

“EXPERT ADVISORY PANEL ON
OCCUPATIONAL HEALTH AND SAFETY”

SUBMISSION
TO THE
ONTARIO MINISTRY OF LABOUR

BY THE
ONTARIO PUBLIC SERVICE
EMPLOYEES UNION

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EXECUTIVE SUMMARY

This report is a response to the Ministry of Labour's "Expert Advisory Panel on Occupational Health and Safety" consultation paper. Following are key points from our submission which OPSEU wishes to highlight for the Expert Panel:

Strengthen External and Internal Enforcement of OHSA

External enforcement

- Enforcement must be based on the principle that the cost of non-compliance is greater than the cost of compliance
- Increase the complement of inspectors, industrial hygienists, ergonomists, toxicologists, occupational health physicians and scientists at the Ministry of Labour as well as providing inspectors with ready access to relevant, scientific research and data bases
- Introduce a more immediate and effective system of employer and supervisor penalties that can be dispensed by inspectors which do not involve the court system
- Simplify the prosecution process so that inspectors can prosecute straightforward cases more speedily
- Province must develop an effective process to ensure the prosecution of appropriate cases under the *Criminal Code*

Internal enforcement

- Provide certified worker members with the unilateral power to issue stop work directions
- Provide certified worker members of JHSCs and health and safety representatives with the authority to issue provisional improvement notices
- Employers should be obliged to implement recommendations made by JHSCs and health and safety representatives
- Provide JHSCs and health and safety representatives with the right to be consulted on the development and implementation of health and safety policies, programs, measures and training
- Provide workers in all workplaces with the right to have health and safety representation
- Provide members of JHSCs and all health and safety representatives with the right to standardized certification training with annual renewals, from a training organization of their choice

Enforce the Reprisal provisions of OHSA (s.50)

- Give ministry inspectors the power to investigate alleged reprisals and to reinstate workers and order back pay and/or damages
- Ministry of Labour must prosecute appropriate reprisal cases
- Provide workers alleging reprisals with an effective simplified forum to make their reprisal case when an inspector has not investigated or acted on a reprisal allegation

Improve and Expand Health and Safety Training

- Provide all members of JHSCs and all health and safety representatives with the right to standardized certification training with annual renewals, from a training organization of their choice
- The curriculum of Certification training programs must be standardized (both Part One Basic and Part Two Workplace Specific Hazard) to ensure that all Certified workers and employer representatives receive equivalent training
- WSIB Certification Standards must establish that e-learning delivery of Certification training is not acceptable. Certification training must be delivered in classroom settings using a variety of learning activities
- Provide all new employees, supervisors and managers with mandatory, relevant, and meaningful health and safety training necessary for them to fulfill the duties of their position safely and competently

Increase Health and Safety Support and Resources for Workers

- Fund resources for workers such as Occupational Health Clinics for Ontario Workers and the Workers Health and Safety Centre to ensure that all workers have access to trusted resources for expertise, health information, and training

Regular Review of Health and Safety System, Legislation and Regulations

- Establish a regular systematic review process of Ontario's health and safety system, including legislation and regulations to ensure the system and the law meets the needs of modern workplaces and work practices
- Clarify or rename the *Regulation for Industrial Establishments* to ensure that all Ontario workplaces not covered by other specific regulations such as mining and construction, are covered by health and safety regulations

Implement principles of 'Designing for Safety' in all Workplaces

- Introduce by legislation or policy the principle that whenever the government or an employer is developing or introducing a new innovation, work process or new technology, it must be done in consideration of potential health and safety impacts on workers and in consultation with JHSCs or health and safety representatives

INTRODUCTION

OPSEU is pleased to comment on the current state of Ontario's health and safety system in response to the Ministry of Labour's "Expert Advisory Panel on Occupational Health and Safety" consultation paper. Ontario's system is in many ways fragmented, poorly resourced and not responsive to the changing nature of work and technology. OPSEU has a unique vantage point from which to comment on the topics raised in the consultation paper. 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 MOL, who are acutely aware of many of the challenges to the health and safety system.

OPSEU represents approximately 130,000 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 a host of other hazards.

While OPSEU addresses many of the topics and questions raised in the consultation paper, it is OPSEU's position that the most critical area the Panel must address is the enforcement system. We know that a strong health and safety enforcement system is absolutely key to improving health and safety conditions for workers. It has been shown consistently in research that without strong enforcement many employers will not choose 'to do the right thing' and establish and maintain safe workplaces. We will provide more detailed advice and examples of both external and internal enforcement strategies later in this paper.

Given the scope of the topics and questions raised in the consultation paper and by the Expert Panel's process, OPSEU would like to formally register its concern that the short time allotted to conduct this review and the small number of lightly promoted consultations will have a negative effect on the amount and quality of feedback that the Expert Panel will receive.

We have also raised concerns about the composition and the process of the Working Groups (WGs) established by the Expert Panel. While we agree with the creation of the Working Groups to research and provide recommendations to the Panel on the identified issues, we are concerned that the absence of knowledgeable labour representatives and representatives from organizations representing vulnerable workers and those in the underground economy will restrict the evidence gathered and ultimately the findings and recommendations of the WGs.

We believe that a review of this magnitude should have taken place over at least a year. Essentially, there will be just over three months of various types of consultation: the Expert Panel was not named until March; the consultation paper was not published until late April; the public consultation sessions will be over at the end of June; and, it is expected that the Working Groups will have completed most of their work in July. This is far too short a time for this review.

Therefore, we strongly recommend that another more substantive review be initiated in the next year to examine how well the current legislation meets the health and safety issues and challenges of our economy and working environments. And furthermore, that

following this substantive review that the government put in place a system to regularly review the functioning of our health and safety system including legislation and regulations, to ensure that all workplaces in Ontario are becoming safer and healthier for those who work there.

RESPONSE TO CONSULTATION PAPER TOPICS

Efforts to Improve Collaboration and Integration

1. How can the Ministry of Labour, the WSIB and the HSAs be better aligned in terms of service and program delivery?

Although there have been some recent attempts to better coordinate the activities of the MOL, WSIB and the Health and Safety Associations (HSAs), for example through the High-Risk Initiative program of the MOL, there continues to be duplication of effort and a lack of communication between these three key players. Even during the High-Risk program where considerable planning was done, there were examples of duplication, such as high-risk companies receiving the four mandatory MOL inspector visits during the same period that a WSIB Workwell audit was underway.

OPSEU proposes that one way to better align the efforts of MOL, WSIB and the HSAs is to clarify and publicize the mandates of these organizations. While the role of the MOL is clear – to set, communicate and enforce workplace standards for occupational health and safety – the WSIB’s mandate within the health and safety system is not well known or understood, outside of its role in administering the workplace insurance system. That the WSIB is intended to have a primary responsibility for the prevention of workplace injuries and illnesses is largely unknown to the general public.

One approach to clarifying and aligning the roles of the MOL and WSIB would be to move prevention out of the WSIB altogether allowing it to focus on its key business which is administering the province’s no-fault workplace insurance system. OPSEU suggests that the Panel seriously consider resituating prevention (including certification standards) to a new branch of the Ministry of Labour. Given the MOL’s role to set workplace standards to protect worker health and safety, it makes intuitive sense that the ministry should play an important role in encouraging the improvement of health and safety conditions, and thus prevent injuries and illnesses.

OPSEU suggests that putting prevention and enforcement under one roof could enhance the effectiveness of both programs, allowing better communication between the two branches, allowing more effective data and information sharing and encouraging joint prevention/enforcement initiatives.

However, if the Panel decides that prevention activities should remain within the WSIB, it is critical to improve communication and data sharing between the MOL and WSIB. Currently the two organizations do not have effective methods to share all pertinent data and consequently neither the MOL nor WSIB have a complete picture of workplaces where each may be active. Consequently, there may be situations where WSIB is offering rebates to a company through its Experience-Rating program at the same time that the MOL is active in the company writing orders for non-compliance with *OHS*A.

The government must develop a method by which all the activities of various government ministries and agencies at individual companies can be accessed by other ministries and agencies. So, for example, when an MOL inspector is visiting a company, she or he can look at the company profile electronically and see its WSIB reports or if another enforcement officer from another ministry has been active there. This would provide a more complete picture of a company's approach to issues and might assist an MOL inspector to determine how to proceed if he/she finds *OHS*A violations or other health and safety problems.

The third major player to be considered is the Health and Safety Associations. Recently restructured to form four much larger associations, these new entities are still in their formative stages. While their main mandate is to develop and deliver education and training programs, they also provide consultation and technical services. OPSEU believes that it is important to clarify, communicate and harmonize the mandates of these four new organizations.

OPSEU recommends that the new HSAs clarify and communicate that their primary mandate is to act as health and safety resources in their sectors. The HSAs should align their activities annually with the plans and sector strategies developed by the Ministry of Labour in consultation with labour and employer organizations.

It is also critical that the HSAs consult labour as they develop their training and educational materials, to ensure they reflect actual workplace situations and solutions to problems. Technical expertise regarding health and safety issues is not enough to create valuable and effective health and safety education – real workplace experience is needed to make the programs meaningful to participants.

