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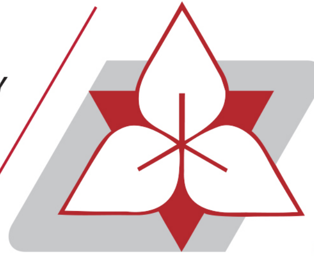

ONTARIO FEDERATION OF LABOUR

Ontario Federation of Labour Submission

Ministry of Labour Consultation

Safe at Work Ontario

February 2018

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Introduction

The Ontario Federation of Labour (OFL) is the central labour organization in the province of Ontario. The OFL represents 54 unions and speaks for more than a million workers from all regions of the province in the struggle for better working and living conditions.

With most unions in Ontario affiliated, membership includes nearly every job category and occupation. The OFL is Canada's largest provincial labour federation. The strength of the labour movement is built on solidarity and respect among workers.

We commit ourselves to the goals of worker democracy, social justice, equality, and peace. We are dedicated to making the lives of all workers and their families safe, secure, and healthy. We believe that every worker is entitled, without discrimination, to a job with decent wages and working conditions, union representation, free collective bargaining, a safe and healthy workplace, and the right to strike.

Organized labour, as the voice of working people, promotes their interests in the community and at national and international forums. We speak out forcefully for our affiliates and their members to employers, governments, and the public to ensure the rights of all workers are protected and expanded.

We are pleased to offer the following comments to the Ministry of Labour Safe at Work consultations.

MOL Consultation Document

In the background of the online document[1] the Ministry states that, "Ontario's workplaces have become safer in the last 10 years…" and cites injury data from the Workplace Safety and Insurance Board (WSIB). The OFL takes issue with using the WSIB injury data as a measure of health and safety performance. We take issue for two key reasons:

1. The WSIB's experience rating programs have skewed the lost-time injury statistics for the province.

2. The large number of Ontario employers not covered by the WSIB.

We will provide detailed information on both of these issues to show why we cannot support the use of WSIB data as a performance measure for Ontario.

[1] https://www.labour.gov.on.ca/english/about/consultations/consult_sawo.php

Reducing Claims Not Injuries

Ontario's workers compensation system's experience rating programs have skewed the lost time injury statistics for the Province. Employers able to hide their serious injuries as no lost time accidents reduce their compensation costs and then become eligible to receive a rebate from the Workplace Safety and Insurance Board (WSIB). The other side of this program provides penalties for employers who have a higher level of lost time injury statistics and costs. The money at stake for many employers can add up to millions of dollars. In addition, efforts to accommodate injured workers now see injured workers coming back the next day to some sort of modified work. As a result, injuries that at one time would have been listed as lost time injuries are now being listed as no lost time injuries. It does not matter whether legitimate modified meaningful work is being provided or if the employer is simply hiding the claim, the result is the same. If it is cheaper to hide the injuries than prevent them, then many employers with an eye to the bottom line will do just that.

In addition to these financial incentives, the Ontario Ministry of Labour (MOL) uses lost time injury statistics as a means to target workplaces for inspections. These are all tremendous incentives for employers to reduce the statistics.

The WSIB's main experience rating programs such as, the New Experimental Experience Rating (NEER) and CAD 7 were introduced in 1984 with the aim of providing a financial incentive to promote improved health and safety practices in the workplace. These programs were introduced notwithstanding the fact that there were no authoritative studies available at the time to demonstrate that experience rating, where introduced, had produced safer workplaces. No cost benefit analysis was done to ensure that the programs would, indeed, add value to the compensation system as a whole.

Ontario's workers compensation system has never put in place an evaluation system to monitor the impact of these programs on employer reporting practices. Such a system should have been established before the experience rating programs were introduced. This evaluation was, in fact, emphasized by Paul Weiler in his 1980 report, "Reshaping Workers' Compensation in Ontario," made by the following observation:

> "I believe it would be irresponsible to miss the opportunity afforded by the introduction of this new merit rating scheme for enhancing the state of our knowledge for the future. As I have already suggested with reference to other proposals, before this new policy is actually implemented, an evaluation study should be developed to monitor its impact on employer behavior in order to provide the Ontario public and policy makers and a more informed basis upon which to appraise and use experience rating in the future."

