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# *Health and Safety: Building a Culture of Safety As We Return To the Workplace*

*The webinar will begin at 9:00am EST*

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# *Agenda*

- Ontario Update: Ron Kelusky  
Immediate Past Chief Prevention Officer
- An Ounce of Prevention
- When the Worst Happens

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# *Ontario Update*



**Ministry of Labour, Training  
and Skills Development**

# **Role of the Ministry of Labour Training and Skills Development (MLTSD)**

**Prevention of Occupational Disease and Injuries including Mental Health;**

**Enforcement of regulations under the Occupational Health and Safety Act;**

**Administer and Enforcement of the Employment Standards Act;**

**Administration of the Employment and Training Programs including Apprenticeships, Federal and Provincial job training initiatives;**

**Global Talent and Settlement Services – Immigration settlement programs;**

**Workforce Policy and Innovation – ensuring Ontario workers have the skills to maintain a competitive economy;**

**Labour Relations Solutions and Labour Policy;**

**Oversee a number of agencies such as the WSIB, Fairness Commissioner and the Office of the Worker and Employer Advisor**



**Ontario**  
Ministry of Labour, Training  
and Skills Development

# “Total Ministry Effort”

- Prevention produced over [250 guidance documents](#) 1.5 million downloads for sectors and business, modified training standards and participated in multiple tables and advisory forums;
- Enforcement completed over 60,000 workplace visits, countless compliance assistance initiatives to maintain essential business;
- Administered job support and training initiatives through provincial and federally funded programs;
- Provided legislative and regulatory support for programs such as the Provincial Sick Credit top up, changes in training requirements under OHS, Small business incentives and the development of new technology to support business;
- Provided advice in critical areas such as agriculture, education, Ontario’s Court System

## Support our COVID-19 response effort



# COVID 19 – What Have We Learned

- There is a difference between Public Health and Occupational Health and Safety;
- Clarity of information is critical (avoidance of ambiguity and confusion);
- Information needs to be tailored to the audience (knowledge transfer and knowledge translation);
- Continuous communication is important – never assume people are aware
- Work with industry and employers to help increase knowledge and expertise;
- Share best practices and do not reinvent the wheel;
- All forms of media and learning is needed (virtual, in person, digital, video and poster);
- Engage your employees, the health and safety committee and/or representative;
- Don't be afraid to ask for advice; and
- Employees are your greatest asset both on and off the job;





# What We Really Learned

- After nearly 50 years and millions of hours of training many businesses struggled to understand the basic concepts of a risk assessment;
- The “Hierarchy of Controls” the very fundamental requirement for elimination of hazards and risk in a pandemic was not fully understood;
- One size fits all does not work especially involving knowledge transfer and knowledge translation;
- Assistance in achieving compliance was more effective than traditional forms of enforcement;
- Leadership and knowledge was a clear differentiator;
- Vulnerable workers, minimum wage earners, people working multiple jobs and living in congregate settings were challenged significantly;
- Employers became responsible not only for activities at work but also in providing information to their staff on safety off the job as well;
- New opportunities for learning evolved;
- Our strategy needed to focus on outcomes and not outputs and evidence

# Ounce of Prevention



Building a Culture of Safety is more than taking a course



Importance of Risk Assessments and Safety Plans



Implementing a Health and Safety Management System



Managing a Safety Audit/Inspection

# Upcoming for Health and Safety Prevention at MLTSD

Ontario's new Chief  
Prevention Officer.  
Effective September  
15, 2021.

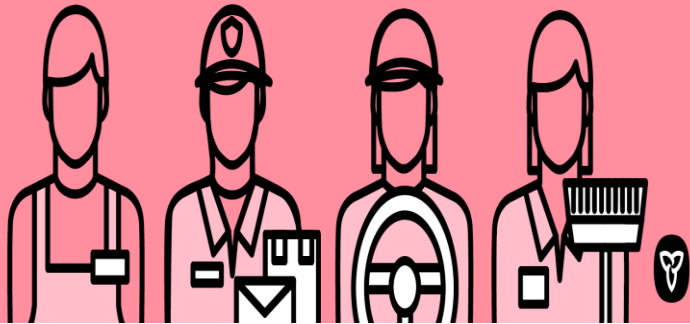


**Joel Moody**  
Chief Prevention Officer  
and Assistant Deputy Minister  
MLTSD

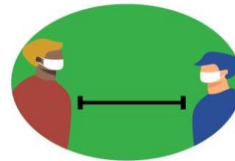


# Continued Support and Resources for Workplaces

## Workplace Safety Plan



- 1 Keep wearing your mask to help reduce exposure to the virus and prevent spreading it if you are infected. This is especially important when you are unable to physically distance.



