

SUBMISSION OF THE ONTARIO PUBLIC
SERVICE EMPLOYEES UNION

MINISTRY OF LABOUR EMPLOYEE
RELATIONS COMMITTEE

TO THE

EXPERT ADVISORY PANEL ON
OCCUPATIONAL HEALTH AND SAFETY

JUNE 30, 2010



Ontario's union
Le syndicat de l'Ontario

Introduction

The Ontario Public Service Employees Union (OPSEU) represents 130,000 members in hospitals, community colleges, community agencies, the Liquor Control Board of Ontario and the Ontario Public Service.

OPSEU represents 1, 043 staff at the Ministry of Labour (MOL).

The recommendations of the expert advisory panel reviewing Ontario's occupational health and safety system will have a direct impact on many of these members.

The greatest impact will be felt by the inspectors who enforce the Occupational Health and Safety Act and its regulations, as well as the advisors and consultants of the Office of the Worker Advisor (OWA) and Office of the Employer Advisor (OEA). The OWA advocates for injured non-unionized workers and the OEA provides advice to small employers.

Provincial Commissions of Inquiry, including The Walkerton Inquiry, 2002, The Meat Regulatory and Inspection Review, 2004, and The SARS Commission, 2005, have reinforced the provincial government's core oversight function with respect to critical public health issues, including but not limited to drinking water, public health and meat safety.

It is for this reason that underlying all of the recommendations that follow is the principle that the policy-setting and compliance functions with respect to occupational health and safety currently located within the Ministry of Labour must remain within the Ministry. As well, the status, functions and operation of the OWA and OEA, independent agencies of the Ministry of Labour, must be maintained.

STRENGTHENING SECTION 50

Recommendation 1: Give occupational health and safety inspectors the powers to immediately investigate complaints of employer reprisal (prohibited under Section 50 of the Occupational Health and Safety Act), rule on whether there was a contravention of Section 50, and, if the inspector finds a contravention of Section 50, order that the worker be reinstated and compensated for any loss that was incurred as a result of the contravention.

Occupational health and safety inspectors currently have the power to immediately investigate fatal incidents, critical injuries and work refusals. In order to give Section 50 force and ensure that health and safety concerns are not driven underground, it is imperative that inspectors have the power to investigate complaints of reprisals by employers and rule on them. Employment standards officers have the power under the Employment Standards Act to order that a worker be reinstated and compensated if they find there was a contravention of certain sections of the ESA. It only makes sense to give that same power to occupational health and safety inspectors.

Recommendation 2: Specify no employer reprisals against health and safety representatives, joint health and safety committee members and supervisors.

The Occupational Health and Safety Act (OHSA) requires the selection of health and safety representatives in workplaces with more than 5 workers and sets out the power and function of this worker representative. OHSA further requires the establishment of a joint health and safety committee (JHSC) in workplaces with 20 or more workers and that at least half the members of the committee shall be workers. The legislation sets out the specific functions and powers of the committee. OHSA outlines the duties of a supervisor with respect to ensuring the health and safety of workers. OHSA should state specifically that reprisals by employers are prohibited against all of these workplace parties.

Recommendation 3 Provide for an expedited appeal conducted in the region where the incident occurs to address lost wages and damages. The appeal body should have staff that is trained in health and safety.

Recommendation 4: Authorize certified JHSC members to investigate reprisal complaints and make it mandatory for the workplace parties to immediately notify the MOL if the issue is unresolved.

A reporting process should be followed the same as for work refusals where one of the parties are required to notify the ministry.

IMPROVING GENERAL DETERRENCE TOOLS

Recommendation 5: Provide ticket schedule items with set fines for supervisors and employers.

Recommendation 6: Increase the maximum fines for Part I summonses within a range of \$1,000 to \$15,000 for employers.

Deterrence is the basis of our system for enforcing workplace standards. The reality now is that fines are too little for many offenses. Also many offenses don't apply to supervisors. In order to make deterrence effective, the MOL needs to ensure that it is cheaper for employers to comply than not to comply. The scope of offenses needs to be broadened.

