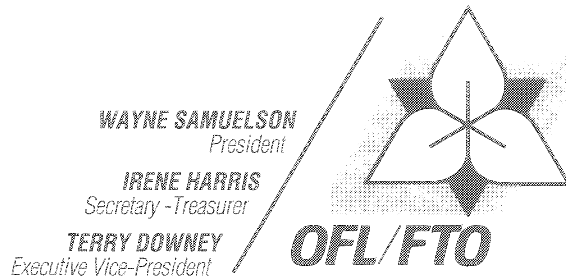

Making Lemonade Out Of Lemons

An activist guide for using Due Diligence and the Internal Responsibility System to Improve Health and Safety in the Workplace

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ONTARIO FEDERATION OF LABOUR (CLC) • FÉDÉRATION DU TRAVAIL DE L'ONTARIO

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Introduction

We don't need to tell workers conditions are getting worse; they can see it. When the Conservatives were elected in 1995, many employers stopped cooperating on the joint health and safety committees (JHSC) and started telling activists on the committees, "We don't have to do this anymore." Little changed following the election in 2003. Many employers are stalling or blocking the JHSC on a regular basis. Many union staff representatives are spending more and more time just trying to support the union representatives on the JHSC and keep their members safe.

There is also growing anecdotal evidence that many supervisors in our workplaces have little or no training in occupational health and safety and are not aware of their legal responsibilities. Thus, they are not considered "competent persons" under the *Occupational Health and Safety Act* (*OHSA*). (See the excerpts from the *OHSA* in the appendix.)

In a workplace where supervisors are not aware of their legal obligations, and do not handle health and safety concerns properly, the health, safety and lives of workers are put at risk.

It is a world where we are the only ones we can count on to fight to protect the health and safety of our members at work. We cannot look to government to bring in new and creative ways to protect workers and many employers are undermining what we have. We need to think about how we can use what we have to our advantage. We can start with the first level of management, move on to managers, then continue moving our way up to the CEO, and let's not forget the members of the corporate board of directors.

Competency of a Supervisor

Before we can determine if supervisors are competent, we need to determine who is a supervisor under *OHSA*. Having the title "supervisor" does not necessarily make the individual a supervisor. In some cases, managers, and even owners, have been charged as supervisors. This issue does not begin and end with the front line supervisor. It goes all the way to the top. Did the CEO appoint a competent plant manager, for instance?

Who Is a Supervisor?

The *OHSA* defines "supervisor" as "a person who has charge of a workplace or authority over a worker." From this definition, it would appear that a manager need only say so and so is in charge, and that person is then a supervisor. This is not necessarily so.

There are some conflicting case law decisions. In a case known as the Jetter's decision, the prosecution argued and the judge accepted criteria as to what "charge of a workplace" and "authority over a worker" really mean. The criteria includes the following:

- ability to fire workers;
- ability to discipline workers;
- controlling what equipment is to be used;
- ability to meet with workers to review safety issues;
- ability to promote or demote;
- ability to hire workers.

This criteria moved the definition more to one that is used for labour relations purposes. That is who can be a member of the bargaining unit and who is really part of the management team.

In the Jetter's decision, the court found that the owner of a roofing company was the real supervisor because the person left in charge of the work site did not have any real authority. A worker was killed at the work site and the owner convicted as a supervisor, fined $10,000.00 and put on 18 months probation. One of the terms of the probation was to enroll in a health and safety management course within six months. The owner did not remain at the work site and did not direct the work on a day-to-day basis. The court found that the company had not taken all reasonable care or due diligence because of the failure to have a supervisor in place at the work site. The company was fined $80,000.00.

The court also decided that an employer who fails to provide a supervisor with the necessary power, authority and knowledge to fulfill the duties of a supervisor, has not taken reasonable care or due diligence.

In another case, a few years after the Jetter's decision, the court decided that a lead hand was a supervisor for the purposes of the *Occupational Health and Safety Act*. The Walter's decision took this issue to the opposite direction. While agreeing with the Jetter's decision that the list of powers are relevant

indicators of authority, the justice in the Walter's decision did not agree that their absence mandates a finding that the person is not a supervisor.

In convicting the lead hand, in this case for failing as a supervisor to take every precaution reasonable in the circumstances for the protection of a worker, the justice made the following statements:

> "..it is clear that the title of lead hand is more than a mere honorific, and that it carries with it both responsibility and authority.
>
> "He was not just another worker. His position vis a vis the workers on his crew was the kind of position that the legislature intended would carry with it the responsibility to take precautions to ensure the safety of those following his directions. To hold otherwise would leave a significant gap in the scheme enacted in Part III of the *Act*."

This decision does not mean that all lead hands are supervisors under the *Act*. The Justice made a point of stating that each case will turn on its own facts. While the lead hand in this case may not have had authority over a worker, he did have charge of the workplace. In this case she felt that the Crown had established that the lead hand was in fact a supervisor within the meaning of the *Occupational Health and Safety Act*.

These points will raise many interesting questions in workplaces across the province. Many employers leave lead hands, group leaders and others who may have the title "supervisor" to direct the work for night shifts, weekend work, etc. In the Jetter's case, the absent supervisor was the one convicted following the accident. In the Walter's case it was a lead hand that was convicted as a supervisor.

For the purposes of this document, supervisors may be considered to be those individuals in the employer's management hierarchy outside your bargaining unit.

Is Your Supervisor Competent?

One of the legal duties for employers under *OHSA* is that when they appoint a supervisor, they appoint a competent person. The term "competent person" is defined under section 1 of *OHSA*. The definition requires that this person be familiar with *OHSA* and the regulations that apply to the work, and has

knowledge of potential or actual dangers in the workplace. If supervisors are not familiar with Ontario's health and safety legislation or are not familiar with potential or actual health and safety hazards, then they are not competent under *OHSA*. Supervisors can be skilled at directing and organizing the work and staff but, if they do not know their stuff under the *OHSA*, they will not be seen as competent in the eyes of the courts. (See the appendix for a list of points to consider. You can use this list as a guide to help determine if supervisor competency is an issue in your workplace.)

How Is Competency Determined?

The Ministry of Labour has policies, guidelines and decision trees for a long list of issues but they have no such documents for determining if a supervisor is competent under the *OHSA*. Once again, case law has filled the void. OPSEU had complained to the Ministry of Labour that the management of the Whitby jail had appointed two supervisors who were not competent under the *OHSA*. The case went to adjudication. The adjudicator listed criteria that, as a minimum, supervisors should know and understand in order to be competent. The criteria included the following:

- an understanding of the *OHSA* and regulations that apply to the workplace, in particular,
- the work refusal procedure;
- the function of the JHSC;
- duties of employers, supervisors and employees;
- knowledge of safe operating procedure;
- knowledge of emergency contingency plans; and
- knowledge of a supervisor's job duties.

