

MOL STRATEGY “Safe at Work Ontario”

2008/2009

**SUBMISSION
TO THE
MINISTRY OF LABOUR**

**BY THE
ONTARIO PUBLIC SERVICE EMPLOYEES UNION**

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INTRODUCTION

The Ontario Public Service Employees Union (OPSEU) is pleased to offer this submission in response to the Ontario Ministry of Labour's (MOL) proposed strategy for 2008/2009, "Safe at Work Ontario."

OPSEU represents more than 115,000 members throughout the province in the public service, the broader public service, the liquor control board and in colleges of applied arts and technology. Our members in every sector are exposed to a variety of hazards such as infectious diseases, asbestos, hazardous chemicals, radiation, workplace violence, working alone, ergonomic injuries and almost any other hazard that exists.

OPSEU believes the 2008/2009 MOL Enforcement strategy is a good start and in many ways, heading in the right direction. OPSEU agrees that it is time for the Ministry of Labour to take steps to foster a better health and safety culture in Ontario.

Our union would like to identify some gaps and offer suggestions that we believe will strengthen the strategy and result in a greater impact health and safety behaviour and culture in Ontario.

OPSEU suggests not relying on WSIB Lost time/no lost time injury data

One of the main concerns that OPSEU and other unions have about past MOL strategies included the MOL's heavy reliance on lost time/no-lost time injury statistics from the Workers Safety and Insurance Board (WSIB) to target firms. As we have pointed out many times, injuries often go unreported and therefore WSIB data does not reflect the true extent of injuries and occupational disease in the province. In fact, under the "High Risk Initiative," targeted companies were often those who were reporting honestly. MOL strategy did little to identify and address those firms who hide claims and fail to report.

Another issue is that many workplaces in Ontario are not part of the WSIB system, so their injury data is not available to the Ministry. Consequently, those firms may not be part of an enforcement strategy, even though they may be hazardous workplaces.

OPSEU is disappointed to learn that once again, WSIB data will play an important part, albeit not as big a role as last time, in the new strategy.

OPSEU echoes the Ontario Federation of Labour's (OFL) suggestion for universal WSIB coverage in Ontario for all workers as part of an injury prevention strategy

As stated above, many workers, especially those in vulnerable sectors such as social services, developmental services, and long term care facilities do not have the luxury of obtaining WSIB benefits when they get injured. To make matters worse, these workers frequently suffer terribly from injuries caused by the clients they care for. Let's not forget that workplace violence can be either willful or can take the form of aggression from clients and residents who are also squeezed by a system of limited funding, hurried care, privatization, contingent workers, and so on. It's time for Ontario to implement universal coverage for workers, a system of mandatory employers participation.

A Critical injury is a critical injury

OPSEU is pleased to see that the 2008/2009 enforcement strategy includes efforts to reduce critical injuries. However, our union would like to communicate our concern that currently, many critical injuries suffered by our members are often not classified as such by employers—or the Ministry of Labour for that matter. In one example, when our union called the Ministry of Labour during a disagreement with the employer about what constitutes a critical injury (interpretation of the Critical Injury Regulation), the inspector allowed the employer to decide whether the injury was classified as critical. It would come as no surprise that the employer decided that it was not, even though the person had lost consciousness. Therefore, although OPSEU is in favour of the strategy to reduce critical injuries, we are concerned that a reduced number may actually be a result of “definition and interpretation issues” rather than a true reduction in critical injuries.

Flexibility in MOL strategy should incorporate stakeholder recommendations

We support the increased degree of flexibility in this MOL enforcement strategy that will include blitzes, and other short-term initiatives that will allow the MOL to move resources around to provide intervention as it is needed in Ontario. As you stated, one example of inflexibility in your last strategy included the four compulsory inspector visits to a target workplace, even in cases where the inspector might judge that a single visit for the particular workplace would have been sufficient. If an inspector assessed a workplace health and safety system as appropriate in the first visit, then the other three visits more strategically used could have expanded the scope of enforcement more widely across Ontario. We are hoping that the flexibility in this new strategy will allow for stakeholder input into short-term projects and initiatives that we believe will improve the state of occupational health and safety in Ontario.

OPSEU suggests a blitz in “Developmental Services”

In keeping with our suggestion above, we point out that numerous times our union has spoken to the Ministry of Labour about the sorry state of health and

safety in the Developmental Service Sector. Workers in this sector suffer daily from a myriad of hazards and horrors. They are exposed to infectious diseases; they get kicked, punched, bitten, and threatened daily—and often have no response system or immediate assistance available. They often work alone, short-staffed, overworked, isolated, and often have no functioning health and safety committees or health and safety representatives. Worse, this sector is often composed of multi-site scattered workplaces, a mish-mash of some sites with no right to a committee, some with a committee and some with no committee or health and safety representative entitlements at all.