Unfortunately, Mr. Weiler's advice was ignored. Now, all these years later, the fundamental premise of experience rating programs that they result in employers

investing time and money to make their workplaces safer remains unproven. The WSIB wrongly assumes that claims costs are a useful measure of health and safety. This is pure fantasy, there is no evidence that claims costs equate to health and safety.

In fact, there is substantial evidence to show that there is widespread injury claims suppression by employers and that statistical trends on lost time injury claims significantly mask the true rate of work-related injury. Evidence of significant under-reporting of lost time injury claims first came to light in the "Report on Accidents and Fatalities in Ontario Mines," 1988 by the Standing Committee on Resource Development. This report concludes on Page 14 that:

> ".... the mining companies, in an attempt to reduce the number of lost time accidents (and therefore lower their WCB assessment rates), are now reporting injuries of greater severity as 'health care only' (no lost time) claims instead of 'lost time' claims. The committee further believes that it is this shift in recording accidents which has resulted in the declining lost time injury rates.... Not only is the declining lost time injury rate masking the true situation concerning serious injuries, but a 'declining' lost time injury rate could also distort the response of the industry in terms of setting priorities and establishing appropriate safety strategies."

Studies undertaken by the former Workers' Compensation Board confirmed the findings of the Standing Committee in 1988. These studies show that experience rated employers misreport or under-report accidents or, otherwise, engage in more intensive claims control measures and early return to work:

(1) A survey and case study conducted by Peat Marwick Stevenson and Kellogg[2] showed that experience rating resulted in firms relying more heavily on claims control measures and early return to work than on the implementation of preventive safety initiatives. The case study revealed that health care claims were simply not reported or short-term claims were reported as health care only.

    The report found that most employers had health and safety initiatives in place, but the report failed to take into consideration that the most comprehensive amendments to the Occupational Health and Safety Act came into effect that year.

    The report found that 82% of firms studied, "place an emphasis on controlling claims costs, and NEER has led to an increased emphasis in this regard for all

[2] Workers' Compensation Board, NEER case studies, FINAL REPORT, Peat Marwick Stevenson & Kellogg, Management Consultants, prepared for the Workers Compensation Board, Research and Evaluation Branch. July, 1990.

of the firms, including incremental impacts on a variety of claims management activities."

(2) A survey[3] of 1,103 employers conducted by the then WCB provides further evidence of misreporting or non-reporting practices in response to experience rating:

a. 20 percent of employers indicated that they allow their injured workers to use short-term sickness plans rather than report the injuries to the WCB;

b. 13.6 percent indicated that they encouraged workers with mild or less severe injuries to take time off with pay and only report to the WCB if the workers had not returned within a few days;

c. 26.8 percent indicated that they gave injured workers light duties or modified work. The WCB study also showed that experience rated employers were more likely to appeal injury claims and that the rate of employer appeals had increased significantly.

The experience rating programs, which we feel are the driving force behind this effort to hide claims, was voluntary and had limited participation until the beginning of 1990 when it was made mandatory and greatly expanded. That same year, limited return to work obligations on employers were introduced. This required the employer to provide modified work so injured workers could return to their workplace sooner.

It did not take the unions to notice the impact that experience rating programs were having on injured workers,

"Experience rating tends to divert the employer's attention from legitimate occupational health and safety pursuits to emphasizing claims control. Employers realize that it is faster and easier to fight workers' claims than to pursue prevention activities aimed at making workplaces healthier and safer." [4]

The experience rating programs were expanded in 1995 to include even more employers. The return to work obligations were also strengthened beginning in 1995.

Prior to 1990, total injury claims involved roughly half no lost time and half lost time with just one percentage point between the two types of injuries. Starting in 1990 we noticed a shift in how injury claims were being reported to the Board. Our own analysis of statistical trends of claims mix also provide support for under-reporting. We saw a

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[3] Workplace Accident Reporting Practices Study: Main Report, August 1992, Research and Evaluation Branch, Strategic Policy and Analysis Division, Ontario Workers' Compensation Board

[4] OFL response to WCB Consultation Paper, "Off-Balances under the NEER and CAD-7 Experience Rating Programs October 31, 1993

consistent and increasing divergent trend with lost time claims decreasing, lock step, with a constant rise in no lost time claims. This would seem to indicate that employers are reporting more serious lost time injuries as no lost time injuries. By 2012, the last year that this data was made publicly available, there was 36.5 percentage points between the two types of injuries. (WCB/WSIB, Monthly Monitor).