The adjudicator listed other criteria that were specific to the jail as a workplace. Specific topics supervisors in the jail should be trained in, include:

- use of mace;
- crisis management;
- delegations of authority;
- knowledge of emergency contingency plans;
- hostage situations;
- bomb threats;
- security equipment; and
- suicide.

From this, it is reasonable to interpret that the intent is that supervisors must also be trained and knowledgeable of hazards and issues specific to your workplace.

Due Diligence

This term is a legal phrase used in court cases when a company is being prosecuted. It is a legal defence where the employer must provide evidence that it took reasonable care to prevent the offence from occurring.

The labour movement has long viewed due diligence as a paper compliance program. Employers create a binder with safety rules, policies and procedures, then ignore it, taking it down and using it to try to escape their liability only after an accident occurs and the company has been charged.

Over the years, case law has established that due diligence is more than preparing a safety binder to decorate the office with. The burden is on the employers to prove due diligence once they have been charged. Due diligence as a defence requires evidence that the employer took specific steps to prevent the contravention.

Proving due diligence is a two part process. First, employers must prove to the court that they took reasonable care and established a proper system for prevention. Secondly, they must prove that they had been taking reasonable steps to ensure effective operation of the system. Due diligence is something employers must be practising before charges are laid; it cannot be created after the fact.

How much care is reasonable will depend on the situation and the degree of harm that can occur if the system fails. The courts would expect a greater effort if a failure could result in death than one that could result in a cut on the finger. To put it simply, the courts will look at the question, “What efforts would a reasonable and rational individual do in similar circumstances?” to decide if an employer has exercised due diligence.

Directors and officers of a corporation also have legal responsibilities to exercise reasonable care that the corporation is not violating occupational health and safety or environmental legislation. The wording of this responsibility in these Acts is similar. (See the legislative excerpts in the appendix.)

This means that similar strategies can be used to force the company to implement pollution prevention initiatives as well as occupational health and safety initiatives.

The Bata Industries case set an important precedent on the issue of director responsibility. The court outlined what it is the directors need to have in place to demonstrate that they have taken reasonable care when it comes to their legislated responsibilities. These include:

- Are the necessary systems in place to prevent the occurrence?
- Is there supervision and/or inspection?
- Do directors exhort those they control or influence to achieve regulatory compliance?
- Does each director ensure that the corporate officers are instructed to set up a system sufficient to comply with the governing legislation?

The courts have provided the following principles to answer the above questions. These are:

- The directors are responsible for reviewing the reports provided by the corporate officers, but are justified in placing reasonable reliance on the reports provided to them by corporate officers, consultants, counsel or other informed parties.
- The directors should substantiate that the officers are promptly addressing health and safety concerns brought to their attention by the government authorities and other concerned parties, including the shareholders.
- The directors should be aware of the standards of their industry and other industries that deal with similar risks.

Most importantly for our purposes is the final principle:

- The directors should immediately and personally react when they have notice that the system has failed.

In the Bata case, three directors were charged but only two were convicted. The CEO was the one not convicted because the court determined that the

president he had appointed to be in charge of the workplace was competent and because the CEO had acted as soon as he was personally made aware of the problem. The others knew of the problem but failed to act to have it corrected. (See the appendix for more detail on these points.)

Internal Responsibility System

The Internal Responsibility System (IRS) is not found in the *OHSA*. It has not been given the power of law and there is no definition given for the system. It is simply a philosophy developed within the Ministry of Labour that the best way to ensure safe and healthy workplaces is to assist workers and employers to work together to solve their problems and find solutions through ethical compliance. The system assumes a common interest in occupational health and safety. It ignores the power structure within workplaces, i.e., the employers have it, workers don't. It ignores the fact that the employers' interest is in increasing profits while keeping costs low. For many workers, it is that internal responsibility system which abandons workers to the whims of the employer. Workers have been given a lemon so we need to look at how we can use it to make lemonade. (For a more detailed look at labour's view on the IRS see "Labour's Program for An Effective Enforcement System" from the 1997 OFL Convention. http://ofl.ca/index.php/library/index_in/C40/)

Due Diligence As a Labour Strategy - Disciplining Your Boss

A worker is hurt or killed at work. The employer is charged. The employer's defence lawyers will present evidence to show the company exercised due diligence. The prosecution will present evidence that the company did not. The worker is in pain or the family is grieving. The health and safety activists can see what should have been done. If we had our way, the accident would never have happened; the worker would have returned home at the end of shift whole, and the company would not be facing charges.

First and foremost, we want to prevent workers from being hurt, poisoned or killed at work. Where employers have been negligent, we want to see them prosecuted to the full extent of the law. We can use one strategy to accomplish both. We do this by doing to employers what they have been doing to workers for years – document them.

Supervisors not competent under the *Act*? Use the list provided to detail what they don't know. If you find that your supervisors are not competent, try to get the issue of supervisor competency on the agenda for the next JHSC meeting. You can use the checklist and go over the issues that need to be addressed. This first step will get the issue documented and on the record. This is

evidence. It is evidence that you are trying to use the Internal Responsibility System and starts our version of progressive discipline against the employer. This is an important first step. If you try to get the Ministry of Labour involved to write orders at some point in the process, the first question they ask may well be, "Has the JHSC discussed the concerns?" If the answer is "no," they could just leave with a suggestion to discuss it at the next meeting of the committee.

If you cannot get the issue on the agenda or the employer representatives have continued to not address the issue, use the sample letter to send a letter to the manager or the next level of management. This letter becomes evidence and puts direct pressure on the manager to take reasonable care to address the issue. If an accident should occur, the letter could be used as evidence in court to show that the employer did not exercise due diligence. The court will want to see proof that once the employer was aware of the concern that he/she responded in a way that a reasonable and rational individual would in similar circumstances. The court will want to see proof that reasonable action was taken. The employer's word is not good enough. Managers are also more likely to understand the extent of the liability you have now placed on their shoulders. They are also your supervisor's supervisor and have the same responsibilities under the *Act* including the competency provision.

If you are unable to get the manager to address the issue, progress to the next level of management. Keep working your way up the chain to the CEO or until you get the issue addressed satisfactorily. This will create a long trail of documentation doing to them what they have long done to workers. It will create evidence against each manager in the chain of command. Once you reach the CEO, use the sample letter for CEOs. Remember that officers of a corporation have specific responsibility under the *OHSA* to take reasonable care to ensure the corporation is in compliance with *OHSA*. Your paper trail will be evidence that the corporation is not in compliance. Your letter to the CEO should get action. The CEO is most likely to understand the liability they are now facing. If not, the company lawyer will explain it to them.

