# WRITTEN SUBMISSION OF THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION

## TO THE STANDING COMMITTEE ON SOCIAL POLICY

Regarding Bill 160, Occupational Health and Safety Statute Law Amendment Act, 2011

April 18, 2011

OPSEU
SEFPO

Ontario's union
Le syndicat de l'Ontario

## INTRODUCTION

OPSEU is pleased to comment on Bill 160, and on the proposed amendments to the *Health and Safety Act (OHSA)* and *Workplace Safety and Insurance Act* (*WSIA)* contained within it. OPSEU represents approximately 130,000 workers throughout the province and the public service, the broader public service, the liquor control board and in colleges of applied arts and technology. OPSEU has a unique vantage point from which to comment on the proposed amendments. Our members in every sector are exposed to almost every conceivable hazard class. This includes, but is not limited to, hazards such as infectious diseases, asbestos, hazardous chemicals, radiation, workplace violence, working alone, and the wide range of ergonomic hazards and their associated musculoskeletal diseases (MSD's). Not only do we represent a large membership from a wide variety of sectors and workplaces, we also represent the Ministry of Labour Inspectorate and other staff within the Ministry of Labour. These front-line enforcement officers are acutely aware of the many challenges to the health and safety system and the real world barriers that workers have in accessing the protections of the *OHSA* and its associated regulations.

It is our understanding that the purpose of Bill 160 is to pave the way for the implementation of the recommendations of the *Expert Advisory Panel on Occupational Health and Safety* (Expert Panel) chaired by Tony Dean, recommendations that this government has fully accepted. OPSEU has been fully engaged with the Expert Panel process, and although we feel much more could have been achieved, we are generally supportive of the recommendations made by the Expert Panel. However, we have grave concerns that the Bill does not properly reflect the spirit and intent of those Expert Panel recommendations. Labour and Labour organizations participated on the panel, and the working groups reporting to the panel, so we are confident that we understand the intent of those *consensus* recommendations.

The critical event that drove the work of the Expert Panel was the Christmas Eve tragedy of 2009 when five workers fell from a suspended platform, four to their death and one who was critically injured and is now permanently disabled. When OPSEU considers this and other workplace tragedies, we ask ourselves, “Is there anything in the proposed legislation that would prevent a tragedy such as this from occurring in the future?” Unfortunately, it is our view that there is nothing in Bill 160 that would have that effect. We recognize that there are a number of good first steps, such as the provisions for training. We also recognize that Bill 160 is not intended to address all of the Expert Panel recommendations but provide the mechanisms by which they may be addressed. But Bill 160 does not go far enough. Additionally, we note that the Bill contains certain provisions that were not contemplated by the Expert Panel and do not appear in the Expert Panel recommendations. These additions have more to do with shifting power within the bureaucracy of the Ministry of Labour and thus fall outside the mandate and purpose of this Bill.

## OPSEU’S CONCERNS WITH BILL 160

### A statement of purpose that includes the precautionary principle

Bill 160 takes responsibility for prevention out of the Workplace Safety and Insurance Board (WSIB) and gives that responsibility to a new Chief Prevention Officer (C PO) and Chief Prevention Council (CPC). The Bill amends subsection 159 (7) of the *Workplace Safety and Insurance Act* by striking out "the prevention of injury and disease” from the mandate of the WSIB. However, a statement of purpose for the prevention of occupational injury and disease is not transferred to the *Occupational Health and Safety Act.* This critical statement describing the mandate for prevention must be inserted into the *Act*.

The government has also missed the opportunity to include a statement with respect to the *precautionary principle* in the *Act*. It was a major finding of the Rt. Hon. Justice Archie Campbell's final report of the SARS Commission:

> *That the precautionary principle, which states that action to reduce risk need not await scientific certainty, be expressly adopted as a guiding principle throughout Ontario's health, public health and worker safety systems by way of policy statement, by explicit reference in all relevant operational standards and directions, and by way of inclusion, through preamble, statement of principle, or otherwise, in the Occupational Health and Safety Act, the Health Protection and Promotion Act, and all relevant health statutes and regulations.*

The commissioner was unequivocal about the importance of this principle, repeatedly emphasizing it throughout the report. He referred to it as the "take home message" of the Commission" and "the most important lesson of SARS."

What greater honour can we bestow upon the late Justice Campbell than to see his vision of including the precautionary principle in the *Occupational Health and Safety Act* realized?

These are omissions that need to be corrected.

## Giving the weight of the law to policy- the powers of a Director

Section 3 of Bill 160 amends Section 6 of the *Occupational Health and Safety Act* by adding a section on policies. This section gives a Director of the Ministry of Labour the power to establish written policies respecting the interpretation, administration and enforcement of the *Act* and provides that an inspector shall follow any policies established by a Director under this subsection.

We note the addition of such provisions is not mentioned anywhere in the Expert Panel recommendations. However recommendation # 25 states:

> *The Ministry of Labour should review its current enforcement policy and supports for inspectors with a view to creating a consistent approach of tough enforcement for serious and wilful contraventions, as well as compliance assistance with guidance and support for employers help achieve compliance.*

This recommendation calls for policy revisions not legislative amendments. We are concerned that this or future administrations may make policy that restricts the ability of enforcement officers to lay charges. It should be sufficient that an inspector reasonably conclude that an offense or contravention has been committed to lay a charge. The ability of law enforcement officers to do their jobs and lay charges for actions the legislature deems to be offenses, should be constrained only by the existence of objective preconditions such as evidence-based reasonable and probable grounds as determined by competent, trained and educated front-line enforcement officers, and not by back-office administrators.

