

**Changing Workplaces Review: Speaking Notes for HPAP,
EMBER, and Health Justice Initiative**
(Gary Bloch, Alyssa Lane, Johanna Macdonald)

Event: Changing Workplaces Review

Special Advisors: Mr. C. Michael Mitchell and Judge Murray

Location: Queen's Park Conference Room, Trent Room, 900 Bay Street

Date and Time: Friday, September 18, 2015, 9:00 – 9:10 a.m.

GARY - Good morning Mr. Mitchell, Judge Murray, Ministry of Labour staff and other guests. Thank you for the opportunity to speak today. My name is Gary Bloch. I am a family physician with St. Michael's Hospital and an Assistant Professor in the Faculty of Medicine at the University of Toronto. I am also Chair of the Ontario College of Family Physicians' Committee on Poverty and Health. I am here representing Health Providers Against Poverty. Health Providers Against Poverty is an advocacy organization made up of physicians, nurses, nurse practitioners, occupational therapists and other professionals who work on the frontlines of health care. We believe that poverty represents a serious, reversible threat to the health of people living in Ontario. We work from the well-accepted understanding that poverty is the most powerful known risk factor for ill health. I am here presenting today also with Johanna Macdonald and Alyssa Lane from the Health Justice Initiative.

Today, we focus our submissions on three key areas as they related to your review of the *Employment Standards Act* ["ESA"]:

- 1) utilizing a social determinant of health and disability rights lens to guide your review and form the backbone of your recommendations;
- 2) recommending essential changes to leave provisions for all workers; and
- 3) recommending a call to action on workplace bullying and harassment.

Together, we will highlight the opportunities that you have to maximize the ability of Ontario's workers to live healthy, productive lives by making meaningful changes to the *ESA* that recognize employment standards as a major determinant of workers' health.

JO – Good morning. My name is Johanna Macdonald and I am speaking with you today in my capacity as the onsite lawyer at St. Michael’s Hospital Academic Family Health Team and the Health Justice Initiative. Our Initiative is novel in Canada, partnering a primary care health team and four community legal clinics, taking a disability rights lens with the goal of improving our communities’ social determinants of health and access to justice. Working closely together to provide legal services, our Initiative provides a unique opportunity to see the intimate link between employment standards, health consequences and the disproportionate impact of such standards on persons with disabilities. It is with this unique view that we discuss today our experiences and our suggestions for reform that you may include in your recommendations.

First, we would like to endorse in their entirety the recommendations presented in the following submissions:

- The Workers’ Action Centre’s written submission and report “Still Working on the Edge: Building Decent Jobs from the Ground Up”; and
- The Income Security Advocacy Centre’s submission “Making Work Work for All”.

ALYSSA - Good morning, my name is Alyssa Lane and I am a student with the Disability Law Intensive Program at the ARCH Disability Law Centre, working with the Health Justice Initiative. Through the Initiative, we have observed that lack of sufficient safeguards in our *Employment Standards Act* has resulted in a number of patients being referred to our Initiative in desperate circumstances. Jamal, an employee for three years at his minimum wage cleaning job, was terminated after having the flu and being absent for one week. Martina, a trans-gendered woman who faced ongoing bullying and harassment at her telemarketing job, and Farah, a delivery driver who was hospitalized for a mental health condition for 2 weeks and upon returning to work, was told that her contract was ‘up’ and ‘no further pay was coming’.

GARY - As Johanna and Alyssa work with our patients to provide relevant legal assistance, my role is to treat the health conditions all too often exacerbated by poor working conditions. Jamal reported feeling high levels of stress. His heart condition worsened after he was terminated. Martina developed anxiety and depression. Farah’s

mental health condition worsened, and she required investigations for new shortness of breath and chest pain.