CEOs answer to a board of directors. In many cases, this is a group of friends of the CEO who rubber stamp what the executive recommends. Under the *OHSA*, directors have the same obligation as officers of the corporation. In addition to this, they have a legal responsibility to ensure the corporation is not placed at financial risk. This is called fiduciary responsibility, if they are personally liable for financial losses which they did not take action on to prevent. We may be able to use this to force the issue of prevention to be dealt with at the highest levels of the organization. Once they are made aware that

the organization is at risk of financial penalty under Ontario's *Occupational Health and Safety Act*, they may be personally liable if they do not take action.

You cannot fire your boss for incompetence, but you may be able to use these techniques to create enough pressure to force the employer to do what should have been done all along; protect the health and safety of your members. If your employer remains stubborn, then you may have created enough evidence for the court to find just cause in sending your boss to jail when one of your members is seriously hurt or killed.

The IRS may not have any teeth, but with a little work, we may give it some sharpened dentures.

Brian Campbell Decision

Brian Campbell was the co-worker of Lewis Wheelan who was electrocuted and lost both legs and an arm in an accident in May of 2001. Mr. Campbell was following the procedure established by his employer for felling trees near hydro lines. His employer, Neat Site, was contracted by Great Lakes Power (GLP) to clear trees and brush away from power lines. It was Mr. Campbell who cut down the tree which hit the power lines which electrocuted Lewis Wheelan.

The Ministry of Labour prosecuted Mr. Campbell. The court found Mr. Campbell guilty of violating section 28 (1)(a) and 28 (2)(b) because, while he was following the procedure established by the employer, it was not a safe procedure and violated the legislated requirements. The court felt Mr. Campbell did not demonstrate due diligence when he performed work that endangered himself and others.

The courts felt that a lack of power and control was not a factor in deciding guilt or innocence. The courts did, however, take this into consideration in the sentencing and Mr. Campbell was sentenced to 18 months probation, 100 hours of community service and a $500 donation to the burn centre that treated Mr. Wheelan.

The case is important for workers in two main ways. One is that the court determined that workers have real duties to each other and that there is an obligation to show that they have demonstrated due diligence and reasonable care in exercising those duties. The other is that it shifts what has been called a right to refuse unsafe work to a legal duty to refuse unsafe work especially when that work could endanger others. The courts will look at the worker's duty under section 28 separate from those of the employer.

> "Given the breaches by GLP and Neat Site, Mr. Campbell was the last line of defence to protect those workers, and he failed in his obligation to do so. If employers are not going to protect workers, then the workers must protect themselves and each other.
>
> Had the worker, Mr. Campbell, discharged his section 28 duties to his fellow workers, then he would have compensated for the serious infractions of GLP and Neat Site.
>
> The sins of Great Lakes Power are not to be diminished, but at the same time, those sins must not obscure Mr. Campbell's personal responsibility as a worker, which as a matter of law must be assessed separate from the misconduct of Great Lakes Power.
>
> ... Mr. Campbell has not discharged the burden to demonstrate he took reasonable care during the work process to protect his fellow workers."
>
> Justice J. Keast, January 15, 2004

The courts have decided that workers must exercise due diligence and reasonable care when it comes to the safety of their co-workers. In this scenario, much of the documentation prepared may also be used in the defence of workers to show that workers and their representatives have been taking steps to ensure the safety of the workers.

It is interesting to note that, in this decision, Justice Keast recognized the role unions play in regards to safety in the workplace. Brian Campbell and Lewis Wheelan worked for a non-union company.

> "Unionized workers have representatives that can advocate safety on their behalf. The five workers from Neat Site that were on the job site, including Mr. Campbell, have no such resource. There may be subtle pressures that prevent such workers from complaining. They may fear loss of their jobs.
>
> A statutory rule that says the worker can refuse unsafe work may have little practical effect for workers in a company like Neat Site, compared to those workers who are protected by a collective bargaining agreement."

Brian Campbell appealed to the Superior Court of Justice but his conviction was upheld. The court felt that this worker who was following the unsafe procedures established by his employer deserved to be prosecuted and convicted.

> "...the appellant merited prosecution and conviction, in my view, for his failure to exercise the simplest, most obvious safety measures in the face of an equally obvious danger that he created and that he should have known could end in tragedy."
>
> Justice W.L. Whalen, February 24, 2006

The appeal decision also confirmed that employers and workers each have their own responsibilities. Justice Whalen agreed with the lower court decision that workers still have a liability even in the face of a failure by the employer to ensure a safe workplace.

> "To be sure, the employer bears primary responsibility to develop and maintain adequate safety measures at its work sites, because it has the greatest control over circumstances there. However, the worker also bears responsibility commensurate with the degree of control he may reasonably exercise in the context of his own experience, the nature of the work and the circumstances of the work place."

The final due diligence test for employers is whether an employer has taken all precautions reasonable in the protection of a worker. For a worker, the final test is whether they refused to carry out unsafe work. We have seen that any worker who follows the unsafe procedures as required by their employer can and will be prosecuted by the Ministry of Labour if another worker is injured. If they are prosecuted, the courts will convict that worker. "I was only following orders", is not a defense.

All the documentation prepared by the activists may not prevent a conviction if a worker fails to refuse unsafe work that results in an injury of a co-worker but it could be used to argue for a lighter sentence.

Criminal Code

The Criminal Code of Canada is a federal statute that places some basic duties and responsibilities on Canadians and provides penalties for those who violate them. The Code applies to both corporations and individuals. These individuals

or "persons" as it is used in the Code could be a supervisor or a worker, just as easily as a member of the general public.

There have been two recent amendments to the Criminal Code which impact occupational health and safety. The first is Bill C-45. The second and less well known is Bill C-13.

The federal Liberals, under pressure from labour, amended the Criminal Code to include criminal liability for corporations and their representatives whose acts or omissions result in bodily harm of workers. This has largely come about as a result of the Westray disaster. The federal government introduced Bill C-45 in response to this pressure. This Bill, also known as the Westray Bill, came into force March 31, 2004.

The personal liability of the officers of a corporation did not change under this amendment. What Bill C-45 did change was that it spelled out more clearly what society expects from corporations and those who run them.

It is possible that documentation such as is suggested in this guide could one day be used as the evidence needed for a successful criminal prosecution against an employer.

Since a worker is a "person," the code, however, could be used against workers in the case of injury or death of a co-worker or a member of the public if a Crown Attorney felt there was evidence of criminal negligence. Here again, documentation could be used to protect a worker perhaps even convincing a Crown Attorney not to lay charges to begin with.

The Workers Health and Safety Centre has a workshop specifically on Bill C-45 and its impact for workers.