These provisions give the force of law to a Director's policies and interpretations of the *Act*. They also require Ministry of Labour inspectors to abide by those policies *as a requirement of the Act*. Giving weight of law to a policy or an interpretation of law that may be incorrect or contradicts the *Act* itself, is bad public policy. One does not have to look far back for recent examples of bad policy within the Ministry of Labour:

- **Inspectors' rights were found to have been violated.**

  When Ministry of Labour Directors caused criminal records background checks to be conducted on inspectors and provided that information to third parties without their consent (OPSEU v. Ontario (Ministry of Govt. Services)(Union Grievance), (2011) OGSBA No. 44, March 28, 2011)

- **Directors appear to be subject to political interference when making policy and interpretations.**

During the SARS crisis of 2003, as was amply documented in OPSEU and ONA's submissions to the SARS Commission, the MOL allowed the Ministry of Health and Long Term Care to assume a leadership role while it abandoned its normal enforcement activities. In the final SARS Commission report, Justice Archie Campbell stated: "Despite its legal mandate to protect workers, the Ministry of Labour was largely side-lined during SARS." After reviewing all of the evidence, the SARS Commission recommended the following:

> *That the Ministry of Labour have the lead responsibility for setting and enforcing work safety policies, procedures and standards in the health care sector, as it does in all workplaces.*

As a result of the Ministry's decision to abrogate its responsibilities towards workers and workplaces during SARS, Ministry of Labour inspectors were directed to not even respond to calls from workers in health care workplaces, but to refer any calls to a manager.

Ultimately, three health care workers died of SARS and more than 100 other health care workers contracted the illness because of workplace exposures. We will never know with certainty what difference it would have made, had the Ministry performed its normal enforcement activities during SARS; however, it is OPSEU's position that active enforcement and assistance by the Ministry could have prevented at least some of the illnesses. We believe that this is yet another example of what can happen as a result of an ill-conceived policy decision by the Ministry.

- **Reprisals against Inspectors.**

In February of this year the Saskatchewan courts ruled that the firing of an occupational health and safety inspector for daring to appeal a decision of a Director constituted an illegal reprisal. *Dunkle v. Occupational Health and Safety Division (Ministry of Advanced Education, Employment and Labour)* February 3, 2011, Chief Justice Robert Laing, Saskatchewan Court of Queen's Bench. Laing ordered the employer to cease any further discriminatory action against Dunkle, reinstatement, compensation for loss of earnings and that her appeal proceed. This is an example where the Director's Policy and demands to follow it, were found to be contrary the *Act*.

- **A policy to not enforce the law.**

The Ministry of Labour Policy and Procedures manual contains direction to inspectors not to enforce the law against reprisals under Section 50 of *OHSA*

> *Unless exceptional circumstances are present, Inspectors do not conduct an investigation into the issue of whether there has been a reprisal. They do not make a determination as to whether a reprisal has been committed, nor do they take any enforcement* action *with respect to the alleged reprisal.*
>
> Ministry of Labour policy and Procedures Manual; 4.9 Reprisals (Their emphasis)

Ministry of Labour Directors, even without the Assistance of Bill 160, are interfering with the ability of inspectors to fully enforce the *Act*.

The Directors who committed these abuses of power are the same Directors that Bill 160 endows with broad new discretionary powers.

## The need for legislative consistency?

We have heard from the Ministry that it needs these new powers to ensure consistency in the enforcement activities of its inspectors. OPSEU is aware that the Expert Panel heard complaints from employers and from Labour representatives about inconsistent enforcement activities by inspectors within regions and between regions. Although OPSEU recognizes that there may at times be inconsistent approaches by inspectors, more frequently what appears as inconsistency can be explained by different fact situations at the workplace level.

What is more critical in our view is the inconsistent direction given by different levels of management within the Ministry. OPSEU inspectors are able to provide examples of receiving substantially different directives from managers and Directors in different regions on important issues such as the provision and use of lockout devices. In one region inspectors may use personal locks in order to effect a lock-out, in another they are prohibited from doing so. There are inconsistencies in the gathering of information and making reports during fatality investigations. Additionally, OPSEU staff have witnessed very different approaches by inspectors who are following management directives when investigating work refusals, complaints concerning workplace violence and definitions of critical injuries.

If the Ministry wants to address problems of inconsistency, it, like every other employer has the ability to do so. It can improve its communication processes and it can improve its training. If employees do not follow existing policies and procedures after they have been communicated, it can discipline them. The Bill 160 amendments will make little or no difference to issues of consistency which lie within communication and training. These provisions do however imperil our enforcement officers with the potential for charges that they may have violated the *Occupational Health and Safety Act* and thus are liable for the significant penalties available under the *Act*, for failing to adhere to what is, and should remain, strictly matters of internal policy and discipline. This is completely unacceptable.

In our discussions with the Ministry staff, they cite the need for consistency in the wording of the legislation with other statutes. They draw attention to the similar provisions contained within section 89 (2) of the *Employment Standards Act (ESA)* to "follow any policies established by the Director of Employment Standards under section 88 (2)." However bad legislation is bad legislation, no matter how many times it is repeated.

OPSEU is uniquely positioned to poll our members who are Employment Standards Enforcement Officers. We are advised by these members that the effect of this provision in the *Employment Standards Act* is far from benign. Employment Standards Officers inform us that at times policy and procedure directives come with such frequency that is impossible for them to maintain an up-to-date manual for policies and procedures and interpretations. Notice of such changes is frequently sent by e-mail and often gets lost in the noise of overfull e-mail inboxes. Formal training and updating on the new policies and procedures is very infrequent. Director level policy often pushes down authority to managerial and front-line supervisor levels and is written in such a manner that the policy *may* be applied by managers and supervisors.

For example, a policy directive, *Ministry of Labour Winter Tire Policy,* was issued on October 8, 2010. This policy allowed for the installation of winter tires on vehicles not being replaced in the current fiscal year. The communication of this directive was so poor that Employment Standards Officers became aware of this policy, mainly through internal communications of the union rather than from their management. In some cases local management refused to allow winter tires to be fitted as late as January of this year because they had not heard of the policy. Confusion and inconsistencies occur in spite of these provisions within the *ESA.* This occurs in an environment where there is only one Director. The Ministry of Labour has several Directors. No amount of legislation will solve the problems of internal communication and training on internal policy.

It has been the experience of Employment Standards Officers that those provisions of the Employment Standards *Act* that Bill 160 seeks to include in the *Occupational Health and Safety Act,* for the purpose of improving consistency, have been at best completely ineffective and may have actually *increased* inconsistency in the application of the *Employment Standards Act*.

OPSEU sees no valid reason to transfer problematic language from one statute to another purely for reasons of consistency in the legislation. If this amendment becomes part of the *Act*, inspectors who violate a Ministry policy will have violated the *Act*. This is unacceptable. The section must be removed from the Bill in its entirety.

