

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.

As a province-wide central labour body, the OFL works to develop and coordinate policy as passed at our conventions and by our executive bodies.

We welcome the opportunity to comment on the proposed Integrated Occupational Health and Safety Strategy for Ontario.

The World Health Organization (WHO) has defined occupational health as follows:

Occupational health should aim at: the promotion and maintenance of the highest degree of physical, mental and social well-being of workers in all occupations; the prevention amongst workers of departures from health caused by their working conditions; the protection of workers in their employment from risks resulting from factors adverse to health; the placing and maintenance of the worker in an occupational environment adapted to his physiological and psychological capabilities; and, to summarize, the adaptation of work to man and of each man to his job.

This is a definition labour has long supported. The Prevention Office should keep this definition in mind during their development of the strategy.

Precautionary Principle

The precautionary principle is an approach to eliminating hazards before they cause harm. Simply put, the philosophy behind precautionary principle reads, “*when an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically.*”

The precautionary principle has been used internationally, primarily around issues of environmental concern. One of the most important times the principle was used was at the 1992 United Nations Conference on Environment and Development.

The precautionary principle was incorporated into a declaration passed at the conference which stated:

In order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation.

The principle of precautionary action has four parts:

- People have a duty to take action to prevent harm before it happens. If there is a reasonable suspicion that something bad may happen, then there is an obligation to try to prevent it.
- The burden of proof of harmlessness of a new technology, process, activity, or chemical lies with those who wish to use or introduce it, not with the general public.
- Before using a new technology, process, or chemical, or starting a new activity, people have an obligation to examine a full range of alternatives including the alternative of doing nothing.
- Decisions applying the precautionary principle must be opened, informed, and democratic and must also include affected parties.

The precautionary principle is not really new. The essence of the principle is captured in common sense aphorisms such as *“an ounce of prevention is worth a pound of cure”*, *“better safe than sorry”*, and *“look before you leap”*. These were the thoughts of public health officials in the 1920s when the petrochemical and automobile corporations announced they were going to start putting lead into gasoline. Public health officials argued that this should be delayed and possible repercussions studied. The corporations argued that, in the absence of convincing evidence of widespread harm, they had the right to proceed. In the end, the corporations won out and this set the standard for corporate behaviour for the next 50 plus years. Industrial chemicals were given the equivalent of civil rights where they were treated as innocent until proven guilty. In the face of scientific uncertainty, corporations have been allowed to proceed with dangerous activities until sufficient evidence has been gathered requiring those corporations to implement control measures. Millions of people and our environment have suffered as a result.

In conducting general research, scientists have defined scientific certainty as being 95% sure that cause and effect have been correctly identified. Corporations have taken this research principle and demanded scientific certainty before controls should be implemented. Even when the evidence has become clear, they try to roadblock implementation of controls by arguing economic or technical feasibility. The corporations have even committed job blackmail

by threatening job loss if protective requirements are made mandatory. They have twisted a research principle and use it as a weapon when health and safety or community activists are arguing that a chemical or process being used may be dangerous and are demanding that precautions be taken.

Parents do not need to know with 95% certainty that their child is going to be hit by a car when they tell the child not to play in the street. They just need to know there is a reasonable danger to that child. We, as a society, need to take precautionary action for prevention to keep people out of harm's way.

While this principle has primarily been used internationally around environmental health issues, other groups are adopting this philosophy to protect the health of workers. In 1996, the American Public Health Association passed a resolution entitled, "*The Precautionary Principle and Chemical Exposure Standards for the Workplace.*" This resolution recognized the need for implementing the precautionary approach, including the shifting of burdens of proof of every chemical considered potentially dangerous until the extent of its toxicity is sufficiently known, and the establishment of strict, preventive chemical exposure limits.

The Precautionary Principle shifts the burden so that emerging hazards would have to be addressed before they are introduced into the workplace, workers' bodies, the air we breathe, water we drink and food we eat. It would require a greater respect for workers' health and their role in the workplace and community.

This government has an opportunity to become proactive in the approach to protecting the health and safety of working people and their families. This can be done by adopting the precautionary principle approach to the introduction of new substances, processes or job designs into a workplace.

Enforcement, Enforcement, Enforcement

Missing from the discussion paper is the issue of enforcement of the *Occupational Health and Safety Act (OHSA)*. According to information posted on the MOL website, "the ministry's mandate is to set, communicate and enforce workplace standards while encouraging greater workplace self-reliance."

Much more could be done through enforcement to drive prevention, training and protecting vulnerable workers.

Enforcement of the *Occupational Health and Safety Act* is a vital element of a comprehensive approach to occupational health and safety. An approach that includes:

- the development of up-to-date health and safety legislation;

- strong enforcement of the legislation by the ministry; and
- proper training for all joint health and safety committee members and health and safety representatives.

Progressive and up-to-date occupational health and safety legislation would include:

- regulations for the control of occupational exposure to toxic substances;
- regulations which address the hazards which lead to repetitive strain injuries and other musculoskeletal injuries;
- regulations for stronger protection from violence and harassment in the workplace;
- requirements for training all members of the joint health and safety committees and health and safety representatives;
- unilateral right of certified committee members to shut down unsafe work without loss of pay and/or other reprisals to affected workers; and
- providing the joint health and safety committee with decision making powers.

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 committee members and representatives in good faith.

BASIC PRINCIPLES OF AN EFFECTIVE ENFORCEMENT SYSTEM

1. 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; and
 - b. Potential violators must expect that there is a high probability of being caught and penalized when they violate.
2. The enforcement system must drive the legal framework of the Internal Responsibility System (IRS). The IRS must be **enforced** on the basis of the following operational elements:

- a. Zero tolerance for violations of the IRS;
- b. Orders must be written when the IRS is violated;
- c. Employers must be penalized when they deliberately violate the provisions of the IRS;
- d. Orders and penalties must be issued when employers fail to implement their own internal policies, programs and standards;
- e. Employers must be penalized for reprisals against workers for using their rights under *OHSA*.

ELEMENTS OF AN EFFECTIVE ENFORCEMENT SYSTEM

- 1. The inspectorate must be highly visible. To this end the Ministry must re-institute the system of cyclical inspections. This will require that the inspectorate be staffed to full complement and more.
- 2. Inspectors must be clear about their role and given a clear mandate to enforce:
 - a. The policy must apply consistently across the province;
 - b. Area directors must be held accountable and responsible for the consistent administration of Ministry enforcement policies;
 - c. The policy must be monitored frequently to ensure consistency overall and individual application of such; and
 - d. The Minister must direct that no exceptions to the policy will be tolerated.
- 3. Inspectors must be mandated and supported to issue orders and penalties for all violations.
 - a. All violations must be recorded when orders are written so that the employer's compliance record is known;
 - b. Certain violations must result in mandatory penalties. A schedule of violations that will automatically result in specific action must be developed and followed consistently;
 - c. Repeat violations must result in higher penalties and mandatory sanctions. Penalties and sanctions must increase as violations increase; and

- d. Penalties must reflect the seriousness of the violation, how long the violation has been occurring, the number of workers affected and whether an injury has occurred.
4. Enforcement tools must provide inspectors with the means to have an immediate impact. The Ministry must institute a speedy approach to bring violators to court. This can be achieved readily by mandating and preparing inspectors in the routine use of Part III Form 104 Summons and Part I Offence Notices and Summons. The Ministry can institute this now without resorting to legislative amendment.
5. Employer gross negligence that leads to injury or death must be dealt with under criminal law. To deliberately endanger is violence against a person and must be treated as an act of violence. In cases where the MOL has evidence of criminal wrongdoing the MOL should be encouraging a criminal negligence investigation.
6. A penalty system that is speedy and not easily circumvented must be developed and instituted. This system would be driven by an administrative monetary penalty system that has no appeal to the courts. This approach was supported in the Expert Panel report from December 2010. This system is an effective deterrent as well as a mechanism to drive prevention programs. The system would have the following advantages:
 - a. It is immediate and avoids expensive and time consuming prosecutions;
 - b. It allows for penalty accumulation depending on the seriousness of the violation, length of time violations have occurred and the past compliance record of the employer;
 - c. It provides penalty flexibility that is in the hands of those directly involved in health and safety enforcement;
 - d. Its flexibility allows it to drive prevention programs, since it can be devised to enforce deadlines and scheduled so that the cost of violation is greater than the cost of compliance; and
 - e. It has the additional advantage of keeping the monetary fines within the Ministry's coffers to promote better programs, hire additional staff and fund further regulatory development.

Prosecutions

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 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.¹

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

The Expert Panel had recommended that:

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.²

1. 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. <http://www.hks.harvard.edu/news-events/news/testimonies/sparrow-senate-testimony>

2. Page 44 Expert Panel on Occupational and Safety, Dec. 2010.

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 \$50,000 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.

