

**Ontario Nurses' Association
Submission**

***MINISTRY OF LABOUR STRATEGY
"Safe at Work Ontario"***

2016/2017

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ONTARIO NURSES' ASSOCIATION

85 Grenville Street, Suite 400

Toronto, ON M5S 3A2

Phone: (416) 964-8833

Fax: (416) 964-8864

Website: www.ona.org

Introduction

The Ontario Nurses' Association (ONA) is the union representing 60,000 front-line registered nurses and allied health professionals and more than 14,000 nursing student affiliates across Ontario, providing care in hospitals, long-term care facilities, public health, the community, clinics and industry. Our members continue to express concerns for their health and safety, and 13 years post-SARS and 10 years after the murder of our member Lori Dupont, they still believe their employers are doing little to protect them. They also believe the Ministry of Labour (MOL) is still not doing enough to fully enforce the *Occupational Health and Safety Act (OHS)* and its regulations to hold CEOs, Boards, Directors and managers/supervisors accountable for the health and safety of our members in this female-dominant environment.

We want to acknowledge the work the Minister of Labour and Minister of Health have provincially undertaken to protect nurses and other health care workers from infectious disease outbreaks (i.e. Ebola) and, through a new executive leadership table, to address the prevention of workplace violence.

The MOL enforcement branch must now build on the work and goals of the two ministers and use this opportunity to align itself with that work by revising its health care sector plan and enforcement strategy. Our nurses and other health care workers will only be safe when the MOL and Ministry of Health and Long-Term Care (MOHLTC) hold health care employers accountable for the health and safety of their workers and compliance with the *OHS* and its regulations.

The MOL's enforcement branch senior leaders, through their messaging to the inspectorate, through this 2016/2017 sector plan and enforcement strategy and through changes to their policy and procedures manual, can demonstrate support and approval for its inspectorate to fully enforce the *OHS* and its regulations.

The health care sector plan must be changed significantly now to support the work of the executive leadership table on workplace violence and not wait for the 2017/2018 iteration of the plan to make necessary changes to the enforcement strategy that could better protect the safety of our nurses and all health care workers.

MOL enforcement is still not making an impact in the health care industry. For instance, just this month at one large hospital (following an assault in May 2015 to a security officer), the MOL inspector left a field visit report after investigating. He found numerous opportunities for the employer to provide information about a history of violence to workers that did not occur. The MOL inspector in the narrative writes, *"In this case, XXX hospital, however has not used this information or any of its historical information on the patient with known history of violence in order to meet its obligations under Section 32.0.5 (1) (3) of the Act. As such, both the employer and the supervisor fundamentally failed in their duties to provide information to workers to protect workers."* The clock is ticking for individual charges to be laid in this case, not only against the employer but to the CEO and the supervisor who continue to fail to protect workers.

Hundreds of orders have been written for numerous violations, and this employer continues to risk workers safety with no MOL repercussions to the CEO or its directors/managers/supervisors for failing to take every precaution reasonable in the circumstances for the protection of a worker.

In 2015, the MOL's Section 21 committee requested enforcement data related to workplace violence. In one particular report entitled "Workplace violence related events for fiscal year 2014/2015," the report reveals a major lack of enforcement with respect to workplace violence of some key sections of the legislation that could, if enforced, hold employers, directors, officers

and supervisor accountable for the safety of its workers. This 2014/2015 fiscal year report reveals gaps in the following areas:

- There were no orders issued to hospitals under Section 32.0.5 for failing to provide information about a person with a history of violent behavior to all workers at risk. Not even one order was issued under this important section of the *OHSA*. Yet our members across the province (except for in a few workplaces) advised us that their employers still do not even have an electronic and visual flagging system in place that could forewarn all workers at risk about such a history, the behaviours they could encounter, the triggers, and any interventions for the patient and the worker to keep both safe. Not even one order. This is unacceptable.
- The MOL has not even issued one order to a health care officer or director under Section 32 of the *OHSA*, which is there to hold officers and directors accountable. Again, it is unacceptable that in this female-dominated workforce, the MOL seems to not value the health and safety of nurses to the same level it values men in male-dominated industries.
- There has not been one order across the entire health care system holding an employer accountable for not appointing a competent supervisor. The same report also indicates that not one order was issued citing the employer under Section 25 (2) (h) or the supervisor under Section 27 (2) (c) to take every precaution reasonable in the circumstance for the protection of a worker. Yet numerous accidents and illnesses may have been avoided if the supervisor had been competent and acted on health and safety concerns brought to their attention prior to the injury.
- The MOL has not written one order that holds health care employers accountable for providing to the Joint Health and Safety Committee (JHSC), the Union and/or to the MOL notice of accidents and illnesses within four days. This, despite years of ONA requesting enforcement of Section 52, which can help our JHSC members perform their number one function – which is to identify hazards and make recommendations to the employer. At ONA's 2015 health and safety training sessions, approximately 300 ONA health and safety reps were asked if they receive these notifications. Less than five per cent of them indicated they are receiving the legislated accident/illness notifications within the four-day time frame and with the prescribed information.