2. What would give employers and workers a better understanding of the roles of the ministry, WSIB, and HSAs?

As described above, there is a need to further clarify the mandates of the WSIB, MOL and the HSAs and to remove unnecessary duplication of the work each organization does. While, OPSEU believes that the role and functions of the ministry are widely understood, there is confusion about the roles and functions of WSIB and the HSAs. Work must be done to clarify their mandates and functions and to communicate broadly into the province's workplaces.

OPSEU recognizes that some work has been done in this area in that the website of the ministry has links to WSIB and the HSAs. In addition,, there are links on the WSIB site to the HSAs. However, a quick look at the front page of the main HSA site (Health and Safety Ontario), does not reveal an obvious link to the MOL or to the WSIB. As a start, it would make sense to ensure that all three – the ministry, HSAs and WSIB – are linked electronically and that the mandate of each is clearly explained. However, even if this was done, any success will depend on having the public (workers and employers) being interested and informed enough to search out information on the internet. This will present a barrier to many. Consequently, OPSEU advises that an ongoing public communication campaign is necessary to broadcast the mandate and roles of the various organizations. Part of the communication plan should focus on describing how the three groups will coordinate their activities.

Additionally, communication between MOL, WSIB and HSAs should be improved and systematized. For example, if an HSA is involved in a workplace and recognizes serious OHS or regulation infractions, it should be expected to inform the MOL and to ask for assistance. Equally, if the MOL is inspecting or investigating in a workplace and an inspector is suspicious that workplace injuries are not being reported to WSIB, the inspector should be expected to notify WSIB.

If the mandates of the three parties were clear and seen by employers and workers to be working together to improve health and safety, there would be greater understanding at the workplace level of these important parts of our health and safety system.

3. Can you comment on the effectiveness of the ministry, WSIB and HSAs in preventing occupational injury and illness?

It is extremely challenging to try to determine the effectiveness of the various activities of the ministry, WSIB and the HSAs. The main indicator currently used to measure progress is still WSIB LTI data – data which we know to be unreliable for well documented reasons. Even if WSIB data was truly a measure of health and safety performance, we know that many employers are not registered with WSIB, relying instead on private insurance plans so that their data would be missed. For example many employers in some of OPSEU's most dangerous workplaces – group homes – are not covered by WSIB. Additionally, there are thousands of workers in the underground economy who have no coverage whatsoever.

Given the paucity of complete and reliable data, we are unable to comment constructively on the effectiveness of ministry, WSIB and HSA strategies.

OPSEU is aware of the ministry's claims that its blitzes and its Safe at Work Ontario strategies have resulted in a substantial decrease in WSIB-allowed Lost Time Injury (LTI) claims. Although we congratulate the ministry on these focused enforcement activities, we are not convinced that the ministry's claims of the success are entirely accurate.

We are aware that the numbers of reported workplace injuries and illnesses have remained quite constant over the recent years despite the decline in LTIs. More sobering is the fact that the incidence of workplace fatalities has remained at about one a day for many years, despite fluctuations in the economy and unemployment. We are also well aware of increasingly aggressive claims management in many workplaces, not to mention employers who deliberately hide claims and encourage workers to use sick time rather than to make a WSIB claim. Many workers are simply afraid to report workplace injuries and illnesses.

OPSEU also has grave concerns about the incidence of occupational illness and the growing number of fatalities due to occupational illness. There is no provincial strategy or consistent approach by the ministry, WSIB and the HSAs towards lowering the incidence of occupational illness. Accordingly, we have no confidence that there has been any measurable success in prevention of occupational illness attributable to these parties.

4. What shortcomings, gaps or duplication of services should be addressed by this review?

There are a number of serious shortcomings and gaps in our current system. OPSEU is most concerned with the following issues, some of which will be covered in more detail later in this paper:

- A weak, under-resourced enforcement system which relies on the Internal Responsibility System (IRS) rather than enforcement to make meaningful health and safety changes
- Legislation and regulations which do not meet the needs of the modern economy and workplaces

Enhance Enforcement capacity

The ministry's capacity to enforce the *Act*, its regulations and the *Criminal Code* in relation to serious health and safety violations must be enhanced. We urge the Panel to look seriously at our current enforcement system and recommend that it be strengthened. Over the years, OPSEU and Labour have consistently argued that the most effective incentive for employers to improve health and safety is a strong enforcement system based on the principle that the cost of violating the law is greater than the cost of compliance. We have cited numerous studies from many jurisdictions demonstrating that increased external inspections and external enforcement results in measurable declines in injury rates.

Recently, a systematic review of the literature comparing the effectiveness of workers' compensation experience-rating schemes to enforcement of occupational health and safety regulation to reduce injury frequency indicated that our support for an active strong enforcement system continues to be well-founded (Tompa 92). The review found "strong evidence that actual citations and penalties reduce the frequency or severity of injuries" (Tompa 91). It found only mixed to moderate evidence that the introduction and degree of experience-rating resulted in reduced frequency of injuries. In fact, most disturbingly, the review found moderate evidence that the introduction of experience rating may result in increased severity of injuries.

Strong enforcement is vital to address the imbalance of power in the workplace. The IRS is predicated on the erroneous assumption that when dealing with workplace health and safety issues, all the workplace parties are equal. Even in unionized workplaces, workers know that is not true. In many workplaces, unionized or not, workers are afraid to raise health and safety concerns, to demand their rights under the *Act*, and to report workplace injuries and illnesses. With no effective protection against employer reprisals for health and safety activity, workers depend on the enforcement agency for support in workplaces which make up the large underground economy and those dominated by migrant labour, new Canadians or part time precarious workers, the need for a strong enforcement system is even greater.

The Ministry of Labour needs more inspectors and inspectors need more resources such as access to industrial hygienists, ergonomists, toxicologists, nurses, physicians and engineers. They also need easy access to data bases and research to assist in addressing new and emerging workplace issues.

We have suggested that prevention services be moved from the WSIB to become a new branch of the MOL. With this the research capacity with the prevention branch must be enhanced beyond what currently exists within the WSIB. Enforcement must have access to solid scientific data both on qualitative issues such as health and safety management systems and highly technical quantitative research.

Legislation and regulations

A look back over the past 30 years indicates that while reviews of the legislation and the system take place from time-to-time, these reviews are triggered by a crisis, workplace fatalities or an ideological decision by government to make a substantive change to components of the health and safety system. The most recent *OHS*A amendment (Workplace Violence and Harassment) was triggered largely by the workplace murder of Lori Dupont and the relentless lobbying by labour, women's groups and Ms. Dupont's family. The most recent comprehensive review of our health and safety system took place in 1997 in the midst of a number of dramatic initiatives by the government of the day to alter the focus and functioning of the enforcement arm of the system as well as changes to other important parts of the system.

Now, just over 13 years later, on the heels of the tragic deaths of 4 construction workers, the government has launched another review. In the intervening years, much has changed in Ontario's world of work, such as the loss of manufacturing workplaces, the rise of the service and knowledge industry, the growth of the underground economy, the increase in part-time work, the increase in home-work, and the introduction of new technology such as nanotechnology. These changes have brought new hazards with them. Although the consultation paper recognizes some of these changes, in no way does it address all of them. And in such a brief consultation period, it is impossible for labour and others to provide the Expert Panel with fulsome input on how the health and safety system could grow and adapt to address our changing world of work.

Accordingly, OPSEU recommends that the government establish a program of regular reviews of the performance of Ontario's health and safety system, looking at a variety of indicators such as enforcement activity including prosecutions, ticketing and field visits, workplace fatalities due to injuries and occupational disease, developing health and safety case law, effects of the introduction of new legislation/regulation and new and emerging health and safety issues/hazards.

In addition to our recommendation for a more substantive review of the province's health and safety system, OPSEU recommends that the government put in place a system to regularly review existing regulations and the need for new regulations under the *Occupational Health and Safety Act*. It is abundantly clear that not only has the *Act* failed to keep pace with the changing world of work in this province, its regulations are also outdated and inadequate to meet the health and safety needs of workers in many modern workplaces. Even modern regulations such as the *Regulation for Health Care and Residential Facilities* require updating to properly address changes in the health care environment.

Workers and employers need an ergonomic regulation. Although excellent work was done developing the *MSD Guide* and its various tools, it is not considered enforceable by the Ministry of Labour and consequently has not been widely implemented. The ministry and WSIB recognize that over 40% of Ontario's LTIs are due to musculoskeletal

disorders (MSD) and yet the government refuses to take steps to introduce an enforceable ergonomic regulation to address this critical hazard.

In addition, it has recently become clear that our long held assumption, supported by MOL practice, that the *Regulation for Industrial Establishments* would be applied in places such as educational facilities and correctional facilities, is no longer correct. OPSEU has learned of a number of cases where the Ministry of Labour inspectors have been instructed not to apply the regulation, leaving the workplace parties to rely on the general duty provisions (*OHS* s.25(2)(h)) to try to determine what steps to take to protect workers' health and safety. OPSEU suggests that the *Regulation for Industrial Establishments* be renamed to ensure it covers all Ontario workplaces not covered by other regulations. For all of these reasons, we also propose that the Panel recommend a system of regular reviews of the regulations under the *Act*.

5. Should stakeholders and other organizations, such as private foundations and non-government organizations be involved in the planning and design of occupational health and safety system initiatives, and if so, how?

