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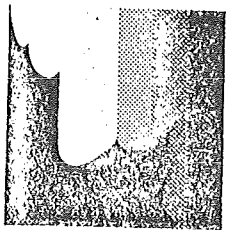
BRIEF TO THE LEGISLATIVE COMMITTEE CONCERNING GOVERNMENT BILL 139, THE EMPLOYEES HEALTH AND SAFETY ACT

Publication # 44
ISBN# 978-1-77189-685-6



from

THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Presented by Michael Izumi Nash
Member, CELA National Executive Committee

December 1, 1976

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CANADIAN ENVIRONMENTAL LAW ASSOCIATION.
NASH, MICHAEL IZUMI.
CELA Brief no. 44: Brie...RN4979

I N D E X

1. Introduction

The Canadian Environmental Law Association is a nation-wide association of lawyers, law students and environmentalists of various professions numbering approximately 750. It exists in order to promote the protection of the environment through law.

CELA was founded in 1971; is supported financially chiefly through donations of foundations, corporations, governments and individuals; and has its head office in Toronto.

CELA is grateful and honoured to be able to put the following recommendations to the Legislative Committee for its consideration.

2. The Right to Refuse Unsafe Work

CELA heartily endorses the initiative in Bill 139 (the "Bill") to provide a legal mechanism for the exercise of the right to refuse unsafe work, a mechanism which has not hitherto been fully elaborated. With one exception, we approve the actual details of the mechanism as spelled out in sections 2, 3 and 9 of the Bill.

The single reservation concerns the position of the worker between the time a decision has been made by management to discipline him or her for refusing arguably safe work and the time the Ontario Labour Relations Board ("OLRB") has had an opportunity to adjudicate the issue. During this time a worker will have suffered the discipline of management, subject only to his right at the OLRB to have the decision reversed, and will in some cases be suspended or terminated for several months with all the economic and familial dislocation that that entails.

The dislocation resulting from a lengthy period without work is often one that cannot be adequately compensated by reinstatement with back pay, and in our view, will prevent many workers from taking a principled stand on their rights. We feel that the economic reality should follow the legal burden, which is on the employer under s. 9(5); if the worker is to have the benefit of the doubt in reality, then he or she needs protection against the disastrous consequences of reduced income which his or her rights are being adjudicated. Moreover, in many cases, the mere threshold cost of applying to the OLRB and retaining counsel to do so will be, for non-union workers, a significant disincentive to use their rights.

Recommendation 1:

That section 9 of the Bill be amended so that no discipline in respect of an alleged abuse of the rights in sections 2 and 3 is to take effect until adjudication by the OLRB, and that the application to obtain such adjudication may be made by either the employer or the employee.

3. Joint Committees

(a) Voluntary Committees and Recognition

The principle behind the joint committees is sound; if co-operation can be reached on common problems both management and labour will gain.

Indeed, CELA would like to see the area of co-operation broadened so as to include not only those workplaces designated by the Minister under section 4(1), but also any workplace having a health and safety committee composed as specified in section 4(3). The policy of the legislation ought to be to encourage voluntary co-operation, and if this can be achieved without ministerial order, then the statute should recognize the achievement by clothing the committee with the same rights and powers as one designated by the Minister.

Recommendation 2:

That any committee voluntarily established and constituted as specified in section 4(3) should enjoy the same rights and powers as one set up pursuant to an order of the Minister under section 4(1).

(b) Committee-Management Conflicts

The statute does not indicate what power the joint committee will enjoy with respect to the disbursement of funds and potential conflict with management. It is quite conceivable that a committee might decide under section 4(4)(b) that a particular expensive programme of testing is to be implemented and management might well take the position that the benefits do not justify the expense. We submit that the power "to establish and maintain programmes" would not alone in practice or in theory carry the necessary legal force to require an unwilling management to implement any programme the committee decides must be established under section 4(4)(c), subject to a right of appeal to another tribunal on the grounds that the programme will make no significant contribution to the health and safety of the workers.

Recommendation 3:

That in case of conflict between the joint committee and management over the implementation of any programme under section 4(4)(c) and the disbursement of funds therefor, the management will be bound to implement such programme and disburse such funds, subject only to a right of appeal to another tribunal on the ground that such programme will make no significant contribution to the health and safety of the employers' workers.