In the 1990's the OFL, unions, legal clinics, injured worker groups, and a few individuals from academia came together to form the Experience Rating Working Group. An informal group dedicated to the eradication of the experience rating programs.

This group challenged the WSIB in 2003 to show them the evidence that experience rating improved occupational health and safety. Several meetings took place in 2004 looking at reports the WSIB had gathered and the WSIB was forced to admit that there was no evidence that the programs improved prevention.

The OFL partnered with the Advocates for Injured Workers and the Industrial Accident Victims Group of Ontario to expose a shocking disconnect between the stated goals of experience rating and reality. The resulting report[5], provided an overview of claim suppression techniques and demonstrated case examples of employers being prosecuted by the MOL for health and safety violations and receiving fines on the one hand while receiving experience rating rebates from the WSIB in the other. In many cases the rebate exceeded the amount of the fine. All of the MOL prosecutions involved serious injuries or the death of a worker.

The release of this report inspired the Toronto Star to carry out its' own investigation. In a series of articles[6] it found what the OFL had exposed and more. This included, "3,000 fractures, dislocations, bad burns, and other injuries, even amputations, that companies reported as resulting in not even one day off work."

Still, the WSIB persisted with the programs providing lip service to make changes.

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5 http://ofl.ca/wp-content/uploads/2007.01.01-Report-ExperienceRating.pdf

6 https://www.thestar.com/news/ontario/2008/02/16/board_shields_unsafe_job_sites.html
https://www.thestar.com/news/ontario/2008/03/11/risky_workplaces_face_cash_penalty.html
https://www.thestar.com/news/investigations/2008/04/05/when_companies_get_rewarded_for_mistakes.html
https://www.thestar.com/news/gta/2008/04/07/workplace_safety_rebates_probed.html
https://www.thestar.com/opinion/2008/04/08/wsibs_mixed_message.html
https://www.thestar.com/news/ontario/2008/04/09/labour_groups_want_wsib_chief_out.html
https://www.thestar.com/news/investigations/2008/06/29/hiding_injuries_rewards_companies.html
https://www.thestar.com/news/investigations/2009/03/04/audit_slams_ontario_workplace_safety_rebates.html

In the midst of the embarrassing media coverage, the WSIB hired Morneau Sobeco to review the experience rating programs. The Morneau Sobeco report of 2008[7] echoed our concerns and criticisms by suggesting that the experience rating programs can encourage bad employer behaviour such as claims suppression rather than investing in health and safety.

In 2010, Tony Dean headed the Expert Advisory Panel on Occupational Health and Safety. The panel was made up of an equal number of representatives from labour, employers and academia. There was consensus that the use of Lost Time Injuries and frequency was not a reliable measure for health and safety. The report[8] provided a list of concerns about the state of the current data and stated, "Without addressing these concerns, efforts to reliably measure and predict occupational health and safety performance at the workplace or system levels will be futile." The panel recommended moving away from the use of LTIs as a metric and use leading indicators instead.

The Ontario government has committed to implementing all the recommendations from the Tony Dean panel yet, seven years later, that recommendation has not been acted upon.

Professor Harry Arthurs also turned a critical eye to the experience rating programs in his report Funding Fairness[9]. He considered the experience rating programs a "moral crisis" and stated that unless the board was prepared to;

> "… prevent and punish claims suppression and unless it is able to vouch for the integrity and efficacy of its experience rating programs, it should not continue to operate them."

The WSIB has chosen to do neither.

Seven years after the OFL released *The Perils of Experience Rating Exposed*, the exercise was repeated. The resulting report[10] showed that despite the governments' public promises of reform, the WSIB continued to reward employers for suppressing claims and that the WSIB still pays rebates to many employers:

- in the same year they committed an offence resulting in a worker's death;
- in the years immediately after they committed an offence that resulted in a worker's death or serious injury;

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[7] Recommendations for Experience Rating, Morneau Sobeco, October 28, 2008

[8] Page 23-24 Expert Panel on Occupational and Safety, Dec. 2010 https://www.labour.gov.on.ca/english/hs/prevention/report/index.php

[9] Page 81 Funding Fairness, A Report on Ontario's Workplace Safety and Insurance System 2012 http://www.wsib.on.ca/cs/groups/public/documents/staticfile/c2li/mdex/~edisp/wsib011358.pdf

[10] http://ofl.ca/wp-content/uploads/2014.11.24-Report-RewardingOffenders.pdf

• in the same year that they committed an offence that seriously injured workers;

• in the same year that they committed offence related to unsafe working conditions; and

• in the same year they were convicted of an occupational health and safety offence.