- 2 Continue to practice physical distancing to help protect yourself and others who may not be vaccinated, like young children.

- 3 If you feel sick, stay home.



- 4 Wash your hands. It helps prevent diseases including COVID-19.

- 5 Take your breaks outdoors and work outside if you can.



**Being vaccinated doesn't eliminate the need to follow other prevention measures.**



# Small Business Health and Safety Training Program



**Free online health and safety  
training for small businesses**



# *Prevention Works: Ontario's 5-year OHS Strategy*

<https://www.ontario.ca/document/prevention-works/prevention-works-5-year-strategy>



# MLTSD Resources for Employers

- COVID-19 Workplace Resources:  
<https://www.ontario.ca/page/covid-19-workplace-health-safety>
- Supporting Ontario's Safe Employer Program-  
<https://www.ontario.ca/page/supporting-ontarios-safe-employers-program>
- Health and Safety Excellence Program;  
<https://www.wsib.ca/en/healthandsafety>
- Free Health and Safety Training for Small Business; [Small Business Health and Safety Training Program](#)
- Health and Safety Training and Consulting;  
<https://www.ontario.ca/page/ontarios-occupational-health-and-safety-system>

# *An Ounce of Prevention*



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# *An Ounce of Prevention- Building a Culture of Safety*

- An accident-free workplace can never be guaranteed
- However, there are steps an organization can take to build a culture of safety to reduce risk
- Ensure leadership is accountable for safety:
  - Appoint a senior member of the leadership team responsible for health and safety
  - Hold managers and supervisors accountable for following and enforcing safety policies
  - Incentivize

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# *Ounce of Prevention-* *Building a Culture of Safety*

- The “Hierarchy of Controls” is a fundamental requirement to eliminate hazards and risks
- Health and safety policies focused on:
  - Compliance with the *Occupational Health and Safety Act* (OHSA)
  - Eliminating hazards and risks in **your** workplace.
- Effective communication and training
- Seed a culture of safety by introducing it during the recruitment, screening, hiring and on-boarding processes
- Ensure workers are motivated to speak up

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# *Ounce of Prevention-* *Building a Culture of Safety*

- COVID-19 Hazard Assessment:
  - ❑ Schedules of work - shift start and stop times
  - ❑ How workers enter and exit the workplace
  - ❑ How workers use equipment and pathways
  - ❑ Impact of facility design, generally
  - ❑ Worker screening (symptoms, recent travel, etc.)
  - ❑ High touch surface and cleaning protocols

# *An Ounce of Prevention- Health and Safety Policies and Processes*

- Provide a variety of avenues for workers to raise health and safety concerns
- Ensure processes and policies are clearly communicated and easily accessible
- Develop metrics
- Review each workplace incident (root-cause analysis) to determine what steps could have been taken
- Remember WSPS resources



# *An Ounce of Prevention- Workplace Violence Risk Assessment*

- Assess the risk of violence that could arise given the nature of the workplace, type of work and working conditions



- Risk assessment must consider:
  - ❑ Circumstances common to similar workplaces, and
  - ❑ Circumstances specific to the workplace.

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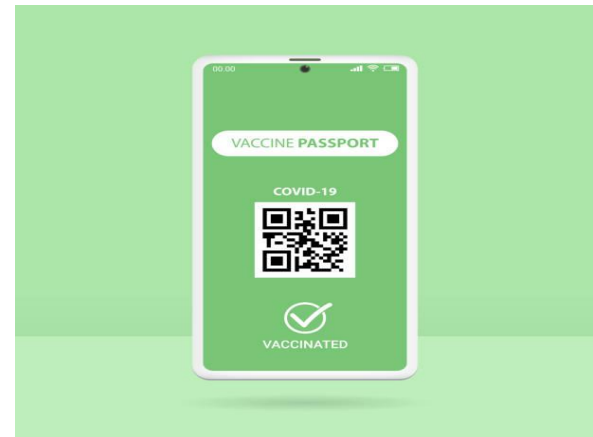
# *An Ounce of Prevention-*

## *Workplace Violence Risk Assessment*

- Once complete, employer must advise JHSC (or Worker Rep, if no JHSC) of the results
  