(c) Compelling Information

CELA is concerned that the very important right contained in section 4(4)(d) of the Bill, the right to obtain information, will be thwarted in practice and in law by the absence of a corresponding duty of anyone asked for such information to provide it quickly. At law of course, no right can be enforced against anyone who does not have a legal duty, and the specifying of such a duty would certainly make the task clearer and simpler.

Moreover, CELA would prefer to see the list of persons from whom information may be sought and compelled extended to include the Crown and its agencies, and any employer engaged in substantially the same business. This extension is particularly important in the case of the Crown, because the normal rule is that the Crown is not bound by statute unless by specific wording or necessary implication. In these days too, it is often the government that is in possession of the most crucial information. Without expanding the list of persons from whom information is available, the risk is run that an adjudicating body might unnecessarily restrict the meaning of "other person" and so defeat the purpose of the Act.

Recommendation 4:

That section 4 be amended by adding a legal duty on the part of anyone asked in writing for information under section 4(4)(d) to provide it forthwith.

Recommendation 5:

That section 4(4)(d) be amended by adding after the word "employer": "the Crown in right of Ontario or any of its agencies or corporations, any employer engaged in a similar industry".

(d) Minutes and Records

One of the most welcome aspects of the Bill is its emphasis on disclosure and openness of information. The limitation in section 4(4)(e) that the minutes and records of the committee are to be available to an inspector or engineer suggests that they are only open to such persons, which seems to be a departure from the general thrust of the Bill serving no apparent purpose. In order for the workers to retain confidence in the committee, its conduct must be open to them.

Recommendation 6:

That section 4(4)(e) be amended by adding after the word "engineer": "or any employee".

4. Safety Representatives

(a) Voluntary Representatives and Recognition

The same reasoning that was earlier applied to recognition of joint committees voluntarily established ought also to apply to safety representatives chosen without prior ministerial order.

Recommendation 7:

That section 5 be amended so that every safety representative selected in accordance with section 5(2) shall enjoy the same rights and powers as one selected pursuant to an order of the Minister under section 5(1).

(b) Qualifications of Representatives

The Report of the Royal Commission on the Health and Safety of Workers in Mines, Toronto, 1976 at p. 155, recommended that the safety representative ("worker-auditor" in the Report's vocabulary) have certain work experience and that he receive adequate instruction arranged and paid for by the government.

While CELA does not necessarily support the lengthy qualifying period the Report would impose, CELA does endorse the principle that the safety representative

be given, before or just after he or she commences his or her duties, adequate education to enable him or her to properly perform the job. We are far from saying laypeople are unable to handle the position; on the contrary, we feel that anyone with reasonable intelligence is capable of performing many of the tests required and understanding most of the issues in occupational health and safety. That does not mean everyone can perform the task well and thoroughly without some background in the area. We note that the Bill does not provide for any such training.

Recommendation 8:

That the Bill require the Minister and the employer to provide at their expense adequate training for every safety representative selected in accordance with section 5(2), whether or not selected pursuant to an order under section 5(1) to enable as far as possible the representative to take all proper tests, interpret the results, recognize hazards, to locate relevant information and to communicate such knowledge to fellow workers.

(c) The Obligation to Furnish Information

In order to avoid needless argument about who shall decide what information is "required for the purpose of carrying out a [safety representative's] inspection" in section 5(3), the language should make clear that the employer and employees have a duty not only to provide information that is objectively required, but also such information as the safety representative subjectively may require. Such wording will short-circuit any withholding of information on the ground that, objectively speaking, the information is not required for the purpsoe of carrying out the inspection.

Recommendation 9:

That section 5(3) be amended by adding following the word "required" the words: "by the safety represenative".

(d) Times for Inspection

Certainly it is legitimate to want to restrict the amount of free time provided by the employer that a safety representative may take. No doubt what is envisaged by

section 5(3) therefor is a once monthly inspection of the whole plant, or such part of the plant for which the safety representative has been selected, and not a simple test or inspection taken of a particular machine or place in isolation. CELA is concerned that the Bill fails to make clear that the representative's one inspection per month is not used up by such isolated activities or the activities provided for in section 3(1) or 3(3) (attending on the inspection of a thing or place in respect of which a worker is refusing to work), section 5(4) (inspection following serious injury or death) and section 6(1) (attending on an inspection by an inspector or engineer).