More recently IAVGO exposed the WSIB decision making in a review of the Workplace Safety and Insurance Appeals Tribunal (WSIAT) decisions. The report[11] found among other issues that the WSIB began in 2010 to wrongly deny claims basing the decision on "pre-existing conditions" sometimes without any evidence that such a condition existed.

For decades, the Ontario Federation of Labour had been hearing anecdotal evidence from our affiliates about workers who had been brought back to work the day after an accident in casts, wheelchairs, and even stretchers so as to prevent the accident from being listed as a lost time injury. We were told of employers who were providing gifts or cash bonuses for work groups that had no reported lost time injuries. This could result in significant peer pressure to use the benefit plan rather than report the injury to WSIB.

Workplace Safety and Insurance Appeals Tribunal

…Tribunal decision makers comment that the decisions of the Workplace Safety and Insurance Board are "unreasonable" and "arbitrary," ignore the "unanimous opinions" of doctors, are based on "not a single word of medical or other reliable evidence," and could place the worker at "medical risk."

-No Evidence, 2017 Maryth Yachnin IAVGO Community Legal Clinic

Then there are the Behaviour Based Safety worker incentive programs which impose discipline for having an accident. Employees learn quickly not to report because of an adverse consequence for themselves and/or their work group. This leads to worsening conditions, unaddressed hazards, unreported injuries, and exacerbation of chronic conditions.

The WSIB has made a conscious decision to ignore decades of evidence that too many employers are gaming the system by suppressing claims rather than investing in health and safety. Instead it has plans to expand this "moral crisis" through the new rate framework revisions.

As it stands today, we are not assured by the WSIB statistics showing a decline in lost-time injuries. Nor are we assured by the Ministry's optimism about health and safety conditions improving. We know these statistics do not reflect the real rate of injury, but only represent injury claims reported to the WSIB. More importantly, as has been discussed, there is substantial evidence to show that there is widespread injury claims

[11] No Evidence, 2017 Maryth Yachnin IAVGO Community Legal Clinic http://iavgo.org/wp-content/uploads/2013/11/No-Evidence-Final-Report.pdf

suppression by employers and that statistical trends on lost-time injury claims significantly masks the true rate of work-related injury.

It is the opinion of the Ontario Federation of Labour and our affiliates that these programs have been more effective in reducing the number of claims than they are in reducing the number of injuries.

We can simply state that any claim that Ontario's experience rating programs result in a reduction of injuries is intellectually and scientifically dishonest.

Return to Work Programs

Labour supports good return to work practices that are safe, effective, sustainable and provide therapeutic value to workers. We hear from many injured workers that employers use return to work programs to force workers back to work the next day doing meaningless tasks so the injury if it is reported at all is listed as a no lost time injury. The consequences of good or bad return to work practices is that they can shift the injury into the no lost time category. The injury can still be serious, but the data suggests the workplace is getting safer when the employer may just be getting better at claims management.

No WSIB Coverage, the Consequences

In Ontario, WSIB coverage is by inclusion. Unless the nature of an employer's business is listed in one of two Schedules to the Workplace Safety and Insurance Act, there is no requirement for the employer to obtain WSIB coverage (although employers can choose to obtain coverage by application).

The schedules have always left out a significant portion of Ontario's economy. The most significant omissions include professional offices (accountants, doctors, lawyers, management consultants, architects, etc.), banks and insurance companies, real estate offices, and privately funded schools, as well as non-government-run daycare centres, retirement homes, home nursing, and attendant services and child welfare services. In addition, many other smaller industries and workers are non-covered. A list of non-covered industries provided by the WSIB to the OFL runs to twenty pages.

It is the employers who pay for the administration of the Occupational Health and Safety Act (OHSA) and Ontario's prevention system through their WSIB premiums. Many of the WSIB excluded employers are covered by the OHSA but are not paying their fair share for prevention and enforcement systems but are benefiting from them.

Workers who are injured in the non-covered sectors are not tracked by the WSIB. The MOL relies on the injury statistics tracked by the WSIB to help plan priorities and enforcement strategies.