**The lack of effective protections against reprisals.**

Some 40 years ago the government Ontario made it illegal for employers to take reprisal against workers for exercising their health and safety rights. In November 1986, fifteen years after the introduction of anti-reprisal legislation, the then Minister of Labour, the Hon. Mr. Bill Wrye lamented in the legislature on the need to take effective enforcement action against these reprisals.

> *I will indicate to the member and to my colleagues in the house that as we look at the amendments to the Act [that] will come forward later this session, in a general sense the issue of workers right of refusal and* action *to protect workers in the event of reprisals rank very high on the list. I do not believe we can move forward in terms of the rights of workers to refuse unless we are very tough on what happens when reprisals take place. If there are reprisals, provable reprisals, the Ministry and the government, through our Act, will be very tough in terms of his reprisals*.
>
> The Hon. Mr. William Wrye, Minister of Labour, Ontario Legislature, November 24th, 1986

And a few weeks later the same Minister also remarked:

> *If Ontario workers are to exercise their rights under this Act freely and fully, they must be free from the fear of harassment, intimidation [and] reprisal. Therefore the government intends to establish a new office of investigations to help workers exercise this freedom.*
>
> The Hon Mr. Wrye, Minister of Labour. Ontario Legislature, February 12th, 1987

That was 24 years ago, yet no such office for the investigation of reprisals exists. Prosecutions of employers, for having reprised against an employee, have been exceedingly rare. And yet we are certain that each and every day in Ontario workers either experience reprisals, or fear reprisals. One of our members who is an enforcement officer reports that:

> *The reality is, that nothing has changed and employers have very little to worry about should they be found to have taken reprisals against a worker because the Ministry of Labour still refuses to enforce the legislation prohibiting such reprisals.*
>
> Ministry of Labour Inspector

One of the topics the Expert Panel repeatedly heard compelling evidence about was the prevalence of reprisals against workers attempting to use their health and safety rights, particularly amongst those who were most vulnerable, and those in the most precarious types of employment. The panel heard and recognized that although the reprisal provisions in the *Occupational Health and Safety Act* may protect some unionized workers, for non-unionized workers, particularly those who are new to Canada, who do not speak English or who are unaware of their rights, the reprisal provisions have little or no protective effect.

The panel heard that workers don't know about the reprisal provisions in the *Act* and that the Ministry of Labour rarely, if ever, prosecutes an employer for violations of the reprisal provisions. Consequently, the panel recommended that the Ministry develop ways to expedite the resolution of reprisal complaints (recommendation No. 33) and it recommended that the Ministry review its prosecution policy and develop guidance for inspectors on when to lay charges (recommendation No.34)

The Bill does address one aspect of reprisals against workers, by allowing an inspector, in certain circumstances, to refer a reprisal complaint to the Ontario Labour Relations Board. Paradoxically, it then renders this assistance almost useless by making inspectors *non-competent* witnesses with respect to a complaint or referral under this section.

This restriction would mean that even when an inspector and/or the Ministry would want an inspector to testify in a reprisal case, they would be unable to do so. Although the Ministry of Labour states that documents and reports can be submitted by an inspector, it is unlikely that evidentiary weight will be given to evidence that cannot be cross examined or corroborated in testimony. This is equivalent to a police officer not being able to testify in court on the evidence he or she has gathered or witnessed. Thus, this section of the Bill *reduces the likelihood of bringing prosecutions, complaints and referrals for reprisals forward.* This directly contradicts the wishes of the Expert Panel to strengthen deterrence. In cases of critical injury and workplace fatalities, inspectors routinely investigate and gather evidence and testify to these events. No limitations on inspectors competency is contemplated in the application of any other sections of the *Act*.

The Interim Prevention Council has recommended that inspectors be allowed to give “direct evidence" but the recommendation does not define what "direct evidence" is. Although inspectors may from time to time witness firsthand a reprisal such as a termination, the reality is that most reprisal activity does not occur under the watchful eye of an inspector. In order to ensure a reasonable prospect for a conviction all available evidence gathered by an inspector must be admissible and able to be backed up by testimony.

A few short days ago on April 11, 2011, in the city of Toronto, Justin, a 26-year-old worker died after being pulled into a machine at the Pasta Quistini factory. Local CBC television crews reported on the event that evening and aired an interview with Venn Bootan a former employee who said that he had been laid off in March 2011 for "raising health and safety issues" and that "there were loose bolts, broken bearings and that machines were not maintained properly." This matter is currently under investigation, but should evidence of reprisals be uncovered it might not be considered "direct evidence." We fail to see how restricting the ability of an inspector to be a competent witness in any facet of a reprisal investigation, can serve the interests of justice, or act as a deterrent to employers who may find it cheaper to fire workers than to fix unsafe equipment.

Without protection from reprisals workers without union representation will remain unable to exercise their rights under the *Act*. Without enforcement activity and prosecutions, employers will continue to exercise absolute impunity in violating the reprisal section of the *Act*.

The limitations on an Inspectors ability to be a competent witness must be entirely removed from the Bill.

As mentioned elsewhere in this submission, the Ministry of Labour has expressed a desire for consistency of language with that of other statutes. If this is a priority for the Ministry we direct their attention to provisions contained within other statutes that <u>should</u> be included in the *Occupational Health and Safety Act.* The *Employment Standards Act* gives Employment Standards Officers the power to order reinstatement of a worker in certain circumstances. This is a power that health and safety inspectors should have and be able to exercise in cases of reprisals. The *Environmental Protection Act* empowers officers appointed under it to "investigate offenses under this *Act* and prosecute any person the provincial officer reasonably believes is guilty of an offense under this *Act*." Health and safety inspectors should be given the power to determine whether prosecution is warranted under the *Occupational Health and Safety Act*. Incorporating these provisions would better address the Ministry of Labour's concerns regarding consistency with other statutes.

