“Health and Safety in Corrections: Finding the Gap”

A health and safety toolkit for OPSEU/SEFPO members facing violence at work in corrections facilities and in probation and parole

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Introduction: the problem of violence

Thousands of OPSEU/SEFPO members know what it is like to face violence in the workplace. But imagine a world where you and your colleagues supervise the daily routines of individuals who are being held against their will. Individuals who would rather be anywhere other than interacting with you. Individuals who often make their displeasure with their circumstances known to everyone around them and the resulting tension and pressure as a daily constant. Individuals who are not free to live their lives or do what they choose, but who live and chafe under institutional rules and routines set for them by jail management. Rules that are operationalized by workers who try to do the best they can with the little that they have.

Perhaps no job possesses the unique challenges faced by our OPSEU/SEFPO men and women in corrections facilities and in their role as probation officers in the community. To say that correctional workplaces are violent places is an understatement. Workers in correctional and community services are called upon to provide care, custody, and control of the people we read about in the news, or who have come into contact with law enforcement in one way or another.

In facilities, violence is a daily occurrence, both between offenders and as offenders towards staff. Violence occurs also in Probation and Parole. Probation officers manage offenders sentenced to serve their sentences in the community or monitor those reintegrating into society. The probation officer has a duty to inquire, ensure, and report that the individual is compliant with their probation conditions, or otherwise report on or return that person to custody. Probation officers face threats of harm or death, harassment, sexual harassment, and even violence on the job.

But rampant violence in the correctional environment in Ontario does not diminish or remove an employer's duty to take every precaution reasonable in the circumstances to protect workers - it amplifies it.

Howard Sapers reports

The need to improve the correctional system by preventing workplace violence has been reinforced by a number of reports written by Howard Sapers, Ontario's Advisor on Correctional Reform. In January 2017, Sapers was appointed in the role and contracted to study and make recommendations to improve Ontario's correctional system. Sapers released his first report in May 2017, *Segregation in Ontario* that contained 63 recommendations about the use of

segregation in corrections. His second report, *Corrections in Ontario: Directions for Reform* (September 2017), looked more broadly at correctional reform and confirms the culture of correctional work as being difficult. According to his report, "decades of studies have shown that correctional work frequently entails a wide range of organizational, operational, and traumatic stressors, including difficult or demanding social interactions, low organizational support, harsh physical environments, and repeated direct and indirect exposures to violence, injury, and death events."

Sapers report on increasing violence

And the stresses of such an environment are palpable. On May 2, 2018, the former Minister of Community Safety and Correctional Services, Marie-France Lalonde, wrote to express concern about violence within Ontario's correctional institutions. Her letter led to the Minister assigning Sapers to conduct yet another independent review - this time of institutional violence and the management of inmate behaviour that contributes to this violence. His report confirmed that violence is skyrocketing. Assaults on staff per year increased from 354 in 2012 to 1,389 in 2017. According to the Sapers report *Institutional Violence in Ontario* (August, 2018), "Feedback revealed a severe disconnect between what frontline staff expect and what management provides in terms of communication, recognition, support, and trust. Correctional officers reported an exceptionally low sense of morale, increased stress, and an overall poor working environment. Evidence has associated negative institutional culture with a heightened risk of hostile interactions and institutional violence for both staff and inmates."

Negative culture, overcrowding, and increased violence occurs at the same time as staff are subject to the Code of Conduct and Professionalism, a policy about what is expected and what staff can and cannot do (e.g. conflict of interest, reporting criminal charges, behaviour on and off duty). In an overcrowded, harsh world with increasing violence, corrections staff try their best to perform their jobs even though there is a monumental gap between the resources they need and the expectations they must meet. They control violence the best they can while fearing that they will get fired because of how escalating situations are later viewed, because of wrongly placed elbows or body parts in scuffles, or armchair quarterbacking of how they should have acted. These fears cause a huge amount of stress.

Preventing workplace violence is a timeless goal, but never as relevant as now, with the Sapers reports confirming the skyrocketing levels, and in the face of existing measures and procedures that can clearly use some improvement.

Employer responsibilities: violence

Under occupational health and safety law, employers and supervisors have the obligation to "take every precaution reasonable in the circumstances" to protect a worker.

To prevent workplace violence, the employer must:

- create workplace violence and harassment policies;
- post the policies in the workplace;
- assess the risk of violence in the workplace; and
- create a program that includes measures and procedures to control the risks of violence.

By law, these procedures must set out:

- how workers can summon immediate assistance;
- how workers shall report incidents of violence; and
- how employers shall investigate incidents of violence.

In addition, employers must have a process (nick-named "flagging") to inform workers about individuals the employer knows have a history of violence if workers are likely to interact with those individuals at work. Employers also must take every reasonable precaution to protect workers from domestic violence that enters the workplace.

Employer responsibilities: harassment and sexual harassment

The employer must prepare and post a harassment policy. The policy must include:

- procedures for workers to report incidents of workplace harassment; and
- details on how the employer will investigate and deal with harassment complaints.

The definition of workplace harassment also includes sexual harassment. Employers must:

- develop procedures for workers to report harassment, including sexual harassment, to someone other than the employer if the employer is the alleged harasser; and,
- conduct appropriate investigations into complaints.

Employers must inform complainants and respondents of the results of the investigation and of any corrective action taken. In addition, Ministry of Labour inspectors have the authority to order employers to conduct (at their own expense) a harassment investigation using a third party.

Frontline workers and their unions continue to report that many employers are not doing enough to control workplace violence - or even complying with the minimum provisions in the OHSA. In many cases, they are failing to perform adequate risk assessments and failing to put procedures in place to prevent violence. Employers are also:

- failing to perform risk re-assessments following a violent attack;
- failing to train staff about workplace violence prevention measures:
- failing to communicate about offenders with a history and risk of violence,
- inadequately reporting workplace violence events;
- failing to properly investigate workplace violence events;
- failing to report workplace violence events to joint health and safety committees (JHSCs); and,
- failing to take every precaution reasonable in the circumstances.

Giving you the tools to make your workplace safer

Many OPSEU/SEFPO corrections members go straight from zero to work refusal, which is only one way to deal with a hazard that endangers worker health and safety. No doubt that there are times when only a work refusal will do, such as when a hazardous situation faces the worker, and, if action isn't immediately taken, the worker will likely face harm. However, most situations do not compel the immediacy of a work refusal. If a gap exists in the measures and procedures and harm is not imminent or likely, then time is available to address the issue. Workers and locals should pursue or negotiate a remedy through using the "Internal Responsibility System," by working through worker reporting and joint health and safety committee activity. Work refusals can be limiting. In a work refusal the inspector is authorized only to decide if the hazard is "likely to endanger" at the time of the work refusal. On the other hand, taking time to have local discussions, exchange rationales, and building solutions to improve precautions is often more successful in the long run than calling the question about whether something "is likely to endanger" in the given moment. Using a work refusal every time is like going "all-in" every hand in a poker game. Nobody goes all-in on every consecutive hand in poker.

Where possible, it is best to get a hazard adequately controlled before it faces the worker in an emergency situation of imminent or reasonable prospect of harm. This is the meat of the JHSC's work, using the requirements in the legislation. The OHSA provides a roadmap to identify the hazard, make recommendations for controls, and to document the process so that if any dispute arises, the gaps that exist and actions taken will be clear to even a third party.

This toolkit is about how workers and union locals work with their joint health and safety committee members to make the workplace safer. It is important that all Corrections members use every clause of the OHSA to hold employers accountable to prevent and address workplace

violence. The toolkit will go step-by-step through the Occupational Health and Safety Act requirements for workplace violence prevention so that we make sure that no stone is left unturned in our efforts.

1. What is workplace violence?

In this section:

Definitions of workplace violence

The **OHSA prevails** over other legislation

OHSA S. 1(1) defines workplace violence as:

(a) the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,
(b) an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker,
(c) a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

It is important to look closely at the definition of workplace violence because this definition determines the steps an employer must take to prevent and control it. Workers must also understand the definition to be able to discuss the hazard with employers and – when necessary – Ministry of Labour inspectors.

Before examining the main components of OHSA S. 1(1), it is helpful to consider the idea of the "intention" to exercise physical violence against a worker.

The OHSA does *not* contain the word or speak to the idea of "intention." Nonetheless, some employers and others have taken the position that if an offender or client has not formulated an intention to perform a violent act, then no violent act has occurred. This interpretation argues that the violent actions of a person under the influence of drugs or alcohol or suffering with delusions or psychosis would not be considered violent under the OHSA. Not true.

While the idea of intention is important to decide if charges will be laid pursuant to the Criminal Code, it is *not* part of the OHSA. Under the workplace violence provisions of the OHSA,

intention does not matter: what matters is the behaviour. Let's break down the language of the definition:

- *the attempt or exercise of physical force* ***by a person:*** This means anyone in the workplace, including offenders, family members, other workers, suppliers, contractors, other visitors, doctors, supervisors and managers.

- ***against a worker:*** The definition requires that the exercise or attempted exercise of force needs to be directed at a worker. However, this does not mean that other types of violence do not take place that need to be controlled. Workers may be called on to de-escalate offender-on-offender violence and other disputes in the workplace. The behaviour of stressed-out family members can be an issue as well. Because of these possibilities, employers should have clear policies on workers' roles and responsibilities to intervene (or not) in these situations and they must ensure that workers are safe if they do intervene. If a worker is at risk of physical violence in those situations, then the event will meet the definition under the OHSA.

- ***in a workplace:*** S. 1(1) of the OHSA defines workplace as "…*any land, premises, location or thing at, upon, in or near which a worker works*." Therefore, if the worker performs duties in an office or facility, in a car, or in the community, or in a client's home, all are considered the workplace. The employer's obligations to protect workers who are working in clients' homes are more complex because employers do not automatically have the right to enter homes or control what goes on in private homes. However, the employer's obligations for safety of the worker do not change. Employers are still obliged to identify potential risks and to take reasonable precautions to protect workers – no matter where their work takes them.

- ***that causes or could cause physical (or psychological) injury:*** Physical injury is not defined in the OHSA. However, the term means any physical injury and is not limited to serious injuries or injuries that prevent workers from performing work. A physical injury could be a bruise, a cut, or a muscle strain. These days we include psychological injury as well into the definition. Additionally, the clause refers to events that "could" cause injury. *When* looking at the situation, the possible result of the exertion of physical force should be assessed. If an offender lunges toward a worker but the worker moves to avoid being struck, then this event meets the definition. It is important to consider incidents that could have caused injury or "near misses." OPSEU/SEFPO recommends that near misses (as incidents that could cause physical injury) should trigger reporting and possibly an investigation as well.

- ***an attempt to exercise physical force:*** This should be understood in the same way as the earlier advice about "near misses." If an offender *attempts* to strike out or to harm a worker by physical force, it is a violent act which should trigger a report and possible investigation.

- ***a statement or behaviour:*** Written or verbal statements such as "I'm going to hurt you/break your leg/kill you/cut you/choke you" meet the definition of violence if the offender has the capacity to carry out the threat. Behaviours such as punching their fist into their hand, raising their fist or hand in the air with an angry expression, hitting their head on the wall, pacing, and agitated actions, should be considered as incidents of workplace violence and reported.

- ***reasonable for a worker to interpret as a threat to exercise physical force:*** Reasonable grounds have been defined as "*…a set of facts or circumstances which would satisfy an ordinary cautious and prudent person that there is reason to believe and which goes beyond mere suspicion.*" A person's past behaviour and history of violence combined with their current situation and their actions and words may lead a worker to develop a reasonable belief that there is a real threat. For example, a worker may perceive a threat of violence if she knows, or has reason to believe, that an offender is not taking their medication as prescribed, or if the offender is agitated or has a history of violence.

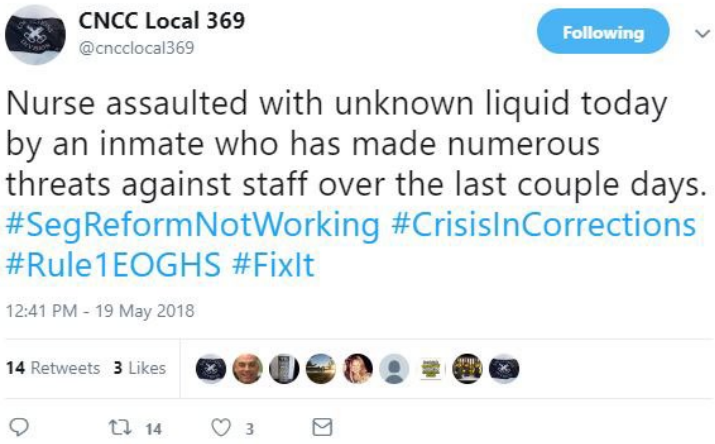
OHSA Section 2 (2) states:

(2) Despite anything in any general or special Act, the provisions of this Act and the regulations prevail.

