

Ms. Laura Pisko, Director  
Health Protection Policy and Programs Branch  
Ministry of Health and Long Term Care  
393 University Avenue, Suite 2100  
Toronto, On M7A 2S1

October 5, 2018

Reference: Proposal Number 18-HLTCO24

Dear Ms. Pisko:

The Ontario General Contractors Association is an organization of 190 general contractors who work in the Industrial, Commercial and Institutional (ICI) sectors of the industry and collectively are responsible for more than \$10 billion of Ontario's annual GDP.

We recognize that the construction industry, by its nature, is one of high hazard and as such, we take our responsibility for the safety of our workers very seriously. We have been very focused on preparing for the legalization of cannabis and the need to provide oversight to assure that substance abuse doesn't compromise workplace safety.

This is a difficult challenge. Our studies have confirmed that the Ontario construction workforce is prone to the use and abuse of alcohol and drugs. The legalization and normalization of cannabis requires that we establish standards that construction workers may not work if they are impaired by drugs or alcohol. These "fit for duty" policies will only be effective if they are supported by law and at this time, there is no such legal requirement in the Ontario construction industry.

It is common for the industry to suffer about 20 traumatic fatalities each year, and 40% to 50% are suffered by persons impaired by drugs or alcohol. The legalization of cannabis will contribute to more traumatic fatalities on construction sites, but we are committed to minimizing the damage. To do this, we need the Ontario government to support construction workplace safety and provide the tools we need to establish and enforce "fit for duty" policies that require construction workers not to attend the workplace under the influence of alcohol or drugs.

The proposed use of the Smoke-Free Ontario Act to determine the legal use of cannabis under Bill 36 makes it much more difficult to manage workplace impairment, except for workplaces already designated as safety sensitive.

The Occupational Health and Safety Act provides this coverage for mining under Ontario's Mining Regulation Subsection 15(1), for Oil and Gas s.64(1), and under the Ontario Commercial Diving Regulation, 12(3)(c). Workers in these industries are specifically required to be competent and fit to perform work and not be impaired because of drug or alcohol consumption. Attached is the content of these regulations.

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There is no such requirement for construction or other workers in safety sensitive work. There is no general or specific prohibition under the OHS Act against a worker in the construction industry or in other safety sensitive workplaces from coming to work under the influence or consuming recreational cannabis or other drugs on their breaks.

The proposal to apply a regulation under the Smoke Free Ontario Act doesn't effectively establish appropriate controls for the impairment in the workplace. It prohibits the "smoking of cannabis in the same places where the smoking of tobacco and/or the use of electronic cigarettes are prohibited." This application doesn't address the impairment effect this may cause as a result of consuming cannabis. It does exempt the smoking of cannabis in enclosed workplaces as with tobacco and extends the prohibition to the driver of a vehicle or a boat for obvious reasons. It doesn't address the issue of impairment, presumably leaving it to other legislation.

The OHS Act requests that the construction industry be given the responsibility and the tools to manage impairment from drugs and alcohol including cannabis in our workplaces. The Occupational Health and Safety Act (OHS Act) should extend the requirements that exist in the mining, diving, oil and gas industries to construction and other safety sensitive industries. Furthermore, we request the ability to enforce this requirement with a reasonable facility to test for impairment. Given the legal responsibility employers have for our workers, we must have the tools to manage their safety.

We specifically recommend:

- 1) The OHS Act regulations be amended to expand the definition of industries whose workers are prohibited from being under the influence or impaired.
- 2) The OHS Act be amended to establish a positive duty on workers not to attend the workplace under the influence of drugs or alcohol that may affect fitness for duty.
- 3) The OHS Act provide employers in construction and safety sensitive industries with the authority to conduct pre-employment, proactive, reasonable cause and post incident testing.

The government of Ontario has recognized the need to keep our children and our roads safe from the impact of cannabis. We must add the safety of our workers and the workplace to that commitment.

The legalization of cannabis is an important challenge to employers and in particular, the construction industry. Any strategy to reduce accidents and fatalities must include a strategy to deal with impairment. Construction employers are prepared to address this challenge but government must provide the tools that we require to put workplace policies in place that are backed up by law.

Thank you for your consideration of our proposals.



David Frame  
Director, Government Relations  
Ontario General Contractors Association

## Occupational Health & Safety Act Regulations

Ontario's Mining Regulation, contains specific workplace drug and alcohol prohibitions. Subsection 15 (1) states that, "no person under the influence of, or carrying, intoxicating liquor, shall enter or knowingly be permitted to enter a mine or mining plant." Subsection 15(2) states "no person under the influence of, or carrying, a drug or narcotic substance, shall enter or knowingly be permitted to enter a mine or mining plant."

Similarly, Ontario's Regulation for Offshore Oil and Gas, s. 64(1) says: "(1) No person under the influence of, or carrying, an intoxicating alcoholic beverage shall enter, or be on, or knowingly be permitted to enter, or be on, a rig. (2) Subject to subsection (3), no person under the influence of, or carrying, a drug or narcotic substance shall enter, or be on, or knowingly be permitted to enter, or be on, a rig. (3) A person required to use a drug for a medical purpose and able to perform work may enter and be on a rig upon establishing medical proof thereof."

Also, the Ontario Commercial Diving Regulation says: Under clause 12(3)(c), the diving supervisor for a diving operation shall "ensure that each diver participating in the diving operation is competent and fit to perform the work"; and under section 13(1)(g), "before participating in a diving operation, a diver or standby diver shall ensure that he or she is not impaired in his or her diving ability because of consumption of alcohol or drugs."