Bill C-13 came into effect September 15, 2004. This bill makes it a criminal offence for an employer to punish or threaten to punish a worker to prevent them from blowing the whistle on employer activities that may be a violation of a federal or provincial law. It also makes it a criminal offence to retaliate against a worker who has already provided information to authorities. The jail term is a maximum of five years.

This particular amendment was originally intended to protect workers who report on insider trading or corporate fraud. The language that was finally chosen was deliberately written to provide whistle blower protection for workers regarding any kind of illegal conduct.

Section 425.1 of the amended Criminal Code reads as follows:

> "No employer or person acting on behalf of an employer or in a position of authority in respect of an employee of the employer shall take a disciplinary measure against, demote, terminate or otherwise adversely affect the employment of such an employee, or threaten to do so,
>
> (a) with the intent to compel the employee to abstain from providing information to a person whose duties include the enforcement of federal or provincial law, respecting an offence that the employee believes has been or is being committed contrary to this or any other federal or provincial act or regulation by the employer or an officer or employee of the employer or, if the employer is a corporation, by one or more of its directors; or
>
> (b) with the intent to retaliate against the employee because the employee has provided information referred to in paragraph (a) to a person whose duties include the enforcement of federal or provincial law."

There is potential that this could provide better protection to workers than that provided under section 50 of the *Occupational Health and Safety Act*.

The Criminal Code is not enforced by the Ministry of Labour. It is enforced by the police department for your area. To date, little if any, training has been carried out to train the police on these amendments.

Variations On The Theme

If you have health and safety contract language, you may be able to use the grievance procedure to take the issue to arbitration. The paper trail created can also be used for evidence in the arbitration case. Arbitrators can order the employer to take action. Arbitrators also have the authority to order employers to discipline supervisors. This can be useful where the management knows the supervisor is violating the law and has not taken action. If you have created the paper trail, then you can prove it. (See the Tenaquip case.)

Many activists will have issues that they have been trying unsuccessfully to get addressed through the JHSC. If you already have this documented, go straight to the manager using the sample letter. You may or may not want to call in the Ministry of Labour before you work your way up to the CEO. Activists know the

company and the inspectors in the area. Activists will need to work out the best strategy with the local union or the health and safety department for the union.

The strategies discussed here are for serious issues that are not being addressed by your employer. This is not something to be used indiscriminately. A series of frivolous letters could backfire and give the employer a defence when something serious does happen.

Ideas for using this strategy

- lack of training or inadequate training
  - workers
  - JH&SC
  - certified member

- supervisor competency

- lack of proper procedures or unsafe practices in place

- health and safety issues not specifically covered under legislation
  - ergonomics
  - violence
  - protective reassignment (pregnant and breast feeding women)

- issues that could impact public health and public safety

- issues that could impact the environment or deal with violations of the *Environmental Protection Act* or *Ontario Water Resources Act*

Final Note

Since this document was piloted at the OFL Workplace Violence conference in January of 2006, Ontario unions have begun to adapt these ideas for province wide campaigns. The Ontario Nurses Association began with a letter to all hospitals where they have members putting the employers on notice about key health and safety issues of concern to their members.

The Ontario Public Service Employees Union has taken a similar approach to the issue of workplace violence with the Children's Aid Society locations around the province.

Copies of these letters are provided in the Appendix.

Appendix

Excerpts from Ontario Legislation

Occupational Health and Safety Act

Definitions

"**competent person**" means a person who,

(a) is qualified because of knowledge, training and experience to organize the work and its performance,
(b) is familiar with this Act and the regulations that apply to the work, and
(c) has knowledge of any potential or actual danger to health or safety in the workplace

Duties of Employers

25. (2) Without limiting the strict duty imposed by subsection (1), an employer shall,

(c) when appointing a supervisor, appoint a competent person;

Duties of Supervisors

27. (2) ... a supervisor shall,

(a) advise a worker of the existence of any potential or actual danger to the health or safety of the worker of which the supervisor is aware;
(c) take every precaution reasonable in the circumstances for the protection of a worker.

Duties of Workers

28. (1) A worker shall,

(a) work in compliance with the provisions of this Act and the regulations,

(2) No worker shall,

(b) use or operate any equipment, machine, device or thing or work in a manner that may endanger himself, herself or any other worker;

Duties of Directors and Officers of Corporations

32. Every director or officer of a corporation shall take all reasonable care to ensure that the corporation complies with,

(a) this Act and the regulations;
(b) orders and requirements of inspectors and Directors; and
(c) orders of the Minister.

Committee Powers

9 (18) It is the function of a committee and it has power to,

(a) identify situations that may be a source of danger or hazard to workers;
(b) make recommendations to the constructor or employer and the workers for the improvement of the health and safety of workers;
(c) recommend to the constructor or employer and the workers the establishment, maintenance and monitoring of programs, measures and procedures respecting the health or safety of workers;
(d) obtain information from the constructor or employer respecting,
    (I) the identification of potential or existing hazards of materials, processes or equipment, and
    (ii) health and safety experience and work practices and standards in similar or other industries of which the constructor or employer has knowledge;

Response to recommendations

9 (20) A constructor or employer who receives written recommendations from a committee shall respond in writing within twenty-one days.

(21) A response of a constructor or employer under subsection (20) shall contain a timetable for implementing the recommendations the constructor or employer agrees with and give reasons why the constructor or employer disagrees with any recommendations that the constructor or employer does not accept.

HEALTH CARE REGULATION

General Duty to Establish Measures and Procedures

8. Every employer in consultation with the joint health and safety committee or health and safety representative, if any, and upon consideration of the recommendation thereof, shall develop, establish and put into effect measures and procedures for the health and safety of workers.

9(1) The employer shall reduce the measures and procedures for the health and safety of workers established under section 8 to writing…

(2) At least once a year the measures and procedures for the health and safety of workers shall be reviewed and revised in the light of current knowledge and practice.

(3) The review and revision of the measures and procedures shall be done more frequently than annually if,

(a) the employer, on the advice of the joint health and safety committee or health and safety representative, if any, determines that such review and revision is necessary; or
(b) there is a change in circumstances that may affect the health and safety of a worker.

(4) The employer, in consultation with and in consideration of the recommendation of the joint health and safety committee or health and safety representative, if any, shall develop, establish and provide training and educational programs in health and safety measures and procedures for workers that are relevant to the workers' work.

Environmental Protection Act

Duty of director or officer

194. (1) Every director or officer of a corporation that engages in an activity that may result in the discharge of a contaminant into the natural environment contrary to this Act or the regulations has a duty to take all reasonable care to prevent the corporation from causing or permitting such unlawful discharge.