OPSEU suggests that this sector badly needs MOL intervention. Health and safety culture in this sector is almost non-existent. Our observations and experience tell us that workers in this sector are especially vulnerable, and reprisals run rampant in these workplaces. Employers have admitted at the Ontario Labour Relations Board (OLRB) that “they have only skimmed the *Act*,” that “if employees do work refusals that they send them home,” and they have even bought flowers after an inspector visit to the workplace, forging the inspectors name on the card and telling the workers that the inspector sent the flowers to “apologize for the inconvenience.” These examples are facts, not fabrications. These kinds of examples are spread right across not just this sector, but also the entire social services sector that includes child treatment, children’s aid societies, children’s and family services, childcare and corrections.

An MOL blitz in this sector should include all the things mentioned in the new MOL strategy, and also such options as:

- Focused MOL inspections -- look for JHSC minutes, recommendations, Terms of Reference, evidence of Health and Safety structures
- Orders or Premise Reports clarifying to employers that health and safety laws requiring employers to inform workers of actual or potential hazards override employer habits (not supported by legislation) to hide violent client backgrounds and histories from workers who must interact with these clients.
- MOL must order the employer to take specific measures regarding workplace violence in these workplaces to deal with specific situations or client behaviours.
- Requiring health and safety commitment from the directing mind of the organization
- MOL inspectors to look for indicators that workplace violence is being addressed: policies, procedures, effective training with frequent (at least annually) refreshers; incident reports being completed and provided to JHSC/union; incident reporting encouraged by employer including reports of near-misses; *OHSA* s.51 and 52 reporting is being done
- Attention to staffing levels, especially working alone
- Infection prevention/control: are there policies and procedures and training; is the employer relying on the notion of patient/resident

'confidentiality' to avoid warning workers of hazards such as TB, Hepatitis B/C, etc.

- Is there a pandemic influenza plan; have workers been trained
- Is employer supplying PPE such as gloves to protect from infectious illnesses; are there adequate facilities for hand-washing or hand-sanitizing
- If there is a hazard of air-borne illnesses, has fit-testing taken place? Is there a Respiratory Protection Program; are N95 respirators available.
- OPSEU recommends that multi-site DSS workplaces have JHSCs, not Health and Safety reps
- If there is no JHSC, is there a system to communicate H&S information between worksites
- Are supervisors competent under the *Act*

OPSEU suggests ways of probing into how well the Internal Responsibility System (IRS) is functioning

OPSEU is pleased to hear that the 2008/2009 strategy includes having MOL inspectors probe into joint health and safety committees (JHSCs) to see if they are functioning. We would like to echo the Ontario Nurses' Association's (ONA) suggestions about how to foster healthy committees and add some of our own. We suggest that inspectors gauge how well the IRS functions by ensuring that their questions first probe whether the workplace has or should have a committee, whether it has or one or more health and safety representatives, or whether an existing committee is even legally composed. Inspectors must talk to the worker reps. Surprisingly enough, inspectors still visit workplaces at times without calling for the presence of a worker health and safety committee member or representative, despite section 54 (3) of the *Act*.

We agree with ONA that a good way to gauge the functioning of the Internal Responsibility System is to ask a worker representative if they have ever made recommendations and received a response from the employer pursuant to the *Act*.

Ask a worker committee member if they have ever been successful in forwarding a recommendation from the entire committee. Often the answer will be no—because workers often have trouble convincing the employer side of a committee to make recommendations to themselves. If you can imagine weeks of discussion and disagreement over whether a recommendation is an actual “recommendation” or just a “suggestion” that doesn't require a 21-day written response. Even worse—imagine that an inspector agrees with the employer that “worker committee suggestions” are not real “recommendations” and so are not legally entitled to a response. This is often the reality in Ontario.

Ask the committee members if they have an opportunity to review and suggest edits to the minutes before they are finalized.

Investigate to see whether the committee has a “Terms of Reference” (TOR) that has been negotiated with the union.

Investigate whether the employer is providing notices pursuant to Section 51 and 52, and if the committee is discussing injury specifics at meetings. It is likely that the best the committee gets is anonymous summaries of injury stats covered under Section 12 of the *Act*.

And above all, ask if the same issues are discussed meeting after meeting, sometimes year after year without resolution. Asking these types of questions of worker committee members or representatives will help provide a true picture of how well the IRS functions.