Ontario employers must comply with many types of legislation. Sometimes, these laws may seem to contradict each other. One example of this is the *Personal Health Information Protection Act* (PHIPA), which employers frequently cite as a reason not to comply with OHSA S. 32.0.5(3), which requires employers to provide workers with information about persons with a history of violence. Employers may also say that PHIPA requirements prevent them from providing injury notices pursuant to S. 52. Employers may also point to requirements under legislation such as the *Health Care Consent Act*, the *Long-Term Care Act*, or the *Mental Health Act* as reasons for not complying with sections of the OHSA.

However, OHSA S. 2(2) states that it prevails over other legislation. PHIPA states that it prevails *unless the other legislation prevails*. It's an important difference. We understand this section of

the OHSA to mean that employers need not fear that they are violating privacy legislation by reporting injuries or information about a person with a history of violence, or by doing anything else required in the OHSA. Worker safety must come first. Offender safety cannot exist without worker safety. If workers are afraid, under threat, or injured themselves, they cannot carry out their care, custody and control responsibilities. This is true whether the hazard is workplace violence or infectious diseases or other hazards. Safe and healthy workers will carry out their responsibilities and provide the service expected.



Is this violence?

Yes ☑ **No** ☐

KNOW the definition of workplace violence

CHECK that your workplace violence policy uses the correct definition of workplace violence (that includes threats)

2. Workplace violence policies

In this section:

OHSA requirements for workplace violence policies

What a workplace violence policy should say

OHSA S. 32.0.1 states:

Policies, violence and harassment

(1) An employer shall,
(a) prepare a policy with respect to workplace violence;
(b) prepare a policy with respect to workplace harassment; and
(c) review the policies as often as is necessary, but at least annually.
Written form, posting
(2) The policies shall be in written form and shall be posted at a conspicuous place in the workplace.
Exception
(3) Subsection (2) does not apply if the number of workers regularly employed at the workplace is five or fewer, unless an inspector orders otherwise.

What does the OHSA require employers to do?

The employer must develop a written policy for workplace violence (and another for harassment). This policy must be posted in the workplace in a conspicuous place. A conspicuous place is one where the posted policy will be noticeable and clearly visible to all. Everyone attending the workplace should be able to see the policy and read it.

Ensuring that the employer has a workplace violence policy posted may not seem important but it is the first step in seeing their plans and protections in writing and acts as a gateway to holding the employer accountable for their commitments to safety.

What should the policy say?

The policy should clearly state the employer's duty to keep the workplace safe by preventing and controlling workplace violence. It should make clear that the employer has the ultimate responsibility to prevent incidents of workplace violence. Many policies also state that violence of any kind in the workplace will not be tolerated.

The policy should state that it applies to everyone who deals with the facility or community with workers wherever they may be working.

Everyone must comply with the policy. This includes employees, contract employees, medical staff, interns, offenders, tenants, volunteers, visitors, contractors, suppliers, consultants, vendors, and any others who may enter the workplace and have contact with workers.

The policy should refer to the required workplace violence program which implements the policy. Although the policy does not have to provide a detailed description of the program it should, at a minimum, list the mandatory parts of the program, such as:

- measures and procedures to protect workers from workplace violence;
- a means of summoning immediate assistance;
- a process for workers to report incidents or raise concerns; and
- how incidents will be investigated and dealt with.

The policy should also reference the employer's and supervisors' duty to provide instruction and information necessary for workers to protect themselves.

The policy must define the responsibilities and accountabilities of all workplace parties. The organization's top administrators are ultimately responsible for developing and implementing the policy and procedures to control violence in the workplace. Employers' and supervisors' responsibilities to take "all precautions reasonable in the circumstances for the protection of a worker," also apply to the hazard of workplace violence. Supervisors are required to follow the policy and to ensure that workers are complying with the workplace violence program. They should also investigate reports of workplace violence as well as those they may observe or hear about, even where not formally reported.

The policy should also describe workers' responsibility to comply with the policy and to report incidents or concerns about the threat of workplace violence.

Joint health and safety committee members should ensure that:

The employer has developed a workplace violence policy and program

The policy and program (that lists measures and procedures for safety) is reviewed annually

3. Workplace violence risk assessment

In this section:

OHSA S. 32.0.3 states:

Assessment of risks of violence
(1) An employer shall assess the risks of workplace violence that may arise from the nature of the workplace, the type of work or the conditions of work.
Considerations
(2) The assessment shall take into account,
(a) circumstances that would be common to similar workplaces;
(b) circumstances specific to the workplace; and
(c) any other prescribed elements.
Results
(3) An employer shall,
(a) advise the committee or a health and safety representative, if any, of the results of the assessment, and provide a copy if the assessment is in writing; and
(b) if there is no committee or health and safety representative, advise the workers of the results of the assessment and, if the assessment is in writing, provide copies on request or advise the workers how to obtain copies.

Reassessment
(4) An employer shall reassess the risks of workplace violence as often as is necessary to ensure that the related policy under S. 32.0.1 (1) (a) and the related program under S. 32.0.2 (1) continue to protect workers from workplace violence.
Same
(5) Subsection (3) also applies with respect to the results of the reassessment.

The OHSA requires employers to assess the risks of workplace violence to workers. This is a necessary first step before developing an effective program with measures and procedures to prevent and control workplace violence.

A risk assessment (RA) for workplace violence follows the same steps as a risk assessment for any potential workplace hazard: identify, assess and control. However, when assessing workplace violence risks, the job is more complex: in addition to considering the physical environment, one must assess the risks from humans whose behaviours are changeable and dependent on many factors.

It is no secret that violence is a hazard in correctional work. Many workers in correctional facilities and in the community have been severely injured. Many have never returned to work. Performing an adequate risk assessment is the first step in putting in place a program to control those risks.

This section on risk assessment does not provide a step-by-step guide to RAs. Instead, it briefly discusses the requirements of the OHSA section quoted above, provides guidance and tips for performing an effective RA, and suggests helpful resources that your JHSC can recommend to your employer. The section contains a brief section on "controls" which should be identified following the risk assessment. The controls that are recommended to address the risks identified in the assessment should be included in the "measures and procedures" section of the workplace violence program, as required by the OHSA.

Assessment and considerations

The first two parts of S. 32.0.3 require the employer to assess the risks of violence that may arise from the ***nature of the workplace, the type of work or the conditions of work.*** The employer is also required to take into account ***circumstances that would be common to similar workplaces*** and ***circumstances specific to the workplace.***

The first requirement concerning nature, type and conditions of work means that the employer must consider in general what is going on in the workplace that could give rise to workplace violence. According to the MOL Guide, the **nature of the workplace** refers to the physical aspects of the workplace, whether it is a building, construction site, vehicle, or in the community. This may include workplace lighting, lines of sight, depth of counters, entrances, exits and objects that could be used to hurt workers. The **type of work** refers to the activities workers perform (such as supervising, searching, or enforcing), the sector of work (such as corrections) and people with whom workers interact (such offenders, and the public). The **conditions of work** refers to other aspects such as hours worked, proximity to others, the surrounding neighbourhood, and whether workers move from location to location, work alone or in isolation.

Additionally, the employer must consider the circumstances common in similar workplaces and those specific to their workplace. This requirement is helpful in cases where, for example, an employer might resist putting in place effective procedures because there have been few reported incidents of violence against staff in recent years. If the workplace is a correctional facility, we know that in "similar workplaces" the incidence of workplace violence is very high. In this example, the JHSC can argue that the employer must consider the "circumstances that would be common to similar workplaces" when performing the risk assessment and consequently must develop measures and procedures to address the risks.

This means that even if a workplace has no severe injuries due to workplace violence, the employer cannot ignore the fact that other facilities in the province have. OPSEU/SEFPO members can contact the Corrections Ministry Employment Relations Committee (MERC) or the Provincial Health and Safety Committee (POJHSC), or the OPSEU/SEFPO Health and Safety Unit who may have examples of injuries in other correctional workplaces. OPSEU/SEFPO members may also contact other OPSEU/SEFPO locals to learn more about health and safety conditions and workplace violence risk assessments and programs in other facilities.

For a more detailed discussion of these requirements, see the MOL document on their website at www.labour.gov.on.ca/english/hs/pubs/wpvh/violence.php This resource contains additional information about the nature, type and conditions of work as well as information about common and specific circumstances of workplaces.

When assessing the exposure to the hazard of violence, it is not always possible to confirm the extent of the violence that has occurred in the past or is occurring. However, working in certain areas of a facility or out in the community increases the potential to be exposed to violence. A

good risk assessment takes into consideration the factors that increase workers' exposure and the risks.

There are many risk factors for workplace violence in Corrections, including:

- Offenders are held in custody against their will or reporting to probation officers and must comply with conditions of probation or parole;
- inadequate staffing levels;
- overcrowding;
- lack of risk assessment, hazard identification, and inadequate controls;
- failure to utilize planned controls;
- lack of offender programming to keep them occupied;
- dealing with intoxicated or drug-impaired persons;
- dealing with persons exhibiting erratic or unpredictable behaviour;
- lack of system supports leading to detainment of people with health and mental health issues who have clinical needs not being met through incarceration or community programming;
- inadequate or harsh physical environments; and
- Failure to adequately communicate risk.

Sapers adds the following factors as risks for workplace violence. According to Sapers (August 2018):

> For the most part, violence doesn't just happen. It arises in a context. There are numerous variables that contribute to prison violence - crowding, staffing levels, training, management competence, gaps in oversight and accountability, gang activity, internal contraband economies, mental health and addiction issues, limited staff experience, facility design, poor operating policies and procedures (including inadequate intake assessment, classification, and placement), abuse of authority, lack of trust, arbitrary decision-making, lack of meaningful activities for inmates, lack of support for staff, predatory conduct of some inmates, and fear are just a few.
>
> Globally, trends indicate that in countries where prisons and jails are overcrowded, or where there is an increase in prisoner population, there is more violence among prisoners, and more violence directed against correctional staff. These countries typically experience a reduced staff-to-prisoner ratio which leads to ineffective supervision, fewer resources for correctional programming opportunities, more lockdowns, and ultimately lessens the chances for successful reintegration, putting public safety at risk (Context and Background, para. 22)

Risk Assessment in Probation and Parole

In Probation and Parole, risk assessments are completed by the local Area Manager (AM) at area and satellite offices. The process entails a physical walkthrough of the office by the AM to assess the physical work environment and local policy and procedure development to ensure both static (panic alarms, magnetized doors, lighting, convex mirrors, etc.) and dynamic (responding to a hostile client, discovery of weapon, client escort procedures, alarm activation response, etc.) safety procedures are in place.

Although RAs are conducted at area and satellite offices, it may surprise you to know the ministry has not conducted them with any regularity at reporting centres (typically leased spaces in small communities where probation and parole officers meet with their clients at to perform the same intensity of duties as with area and satellite offices).

Accordingly, in 2018 the issue was tabled by the union who argued that reporting centres met the definition of a “workplace” as per OHSA and as such, each worksite required its own RA and, where applicable (worksites with six or more workers), written policies and procedures based on the results of the RA.

Still, the employer argued reporting centres as less frequently attended leased spaces my not be considered a workplace under the act. To settle the issue, consultation was sought from the Ministry of Labour Bill-168 Specialist. The results were unequivocal: reporting centres did meet the criteria of a workplace under the act and as such all reporting centres in the province required a RA as per section 32 OHSA.

A key takeaway here is some strategies which may, on the surface, seem less impactful, may in fact net bigger gains for worker safety than other safety-related procedures typically considered more definitive or procedural-driven such as a work refusal or bilateral work stoppage. In this case, a major health and safety gap was strategically identified by the union at the provincial level to ensure the outcome would have division-wide implications.

Risk Assessment in facilities:

CNCC has a good risk assessment format, with a column that lists hazards such as summoning immediate assistance and measures for when the worker in distress cannot call for immediate assistance, objects and equipment, reducing risk by controlled offender management, and communicating risk. Each hazard is analyzed: Who might be harmed and how; what we are

doing already; what would decrease the risk; who will be responsible for action; the date action was taken; and the date completed.

Communicating risk assessment results

The results of the assessment must be communicated to the JHSC and a copy of the assessment must be provided to the JHSC if the assessment is in writing [S. 32.0.3(3)]. Correctional facilities are large complex workplaces and therefore the assessment must be in writing, but if not, a MOL Inspector can order the employer to have their risk assessment in writing (S.55.2 of the OHSA). If the JHSC has not received a copy of the risk assessment, it should ask for a copy. If the employer refuses, the worker members should show the employer the OHSA language, and if still unsuccessful, file a complaint with the MOL.

Reassessment of workplace violence risk

The Ministry of Labour recommends that the risks of workplace violence should be re-assessed as often as is necessary to protect workers from workplace violence. For example, employers must re-assess the risks if:

- the workplace moves or the existing workplace is renovated or reconfigured;
- there are significant changes in the type of work (for example, different types of admissions, processes, or services);
- there are significant changes in the conditions of work (rising violence, gangs, or population, changes in work pace or flow);
- there is new information on the risks of workplace violence; or
- a violent incident indicates a risk related to the nature of the workplace, type of work, or conditions of work was not identified during an earlier assessment.

