

Ontario Nurses' Association

Submission on Bill 160, Occupational Health and Safety Statute Law Amendment Act, 2011

The Standing Committee on Social Policy

April 11, 2011



ONTARIO NURSES' ASSOCIATION

85 Grenville Street, Suite 400

Toronto, ON M5S 3A2

Phone: (416) 964-8833

Fax: (416) 964-8864

Web site: www.ona.org

EXECUTIVE SUMMARY

INTRODUCTION

The Ontario Nurses' Association (ONA) is the union representing 55,000 front-line registered nurses and allied health professionals and more than 12,000 nursing student affiliates providing care in Ontario hospitals, long-term care facilities, public health, clinics, the community and industry.

STATEMENT OF BELIEFS: OCCUPATIONAL HEALTH & SAFETY

ONA believes that it is the right of all its members to work in a healthy and safe work environment. It further believes in the pursuit of the highest degree of physical, mental and social well-being of workers in all occupations. As the largest health care union in the country, ONA believes it is part of its mandate to exercise a strong leadership role in achieving progressively greater gains in the field of occupational health and safety.

OCCUPATIONAL HEALTH AND SAFETY PROGRESS

This government has driven significant progress in attaining safe and healthy workplaces for Ontario's health care workers and their patients. It embraced and acted on Justice Campbell's findings that, "hospitals are dangerous workplaces," and that by making health care environments safe for workers it has the added benefit of making them safe for patients, too. In keeping with Justice Campbell's advice, the government expanded the enforcement focus from the traditional industrial plant-type hazards in the sector, and added special attention to the peculiar dangers that characterize the complex health care environments around the province.

This government has enacted safe needle and violence prevention legislation, provided funding for patient lifting equipment and worker respiratory protection, engaged in multi-stakeholder pandemic planning, established the Ontario Agency for Health Protection and Promotion (OAHPP) and more. We were particularly pleased with the establishment of a new unit of inspectors within the Ministry of Labour (MOL) with specialized health care knowledge, to inspect and investigate the very complex health and safety issues that predominate in this sector. There have been hundreds of orders and several prosecutions that we believe are getting the attention of employers and raising health and safety consciousness in our health care workplaces across the province.

While we acknowledge the progress, it is not perfection. Much remains to be done. We still hear about nurses who suffer violent attacks causing serious injuries, the unprotected tuberculosis and other exposures causing disease that workers bring home to their families, employers who do not report critical injuries, unprotected exposures to antineoplastics and other peculiarly health care toxics. It is clear we need consistent and persistent enforcement to drive further progress.

EXPERT PANEL REPORT

We welcomed the expert panel review of Ontario's occupational health and safety system as an opportunity to contribute to further health and safety advancement in our sector. The panel was struck after tragic Christmas Eve 2009 workplace fatalities, and a call for **increased** enforcement, particularly in high risk workplaces and in workplaces with vulnerable workers. While not perfect, we expressed cautious optimism that the government would implement the recommendations of the Expert Panel consensus report. We were pleased the government accepted the recommendations, pledged to implement them, and we agreed with Tony Dean (emphasis added):

*The full consensus reached on our recommendation is a testament to [the expert panel members] hard work. **If the quality and spirit of the Panel's recommendations are sustained in the implementation of this report** and in the work of the proposed Prevention Council, you will have set in place an important cultural shift that could not be achieved through any amount of regulation.*

*Tony Dean
Expert Advisory Panel on Occupational Health and Safety
Report and Recommendations to the Ministry of Labour
page 2
December 2010*

OCCUPATIONAL HEALTH AND SAFETY REVERSAL

So, we were taken aback when we saw the bill the government tabled, parts of which we believe actually sets the stage for **weakened** enforcement and which we fear will reverse all the improvements we have seen. This on the heels of the Ministry of Labour's apparent about face on the Campbell recommendations. Justice Campbell, after investigating what went wrong during SARS, called for specialized attention to the long-ignored peculiar hazards in the complex health care environment. This government made substantial progress, including setting up a specialized unit of inspectors for healthcare. But in an apparent about-face, we understand that MOL managers recently eliminated the health care inspector classification with the inevitable result that the healthcare-focused enforcement activity will be diluted. Why this

turnabout on occupational health and safety enforcement in our sector?