## Politicization of the prevention system

Bill 160 places extensive powers in the hands of the Minister of Labour including the power to appoint the Chief Prevention Officer and the Prevention Council. We are concerned that the powers of the Minister in this or future governments could be used in arbitrary ways, or for partisan purposes. Changes must be made to empower the Prevention Council in a meaningful way and to ensure that the Chief Prevention Officer (CPO) is acceptable to the Prevention Council. The powers of the CPO must be clearly articulated and the Minister of Labour must be required to consult with the CPO when considering making significant changes to the prevention system. Additionally, the Bill must be amended to ensure that trade unions are represented on the Council in at least equal numbers as employers in the spirit of the Expert Panel report. Examples of legislation that better define the division of powers and insulate decisions from political interference are to be found in the *Health Protection and Promotion Act* where the Medical Officer of Health and Chief Medical Officer of Health report to Boards of Health and in the *Safe Drinking Water Act, 2002*, where the duties of the Chief Inspector are well defined.

(See Appendix A for proposed revisions to Bill 160, which address the powers of the Minister, the Chief Prevention officer and the Prevention Council)

## Impediments to the operation of the Internal Responsibility System (IRS)

The Expert Panel recommended that the *Act* be amended to allow a co-chair of a Joint Health and Safety Committee (JHSC) to submit a recommendation to the employer if an issue is unresolved following repeated attempts to reach consensus. It is safe to assume that when this happens, in most cases it will be a worker co-chair making the recommendation. OPSEU is aware that many Joint Health & Safety Committees are barely functional and that issues remain unresolved at the committee, sometimes for years, without any resolution. Although the Bill provides a co-chair with this power to make a recommendation to the employer, it places unnecessary obligations on them,

requiring them to submit three separate pieces of documentation, in addition to the recommendation, to the employer:

- A summary of the position of the members of the committee who supported the recommendation.
- A summary of the positions of the members of the committee who did not support the recommendations
- Information about how the committee attempted to reach consensus

Ironically, this requires the co-chair to summarize management's position – to management. Unfortunately, it has been our experience that sometimes management does not articulate its reasons for disagreeing with proposed recommendations, which is perhaps why they are required to do so by Sect. 9 (21) of OHSA after the recommendation has been made.

The effect of these provisions is to make it more onerous for the co-chair to make recommendations.

Health and Safety Representatives in small workplaces have always had the ability to make recommendations to their employer without any such conditions and this has not been found to be problematic. The inability to come to a consensus agreement currently prevents many Joint Health and Safety Committees from making recommendations. We strongly recommend that these restrictions be removed from the legislation. We believe that it would be reasonable to require a co-chair to attach the relevant JHSC minutes to the recommendation. This should provide adequate explanatory information to an employer.

## The threat to the autonomy of the Workers Health and Safety Centre (WHSC) and the Occupational Health Clinics for Ontario Workers (OHCOW)

As part of the transfer of responsibility for prevention from the Workplace Safety and Insurance Board (WSIB) to the Ministry of Labour (MOL), the four Health and Safety Associations (HSA), the Workers Health and Safety Centre (WHSC) and the Occupational Health Clinics for Ontario Workers (OHCOW) become the responsibility of the MOL. Bill 160 addresses the transfer of these "Designated Entities."

OPSEU is very concerned that in the transition, the new powers of the Minister may be used to undermine the autonomy of the WHSC and OHCOW. Mechanisms must be put in place to protect their independent governance and to allow them to continue to reflect the core values and principles of the labour movement. The WHSC and OHCOW must retain their ability to set their priorities and to develop content, services and information that meet the needs of workers as defined by workers.

## CONCLUSION

OPSEU commends the government for treating the recommendations of the Expert Panel so seriously and for taking this first step to implement them. However, we cannot stress enough the seriousness of the critical areas we have described here. We cannot support this Bill unless they are addressed.

# Appendix

# “A”

# Proposed Revisions to Bill 160

Bill 160 2011

An Act to amend the Occupational Health and Safety Act and the Workplace Safety and Insurance Act, 1997 with respect to occupational health and safety and other matters

Note: This Act amends or repeals more than one Act. For the legislative history of these Acts, see the Table of Consolidated Public Statutes – Detailed Legislative History at www.e-Laws.gov.on.ca.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Occupational Health and Safety Act

1. (1) Subsection 1 (1) of the Occupational Health and Safety Act is amended by adding the following definition:

"Building Code" means any version of the Ontario Building Code that was in force at any time since it was made under the Building Code Act, 1974, the Building Code Act of the Revised Statutes of Ontario, 1980, the Building Code Act of the Revised Statutes of Ontario, 1990, the Building Code Act, 1992 or a successor to the Building Code Act, 1992; ("code du bâtiment")

(2) The definition of "certified member" in subsection 1 (1) of the Act is repealed and the following substituted:

"certified member" means a committee member who is certified under section 7.6; ("membre agréé")

(3) Subsection 1 (1) of the Act is amended by adding the following definitions:

"Office of the Employer Adviser" means the office continued under subsection 176 (2) of the Workplace Safety and Insurance Act, 1997; ("Bureau des conseillers des employeurs")

"Office of the Worker Adviser" means the office continued under subsection 176 (1) of the Workplace Safety and Insurance Act, 1997; ("Bureau des conseillers des travailleurs")

2. Part II of the Act is amended by adding the following section:

Administration of Act

4.1 (1) The Minister is responsible for the administration of this Act.

Powers of Minister

(2) In administering this Act, the Minister's powers and duties include the following:

*New sub 1, taken from WSIA: to promote health & safety in workplaces and prevent and reduce the occurrence of workplace injuries and disease (renumber following items)*

1. To promote public awareness of occupational health and safety.

2. To educate employers, workers and other persons about occupational health and safety.

3. To foster a commitment to occupational health and safety among employers, workers and others.

4. To make grants, in such amounts and on such terms as the Minister considers advisable, to support occupational health and safety

(3) New sub-section 3 of s. 4.1 - *The Minister shall ensure that all recommendations of the Chief Prevention Officer and the Prevention Council are taken into consideration in exercising the Ministers powers and duties.*

Delete all of section 3 of the Bill - Illegal fettering of discretion and undermines the enforcement role of inspectors; improper attempt to deal with labour relations issues in legislation

Same

4. The Act is amended by adding the following sections:

Standards – training programs

7.1 (1) The Council may establish standards for training programs required under this Act or the regulations.

Approval – training programs

(2) The CPO may approve a training program if it meets the standards established under subsection (1).