- Workplace violence should be re-assessed as often as necessary, including after:
  - Relocation or extensive renovations
  - Any workplace violence incident
  - External changes (legislation, social or environmental factors, *etc.*)

# *An Ounce of Prevention- Workplace Violence Risk Assessment*

- An employee required to conduct a pre-entry screen may face increased risk of violence by an unvaccinated patron who is denied entry
- Consider how to reduce this risk
- Put protocols in place now





# *An Ounce of Prevention- Safety Plan*

- Safety Plan is a written roadmap of what your organization has done/will do to address COVID-19
  
- Must address:
  - Screening
  - Physical distancing
  - Masks or face coverings
  - Cleaning and disinfecting of surfaces and objects
  - Wearing of PPE



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# *An Ounce of Prevention- Health and Safety Inspections*

- Often no warning, but if given advance notice:
  - Contact your lawyer (*e.g.*, Sherrard Kuzz) to ensure you understand the nature of the inspection
  - Gather and organize information
  - Identify any existing deficiencies and take immediate steps to remedy
  - Identify a “point person” to:
    - Greet and accompany inspector
    - Explain documents and records

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# *An Ounce of Prevention- Health and Safety Inspections*

- DO:
  - ❑ Co-operate and be responsive
  - ❑ Review documents with counsel before disclosing
  - ❑ Disclose only what is required
  - ❑ If concerned, contact your lawyer (*e.g.*, Sherrard Kuzz) prior to disclosure

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# *An Ounce of Prevention- Health and Safety Inspections*

## ■ DO NOT:

- Keep the inspector waiting on arrival
- Let the inspector walk around the workplace unaccompanied
- Argue with the inspector
- Discuss any topic not raised by the inspector
- Provide too much information

# *An Ounce of Prevention- Health and Safety Inspections*

- If an inspector's request cannot be satisfied on the spot:
  - ❑ Explain why the information is not available
  - ❑ Make note of the request
  - ❑ Promise to get the information
  - ❑ Get the information as quickly as possible
  
- Document and demonstrate efforts to comply



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# *An Ounce of Prevention- Health and Safety Inspections*

- Self-audit for OHSA violations before you have an inspector at the door
- If an inspection occurs, cooperate fully and make the process as painless as possible for the inspector
- If non-compliance is found, ask if there is an opportunity to correct it before an order is issued
- If an order is issued, remedy the situation as soon as possible and send in the Notice of Compliance
- In either case, consult Sherrard Kuzz (or your lawyer) before responding

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# *When the Worst Happens*



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# *When the Worst Happens- An Accident Happened, Now What?*

## ■ DO:

- ❑ Provide medical assistance (first-aid and/or call 911)
- ❑ Secure the scene of the accident (other than to preserve life, provide first aid or prevent unnecessary damage to equipment or property)
- ❑ **Call Sherrard Kuzz (or other legal counsel) to help protect your organization**
- ❑ Report the accident to the MLTSD, JHSC and the trade union (if any) as required by the OHSA

# *When the Worst Happens- An Accident Happened, Now What?*

## ■ DO:

- ❑ Record witness/first-aider contact information
- ❑ Obtain/secure any accident scene video
- ❑ Collect copies of important documents (policy, work procedure, *etc.*)
- ❑ If an investigation is required or an internal investigation is appropriate, undertake without delay (with the assistance of counsel)
- ❑ Accompany and cooperate with the MLTSD inspector



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# *When the Worst Happens- An Accident Happened, Now What?*

## ■ DON'T:

- Clean up or interfere with the scene of the accident
- Continue to work in the area where the accident happened
- Allow witnesses to leave the workplace without permission
- Admit liability or speculate as to the cause of the accident

# *When the Worst Happens- An Accident Happened, Now What?*

## ■ Reporting Requirements:

### □ Critical Injury

- Immediately notify MLTSD, JHSC and trade union
- File written report within 48 hours

### □ Accident, explosion, fire or workplace violence causing injury

- Written notice to the MLTSD, JHSC and trade union within four days

### □ Prescribed incident at a project site or mine

- Written notice to the MLTSD, JHSC and trade union within two days

# *When the Worst Happens- An Accident Happened, Now What?*

## ■ What is a “critical injury”?

- fatality
- places life in jeopardy
- unconsciousness
- substantial loss of blood
- fracture of a leg or arm
- amputation of a leg, arm, hand or foot
- burns to a major portion of the body, or
- loss of sight in an eye



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# *When the Worst Happens- Charges and Penalties*