OPSEU believes that unions, employer organizations, HSAs and organizations such as those that support migrant and vulnerable workers should have input into health and safety system initiatives. All of these organizations have information and experience in different aspects of workplaces and can bring on-the-ground information to assist in developing the most effective initiatives and strategies. Periodically, for example, the ministry has consulted with labour as it develops its sector strategies and other initiatives. We believe that is a useful exercise, if the intention of the government is to truly listen and respond to the suggestions and information.

6. What enforcement strategies could be used to improve compliance with legislation, codes and standards?

Effective reform of our health and safety system must include the enhancement of both the external and internal enforcement system. The former involves building the legal regime administered by the Minister of Labour's OHS Division, while the latter involves addressing the imbalance of power over health and safety decision making in the workplace.

External Enforcement System

1. The capacity of the Ministry's OHS Division must be enhanced with the development of several disciplines as well as building the individual capacity of inspectors. This involves the following:
 - a. Increasing the complement of industrial hygienists, ergonomists, toxicologists, occupational health physicians and scientists
 - b. Enhancing the skill level of inspectors by regular training
 - c. Develop a research arm similar to Quebec's ITSST that would consist of a collection of toxicologists, industrial hygienists, radiation specialists, scientists, and ergonomists
2. Enforcement must be based on the principle that the cost of non-compliance is greater than the cost of compliance

3. Introduce a more immediate and effective system of employer and supervisor penalties that can be dispensed by inspectors, that do not involve the court system, and which are consistent with Braithwaite's progressive enforcement model system (Gunningham 222). Stop ticketing workers; ultimately supervisors and employers are responsible for work practices and must supervise workers competently.
4. The prosecution process must be simplified to allow inspectors to prosecute some cases using what is known as Part 3 "short form" which will result in bringing violators to court more speedily and will considerably shorten the time needed by an inspector to develop the brief needed for a prosecution. The current lengthy process acts as a deterrent to prosecution in some cases.
5. Develop a system to apply administrative penalties as well as shortening the time taken to prepare to prosecute certain violations. (See OPSEU response to question regarding administrative penalties in #7 on page 12.)
6. Address weakness in the application of *OHS*A s.50 reprisal provisions. Inspectors must be given the authority to conduct immediate investigations into worker complaints about reprisals. Grant inspectors the power to: (1) rule on the reprisal, and (2) reinstate the worker and to order payment of lost wages and benefits. As in the *Employment Standards Act*, provide the inspector with the power to award damages. The MOL must also, in certain cases, prosecute employers for taking reprisals against workers.

If inspectors are not given the power to rule on reprisals, or if the inspector is unable to gather enough evidence to proceed, provide for an expedited complaint process conducted in the region where the incident occurred. The person hearing the complaint must be trained in health and safety law, similar to the staff at the previous Office of the Adjudicator.

7. The ministry must be permitted in certain cases to prosecute health and safety offenses under the *Criminal Code*. Alternately, the Ministers of Labour, Community Safety and Correctional Services and Attorney General must coordinate and develop a protocol and training package to ensure that police throughout the province are aware of the provisions of *Bill C-45* under the *Criminal Code* and lay charges appropriately.
8. Development of a regulatory review process that is appropriately resourced and allows for the meaningful participation of Labour. This process could be tied into the proposed research arm. (See proposal in earlier response.)

Internal Enforcement System

This involves providing workers with enhanced enforcement tools at the workplace. These provisions would address the imbalance of power between workers and employers with respect to making decisions about health and safety matters. Among others described in different sections of this document, following are three major provisions:

1. Providing certified worker members with the unilateral power to issue stop work directions, such as is the case in the Australian state of Victoria, and also in some European countries.
2. Providing certified worker members of JHSCs and health and safety representatives with the authority to issue provisional improvement notices such as is the case in the state of Victoria in Australia.
3. Enhanced certification training for joint health and safety committees and health and safety representatives from a training organization of their choice. The program should have a single regulated curriculum that involves central delivery within required time frames. For more details see the “Training” section (page 9) of this document.

7. Should the government use administrative penalties as another enforcement tool and what sort of violations should these penalties be applied to?

OPSEU supports the use of administrative penalties which would allow an inspector to impose an immediate financial penalty on an employer. OPSEU proposes the following:

- Certain violations must result in mandatory penalties, relying on a schedule of violations and penalties.
- Repeat violations must result in higher penalties.
- Penalties must reflect the seriousness of the violation, how long the violation has been occurring, the number of workers affected and the impact on workers (injuries and illnesses).

Such a system would be speedy and not easily circumvented. Employers and other workplace parties would be aware of the cost of non-compliance with certain sections of the *Act*. Fines gathered through administrative penalties would return to the ministry and could be applied to improving the ministry’s health and safety programs.

8. What can the government do to ensure that other ministries consider occupational health and safety implications when they are making decisions?

OPSEU recommends that the government make every effort to become a leader in health and safety. The province must lead by example.

The government should begin by revising its central health and safety policy statement to include a commitment to employing the precautionary principle when making decisions that could have an impact on the health and safety of its employees and the public.

To reinforce the importance of health and safety, it should incorporate meaningful health and safety performance measures into all OPS positions, most critically into senior positions such as Assistant Deputy Ministers and other senior bureaucrats. Research has demonstrated repeatedly that one of the key factors necessary to create truly safe

and healthy workplaces is employer and senior management commitment, referred to as 'top-down commitment.'

The government and its ministries should also incorporate a 'designing for safety' approach when they are making any substantive change to an operation, whether it is a physical move to another site or a change to a workplace practice initiated because of legislative or other change. Following are examples of substantive changes where health and safety issues must be considered:

- When a ministry workplace is moving to another location, whether rented or government owned, worker health and safety issues such as lighting, location, ergonomics of office and work station setup, air quality and ventilation, access to public transportation and parking lot safety, must be considered and the JHSCs must be consulted.
- When a ministry makes substantive changes to a work process the impact on worker health and safety must be considered and again the JHSC must be consulted.

Activities within certain ministries such as Environment, Health and Long Term Care and Community Safety and Correctional Services all can have major effects on public and workplace safety. Yet the links between public and workplace safety are not reinforced and acted upon. Two recent examples illustrate this problem.

- In the early weeks of the H1N1 influenza outbreak/pandemic last year, the government (MOHLTC Emergency Management) failed to recognize MCSCS workplaces as high-risk workplaces and would not allow facilities to initiate any part of their pandemic influenza plans to increase measures to reduce the potential for H1N1 to enter the workplace. Nor would MOHLTC recognize workers within facilities as being at heightened risk of contracting influenza (because of the work environment) and consequently would not place them in a high priority group for vaccination. These decisions potentially placed the public and workers at risk. If H1N1 had resulted in high incidence of serious illness and fatalities, it could have swept through correctional and youth facilities and led to dangerous situations if there were not enough healthy staff available to run the facilities.
- The government-created Section 21 Health and Safety Committee for the Health Care Sector is not permitted to make recommendations to any ministry other than the Ministry of Labour. This is despite the obvious fact that many decisions made within the MOHLTC have a direct impact on the health and safety of workers within the health care sector. This is ludicrous. For example, if the MOHLTC makes a decision to promote a particular cleaning or disinfection protocol which has an impact on worker health and safety, the S.21 Committee cannot make a recommendation to the MOHLTC to alter it in order to better protect workers. Even making a recommendation as simple as to encourage the MOHLTC to work more closely with labour to bridge the gap between patient infection control measures and worker health and safety issues is fraught and apparently undoable.

Another area where more coordination is needed is between MOL and the two ministries responsible for policing and justice services (MCSCS and MAG), to ensure that when

appropriate, criminal charges are laid for serious health and safety violations. We have already commented on the ongoing problems of police forces being largely unaware of the C-45 amendments to the *Criminal Code* and the absence of criminal charges in even the most egregious of cases where workers have been killed or seriously injured at work.

OPSEU also recommends that coroner's inquests should be conducted into all workplace fatalities, including those due to occupational illness. Currently inquests are held for occupational fatalities in mining and construction, but in other sectors, the determination to conduct an inquest is made on a case-by-case basis. It is our contention that public inquests into workplace deaths are an important tool to uncover weaknesses in our health and safety system and can ultimately lead to improvements to the system. For example the recommendations arising from the Coroner's Inquest into the workplace murder of nurse Lori Dupont at Hotel Dieu Hospital played an important part in the recent workplace harassment and violence amendments to the Act.

Underground Economy

1. What could regulators do to enhance these existing systems and techniques to detect underground employers?

Ontario needs to undertake strategies to **make the underground economy visible** by examining the use and legality of so-called "independent operators." Independent operator is a status attributed to workers that allows the firm to deliberately and systematically evade responsibilities for reporting taxable income, making EI and CPP contributions, paying GST and sales tax, and paying Workers Compensation premiums. Underground work typically involves ignoring the *Employment Standards Act* for holiday and vacation pay and paying scant attention to health and safety laws and to the use of licensed trades where they are required. Whether it is a housekeeping worker at a hotel, a cleaner, or a construction worker to name a few, the underground economy is alive and well in Ontario. The underground economy is cancerous; once it exists it affects the behaviour of legitimate businesses that feel pressure to lower standards (including health and safety standards) in order to compete.

The federal government has attempted to address the underground economy by allocating more resources for construction sector audits and by creating a "Contractor Payment Reporting System" which tracks the chain of contracts, sub-contractors, and sub-sub-contractors. Ontario could take similar action through legislative requirements restricting and monitoring the use of "independent operator" status and allocating resources to enforcement of health and safety legislation in proactive initiatives in Ontario workplaces.