Reprisals

Section 50 of the *Occupational Health and Safety Act* prohibits reprisals against workers for exercising their rights under the *Act* or for complying with the *Act*. For years the Ontario Federation of Labour has been raising concerns with the Ontario Ministry of Labour that workers are not properly protected from reprisals in the workplace. These concerns had largely fallen on deaf ears.

In the summer of 2009, we were fortunate to have a law student conduct research on this issue and prepare a report of the findings. The report was finalized in December of 2009.

Culture of Fear: A Report on the Status of Reprisal Protection for Workers under the Ontario Occupational Health and Safety Act has been presented previously to the Expert Panel as evidence for the need to provide better protections to workers from employer reprisals.

The Culture of Fear correctly characterizes occupational health and safety-based reprisals as an attack on the validity of the Internal Responsibility System (IRS) itself and not just to the individual worker. This report validates what worker health and safety advocates have known for years, Ontario workers are afraid to complain about health and safety, and too many are not aware of Section 50 of the *Act*. Strong deterrent action, expressed through prosecutions, is consequently required in order to protect the system. It is the responsibility of the Ministry of Labour to ensure that such fear and ignorance are vastly reduced, and that its chosen method of occupational health and safety regulation flourishes in Ontario's workplaces.

The Expert Panel had recommended:

The Ministry of Labour should review its prosecution policy and develop guidance for inspectors on when to lay charges for a contravention of Section 50 of the Occupational Health and Safety Act.

The MOL needs to move on this recommendation.

Vulnerable Workers

There are many ways that a worker could be considered a “vulnerable worker”. Some workers who are members of a union could be vulnerable due to working in an industry with low wages and low rates of unionization. Some workplaces may be staffed with large numbers of immigrants who do not understand their rights or who have a fear of authority figures due to the culture of their country of origin.

“Vulnerable Worker” was defined by the Law Commission of Ontario as follows:

It has been said that “the sector in which workers are employed, the size of the enterprise in which they work, the non-standard nature of their employment contract and their demographic circumstances are markers that help to identify them as ‘vulnerable’”. In this paper, vulnerable workers are those whose work can be described as “precarious” and whose vulnerability is underlined by their “social location” (that is, by their ethnicity, sex, ability and immigration status).³

Many workers will be vulnerable because their work has been structured as precarious. “Precarious work” was defined by the Law Commission of Ontario as follows:

Precarious work is characterized by lack of continuity, low wages, lack of benefits and possibly greater risk of injury and ill health...Measures of precariousness are level of earnings, level of employer-provided benefits, degree of regulatory protection and degree of control or influence within the labour process...The major types of precarious work are self-employment, part-time (steady and intermittent) and temporary.⁴

Any worker can be vulnerable if they are working for an employer who does not respect them or their rights and they feel powerless to make change.

The Ontario Common Front is a coalition of labour and community groups that have come together to challenge cuts to jobs and services in every community in Ontario. There are 90 community groups that represent a broad range of vulnerable worker populations. The MOL should continue to work with the OFL to reach out to these organizations to continue the dialog between the MOL and these organizations which began on April 17, 2013. <https://www.facebook.com/OntarioCommonFront>.

CUPE represents the teaching assistants at a number of Ontario universities. These are students who also are workers for the university. They have some unique vulnerabilities as workers. For instance their professor can also be their supervisor and if they raise health and safety concerns they may face a risk of a reprisal in the form of lower grades as a student rather than a reprisal as a worker.

3. Law Commission of Ontario, Vulnerable Workers and Precarious Work (December 2010), vi-vii (Law Commission of Ontario, Vulnerable Workers and Precarious Work Background Paper).

4. Ibid.

The Canadian Federation of Students also advocates on behalf of students at universities. Not all of these will currently be workers but they would certainly be future workers.

Reaching out to the unions and the associations that represent students is one avenue of raising the awareness of occupational health and safety in universities as a workplace. It will also help to raise the occupational health and safety consciousness of students as they move forward into their chosen professions.

Small Business

Very little research has been done looking directly at managers' behaviours and what is effective to motivate them to make sure work is designed, planned, and supervised to be safe and healthy, complying with the law. Australian researcher Andrew Hopkins is quoted by Harry Shannon.⁵

The only systematic and detailed attempt to investigate this issue that I am aware of is a book by Hopkins, based in his experience and research in Australia, entitled Making Safety Work. He first examines the "safety pays" argument, that it is in the company's economic interest to improve safety. Hopkins points out that this does not always work, and indeed that if it really did, there would be little or no need for regulation since it would be in management's interest to deal with safety. (Stewart argues that safety may well pay in very poor climates, but beyond a certain point the cost of the injuries will not drive safety.) Hopkins describes his qualitative research as showing that experience rating may lead to claims management rather than safety or disability management. The latter effect, he points out, calls into question the validity of time loss claims.

Hopkins states that managers can be motivated by a belief in their obligation to obey the law – a wish to be seen to do the proper thing – and real concern for the welfare of (or at least lack of harm to workers). He believes that government intervention is the best way to focus management attention on safety. From his interviews, he points out that small businesses are typically unaware of experience rating, but they do remember a visit from health and safety inspectors. Indeed, he goes further and states that such visits are the only thing that draws the attention of small employers to health and safety matters.

Economic theory tries to predict that organizations will spend on health and safety up to the point where marginal benefits equal marginal costs. However, because organizations do not bear the full cost of injury or illness and their reward structures emphasize production and output, such corporate behaviour has competing interests. Hopkins argues that prosecutions are the most effective vehicle to secure management commitment. When they occur, prosecutions are

5. Harry Shannon, "Firm- Level Organizational Practices and Work Injury," Chapter 7 in *Injury and the New World of Work*, edited by Terrence Sullivan, UBC Press 2000 at p. 157.

most effective if they get senior managers (or company directors) onto the witness stand in court to explain company policy. He [Hopkins] reports that many managers told him that the fear of personal liability was by far the most important motivating factor to attend to”⁶

The MOL should also remember that there are many small organizations in the non-profit and public sector that will be facing the same challenges as the profit sector when it comes to addressing health and safety for the workers.

Smaller employers whether they are in the public, private or non-profit sectors will all require more direction and assistance. Ellen MacEachern’s recent systematic review of health and safety in small workplaces suggests an important innovation to address this significant area:

If SBs [small businesses] occupy such a substantial part of economies, is it sensible for them to be considered in policy and rules as ‘the exception’ when in fact they are mainstream? Also, how effective are exemptions as a way of managing OHS risk in SBs? While exemptions might have been put in place to spare SBs from regulatory burden and paperwork, they also have the effect of reducing pressure on SBs to engage in safe work practices. Additionally, they can set up SBs as sites to which dirty work can be outsourced from large firms.⁷

The innovation would be to pay more attention to the life cycle of small businesses and “practical solutions to improve work and health in small firms might lie in interventions such as third-party support and improved worker representation.”

Enforcement is a key part of driving health and safety in small workplaces. The Expert Panel had also recognized that smaller organizations will also need some compliance assistance. The MOL inspectors will need to be provided with the resources to provide this assistance.

High Hazard Activities

High hazard activities could be considered those that can kill or maim workers when things go wrong or the proper precautions have not been taken. This term should include traumatic injuries and deaths as well as those caused by occupational disease. Another high hazard activity is any event or events that can result in Post Traumatic Stress Disorder(PTSD).

In addition to working at heights and entry level construction, the following are examples of high hazard activities that should require standards for mandatory training:

- Entry level agriculture
- Confined space entry

6. Andrew Hopkins. Making Safety Work: Getting Management Commitment to Occupational Health and Safety, 1996 Allen and Unwin, Australia.

7. E. MacEachern, et al *Workplace Health Understandings and Processes in Small Businesses: a Systematic Review of the Qualitative Literature*, (February 2010) J Occup Rehabil at 16.

- Diving Operations
- Trenching and shoring
- Temp agencies
- Taxi drivers
- Nail salons
- Plastics manufacturing
- Working in traffic\road repair
- Manual material handling

Any work to which the Designated Substance Regulation (DSR) applies:

- Lead
- Mercury
- Silica
- Coke oven emissions
- Asbestos
- Acrylonitrile
- Arsenic
- Benzene
- Ethylene Oxide
- Isocyanates
- Vinyl Chloride

- Any workers who may be exposed as bystanders to asbestos when work is carried out under the Asbestos in Buildings Regulation.
- Workplace Hazardous Materials Information System (WHMIS) Parts 1 and 2.

Some of the more dangerous substances that would be covered include:

- Flammable and combustible
- Immediate and serious toxic effects
- Dangerously Reactive
- Other toxic effects
- Corrosive
- Bio-hazardous infectious

Joint Health and Safety Committees/Internal Responsibility System

Why would any legal system allow the people in charge to put off doing what the law requires, by saying “it is under consideration?” This is what is happening to internal responsibility system in Ontario.

The current attitude towards internal responsibility has created a “merry-go-round” effect where worker complaints go into the system and go around and around without effective resolution as long as they are considered “in the Internal Responsibility System”, whether at the Joint Committee or being considered by management or government. It has become virtually impossible for a worker representative to reach an inspector directly and get action to address their concern.