Standards – persons who provide training

7.2 (1) The Council may establish standards that a person shall meet in order to become an approved training provider.

Approval – persons who provide training

(2) The CPO may approve a person who meets the standards described in subsection (1) as a training provider with respect to one or more approved training programs.

Amendment of standard

7.3 (1) The Council may amend a standard established under subsection 7.1 (1) or 7.2 (1).

Publication of standards

(2) The CPO shall publish the standards established under subsections 7.1 (1) and 7.2 (1) promptly after establishing or amending them.

Time limit of approval

7.4 (1) An approval given under subsection 7.1 (2) or 7.2 (2) is valid for the period that the CPO specifies in the approval.

Revocation, etc., of approval

(2) The CPO may revoke or amend an approval given under subsection 7.1 (2) or 7.2 (2).

Information to be provided to Minister

(3) The CPO may require any person who is seeking an approval or is the subject of an approval under subsection 7.1 (2) or 7.2 (2) to provide the CPO with whatever information, records or accounts he or she may require pertaining to the approval and the CPO may make such inquiries and examinations as he or she considers necessary.

Collection and use of training information

7.5 (1) The CPO may collect information about a worker's successful completion of an approved training program for the purpose of maintaining a record of workers who have successfully completed approved training programs.

Disclosure by training provider

(2) The CPO may require an approved training provider to disclose to him or her the information described in subsection (1).

Same

(3) The CPO may specify the time at which, and the form in which, the information shall be provided.

Disclosure by Minister

(4) The CPO may disclose information collected under subsection (1) to any person, including but not limited to a current or potential employer of a worker, if the worker consents to the disclosure.

(5) The CPO shall advise the Council of any approvals under sections 7.1 or 7.2 or any revocation under 7.4 to the Council within 30 days of the date of approval or revocation, including the reasons therefore.

5. The Act is amended by adding the following section:

Certification of members

7.6 (1) The Council may,

(a) establish training and other requirements that a committee member shall fulfil in order to become a certified member; and

(b) certify a committee member who fulfils the requirements described in clause (a).

Transition

(2) A person who is certified under paragraph 5 of subsection 4 (1) of the Workplace Safety and Insurance Act, 1997 on the date section 20 of the Occupational Health and Safety Statute Law Amendment Act, 2011 comes into force is deemed to be certified under this section.

6. Section 8 of the Act is amended by adding the following subsections:

Training requirement

(5.1) Unless otherwise prescribed, a constructor or employer shall ensure that a health and safety representative selected under subsection (5) receives training to enable him or her to effectively exercise the powers and perform the duties of a health and safety representative.

Same

(5.2) The training described in subsection (5.1) shall meet such requirements as may be prescribed.

Entitlement to be paid

(5.3) A health and safety representative is deemed to be at work while he or she is receiving the training described in subsection (5.1), and the representative's employer shall pay the representative for the time spent, at the representative's regular or premium rate as may be proper.

7. (1) Section 9 of the Act is amended by adding the following subsections:

Powers of co-chairs

(19.1) Where there has been no agreement, either co-chair of the committee has the power to make written recommendations to the constructor or employer.

Recommendations

Delete (19.2)

(2) Subsection 9 (20) of the Act is amended by striking out "committee" and substituting "committee or co-chair".

(3) Subsection 9 (36) of the Act is amended by striking out "certified by the Workplace Safety and Insurance Board" and substituting "a certified member".

8. (1) The Act is amended by adding the following Part:

Part II.1
Prevention Council, Chief Prevention Officer and designated entities

Prevention Council

Prevention Council

22.2 (1) The Minister shall establish a council to be known as the Prevention Council in English and Conseil de la prévention in French.

Composition

(2) The Council shall be composed of such members as the Minister may appoint, and shall include equal representation from labour and employers.The Minister may also appoint other persons with occupational health and safety expertise, limited to no more than one third of the overall membership of the Council..

Appointment of members

(3) The members of the Council shall be appointed for such term as may be determined by the Minister.

Chair

(4) The members of the Council shall choose a chair from among themselves by the date fixed by the Minister; if they fail to do so, the Minister shall designate a member as chair.

Same

(5) Subsection (4) applies on the first appointment of members and thereafter whenever the office of chair is vacant.

Functions

(6) The Council shall,

(a) provide advice and recommendations to the Minister on the appointment of a Chief Prevention Officer;

(b) provide advice and recommendations to the Chief Prevention Officer,

(i) on the prevention of workplace injuries and occupational diseases,

(ii) for the purposes of the provincial occupational health and safety strategy and the annual report under section 22.3,

iii) on key performance indicators for measuring improvements in health and safety and

(iv) on any significant proposed changes to the funding and delivery of services for the prevention of workplace injuries and occupational diseases;

(c) provide advice and recommendations on any other matter specified by the Minister;

(d) establish training standards under s. 7.1, 7.2, 7.3 and 7.6, designation entity standards under s. 22.4 and to authorize grants under s. 22.5.

(e) establish competency based stakeholder sub-committees or working groups for specific initiatives

and

(f) perform such other functions as may be specified by the Minister.

Advice

(7) For the purposes of subsection (6), any advice provided by the Council shall be communicated by the chair of the Council.

Remuneration and expenses

(8) Any member of the Council who is not a public servant within the meaning of the Public Service of Ontario Act, 2006 (insert from WSIA s. 162(3) shall receive such remuneration and benefits and reimbursement for such reasonable expenses as may be determined by the Lieutenant Governor in Council.

**(From 162(4) of WSIA)** (9) The Council shall meet at the call of the chair and in no case shall more than two months elapse between meetings of the Council.

Chief Prevention Officer

Functions

22.3 (1) The Minister shall appoint a Chief Prevention Officer pursuant to s. 22.2(6)(a) to,

(a) develop a provincial occupational health and safety strategy on the prevention of workplace injuries and occupational diseases;

(b) prepare an annual report ;

(c) exercise any power or duty assigned by this Act or delegated to him or her by the Minister under this Act;

(d) provide advice and recommendations to the Minister on the prevention of workplace injuries and occupational diseases.