As with the initial risk assessment, a copy of the re-assessment (and the results) must be provided to the JHSC or health and safety representative.

Who does the risk assessment?

It is an employer's duty under the OHSA to do the risk assessment. The OHSA does not require the employer to use any specific assessment tool or template.

While the Act does not mandate that the JHSC be involved in the risk assessment, a properly done RA takes time, requires knowledgeable assessors who know the work and the risks in the work. The

JHSC's expertise and knowledge of workplace health and safety within the workplace enhances the risk assessment process. Ideally, the JHSC should:

- ask to be involved in the risk assessment;
- make recommendations on how to control identified risks; and
- monitor those controls.

Some workplaces strike a special workplace violence committee that focuses only on the workplace violence requirements of the legislation. Part of the committee's duties may be to participate in, or perform, the risk assessment and provide input on the safety procedures that flow from it. If formed, such a committee should have a link with and report to the JHSC. The union should select its own participants, and senior leaders in the organization must endorse and participate on the committee.

Other employers may hire outside agencies to complete the risk assessment because they lack the internal capacity to do it. Some employers do the risk assessment very quickly using free resources from the internet that have not been customized to what the work is actually like in the corrections sector. This is problematic: a generic assessment tool will probably not capture all of the factors in the work, the nature or condition of the workplace, the offender population being cared for, or the history of violence and near-misses.

The JHSC should recommend that the JHSC be involved in the RA.

The Public Services Health and Safety Association (PSHSA) has created assessment tools that are mainly used in healthcare workplaces. They may be useful as a reference or to create a corrections-specific risk assessment. OPSEU/SEFPO and other health care unions helped develop the healthcare tools, the Organizational Risk Assessment and the Individual Client Risk Assessment. OPSEU/SEFPO believes that these are currently the best free resources that employers and the JHSC can use to conduct a workplace violence assessment. All of OPSEU/SEFPO's correctional facilities and community workplaces likely need to complete all sections of both tool kits if used.

Access the PSHSA risk assessment tools here:
https://www.pshsa.ca/workplace-violence-risk-assessment-tool-anysector/

The steps in a risk assessment:

No matter which tool you choose, doing a risk assessment is basically the process of identifying and assessing possible hazards and designing controls to eliminate or minimize the hazard to

the lowest possible and reasonable extent. The process involves collecting and evaluating many different types of information, such as:

Risks specific to workplace or sector

You can collect data and information regarding the corrections sector from the provincial health and safety and employment relations committees. Locally, you are entitled to overall injury statistics (OHSA Section 12), notice of occupational injuries and illnesses and critical or fatal injuries (OHSA Sections 51/52). It is by collecting illness and illness statistics and reviewing incident details that JHSCs formulate and bolster rationale to identify gaps in protections and recommend measures and procedures to fill the gaps and improve safety.

Past incident data

Reviewing past incidents is an important step in the risk assessment. Identifying the frequency of near misses and the frequency and severity of violent events helps guide decision-making on what control measures will prevent incidents. Create a table or chart to visualize and identify any trends in the frequency, location, time and types of injuries that have occurred in the workplace.

Consider the following factors when analysing the data:

- job classification of injured staff
- time of day
- location in the workplace
- number of workers present
- staffing levels
- routine activity
- previous concerns or incidents

An examination of past incidents should lead to identification of locations, times, staffing levels, particular events, and other factors which may be associated with an increased risk of workplace violence. This analysis may also point to areas or events which are associated with increased *severity* of violence, not only an increased *incidence* of violence.

"Frequency versus severity" conundrum - what we can learn from the Moncton New Brunswick Shooting RCMP Conviction

On June 4, 2014, 3 RCMP officers were killed and 2 injured in a shooting in Moncton NB where the shooter had an automatic pistol and officers had what the RCMP already knew were inadequate weapons. A plan had been underway for 33 months to equip RCMP officers with carbine weapons but yet, at the time of the shooting, Moncton only had 12 carbines and all 12 were in the training facility at CFB Gagetown. RCMP was charged with violating the Canadian Labour Code Section 124—taking reasonable precautions for worker safety.

The judge dismissed the employer argument that "Risk is great, but likelihood is remote." This argument fails because likelihood cannot be used to mitigate the risk. Quoting from another case in the decision, the judge said, *"An approach which focused on likelihood of danger rather than on exclusion of danger where possible could encourage employers to engage in a chillingly brutal calculus of the odds of harm against the cost of its avoidance".* He said that the employer should focus on addressing the hazard, not trying to figure out how often it happens to decide to what extent to address the hazard. He said, "*Front-line officers were left exposed to potential grievous bodily harm and/or death while responding to active shooter events for years while the carbine rollout limped along, apparently on the assumption that as the likelihood of such an event was relatively rare, a timely implementation was not required*."

This informs our approach in risk assessments to prioritize severity of a hazard, and away from assigning excessive weight to frequency of the hazard. A focus on severity would include developing short, medium and long-term plans for all serious incidents regardless of frequency.

Environmental factors

Environmental factors typically include physical location, lighting, communication systems, location of parking lots, entrances and exits, layout and design of the workplace. However, environment also means other characteristics of how work is performed, like rush, resources, staffing, chain of command, expectations, etc. These items may be missing from the typical environmental section of a risk assessment. We need to make sure that there is a place to record these observations that, while not part of the physical environment, they do form part of the contextual environment where the work occurs.

Offender population

Studies tell us that people suffering from mental illnesses are more likely to be the *targets* of violence than the *perpetrators*. Nonetheless, the evidence is clear that workers in correctional workplaces deal with persons exhibiting erratic or unpredictable behaviour whether or not they suffer from any mental illnesses and staff are frequently the target of violent assaults. There are many reasons for this, including:

- inadequate staffing levels;
- lack of programming;
- running a direct supervision model without requisite staffing and programs;
- inadequate physical environments;
- inadequate risk assessments and communication of risk;
- offenders who have mental, behavioural and developmental disabilities;
- offenders who have a history of violence and criminality;
- offenders who have addictions issues; and
- (perhaps most importantly) the fact that in recent years the lack of services in the community has led to incarceration rather than hospitalization and treatment for the mentally ill, where these individuals are often very unwell and possibly volatile.

Employers often raise concerns about stigmatizing persons with mental health illness if we state that mental health is a factor in higher rates of workplace violence. But there is no intent to stigmatize those who suffer from mental health issues by stating this reality. The truth is—the system does not provide adequate support for people suffering from mental health issues and they often end up in the harsh corrections environment for actions in society resulting from their lack of treatment. Workplace violence policies and programs are developed to reduce the risk of violence protect offenders as well as staff. A safe workplace provides and environment where workers are able to perform duties and where offenders themselves feel safe. Not controlling violence in a workplace leads to incidents where staff *or* offenders may be injured.

Sometimes, a single new offender introduced into a workplace can increase the risk of violence significantly – even if the risk of workplace violence had been previously under control. In such a case, the employer must react quickly to modify controls or introduce new ones to address the heightened risk.

For example, some offenders with a history of violence are flagged using “special handling sheets” to require specific escorting or supervising procedures, such as “two-person back-up” where additional staff are required for normal routines such as showers, cell cleaning, escort within the facility, fresh air, or visits. These precautions can be thought of as periodic staffing “surge” needs based on particular risks in specific situations. Another example is when the Institutional Crisis Intervention Team (ICIT) is called in (e.g. as extra staffing and resources, and with specialized equipment) to extract a rebellious or disturbed offender from a cell.

In the community context, probation and parole officers have the discretion to meet offenders who have a history of violence in the secure interview rooms.

Work practices

The risk assessment process must also examine work practices unit by unit and work area by work area.

Consider all work practices that can lead to exposure and all workers who may be exposed.

Intervening in attempt suicide incidents?

Dealing with riots and fires?

Reception staff?

Probation and parole?
A worker and her colleague from a probation and parole office went for a walk during their lunch only to be approached by a disgruntled client who had attended the office earlier in the day. The client was irate and without warning approached the workers and spat in the face of one of them without provocation.

Keep in mind all types of workers during the assessment so that controls can be developed to protect everyone. Consider the following:

- Is it a mandatory practice for workers beginning a shift to hear a briefing about incidents that occurred that day and dangers they might expect or procedures that would be necessary?
- Is there a practice and policy prohibiting workers from doing certain work alone?
- Are there policies and procedures concerning which staff, and how many staff, are to attend at emergencies, or apply and remove restraints?
- Are there policies and procedures concerning how many staff must always be on a unit when offenders are not secured?
- After incidents occur, does the supervisor investigate the root cause or triggers and put in place “steps to prevent recurrence”? Note that the “steps to prevent a recurrence” must be reported in the injury notice provided to the JHSC within 4 days of an injury where a worker seeks medical attention or is disabled from performing their normal work.

These are only a few examples of work practices that should be considered when identifying the risks of violence to workers.

What if a hazard is missing from a risk assessment, or there is a gap in controls?

Case study: Workplace Violence at the Toronto South Detention Centre

In 2017 Howard Sapers reviewed INMATE ON STAFF ASSAULTS and found 252 cases at Toronto South Detention Centre (TSDC), which was an increase of 85% from 2016.

Sapers' Institutional Violence Survey of Correctional Officers reported that:

- 71% of responding Officers did not feel safe working at TSDC;
- throwing objects / fluids at correctional officers was higher than any other institution in the province;
- offender threats against staff was lower than any other provincial institution;
- 80 incidents alone involved assaults through meal hatches in their Mental Health Units (MHU) and Special Handling Units (SHU);
- an increased number of physical assaults involving punching and elbowing of correctional officers by inmates; and,
- Sapers suggests that a pilot project be implemented for meal hatches at TSDC in MHU & SHU

While the Provincial Occupational Health and Safety Committee had recommended that the pilot project be implemented a full four years ago, the Sapers report provides a new and objective basis to pursue the idea.

THE ROOT CAUSE: Does "direct supervision" actually work in a maximum security super jail? Do correctional officers have tools and resources needed to perform their duties safely to reduce the violence? Do offenders have enough programming and activities to keep them busy and help break the cycle of violence while incarcerated while awaiting trial?

YES **NO**

☐ ☑

Case study: How do we address a gap in the risk assessment?
Analyzing the issue of "thrown objects, including bodily fluid" and OHSA:

- Does the written risk assessment identify the risk of thrown objects, including bodily fluids, from cell hatches? If no—this is a gap and ask that it be identified in the risk assessment

- Then, what measures and procedures has the employer put in place to address this risk? The control measures need to be included in the risk assessment. Are there any controls listed?
- If not, then write a recommendation to: 1) add to the risk assessment as an identified hazard along with controls to address it, and 2) identify controls that could address the hazard. You can draft recommendations during caucus time with other worker members that must be provided prior to the meeting. If no meeting is approaching, you can either wait until the next meeting, include it in your next inspection, or send it to your employer counterpart prior to the next meeting and ask if the employer side agrees with the recommendation (if they do then the recommendation is "joint"). If the employer side does not agree with the recommendation, then the worker co-chair shall submit it unilaterally (and without JHSC employer agreement) to upper management.
- Keep a copy, and mark 21 days in your calendar to receive the mandatory employer response that must contain a) a schedule for implementation if they agree with the recommendation, or b) reasons why they do not agree with the recommendation.
- On the 21st day, contact the person who received the recommendation and offer an extra day or two to provide the mandated response.
- Follow up for the response to the recommendation.
- If unsatisfactory, decide how to proceed.

You have various options to proceed if the employer disagrees and declines to implement the recommendations:

- You could leave it for now and bring it back the next time an incident occurs - JHSCs should be monitoring incidents and trends.
- If you have some good evidence of the gap and how you have attempted to address the gap, you could file a complaint to the MOL and prepare a small, concise package to send to the inspector assigned (see the guidance about filing a complaint later in this toolkit).
- You could focus the next few inspections on the hazard and boost your rationale and case.
- You could file a grievance for failing to recognize a risk or address the hazard (again, some evidence and rationale is critical here).
- You could inform workers that their rights include being provided with the information and instruction to work safely, and if workers are not sure how to guard against thrown objects or bodily fluids they should be asking their supervisors for guidance.
- You could create a factual date-by-date account of your actions and efforts in neutral language to inform your members of the worker JHSC members efforts on the issue so far.

Whatever you decide to do, you will make your decision based on various factors such as: the risk the hazard poses and the importance of controls, the strength of your rationale and proof, immediacy of the issue given past incidents, sector experience with the issue, best practices elsewhere, clearly within the OHSA jurisdiction of enforcement, efforts or lack of employer effort to address the concerns, ongoing dialogue or non-dialogue trying to find solutions etc.

4. The workplace violence program

In this section:

OHSA S. 32.0.2(1), states:

Program, violence
(1) An employer shall develop and maintain a program to implement the policy with respect to workplace violence…

Mandatory components of the workplace violence program

Every workplace violence program must:

1. include measures and procedures to control the risks likely to expose a worker to physical injury as identified in the risk assessment;
2. include a means to summon immediate assistance when workplace violence occurs or is likely to occur;
3. include measures and procedures for workers to report incidents of workplace violence to the employer or supervisor; and
4. set out how the employer will investigate and deal with incidents or complaints of workplace violence.