Inspectors provide little support if they determine that the complaint should be addressed internally first. This approach leaves employers with the belief that they can take as much time as they want to address a problem that is a violation of the *Act* and that they do not have to pay much attention to worker representatives.

One of Ontario’s breakthrough contributions to occupational health and safety was the adoption of a framework referred to as “internal responsibility.” It arose out of the Ham Commission in the 1970’s as the framework of responsibility made up of the key factors that determine the “acceptable level of occupational risk.”

- quality and kind of industrial management and supervision;
- degree of participation and commitment from employees, individually and collectively through unions or otherwise;
- state of social expectation and concern in communities and in the public at large;
- measure of political attention, in legislation, related government administrative practices for monitoring compliance and provision of compensation; and
- combined effectiveness of parties as a system.⁸

The Ham Commission identified the absence of worker participation and representation as a critical deficiency in the then-existing system. The legislation that followed recognized the role and rights of workers and their unions for the first time.

There is good evidence that increased worker participation since then has been effective in improving safety and health in workplaces. Numerous studies have shown how committees can be effective. Worker health and safety representatives, when supported and empowered, can bring about improvements.⁹ Unions are key organizations providing health and safety training, education, support, and information for worker representatives.

8. Ham Commission, Page 5.

9. Alan Hall, et al, *Making a Difference: Knowledge Activism and Worker Representation in Joint OHS Committees RI/IR*, 2006, vol. 61, no 3 pp 408-434.

Unfortunately, these successes have been used by successive governments to shift their responsibility to protect workers onto the workplace. This was most graphically demonstrated in Nova Scotia by the Westray mine explosion in 1992. Mr. Justice Richard, in the report of the public inquiry, highlighted the problems created by government which emphasized the responsibility of the workplace parties to the exclusion of government's responsibility to enforce the law. The focus of Justice Richard's critique was a government attitude in which *"internal responsibility means that everyone takes responsibility for themselves and their fellow workers...it's a co-operative venture primarily between management and labour."*¹⁰ This approach ignores the hierarchy of the workplace.

IRS has moved away from the recognition of the importance of interaction of the key components. More recent reformulations emphasize that health and safety is everyone's responsibility. While nice-sounding rhetoric, this approach weakens the system by:

- Minimizing the control which management has over work;
- Undermining the right of workers to independent representation; and
- Marginalizes the importance of enforcement.

Inspectors should be directed to address the health and safety problems that are brought to their attention, and not defer to internal processes that delay action and resolution. We know a penalty assessment plays a significant role in improving conditions. Deferring to an ideal of internal responsibility does not.

The merry-go-round effect has made it easier for employers to impose "behaviour based safety programs" and discipline, shifting responsibility onto workers and creating other problems as described elsewhere in this Submission. The Ministry does not protect workers from these programs, accepting them without evaluation or consideration of their impact.

The effect is worsened by the failure of the inspectorate to provide effective enforcement of workers' rights to representation. Elsewhere in this Submission we discuss the policy of the Ministry of Labour not to enforce a worker's right to protection against reprisals from the employer when they raise a health and safety concern. None of the worker's rights to participate or know the hazards they face are enforced by inspectors.

Declining worker representation and smaller workplaces make it more difficult for workers to participate effectively in their health and safety. Access to independent information and support is limited. Workers in small workplaces must have the right to representation and to seek outside advice and support on health and safety issues.

The labour movement has played a key role in establishing training and other resources for workers. Workers should be able to seek support and assistance from union health and safety representatives outside their workplace. Other system players such as safe work associations must recognize worker's rights to participate and be represented and support their independent representation.

10. *The Westray Story: A Predictable Path to Disaster*, Volume 2, Chapter 12 at page 470.

The government can best improve the Internal Responsibility System by recognizing the inequality in power that exists between employers and employees, by strengthening the responsibility of management to provide a safe and healthy work environment, encouraging stronger worker representation, and requiring effective enforcement by government inspectors.

It is also important to recognize that where a union exists, it is a workplace party with an important role to play in the IRS. For more information see the OFL document, “*Union as a Workplace Party under the Occupational Health and Safety Act*” in the Appendix.

Behaviour Based Safety

Behaviour based safety (BBS) programs, as most worker incentive programs are called, do not reduce injury or illness. A recent study published by the American Society of Safety Engineers demonstrates that there is no correlation between observations of behaviour and improvement in safety.¹¹ Behaviour incentives have even less ability to reduce health risks. Declining job security, well documented and discussed elsewhere in this paper, exacerbates the worst features of BBS. Psychosocial hazards, which are growing in numbers and significance, are not considered at all.

Most worker incentive programs 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, and exacerbation of chronic conditions.

Programs which focus on behaviour seek to change the culture of the workplace. The culture of a workplace has to support health and safety. The mistake is to confuse the development of a collective culture with changing individual behaviours. In Dr. Hopkins words:

To focus solely on changing individual behaviour without considering necessary changes to how people are organised, managed, motivated, rewarded and their physical work environment, tools and equipment can result in treating the symptoms only, without addressing the root causes of unsafe behaviour.¹²

Those who support incentives for workers proceed from the statement, originating in the 1930s research by Herbert William Heinrich, that 80-96% of all accidents are the result of worker carelessness. Professor Andrew Hopkins at the Australian National Research Centre for OHS Regulation who has researched and written extensively on this issue summarizes his conclusions this way:

11. R. Agraz-Boeneker, W. A. Groves 1, and J. M. Haight, *An Examination of Observations and Incidence Rates for a Behavior Based Safety Program* Journal of SH&E Research Vol. 4, No. 3.

12. Andrew Hopkins, *Safety Culture, Mindfulness and Safe Behaviour: Converging ideas?* National Research Centre for Occupational Health and Safety (Australia) Working Paper 7.

There is a basic fallacy in concluding that because the great majority of accidents are the result of human factors, in particular unsafe behaviour, the solution is to try to modify this behaviour. The fallacy is the presumption that accidents have a single or a primary cause. Modern accident analysis proceeds on the opposite assumption, that there is a potentially infinite network of causes which contribute to an accident, all of them causes in the sense that had they been different, the accident would probably not have occurred.¹³

Labour opposes behaviour based safety programs because they do not reduce injuries and illness, they encourage employees to not report, and they distract from the need to identify and remove hazards. The root causes of injuries and illness are attributable to the failure of management to address a potential hazard.

The MOL should make a clear and unambiguous statement rejecting behaviour based safety as a legitimate program and take steps to encourage employers to develop hazard based safety programs and proactive *organizational* cultures.

Any standards developed for health and safety programs or mandatory training under the *OHS*A must avoid these bogus and harmful BBS type programs.

Protecting Workers from Occupational Disease

In Ontario, there is limited protection for workers from exposures to toxic substances. A limited number of substances are covered under the Designated Substances Regulation. There is an Asbestos in Buildings and Repair Operations regulation. Workers are entitled to receive training and information about hazardous substances through the Workplace Hazardous Materials Information System regulation (WHMIS). There are some additional protections in the sector regulations.

The main focus for controlling exposures for the MOL has been the Control of Exposure to Biological or Chemical Agents regulation. This regulation provides a list of Occupational Exposure Limits which are updated annually based on the American Conference of Governmental Industrial Hygienists (ACGIH) revisions to their Threshold Limit Values (TLV). Labour has repeatedly raised concerns over the use of the TLVs as regulated exposure limits.

In addition to the training listed above, Ontario workers need and deserve a strategy to protect them from toxic exposures and the occupational diseases that result from those exposures.

Labour's Concern Over the Use of TLVs

The overwhelming majority of occupational exposure limits which were set here in Ontario in 1986 were actually established 25 to 50 years ago, as recommended TLVs by the ACGIH. These limits were set based on what the average healthy white male worker could acutely tolerate.

13. Andrew Hopkins, *What Are We To Make Of Safe Behaviour Programs?* Paper to ACTU OHS

Little or no regard was made for the risks of long-term damage to worker's health or reproductive health effects.

For years, labour had been suspicious of the exposure guidelines called TLVs developed by the ACGIH and adopted as legal limits by Ontario in 1986. This was done without consultation and over the objections of labour.

We watched with frustration as hygienists working for our employers and enforcement agencies compared our workplace exposures to the limits which the ACGIH claimed "workers may be repeatedly exposed day after day without adverse effect." We had seen our headaches, dizziness, nausea and shortness of breath dismissed when air samples have shown that our exposures were below the TLVs.

Numerous scientific reports published in the late 1980s and early 1990s documented what labour had long suspected – that the American Conference of Governmental Industrial Hygienists (ACGIH) TLVs have been set at levels that protect the interests of employers, not the health of workers. The first report, prepared by renowned scientists, Dr. Barry Castleman and Dr. Grace Ziem, and published by the American Journal of Industrial Medicine in 1988, documented in incredible detail the sloppy science and corporate bias involved in the development of the ACGIH TLVs.