This data report confirms that the MOL inspectorate to date is still not holding health care employers accountable under the *OHSA* despite our numerous pleas to senior leaders at the MOL to do so.

We have to ask – is it because the senior leadership at the MOL is protecting another ministry's area of responsibility? Or, is it because the legislation is weak and needs to be changed? Either way, the MOL has a job to do, as does the MOHLTC, and needs to hold leadership accountable for the health and safety of our nurses and all health care workers. Doing so will not only protect nurses but patients as well.

ONA believes the lack of attention to effective, consistent enforcement, and what appears to be MOL directors' and senior leadership's resistance to hold health care employers, CEOs, directors and supervisors personally accountable for not complying with the *OHSA* and its regulations through relevant orders and prosecutions, is putting our members' health and safety at risk. It was only two years ago that the MOL even put back the reference to Section 32 (Duties of directors and officers of a corporation) into the sector plan. Yet despite it being referenced, we are still not aware of one single prosecution naming or holding CEOs and/or directors personally accountable for the violations to the *OHSA* that are repeatedly injuring and making our health care workers ill.

The health care sector strategy and plan to date has not been effective in reducing health care worker exposure to hazards. The 2016/2017 strategy and plan must once and for all provide

clear compliance direction and support to inspectors that encourage and support a robust and aggressive enforcement strategy.

However before the sector plan can be effective, the MOL will need to hold his own deputy and assistant deputy ministers, directors and managers and policy advisors within the MOL accountable to establish an enforcement system that promotes a culture of enforcement where the evidence supports such enforcement. The Minister himself in October 2015 told his Section 21 Committee that if staffing shortages are creating a risk to worker safety he would want to know about this. Yet our health and safety specialist has personally been told by MOL senior leadership that inspectors are not allowed to write orders for additional staff, even where the evidence in a violent assault indicates a staffing shortage contributed to an assault that injured a nurse or other health care worker. Such interference in our opinion should be viewed as obstruction of an inspector under Section 62 (1) of the *OHSA*.

We agree that the MOL could argue that they are enforcing the *OHSA* as they do write numerous orders, however one needs to ask what impact are these orders having in improving health and safety? In fact, the WSIB lost-time injury data alone shows an increase in lost-time claims related to violence from 639 in 2013 to 680 in 2014. The rate of lost time related to exposure to infectious disease has also increased. Musculoskeletal disorder injuries (MSDs) are still the number one reason for lost time injuries in health care.

MOL data also shows a significant increase in health care workplace critical injuries in the last reported year even though the definition of a critical injury is very restrictive and concerning and needs to be changed, as suggested to the Minister by his Section 21 Committee. The current and old way of getting CEOs/Boards to protect workers is not working – and there comes a time when enough is enough. Our members are tired of being injured and made ill, and just want their employers to protect their health and safety so they can be in a position to protect the health and safety of their patients.

When a violent assault places our members' lives in jeopardy and the MOL shows up to our workplaces, inspectors are still typically leaving the same type of orders, which are requiring the employer to reassess the risk of workplace violence. The response is so canned that one can only assume that this is what they are being told or allowed to write, even though our members raise concerns about lack of security, alarms, flagging systems, staffing, etc. that contributed to the assault.

We are aware of many large hospitals who have received in excess of a hundred orders and have not been charged once for any of these violations.

To effect change, the MOL enforcement strategy and health care sector plan must:

- Hold CEOs/Boards/Directors and managers/supervisors accountable through effective enforcement (effective orders and prosecute where there is evidence of non-compliance).
- Strengthen the health care sector plan to provide clear and concise enforcement direction. The only clear compliance message in last year's sector plan was around the Awareness Training Regulation. The only reference to the word Compliance is in relation to this regulation in the entire sector plan. Many employers read your sector plans and prepare for the year ahead – if they see a strong enforcement message under all hazards they will better prepare for MOL proactive and reactive visits
- Revise the MOL Policies and Procedures manual section on workplace violence to remove any direction that could limit an inspector's ability to fully enforce the *OHSA* and regulations. Give inspectors the power in this policy to write orders under Section 25 (2) (h), 27 (2) (c), Section 32 and 32.01-32.05, health care Regulation 8, 9 and 10 and empower them to write orders where the evidence supports the need for additional staffing (including security),

personal alarms linked to security, electronic and visual flagging systems, proper and comprehensive environmental and patient risk assessments, adequate number of proper seclusion rooms, specific training that will actually protect workers, etc., just to name a few.