OPSEU suggests that now is the time to make certification training mandatory for health and safety representatives

Another area the MOL should pay special attention to is health and safety representatives. These workers—without the support and structure of a committee that has the luxury of regular meetings and minutes – often work in isolation with no assistance or information. How can it be that these workers, who often work in such vulnerable sectors such as group homes in developmental services, or retail establishments such as the LCBO, are not afforded the right under Ontario legislation to receive certification training? In many cases, without the right to any training, these health and safety representatives are not aware of their roles described in Section 8 of the *Act*. How can they be when employers (supported by law in Ontario) are often content to have these workers remain like mushrooms in the dark with no knowledge, training, or information? To make matters worse, these health and safety representatives (who stand alone) often suffer reprisals from employers who do not welcome the activities that an active health and safety representative brings.

It’s time to address this critical issue. Small workplaces can be just as dangerous as large ones. All employers, large and small, have the same obligations to provide safe and healthy work. It is unfair and unsafe that workers in small workplaces are not entitled to the same level of health and safety education as those in larger workplaces. If the MOL is really committed to well functioning health and safety structures, then we believe that the MOL should take steps to ensure that the playing field is equal for health and safety reps. The *Occupational Health and Safety Act* should compel employers to provide certification training to health and safety representatives. It is not good enough that in 2008, health and safety representatives are not entitled to training even while they continue to struggle for the right to participate and the right to know that was supposed to be established by the *OHS Act* in 1978.

The MOL needs to probe into adequacy and existence of certification training

OPSEU is aware that the WSIB recently surveyed all their participating employers and found that the number of joint health and safety committees that had certified workers was appallingly low—less than half. Unfortunately, since these employers voluntarily reported this information, we understand that the report has been shelved and has never seen the light of day, despite many requests by labour, including the OFL for copies. With the requirement for certification training for at least one worker and employer member clearly established in the *Act*, it defies reason why MOL orders are not flying all over the province to enforce this very important provision of the *Act*—one that is critical for effective functioning of joint health and safety committees.

Another issue with certification training is the steady weakening of the programs despite the WSIB's declared commitment to injury prevention. Some Safe Work Associations are in a race to the bottom, to hollow out certification training to the least number of days to save employers money on what is not really an onerous expense for the benefits the training provides. Rather than allowing programs to be eroded, the WSIB should be working in tandem with the MOL to ensure that certification programs are meaningful and effectively prepare both worker and employer reps for their workplace roles.

Frankly, MOL reluctance to wade into the contents and methods of certification training is a cop-out. OPSEU does not accept this "hands-off" approach. We note that increasingly the WSIB and MOL have been working together for health and safety prevention, and we suggest that the new MOL strategy ought to include more actions and co-ordination of efforts to evaluate certification training—more than just asking to see a card. We suggest that the MOL inquire not only whether certification training has been done, but also inquire about the contents of the training, in order to try to stop this race to the bottom. It's not acceptable to our union that certification training has become a commodity where the best is faster, shorter, and cheaper. However, this is what is occurring, to the detriment of Ontario workers, their families and their communities.

A robust health and safety enforcement system in Ontario includes employer prosecutions and fines for violations of the Act and failing to comply with previous MOL orders

Glaring to OPSEU members are the small numbers of MOL prosecutions and fines to employers who continually violate the Act and/or refuse to comply with existing orders.

In some cases, employers simply ignore orders which have been written by inspectors. All too often, workers seeking enforcement of those orders are

unsuccessful in getting assistance from the Ministry of Labour inspectors to enforce their own orders.

Ontario's Ministry of Labour needs to prosecute more employers who fail to comply with Ministry orders. At a recent meeting that the OFL and affiliate unions had with the MOL, our unions were assured that many more prosecutions occur than are reported, and that senior MOL staff assumes and expects that inspectors are preparing cases for prosecutions rather than writing repeat orders. Although we accept that this is may be the desired outcome, in our experience that is not what is happening out there. The collective group of our unions could pinpoint only one recent prosecution within our workplaces where this has been the case. Furthermore, we have many examples just in our own union where we are hard pressed to even get the repeat orders written.

Our union believes that the lack of prosecutions may be partly due to inspectors not being allotted the time to prepare prosecutions due to other expectations around numbers of field visits and other activities they are expected to complete. As part of its new enforcement strategy, OPSEU suggests that the Ministry of Labour ensure that inspectors have the support, knowledge and tools to launch more prosecutions against employers.

MOL needs to address ALL hazards, including workplace violence, working alone and ergonomics

Unfortunately, calls for help to Ontario's Ministry of Labour sometimes are not that helpful when certain hazards are involved. Ontario's Ministry of Labour often does not adequately address issues such as workplace violence, working alone and ergonomics. For example, inspectors consistently downgrade work refusals regarding workplace violence to complaints; in essence negating workers' work refusals on this issue. These problems arise in part, we believe, because Ontario's health and safety laws do not specifically address these hazards. Consequently, workers and MOL inspectors must rely on MOL policies and procedures for guidance.

