

# DIRECTIONS

Scanning the future...to help you prepare for it. Spring 2004

## Health and Safety in the Education Sector

### Bill C-45

Criminalizing Occupational Health and Safety

### Asbestos Management

'Til Death Do Us Part'

### Trends

General and Social



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## A Note from the ESAO Scanning Team

Welcome to the third edition of Directions – and thank you for the positive comments on the first two editions.

When we published Volume 1, the concept was to deliver short, concise articles on current health and safety topics to the executive level of our clientele. The feedback has been very positive, and we find that people are looking forward to the next edition, and even suggesting topics. Our focus then, and now, has been on two simple questions – why should I care? And, if I care, what should I do? As always, the articles in Volume 3 are timely, concise and accurate.

A word of caution – if you are the senior executive in your organization, and you find yourself holding a health and safety

magazine in your hand for the first time, please fight the urge to put it in the mail to your health and safety specialist. The articles are not “how to” articles on health and safety issues. There are many excellent publications that come from that perspective.

This magazine looks at things from your perspective – what questions should you ask to address your own due diligence? How can you know that your health and safety responsibilities are being addressed? What issues are coming down the pipeline that may change the way you do your job?

This year we deal with Bill C-45, and Robert Keel and Catrina Duong from Keel-Cottrelle kindly offered to “guest-author” an article in this area – don’t miss it. We also provide new information on old topics (Asbestos, Motor Vehicle Incidents, and Young Worker Health and

Safety) as well as brand new data from the 2001 census, and Emergency Planning from the CEO perspective.

Please enjoy the 2004 Directions – we hope it helps you move closer to our vision for the education sector – People working safely in the safest and healthiest workplaces in the world.



Dwight Barratt  
Executive Director, ESAO  
Publisher

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### Publisher

Dwight Barratt  
Executive Director, ESAO

### ESAO Editorial Team

Dwight Barratt, Derek Zulesky, Tracy Byng

### Graphics and Layout

Richard Brown,  
Dreamcast Productions  
and Keith Sutcliffe

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4950 Yonge Street, Suite 1505, Toronto,  
Ontario M2N 6K1 (416) 250-8005  
or 1-877-732-3726(ESAO).

# Motor Vehicle Incidents Who's Responsible For The Leading Cause of Work-Related Fatalities?

Is driving an occupational hazard?

Statistics say "Yes!" From 1999 to 2002, motor vehicle incidents (MVI's) accounted for 38% of all traumatic fatalities, making it the leading cause of work-related fatalities in Ontario, far ahead of machinery-related incidents (15%) and falls (14%).

MVI-related fatalities occur in three categories: highway collisions, highway non-collisions, and non-highway collisions. According to the Workplace Safety and Insurance Board (WSIB) database, the number of fatalities for each of the three categories were almost the same in 1996. Since then, the number of highway non-collision and non-highway collision fatalities initially declined and then remained almost constant. However, the number of fatalities related to highway collisions has increased and, in 2003, accounted for more than 80% of MVI-related fatalities.

Data based on all industrial sectors over that time period show that the leading sectors in terms of number of MVI's were transportation, services and construction. In the education sector, MVI's occur far less frequently than in many of the other sectors. According to the WSIB, the sector has not recorded a fatality for some time, and there have been, on average, just over 10 Lost-Time Injuries due to MVI's every year.

With the increasing frequency of MVI's in Ontario, how can education sector firms protect their good records in this area?

One way is for firms to be aware that driving is an occupational hazard, so the first step is recognition of that hazard. Executive officers who know that they employ workers who drive as part of their job must make sure that adequate policies and procedures are in place to protect them. This is an area where input from the Joint Health and Safety Committee can be especially valuable.

At the same time, employers need to understand and accept their responsibility for ensuring the safety of employees who drive as part of their work duties, a responsibility that exists even when employees use their own vehicles.

Much of the written material dealing with the prevention of Motor Vehicle Incidents focuses on the responsibility of the worker – driving safely, obeying traffic laws,



staying alert and even taking defensive driving training. Although this focus has some value, much of the responsibility for driving safety still begins with the employer.

Here are some questions to help employers review their driving safety policies and procedures (firms without driving safety programs can use these questions as a template to create one): Do you

- Have a clear Safe Driving Policy that is communicated regularly to all employees who drive as part of their job?

- Have a maintenance program for all company-owned vehicles and require proof of mechanical fitness for personal vehicles?
- Require all of your employees who drive as part of their job to have a valid driver's license for the class of vehicle driven?
- Require a driver's abstract from the Ministry of Transportation on a regular basis for all employees who drive as part of their job?
- Try to minimize driving where possible (delivery from firms providing office supplies, teleconferences to reduce travel, etc.)?
- Allow sufficient travel time for moving between worksites, making deliveries or returning from off-site meetings?
- Limit the number of hours employees can drive without a rest break?
- Require driving during rush hours, or reschedule some tasks for times when there is less traffic (especially important in school zones at the beginning and end of the school day)?
- Require highway driving (where most MVI-related fatalities occur), or permit other modes of transportation when attending out-of-town meetings?
- Expect those attending meetings out of town to work a full day before driving to the meeting during the evening or night, or require them to return after a full day of meetings?
- Provide Defensive Driving Training, or Skid School Training, for full-time drivers?

Employees need to know how employers expect them to drive while on the job. But it's not enough to simply "expect" everyone to drive safely. Clear policies supported by enforced programs and procedures create a safe driving culture in the workplace. Those behind the wheel play an important role in avoiding motor vehicle incidents, a role made much easier by the support of their employers.

## Emergency Preparedness: Planning for the Unimaginable

September 11. The Ice Storm of 1998. Oklahoma City. The Manitoba Floods. Over the past few years, these events have all burned themselves into our collective consciousness. Call them emergencies, disasters, catastrophes, whatever ... the unexpected -- the unimaginable -- has happened again and again. The message is clear; it will happen again.

Whether the scale is confined to a single building or involves an entire facility or city -- even if events are national or international front-page news -- we will all, at some time, be faced with an emergency that tests our ability to respond. And when the dust settles, when the fire is out or when power is restored, our response will be the subject of immediate review by others. That perception of our ability to “manage” the event will linger in the public consciousness long after the media moves on to other topics.

Emergency planning must be high on the “must do” list of every executive officer, and few operations are as likely to be on the front lines as educational institutions.

In Canada, emergency planning is required not only under federal legislation, but also under most provincial and many municipal jurisdictions. In many cases, educational facilities are seen as resources, which play a major role in disaster recovery plans developed by local and regional governments. For our clients, it is important to realize that, even if you don't have a current emergency plan, your facilities will probably be actively involved in plans developed by others.

