

Bill 70: 'building up' everyone but Ontario's working people

Responding to the Ontario government's stealth attack
on worker health and safety.

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Ontario's Finance
and Economic
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Introduction

This submission is made on behalf of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers/USW). We are the largest industrial union in North America, with over 860,000 members. We are a diverse organization with members working in various sectors from industry, education, mining, chemical, glass, rubber, rail and over the road transport, forestry, telecommunications, call centres, banking and more.

We also enjoy a proud history of securing and defending worker rights, including their right to safe *and* healthy work. In fact, the fight for Ontario's hard-won original Bill 70 which ushered in our present day *Occupational Health and Safety Act (the Act)* in large measure began when USW members in an Elliot Lake mine took the rare and courageous step of striking for better working conditions more than 40 years ago. Consequently, we consider it a sad irony that we are forced to respond to a second Bill 70 – only one designed to weaken, not strengthen worker health and safety in Ontario.

USW has listened carefully to responses to union and New Democratic Party concerns on this Bill from the Ministry of Labour and/or Chief Prevention Officer (CPO). They have not allayed our concerns or sense of betrayal. Clearly, with Section 16 of this Bill this government is intent on serving the agenda of employers and their friends in private industry, instead of the very real needs of working people in this province. That they did so under stealth, burying changes to the *Occupational Health and Safety Act (the Act)* in an omnibus budget bill, misused their majority to limit debate in the legislature and now at the eleventh hour and with very little notice are allowing a few public submissions in the short span of five hours, tells us Ontario's government is no better than the Stephen Harper government they once criticized.

Employer management systems not proper accreditation systems

In a letter jointly signed by the Minister and CPO they claim: "The Ministry of Labour is looking to design a workplace Health and Safety Accreditation Program with the help of labour, advocates and industry groups. As a preliminary step, we have proposed amendments to the *Occupational Health and Safety Act*. This proposed framework legislation would provide a pathway to allow the Chief Prevention Officer (CPO) to work with you to develop an accreditation program."

This sounds all very reasonable until one considers the “framework” to which they refer is especially flawed. If allowed to pass, the framework will take us down a path we don’t want to go.

Done properly, labour has always believed legislated accreditation programs could help incent the workplace parties to well exceed legislative health and safety minimums and implement truly effective health and safety prevention programs. However, if we look at the proposed program name and definition to be added to *the Act*, we see these programs are envisioned as being firmly in the control of employers. It is no accident they are to be called, “health and safety management systems” – emphasis on the word “management” – for as the definition explains these are to be “designed and implemented by employers” only. No mention is made of worker representative participation. It is also noteworthy that nowhere in the definition does it tell us the aim of these systems must be the prevention of hazardous exposures that give rise to worker injury, illness and death. We believe this is by design as well.

Our members are all too familiar with behaviour-based safety management systems like Dupont’s STOP management system which focuses on watching workers rather than eliminating debilitating exposures, and actually provides incentives for workers to not report injuries. USW has been fighting these kinds of programs for years. We are convinced Bill 70 will open the door to these truly harmful programs. We also know the CPO in his inexperience promotes these kinds of programs, for we have seen criteria for his innovation grants and youth video contests that specifically encourage an emphasis on worker behaviours.

Privatization of health and safety standards

An equally objectionable part of the government’s “framework” and proposed changes to *the Act* can be found in their new Section 7.7 of *the Act* which would allow the CPO to delegate his powers for administering health and safety standards to “any person outside the government.” In the case of accreditation, these ‘persons’ will be private consultants who will apply to government for their proprietary health and safety management systems to be accredited. They in turn will have the power to recognize individual employers who “use” their accredited systems. Of course they will charge a fee in exchange for this recognition. Thus profit, rather than real health and safety prevention, is the prime motivation in this system. And of course these “persons” will not be answerable in the same way governments are supposed to be.

Unfortunately, this will not be the only damage Section 7.7 will wreak. For this section also allows the CPO to give away his powers for approval of training programs and training providers to private business interests. Does anyone (in this room) really think these businesses will

ensure training meets the needs of workers when we have already seen how businesses operated under old weak Certification Part II standards, where employers could complete this part of the training standard with a PowerPoint sent to those seeking to become certified, or where some businesses supported by private training providers insisted they only had one significant hazard in need of addressing? Labour and the Workers Health & Safety Centre (WHSC) fought back against this standard that allowed these kinds of approaches. After years of pressing the government on this issue the standard has finally been strengthened; but now the government would undo all of this good work and open workers up to similarly weak training, that does nothing to ensure hazards are addressed or that learning is demonstrated. In this environment, the government deals a very destructive blow to the Workers Health & Safety Centre as well. WHSC sustainability is ensured with quality mandatory training standards. Without them, they find it difficult to compete, because they refuse to leave workers unprotected by minimalist approaches to training.

Meaningless consultations

In their same letter of assurance the Minister and CPO promised of the accreditation programs: “No program design or standards are contained in the legislation. These specifics will not be developed until after a robust consultation with labour and business stakeholders.” We see two problems with this assurance, other than the “framework” already being set. Yes, a regulation needs to come after the fact, however, regulations do not get the same public scrutiny; they do not come before the legislature. What’s more, in the last five years we have gone through many consultations with this government; their end game never changed as a result of consultations. They listened and did whatever they had decided in the beginning.

