

## **SEIU-West's Response to the Questionnaire and Discussion Document Regarding Proposed Changes to *The Occupational Health and Safety Act, 1993***

SEIU-West is the province-wide Service Employees International Union Local, which was created through the merger of Local 299 (Moose Jaw), Local 333 (Saskatoon) and Local 336 (Swift Current). We represent over eleven thousand members across the province working in healthcare, education, municipalities, and community-based organizations.

The mandate of Service Employees' International Union is to improve the lives of working people and their families, and lead the way to a more just and humane society. We stand for economic and social justice, for dignity and respect, for having a voice on the job and in society, and for a secure job with the opportunity to advance.

SEIU-West members place a high value on all matters related to Occupational Health and Safety and are keen to eliminate workplace hazards and prevent injuries, illnesses and fatalities.

In this submission, SEIU-West will outline our perspective and outstanding questions for each of the sections in the discussion document. Rather than attempting to fill out the questionnaire, which is designed with employers in mind rather than workers and their unions, we believe that this format will provide the most meaningful input.

### ***DISCUSSION DOCUMENT***

#### **1. Proposed Amendments to *The Occupational Health and Safety Act* Part I – Preliminary Matters**

##### **Section 2(1)(d) Definition of Project Owner (formerly referred to as Contractor)**

SEIU-West agrees that contractors who hire employers to complete a job, and are therefore not directing the activities of the project or the workers, should also be held accountable under *The Occupational Health and Safety Act*. However, simply changing the name from 'Contractor' to 'Project Owner' does not accomplish this. In fact, what needs to occur is the current definition of 'Contractor' needs to be expanded.

##### **Section 2(1)(u) Definition of Owner**

SEIU-West questions the need for this change and is concerned that it may have unintended consequences in regulations.

##### **Section 2(1)(ff) Definition of Worker**

SEIU-West believes *The Occupational Health and Safety Act* should protect all workers, but we have an outstanding query regarding the suggested change:

- The rationale suggests that the Lieutenant Governor in Council by regulation may prescribe a person or category of persons as workers within the meaning of the Act, yet the example provided i.e. volunteer firefighter is not in keeping with this definition unless they are paid.
- Could this not be achieved through the addition of a paragraph under section 44 of the Act?

## **Part V – Notices of Contravention**

### **Section 30(1) Rename “Notice of Contravention” as “Compliance Order”**

SEIU-West has significant concerns about the implications of this change. A notice of contravention should not be interpreted as a compliance order when indeed it is an offence of the Act and/or Regs. It must remain legally defined as a violation for which a penalty and/or remedy shall ensue and may entail prosecution. The suggested change would inevitably weaken enforcement and protection for workers. It is important to identify a breach of legislation, as that is the intent of notices of contravention, as laid out in the existing Section 30(1).

We would inquire as to the rationale for such proposed change and for your identification of any other jurisdiction that has eliminated reference to notice of contravention together with the measurable outcomes of such revision.

### **Section 36 Reassignment to alternate work**

SEIU-West believes that this proposed change would permit employers to minimize or avoid financial responsibility to continue to pay workers after a stop work order is issued. Further, we believe that the current wording should remain in place as it serves as an incentive to remedy the breach of the legislation in a timely manner.

## **Part VII – Appeals**

SEIU-West is concerned about the change limiting appeals to “21 days of the date of *service*” in that it does not go quite far enough. While it is ideal to commence appeals within this timeframe, there may be extenuating circumstances from time to time that prevent one from commencing their appeal within this timeframe, particularly in our large multi-union workplaces. Such technicalities should not necessarily bar appeals with merit from proceeding.

SEIU-West would submit that the rationale provided for legislatively expanding the authority of the Director is not appropriate in the circumstances. We would suggest that the adjudicator remain the decision-maker with respect to standing on an appeal. SEIU-West acknowledges that persons with no connection to the employer, worker or workplace should not have a right to appeal.

The current practice in which Unions may assist in an appeal on behalf of Union members should continue and be enshrined within the Act.

## **Part IX – Offences and Penalties**

### **Onus of Proof Related to Adequacy of Worker’s Training**

SEIU-West agrees that the onus should be placed on employers in proceedings under the Act to prove that the training provided to workers meets the requirements of the Act and Regulations. This needs to include the requirement to ensure that the training is adequate, and not merely reading a policy or watching a video and signing it off. In order to satisfy this onus, employers ought to be required to keep accurate training records.

## Part XI – Administration

### Section 72(1) Inspection, Investigation, Search

SEIU-West agrees that officers should have the ability to require employers to produce any training or other records related to occupational health and safety and require a person whom the officer has reasonable cause to believe possesses information respecting the conditions of safety, health or welfare at a worksite to attend an interview and provide full and correct answers.

