

**Submission to the Expert Advisory Panel on
Ontario's Occupational Health and Safety
Public Consultation**

CUPE Response to the Minister of Labour's (MOL's)
Review of Ontario's Health and Safety System
June 28, 2010

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CUPE Ontario
Written submission to:
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Introduction:

CUPE Ontario welcomes the opportunity to present to the Ontario Expert Panel on Health and Safety consultation on behalf of over 230,000 CUPE members province-wide. In our opinion, a review of Ontario's occupational health and safety system (OHSS) is long overdue.

CUPE Ontario views the health and system as holistic – that is, all its parts are key to ensuring workers are safe in the workplace. The effectiveness of prevention programs cannot be dealt proactively unless the system's other segments are also considered. The new protections under Bill 168 that include harassment are also indicative of the system reforms that CUPE Ontario supports.

Therefore, we are particularly supportive of the cohesive approach that the Expert Panel is taking in reviewing the individual components of the occupational health and safety system, including the role of the Ministry of Labour (MOL), the Workplace Safety and Insurance Board (WSIB), and the health and safety associations.

In addition to this initial written submission presented today, CUPE Ontario will be submitting – at a later date – our written submission in answer to the direct questions posed by the Expert Panel on Health and Safety as part the provincial consultation process. This later submission to the Expert Panel will include evidentiary data – in some cases, specific to workplaces and sectors – that, because of CUPE's diverse member and workplace base, has proven challenging in the short-time frame provided under the current consultation.

Background:

With the decline of the industrial/manufacturing sector, increasingly, Ontario's public sector is a growing and important part of local and provincial economies.

In Ontario, CUPE's 230,000 members work in the airline sector, and all facets of the broader public sector, including health care (hospitals, long-term care, and home care), municipalities, hydro utilities, libraries, social services (child care, mental health, developmental services and community-based agencies, shelters), education (elementary/secondary and post-secondary). Over 65% of CUPE members in Ontario are female. In urban centres, the face of CUPE is increasingly racialized.

Among CUPE's Ontario membership are 3,500 members employed directly for the WSIB, and nearly 400 more who are employees of several WSIB-funded and recently amalgamated health and safety associations. These include the following:

1. **Workplace Safety North** – Mines and Aggregates Safety and Health Association, Ontario Forestry Safe Workplace Association, Pulp and Paper Health and Safety Association
2. **Public Services Health and Safety Association** – Education Safety Association of Ontario, Municipal Health and Safety Association, Ontario Safety Association for Community and Health Care
3. **Infrastructure Health and Safety Association** – Construction Safety Association of Ontario, Transportation Health and Safety Association, Electrical and Utilities Safety Association
4. **Workplace Safety and Prevention Services** – Farm Safety Association, Industrial Accidental Prevention Association, Ontario Service Safety Alliance
5. **Medical Clinics and Training Centre** – Occupational Health Clinics for Ontario Workers Inc., Workers Health and safety Centre

The majority of CUPE members regularly interact with the public as a function of their job. Due to the nature of their work, many CUPE members are exposed to degrees of health and safety risks, including violence and other aggressive acts. Thousands of CUPE members work alone. Thousands more support at risk individuals or individuals with cognitive or intellectual disabilities in community settings and in schools where the nature of their work is inherently precarious.

CUPE members' workplace health and safety is therefore directly tied to the well-being and safety of all Ontarians. Perhaps one of the best illustrations of the connection between public health and workers' health and safety is in our hospitals. In our opinion, better training for workers and increasing custodial staffing levels to ensure best practices in cleaning (as has been done in the United Kingdom) would result in decreasing rates of hospital-acquired infections that routinely kill hospital patients.

Occupational health and safety and WSIB reforms must be public, for-profit solutions

Included with this CUPE Ontario written submission to the Expert Panel Review, is an October 2009 study by economist Hugh Mackenzie entitled, '***Financial review and opportunities for reform in service delivery and coverage Ontario WSIB.***' We will not detail the study findings in this submission. However, we encourage the Expert Panel members to review the study and its recommendations for WSIB reforms which CUPE Ontario supports and, in our opinion, may greatly inform the work of the Expert Panel now underway.

1990s system reform undermined worker health and safety, commercialized and increased program costs

During the 1990s – in particular, under the Mike Harris Conservative government – occupational health and safety and WSIB reforms resulted in a fragmented and commercialized system and the current ‘unfunded liability’ challenges being faced by the provincial insurance plan.

Provincial statistics for 2008 show that, nearly a decade after the Conservative occupational health and safety system and WSIB reforms, costs have increased. With so many ‘outside’ broader public sector service providers, Ontario’s OHSS appears rudderless and disjointed.