Recommendation 10:

That the word "inspection" in section 5(3) be defined so as to exclude

(a) any isolated test or inspection of a thing or place

(b) any activity provided for by sections 3(1) and 3(3), 5(4) and 6(1).

(e) Accompanying the Inspector

The Construction Safety Act S.O. 1973, c. 47 provides in s. 8(1) and 8(2) that an inspector and a person accompanying an inspector shall keep confidential any information obtained on an inspection. The text of the statutory section, which is substantially the same as section 13(1) and 13(2) of The Industrial Safety Act, S.O. 1971, c. 43, is as follows:

8(1) An inspector, a person who accompanies an inspector, or a person who makes an examination, test or inquiry, or takes samples shall not publish, disclose or communicate to any person any information, material, statement or result of any test, acquired, furnished, obtained, made or received under the powers conferred under this Act and the regulations except for the purposes of carrying out his duties under this Act or the regulations.

8(2) No report of an inspector, a person who, at the request of an inspector, makes an examination, test, inquiry or takes samples shall be communicated, disclosed or published to any person except for the purposes of carrying out his duties under this Act or the regulations.

These sections say quite clearly that basically an inspector is not to reveal anything he or she knows except as is neces-

sary for the Act, which means in practice that he or she may only report his or her information to responsible personnel in the employer's management and his or her own ministerial supervision. Quite clearly also, a person accompanying the inspector is similarly limited.

The Bill does provide in section 11 that where there is a conflict between it and any other Act, the new Bill is to govern.

The problem is that nowhere does the Bill provide an expressly conflicting right or duty of an inspector or a person accompanying an inspector to inform anyone other than management of what they have found. There is no provision that provides, for example, that a safety representative can have his questions answered by the inspector, or that the inspector is obliged to reveal what he is doing, or what he is doing, or what oral orders he is going to give management. Nor is there any provision permitting a safety representative to communicate his findings to his fellow workers. In short then, section 11 of the Bill does not undo the confidentiality requirements of the other Acts.

If the safety representative is to receive any meaningful kind of right in accompanying the inspector, he will have to know verbally what is being done. The safety representative ought also to be able to take advantage of the superior education and experience of the inspector. In order for the workers to profit by having a safety inspector and to maintain confidence in him, they should be able to receive information from him.

Recommendation 11:

That section 6 be amended to provide that the inspector or engineer shall be required to inform the safety representative of all matters relevant to the understanding of any aspect of the inspection and any instructions or advice he will orally give to the employer.

Recommendation 12:

That section 6 be amended to give a safety representative the right to inform any worker of any matter relevant to occupational health and safety within his knowledge.

5. Reports to Complainants

In its Brief to the Minister of Labour, September 23, 1976 (see Appendix "B"), CELA urged that any person complaining to an inspector or engineer be given an answer to his or her complaint (at page 3). We are therefore pleased to to note section 7 of the Bill which requires the public posting of all written notices to the employer and the delivery of copies to any person whose complaint resulted in the investigation and notice.

We see no reason, however, why the principle of the responsibility of the inspectors to the beneficiaries of their work should not be extended to cover every complaint made and not just those that issue in a written notice as we had earlier urged.

Recommendation 13:

That section 7 be amended to provide that when any worker complains to an inspector or engineer concerning a matter of occupational health or safety the inspector or engineer shall answer the complaint in writing if the complaint was in writing, or orally, if the complaint was oral within a reasonable time following the complaint.

6. Statistical Information

(a) Coverage

Again, CELA can only be pleased to see in section 8 of the Bill recognition of a concern it had raised in its earlier Brief, at page 3, namely that adequate statistical information must be made freely available. We do feel, however, that the information available under section 8 of the Bill could easily and without any prejudice at all be made more compendious and useful.

In particular, the information as to accidents and diseases would be far more useful in identifying dangers if it listed the causes of the accidents and diseases. Similarly, it would be helpful to know what trends are developing, which can be determined by comparing the most recent figures with past figures. Lastly, it would be useful for the same comparative purposes to have statistics for employers in the same class, subclass and group. We do not feel that it is sufficient to rely on the Workmen's Compensation Board to provide this information in its discretion when it is so important and can so simply be specified in the statute.

