



**Ontario Federation of Labour**

**Comments**

**to the**

**Workplace Safety and Insurance Board's**

**Accreditation Paper**

**May 30, 2007**



## **Introduction**

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. The accreditation of employers will, if done properly, be a positive step forward both in reducing the deaths, injuries and illnesses which continue to occur at alarming rates and in enhancing the Internal Responsibility System. This enhancement could be achieved by recognizing the legitimate role workers and their representatives have in influencing the occupational health and safety and the return to work practices of the employer. If accreditation standards are developed poorly, it will provide a false sense of the employers' true health and safety practices and erode the Workplace Safety and Insurance Board's (WSIB) credibility on prevention issues.

Labour knows only too well how meaningless some health and safety recognition programs can be. The experience of Westray is a worst case example of this. On May 9, 1992, just 11 days after the employer received an award for having the industry's safest mine, an explosion killed 26 workers and bankrupted the company. It was the second year in a row they had received the award. Just 15 bodies were removed, the remaining 11 will remain forever entombed in their former workplace.

The Nova Scotia government launched a commission to investigate what went wrong at the mine. The commission<sup>1</sup> found that despite what the employer had put to paper, "management at Westray displayed a certain disdain for safety and appeared to regard safety-conscious workers as the wimps in the organization."

The commission went on to report:

"Regardless of the theories, philosophies and procedures management espoused on paper, most notably in its employee handbook, it clearly rejected industry standards, provincial regulations, codes of safe practice and common sense in the Westray mine.

Instead, management, through its actions and attitudes, sent a different message – that Westray was to produce coal at the expense of worker safety..."

Labour says – No More Westrays. The WSIB's accreditation program must be a comprehensive audit system that looks at more than just what the employer has on paper or in the employee handbook.

## **Accreditation Requirements**

It should be mandatory that all workplaces covered under the Ontario *Occupational Health and Safety Act (OHSA)*, with six or more employees, go through the accreditation audit process. A voluntary program will only review those employers who

feel they have taken sufficient precautions to give them an opportunity to receive a rebate from the WSIB. A voluntary program will not capture those employers who have not put in place proper protective practices. These are the very workplaces which need to be sought out and corrected. These are the workplaces which, sooner or later, kill and maim workers.

Due to the large number of workplaces involved, it may be necessary to stagger the completion dates for the accreditation process, similar to what was done years ago with the certification training. Large employers tend to have more internal resources available to them and should be required to begin the accreditation audit process sooner than smaller employers. This extra time for smaller employers would allow them to utilize the advice and resources of Ontario's Workers Health and Safety Centre, Occupational Health Clinics for Ontario Workers and other health and safety associations as designated by the WSIB to ensure that they have established good health and safety practices.

Accreditation should be a comprehensive health and safety audit that is in keeping with the WSIB's current vision to eliminate workplace injuries and illnesses. In addition, the recently released final report of the SARS Commission lead by Justice Archie Campbell, recommended the use of the precautionary principle.

"The Commission therefore recommends:

That the precautionary principle, which states that action to reduce risk need not await scientific certainty, be expressly adopted as a guiding principle throughout Ontario's health, public health and worker safety systems by way of policy statement, by explicit reference in all relevant operational standards and directions, and by way of inclusion, through preamble, statement of principle, or otherwise, in the *Occupational Health and Safety Act*, the *Health Protection and Promotion Act*, and all relevant health statutes and regulations."

Throughout the report the Commissioner was unequivocal about the importance of this principle. Here are the key examples:

"If the Commission has one single take-home message it is the precautionary principle that safety comes first, that reasonable efforts to reduce risk need not await scientific proof."

"Perhaps the most important lesson of SARS is the importance of the precautionary principle. SARS demonstrated over and over the importance of the principle that we cannot wait for scientific certainty before we take reasonable steps to reduce risk. This principle should be adopted as a guiding principle throughout Ontario's health, public health and worker safety systems."

“... we should not be driven by the scientific dogma of yesterday or even the scientific dogma of today. We should be driven by the precautionary principle that reasonable steps to reduce risk should not await scientific certainty.”