Provincial statistics (source: MOL and WSIB) show that, at the lost-time injury (LTI) rate of 1.7 per 100 workers, the average cost of an LTI is \$120,655.

CUPE Ontario supports the recent decision by the WSIB to bring back in-house, the Market Re-entry Programs (LMR) contracted-out as part of the Harris government system reforms.

The Mackenzie study concludes the following about the outsourced LMR programs:

“This points to an underlying problem with the general provider service delivery model. In particular, inherent flaws in the claims management model increased the length of time injured workers stay away from work by building incentives into the system to maximize the number of tests conducted prior to the approval of the RTW plan; to maximize the scope of the services provided in that plan; and to extend the duration of the plan.”

CUPE Ontario recommends that all outsourced programs, including training and prevention programs, be brought back under broader public agency provision.

Public sector restructuring and workers’ health and safety:

Harris government funding cuts for public services also resulted in workforce downsizing and restructuring and the increased reliance on part-time and casual staff by employers, a symptom of the endemic underfunding of public services by all levels of government.

A 2002 WSIB-funded study, conducted by McMaster University researchers, of developmental services workplaces entitled, ***‘Improving Work Organization to Reduce Injury and Illness: Social Services, Stress, Violence and Workload,’*** concludes that:

“The restructuring of services in this sector appears to have increased workloads and the health risks associated with over work and burn out. It has also exposed workers and clients to higher levels of stress and violence. While workplace bullying certainly predates restructuring, some studies show that it is a phenomenon that has seen rapid growth within the context of restructured public sector and non profit workplaces (Ananova, 2002; Summerskill, 2002).

Further, the 2002 WSIB-funded study finds that:

“The increased reliance on part-time and casual staff in all agencies introduces instability to the work environment and increases the likelihood of violence and injuries for workers and clients.

Previous system reforms linked to a culture of silence, under-reporting and shallow incentives for workers not to report:

Over the decade that public services and public sector jobs were cut and the remaining workers dealt with increasing stress and workload, the regressive WSIB and health and safety system changes fuelled an endemic culture of silence and under-reporting of workplace injuries and public sector employers using public money to hire private companies – that specialize in aggressive practices against workers – in order to cut WSIB costs. These practices include:

- Intimidating workers not to report injuries.
- Bringing injured workers back to work before they are healed and healthy.

In many CUPE workplaces, the employer expectation is that workers' health and safety concerns are not raised. Reporting is actively discouraged by employers who bully and intimidate workers not to report. Employer reprisals** for workers who raise concerns is common. ****More on reprisals on page 7 of the submission – Section 50 undermined – no protection from reprisals.**

Sadly, we currently have a system where public money is being used to fight safety rather than improve it. The incentive to not report injuries is so strong many employers create in-house programs with the aim of suppressing injury reports. In more benign workplaces, the suppression of reporting by employers' manifests is in their buying silence from workers. They are encouraged not to report incidents with rewards ranging from small financial incentives – pizza lunches to gift certificates – when the reported injury rates are kept low.

In CUPE's estimation, the reforms to the system enacted from 1995 to today have promoted a culture of poor workplace health and safety practices, under-reporting of injuries, and public money being funnelled out of the system to private operators who make profit by taking a cut of the WSIB cost-savings to employers. These profits total millions of dollars each year and could be better used by the province to ensure

employer WSIB premiums (which were lowered during the Harris era) are set at the appropriate level to begin to adequately deal with the insurance plan's unfunded liability.

Training:

Over nearly two decades, worker health and safety training has been diluted substantially. On-line programs and short, whittled-down, one-and-two-day sessions have now replaced the comprehensive two-week-long health and safety courses. Where worker training and instruction is done, it is often badly done or done in a cursory way. In most cases, no standards exist that outline the training, information, instruction and acquainting required to fulfill the law. Without these standards, the ability of enforcement officers to detect non-compliance with OHSA 25(2)(a), 25(2)(d), 26(1)(l) and 42(1) is severely weakened. A 2002 Vector Research Poll found that 43% of workers, who received any safety training at all, received two hours of less. Regrettably, the only evidence most enforcement officers will receive that demonstrates inadequate training is an injury or exposure.

The lack of mandatory standards allows unscrupulous employers to use low-quality training providers to give cheap, fast – and virtually useless – training. Lack of standards makes it difficult for progressive employers to determine and access quality training.

Currently, there is no system for accrediting providers of training programs or for the individual trainers delivering the course. This must be rectified. Through the Ontario Federation of Labour (OFL), CUPE has recommended longer and accredited training, and a review of the training certification process.