ONA CONCERNS IN BILL 160

We are pleased that the bill moves prevention activities out of the Workplace Safety Insurance Board (WSIB) into a new entity comprised of a Chief Prevention Officer (CPO) and a Chief Prevention Council (CPC). As well, affording the services of the Office of the Worker Advisor (OWA) to unorganized, vulnerable workers, in matters of reprisal, will help secure justice for them as they assert their occupational health and safety rights.

However, as drafted, parts of the bill actually contradict the quality and spirit of the Expert Panel's recommendations. The hard work done by stakeholders and the hard won consensus has been undermined by drafters of this bill who appear not to trust the experts' recommendations, and appear to have seized this opportunity to address a perceived management challenge in the Ministry of Labour.

We have six main areas of concern in the bill:

1. The accumulation of power by senior MOL bureaucrats to write law. We are deeply concerned about the section of the bill that gives directors of the Ministry the authority, without any oversight or warning, to publish policies that have the force of law. We cannot accept any legislation that gives the government of the day these unnecessary powers.
2. Failure to protect workers from reprisal. Vulnerable workers who are victims of reprisal for their attempts to protect their health and safety are not effectively protected by this bill. There was broad consensus that the reprisal section of the OHS Act needs to be enforced, but the bill actually accomplishes the opposite, establishing blatant barriers to investigation and enforcement of violations. (Note: the Interim Prevention Council's suggestion to allow inspectors to testify only if they have direct evidence of an offence does not resolve our concern.)
3. Placing obstacles to Joint Health and Safety Committee (JHSC) co-chair recommendations. The Dean report called for expanded powers to write recommendations, yet the bill, as drafted, establishes additional restrictions on a co-chair to send a recommendation to the employer.
4. Politicization of the health and safety system by placing extensive powers in the hands of politicians, not protecting the political independence we expected of the new Chief Prevention Office and not ensuring trade union representation promised by the Dean

report.

5. The threat to the autonomy of the Workers Health and Safety Centre (WHSC) and the Ontario Health Clinics for Ontario Workers (OHCOW). Mechanisms are needed to protect their independent governance and operation.
6. The opportunity to insert the precautionary principle in the *Occupational Health and Safety Act* (OHSA).

In our submission below, we cite each concern and the relevant Expert Panel recommendation, followed by the corresponding sections of the bill and discussion of each concern.

We do not believe the identified provisions of Bill 160 reflect this government's otherwise demonstrated commitment to workplace health and safety. We urge this government to reconsider the amendments we highlight below. We have come a long way and now is not the time to reverse progress.

CONCERN 1: *The accumulation of power by senior MOL bureaucrats to write law. We are deeply concerned about the section of the bill that gives directors of the Ministry the authority, without any oversight or warning, to publish policies that have the force of law. We cannot accept any legislation that gives the government of the day these unnecessary powers.*

a. Dean Report

Recommendation 25: The Ministry of Labour should review its current enforcement policy and supports for inspectors with a view to creating a consistent approach of tough enforcement for serious and willful contraventions, as well as compliance assistance where guidance and support for employers help achieve compliance.

b. Bill 160:

**3. Section 6 of the Act is amended by adding the following subsections:
Policies**

(3) A Director may establish written policies respecting the interpretation, administration and enforcement of this Act.

Same

(4) An inspector shall follow any policies established by a Director under subsection (3).

Recommendation 25 in the Dean report calls for *policy* revisions, not legislative amendments. Only the legislature should establish law, and determine what constitutes an offence that may be prosecuted. We are concerned that, if the proposed section 6 of the *OHSA* is implemented, the policies established by an occupational health and safety director (such as whether or not to prosecute violations such as reprisals) would have the force of law, even though the policies are not labelled "laws" or "regulations" under the *OHSA*; it is sufficient that they are of "general application" and that they follow the applicable requirements for legislation.

