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Tuesday 12 April 2011

Journal des débats (Hansard)

Mardi 12 avril 2011

**Standing Committee on
Social Policy**

Occupational Health and Safety
Statute Law
Amendment Act, 2011

**Comité permanent de
la politique sociale**

Loi de 2011 modifiant des lois
en ce qui concerne la santé
et la sécurité au travail

Chair: Shafiq Qadri
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
SOCIAL POLICY**

**COMITÉ PERMANENT DE
LA POLITIQUE SOCIALE**

Tuesday 12 April 2011

Mardi 12 avril 2011

The committee met at 1601 in committee room 1.

**OCCUPATIONAL HEALTH AND SAFETY
STATUTE LAW
AMENDMENT ACT, 2011**

**LOI DE 2011 MODIFIANT DES LOIS
EN CE QUI CONCERNE LA SANTÉ
ET LA SÉCURITÉ AU TRAVAIL**

Consideration of Bill 160, An Act to amend the Occupational Health and Safety Act and the Workplace Safety and Insurance Act, 1997 with respect to occupational health and safety and other matters / Projet de loi 160, Loi modifiant la Loi sur la santé et la sécurité au travail et la Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents du travail en ce qui concerne la santé et la sécurité au travail et d'autres questions.

The Chair (Mr. Shafiq Qaadri): Colleagues, welcome to day two of the Standing Committee on Social Policy. As you know, we're here to hear presentations on Bill 160, An Act to amend the Occupational Health and Safety Act and the Workplace Safety and Insurance Act, 1997 with respect to occupational health and safety and other matters.

CANADIAN AUTO WORKERS, LOCAL 1859

The Chair (Mr. Shafiq Qaadri): With that, if there's no immediate business for the committee, I'd invite our first presenter to please begin and welcome her by conference call. Ms. Markus, are you there?

Ms. Susan Markus: Yes, I am.

The Chair (Mr. Shafiq Qaadri): That's great. Could we just up the volume? Dr. Qaadri, Chair of Social Policy. I welcome you to the committee. You'll have exactly 10 minutes in which to present. The time remaining within that will be distributed evenly amongst the parties. As I say, it will be enforced with military precision. I invite you respectfully to please begin now.

Ms. Susan Markus: Thank you. This presentation is respectfully submitted by myself, Susan Markus, on behalf of Canadian Auto Workers, Local 1859. I would like to start by saying thank you to the panel for giving me the opportunity to present my concerns on Bill 160. But at the same time, I'm a little concerned that submissions are being limited and others who share the same

concerns will not have that opportunity to present them to the committee.

There are five distinct sections that I wish to address with my submission. Number one would be that Bill 160 places extensive powers in the hands of politicians, including the powers to appoint the chief prevention officer and the prevention council. There is potential for these powers to be used in arbitrary ways or for partisan purposes.

The second concern is the threat to the autonomy of the Workers Health and Safety Centre and the Occupational Health Clinics for Ontario Workers. It is absolutely critical that these key organizations be respected and mechanisms put in place to protect their independent governance and the ability to set priorities, approaches and philosophies that meet the needs of the workers.

As an instructor also for the Workers Health and Safety Centre, I can attest to the high-quality, hazard-based programs that are offered currently by them.

A third concern—a deep concern—would be about the section of the bill that gives directors of the ministry the authority, without oversight, without any warning, to publish policies that would have the force of the law. We cannot accept any legislation that gives the government of the day these secret powers.

The fourth issue is failure to protect workers from reprisals. Vulnerable workers who are victims of reprisals for their attempts to protect their health and safety are not protected by this bill. All workers in Ontario have the right to participate, the right to know and the right to refuse, and these must be swiftly enforced. If workers' rights were respected by all employers, we would not have to worry about the protection from reprisals, but unfortunately, this is not always the case. And if more workers understood and used their rights, we would not see the growing numbers of injuries and fatalities occurring in our province.

Bill 160 also places limitations on the ability of the inspectors to appear before the Ontario Labour Relations Board and provide testimony and evidence to protect workers, the very body that workers look towards to make sure that there is a safe workplace.

The fifth one is placing obstacles on the joint health and safety committee co-chairs' recommendations. As written, Bill 160 provides no relief to the worker members of the joint health and safety committee facing stonewalling tactics from the employer side of the joint

committee. The powers of the co-chair to send recommendations to the employer must not be subject to these restrictions. I speak on that very well, being on a joint health and safety committee for 20 years and serving as co-chair for 16 of those 20 years. It's imperative that if we cannot come to a consensus, we have some mechanism that we can forward our recommendations to and have those recommendations responded to by the employer.

Once again, I would like to thank you for this opportunity to present my submission.

The Chair (Mr. Shafiq Qaadri): Thank you, Ms. Markus. We have about a minute and a half or so per side. I will now offer question time to the PC caucus with Mr. Hillier.

Mr. Randy Hillier: No questions at this time. I'll pass it over.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. Mr. Miller of the NDP.

Mr. Paul Miller: That was a good presentation, Susan. I have the same feelings you have about the situation.

I saw you started off your submission with being concerned about the length of time that was given to this and the amount of people who could come forward to the committee. I shared the same opinion and I pushed for as many days as possible. There was some co-operation to get to the third day, so that's the best we could do from the NDP's position. We would have liked to have seen it out in the communities throughout northern Ontario, southwestern Ontario, eastern Ontario and, of course, Hamilton and areas like that, but it didn't happen.

Also, you mentioned—it's been an ongoing theme here with section 50—the lack of enforcement and the lack of authority that is given to the inspectors. How do you feel about that?

Ms. Susan Markus: Most workplaces are doing a lot of training. They look to the Ministry of Labour to come in and help them with these issues. The Ministry of Labour's hands are tied and they cannot represent the workers in this case at the labour relations board or even prior to the labour relations board—maybe just putting a stop to it at the workplace at that time instead of time going on. You need to have something a lot stronger for the Ministry of Labour inspector to be able to enforce regarding that.

Mr. Paul Miller: And a lot of workplaces don't even get inspected at the best of times. These inspectors are not allowed to levy any fines at the work site; they have to go through a big process. Personally, I think that they should be allowed to do their job with more authority and certainly put the employers on notice that any unsafe act or safety procedures that are not followed should be dealt with immediately and fined on the spot, if necessary. Do you feel the same?

Ms. Susan Markus: Oh, most definitely. We have an ongoing issue with one of our workplaces that had a very serious accident where a young woman lost her hand. They're still trying to fight over something happening in

that workplace. It's been almost a year since that accident happened. So yes, we need to have it.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Miller. Ms. Markus, you're now with the government caucus. Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Thank you, Ms. Markus, for your presentation. It was very informative. I think you've summed up some of the key issues that came up yesterday during our presentation, so I want to thank you for that.

Just one quick question, if I have the time to put it in: You mentioned that this may serve partisan purposes because too much power rests with the minister. Because we have a chief prevention officer and a council that we're proposing, can you provide perhaps, very briefly, an answer or an explanation as to what would be a better system or how to better work it?

Ms. Susan Markus: Certainly there has to be some sort of a structure, and maybe some ground rules laying out the size of the committee and the chief prevention officer answering to the committee, not the committee answering to the chief prevention officer. What I'm seeing right now is that the chief prevention officer can even unilaterally make some decisions. It's really important that if it's going to be a committee structure that's put in place, then there has to be strong representation from labour as well as representation from the employer side, so some kind of a structure that would be more fair and they can just not make these kinds of decisions without coming forward with what their ideas will be.

1610

Mr. Lorenzo Berardinetti: Thank you on behalf of the government for your points.

The Chair (Mr. Shafiq Qaadri): Thanks, Mr. Berardinetti, and thanks to you, Ms. Markus, on behalf of the social policy committee here in Parliament, and goodbye.

SAFE COMMUNITIES CANADA

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Mr. Kells, president of Safe Communities Canada. Welcome, Mr. Kells. You've seen the protocol. I invite you to begin officially now.

Mr. Paul Kells: Thank you. The consequences of disabled lives and life-altering workplace injuries are personal and they're a human issue before anything else, including a partisan issue. I know because I lost my son to a workplace explosion. So the organization I founded focuses on one thing, and that's preventing human suffering and pain through injury, inside and outside of workplaces. A personal mission of mine has been on the workplace side for many, many years. We do that through our Safe Communities network, which now has 26 communities in Ontario, and through Passport to Safety, which is an online workplace awareness test aimed primarily or targeted, in a non-Sarah-Palin kind of way, to young people.