Senior executives, and those with governance oversight, must be prepared to act as spokespeople during any crisis affecting their institutions, and represent their institutions as they assist in the response to an external emergency.

There will be little, if any, warning. The first inkling that “this is not a drill” may be the request for a statement from the media about an event in progress.

For those of you likely to be in the spotlight, ask yourself the following questions to help prepare you for a day everyone hopes will never arrive:

**1.** Is there a current Emergency Plan, and are key personnel up to date with their responsibilities in that plan?

If you have executive responsibilities, you are most likely one of these key people. You need to know what the plan is and what your role will be. You also need to feel confident that everyone else with a role to play is trained and ready to go. While the primary focus will be on helping victims, preventing injury and minimizing damage, the overall perception of your efforts will be determined by how well your team performs. Remember, you don't want too many surprises beyond the event itself.

**2.** Is the plan reviewed on a regular basis, and are the key personnel kept current with changes?

Emergency response experts often refer to POTS – Plans On The Shelf. These are excellent emergency response plans which are not reviewed and renewed, and which therefore gradually fall out of date (get put on the top shelf). Reviewing plans annually, updating the contact lists, reviewing the hazard analysis, and making sure that emergency supplies and equipment are in place all take time and money. But they spell the difference between surviving a crisis and managing one.

**3.** Do you and your involved colleagues know what your jobs are – in both the short and long terms?

Chances are, unless you operate a very small facility or are directly involved with the incident, you won't be on the front lines. If that's the case, what are you supposed to do? Most likely, your job will be to lead the organization through the crisis and back to “normal” operations, and you'll be expected to achieve that goal.

The example of former New York City Mayor Rudy Guiliani during the 9/11 emergency continues to demonstrate the value of prepared and concerned leadership under the most difficult of circumstances. While few education sector executives will ever have to face disaster on the scale of 9/11, there are recent examples of emergencies in our sector that have called out for strong leadership; school shootings and residence fires probably top the list.

Speaking at the 2002 ESAO Health and Safety Conference, **Donna Tona**, Certified Trauma Specialist from Alberta, Canada, emphasized one of the most important roles of corporate leaders following a crisis: The need to “restore your sense of corporate community – quickly”. Leaders need to be seen as competent and compassionate, and they must communicate with clarity. Leaders who know what to say, and how to say it, will be seen as being in charge and capable of rallying everyone around them.

Clarity comes with being prepared. Being prepared comes with not only having a plan but also being extremely familiar with it.

No one can predict the next disaster, but we can assume with confidence that there will be one. If you're likely to be the person facing the cameras and the microphones, find out about your organization's emergency plan now. Make sure that there's an up-to-date action plan (not just “a plan on the shelf”) and that you know what it is and what you must do to lead your organization through the crisis.

## Young Worker Safety in Ontario - an Update

In the first edition of *Directions*, we addressed the issue of young worker safety in Ontario in an article entitled Preventing Young Workers from Becoming Young Victims. We covered several initiatives on the part of the Ministry of Labour, the Workplace Safety and Insurance Board, various Safe Workplace Associations, labour unions and individual citizens. It's interesting to see the impact that has been made during the past two years.

In 2001, there were nine fatalities involving young workers (age 24 and under) in Ontario. In 2003, for the first time in recent records, there were zero fatalities involving workers under 19 for workplaces under Ministry of Labour jurisdiction, and only five in the age range of 20 to 24.

Injury Rates Among 15 – 24 year olds by province (2000-2001) Source: IWH

	15 – 24	25+
Atlantic Provinces	6.3	3.7
Quebec	6.9	3.8
Ontario	4.3	2.9
Manitoba	7.1	3.2
Saskatchewan	9.7	3.8
Alberta	6.2	4.1
British Columbia	6.3	3.9
Total	5.8	3.5

Based on 2000/2001 data, Ontario has the lowest injury rate in Canada: there were 15,113 lost time injury claims involving young workers in 2001 and 14, 484 in 2002.

The Ministry of Labour does not consider the battle won by any means. Moving into the future, a three-pronged Ministry program begins with a strong enforcement strategy to make Ontario workplaces safer. Future initiatives could include entry-level training, accreditation and, in some industries, business registration. Safer workplaces mean fewer young worker injuries and fatalities.

The second part of the program revolves around smarter young workers, who are learning more about health and safety in their school curricula. More health and safety messages are aimed at attracting the attention of youth, because the more they know – about their rights, their

responsibilities and the role their supervisors should be playing to protect their safety on the job – the safer they will be.

Finally, the Ministry is exploring such innovative strategies as engaging parents, conducting in depth surveys, and creating alliances with organizations and individuals outside the traditional health and safety system. Their goal is to make everyone aware of the importance of young worker health and safety.

“We have certainly come a long way in establishing a well-integrated and sustainable health and safety awareness and education program for Ontario youth. In fact, Ontario is a leader in health and safety education for teens, but as long as youth continue to suffer preventable injuries and deaths, our work is not done”, says **Sue Boychuk**, Coordinator of Young Worker Health and Safety for the Ontario Ministry of Labour.

“While youth are more ‘safety savvy’ today than ever before, the responsibility for providing a safe workplace rests squarely with employers,” she emphasizes. “Employers must provide quality job-specific training and safe equipment and ensure that safe working procedures are in place and enforced. Employers need to know that we will do what it takes to make sure they know they have to do their part”

ESAO’s goal is to make certain that education sector firms are aware of that responsibility as well. Although the education sector is not a large employer of youth (compared with retail and hospitality), there are seasonal employment opportunities for many in the 16-24 age group. As employers and as educators, we need to make sure we’re doing our best to protect the health and safety of our young workers.

## Moral High Ground or Fiscal Quagmire?

The idea was pretty simple in 1998. Firms in the education sector would pay premiums into the WSIB, a small portion of which would flow through the system to fund their new Safety Workplace Association – ESAO. In turn, ESAO would provide products and services to help prevent accidents and reduce compensation costs.

From the mid-1990’s onwards, the history of education sector firms was well known. They had been financially ravaged, and anecdotal stories of teachers buying pencils with their own money were common. Later, when the entire economy crashed, the lack of discretionary spending forced many museums and art galleries to close their doors, some permanently. Libraries cut back on periodicals and struggled to find funding for basic services. Universities and colleges fretted about crumbling infrastructure and worried about their ability to absorb the infamous “double cohort” (simultaneous graduation of the last OAC students and the first class of four-year students from secondary schools).