Recommendation 14:

That section 8 be amended to require the Workmen's Compensation Board to send, in addition to the information already specified in section 8, the causes of all accidents and injuries where known, a comparison with the experience of the employer in the previous three years, and a comparison with the experience of employers in the same class, subclass and group for the same years.

(b) Status to Obtain Information

Persons other than workers, or workers in their capacity as citizens, all have an interest in knowing the progress being made in occupational health and safety province-wide. This kind of information is necessary to determine the efficiency of the governmental programme and the progress being made by private industry and indeed, by workers themselves. The law does not extend to citizens the possibility of obtaining such information and CELA feels strongly that it should.

Recommendation 15:

That the Bill provide for the amendment of The Workmen's Compensation Act, R.S.O. 1970, c. 505, 8/c so that the Annual Report of the Board specifically contain compendious statistical information on the matters specified in s. 8 of the Bill and their causes, broken down by employer class, subclass and group on a comparative basis with the preceding year, and that the Annual Report be available free on the request of any Ontario resident.

7. Penalties and Enforcement

(a) A Mechanism for All Rights

There are several rights of persons under the Bill which apparently have no mechanism for their enforcement, and if the recommendations in this Brief are accepted, there will be more. Examples in the former category are the right of a joint committee to obtain information under section 4(4)(d); the right of a worker to obtain written notice, where one is made, in response to a complaint under section 7; and the right of a safety representative to be paid for time on his or her duties in that capacity, under section 5(5).

With no mechanism spelled out for the enforcement of rights there are two possibilities. One is that there

may simply be no enforceable right. The second and more likely is that an application to a court must be made. If the latter, the Bill does not specify which court has jurisdiction. The tradition in Ontario, which CELA approves, is to keep matters involving workers out of the courts. It would therefore seem appropriate to refer such matters to a tribunal, perhaps the OLRB, the Workmen's Compensation Board, or a new specialized tribunal.

Recommendation 16:

That every right of every person under the Bill be given a mechanism for its enforcement, preferably through an administrative tribunal.

(b) A Penalty for Offences

Section 10 of the present Bill provides a penalty on summary conviction for offences against section 4(1) (failure to create a joint committee), section 5(1) (failure to cause the selection of a safety representative) and section 9(1) (improper discipline). This recognizes the elementary principle that a fine is not the answer to every problem, and with that CELA agrees.

There are some duties under this Bill, however, and even more if our recommendations are accepted, which are important enough to raise the possibility of a fine. In particular, the obligation to provide information, if breached, should be visited with quasi-criminal penalties in view of its importance to those it is designed to help and the almost inevitable presence of neglect.

Recommendation 17:

That section 10 of the Bill be amended to provide a penalty for anyone on whom a duty to provide information lies for failure to produce such information provided he had such information to produce when he knew or ought to have known that the same would be or was being requested.

8. Matters Not Addressed in the Bill

(a) The Right of Any Worker to Monitor the Environment

CELA has no hesitation in approving the concepts of joint committees and safety representatives, but both

of those institutions suffer the same potential pathology: the dangers of planned inspections, and of the lessening of vigilance upon the assumption of office. The end result of these dangers is the same: that the committees and representatives may not really perform their watchdog function as they are designed to do or they may be suspected of such failure. In particular, the planned inspections present the possibility of an atypically altered environment.

What CELA has proposed in its earlier Brief and now reiterates is the need to allow simple tests to be taken by any worker, within limits, so that he or she may be certain that the environment is indeed being properly monitored. We respectfully refer the committee to our earlier Brief, at page 2.

Recommendation 18:

That a section be added to the Bill providing that no employer shall prevent or discourage any employee from bringing into the work place and using therein any device to measure or record the quality of the workplace environment, provided the bringing or using does not unduly interfere with the employer's work or with the safety of any person.