- One (1) year limitation period for an OHSA charge
- Common charges:
  - Lack of instruction/training (employer and supervisors)
  - Failure to guard or de-energize machinery
  - Failure to comply with fall protection requirements
  - Failure to take all reasonable precautions

***You don't need to have an accident to be charged!***

# *When the Worst Happens- Charges and Penalties*

- The crown must prove all elements of a charge beyond a reasonable doubt
- But - an OHSA offence is a strict liability offence
  - No requirement to prove “intent”



# *When the Worst Happens- Charges and Penalties*

## ■ “Due Diligence” Defence

- Employer must demonstrate all reasonable precautions were taken to avoid or prevent the accident

## ■ Consider:

- Written policies, practices and procedures
- Training and education
- Competent supervisors
- Monitoring and enforcement

## ■ Important to **document, document, document**

# *When the Worst Happens- Charges and Penalties*

## ■ Officially Induced Error Defence

- ❑ An accused should not be convicted in circumstances in which a government authority has contributed to a course of action
- ❑ **It is not** an officially induced error to say that an inspector previously inspected and didn't issue an order



# *When the Worst Happens- Charges and Penalties*

- OHSA sentencing is guided by three principles
  - Deterrence
    - Fines and penalties must seek to deter future offender
  - Retribution
    - Punishment must demonstrate a moral condemnation by society
  - Rehabilitation/reform
    - Working with the defendant to ensure no future offence is committed (*e.g.*, improved safety standards)

# *When the Worst Happens- Charges and Penalties*

## ■ Sentencing Factors:

- Size of the company
- Scope of the economic activity in issue
- Extent of actual and potential harm to the public
- Profits realized by the offence
- Maximum penalty prescribed by statute
- Penalties imposed in similar cases
- Remorse/personal appearance
- Post accident health and safety/prevention efforts



# *When the Worst Happens- Charges and Penalties*

- Sentence is typically a fine, but that may be changing...
- Maximum fines (OHSA)
  - Corporation – up to \$1,500,000
  - Individual – up to \$100,000 + 12 months' imprisonment

**Per charge + 25% victim fine surcharge**

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# *When the Worst Happens- Charges and Penalties*

*Ont. (MLTSD) v. New Mex Canada Inc. 2019 ONCA 30 (CA)*

- A worker with known epilepsy had a seizure while working at heights, fell to the ground and died
- Worker had no fall protection or training
- Small company and two directors plead guilty to multiple OHSА charges
- Trial judge considered conduct egregious

# *When the Worst Happens- Charges and Penalties*

*Ont. (MLTSD) v. New Mex Canada Inc. 2019 ONCA 30 (CA)*

- Company fined \$250,000; individuals received 25 days' jail plus 12 months' probation
- On appeal, sentences considered 'out of range' and not necessary for deterrence - reduced to \$50,000 for corporation and \$15,000 per individual
- Court dismissed subsequent crown appeal – compelling reason needed to depart from penalties in similar cases

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# *When the Worst Happens- Charges and Penalties*

## *Ont. (MLTSD) v. Lafarge Canada Inc., 2019 ONCJ 748*

- Worker died as result of a fall from height at a decommissioned cement plant
- Company plead guilty and fined \$400,000 (based on a joint submission with crown)
- Company had prior convictions with previous fines totaling \$765,000
- Court noted maximum penalty would be appropriate for future violation

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# *When the Worst Happens- Charges and Penalties*

*Ont. (MLTSD) v. Vixman Construction Inc., 2020 ONCJ 64*

- Worker fell and died as a result of improper use of fall restraint system
- Company convicted at trial (two charges)
- Court rejected \$125,000 sentence jointly proposed by crown and company

# *When the Worst Happens- Charges and Penalties*

*Ont. (MLTSD) v. Vixman Construction Inc., 2020 ONCJ 64*

- Court viewed “fine only” sentence as not sufficient to achieve the core objective of the OHS Act: “to prevent and mitigate harm in the workplace”
- In addition to \$125,000 fine, court imposed 18 months’ probation AND required the company to
  - Publically acknowledge offence in safety article to be published in a safety magazine and on the MLTSD website
  - Produce safety training video for the MLTSD website

# *When the Worst Happens- Charges and Penalties*

- Not known whether “creative sentencing” will take hold post-pandemic
- Other non-monetary considerations
  - Media coverage/MLTSD press release
  - Negative impact on corporate brand/goodwill
  - Potential impact on business contracts
  - Potential for personal liability (supervisor, director, officer) under OHSA and the Criminal Code