ONA is concerned that empowering an occupational health and safety director to create policies for inspectors that the *OHSA* requires them to follow will actually permit a director to make policies that render it difficult for inspectors to enforce the *OHSA*. For instance, a director could make a policy that allows inspectors to recommend or initiate prosecution for a reprisal only in very restricted circumstances. That would mean that employers could violate the reprisal provisions of *OHSA* without fear of prosecution so long as the violations did not come within the circumstances established under the policy. ONA is also concerned about whether the amendments to section 6 will have implications for private prosecutions.

We understand that the proposed amendments are modeled after language currently present in the *Employment Standards Act*, S.O. 2000, c. 41 (ESA). Section 89(2) of the *ESA*

requires employment standards officers to "follow any policies established by" the Director of Employment Standards under section 88(2). Apparently, this clause of the *ESA* was inserted by the previous government in order a) to prevent certain "rogue" officers from relying on discredited investigation and decision-making techniques that ran counter to the "spirit" and "intent" of the *ESA*, and b) to bring consistency to the enforcement of the *ESA*, because policy for all employment standards officers would be written by a single director.

Not all "public welfare" statutes, however, contain requirements that the officers responsible for the enforcement of the statute follow policies written by a director or directors. For instance, the *Environmental Protection Act*, R.S.O. 1990, c. E.19 (EPA) empowers officers appointed under it to "investigate offences under this Act and [to] prosecute any person whom the provincial officer reasonably believes is guilty of an offence under this Act." There is no duty placed on officers appointed under the *EPA* to follow certain policies in performing their legislated roles. The same is true for those individuals conducting investigations under the *Regulated Health Professions Act*, S.O. 1991, c. 18, and for labour relations officers under the *Labour Relations Act*, S.O. 1995, c. 1, Sched. A (LRA).

The proposed *OHS*A amendments pose a danger of unnecessarily restricting the enforcement powers and duties of the health and safety inspectorate. Under Part VIII of the *OHS*A ("Enforcement"), health and safety inspectors have broad powers to investigate health and safety matters and to ensure compliance with the *OHS*A. Section 57(1) permits an inspector to write a compliance order where "an inspector finds that a provision of this Act or the regulations is being contravened." Section 62 prohibits any "person" from "hindering" or "obstructing," among other things, an inspector in the performance of his or her duties or legislated powers. Section 66(1)(a) makes it an offence to contravene any *OHS*A provision or regulation, and the *Provincial Offences Act*, R.S.O. 1990, c. P.33 (POA) empowers a health and safety inspector, among others, to initiate a prosecution where an offence has been committed (ss. 3(2), 23(1)).

In none of the legislative provisions just quoted is the ability of a health and safety inspector to initiate a prosecution or issue an order substantially restricted: it is enough that the inspector reasonably conclude that an offence or a contravention has been committed. The provisions say nothing about circumstances where an offence or a contravention has occurred, but where it is nonetheless impermissible for the inspector to lay an information or write an order. The proposed section 6 amendments might contradict – and even undermine – the broad powers

of investigation and enforcement (either through orders or prosecution) given to health and safety inspectors under the *OHSA* and the *POA*.

There is also the possibility that especially restrictive policies would fetter the inspectorate's performance of their legislated duties and powers, insofar as the policies might prevent inspectors from considering all relevant factors in making determinations during an inspection or investigation. The fettering of discretion might well trigger administrative law concepts of procedural fairness. Any director policies might not be able to circumscribe the powers and duties of the inspectorate, so long as those powers and duties are set out in the *OHSA* itself.

We believe it is poor practice at best when a bureaucracy is not willing to prosecute someone for a breach of a law, for that directive to be in legislation. The ability for law enforcement officers to do their jobs and lay charges for actions the legislature deems to be offences, should be constrained only by the existence of objective preconditions, such as evidence-based reasonable and probable grounds decided by competent, educated enforcement officers, that the requisite facts exist (not the selective enforcement whims of enforcement-shy managers).