Against this background, it was clear that ESAO could not be seen as another cost imposed upon a system already in disarray. So our business model turned on becoming part of the solution, rather than another part of the problem. Education sector firms insured through the WSIB were considered to have “prepaid” for our services – visits, presentations and training were all provided without any fee for staff time. All printed material was provided at cost. Virtually everything was available in both official languages.

Elsewhere in the Safety Workplace Association community, the keyword became “growth”. To provide more staff, most other organizations turned increasingly to revenue generation. Additional staff to provide a higher level of service was financed through fees charged to client firms for consulting, training and products. Similarly, the fees paid by firms

for safety services and products in other sectors could be charged back to their clients.

At ESAO, we decided against revenue generation very early in that period. Our business model stressed efficiency (most staff members work out of their own homes) and, above all, minimizing our financial impact on our clients. The theory: There was enough money flowing into the system from our clients to support a level of service to get the job done.

Over the past five years, costs in all businesses have risen dramatically. Some budgets have seen double-digit increases, particularly with regard to insurance and benefit costs. However, employment in the sector has also increased, with more funding pumped into the system following the brutal cutbacks of earlier years. Increased employment means more funding flowing into the WSIB.

However, less money is flowing through the system, to us. ESAO's budget, in real terms, is below what it was in 1998 (see Figure 1 for the operating budgets for ESAO from 1998 to 2004. (Note that neither the additional start-up capital in 1998 nor the added employer portion of the pension contribution following the end of the pension contribution holiday in 2003 and 2004 support our operating costs.)

Yet the message from the WSIB is quite clear – we must offset decreases in funding through increased revenue generation. The majority of the Safe Workplace Associations are doing exactly that, with some even approaching 50% of their operating budget as generated revenue from their clients as fees for products and services.

Right now, we at ESAO are forced to examine our business model. Because we currently charge the lowest fees, compared to those of many other areas, the effect of increasing charges for products and services would generate significant revenue.

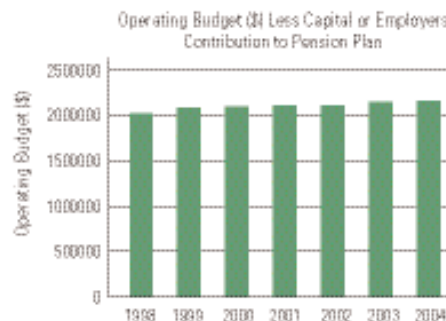
But where would the money come from? In the case of other industrial sectors, it comes from clients who are themselves in

business. Increasing our revenue in the education sector would require additional tax dollars, the same dollars that primarily fund our clients. Thus, any increase in our fees would ultimately have to come from the Minister of Education, or the Minister of Colleges, Universities and Training, or the Minister of Culture and Heritage.

Our business model has been described by **Roy Mould**, Chief Prevention and Strategy Officer, WSIB, as one of the most "morally defensible" models in the system. We've been trying to provide a high level of service, effectively and efficiently, within the existing funding structure and at a minimal impact upon our clients' finances. It was an interesting experiment. It's beginning to look like the experiment is failing.

While the model is "morally defensible", it also appears to be fiscally unsupportable. As less and less money flows from firms through the WSIB to Safe Workplace Associations, there is continuing pressure to generate revenue. It is ironic, of course, that education sector firms are actually paying more money into the system than ever before. Employment is up in the Schedule 1 firms who provide 80% of our funding, so in theory, there should be more money flowing into the system. In fact, there is less flowing through to us.

Over the next year, we will be re-inventing our business model. It seems that the bedrock of our current model – "You have prepaid for our services" – may no longer be true. One of the options will be to examine how we might pass more of our costs on to our clients to generate the revenue we need to survive.



It's time to hear from our clients,

Here are several options on the table:

We can change our business model to allow revenue generation. Our prices would go up, and you would pay more, resulting in one of the following scenarios.

1. Pass the costs along to the government, which would provide the required additional funding. The impact on the deficit or taxes is impossible to predict.
2. Pass the costs along to the government, which would not provide the funding. Caught between a rock and a hard place, our firms will simply be forced to reduce their commitment to health and safety as they become more and more expensive. That would make schools, libraries and post-secondary institutions more dangerous places for work and study.

Or we can encourage our clients to insist that the funding they pay for prevention services actually flows through the system and returns to them in the form of ESAO products and services.

We believe that cost increases in the education sector cannot simply be passed on to you, because they mean either increased spending of available tax dollars or decreased spending on health and safety. Since there's enough money flowing into the system to restore ESAO funding to its original level, neither increased fees, or increased taxes or decreased health and safety in our educational institutions appears to be necessary.

Our position on this matter has been made very clear to the WSIB and to the Ministry of Labour. But it can be seen to be a self-serving position.

Now, it's up to our clients to make your preferences known to the Minister of Education and the Minister of Labour.

# Criminalizing Occupational Health and Safety

Catrina Duong & Robert Keel  
KEEL COTTRELLE LLP

Bill C-45, *An Act to Amend the Criminal Code (Criminal Liability of Organizations)* ("CLO") received Royal Assent on November 7, 2003, and came into effect as of March 31, 2004. In recognizing the changing complexities of modern corporate entities, the CLO imposes *Criminal Code* responsibilities on school boards and other "organizations". The "Offences of Negligence" and "Duties of Persons Directing Work" provisions will have a significant impact on both the public and private sectors. The most important provisions to impact school boards are set out below. The amendments to the *Criminal Code* arise primarily as a result of recommendations from the 1997 Nova Scotia public inquiry into the Westray Mine disaster. The inquiry clearly indicated that the existing provisions of the *Criminal Code* were ineffective for holding corporations and individuals criminally responsible for the deaths of workers. Nevertheless, the CLO amendments to the *Criminal Code* raise significant concerns as to application and interpretation. The summary below is also supplemented by the attached chart.

## **Senior Officer and Organization**

The CLO amends section 2 of the *Criminal Code* by adding new definitions for "organization", "representative" and "senior officer". "Organization" has been amended to include school boards within the meaning of a "public body or body corporate". The definition of "senior officer" now clarifies and specifies the reach of liability for officers formerly referred to as the "directing mind" of a corporation, and includes all representa-

tives of the organization who play an important role in managing core activities and creating policies. The definition of "representative" has been expanded to a wide range of individuals and includes almost every person in or affiliated with an organization. This definition becomes very important with respect to the subsequent duties set out in sections 22.1 and 22.2.