We support anyone and anybody who demonstrates the ability and willingness to do the right things in the best possible ways. To that, because I've been at this for 15 years, I count in that the Minister of Education for the NDP in the first government I spoke to; Elizabeth Witmer, who supported the enforcement and maintaining the inspectorate during the most difficult times of the early budget cuts; the former chairman of the WSIB, Glen Wright, under whose leadership injury prevention in this province took a great leap forward some dozen years ago; Chris Bentley, Minister of Labour, for doubling the size of the inspectorate; Peter Fonseca for commissioning the Dean report and presenting it; and most recently, Charles Sousa for actually putting the speed and priority behind this that it deserves.

My congratulations to all of you, because my sense is that all parties support the fact that this legislation needs to go forward and that with some modifications here and there, this bill needs to get done.

About the key features of that report, a couple of key points: First, we fully support the recommendations of the Dean report, and while we can always do more in this country, the implementation of the Dean report is a huge step forward.

Second, we're pleased to see that the bill provides for increased responsibility for training, particularly for supervisors, and that a chief prevention officer will have authority and access to any ministry in government.

Third, on enforcement and compliance, work orders, reprisals and the underground economy—there is no room for double standards on enforcement and compliance. If this was a discussion about drinking and driving, would we be having the same discussions about relaxing compliance and enforcement? I do not believe so. Life-altering injuries are at stake in both cases. Focus and consistency in leadership around prevention has been diminished in the past few years. This is not the time to let it get even fuzzier.

That having been said, compliance just doesn't happen through enforcement. It's what people do locally to change the culture and what we do in our jobs and our professions to enable and support compliance. There's no magic wand. You have to work at it. An advisory committee is not enough on its own to make that happen.

The system has been focused inward for four years on restructuring and creating its own internal solutions. It does not entertain well solutions outside the box of the system, and so, effectively a lot of the things that are actually causing injuries in this province right now are on hold because of all the restructuring activity. So this is a careful reminder that we no longer have ad campaigns in this province. Our community engagement: We have the data, the surveys that say that the health and safety agencies, the WSIB, have been withdrawing from local community impact over the past couple of years. The Ministry of Labour, interestingly enough, without the prevention mandate, has actually got a greater presence than either of those two organizations, which add the prevention one.

I guess the bottom line of this message is, we don't just want to advise you on what to do. We're already there. We actually want to help it, and we encourage you to reach outside the system and actually indicate by guiding principle or value or statement that the new chief prevention officer, whoever that might be, seek out and be required to search for outside support.

I'll illustrate: Since 2004, 375,000 high school students and employment centre youth participants in this province have completed Passport to Safety; another 60,000 have started it. That's nearly half a million young people in the last five years. Government supported it initially, or at least the WSIB did, but it didn't do it. It got allies outside to do it.

The Ontario Public School Boards' Association gets it. You will get a recommendation from them saying that rather than a stand-alone course, occupational health and safety is part of the mandatory credit course, guidance and career education. This must be done. It's a huge gap that has existed for years.

The school board association has also said it would make sense to connect with Safe Communities Canada, Passport to Safety and "the ongoing work of Paul Kells, whose son Sean died tragically while working (unprepared) at a new job in 1994." So they get that you don't have to build all this from scratch.

I would encourage you to encourage the system. When it comes to supervisor training, for example, my guess is that the system will actually spend millions trying to recreate a system that may already exist and that could actually be adapted much more cheaply.

So here's the thing: We can't afford to do that. You can't reinvent the wheel anymore. You need broad engagement, a culture shift in large volumes at low cost, and you cannot do that through the system spending its own money.

This isn't about an advisory committee giving the owners ideas. It's shared ownership. It's an attitude toward shared ownership that should be spelled out in a preamble or guiding principle or a specifically mandated value.

This time the system needs to be directed on that score rather than have it wither away as it has.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kells. We have a minute per side, beginning with Mr. Miller of the NDP.

Mr. Paul Miller: Thank you, Mr. Kells, for your presentation. It almost sounded like a promotional advertisement for the Liberals at the start, but that's okay.

The enforcement part of it—I didn't hear any of that. You said you had witnessed that there had been problems in your own family about somebody being killed. Were there any fines levied against the company when our son was injured, and was the enforcement followed through?

One of the biggest problems in this bill is section 50. Enforcement has not been followed through over the years. They've even doubled the inspectors, but the inspectors have no weight behind them. They have to go back and report, and sometimes it gets overruled. What do you think about that?

Mr. Paul Kells: The owner of the firm was fired and fined. The justice of the peace reduced the fine. The minister at the time actually appealed that fine; it was reinstated to what the plea bargain was. It should never have been plea-bargained to begin with.

Enforcement: You know and I know perfectly well that we can't inspect every workplace in this province. It's not physically possible; it's not monetarily possible. You cannot hire enough inspectors to do it. So the system has a whole bunch of improving to do to engage other partners who are in enforcement in other ways and to enjoin its citizens to actually participate in the notion of increasing safety.

Do we need enforcement? Yes, we do.

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Mr. Kells, thank you for your presentation. On behalf of all the government members here, we appreciate the good work you do and that your work group does in educating people on health and safety. It's very important work, and I just want to say thank you.

The Chair (Mr. Shafiq Qaadri): Ms. Jones.

Ms. Sylvia Jones: Thank you, Mr. Kells. I appreciated your presentation. At the beginning you mentioned that you fully supported the Dean report. During second reading of Bill 160, there were many comments made about the fact that there are a lot of recommendations from the Dean report that are not in Bill 160. Can you share with the committee some specific ones you would like to have seen included?

Mr. Paul Kells: In the legislation specifically?

Ms. Sylvia Jones: Yes.

Mr. Paul Kells: To tell you the truth, I'm not really able to comment on that. What I was endorsing was the direction of the Dean report. I would hope that in the fullness of time they'll all be there. I understand the need right now to get priority things straight, to get in place and done the legislation that enables the whole process to move forward. I expect that the rest of it will come in due course, and I truly hope it will.

Ms. Sylvia Jones: You're more optimistic than some of us.

Mr. Paul Kells: You know what? I guess I wouldn't have been at this for this long if I was a pessimist.

Ms. Sylvia Jones: True enough.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Kells, for your deputation on behalf of Safe Communities Canada.

CONSTRUCTION INDUSTRY TASK FORCE

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter to please come forward: Mr. Frame, of Construction Industry Task Force, and colleague. Welcome. I'd invite you to please introduce yourselves and begin now.

1620

Mr. David Frame: Thank you. With me today is Karen Renkema. She is the director of government rela-

tions for the Ontario Road Builders' Association. I am David Frame. I am the director of government relations for the Ontario General Contractors Association, and I am a former director of prevention at the Workplace Safety and Insurance Board.

The construction industry-WSIB task force was formed in 2008 to be a forum for construction employers to work with the WSIB on compensation and prevention issues. We represent some 1,400 employers operating in a very broad, diverse cross-section of Ontario's construction industry, including residential, heavy civil, industrial, commercial and institutional. Our members employ 70,000 construction employees across the province. Ontario's construction industry is responsible for approximately 25%, or \$900 million, of the WSIB's \$3.6 billion in total annual premium income. I won't read out the list of our members, but they're there for your reference.

The task force was actively involved in Tony Dean's expert advisory panel on occupational health and safety. We are supportive of the fundamental direction it provides in recognizing important challenges and providing direction to continue to improve the health and safety of Ontario's workplaces.

We will use the few minutes we have today to raise a few of our recommendations on how Bill 160 could be more effective.

The first is on financial transparency and accountability. The Occupational Health and Safety Act directs employer premiums to flow through the WSIB, and then the Ministry of Finance, to the Ministry of Labour, to fund the administration of the act. With the introduction, or proclamation, of Bill 160, the transfer payments will substantially increase to also include the current prevention operations of the WSIB and the funding of the safe workplace associations, also known as SWAs.

The WSIB, as the direct funder of the six SWAs, has a significant number of controls over their funding and performance from the time they are designated. These controls include establishment of standards respecting governance, objectives, functions and operations, and the authority to reduce or suspect SWAs' financial assistance. Bill 160 removes these controls from the board, yet it—and indirectly employers—remains responsible for about \$215 million of transfer funds.

As both the funders and users of the system, we are convinced that Bill 160 does not provide for an appropriate level of financial accountability. For example, the safe work associations currently have funding provided by the WSIB, subject to prescribed performance, including financial standards. Bill 160 allows them to be eligible for a grant from the ministry and to be subject to monitoring government directives by the minister. This oversight does not refer to an accountability framework that may include measurable expectations for service outcomes, evaluation of service and assessment of agency service delivery costs to ensure reasonable funding, and that other financial and performance measures are established and maintained.

