

## **Internal Responsibility: The Challenge and the Crisis.**

### **Outline and Purpose of Paper**

The Labour OHCOW Academic Research Collaboration has prepared this paper to identify areas for reform to improve internal responsibility in Ontario. We draw on our collective experience, knowledge, and research from the past thirty years of activity as union health and safety representatives, occupational health practitioners, and academic researchers. We begin by revisiting the original principles underlining the internal responsibility approach to occupational health and safety and the conditions understood at the time as necessary for effective regulation and prevention. We then review the implementation and evolution of the Ontario Occupational Health and Safety Act, emphasizing the evolution of internal responsibility within the context of reactive and passive policy to both enforcement and prevention. A review of the research literature is provided outlining the importance of enforcement and worker representation. We conclude with an examination of the impact of the increase in precarious employment.

## **The History and Promise of Internal Responsibility**

Ontario's 1976 Royal Commission on the Health and Safety of Workers Report coined the term "internal responsibility system" (IRS) to characterize company-level systems to address workplace hazards. The commission, often referred to as the 'Ham Commission' after its chairperson, James Ham, argued that the existing regulative system of exclusive management control and responsibility was unjust and ineffective. A just and effective health and safety system embraced five factors which determined "acceptable levels of occupational risk:"

1. Quality and kind of industrial management and supervision
2. Degree of participation and commitment from employees, individually and collectively through unions or otherwise
3. State of social expectation and concern in communities and in public at large
4. Measure of political attention, in legislation, related government administrative practices for monitoring compliance and provision of compensation
5. Combined effectiveness of parties as a system<sup>1</sup>

At the time, the commission noted that Ontario's responsibility system was deficient in two ways. Divided jurisdictions made it difficult to determine who was responsible and, as the commission put it, "the worker as an individual, and workers collectively, have been denied effective participation in tackling these problems; thus the essential principles of openness and natural justice have not received adequate expression." The commission recommended that new legislation should provide participative rights and responsibilities for workers, which it defined as having three key elements:

- 1) *Knowledge* – having ready access to information about actual and expected conditions at the workplace, and about the state of health of the workers;
- 2) *Contributive responsibility* – to provide individual and collective insight on problems on the basis of knowledge and work experience; and
- 3) *Direct responsibility* – to make operative decisions that influence conditions at work.<sup>2</sup>

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<sup>1</sup> Royal Commission Report, 1976 p 5

As these principles imply, the commission recognized that workers should have open access to information about workplace hazards, with particular reference to health hazards where the long-term effects are not perceptible to workers. At the same time, the significance of worker knowledge and experience of worker procedures and conditions were acknowledged by the commission as being important elements for an effective prevention orientation. It was largely in this context that they made recommendations for experienced worker auditors, joint health and safety committees, and the worker right to refuse unsafe work<sup>3</sup>.

The commission offered the promise that although the confrontational nature of Canadian labour-management relations had “deterred the creation of sensible arrangements for worker participation,” its hope was that the recommendations for participation would lead to “a well-founded internal responsibility system in which labour and management cooperate to control occupational hazards...[leading to] a high measure of self regulation.”<sup>4</sup>

While expressing the view that self-regulation was the “key to the control of risks at work in a technologically complex future,” the commission also recognized the continuing need for external monitoring and enforcement<sup>5</sup>. To this end, it recommended reorganizing, expanding and extending the powers and activities of the inspectorate under the single authority of the Ministry of Labour<sup>6</sup>. Concerns about divided jurisdictions and conflicting interests were critical rationales underlying the recommendation to consolidate enforcement and administrative powers within a single ministry led by an assistant deputy minister. The central function of this authority was “to keep the internal system at the company level alert and responsive,” and where infractions are found, “to deal bluntly with the true offender.”<sup>7</sup> In short, it was recognized that an effective internal responsibility and prevention system requires the substantive threat of external intervention and enforcement.

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<sup>2</sup> Royal Commission Report, 1976, p. 6.

<sup>3</sup> Royal Commission Report, 1976, pp 269-70

<sup>4</sup> Royal Commission Report, 1976, p 250.

<sup>5</sup> Royal Commission Report, 1976, p 250.

<sup>6</sup> Royal Commission Report, 1976, pp 254-55.