## **Offences of Negligence**

The "Offences of Negligence" provision, section 22.1, requires the Crown to prove that a negligent act or omission has occurred. As a result, there is no need for actual knowledge or intent on the part of senior management with respect to the offence. An organization is a party to the offence if one of its representatives, acting within the scope of his or her authority, is a party to the offence or where two or more representatives engage in conduct such that, had it been the act of one representative, that representative would have been a party to the offence.

Section 22.2, the "Other Offences" provision, requires the Crown to prove fault other than negligence. The Crown is required to prove fault or intent on the part of the senior officer. Fault or intent can be found where the senior officer acts directly, indirectly through subordinates or is wilfully blind to the illegal actions of the representatives of the organization.

## **Duties of Persons Directing Work**

The "Duties of Persons Directing Work" provision, section 217.1, imposes a legal obligation on those who direct work to



take reasonable steps to prevent harm to any person from any act arising from that directed work. This section creates a criminal offence for occurrences that have traditionally been considered occupational health and safety matters. It is likely that the defence of due diligence will apply, but this remains to be determined by the Courts.

## **Sentencing**

Finally, the CLO amends section 718.21 of the *Criminal Code* by including additional factors which are to be considered by a Court when fining an organization. Included in these additional factors are considerations of moral blameworthiness, public interest and the prospects of rehabilitation.

## **Compliance**

The policies, procedures and training necessary to comply and prove due diligence with respect to the *Occupational Health and Safety Act* will also be relevant to the proof of due diligence under the CLO provisions of the *Criminal Code*. Consequently, Occupational Health and Safety Officers should take the implications of CLO into consideration with respect to the drafting of policies and procedures and the appropriate design for training. Further, Occupational Health and Safety Officers may need to become advocates with senior administration in order to ensure that the organization is compliant with both the *Occupational Health and Safety Act* and the *Criminal Code*.

## An Act to Amend the Criminal Code (Criminal Liability of Organizations) (“CLO”)

CLO Section	Criminal Code Section	Provision	Impact
1(2)	2	<p>“organization” means</p> <p>(a) a public body, body corporate, society, company, firm, partnership, trade union, or municipality, or</p> <p>(b) an association of persons that:</p> <p>(i) is created for a common purpose</p> <p>(ii) has an operational structure, and</p> <p>(iii) holds itself out to the public as an association of persons</p>	School Boards fall within the meaning of “public body” and / or “body corporate” pursuant to the meaning of “organization”.
1(2)	2	“representative”, in respect of an organization, means a director, partner, employee, member, agent, or contractor of the organization	This definition expands the reach of liability to a wide range of individuals and includes almost every person in or affiliated with an organization. This definition becomes very important with respect to the subsequent duties imposed by sections 22.1 and 22.2.
1(2)	2	“senior officer” means a representative who plays an important role in the establishment of an organization’s policies or is responsible for managing an important aspect of the organization’s activities and, in the case of a body corporate, includes its director, chief executive officer, and chief financial officer	This definition clarifies and specifies the reach of liability for officers formerly referred to as the “directing mind” of a corporation, and now includes all representatives of the organization that play an important role in managing core activities and creating policies.
2	22.1	<p>Offences of Negligence</p> <p>In respect of an offence that requires the prosecution to prove negligence, an organization is party to the offence if:</p> <p>(a) acting within the scope of their authority,</p> <p>(i) one of its representatives is a party to the offence; or</p> <p>(ii) two or more of its representatives engage in conduct, whether by act or omission, such that if it had been the conduct of only one representative, that representative would have been a party to the offence; and</p> <p>(b) the senior officer who is responsible for the aspect of the organization’s activities that is relevant to the offence departs æ or the senior officers collectively depart æ markedly from the standard of care that, in the circumstances, could reasonably be expected to prevent a representative of the organization from being a party to the offence</p>	<p>This section requires the Crown to prove a negligent act or omission and, therefore, there is no need for actual knowledge or intent on the part of the senior officer. This is a significant departure from the traditional focus of “mens rea”, which requires the Crown to prove intent to commit a criminal offence.</p> <p>The requisite act underlying the negligence can be the act of two or more representatives of the organization.</p> <p>Actions from two unrelated representatives with no knowledge of the other can combine to form the act from which an organization can be found negligent.</p>

## Criminalizing Occupational Health and Safety (continued)

### An Act to Amend the Criminal Code (Criminal Liability of Organizations) ("CLO")

CLO Section	Criminal Code Section	Provision	Impact
2	22.2	<p>Other Offences</p> <p>In respect of an offence that requires the prosecution to prove fault æ other than negligence æ an organization is a party to the offence if, with the intent at least in part to benefit the organization, one of its senior officers</p> <p>(a) acting within the scope of their authority, is a party to the offence;</p> <p>(b) having the mental state required to be a party to the offence and acting within the scope of their authority, directs the work of other representatives of the organization so that they do the act or make the omission specified in the offence; or</p> <p>(c) knowing that a representative of the organization is or is about to be a party to the offence, does not take all reasonable measures to stop them from being a party to the offence.</p>	<p>This section requires the Crown to prove fault or intent on the part of the senior officer. Fault or intent can arise where the officer acts directly, or through subordinates, or is wilfully blind to the illegal actions of representatives of the organization.</p>
3	217.1	<p><b>Duties of Persons Directing Work</b></p> <p><b>Every one who undertakes or has the authority to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.</b></p>	<p>This creates a legal duty on all those who direct work to take reasonable steps to prevent harm to any person from any act arising from that directed work.</p> <p>This section creates a criminal offence for occurrences that have traditionally been considered occupational health and safety matters.</p> <p>The defence of due diligence will likely apply, but this remains for the Courts to determine</p>