Furthermore, we are concerned about the potential for such power to also fetter the democratic right of any individual to swear his/her own information when s/he has sufficient evidence to establish reasonable and probable grounds that an offence was committed, but enforcement agencies are not prosecuting. On their face, the proposed amendments do not apply to private persons who want to initiate a prosecution under the *OHSA* by laying an information pursuant to section 23 of the *POA*. That section allows "[a]ny person," not just a health and safety inspector, to seek the enforcement of the *OHSA* through prosecution. Certainly, the proposed section 6 amendments relate specifically to the inspectorate. It should be noted, however, that section 24 of the *POA* allows a justice not to consider an information laid under section 23 if he or she does not "consider... it desirable to do so." As such, there is a danger that a justice might rely on the amended section 6 of the *OHSA* to refuse to consider the information, if it appears to the justice that the person laying the information was proceeding in a fashion contrary to the director's policies. This might make it not "desirable" to consider the information, even though the person is not strictly bound by the policies. Moreover, it seems that justices have historically been quite resistant to allow private persons to initiate prosecutions regarding *OHSA* contraventions. An amended section 6 of the *OHSA* might make justices even more resistant to allow private prosecutions to go forward.

It appears, therefore, that although the hard won consensus of the Dean Panel did not call for this legislative amendment, the MOL *thinks* they have some problems controlling some inspectors and are seizing this opportunity to impose similar measures of control on health and safety inspectors as the previous government imposed on employment standards officers. The impact of controlling employment standards inspectors might be gauged by looking at the number of court bulletins about prosecutions that MOL posts on its website. In 2010, MOL posted bulletins about 81 health and safety convictions compared to only 6 employment standards convictions. The Expert Panel was struck in response to cries for enhanced enforcement, and the Panel's final report recommended more consistency and opportunities for deterrence. Ontario's employment standards enforcement is hardly a model to emulate.

No other employer can handle perceived management problems by making their subordinates' particular actions illegal in this fashion. Also, we are not aware of any other enforcement agency that has chosen this route. Why should this ministry think they have such an extreme power to do so? As with other employers, training, policies, recruitment, and labour relations practices are available to deal with their management issues.

It is a specious argument that the ministry is attempting to make their law enforcement more consistent by enacting this unnecessary and regressive amendment. ONA was one of a large number of stakeholders who asked the Expert Panel to address inconsistent law enforcement. In our experience that inconsistency pervades the entire ministry. It is our understanding that during SARS and recently after an investigation of a critical injury related to infectious disease, it was ministry management's decision not to issue orders or initiate prosecution. Just this past month, we were informed through the Interim Council that the ministry is aware that reprisals have always been prosecutable, but has chosen not to exercise this power, despite all the injustice to vulnerable workers that the Panel reported on.

We question why a government, who has been so appropriately engaged in streamlining and eliminating unnecessary law would now choose to enact an unnecessary, regressive section similar to that used by the predecessor government. Targeting the bottom of the ministry with unnecessary legislation will not fix the ministry's problems.

CONCERN 2: *Failure to protect workers from reprisal. Vulnerable workers who are victims of reprisal for their attempts to protect their health and safety are not effectively protected by this bill. There was broad consensus that the reprisal section of the OHSA needs to be enforced, but*

the bill actually accomplishes the opposite, establishing blatant barriers to investigation and enforcement of violations. (Note: the Interim Prevention Council's suggestion to allow inspectors to testify only if they have direct evidence of an offence does not resolve our concern.)

1. Dean Report

Recommendation 34: 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*. (...To strengthen deterrence, the Panel supports enhanced enforcement under the OHS Act to address egregious or repeated contraventions of Section 50...)

2. Bill 160:

13. (1) Section 50 of the Act is amended by adding the following subsections:

Referral by inspector

(2.1) Where the circumstances warrant, an inspector may refer a matter to the Board if the following conditions are met:

1. The worker has not had the matter dealt with by final and binding settlement by arbitration under a collective agreement or filed a complaint with the Board under subsection (2).
2. The worker consents to the referral.
3. A policy respecting referrals has been established under subsection 6 (3).

Same

(2.2) Any rules governing the practice and procedure of the Board apply with all necessary modifications to a referral made under subsection (2.1).

Referral not an order

(2.3) A referral made under subsection (2.1) is not an order or decision for the purposes of section 61.

Testimony

(2.4) An inspector is not a competent or compellable witness before the Board in a proceeding relating to a complaint filed under subsection (2) or a referral made under subsection (2.1).

The Ministry of Labour has, for many years, chosen not to lay charges against employers who take reprisals against workers seeking health and safety protection and enforcement. All labour submissions called for greater enforcement of the reprisal section, the Panel agreed and made Recommendation 34.