The employer must provide information and instruction to workers about the contents of the workplace violence policy and program.

Once the risks have been identified and assessed, the risks need to be controlled. The employer (with the JHSC's input) must build the workplace violence program and specify controls to minimize each identified risk.

The "hierarchy" of controls

Some controls are better than others, depending where they are:

- **At the source:** addresses the hazard itself. Removing or eliminating the hazard is not always possible. (e.g. Secure interview rooms).
- **Along the path:** does not remove the hazard, but rather puts a barrier or a protection between the hazard and the worker (e.g. a wide counter for interviewing or in admitting, etc).
- **At the worker:** does not remove the hazard or put up a barrier, but gives the worker training or equipment to use to minimize or protect herself from the hazard (e.g. non-violent crisis intervention training, puncture-proof sleeves, handcuffs, Kevlar vests, pepper spray, training to use restraints). This is the least effective of the controls and should only be considered as a last resort method.

Types of controls:

- **Engineering controls.** These are controls (either at the source or along the path) that physically change the workplace or the work to eliminate or minimize the hazard for the worker. Engineering controls are the best type of controls but are not always possible, for example:

    - changing floor plans to make exits more accessible and visible;
    - improving lighting;
    - installing mirrors to see around corners;
    - installing metal detectors and emergency buttons;
    - controlling access to certain areas; and/or
    - enclosing the worker's station.

- **Administrative controls.** These are measures that limit how work is done or that control the worker. They include policies on how to interact with escalating behaviour, emergency response policies, isolation or segregation procedures, scheduling, etc. These are necessary controls, especially if the hazard cannot be "engineered out." They could include, for example:

    - procedures and tools for assessing and periodically reassessing offenders' potential for violent behavior;
    - threat assessments when an offender is admitted and periodically afterwards;

- emergency policies and procedures;
- procedures for tracking and communicating information about offender behaviour;
- special procedures for offenders with a history of violent behaviour;
- adequate staffing on all units and shifts; and
- policies and procedures that minimize stress for offenders, visitors, and others.

The trouble with getting adequate controls

The general duty clause in the OHSA, often referred to as S. 25(2)(h), requires the employer to take every precaution reasonable in the circumstances to protect the safety of workers. This section was purposely added to the OHSA to cover all of the circumstances that are not covered by regulations. Lawmakers realized that they could not possibly identify all of the hazards, including violence in the workplace, present in workplaces – especially when work and workplaces are constantly changing. This section has been included to allow for the enforcement of minimum controls to protect workers from hazards that had not been specifically identified in other regulations.

Regulations, on the other hand, do not always specify precisely what the employer must do. These types of regulations are called performance-based regulations. As long as whatever the employer has done controls the hazard, they have complied with the requirements of the OHSA.

This is similar to S. 25(2)(h). As long as the employer has implemented controls for a hazard that prevents injury to workers, they have complied with the law. This can be an obstacle to making workplaces safer. Here's how: 1) we ask the employer to provide a specific control for a hazard. 2) they say "no" because they have other controls in place that they say are sufficient. 3) We call the Ministry of Labour and explain what we want but the ministry does nothing because it is hard to tell what exactly is "sufficient." Sound familiar?

Many of our disputes with employers (and with the MOL) amount to one precaution versus another. Regrettably, the law does not specify the exact precautions to be used for workplace violence; instead, it states that "reasonable precautions" must be taken. This often leads to arguments about what precautions are actually reasonable in the circumstances. Many employers want to provide only the minimum amount necessary; workers, meanwhile, expect the best possible precautions. Therefore, we must build our case and develop rationale for why the precautions that we are suggesting are the "reasonable" ones required by the law. That means that we must assert all our rights under the OHSA to receive information and injury reports, investigate critical injuries, and make recommendations for prevention.

What is "a reasonable precaution in the circumstances"?

The Moncton RCMP case gives us a glimpse into how high the standard is to prove what precautions are reasonable in the circumstances. What does it take to prove exactly what the precaution must be (in the Moncton case—it was a carbine gun as the proposed weapon)? It takes a lot.

In regards to Count 1 (Failing to provide RCMP members with appropriate use of force equipment and related user training when responding to an active threat or active shooter), the judge said the crown **must prove beyond a reasonable doubt that providing carbine guns was the reasonable precaution necessary in the circumstances**. Ultimately he decided that carbine guns was indeed the reasonable precaution in the circumstances and found the employer in breach of duty. However, the evidence threshold for this decision was very high.

The judge agreed with the crown that carbine guns were a reasonable precaution because:

- The RCMP had previously commissioned 2 expert reports (2007 and 2011) where both said that carbine guns were necessary for safety;
- Other police forces were changing to carbine guns because there was a growing knowledge that carbine guns was the appropriate precaution; and
- There was also corroborating external incident evidence of the need for carbines:
    - the 2011 recommendation by Chief Justice John Rahl after 4 RCMP were shot and killed in an ambush in Mayerthorpe AB; and
    - the Inspectorate report that recommended investigating carbine weapons following the shooting deaths of 2 RCMP in Spiritwood Saskatchewan in 2006.

Framing our conversations with inspectors

We use existing case law and our knowledge and experience to make strategic decisions about how to proceed on a particular issue. Moving precautions upwards can be a long journey given the employer latitude to decide what adequate controls are.

One thing that can help us is changing the conversation we have with the MOL inspectors. Use particular terms and phrases found in the OHSA that will immediately resonate in the inspector's mind.

Remember that MOL inspectors have a policy and procedure manual that their employer expects them to follow. This is very similar to the policy and procedure manual you have in your workplace. While the MOL inspector is supposed to be an independent decision maker, the Ministry of Labour management places subtle and not-so-subtle pressures on them to make decisions in a certain way by following the manual or by setting parameters on when they can write specific orders. The manual is not the law, but as an employee of the MOL, inspectors need to follow policies and procedures as long as the direction is not illegal.

Therefore, workers must be prepared to **point out the gaps and failures of existing controls** to make the case for stronger precautions to prevent workplace violence. If the inspector is made aware of gaps in an employer's program, the inspector is more likely to see a violation of the OHSA and order the shortfall to be filled. Part of this is building a dialogue for talking to an inspector.

When talking to inspectors about getting adequate controls:

Drop this terminology	Use this terminology
"raise a concern"	"Report a hazard"
"Employer policies and procedures"	"Measures and procedures to control hazards"

"Raising a concern" terminology indicates a subjective position, observation, or opinion of the person reporting to which others may disagree, feel, or opine differently. People's subjective opinions are often consciously or unconsciously discounted by employers and also inspectors. So, we advise reframing the concern as an objective hazard that has nothing to do with self-opinion, feelings, or views of an individual.

"Reporting a hazard" terminology is the objective way to discuss something observed in the workplace that can cause harm. Workers have obligations under the OHSA to report hazards. It is part of their responsibility as a worker. And once a hazard is reported, responsibility switches over to the supervisor and employer to address it. If the workplace parties cannot address the hazard, then the MOL inspector can attend and decide if the hazard is adequately addressed.

"Employer policies and procedures" is correctional terminology for administrative controls that employers put in place to address hazards as part of their measures and procedures that are committed to writing. Employers are allowed to put in place whatever controls they like as long as they take every precaution reasonable to protect the worker. As such, employers would be entitled to change their policies and procedures in light of new information or as they wish as long as they continue to protect workers. We cannot get inspectors to enforce that employers must follow their own policies and procedures.

"Measures and procedures to control hazards" is MOL terminology for policies and procedures, which are administrative controls to control how work is done or to control the worker in order to control the hazard. The law requires employers to develop measures and procedures to protect the health and safety of workers. In essence, the employer's written policies and procedures outline those protections. A gap in policies and procedures is really a gap in the measures and procedures for safety. When you say "measures and procedures for safety", the MOL inspector's mind goes to the legislation where having those is listed as a requirement, but when you say "policies and procedures" you are hoping they make that leap themselves. Don't leave it for the inspector to

make that leap. Use the MOL lingo when talking to the MOL. Drop the words “policies and procedures” and use “measures and procedures” for safety.

Summoning immediate assistance

The employer’s workplace violence policy must specify how workers can summon immediate assistance.

Immediate means without delay. Assistance means adequate support to stop the workplace violence so potential injury can be prevented and severity reduced.

Depending on the nature, location and level of risk, determining the right tool to use for summoning immediate assistance may be a challenge. When evaluating various types of communication equipment, it is important to consider the location (facility or in the community), time of day (number of available staff) and many other factors. Workers must have regular training in emergency communication procedures to be sure you and your co-workers utilize the equipment and the prescribed procedures effectively.

“Immediate assistance” in the facility

The most ideal system that is currently available to help workers call for help is a device (often a personal alarm) that can be activated that notifies someone in a central area who can dispatch others to provide immediate assistance. There should be a way (or a small noise or announcement) for the worker to know that the alarm has been activated and that a response is coming. The system should be able to pinpoint the exact location of the worker. The system is wireless and each worker is assigned a specific alarm. If the alarm is activated, workers designated to provide assistance know who has activated a panic alarm and where to locate the distressed worker. Other devices may include cellphones, noise makers, alerts, signals, intercoms and radios. Whatever system is in place, it should be monitored for effectiveness in routine checks as well as evaluated (and improvements made) when incidents occur.

“Immediate assistance” in the community

Perhaps the most commonly identified and used tool for summoning assistance in the community is the cellphone, but they can be unreliable due to gaps in service. As such, satellite devices are more effective in cases where workers work remotely. Ideally, any cellphone or communication device should be provided along with clearly developed and written procedures to ensure its use will effectively summon immediate assistance to the worker in need. The JHSC should recommend equipment be equipped with GPS tracking or smartphone apps that

automatically connect with other parties and provide a notification to the worker that help is on the way. Noise makers and flashers do not work if nobody is nearby to respond. Communication radios, satellite phones, “spot” devices and walkie-talkies are just a few examples of portable devices that can be of some assistance to prevent violence while in the community.

Your JHSC can use the chart below as a guide while conducting a risk assessment in your workplace to assist with determining what tool may be appropriate for summoning immediate assistance.

Device	Strengths	Weaknesses
P.A. systems	▪ Immediate facility wide communication ▪ Useful for "code" alerts	▪ May not be heard by those in noisy areas or quieted areas (such as meeting rooms) ▪ One-way communication only ▪ Restricts type of information that can be communicated (because of confidentiality concerns)
Fixed panic buttons	▪ Direct link to security or control room ▪ Easy to use ▪ Can be installed outside as well (parking lots/walkway)	▪ Requires someone to be in the security office or control room at all times ▪ Fixed locations in the facility means staff may not be able to access in an emergency
Individual cell phone	▪ Fast direct one-to-one communication ▪ Can be used in facility or community ▪ Minimal range limitations ▪ Can be used to text messages ▪ Can be used for a variety of messages including 9-1-1	▪ Requires intended call/message recipient to be available ▪ Signal strength may be poor in elevators, basements or "dead zone" while in community ▪ If being attacked, employee may not be able to use – not enough time to dial
2-way radio (walkie-talkie)	▪ Almost instant communication ▪ One button use ▪ Can use voice or signal communication (if equipped) ▪ Can select specific recipient or numerous recipients ▪ Can be used for a variety of messages ▪ Few weak spots within range	▪ May need security or control room to be continuously staffed or select receivers always active (also may move about) ▪ Battery levels need to be closely monitored ▪ No access to 9-1-1
Personal alarms	▪ Audible type (incapacitating sound) may deter attack ▪ Sound brings assistance to general area	▪ Use limited to extreme situations unless two-way communication included ▪ May take time to pinpoint location (if GPS not included) ▪ No access to 9-1-1

Device	Strengths	Weaknesses
	▪ Non-audible type (transmits emergency signal to a receiver) may include two-way communication as well as identification ▪ Immediate, one button use	
GPS Tracking System	▪ Continuous or signaled tracking ▪ May be included in personal alarms	▪ Requires continuous monitoring of all signals (additional staffing) ▪ Most expensive communication system ▪ No direct access to 9-1-1 since two-way communication is feasible with many of these units and the monitoring company relays the info to 9-1-1.

What form do you use to report hazards? Does the ministry have a stand-a-lone form to report hazards or report near misses? What about the "Occurrence Report?" Is that an effective way to report hazards? How does your JHSC find out what hazards were reported and how they were addressed?

The program must contain a method for workers to report workplace violence

Any workplace violence program must set out a method for workers to report workplace violence. Is the procedure clear and simple? Does it allow a worker to capture the necessary details of the incident? The JHSC should ensure, during regular committee meetings that the reporting procedures are being followed and identify any problems with reporting. Workers *must* follow the procedures and employers and supervisors *must* ensure that workers follow these procedures.

Workers have a statutory duty to report hazards to the employer. This includes workplace violence events or near misses. Workers need to know about their important role and how critical it is to report any hazard, incident, or injury, no matter how small. Many employers have an internal incident form that they use to track events or near misses that do not result in injury.