Creating opportunities for firms to interact with authorities will also make firms visible. One way to do this is through mandatory participation in workers compensation. WSIB coverage for all workers in Ontario is also essential to help firms to be visible to authorities, not to mention that workers and their families should have the right to compensation once injured, ill, or killed on the job.

2. How could employees of underground employers be enabled and protected to inform regulators about an underground employer?

This is like asking an ant to overpower the giant. The underground economy needs to be dismantled through policy, regulation and enforcement from above, and not rely on workers who in many cases are not even aware of what an underground employer is or what their own rights are. Although providing anonymous tip-lines or explanatory materials may help, these tools assume that workers know that something about their employment is amiss. Workers may also speak different languages or otherwise not benefit from the materials.

Although enabling and protecting workers to inform regulators about underground employers is an admirable goal, other factors in the system need to be fixed before expecting a tip-line to actually help. For example, fear of reprisals from the employer together with a lack of adequate and speedy redress in Ontario to deal with reprisals is a monumental hurdle even if workers are aware of their employer's underground economy status. Indeed, leaving it to workers to carry the burden of reporting on their boss is irresponsible; rather the OHS system of Ontario must approach the issue from the top with enforcement strategies designed to expose such employers, as well as procedures and penalties to deal with employers who continue to hide under the radar.

3. What kind of partnerships within and external to the prevention system, as well as with the public, would work best to address the underground economy?

a) Funding resources for workers: The system must fund resources for workers such as Occupational Health Clinics for Ontario Workers (OHCOW) and the Workers Health and Safety Centre (WHSC) so that workers have trusted places to go for information, expertise and training. It is essential that these services be free of charge and accessible to all workers. Workers – whether union or non-union – need the kind of direct services these organizations could provide.

One can only examine the work funded by WSIB that OHCOW, IMRC, UFCW, and the community are currently doing with migrant workers to understand the benefit that trusted organizations, if given the resources, can provide to workers in vulnerable circumstances. This important project brings occupational health expertise to the fringes of one farm to provide sorely needed services to migrant workers who are often without transportation, funds, or even the time to seek out such assistance. OHCOW has filled a gap with this work and knowledge of it is spreading as more migrant workers come out of hiding to share their experiences and symptoms of occupational injury and disease to someone who will listen and whom they trust.

b) sharing information between enforcement agencies: While sharing information about workplaces between enforcement agencies may have some utility, one must be aware that meaning may be skewed due to the differing purposes for which the information was gathered. It is absolutely essential that when acting upon such information, each enforcement agency maintain carriage of their own area of expertise and independently investigate items brought to their attention.

c) Programs to lure underground employers out into the open: Creating programs to obtain tax deductions for improving their businesses may entice some underground employers to come above ground. Such a strategy should first be implemented as a pilot project to ensure that it actually creates the intended effect. To see how good intentions can go wrong, one only needs to examine the honourable intentions of the experience rating program compared its perverse and horrible results as employers hide claims, shorten claims, lie about claims and dispute claims..

Again, as mentioned above, mandatory WSIB coverage for all workers would provide another avenue or touch-point for these employers to become visible.

4. How might legitimate employers motivate underground employers to comply with the law and/or help regulators identify underground employers?

Now here is where a tip-line may work. Who better to report to the authorities on underground employers than legitimate businesses who are suffering due to the shortcuts of others skirting the law? Economist John O'Grady argued in a 2004 Canadian Construction Association Conference in Montreal that "once an underground economy forms, it becomes the single most competitive issue for legitimate businesses" (p 2). Legitimate firms not only know the intricacies of their own business, but also know who their competitors are and the methods by which they are competing. Legitimate firms also have a strong incentive to turn non-legitimate employers in—that is IF they do not see it as attractive to join the non-legitimate ranks themselves.

Therefore stringent enforcement is needed to strengthen the incentive for good firms to turn bad ones in and to prevent legitimate firms from simply joining the underground economy themselves. The costs of non-compliance must be greater than the cost of compliance.

If considered, a tip-line must be structured to collect information that is as specific and useful as possible. For example, a tip that a roofer is without fall equipment on a certain street is not helpful if the street is miles in length. Likewise, it is difficult to maintain confidentiality if the tip is so specific (i.e. truck number 115 is unsafe) that the person who called it in could be easily identified through a MOL investigation. The latter concern of confidentiality could be lessened with an employer tip-line instead of a worker tip-line.

5. How could a media campaign about the negative consequences of the underground economy effectively influence consumers to not purchase goods or services offered by someone operating in the underground economy?

While media campaigns may help and should accompany other strategies, they certainly do not reach or convince everyone. Firms and individuals often put their own interests above other, more remote interests. Difficulties such as "how will a consumer know that they are purchasing from an underground employer" need to be addressed in a media campaign.

Media campaigns also do nothing to alleviate the powerless situation of workers in the underground economy. This is why they should not be relied upon as a main strategy. While media campaigns may help workers to know their rights, employers justify many bad decisions to their own employees and the public by arguing they are necessary for their business to survive. Many media outlets and individuals consider such arguments ethical in a business-dominated world.

The growth of an underground economy has been fuelled by a survival mindset created by economic factors. When workers are faced with “Hobson’s choice,” or a choice between health and safety on one hand or their job on the other, many will accept unhealthy environments just to keep their jobs. These decisions are reinforced when the media constantly reports on the dire state of the economy. Even knowing their rights in these situations often will not change workers’ decisions to remain in a dangerous job.

Vulnerable/Precarious Workers

1. Who would you consider to be a vulnerable worker?

The consultation paper identifies a number of groups of workers, who because of their employment status are at greater risk of exposure to unsafe working conditions: workers employed in short-term, part-time and low wage jobs, temporary foreign workers, new immigrants, undocumented workers and young workers. OPSEU agrees that all of these workers are particularly vulnerable to health and safety hazards. We would add to that list workers who are injured or ill and who are either still in the workplace or are trying to return to work following their injury or illness. Many employers actively discourage reporting of workplace injuries and illnesses and many employers are extremely reluctant to offer appropriate accommodated work to assist workers back into the workplace, no matter whether the source of their injury/illness was in the workplace or elsewhere.

We also believe that workers in certain types of workplaces such as healthcare, social services, home care services and developmental services are particularly vulnerable. Most of these workers identify strongly with the clients they care for and are susceptible to employer suggestions that if they insist on safe and healthy working conditions, there will be a negative effect on clients. They frequently work alone and in residential settings with no supervisory or other support. We see this frequently in the Developmental Services Sector where our members are assaulted, exposed to infectious illnesses without proper protection and training, where they are obliged to work alone at night without proper support, and to try to manage violent clients without appropriate staffing, training and equipment.

In fact there are vulnerable workers in all workplaces where workers are unaware of their rights under the *Act* or where they are unable to enforce their rights because they are intimidated by their employer and/or by clients/customers/patients/residents who insist that workers’ rights are secondary to those of the ‘customer.’ Compounding this vulnerability is that even in workplaces where our members know their rights, they also know that the ministry does not enforce *OHS* s.50, so they are not safe from employer reprisals.

A final group of vulnerable workers are those who are told by the temporary agencies that employ them that they are independent contractors with no protection under *OHS*A or *WSIA*. Often these workers, typically cleaners, are naïve about the province's labour and health and safety laws and have no idea where to turn for assistance.

2. How can government require and/or motivate employers to protect the health and safety of these workers?

We have already commented at length on the need for an enhanced enforcement system with greater resources, administrative penalties, expedited methods of prosecuting some infractions and enforcement of the reprisal section of the Act. OPSEU believes that a vigorous, well resourced enforcement system will act as a strong motivator for employers to protect the health and safety of these workers. OPSEU members, who we consider to be vulnerable workers as described above, would benefit greatly from a more vigorous and enhanced enforcement system, particularly if *OHS*A s.50 was enforced aggressively.

OPSEU also believes that strong protections are necessary for workers who work for temporary agencies, labour brokers and those working in sub-contracted arrangements. This would include ascribing full legal responsibility to the receiving employer or main contractor for the health and safety of all those working within their sphere of control. For example, the receiving employer for a temporary agency worker would be legally responsible for ensuring that the worker is trained and properly protected from hazards in the workplace. Responsibility for the health and safety of vulnerable workers can no longer be bounced back and forth between two or more agencies, leaving workers completely unprotected and vulnerable.

Additionally, the prevention system must ensure that employer prevention efforts result in materials, programs and media products that are accessible to vulnerable workers by responding to their language and cultural needs. Linkages must be made between all those involved in prevention efforts with community and other organizations working with vulnerable workers.

3. Could anonymous complaints be effective in enforcing health and safety compliance to protect vulnerable workers?

OPSEU believes that the ability of workers to make anonymous complaints regarding health and safety problems would be helpful, although the institution of such a system should not be considered a panacea. Many vulnerable workers are completely unaware of their rights under *OHS*A and would have no idea how to call the ministry or what to say. Workers in small workplaces with only a few employees would also be reluctant to call, fearing that the employer would be able to determine who made the call. We also recognize that anonymous calls create an obstacle for the ministry inspector who responds to the call without knowing who they should speak with to get more information about the concern.