## An Act to Amend the Criminal Code (Criminal Liability of Organizations) (“CLO”)

CLO Section	Criminal Code Section	Provision	Impact
14	718.21	<p>A court that imposes a sentence on an organization shall also take into consideration the following factors:</p> <p>(a) any advantage realized by the organization as a result of the offence;</p> <p>(b) the degree of planning involved in carrying out the offence and the duration and complexity of the offence;</p> <p>(c) whether the organization has attempted to conceal its assets or convert them in order to show that it is not able to pay a fine or make restitution;</p> <p>(d) the impact that the sentence would have on the economic viability of the organization and the continued employment of its employees;</p> <p>(e) the cost to the public authorities of the investigation and prosecution of the offence;</p> <p>(f) any regulatory penalty imposed on the organization or one of its representatives in respect of the conduct that formed the basis of the offence;</p> <p>(g) whether the organization was æ or any of its representatives who were involved in the commission of the offence were æ convicted of a similar offence or sanctioned by a regulatory body of similar conduct;</p> <p>(h) any penalty imposed by the organization on a representative for their role in the commission of the offence;</p> <p>(i) any restitution that the organization is ordered to make or any amount that the organization has paid to a victim of the offence; and</p> <p>(j) any measures that the organization has taken to reduce the likelihood of it committing a subsequent offence.</p>	<p>These additional factors are to be considered by a Court in the fining of an organization, in addition to those factors already set out in the <b>Criminal Code</b>.</p> <p>Included here are:</p> <p>moral blame-worthiness (a) and (b)</p> <p>public interest (d) and (e)</p> <p>prospects of rehabilitation (c), (f), (g), (h), (i) and (j).</p> <p>With respect to (h), this could be a double-edged sword. If the organization takes action against an individual(s), this could be considered an admission. On the other hand, if the organization takes no action, this could exacerbate the sentence. Each situation will have to be carefully reviewed.</p>

# New Workers, Old Problems

Right on!

Two years ago, we raised the issue of the impending retirement wave in the context of its impact on the requirement for health and safety training for new workers ("The New Challenge of New Workers", *Directions*, 2002).

The prediction then -- that new employee orientation programs in the education sector should prepare to deal with 10, 20 or 30 times the number of new employees on an annual basis over the course of the next decade -- is still true. Early retirement data is tracking just as the experts predicted it would for employees of school boards across the province.

But today, three new trends will affect your plans and require special attention, as all education sector firms begin to deal with increased staff replacement issues in the years ahead.

The first is the increased dependence on immigration for population growth across Canada and especially in Ontario. According to the 2001 Census, the total number of children up to age 14 increased by only 0.8%, while the number of the youngest children (0 to 4 years) declined. This means that immigration, not natural increase, will account for a larger portion of the population increase over the next decade.

As the number of retirements in the "baby boom" generation grows, their replacements will increasingly be recent immigrants to Canada. This will raise issues in areas of worker training (English as a second language) and cultural sensitivity. In the future, the Ontario workplace will be far more culturally diverse than it is even now, and standard communications to employees may need to be available in many languages.

The second trend is the significant increase in "contingent work", that is, work that does not fit the standard definition of full-time employment. This work may be temporary or short term, it may be under contract for a special project, or it may be seasonal to address spikes in workload. More and more, firms in Ontario are relying upon contingent workers to meet specific production targets.

In the education sector, this is showing up in the growing number of seasonal lecturers at the university and college level. It's likely that even more work will be done by contingent workers in the future, particularly when you compare their cost against that of full time employees (and their full benefits packages).

However, hiring contingent workers is not without cost. WSIB data clearly suggest that contingent workers have higher injury rates. Moreover, the long term cost of serious injuries for full-time employees can often be mitigated by early return to work with modified duties, an option not available in the case of contingent workers. For jobs with a greater risk of accidents leading to injury and additional compensation, the wage and benefit cost-savings gained through hiring contingent workers can easily be lost.

The third trend, which is showing up in the United States, is the problem of "the disengaged worker", a situation which has several causes. In some cases, workers had always assumed that they would retire early, perhaps at age 55, to enjoy their retirement. However, in many cases, early retirement has no longer been an option. Many were the victims of downsizing who lost good jobs with years of seniority and excellent benefits.

Some found themselves grappling with childcare (including tuition) and elder-care issues in rapid progression. Still others found jobs that under-employed them or stayed in jobs that no longer motivated them. Whatever the reason, they underperform.

Another group of disengaged workers are those who simply do not have the skills to compete in the knowledge- and creativity-based workplace of the 21st Century. They take whatever jobs they can get and simply put in their time.

Managing disengaged workers will be a significant challenge in the next decade, one to which the education sector will not be immune. New HR skills will be required to address the problems of employer reluctance to offer full-time, permanent jobs to unproven workers, or worker reluctance to commit fully to contingent jobs that fail to motivate them.

One thing is certain. The workplaces of the next decades will be very different from the workplaces most of us have known. Expect more cultural diversity, with the challenges that increased diversity brings. Expect fewer full-time positions and more contingent jobs, with their accompanying staff turnover and training issues. And expect your share of unmotivated workers who simply put in their time. All of these changes, and more, will challenge employers in the years ahead.

Sources:

Ministry of Finance website, Age and Gender Profiles of Ontario Factsheet 2.  
[www.gov.on.ca/FIN/english/demographics](http://www.gov.on.ca/FIN/english/demographics)

HR Professional April/May 2004, The Top Four Trends of 2004, page 20.

## Education Sector Jobs: On the Edge of Opportunity

A lot rides on the ability of education employers to attract the new workers they will need in the future.

Data from the 2001 Census reveals that two trends will play an important role in the education sector in the years (and even the decades) ahead. Taken together, these trends suggest that the sector is on the verge of significant changes, some of which have already begun.

### First, an increasing number of graduates

The number of post-secondary graduates increased by 2.7 million individuals between 1991 and 2001, nearly three times the growth rate of the population aged 15 and over. The proportion of individuals aged 25 and over with a university degree rose from 15% to 20% during that decade, while the number of those with a college diploma increased from 12% to 16%.

In the year 2000, Canada led all Organization for Economic Cooperation and Development countries in combined college and university education, with 41% of the population aged 25 to 64 having either a college or university degree. This compared to 37% in the United States, 36% in Ireland and 34% in Japan.

Today, the Canadian population is more educated than ever. Recent data follows a trend that has been a constant in Canada for 50 years. In 1951, only 2% of the population aged 25 and over had a university degree. Since then, young people have embraced the idea that more education improves the likelihood of employment, as well as the level of income. They are also aware that the economy of the 21st Century will be driven by knowledge, skills and creativity. According to census data, Canadians

have continued to upgrade their education, not only to compete in today's fast-paced, global economy but also as a way of reacting to constant change.

At the same time census data tells us of the continuing increase in the number of young people in the post-secondary age band over the next 10 years, the projected growth of jobs in the economy is expected to remain soft in the short-to-medium term. This suggests that, based on historical trends, more young people coming out of high school will seek further education, rather than compete in a sluggish job market. Thus, the trend to more education is very unlikely to reverse itself or even to slow down in the decade ahead.

### Second, the predicted retirement crisis is here

The impending retirement crisis we wrote about in an earlier edition of *Directions* is now upon us.