Changes, funding and delivery of services

(2) 1. If the Chief Prevention Officer is considering a proposed change to the funding and delivery of services for the prevention of workplace injuries and occupational diseases, the Chief Prevention Officer shall report the proposed change to the Prevention Council

2. If the Prevention Council determines that the proposed change is significant, the Chair of the Council shall inform the Chief Prevention Officer whether the Council endorses the proposed change.

Appointment

(3) The Chief Prevention Officer may be appointed for a term not exceeding five years and may be reappointed for successive terms not exceeding five years each.

Occupational health and safety strategy

(4) The Chief Prevention Officer shall develop a written provincial occupational health and safety strategy that includes,

(a) a statement of occupational health and safety goals;

(b) key performance indicators for measuring the achievement of the goals; and

(c) any other matter specified by the Minister.

Advice of Prevention Council

(5) The Chief Prevention Officer shall consult with the Prevention Council and shall consider its advice and recommendations in developing the strategy.

Strategy provided to Minister

(6) The Chief Prevention Officer shall provide the strategy to the Minister on or before a day specified by the Minister.

Minister's approval

(7) The Minister may approve the strategy or refer it back to the Chief Prevention Officer for further consideration.

Publication

(8) After approving the strategy, the Minister shall publish it promptly.

Annual report

(9) The Chief Prevention Officer shall provide an annual written report to the Minister on occupational health and safety that includes a measurement of the achievement of the goals established in the strategy, and that contains such other information as the Minister may require.

Advice of Prevention Council

(10) The Chief Prevention Officer shall consult with the Prevention Council and shall consider its advice in developing the report.

Report provided to Minister

(11) The Chief Prevention Officer shall provide the annual report to the Minister on or before a day specified by the Minister.

Publication

(12) The Minister shall publish the Chief Prevention Officer's report promptly.

(2) Part II.1 of the Act, as enacted by subsection (1), is amended by adding the following sections:

Designated Entities

Designation by Minister

22.4 (1) The CPO may designate an entity as a safe workplace association or as an occupational health clinic or training centre specializing in occupational health and safety matters if the entity meets the standards established for it by the Prevention Council.

Standards

(2) The Council may establish standards that an entity shall meet before it is eligible to be designated.

Same

(3) The standards established under subsection (2) may address the objectives, functions and financial accountability of the entity..

Same

(4) The Council may establish different standards for safe workplace associations, occupational health clinic or training centre serving different industries or groups. Specifically, the Council shall **designate and fund a labour-governed occupational health clinic and a labour-governed training centre.**

**The occupational health clinic shall provide clinical and prevention services whose mandate is:**

- **to investigate the work-relatedness of workers' health conditions**
- **to promote the prevention of occupational injuries and diseases; and**
- **to provide services designed to eliminate or reduce occupational hazards and improve the health of workers.**

The training centre shall provide educational, training and information services and have the mandate to:

(a) establish its education, training and information priorities;
(b) develop education, training and information courses and materials; and
(c) deliver training including training required for certified members under section 7.6, and health and safety representatives training required under section 5.1

Duty to comply

(5) A designated entity shall operate in accordance with the standards established under subsection (2) that apply to it, and in accordance with any other requirements imposed on it under section 22.5.

Amendment of standard

(6) The Council may amend a standard established under subsection (2).

Date for compliance with amended standard

(7) If the Council amends a standard established under subsection (2), the Council shall establish a date by which designated entities to which the amended standard applies are required to comply with it.

Publication of standards

(8) The CPO shall promptly publish,

(a) the standards established under subsection (2); and

(b) standards amended under subsection (6), together with the compliance date described in subsection (7).

Transition

(9) When the Council establishes and publishes standards under subsections (2) and (8) for the first time after the coming into force of subsection 8 (2) of the Occupational Health and Safety Statute Law Amendment Act, 2011, the CPO shall establish a date for the purposes of subsections (10) and (11) and shall publish it together with the standards.

Same

(10) An entity that is designated as a safe workplace association or as a medical clinic or training centre specializing in occupational health and safety matters under section 6 of the Workplace Safety and Insurance Act, 1997 on the date section 20 of the Occupational Health and Safety Statute Law Amendment Act, 2011 comes into force is deemed to be designated for the purposes of this Act until the date established by the Minister under subsection (9).

Same

(11) The standards that are in place under section 6 of the Workplace Safety and Insurance Act, 1997 on the date section 20 of the Occupational Health and Safety Statute Law Amendment Act, 2011 comes into force continue to apply, with necessary modifications, and are deemed to be standards for the purposes of this section, until the date established by the Council under subsection (9).

Effect of designation

Funding

22.5 (1) A designated entity is eligible for funding from the Ministry.

Monitoring

(2) The CPO shall monitor the operation of designated entities, may require a designated entity to provide such information, records or accounts as he or she specifies, and may make such inquiries and examinations as he or she considers necessary.

Directions

Government directives

(4) The CPO may direct an entity to comply with government directives regarding financial accountability.

Failure to comply

(5) If an entity does not operate in accordance with the standards established under section 22.4 and with any other requirements imposed on it under this section, the CPO may give notice to the designated entity of any alleged deficiency or incidence of non-compliance, and an opportunity for discussion and resolution, prior to invoking the powers of subsection (5),

(a) reduce or suspend grants to the entity while the non-compliance continues;

(b) assume control of the entity and responsibility for its affairs and operations;

(c) revoke the designation and cease to provide grants to the entity; or

(d) take such other steps as he or she considers appropriate.

Appointment of administrator

22.6 (1) For the purposes of assuming control of an entity and responsibility for its affairs and operations under clause 22.5 (5) (b), the CPO may appoint an administrator.

Term of appointment

(2) (Insert language from s. 8(3) of WSIA) The CPO shall provide 30 days written notice to the Board of Directors of the entity before appointing the administrator, but if there are not enough members of the Board of Directors to form a quorum the CPO may appoint an administrator without notice. The appointment of the administrator remains valid until it is terminated by the CPO.

Powers and duties of administrator

(3) The administrator has the exclusive right to exercise the powers and perform the duties of the board of directors and its officers and exercise the powers of its members.

Same

(4) In the appointment, the CPO may specify the powers and duties of the administrator and the terms and conditions governing those powers and duties.

Additional power of administrator

(5) The board of directors and officers may continue to act to the extent authorized by the CPO, but any such act is valid only if approved, in writing, by the administrator.

