



HANDBOOK FOR  
HEALTH & SAFETY  
REPRESENTATIVES  
  
IN  
  
BARGAINING UNITS  
AND  
DISTRICTS

Prepared by the  
Health and Safety/WSIB Sub-Committee  
of the  
Collective Bargaining Committee  
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**NOTE:** Specific references cited to the Act are in square brackets – e.g. [Section 9]

## 1. Purpose of the *Occupational Health and Safety Act*

The purpose of the *Occupational Health and Safety Act* (“the Act”) is to define the roles of workers, supervisors, employers and the Ministry of Labour in the prevention of injury and occupational illness in the workplace. The Act requires employers to take responsible action for the health and safety of their employees and provides a minimum standard for safe and healthy workplaces. It is the intention of the Act to develop an *internal responsibility system* within the workplace which involves an atmosphere of communication and co-operation between employers and employees, making them active partners in protecting workers from hazards to their health and safety.

## 2. Role of OSSTF/FEESO Bargaining Units

OSSTF/FEESO Bargaining Units have the following rights and duties concerning the health and safety of its members in the workplace. [Referenced to relevant sections of the Act].

- A. To select a member to serve as Health & Safety Officer for the Bargaining Unit/District and representatives of the Bargaining Unit on the Joint Health and Safety Committee (JHSC). [Section 9(8)]
- B. To ensure that members receive a minimum of Level 1 and, preferably also “certified worker” training, from the Workers Health and Safety Centre. [Section 9 (14) (15); also OSSTF/FEESO Policy 6.7.4.1 – the Workers Health and Safety Centre trains OSSTF/FEESO members.]
- C. To consult with the Ministry of Labour on disputes regarding the formation and operation of JHSC. [Section 9(39)]
- D. To receive reports from the Bargaining Unit/District Health and Safety Officer.
- E. To receive from the Employer
  - 1. a copy of any order made under “Toxic Substances”, [Section 33(3)]
  - 2. immediate notification of a “critical injury” or death of a member at a workplace, [Section 51(1)]
  - 3. notification in writing within 4 days of the occurrence where an accident, explosion or fire caused *non-critical* injury to a member at a workplace whereby the member was disabled from performing usual work or required medical attention, [section 52(1)]
  - 4. notice in writing within 4 days of being so advised, of any member who has an occupational illness, [Section 52(2)]

5. notification that a former member, or a person on behalf of such member, has notified the Employer that the member has or has had an occupational illness. [Section 52(3)]
- F. To appeal in writing to the Minister within 14 days of the making of any order made under (E) above or appeal to the Ministry of Labour regarding non-issue of orders where a member feels that orders should have been written. [Section 33(4)]
- G. To ensure that the Bargaining Unit/District Health & Safety Officer, as a member of the JHSC,
  1. attends without delay to investigate a work refusal by any member, or a workplace inspection by a Ministry of Labour Inspector, [Section 43(a) and 54(3)]
  2. becomes “designated” by the JHSC to attend any and all testing in members’ worksites concerning occupational health and safety, [Section 9(18)(e)(f); Section 11(3)]
  3. is provided by the employer such time from regular duties as is necessary to attend JHSC meetings and carry out the duties of a JHSC member, plus a minimum of one hour preparation time before each meeting, [Section 9(34)]
  4. receives regular salary or regular hourly rate of pay for all time spent on duties as a member of the JHSC. For hourly paid members, overtime spent on these duties must be provided [Section 9(35)]
- H. To ensure that the Bargaining Unit/District Health & Safety Officer has also received notification referred to in item E.) above. [same Sections cited for each apply]
- I. To ensure, where possible, that members are represented by the Bargaining Unit/District Health & Safety Representative (as a member of the JHSC) during an inspection of a workplace conducted in compliance with the Act. [Section 9(24) of the Act states that whenever possible this person shall be a “certified worker”.]
- J. To ensure that the time spent by the Bargaining Unit/District Health & Safety Officer, as a member of the JHSC, on duties under the Act is deemed to be work time by the Employer for which the member is compensated. [Section 9(35), 54(5)]
- K. To request from the Workplace Safety and Insurance Board (WSIB) an annual summary of injury/illness data relating to the Employer and the workplace. [Section 12(1)]