Section 13 (2.4) of Bill 160 flies in the face of the Expert Panel report, and actually prevents involvement of Ministry of Labour Inspectors in presenting evidence at a hearing of a reprisal complaint at the Ontario Labour Relations Board (OLRB).

Ordinarily an enforcement officer investigates and gathers evidence with a view to prosecuting, or presenting evidence in a hearing or trial. Government representatives have suggested that there is not an intention to prevent inspectors from investigating reprisals, but there is no need for them to testify at a complaint hearing at the OLRB because the Board will receive the physical notes and statements of inspectors as evidence.

This practice is an option available and exercised by the Board now. So this practice does not explain why the government finds it necessary to enact law that prohibits inspectors from testifying. While the Board may choose to receive an investigator's evidence without testimony, it also has the choice, when there is a dispute about notes, etc., to hear the testimony of the inspector. Bill 160 would remove that choice.

There is already a provision in the *OHSA* that prohibits inspectors and other individuals from being compelled to give evidence "in a civil suit or any proceeding, except an inquest under the *Coroners Act*, respecting any information, material, statement or test acquired, furnished, obtained, made or received under this Act or the regulations" (s. 63(3)). Section 63(4), however, permits a director to "communicate or allow to be communicated or disclosed information, material, statements or the result of a test acquired, furnished, obtained, made or received under this Act or the regulations." In essence, section 63(4) acts as an exception to the prohibition in section 63(3), insofar as a director appears to be able to allow an inspector to testify (see *Boeing Canada/DeHavilland Division*, [1989] OLRB Rep. December 1213).

Unlike subsection 63(3)-4, the proposed section 50(2.4) deems inspectors to be both non-compellable and non-competent at an OLRB hearing, and does not include an exception to the prohibition on inspectors giving evidence. A non-compellable witness is a witness that cannot be required by law to give evidence. A non-competent witness is a witness that has no status or ability to give evidence. As such, even if a non-competent witness could be required to give evidence or was given permission – for example, under section 63(4) of the *OHSA* – to testify, the evidence could not be heard.

Unlike health and safety inspectors under the *OHSA*, the *ESA* allows employment standards officers to testify in performing their duties. Moreover, the *LRA* sets out a broad ban on

various officials giving evidence, though that ban is tied largely to negotiation and mediation matters, unlike the ban set out in the *OHSA*, which is more general. The addition of the proposed section 50(2.4) might add a further restriction to the *OHSA*, since it does not allow for an exception to the prohibition on inspectors testifying at OLRB reprisal hearings, and since it deems inspectors to be both non-compellable and non-competent. At least an exception, like that now set out at section 63(4) of the *OHSA*, must be added to the proposed section 50(2.4), along with the deletion of the "non-competency" language.

The recommendation from the Interim Council which would allow an inspector to appear before the OLRB in reprisal proceedings where the inspector has "direct evidence" of the reprisal is problematic. While it implies that the inspector would be competent to testify (thus apparently significantly changing the proposed s. 50(2.4)), it does not tell us whether the permission of an occupational health and safety director would be required to get the inspector to provide evidence, as under section 63(4) of the *OHSA*. That is, it does not specify whether the inspector would be compellable, i.e., whether the inspector could be summoned by one of the parties to the proceeding without the consent of a director.

Second, the recommendation is not clear about what constitutes "direct evidence." In the criminal law context, "direct evidence" is defined in opposition to "circumstantial evidence." "Direct evidence" is "evidence which, if believed resolves a matter in issue" (*R. v. Arcuri*, [2001] 2 S.C.R. 828 ("*Arcuri*") at para. 22, qtg. *Watt's Manual of Criminal Evidence* (1998) at para. 8.0), and is "witness testimony as to 'the precise fact which is the subject of the issue on trial'" (*Arcuri* at para. 22, qtg. J. Sopinka, S.N. Lederman and A.W. Bryant, *The Law of Evidence in Canada* (2nd ed. 1999) at para. 2.74). "Circumstantial evidence," in contrast, is evidence that requires you to draw inferences from the evidence in order to decide the issue (*Arcuri* at para. 23). This distinction between "direct evidence" and "circumstantial evidence" has been implicitly imported into OLRB case law on employer involvement in decertification applications, where "direct first hand evidence" is often unavailable and only evidence from which employer involvement could be inferred is before the OLRB (see *McDonnell-Ronald Limousine Service Ltd. (c.o.b. Airline Limousine)*, [2000] OLRB Rep. September/October 929 at paras. 98, 145-151). As such, "direct evidence" might very well be evidence that the inspector observed an employer terminate an employee for exercising his or her rights under the *OHSA*. It is unlikely to be evidence from an inspector that the employee exercised his or her *OHSA* rights and was fired a day after exercising these rights, and the employer offered no convincing alternative explanation for the termination.