Role of workplace health and safety committees:

CUPE Ontario believes that worker-led Joint Health & Safety Committees (JHSC) are the most effective way to instill a culture of health and safety in the workplace.

It is CUPE's experience with a multitude of employers in the public sector that many JHSCs are not functioning well. Often worker representatives are sidelined and the committees become the purview solely of employers.

A recent development that CUPE Ontario believes will undermine the effectiveness of JHSC in the education sector (school boards and post-secondary sectors) is a reclassification of the sector now deemed to be "an extended coverage workplace" that falls outside of existing occupational health and safety regulation.

In the school board sector, this is having a negative impact on the effectiveness of JHSC. The new classification is resulting in a move away multi-site JHSC that drew on the expertise of workers and employers from across a school board to individual school-based committees, where the responsibility for health and safety falls on the shoulder of the local administration and individual workers and the school board employer.

JHSC models that work

One of the best examples of a JHSC model that works is at the Toronto Transit Commission (TTC) where CUPE (Local 2) represents over 600 skilled trades employees. There are 42 Joint Health and Safety Committees (JHSC). These committees are typically comprised of groupings of similar work groups, trades, professions, and locations. What the JHSC CUPE Local 2 members participate in is called the Signals, Electrical, Communications Joint Health and Safety Committee (SEC JHSC).

In addition to the functions and duties described in the *Occupational Health and Safety Act (OHSA)*, as part of an ongoing effort to continually improve workplace safety and conditions, the SEC JHSC develops, participates in, and supports many different safety-related initiatives and programs that include the following:

- All members of the SEC JHSC are fully certified;
- All members of the committee attend various conferences and external training sessions;
- The worker co-chair is a WHSC-certified instructor and delivers the WHSC basic and hazard-specific training to all TTC JHSC's, both worker and management members;
- Developed and implemented a specialized and custom accident investigation system called the SEC Incident Investigation Process (SIIP) for conducting accident investigations using root cause analysis. The SIIP is also used for the reporting of the accident. (Reactive System)
- Developed and implemented a training program for the above-mentioned system;
- Developed and in the process of implementing a system that uses workers knowledge, and experienced to identify hazards and risk in the workplace, as well as suggestions for improving the workplace safety, conditions, and culture. (Proactive system)
- The information/data gathered from both the proactive systems and the reactive systems are automatically inputted into a central database from which various information is able to be extracted. It is also useful for identifying trends and other indicators.
- Recognition program that does not measure performance or other management indicators; rather, a system that recognizes all workers for contributing towards and encouraging health and safety. The "rewards" for this program are typically items like T-shirts, pins, hats, jackets, etc. That bears the SEC JHSC logo, and is given out equally to all workers;

- All initiatives are consistent with the leadership model developed by the SEC JHSC. This leadership model centres around the Internal Responsibility System (IRS);
- Developed and implementing a two-day training program for all the SEC employees that focuses on workplace safety, and the practical application of the IRS within the organization;
- The above-mentioned training program is being adopted by the safety department and will become standard training for all of the 11,000+ employees at the TTC;
- The worker co-chair sits on various different committees, including the Safety Leadership Committee, and Serious Incident Prevention committee;
- Creation and distribution of a quarterly magazine style newsletter that keeps the membership informed on all safety issues, concerns, and initiatives. It also features articles from various safety “influencers” within the TTC, as well as in government and industry;
- Designed a website for the workers to use as a resource for health and safety. This website has many interactive features including a blog for identifying issues and concerns, as well as general inquiries;
- Developed and implemented a program to encourage physical fitness in the workplace, as well as at home. This program includes various regularly-scheduled sports, and a range of events that may, or may not, include fundraising for charities. One of the more high profile events is the annual CN Tower climb;
- The SEC JHSC not only provides input into new equipment, in many cases, the committee has modified or designed it;
- The terms of reference negotiated for the committee include monthly JHSC meetings, and the right to investigate ALL reported incidents or accidents.

Section 50 Undermined – no protection from reprisals**

The most fundamental right – the ultimate backstop for a worker being directed to work in unsafe conditions – has ceased to exist for most Ontarians. Overwhelmingly, Ontario workers know they have the legal right to refuse unsafe work. It is the last remaining tool of a worker when all else has failed. But, this right has no substantial reality in Ontario because of the barriers that have been erected to stop workers from protecting themselves from retaliation when they use this right.

Under current practice, workers who have suffered retaliation for attempting to protect their health and safety at work must make an application at the Ontario Labour Relations Board (OLRB) and have a hearing. This process sets the affected worker on a long journey in order to obtain justice, and there is considerable evidence that most workers simply give up.