We recognize that the funding agency, the WSIB, is struggling with an unfunded liability of approximately

\$11.7 billion. As a matter of principle, we believe that they must have a level of control over all expenditures in order to better control spending. A strength of the current system is that the WSIB must raise the funds for its prevention operations and the funding of the safe workplace associations so they are subject to their internal accountability mechanisms. When funding responsibilities shift to the Ministry of Labour, this no longer exists and the WSIB loses all control over the current \$215 million of funds. The Ministry of Labour then becomes the recipient of a grant, with very few controls on its allocation and accountability for its value for money.

It is our understanding that the Ministry of Labour lacks the experience to administer such grants and, as a result, will be challenged to immediately set controls and measures in place to assure performance. Enhanced guidance in Bill 160 to support the financial performance of funds transferred from the WSIB is required, and we strongly recommend that this committee amend the legislation to establish an interministerial task force chaired by the WSIB president and involving senior officials of the Ministry of Finance and the chief prevention officer from the Ministry of Labour.

Under section 22.3(1)(b), the chief prevention officer is required to provide an annual report to the minister on occupational health and safety but not on the allocation of funds distributed through the WSIB. We recommend that this section be amended to provide a complete financial report detailing the allocation of the grant, thus providing an important point of transparency and accountability.

I'll now ask Karen to go on and talk about the provincial council.

Ms. Karen Renkema: Thank you. I realize we don't have too much time here, so I'll just briefly summarize what we're suggesting here.

We support the continuation of the expert advisory panel members as the current interim prevention council, but we do suggest that the interim prevention council should be assisted by a broader group of sector-specific stakeholders to aid in the implementation phase of the Dean report. Therefore, we would suggest that there be a specific, direct conduit to the prevention council through the construction industry. So we would suggest a separate advisory panel from the construction industry to assist the prevention council as we're going through a transition time period.

Secondly, on education and enforcement, Bill 160 contemplates the removal of prevention activities from the WSIB and into the Ministry of Labour. On the whole, we're supportive of this initiative, because traditionally the Ministry of Labour and its inspectorate were primarily focused on enforcement activities and less concerned with educational opportunities. Indeed, that role was the primary domain of the SWAs. However, with the Ministry of Labour assuming the prevention activities of the WSIB, the line of demarcation between enforcer and educator becomes less clear. Collectively, our members have expressed concern about the new role that the Ministry of Labour inspectors will assume and what

guidance they will have as they become both an educator and enforcer.

Therefore, we believe that an "educate first" approach is best in these circumstances, where the immediate health and safety of the worker is not at risk. An "educate first" policy needs to be established by the Ministry of Labour. The SWAs, specifically the IHSA, are uniquely positioned to assist meeting this mandate and should be relied upon to assist the prevention council. Therefore, we would suggest an amendment to the legislation, perhaps under section 3 of Bill 160, that would allow for an "educate first" policy to be written by the director, as the director has the ability to write specific policies.

I'll try to summarize this last part very quickly. It has to do with the current prevention programs within the WSIB and the prevention mandate being removed from the Workplace Safety and Insurance Act. Part II of the Workplace Safety and Insurance Act, obviously, has been completely repealed.

We are concerned that we will lose the ability to continue the prevention programs that currently exist, such as safety groups, and the ability for financial incentives to be tied to these prevention programs. In addition, part II of the WSIA, which would be repealed through Bill 160, allowed for an accreditation program for employees and allowed for financial incentives to be attached to an accreditation program. By removing that section, there would no longer be the ability for the accreditation program to move forward, in our reading of the act, or for financial incentives to be tied to that.

Therefore, we would recommend amendments to the legislation that would allow for incentive-based prevention programs to continue, would direct the WSIB to continue providing funding for such programs, and would highlight the ability of the Ministry of Labour, through the chief prevention officer, to introduce an accreditation program that would receive the benefit of financial incentives provided through employer premiums via the WSIB.

We'll also be providing some further written comments that will further expand on some of the ideas and issues that we have.

We thank you for your time, and if there's time, we're happy to answer some questions.

The Chair (Mr. Shafiq Qadri): There are about 40 seconds left, in total, so I think I'll just take it upon myself, as Chair, to, on behalf of all members of the committee and, indeed, all members of the Legislature, thank you for your deputation and written submissions on behalf of the Construction Industry Task Force. Thank you.

Ms. Karen Renkema: Thank you.

THUNDER BAY AND DISTRICT INJURED WORKERS SUPPORT GROUP

The Chair (Mr. Shafiq Qadri): Now I invite our next presenter, Mr. Mantis, who comes to us via conference call, of the Thunder Bay and District Injured Workers Support Group. Mr. Mantis, are you there?

Mr. Steve Mantis: Yes.

The Chair (Mr. Shafiq Qaadri): Welcome to the social policy committee. You have exactly 10 minutes in which to make your presentation. I'd invite you to please begin now.

1630

Mr. Steve Mantis: Thank you, Mr. Chairman and members of the committee. I'm speaking on behalf of the Thunder Bay and District Injured Workers Support Group. We are a voluntary organization based in the Thunder Bay district. We were formed in 1984. We are staffed entirely by volunteers and receive no government funding.

This legislation is really important to us because we're on the receiving end of where the health and safety systems fall down. We are seeing an increase in the number of people coming to us for assistance, we think because of the complexity that is developing within the WSIB, the Workplace Safety and Insurance Board, but also, we think that there are more serious injuries that are happening today than there were some years ago.

The experience of injured workers, once they become injured and if they end up with a long-term injury or a permanent disability, is really tragic. The systems themselves do not keep track. It was interesting: The last presenter talked about performance measures. We have been seeking for the workers' compensation system to bring in performance measures during the whole length of our organization, the 27 years, to really look at what happens to people once they become permanently disabled.

The average over the last 20 years has been that around 12,000 or 13,000 workers end up with a permanent disability as a result of their workplace injury or disease. Those numbers are going up. When we look at the annual report and the statistical supplement of the WSIB, we're seeing that those numbers are now inching right up to 16,000 a year.

This is happening at the same time as the number of injuries that are reported to the system goes down and, even more so, as the number of lost-time injuries goes down. The Ministry of Labour has been celebrating this; the WSIB has been celebrating this. But we think that, in fact, what is happening is that there is an increasing experience of seeing some employers hiding the claims, trying to stop their workers from reporting to the WSIB, and this has a negative impact on the overall health and safety system.

When you develop a culture within the workplace that discourages people from reporting injuries and diseases, the basis, the foundation, of the system is in jeopardy. We know well that there is a pyramid of, first, near misses and then injuries and lost-time injuries, leading up to fatalities. When you start chipping away at that bottom level and say, "Don't report, don't report," then you don't have the information, as management, to take the appropriate action to prevent these types of accidents and injuries from happening in the future. We think that that may be why we are seeing an increase in the serious injuries, the long-term, permanent ones, while at the same time the overall numbers are falling.

We see that this is a result of a number of things. One is that the ministry and the WSIB have focused all their attention on lost-time injury rates and have set goals that those rates need to go down. They have used the programs—we heard from the last speaker that they want more of the programs that provide financial incentives to employers to play the system, to engage in these programs. We have seen over the last 10 or 15 years that the amounts are—well, over 15 years, it's close to \$3 billion that has been paid out to employers through the WSIB incentive programs to achieve these goals of lower lost-time injury rates. But as I've already said, at the same time we're seeing an increase in long-term, permanent injuries, and those are really the major costs in the system. That's what really drives the costs of the system. So we are seeing short-term results, seemingly, on paper at least, but we think that this ends up in long-term costs, and now we're really seeing those costs mount up with those numbers increasing of people with a permanent impairment.

We know that the Dean report, when they looked at the experience rating program, the incentive program, said, "Well, we're not going to really comment. We think there are some problems here, but we're going to leave that up to someone else," and we think that this is causing a real problem with health and safety in the workplace, meaning that some employers now spend more time playing the system in order to get a financial rebate or prevent themselves from getting a financial surcharge, rather than focusing on good occupational health and safety practices.

We have a real concern as well around occupational disease. This is the area in terms of health and safety where we see the largest expansion of claims. As more and more research gets done, we see that there may be increasing evidence of the connection of workplace exposures to cancers in years following and that we need to address this in a very proactive way. We have recommended, in terms of cancer, that all those cancer treatment centres start taking work histories, start assessing when we start getting clusters of workers with the same cancers in the same workplaces and take action as quickly as possible. That, as well, has fallen on deaf ears.

We think the research clearly supports that what is most effective in terms of better health and safety is stronger enforcement, and we really see that as more inspectors with a mandate to really call what they see and where the problems are. The enforcement is what employers really pay attention to.