Ontario Water Resources Act

Duty of director or officer of corporation

116. (1) Every director or officer of a corporation that engages in an activity that may result in the discharge of any material into or in any waters or on any shore or bank thereof or into or in any place that may impair the quality of the water of any waters contrary to this Act or the regulations has a duty to take all reasonable care to prevent the corporation from causing or permitting such unlawful discharge.

Supervisory Competency - Points to consider
(Adapted from the WSIB 2000 Workwell audit document)

training in the *Occupational Health and Safety Act* and applicable regulations

understands:

- responsibilities under the *OHSA*,
  - employer
  - supervisor
  - worker
- right to know,
  - WHMIS requirements
- right to refuse procedure,
- right to participate,
  - function of the JHSC
- specific hazards in the workplace,
  - lockout
  - confined spaces (if applicable)
  - other
- safe operating procedures,
- emergency contingency plans,
- health and safety committee/worker rep. responsibilities,
- health and safety policy.

Employer has health and safety responsibilities defined, written and communicated for:

Employer - Documentation outlining legislated duties for managers that incorporates their responsibilities outlined in the *Occupational Health and Safety Act*. Documented evidence of responsibilities being formally communicated to managers is required.

Supervisors - Documentation outlining legislated duties for supervisors that incorporates their responsibilities outlined in the *Occupational Health and Safety Act*. Documented evidence of responsibilities being formally communicated to all supervisors is required.

Position descriptions

Written position descriptions for supervisory/management personnel including accountability for health and safety responsibilities associated with job tasks in the area of their control.

Written position descriptions from supervisor to senior management will be reviewed to ensure they are current, reviewed and communicated on a regular basis, i.e., every two years as a minimum. The written position descriptions shall establish clear guidelines which address the organization’s expectations, outline the position’s responsibilities or tasks, which include safety and indicate the reporting relationships.

Training

The following health and safety training programs are documented and records of training maintained:

Manager, supervisor and worker training in the *Occupational Health and Safety Act*, the *Workplace Safety and Insurance Act* and respective regulations.

1. All staff including senior management is trained i.e., responsibilities, right to know, right to refuse, right to participate, lockout, confined spaces applicable, health and safety committee/worker rep. responsibilities, health and safety policy.

2. Return to work obligations.

The following health and safety training programs are documented and records of training maintained:

Training is required for employees who have been promoted from worker to a supervisory/management position.

The promotion/transfer orientation program must be formalized and include but not be limited to:

Supervisors/management: supervisory training, legislative responsibilities, time line for training, etc.

The management team promotes/communicates/demonstrates the need for an effective health and safety program by:

Attending a health and safety training program annually.

Documenting measures to improve the health and safety program.

Implementing improvements to the health and safety program.

Training courses such as due diligence, safety seminars, etc., should be considered.

Have senior managers/managers/supervisors received formal health and safety management training?

Excerpts from the Bata Decision Feb. 7/92

Re - Thomas Bata (CEO)

“Thomas G. Bata was the director with least personal contact with the plant at Batawa. His responsibilities were primarily directed at the global level of the Bata Shoe Organization. It was established in the evidence that TAC 298*, the environmental alert, had been distributed to his companies throughout the world.”

“He attended on site in Batawa once or twice a year to review the operation and performance goals of the facility. He was a walk-around director while on the site. The evidence of Mr. Riden establishes that the plant managers could not orchestrate a visit for Mr. Bata: "You never knew where Mr. Bata was going to go, believe me. He had a habit of trying to outguess where you wanted him to go." There is no evidence that he was aware of an environmental problem.”

“...when the Bata Engineering chemical storage problem was brought to Mr. Bata's attention, he immediately directed the appropriate resources ($20,000) to minimize the effect on the environment. The evidence also establishes that when a water problem was identified and funds were required to construct the water treatment plant for the town of Batawa, he (the family) authorized the expenditure of $250,000.”

“In short, he was aware of his environmental responsibilities and had written directions to that effect in TAC 298. He did personally review the operation when he was on site and did not allow himself to be wilfully blind or orchestrated in his movements. He responded to the matters that were brought to his attention promptly and appropriately.”

“Although the burden of establishing due diligence was onerous in the absence of more recorded corporate documentation, he has done so in my opinion and is not guilty of the offences charged.”

Re - Douglas Marchant (Director)

“Mr. Marchant presents another variation in directors' liability. His responsibility is more than Mr. Bata, but less than Mr. Weston's. This "doctrine of responsible share" is well accepted in American jurisprudence (United States v. Park, supra) and is applicable in this case.”

“He was appointed to the Board as president on January 26, 1988. Mr. Richer testified that Mr. Marchant was "down in Batawa once a month" and these visits included a tour of the plant. Mr. Richer brought the storage problem to his personal attention around February 15, 1989.”

“The evidence, therefore, establishes for at least the last six months of the time alleged in the charges (February 15, 1989 to August 31, 1989), he had personal knowledge. There is no evidence that he took any steps after having knowledge to view the site and assess the problem. There is no evidence that the system of storage was made safer or temporary steps were taken for containment until such time as removal could be effected.”

“In the circumstances, it is my opinion that due diligence requires him to exercise a degree of supervision and control...”

“He had a responsibility not only to give instruction but also to see to it that those instructions were carried out in order to minimize the damage. The delay in clean-up showed a lack of due diligence.”

“In my opinion, he has not established the defence of due diligence on the balance of probabilities and is therefore guilty as charged.”

Re - Keith Weston (Director)

“Keith Weston's responsibilities as an "on-site" director make him much more vulnerable to prosecution. He demanded the authority to control his work environment before he took the job. He had experience in the production side and was aware toxic chemicals were used in the process. He was reminded of his environmental responsibilities by TAC 298. In my opinion, Keith Weston has failed to establish that he took all reasonable care to prevent unlawful discharge.”

“As the "on-site" director Mr. Weston had a responsibility in this type of industry to personally inspect on a regular basis, i.e., "walk-about". To simply look at the site "not too closely" 20 times over his four-year tenure does not meet the mark. He had an obligation if he decided to delegate responsibility to ensure that the delegate received the training necessary for the job and to receive detailed reports from that delegate.”

* Bata Industries Ltd. technical advisory document on safety and environment issues.

Letter to CEOs Regarding Unaddressed Health and Safety Issues

I/We are writing to you regarding a health and safety risk(s) which is/are not being addressed at xyz location. Local/department management has been unwilling/unable to address the issue.

(Insert a summary/explanation of the issue)

Under the *Occupational Health and Safety Act*, it is the responsibility of every director and officer of a corporation to take all reasonable care to ensure that the corporation is in compliance with the *Occupational Health and Safety Act* and regulations.