The complication for reporting in corrections facilities is that workers report everything in the Offender Occurrence Report. If the event involves an offender, the "Offender" box is selected. If the worker is reporting a general hazard, they tick "Other." This system makes it very difficult for reporting to the JHSC and for evaluating trends. Other workplaces have incident forms, which collect systemic information in ways easy to evaluate and categorize, unlike occurrence reports which are written in full narrative.

At the Hamilton Detention Centre, occurrence reports with "Other" selected are provided to the JHSC for review and evaluation.

The probation and parole side has a similar issue. If there is an incident that involves an offender, policy dictates that the manager is responsible for filing the incident report rather than the involved worker or health and safety representative. Several issues arise from this: reports are not always completed and submitted by the employer resulting in the potential loss of information which may otherwise be used to advance worker safety initiatives; the content of the report is limited to the employer's version of the incident regardless of whether or not they were involved in the incident; the loss of the witness and/or victim's account of the incident.

What should workers report?

The short answer is that workers should report anything at work that could cause harm to physical or mental health. Workers should report:

- hazards they see, smell, feel, hear, or taste;
- any malfunction of any workplace equipment, policy, procedure;
- any unusual event at work that could cause harm to persons or property;
- any injury, no matter how small – a first-aid occurrence, an injury with no time lost, or an injury with time lost; and
- any occupational exposure of a biological, chemical, or physical hazard such as asbestos, mould, infectious disease, excessive noise, vibration (Note: WSIB has an exposure form on their website to fill out for this item as well. Always keep a copy for yourself).

Reporting isn't enough. Workers should keep records of their reports. That's easier said than done; many online reporting forms disappear the minute you click "send." Workers need to either keep a copy or jot down their own notes about it prior to hitting send. They can also take a picture of the screen. Or even keep a personal log of event particulars.

Workers should be prepared for their employer to say that "not all this stuff has to be reported." However, progressive employers will not say this. Progressive employers know that proactive action to address all concerns builds a healthy workplace safety culture where people feel that their employer cares about their health and safety. Unfortunately, not all employers understand this.

Workers must protect themselves and their health – even their future health if something happens resulting from this event years later. Vicarious trauma is the effect of witnessing, hearing about, or working within someone else's negative events. Day after day or year after year of immersing yourself in other people's trauma may have impacts on your own health. Workers may not report traumatic incidents because they occur often, even though any of these events may be the culminating factor or tipping point for their health. The best advice is that workers should fill out an incident report when *any* traumatic incident occurs or if the worker witnessed it.

Workers should:

- know what to report;
- know why they are reporting;
- know how to report;
- stick to their rationale for reporting, even if a supervisor does not want to accept their report; and
- keep a copy or proof of their report and its particulars.

Web resources for vicarious trauma and post-traumatic stress disorder (PTSD):

Boots on the Ground https://www.bootsontheground.ca/

Badge of Life Canada https://badgeoflifecanada.org/

So why don't we have lots of reports?

There are many other reasons for workers not to report:

- correctional workers often have little time to fill out paperwork due to staff shortages, workload etc.;
- workers may feel that the event that occurred was minor, and not worth reporting;

- workers may see the event happen so often that they are numbed by it and don't feel that the event is worth reporting;
- workers may have the perception that nothing will be done and that reporting is futile; and,
- hazards may get reported on "Offender Occurrence Reports" rather than selecting the "Other" option.

Not filling out a report harms everyone by:

- leaving the hazard free to affect someone else – maybe even more seriously;
- leaving the worker with no proof if the injury or illness manifests at a later date. This is what can happen with Hepatitis B or C exposure, or Post-Traumatic Stress Disorder, from experiencing trauma personally or vicariously (e.g., by witnessing the trauma of others);
- possibly causing a denial of a Workplace Safety and Insurance Board (WSIB) claim;
- helping the employer to think that it is not an issue – therefore ensuring it won't be addressed;
- creating a situation where workers are not doing their duty under the OHSA;
- reinforcing the status quo; and/or perpetuating "stigmas" that may exist about reporting; and,
- reducing the information available to the JHSC to do their work to identify and make recommendations to prevent hazards.

Factors that prevent workers from reporting incidents of workplace violence should be identified by the JHSC and recommendations should be made to the employer to improve the reporting system. It is important that the workplace captures all incidents of aggressive and abusive behaviour. Without this information, the JHSC cannot determine if the controls that have been implemented are working. The employer should not be afraid to capture these incidents. JHSC members should look for reports that match the definition of workplace violence. Are attempts and threats of aggressive behaviour being reported? If not, the measures and procedures are not working.

Worker report to WSIB after injury

The employer has a duty to fill out a Form 7 as soon as a worker reports a workplace injury. There are three WSIB forms:

- The Worker Form 6 – this form is completed by the worker
- The Employer Form 7 – this form is initiated by the employer when a worker gets injured

- The Doctor Form 8 – this form is completed by a doctor when a worker informs them the injury was sustained at work

As soon as the WSIB gets one of these forms it will go looking for the other two. If a worker gets injured and their employer says the forms are not necessary, the worker should obtain and complete a worker Form 6 and send it in to WSIB on their own. Alternatively, the worker can go to his or her doctor and say that the injury occurred at work and the doctor will complete a Form 8. This means workers do not need to argue with the employer about whether the employer starts a Form 7 or not. Workers can take steps to protect themselves and their own health.

This means that after injury, workers likely need to fill out more than one report. They should fill out an internal employer incident report (or occurrence report) as well as the forms for workers' compensation. Sometimes workers think an incident report is also a WSIB report, but it is not. An employer internal incident form is not the form that reports injuries to the WSIB.

The program must set out how an employer will investigate and deal with workplace violence

Under the OHSA, employer policies must identify how they will investigate incidents or complaints of workplace violence (Sec 32.0.2(1)). Also useful to note is the employer's obligation to reassess the risks where necessary to ensure that the workplace violence program "continues to protect workers" means that the employer must sufficiently investigate incidents that occur so as to be able to prevent similar incidents from occurring in future.

"Investigate" means to carry out a systematic or formal inquiry to discover and examine the facts of an incident, allegation, etc., to establish the truth. It includes collecting evidence, speaking with witnesses, taking photographs, writing reports, and so on. Someone needs to determine what has happened, why it happened, and what will be done to prevent it from happening again. Investigations of workplace violence and health and safety incidents are integral to identifying gaps in our safety program.

One of OPSEU/SEFPO's worker health and safety committee members at Ontario Shores has developed a local form to identify risk factors in play for specific situations. On his own, he follows up (often by phone) with the unit and identifies relevant factors to the incident such as staffing that day, unusual circumstances, tone of the unit, additional pressures on work, etc. Knowing that these factors might otherwise be left out of the employer's investigation, the OPSEU/SEFPO JHSC member provides the information to the supervisor in writing to ensure that their investigation is fulsome and that it includes systemic root cause factors.

We can also learn from the incidents that do not cause any injury. It is important to collect and report "near misses," or attempts by patients and others to strike out at workers. Investigating these events will help reveal how to prevent future incidents that may cause injury. Not all incidents of workplace violence will need a comprehensive investigation but these circumstances should be clear in the policy.

In some correctional workplaces, incidents of workplace violence are so frequent that the manager or supervisor may have to spend considerable time investigating them. That is not a worker or JHSC problem. The law requires that the employer do this and it is important to ensure that the employer is investigating all of these incidents.

The JHSC should request copies of all reports of workplace violence and the results from any investigation. The JHSC should encourage the employer to allow worker members to be involved with these investigations, but it is not required by the OHSA. (Note: Worker members of the JHSC *do* have the right to conduct their own investigation when a worker is critically injured or killed. In this case, the worker members visit the scene, investigate, and develop their own report and recommendations and submit it to the MOL and the employer. See section 9 (31).)

Investigation findings

After an investigation has been completed, the facts need to be organized. The root cause and contributing factors of the violence should be clear. List recommendations to prevent similar events in future. The findings should identify actions that will take place. A lack of training for one worker must be further investigated to ensure that the training is not required for more workers**.** Problems with equipment that the investigation finds to be broken, not functioning as designed, or beyond a required inspection or warranty date must be addressed.

When an investigation is complete and a report is written, the JHSC should:

- Ask for the results of the investigation or a copy of the report. The conclusions of the investigation will enable the JHSC to make sound recommendations to the employer to prevent reoccurrences;
- Ensure that the investigator(s) considered and evaluated all the data available and that the investigation identified root causes of the violence that occurred;
- Review investigation recommendations – they should include controls that, if implemented, could prevent a recurrence; and
- Monitor the employer's implementation of the recommendations.

5. The JHSC's right to information

In this section:

Rights of the JHSC to receive:

- Statistical summary of lost time/no lost time injuries
- Results of reports about occupational health and safety
- Injury notices
- Critical injury/fatality notices
- Ministry of Labour reports

Employers' reporting responsibilities to the union and JHSC under the OHSA and Regulation 851—Industrial Establishments

Section 12. (1) For workplaces to which … the Workplace Safety and Insurance Act applies, the Workplace Safety and Insurance Board, upon the request of an employer, a worker, committee, health and safety representative or trade union, shall send to the employer, and to the worker, committee, health and safety representative or trade union requesting the information an annual summary of data relating to the employer in respect of the number of work accident fatalities, the number of lost work day cases, the number of lost work days, the number of non-fatal cases that required medical aid without lost work days, the incidence of occupational illnesses, the number of occupational injuries, and such other data as the Board may consider necessary or advisable.
Posting of copy of summary
(2) Upon receipt of the annual summary, the employer shall cause a copy thereof to be posted in a conspicuous place or places at the workplace where it is most likely to come to the attention of the workers.

Entitlement to a statistical summary of injuries and occupational diseases

The role of the JHSC and health and safety representative is to identify hazards and recommend actions to prevent injuries. As such, it makes sense that the JHSC and health and safety representative have access to injury summaries and trends. Section 12 of the OHSA entitles the union, the JHSC, health and safety representative, or an employer to request a statistical summary of injuries for a workplace from the WSIB. The report will provide lost time and no

lost time injury totals for the year. OPSEU/SEFPO recommends that JHSCs and health and safety representatives request summaries and compare and discuss them with the employer annually.

An employer shall:

(l) provide to the committee or to a health and safety representative the results of a report respecting occupational health and safety that is in the employer's possession and, if that report is in writing, a copy of the portions of the report that concern occupational health and safety; and

(m) advise workers of the results of a report referred to in clause (l) and, if the report is in writing, make available to them on request copies of the portions of the report that concern occupational health and safety.

Entitlement to the results of written reports regarding occupational health and safety

JHSCs and health and safety representatives are entitled to know about, and have a copy of, the results of any report that exists in writing that has to do with occupational health and safety. This section is the basis for which JHSCs can request information on investigations of injuries that supervisors do in order to ascertain steps that they will put in place to prevent recurrence, and the steps that the manager lists on the injury notice received within four days by the JHSC (see notice of injuries below). The right to receive reports regarding occupational health and safety has recently been confirmed in a June 2018 grievance arbitration case (Ontario English Catholic Teachers Association versus Toronto Catholic District School Board, see CanLII 59943) where the joint health and safety committee was entitled to receive information such as emergency response plans and portions of documents regarding students which relate to "assessments of the specific risk of workplace violence from specific persons and the specific measures to control such risk."

Again, these rights flow from the role of the JHSC and health and safety representative to identify hazards and recommend preventative measures to address those hazards. The JHSC and health and safety representatives act as internal auditors of the employer's health and safety program.

Worker JHSC members should rely on this section of the OHSA to receive information on near misses and incidents of workplace violence that do not result in injury or illness. Again, receiving this type of information is paramount so that the JHSC can do its job. If a near-miss incident was investigated and evaluated, and recommendations were made, the issue should be addressed before any injuries occur.

Notice of accident, explosion, fire or violence causing injury

Section 52. (1) If a person is disabled from performing his or her usual work or requires medical attention because of an accident, explosion, fire or incident of workplace violence at a workplace, but no person dies or is critically injured because of that occurrence, the employer shall, within four days of the occurrence, give written notice of the occurrence containing the prescribed information and particulars to the following:

1. The committee, the health and safety representative and the trade union, if any.

2. The Director, if an inspector requires notification of the Director.

Notice of occupational illness

(2)If an employer is advised by or on behalf of a worker that the worker has an occupational illness or that a claim in respect of an occupational illness has been filed with the Workplace Safety and Insurance Board by or on behalf of the worker, the employer shall give notice in writing, within four days of being so advised, to a Director, to the committee or a health and safety representative and to the trade union, if any, containing such information and particulars as are prescribed.

(3)Subsection (2) applies with all necessary modifications if an employer is advised by or on behalf of a former worker that the worker has or had an occupational illness or that a claim in respect of an occupational illness has been filed with the Workplace Safety and Insurance Board by or on behalf of the worker.