The average age of the education sector workforce is higher than in other industrial sectors, particularly for those in management positions. At the same time, the median retirement age (56) is low. Based on data from 2001, half of the entire education workforce is likely to retire over the course of the next decade. Half of those in management positions will retire even earlier than that. (In 1999, the retirement rate in the education sector was already more than double that of the economy-wide average.)

Thus, unprecedented demand for post-secondary education will coincide with unparalleled retirement of skilled and experienced teachers, managers and administrators. This will lead to both crises and opportunities for change.

The crises will come from trying to provide education in Canada in the same way as in the past 50 years or more. But simply replacing retiring teachers and administrators with more of the same will not create the education system Canadians are going to need in the 21st Century.

Opportunities will come, in part, from the fact that the education sector will experience the retirement wave and proceed to develop strategies to attract new workers with relevant skills and creativity sooner than other sectors. New business models, new ways of teaching and learning and new workplace relationships will come out of these anticipated changes.

There is evidence that many young people are already aware of this. In 2001, two of the top three fields of study for working-age university-educated men were business and commerce, and teaching (engineering was the most popular). For women, teaching was the most popular field of study. Nursing and business and commerce were second and third, respectively.

The education sector has traditionally been an attractive industry in which to work. There will be opportunities ahead for those young people with the education, skills and creativity the sector will need. However, education employers will need to sharpen their ability to attract new talent, in the face of increasing competition from other sectors, as workers and managers across the economy begin to retire.

Sources: Canadian Social Trends, Autumn 2003, Winter 2003, Statistics Canada – Catalogue No. 11-008.

# Selecting the “Right” Post-Secondary Schools

## Parents: Increasing Involvement, Increasing Concern for Their Kids

What do the following three situations have in common?

An increasing number of young people between 20 and 25 live with their parents, and more and more recent graduates from post-secondary institutions remain at home.

A 22 year-old university student is told he did not satisfy his academic requirements to advance and must withdraw. At his appeal meeting, he shows up with his mother, who does most of the talking.

Following a residence fire in the United States, concerned parents in Canada question many Canadian university staff members about the fire safety programs in their residences.

If you spotted increasing parental involvement in areas that used to be of concern only to students as the common feature, congratulate yourself. If you're surprised, you may be missing one of the most dramatic trends in today's society.

The involvement of parents has always been desirable in elementary and secondary education. Parents and teachers there have been viewed as partners who can work together to create good study habits, reinforce the need to excel in order to graduate and identify and assist each other in helping teens navigate the dangerous waters of adolescence.

Post-secondary education has traditionally been a time when parents stepped back and encouraged their children to complete the transition to adulthood by taking responsibility for their own actions. This is no longer always the case.

At one Ontario community college, staff and faculty refer to “helicopter parents”, those who hover continually over their

children, willing to intercede at the slightest sign of difficulty. These parents often question college administrators and faculty about assignments and grades and/or why their child failed to receive the same marks, opportunities or assistance as someone else.

There are many possible reasons for this:

Some suggest the increasing cost of post-secondary education has made it impossible for young adults to afford both tuition and living away from home. Those who continue to live at home are less successful in achieving the kind of independence developed by those living away from their parents.

Others suggest that today's parents, the “baby-boom” generation, are fixated on remaining young for as long as possible. Retaining control over their “children” defers the need for admitting that, since their children are grown up, they too must be getting older.

Another theory suggests that all generations want more for their children. Baby Boomer parents, often quite successful in their own right, are prepared to do whatever it takes to make their kids successful. Where, as an example, is the most violence at youth sporting events likely to occur: on the field or in the stands among the parents?

Finally, the “baby-boom” generation was the first to enjoy post-secondary education in significant numbers. For many, it was one of the best times of their lives, and many parents wish to share that experience with their children.

Whatever the reason, post-secondary institutions are facing increased parental activity, which will soon have an impact on safety.

In January of 2000, Seton Hall University in New Jersey experienced a freshman dorm fire, resulting in the death of three students and injury to more than 50 others. Within weeks of that event, many major American universities posted residence fire safety plans on their websites, emphasizing the presence of modern sprinkler systems, fire resistant construction and the availability of emergency response. In the increasingly competitive world of post-secondary education, residence fire safety came to be a selling point used to attract not students, but the parents who are increasingly involved in selecting post-secondary institutions for their children.

This involvement in that choice comes as a result of their number one concern of parents for the first 20 years of a child's life: the child's health and safety. If this trend continues -- and those on the front lines suggest that it will -- in the years ahead, colleges and universities can expect to get more questions like “Will my child be safe on your campus?”

Straight questions demand straight answers. Thus, those institutions replying along the lines of “We can't babysit every student”, or “Our campus is an urban campus and is as safe as most areas of the city”, or “As young adults, they are responsible for their own safety”, are simply not going to do well when compared to other institutions.

Post-secondary institutions can expect safety questions in three specific areas – residence safety, academic safety and campus-life safety. To prepare answers for questions in the future, consider the following areas of focus:

Residences – fire safety, building access control, transportation to and from main campus after dark, role of residence staff

and security, proximity of emergency services (fire, ambulance, police), on-site emergency staff, etc.

Academics – safety training for students in labs, use of hazardous materials in undergraduate years, requirements for younger students to take courses in the evening, a required evening commute to and from the library (or do residences have their own libraries?), field trips and how they are supervised, etc.

Campus life – does the campus have its own police or security force? Is it regularly patrolled? Is the lighting adequate? Are the main routes between academic buildings, libraries and residences safe? Is the campus and buildings open to the public? etc.

Increasingly, institutions will get specific questions about crime statistics. Have there been student fatalities? Assaults? Sexual crimes? Answers to these questions must be prepared ahead of time, and legal input is often necessary to achieve the right balance between providing clear answers and protecting both the institution and any victim of crime.

So far, when Maclean's does its annual ranking of universities, the focus has been primarily on academic and financial measures. Don't be surprised, however, if the Baby-Boomer parents consider these issues to be secondary. Ask any parent. A question like "Will my child get a great degree or a great job?" fades away when placed beside "Will my child be safe?" Your answer will go a long way to determining if students (and their parents) choose your institution.

## Work-Related Musculoskeletal Disorders (WMSDs): Big Name, Big Problem

Work-related Musculoskeletal Disorders (WMSDs) are a huge problem for Ontario workers, and the increasing costs for dealing with this problem will impact every employer in the system over the next decade. It is already the Number One problem in Ontario workplaces...and more important for us, in education sector workplaces

WMSDs are a catch-all term for a number of injuries that include repetitive strain, overexertion, cumulative trauma and a long list of others. The creation of the common term was instrumental in recognizing that, when taken together, all of these similar kinds of injuries were the single most frequent injury in our workplaces.

