

Presentation to Standing Committee on Justice Policy
May 11, 2006

Good Morning,

I am appearing on behalf of the Ontario Public Service Employees Union, and on OPSEU's behalf, I wish to thank the Committee for this opportunity to make submissions on this extremely important matter to our members.

Leah Casselman, the President of OPSEU, could not to here today.

I am Patty Rout, a Member of the Executive Board of OPSEU, and Chair of the OPSEU Health Council. I am also Chair of the Hospital Professional Division. I am a Laboratory Technologist by profession, and have worked in that capacity now for over 33 years. I currently work at the Lakeridge Health Corporation.

To my left is Roman Stoykewych, who is OPSEU's General Counsel. Roman will be assisting me during the course of our presentation today.

We have prepared a written brief for the purposes of this presentation in which we include OPSEU's analysis of the employment-related issues arising out of the proposed legislation. We have included our recommendations by which the interest of our members, as well as the public interest, might be better protected. In addition, we have attached to our written presentation the submissions that were prepared by our union jointly with the Ontario Nurses Association for the Campbell Commission.

These latter submissions, we think, provide the Committee with an extremely valuable chronicle of the experience of hospital workers during the SARS crisis: the extraordinary chaos that arose out the lack of preparedness and coordination, and the completely unacceptable - even in the context of an emergency - health and safety risks that employees were required undergo.

We believe that there are critical lessons to be learned from this fiasco, and strongly believe that they should not have to be learned twice. If there is a single message we wish to bring to you today, it is that preparedness and coordination during the course of an emergency is all important both to the public, but also to ensure the safety of emergency workers. And we believe that enhanced reliance on the existing structures of employment, such as the collective agreements that are in place at the vast majority of hospitals and health facilities, and the health and safety mechanisms, is the direction in which the legislation should direct all of the participants in an emergency. Our recommendations, which we will detail in a moment, are in support of that general position.

But first, I think it is important that the Committee appreciate who it is that OPSEU speaks for today. We represent approximately 30,000 health care workers in the province of Ontario, including those providing direct care to patients, as well as the whole range of technicians, emergency service workers and other who are placed at risk in the course of a pandemic outbreak. Many of these employees were directly involved – and served courageously during the outbreak of SARS in Toronto.

In addition, OPSEU represents ambulance paramedics, environmental officers, fire safety officers, meat inspectors – in short, the entire range of service employees that serve as the wall between the Ontario public and the next pandemic, the next Walkerton, train derailment, truck explosion, or even acts of bio-terrorism. All of these employees, and not just the workers engaged in health care, may be directly in harm's way in the event of an emergency. They are employees who, by virtue of their occupation, risk their lives to ensure that the public interest is served. We believe, and we are sure that the Committee will agree, that they should not be exposed to unnecessary risks and losses.

The first two recommendations that we make in respect of the current legislation relate directly to our experience during the SARS crisis. As Justice Campbell has repeatedly stated, and it is really common sense: it is extremely important that there be a well-established set of rules setting out tasks and defining lines of authority during the course of an emergency. This was almost completely lacking during the course of the SARS outbreak: various hospitals were improvising completely new methods of staffing, and were, remarkably, taking the position that the existing rules governing work, including the terms and conditions of employment set out in the various collective agreements, simply did not apply anymore. This was a recipe for chaos, and chaos there was.

We do not believe that experimenting with completely new ways of running a complex facility should take place during the course of an emergency, and instead, think that the opposite direction should be taken: OPSEU believes that employers and their bargaining agents should utilize their existing

collective agreements, which already set out the various provisions for staffing, scheduling, pay, emergency premiums, training, protection of occupational standards, accommodation of employees with particular needs and other matters that are essential to the running of a complex organization, as a basis for the employment of emergency workers. Provided that there is a clear consensus that these issues are to be dealt with jointly, collective bargaining is a remarkably flexible manner of addressing issues as they arise during the course of an emergency, and the parties to a collective agreement could and should be able to deal with the various needs that are presented by an emergency.

We believe that the existing arrangements, that is, collective agreements, provide for the best guarantee that there will be good communication, clear accountability and fair and sustainable employment during the course of an emergency. And we therefore recommend, as is set out at pages 3 and 4 of our submissions, that the government expressly provide that existing collective agreements serve as the basis of employment during the course of an emergency. And, to the extent that there are no collective agreements in place, any orders that may have the effect of requiring employees to work during the course of an emergency should specifically state the terms upon which these employees should work.

OPSEU is extremely pleased to see the proposed legislation providing for the continued operation of the Occupational Health and Safety legislation during the course of an emergency. We welcome this as an important recognition that the health and safety of workers engaged in emergency services should be a central concern during the course of an emergency.

Nevertheless, we believe that the provisions protecting emergency workers should be strengthened during the course of an emergency in order to reflect the obvious fact that they are working in conditions of increased hazard.

As we set out in our brief at pages 5 through 7, this kind of protection is peculiarly important for the bulk of employees who are likely to be utilized during the course of an emergency. These are, for the most part, employees who have extremely limited recourse to the basic protection that is afforded to the majority of workers in Ontario in respect of unsafe work – that is, the right to refuse to perform unsafe work and the various mechanisms in the Occupational Health and Safety legislation that flow from it.