And the contents required for workplaces that fall under Regulation 851—Industrial Establishments:

5 (2) ***If an accident, explosion or fire causes injury to a worker at a facility that disables the worker from performing his or her usual work, the written notice required by subsection 52 (1) of the Act shall include,***

(a) the name and address of the employer;

(b) the nature and circumstances of the occurrence and of the bodily injury sustained by the worker;

(c) a description of the machinery or thing involved, if any;

(d) the time and place of the occurrence;

(e) the name and address of the worker who was injured;

(f) the names and addresses of all witnesses to the occurrence;

(g) the name and address of the physician or surgeon, if any, who is attending to or attended to the worker for the injury; and

(h) the steps taken to prevent a recurrence.

(3) If an accident, explosion or fire at a facility causes injury requiring medical attention but does not disable a worker from performing his or her usual work, the employer shall keep a record of that occurrence and the record shall include,

(a) the nature and circumstances of the occurrence and of the injury sustained;

(b) the time and place of the occurrence;

(c) the name and address of the injured worker; and

(d) the steps taken to prevent a recurrence.

(4) The record kept by the employer under subsection (3) for inspection by an inspector shall be notice to a Director.

(5) The written notice required under subsection 52 (2) of the Act if an employer is advised that a worker has an occupational illness or that a claim in respect of an occupational illness has been filed with the Workplace Safety and Insurance Board shall include,

(a) the name and address of the employer;

(b) the nature of the occupational illness and the circumstances which gave rise to such illness;

(c) a description of the cause or the suspected cause of the occupational illness;

(d) the period when the worker was affected;

(e) the name and address of the worker who is suffering from the occupational illness;

(f) the name and address of the physician, if any, who is attending to or attended to the worker for the illness; and

(g) the steps taken to prevent further illness.

Entitlement to receive notice of injury

The JHSC or health and safety representatives and the union are entitled to receive written notice (within four days) if a worker is disabled from performing their regular work, seeks medical attention, or reports an occupational illness. “Disabled from regular work” means that they are absent the next day (or longer), or are still at work but accommodated out of their regular work to a different task or job. Medical attention means seeing a doctor, and does not refer to first aid assistance.

Regulation 851 - Industrial Establishments specifies what specific information must be provided in workplaces that fall under the regulation. Note: for workplaces not under the Regulation, the items represent a best practice.

OPSEU/SEFPO recommends that all JHSCs and health and safety representatives establish a systematic process to receive their statutory notices and to keep them strictly confidential. Ideally, the worker JHSC members should review the injuries during caucus time, and draft any recommendations for prevention to take to the meeting for full committee discussion and finalization. OPSEU/SEFPO discourages JHSCs from using all the meeting time going through injury

reports one by one. Sometimes we see this as an employer tactic to keep the committee busy with details to distract the committee from engaging in important discussions about controls.

Notice of death or injury

Section 51. (1) Where a person is killed or critically injured from any cause at a workplace, the constructor, if any, and the employer shall notify an inspector, and the committee, health and safety representative and trade union, if any, immediately of the occurrence by telephone or other direct means and the employer shall, within forty-eight hours after the occurrence, send to a Director a written report of the circumstances of the occurrence containing such information and particulars as the regulations prescribe.

In an industrial establishment, the mandatory items in an employer's notice to the MOL:

5. (1) If a worker is killed or critically injured at a facility, the written report required by subsection 51 (1) of the Act shall include,

- ***(a) the name and address of the employer;***
- ***(b) the nature and circumstances of the occurrence and of the bodily injury sustained;***
- ***(c) a description of the machinery or thing involved, if any;***
- ***(d) the time and place of the occurrence;***
- ***(e) the name and address of the person who was critically injured or killed;***
- ***(f) the names and addresses of all witnesses to the occurrence;***
- ***(g) the name and address of the physician or surgeon, if any, who is attending to or attended to the injured or deceased person; and***
- ***(h) the steps taken to prevent a recurrence.***

Entitlement to receive notice of critical injury or fatality

More serious injuries are called critical injuries and are defined by the Critical Injury Regulation 834. According to regulation 834:

"critically injured" means an injury of a serious nature that,

- ***(a) places life in jeopardy,***
- ***(b) produces unconsciousness,***
- ***(c) results in substantial loss of blood,***
- ***(d) involves the fracture of a leg or arm but not a finger or toe,***
- ***(e) involves the amputation of a leg, arm, hand or foot but not a finger or toe,***
- ***(f) consists of burns to a major portion of the body, or***
- ***(g) causes the loss of sight in an eye.***

The JHSC, health and safety representative, and the union (usually the local president) are entitled to immediate notice of a critical injury or fatality of any person at a workplace. This means by telephone or other direct means. Knowing immediately is important because a critical injury also triggers the worker JHSC's and health and safety representative's right to investigate pursuant to the OHSA. Worker investigators are entitled to inspect the place where the injury or fatality occurred and to write a report with recommendations to the Ministry of Labour and to the JHSC. The employer is obligated to also notify the MOL and send a written report to them within 48 hours.

Keep in mind that the MOL and possibly the police will be investigating and their investigations will likely have priority. You may not be privy to their investigation or to their reports. It is a good idea to let the employer know who the designated worker investigators are and to make arrangements for clearance to do the investigation in a timely manner. Some worker members provide a general sketch of their planned activities to the employer that helps them obtain the clearance they need.

Many workers think they must or should do the investigation jointly with the employer. That's fine, but in many cases it is better to keep your investigation separate from the employer's. The employer investigates for many different reasons. Some are the same as ours, e.g., to find root cause of the incident. But employers also investigate for other reasons – like protecting themselves from liability or from MOL charges.

Entitlement to accompany Ministry of Labour inspectors and receive a copy of the report

54 (3) Where an inspector makes an inspection of a workplace under the powers conferred upon him or her under subsection (1), the constructor, employer or group of employers shall afford a committee member representing workers or a health and safety representative, if any, or a worker selected by a trade union or trade unions, if any, because of knowledge, experience and training, to represent it or them and, where there is no trade union, a worker selected by the workers because of knowledge, training and experience to represent them, the opportunity to accompany the inspector during his or her physical inspection of a workplace, or any part or parts thereof.

57 (10) Where an inspector makes an order in writing or issues a report of his or her inspection to an owner, constructor, licensee, employer or person in charge of the workplace,

(a) the owner, constructor, licensee, employer or person in charge of the workplace shall forthwith cause a copy or copies of it to be posted in a conspicuous place or places at the workplace where it is most likely to come to the attention of the workers and shall furnish

a copy of the order or report to the health and safety representative and the committee, if any; and

(b) if the order or report resulted from a complaint of a contravention of this Act or the regulations and the person who made the complaint requests a copy of it, the inspector shall cause a copy of it to be furnished to that person.

When an MOL inspector visits a workplace, a worker JHSC member or a health and safety representative is entitled to be present and accompany the inspector. If the JHSC member is not available, then another person chosen by the union is entitled to attend. The employer must post a copy of the inspection report and provide a copy to the JHSC or to the health and safety representative. If the MOL inspection is regarding a worker complaint, the worker is entitled to request and receive a copy of the MOL report from the employer.

6. Refusing unsafe work

"If you always do what you always did, you always get what you always got."

--Ryan Graham, (and originally said by Henry Ford and motivational speaker Tony Robbins)

"Nothing changes if nothing changes."

--Mike Lundy, (and originally said by Courtney C. Stephens author of The Lies about Truth)

In this section:

Section 43 of the OHSA details workers' right to refuse unsafe work:

Refusal to work

Non-application to certain workers

43. (1) This section does not apply to a worker described in subsection (2),

(a) when a circumstance described in clause (3) (a), (b), (b.1) or (c) is inherent in the worker's work or is a normal condition of the worker's employment; or

(b) when the worker's refusal to work would directly endanger the life, health or safety of another person.

Idem

(2) The worker referred to in subsection (1) is,

(a) a person employed in…a police force….

(b) a firefighter….

(c) a person employed in the operation of,

(i) a correctional institution or facility,

(ii) a place of secure custody designated under section 24.1 of the Young Offenders Act (Canada), whether in accordance with section 88 of the Youth Criminal Justice Act (Canada) …

(iii) a place of temporary detention under the Youth Criminal Justice Act (Canada), or

(iv) a similar institution, facility or place;

(d) a person employed in the operation of,

(i) a hospital, sanatorium, long-term care home, psychiatric institution, mental health centre or rehabilitation facility,

(ii) a residential group home or other facility for persons with behavioural or emotional problems or a physical, mental or developmental disability,

(iii) an ambulance service or a first aid clinic or station,

(iv) a laboratory operated by the Crown or licensed under the Laboratory and Specimen Collection Centre Licensing Act, or

(v) a laundry, food service, power plant or technical service or facility used in conjunction with an institution, facility or service described in sub clause (i) to (iv).

S. 43(3) of the OHSA states:

Refusal to work
A worker may refuse to work or do particular work where he or she has reason to believe that,
(a) any equipment, machine, device or thing the worker is to use or operate is likely to endanger himself, herself or another worker;
(b) the physical condition of the workplace or the part thereof in which he or she works or is to work is likely to endanger himself or herself;
(b.1) workplace violence is likely to endanger himself or herself.

Correctional officers and other workers employed in the operation of a correctional facility have a limited right to refuse unsafe work. Probation and parole officers are not listed and *do not have restrictions* on their right to refuse.

Restrictions on the right to refuse unsafe work

S. 43(1)(a) of the OHSA says that workers employed in the operation of a correctional facility do not have the right to refuse when a circumstance *is inherent in the workers' work or is a normal condition of the worker's employment.*

Inherent circumstance. The concept of "inherent circumstance" is controversial in many workplaces where the right to refuse is limited. While exposure to the potential of violence may be inherent in many workplaces, the overarching intention of the OHSA is to protect workers from workplace hazards and to put in place systems where employers and supervisors take all reasonable precautions in the circumstances to protect workers from hazards. Accordingly, "inherent" means that while the potential hazard may be inherent, the actual hazard can be controlled and should have controls in place. Workers in correctional facilities do have the right to refuse work when they believe that violence is likely to endanger them and that the hazard is not adequately controlled. Now the danger is not "inherent" because controls are missing.

Normal condition of the worker's employment. Also a bit tricky to interpret is the phrase "*a normal condition of the worker's employment."* As discussed above, while there may be a potential for violence in a workplace, unaddressed exposure to physical violence cannot be considered an inherent or normal condition of employment. That's why workplace violence

programs include measures and procedures, means of summoning assistance, and rules for reporting, instruction and training.

For example, a correctional worker is being ordered by a manager to immediately open a cell door and remove an offender who is threatening imminent harm to the officer. The offender is not complying with direction to allow himself to be restrained through the hatch using mechanical restraints. The CO fears for his/her safety and recalls that his training was that "if the offender is not complying, then the CO should disengage and not open the door." Rather, "Cell Extraction Teams (CET)" have the appropriate training and equipment, and in fact, the employer's measures and procedures require the CET team (where they exist) to do this work, not a CO or two. If no CET team exists, and for higher risk situations, such as if a weapon is involved, the Institutional Crisis Intervention Team (ICIT) is listed as the measure and procedure for safety. Also in this situation, one has to ask what is the emergency to get the offender out of the cell? No CO should be put in this position when the employer has already specified the measures and procedures to address this type of risk. The lone CO (or two) do not have a baton or shield. A CO has pepper spray, but to draw it in advance will attract an accusation of antagonizing the situation. Also, the reaction time to use pepper spray at such close proximity may not be sufficient for the officer's safety. There is no reason for this risk. The appropriate response is to disengage and reassess, and if the offender continues to threaten, and if immediate removal from the cell is even necessary, then CET or ICIT should be brought in. Therefore we would say that a work refusal such as this overcomes the "inherent and normal condition of work barriers."

Directly endangering the life, health, or safety of another person

What is work that can "directly endanger, the life, health, or safety of another person"? This concept can also be open to interpretation. Will the work refusal cause harm to the health or safety of another person?

- In cell or out in dayroom? No harm
- Yard or no yard? No harm
- Delaying food? No harm
- Delaying medication? Perhaps. What is the medication and can it be delayed?
- Moving from one area to another? No harm
- Refusing an escort? Depends to where—to essential health care—definitely will be harm, to elective or non-essential appointments—likely no harm.

For example, a correctional worker is required to offer an opportunity to see the nurse so that the nurse can administer a once-daily blood pressure medication to an offender displaying aggressive

behaviours. There is no one else in the room and the offender is acting aggressively. When the worker approaches the doorway escorting the nurse, the offender sees her and starts to shout directly at her in a threatening manner. In this case, the worker does have the right to refuse to enter the room with the nurse to deliver the medication to the patient. She is afraid that the patient will strike her and the nurse. She also knows that the medication is only given once daily and knows that if it is delivered late by a few hours that the patient's life, health or safety will not be endangered. Accordingly, she reports to her supervisor that she is refusing to perform this specific task at this time. This situation may be resolved at this first stage if it is decided to try again with a different method, or wait a couple of hours, or if the trigger of the behaviours can be identified and addressed first.

Get the facts!