# *When the Worst Happens- Charges and Penalties*

- Section 217.1 of Criminal Code (Bill C-45)

*Everyone 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*



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# *When the Worst Happens- Charges and Penalties*

- Criminal charges are relatively rare, but a significant risk for repeat offences or if evidence shows disregard for worker safety and/or OHSА obligations
- OHSА charge(s) are also likely to accompany criminal charges

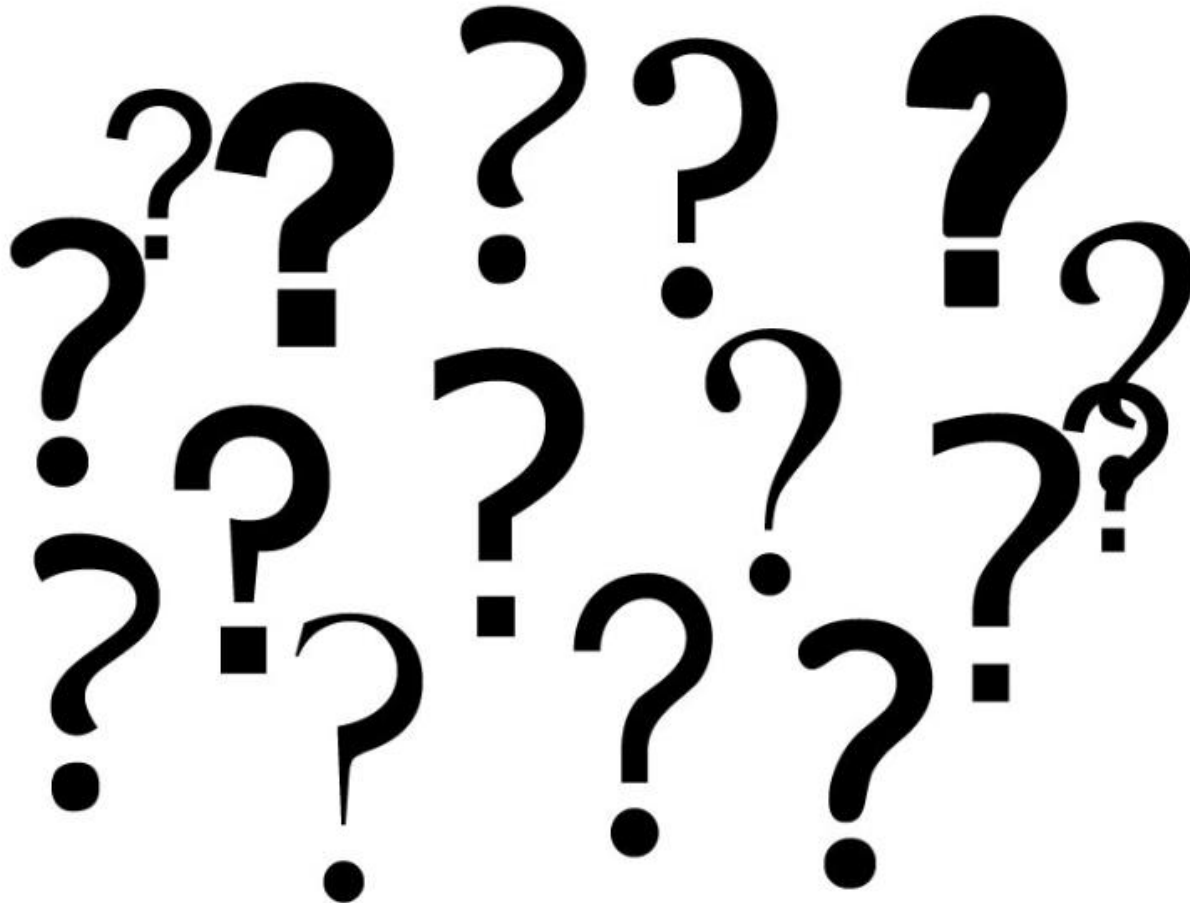
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# *When the Worst Happens- Takeaways*

- A strong safety culture helps reduce the risk of a workplace accident
- Frequent health and safety self-audits and inspections, written work instructions, training and strong supervision helps improve due diligence defence
- **Contact Sherrard Kuzz (or other legal counsel) as soon as possible if a critical injury or other reportable incident occurs in the workplace**

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# *Questions?*





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