Dr. Castleman and Dr. Ziem found that many of the TLVs were based on confidential information of questionable scientific value. The TLVs for at least 89 substances were based on unpublished corporate "communications" while those for 15 other substances were based on unpublished corporate studies or reports.

In most cases, Dr. Castleman and Dr. Ziem were unable to obtain copies of these unpublished materials from either the ACGIH or the original corporations. Members of the TLV Committee admitted that some of the information was never conveyed in writing; it was simply given over the telephone. They also learned that the TLV Committee considered information as published when it merely appeared in a manufacturer's Materials Safety Data Sheet.

Furthermore, Dr. Castleman and Dr. Ziem found that corporate representatives would be given the responsibility of reviewing the TLVs for major products of their own companies. For example, an industrial hygienist from DuPont and a toxicologist from Dow Chemical were two of four representatives to sit on the ACGIH subcommittee for cancer-causing agents in the 1970s, when a number of chemicals produced by Dow and DuPont were being considered.

In his 1975 letter of resignation from the ACGIH TLV Committee, Hervey Elkins, an occupational health official, expressed his outrage at the duplicity of corporate representatives on the Committee:

In spite of his knowledge he seems to come up with some recommendations for TLVs that are way too high, in my judgement. The same can be said for most of the other industry representatives we have had. In many cases they recommend a TLV much above the action levels used in their own plants.

This long standing member of the TLV Committee had raised concerns as far back as 1966 when he wrote: *"It annoys me to no end, that any action that could possibly adversely affect a certain chemical company is immediately objected to by a consultant to said company, and the objection is always accepted by the chairman."*

In 1980, Dr. Hector Blejer, a member of the TLV Committee for 10 years, resigned protesting the "increasingly stronger pro-industry bias...particularly among all the Committee consultants and among the members who consult privately for private industry." Dr. Castleman and Dr. Ziem completed their report with an historical account of the actual TLVs for particular substances. For example, when drafting its TLVs for 1986, the ACGIH TLV Committee relied upon a 1975 study of benzene workers which demonstrated "no excess mortality among benzene-exposed workers" while totally ignoring the 1977 follow-up study which indicated "a significant excess of leukemia" among the same workers.

Dr. Castleman and Dr. Ziem followed up their original report with additional research and published additional results in the American Journal of Occupational Medicine in 1989. They questioned the scientific quality of the TLVs and found more evidence of the corporate influence in establishing the TLVs.

They stated: "Industrial experience reflect a pattern of uncritical acceptance of assertions from financially interested parties, based on scant data of poor quality. These assertions, absent explanations of materials and methods used, would never be accepted for publication in medical or other scientific literature." They went on to state, "There is no question of the economic impact of the TLVs on the chemical industry generally and on Dow, DuPont, and Bayer in particular, has been enormous. There seems no reason to doubt that chemical industry employees working on the TLV Committee were implementing corporate policies of their firms."

They found that as early as 1970, industry representatives working as "consultants" to the TLV Committee had prepared "documentations" for more than 100 substances. Of these, at least 36 substances were considered carcinogens by official bodies, but not by the TLV Committee. The Dow representatives was assigned at least 30 Dow products. The DuPont representatives made recommendations for many of the company's pesticides. The individual listed as representing the German MAK Commission actually worked for Bayer which owned Mobay in

the USA. He prepared documentation for eight Bayer or Mobay products and was responsible for the decision to double the TLV for one Mobay product.

Dr. Castleman and Dr. Ziem also discussed the issue of “Toxic Torts” and the “TLV defence.” They wrote:

An increasing number of persons are appearing before the courts with conditions medically attributed to chemical exposures. The courts are interested in knowing the state of medical knowledge when these people’s exposures to chemical products and wastes occurred. A rationale often used to parry charges of negligence and assessment of liability is known as the TLV ‘defence’. This amounts to: We thought that the exposures here would be below the TLVs, and we also thought the TLVs were safe, so what happened is not our fault.

Then in 1990 the American Journal of Industrial Medicine published an article by Roach and Rappaport. They had written a critical analysis of the documentation cited by the ACGIH for the Threshold Limit Values. When these researchers analysed the reports on which the TLVs were based, they found little relationship between health effects and the TLVs were supported. In fact, they found that one out of every six or seven workers exposed to levels below the TLV were actually suffering from health effects, and this was according to the reports used by the ACGIH committee itself.

Roach and Rappaport found a very clear relationship between the TLVs set and the levels of exposure found in the workplaces studied. They concluded that the ACGIH TLVs are not based on health effects as the ACGIH claims, but on practical levels with which industry can readily comply. The summary of their article is as follows:

Threshold Limit Values (TLVs) represent conditions under which the TLV Committee of the American Conference of Governmental Industrial Hygienists (ACGIH) believes that nearly all workers may be repeatedly exposed without adverse effect. A detailed research was made of the references in the 1976 Documentation to data on ‘industrial experience’ and ‘experimental human studies.’ The references, sorted for those including both the incidence of adverse effects and the corresponding exposure, yielded 158 paired sets of data. Upon analysis it was found that, where the exposure was at or below the TLV, only a minority of studies showed no adverse effects (11 instances) and the remainder indicated that up to 100% of those exposed had been affected (8 instances of 100%). Although, the TLVs were poorly correlated with the incidence of adverse effects, a surprisingly strong correlation was found between the TLVs and the exposures reported in the corresponding studies cited in the Documentation. Upon repeating the search of references to human experience, at or below the TLVs, listed in the more recent, 1986 edition of the Documentation, a very similar picture

has emerged from the 72 sets of clear data which were found. Again, only a minority of studies showed no adverse effects and TLVs were poorly correlated with the incidence of adverse effect and well correlated with the measured exposure. Finally, a careful analysis revealed that authors' conclusions in the references (cited in the 1976 Documentation) regarding exposure-response relationships at or below the TLVs were generally found to be at odds with the conclusions of the TLV Committee. These findings suggest that those TLVs which are justified on the basis of 'industrial experience' are not based purely upon health considerations. Rather, those TLVs appear to reflect the levels of exposure which were perceived at the time to be achievable in industry. Thus, ACGIH TLVs may represent guides of levels which have been achieved, but they are certainly not thresholds."

Roach and Rappaport recommended that worker exposure should be kept below one tenth of the currently recommended TLVs.

Despite the criticisms, the ACGIH bitterly resisted any real change to guard against conflicts of interest in the review of TLVs. In 1994, the American Journal of Industrial Medicine published a commentary by Dr. Castleman and Dr. Ziem which critiqued the ACGIH's handling of conflicts of interest by those recommending changes to the TLVs. They commented: *"the conflict of interest 'policy' consists of a mere understanding that, if a member of a committee suspects that he or she may have a conflict of interest, that should be discussed with the TLV Committee chair and resolved. This ensures that, to the extent that conflicts of interests are of concern on the committee, they will be handled in such a way that there is no public disclosure of the issues involved or the manner of their resolution. ACGIH declined to explicitly prohibit committee members from being involved in developing TLVs for substances produced by firms with which they have financial relationships."*

They also commented on the ACGIH method for addressing the issue of unpublished corporate communications which were used in establishing many TLVs. *"Removed were citations to unpublished corporate communications that were critical in setting TLVs for over 100 substances. The problem is, the TLVs that were based on the old references were not subjected to review in the course of this process. By revising the documentation but not the TLVs, ACGIH concealed corporate influence instead of eliminating it."*

Castleman and Ziem concluded their commentary with the following statement:

ACGIH has had five years to deal responsibly with criticisms of the impropriety in the process for setting TLVs and has chosen to do little if anything that would inspire public trust. The organization yielded to the most recalcitrant elements on the TLV Committee and on the Board of Directors in refusing to repudiate discredited procedures and by changing as little as possible. Through the

combination of intransigence and lack of resolve, ACGIH leadership has failed its members and the public once again on the TLVs. The winners in this sad affair are the business interests and lawyers that continue to use the TLVs and ACGIH's tattered credibility as a shield from liability in personal injury lawsuits.

The Ontario Federation of Labour has steadfastly opposed and continues to oppose the use of these threshold limit values as legal exposure limits for Ontario workers. We know, based on the health responses of our membership and on the scientific evidence, that workers exposed at these levels will continue to become ill, develop diseases and die from horrible premature deaths.

The sad reality is, as bad as the TLVs are, many are better than what has been in place for Ontario workers. We are being told that the ACGIH has since revised how the TLVs are set but very few substances have had TLVs set or revised by this newer process. The newer process is supposed to be based more on science than back room corporate influence by corporate consultants.

Interestingly, since the ACGIH has been revising the TLVs with the newer process the corporations have resorted to court action in the U.S. to try to silence the ACGIH. These efforts have repeatedly been dismissed by the courts.

Regardless, Ontario workers need a made in Ontario solution to deal with exposures. An Ontario process which can deal with substances that are of concern here in Ontario rather than simply waiting for the ACGIH reviews. The MOL also needs to address exposures to diesel exhaust, metal working fluids and manganese. It also needs to act on ozone, silica and blood lead levels.