Consequently, the protections that emergency workers are afforded should be strengthened during an emergency: in particular, we believe that there should be express legislative recognition that the Joint Health and Safety Committees are the forum at which issues relating to the health and safety of employees involved in an emergency ought to be addressed. The Joint Health and Safety Committees are established under the Act as the forum in which the actual experience of workers can be brought to bear upon decisions relating to the protection of health and safety. Critical information can be shared with management personnel, and the decision making

regarding health and safety is demonstrably improved by the operation of this process. The Legislature has recognized this years ago. Remarkably, during the SARS crisis, the Joint Committees were routinely ignored by Hospitals. As is detailed in our joint submission that is attached to our brief, it is remarkable that there were no more tragedies that occurred in light of the fact that the health and safety of workers were jeopardized without recourse to this basic mechanism for ensuring the health and safety of employees. The Joint Committees can and must operate during the course of an emergency, and we urge the Committee report to reflect this important need.

We also believe that the second method of protecting the health and safety of emergency workers – intercession by the Ministry of Labour ought to be strengthened during the course of an emergency. Once again, most of these workers do not have the full right to refuse unsafe work, and as a result, the role of the Ministry of Labour's Occupation Health and Safety Branch is of great importance in these circumstances. The Ministry alone is able to put an end to practices that are hazardous or unsafe. Unfortunately, during the SARS crisis, the role of the Ministry appeared to be seriously misunderstood, up to the point that the Ministry was declining to send inspectors into the workplace even in instances of serious risk to employees' health and safety.

We believe that the Ministry of Labour should be directly involved at an early stage, including the preparation stages for an emergency, in order that it may acquire the necessary technical expertise in matters related to the handling of emergencies. We further believe that the Director of the Health

and Safety Branch, who is responsible for the operation of the health and safety legislation, should be required to consult with the Joint Health and Safety committees in affected establishments in order to ensure that the provisions of the Occupational Health and Safety Act are complied with. Without such steps, we respectfully submit, the language in the proposed legislation providing that the OHSA is in full effect during the course of an emergency is merely a symbolic gesture. As the bargaining agent of the employees who must risk their lives during the course of an emergency, we would see that as an obviously hollow promise.

Justice Campbell has made it very plain that clear assurances to employees who are about to commence working during the course of an emergency, and thereby exposing themselves to extraordinary hazards, should be made so that they know, in advance of an emergency, that their interests will not be adversely affected by doing so. This is not just required to meet a basic principle of fairness to the employees, a principle which, we say, should be enough to satisfy the Committee; it is also a matter of exceptional significance to the general public, because it is only with such assurances that employees will willingly engage in such extraordinary activity.

We believe that the proposed statute ought to be amended so as to provide additional assurances of this sort.

First, we believe that the Act should provide for a broader indemnification of employees that are engaged in emergency work that what is currently proposed. The committee should be aware that employees, particularly

those who are governed by professional bodies, are frequently required to perform acts during the course of an emergency in a manner that may bring their conduct into question in litigation. The current legislation does provide for indemnification in the event of a finding of liability; however, it does not provide indemnification for the *costs of a defense* to such allegations. The mere defense to such allegations can be crippling to an employee that is not found to be liable. It would operate as a serious disincentive to willing participation in work during the course of an emergency. As we point out at pages 7 through 8 of our brief, we therefore believe that language of the Act should be amended to include indemnification similar to that which is already in place under the *Police Services Act*, in which legal costs of defense are provided for if the employee demonstrates a good faith performance of duties.

As we set out at page 8 and 9 of our brief, OPSEU believes that there are insufficient protections for employees who would suffer pecuniary losses as a result of, for example, extended quarantine. Consistent with Mr. Justice Campbell's recognition that these matters be dealt with ahead of time, we propose that there be developed a compensation package, known to employees in advance, to take into account the predictable forms of pecuniary loss by employees.

OPSEU also is of the view that the protection against termination that the Act provides is neither fair nor sufficient, and that further, more extensive protections must be provided to employees who may be taken from their normal duties as a result of their participation in an emergency. Currently the proposed legislation provides only that there be protection against loss of

employment. We do not think that this is sufficient, as these employees are not guaranteed that their previous position will be available to them, or that their position will be altered to their disadvantage as a result of their absence. Accordingly, at page 9 in our brief, we recommend that the legislation should be amended to include protection against adverse employment effects.

Finally, OPSEU is of the view that the proposed amendment to the *Employment Standards Act* setting out the duration of the leave of absence is insufficiently clear and may lead to some anomalies that, we expect are unintended. Currently, the duration of the leave that an employee is provided depends on the duration of the emergency, and presumably, that the employee's protection from adverse employment consequences would cease when the emergency is terminated. However, we can see circumstances in which an employee should be permitted to extend an absence from work for a period after the emergency is ended. For example, an employee may be quarantined or otherwise prevented from returning to work notwithstanding that the emergency is declared to be over. Such an employee should have protection under the *Employment Standards Act*, and should not be liable to discipline or adverse employment consequences for overstaying a leave of absence. We therefore recommend that the language of the proposed legislation be amended to include a reference to a *reasonable* period of time after which the employee will be required to return to work, and ask that this very, very complex provision be rethought.

In summary, then, OPSEU believes that the existing mechanisms for regulating employment and health and safety in establishments that are

subject to emergencies – namely, collective agreements and the provisions of the Occupational Health and Safety legislation, ought to be strengthened by the legislation. They are, and their continued operation, are essential to the operation of establishments during the course of an operation, and they are essential to protect the interests of the employees who are risking their lives and their health by working during the course of an emergency. We ask that the resulting legislation take this critical fact into account.

I would like to thank the Committee for this opportunity to present OPSEU's view. Mr. Stoykewych and I would be pleased to answer any questions you may have.

Q&A