OPSEU cannot stress enough its position that our enforcement system must be enhanced and that the reprisal section of the Act must be strengthened and enforced. Workers who are confident that the ministry will protect them if they raise a health and

safety concern are much more likely to attempt to enforce their rights for a safe and healthy workplace.

Incentives/Supply Chains

1. What are reliable indicators of health and safety conditions in workplaces?

OPSEU suggests that WSIB LTI claims are NOT reliable indicators of health and safety and supports the MOL's recent efforts to move away from enforcement based on claims data alone. Objective data, such as workplace hazards or high risk industries combined with inspector knowledge and information are more reliable indicators. However, the MOL must make sure that enforcement activity does not focus just on typical industry hazards and on industry alone. It is important to recognize that other workplaces such as schools, colleges, and offices also face serious hazards such as asbestos, workplace violence, and chemical exposure.

Many have suggested using OHS climate, culture and management systems as indicators, but OPSEU recommends that a cautious approach should be taken. One problem with indicators is the expanse of disagreement with what good indicators are. For instance, while some argue that "providing rewards for good health and safety behaviour" is an indicator of positive employer commitment to health and safety, OPSEU argues that providing rewards actually reduces reporting and increases conformity (through peer pressure) with unsafe practices.

OPSEU opposes relying using these types of indicators to target inspector activity; rather these culture and management systems indicators should only be used in addition to inspectors' knowledge and experience while in the workplace and to guide subsequent enforcement activity. To OPSEU, indicators are simply a mechanism to tell inspectors where not to go. Inspectors often know their areas: opportunities must be provided in any targeting strategy to allow inspectors to utilize their information, intelligence, and knowledge.

Once in the workplace, inspectors can confirm the existence of various items that research has shown indicate commitment to health and safety: management commitment, resources applied to health and safety, unfettered provision of information to workers and JHSC, appropriate training for workers and JHSC, practises that exceed *OHSA* minimums, collaborative JHSC practices, high level of incident reporting, positive worker perceptions of health and safety, speed with which hazards are addressed, whether recommendations are responded to and action taken, and many other things. A trained and experienced inspector will be able to ask these questions and gauge enforcement activity accordingly.

2. What motivates employers to constantly improve their health and safety performance?

Employers need to expect that if they do not meet compliance, they will face swift, progressive, and effective enforcement intervention. Many studies have reinforced the effectiveness of stringent enforcement. For example, in their study of 6,842 large U.S. manufacturing plants in 1991 Gray and Sholtz found that frequency of inspection combined with penalties reduced injury rates by 22 percent and lost days by 20 percent

(qtd by OPSEU 26). A recent review of the literature by Emile Tompa reinforces those findings (5). Researcher John O'Grady also argues that the idea that government inspectors only intervene as a last resort has led to a perception of weak enforcement in Ontario (Joint health and safety 32). OPSEU suggests that it is time to change this perception and move away from a facilitator/mediator approach to immediate, graduated enforcement inspector activity. The prospect of swift, progressive action by the MOL combined with a strengthened IRS will help improve Ontario's health and safety system and will move Ontario closer to a more effective balance between enforcement and compliance.

3. Should Ontario continue to have a system of incentive programs to motivate organizations to go beyond minimum standards of health and safety? If so, what indicators or activities such as operation of an occupational health and safety management system, should be used to verify that a workplace is a superior health and safety performer? How should such incentive programs be administered?

OPSEU strongly recommends that Ontario eliminate its discredited Experience Rating program. Although Ontario's rebate program, the "New Experimental Experience Rating" (NEER) intends to reward employers that operate safer workplaces, the program has other unintended effects that detract from its objectives. NEER causes employers to engage in strategies to lower claim numbers that have little to do with improving workplace safety. These measures worsen the situations of injured workers. Any incentive program ought to achieve its stated objectives or be fixed or eliminated. In addition, even if experience rating actually worked to prevent future injuries, it is largely a reactive system and is not engaged in primary prevention efforts.

Ontario needs a balanced approach to effectively prevent and compensate injuries. Replacing incentives with appropriate legislative options and enforcement activity will improve workplace safety as well as provide fair treatment for injured workers. Recognizing and addressing system faults means ensuring that, if employers get rewarded, it is for instituting health and safety improvements that can be observed and measured rather than simply managing injured workers.

Many alternatives can connect incentives with actual health and safety improvements if the government intends to retain an incentive lever in Ontario. One option would be an "Excellence Fund," that takes current rebate money paid to employers and instead makes it available to employers to fund specific, quantified health and safety improvements on a case by case basis.

4. Should there be incentive programs directed at parties other than employers, such as supervisors and workers?

OPSEU opposes incentives for supervisors and workers which frequently have produced negative effects and which also push responsibility for safety from employers downward onto individual workers.

5. Is there an incentive program currently in place in another jurisdiction that you would recommend as a best practice which rewards superior health and safety performance?

OPSEU is not sufficiently familiar with programs in other jurisdictions to comment. We will await the review and report by the Working Groups.

6. Should there be non-monetary incentives? If so, what form should such incentives take?

Some non-monetary incentives may be helpful. OPSEU notes that the public health program of posting 'Pass/Fail' stickers outside restaurants according to their compliance with public health standards has wide-spread public support. It is possible that publicizing the names of good and bad employers according to compliance with health and safety law, may have some utility in achieving compliance. Some firms may want to avoid having their bad behaviour in the public eye. As with environmental standards, society is placing greater emphasis on ethical and socially responsible investment policies. A poor record in this area may deter investment and future business success.

7. How can accountability for compliance with the law be ensured when goods and/or services are purchased through a chain of contracts and sub-contracts?

As our economy and the marketplace changes, many employers have learned to structure their businesses to avoid legal responsibility for health and safety and other labour legislation. OPSEU suggests that one employer be designated as the main employer who cannot abdicate responsibility down the line to contractors and sub-contractors. That lead employer would then be responsible for ensuring that all organizations down the chain are legally compliant.

8. Should government encourage and support the development of supply chain incentives and, if so, how?

Yes, one strategy could be to encourage good performance by setting criteria by which supplies and contracts can be judged against prior to selection. These incentives cannot replace enforcement as the primary tool to ensure compliance with health and safety legislation.

Joint Health and Safety Committees/Internal Responsibility System

1. Is a JHSC an effective mechanism to prevent workplace injury and illness?

Not without being accompanied by stringent enforcement to support the IRS. The power imbalance between employers and workers needs to be addressed when examining whether JHSCs are an effective mechanism to improve workplace health and safety. Another problem is the growing trend to individualize responsibility for health and safety within the workplace. Rather than the JHSC being considered as the "cornerstone of the IRS," the IRS is increasingly interpreted as a system of individual responsibilities within a workplace. This principle of accountability without power accompanies the downward assignment of responsibility onto workers.

Such an approach minimizes the importance of the JHSC and instead highlights individual roles and responsibilities within the workplace. OPSEU considers this incorrect interpretation of the IRS to be detrimental to the effectiveness of a JHSC or health and safety representative. The focus must be put back on developing effective JHSCs and health and safety representatives. The JHSC should be the mechanism through which workers can collectively participate in workplace health and safety especially in a non-unionized workplace. In addition, unions need a bigger role in unionized workplaces (discussed in more detail later in this paper).

This transfer of responsibility downward can also be seen in inspector ticketing, where there is a focus on ticketing workers rather than employers, citing individual responsibility for health and safety and totally missing the point that workers' responsibilities rely to some degree on outcomes of employer responsibilities and the choices employers or supervisors make. Ticketing currently penalizes those with the least say in health and safety. For example, if 11 workers at a worksite are without construction hats, the employer of those 11 workers ought to be receiving the penalty, not the 11 workers. Giving the 11 workers tickets does nothing to reinforce employer accountability in the workplace. Therefore, to increase the power of the JHSC, emphasis must be placed on increasing the power of the committee and that of the worker members. Valence Young quotes Walters et al (2005) in citing six pre-conditions of JHSC effectiveness:

1. Strong legislative influence
2. Effective external inspections and control
3. Senior management commitment and capacity
4. Competent hazard/risk evaluation and control
5. effective, autonomous worker representatives
6. External union support (7)

2. How can JHSCs make effective contributions to workplace health and safety?

OPSEU believes that the six pre-conditions described above provide the key to the JHSC being effective in addressing workplace health and safety, but would also point out that this question excludes smaller workplaces that do not qualify for a JHSC and, in some cases, even a health and safety representative. On this note, OPSEU recommends that any strategy ought to include small workplaces.

As the six conditions outline, a strategy must include important aspects of the external responsibility system, such as an appropriate and relevant legislative scheme combined with strong enforcement designed to produce senior management commitment, and complemented by strong rights and training for worker health and safety representatives and joint health and safety committee members.