<sup>7</sup> Royal Commission Report, 1976, p 258.

### **1978 Occupational Health and Safety Act**

Most of the positions of the Ham Commission were reflected in the main innovations of the 1978 Occupational Health and Safety Act (1978 OHSA). Consistent with the principles of worker participation, the Act provided for the workers' right to training and information about health and safety hazards, the right to worker health and safety representatives and committees, and the individual right to refuse unsafe work. Worker, supervisory and employer responsibilities to report and correct hazardous conditions were also specified imposing new legal obligations with stronger legal sanctions, enforced by a new consolidated, empowered and expanded health and safety administration and enforcement branch within the Ministry of Labour.

However, while the Act provided an increased inspectorate with substantial enforcement powers, the government of the time interpreted the commission's philosophy of internal responsibility as meaning a less-than-rigorous or extensive process of external enforcement. In practice, this meant that ministry inspectors relied heavily on workers and joint occupational health and safety committee (JOHSC) worker representatives to notify the ministry if there were significant problems in a given workplace, failing to recognize that the absence of complaints did not necessarily mean the absence of problems (Tucker, 1998).

From the outset, workers, health and safety activists and unions complained that this approach placed too much responsibility on workers without providing them with the power to exert an influence over management. They pointed out that the committees and representatives only had advisory powers, that the training mandated by the Act and later by the Workplace Hazard Management Information System (WHMIS) was frequently inadequate, that workers and representatives were often threatened or intimidated from reporting injuries or hazards, and that the lay knowledge and experience of workers continued to be devalued and ignored by management and government officials (NDP, 1986). With respect to enforcement policy, labour critics noted that even when caught, corporate offenders were rarely prosecuted given an explicit Ministry of Labour policy that gave preference to education and persuasion over punishment (Storey and Tucker, 2006). Investigations of the internal responsibility system during the 1980s largely confirmed that many workplaces had no functioning committees or worker representatives, that training was often inadequate to non-existent and that workers were by and

large unable to exercise their rights to clear and decipherable information on health and safety hazards in their workplace (Hall, 1989; Walters and Haines, 1988; Ontario Advisory Council on Occupational Health and Safety, 1986; Walters, 1983). Coupled with a distinct lack of progress in injury and fatality rates, this research helped to fuel considerable controversies surrounding health and safety, leading ultimately to a number of changes, including the introduction and passage of reforms to the OHSA in 1990 (Storey, 2004).

### **The Segregation of Prevention**

Although labour movement had great expectations that a more effective balance would be struck between internal and external responsibility following the 1990 OHSA reform, there was little change in enforcement. The reforms tightened the requirements and rules for committee elections and processes, strengthened worker representation by establishing a worker auditor position (certified worker representatives), and increased fine levels, but as Robert Storey and Eric Tucker (2006) point out, the number of inspections and prosecutions actually dropped in the early 1990s to their lowest levels since the introduction of the Occupational Health and Safety Act (Tucker, 2003). There were some positive changes in enforcement levels and penalties in subsequent years but the changes represented by 1990 OHSA did not take hold in a significant way, as changing political and economic conditions in the 1990s shifted the attention of government in Ontario and other provinces (Tucker 2003). Under pressure from deregulation, the description of internal responsibility increasingly emphasized the responsibility of employees without recognizing the constraints and limitations on their ability to control their conditions of work. As described in one report, “The IRS is a system, within an organization, where everyone has direct responsibility for health and safety as an essential part of his or her job. It does not matter who or where the person is in the organization, they achieve health and safety in a way that suits the kind of work they do. Each person takes initiative on health and safety issues and works to solve problems and make improvements on an on-going basis.”<sup>8</sup>

Some efforts were made to support worker representation, principally through the funding of two labour-sponsored associations with mandates to train and support workers and health and safety

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<sup>8</sup> Ian M. Plummer, Peter W. Strahlendorf, Michael G. Holliday, The Internal Responsibility System In Ontario Mines Final Report: The Trial Audit & Recommendations, 2000.  
[http://www.labour.gov.on.ca/english/hs/pubs/mining/syn\\_minirs\\_2.php](http://www.labour.gov.on.ca/english/hs/pubs/mining/syn_minirs_2.php)

representatives – the Workers’ Health and Safety Centre (WHSC) with responsibility for training, and the Occupational Health Clinics for Ontario Workers (OHCOW) with responsibility for assisting injured workers and providing technical resources to worker representatives and joint committees. The creation of Ontario Workplace Health and Safety Agency (WHSa) in the 1990 OHSa reforms, with responsibility for health and safety training, research, and funding of the sectoral and labour-focused prevention associations, reinforced the withdrawal of the Ministry of Labour from prevention policy.