Without reliable and complete data how can the Ministry of Labour possibly determine the appropriate resources needed for enforcement and prevention? The government cannot really know if the instances of work related injury and illnesses are decreasing.

WSIB Injury Data does not measure prevention performance

To sum up the experience rating programs at the WSIB skew the statistics; return to work programs can also skew the data; and the failure of this government to expand WSIB coverage to all workers, all result in the WSIB data being useless as a measure for prevention performance.

The MOL needs to stop using the WSIB data to argue that Ontario workplaces are getting safer.

Risks and Hazards

Labour does not support assessing and managing risk. This is an insurance industry practice to reduce financial loss and liability. It should not be used in occupational health and safety. There should instead be a focus on hazard analysis then using the “hierarchy of control” principle to eliminate the hazard or prevent exposure if the hazard cannot be eliminated.

It is our conviction, that the people who suffer the consequences of poorly framed health and safety policies and practices have far too little to say in the management of the workplace. Any hazard assessment conducted by or for an employer should be done in consultation with the joint health and safety committee or with the workers’ health and safety representative.

There are many hazards that exist today that are not being properly addressed. Emerging hazards such as engineered nano-particles does not seem to be on the radar at the MOL.

Nano technology is advancing faster than our understanding of its long-term health and environmental consequences. Scientists are manipulating substances and engineering them into hollow spheres or tubes using interconnecting hexagons or pentagons at sizes less than 100 nanometres and in some cases as small as one nanometre. A human hair ranges 70 to 80 thousand nanometres in diameter.

Nano sized dust particles have been around longer than human beings, it is the engineering at the nanoscale that is new. These engineered nanomaterials have chemical, mechanical, electrical, and biological properties which are unique and very

different from the properties of the same substance existing as a dust particle. This uniqueness has created a great deal of interest in the commercial and medical potential of these new materials. This uniqueness also means that many of the occupational and environmental standards currently in place are meaningless for these engineered nanomaterials.

While research has shown great and exciting promise for the potential usefulness of these materials, we know from experience that just because a substance is useful does not mean it is safe for human health or the environment. Examples such as asbestos, CFCs, DDT, tetraethyl lead, and others remind us of this fact. We are also reminded of the consequences of poor regulation and control before these substances were widely used in commerce. We have an opportunity to learn from the mistakes of the past and ensure that workers, the public, and the environment are protected. The consequences of not doing so may lead to tragic consequences for workers, their families, and their communities as well as costly clean-up efforts, legal, and political battles.

Regulators have an opportunity to learn from the past and take precautionary measures today to prevent another tragedy in the future. Much more research is needed before these engineered nanomaterials should be allowed to be released on a massive scale on an unsuspecting public and an unprotected environment.

Ergonomic hazards are injuring workers on a daily basis. These types of injuries make up the single largest cause of lost time injuries according to the WSIB.[12] Considering our comments above about claim suppression and WSIB coverage it is reasonable to state that the actual number of workers suffering permanent injuries are much higher.

It is incomprehensible that this rate of disabling injuries has been allowed to continue with no effort to protect workers through regulations. Guidelines and encouragement has not had an impact on reducing these injuries. It is time to protect workers with ergonomic regulations.

Virtually every occupational hazard that exists in Ontario exists in the education sector. For example, colleges, universities, and high schools have technical programs where students learn (and teachers teach) manual trades such as electrical, welding, and carpentry. Teachers and students in medical schools and other health care programs face the same hazards found in the health care sector. Some university chemistry laboratories can match those in the petrochemical industry. There are post-secondary programs that train students on the use of machinery, all the way to the use of small nuclear reactors, and yet these training environments are not subject to the same regulatory protections and precautions that would exist for a worker doing the same work in other sectors.

[12] www.wsib.on.ca

Education environments face a huge regulatory gap when it comes to the protection of education workers. If the workplace is not safe for education workers, then it is not safe for the students.

The education sector needs regulations to protect education workers.

Awareness of that the workplace psycho-social factors have on mental health is growing. Disabling injuries resulting from chronic stress in the workplace is now recognized as a workplace injury. Bullying and harassment in the workplace creates a work environment that can be just as toxic as one filled with hazardous substances.

The government has not been immune from this type of behaviour in the workplace.[13]

More needs to be done to protect all workers from the negative psycho-social factors in the workplace.