To appropriately consider the role of JHSCs within the IRS, one should go back to Ham's original conception of the JHSC. The function of the IRS, as it was originally conceived by the Ham Commission, was to enhance the ability of workers to influence decisions about the health and safety conditions of work and the level of risk. This was to be achieved by the right to participate in decision-making through joint health and safety committees and as health and safety representatives, the right to know about the

nature and extent of hazards in order to participate knowledgeably, and the right to refuse an unacceptable level of risk. To truly give life to Ham's vision, OPSEU suggests:

- a) Count all workers whether temporary, seasonal, contract or independent operator both as part of employer obligations (Johnstone, Quinlan and Walters 97) and to determine existence of a JHSC rather than relying only on a definition of 'regularly employed'
- b) A legal obligation for employers to address the concerns of workers as well as JHSCs and health and safety representatives
- c) Providing workers with real decision-making power over health and safety issues through joint committees and health and safety representatives
- d) Providing workers with the majority of positions on joint health and safety committees and obliging employers to follow the recommendations of joint health and safety committees
- e) Providing for strict enforcement by the inspectorate
- f) Authorizing certified worker representatives to issue provisional improvement notices that the employer must comply with or appeal to an inspector such as exists in the Australian state of Victoria

3. What leadership behaviours are expected from a JHSC?

OPSEU opposes incorporating behaviour standards in any shape or form for JHSCs or health and safety representatives for two reasons. First, training to develop these types of skills takes substantial time to complete, requiring education in theory and practice, and often is provided only to management rather than to workers.

Secondly, OPSEU believes that any assessment of interpersonal skills is subjective in nature and as such any "standards" may be used against worker JHSC members. For example, worker members who speak up are often judged by employers to be troublesome, rather than being considered as a natural part of a healthy and robust internal responsibility system and part of an atmosphere where all workplace parties can discuss issues and disagree from time to time. Any expectation of interpersonal skill-building or possession of skills may be complicated by the fact that usually only employers or supervisors, not workers, receive leadership training. Interpersonal skills may also focus on the form or appearance of interpersonal relationships, rather than the content or achievements arising from those relationships. The result might be a JHSC with good manners and few accomplishments.

We absolutely discourage Ontario from opening this door to what we argue will be new opportunities for employers to control behaviour or set subjective standards for JHSC member behaviour. This is not to say that OPSEU disagrees with standards of behaviour (i.e. professionalism) for all persons in the workplace; rather we believe that existing employer rules and regulations for acceptable behaviour effectively manage these issues, and that it is NOT the responsibility of the MOL or certification processes.

4. What measures could be used to ensure that JHSCs exist and function effectively at workplaces where they are required?

OPSEU advises that the MOL provide adequate resources and focused enforcement activity to ensure compliance with laws in regards to JHSC and health and safety representative existence and function. OPSEU suggests:

- a) Enforcement must drive the IRS and the joint committee system. There should be zero-tolerance for breaches on the joint committee and health and safety representative system.
- b) Increase the powers of JHSCs from their current role as an advisory committee. According to Digby and Riddell (1985) committees should have functional authority to be effective (such as approval powers for equipment selection or a duty to bargain in good faith (qtd in Joint health and safety O'Grady 12). Employers must be obliged to follow the recommendations that have been formulated by joint committees.
- c) Committees should also participate in the development and approval of health and safety policies and programs.
- d) The employer should be obligated to provide committees and health and safety representatives with budgetary allocations to conduct their duties and to ameliorate unsafe conditions.
- e) In order to address the unequal distribution of power and the ability of employers to exercise a double veto over recommendations, worker members must be provided with the majority on the committee.
- f) JHSC powers should be increased to support "provisional improvement notices" which could be issued by worker representatives. These notices would become an internal compliance mechanism.
- g) Multi-workplace committees must receive ministerial approval even if these arrangements may have been entered on a contractual or voluntary basis. The issue here is one of enforceability of the terms and conditions that are not legally mandated in the *Act*. Ministerial sanction provides for clear designation of responsibilities with which the parties must comply. Voluntary structures create instability and confusion and lead to unnecessary conflict over procedure and structure

In this vein, Ontario's inspectorate ought not to have their enforcement activities limited or be compelled to achieve quota numbers of inspection or site visits. Let inspectors use their expertise and intelligence to guide more effective enforcement activities; they are knowledgeable professionals who know their jurisdictions and where to focus. Their intelligence and experience is superior to targets set out in a paper enforcement strategy. For example, an inspector might consider preparing a prosecution for a firm with a poor record more important than performing an expected number of relatively unimportant site visits. Too often in Ontario inspectors are not being afforded sufficient time to prepare essential prosecutions or to follow up on problems due to pressures to meet such performance standards.

5. What impediments are there to the effective functioning of a JHSC within the internal responsibility system?

Functionality of a JHSC cannot be examined without realizing that the power of a JHSC is guided by and contingent upon the importance placed on it by the regulatory and enforcement scheme in Ontario. Unfortunately, the state of regulatory protection is not a reflection of the state of knowledge or technological know-how, it is a demonstration of the distribution of economic power, political power, and the importance society places upon worker health and safety.

Accordingly, enforcement strategies in Ontario float between a deterrence or compliance model. While a deterrence model focuses on laws and the sanctioning of rule-breaking behaviour, a compliance model focuses on gaining compliance through voluntary measures using a facilitation and mediation approach (Gunningham 213). Gunningham argues that “too much compliance easily generates into an intolerable laxity and fails to deter those who have no interest in complying voluntarily, while too much deterrence breeds a culture of resistance” (214). Ontario is not in danger of too much deterrence; rather OPSEU argues Ontario does not make the best use of its compliance structures. We argue that Ontario relies heavily on a weak internal responsibility system while at the same time providing no real expectation of external enforcement for non-compliant employers unless someone dies or gets critically injured. Ontario needs to strengthen the internal responsibility system. At the same time it must increase expectations that external enforcement will occur swiftly and progressively where needed. In this manner these two approaches can work well together.

Some suggest that one way to bridge the gap between deterrence and compliance is to consider Braithwaite’s enforcement pyramid, whereby enforcement increases with an employer’s unwillingness to comply (Gunningham 215). Even if progressive enforcement in Ontario shows appropriate use of the lower levels of Braithwaite’s enforcement pyramid, Ontario often moves to the apex of the pyramid (prosecution) only in cases of severe injury or fatality rather than routinely proceeding upward in cases of severe breach or ignorance of health and safety laws (Gunningham 216). This means that employers who severely and repeatedly violate do not expect prosecution because that consequence exists in a separate enforcement pyramid — for severe injuries or fatalities only. This gives employers absolutely no deterrence for serious breaches of the law that do not result in critical injury or fatality, such as wanton disregard for health and safety laws, failure to provide workers with information or reports, or failure to comply with previous inspector orders.

Another problem is the lack of criminal prosecution despite the existence of *Bill C-45*. The failure to use these provisions cannot possibly leave employers with the impression that any type of enforcement action is likely or even possible.

For enforcement to be effective it must have the following characteristics:

- a) IRS needs to be driven by enforcement and not be a substitute for enforcement
- b) Provide inspectors with a clear and consistent mandate
- c) Have high capability to provide technical expertise such as industrial hygiene (OPSEU qtd. Gray and Sholtz 26)

- d) Provide more tools and resources for inspectors and not rely on quotas
- e) Cost to violate is greater than the cost of compliance
- f) Visible publication of offences and resulting penalties
- g) Violators need to expect high probability of getting caught and penalized
- h) Include a system to ensure fines are paid in a timely manner or further penalties such as contempt of court charges should occur

Power imbalance between employers and workers

From a prevention standpoint our currently legislated joint committee system is too weak and does not address the power imbalance in the workplace. OPSEU believes that our recommendations will address this problem.

Preoccupation with economic concerns

Another impediment to effective functioning is the fact that employers are preoccupied with, and make decisions primarily in response to economic concerns. Resources are scarce. This inescapable fact, combined with the sheer power that employers wield in the workplace, bodes badly for workers' health and safety.

Failure of the employer to acknowledge existing health and safety laws

When workers have to call for inspector enforcement to obtain copies of hygiene reports, to be able to assert their rights to select specific workers to sit on the committee, to be cleared from work duty to attend a JHSC meeting, to receive a response for a recommendation, it shows the sorry state of employer compliance with existing requirements in Ontario. The law already provides the right for these items. Workers often show the employer the green book to try to resolve the issue BEFORE calling the inspectorate! There is no excuse for employer non-compliance after they have been shown the *Act* by the workers and/or union. Enforcement activity and resources are wasted with simple breaches that could easily be fixed. If the inspectors had the ability to issue employers or supervisors with short, quick penalties for obvious indifference and ignorance of existing requirements a lot of resources and time could be saved. Workers could also get to the real business of workplace health and safety—identifying hazards and potential solutions rather than simply striving to achieve basic rights around composition and function that are already clearly laid out by law.

6. Is the current system of certification training adequate and, if not, what is needed to make it more effective?

No, OPSEU suggests that certification training should be mandatory and paid for by the employer for all employer and worker members of JHSCs and for health and safety representatives. Workers should obtain certification from a delivery organization of their choice. Certification should be renewed on an annual basis, be a standardized program, and occur within mandated timelines.

Health and safety representatives badly need certification training in order to function effectively. 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 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 training, health and safety representatives are not aware of their roles, as described in Section 8 of the *OHSA*. 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, if these health and safety representatives begin to raise health and safety concerns, their employers often subject them to reprisals, counting on the fact that the representatives have little knowledge and support to resist effectively.

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 WSIB and MOL are really committed to prevention of illness and injury, through the operation of well functioning health and safety structures, we urge that you assist by ensuring that Ontario 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 2010, 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 *OHSA* in 1978.