The Occupational Health Clinics for Ontario Workers (OHCOW) has repeatedly provided detailed technical information on the need to address exposures to these specific substances when the MOL conducts these consultations on revisions to the OELs.

Silica

On the issue of silica the Ministry has claimed for six years that a reduction in the exposure limit for silica is under "consideration," despite the fact that the ACGIH has twice reduced the TLV for silica.

Occupational exposures to silica are associated with the development of silicosis, lung cancer, pulmonary tuberculosis and other airways diseases. Exposure to silica has also been linked to the development of autoimmune disorders, chronic renal disease and other adverse health effects.

The Ministry of Labour needs to act now to protect the health of workers exposed to silica. At minimum the MOL should reduce the exposure limit to that found in the ACGIH TLV booklet.

Engineered Nano-Materials

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, PCBs, 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 cleanup efforts, legal and political battles.

For almost a decade researchers have been raising alerts with initial studies showing that some engineered nanomaterials can cross a variety of protective barriers of living organisms; barriers such as intestinal, placental and even the blood-brain barrier as well as individual cellular membranes. This will allow these nanomaterials to interact with living cells in ways we cannot even anticipate. Different shapes of these materials result in different reactions as does the various coatings that these materials can be covered with. All of which can make them more or less toxic to varying degrees.

Research on animals and aquatic organisms has shown a wide range of effects from short-term exposures. One study published in Environmental Health Perspectives in 2004 showed damage to the brain cell membranes of largemouth bass after just 48 hours of exposure in an aquarium.

The impact on filter feeders in the aquatic environment is unknown. Nor do we know if these nanomaterials will concentrate in the tissues of other species as they move up the food chain. Some of the materials when formed into hollow tubes have been shown to have effects on the

lungs of laboratory animals similar to asbestos.

Important research is taking place in Quebec in the possible health impact of nanomaterials. One recent report prepared by the Institut de recherche Robert-Sauvé en santé et en sécurité du travail (IRSST) stated: *“Several effects have already been shown in animals. Among these, toxic effects have been identified in several organs (heart, lungs, kidneys, reproductive system...)”*

Another report, released in 2010 raises an important question that provides the answer:

Indeed, how does one assess the risks associated with these new products, and prevent the rise of occupational disease or new safety problems when the information available is extremely limited and totally insufficient?

These nanomaterials are already in use in commercial products with an estimated 1000 products containing engineered nanomaterials. The rate of production increases each year. As with other substances that were later found to be a public health or environmental disaster, these materials are being treated as innocent until proven guilty.

Initial research in China looking at exposures to nano-materials is linking lung inflammation, damage, toxicity and death to the substances.

Regulators in Ontario and Canada 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 in our workplaces, on an unsuspecting public and an unprotected environment.

In October of 2012, the Canadian Standards Association (CSA) announced the release of Canada's first standard on nanotechnologies. According to CSA, this standard Z12885-12) will be the first in a series focussing on the manufacture and use of engineered nanomaterials in workplaces. It provides details on establishing and maintaining exposure control programs relevant to these materials.

There is more than sufficient information on the potential hazards of these materials and the methods to control exposures for the Ministry to take action to protect workers exposed to engineered nanomaterials at work.

Electro Magnetic Fields

Advances in technology introduce new hazards for workers. The use of computers, fax machines, printers, etc., has introduced a hazard that workers cannot see, feel or smell. It is the electromagnetic field (EMF) generated by electrically operated devices now surrounding many workers. In addition there can be massive exposures to EMF from transformers and conduits in buildings. Evidence is mounting that exposure to these energy fields causes numerous health problems to the workers exposed. The main concern is the development of cancer, specifically leukaemia, lymphoma, brain and breast cancer (of both sexes).

The increasing use of Wi-Fi networks, wireless smart meters and other wireless devices in the workplace is also raising concerns about their use and the adequacy of exposure levels.

Prevention of occupational disease measures will need to include requirements to protect workers from exposure of hazardous physical agents as well as toxic substances.

Occupational Cancer

The chemical manufacturers and producers of the substances in commercial use provide virtually no information on the long-term health effects to the workers or their families. Nor do they provide information on the repercussions that can occur when these substances are mixed with others already present in the workplace or the environment.

Industry can introduce chemicals into the workplace and the burden is placed on society to demonstrate that these substances cause harm, rather than requiring industry to demonstrate that these substances are safe before introducing them into the workplace and, in the end, our environment.

Most often, by the time it is realized that a chemical is harming workers or the environment, the substance is firmly entrenched into the economy. The result is that workers suffer illnesses and premature death due to their exposures. For too many years, workers have had to count the tombstones of their fallen sisters and brothers and use that information to gain improvements in prevention.

Research has shown that cancer is largely a disease of industrialization and, therefore, preventable. In the 1800s and early 1900s, physicians who were providing health care to indigenous populations, as yet untouched by modern civilization, reported on the almost entire absence or infrequency of cancer in these populations. Medical missionaries who worked with these populations for decades at a time reported malignant disease as extremely rare. Some would see one or two cases during the years that they serviced the population. Some reported seeing no cancer among the population at all.

Estimates regarding the number of cancer deaths attributable to workplace exposures vary greatly. Researchers who act as apologists to the corporations argue less than 5% are related to occupation. Research done by the National Institute of Occupational Health and Safety and the National Institute of Environment Health Sciences in the U.S. estimated that between 20% to 40% of all cancers are related to occupation.

Closer to home, Cancer Care Ontario has estimated that workplace exposure is accountable for nine percent of cancer deaths in Ontario. In 1998, there were 23,100 cancer deaths in Ontario. By 2011 this had risen to 27,800 with an estimated 66,900 new cases diagnosed.

According to the Canadian Cancer Society, cancer surpassed cardiovascular disease (heart and cerebrovascular) as the leading cause of death in Canada in 2007.

If the nine percent figure were to be accepted, then 2,500 working people died prematurely last year from cancer and another 6,021 workers developed cancer as a result of their exposures at work. At 20%, this becomes 5,560 and 13,380; and at 40%, this would mean that 11,120 workers died of cancer and another 26,760 developed cancer as a result of their workplace exposure to toxic substances. These figures do not consider those workers who contracted cancer but survived the disease, nor does it consider the number of workers who have died as a result of other diseases.

Ontario's Workplace Safety & Insurance Board (WSIB) allowed a total of 222 fatal claims for all diseases in 2011. There were only 295 fatal claims for all types of disease made to the WSIB that year. In 2011 fatal occupational diseases made up just under 64% of the total fatal claims allowed by the WSIB.

Clearly, there is a gross discrepancy between even the most conservative estimates for occupational cancer deaths in Ontario and the number of fatal disease claims filed with the WSIB.

Occupational Disease Prevention

It is important to remember that, at some point, each chemical or industrial process was new and not an essential part of an important productive process. Many more products and processes which will become integral to our economy are under development now. Ontario's approach to harmful exposures and the prevention of occupational disease is completely inadequate.

In the 10 years from 2002 through to 2011 the WSIB allowed a total of 2,421 occupational disease fatalities compared to 796 allowed traumatic fatalities for the same time period. This is a disease death rate more than three times higher than for traumatic deaths.

If we are to prevent future occupational disease, we must aim now to reduce the use of existing toxic substances or processes and other potentially harmful exposures in the workplace and provide the framework for development of new, non-toxic substances and processes in production. This goal has much in common with environmental objectives. The successful reduction of toxic substances and processes will also play a key role in diminishing environmental pollutants.

Despite years of lobbying by the OFL and the affiliates, the Ontario government has failed to develop an occupational disease strategy to prevent health problems resulting from harmful exposures in the workplace.

Now that the MOL has clear responsibility for prevention, the OFL is calling on the government to prepare a comprehensive occupational disease prevention strategy.

We provide here, approaches, ideas, and specific strategies that could be used in a made in Ontario occupational disease prevention strategy.

Ventilation Controls

The regulations should contain a clause requiring any new or existing ventilation system intended to limit inhalation exposure to a regulated substance to meet or exceed the applicable design specifications and operating parameters recommended in the ACGIH Industrial Ventilation Manual.

Unlike the most of the TLVs, the ACGIH ventilation design specifications and operating parameters found in its Industrial Ventilation Manual are based on good science and engineering practice. The manual is based on many years of practical experience and a compilation of research data and information on design, maintenance, and evaluation of industrial exhaust ventilation systems. It has found wide acceptance as a guide for official agencies internationally. It is used as the standard for industrial ventilation designers. It is also used at the university level as a textbook for occupational hygiene courses.

The manual provides best practices, solid science as well as practical solutions for employers who just need to know what is needed. The manual also contains ventilation duct design examples or preferred designs as well as examples of how they should not be designed.

This manual is designed to present accurate and authoritative information. Topics which are covered include: general principles of ventilation, general industrial ventilation, local exhaust hoods, air cleaning devices, exhaust system design procedures, replacement and re-circulated air, ventilation systems, as well as details for specific operations.