- L. To ensure that all members know their responsibilities to provide information and to facilitate the work of the Bargaining Unit/District Health & Safety Officer and a Ministry of Labour Inspector in the performance of their duties under the Act. [Section 9(29), (31); 54(1)(h)]
- M. To promote awareness among all members of their other duties under the Act. [Section 28]
- N. To ensure that no member is threatened with, or actually, disciplined, dismissed, or suspended, or penalized, intimidated or coerced by the Employer or supervisor regarding any health or safety issue related to the Act, its Regulations, or a Ministry of Labour order. [Section 50(1)]
- O. To represent and protect any member who complains that circumstances listed in item (N) above do apply. [Section 50(2)-(7)]
- P. To participate, through the Bargaining Unit/District Health & Safety Officer (as JHSC member), in Employer's annual review of the workplace Health and Safety Policy and monitor its implementation. [Section 25(2)(j)]

In addition, OSSTF/FEESO has policies regarding Health and Safety issues: [OSSTF/FEESO Policies and Procedures Manual, 2010-2011]

## 6.7 Health and Safety Working Conditions

- 6.7.1 It is the policy of OSSTF that collective agreements should contain provisions for the protection of Members with respect to the *Occupational Health and Safety Act* and its Regulations. (R.10)
- 6.7.2 It is the policy of OSSTF that employers should develop and/or utilize a Workplace Hazardous Materials Information System (WHMIS) and First Aid training programs acceptable to the Bargaining Unit. (R.10)
- 6.7.2.1 It is the policy of OSSTF that employers should make it a priority to train all staff during regular working hours, with replacement coverage, if necessary, or consider using paid professional development days, using programs acceptable to Bargaining Unit on issues of first aid, safety, violence, and emergency procedures. (A07)
- 6.7.3 It is the policy of OSSTF that employers should ensure that delivery of the WHMIS training program should be by qualified instructors acceptable to the Bargaining Unit. (R.10)

- 6.7.4 It is the policy of OSSTF that workplace inspections should be conducted by a certified worker member of the Joint Health and Safety Committee in accordance with the *Occupational Health and Safety Act*. (R.10)
- 6.7.4.1 It is the policy of OSSTF that the minimum training for Health and Safety Representatives should be Certification from the Workers' Health and Safety Centre.
- 6.7.4.2 It is the policy of OSSTF that each workplace should be fully inspected monthly. (A.07)
- 6.7.5 It is the policy of OSSTF that employers should not require Members to participate in employer-mandated WHMIS training programs beyond the normal school day or outside the defined school year without the consent of the Bargaining Unit. (R.10)
- 6.7.6 It is the policy of OSSTF that, in the event that a Bargaining Unit gives assent for training beyond the normal school day or defined school year, the employer should provide Members with appropriate compensation or compensating lieu time during the defined school year. (R.10)
- 6.7.7 It is the policy of OSSTF that district school boards should not use school buildings or property as storage sites for polychlorinated biphenyl (PCB) wastes. (R.10)
- 6.7.8 It is the policy of OSSTF that employers should provide information to enable Members to work in a safe and healthy manner. (R10)
- 6.7.9 It is the policy of OSSTF that employers should inform Members about potential threats or hazards in the workplace. (R.10)
- 6.7.10 It is the policy of OSSTF that employers, in consultation with the local Bargaining Units, should develop, or review annually, emergency response procedures and alert systems. (R10)
- 6.7.11 It is the policy of OSSTF that
  - 6.7.11.1 reconstruction or maintenance procedures that produce noise, airborne particles and/or gases which may result in adverse health effects to Members should be performed outside normal working hours whenever possible; (R.10)
  - 6.7.11.2 when reconstruction and maintenance procedures must be carried out during normal working hours, appropriate safeguards should be undertaken to eliminate excess noise, airborne particles and/or gases; and (R.10)
  - 6.7.11.3 if a Member suffers adverse effects because of the procedures outlined in 6.7.11.2, suitable alternate work should be assigned or a suitable replacement worksite should be arranged. (R.10)
  - 6.7.11.4. It is the policy of OSSTF that school boards and other employers of OSSTF