7. Should a worker health and safety representative be required at every workplace where a JHSC is not required?

Yes, if possible. Employers have obligations for health and safety at all workplaces. The difficulty is the lack of volunteers willing to be selected. This needs to be addressed in a way that does not force the union or workers to select a person who is not willing. Why? Simply, workers may have many reasons for not volunteering. Fears of reprisal may make workers too afraid to step forward in a leadership role. The workplace may be small and have few employees, or workers workloads may be too heavy to take on the role. Ontario needs to mandate that all selected health and safety representatives must be recognized by the employer. The law must require employers to assure that the work environment is supportive and inviting for people who step forward as representatives. Ontario also needs to strengthen the reprisal protections in the *Act* if this issue is to be successfully addressed. OPSEU suggests:

- a) To address the difficulty in small, scattered workplaces, Ontario should allow workers and unions to select health and safety representatives from different sites if necessary, that may or may not be under the same employer
- b) That union representatives (of the same employer and at the same employer's workplace at a minimum) may perform duties or inspect workplaces on behalf of their workers in circumstances where no representative exists, or where the health and safety representative requests assistance
- c) Mandatory certification for all worker health and safety representatives

- d) Authorizing worker representatives to issue provisional improvement notices that the employer must comply with or appeal to an inspector like exists in the Australian state of Victoria
- e) Penalties for an employer interfering or not co-operating with a health and safety representative in their role because the representative is a lone person and especially vulnerable

8. What impediments or barriers are there which may prevent a worker from participating within the internal responsibility system to identify and resolve health and safety concerns?

Fear of reprisal is a big barrier that will be discussed later in this paper. Other barriers include workload, and a poor health and safety culture where the atmosphere does not welcome workers to raise concerns. Employer delays in addressing existing concerns also contribute to feelings of futility. As mentioned earlier in this paper, vulnerable worker status itself is a barrier to full participation for a myriad of reasons such as language, part-time status, etc.

9. What can the government do to strengthen the internal responsibility system and ensure that all workplace parties are able to play a meaningful role in the internal responsibility system?

Please see our responses to question 4 above.

10. Is the reprisal protection currently provided sufficient to protect workers who raise health and safety concerns or exercise their rights under the legislation?

No. Currently the *Act* promises protections that do not truly exist for workers. Unfortunately, although the language in Section 50 describes and prohibits unacceptable behaviour, the law has no teeth to enforce its own assurances. OPSEU encourages the expert panel to review and consider the December 2009 report by Brendan McCutchen, *“Culture of Fear: A report on the status of enforcement of reprisal protection for workers under the Ontario Occupational Health and Safety Act.”* OPSEU concurs with McCutchen and suggests that the panel examine provisions in Manitoba, Alberta, Saskatchewan and Nova Scotia where inspectors have additional powers and responsibilities in regards to reprisals, such as investigating alleged reprisals, ordering wage payments, or reinstating workers.

OPSEU submits that the government has known for some time that reprisal redress is problematic in Ontario and suggests it is now time to address the rampant fear that prevents workers from fully participating in health and safety in Ontario. McCutchen reminds us that the MOL’s discussion paper released in 1997 acknowledged that protection from reprisals is crucial to workers participation in health and safety (6). McCutchen also points out that even as far back as 1986, then Minister of Labour the Hon. William Wrye asserted in the Ontario Legislature that his government would be “tough with reprisals” (7). So far we have not seen these promises realized.

OPSEU suggests giving inspectors powers to investigate alleged reprisals. Inspectors should have the ability to reinstate workers or order payment of back pay and damages.

The MOL should also have the ability to prosecute employers in clear cases. The OLRB (or Office of the Adjudicator) mechanism should be maintained where inspectors have no findings, or the MOL does not prosecute and workers wish to seek their own redress.

OPSEU cannot sufficiently emphasize the importance of strengthening reprisal protections in Ontario health and safety law. We say that other improvements made by the panel will be for naught if this important issue is not addressed.

11. What role should the various partners play in promoting a robust and functional internal responsibility system in Ontario workplaces?

As mentioned earlier in this paper, unions need a bigger role in health and safety under the *Occupational Health and Safety Act*. While the *OHS Act* provides a role for unions in selecting worker representatives and receiving injury notices, we suggest that unions be provided with the right to obtain other relevant health and safety information in the workplaces they represent such as copies of MOL reports, health and safety recommendations and responses, have the right to tour or inspect where no health and safety representative exists or where the representative seeks assistance. This is especially important and could be useful in small businesses or where no health and safety representative or committee exists.

A greater role for the union would generate worker interest and involvement in health and safety matters. More worker representatives would volunteer for these roles if they could be assisted more by the union where there is one.

Technology/Innovation

It is OPSEU's position that whenever an employer or the government has an opportunity to develop and/or introduce a new innovation, work process or new technology, it must be done with consideration of potential health and safety impact and in consultation with the JHSC or health and safety representative. The ultimate goal should be that health and safety is seen as a key consideration at the design stage of any new innovation or building project. There is a growing body of knowledge known as "Safety in Design" where those principles are recognized and promoted.

1. Do you have examples of how information or manufacturing technology has significantly improved health and safety in your workplace; and how advances in technology can be extended to workplaces with limited or no access to them?

Pressure and culture in small businesses make adopting health and safety practices difficult, expensive, and often unwelcome to both employers and employees. At the 2010 CARWH conference in Toronto, Danielle Champoux argued that while opinions about health and safety are positive in small businesses, very few JHSCs exist and the dominant approach is individual responsibility. Champoux noted that enforcement is difficult because small business pressures make both employers and employees want to work faster and often in an unsafe manner (May 29, 2010). Champoux found that small businesses need help prior to investing in machines and setting up in business so that they can invest in safety at the beginning (May 29, 2010). This idea supports an issue OPSEU raises in this paper that standards should be referred to in health and safety

legislation to ensure that small businesses know what standard they should meet. Government bodies or trade associations can also develop resources for new business owners.

2. Have you encountered situations where introducing a new technology created potential health and safety hazards? What did you do to identify and control/eliminate these hazards? What steps could have been taken at the onset to prevent these hazards from occurring?

OPSEU offers two examples of the hazards of introducing new technology without consideration of the associated potential health and safety risks. Although the first example is old, workers are still experiencing the consequences. The replacement of typewriters with computers in modern offices 25 years ago has been associated with a dramatic increase of repetitive strain injuries. Despite the growing body of ergonomics knowledge and huge personal and financial toll of these injuries, new injuries appear daily and few changes either to equipment or work processes have been made to stem the onslaught of injury.

Another more recent example in an OPSEU workplace was the introduction of a new software program to manage complex layers of data. No attention appeared to have been paid to the complexity of the system, how awkward it was to use, how many mouse clicks and keyboard strokes it would take for a worker to go through the various screens to find and/or enter data, and the increase in stress levels among the workers already coping with extremely heavy workloads.

With the first example, it may have been difficult to predict from the beginning how widespread and serious the repetitive-strain injury (RSI) problem would become. However, what is startling is that so few changes have been made subsequent to these problems emerging to attempt to design out the hazard, either by developing different equipment or recommending less injurious work practices.

With the second example, given the magnitude of change to the software program and that this group of workers spends many hours daily using the system, it would have made sense to bring the proposed changes to the workplace JHSC for review and comment when the prototype was developed. It would also have made sense to pilot the software with experienced workers. Their concerns should have been noted after a substantial pilot period, well before widespread implementation.

3. What measures can be taken at pre-design or design stage to eliminate hazards? Are you aware of any methods used in other jurisdictions to identify and control hazards before introducing a new process or changing an existing one?

There is a growing body of knowledge and expertise concerning the importance of designing for health and safety to prevent health and safety problems from developing. For example, in 2007, the United Kingdom enacted a regulation in the construction sector, "*The Construction (Design and Management) Regulation 2007*" which establishes rules to ensure safety on construction sites (a consideration of construction workers safety before the project begins) and to ensure that others will not be placed at risk because of the project (6).

Similarly, Safe at Work Australia has developed a resource, “*Guidance on Principles of Safe Design for Work*,” which although not regulation, offers advice to employers, designers and individuals who are involved with design or modification of products, buildings, structures and processes used for work. It focuses on key principles of safe design and raises awareness of the importance of safe design and how it can be achieved.

For particular types of workplaces, such as laboratories, there is also a growing body of information to assist designers, constructors, engineers and others to design worker health and safety into the planning and construction of a laboratory. For example, a quick search of the web found a recent four-day course at the Harvard School of Public Health, “*Guidelines for Laboratory Design: Health and Safety Considerations*.” The course was aimed at architects, building planners and owners, construction engineers, health and safety professionals, laboratory facility engineers and scientists and others. The goal of the course was to prepare the different players involved in the construction, renovation or decommissioning of a lab to be able to fulfill their roles without endangering the workers involved in the actual task and in future work (4).

In Ontario, knowledge of these sorts of initiatives – regulation, guidelines and training – seem to be largely absent from the workplaces where OPSEU is involved. For example the design of new hospitals or units of hospitals appears to be done with no attention to the workers who will work there; workplaces are moved and redesigned with no attention to simple issues such as safety of parking lots, width of countertops, location of security devices, etc. OPSEU strongly recommends that the government make designing for safety one of its key principles and that it also require all of the other health and safety partners to also adopt the concept as a key principle, as did Safe at Work Australia.