Now that you are aware of the hazard(s), we hope that you will exercise due diligence and reasonable care to ensure that the hazard(s) is addressed in a timely manner.

Sincerely,

Name
Union position

Letter to Management Regarding Supervisors

I/We are writing to you regarding a health and safety concern with an XYZ supervisor which needs to be addressed.

(Insert a summary/explanation of the concern)

The acts/omissions by this supervisor constitute an unsafe condition or element in the workplace.

Under the *Occupational Health and Safety Act*, it is the responsibility of the employer, when they appoint a supervisor, to appoint a competent person. A copy of this definition is provided for your convenience.

Now that you are aware of the hazard(s), we hope that you will exercise due diligence to ensure that this concern is addressed in a timely manner.

Sincerely,

Name
Union position

Teamsters Local 419 v. Tenaquip Ltd.

In October 2003, an arbitrator held that she has jurisdiction to order an employer to discipline a supervisor if the union establishes that such action is necessary in order to provide a safe workplace for employees. The arbitrator also held that she has jurisdiction to order damages for tort claims.

The decision arose from a grievance brought by the Teamsters Canada, Local 419 which alleges that a supervisor employed by Tenaquip Ltd. verbally abused and physically battered a bargaining unit member. According to the union, in the days that followed the incident, the supervisor continued to intimidate and harass the employee. The employer denied the grievance, maintaining that the supervisor had done nothing wrong. However, in an unrelated meeting between the union and the employer, the same supervisor became inflamed and abusive and was ejected from the meeting. When the union commented that the supervisor was a bully and that the employer should do something about him, the employer replied that it knew the supervisor was a bully and that was why he had been hired.

In particulars outlining its position and the remedies it intended to seek at arbitration, the union maintained that the supervisor "presents an unsafe condition which the Employer has intentionally introduced and maintained in the workplace" and indicated that it would ask the arbitrator to order the employer remove the supervisor from the workplace. The union also indicated that it would request damages for the tort of battery.

The employer and the supervisor raised several preliminary objections. In particular, they asked the arbitrator to dismiss the grievance on the basis that the arbitrator had no jurisdiction to award the remedies sought. They argued that the union's request that action be taken against the supervisor was not available because it was not a remedy against the employer and because it would usurp the right of the employer to discipline and manage its business. They also maintained the arbitrator had no jurisdiction to award damages.

The arbitrator dismissed the preliminary objections. Noting that exclusive jurisdiction is conferred upon labour tribunals to deal with disputes or differences arising from the collective agreement, she held that it is within an arbitrator's jurisdiction to award monetary damages. To hold otherwise would leave the grievor with no forum in which to assert his claim. Accordingly, she concluded that the union was entitled to argue that damages would constitute an appropriate element of remedy.

Turning to the question of an arbitrator's jurisdiction to order an employer to take action against a supervisor, the arbitrator concluded that a board of arbitration has an obligation to deal with all disputes between the parties arising from a collective agreement and to grant the labour remedies that will give complete and final effect to the resolution of those disputes. In an unusual case, she held, this might require a board of arbitration to fashion a remedy which limits a right that management would

otherwise exercise or which has a negative impact on an employee who is not a party to the collective agreement. In this case, the union had asserted that the supervisor constituted an unsafe condition intentionally created by the employer and that, if the allegations were founded, the arbitrator would be required to fashion a complete and substantive remedy which effectively addressed the continuing violation of the collective agreement. This might require an order which encompassed disciplinary action. The arbitrator agreed:

> It is one thing for the Union to say, "there has been misconduct on the part of the Supervisor, and we want him punished." That sort of order is outside of the jurisdiction of the arbitrator. It is management, and exclusively management, which has the authority to impose a disciplinary measure against its employees, in the interests of punishment or deterrence. But, it is another thing for the Union to say, "the conduct evidenced constitutes an unsafe condition or element in the workplace, that an order is needed to compel the company to provide a safe environment, and nothing short of a specific order addressing a specific individual will give true effect to that award." If the latter case is supported, in my view, the arbitrator is bound to complete the award to that extent, even if the order has a disciplinary impact.

For all these reasons, the arbitrator refused to dismiss the grievance and allowed the grievance to proceed to arbitration on the merits. The parties later settled the grievance.

Case Digest prepared by Sack Goldblatt Mitchell who represented Teamsters Canada, Local 419
http://www.sgmlaw.com

COPE 343

Sample Scenario 1 - Violence
Draft

Sheila, who works in the administration office, went through a difficult break-up with Todd, a man she had been dating. Todd did not want the break-up. Todd has called Sheila regularly asking to reconcile and he has begun coming by the office to leave messages and gifts. Sheila has asked him not to call or come by the office. Todd becomes more aggressive and other staff express concerns to management. Sheila's supervisor tells Sheila that she needs to resolve the situation. Sheila asks for better security measures but the supervisors tells Sheila this is her problem and she needs to fix it.

Sheila raises the issue with her union. The employer is refusing to allow the issue to go on the agenda for the meeting of the joint health and safety committee.

Letter to CEO Regarding Unaddressed Health and Safety Issue:

We are writing to you regarding a health and safety risk which is not being addressed at xyz location. The local management has been unwilling to address the issue.

The issue is one of violence in the workplace. One of our members is being accosted at xyz location by an aggressive individual. A number of our members have raised concerns with us that there are no measures or procedures in place to protect them from violent individuals entering the workplace at xyz location. If the company does have measures or procedures we are not aware of, they are clearly not being utilized. Our representatives have attempted unsuccessfully to have local management address the concerns of our members.

Under the *Occupational Health and Safety Act*, it is the responsibility of every director and officer of a corporation to take all reasonable care to ensure that the corporation is in compliance with the *Occupational Health and Safety Act* and regulations.

Violence is a hazard that is covered under Ontario's *Occupational Health and Safety Act*.

Now that you are aware of the hazard, we hope that you will exercise due diligence and reasonable care to ensure that the hazard is addressed in a timely manner.

Sincerely,

President
Sheila's Local Union 1

COPE 343 [violence-scenario-draft 1]

Sample Scenario 2 - Violence
DRAFT

Devika is a teaching assistant at the local school. An autistic child has been transferred from another school. Devika is assigned to assist the child. The first day the child attends class, Devika is punched and bitten. The next day Devika refuses to go to class with the child exercising her right to refuse under the *Occupational Health and Safety Act*. The Ministry of Labour is called and Devika is told over the phone that she is not entitled to refuse and that the issue will be treated as a complaint. The MOL says that the threat of violence is not a physical condition of the workplace that allows for the work refusal process to be used. The MOL advises Devika's employer that violence is a hazard covered by the *Act* and that they should use the Internal Responsibility System to resolve the issue.