The WSIB is an important part of the “worker safety system” referred to by Justice Campbell. The Board should demonstrate a leadership role by including this principle as the guiding principle in the accreditation program and in all prevention initiatives of the WSIB.

It cannot be over emphasised that for the accreditation audit to be meaningful it will need to verify that the health and safety policies, programs and procedures established by the employer are in fact practised by the employer in the workplace. For instance, a lock-out procedure written and put on a shelf is of value only if the workers affected have been trained, the necessary equipment is provided, the employer ensures that the procedure and equipment are maintained and that all of this is regularly reviewed with meaningful input from the Joint Health and Safety Committee (JH&SC) and updated as is necessary.

The accreditation audit has the potential to play an important role in the prevention of future occupational diseases. The importance of the "health" aspect of the health and safety audit cannot be over emphasized. A superior health and safety program would not simply have policies, equipment and procedures for controlling exposures. This is the minimum under the legislation. Even where exposures are maintained at a fraction of the legal limit, if the ability to do so is technically and economically feasible, then this is also arguably required under the general duty clause of the *Occupational Health and Safety Act*. This duty requires employers to do everything reasonable in the circumstances for the protection of a worker. A superior program would actively look for safer substitutes for toxic substances and processes. Encouraging the substitution of hazardous substances is Ministry of Labour policy. According to the Ministry of Labour (MOL) Statement of Environmental Values (SEV), the MOL is “encouraging the substitution of hazardous substances with those that are less hazardous”.

It will be important for the WSIB to check the use of temporary workers in the workplace. Increasingly employers in Ontario are using staff from employment agencies or simply hiring workers on temporary contract as a means to avoid their duties to provide health and safety training for workers and eliminate the need to consult with workers on matters that impact their health and safety. If these workers dare to raise a health and safety concern the employer need only contact the agency and tell them to send someone else tomorrow, or in the case of contract workers they simply do not get the contract renewed. This is distinct from the use of construction or repair contractors which should also be considered in the audit.

## **Measuring Health and Safety Practice Effectiveness**

Having measures and procedures in place is something that the Accreditation will audit. But whether those measures and procedures are effective will in most cases be measured by Experience Rating status, frequency and accident costs. Labour is not supportive of these types of measurements because they have proven to be a great encouragement to employers to hide or challenge claims. Lost-time Injury Statistics are a measure of the reduction in the number of claims not the number of accidents. The other serious concern is that these forms of measurement do not take into consideration occupational disease. The WSIB has not significantly changed how injury data is collected and reported in decades. The WSIB has not adjusted its injury classification report requirements nor its data collection to reflect the addition of experience rating programs or the early and safe return to work programs. Missing from the Board data is information on the number of injuries requiring modified duties or involving restricted work activity. The Board needs to start collecting this information and reporting it alongside the lost-time and no lost-time injury data. Only then will we be on the road to establishing a meaningful performance measurement for Ontario workplaces.

We will need to work with what we have and therefore a marked decline in the accident/injury level below the average for the rate group should be considered only as a possible indicator of positive performance of the health and safety practices. The same can be said for the maintaining of a low accident/injury level for those with well established programs. Checks and balances will need to be in place to ensure that employers are not simply hiding claims. The audit will also need to look at first aid and medical aid accidents as well as the cases where the employer's accommodation of injured workers may have resulted in fewer lost-time injuries.

Employers should only be accredited where their documented measures and procedures that are in place have demonstrated positive results over the previous 12 months.

The exception should be with small employers (less than 50 employees) where one accident which injured several people or permanently injured one or two and can severely affect the statistics. In these cases, small employers should not be prevented from being accredited solely on the basis of the experience rating or costs from a single accident. More consideration should be given to whether the employer has put in place appropriate practices and procedures for the protection of workers.

## **Reporting Injuries**

Accreditation requirements should include the employer's policies and practices regarding claims management. This should include the training of workers as to the rights and duties of workers and employers to report injuries under the WSIB. In addition to any employer claims management strategies to reduce claims reporting,

there is sometimes a lack of understanding by workers about reporting injuries. This lack of reporting can also result in a false picture of the workplace's prevention performance.