We support education, it's great, but we've already seen how the education that is mandatory now is often-times not carried out. We see what the regulation says, that there have to be joint health and safety committees in workplaces over 20. Not even half of the workplaces have a joint health and safety committee that is functioning.

So the regulations that you're dealing with now—we're not really convinced they're going to have much, if any, impact. We think that enforcement is where we need

to go. We do also support the occupational health clinic for Ontario workers. That's the group that can provide real help in the workplace in terms of the hazards and especially around disease, and we really call for expansion of those services across the province. And in terms of experience rating, we need to change that so that experience rating is not based on lost-time injury claims, not based on claims costs, but is based on the actual safety improvements that happen in the workplace.

Thank you very much for the time to present to you today.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Mantis. You have 20 seconds a side, beginning with the PCs.

Mr. Randy Hillier: I would say that it's an important thing for the government to understand, with your statistics—I think it's intuitive to everyone, when you see that the fatal and serious injuries are increasing but all lost-time injuries are going down, that the system and the—

The Chair (Mr. Shafiq Qaadri): Thank you. Mr. Miller.

Mr. Paul Miller: Thank you, Steve. You hit the nail right on the head. The experience rating program has to go. Companies do play games, and a lot of injuries don't get reported. You're right on the money with that one, and that's one of the major things causing the unfunded liability in WSIB.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Miller. Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Mr. Mantis, I want to thank you for your presentation, on behalf of the committee.

Just one quick point: I understand that you have worked with the Minister of Labour on issues related to the injured worker community, and your insight and suggestions in the past and today have been very helpful, so thank you.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Berardinetti, and thanks to you, Mr. Mantis, for coming before the social policy committee here in Parliament. Thank you very much, and goodbye.

Mr. Steve Mantis: My pleasure. Goodbye.

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ELEMENTARY TEACHERS' FEDERATION OF ONTARIO

The Chair (Mr. Shafiq Qaadri): I now invite our next presenter: Ms. Young of the Elementary Teachers' Federation of Ontario. Welcome. You've seen the protocol here a few times now. I invite you to please begin.

Ms. Valence Young: Thank you. As a teacher, I call your attention to an error on the first page. It's actually 2011 that we're speaking to.

Thank you for including us today. I would like to give remarks based on the content of the document that you see before you. The Elementary Teachers' Federation of Ontario includes some 76,000 educators.

I very much appreciated the remarks of Steve Mantis about the incidence of accident, injury, illness and disease, because as the Elementary Teachers' Federation of Ontario, we know that our workers are exposed to those risks too. In fact, in the Ministry of Labour document, the industry sector report, elementary and secondary educators have as much a risk of lost-time injury as health care workers, which puts them at more than double the rate for mining in Ontario.

In terms of the strengths and weaknesses of Bill 160, we chose five points, and I would like to run through those five points with highlights that may not be in the text.

First of all, in terms of the chief prevention officer and prevention council, we recommend that we have equity on that council of both labour and management, and that there be provisions for equal representation on that council from both labour and employers, and if there are additional members appointed to that council, that they certainly have health and safety expertise.

In terms of directors and inspectors, the new language in Bill 160 is troubling in terms of policies—the power over policies by directors. It appears that the director may establish written policies respecting the interpretation, administration and enforcement of the act, and we believe that is a grey area that can be twisted according to political interest.

We also suggest a concern over the mention that Ministry of Labour inspectors “shall” follow the policies established by the director. We feel quite strongly that that takes away the inspectors' power to enforce and the duty to uphold the Occupational Health and Safety Act.

We're also concerned about testimony. There's a statement in the Bill 160 provisions which uses the word “not”: “An inspector is not a competent or compellable witness before the board....” We find that unproductive and, in fact, unacceptable. We support the Ministry of Labour inspectors in their work across Ontario, and in fact we strongly believe that there are not enough inspectors in Ontario doing the job that needs to be done in terms of enforcement in every workplace. So we have recommendations regarding the language of those policies.

The third point that we have is the labour-governed occupational health clinic and labour-governed training centre. We're referring, of course, to the Occupational Health Clinics for Ontario Workers and the Workers Health and Safety Centre. We implore you to consider the long-standing value, the proven record of both of those organizations—the Occupational Health Clinics for Ontario Workers in terms of preventing occupational disease and injury, researching among and with workers, and finding constructive, clear ways of communicating risk to the larger community and supporting workers and having safer and healthier workplaces. In terms of the Workers Health and Safety Centre, the standard of training that is provided by the Workers Health and Safety Centre is unmatched in Ontario, and we look forward to their continued support in every workplace. We're

recommending that Bill 160 include specific provisions to designate and fund both the Occupational Health Clinics for Ontario Workers and the Workers Health and Safety Centre.

In terms of the fourth subject, joint health and safety committees, this is a tremendous struggle for us. We find we're often in battle with our school boards that have challenges understanding that this joint health and safety committee is actually a powerful medium for the internal responsibility system, where neither management nor worker hold supreme power. Those battles are time-consuming and get in the way of dealing with serious concerns about workplace health in our schools that affect not only the professional well-being of the educators, but the learning environment of our students.

There is mention in the provisions of Bill 160 of providing the powers of co-chairs so that a co-chair can make an independent recommendation to the school board. We find that a powerful addition and ask for a clear, succinct, crisp statement regarding that, so there is no fuss and bother when a co-chair needs to make an independent recommendation on the worker side to the school board about a necessary consideration to improve the well-being of everybody in the building.

Our fifth concern is training. We find there is very little that we can uphold as exemplary training among school boards in the province of Ontario regarding the health and safety of the people in the building. This is currently exemplified in the lack of adequate workplace violence prevention training and workplace harassment training. There is currently no direct and robust effort to address the concerns, the needs or the requirements of the Occupational Health and Safety Act in terms of domestic violence spilling over into the workplace.

We need mandated training for everybody in the school board; everybody in the organization, from the director to the worker. That must be in place, because right now, what's happening is there are training programs that aren't training programs at all: for example, PowerPoints that are done on independent time or WHMIS training that's done with computer programs that cannot show you your errors clearly. You need people to educate, people who have a passion for health and safety. You need clearly mandated content delivered by qualified people to train others in their rights and responsibilities in the workplace, whether they are the director of a board of education, the custodian, the secretary or the educational assistant.

Those pretty much sum up the concerns of the Elementary Teachers' Federation of Ontario. It's my privilege to be with you here today, and I'm looking forward to hearing any comments or questions that you may have.

The Chair (Mr. Shafiq Qaadri): Thank you. There's about 45 seconds per side. Mr. Miller?

Mr. Paul Miller: Thank you; a very good presentation. One of the problems I see in Bill 160 is that they don't deal with section 50, which is enforcement. It's never been a good section, in this bill or in the previous bill.

My wife's a teacher too, retired. Do you feel that sometimes there's intimidation in the workplace—in the

school boards, in the schools—about not reporting incidents of safety? Have you seen any of that in your years of experience?

Ms. Valence Young: It's often a concern that comes across my desk down the street at the Elementary Teachers' Federation. We're speaking about concern about reprisal, and also a concern about employment—

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Miller. Mr. Berardinetti?

Mr. Lorenzo Berardinetti: Ms. Young, thank you for coming out today. We've been taking notes, and you brought up some very excellent points. My time is very limited. I wanted to ask you a few questions, but I don't want to get cut off by the Chair. But we do have the presentation, and thank you for that.

Ms. Valence Young: Thank you very much, and thank you all. I appreciate being here.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Berardinetti. Mr. Hillier?

Interjection.

The Chair (Mr. Shafiq Qaadri): Ms. Young, we've got one more party before you. We would never want you to neglect the PC caucus.

Ms. Valence Young: Oh, I'm delighted. Thank you.

The Chair (Mr. Shafiq Qaadri): Mr. Hillier?

Mr. Randy Hillier: First off, I have to say I was quite amazed that elementary school teachers have twice as many lost-time injuries as mining. I will say this: Do you think anything in this bill or in your recommendations will make elementary schools safer? On the same par as mining, for example?

I'd also like you to expand a little bit with regard to inspectors not being more in education for health and safety. Would more inspectors in the school make it safer for our elementary school teachers in reducing lost-time injuries?

Ms. Valence Young: Yes. And mandatory training for everyone in terms of their rights and responsibilities under the act would be very beneficial, sir.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier, and thanks to you, Ms. Young, for your deputa- tion on behalf of the Elementary Teachers' Federation of Ontario.

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EMPLOYERS' ADVOCACY COUNCIL

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward: Mr. Galasso and Ms. Dagnis of the Employers' Advocacy Council. Welcome, and please begin.