Report, directions

(6) The administrator shall report to the CPO as required by him or her and shall carry out his or her directions.

Meeting of members

(7) Before the termination of an administrator's appointment, the administrator may call a meeting of the members to elect a board of directors in accordance with the Corporations Act.

Unincorporated entity

(8) This section applies, with necessary modifications, to an entity that is not incorporated.

Delegation of powers and duties

(3) Subsection 22.6 (7) of the Act, as enacted by subsection (2), is amended by striking out "Corporations Act" and substituting "Not-For-Profit Corporations Act, 2010".

9. Clause 25 (1) (e) of the Act is repealed and the following substituted:

(e) a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, is capable of supporting any loads that may be applied to it,

(i) as determined by the applicable design requirements established under the version of the Building Code that was in force at the time of its construction,

(ii) in accordance with such other requirements as may be prescribed, or

(iii) in accordance with good engineering practice, if subclauses (i) and (ii) do not apply.

10. Section 32.1 of the Act is repealed and the following substituted:

Definition

32.1 In this Part,

"legal requirement" means a requirement imposed by a provision of this Act or by a regulation made under this Act.

11. Subsection 32.2 (1) of the Act is repealed and the following substituted:

Approval of code of practice

(1) The Minister may approve a code of practice and the approved code of practice may be followed to comply with a legal requirement specified in the approval.

Same

(1.1) An approval made under subsection (1) may be subject to such terms and conditions as the Minister considers appropriate and may be general or particular in its application.

12. Section 32.4 of the Act is repealed and the following substituted:

Effect of approved code of practice

32.4 The following apply if a code of practice is approved under section 32.2:

1. Subject to any terms or conditions set out in the approval, compliance with the approved code of practice is deemed to be compliance with the legal requirement.

2. A failure to comply with the approved code of practice is not, in itself, a breach of the legal requirement.

13. (1) Section 50 of the Act is amended by adding the following subsections:

Referral by inspector

(2.1) Where the circumstances warrant, an inspector may refer a matter to the Board if the following conditions are met:

1. The worker has not had the matter dealt with by final and binding settlement by arbitration under a collective agreement or filed a complaint with the Board under subsection (2).

2. The worker consents to the referral.

Same

(2.2) Any rules governing the practice and procedure of the Board apply with all necessary modifications to a referral made under subsection (2.1).

Referral not an order

(2.3) A referral made under subsection (2.1) is not an order or decision for the purposes of section 61.

Testimony

(2.4) An inspector is a competent witness before the Board in a proceeding relating to a complaint filed under subsection (2) or a referral made under subsection (2.1).

(2.5) The application of this process does not preclude an order or prosecution of the employer under s. 50.

(2) Subsection 50 (3) of the Act is amended by striking out "any complaint filed under subsection (2)" and substituting "any complaint filed under subsection (2) or referral made under subsection (2.1)".

(3) Subsection 50 (4) of the Act is amended by striking out "a complaint filed under subsection (2)" and substituting "a complaint filed under subsection (2) or a referral made under subsection (2.1)".

(4) Section 50 of the Act is amended by adding the following subsections:

Rules to expedite proceedings

(4.1) The chair of the Board may make rules under subsection 110 (18) of the Labour Relations Act, 1995 to expedite proceedings relating to a complaint filed under subsection (2) or a referral made under subsection (2.1).

Same

(4.2) Subsections 110 (19), (20), (21) and (22) of the Labour Relations Act, 1995 apply, with necessary modifications, to rules made under subsection (4.1).

(5) Subsection 50 (5) of the Act is amended by striking out "a complaint filed under subsection (2)" and substituting "a complaint filed under subsection (2) or a referral made under subsection (2.1)".

(6) Subsection 50 (6) of the Act is repealed and the following substituted:

Jurisdiction when complaint by public servant

(6) The Board shall exercise jurisdiction under this section when a complaint filed under subsection (2) or a referral made under subsection (2.1) is in respect of a worker who is a public servant within the meaning of the Public Service of Ontario Act, 2006.

(7) Subsection 50 (7) of the Act is amended by striking out "a complaint filed under subsection (2)" and substituting "a complaint filed under subsection (2) or a referral made under subsection (2.1)".

(8) Subsection 50 (8) of the Act is amended by striking out "subsection (2)" and substituting "subsections (2) and (2.1)".

14. Part VI of the Act is amended by adding the following section:

Offices of the Worker and Employer Advisers

Office of the Worker Adviser

50.1 (1) In addition to the functions set out in section 176 of the Workplace Safety and Insurance Act, 1997, the Office of the Worker Adviser has the functions prescribed for the purposes of this Part, with respect to workers who are not members of a trade union.

Office of the Employer Adviser

(2) In addition to the functions set out in the section 176 of the Workplace Safety and Insurance Act, 1997, the Office of the Employer Adviser has the functions prescribed for the purposes of this Part, with respect to employers that have fewer than 50 employees or such other number as may be prescribed.

Costs

(3) In determining the amount of the costs that may be incurred by each office under subsection 176 (3) of the Workplace Safety and Insurance Act, 1997, the Minister shall take into account any functions prescribed for the purposes of this Part.

15. Clause 54 (1) (m) of the Act is repealed and the following substituted:

(m) require in writing an owner, constructor or employer to provide, at the expense of the owner, constructor or employer, a report bearing the seal and signature of a professional engineer stating,

(i) the load limits of a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent,

(ii) that a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, is capable of supporting or withstanding the loads being applied to it or likely to be applied to it, or

(iii) that a building, structure, or any part thereof, or any other part of a workplace, whether temporary or permanent, is capable of supporting any loads that may be applied to it,

(A) as determined by the applicable design requirements established under the version of the Building Code that was in force at the time of its construction,

(B) in accordance with such other requirements as may be prescribed, or

(C) in accordance with good engineering practice, if sub-subclauses (A) and (B) do not apply;

16. Section 63 of the Act is amended by adding the following subsections:

Compellability of witnesses

(3.1) Persons employed in the Office of the Worker Adviser or the Office of the Employer Adviser are not compellable witnesses in a civil suit or any proceeding respecting any information or material furnished to or obtained, made or received by them under this Act while acting within the scope of their employment.