As a minimum the following issues should be covered:

- The importance of reporting and filing a claim
- What injuries should be reported to the employer
- What injuries should be reported to the Board
- How should an injury be reported
- What are the worker's initial obligations
- How does the worker fulfil their statutory obligations
- The penalties a worker will face if injuries are not reported or they delay reporting
- The employer's initial obligations
- Employer reporting penalties
- Steps for the worker to take if the employer fails to report

### **Early and Safe Return To Work (ESRTW)**

The prevention of disabilities should also be incorporated into the prevention policies and practices of the employer.

Therefore accreditation should also require the employer to have in place a policy on return to work that outlines the purpose of the return to work program such as when returning injured/disabled workers back to work regardless of cause of the disability, the job will be available, have productive value and be sustainable. In addition a comprehensive return to work program that does more than meet the minimum requirements under the legislation must be in place. The program must have key fundamental principles such as a focus on disability prevention, hierarchy for accommodation and return to work, representatives responsible for return to work. For the purposes of the accreditation there needs to be emphasis on the safe aspect of the ESRTW. Workers still have rights to safe work but the employer has a duty to accommodate to the point of undue hardship. Accreditation should not only examine the steps taken to modify the work and make it safer for the injured worker, accreditation should look at how the employer determines what modifications can be incorporated into the general workforce to make the work safer for all workers. Training of the workers regarding ESRTW provisions before they are injured should also be a requirement of accreditation. As a minimum, the workers should receive training in the following:

- The employer's obligations
- The worker's obligations
- The Board's role
- The worker's right to safe work
- Non co-operation penalties for employers

- Non co-operation penalties for workers
- Obligation of employers to re-employ
- Labour market re-entry

### **Workplaces with a Joint Health and Safety Committee and Certified Members**

It is the certified members of the JH&SC who have completed all the WSIB requirements for certification and who, because they know their workplace, are in the best position to know if the employer is practising what it has put to paper. Accreditation can play an important role in enhancing the functioning of the JH&SC in the workplace. A workplace with superior health and safety practices and procedures will have a highly functional JH&SC which plays a meaningful role in all aspects of prevention initiatives in the workplace.

It will be necessary to provide education sessions to these members on accreditation requirements. This education should be developed by the Occupational Safety and Health Council of Ontario (OSHCO) in consultation with stakeholders, subject to approval by the WSIB and delivered through the Health and Safety Associations (HSA). The employer will be required to bear all costs associated with the training and the time necessary to consult on the audit. Involvement by the worker members should be conducted in a confidential manner without management present so that there is less risk of intimidation by the employer.

The WSIB should charge a registration fee for accreditation to help cover the increase in administrative costs involved in the accreditation process.

Unfortunately not all workplaces have a JH&SC and a different system is necessary to audit these workplaces.

### **Workplaces with 6 - 19 employees**

For workplaces with 6 - 19 employees which have a worker Health and Safety Representative (H&S Rep) rather than a JH&SC, the accreditation audit should be conducted in consultation with the worker H&S Rep and a management representative. These two people would then confirm that the practices and procedures are in place and that they function appropriately. Involvement by the worker representative should be conducted in a confidential manner without management present so that there is less risk of intimidation by the employer.

Both of these individuals should be required to have successfully completed an OSHCO training program on the accreditation audit process prior to involvement in the audit. Such a program will need to be more extensive than the accreditation education program developed for the certified members, as few of these representatives will have had any prior health and safety training. This education should be developed by OSHCO in consultation with stakeholders, subject to approval by the WSIB and

delivered through the HSAs. The employer will be required to bear all costs associated with the training and the time necessary to consult on the audit.

The WSIB should charge a registration fee for accreditation to help cover the increase in administrative costs involved in the accreditation process. This could also be used to help defray the costs of the accreditation process for the workplaces with less than six employees.