Correctional workers DO have a right to refuse unsafe work if they have a reasonable belief that something in the work will endanger them. However, workers in correctional facilities cannot refuse:

- when a circumstance is inherent in the worker's work or a normal condition of the worker's employment; or
- when the refusal will directly endanger the life, health or safety of another person.

Steps and stages of a work refusal

Workers need to be aware of their rights to refuse unsafe work so that if they face an unsafe situation, they know what to do and know the process they must follow. The best resource to use in Ontario for work refusals is the Guidance Note on Workplace Violence developed by the Section 21 committee for healthcare workers, who also have a limited right to refuse unsafe work. Regardless of sector, the work refusal process guidance is the same. Access the Guidance Note here: **www.pshsa.ca/wp-content/uploads/2012/11/Approved-Right-to-Refuse-GN_Health-Care-Section-21-September-1820141.pdf**

Reporting and following up to address a hazard is NOT the first stage of a work refusal

While a corrections workplace is different than a healthcare workplace, both types of workers have a limited right to refuse and so the Guidance Note above is helpful to discuss the correct process with practical examples. For one thing, the Guidance Note differentiates between a worker's right to report a hazard under Sec 28 and triggering the first stage of a work refusal in Sec. 43. They are NOT the same thing, but correctional workers often treat them as the same thing - raising a concern, that if not addressed immediately, always turns into a work refusal! They are two different processes with two different timelines, under two different sections of the OHSA, and both are suitable for various situations.

The truth is that a concern can stay a concern for a reasonable time period while the issue has a couple of ways of being addressed. A worker can report a hazard and have a supervisor investigate and provide a response over a reasonable period without triggering the work refusal process at all. That means that the issue is not urgent or imminent in nature (e.g. LIKELY to cause harm if the current situation continues). It is usually situations of urgency and likeliness of harm, and often that have suddenly arisen or are unusual or unexpected result in work refusals that are deemed "likely to endanger."

Not all reports of hazard should lead into a work refusal. Sometimes it takes a supervisor to look into a situation, get back to the worker, and an unsatisfied worker approaching their worker JHSC rep to put the item on the agenda of the next JHSC meeting and it gets resolved that way over time. Working at the JHSC on the issue is another way to deal with unresolved worker concerns. It is not uncommon for it to take some additional time for the "internal responsibility system" to negotiate and work on the issue.

Stage One

OHSA, subsection 43(4), states:

Report of refusal to work
Upon refusing to work or do particular work, the worker shall promptly report the circumstances of the refusal to the worker's employer or supervisor who shall forthwith investigate the report in the presence of the worker and, if there is such, in the presence of one of,
(a) a committee member who represents workers, if any;
(b) a health and safety representative, if any; or

(c) a worker who because of knowledge, experience and training is selected by a trade union that represents the worker, or if there is no trade union, is selected by the workers to represent them,
who shall be made available and who shall attend without delay.

If a worker has a reasonable belief that conditions in the workplace pose a risk to his or her health and safety, and the worker is going to refuse some aspect of work, the worker must report the work refusal to their supervisor. The supervisor must respond promptly, obtain a worker health and safety committee member (or if not available, obtain another person chosen by the union because of knowledge and training), and begin to investigate the situation accompanied by that rep. It is the supervisor or employer's duty to ensure that a worker representative is made available and can attend promptly. When the supervisor arrives, the refusing worker should explain the situation calmly and professionally, detailing specifically why she/he believes it is not safe. The worker or the worker representative should keep notes of this conversation and the overall situation as it may be fluid and the notes may be helpful later. This is called the "Stage One" investigation.

The Stage One investigation should not be conducted in a manner that makes the worker feel intimidated. The supervisor is free to ask questions in an attempt to understand the worker's concerns and the overall situation for the purposes of clarification, but the worker should not be made to feel they are being interrogated for exercising their legal rights.

Remember, just because several other workers have performed the same task with without refusing, this does not mean the worker may not refuse to perform it. The problem may be something no one else thought of or was fearful of identifying. It is the supervisor's responsibility to remedy the situation and after discussion and investigation by the supervisor it is not unusual for either party to propose plausible solutions that would enable the employee to safely resume work. Keep in mind that the supervisor may suggest a solution which the workers do not think is ideal but does address the hazard. It should be given due consideration and may have to be accepted as adequate.

If the remedy presented by the supervisor resolves the concerns at the basis of the refusal, the worker should return to work. These resolutions may only be "interim solutions" to enable the employer to immediately continue operations. That too is acceptable, for the time being. Workers should keep their detailed notes from this encounter as there may be recommendations arising from the situation which should be forwarded to the JHSC. In turn, the committee can request the introduction of permanent measures for the protection of workers in similar situations.
The purpose of the stage one is to outline the concerns and attempt to agree on a solution to resolve them so that the work can be done safely.

OHSA S. 43(5) states:

Worker to remain in safe place and available for investigation
Until the investigation is completed, the worker shall remain,
(a) in a safe place that is as near as reasonably possible to his or her work station; and
(b) available to the employer or supervisor for the purposes of the investigation.

The worker is entitled to remain in a safe place (e.g., by not doing the refused work) and the worker should be close by to participate in the investigation.

Stage Two

OHSA S. 43(6) and S. 43(7) state:

Refusal to work following investigation
(6) Where, following the investigation or any steps taken to deal with the circumstances that caused the worker to refuse to work or do particular work, the worker has reasonable grounds to believe that,
(a) the equipment, machine, device or thing that was the cause of the refusal to work or do particular work continues to be likely to endanger himself, herself or another worker;
(b) the physical condition of the workplace or the part thereof in which he or she works continues to be likely to endanger himself or herself;
(b.1) workplace violence continues to be likely to endanger himself or herself; or
(c) any equipment, machine, device or thing he or she is to use or operate or the physical condition of the workplace or the part thereof in which he or she works or is to work is in contravention of this Act or the regulations and such contravention continues to be likely to endanger himself, herself or another worker, the worker may refuse to work or do the particular work and the employer or the worker or a person on behalf of the employer or worker shall cause an inspector to be notified thereof.
Investigation by inspector
(7) An inspector shall investigate the refusal to work in consultation with the employer or a person representing the employer, the worker, and if there is such, the person mentioned in clause (4) (a), (b) or (c). 2001, c. 9, Sched. I, s. 3 (11).
Decision of inspector
(8) The inspector shall, following the investigation referred to in subsection (7), decide whether a circumstance described in clause (6) (a), (b), (b.1) or (c) is likely to endanger the worker or another person. 2009, c. 23, s. 4 (5).
Idem

(9) The inspector shall give his or her decision, in writing, as soon as is practicable, to the employer, the worker, and, if there is such, the person mentioned in clause (4) (a), (b) or (c). R.S.O. 1990, c. O.1, s. 43 (9).

If the refusing worker, the worker representative, and the supervisor are unable to resolve the situation at Stage One, the work refusal may enter what is known as Stage Two. However, while Stage One of the work refusal requires only a "reason to believe," the worker at Stage Two has a higher onus because the worker has now heard the supervisor's point of view and likely considered the supervisor's suggested solutions (if any) to resolve the work refusal. To continue to refuse, the worker should have "reasonable grounds" to believe that the circumstances remain dangerous even after the initial investigation and information provided. While the term "reasonable grounds" is not defined in the OHSA, it is usually understood that the worker following the Stage One investigation and discussion will have a more complete understanding of the hazard and the reasons why it is dangerous to perform the work, and will be able to explain this.

Stage Two involves the MOL. Either the employer, the refusing worker, or the worker representative must notify the ministry and request that an inspector attend the workplace to resolve the situation. OPSEU/SEFPO advises, if possible, that the refusing worker or the worker representative should make the first phone call to the ministry. There have been situations in the past where the employer has made the call and the work refusal situation has not been fully explained, leading to problems with having an inspector assigned, or having the inspector come to the workplace with an incorrect understanding of the situation.

Note that the OHSA was changed years ago to allow inspectors to rule on work refusals without attending the workplace, but by consulting with the workplace parties. However, after a huge outcry, the MOL wrote in their policy manual that inspectors shall attend the workplace once a work refusal is established. This is why MOL inspectors first check on the phone that a) the Stage One has been completed and b) that it is a valid work refusal (ie that it meets the limitations set in the Act). If the work refusal overcomes those two grounds, then the MOL's practice is that the inspector attends the workplace to investigate the refusal in consultation with all three parties. However, sometimes inspectors (and mostly their supervisors especially after hours) deal with the refusal over the telephone. The law allows it, but this is not the best way to proceed – the worker and the worker representative should insist that the inspector attend at the workplace to investigate. When the Inspector's investigation is completed, she or he will determine whether the situation is "likely to endanger." The inspector is required to issue a written report of this decision "as soon as is practicable" and provide a copy to the employer. The employer is required to post the orders and/or the report in a conspicuous place or places so that workers will see it. The employer must also provide a copy of the MOL report to the JHSC and to the refusing worker if the refusing worker requests a copy.

Keep in mind that an inspector rules on a work refusal to determine only whether the refused work is "likely to endanger" or not. Sometimes the inspector will decide that the work refusal is not valid and will decide to treat the issue as a complaint. This is not necessarily a bad thing, although workers are often very frustrated when this happens. Handling it as a complaint is actually a way for the inspector to continue the "life" of the issue rather than just ruling "not likely to endanger" and then closing the investigation, shutting down the issue. Also, according to MOL policy, complaints will be expedited for workers with the limited right to refuse. Determining that there is no right to refuse does not preclude the inspector from handling it as a complaint where they can write orders (now or later) to the employer to address the hazard. Whatever the inspector decides to do or write, keep in mind that both the union and the employer have the right to appeal the decision, the order(s), or the failure to write orders.

Can the employer assign the work being refused to another worker?

OHSA S. 43(11) states:

Duty to advise other workers
Pending the investigation and decision of the inspector, no worker shall be assigned to use or operate the equipment, machine, device or thing or to work in the workplace or in the part of the workplace being investigated unless, in the presence of a person described in subsection (12), the worker has been advised of the other worker's refusal and of his or her reasons for the refusal.

The employer may assign the work being refused to another worker once the Stage One investigation is completed and during the time while waiting for the MOL inspector to investigate and make her/his decision. To safeguard the health and safety rights of the potential replacement worker, the employer must inform the replacement worker about the prior worker's refusal along with the reasons for the refusal. This must be done in the presence of the worker representative. The replacement worker may choose to perform the work or decide to refuse it if he or she believes the work is unsafe. **The right to refuse unsafe work is an individual right and must be asserted by individuals, not as a group**.

Can the employer assign alternative work to the refusing worker?

OHSA S. 43(10) states:

Worker to remain in safe place and available for investigation

Pending the investigation and decision of the inspector, the worker shall remain, during the worker's normal working hours, in a safe place that is as near as reasonably possible to his or her work station and available to the inspector for the purposes of the investigation.
Exception
(10.1) Subsection (10) does not apply if the employer, subject to the provisions of a collective agreement, if any,
(a) assigns the worker reasonable alternative work during the worker's normal working hours; or
(b) subject to section 50, where an assignment of reasonable alternative work is not practicable, gives other directions to the worker.

The worker is entitled to wait in a safe place and must be available to the inspector doing the investigation, until the work refusal is dealt with. However, while waiting for the MOL inspector to arrive and complete her/his investigation, the employer can assign alternative work to the refusing worker (subject to the terms of a collective agreement) during the worker's regularly scheduled working hours.

If no alternative work exists, the employer can give other directions to the worker, subject to section 50 of the OHSA (no reprisals). This means that an employer could send a refusing worker home if no work is available and if it is expected that the inspector will not arrive and/or complete the investigation that shift. However, since the clause states that this decision is "subject to section 50," it means that the employer's decision cannot be interpreted as punishment or a reprisal against the worker for the work refusal. We would understand this to mean that if the employer instructs the worker to leave the workplace because there is no alternative work, the worker should continue to be paid for the rest of the shift. Note though, that if the MOL arrives and the worker is not present, then the work refusal will be deemed over, or abandoned, unless other arrangements have been made to investigate at a later date.

Do the refusing worker and their representative get paid during a work refusal?

OHSA S. 43(13) states:

Entitlement to be paid
A person shall be deemed to be at work and the person's employer shall pay him or her at the regular or premium rate, as may be proper,
(a) for the time spent by the person carrying out the duties under subsections (4) and (7) of a person mentioned in clause (4) (a), (b) or (c); and
(b) for time spent by the person carrying out the duties under subsection (11) of a person described in subsection (12).

Both the refusing worker and their representative are entitled to be paid during both Stage One and Stage Two of the work refusal. Note that S. 43(10.1)(b) discussed above references section 50, the "no reprisals" section, when describing how alternative work may be assigned. Workers – both the refusing worker and their representative – are considered to be at work and entitled to pay during the work refusal process.

Can I be disciplined by the employer for initiating a work refusal?

