaceutical companies, health care agencies, professional associations and health care professionals with both routine matters and specialized concerns. Our extensive specialized knowledge and experience in the health care industry, combined with our progressive approach and responsible business practices, ensures that we provide cost-effective legal services that meet the needs and exceed the expectations of our clients.

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