JO - And though Jamal, Martina, and Farah may be able to seek legal redress, the fact that these issues arise at all is deeply concerning and points to a lack of baseline preventative protection in our *ESA*. I all-too-often provide advice to individuals like Jamal or Martina who are unable, due to their social location and exacerbated health conditions, to take on legal action or make any grievances. As Gary has illustrated, health consequences persist, even if they do take action. Health care practitioners and patients alike are desperate to avoid workplace conflict, poor treatment, and discrimination at work because they see and experience the clear and direct immediate effect on their health.

GARY - Our experiences and research have demonstrated the link between healthy work and healthy individuals, and we urge you that it is timely and imperative for you to take the opportunity to analyze and make recommendations for workplace reforms using a social determinants of health lens. Social determinants of health research informs us that the health of individuals and our communities is driven by the conditions in which people are born, grow, work, live and age, and the wider set of forces and systems shaping the conditions of daily life. These forces and systems include economic policies and systems, development agendas, social norms, social policies and political systems”.¹

Employment conditions clearly have a big impact on health.

- As noted in the Final Report of the World Health Organization’s Commission on the Social Determinants of Health: “Employment and working conditions have powerful effects on health and health equity. When these are good they can provide financial security, social status, personal development, social relations and self-esteem, and protection from physical and psychosocial hazards – each important for health”.²
- Poor mental health outcomes are associated with precarious employment (e.g.

¹ World Health Organization, “Social determinants of health”, online: <http://www.who.int/social_determinants/en/>.

² Commission on Social Determinants of Health Final Report, *Closing the gap in a generation* (Geneva: World Health Organization, 2008).

- informal work, non-fixed term temporary contracts, and part-time work)³
- Workers who perceive work insecurity experience significant adverse effects on their mental and physical health.⁴
 - Temporary workers showed a 3 times higher rate of non-fatal occupational injuries (95% CI 2.40 to 3.61) and a two and a half times higher rate of fatal occupational injuries (95% CI 1.88 to 3.42).⁵

Given this powerful body of evidence, we recommend you consider the health impacts of changes to the *ESA*, as one framework of analysis in your review. One way to operationalize this is to utilize Health Equity Impact Assessments as endorsed by the Income Security Advocacy Centre to evaluate the impact of changes to the *ESA* on the health of our most vulnerable individuals and communities. We feel it is a mistake to consider social regulations separately from health outcomes, as negative consequences of such regulations for workers are intimately felt in higher demand on, and expenditures through, the health system.

JO – We further urge in your review, to resist engaging in a balancing approach to efficiency, equity and voice, and instead retain an approach that infuses all three. We suggest that you can do so by adopting a social determinants of health and disability rights lens to your analysis. We support the Income Security Advocacy Centre’s suggesting that you use the tools outlined in the Law Commission of Ontario’s report “A Framework for the Law as It Affects Persons with Disabilities”⁶ as you build your recommendations for law and policy change. We know that over 10% of our labour force identifies as having a disability,⁷ and that persons with disabilities face unacceptably high rates of discrimination in the workplace. Currently, 30-50% of human rights claims made to our Human Rights Tribunal cite the ground of disability, most of

³ L Artazcoz, J Benach, C Borrell, & I Cortès. *Social inequalities in the impact of flexible employment on different domains of psychosocial health* (2005) 59:9 *Journal of Epidemiology and Community Health* 761-767.

⁴ J E Ferrie et al., *Change in health inequalities among British civil servants: the Whitehall II study* (2002) 56:12 *Journal of Epidemiology and Community Health* 922-926.

⁵ Statistics Canada, *Low income cut-offs* (5 February 2013), online: *Gov Can* <<http://www.statcan.gc.ca/pub/75f0002m/2012002/lico-sfr-eng.htm>>.

⁶ Law Commission of Ontario, *A Framework for the Law as it Affects Persons with Disabilities: Advancing Substantive Equality for Persons with Disabilities through Law, Policy and Practice. Final Report* (2012) <https://www.lco-cdo.org/en/content/ersons-disabilities>.