A recent report by the Ontario Federation of Labour (OFL), “Culture of Fear”, documents how the existing process for asserting protections under Section 50 is utterly failing workers. According to the report, from January 1, 2009 until June 26, 2009, 36 Ontario workers had contacted the Ministry of Labour (MOL) asking for an investigation into employer reprisal against them for protecting workers’ health and safety.

Under current law, MOL inspectors cannot investigate a reprisal. Therefore, the workers are advised to file a complaint with the Ontario Labour Relations Board (OLRB). After being advised of the process, none of the 36 requests led to an application to the OLRB.

In 2008, 141 workers contacted the MOL asking for an investigation of retaliation against them. When these workers were advised of the need to follow the OLRB process, only 14 continued to make an application. In 2007, 106 workers sought justice from the MOL and, when referred to the OLRB, only 15 of these workers did so.

Altogether, from January 1, 2007 and June 26, 2009, 286 workers believed they were retaliated against for protecting the health and safety and wanted some justice – but, gave up when presented with the OLRB process. Nineteen workers took on the OLRB process. Overwhelmingly, workers are not using the OLRB process.

The actions of those workers who do use the OLRB process may suggest there is one key reason so many workers give up: cost. Although the OLRB is a fairly complex quasi-judicial body, two-thirds of workers bringing a retaliation case to the OLRB are self-represented or represented by a field or family member. In hearings for 350 of the 547 OLRB applications made between January 1, 2004 and March 30, 2009, the aggrieved worker was self-represented or represented by a friend or family member. Of the 197 cases in which there was representation, 84 workers were represented by a union lawyer or other official, 47 were represented by a paralegal, and 66 were represented by lawyers.

It may be natural to conclude the expense and the anticipation of expense was the driving factor in the decision of 286 workers who gave up in seeking justice. It is also natural to conclude that there are 286 employers and supervisors who learned that Section 50 was a ‘paper tiger’ and who have learned that no government organization is willing to stop them from pushing the culture of fear in their company.

Notification requirements – Every Incentive to Not Comply

Many employers fail to provide information to their employees as required under Sections 51, 52 and 53.

In public sector workplaces, particularly those in social service workplaces, the right to know is a key part of health and safety protections for workers who often deal with individuals and clients with existing violent behaviours and mental health challenges.

Because of the nature of their work, they often work alone and often provide supports to individuals directly in their home outside the actual workplace.

The potential for these workers to be faced with violence in the workplace is very real. While new protections under Bill 168 are a good start, regulations are needed to strengthen enforcement mechanisms under the *Act*.

CUPE Ontario asserts that the workers' right to know a client's/individual's past violent behaviours history must take precedence over privacy and confidentiality laws. Similarly, the government must find the balance between a worker's right to know and privacy concerns, and must find solutions that recognize that violence toward workers in these workplaces is not part of the job.

CUPE Ontario supports the following recommendations for OHSS and WSIB (by extension health and safety associations) reforms:

- **Public, not-for-profit solutions and reforms to occupational health and safety.**
- **Expanding WSIB to cover more than 1 million workers now currently not protected under the insurance plan.**
- **Developing a proactive, tripartite health and safety culture in the public sector where government, unions/workers, employers play an equal role rebuilding the system, particularly on Joint Workplace Health & Safety Committees.**
- **Return to employer responsibility/accountability through multi-site – JHSCs – not through single site, i.e. if an MOL Order is made in a school – it must be addressed/rectified by the employer – the school board – in all schools.**
- **Better enforcement of the Act – including hiring more MOL inspectors – no outsourcing of inspection to outside agencies.**
- **WSIB has responsibility for regulating prevention programs – but, they should also have an enforcement arm in WSIB – WSIB inspectors.**
- **Government should provide adequate funding (perhaps even dedicated funding) to broader public sector employers to ensure adequate staffing levels and training. This would eliminate risks from working alone and decrease injury rates, like repetitive strain injuries related to transferring a weight (as in lifts in LTC homes).**
- **Return to comprehensive courses for Health & Safety certification training of at least two weeks in duration.**
- **Ensure that the *Ontario Occupational Health & Safety Act* supersedes other Acts – as per Part 1-2(2) of the Act, including the *Privacy Act*.**
- **Bringing currently contracted-out programs, back in-house (under WSIB and MOL) including prevention, labour market re-entry and training programs.**
- **Improved health and safety training workers through non-profit agencies, like the Workers' Health & Safety Centre.**
- **Better enforcement of the *Occupational Health & Safety Act (OHSA)*, which includes more MOL inspectors under the public system.**