Adopting the design specifications and operating parameters of this manual would be a significant step forward in protecting workers from inhalation hazards of toxic substances.

As Low As Reasonably Achievable

The As Low As Reasonably Achievable (ALARA) principle is widely used in the nuclear industry to reduce worker exposure to levels much lower than the legal limit. The use of OELs

tends to be interpreted as permission to expose workers up to the limit. Legal exposure limits, when they are obeyed at all, tend to be treated like highway speed limits. That is, if the employer finds the workplace at or below the limit, then there is no incentive to reduce exposure further, even when the limits are known to be inadequate. It would be better to treat exposure limits like minimum wage legislation as a minimum standard upon which most workplaces should be expected to improve.

The evidence that the ACGIH TLVs will not protect the health of workers is clear. The government should introduce the ALARA principle as another tool to control worker exposure to potentially harmful agents.

The Ministry had started to introduce this principle for some of the designated substances but to date the requirement exists in legislation for just seven of the more than 700 substances regulated. Section 16(2) of the Designated Substances regulation requires employers to reduce exposures "to the lowest practical level."

Action Limits

The use of "action limits" to trigger exposure reduction efforts before the Time Weighted Average (TWA) limit is reached can be another tool to protect the health of workers.

Several investigators have demonstrated that exposure variation between workers and between days in many workplaces are substantial and that a few air samples may not come near to capturing worker exposures to hazardous substances over time. One researcher shows that an average air sampling measurement which is 25% of the OEL may reflect exposures which exceed the exposure limit as much as 5% of the time.

In the U.S., action limits set at 50% of the OEL are used to trigger increased monitoring requirements for some substances. NIOSH recommends general application of the 50% action limit. However, this action limit has been criticized by a number of investigators as too high.

A number of approaches are possible for using action limits. One approach is the use of a 25% action limit. Where air sampling shows average exposures exceeding 25% of the OEL, then it is almost certain that some unmeasured exposures will exceed the OEL and the employer can be deemed out of compliance. The employer would then be required to improve controls and decrease exposures to below the action limit.

Another approach is to use a sliding scale of action limits, depending on the extent of sampling. An employer who takes few air samples may use an action limit as low as 10%; greater numbers of samples may be associated with larger action limits. In this scheme, employers who carry out extensive sampling and can better show that real exposure levels are consistently below the exposure limit are allowed to use a higher action limit.

Wherever possible, documented health effects in workers at any level of exposure should also be a trigger which requires action to reduce exposures in the workplace.

Prior Toxicity Testing

One method of preventing new toxic substances or processes from being introduced to the workplaces is to require prior toxicity testing. The requirement to add toxicity testing to the research and development phase of new products and processes will help to bring occupational health concerns into the earliest stages of planning and design of production instead of being afterthoughts.

Prior toxicity testing is a realistic regulatory option. It is part of current regulations governing the introduction of new food additives, pharmaceuticals, and pesticides. Before new additives, drugs or pesticides enter the market, they must be tested, results reviewed by the appropriate government agency, and approved. Licenses are then issued for the manufacture, distribution, and sale of these products.

The intention of this protective effort was to limit harm to the consumer and the public, rather than to workers. However, the model needs to be extended to include the explicit goal of protecting workers who produce and use these and other toxic products.

If we are to rely on pre-testing of chemicals, we must be able to trust the testing process. Safeguards must be erected to prevent a repetition of the Industrial Biotest Laboratory (IBT) scandal in the late seventies, in which the laboratory was found to be fabricating most of its research data on the health effects of 43 pesticides. (Many pesticides approved on the basis of information from IBT are still on the market.) This is a potential problem wherever employers pay for programs in which they have a vested interest. Safeguards could include:

- certification of testing laboratories by a government agency;
- requirements of test laboratories to follow strict guidelines and international protocols in carrying out tests;
- inspections of laboratories;
- random checking of test results, including the reproduction of some experiments to verify results; and
- Bipartite review of experiment reports and results.

Prior toxicity testing assumes that, once health information is known about particular substances, a decision can be made about whether to allow its introduction into general use. And when new substances are approved, more information will be available on which to base protective measures.

A number of important judgements will have to be incorporated into the regulation to govern these decisions. Substances may have to be ranked for seriousness of health effects and potency, for example, in order to decide which new substances to veto. If new substances are proposed as substitutes for existing ones, the health effects for both will have to be compared.

This is not always a straightforward process. It is fairly easy to compare one effect of a toxic substance to the same effect of another. For example, we can compare strong and weak carcinogens or substances which have severe developmental effects on the fetus of an exposed worker and those for which effects are weaker or appear less frequently. It is more difficult to rank different types of health effects.

Another complicating factor is that most substances have multiple effects. Lead, for example, causes reproductive effects, damage to the nervous system, gastrointestinal disorders, anaemia, and other problems. It may be hard to compare this substance and its effects to other substances with a different mix of effects and decide which is safer.

Most or all of the testing information on new substances will depend on animal experiments and, more and more, on in vitro testing. Interpretation of this information should be laid out in clear, public protocols that accompany the regulation so that decisions on the toxicity of substances are consistent and accountable.

It is important to recognize the limits of this regulatory option. It does not affect the vast number of toxic substances and processes already in use in the workplace.

It may not weed out all substances which cause chronic damage after many years of exposure. It also has the potential to slow the introduction of safer, new substances and processes as well as toxic ones. This is not necessarily bad, since it is preferable to deal with a known danger than an unknown one.

Despite the difficulties, uncertainties, and limits of prior toxicity testing, it is an important part of a preventive regulatory strategy to stop the introduction of new, highly toxic substances into the workplace. It forces health and safety considerations to the top of the agenda in the introduction of new substances to the workplace and to the economy.

Banning/Licensing Toxic Substances

Prohibiting or restricting the use of highly toxic substances is an effective method to protect workers from the unnecessary use of highly toxic substances. Implementing a licensing system for these substances when there is a demonstrated need for their use with requirements to protect workers can be a very effective control strategy. Employers using such substances will be registered and this can be used as part of an enforcement strategy. Employers who do not properly protect workers exposed would stand to lose their right to use the substance.

Mandatory Substitution

Out of the 70,000 plus substances in commercial use, Ontario legislation requires the employer conduct an assessment and implement control measures for only 11 substances. Unlike the federal jurisdiction, there are no provisions for mandatory substitution of toxic substances.

Where a regulated substance is used for any purpose in the workplace and the use of a less hazardous substance can substantially serve the same purpose, employers should be required to substitute the less hazardous substance for the regulated substance currently used.

The *Canada Labour Code* and regulations in Newfoundland and Quebec contain substitution requirements. These regulations require the employer to use non-toxic or less toxic substitutes for more toxic substances where the substitutes can do the job.

To be enforceable, mandatory substitution regulations need to include the following:

i) Criteria for deciding which substances are less toxic

Many of the same considerations that go into a decision about whether to approve a pre-tested substance or whether to ban a substance currently integrated into the workplace must also be made in comparing the relative toxicity of substances which may be substituted one for another. In some cases, this comparison is easy. For example, vegetable oil may be used instead of VM&P Naphtha as a print roller cleaner. Naphtha is not a highly toxic substance but vegetable oil is not at all toxic and should be substituted for the solvent in this application.

But the comparison may be more complicated than this example if the potential substitutes have quite different toxicological or safety properties, which make them difficult to compare. A substance with unpleasant, acute effects may not be successfully substituted for a chemical with serious, long-term, chronic effects. For example, unions in B.C. pressed the forest industry to find a substitute for chlorophenol wood preservatives known to cause cancer. Early substitutes caused such extreme, acute effects in workers that they refused to work with them. (Only after a European ban on B.C. treated lumber, were satisfactory substitutes for chlorophenol found). The flammable or explosive properties of potential substitutes also have to be taken into account.

ii) A requirement that employers survey highly toxic substances present in the workplace and look for alternatives

A mandatory substitution regulation should, as a minimum, target potent carcinogens, respiratory sensitizers, reproductive toxins, neurological toxins, and substances with highly acute effects or those that cause pulmonary fibrosis for

workplace review and potential substitution. Employers should be required to document, in writing, their efforts to search for substitutes and to justify choices made.

iii) Promotion of Innovation in Development of Non-toxic Inputs, Safe Processes, and Healthy Products

The above sections represent, to a certain extent, negative regulatory approaches to the use of toxic substances. A comprehensive approach to this issue should also incorporate some means of stimulating the search for non-toxic inputs and safe processes which provide the goods and services we need. This may be outside the purview of health and safety regulation per se but, nevertheless, constitutes a vital element in weaning industry from its dependence on toxic substances and processes.

Toxics reduction legislation in some American states has partially addressed this issue by supporting the development of research and training institutes geared to the development and implementation of alternatives to toxic substances and processes.

This government could set up technical assistance programs to help small and medium size firms wanting to make changes to toxic production processes but without technical resources to do so.