Perhaps the most grievous example of this was with the establishment of a working group consisting of labour and employer stakeholders to help draft a standard for mandatory entry level training for construction workers. We were all watching the development of this standard because we were promised similar standards in other high risk sectors. After 18 months of discussion, the parties reached a consensus of a two-day program covering a host of hazards workers confront in the industry. With no credible explanation, the CPO summarily dismissed the consensus and imposed his decision of a one-day program. He disingenuously offered the same learning objectives should be met using adult education principles. Anyone with any experience and integrity though, could see the only way the material could be covered was a straight lecture or “information dump”. There is no way an instructor could ensure all participating workers understood the concepts covered, much less apply them. Consequently, the USW rejects the notion that we must simply trust after the fact consultations will take care of our concerns.

Shielding employers from inspections

For similar reasons USW does not accept the Minister and CPO's characterization of recent staff communications around Bill 70 as a "misunderstanding." In an e-mail from senior staff in the Minister's office this was said, "This [accreditation] program would recognize employers who implement superior occupational health and safety management systems, highlighting the great work they are doing to protect Ontario workers and reduce the burden of unnecessary processes, such as routine inspections." Attempting to quell the ire of unions regarding this statement, in their joint letter the Minister and CPO offered the explanation of a "misunderstanding" and the promise of consultations. However, they still persisted where the staffer left off, suggesting their efforts would be better placed pursuing activities other than inspecting for instance, accredited unionized workplaces and that this position had to be on the table. This is a non-starter for our union. We will not agree to exempt our members' workplaces from proactive inspections. While unionized workplaces are generally safer than non-union workplaces, we have many issues with employer non-compliance and worker suffering as a result. The Minister and CPO know this to be true. Internal responsibility only works to the degree external enforcement remains a palpable threat. To suggest our members or any workers will not benefit from proactive inspections is simply not on and particularly in light of the self-regulating approach to accreditation that is also being considered.

Employer self-regulation in the form of COR

Finally, we have watched with interest the debates in the legislature over Bill 70 and especially over Section 16. Judging by the Minister's defense of this proposed legislation it would seem the Minister has already made up his mind to accredit an employer self-regulation program called Certification of Recognition or COR – this despite the promise of "robust consultation." Although he did not name the program he had in mind, the Minister said the same accreditation program is operating in British Columbia, Alberta and Nova Scotia. The only government recognized program operating in all three provinces is COR. The Minister championed COR stating: "Clearly, Speaker, when those programs were put into place, health and safety improved. Incidents went down. Increased hazard reporting took place. Reduced rates of lost time injuries. Improved health and safety environments. These are all things, Speaker, that we want for the health and safety of workers in this province." He also counselled MPP Catherine Fife who was ably challenging the government Bill to "do her homework ... instead of making cheap political points."

I am sure Ms. Fife has done her homework. As have we. The Minister is clearly overstating COR's effect. Studies of COR and programs like them have been inconclusive. The Institute for Work and Health (IWH) studied the BC COR program. IWH found that firms with lower injury rates were COR users. But they were unable to make any conclusion about whether COR was driving the lower rates or whether firms that were already performing well were applying for COR recognition: "To say whether COR is facilitating change or driving the change, we would need a different study design." It is worth noting as well, the IWH also conducted a study of audit programs in general and found:

- Few reliable studies about their validity, measurement properties
- Auditors should not also provide consulting services
- Quality of auditors varies—they need more training, in the field experience
- Inconsistency between auditors in scoring evidence
- Need to link corrective action more closely to audit results.

An Australian study similarly found a lack of reliable studies on audit programs or occupational health and safety management systems.

We do know however, in all three Canadian jurisdictions highlighted by the Minister, COR certified employers receive rebates in compensation premiums (In B.C. for instance participating employers get a 10 per cent rebate, while Alberta employers receive up to 20 per cent in rebates). We also know Alberta's Auditor General has pointed out serious issues with COR on three separate occasions, including the fact as many as half of all COR certified employers experienced workplace fatalities, multiple stop work orders, high disability injury rates and yet still received rebates. As such COR may just be another rebate program, not a prevention program.

We also know although COR is touted as benefiting the health and safety of working people, the conventions of both the BC and Alberta Federations of Labour reject COR. The BC Federation of Labour recently summed up their considerable experience with COR accordingly: "COR auditors [are] in clear conflict of interest, whether internal employees chosen by the employer or external industry consultants paid by the employer; their interests [are] based on personal profit or profit for the company they represent; workers are nowhere to be seen in the program; rebates [are] siphoning money out of the accident fund, providing significant breaks to employers in return for negligible results to injury reduction."

Conclusion – support what works

In the face of very serious and legitimate concerns and at best uncertain results regarding the government's accreditation program of choice, we urge the government to instead embrace

those activities the research and our experience tells us actually work. Vigorous enforcement works, we need more not less of it. Two recent IWH studies tell us this much too. Worker representative participation in workplace health and safety programs also works. So does quality health and safety training. There is a substantial body of research supporting these conclusions as well. We have supplied the government and CPO with this information in previous submissions on other related issues.

Further, if the government is serious about a truly effective accreditation program then we ask them to drop Section 16 from Bill 70 and sit down in a spirit of genuine cooperation with those of us who represent workers to discuss how we might develop and administer a program that “builds up” working people too. The workers of Ontario deserve this much from their government. They need good government, not privatization, deregulation and employer self-regulation.