Mr. Joe Galasso: Good afternoon. My name is Joe Galasso. I'm corporate director of health, safety and environment for Samuel, Son & Co., Limited, and I am a member of the Employers' Advocacy Council policy and legislative committee. With me today is Maria Dagnis, director of government relations and membership for the Employers' Advocacy Council, who will be presenting our comments on Bill 160.

Ms. Maria Dagninis: On behalf of the Employers' Advocacy Council and its 400-plus members, we wish to thank the Standing Committee on Social Policy for the opportunity to present today and provide feedback on Bill 160. The EAC would also like to thank Tony Dean and the expert advisory panel, and Minister Sousa for their commitment and dedication to improving Ontario's occupational health and safety system, and for their desire to create a "best in class" system that all employers and workers can be proud of.

The EAC is a member-based, non-profit employer group and an initiative of Canadian Manufacturers and Exporters. The EAC takes great pride in being the leading source of information, training and advocacy on workplace safety insurance. For 26 years, through our advocacy, workshops and safety group program, we've worked with employers to reduce worker compensation costs and the number of claims, and help to prevent workplace injuries.

The EAC is a founding member of the safety group program. This year, the EAC has over 140 companies participating in the safety group program. We have three distinct chapters: the Canadian Vehicle Manufacturers' Association, Magna and a multi-sector group. In 2009, our safety groups received a combined rebate of \$1.6 million. In addition, EAC's training seminars have now expanded to include seminars in both insurance and compensation, and health and safety.

With the average cost of a lost-time injury in Ontario now well over \$100,000 in direct and indirect costs, the EAC is very cognizant of the challenges facing the current occupational health and safety system. It recognizes the importance of the legislative amendments required so that all workplace parties can benefit through greater alignment and coordination of health and safety association activities, better access to resources and improved opportunities for stakeholders to become engaged.

In reviewing Bill 160, EAC recommends that the following legislative amendments be adopted with priority:

(1) Transfer of the prevention responsibility from the Workplace Safety and Insurance Board to the Ministry of Labour: This is a critical component of the health and safety alignment process. There is a definite need to minimize duplication between the prevention and enforcement pillars of the occupational health and safety system and to create uniformity and consistency. With this provision, the Minister of Labour would have express powers to promote public awareness of occupational health and safety, educate employers and provide grants to support occupational health and safety activities. EAC supports this provision.

(2) Consistency of application and instruction to ministry inspectors: The EAC supports the provision under subsection (3) which allows directors to establish written policies respecting the interpretation, administration and consistent application and enforcement of this act, and that the inspectors follow the established policies set out by the director. Consistency of application is a

very important step in guiding the implementation process of prevention activities.

(3) The creation of a chief prevention officer: The EAC has made a separate submission on this new role. It included the importance of communicating to small employers by focusing on their specific needs and financial resources. In addition, among the recommendations in the report of the minister's expert advisory panel in December 2010, was one recommending that the new prevention organization develop a multi-year social awareness strategy. We continue to support this recommendation and its intention to significantly reduce public tolerance of workplace injuries, illnesses and fatalities, and shift attitudes, beliefs and behaviours around occupational health and safety.

The EAC supports the creation of the CPO and a new prevention council.

(4) The establishment of standards for training programs: Establishing training program standards in workplace health and safety education and its promotion is an important initiative in achieving excellence in workplace safety. The EAC supports the proposed change to transfer the responsibility of the delivery of certification of joint health and safety committee members from WSIB to the MOL. We support the provision for training providers to disclose information to the minister on a worker's successful completion of an approved training program.

Furthermore, the EAC supports the creation and development of coordinated and aligned training objectives, so that all parties understand their legislative obligations.

Mr. Joe Galasso: Conclusions and recommendations: EAC remains committed to working with the Ministry of Labour and all health and safety prevention partners. EAC will continue to work diligently on behalf of Ontario employers to ensure that their concerns are addressed and to ensure an adequate and equitable health and safety system in Ontario.

In summary, EAC supports the adoption of the Bill 160 legislative amendments regarding: the transfer of the prevention responsibility from the WSIB to the MOL; consistency of application and instruction to ministry inspectors; the creation of a chief prevention officer; and the establishment of standards for training programs.

In conclusion, the EAC welcomes the opportunity to work with a new prevention organization, a new chief prevention officer and a prevention council whose combined efforts will engage employers in more meaningful, proactive and consistent applications of the Occupational Health and Safety Act.

The EAC thanks you for your consideration.

The Chair (Mr. Shafiq Qadri): Thank you. A minute a side: Mr. Berardinetti.

Mr. Lorenzo Berardinetti: Thank you, Ms. Dagninis and Mr. Galasso, for your presentation. Is it fair to say that, in general, you support the bill that has been put forward today?

Ms. Maria Dagninis: Yes.

Mr. Lorenzo Berardinetti: Thank you, and thank you for coming out, on behalf of the government members.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Berardinetti. Mr. Hillier?

Mr. Randy Hillier: Thank you very much for coming out. There's no mention in your presentation about the removal of the existing section 7 committees throughout the province. I'm wondering if that's not a concern to you at all.

Mr. Joe Galasso: I can't talk specifically to the whole EAC's position on that. I think that the EAC and its membership have varying opinions on various parts of this legislation. We're talking specifically to these ones today. I think everyone has a different opinion on different sections of the legislation. So we would support some and some would not be supported.

Mr. Randy Hillier: Thank you very much.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Hillier. To Mr. Miller.

Mr. Paul Miller: No questions, thanks.

The Chair (Mr. Shafiq Qaadri): Thank you, Mr. Miller, and thanks to you, Ms. Dagainis and Mr. Galasso, for your deputation on behalf of the Employers' Advocacy Council.

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 5555

The Chair (Mr. Shafiq Qaadri): I invite the next deputation, deposition, delegation—I believe all qualify, but I do thank you for the literary input, Mr. Hillier.

I now invite Mr. Postar of CUPE, Local 5555 and colleague. Gentlemen, please do introduce yourselves. I believe that's Mr. Morin; welcome, again.

Please begin.

Mr. Don Postar: Yes, thank you. My name is Don Postar. I work out of CUPE, Local 5555, which is, of course, the Kawartha Pine Ridge District School Board. I am a full-time caretaker there. I'm also the chairperson for CUPE Ontario's health and safety committee. I want to make sure that I say that Fred Hahn, our president, will be submitting to you later in the week.

We do support the position of the OFL and the issues raised and provided to the ministry of what follows, but because my timelines are short, I want to cut to page 2 already. I want to talk about vulnerable workers who are victims of reprisals for their attempts to protect their health and safety. They're not protected by this bill.

Ontario workers have the right to participate, know and refuse, and these rights must be done powerfully and swiftly to be enforced.

I have provided the committee with some literature. The first one to deal with is an article from the Toronto Star concerning what we believe is another form of intimidation. The private investigators followed a health and safety representative for as many as 13 hours a day.

My second paper is: "Toronto Hydro Brass Caught in Cover-Up...." It says in the second paragraph, last line, "The employer's letter stated that the allegations were 'completely untrue' and that 'there is no such surveillance investigation under way.'" It was later deemed that

there was an investigation by three different private investigators.

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To my second one, I go to the last lines, where the worker said, "To potentially follow me home and get my family on tape, I have a real concern with that.

"You want to pound on me here at work," that's okay. "But to take this into my personal life," that should be forbidden.

Attached, also, we have the behaviour-based safety form from Suncor. It's from 2007. It's about programs to put in a place so that we don't report injuries and we don't report hazards. Because, as you can see in the first bullet, it says, "without exception, regardless of reason" that I do not miss work, my name will get put in to receive a reward of a vehicle valued at \$30,000 to \$40,000, but I have to not miss a day of work. So if I'm injured, I'd better not report. That is bad.

Actually, I could give you a personal one on this: My daughter worked in a place, and it didn't have a union. They were given a \$500 bonus for the 16 workers who worked on the tow motors, delivering. If they didn't have an injury or an illness that month—or, it was six months; sorry—they got a \$500 bonus. A 22-year-old man stepped off his tow motor and twisted and broke his ankle, and subsequently the \$500 went out the door, with 11 of his co-workers showing up at his door to give him the reprisal instead of the employer—terrible.

Then I want to talk about powers to the senior Ministry of Labour directors. I quickly want to go into school boards. We have a real concern about giving directors this power, the reason being, there are so many directors in Ontario from the Ministry of Labour that each one would have a different take on it. To give you an example, my school board goes from Trenton to Oshawa, up to Apsley—108 sites and 108 different ways to do business. The principals all do their own business. But what is alarming is, I deal with three Ministry of Labour offices, and I'll tell you right now, all three have different ways of doing business.