(b) Workplace Environmental Impact Assessment

Our Association has long advocated the principle of environmental impact assessment and is proud of its efforts to achieve it. The Ontario government was the first Canadian government to accept this principle in its statute, The Environmental Assessment Act, S.O. 1975, c. 69. Yet neither CELA nor the Ontario government have hitherto extended to the workplace environment, as opposed to its structure, the same logic that applies to the environment elsewhere. We now recognize this failure as unjustified. There appears to be no reason why a new substance, process or alteration of the workplace that has potential for significant impact for occupational health and safety should not in principle have to be scrutinized prior to its introduction rather than after. Different guidelines and procedures will undoutedly have to be established, but the principle should be the same, namely that prevention is better than cure.

While the details of a pre-testing scheme will require further elaboration, CELA submits that the rudiments could be put in motion with this Bill.

Recommendation 19:

That sections be added to the Bill to set up a scheme of work-place environmental impact assessment and in particular, to provide that:

(a) any employer who plans to introduce a new substance, process or alteration into the workplace environment to give written notice of the details of the same to the safety representative if there be one, the trade union if there is one, and to the Minister at least one month before the planned introduction,

(b) the Minister shall study the notice together with available literature and knowledge on the matters raised therein and if in his opinion the proposed introduction may have a detrimental effect on occupational health or safety, may require the employer to submit a workplace environmental assessment statement as prescribed by Regulation and to refrain from the introduction until such time as the Minister has made a decision thereon or for two months whichever is lesser,

(c) the Minister shall provide copies of the statement to employees of the employer, or their representatives and invite written or oral submissions and shall study such other material and summon such experts as he considers advisable to arrive at a decision,

(d) the Minister shall refuse or allow or allow with conditions the introduction of the substance, process or alteration and shall notify the employer and employees of the employer or their representatives in wiriting of his decision.

(c) Availability of the Law

It is a simple axiom, partially recognized in The Industrial Safety Act, s. 24(1)(e) (requiring the employer to keep a copy of the Act available to workers in any factory) that a worker has a right to know the law. Indeed, for the worker to exercise the right to refuse unsafe work he or she would very much need to know the law. The principle ought to be extended to that any worker may obtain a copy of the Act, the Regulations and any code or Threshold Limit Value applicable in the work place.

Recommendation 20:

(a) That a section be added to the Bill providing that the Minister shall supply every employer with an adequate number of copies of this Act and Regulations, The Industrial Safety Act and Regulations, The Construction Safety Act and Regulations, The Mining Act, Part IX, and Regulations as may be appropriate, any relevant Codes or Threshold Limit Values.

(b) That the employer shall make known to his employees that such copies are available.

(c) That the employer shall make such copies available.

9. Conclusion

Our Association welcomes all of the initiatives in this Bill, recognizing in each of them a significant advance over the previous legal regime governing the workplace environment. At the same time, many of the initiatives fail to provide the means to make them a significant benefit to Ontario workers. Moreover, there are several crucial areas which the Bill does not address at all, as we have listed in Item 8 of our Brief.

We have submitted twenty detailed recommendations for the consideration of this committee which CELA believes will make the Bill an even more important advance for the protection of occupational health and safety in Ontario. We trust that you will give them your careful attention.

Recommendation 8: Page

That the Bill require the Minister and the employer to provide at their expense adequate training for every safety representative selected in accordance with section 5(2), whether or not selected pursuant to an order under section 5(1) to enable as far as possible the representative to take all proper tests, interpret the results, recognize hazards, to locate relevant information and to communicate such knowledge to fellow workers. 5

Recommendation 9:

That section 5(3) be amended by adding following the word "required" the words: "by the safety representative". .. 5

Recommendation 10:

That the word "inspection" in section 5(3) be defined so as to exclude

(a) any isolated test or inspection of a thing or place

(b) any activity provided for by sections 3(1) and 3(3), 5(4) and 6(1). 6

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Recommendation 14:

That section 8 be amended to require the Workmen's Compensation Board to send, in addition to the information already specified in section 8, the causes of all accidents

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therein and if in his opinion the proposed introduction may have a detrimental effect on occupational health or safety, may require the employer to submit a workplace environmental assessment statement as prescribed by Regulation and to refrain from the introduction until such time as the Minister has made a decision thereon or for two months whichever is lesser,

(c) the Minister shall provide copies of the statement to employees of the employer, or their representatives and invite written or oral submissions and shall study such other material and summon such experts as he considers advisable to arrive at a decision,

(d) the Minister shall refuse or allow or allow with conditions the introduction of the substance, process or alteration and shall notify the employer and employees of the employer or their representatives in writing of his decision. 12

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(a) That a section be added to the Bill providing that the Minister shall supply every employer with an adequate number of copies of this Act and Regulations, The Industrial Safety Act and Regulations, The Construction Safety Act and Regulations, The Mining Act, Part IX, and Regulations as may be appropriate, any relevant Codes or Threshold Limit Values.