The employer tells the joint health and safety committee that it does not have the budget to address the issue and that Devika will just have to be more careful in dealing with the child.

Letter to Superintendent Regarding Unaddressed Health and Safety Issue:

We are writing to you regarding a health and safety risk which is not being addressed at xyz location. The management of the school district has been unwilling to address the issue.

The issue is one of violence in the workplace. One of our members is being assaulted at xyz school by an aggressive individual. A number of our members have raised concerns with us that there are no measures or procedures in place to protect them from violent students. Our representatives have attempted unsuccessfully to have local management address the concerns of our members.

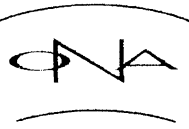
Under the *Occupational Health and Safety Act*, it is the responsibility of every director and officer of a corporation to take all reasonable care to ensure that the corporation is in compliance with the *Occupational Health and Safety Act* and regulations.

Violence is a hazard that is covered under Ontario's *Occupational Health and Safety Act*.

Now that you are aware of the hazard, we hope that you will exercise due diligence and reasonable care to ensure that the hazard is addressed in a timely manner.

Sincerely,

President
Education Local Union 1



Ontario Nurses' Association

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Telephone: (416) 964-8833 • Fax: (416) 964-8864
E-mail: onamail@ona.org • Web site: www.ona.org

August 24, 2006

Attention: Health Agency Administrators/ Human Resource Directors

Re: ONA Occupational Health and Safety Concerns

The Ontario Nurses' Association is the trade union that represents over 52,500 nurses and other healthcare workers across the province of Ontario.

The health and safety of our members working in all health care facilities is of major concern to us. ONA has been extremely proactive working with all levels of government, other trade unions and our members to ensure our members are properly protected from the hazards associated with or arising from their workplaces.

The Occupational Health and Safety Act (OHSA) and its regulations set out numerous responsibilities for all workplace parties. The employer however has ultimate responsibility under the OHSA to ensure workers are protected from hazards.

We repeatedly hear back from our members on a number of health and safety issues that continue to remain unresolved. For the purpose of this correspondence we are particularly addressing the issues of violence, exposure to infectious disease, supervisor competency and accident reporting.

In a well functioning robust internal responsibility system all parties work together to identify and resolve hazards that could cause harm to workers. Unfortunately, as one CEO said at a Minister's Health and Safety Action Group Meeting, when it comes to occupational health and safety, "*Health care is twenty years behind industry.*" This is not acceptable to ONA or our members and we expect all of our employers to comply with the OHSA and take every precaution reasonable in the circumstance for the protection of workers.

The OHSA in addition to many other requirements requires an employer to identify hazards, protect workers and to consult the JHSC in the development of all policies, programs and training pertaining to worker health and safety.

Violence

As many of you know our ONA member Lori Dupont was brutally murdered in November 2005 at her workplace. To ensure the prevention of another tragic event and all other forms of violence, employers must develop effective measures (control measures) and procedures that will protect our members from violence. Some of the violence policies and programs we have reviewed are sorely inadequate and must be seriously reviewed and improved upon. In order to comply with the OHSA we recommend the employer engage the Ontario Safety Association for Community and Healthcare in consultation with the Joint Health and Safety Committee (JHSC)

and develop a violence policy and a comprehensive program that includes training for all workers.

ONA Bargaining unit presidents and/or the ONA Joint Health and Safety Committee (JHSC) members have been directed (where violence is an issue for any worker in their workplace) to address these hazards. We are directing our leaders to ensure that where their employer does not have a violence policy and program in place or where the policy and program is weak and ineffective and/or where the employer has not properly trained workers in the policy and program that they table written recommendations with the JHSC.

We are also directing them to call the Ministry of Labour (MOL) immediately if the written recommendations are not forwarded to the employer by the JHSC or if the employer does not respond or responds unsatisfactorily as per section 9 (20) of the OHSA.

Supervisor Competence

The OHSA Section 25 (2) (c) also requires employers, when appointing a supervisor, to appoint a competent person.

Under the OHSA "competent person" means a person who,

(a) Is qualified because of knowledge training and experience to organize the work and its performance;
(b) Is familiar with this Act and the regulations that apply to the work; and
(c) Has the knowledge of any potential or actual danger to health or safety in the workplace

It is essential that supervisors fully understand their duties under the OHSA in order to properly address our members' health and safety concerns. Employers have a responsibility under the OHSA to ensure that all its supervisors are competent. Nurses, like many other unionized professionals, often end up directing or supervising other workers. ONA therefore expects and requests that all employers provide full training for all supervisors, including ONA members working in a supervisory capacity (as defined in the OHSA), on matters within their responsibility. This must include ensuring that the workplace has a full set of policies and protocols for handling all potential health and safety situations and concerns.

Accident Reporting

It has come to our attention that many of our JHSCs receive accident information in the form of a summary, just prior to each JHSC meeting. While a summary can be a useful tool for quickly analyzing information at the JHSC meeting, it in no way should be a replacement for the employer's obligation under section 51 and 52 of the OHSA to report accidents and illnesses. We have also heard that some employers are using recent privacy legislation as a reason to withhold this information. This is incorrect. There is no legislation which supersedes the rights of the JHSC or trade union under the OHSA to receive this information.

It is the right of the JHSC and the trade union to receive reports of accidents, illnesses, critical injuries and fatalities within the time frames set out in section 51 and 52 of the OHSA. Furthermore Section 5 of the *Health Care and Residential Facilities Regulation* sets out the information that must be provided to the JHSC and to the trade union. Please ensure that the JHSC and the bargaining unit president are notified of this information within the legislated time

frames. Where this information is not provided ONA has directed its representatives to contact the MOL.

Respiratory Protection Programs/Airborne Disease/Pandemic Planning

Pandemic influenza virus may at times be airborne. Furthermore, health care workers often deal with other known airborne transmitted disease, unknown illness or suspected airborne illness. The employer has an obligation under the OHSA Section 25 2 (h) to take every precaution reasonable in the circumstances for the protection of a worker and under section 8 & 9 of the health care regulation must in consultation with the JHSC develop, establish and put in effect measures and procedures for the health and safety of workers including those to control infections. These measures must also be reduced to writing and the employer in consultation with the JHSC must develop, establish and provide training and educational programs in health and safety measures and procedures. Surgical masks do not provide protection for airborne respiratory illness and are insufficient protection for health care workers working in proximity to any patient with an airborne transmissible illness or when the illness is unknown or suspected to be airborne during a pandemic influenza or otherwise.