As part of the 1997 reforms that transformed the Workers’ Compensation Board (WCB) into the Workplace Safety and Insurance Board (WSIB), the WHSA was dissolved and its prevention and research functions transferred back to WSIB under a legislated mandate. Through the 1990s, the WSIB developed and dramatically expanded financial schemes such as the second injury program (SIEF) and experience rating programs to provide employers with additional financial incentives to take prevention more seriously. In the case of SIEF, claims costs were reduced if the worker had a pre-existing or pre-disposing factor contributing to the compensable event. In the case of experience rating programs, calculations for rates or surcharges are based on a formula considering the number of claims and duration of claims.

Experience rating programs have been controversial from the beginning, rejected by worker representatives and early experts such as Terry Ison as inconsistent with the principles of no fault insurance (Ison, 1986 ). Although experience rating systems are supposed to enhance employer commitment to prevention, they often do the opposite, especially in highly competitive market situations where relative profit margins are thin, or in a globally competitive context where relative profit margins in other jurisdictions are challenging. Storey and Tucker have argued that the increased emphasis on a market-based experience rating within the injury compensation system in Ontario has encouraged employers to conceal injuries rather than improve prevention (Storey, 2009; Storey and Tucker, 2006).

These concerns have been vindicated more recently by two other sources – an Institute for Work and Health (IWH) systematic review of prevention and an investigative report by journalists for the *Toronto Star*.

In 2007, Emile Tompe, Scott Trevithick, and Chris McLeod published a systematic review of prevention incentives and the regulatory mechanism.<sup>9</sup> Using a very rigorous methodology to compare the quality of many studies, they were able to make a few overarching comments about what the evidence shows works and does not work, as incentives for prevention. There are only two kinds of incentives systems currently in place, experience rating and occupational health and safety regulations. After a systematic review of the evidence, Tompe and his colleagues concluded:

- There is strong evidence that actual citations and penalties reduce frequency and/or severity of injuries, the confidence of some researchers in the effectiveness of experience rating, and conversely in the ineffectiveness of occupational health and safety regulation, appears premature; and
- More research needs to be conducted before definitive conclusions can be drawn about the effectiveness of workers' compensation experience rating.

On April 5, 2008, two *Toronto Star* reporters, Dave Bruser and Mora Welsh, produced an investigative report titled "When companies get rewarded for mistakes. Flaw in worksite safety system allows big rebates even when a death occurs." While acknowledging that experience rating was brought in to provide a financial incentive for safety, the *Star* investigation found that:

The insurance agency [WSIB] has given at least tens of millions of dollars in rebates to companies that have been prosecuted by the provincial government and found guilty of safety violations leading to deaths, amputations and other gruesome injuries.

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<sup>9</sup> Tompa E, Trevithick S, McLeod C. Systematic review of the prevention incentives of insurance and regulatory mechanisms for occupational health and safety. *Scandinavian Journal of Work, Environment and Health*. 2007;33(2):85-95 originally published as IWH Working Paper 213.

*The Star* looked at whether rebates were issued in the year following the accident and the year of the guilty finding. That analysis led to 75 cases that most dramatically illustrate the problem. These offending companies were fined a total of \$14 million yet received payouts totalling \$42 million from the WSIB. As noted in the article:

While the WSIB has known about the practice for years – labour groups have repeatedly complained about it – it is now searching for solutions after the *Star* started investigating.<sup>10</sup>

These revelations caused the WSIB to stop the practice of rewarding employers with rebates after they had been fined for the death of a worker. The WSIB then employed consultants Morneau Sobeco to review the experience rating system. The consultants made recommendations to alleviate some of the most egregious consequences of experience ratings, calling for a lengthy and major reworking of the experience system, including the elimination of the Second Injury and Enhancement Fund.