### Director to Direct a Professional Engineer's Report

SEIU-West supports this proposed change that would require a professional engineers report regarding the physical condition of the place of employment, and a qualified person to conduct tests or examination on chemical/biological substances in the workplace.

### Grant Immunity to Adjudicators for Actions Taken in Good Faith Pursuant to the Act

SEIU-West supports the inclusion of Adjudicators and Special Adjudicators in the list of officials in Section 85, making them immune from actions taken against them for their decisions or activities made in good faith pursuant to the Act or Regulations.

## 2. Summary of The Occupational Health and Safety Act Amendments Previously Consulted on

SEIU-West is uncertain of the government's intention regarding the consensus recommendations from the previous OHS Council's review. If the government intends to move forward with the consensus recommendations, we would wholeheartedly support that as we believe these recommendations will lead to a healthier and safer workplace for our members and all Saskatchewan workers. However, we would only support this move if the wording and intent remain the same as the Council's recommendations.

## 3. Discussion on Penalties for Comment

### Increasing Penalties

SEIU-West strongly urges a significant increase to penalties. We would recommend the following minimums:

Section 58(1)	Increase from 2,000.00 to a minimum of 10,000.00
Section 58(2)(a)	Increase from 5,000.00 to a minimum of 25,000.00
Section 58(2)(b)	Increase from 500.00 to a minimum of 2,500.00
Section 58(4)(a)(i)	Increase from 10,000.00 to a minimum of 50,000.00
Section 58(4)(a)(ii)A	Increase from 10,000.00 to a minimum of 50,000.00
Section 58(4)(b)(ii)B	Increase from 1,000.00 to a minimum of 5,000.00

The minimum Penalty for a 2<sup>nd</sup> offence should be double that of the first offence and there should be serious consideration given to prison time as well as the monetary penalty.

Section 58(6)(a)(i)	Increase from 50,000.00 to a minimum of 250,000.00
Section 58(6)(a)(ii)	Increase from 5,000.00 to a minimum of 25,000.00
Section 58(6)(b)(ii)	Increase from 100,000.00 to a minimum of 500,000.00

Section 58(6)(b)(ii)	Increase from 10,000.00 to a minimum of 50,000.00
Section 58(7)	Change to a minimum of 500,000.00 and 6 months in prison For a second offence charge to a minimum 1,000,000.00 and 1 year in prison.

### **Additional Powers on Sentencing**

SEIU-West supports in principle granting the Court additional powers on sentencing in order to increase the Court's flexibility in imposing penalties or conditions, which in the circumstances of a particular case, may be more effective in ensuring future compliance. However, we have questions about whether this provision may serve to weaken the penalty system and complicate proceedings through employer arguments for alternative penalties rather than a monetary penalty or prison sentence. We urge clear language to be used within the Act to ensure that the intent of this provision cannot be misinterpreted.

### **Alternative Penalties**

The Ministry's discussion paper cites the following list as examples where Saskatchewan may benefit from officer-issued tickets:

- Failure to comply with fall protection
- Permitting workers inside an unshored trench
- Failure to wear personal protective equipment
- Breaching the minimum distance from an exposed energized conductor
- Improper lifting of patients

When one looks to the example of the Ontario summary offence ticketing system, it is recognized that tickets to workers or supervisors held no penalty for employers. We would echo the submissions of CUPE and the statistics offered: In fact, an initial examination of ticketing in Ontario showed that 37% of the tickets were issued to workers, 38.3% to supervisors and only 24.7% to employers.

In addition, workers would be required to go to court at considerable expense to challenge the ticket. As proposed, monies collected under this system in Saskatchewan would go back into general revenue and not be used towards prevention initiatives. This is entirely punitive to workers and would result in less reporting of injuries, thereby, skewing the statistics regarding workplace injury. This does nothing to improve upon health and safety in the workplace.

Contrary to Ontario's system, the administrative penalty system in British Columbia applies only to employers. Employers, workers and supervisors are still subject to prosecution for serious offences. We would support the administrative penalty system as it applies to employers.

A further benefit for Saskatchewan workers would be that penalty assessment and citations are administrative penalties, they can be supervised by Administrative Tribunals or Adjudicators and the financial penalty could be used for prevention initiatives or a health and safety clinic.

SEIU-West would support the introduction of Administrative penalties if such penalties are:

- Issued for non-compliance with a Notice of Contravention
- Issued by the Director on the recommendation of an Officer

- Applied only to Employers
- Based on assessable payroll with a range from 1,000.00 to 500,000.00
- A higher penalty per day for continuous offence
- Tried by an Administrative Tribunal or Adjudicator
- Fines to be paid into a fund to for prevention or an OHS Clinic

Finally, we would submit that all serious offences should continue to be dealt with by prosecution.  
X:\GOVERNMENT\2011\SEIU-West Submission.doc