Another avenue to consider is mandating the right for JHSCs to be consulted in the process. For example, O’Grady points out in “*Joint health and safety committees: Finding a balance*” that Scandinavian work environment, legislation gives worker representatives a right of approval just short of a full veto of new technology or equipment (12). O’Grady also suggests that the duty to bargain in good faith could ensure a fair process to select equipment or design through meeting and exchanging relevant information and make proposals (Joint health and safety 12). Recognizing that these suggestions may work only in large, unionized workplaces, outcomes of these experiences and criteria for selection could be made into materials for small businesses. Other resources should be made available through the HSAs.

4. What barriers have you experienced in implementing new technology to improve health and safety?

Workplace layout or building structure can be a barrier to implementing new technology. Employers abandon the technology to remain in the space. Examples go from doing without mechanical lifts for patients in long-term care facilities to doing without stationary pallet lifts in small liquor stores. Changing work operation or reorganizing the workplace to accommodate the new technology is often not considered.

5. What electronic data and information collected by the various OHS system partners should be shared among the occupational health and safety system partners and the public?

Although there has been some progress to encourage and implement data-sharing between WSIB, MOL and the HSAs, this process could be improved as OPSEU suggested on page 3 of this paper. In summary, OPSEU recommends that systems be put into place to allow real-time information sharing by WSIB with MOL about serious injuries and occupational illnesses, which MOL could use to assist to identify workplaces that should be targeted or which need support.

The WSIB should also be required to share information with the MOL in cases of fraud or other WSIB issues which may indicate that the company has inadequate health and safety systems. Measures should also be put into place to allow MOL to notify WSIB and/or the appropriate HSA when the MOL is concerned that a company may be hiding workplace injuries and illnesses or if the inspector believes that the company needs the assistance of the HSA. And the HSAs must have a system and an obligation to report to the MOL or to WSIB if they become aware of issues that should be addressed by either organization.

More information should also be shared with the public and workplace parties like unions. For example, in previous years unions used to be able to request and receive detailed information from the Ministry of Labour concerning its activities in various sectors. Known as the 'Facts and Figures' document, it provided information on numbers of registered premises in the province, numbers of registered workers, MOL Field visits, inspections, consultations and investigations, numbers of work refusals, critical injuries and fatalities, and more. It was possible with this data to trace trends over the years. The MOL asserts that it can no longer provide this detailed data to workplace parties.

Additionally, unions used to be able to get detailed reports from WSIB concerning workplace injuries/illnesses in sectors where they represent workers. It has now become exceedingly difficult for unions to request and receive meaningful data from WSIB in order to be able to plan their health and safety and prevention efforts. For example, one OPSEU request for injury/illness data from WSIB for hospital workplaces where we represent thousands of members, took more than a year of repeated requests and finally intervention from senior WSIB management before being granted. This is not acceptable.

6. How can government policy and regulations assist in the use of new technology to improve health and safety?

As argued above, government policy should insist that health and safety principles be incorporated into the design of new buildings, innovations, work processes and technology. Before purchasing a new technology, the government must ensure that it was designed with health and safety principles in mind.

It would also be useful if all regulations under *OHSA* referred to current applicable standards, so as standards change and are updated, the regulations will keep pace. For example, if the *Regulation for Industrial Establishments* referred to the 'current' *CSA*

Respiratory Protection standard, then if new and improved personal protective equipment became part of the standard, inspectors could write orders to comply with the standard. This would be a similar process to the way the *Communicable Disease Surveillance Protocols* are handled. They are referred to as a group under the *Public Hospitals Act* and then as each protocol is updated it continues to be an enforceable standard.

Training

1. Are there training principles and methods that are key elements of effectively imparting health and safety knowledge of workers?

Yes, most health and safety training needs to be practical and in-person rather than informational or e-learning. Practical classroom application with opportunity for feedback increases knowledge transfer and enhances retention of the material.

2. Should there be mandatory entry-level training for workers, supervisors and managers? Should the curriculum and method of training be prescribed?

Yes, all new employees, supervisors and managers should receive mandatory, relevant, and meaningful health and safety training. OPSEU opposes non-classroom training for many reasons. When given instructions to perform on-line training, workers are often not provided with free time from their work responsibilities to complete that training. Rather, workers are simply expected to fit training into their already busy day. Online training lacks reality and emphasis. Non-classroom courses do not provide real-time access to instructors or peers, nor do they respond to differing learning styles. Additionally, there is a lack of strong evidence demonstrating that e-learning training produces effective competent certified members. Our experience is that it is the combination of strong curriculum and the interactions between peers and instructors that results in effective, meaningful training.

We strongly recommend and request that the WSIB's e-learning standard dated March 2007 be revoked. This standard was developed with no consultation with stakeholders and in our opinion, has opened the doors to a race to the bottom where some providers actually claim that they can offer Part One Basic Certification in less than one day.

3. Are there criteria that should guide decisions on when a specific training program should be mandatory?

Definitely yes, OPSEU believes that certification as well as other training should expire and that renewal should be mandatory. Laws change, work changes, hazards change, and new hazards emerge. Certified workers and all workers need refreshers and upgrades to perform their roles effectively. Just as members of professional associations or trades must keep certifications active to effectively contribute to their field; so must JHSC members and health and safety representatives have relevant certification to effectively carry out their functions in the workplace.

OPSEU also agrees with the Building Trades that workers should have a "training passport" that lists all the training received, date, trainer, and the delivery organization.

4. Do you have an example of a highly effective training program that you could provide?

OPSEU believes that the Workers Health and Safety Centre's programs are relevant to workers and serve as examples of effective training programs. The WHSC allows sufficient time and space to run a program, rather than crunching it down to the bare minimum—like other organizations do in order to be cheaper and faster. WHSC courses are worker-taught; not only do participants get knowledgeable facilitators, but the facilitators also bring a practical perspective into the classroom. WHSC courses use a variety of teaching methods to meet the needs of a variety of learning styles. OPSEU strongly suggests that workers should have the right to choose their training delivery organization for certification training. Additionally, we recommend that all JHSCs be provided the right to be consulted in the development and delivery of health and safety training as is provided in workplaces covered by the *Regulation for Health Care and Residential Facilities*.

5. When providing health and safety information, instruction and training to workers, how do you take into account: 1) literacy levels, in any language; and 2) the presence of multiple languages at the workplace?

Obligations for employers to provide information and instruction to workers to work safely must include the additional obligation to provide material and methods relevant to the particular workplace. This material must be provided in a way that is understood by employees. Training or information must take into account literacy levels and the presence of multiple languages by providing information in a variety of ways suited to adult learners. It should not simply rely on e-learning programs where no valid opportunity exists for real-time, two-way communication that can verify understanding and comprehension.

Also, consulting workers about delivery organizations or methods will help increase knowledge transfer, usefulness, and retention of information.

6. How have you incorporated visual aids (e.g., pictures, symbols, demonstrations, etc.) into health and safety training?

Using a variety of delivery methods helps to transfer the information effectively to trainees. From power-point presentations to interactive small and large group activities, information can be imparted and practised in the session. Reading information is not sufficient for all circumstances; practical training must be maintained and mandated for technical or dangerous tasks.

OPSEU suggests that classroom activities such as role plays, group activities, case studies, organized feedback practice, and other in-session tools be built into training programs to evaluate whether session objectives have been met.

OPSEU recommends that training guidelines (as set by the WSIB or mandated by regulation) need to be effectively and rigorously enforced by the Ministry of Labour. OPSEU continues to be dismayed by the MOL's reluctance to wade into the contents and methods of certification training or other mandated instruction, information, or training. OPSEU does not accept this 'hands-off' approach. We suggest that the MOL

inquire not only whether certification training, information or instruction or training has been done, but also about the contents of the training to ascertain whether responsibilities have been appropriately discharged.

We hope that the steady weakening of certification and other training programs over the last number of years will now be stopped. Some training organizations are in a race to the bottom, to hollow out 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. It is not acceptable that training has become a commodity where the best is faster, shorter, and cheaper. This is what is occurring, to the detriment of Ontario workers, their families and their communities.

We hope that this consultation process results in a more valid, effective system of training to ensure that certified members of JHSCs and workers can effectively carry out their functions and positively contribute to workplace prevention efforts.

CONCLUSION

Every day, OPSEU receives calls from concerned workers who have reached an impasse while struggling to make improvements in their workplaces. Workers efforts are blocked 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*. These are a few of the issues faced by OPSEU members on a daily basis. There are many more.

Not only do workers often reach a dead end with their efforts, they frequently do not get the enforcement activity from the Ministry of Labour they need and to are entitled to. This submission reflects many of our members' concerns. We hear them every day. Included are suggestions that OPSEU believes will help make Ontario's health and safety system more effective. Through these changes injuries, fatalities and incidences of occupational disease will be prevented.

We believe that now is the time to improve the province's health and safety system. Now is the time to eliminate the culture of fear and truly protect workers from reprisals. Without doing so nothing else will succeed. Now is also the time to strengthen workplace joint health and safety committees and health and safety representatives on one hand and make external enforcement a real possibility in cases of non-compliance on the other. Only by addressing all three of these critical issues will we be able to move the yardstick forward.

OPSEU is concerned about social justice in Ontario. We point out that if the situation regarding health and safety is this dire in our unionized workplaces, it is far worse for non-unionized Ontario workers. We therefore suggest that the MOL move expediently and decisively to recommend and implement change. This should be the result of this expert panel review.

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