This government must set the example and initiate a program to look for non-toxic alternatives for use by its ministries and set policy which requires any firm contracting with the government to do the same.

Process Specific Regulations

Process-specific regulations, also called "design" or "procedural" regulations or "specification" standards, give clear direction to employers about the control measures which must be applied to particular workplace operations which utilize or produce specific toxicants. They may prescribe any or all of the following: control equipment, enclosures, ventilation systems, work practices, hygiene facilities, training requirements, personal protective equipment and emergency procedures.

Process-specific regulations have been widely applied to safety hazards in construction and mining. They have also been used in the nuclear industry for the protection of workers potentially exposed to radioactive substances. However, process-specific regulations have not been widely developed for the area of industrial production and use of chemicals. This needs to change. Process-specific regulations are necessary as an integral part of regulating exposure to hazardous substances in the workplace.

Process-specific regulations could easily be developed to improve working conditions and enforcement where known hazards are produced by relatively common industrial operations and processes. A few examples of these types of regulations already exist. *OSHA* has a ventilation regulation covering open surface tanks, abrasive blasting, grinding, polishing and buffing operations, and spray finishing operations. This regulation gives employers very clear directions as to the ventilation requirements for the protection of workers involved in these processes. Great Britain has recently developed extensive control guidelines for a number of industrial operations. These could be readily adapted as enforceable regulations.

This type of regulation could also be used to protect workers where renovations take place using toxic substances. This has been a major concern in the retail sector where renovations take place but the store remains open. These retail workers then become exposed to high levels of dust, epoxy resins, spray painting and other coatings. These exposures take place in structures without the ventilation systems to properly address the exposures. Several years ago, Ontario passed a regulation outlining procedures which must be followed in all construction or demolition projects involving asbestos. A similar regulation for renovations in existing workplaces should be developed.

These types of regulations would also benefit workers in situations where exposures to hazardous substances are difficult to characterize or monitor. This may occur where:

- a wide range of chemicals are used in small amounts;
- the materials used or produced are a complex mixture of chemicals;
- substances contain variable levels of toxic contaminants;
- work is carried on outdoors or in environments which change from day-to-day;
- renovations using toxic substances take place in existing workplaces;
- there exists exposure to substances for which there is no accepted sampling analytical methodology.

Process-specific regulations, which are enacted for workplaces with multiple chemical uses, may also protect workers against the unknown effects of mixed chemical exposures, even where individual exposures are maintained below the occupational exposure limit.

Stringent process-specific regulations could be developed for the use of certain high toxicity substances. As a by-product, this may have the effect of pressuring employers to look for less hazardous substitutes.

The advantages of process-specific regulations are:

- ease of enforcement (compliance can be determined through visual inspection and/or worker reports rather than air sampling);
- inducement to control exposures to levels achievable through good hygiene practice rather than allow exposure to rise to exposure limits;
- more limits set on employers who choose to use or produce toxic materials in common processes; and
- to ensure that employers take health and safety into account as a basic and ongoing operating expense.

These regulations do not have to be completely inflexible. On the contrary, where employers believe that control measures already in place in their workplaces or alternate control measures from those provided for in the regulations may provide equal or better protection for workers than control measures prescribed by process-specific regulations, they could apply for a variance from the requirements of the regulations. In this situation, the onus would be on the employer to provide sufficient evidence to prove that the alternate control measures are protective.

Construction

Those working in the construction trades do not have the same minimal protection for toxic substances provided to workers in other sectors.

Section Two of Ontario Regulation 833 Respecting Control of Exposure to Biological or Chemical Agents specifically excludes construction workers from any restriction in the amount and duration of exposure to hazardous chemical substances in their workplace. This section reads:

This regulation does not apply at a project to an employer who primarily carries on the business of construction or to workers of such employer.

If the Ministry of Labour is serious about its stated commitment to make Ontario workplaces among the safest in the world, it needs to end this discrimination against construction workers. It can begin to provide health protection for these workers by removing this section of Ontario Regulation 833.

According to WSIB data, construction has the highest number of allowed occupational disease fatalities by industry sector. This is followed by manufacturing then primary metals.

The transient nature of the trades means that those workers who exercise the right to refuse hazardous work, quickly find their services are no longer required on the site. Those who have

a history of refusing hazardous work on construction sites can find themselves blacklisted and unable to find work in their trade. The prohibition against employer retaliation on workers exercising their rights under health and safety legislation means little in the construction industry.

Agricultural Workers

Many of these workers are specifically excluded from the protection of the Ontario's *Occupational Health Safety Act* and the regulations. Those agricultural workers who do have limited coverage under the *Act* are still excluded from the regulations that could protect them from hazardous exposures. Therefore, agricultural workers do not have the same minimal health protection provided many other workers, as the exposure limits do not apply to them. These workers also do not have the benefit of the right to know through the WHMIS legislation. Nor are they able to negotiate collective agreements which could include provisions in occupational health and safety.

While the agri-business community would like to maintain the "Little House on the Prairie" mystique, the reality is that many agricultural operations in Ontario today do not resemble the small family farms of our past.

In keeping with the Ontario Federation of Labour's position that all workers should be protected under the *Occupational Health and Safety Act*, we are requesting that this government act to remove the exemption which continues to exclude some farm workers from the protection of the occupational health and safety legislation. Regulations intended to provide protection from hazardous exposures including the occupational exposure limits as well as the Workplace Hazardous Materials Information System (WHMIS) should be made applicable to agricultural workers. This can be done by regulation without amending the Act.

Application of the WHMIS regulation will provide a better understanding of the health hazards involved in the use of other toxic substances and would lead to safer handling of the substances. This would protect the farm workers but would also protect their families. We have seen with tragic consequences that toxic substances can be brought home on work clothing, etc., if the worker is not aware of the hazards.

The Expert Panel on Occupational Health and Safety recognized the importance of this and recommended that the MOL develop regulations to control key hazards associated with farm work. One of the examples used in that report is extending the WHMIS regulation to farms.

The MOL needs to act on the recommendation.

Constitutional Concern

It is the opinion of the Ontario Federation of Labour that the Ontario Ministry of Labour may be violating the equality rights under Section 15 of the *Canadian Charter of Rights and Freedoms* by denying workers in the construction and agricultural sectors a statutory protection enjoyed by other occupational groups in Ontario.

Further, the OFL feels that there is a positive obligation on the Ontario government to provide legislative protection of occupational health hazards for workers in the Ontario construction and agricultural sectors equal to that provided to other occupational groups in Ontario.

Section one of the charter does allow some limits to the guaranteed rights. That section reads as follows:

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

We would argue that excluding workers in these sectors from the legislated occupational health provisions enjoyed by other occupational groups is not a “reasonable limit” nor can it be “demonstrably justified in a free and democratic society.”

The Ontario government should now follow through on its moral, and we would argue constitutional, obligation to provide this legislative protection for workers in the construction and building trades by enacting the changes into law.

Occupational Health Resources

Increasing efforts by unions and community groups to prevent occupational disease, legislative changes and the public awareness that these generate are placing greater demands on the resources of the Occupational Health Clinics for Ontario Workers (OHCOW) as well as the Workers Health & Safety Centre (WHSC). The funding for OHCOW & WHSC should be increased to allow them to improve the resources necessary to respond to the emerging trends around occupational disease and increase the role they play in preventing occupational illness.

Secondary Victims

Controls protecting workers also protect family members and those in the surrounding community. The spread of toxins are not stopped at the employer’s door. Toxic substances are often unknowingly brought home, exposing members of the worker’s family. There are known cases where spouses and children of asbestos workers have died as a result of contracting mesothelioma. The only known cause of mesothelioma, a cancer of the lining around the lungs, is inhalation of asbestos fibres.

In addition, many substances affect the reproductive outcomes of workers and their spouses. These outcomes include visible birth defects, learning disabilities, or problems with social integration. For women workers, even after delivering a healthy baby, there is the issue of breast milk contamination. Some toxic substances are stored by the body in the tissues of a woman that are used to produce milk. These contaminants then concentrate in the breast milk. In the case of the environmental contaminant, dioxin, the average breast-fed baby receives its total recommended maximum lifetime dose of dioxin in the first six months of its life.

Providing workers with real protection from toxic substances will also reduce the toll of secondary victims.

Occupational Disease Summary

A key principle in preventing occupational disease is not to use or produce the toxic substances or toxic processes or other harmful exposures which cause it. Much current industrial production is based on the use of toxic substances or on processes which produce hazardous by-products. It is a challenging task to alter this situation.

Another key element of prevention and early detection of occupational disease is the need for regular monitoring and chest x-rays. We believe the Ministry of Labour must reinstate the chest clinics they were responsible for in the past, with workers who are exposed to designated substances as a minimum. It is a tragedy that this critical program was eliminated.

It will take more than a public relations exercise. It requires a fundamental shift in how government views the introduction and use of potentially deadly agents into Ontario workplaces.