⁷ Ministry of Labour, *Changing Workplaces Review: Guide to Consultation* (Toronto 2015).

which are in the area of employment.⁸ As a result of discriminatory practices, people with disabilities are much less likely to be employed than those without disabilities, and are particularly impacted by the lack of accommodations in the workplace and poor enforcement of the duty of employers to accommodate.⁹

The Guide calls upon businesses to provide greater integration of historically under-represented groups, including persons with disabilities. The *Ontario Human Rights Code* provides an overarching, quasi-constitutional overlay for the right of workers to have equal treatment in workplaces, and the *Accessibility for Ontarians with Disabilities Act*¹⁰ has a number of requirements for employers to remove barriers for persons with disabilities. But the *ESA*, our most basic foundation of employee rights, holds no provisions that recognize the overarching intent and compliance with these fundamental laws. We suggest that you recommend the creation of a preamble to the *ESA* that give recognition to the need for healthy workplaces as rooted in our social determinants of health and recognition of our overarching Constitutional and human rights laws that protect persons with disabilities and other protected grounds against discrimination. The preamble should feature goals of increasing social inclusion by reducing poverty and discrimination through our basic employment standards.

GARY - In the context of taking a social determinants of health and disability rights approach to reform recommendations, *we would like to specifically highlight our support of the Workers' Action Centre's submission on leave provisions within the ESA*. The recommendations are to:

- *Repeal the exemption for employers of 49 or less workers from providing personal emergency leave*
- *Allow all employees to accrue a minimum of one hour of paid sick time for every 35 hours worked.*

⁸ Ontario Human Rights Commission, *Policy and Guidelines on Disability and the Duty to Accommodate* (23 November 2000), online: <<http://www.ohrc.on.ca/en/book/export/html/2461>>.

⁹ Human Resources and Skills Development Canada. *Advancing the Inclusion of People with Disabilities: 2009 Federal Disability Report*. Human Resources and Skills Development Canada (2009); Banks, K.,R. Chaykowski and G. Slotove. *The disability accommodation gap in Canadian workplaces: What does it mean for law, policy, and an aging population?* (2013) Canadian Labour & Employment Law Journal. 17:2. P.294-344

http://labourlawjournals.com/abstracts/pdf/CLELJ_17_2_Banks_Chaykowski_Slotsve.pdf.

¹⁰ *Accessibility for Ontarians With Disabilities Act, 2005, SO 2005, c 11.*

- *Repeal Section 50(7) and amend the ESA to prohibit employers from requiring evidence to entitle workers to personal emergency leave or paid sick days.*¹¹

The benefits of paid emergency or sick leave are backed by evidence: an article in the *International Labour Review*¹² identified many studies that showed that providing paid sick-leave reduces duration of illness,¹³ reduces risk of worsening minor conditions,¹⁴ is correlated with a higher return to work rate following heart attacks,¹⁵ and an overall lower burden on health care resources.¹⁶ Research involving long-term care facilities showed a significant reduction in the frequency of outbreaks¹⁷ when comparing sites with and without paid sick leave policies. A recent study in the *American Journal of Public Health* found workers with access to paid sick leave are 28 per cent less likely to be injured on the job than workers without such a benefit, and reduction of productivity losses associated with ‘presenteeism’ – when sick workers continue to show up at work despite their illness.¹⁸

Often, workers who are sick end up in family medicine clinics or emergency rooms: not for medical care but merely to obtain proof they are ill. In delegating physicians into a policing role, clinical hours get chewed up by administrative tasks. When these illnesses are due to larger outbreaks, physicians are doubly burdened – by the workers who need treatment and the workers who need notes. The Ontario Medical Association discourages requiring sick notes for this reason,¹⁹ and also because of the real risk of transmission to others in the health care environment.²⁰

¹¹ Worker's Action Centre, *Still Working on the Edge: Building Decent Jobs from the Ground Up* (Toronto, 2015). <http://www.workersactioncentre.org/updates/new-report-released-still-working-on-the-edge/>.