Recommendation 7: Utilize the short form for Part III charges.

This would enable inspectors to lay selected charges against employers, for example, failing to ensure there are guards on a machine or failing to make appropriate personal protective equipment available for workers to use.

EXPAND REGULATIONS TO APPLY TO MORE WORKPLACES

Recommendation 8: Change the name of Regulation 851 from Industrial Establishments to Ontario Workplaces.

Recommendation 9: Some regulations such as one for Window Cleaning, Diving, Confined Space Entry, should be referenced in the major regulations the same as the Fire Code and Electrical Certification sections so inspectors can order that they be followed and the workplace parties can no longer claim they didn't know these standards applied to their workplaces.

MOL should consolidate like regulations under one regulation for Ontario Workplaces thereby ensuring applicable workplace standards apply to all sectors. In order to address the sector-specific workplace hazards, this regulation should include sections specific to sectors such as there as for foundries and logging in the current Regulation 851. As it is currently, the health care sector, for example, is missing many standards that should apply, such as an eye wash fountain. Consolidating the regulations into one regulation would resolve this situation. You could still include a section for health care that is specific to infection control, citing just one example, of a workplace hazard specific to health care workplaces.

UPDATING OF STANDARDS

Recommendation 10: Enhance the recognition of industry or sector standards such as those of the Canadian Standards Association (CSA) and make the periodic updating of the regulations mandatory to ensure technological changes are covered by the regulations.

The regulations should incorporate reference to current standards as a means of ensuring compliance with the intent of the regulation and recognize that equivalent methods are alternative compliance method.

It is necessary to ensure the workplace standards that inspectors enforce keep up with technological advances. For example, the machine guarding standard in the Industrial Establishments regulation speaks of physical barrier guards. Now industry uses radio-frequency lasers, pressure-sensitive mats, light curtains, interlock switches and artificial intelligence. There are CSA standards for all of these types of guards but inspectors can't write an order to the standards because they are not in the regulation. It should be written right into the regulation: *refer to current CSA standard or equivalent*.

Recommendation 11: Some sectors have tripartite review committees that meet on an on-going basis to propose modifications and additions to the applicable regulations. These committees include inspectors. We think this is a good model to follow. All regulations should have a review every two years, at a minimum. Technological changes should not endanger the safety of workers.

STRENGTHENING THE INTERNAL RESPONSIBILITY SYSTEM

Recommendation 12: There should be mandatory certification training for Joint Health and Safety Committee members and health and safety representatives. In order to ensure the training is consistent, it should be based on a curriculum that is set out in the OHSA.

Recommendation 13: All workplaces with one to five workers should have a health and safety representative selected from among the workers.

Recommendation 14: There should be mandatory training for supervisors on the OHSA and its regulations, testing competency on hazards.

Recommendation 15: In order to be certified, all JHSC members and health and safety representative should be required to complete a risk assessment of all workplace hazards, including the identification of controls.

The Internal Responsibility System is at the heart of ensuring a safe workplace. It must be strengthened. A critical component is training. Currently, there is no certification requirement for health and safety representatives. This must change. As well as broadening the scope of who gets certified, the certification training itself must become consistent and uniform across the province. Currently, the training provided by health and safety associations ranges from one day to two weeks. It is also critical that a requirement of certification be the completion of a risk assessment of the committee members and health and safety reps' workplace, including the identification of controls. This is how training becomes an effective and meaningful tool for identifying and developing solutions for health and safety problems.

Recommendation 16: Amend the powers of the JHSC so that it only requires 50 per cent support for recommendations in order for the recommendations to be forwarded to the employer for response.

The Internal Responsibility System must be exhausted before an inspector can get involved. Too often health and safety problems go unresolved because the workers can't get agreement from the employer members to forward them on for response by the employer.

Recommendation 17: Amend the powers of the worker health and safety representative and JHSC so the inspection section is broadened to include the whole safety program and hazards in the workplace and vehicles the workers may use.