Every year in Ontario, over 2 million WSIB claims are approved in the area of WMSD, representing just under 50% of the total number of Lost Time Days reported, a proportion which was fairly constant from 1996 to 2001. (Because WMSDs are sometimes difficult to diagnose, the numbers for the more recent years are still changing.)

In the education sector, just under 2,000 WMSD claims were approved every year from 1996 to 2001 (See figure 1.) The number of Lost Time Days in education related to WMSDs is slightly higher than the provincial average, accounting for

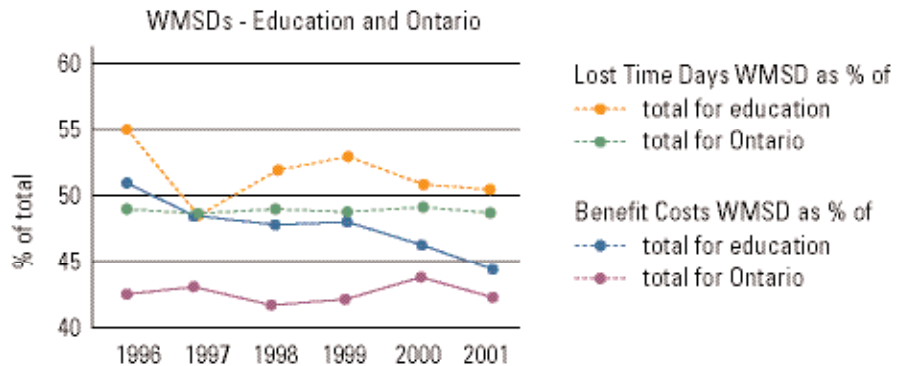
just about 50% of all Lost Time Days during that period.

The real difference shows up in the area of benefits costs. Provincially, the costs of claims related to WMSDs were between 41% and 43% of all benefit costs for the period of 1996 to 2002. In the education sector, benefit costs for claims related to WMSDs range from 45% to 51% of the total benefits paid.

This suggests two things. First, injuries arising from WMSD in the education sector tend to be more serious than in other sectors. Second, workers with WMSD injuries tend to be off work longer, thus driving up compensation costs. You may already be aware that the diagnosis and adjudication of WMSD claims take longer than those for simple, traumatic injuries. Thus, lower numbers for 2002 or 2003 will increase as more medical investigations are completed and more claims awarded.

The key to getting some control on costs in this area is prevention. Do you know the number and costs of WMSDs in your workplace? Do you have an Ergonomics or Overexertion Control program in place? Do you encourage workers to report, and get treatment for, the early stages of WMSDs, rather than waiting until the problem is so severe it may never be corrected?

Find out how much these injuries are costing you each year and develop a program not only to control the costs, but also to prevent injuries to your workers.



# Multi-Workplace or Workplace-Specific? – A “Must-Do” Commitment, Not Your Choice

Joint Health and Safety Committees have played an essential role in workplace health and safety since they were introduced by the Occupational Health and Safety Act in 1978.

Initially intended as a vehicle for workplace parties to meet, to discuss health and safety issues and to identify hazards in the workplace, the JH&SC was to be a cornerstone of each organization's Internal Responsibility System. As a result, in the early 1980's, Ministry of Labour inspectors spent much of their time making sure that those in the workplace understood their responsibilities with regard to these committees.

A quarter of a century later, it may come as a surprise to some to note that there are problems with many JH&SCs. Within the education sector, the number of orders written by the Ministry of Labour about the proper operation of committees is increasing. So, too, is the number of charges laid that stem from improper operation of Joint Health and Safety Committees. At ESAO, we're fielding an increasing number of questions about their operation.

One of the areas of greatest concern is the distinction between “workplace-specific” and “multi-workplace” committees. Many of our clients believe they have a choice about which committee structure they choose to use for their workplace. Wrong!

The Occupational Health and Safety Act requires a Joint Health and Safety Committee in every workplace with 20 or more workers. Other factors can also

trigger the need for a committee (we advise you to read Section 9 of the Act closely), but there is no doubt that the number of workers at a particular workplace absolutely triggers the need for such a committee.

In the education sector, a number of our firms have many separate workplaces with more than 20 workers. Under the Act, that means a separate committee must be established in each workplace, as a minimum starting point. If this requirement is not satisfied, you are in violation of the Act.

The Act allows employers to apply for permission to set up a fewer number of required committees by establishing a multi-workplace committee, only if permission for this is granted through a Minister's Order, permitted under Section 9(3.1) of the Act. Multi-workplace committees are not a right, but a privilege the Ministry can grant when warranted.

The key consideration in granting this request is whether or not a Multi-Workplace Committee will provide an equivalent level of safety to workers. To determine this, the application process for a Multi-Workplace Committee requires considerable documentation. And it is essential that the workplace-specific committee structure be in place and functioning effectively during the process leading up to approval for the Multi-Workplace Committee.

Employers may propose moving to a Multi-Workplace Committee under a common misconception that fewer committees in place will reduce the costs of

administering health and safety. This may or may not be true for any particular workplace. The committee structure does not affect the requirement to inspect each workplace on a monthly basis and address any concerns raised during those inspections. Workers at each individual workplace must have the same access to certified worker members, and written concerns must receive a response from the employer within 21 days.

The costs involved in choosing one structure over the other are not obvious and should be carefully evaluated. In many cases, the administrative process involved in operating a Multi-Workplace Committee outweighs any savings generated by having fewer committees.

Most important, however, is the fact that many firms are operating as Multi-Workplace Committees without the approval of the Ministry. During 2003, several school boards in Ontario inspected by the Ministry of Labour were issued orders to establish workplace-specific committees in every worksite with more than 20 workers. In one case, charges were laid for failure to operate a Joint Health and Safety Committee as required by the Act.

If you have executive responsibilities in a firm in the education sector, you probably have a Joint Health and Safety Committee. As part of your due diligence, ask the following questions:

Do we operate on a workplace-specific or a multi-workplace committee structure?

## Your Asbestos Management Program: Til Death Do Us Part

If there is a multi-workplace committee, do we have a Minister's order, under section 9(3.1) of the Act, permitting this? If yes, where is the letter?

In either case, are we inspecting the workplace on a monthly basis as required by the Act?