Members should develop policies and procedures addressing the specific accommodation needs of members within their workplaces to enable their continued employment. (A05)

6.7.11.5 It is the policy of OSSTF that harassment be recognized as a form of workplace violence and a health and safety issue. (A05)

6.7.12 It is the policy of OSSTF that employers having more than one workplace should establish and maintain multi-site Joint Health and Safety Committee(s) by applying to the Ministry of Labour with a Terms of Reference for approval, unless the unions are in agreement due to expansive geography and site-based committees can function well without a system-wide structure. (A.07)

6.7.13 It is the policy of OSSTF that notice of accidents, injuries and occupational diseases should be provided to the Joint Health and Safety Committee, as outlined by Section 51 and Section 52 of the Occupational Health and Safety Act and Section 5 of the Industrial Regulations. (A.07)

6.7.14 It is the policy of OSSTF that employers should ensure all asbestos in OSSTF workplaces be safely removed where appropriate and replaced with safe substitutes. (A07)

6.7.15 It is the policy of OSSTF that the school board employed educational team is a necessary component of a safe and healthy school. (A.08)

6.7.16 It is the policy of OSSTF that all publicly funded schools in Ontario should recognize the Day of Mourning for workers injured or killed on the job. (A.09)

## **6.8 In-School Medical Procedures**

6.8.1 It is the policy of OSSTF that each employer should establish policies relating to the administration of medication, medical procedures and physical procedures such that no teacher shall be required to do any medical or physical procedure for pupils that might in any way endanger the safety or well-being of the pupil or subject the member to risk of injury or liability for negligence. Such procedures include but are not limited to administration of medication, catheterization, lifting a pupil, physiotherapy, feeding handicapped pupils, postural drainage, manual expression of the bladder, and toileting assistance. (A.01)

6.8.2 It is the policy of OSSTF that each employer should engage personnel to carry out physical procedures required by pupils. (R.10)



- 6.8.3 It is the policy of OSSTF that, where it is not possible or feasible to provide the services in Policy 6.8.2 to a particular worksite, the student should be placed in a worksite where the services are available or the district school board should purchase such services from a neighbouring board as provided for in the legislation. (R.10)
- 6.8.4 It is the policy of OSSTF that employers, through existing or supplementary insurance coverage, should adequately insure personnel against claims arising from the administration of medication through policy, or directive, and those employees who in an emergency must deal with medical procedures. (R.10)
- 6.8.5 It is the policy of OSSTF that there should be no unilateral imposition of first aid training on Members by employers. (R.10)
- 6.8.6 It is the policy of OSSTF that an employer should employ a qualified replacement to cover any absences caused by a Member undertaking first aid training provided by the employer during work hours. (R.10)
- 6.8.7 It is the policy of OSSTF that employers should provide adequate information, equipment, material, and methods of safe disposal of those materials, for Members providing medical procedures, dispensing medication and/or providing other health-related services when they are contracted as a specific function of their job-related duties. (R.10)
- 6.8.8 It is the policy of OSSTF that employers should provide appropriate training from appropriate medical personnel to Members who perform medical procedures, dispense medication, and/or provide other health-related services when they are contracted as a specific function of their job-related duties. (R.10)

### 3. OSSTF/FEESO Health & Safety Structures

#### A. Provincial Organization

- 1. Health & Safety/WSIB Sub-Committee (of the Collective Bargaining Committee) comprised of:

Member from the Secretariat

- appointed by the General Secretary

A minimum of 4 members at-large

- appointed to CBC by Provincial Council

- 2. OSSTF/FEESO Health and Safety Instructors trained as Instructors through

the Workers Health and Safety Centre that assist the Sub-Committee in delivering Health & Safety education.

## **B. District Organization**

### **1. District Health & Safety Officer**

In a District **with one** Bargaining Unit – the Health & Safety Officer selected by the Bargaining Unit may also be referred to as the District Health & Safety Officer.

In a District **with more than one** Bargaining Unit – one of the Bargaining Unit Health & Safety Officers should be selected to also serve as the District Health & Safety Officer.