### **Workplaces With Less Than Six Employees**

Workplaces with less than six employees should be required to go through the accreditation audit process only if they are in the worst 20% of Experience Rating for their rate group or have had one fatality or one critical injury investigated by the MOL in the last 24 months. It should be voluntary for the rest of these smaller employers only because the number of these workplaces makes any other system of physical audit unworkable. The audit should involve interviewing workers but should be done in a confidential manner without management present so that there is less risk of intimidation by the employer.

The WSIB should charge employers required to go through the audit a registration fee. Those smaller employers who volunteer to participate in the accreditation program should not be charged a fee.

### **Targeting**

The WSIB's consultation paper asks if specific sectors or groups should be targeted. We would not be opposed to targeting specific sectors as a means of phasing in the accreditation program. We offer the following as suggestions as to the sectors and industries that the WSIB could begin with as part of a targeting strategy.

### **Health Care**

The recently released final report of the SARS Commission<sup>2</sup> determined that here in Ontario, "Hospitals are dangerous workplaces, like mines and factories, yet they lack the basic health and safety culture and workplace safety systems that have become expected and accepted for many years in Ontario mines and factories and in British Columbia's hospitals."

"The evidence reveals widespread, persistent and ingrained failures by the health care system to comply with, and by the Ministry of Labour to enforce, Ontario's safety laws, including the *Occupational Health and Safety Act* and Ontario Regulation 67/93, Regulation for Health Care and Residential Facilities."

“The problems include those in hospital administration and health bureaucracies who resist advice and enforcement on hospital turf by independent worker safety experts and the provincial Ministry of Labour.”

Justice Campbell counselled hospitals to “listen more carefully” to the health and safety concerns and advice of the unions.

Health care unions agree that hospitals are dangerous places in which to work and are frustrated by hospital administrations who even today typically dismiss concerns about worker health and safety. When it comes to worker safety, with few exceptions, the hospital administrations have heeded little of Justice Campbell’s advice. It can be debated whether this is arrogance or ignorance either way as Justice Campbell stated in his final report “the system needs a tune up” and the WSIB’s accreditation program can do much to help correct the problems uncovered by Justice Campbell’s investigation.

### **Education**

This is a sector whose administrations suffer from many of the same symptoms as were found in health care by Justice Campbell. In many cases the above quotes can easily be applied to school boards. It is labour’s opinion that this system is also in need of a “tune up.”

### **Employment Agencies**

In Ontario, employment relationships are changing. There is an increasing shift to the use of temporary workers hired through employment agencies. By some estimates less than two-thirds of Canadian workers are employed in traditional permanent full-time work.

Employment agencies are a growth industry with increasingly more employers using temporary workers on a permanent basis. Gone are the days when these agencies would simply provide a temp to fill a vacant position until the employer could hire a new employee. It is not just office workers or production workers that are being faced with this type of precarious work but middle management and professional positions. Workers faced with no other options but to accept this precarious work are vulnerable to the whims of the management of the employment agency. Abuse and exploitation is rampant. So much so that the Ontario government is considering passing Bill 161 which would require the licensing of these agencies. The Toronto Star has published an editorial supporting the Bill and calling for aggressive enforcement. According to the Star article there are 500 employment agencies operating in the Toronto area. The Ministry of Labour has identified this sector as a high risk industry for violations of the *Employment Standards Act* and has targeted this sector for increased inspections on employment standards issues.

In Toronto, the Parkdale Community Legal Clinic has provided the MOL Employment Standards Branch with a long list of employment agencies and the complaints connected with each. The complaints range from cash payments below minimum wage to non-payment of vacation and statutory holiday pay to mis-classification of workers as independent operators or franchisee owners.

Employers willing to disregard employment legislation are often just as willing to ignore other provincial statutes such as the *Occupational Health and Safety Act* and the *Workplace Safety and Insurance Act*. A recent report<sup>3</sup>, funded in part by the WSIB, found that "... most precarious workers in our study had not received health and safety training in any of their jobs and a few had been in dangerous situations where the lack of safety equipment and lack of proper supervision at work greatly increased their risk of injury." In interviewing these precarious workers the researchers found examples of workers afraid to raise health and safety issues or report injuries or illnesses they thought were a result of the work they did. They felt it would jeopardize their jobs or their chances of getting full-time work.