The current wording of OHSA restricts the monthly inspection to the physical condition of the work place. Some employers restrict the inspections and will not let the workers include auditing the safety programs such as WHMIS, protective clothing, lock out use, lifting device annual certification or vehicles used by the workers to go off site. To make the IRS inspections meaningful they should cover the whole safety program. Many good employers do extend these rights to the workers conducting the inspections. The safety associations include much of program audits in the training they give. It needs to be stated in the Act to make every work place follow what is recognized as a good practice for improving safety.

IMPROVING THE DEPLOYMENT OF INSPECTORS

Recommendation 18: Develop a criteria for the targeting of workplaces for inspections that includes: field intelligence from inspectors, report of "suppressed claims" from the Workplace Safety Insurance Board (WSIB), findings of contraventions of the Employment Standards Act, Canada Revenue Agency list of companies that evade paying taxes and current data from WSIB on lost-time injury claims.

Each inspector is required to do 240 field visits a year. Inspectors are concerned that they are assigned workplaces that do not merit being targeted for inspection while other health and safety offenders go unmonitored. Inspectors believe the reliance on lost-injury claims data from WSIB is not a reliable indicator of health and safety performance because mid-size to big employers manage their claims so that it appears their company has lost less time to accidents. Inspectors point out that small workplaces get penalized because they don't have the resources to manage their claims so it appears they are high-risk when in reality they are not.

PROTECT THE INTEGRITY OF THE INSPECTORS' POWERS

Recommendation 19: The MOL must prevent the obstruction of inspectors and interference with their orders by hiring managers that have a background in occupational health and safety. There should be an emphasis in the training of managers and inspectors that the inspectors' powers are discretionary.

The OPSEU MOL MERC knows of examples where inspectors have faced pressure to change their orders or are told in advance of an inspection to not write specific orders against

an employer. This exertion of pressure could have serious consequences including preventable death. Provincial commissions of inquiry undertaken in the past 10 years into drinking water, public health and meat inspection have highlighted the importance of the provincial oversight role. The responsibility for oversight is expressed through establishing science-based standards and ensuring effective compliance and enforcement. The MOL MERC is deeply concerned that with the recent hiring of 80 or so additional inspectors, and the expected retirement of a sizeable cohort of experienced inspectors in the next five years, the less experienced inspectors will face increasing pressure to change orders. New managers, with no experience in occupational health and safety, do not understand that employers' complaints about inspectors' orders come with the territory. Employers have a right to appeal an inspector's order to the Ontario Labour Relations Board (OLRB) and that is how they express their right to disagree. Too often, employers contact MOL managers to complain and inspectors are subsequently called into meetings with their manager and the aggrieved employer, only to have the manager ask the inspector to change their order. We are concerned that newer, less experienced inspectors will undoubtedly feel the pressure to do just that, and the health and safety of workers will not be upheld.

In addition to private sector employers, pressure for inspectors to change orders routinely comes from the Ministry of Community Safety and Correctional Services (MCSCS), which operates correctional facilities and detention centres. The MCSCS ought to file appeals at the OLRB to address unsatisfactory inspector orders rather than adopting a strategy of intervening at management levels at the MOL to send out inspectors to rescind the orders.

OTHER RECOMMENDATIONS FOR IMPROVING WORKPLACE SAFETY

Recommendation 20: It should be mandatory for all employers in the province to pay premiums to and be covered by the Workplace Safety Insurance Board (WSIB).

No worker should worry about what will happen to themselves or their loved ones should they get injured on the job. Currently, about 30 per cent of employers are not required to join WSIB. If more belonged, it would reduce the cost of premiums across the board.

Recommendation 21: Reform WSIB: eliminate the experience rating so all employers are treated the same.

The current system with its rewards for employers that reduce the time lost to injury, encourages the management of claims and drives the reporting of accidents underground. This system penalizes small employers that don't have the resources to manage claims and, most critically, does not prevent injuries.



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