**Note:** If challenged, legal standing defers to the one representing a Bargaining Unit, so unless a District Health & Safety Officer also represents a Bargaining Unit, he/she is vulnerable to a challenge through the Ministry of Labour regarding legal responsibilities and rights under the Act, eligibility to serve on the Joint Health & Safety Committee, and eligibility to exercise the particular powers of a “certified worker”, regardless of training or qualifications.

**Avoid this problem by selecting a Bargaining Unit H&S Officer to also serve as the District H&S Officer**

### **Role of District Health & Safety Officer who is NOT also a Bargaining Unit Health & Safety Officer**

Without legal standing, there would be no duties or rights conferred by the Act. The District Council, however, may assign responsibilities regarding health and safety that serve the interests of District members and do not conflict with those of legally recognized Bargaining Unit Health & Safety Officers.

### **Suggested Duties of a District Health & Safety Officer**

- a. Advise, and take direction from the District Executive and Council on matters concerning occupational health and safety,
- b. Represent members’ interests in occupational health and safety with the employer (Board) and its agents,
- c. Co-ordinate matters concerning occupational health and safety among the District’s Bargaining Units (if more than one exists),

- d. Chair the District's Health and Safety Committee composed of all Bargaining Unit Health & Safety Officers, and other designated member,
- e. Provide advice and assistance to Bargaining Unit Health & Safety Officers and members, as required,
- f. Provide information and training to members, as required, and
- g. Assist the Provincial Office on matters concerning the health and safety of members.

### **Role of District Health & Safety Officers who is ALSO a Bargaining Unit Health & Safety Officer**

All the rights, duties and obligations required by the Act apply in the role of Bargaining Unit Health & Safety Officer, **outlined below**. The District Council may also assign additional responsibilities regarding health and safety that serve the interests of District members. (See Suggested Duties .... above).

#### **2. Bargaining Unit Organization**

##### **Each Bargaining Unit shall:**

- a. Elect or appoint a Health and Safety Officer who shall be a member of, and report to, the executive and/or council, and who shall be a worker member on the workplace Joint Health & Safety Committee (JHSC),

**Every Bargaining Unit in every District is entitled to, and should, seek representation on the Joint Health and Safety Committee for the workplace (Board).**

- b. Ensure that each workplace elects or appoints a Health and Safety Representative to the Branch executive, and
- c. Establish a Health & Safety Committee composed of all workplace Health & Safety Representatives, chaired by the Bargaining Unit Health & Safety Officer.

**Regular meeting agendas should include the following:**

- discuss issues and conditions in their worksites,
- plan strategies to get improvements in health and safety,
- monitor implementation of the Board's Health & Safety Policy
- monitor action taken by the Board in response to worksite inspections, and

- develop recommendations which the Bargaining Unit Health & Safety Officer can present to the Board's Joint Health and Safety Committee.

### **Duties of a Bargaining Unit Health & Safety Officer**

The Bargaining Unit Health & Safety Officer shall:

- a. Provide leadership to assist the Bargaining Unit in meeting its duties listed on page 1,
- b. Represent the Bargaining Unit as a worker member of the workplace Joint Health and Safety Committee (JHSC),
- c. Participate in OSSTF/FEESO worksite inspection (audits), as required through the Joint Health and Safety Committee terms of reference,
- d. Accompany a Ministry of Labour Inspector on a workplace inspection,
- e. Receive copies of all accident reports regarding member injury or illness,
- f. Assist Bargaining Unit personnel responsible for WSIB/LTD claims in attaining relevant documentation/information,
- g. Investigate all injuries/illnesses of members, particularly "critical injuries",
- h. Participate in Ministry of Labour and/or Board inquiries of injury/illness involving members,
- i. Endeavour to receive the training required <sup>1</sup> to be a "certified worker" and become "designated" by worker members of the Joint Health and Safety Committee as one of the two committee's "certified members",
- j. Chair meetings of the Bargaining Unit Health and Safety Committee composed of all workplace Health & Safety Representatives,
- k. Become "designated" by the JHSC to attend any and all testing in members' worksites concerning occupational health and safety [section 9(18)(e)(f)]
- l. Organize training sessions for workplace Health and Safety Representatives,
- m. Assist the Bargaining Unit's Chief Negotiator to develop contract language,

- n. Assist the Provincial Office in matters concerning the health and safety of members.