We have multi-site and single-site through Ontario. I haven't mentioned yet, but I'm the health and safety rep for the Ontario School board coordinating committee, so I know pretty well what's going on through the Ontario school boards' works. I can tell you that if we do lose the multi-site to a single site—and it looks like the Ministry of Labour is pushing for that—it virtually skirts the employers' obligations under sections 25 and 26 because now the site is in charge of inspecting and reporting and keeping our workers safe in the workplace. This is not right and it should be looked at.

I've been working in the school board sector for 28 years, and what I see is, the education sector does not have its own regulations. We are called by some of the inspectors "an extended workplace," which means that we don't fall under any regulations. So when they come in to enforce, there's nothing to enforce. There's nothing there for them to enforce in the school board sector. One of the previous speakers talked about the injuries in the

teachers. Well, the teachers, I can tell you right now—our caretakers, EAs, secretaries and maintenance persons are higher.

Accountability: I can talk again about—I'm on page 3. Imagine being in a school board as a casual worker or a temporary worker. I get into one of these schools in the rural area and I want to report an injury or report a hazard, and the administration wants to keep it in the school. The intimidation is there, the reprisal is there, and my workers are told, "You're lucky to have a job." The EAs have been told, over the violence in the workplace, "That's just part of your job." Everyone here knows it's not part of the job to go home injured at night, so I have a real hard time dealing with this.

I'd like to talk quickly about the internal responsibility system and what I see the Tony Dean report came out with. I have a hard time believing that the expert panel would try to get the individual responsibility system through here, because the internal responsibility system, very much so, is part of the culture in health and safety.

On my one from the Canadian Vehicle Manufacturers' Association, page 2, third-last paragraph, it says, "With respect to this review, we believe the Ministry of Labour needs to effectively communicate and endorse the understanding of an internal responsibility system. The ministry should be fostering an individual responsibility approach to IRS. Under the approach, the joint health and safety is responsible for monitoring the effectiveness of the IRS system should it not undertake the health and safety responsibility for the workplace parties." The internal responsibility was entrenched when Ham and his commission did his study way back.

The Ontario government commissioned an independent review of the Ministry of Labour's health and safety division in the 1980s. Laskin's study looked at the IRS and found—and I've quoted it in my submission, which I'm just going to pass over because I've allowed it for your reading.

Where I want to go now is to page 4 of it. I've included a copy about criminal charges up in Sault Ste. Marie. What we had there up in Sault Ste. Marie was James Vecchio, who died. The article of March 22 cites the reasons the criminal charges were dropped, and then on April 11, which has just passed, the crown released a statement that they could not establish that the braking system on the crane failed. The question is, if this is why the criminal charges were dropped, then who is actually responsible for that worker who was killed? What caused the accident, and why wasn't the city actually charged? Because it was their worker who was killed. Instead, a worker who worked the crane was subsequently blamed for it, so it was called "blame the worker." In the labour movement, we have a hard time blaming a worker for an accident that should be under the obligations of the employer.

The Chair (Mr. Shafiq Qaadri): Mr. Postar, I'll need to intervene there.

Once again, on behalf of the committee, thank you for your deputation on behalf of CUPE Local 5555, and to your repeat colleague, Mr. Morin there.

ONTARIO BAR ASSOCIATION

The Chair (Mr. Shafiq Qaadri): I now invite our next presenters to please come forward: Mr. Geiger, Ms. Tanzola and Mr. Akazaki—yes; konnichiwa—of the Ontario Bar Association. I welcome you. I'd just have you introduce yourselves, and please begin now.

Mr. Lee Akazaki: Good afternoon. My name is Lee Akazaki, and I'm the president of the Ontario Bar Association. We're circulating materials which are in draft form. A final version will be prepared in response to any concerns or questions that this committee may have, which we may prepare.

To my immediate left is Mark Geiger of Blaney McMurtry and to his left is Carissa Tanzola of Sherrard Kuzz. They are members of the employment and labour section of the OBA.

The OBA is the largest voluntary group of lawyers in Ontario, approximately 18,000 in total. We represent judges, lawyers, law professors and students and are the voice of the legal profession. We have no fewer than 36 practice sections, which are actively involved in every part of Ontario society. Our labour employment law section has 900 members, including leading practitioners in the field.

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Our members and those who appear before you today represent lawyers acting for employers, unions and employees in every sector. It is our members who are in the trenches working with this legislation, and our interest in appearing before you today is to ensure that this legislation works.

So without further ado, I am going to call upon my colleague Mr. Geiger.

Mr. Mark Geiger: Thank you very much. As Lee has said to you, we represent all of the employment and labour lawyers who are members of the OBA in the province of Ontario. Our job is to try to bring up for you any changes that we think would make the act work better, and that's what we're hoping to do here today.

We are really focusing on three comments and some suggested amendments to the act. I'm going to deal with the first two and my friend to my left is going to deal with the third one.

The first one deals with the training. We are very much in favour of training of workers, especially in heavy risk industries, such as construction. However, we want to make sure that we don't undo some of the very good work that's been done in training in the people of Ontario with many employers and many workers and supervisors over the last several years. We want to make sure that when standards are introduced, they are prospective. In other words, we're not going to be required to retrain everyone who has already been appropriately trained in the people of Ontario. That would be incredibly expensive for everyone concerned.

In the construction industry, just by way of example, if a major construction company is dealing with employees, those employees don't appear on the work site unless

they have the appropriate training. There's at least five or 10 different kinds of training that are required. Fall arrest is perhaps one of the most important, and confined spaces, shoring etc. So there have been good training programs in place in Ontario that have been provided to employees both by employers and by private companies. We just want to make sure that that isn't nullified.

The recommendation that we make on page 4 is that we suggest the amendment, "Nothing in this act renders inadequate training received before the effective date of any standards established under subsection (1), and non-compliance with any standards established under subsection (1) is not, in and of itself, evidence of inadequacy of training received prior to the effective date of such standards." I think the amendment sort of speaks for itself.

The second area that we want to speak to you about deals with the chief prevention officer. The Dean report had very strong recommendations that someone would be appointed who would almost be a chief executive officer with respect to safety in the province of Ontario, but the provision in the proposed legislation doesn't clarify—at least as far as we can see—how this person's duties and responsibilities relate to the duties and responsibilities of a director. It seems to us that this will perhaps, unless there is some greater clarity, in fact deal with increasing the confusion and the lack of clarity which the Dean report points out in quite a bit of detail instead of the opposite.

We're suggesting to you that it would be wise, in our respectful submission, to have something in this legislation which clarifies exactly—I'll put it this way—where in the pecking order this officer, this new person, is. The Dean report suggests that they would be at the level of a deputy minister. We're not suggesting for you where you want to put this person, but we are suggesting that you make clear that the policies and procedures that are developed by this individual and by the committee that he is in charge of are coordinated with the procedures and the advice that's given by the directors.

I'll turn it over to you.

Ms. Carissa Tanzola: Thank you. I'll be speaking briefly about section 50 and the amendments made to section 50 which allow an inspector to refer a reprisal complaint to the Ontario Labour Relations Board. We refer to that—at least what we do—as just "the board," so I'll do that here as well.

We're making a few suggestions here about how we think we can improve the language of the legislation to achieve the balance that I think everyone is looking for. What I'm going to be speaking about is the overlapping jurisdiction and concurrent-proceedings problem that we see here, as well as the procedural difficulties and access-to-justice issues. I'm going to be breaking that up into the board, as it stands now, the purpose and powers of that board, inspectors and compellability, as well as carriage issues.

With regard to the overlapping jurisdiction issue, right now the proposed language says that an inspector can

refer a reprisal matter to the board if the worker has not had the matter dealt with by a final and binding settlement by arbitration or in a complaint filed with the board under subsection (2). The effect of this provision is that concurrent proceedings may be commenced, and I'll give you an example of how that can be done. In a unionized setting, arbitrators have jurisdiction to deal with these types of issues. If an arbitrator has not yet made a final and binding decision, it's possible that one is coming down in a few weeks or a few months. By the language that's currently drafted here, we could potentially have overlapping jurisdiction and concurrent proceedings, which we suggest might not be the intent of the bill itself.

As such, we've made a few recommendations, which are located on pages 6 and over to 7 of the draft document that you have in front of you. Essentially, we suggest that the language be changed to broaden the scope of what might be already commenced. We suggest, "No proceedings in respect to the matter have been commenced by or on behalf of the worker, including but not limited to, a grievance or arbitration pursuant to the grievance or arbitration provisions of a collective agreement, an application to the Ontario Labour Relations Board pursuant to section 50, a proceeding under the Employment Standards Act"—because we might be dealing with a termination here on the same set of facts—"or any other court proceeding"—the same suggestion there. In addition, "The matter has not been dealt with by final and binding settlement," if one has already come into play.