It is ONA's position that the employer must:

- have a complete infection control program including engineering controls (e.g. negative pressure rooms), measures (e.g. isolation), procedures (e.g. risk assessments), equipment (e.g. respirators) and education to protect workers against airborne respiratory disease

- have a complete respirator protection program including hazard identification, risk assessments, education, proper respiratory protection and fit testing

- provide:

  1. N95 respirators for workers in proximity to patients with respiratory symptoms during a pandemic;
  2. enhanced respiratory protection for aerosolizing procedures during a pandemic;
  3. N95 respirators for workers in proximity to patients with other airborne illnesses;
  4. enhanced respiratory protection for aerosolizing procedures for other airborne illnesses.

- adopt a policy to "err on the side of safety" when complete information is not available or when there is disagreement about appropriate personal protective equipment to be used. In these situations the higher level of precautions should be used until consensus can be reached.

We have enclosed a literature review entitled "Transmission of Influenza A Virus by Aerosols: a Review" by Dr. Raymond Tellier, MD MSc FRCPC CSPQ Microbiologist, Hospital for Sick Children, Senior Associate Scientist, Hospital for Sick Children, Associate Professor, University of Toronto. His review confirms that even regular influenza A can become airborne. We have also enclosed a Material Safety Data Sheet (MSDS) from Public Health Agency of Canada prepared by the Office of Laboratory Security for "Influenza virus". In it, the mode of transmission includes; "...aerosols, airborne spread among crowded populations in enclosed spaces...". Therefore during a pandemic where virus is or may be highly lethal, or its lethal

nature is not known, as a minimum employers must ensure all engineering, administrative controls etc. are in order and that all workers at risk are fit tested and provided N95 respirators. For high-risk procedures it is ONA's position that the employer must provide enhanced precautions.

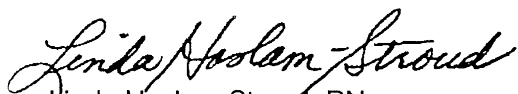
We have included in this mailing a copy of the most recent draft Fraser Health Authority Guidelines and Risk assessment materials which should be used to properly protect our members.

For more assistance in any of these matters, contact the Ontario Safety Association for Community and Healthcare at www.osach.ca and consult with your Joint Health and Safety Committee.

I trust you will fulfill your obligations under the Occupational Health and Safety Act and engage your Joint Health and Safety Committee in discussion on the issues contained in this letter, so that the appropriate steps are taken to protect the health and safety of our members and your employees.

Sincerely,

ONTARIO NURSES' ASSOCIATION



Linda Haslam-Stroud, RN
President

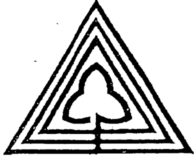
LHS:eb:sb

Encl.

Copy: ONA Board of Directors
ONA Local Coordinators and Bargaining Unit Presidents
ONA Labour Relations Officers

Ontario Public Service
Employees Union

OPSEU



SEFPO

Syndicat des Employé-e-s
de la Fonction Publique
de l'Ontario

February 2007

Attention: All Children's Aid Society Employers in Ontario

Re: OPSEU Occupational Health and Safety Concerns

The Ontario Public Service Employees Union (OPSEU) represents approximately 2,500 Children's Aid Society workers who face the risk of violence every day at work. Child welfare workers have to make difficult decisions that affect the core existence and emotions of families and children. In addition to enforcement duties, they face other risk factors, such as working alone in the community, working irregular hours and working with clients who face many difficult challenges.

The health and safety of our members working in the Societies is of major concern to us. OPSEU CAS members have recently been involved in incidents of workplace violence such as: physical assault on the job; verbal abuse; threats and intimidation; mobbing by a crowd; death threats; guns pointed at them; clients photographing them; and the shock and trauma of dealing with a murder-suicide.

The *Occupational Health and Safety Act* (*OHSA*) and its regulations set out numerous responsibilities for all workplace parties. However, employers have the ultimate responsibility under the OHSA to ensure that workers are protected from hazards. Regarding workplace violence, the "reasonable precautions" that you as an employer must take include a comprehensive violence policy and a prevention program that incorporates a procedure for incident tracking and reporting along with worker training. Ontario's Ministry of Labour has this and other information on its website that provides more guidance to employers to assist them to address this hazard.

The *OHSA* requirements include a responsibility that an employer identify hazards, protect workers and consult the Joint Health and Safety Committee (JHSC) in the development and review of all policies, programs and training pertaining to worker health and safety. In a well-functioning, robust "Internal Responsibility System," all parties work together to identify and eliminate or reduce hazards that could cause harm to workers.

A key component of prevention in the workplace and of identifying hazards is incident tracking and reporting. The JHSC should be kept apprised of incidents involving violence or the threat of violence in the workplace. Section 25.2 (L) obliges the employer to provide written reports about health and safety to the JHSC. It is also the right of the JHSC and the trade union to receive reports of accidents, illnesses, critical injuries and fatalities within the time frames set out in Sections 51 and 52 of the *OHSA*. Furthermore, Section 5 of the *Regulations for Industrial Establishments* sets out the information that must be provided to the

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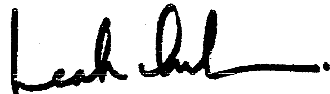
TDD:
(416) 443-9898
or
1-800-663-1070

JHSC and to the trade union. OPSEU requests that both the JHSC and the Local President are notified of this information within the legislated time frames. Where this information is not provided, OPSEU has directed its representatives to contact the Ministry of Labour.

OPSEU Joint Health and Safety Committee (JHSC) members have been encouraged to ensure that their employers are addressing violence as a hazard in workplaces. Our members will be putting "workplace violence" on JHSC agendas across Ontario to discuss and work with their employers to develop and improve prevention strategies. Where their employers do not have an appropriate and comprehensive violence policy and program in place and/or where the employer has not properly trained workers in the policy and program, OPSEU members will be tabling written recommendations with the JHSC. Given that the OHSA mandates the JHSC as the appropriate forum for the workplace parties to address workplace health and safety, our JHSC representatives will follow up with you for your responses to these recommendations and participate in the implementation of improvements for prevention. Our members' efforts will be focused on working with you to improve safety in the workplace, as we believe that the expertise to improve health and safety lies in the workplace itself. If, however, through the internal responsibility system process, their efforts are unsuccessful, we have advised them to call the Ministry of Labour to ask an Inspector to come and investigate.

We trust that you agree that violence is an unacceptable hazard in the workplace and accordingly an important area to address and continually improve upon. We hope that you will work with the JHSCs in all Children's Aid Societies in Ontario to take on the issue of workplace violence in a way that protects the health and safety of workers on the job. It is our hope that this concerted, co-operative effort to examine, discuss and improve workplace violence prevention strategies will make all Society workplaces safer for all employees performing this important work in Ontario.

Sincerely,



Leah Casselman
President
ONTARIO PUBLIC SERVICE EMPLOYEES UNION