<sup>1</sup>The Act confers special rights and duties to a JHSC member who is “certified” and “designated”. OSSTF/FEESO policy requires that this Basic Certification Training (four days), and all H&S training, must be done by the Workers Health and Safety Centre.

### 3. Workplace Organization

Each workplace shall elect or appoint a Health & Safety Representative.

**Note:** Workplace Health & Safety Representatives have limited legal standing, duties or rights since the Act defers all responsibilities to the worker(s) selected by the “trade union” (bargaining unit) to be their member(s) on the Joint Health and Safety Committee. However, the workplace Representative is an important on-site asset – someone who can quickly respond to any health or safety concern of members and can communicate with, and assist, the Bargaining Unit/District Health & Safety Officer.

### Duties of a workplace Health & Safety Representative

The workplace Health & Safety Representative shall:

- a. Receive and pursue all health and safety concerns of workplace members, by:
  - i. referring all complaints to the supervisor/principal **and** the Bargaining Unit Health and Safety Officer,
  - ii. advising Branch members on health and safety matters,
  - iii. discussing the issue with worksite administration.
- b. Monitor the worksite for compliance with the *Occupational Health and Safety Act* and regulations,
- c. Report on a regular basis to the Branch Executive,
- d. Distribute health and safety information to members,
- e. Participate in worksite health and safety inspections, as required,
- f. Attend Bargaining Unit/District training workshops on health and safety matters,
- g. Represents the workplace on the Bargaining Unit Health and Safety Committee.

#### 4. Member's Rights and Duties

##### A. Member's Rights

Members have the legal right under the *Occupational Health and Safety Act* to:

1. Participate in decisions affecting their own health and safety protection in the workplace,
2. Have the workplace inspected regularly,
3. Information about potential hazards in the workplace and to ask questions about potential hazards,
4. Receive appropriate training regarding potential and existing hazards,
5. Recommend programs, measures and procedures respecting health and safety to the Joint Health and Safety Committee,
6. Identify potential or existing hazards,
7. Evaluate the employer's assessment of a designated substance,
8. Evaluate a control program proposed for a designated substance,
9. Refuse unsafe work. Teachers must ensure the safety of their students prior to a work refusal, (*See Appendix A – Information Bulletin on Right to Refuse*),
10. Access Material Safety Data Sheets (MSDS) and hazardous materials inventories,
11. Choose whether to participate in any prescribed medical surveillance program established by the employer,
12. Information such as the following:
  - (a) names and work locations of Joint Health and Safety Committee members
  - (b) copy of the Act and any explanatory material published by the Ministry posted in the workplace,

- (c) copies posted in the workplace of any Ministry Inspector's order or report, and any notices relating to injury, accidents or death,
- (d) annual summary of workplace injury experience through the Workplace Safety and Insurance Board (WSIB) as requested,
- (e) results of any report respecting occupational health and safety that is in the employer's possession as requested.

## B. Member's Duties

Members have the duty under the *Occupational Health and Safety Act* to [Section 28]

1. Work in compliance with the Act and Regulations,
2. Report to the employer, through the supervisor/principal, any contravention of the Act or the Regulations and the existence of any hazard of which the member is aware,
3. Use protective equipment that the employer supplies and requires to be used,
4. Refrain from using or operating any equipment, machine, device or thing or working in a manner that may endanger himself/herself or any other worker,
5. Refrain from removing or making ineffective any protective device required by regulation or by the employer. When a task requires removing or disabling a protective device, the worker must provide an adequate temporary protective device and re-install the original protective device immediately after that particular task is completed, and
6. Refrain from engaging in any prank, contest, feat of strength, unnecessary Running or rough and boisterous conduct.

*In addition to these duties under the Occupational Health and Safety Act, **teacher members** also have the following duties under the Education Act related to the health and safety of students.*

Teachers have the duty under the *Education Act* to:

7. Exemplify safe behaviour in teaching practices and procedures,
8. Instruct students in general and specific safety precautions and ensure the use of personal protection equipment where it is required,

9. Implement documented safety education programmes in accordance with School board policies and the regulations and standards of other regulatory bodies,
10. Maintain proper order and discipline in the classroom and while on duty in the school or on school grounds, and
11. Report any serious accidents to the administration indicating the cause and the treatment given, together with corrective actions taken.