Just as an aside, a cumulative grouping of these amendments is attached to the last section of your submissions.

With regard to procedural difficulties of the board, the board is not an investigative body. The board is an adjudicative body, and that's its primary function: to resolve labour and employment disputes. The legislative powers that it has pursuant to the Labour Relations Act reflect this. This board is distinctly different from other bodies that we've had in the past and perhaps currently, which are more investigative. The example that came to our mind is the Ontario Human Rights Commission. It's helpful to kind of compare what these two bodies did and do.

The Ontario Human Rights Commission was an investigative body, as I mentioned. Cases were referred to it. It took a look at those cases and decided if there was a prima facie case that determined it would go forward to the board to be adjudicated. If it did do that, it would go on to the tribunal and they would hear the case.

The Ontario Labour Relations Board has no rules or procedures that are suited to the investigative role or carriage of the case. The problem here is, how does the board effectively deal with the matters that have implicit management carriage issues? I'm going to talk about the carriage issues in more detail.

As such, we suggest the following recommendation: that "The chair of the board may make rules under subsection 110(17) of the Labour Relations Act, 1995

relating to the participation of a worker in a referral made under subsection (2.1).”

Currently, there are—

The Chair (Mr. Shafiq Qaadri): Ms. Tanzola, it’s not usual that a physician would dare to interrupt a lawyer, but in this case, I will need to. Your 10 minutes has expired, and I thank you on behalf of the social policy committee for your deputation on behalf of the Ontario Bar Association.

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ONTARIO COMPENSATION EMPLOYEES UNION

The Chair (Mr. Shafiq Qaadri): I invite our next presenter: President Goslin of the Ontario Compensation Employees Union, CUPE 1750, and entourage. I’ll just let you get seated there. Please do introduce yourselves. Welcome, and please begin now.

Mr. Harry Goslin: Hi. I’m Harry Goslin, president of the Ontario Compensation Employees Union, which represents the Workplace Safety and Insurance Board employees. Here with me are Jim Braund, who is the vice-president, and Beth Harris, who is our chief steward.

I’ll begin with the reason why we’re all here today. It’s really about trying to best create workplace environments where we’re protecting Ontario’s workers. I’ve given you some information about the average rates of injury. We know that two people die each week, that another five succumb to occupational disease and that another 1,600 worker injuries cause lost time from work.

Really, the bottom line is that the death of any one worker is one too many, let alone the 365 who die in Ontario every year. In fact, we had a tragic event that happened in North York just yesterday, where a young man of 26 years died at a pasta factory. It really causes you to pause for a second and take a look at what’s happening with Bill 160.

Our core belief is that Bill 160 in itself just does not address the issue, which is to best protect Ontario’s workers. We believe that it’s a travesty to say that if you move prevention from one organization to another organization you’re going to deal with the real issue.

I’d ask the committee to take a look at what gave rise to Bill 160. What gave rise to the Tony Dean expert panel on health and safety in Ontario? It was that event that happened a little over a year ago, where four immigrant workers fell to their death when they fell 13 floors. Will this legislation, in and of itself, actually help save workers’ lives? Will it actually prevent more tragic events like this? I say to you that it will not.

We believe that Bill 160 should really not be proceeding. The recommendation to remove prevention from the WSIB and transfer it to the Ministry of Labour does not improve workers’ safety.

Bill 160 will cause Ontario to lose momentum on the issue of the WSIB’s Road to Zero strategy, which has significantly reduced injuries since it came to their mandate after 1998: a 27% decline in the lost-time injury

rate; a 15% decline in the no-lost-time injury rate; and a 40% decline in young worker fatalities since 1999. There are these two initiatives called the High-Risk Firms and Last Chance initiatives, which resulted in over 14,600 fewer lost-time injuries and saved almost \$1 billion. So why are we bringing this all to an end?

The WSIB has set a strategy of reducing injury rates by 35%, and at the midway point, they’re well ahead of their goal.

In one piece of the Tony Dean report it talks about, on page 58, lack of coverage in the Workplace Safety and Insurance Act. I would say to you that if we’re actually really serious about doing what’s in the best interest of the workers of Ontario, then we will be looking at the issue of coverage. We know that only 72% of the employers in Ontario are actually covered under the Workplace Safety and Insurance Act. That means that 28% are not paying at all into the compensation system, and their injury rates are not being tracked by the premiums and the assessments and the experience rating programs that the WSIB operates. The 28% that are not covered under the act actually represent 38% of workers in Ontario who are not covered, and they are the vulnerable workers. So if we’re really serious about doing something about workers’ safety, I’d call upon all of you to actually do something about the Workplace Safety and Insurance Act.

It would be premature to remove any programs that are tied to WSIB funding. Right now, we know that the WSIB has the Harry Arthurs funding review taking place and that that is going to be looking at things like experience rating, and experience rating and incentive programs are tied to prevention. It’s crucial that these programs are not disrupted so that the organization continues—has a key interest in prevention, because if you can prevent an injury from happening, you can reduce the unfunded liability.

I think that the government is moving far too quickly in trying to implement something like Bill 160 without looking at the whole picture, which is part of what the funding review would do. It’s going to disrupt programs like Workwell evaluation. Workwell evaluators will go in and they will do health and safety audits. We know that every dollar invested in Workwell actually yields an eight-to-one savings ratio, so why is this going to be disrupted by this bill?

Another key thing is: What will happen during the interim? So this bill gets passed; is there any road map on how we will get to the end state? There isn’t. I’ve met with the deputy minister, I’ve met with the Minister of Labour, and there is no clear road map of how we’re going to get from here to there without stopping the Road to Zero and without actually trying to do something—it’s completely vague. This is such a travesty.

The WSIB will continue to fund the safe workplace associations. That funding all comes from 72% of employers that pay premiums to the WSIB. They fund 100% of health and safety and prevention in Ontario, to the tune of over \$216 million—\$216 million that will come from

WSIB, move to the Ministry of Labour, more than doubling the Ministry of Labour's current budget. And yet the WSIB would have no oversight over how those funds will be used.

When you look at the prevention council, the council has a lot of responsibility but very little authority. With that council's makeup, which is being supported by employer premiums, the WSIB has no seat. Why is that? That seems awfully strange. We would suggest that they have at least two people on the council.

With a chief prevention officer, we think that the chief prevention officer's role is far too politicized; it needs to be an apolitical role. It needs to have an actual arm's length from the Minister of Labour and the Deputy Minister of Labour. You need to have a strong chief prevention officer who can make those tough apolitical decisions and not be at the whim of the political philosophy of an elected official. We think this is a critical flaw in this proposed legislation.

One of the key things, I think, that is also of primary concern to us is the bill that gives the directors of the ministry the authority to really publish policies that would have the force of law. I think that this is something that is a completely new event in legislation. It really circumvents the whole process and gives the ministry powers that they currently do not possess. Is that something that we really want to be seeing happen?

Reprisals: We think that the inspectors ought to be compellable to come to the Ontario Labour Relations Board, and we think that this provision should be expanded so that they could be compellable to come any time that they have relevant findings.

When we talk about the WSIB, which is going to be funding the new prevention system to the tune of \$216 million at a time when the WSIB has an unfunded liability issue that they are trying to deal with but yet will have no control or consultation from the chief prevention officer or the prevention council on how those funds will be utilized—it hinders them in trying to be transparent with the employer stakeholder groups on how their funds are being best used.

One of the key things is, under the Workplace Safety and Insurance Act, all references to prevention in the mandate of the WSIB are being struck from the act. We'd suggest to you that this is not the best approach to take when we talk about the Workplace Safety and Insurance Act—I think it's on page 19 of the Bill 160 draft. We're suggesting that you include the whole statement that enables the WSIB to have a role in prevention. That way, when the chief prevention officer is established, that person will be able to look at what kind of a framework they want to have when it comes to prevention in Ontario and determine what kinds of functions should continue to operate, such as Workwell evaluation in the WSIB. But if WSIB has absolutely no provision to support and foster prevention in Ontario, then you hinder that chief prevention officer's ability to make that decision.

One of the other key pieces that—

The Chair (Mr. Shafiq Qadri): I need to intervene there, Mr. Goslin. I'd like to thank you and your col-

leagues on behalf of the committee for your deputation on behalf of the Ontario Compensation Employees Union and CUPE.

Mr. Harry Goslin: Thank you.