The Kitchener-Waterloo area has seen massive job loss with multiple factory closures resulting in thousands of manufacturing jobs leaving the area. There are now approximately 70 employment agencies operating in that area with new agencies opening weekly. According to the job centre run by former workers of BF Goodrich, workers looking to find a pay cheque through temp agencies are handed some paper with health and safety information on it and told to sign off that they have received training. Desperate for a pay cheque they sign the document.

Many of these agencies have a satisfaction guarantee for the employer. If for any reason the employer is unhappy with the temporary worker sent to the workplace, the agency will replace them at no extra charge. This means that should a worker ask questions about health and safety, object to working without the proper training, equipment or insist on reporting an injury, they can find themselves without work the following day. They won't be fired they just won't be called and assigned work by the agency.

### **Accreditation Ratings**

There should be three levels in the accreditation process. These are:

1. Failure to be accredited due to lack of proper protective measures or a revoking of accreditation status which should impact on WSIB consideration for a penalty assessment. This will provide an administrative penalty for not ensuring that proper protective measures are in place.
2. A basic level of accreditation for those workplaces where the employers exceed the minimum legal requirements. This should have a positive impact in decisions regarding penalties and rebates.

3. One additional level for those employers with multiple worksites in Ontario, all of which meet the requirements for accreditation.

Attainment of the second or third level allows an employer a means to advertise this fact for the workplace(s) involved.

The WSIB should also publish the names of employers who have been found by the Board to have failed to take sufficient precautions for the prevention of hazards to workers under the accreditation standards. The publication of the names of companies who have had their accreditation status revoked by the Board should also be made.

The WSIB should also work with the provincial government to develop a policy for the Ontario government and provincial government agencies that a positive accreditation status will be a requirement in the purchase of goods and services or awarding of contracts. The WSIB could play a leadership role and make this a requirement for doing business with the Board.

The administrative penalties and the money which had previously been provided in experience rating rebates for unsubstantiated accident performance could be used for an excellence fund. This fund could be used to provide grants/loans to employers who want to make health and safety improvements beyond their obligations under the *Occupational Health and Safety Act*. This would be a much better use of the funds than simply giving rebates based on statistics.

### **Accreditation Standards**

The actual criteria contained within the accreditation audit itself should be as standardized as possible. The application can vary according to size of workplace and provisions for sector specific regulations can be added or removed according to the sector (i.e. industrial, construction, health care, mining, etc). The audit process will also need to recognize that some provisions will not be applicable to some types or sizes of workplaces. It will also need to recognize that different types of industries have different legislative standards with regard to worker protection or exposures.

Where an employer at a particular workplace has received orders from the MOL, this should be a factor to be seriously considered in the accreditation audit. In some cases written orders may be for a technical oversight which was immediately corrected. In other cases, it may be a reflection of an employer's consistent failure to correct hazards or implement JH&SC recommendations. These are elements that should be taken into consideration in the audit process.

One technical oversight which resulted in an order being written should not preclude an employer from a successful completion of the accreditation audit. Of more importance in this situation is the employer response and the action taken to correct the problem.

An employer should not receive accreditation status if there have been orders written as a result of a critical injury, a fatality, a work refusal under section 43 of the *Act* or a work stoppage under section 45 of the *Act* within the previous 12 months.

The positive accreditation status levels should be valid for a limited period of time after which a review to maintain the status should be an automatic requirement. This should vary depending upon the size and type of workplace. For workplaces where the accreditation audit is conducted internally, the status should be good for only one year, after which an annual review should be required for those maintaining their status. In the case of workplaces with less than six employees, limited resources may dictate that an annual review is not practical and a longer period may be necessary.

An employer who does not make the "grade" may be granted a second opportunity. The time limit for this second try should be no longer than 90 days. This may encourage employers to put an effort into making positive changes sooner rather than waiting another year. If they do not make it the second time, they should be required to wait 12 months to try again. In these cases the onus should be on the employer to re-apply.