## 5. Right to Refuse Unsafe Work (*Legal Work Refusal*)

### A. Conditions

1. Teachers should note that Regulation 191/84 which brought all teachers under the *Occupational Health and Safety Act*, states:  
“Part V of the Act (*the part dealing with the right to refuse*) does not apply to a teacher where circumstances are such that the life, health or safety of a pupil is in imminent jeopardy.”

**Regulation 857/90 mandated however that Teachers must ensure the safety of their students before exercising their right to refuse unsafe work.**

2. Members who work in a residential, correctional facility, hospital, residential group home or facility for persons with behavioural or emotional problems or physical, mental or developmental handicap **DO NOT** have this right to refuse unsafe work [section 43(2)]

**No worker can be dismissed, disciplined, suspended, penalized, intimidated, coerced or threatened by the employer (or agents of the employer) for exercising rights or responsibilities under the *Occupational Health and safety Act* and Regulations.** [Section 50]

### B. Procedure

See Appendix B – Information Bulletin: Your Right to Refuse Unsafe Work

## 6. Employer’s Duties and Responsibilities [especially Sections 9, 25, 26, 32]

Some duties of the employer under the *Occupational Health and Safety Act* are to:

- a. Establish a Joint Health and Safety Committee,



- b. Provide assistance and co-operation to the Joint Health and Safety Committee members with regard to the committee's legal functions,
- c. Post the names and work location of the Joint Health and Safety Committee members,
- d. Ensure that any measures and procedures prescribed through Regulations made under the Act are carried out,
- e. Take every precaution reasonable in the circumstances for protection of workers,
- f. Post copies of the Act excerpt poster, Ministry of Labour Orders and Reports, workplace inspection reports, and any other necessary explanatory material,
- g. Appoint "competent" persons as supervisors, <sup>2</sup>
- h. Provide information on testing to be used in the workplace,
- i. Respond in writing to recommendations of the Joint Health and Safety Committee within 21 days,
- j. Provide a fully equipped and clearly marked First Aid Station or Stations as prescribed by Regulation 1101/98,
- k. Prepare and review, at least annually, a written Occupational Health and Safety Policy,
- l. Develop and maintain a program to implement the Occupational Health and Safety Policy,
- m. Establish a medical surveillance program for the benefit of workers as prescribed,
- n. Provide and pay for safety-related medical examinations and tests for workers as prescribed,
- o. Keep readily accessible in each workplace a floor plan showing the names and locations of all hazardous materials and to provide unexpired Material Safety Data Sheets for such materials,

- p. Request and participate in health and safety investigations, and,
- q. Provide adequate funding to ensure the provision of a safe, healthy environment,
- r.
  - i. Prepare a policy with respect to workplace violence [section 32],
  - ii. Prepare a policy with respect to workplace harassment and review the policies as often as is necessary but at least annually [section 32],
- s. Develop and maintain a program to implement a policy with respect to workplace violence [section 32],
- t. Assess the risks of workplace violence that may arise from the nature of the workplace, the type of work or the conditions of work, and reassess the risks of workplace [section 32],
- u. Take every precaution reasonable in the circumstances for the protection of the worker if they become aware or ought reasonably to be aware that domestic violence that would likely expose a worker to physical injury may occur in the workplace [section 32],
- v. provide information to a worker to include the duty to provide information including personal information related to a risk of workplace violence from a person with a history of violence if
  - i. the worker can be expected to encounter that person in the course of his/her work
  - ii. the risk of workplace violence is likely to expose the worker to physical injury
- w. develop and maintain a program to implement the policy with respect to workplace harassment that
  - i. includes measures and procedures for workers to report incidents of workplace harassment
  - ii. sets out how the employer will investigate and deal with incidents and complaints of workplace harassment and include any prescribed elements [section 32.06]
- x. shall provide a worker with
  - i. information and instruction that is appropriate for the worker on the

- contents of the policy and program with respect to workplace harassment
- iii. any other prescribed information [section 32.07]

- y. Shall provide workers and supervisors with health and safety awareness training subject to Regulation.