And when there ARE orders, the orders are often for the employer to have policies and procedures in regards to violence. OPSEU knows from polling 500 of our social service members that the policy approach is not sufficient. In our poll, approximately 81% of workplaces had policies dealing with violence, yet 43% of respondents reported suffering from an incident of violence in the past year. Therefore, OPSEU urges the Ministry of Labour to expand their "policy approach" and tread into areas including workplace processes, the physical work environment and organization, practices, information sharing, training, and staffing. The MOL continually pleads that they are "unable" to write orders about staffing, yet OLRB decisions already exist that nullify this assertion. OPSEU does not accept this reluctance of the MOL to address staffing issues where appropriate and suggests that writing staffing orders must be one consideration

of inspectors who are investigating workplace violence issues in individual workplaces.

Inspectors following MOL policies and procedures also hesitate to write orders where the law isn't specific, such as incidences of working alone. Yet working alone can be a deadly hazard—it has been deadly. In 1989 OPSEU member and worker Krista Sepp was killed while working night shift in a group home alone. These vulnerable workers need the attention of the Ministry of Labour. OPSEU has many workers who need protections available through the health and safety law and enforcement system in Ontario. Every day social service workers, public service workers, retail workers, hospital professionals, educators, among others take their life in their hands while providing their services in the province of Ontario. It is time that the Ministry of Labour included workplace violence and working alone as a cornerstone of its prevention strategy in Ontario.

MOL must not abandon workers who suffer reprisals

Lacking in the 2008/2009 MOL strategy is assistance and support to workers who suffer reprisals from the employer for seeking enforcement of the *Act*, or acting in compliance with the *Act*. OPSEU suggests that the MOL correct this by empowering inspectors to write orders, prosecute and fine employers who callously take reprisals against workers for asserting their legal health and safety rights. Taking a reprisal against one worker can effectively chill all health and safety activity at a workplace; therefore, reprisals should not be treated lightly.

Frankly, it is not that reassuring for workers to know that the MOL policy manual advises inspectors to deal with reprisals by “counseling the workplace parties” and handing out a pamphlet. The pamphlet does nothing for workers who have been suspended or terminated. Counseling employers does not erase threats and intimidation that bar workers, or health and safety committee members or representatives from carrying out their roles under the *Act*. OPSEU does not agree with MOL policy that directs inspectors to “act as more of a conciliator than an enforcer in these situations.”

Luckily, inspectors out there feel passionate about the job they do and, despite the MOL policy manual, many write orders citing violations of Section 50 of the *OHS Act*. OPSEU knows that there have been at least 90 orders written under Section 50 since 1990. The Ontario Federation of Labour has written letters to the Minister of Labour asking that reprisals be dealt with where appropriate by inspectors. OPSEU echoes the OFL's concern and requests that addressing reprisals be included in the MOL's “Safe at Work Ontario Strategy 2008/2009.”

Everyday, the Health and Safety Unit at OPSEU receives calls from concerned union members who are struggling to make improvements in their workplaces, but have reached a dead end. Workers reach dead ends for many reasons:; the joint health and safety committee is not functioning; when health and safety

representatives raise concerns, they fall on deaf ears; supervisors are not aware of their obligations under the *Occupational Health and Safety Act*; or, workers are suffering reprisals for exerting their rights under the Act. Those are just a few issues that face OPSEU members on a daily basis; there are many more.

Not only do workers often reach a dead end at the workplace, they often do not get the enforcement activity from the Ministry of Labour that they need and to which they are entitled, to resolve workplace health and safety issues. We believe that the 2008/2009 MOL "Safe at Work Ontario" strategy includes many provisions that have the potential to improve the status quo. This submission reflects many of our members' concerns that we hear about every day and includes suggestions that OPSEU believes will help make the strategy more effective and help prevent more injuries, fatalities and incidences of occupational disease in Ontario.

As a union that is concerned about social justice in Ontario as a whole, we point out that if the situation regarding health and safety is this dire in our unionized workplaces, we shudder to think what its like for non-unionized Ontarians. Therefore we suggest that the MOL move expediently and decisively in the 2008/2009 enforcement strategy.

We appreciate the opportunity to comment on the Ministry's enforcement strategy for 2008 and 2009 and we look forward to providing input and being consulted along the way. In this vein, we welcome your commitment to consult with OPSEU and other unions each fall—in advance of the finalization of future MOL strategies. As we have indicated, we are in support of many of the proposed strategies, such as evaluating functioning capacity of health and safety committees, targeting specific sectors (such our suggestion of a blitz in Developmental Services), and making the strategy more flexible to react to new hazards or information. However, we encourage you to seriously consider the other issues we have raised which we believe will substantially contribute to worker safety in our province.