Regular reviews are important to ensure that the employer is maintaining health and safety practices. Where the review indicates that there may have been a deterioration of the health and safety practices in the workplace, a reassessment of the accreditation should be required.

A reassessment of the accreditation should be done for those re-applying to upgrade their accreditation status or where significant changes in work processes have been made. A reassessment of the accreditation should be required where any of the following has occurred in the workplace:

- a critical injury
- a traumatic occupational fatality
- an increase in the injury rates
- ticketing of a supervisor or the employer
- a finding that the employer has committed a reprisal against a worker under Section 50 of the *Occupational Health and Safety Act*
- a successful prosecution of the employer or a supervisor under the *Occupational Health and Safety Act* by the MOL

Accreditation status should be downgraded or revoked when a reassessment of the accreditation finds that an employer has failed to maintain the standards. Accreditation should be revoked if the employer is consistently failing to report accidents or is found to be encouraging workers to utilize sickness and accident benefits or is paying workers regular wages while off with an injury rather than filing a WSIB claim or go on WSIB

benefits. Accreditation should be revoked where it has been found that false information had been provided to the WSIB to obtain a positive accreditation status.

### **Accreditation Department**

The Board will need to establish an accreditation department. Staff will be needed to review the accreditation audit materials and accompanying documentation as well as respond to inquiries and questions regarding the accreditation audit. The staff can also follow up with those audit reports that have weak or incomplete information.

Additional staff will also be needed to conduct spot checks, both random and targeted checks for verification of those workplaces which submitted audits with contradictory information.

The Board should establish a 1-800 number to allow workers to report employers who have provided false information or who may have intimidated the worker certified member or representative into signing off on the accreditation audit. Workers should be assured anonymity when reporting this information to the Board.

Labour does not support the WSIB contracting out its responsibilities to a third party such as the National Quality Institute. The WSIB has public accountability, third parties do not.

### **Administration of Accreditation**

The WSIB, the MOL and the HSAs will need to work together on this initiative due to the nature of accreditation.

The role of the MOL should be as follows:

- provide information to the Board regarding orders written, prosecutions, ticketing penalties, critical injuries and fatalities at all workplaces;
- provide the Board copies of the OLRB health and safety decisions, i.e. orders, reprisals, etc.

The role of the WSIB should be as follows:

- develop the comprehensive audit materials and the process to be used for the audits, reviews and reassessments;
- administrate and review the audit materials submitted and conduct spot checks;
- develop workplace profiles based on the information obtained from the MOL and WSIB;

- provide completed profiles to the individuals conducting the audit;
- oversee the development of accreditation education programs for certified members and the worker and management representatives who will be participating in the audits.

The role of the HSAs should be as follows:

- provide training to certified committee members, health and safety representatives, employers to provide meaningful involvement in accreditation audits, reviews and reassessments;
- act as an information resource to these people, provide information and training for the development of proper health and safety practices and procedures;
- provide health and safety training to workers and supervisors to allow workplaces to meet accreditation requirements.

The WSIB has a system called "Workwell". This system will be redundant once the accreditation system is in place.

The Accreditation Paper asked whether the MOL should inspect accredited employers less frequently or differently than non-accredited employers. The labour movement does not feel that accredited employers should be given any special status or that the MOL Inspectorate should take a "hands off" approach.

## **Conclusion**

The WSIB has an opportunity to create an accreditation process that can be a positive step forward in advancing occupational health and safety; enhancing the Internal Responsibility System and supporting the proper functioning of joint health and safety committees. All of which will work to reduce the true toll of deaths, injuries and illnesses in Ontario workplaces, not just reduce the number of claims.

Respectfully submitted,

**ONTARIO FEDERATION OF LABOUR**

## ENDNOTES

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1. Justice K. Peter Richard, Commissioner, *The Westray Story: A Predictable Path to Disaster*, November 1997.
  2. Justice Archie Campbell, Commissioner, *Spring of Fear*, January 2007.
  3. Marlea Clarke et. al. "This just isn't sustainable," *Precarious Employment, Stress and Workers' Health*, April 2007.