1730

MS. TRACIE EDWARD PALMER

The Chair (Mr. Shafiq Qadri): I'd now invite our next presenter to please come forward, who is coming to us via conference call. Ms. Palmer, are you there?

Ms. Tracie Edward Palmer: Yes, I am.

The Chair (Mr. Shafiq Qadri): That's great. You are before the social policy committee. You have 10 minutes. Please begin.

Ms. Tracie Edward Palmer: In June, I made a presentation to the expert panel on occupational health and safety on behalf of the Lambton-Kent-Essex regional education sector health and safety coalition, which includes representatives from local school boards. Our coalition exists due to a long struggle with health and safety concerns in our sector.

Numerous issues were brought to the Ontario Labour Relations Board, such as an employer appeal of Ministry of Labour orders, a section 50 reprisal—

The Chair (Mr. Shafiq Qadri): Can you just do something with the microphone, how close you are to it? I think it's a little fuzzy on this end.

Ms. Tracie Edward Palmer: Okay—a section 50 reprisal complaint, an unfair labour practice complaint involving health and safety issues, permission for multi-site joint health and safety committees being revoked and a conviction which resulted in a significant fine to one of our local school boards for not complying with legislation.

I have been involved in health and safety locally for over 15 years and provincially for over seven years with the Ontario Secondary School Teachers' Federation.

First, I'd like to say that I believe some revisions of the Occupational Health and Safety Act are overdue in order to clarify its intent to protect workers. The act was first developed over 30 years ago as a result of the Ham commission and relies heavily on the concept of the internal responsibility system, giving workers an equal voice with management.

One of the changes proposed in Bill 160 is an attempt to clarify how a recommendation is dealt with if the entire committee does not agree. Unfortunately, instead of moving toward the common practice many workplaces have held by allowing any member of the joint health and safety committee to make a recommendation, Bill 160 proposes putting additional barriers in place, limiting the source of recommendations to only the co-chairs and requiring them to include additional information.

If worker members of the joint health and safety committee truly had a more equal voice when consultations occur reviewing employer policies and protocols, the employer should at least be required to indicate the

reason for disagreement if the workers make a recommendation for an improvement.

One of the other changes proposed in Bill 160 is the establishment of a prevention council. Unfortunately, the current proposal does not mandate that the council be comprised of an equal number of worker and management representatives, as was originally introduced by the Peterson Liberal government in Bill 208. To ensure that the act remains true to its original intent of workers having an equal voice dealing with health and safety, this should be amended in the final version of Bill 160 legislation.

I was glad to see in Bill 160 that the Ministry of Labour inspectors will be given the ability to address section 50 reprisal complaints. In one of our local situations, the Ministry of Labour inspector was unable to even include his opinion about the reprisal he witnessed in his field report. Section 50 of the Occupational Health and Safety Act needs to be strengthened even further to allow Ministry of Labour inspectors to act as witnesses in a section 50 complaint, if applicable, to protect the worker during the process and to make the section 50 complaint process faster and more accessible.

Because we have so many staff members who are afraid of raising concerns due to the subtle ways administration can issue a reprisal in our system, we rarely are successful in encouraging our members to stand up for their rights, and even anonymous complaints must be thoroughly investigated. If I had more time, I would present more information on the lack of enforcement we have experienced in our sector and the need for random inspections by Ministry of Labour inspectors.

Unfortunately, Bill 160 does not indicate any increase in enforcement of the act, but indicates that the chief prevention officer could actually develop new policies and require Ministry of Labour inspectors to enforce them without ensuring that these new policies are adequately vetted to ensure their reasonableness.

We need to remember that absolute power corrupts, and the Ministry of Labour is there to enforce the laws, not to create them. That's what the Legislature is for. Policies established under the legislation should be vetted through the prevention council, which, as I stated earlier, should have equal representation from worker groups.

Also, if the Ministry of Labour makes orders at one work site, it is only reasonable that the orders must be enforceable at all of the work sites belonging to the same employer where that order is relevant so the employer is forced to implement the correction to protect all employees.

Currently, the school boards believe they are issued orders that are only relevant at the one school and do not apply throughout the whole school board. Their due diligence should be explicitly clarified in the legislation with an amendment to Bill 160.

The expert panel on Bill 160 recognizes the need for more training. Unfortunately, you know from experience that if the type and quantity of training are not prescribed, employers will do the minimum.

Competition between training providers leads to employers looking for training at the lowest possible cost. Interactive, face-to-face or group instruction rather than online computer-based training should be required, allowing participants to have their questions answered.

All of the school boards use inadequate PowerPoint printouts or computer-based training in their annual WHMIS training, and the most common outcome for staff is finding a shortcut to save time and avoid running the required content.

The training must involve examples from the participants' workplaces, brainstorming solutions to scenarios presented on worksheets etc. to make it relevant.

Best practices show employers using worker members of the committee to do the training after they receive instructor training through the Workers Health and Safety Centre. Even with the train-the-trainer model, employees can save money and have instructors that are familiar with their policies and protocols.

Standards need to be set for all types of training; for example, basic orientation training that includes awareness of worker rights and information on the significant hazards in the workplace—more than just WHMIS. And in light of Bill 168, which incorporated violence into the Occupational Health and Safety Act, we need training related to violence in the workplace and proactive training that includes de-escalation techniques.

All workers need training on the work refusal process, and the workplace parties need to be reminded of the protection offered by section 50 of the act. This basic training for all workers should be legislated.

The Ministry of Labour must be empowered to enforce concerns under the direction of the WSIB, not just training but also the reporting and falsifying of accident reports. We have encountered each of these issues, and neither WSIB nor the MOL have an enforcement mechanism to deal with them.

Although the WSIB guidelines recommend employers consult the joint health and safety committees about determining hazard-specific modules for certification training, an employer can opt for the minimum.

One of our school boards decided that there was only one significant hazard in their schools—slips, trips and falls—by simply looking at the frequency of these injuries. They ignored training on indoor air quality, violence, ergonomics and a host of other hazards frequently encountered in our schools.

There may not be a "one size fits all" solution, but the health and safety associations and the Workers Health and Safety Centre have determined sector-specific streams of modules for part 2 certification, and this could be a baseline or minimum standard for the sector.

I don't understand the creation of a body to oversee health and safety training providers, since I have had some training from management-based IAPA and ESAO, which is lacking, particularly in areas such as providing information on the right to refuse and how to be an effective advocate for health and safety. I am concerned that this overseeing body will have too much control over

the Workers Health and Safety Centre, which has met the WSIB standard and provided superior training for years. The autonomy of the Workers Health and Safety Centre must be preserved so that their training is not dragged down to the minimum standard of the other organizations.

The Workers Health and Safety Centre must be able to ensure they are not forced to advocate for the principles of behaviour-based safety as other organizations do. Health and safety training should demystify the myth of the careless worker and focus on eliminating the hazards and not blaming the worker. Behaviour-based safety programs, such as rewarding accident-free periods, only serve to limit accident reporting and should be eliminated totally from health and safety programs and training.

The worker members of the joint health and safety committee should be given the choice of training providers to counteract the effects of competition, which drives down quality in the private sector training organizations.

Even the consultations that are used by the employer for indoor air quality reports and ergonomic assessments are questionable, since they provide the employer with a draft report and accept feedback on it before producing the final version, which is shared with the workers. If the consulting firm wants to be hired again, they are pressured to provide a report which reduces the employer's liability and obligations.

The private sector organizations have a conflict of interest in their involvement if they plan to be benefiting financially from the decisions. This is why it is important to preserve the autonomy of OHCOW, the Occupational Health Clinics for Ontario Workers, which is currently funded by the WSIB. Actually, I would go one step further and believe that it should be required in legislation—

The Chair (Mr. Shafiq Qadri): Ms. Palmer, I'll need to intervene there, and I'd like to thank you.

Ms. Tracie Edward Palmer:—that public institutions need the free, unbiased services of OHCOW and not use taxpayers' money for consultants' reports.

The Chair (Mr. Shafiq Qadri): Ms. Palmer.

Ms. Tracie Edward Palmer: Sorry?

The Chair (Mr. Shafiq Qadri): I need to interrupt you there—this is Dr. Qadri, chair of social policy—and thank you for your deputation in the allotted time of 10 minutes. Thank you on behalf of the committee.

Ms. Tracie Edward Palmer: Thank you.

The Chair (Mr. Shafiq Qadri): I'd also just like to thank committee members for a remarkably collegial meeting, particularly given what took place earlier today in question period, which provoked 15 minutes of disciplinary action from the Speaker.

I remind us that the committee is adjourned for further public hearings until Monday, April 18, at 2 p.m.

The committee adjourned at 1741.

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