### **When IRS Works**

Studies of internal responsibility systems have identified a number of different factors associated with effective worker participation, joint health and safety committees and worker representation. The evidence often points to the importance of training for workers, while identifying several important committee characteristics including such things as committee size, committee composition, meeting frequency and length, written agendas and minutes, committee scope and various committee procedures and structures (Coyle and Leopald, 1981; Eaton and Nocerino, 2000; Hall, Forrest and Sears, 2003; Jenson, 2002; Kochan, Dyer and Lipsky, 1977; Tuohy and Simard, 1993; Lewchuk, Robb, and Walters, 1996; Reilly, Paci and Holl, 1996). A small number of representative characteristics have also been examined, with most studies pointing to representative information and training as the most significant correlates of committee effectiveness whether measured in terms of injury rates or some other measure such as perceived committee effectiveness (Coyle and Leopald, 1981; Eaton and Nocerino, 2000; Hall

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<sup>10</sup> Toronto Star April 5, 2008



et al., 2006; Kochan, Dyer and Lipsky, 1977; Walters and Haines, 1988; Walters, 1996). Another focus of investigation has been on the production context itself, including the size of the firms, the types of production, the level of mechanization and automation, the presence of a union and the attitudes and expertise of management regarding health and safety (Eaton, 1994; Lewchuk, Robb and Walters, 1996; Hall, 1999; Frick and Walters, 1998).

While the overall results on firms characteristics have been inconclusive, a number of researchers have pointed to the significance of positive management attitudes and knowledge (Eaton, 1994; Walters and Haines, 1988; Lewchuk, Robb and Walters, 1996), while the presence and quality of overall union representation, the knowledge and militancy of front-line workers and the level of government or ministry of labour enforcement of the legislation have all been identified in various studies as the most relevant contributors to committee effectiveness or more direct health and safety outcomes (Eaton and Voos, 1994; Hall, 1993, 1999; Kochan et al., 1977; Lewchuk, Robb and Walters, 1996; Novek, 1990; Tucker, 1995; Walters and Haines, 1988; Walters, 1996).

A consistent and strong finding from research is that worker participation and committee effectiveness are greater where there is union representation (O'Grady, 2000; Shannon et al., 1992; Walters, 2002, 2006; Weil, 1991, 1992, 1999). Many analysts have suggested that union representation is critical in shaping management commitment – that is, in the absence of union security, conflicts of interest between employers and workers are almost always resolved through the exertion of management power; whereas in the context of union shops, there is a greater tendency for efforts at consensus building which forms the foundation of a sound participative approach (Benach et al, 2007). Research also demonstrates that in most non-union contexts, robust government monitoring and enforcement are critical to the workers' capacities to exercise their responsibilities and rights under health and safety law (Mayhew et al. 1997; Frick and Walters, 1998). Small workplaces are identified as being particularly problematic, both unionized and not, with a number of deficits in terms of training and knowledge, low levels of compliance and a top-down approach to health and safety (Eakin, 1992; Quinlan, 1999). However, studies of Sweden and other countries suggest that various mechanisms including

regional safety representatives and strong government funding of prevention and enforcement can yield significant gains in safety (Frick and Walters, 1993; Quinlan, 1999; Frick 2009).

### **Internal Responsibility in the ‘New Economy’**

In Ontario, the value and potential of worker representatives has been documented in many places – from parliamentary records and policy consultations with government and workers’ compensation boards, governance of the formal occupational health and safety OHS system, research studies, hearings on behalf of members, and dealing with inspectors, management and others. Much of this has been demonstrated by Ontario scholars from the 1970s through the 1990s – Vivienne Walters, Harry Shannon, Wayne Lewchuk and Ted Haines studied the impact of the first legislation documenting both the limitations and the contributions of worker participation. More recently, researchers around the world have focussed increasing attention on the profound changes that are taking place in employment and employment relations and the impact of those changes on accident and disease prevention (Quinlan, M., Mayhew, C. & Bohle, P, 2001).