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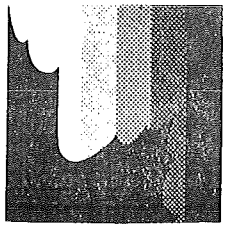
APPENDIX "B"

ONTARIO'S HEALTH AND SAFETY LAWS

MUST BE CHANGED TO PROTECT WORKERS



Brief to the Minister of Labour

by the Canadian Environmental Law Association in support of the Brief of the Union of Injured Workers submitted to the Minister, November 28, 1975.

prepared by Michael Izumi Nash,
member of the Board of Directors
The Canadian Environmental Law Association

September 23, 1976

1. Introduction

The Canadian Environmental Law Association supports the three major demands of the Union of Injured Workers under the heading "Better Job Safety":[1]

(a) Stricter assessment by the Workmen's Compensation Board of employers with higher than average accident and disease experience,

(b) Enlargement of the Industrial Safety Branch of the Ministry of Labour,

(c) Higher penalties for employers who breach legal health and safety standards.

The Association also supports the general call for an improved legal regime dealing with health and safety on the job. In doing so, the Association recognizes the fact that a poor quality environment in the workplace frequently has greater adverse impact on the health and safety of individual Canadians than a poor quality natural environment. In their roles as workers, people are often subject to an environment regulated by far more lenient standards, policed to a lesser degree, and over which they have less control and fewer opportunities for avoidance than they do in their role as citizens.

Redressing this imbalance requires not only the government to expand and strengthen regulations but also that the citizenry become more involved in regulating the quality of life. Excluding citizens from the regulation-setting process has several adverse results. First, by requiring vast numbers of civil servants, it presents an additional tax burden. Second, it increases the responsibility of government and its personnel and decreases the responsibilities and knowledge of citizens, thus undermining the democratic requirement of individual participation. Third, it increases the chances of administrative abuse.

In this brief, we therefore propose specific legal amendments which we feel will allow and encourage working people to take a hand in their own protection. The thread which connects the recommendations is: self-regulation and self-policing.

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1 Union of Injured Workers, "Brief to the Minister of Labour", Toronto, November 28, 1975, p. 14-16.

2. Access to Information

(a) The Right to Monitor the Environment

In modern times, laws cannot be changed by words alone. In our time, the evocative force of language cannot compete with data recorded by scientific instruments as the persuasive means of law reform.

It is precisely such data which is put beyond the reach of anyone but the rare professional researcher or Ministry of Health inspector. Most employers either have rules forbidding anyone to bring instruments onto the worksite or can discipline workers who try to take any tests. The employers argue that the worksite would be disrupted if workers made tests and the law does not contradict them. But many tests represent no significant interruption of production or compromise of safety standards. Many testing instruments such as cameras, noise meters, dust collection sheets, simple gas meters, and thermometers can be used with little or no training.

There are several benefits of allowing workers the right to monitor their own workplace environment: It provides workers with the necessary facts for law reform and contract negotiation; it opens the way for increased knowledge and control over working conditions thereby decreasing industrial anomie; and it reduces the need for an army of government inspectors. We have also noted with approval that the principle of autonomous worker-auditors has been recommended by the Ham Commission.[2]

Our Association therefore recommends the following addition to The Employment Standards Act, R.S.O. 1970, c. 147 or alternatively to the three workplace safety statutes -- The Mining Act, R.S.O. 1970, c. 274, The Construction Safety Act, S.O. 1973, c. 47 and The Industrial Safety Act, S.O. 1971, Vol. 2, c. 43:

> "No employer shall prevent or discourage any employee from bringing onto the worksite and using thereon any device to measure or record the quality of the workplace environment, provided the bringing or using does unduly interfere with the employer's work or with the safety of any person."