Exception

(3.2) If the Office of the Worker Adviser or the Office of the Employer Adviser is a party to a proceeding, a person employed in the relevant Office may be determined to be a compellable witness.

Production of documents

(3.3) Persons employed in the Office of the Worker Adviser or the Office of the Employer Adviser are not required to produce, in a proceeding in which the relevant Office is not a party, any information or material furnished to or obtained, made or received by them under this Act while acting within the scope of their employment.

17. (1) Subsection 65 (1) of the Act is amended by adding the following clause:

(b) an employee in the Office of the Worker Adviser or the Office of the Employer Adviser;

(2) Subsection 65 (2) of the Act is amended by striking out “a Director, an inspector or an engineer of the Ministry” and substituting “a Director, the Chief Prevention Officer, an inspector or an engineer of the Ministry”.

18. (1) Subsection 70 (2) of the Act is amended by adding the following paragraphs:

13.1 exempting any class of workplaces from the requirement set out in subsection 8 (5.1);

13.2 requiring that the training of health and safety representatives under subsection 8 (5.1) meet such requirements as may be prescribed;

(2) Subsection 70 (2) of the Act is amended by adding the following paragraph:

31.1 requiring that training programs provided by employers meet such requirements as may be prescribed;

(3) Subsection 70 (2) of the Act is amended by adding the following paragraph:

53. providing for such transitional matters as the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of section 22.4;

(4) Subsection 70 (2) of the Act is amended by adding the following paragraphs:

54. prescribing the functions of the Office of the Worker Adviser for the purposes of Part VI;

55. prescribing the functions of the Office of the Employer Adviser for the purposes of Part VI;

56. prescribing a number of employees for the purposes of subsection 50.1 (2).

Workplace Safety and Insurance Act, 1997

19. Paragraph 1 of section 1 of the Workplace Safety and Insurance Act, 1997 is repealed and the following substituted:

1. To promote health and safety in workplaces.

20. Part II (sections 3 to 10) of the Act is repealed.

21. Paragraph 3 of section 82 of the Act is amended by striking out “this Act or”.

22. Paragraph 1 of subsection 123 (2) of the Act is repealed.

23. (1) Section 159 of the Act is amended by adding the following subsections:

First aid requirements

(5.1) The Board may require employers in such industries as it considers appropriate to have such first aid appliances and services as may be prescribed.

Repeal

(5.2) Subsection (5.1) is repealed on a day to be named by proclamation of the Lieutenant Governor.

(2) Subsection 159 (7) of the Act is amended by striking out “the prevention of injury and disease and”.

(3) Subsection 159 (8) of the Act is amended by striking out “the prevention of injury and disease and”.

(4) Section 159 of the Act is amended by adding the following subsection:

Exception

(9.1) The requirement in subsection (9) to obtain the approval of the Lieutenant Governor in Council does not apply to an agreement between the Board and the Ministry of Labour to exchange the information described in subsection (9).

24. (1) Subsection 161 (1) of the Act is repealed and the following substituted:

Duties of the Board

(1) The Board shall administer the insurance plan and shall perform such other duties as it is assigned under this Act and any other Act.

(2) Subsection 161 (3) of the Act is repealed and the following substituted:

Duty to monitor

(3) The Board shall monitor developments in the understanding of the relationship between workplace insurance and injury and occupational disease,

(a) so that generally accepted advances in health sciences and related disciplines are reflected in benefits, services, programs and policies in a way that is consistent with the purposes of this Act; and

(b) in order to improve the efficiency and effectiveness of the insurance plan.

25. Paragraph 1 of subsection 171 (4) of the Act is repealed and the following substituted:

1. The employees of safe workplace associations that were designated under section 6 at any time before the repeal of that section by section 20 of the Occupational Health and Safety Statute Law Amendment Act, 2011.

1.1 The employees of safe workplace associations designated under section 22.4 of the Occupational Health and Safety Act.

26. The Act is amended by adding the following section before the heading "Workplace Safety and Insurance Appeals Tribunal":

Payments to construction workers

172.1 The Board shall pay persons who are regularly employed in the construction industry for the time they spend fulfilling the requirements to become certified for the purposes of the Occupational Health and Safety Act. However, the Board shall not pay persons who may represent management as members of a joint health and safety committee.

27. Subsection 176 (4) of the Act is repealed.

28. (1) Paragraph 4 of subsection 179 (1) of the Act is repealed.

(2) Section 179 of the Act is amended by adding the following subsection:

Transition

(1.1) Despite the repeal of paragraph 4 of subsection (1) by subsection 28 (1) of the Occupational Health and Safety Statute Law Amendment Act, 2011, no action or other proceeding for damages may be commenced against persons employed by a safe workplace association, a medical clinic or a training centre designated under section 6 for an act or omission done or omitted by the person in good faith in the execution or intended execution of any power or duty under this Act before the date on which subsection 28 (1) of the Occupational Health and Safety Statute Law Amendment Act, 2011 comes into force.

Commencement

29. (1) Subject to subsections (2), (3) and (4), this Act comes into force on the day it receives Royal Assent.

Same

(2) The following provisions come into force on a day to be named by proclamation of the Lieutenant Governor:

1. Section 6.

2. Section 13.

3. Section 14.

4. Section 16.

5. Subsection 17 (1).

6. Subsection 18 (1).

7. Subsection 18 (4).

8. Section 21.

Same

(3) The following provisions come into force on the earlier of April 1, 2012 and a day to be named by proclamation of the Lieutenant Governor:

1. Subsection 1 (2).

2. Section 2.

3. Section 5.

4. Section 7.

5. Subsection 8 (2).

6. Subsection 18 (3).

7. Section 19.

8. Section 20.

9. Section 22.

10. Subsections 23 (1), (2) and (3).

11. Sections 24 to 26.

12. Section 28.

Same

(4) Subsection 8 (3) comes into force on the later of,

(a) the earlier of April 1, 2012 and a day to be named by proclamation of the Lieutenant Governor; and

(b) the day section 24 of the Not-For-Profit Corporations Act, 2010 comes into force.

Short title

30. The short title of this Act is the Occupational Health and Safety Statute Law Amendment Act, 2011.

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*Syndicat des employés de la fonction publique de l'Ontario*

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