Data and Information

For deterrence to be effective, employers need to know that the MOL is prosecuting and the courts are issuing fines. The current MOL policy of issuing press releases only after the fine has exceeded 50 thousand dollars is a barrier to deterrence. When a fine is issued but not made public there may be a financial deterrence for that employer not to repeat the offence but there is no deterrence for other employers who will not know that the MOL prosecutes on that issue. All fines against employers, directors, and supervisors should be made public and posted on the MOL website.

The Employment Practices Branch of the MOL lays out the tickets and fines very effectively.[14] Each employer who received tickets, summons, or was prosecuted and fined is listed in a table with the infraction and the amount of the fine. This is in addition to the press releases for higher penalties.

Guidelines are useful to assist workplace parties[15] to ensure that the workplace comes into compliance with legislative requirements. They have little value for workers if there is no legislation to back them up. A case in point are the injuries suffered as a result of poor ergonomics in the workplace. The MOL has a long list of guidelines and resources on

[13] https://www.thestar.com/news/investigations/2018/02/21/ontario-government-lawyers-being-terrorized-by-bully-bosses-secret-report-reveals.html
https://www.thestar.com/news/investigations/2018/02/22/bully-bosses-issue-swept-under-the-carpet-until-junior-government-lawyer-sent-email.html
[14] https://www.labour.gov.on.ca/english/es/pubs/enforcement/convictions.php
[15] The OFL defines “workplace parties” as workers, employers, supervisors, joint health and safety committees, health and safety representatives, and unions (where one exists)

their website,[16] including some very detailed guidelines that were developed 12 years ago. Without regulations these efforts have had very little impact for workers.

Enforcement campaigns

Enforcement of the Occupational Health and Safety Act is a vital element of a comprehensive approach to occupational health and safety. Much more could be done through enforcement to drive prevention, training, and protecting vulnerable workers.

Employers are ultimately responsible for ensuring a safe and healthy workplace. Knowing that they will be held accountable and prosecuted for not maintaining a safe and healthy workplace will force employers to fulfil their responsibilities under the Act. It will also provide good reason for them to deal with the worker members of the JHSC and representatives in good faith.

The enforcement system must be designed and operated to give a clear message that violations of our health and safety laws and endangerment of workers will not be tolerated.

The system must be based on two operating principles:

a. The cost of violating the law will be greater than the cost of compliance;

b. Potential violators must expect that there is a high probability of being caught and penalized when they violate.

Prosecuting employers is an important part of enforcement. There needs to be a strong deterrence, so employers will live up to their duties to protect workers. In 2009, Malcolm K. Sparrow had this to say about deterrence,

> *"The magnitude of a deterrent effect depends, according to criminologists, on a potential perpetrator's assessment of three factors:*
>
> *(a) the likelihood of getting caught (i.e. the probability of being detected or reported),*
> *(b) the probability of being convicted once detected, and*
> *(c) the severity of the punishment if eventually convicted.*
>
> *This hearing clearly focuses on the third, and I certainly support the notion of effective punishment for white collar crimes, particularly those that involve an abuse of the public's trust and diversion of public funds.*
>
> *But I would urge the committee in its deliberations to consider the first two factors equally seriously. The third—severity of punishment—can be set or altered by*

[16] https://www.labour.gov.on.ca/english/hs/topics/pains.php

statute or by adjusting sentencing guidelines. The first two are harder to change, as they depend on the underlying capacity of the detection apparatus and the capacity of the criminal justice system to deal with cases that come to light. The most obvious weaknesses in health care fraud control lie with these first two. Criminologists argue, in fact, that the first two—the probability of detection and conviction—weigh more heavily in the calculus of would-be-perpetrators than the severity of sentences because (assuming a low enough probability of detection) criminals like to believe they will never face sentencing.[17]"

This is consistent with the two principles of enforcement labour has been supporting for many years.

British Columbia, Alberta, and Nova Scotia use administrative monetary penalties (AMPs) for OHS contraventions. There was support from MOL inspectors during the Expert Panel review for AMPs as an intermediate enforcement tool to be applied to offences for which a relatively small fine would not provide sufficient deterrence.

The introduction of AMPs was one of the recommendations made by the Expert Panel. The government committed to acting on all the recommendations. It has now been more than seven years since of the release of the report and the government has yet to act on this recommendation.