The key concern is that the increased precariousness of employment resulting from extensive economic restructuring is undermining the capacity of workers to exercise their responsibilities and rights under the law. Increased precariousness takes many forms (Vosko et al, 2003), expressed in more temporary agency and contract employment, more people working multiple part-time jobs, more people in own-account self-employment, more frequent and longer periods of unemployment, greater numbers of working poor, declining unionization (particularly in the private sector) and weaker collective bargaining protections. The common theme is that employment is much more insecure, an insecurity that is further aggravated by reductions in social assistance with lower employment insurance (EI) and welfare payments, stricter qualification requirements, and pension shortfalls. Increased levels of stress, declining union and worker solidarity and associated health and social problems are all commonly observed consequences of these developments (Siegrist and Marmot, 2004).

Not surprisingly, these shifts in employment are linked to significant reductions in levels of unionization. Over the last 20 years, union density, as the percentage of the workforce who are

members of a union, in the private sector has slipped from 26% to 18% (Akeyambong, 2004). Under current Ontario labour law, it is almost impossible to organize temporary and contract workers. Industry restructuring, new technologies and global realignment under free trade have led to major job losses in the core unionized industries, while the increased use of contracting out has resulted in smaller, more mobile, harder-to-organize workplaces. The privatization of many public services is also having increased effects on overall union density as well as putting pressure on public sector unions to make concessions. Although unions are using various strategies to adapt to these developments, both private and public sector unions have lost significant bargaining power under the constant threat of layoffs or closure, and have been forced increasingly into concession bargaining situations (Hall, 2010). As this implies, both unionized and non-unionized workers are increasingly insecure (O'Grady, 2000).

There is a large body of evidence demonstrating that precarious workers, those with little or limited job security, and workplaces with higher ratios of precarious workers have higher rates of injuries (Quinlan, Mayhew and Boyle, 2000). Employment insecurity more generally has been found to relate to several indicators of poor health and safety outcomes, including injury rates and self-reported health problems (Domenighetti, D'Avanzo and Bisig, 2000; McDonough, 2000; Saloniemi, Vrtane and Vahtera, 2004). Precarious workers, in particular temporary and own account self employed workers, have also been found to have worse physical and ergonomic conditions of employment, and report higher levels of psycho-social stress and more incidents of workplace violence (Gouswaard and Andries, 2001; Letourneux, 1998).

Research also suggests that these higher rates of injuries and health problems stem from the basic features of precarious work in ways that speak directly to the assumed requirements for effective worker participation in injury and disease prevention.

First, given the temporary and short-term nature of precarious employment, especially in temporary agency and contract situations, workers have less time and opportunity to develop the experience, skills and knowledge necessary to recognize, avoid and control workplace hazards (Aronson, 1999; Lewchuk, Clark and de Wolff, 2009; Quinlan, 2000). Consistent with this argument, several studies show that workers are at much greater risk when they are new to a

workplace. For example, Shannon et al. (1992) found that workplaces with a high proportion of workers with significant seniority and fewer younger workers had significantly lower lost-time injury rates. Many other studies have also demonstrated that high rates of worker turnover are strongly related to poor injury performance (O'Grady, 2000). The Ham Commission saw lay knowledge of work hazards as a key aspect of the internal responsibility system – that the accumulated knowledge and experience of workers was an essential element of hazard identification and injury prevention. Precarious workers are less able to develop this body of personal knowledge and insight, and in that sense, less able to act to protect themselves and other workers.

Second, since workers are less permanent, and training is a relatively expensive investment, businesses are also less likely to provide the same level of training to precarious workers. Although some studies claim an improvement in training, most labour representatives argue that increasingly employers, especially in some of the expanding service industries, are providing no meaningful health and safety training. A recent study by Lewchuk, Clark and de Wolff (2009) confirms this argument. Not only did they find that only half of the men and women employed in permanent full-time positions reported receiving health and safety training at work (see Table 1), alarming in itself, the situation was even worse for those in less permanent employment where barely one-third of the men and just one-quarter of the women received any health and safety training. The percentage of the self-employed receiving health and safety training was closer to one in five. Their survey respondents were equally poorly informed about the toxic substances used at work. Again, just over half of the men employed in permanent full-time positions who regularly use toxic substances received information on them, while the percentage of men in precarious employment receiving information on toxic substance was closer to one-third. Just over half of the women employed in permanent full-time positions received information on toxic substances. Self-employed women who reported using toxic substances were the least likely to receive information on the substances they were using. This suggests some support for the argument that weaker employment relationships undermine employers' commitment to the value of investments in the health and safety of their workers, since one aspect of the flexible employment relationship is reduced permanency and reduced obligations (Vosko, 1999).