In this connection, it must be mentioned that it is unclear that an admission made by the employer, for example, to an inspector in the reprisal context would constitute "direct evidence." Bryant, Lederman and Fuerst in *The Law of Evidence in Canada*, 3d ed. (Markham: LexisNexis, 2009) at para. 6.398 note one theory of admissions that characterizes admissions as "evidence of conduct" and thus as "circumstantial, rather than assertive, evidence." Employer admissions to inspectors would not count as "direct evidence" that the inspector could offer during reprisal proceedings.

CONCERN 3: *Placing obstacles to Joint Health and Safety Committee (JHSC) co-chair recommendations. The Dean report called for expanded powers to write recommendations, yet the bill, as drafted, establishes additional restrictions on a co-chair to send a recommendation to the employer.*

a. Dean Report

Recommendation 12: The Occupational Health and Safety Act should be amended to allow a co-chair of the Joint Health and Safety Committee to submit a written recommendation to the employer if an issue is unresolved following repeated attempts to reach consensus.

b. Bill 160 (striketthrough added):

7. (1) Section 9 of the Act is amended by adding the following subsections:

Powers of co-chairs

(19.1) If the committee has failed to reach consensus about making recommendations under subsection (18) after attempting in good faith to do so, either co-chair of the committee has the power to make written recommendations to the constructor or employer.

Recommendations

~~*(19.2) Written recommendations made under subsection (19.1) shall include the following:*~~

- ~~1. *The co-chair's recommendations.*~~
- ~~2. *A summary of the position of the members of the committee who supported the recommendations.*~~
- ~~3. *A summary of the position of the members of the committee who did not support the recommendations.*~~
- ~~4. *Information about how the committee attempted to reach consensus.*~~

Though labour feels substantial strengthening of worker powers is needed to make workplaces safer and healthier, recommendation 12 of the Dean report was the single morsel offered to

bolster joint health and safety (JHSC) powers. Arguably, either co-chair has always been able to make a unilateral recommendation to the employer, but doing it alone (without the other co-chair) would not activate the employer's legal duty to respond to a JHSC recommendation writing in 21 days. Recommendation 12 was a small offering to labour. This amendment undermines the recommendation by requiring new, unnecessary hoops for the co-chair to climb through to accomplish the power intended by the consensus report.

CONCERN 4: *Politicization of the health and safety system by placing extensive powers in the hands of politicians, not protecting the political independence we expected of the new Chief Prevention Office and not ensuring trade union representation promised by the Dean report.*

a) Dean Report

Recommendation 1: A new prevention organization should be created within the Ministry of Labour. The new organization would be headed by a Chief Prevention Executive, and would feature a multi-stakeholder Prevention Council; each would have specific powers explicitly defined in the *Occupational Health and Safety Act*.

Recommendation 2: A new prevention organization should create, implement and audit training standards that would apply to training required by the *Occupational Health and Safety Act* and regulations....The prevention organization should involve stakeholders, including management and labour....

b) **Bill 160** (examples of concerns.....)

4. The Act is amended by adding the following sections:

7.1 (1)The Minister may establish standards for training programs required under this Act or the regulations.

(2) The Minister may approve a training program....

7.3 (1) The Minister may amend....

8. (1) The Act, is amended by adding the following:

22.2 (2) The Council shall be composed of such members as the Minister may appoint, and shall include representa-tives from the following groups:

1. Workers.
2. Employers.
3. Other persons with occupational health and safety expertise.

Appointment of members

(3) The members of the Council shall be appointed for such term as may be determined by the Minister.