The Expert Panel had recommended,

"The Ministry of Labour should enhance the current legislative provisions for penalties by adding administrative monetary penalties as an enforcement tool and should develop policies and procedures that govern their use.

The Panel generally believes that AMPs, if used, should be applied primarily for wilful or repeat offences that immediately place workers at serious risk. An approach modelled on the AMPs used by the Ministry of the Environment, where decisions are ultimately the responsibility of a director, would provide for consistency of use. The notice to apply an AMP and the appeal process provide an opportunity for employers to challenge an AMP if they believe they are not in contravention.[18]"

AMPs can be more cost effective than a prosecution and allows the MOL to keep the money paid. In a prosecution, the municipality in which the offence took place keeps the

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[17] Malcolm K. Sparrow, Professor of the Practice of Public Management
John F. Kennedy School of Government, Harvard University
Speaking to the Senate Committee on the Judiciary: Subcommittee on Crime and Drugs on May 20th, 2009.

[18] *Page 44 Expert Panel on Occupational and Safety, Dec. 2010*

fine paid. A Victim Surcharge is also applied to the fine which goes into a special fund for victims of criminal acts.

AMPs can also be set up to increase the penalty each day or week that the employer fails to come into compliance. The use of AMPs will provide a stronger deterrence.

> …other ministries who rely on the attorney general's legal department were allowed to "exert improper influence" on the laying and withdrawing of charges.
>
> -"Turning the Ship Around", an unrelease report by Leslie Macleod, 2017 as quoted in the Toronto Star Feb. 21, 2018

Our affiliates consistently raise concerns with us over the lack of MOL enforcement of the asbestos in buildings regulation[19] particularly in publicly funded buildings such as schools and universities. The MOL needs to make greater efforts to ensure compliance with the regulation.

Given the revelations in the previously cited article in the Toronto Star, "Ontario government lawyers being terrorized by 'bully' bosses, secret report reveals" we question if other ministries would "exert improper influence" with the MOL enforcement of the regulation when it comes to asbestos in public buildings. This would explain the consistent lack of prosecutions in the public sector on this issue.

The MOL efforts on working at heights has focused on the construction sector. Many of sectors also have workers working at heights. The MOL needs to have a focus on this and extend the mandatory training for working at heights to all sectors.

In addition to working at heights, the following are examples of high hazard activities;

Agriculture
Confined space entry
Diving Operations
Trenching and shoring
Temporary agencies
Taxi drivers
Nail and beauty salons
Plastics manufacturing
Working in traffic\road repair
Manual material handling

Another issue our affiliates consistently raise are concerns about employers who fail to provide the Joint Health and Safety Committee and the union with the notices required under sections 51 and 52. Some employers provide a notice to the committee but refuse to provide the information prescribed or refuse to provide the information to the union.

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[19] O. Reg. 278/05: DESIGNATED SUBSTANCE - ASBESTOS ON CONSTRUCTION PROJECTS AND IN BUILDINGS AND REPAIR OPERATIONS.

Providing information about accident, injuries, illness, and fatalities to the workplace parties is an important part of a functioning Internal Responsibility System. The parties need this information to monitor the effectiveness of health and safety policies, programs, measures, and procedures. The parties can then recognize gaps or failures in the system and make recommendations to prevent a recurrence.

The Ministry should establish a schedule of set fines for employers who fail to comply with their reporting obligations. These fines should multiply if there are multiple violations i.e. failing to give notice to the JH&SC/representative on time; failing to provide the details prescribed; failing to give notice to the union.

The Ministry should retain the right to prosecute under these sections as it did recently when one hospital failed to report an occupational disease to the Ministry of Labour when workers were infected by scabies.

The WSIB has for many years established penalties for employers who fail to comply with their reporting obligations under the WSIA. The following is taken from the WSIB's Employer's Report of Injury/Disease Reference Guide for Employers:

The WSIB will charge a penalty of $250 for each of the following:

- late submission of the form 7 report,
- incomplete information,
- failing to provide a copy of the completed Form 7 to the worker, and
- reporting on a version of this form that the WSIB has not approved.

These can be multiple fines. For example: If the Form 7 is submitted late and incomplete, the fine would be $500.

Workplace violence

The most important thing the MOL can do on the issue of workplace violence is to enforce the law. Writing orders and prosecuting employers and directors who ignore their duties and continue to place workers in harms way.

Respectfully submitted:

ONTARIO FEDERATION OF LABOUR