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2 Report of the Royal Commission on the Health and Safety of Workers in Mines, June 30, 1976, pp. 153-156.

(b) Available Statistical Information

In order to develop intelligent programmes for law reform, collective bargaining and in-plant health and safety operations it is essential that recent accurate statistical information be available to workers on accidents, diseases and their causes. Again, we can only applaud the Ham Commission for its recognition of the importance of such information, underlying as it does so many of the Commission's recommendations.[3]

At present, the Workmen's Compensation Board is required by s. 81 of The Workmen's Compensation Act, R.S.O. 1970, c. 505 to submit annual reports to the Minister of Labour and the Superintendent of Insurance. Only the former is by law available to the public, and then only because it must be tabled in the Legislature. Fortunately, the Board's practice is to combine the reports in a single Annual Report which is put before the Legislature and the public. Although the Annual Report is probably sufficient for its intended purpose, which is to summarize the annual operations of the Board, it is not adequate for the needs of concerned workers. It contains only a generalized survey of the year's activities and finances, but no detailed information on accidents and diseases and their frequency, location and causes.

In order to be useful, information must be readily accessible, understandable, recent and sufficiently particularized to enable comparisons to be made and trends to be seen. The Workmen's Compensation Board already collects such information -- the costly part of an information programme, namely gathering data, has already been internalized. The additional cost is only that of publishing and printing.

If meaningful data is to be made available then it must include information on the accident and disease experience of employers by group, class, and subclass. Information on any particular employer not named in the Annual Report should be available from the Board upon request.

Section 81(c) of The Workmen's Compensation Act ought therefore to be repealed and replaced with a new section along the following lines:

(1) The Board shall, at the end of each year file with the Minister of Labour an Annual Report which shall include:

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3 Ibid., e.g. Recommendations 1, 4, 6, 57 and 94, pp. 261-277.

(a) The number and kinds of accidents and industrial diseases together with amounts of time off work resulting from same for employers under this Part by group, subclass and class,

(b) The names and addresses of employers with above average incidence of accidents or industrial diseases within their group, subclass or class.

(2) The Board shall at the end of each year file with the Superintendent of Insurance, in such detail as he or she may require, a report on the accident fund and the Superintendent of Insurance shall report thereon to the Minister of Labour.

(3) The Minister of Labour shall submit the reports to the Lieutenant-Governor in Council and shall then lay them before the Assembly if it is in session or, if not, at the next ensuing session and the reports shall then be referred to a Standing Committee of the Assembly.

(4) Within sixty days of receipt of the reports by the Minister of Labour, the Minister shall make the reports available to the public.

(5) The Superintendent of Insurance shall, whenever required by the Lieutenant-Governor in Council or the Board, examine the affairs and business of the Board for the purpose of determining as to the sufficiency of the accident fund and shall report thereon to the Lieutenant-Governor in Council or the Board.

A new section ought also to be added in Part I:

Upon request, the Board shall furnish to any employee of any employer under this Part information detailing the number and kinds of accidents and industrial diseases together with amounts of time off work resulting from the same encountered by the employees's employer in the immediately preceding year covered by the annual reports mentioned in Section 81(c).

(c) A Responsible Complaint Procedure

Under the present regime when a worker complains to a provincial inspector about workplace conditions, the inspector is prohibited from telling the worker what he found out, or what he did, by subsections 8(1) and 8(2) of The Construction Safety Act and subsections 13(1) and 13(2) of The Industrial Safety Act. A complainant never knows what has happened to his or her complaint unless the situation visibly changes. The only exceptions are a provision in both Acts which permit an inspector in certain rare circumstances to display publicly a notice of his or her order to the employer [The Construction Safety Act, s. 11(6) and The Industrial Safety Act, s. 10(4)], and a provision in The Construction Safety Act, ss. 8(4), that the Director may in his discretion release this otherwise confidential information. Neither of these exceptions are satisfactory because they only allow infrequent release of information, both in concept and practice, and they start from the wrong first principle. Freedom of information about workplace conditions must be the starting principle.