Third, studies indicate that precarious workers are generally less able or willing to challenge hazardous working conditions, both individually or collectively, given their greater employment and financial insecurity (Gray, 2002; Lewchuk, Clark and de Wolff, 2009; Quinlan, 2000). The lack of union protection, or the weaker nature of the protection, is also often related to the workers' willingness, and the willingness of worker JOHSC representatives, to challenge management on hazardous conditions. Several studies have suggested that workers in non-union situations are more likely to express concerns about job loss and a greater readiness to accept their working conditions including hazards based on those concerns, especially if there are threats of plant closures or layoffs. For example, Lewchuk, Clarke and de Wolff (2009) found that one third of the male Ontario workers and one quarter of the female workers in their survey were concerned that raising a health and safety issue would negatively affect their future employment. The proportion of concerned workers again went up among less permanent workers, for male to 50% and for female workers to 43%. Consistent with these findings, research suggests that worker refusals, supposedly another key element of the internal responsibility system, are much less likely in non-unionized workplaces (Gray, 2002; O'Grady, 2000; Tucker, 1986).

Unionized workers in insecure employment situations, which in some industries such as the auto sector is almost endemic, are also often vulnerable to these same threats. A recent survey of unionized workers found that close to one-third of the workers expressed concerns that reporting hazards or injuries would negatively affect their future employment. Forty-five per cent expressed concerns that their future financial situation would be negatively affected (Hall et al., 2010). Studies of work refusals in unionized workplaces also suggest that concerns about employment security are significant impediments in these contexts (Hall et al., 2006).

Fourth, the impact of insecurity and declining unionization can have profound effects on the representative and joint committee aspects of the internal responsibility system. The Ham Commission put enormous emphasis on the roles of worker auditors and JOHSC representatives in ensuring a balanced approach to prevention. But many studies have repeatedly demonstrated that effective representation, proper committee operation and management attention to committee recommendations are more likely in a unionized context or in contexts where the

workers are longer term (O'Grady, 2000; Shannon et al., 1992; Walters, 2002). Worker representatives are often selected by management, and even when not, it is much more difficult for non-unionized representatives to challenge their employer without taking significant risks for their employment future (Hall, et al., 2005). Unionized workplaces experiencing considerable employment losses and insecurity are also subject to these same effects, often leading to rapid turnover in representatives, greater reluctance on the part of representatives to challenge management, less support from workers concerned about their futures and increased rates of management intimidation (Hall et al, 2006). As noted above, one of the key factors that predicts committee effectiveness and positive health and safety performance is a management commitment to a co-operative approach in health and safety (Eaton and Nocerino, 2000; Hall et al., 2006; Lewchuk, Clarke, de Wolff, 2009, O'Grady, 2000). In the context of globalization, many managers are under increased competitive pressures to perform at lower-cost levels which make it increasingly difficult to maintain a high level of commitment to injury and disease prevention, pushing them to seek more and more compromises and more delays in addressing committee issues. Over time, managers begin to seek ways of neutralizing the capacity of the committees and the representatives to intervene, and of course workers develop increasing skepticism about the value of committees and participation (Hall, 1993; Lewchuk, Clarke and de Wolff, 2009).

As the above evidence indicates, this increased vulnerability to management resistance, pressure and intimidation also means that precarious workers are less likely to report injuries. This clearly has significant implications for the reliability of injury compensation data in as much as it suggests that precariousness may be leading to more under-reporting (Hall et al., 2010; Lewchuk, Clark and de Wolff, 2009). This problem may be greatly enhanced when management is motivated to conceal or repress complaints or injury reporting. Faced with what both workers and managers see as 'hard choices,' plant closures or risk-taking, they opt for the latter, whether it is in terms of working too fast, persistent delays in scheduled maintenance and repairs or failing to invest in needed ventilation improvements. When the inevitable injuries or health problems start to appear, these present more 'hard choices.' Rather than making the changes that are needed, workers are cajoled, persuaded or threatened to conceal their injuries and/or conceal their seriousness (Eakin et al., 2003; Thomason and Burton, 2000).