OHSA Section 50 states:

No discipline, dismissal, etc., by employer

(1) No employer or person acting on behalf of an employer shall,

(a) dismiss or threaten to dismiss a worker;

(b) discipline or suspend or threaten to discipline or suspend a worker;

(c) impose any penalty upon a worker; or

(d) intimidate or coerce a worker,

because the worker has acted in compliance with this Act or the regulations or an order made thereunder, has sought the enforcement of this Act or the regulations or has given evidence in a proceeding in respect of the enforcement of this Act or the regulations or in an inquest under the Coroners Act.

Arbitration

(2) Where a worker complains that an employer or person acting on behalf of an employer has contravened subsection (1), the worker may either have the matter dealt with by final and binding settlement by arbitration under a collective agreement, if any, or file a complaint with the Board in which case any rules governing the practice and procedure of the Board apply with all necessary modifications to the complaint.

Employers are forbidden from intimidating, disciplining or threatening to discipline workers for asserting their health and safety rights under the work refusal provisions (and all other provisions) of the OHSA. It is important that workers understand they not only have a right to refuse what they reasonably believe to be unsafe work: this right is *protected by law*. If a worker feels that an employer has taken a reprisal against them for asserting health and safety rights, workers are entitled either to file a grievance under a collective agreement or a complaint at the Ontario Labour Relations Board (OLRB).

What if I disagree with a Ministry of Labour inspector's decision?

If an inspector has issued orders, failed to issue orders, or made a decision that workers do not agree with, workers have the right to appeal that decision. Appeals of inspector decisions must be filed within 30 days from the issuance of the report. However, an appeal is a formal process that must comply with specific OLRB rules of procedure. The OLRB process works best when the legislation covers the issue at stake or there is some legislative provision to rely on in the matter. OPSEU/SEFPO members who want the union's assistance to appeal an inspector order (or non-order), should contact the Health and Safety Unit and fax a copy of the premise report and all supporting documentation and details as soon as possible. The unit can help assess the situation, advise on the merits of the potential appeal, and may offer to assist with the appeal or suggest other ways of addressing the issue.

A Certified Member's right to call for a supervisor investigation of a dangerous circumstance – the start of a bilateral work stoppage

45 (1) A certified member who has reason to believe that dangerous circumstances exist at a workplace may request that a supervisor investigate the matter and the supervisor shall promptly do so in the presence of the certified member.

One under-used section of the OHSA entitles the certified member to call for a supervisor to investigate a dangerous circumstance. A dangerous circumstance is a situation in which:

S.44(1) (a) a provision of this Act or the regulations is being contravened,
(b) the contravention poses a danger or a hazard to a worker, and
(c) the danger or hazard is such that any delay in controlling it may seriously endanger a worker.

The process by which a certified member may call a supervisor to investigate a situation is an important and often effective way to obtain quick action to address an imminent hazard. Even if the process ends here, and does not move to a bilateral work stoppage, a hazard has been addressed quickly. Certified members receive special training in occupational health and safety and may recognize dangerous circumstances in cases where workers may not. Certified members may also be more knowledgeable about the Act and how to get the hazard addressed.

If, after the investigation of the supervisor, the certified worker still believes that a dangerous circumstance exists, he/she may call for the other certified member to attend and assess the situation. If both certified members agree that a dangerous situation exists, they may issue a stop work/bilateral work stoppage until the employer corrects the situation. As with a regular work refusal in health care workplaces, the work stoppage may not endanger the life, health, or safety of another person.

7. Contacting the Ministry of Labour

"If all you have is a hammer, everything looks like a nail"
- Abraham Maslow, the Psychology of Science, 1966

In this section:

While complaints are not mentioned in the OHSA, the Ministry of Labour will respond to workplace complaints called in by workers or the public.

Anyone can make a complaint: workers, JHSC members, health and safety representatives, union representatives, or employers. However, it is good practice to seek local action first, and then make a complaint if local efforts fail.

Complaints are underused in corrections. Not everything should be a work refusal.

Document all your efforts. If you make a complaint to the MOL about an issue that has never been to the JHSC for resolution, the MOL will likely only make a preliminary investigation and advise the parties to try to resolve it at the JHSC.

MOL inspectors are almost always reluctant to write orders or recommendations on an issue that the JHSC has not attempted to resolve. This is because the MOL expects local workplace parties to try to resolve health and safety issues as they arise. The workplace parties' participation in health and safety is expected in what is known as the "internal responsibility system" (IRS) where every person in the workplace participates in health and safety prevention. The OHSA specifies participation for workers, supervisors, employers, JHSCs and health and safety representatives. All have specific responsibilities for health and safety that are commensurate with the level of responsibility each party possesses in the workplace.

So, try to resolve the issue at the JHSC first, by tabling the agenda item and potential recommendations to try to get employer-side agreement. If the employer side of the JHSC does

not agree with the recommendations, then the worker co-chair should submit the recommendations to the employer unilaterally. Get the item noted in the minutes with the main points as discussed. Then follow up and get the 21-day response regarding the recommendations and the reasons why the employer does not agree with them. In the meantime, collect information and keep track of any new incidents that help bolster your recommendations as reasonable precautions in the circumstances for safety.

How do I make a health and safety complaint to the MOL?

- Call the MOL and make the complaint verbally at the toll free phone number: 1-877-202-0008. Ask the name or ID number of the person you are speaking to and the reference code of the report. The call centre personnel will ask questions about the purpose of the call – What has happened? What is the issue? What steps have been taken to deal with the problem prior to calling? Call takers may ask the question, *"Where does it say that?"*, so it is important to connect any health and safety complaint with a specific section of the OHSA or any of the other 25 regulations that go along with it. Make sure notes are kept about the issue and record who said what and when. Collect any documentation to help explain the complaint. This could include emails, photographs, injury reports, WSIB reports, or statements from workers or managers. It is important to get the facts straight before calling the MOL. Organize the events in a concise timeline so that any third party can obtain a quick understanding of what has occurred. Have the most relevant key documents appended.
- The complainant should obtain (if possible) the inspector's name and fax number or email address. If the call taker is not sure which inspector will be assigned, the complainant should ask the call taker to write a note on the file for the inspector to call him or her (and leave a name and number).
- Once the inspector calls, explain the unresolved issue and ask the inspector to inspect the workplace at a time when the complainant is available and can attend. Give the inspector the name and contact info of the worker rep you want to be present at the visit if it is not the caller.
- Fax the inspector a short, concise package to provide background material on the issue. Make sure to keep a copy. Be careful what documents you send. Do NOT send Ministry documents such as occurrence reports, offender information, or ministry policies (although a quoted excerpt or clause will likely be fine).
- Try to schedule the inspector's visit at a time when the representatives or workers familiar with the issue are on duty - give the inspector the schedule or discuss possible dates.
- Ensure that all worker members know information about the issue and be prepared to discuss and produce documents in case inspector arrives during their shifts. This can be arranged during your caucus before the JHSC meeting.

- Keep following up by phone, email or fax until an inspector comes to the workplace. Keep good records of attempts.

Can complaints be made anonymously? Yes, they may, but it is not ideal. Complainants do not have to reveal their identity, nor do they have to tell their employers. However, the best complaint is a well-planned and researched one. The best complainant has pre-arranged that the H&S rep/worker committee member is knowledgeable about the issue since that is likely who will be accompanying the inspector pursuant to S. 54(3).

Do I tell my employer? At times it may be a good idea to tell the employer that a complaint has or will be made to the Ministry of Labour. Sometimes they will want to fix the problem instead of answering MOL questions.

Should I make a complaint or do a work refusal? It depends. If a worker believes that a situation is likely to endanger them if not corrected, then workers have a right to refuse the unsafe work. As discussed above, many workers in health care have a limited right to refuse – e.g., they cannot refuse if the work is inherent in the job or if a refusal puts someone else in danger. In less urgent situations, gathering information and filing a complaint after exhausting the issue locally may be more effective.

Important information to have on hand when speaking to the MOL:

1. Identify what is the gap in the existing health and safety program

    a. Collect injury and near-miss information. How many workplace violence incidents have occurred? Where have they occurred?
    b. Why have the incidents occurred? Look at the findings in the investigation reports.

2. What controls are currently in place for the specific hazard?

    a. Why are they not working?

        i. Lack of training?
        ii. Lack of equipment?
        iii. Lack of staff?

The MOL inspector will enforce any employer violations of legislation.

An inspector has left a time-based order that specifies the date that the employer must comply. What is my role as a JHSC member?

Section 57 – 59 of the OHSA covers time-based orders and compliance plans. The inspector gives the employer a "Notice of Compliance" form for the employer to fill out and send back along with the details of how they plan to comply with the order.

OHSA S. 59 states:

(1) Within three days after a constructor or employer who has received an order under section 57 believes that compliance with the order has been achieved, the constructor or employer shall submit to the Ministry a notice of compliance.

(2) The notice shall be signed by the constructor or employer and shall be accompanied by,
(a) a statement of agreement or disagreement with the contents of the notice, signed by a member of the committee representing workers or by a health and safety representative, as the case may be, or
(b) a statement that the member or representative has declined to sign the statement referred to in clause (a).

(3)The constructor or employer shall post the notice and the order issued under section 57 for a period of fourteen days following its submission to the Ministry in a place or places where it is most likely to come to the attention of workers.

(4) Despite the submission of a notice of compliance, a constructor or employer achieves compliance with an order under section 57 when an inspector determines that compliance has been achieved.

These sections tell us that the worker JHSC member has rights to know about and offer recommendations for the employer's proposed compliance plan. The OHSA language indicates that the rep will have seen and be able to either agree or disagree with the plan and to append their written statement of agreement or disagreement.

Therefore, JHSC reps should undertake the following actions after the MOL makes time-based orders and leaves a "Notice of Compliance" form:

1. Insert yourself into the process that unfolds, by contacting the employer in writing and asking for a copy of the employer's proposed compliance plan in advance of the date of the time-based order or other date the compliance is expected. Make it clear that you want to have time to review the plan and offer recommendations if necessary. If your employer refuses to share their proposed compliance plan, this could be considered hindering with the role of a JHSC member (prohibited in OHSA S. 62(5)).

2. Review the employer's proposed compliance plan and interact with the employer (with your suggested additions/changes in writing) prior to the compliance visit in an effort to have mutual agreement on the plan.

3. On the date of the MOL's compliance visit, or the day the "Notice of Compliance" form will be sent in, have ready and provide in writing your statement of agreement or disagreement with the compliance plan. Make sure you outline the gaps or provide specific reasons for your disagreement.

4. Sign the "Notice of Compliance" form and append your written statement. If the employer refuses to include your written statement, send your written statement directly to the inspector. The inspector will make decisions on whether the employer has complied based only on the information he or she has about the matter.

Hamilton Wentworth Detention Centre: Working together on a compliance plan

Hamilton Wentworth Detention Centre's health and safety representative participated in the compliance process when the MOL issued six orders in September 2017 after 17 staff went to hospital after exposure to an unknown substance. The hospital notified the MOL. The MOL ordered that, within two months, that Hamilton D.C. employer train all staff on how to do an on-scene risk assessment, when to, and how to don and doff respiratory equipment, types of substances and possible health effects, how to avoid aerosolizing the contraband, and how and what personal protective equipment to use to clean and dispose of materials. Knowing that developing and training on a program would take more than two months, the worker rep and employer jointly requested that the compliance date be extended by a further two months. The MOL agreed. Now there would be a four-month timeframe to comply. At the four-month mark, in January 2018, both the union and the employer agreed that compliance had been met. A program had been developed and staff trained. Only seven per cent of staff had not been trained on the new program, and those staff members were either off on secondment or leave. The parties agreed that as each one of them returned to Hamilton, they would receive the training on their first day back.

8. Conclusion: Knowledge is power

You have rights as a JHSC committee member. The OHSA intends health and safety issues to be resolved as close to the workplace level as possible. Holding information from JHSC members does not achieve that goal and it does not make workplaces safer.

The OHSA has a provision that prohibits hindering JHSC members in their work. Hindering can mean withholding information, not allowing time to inspect the workplace, not allowing entrance in various areas, not providing information specified in the OHSA, or other issues.

OHSA S. 62 (5) states,

(5) No person shall knowingly,
a) hinder or interfere with a committee, a committee member, or a health and safety representative in the exercise of a power or performance of a duty under this Act;
b) furnish a committee, committee member, or a health and safety representative with false information in the exercise of a power or performance of a duty under this Act;
c) hinder or interfere with a worker selected by a trade union or trade unions or a worker selected by the workers to represent them in the exercise of a power or performance of a duty under this Act.

Being a health and safety activist in corrections is not for everybody. Some people sit back, do nothing, and wait for things to improve. Other people move out front, enter the storm, and take the reins to make the change happen. This booklet is dedicated to the latter. Corrections activists are passionate about health and safety and use their time, energy, expertise, and guts to improve the workplace for everyone inside.

Being an activist in corrections is not an easy job. The legislation is complex and the system does not seem to support our struggle. The stakes are high, but so are the rewards. OPSEU/SEFPO members working in corrections do work that is vital to our well-being as a society. Keeping workers safe is our top priority.

So, be strategic about the situation at hand. Evaluate the pros and cons of the different actions you can take. And proceed with the best plan to make a difference.