The rationale of s. 11(6) and s. 10(4) should be extended to any situation about which a worker has complained. Workers should know what things or conditions are dangerous, and that they should see that justice is being done. Indeed, failure to provide such information invites the inference that either everything is satisfactory, when it might not be, or that the illegal situation is being covered up, again when it might not be.

We propose that all three health and safety statutes (The Construction Safety Act, The Industrial Safety Act, and Parts IX and XI of The Mining Act) should be amended to include a provision:

> Where a worker makes a complaint or inquiry concerning the safety of some aspect of the workplace to an inspector (an "engineer" under The Mining Act) the inspector shall make the necessary answer or conduct the necessary investigation, and where an investigation is undertaken all pertinent results of the same together with notice of the corrective steps taken by the inspector or the employer as the case may be shall be reported to the worker in writing if the complaint was in writing or orally if the complaint was made orally.

3. Freedom and Ability to Enforce Health and Safety Standards

(a) Reduction of Ministerial Discretion

The Mining Act (s. 625), unlike The Construction Safety Act and The Industrial Safety Act, and contrary to the general rule of the common law, states that there can be no prosecution without the approval of government.

All workers, whether or not they are miners, ought to be able to initiate a prosecution where government enforcement is lacking. As The Construction Safety Act and The Industrial Safety Act have shown, there is no danger of a flood of prosecutions. Section 625(1) ought therefore to be repealed.

(b) Compellability of Inspectors

The Industrial Safety Act (s. 13(3)) and The Construction Safety Act (s. 8(3)) provide that inspectors are not compellable witnesses in any civil suit or proceeding. We recognize that the protection of inspectors and employers is a legitimate aim and that the exemption is basically sound. However, we do suggest that these sections specify that a prosecution under the particular Act is deemed not to be a civil suit or proceeding. With the present wording it is not at all clear that a prosecution is not "a proceeding" and therefore it could be successfully but unmeritoriously argued that an inspector has no place in a private prosecution.

In at least one additional situation, moreover, the non-compellability of inspectors may create an unjustifiable hardship. In cases where persons have been injured or have contracted a disease because of the failure of someone not their immediate employer to meet the relevant health and safety standards, the prosecution may be frustrated by the non-compellability of the very expert witnesses who could prove the facts necessary to find liability. We suggest that a clause be added to each section noted above, as follows:

> Nothing in this section affects the compellability of an inspector in a prosecution under this Act nor in a civil suit by a person alleging personal injury by reason of the failure of any other person to comply with this Act or the regulations.

(c) The Right to Obtain and Enforce Stricter Standards than Those Established by Law

Just as The Employment Standards Act provides in s. 9(1)

that its standards are only minimum standards, so too the health and safety statutes should make it quite clear that health and safety are proper matters for collective bargaining. Higher standards so set could be enforced in the same way as present collective agreements are: by grievance and arbitration.

In a way, even current legal standards are the result of a bargaining process, among civil servants, employers and consultants. Standard-setting by collective bargaining has the advantage of openness to those most directly affected.

We suggest that a section be added to each relevant statute spelling out the freedom to bargain over health and safety standards:

> The standards governing health and safety under this Act are minimum standards only and nothing in this Act affects any standard governing health and safety or any rights of an employee relating thereto under any law, custom, agreement or arrangement that is more favourable for health and safety than the standards under this Act.

4. Conclusion

CELA has made several suggestions in this brief. They are:

(1) The Workmen's Compensation Board should more strictly assess employers with higher than average accident and disease experience.

(2) The Ministry of Labour should increase the personnel available to inspect and enforce health and safety standards in Ontario.

(3) Higher penalties for infractions of legal health and safety standards to employers.

(4) Workers should have the right to monitor the environment in their workplace.

(5) (a) Information collected by the Workmen's Compensation Board should be made public.

(b) Information collected by the W.C.B. should be collected in a meaningful form, capable of comparison with other data.

(6) Inspectors should report the results of their inspections to the complainant.

(7) The Mining Act should be amended to allow workers to enforce its provisions in the Courts without getting Ministerial permission first.

(8) Inspectors should be compellable witnesses in private prosecutions and in suits where the direct employer of the injured person is not a party.

(9) Health and safety statutes should be amended to make it clear that standards higher than the minimum can properly be a subject for collective bargaining.