- If you want to make a meaningful change support inspectors to enforce the *OHS*A and its regulations. Where the Act or regulations, policy and procedures manual or health care sector plan are not strong enough to support proper enforcement or get a conviction, then change the legislation and or regulations.
- Change the language in the Critical Injury regulation to include an event of workplace violence that places life in jeopardy, etc.
- Require through legislation/regulation minimum criteria for employers to be held accountable to perform comprehensive risk assessments and training and allow inspectors flexibility to assess if these measures were sufficient
- Require through legislation/regulation that employers must conduct root cause investigations into workplace hazards/incidents/accidents/illnesses/exposures/near misses and require them to develop an action plan with time frames to eliminate the hazard or control the risk to workers

The MOL did consult labour representatives on November 25, 2015 about improving the sector plan and numerous ideas to improve them were captured in group sessions in addition to those we have raised above. The session was better organized in 2015 than in 2014 and even though group work was conducted everyone was given an opportunity to provide advice and feedback on the overall plan. We did ask MOL that the feedback be shared with all participants within two weeks (that has not occurred to date), and that next year the MOL, at its stakeholder consultation, present to the group what feedback was actually incorporated into the 2016/2017 sector plan and acted on.

We also suggested that in 2016 at the next consultation there be a question asked such as "What else is needed to ensure worker safety through prevention and enforcement"?

Specific comments and concerns about non-compliance discussed and captured at the November 2015 SAWO stakeholder consultation that must also be considered and used to revise the sector plan include:

- Use strong compliance language throughout the health care sector plan – currently the only reference to compliance is for the awareness training regulation.
- MOL Policy and Procedure Manual needs significant revisions.
- Require employers to provide information about history of violent behavior to all workers at risk and demonstrate they have a system to do so or order it to be done.
- Employers ear marking spots on JHSC for non-worker members and therefore not following the *OHS*A for selection of worker members.
- MOL not enforcing Section 52 of the *OHS*A – compliance to the notification section of the *Act* needs to be clear in the sector plan.
- MOL not issuing orders under Section 25 (2) (l) – few employers complying with this section and not providing reports or result of a report respecting occupational health and safety.
- MOL not enforcing Section 32 Duties of Officers and Directors.
- Prism Report Identifies disproportionate percentage of money being given to health and safety associations that provide services for male dominated workplaces. Public Services Health and Safety Association (PSHSA), Occupational Health Clinics For Ontario Workers (OHCOW) and Workers Health & Safety Centre (WHSC) funding should be enhanced to provide optimum service.
- MOL not collecting appropriate statistics for enforcement.
- MOL/WSIB aware that employers are keeping workers wages whole following the day of an accident and inaccurately reporting these injuries to the WSIB as no lost time claims when in

fact there is lost time just not a loss of earnings. MOL cannot measure health and safety compliance and improvement when using inaccurate data.

- WSIB categories for caregivers for the purpose of reporting injuries are inaccurate (e.g. no RNA position any longer, but WSIB still has this as a category).
- MOL should not rely so heavily on WSIB data and should invest in a new data collection system/data query system.
- MOL interpretation of the critical injury regulation – results in fewer accepted critical injuries – this takes away JHSC worker members rights to investigate and make recommendations to the employer that would better protect workers.
- Change Critical injury regulation to include an event of workplace violence.
- Need to see orders under the Obstruction Section 62 (5) as we hear often about employers and supervisors obstructing the work of a committee or committee member.
- Prevention Office not focusing on health care in same way they do male-dominated sectors like construction and mining.
- Prevention office communicates strong compliance message requirements for industry employers but not for publicly funded employers.
- Focus on compliance with supervisor competency not awareness – many health care employers now only providing two hours of awareness training, and MOL not holding employers accountable to prove that they appointed a competent supervisor and that supervisor is still competent to actually know how to protect workers, not just be aware that they are required to protect workers.
- MOL should post all charges and fines in health care, not just those \$50,000 or greater – will help set deterrence.
- MOL to hold employers accountable for engaging in a reprisal for raising health and safety concerns – currently MOL is not proactive despite the MOL in the Global 16 x 9 documentary stating that the MOL does not condone reprisals.