While non-union workers are particularly susceptible to these pressures, many unionized workers are also in precarious situations (Hall et al., 2006; Hall et al., 2010). These findings have particular significance given that the Ministry of Labour relies on injury rates as a measure of its regulative success, forming the main of its claims that the internal responsibility system is working effectively.

### **The Continued Importance of a Strong OHS Worker Movement**

Tucker and Storey have reported on the development and political impact of worker health and safety activists at various moments in Ontario's history (Tucker and Storey, 2006). A central point they make is that worker activists both within and outside the labour movement have been critical to the mobilization of union, worker and public support for better health and safety conditions, and as such, have been a central dynamic in fuelling critical changes in legislation and enforcement policy.

Whatever their limitations historically, the rights to health and safety committees and representation remain a critical source of activism both within and outside the workplace. In their study of unionized worker representatives in feeder auto plants, Alan Hall and his colleagues have shown that despite the challenges in the context of considerable industry restructuring, worker representatives can achieve meaningful improvements through a combination of strategic thinking, access to independent resources and collective and enforcement support, what they refer to as "knowledge activism" (Hall et. al, 2006). These findings point to the success and importance of WHSC and OHCOW. The evidence also supports the importance of job security, in supporting the capacities of workers and worker representatives to seek and gain significant improvements in conditions.

## **Lessons from 30 Years of Experience**

Thirty years has taught us three critical lessons about what is necessary for effective IRS.

**Lesson one:** The role of enforcement needs to be clarified and reinforced. Enforcement must set the system standard, and not be subordinated to internal responsibility. When enforcement is weak and waits on IRS, it encourages employers to be weak and minimizes their responsibilities. When enforcement is strong, it ensures system compliance as a basis from which prevention activities can be encouraged.

Enforcement must be based on evidence. The evidence shows that citations and penalty assessments make a difference.

Financial incentives that do not require independent inspection and verification lead to corrupt results, claims suppression and manipulation.

**Lesson two:** Worker representatives make a difference. Engaged and informed worker health and safety representatives are critical to achieving effective internal responsibility and to ensuring a progressive movement towards better working conditions. The system must guarantee representatives with improved access, training, and protection from reprisal. Government policy and practice must encourage and protect worker representatives.

**Lesson three:** An enhanced strategy for effective IRS is necessary to protect precarious and contingent workers.

Given the central role of the labour movement to worker representation, serious consideration must be given to innovative ways in which assistance can be provided to those in more vulnerable circumstances.

**Lesson four:** Formulating good policy in occupational health and safety requires good research that takes into account the experience of workers and their representatives.



## **Recommendations**

1. **Make the enforcement responsibility clear and effective.** More inspectors are needed. Inspectors must be empowered with tools that work, such as citations and penalty assessments, to be used systematically to promote approaches to prevention that recognize the responsibility of management to provide safe and healthy working conditions. Prevention and enforcement should be subject to the same overriding authority to align their functions effectively.
  
2. **Worker representatives must be provided with more and better access to workplaces, training and resources.** Inspectors must be empowered to support worker representatives. Resources such as OHCOW and the WHSC that provide independent worker-focused resources must be enhanced and continued.
  
3. **Internal responsibility must be enhanced to address needs of precarious workers by:**
  - Employers must publicly report on the use of precarious workers, the conditions and the progress of programs that have been implemented to protect their occupational health and safety.
  
  - The inspectorate must establish a dedicated enforcement unit and direct prevention resources to address the conditions of precarious workers.
  
  - Government must provide opportunities for worker representation which can address the needs of precarious workers.
  
  - Government must provide precarious workers with meaningful remedies when their health and safety rights are abused.

**4. Secure and expand the resources available to document and evaluate the activities of the occupational health and safety system.** With lives at stake, workers have a right to expect that the systems and organizations put in place to protect them can and do make a difference. Reforms should be supported by reliable evidence and research that is unbiased and transparent.

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Labour OHCOW Academic Research Alliance was formed in 2008 by union health and safety representatives, occupational health and safety practitioners, and academics who share a common interest in workers health and safety. We believe that our exchange of experience informs and creates a better research process resulting in important insights that can empower workers to create a healthier work environment.

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