The trade unions pressed for this inquiry, “consented” to the report, with no mention of involvement in the proposed council?

The major achievement of the Expert Panel was to come to consensus on the recommendation that health and safety prevention be moved from the WSIB (where the former government located it, with dismal results) into a new, semi-autonomous entity that would oversee system-wide development of training, standards, and health and safety cultures. Looking forward to system integration, after much discussion Labour endorsed moving prevention to MOL rather than a preferred, stand-alone agency. Critical to this concession that paved the way to consensus was Labour's understanding that the powers for oversight of training, etc. would reside in the new CPO/CPC, not in the Minister of Labour. We need de-politicization of the current proposed legislation by vesting the proposed CPO/CPC with powers and duties over training standards and designated health and safety delivery organizations. Another fundamental part of the consensus was our understanding from the Panel that labour organizations would have at least equal numbers on the council as employers. That cornerstone of our consensus is conspicuously absent from the bill. Amendments are needed.

CONCERN 5: *The threat to the autonomy of the Workers Health and Safety Centre (WHSC) and the Ontario Health Clinics for Ontario Workers (OHCOW). Mechanisms are needed to protect their independent governance and operation.*

a) Dean Report

Recommendation 1: A new prevention organization should be created within the Ministry of Labour. The new organization would be headed by a Chief Prevention Executive, and would feature a multi-stakeholder Prevention Council; each would have specific powers explicitly defined in the *Occupational Health and Safety Act*.

Recommendation 2: A new prevention organization should create, implement and audit training standards that would apply to training required by the *Occupational Health and Safety Act* and regulations....The prevention organization should involve stakeholders, including management and labour....

b) **Bill 160** (examples of concerns.....)

8. (1)(2) The Act is amended by adding the following:

22.4 (1) The Minister may designate an entity as a safe workplace association or as a medical clinic or training centre specializing in occupational health and safety matters if the entity meets the standards established by the Minister.

Standards

(2) The Minister may establish standards that an entity shall meet before it is eligible to be designated.

Etc.....

Composition

22.2 (2) The Council shall be composed of such members as the Minister may appoint, and shall include representatives from the following groups:

1. Workers.
2. Employers.
3. Other persons with occupational health and safety expertise.

Appointment of members

(3) The members of the Council shall be appointed for such term as may be determined by the Minister.

As mentioned above, the trade unions pressed for this inquiry and “consented” to the final Panel report, but this bill has no mention of involvement in the proposed council. The Minister has extensive powers of oversight, but our consensus was built on an understanding that these powers would be ascribed to the CPO and CPC. Instead the bill proposes ministerial powers which appear to include being able to dissolve the WHSC’s Board of Directors, or require a change to WHSC’s membership. There need to be mechanisms that protect worker-governance of the WHSC and the Occupational Health Clinics for Ontario Workers (OHCOW), including authority over priorities, content, philosophy and approaches, etc.

PRECAUTIONARY PRINCIPLE

Finally, it is in ONA members’ workplaces, which are decades behind in health and safety practice, and where so much is at stake, that our members paid the ultimate price that underscored the need for the precautionary principle in occupational health and safety. As Justice Campbell so eloquently explained, health care is “dangerous...like mines and factories.” Until the Campbell Commission report, and the current government’s actions, there was little attention to occupational health and safety enforcement in this sector.

Others appear to be taking opportunities to use the opening up of this legislation to accomplish other than what the Expert Panel recommended. As we approach what would have been Justice Campbell’s 69th birthday, it would be more fitting if we are going to reach beyond the Panel’s recommendations, to use this opportunity to pay tribute to him, honour his legacy and ensure, as he suggested, that “the precautionary principle, which states that action to reduce risk need not await scientific certainty, be expressly adopted...by way of inclusion, through preamble, statement or otherwise, in the *Occupational Health and Safety Act*.”

CONCLUSION

We do not believe the identified provisions of Bill 160 reflect the current government's otherwise demonstrated commitment to Justice Campbell's legacy, and to workplace health and safety. We urge the Standing Committee to reconsider the amendments we have highlighted. We have come a long way and now is not the time to reverse progress.