Is there a process in place whereby concerns raised during the monthly inspections are addressed and answers communicated back to the workplace in a timely manner?

It's far better for you to recognize and initiate any required changes to your Joint Health and Safety Committee, rather than waiting until the Ministry arrives to inspect your committee system. Unapproved multi-workplace committees are considered a violation of the Act, as are workplaces under either committee structure not inspected on a monthly basis.

Visit [www.esao.on.ca](http://www.esao.on.ca) for general information and other related material.

Why would we bother writing an article on asbestos management in 2004? Wasn't this a problem identified and resolved in the '80s ... Or was it?

Many in the health and safety field can remember those days two decades or more ago, when the world began to recognize asbestos as a significant problem. To say that this realization was a culture shift, even a culture shock, would not be an exaggeration.

For much of the mid-1900s, the Ontario Building Code required asbestos as an essential component of building fire safety. The education sector, in particular, experienced a building boom in the 1960s and '70s. Literally hundreds of school, university and college buildings, as well as such public buildings as libraries, museums and art galleries were constructed with a liberal amount of asbestos throughout.

Asbestos was used as thermal insulation on steel beams, steel decks and ceilings. It was mixed into ceiling plaster. It was a component of ceiling and floor tiles, and it was the principal means of insulating hot water and steam pipe elbows and valves. There were also literally hundreds of non-structural uses. If your



*Protection of the worker and the surrounding area is regulated by legislation.*

building was erected during those decades in Ontario, it was a virtual certainty that asbestos was used in many, many places throughout the entire structure.

When the medical and epidemiological data became overwhelming and it was accepted that exposure to asbestos could lead to serious health problems, the government moved swiftly to enact legislation controlling its use. There was also legislation to control exposure to asbestos arising from maintenance or repair work involving material that contained asbestos.

During the 1980s, most education sector firms developed asbestos management programs. These programs included a complete asbestos inventory, establishment of work procedures, medical and exposure surveillance programs and, it was hoped, the development of a long-term asbestos management program.

Thus, many people believed the problem was solved some time around 1985. There are many who still remember the asbestos inventory, the sampling and testing program, asbestos removal projects and,

above all, the costs associated with these activities. They came to believe

## Your Asbestos Management Program: Til Death Do Us Part (continued)

that all of the asbestos once in their workplace has since been removed.

Unfortunately, in most cases, that was really never an option. The majority of education sector firms removed asbestos that had deteriorated, or was in buildings slated for demolition, or on a project-by-project basis. For the majority of institutions, total removal would have been far too expensive and far too disruptive in terms of day-to-day operations. In most cases, the decision was made to manage the asbestos in place. For these reasons, asbestos continues to exist in buildings across Ontario and, in many instances, will stay there for the life of the building. Asbestos is not gone; it's just forgotten.

Managing asbestos in place doesn't automatically mean there's a problem; effective Asbestos Management programs can prevent exposures and minimize risk. But there are some requirements for asbestos management: One is keeping the asbestos inventory up to date. Another is monitoring the condition of identified asbestos on an on-going basis. There's increasing evidence that, in many workplaces, no on-going monitoring is being done.

According to Regulation 837 (Asbestos on Construction Projects and in Buildings and Repair Operations), which applies to virtually all education sector firms, the owner is required to prepare and maintain a detailed record of the location of friable asbestos. The owner is also responsible for providing training to those who work closely with asbestos, and for cleaning-up, sealing, enclosing or removing any fallen or deteriorated asbestos. The Regulation requires that this information be provided to the Joint Health and Safety Committee. Ministry of Labour inspectors have

noticed that fewer and fewer JH&SCs in the education sector receive regular information about the state of their Asbestos Management Programs. This is creating the impression among many committee members that asbestos management is no longer a problem in most workplaces.

Nothing could be further from the truth.

There are increasing indications, however, that institutional memory about the problem is being lost as more and more of the workers and supervisors involved in establishing Asbestos Management Programs retire. Nevertheless, the asbestos remains, and so does the legal obligation to manage it properly.



*Many buildings have asbestos sprayed onto beams and decks as fireproofing.*

If you're part of the senior administration at an educational institution, or a supervisor with specific responsibilities for facilities or for health and safety, ask yourself the following questions:

- Does our institution have a long-term Asbestos Management Program?
- Is the Asbestos Inventory kept up to date?
- Are new workers being trained in asbestos management procedures to

replace those who are retiring?

- Is the Asbestos Management Program reviewed at least annually by the Joint Health and Safety Committee?
- Has the Asbestos Management Program been revised to take into account changes in the Asbestos Inventory or other factors?

It is critically important that you know if you have asbestos in your workplace. If the answer is yes, you must manage it. An Asbestos Management Program is the first step in addressing your responsibilities.

For most institutions, ongoing asbestos management is just a fact of life, like any other aspect of the facilities management program. Plan it, fund it and review it on a regular basis. Be aware of one simple fact: for most institutions, asbestos in the workplace will be a problem for the next 50 years or more.

### DIRECTIONS

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## Field Consultants

### Central Lakes

Dave Roger, Peterborough  
droger@esao.on.ca  
705 876 1001

### Ontario Francophone

Alain Chenard, Orleans  
achenard@esao.on.ca  
613 837 2042

### Georgian Bay

Normand Belanger, Cambridge  
nbelanger@esao.on.ca  
519 623 1654

### Niagara

Bill Urie, Hamilton  
burie@esao.on.ca  
905 312 9962

### North East

Doug Bennett, North Bay  
dbennett@esao.on.ca, 705 476 7433  
888 824 4472 (for 705 area code)

### North west

Brian Smith, Thunder Bay  
bsmith@esao.on.ca, 807 344 6017  
807 890 0002 (for 807 and 705 area codes)

### South Central - GTA

Mike Atkinson, Toronto  
matkinson@esao.on.ca  
416 466 1923

### South Central - GTA

Janice Gallant, Mississauga  
jgallant@esao.on.ca  
905 566 5056

### South Central - GTA

Lawrence Kurtz, Thornhill  
lkurtz@esao.on.ca  
905 886 7691

### South West

Ed Hager, Melbourne  
ehager@esao.on.ca  
519 264 9738

### East

Jean-Guy Raymond, Kanata  
jraymond@esao.on.ca  
613 592 4491

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[www.esao.on.ca](http://www.esao.on.ca)

## Contact Information

Head Office  
The Education Safety Association of Ontario  
4950 Yonge Street, Suite 1505  
Toronto, Ontario, M2N 6K1  
Telephone: 416 250 8005  
Fax: 416 250 9190



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