¹² A Schliwen et al., *The administration and financing of paid sick leave* (2011) 150:1-2 *Int Labour Rev* 43.

¹³ D B Gilleskie, *A dynamic stochastic model of medical care use and work absence* (1998) *Econometrica* 1.

¹⁴ G Aronsson, K Gustafsson & M Dallner, *Sick but yet at work. An empirical study of sickness presenteeism* (2000) 54:7 *J Epidemiol Community Health* 502.

¹⁵ Alison Earle, John Z Ayanian & Jody Heymann, *Work resumption after newly diagnosed coronary heart disease: findings on the importance of paid leave* (2006) 15:4 *J Womens Health* 2002 430.

¹⁶ Vicky Lovell, *No Tie to Be Sick: Why Everyone Suffers When Workers Don't have Paid Sick Leave*, (December 2003), online: *Inst Womens Policy Res* <<http://www.iwpr.org/publications/pubs/no-time-to-be-sick-why-everyone-suffers-when-workers-don2019t-have-paid-sick-leave>>.

¹⁷ J Li et al, *Impact of institution size, staffing patterns, and infection control practices on communicable disease outbreaks in New York State nursing homes* (1996) 143:10 *Am J Epidemiol* 1042.

¹⁸ Abay Asfaw, Regina Pana-Cryan & Roger Rosa, *Paid sick leave and nonfatal occupational injuries* (2012) 102:9 *Am J Public Health* e59.

¹⁹ Scott Wooder, *Please Stay Home if You Are Sick: Ontario's Doctors*, (7 January 2014), online: *Ont Med Assoc* <<https://www.oma.org/MediaRoom/PressReleases/Pages/PleaseStayHome.aspx>>.

These simple amendments would likely have had a significant impact on our clients Jamal and Farah, who were both absent from work for short periods of time, would likely have not lost their jobs, and would not have had to avail themselves of the health system and legal actions to enforce their rights.

ALYSSA – Finally, we are concerned about the specific discriminations experienced by our patients and clients with mental health disabilities. Disclosure of a mental health problem in the workplace can also lead to discriminatory behaviours from managers and colleagues such as micro-management, lack of opportunities for advancement, over-infering of mistakes to illness, gossip and social exclusion.²¹ Employees may find themselves isolated and marginalized in the workplace – impacts that may be made worse by other human rights-related barriers such as racism, sexism, ageism or homophobia.²² Research has shown and we have seen the health effects of these circumstances,²³ and strongly recommend taking measures to hold employers accountable to maintaining a healthy workplace for all employees. For this, we would like to highlight our endorsement of the Workers' Action Centre recommendations calling for action to address and prevent workplace bullying and providing remedies for psychological harassment.²⁴

We thank you for the opportunity to speak with you today. We strongly advocate that you take a new approach to employment standards that adopt a social determinants of health and disability rights lens. We are excited about the potential for positive change this approach holds to protect the health and rights of workers and the communities we live in, meaning the health and rights of all of us.

²⁰ Jacob E Simmering et al., *Are well-child visits a risk factor for subsequent influenza-like illness visits?* (2014) 35:3 *Infect Control Hosp Epidemiol* 251.

²¹ Brohan, E., & Thornicroft, G. *Stigma and discrimination of mental health problems: workplace implications.* (2010) *Occupational medicine*, 60(6), 414-415.

²² Ontario Human Rights Commission, *Human rights and mental health (factsheet)*, online: *Ont Hum Rights Comm* <<http://www.ohrc.on.ca/en/human-rights-and-mental-health-fact-sheet>>.

²³ M Kivimäki, M Elovainio & J Vahtera, *Workplace bullying and sickness absence in hospital staff* (2000) 57:10 656; L Quine, *Workplace bullying in nurses* (2001) 6:1 *J Health Psychol* 73; S Einarsen et al, *Bullying and harassment in the workplace: Developments in theory, research, and practice* (Crc Press, 2010).

²⁴ Worker's Action Centre, *supra* note 11.