Occupational disease in Ontario is a ticking time bomb, for the workers whose health has been compromised; for the politicians who will be faced to deal with the fallout; for those officials in positions of trust who knew what was and is happening, yet have chosen to do little to correct the situation.

Respectfully submitted by,

THE ONTARIO FEDERATION OF LABOUR

Dated: May 2013



Appendix

Union as a Workplace Party under the *Occupational Health and Safety Act*

The purpose of this reference document is to assist various parties to understand that a “trade union”, where one exists in a workplace, is a workplace party.

Introduction

All workplace parties have rights and duties under the *OH&S Act*. The only difference for trade unions is that the rights and duties are not listed under one or two provisions as they are for the other workplace parties.

Referring to the definition of “trade union” under the *OH&S Act* we see reference to “in the workplace”. This alone should demonstrate that a “trade union” “in the workplace” is in fact a “workplace party”. The definitions of trade union under both the *OH&S Act* and the *Labour Relations Act* are provided below.

Definitions

Occupational Health and Safety Act

“trade union” means a trade union as defined in the *Labour Relations Act* that has the status of exclusive bargaining agent under that *Act* in respect of any bargaining unit or units **in a workplace** and includes an organization representing workers or persons to whom this *Act* applies where such organization has exclusive bargaining rights under any other *Act* in respect of such workers or persons.

Labour Relations Act

“trade union” means **an organization of employees** formed for purposes that include the **regulation of relations between employees and employers** and includes a provincial, national, or international trade union, a certified council of trade unions and a designated or certified employee bargaining agency.

The rights and duties of trade unions are spread throughout the *Act*. In fact, including the definition, there are 23 provisions under the *OH&S Act* referencing trade unions, their rights or duties. The relevant provisions are listed below and reproduced in the appendix; the references to trade union are bolded for your convenience.

Occupational Health and Safety Act

8(5) (10); 9(5) (8) (14) (39); 10(3); 12(1); 33(3) (4); 40(4); 43(4) (12); 49(1); 51(1); 52(1) (2); 53; 54(3); 61(1) (2); 62(5); 65(1)

Ontario Labour Relations Board

In addition to the above points, where the trade union has exercised its right to appeal an inspector's decision, the OLRB has consistently referred to the union as a workplace party in its decisions.

Notices to the Union

It is worth emphasising that for the purposes of the *Occupational Health and Safety Act*, the union is the body that has exclusive bargaining rights under the Labour Relations or similar *Act*. In some cases this is the local union, in others it will be the regional or perhaps head office.

Some individuals may argue that notice to the joint health and safety committee is notice to the union. This is not necessarily true. It is up to the union to decide who in the union will get the information required under the *Act*.

Conclusion

Given the references in the *OH&S Act*, the *Labour Relations Act* and the OLRB case law, there should be no doubt of the status of a trade union, where one exists in a workplace. The union is one of the workplace parties that play a critical role in ensuring health and safety in a workplace.

Excerpts from the *OH&S Act*

Selection of representatives

8. (5) The selection of a health and safety representative shall be made by those workers who do not exercise managerial functions and who will be represented by the health and safety representative in the workplace, or the part or parts thereof, as the case may be, or, **where there is a trade union or trade unions representing such workers, by the trade union or trade unions.**

8. (10) A health and safety representative has power to identify situations that may be a source of danger or hazard to workers and to make recommendations or report his or her findings thereon to the employer, the workers and **the trade union or trade unions representing the workers.**

What Minister shall consider

9. (5) In exercising the power conferred by subsection (3) or (3.1), the Minister shall consider,

- (a) the nature of the work being done;
- (b) the request of a constructor, an employer, a group of the workers or **the trade union or trade unions representing the workers in a workplace;**

Selection of Members

9. (8) The members of a committee who represent workers shall be selected by the workers they are to represent or, **if a trade union or unions represent the workers, by the trade union or unions.**

Designation of Member to be Certified

9. (14) If no member representing workers is a certified member, the workers or **the trade unions who selected the members representing workers shall select from among them one or more who are to become certified.**

Dispute Resolution

9. (39) Where a dispute arises as to the application of subsection (2), or the compliance or purported compliance therewith by a constructor or an employer, the dispute shall be decided by the Minister after consulting the constructor or the employer and the workers or **the trade union or trade unions representing the workers.**

Selection of Members

10. (3) The members of a worker trades committee shall be selected by the workers employed in the trades the members are to represent or, **if a trade union represents the workers, by the trade union.**

Summary to be Furnished

12. (1) For workplaces to which the insurance plan established under the *Workplace Safety and Insurance Act, 1997* applies, the Workplace Safety and Insurance Board, upon the request of an employer, a worker, committee, health and safety representative or **trade union**, shall send to the employer, and to the worker, committee, health and safety representative or **trade union** requesting the information an annual summary of data relating to the employer in respect of the number of work accident fatalities, the number of lost work day cases, the number of lost work days, the number of non-fatal cases that required medical aid without lost work days, the incidence of occupational illnesses, the number of occupational injuries, and such other data as the Board may consider necessary or advisable.

Posting of Order

33. (3) The employer shall provide a copy of an order made under subsection (1) to the committee, health and safety representative and **trade union**, if any, and shall cause a copy of the order to be posted in a conspicuous place in the workplace where it is most likely to come to the attention of the workers who may be affected by the use, presence or intended use of the biological, chemical or physical agent or combination of agents.

Appeal to Minister

33. (4) Where the employer, a worker or a **trade union** considers that he, she or it is aggrieved by an order made under subsection (1), the employer, worker or **trade union** may by notice in writing given within fourteen days of the making of the order appeal to the Minister.

Appeal

40. (4) The employer or any worker of the employer or any **trade union representing the workers** of the employer may, in accordance with the regulations, appeal a determination made under subsection (3).

Report of Refusal to Work

43. (4) Upon refusing to work or do particular work, the worker shall promptly report the circumstances of the refusal to the worker's employer or supervisor who shall forthwith investigate the report in the presence of the worker and, if there is such, in the presence of one of,

- (a) a committee member who represents workers, if any;
- (b) a health and safety representative, if any; or
- (c) a worker who because of knowledge, experience and training is **selected by a trade union that represents the worker**, or if there is no trade union, is selected by the workers to represent them.

Who shall be made available and who shall attend without delay.

43. (12) The person referred to in subsection (11) must be:

- (a) a committee member who represents workers and, if possible, who is a certified member;
- (b) a health and safety representative; or
- (c) a worker who because of his or her knowledge, experience and training is **selected by the trade union that represents the worker** or, if there is no trade union, by the workers to represent them.

Complaint re Direction to Stop Work

49. (1) A constructor, an employer, a worker at the workplace or a representative of a **trade union that represents workers at the workplace** may file a complaint with the Board if he, she or it has reasonable grounds to believe that a certified member at the workplace recklessly or in bad faith exercised or failed to exercise a power under section 45 or 47.

Notice of Death or Injury

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

Notice of Accident, Explosion or Fire Causing Injury

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

- (a) The committee, the health and safety representative and the **trade union**, if any.
- (b) The Director, if an inspector requires notification of the Director.

Notice of Occupational Illness

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

Accidents, Explosions, etc., at a Project Site or Mine

53. Where a notice or report is not required under section 51 or 52 and an accident, premature or unexpected explosion, fire, flood or inrush of water, failure of any equipment, machine, device, article or thing, cave-in, subsidence, rockburst, or other incident as prescribed occurs at a project site, mine or mining plant, notice in writing of the occurrence shall be given to a Director and to the committee, health and safety representative and **trade union**, if any, by the constructor of the project or the owner of the mine or mining plant within two days of the occurrence containing such information and particulars as are prescribed.

Representative to Accompany Inspector

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

Appeals from Order of an Inspector

61. (1) Any employer, constructor, licensee, owner, worker or **trade union** which considers himself, herself or itself aggrieved by any order made by an inspector under this Act or the regulations may appeal to the Board within 30 days after the making of the order.

Parties

- 61.** (2) The following are parties to the appeal:
- (a) The appellant.
 - (b) In the case of an appeal by an employer, the employer's workers and each **trade union** representing any of the workers.
 - (c) In the case of an appeal by a worker or **trade union** representing a worker, the worker's employer.
 - (d) The inspector whose order is being appealed.
 - (e) Such other persons as the Board may specify.

Obstruction of Committee, etc.

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

65. (1) No action or other proceeding for damages, prohibition or mandamus shall be instituted respecting any act done in good faith in the execution or intended execution of a person's duties under this Act or in the exercise or intended exercise of a person's powers under this Act or for any alleged neglect or default in the execution or performance in good faith of the person's duties or powers if the person is:

- (a) an employee of the Ministry or a person who acts as an advisor for the Ministry;
- (b) Repealed: 1997, c. 16, s. 2 (14);
- (c) the Board or a labour relations officer;
- (d) a health and safety representative or a committee member; or
- (e) a worker selected by **a trade union or trade unions** or by workers to represent them.

May 2013