<sup>2</sup>The Act has a special meaning for the word competent, namely (i) someone who is qualified because of knowledge, training and experience to organize the work and its performance; (ii) is familiar with the *Occupational Health and Safety Act* and its Regulations that apply to the work; and (iii) has knowledge of any potential or actual danger to health or safety in the workplace.

## 7. Supervisor's Duties and Responsibilities

Any person who exercises authority over a worker in terms of hiring, firing or demotion is considered a supervisor and as such must be trained by the employer and be capable of training others to comply with the provisions of the Act and Regulations. **All principals and vice-principals acting as principals are supervisors. Department Heads are NOT supervisors.** (For further detail, see OSSTF/FEESO Information Bulletin: "Who Is Legally a Supervisor under the OHS Act?".)

**Note:** Recent legislation (Bill C-45) has deemed someone who directs work to be vulnerable to Criminal Code charges of negligence. Charges of criminal negligence may be brought where a person does anything or fails to act in a way which demonstrates a wanton or reckless disregard for the lives or safety of other persons and death or bodily harm results.

Supervisors may be defined as agents of the employer under the *Occupational Health and Safety Act* and have a personal liability, if convicted of contravening the Acts or its Regulations, of significant fines and/or one year in jail.

Some duties of a Supervisor are: [Section 27]

- a. Ensure that the worker works in a manner and with protective devices, measures and procedures required by the Act and Regulations,
- b. Ensure that the worker uses the protective devices or clothing that the employer requires,
- c. Advise the worker of the existence of any potential or actual danger to the health and safety of the worker of which the supervisor is aware,

- d. Investigate the circumstances of any refusal to work,
- e. Provide a worker with written instructions as to the measures and procedures to be taken for the protection of the worker.

*In addition to the above, a school principal has the responsibility under other legislation and Board policies to:*

- f. Provide for educational programmes and resources which assist in the development of good safety practices and attitudes,
- g. Take leadership in establishing a school health and safety committee and represent the board on that committee,
- h. Facilitate regular health and safety inspections by workers (where possible, certified workers),
- i. establish procedures for reporting and responding to school accidents and to ensure that staff members are familiar with them,
- j. Identify potentially hazardous situations or conditions and ensure that safe practices and procedures are in place to eliminate them,
- k. Refuse to admit any person whom the principal suspects is infected with or exposed to a communicable disease,

**The Supervisor must promptly contact the Medical Officer of Health and the designated Board official upon suspicion of any communicable disease, or unsanitary condition, in the school.**

- l. Make employees in each school aware of personnel (who volunteer to be identified) who have First Aid and/or Cardio-Pulmonary resuscitation training,
- m. Ensure adequate qualified supervision of students at all time,
- n. Ensure appropriate class sizes for the class and/or activity undertaken,
- o. Give assiduous attention to the health and comfort of the students, and to the cleanliness, temperature and ventilation of the school.

## 8. Joint Health and Safety Committee (JHSC) [Section 9]

### A. JHSC Guidelines for Educational Workplaces

The *Occupational Health and Safety Act* mandates that an employer establish a Joint Health and Safety Committee in a workplace where twenty or more workers are regularly employed. **This joint committee is truly bipartite with labour and management equally empowered by the Act.**

The Ministry of Labour may consider some employers to be “Multi-Site Workplaces” where the entire Board (i.e. all schools, lands, premises and buildings under the jurisdiction of a school board) constitutes one workplace for the purpose of establishing the required central Joint Health and Safety Committee. A guideline on such multi-site workplaces has been published by the Ministry and is available from the Health & Safety/WSIB Sub-Committee at OSSTF/FEESO Provincial Office.

Employers may apply to the Minister of Labour for approval to establish more than one JHSC. However, the Terms of Reference of any JHSC must be negotiated with the Bargaining Units representing the workers, signed by the Bargaining Unit President and must be submitted to the Minister of Labour for approval.

The most effective JHSC represents all employee groups/Bargaining Units working together with the Board’s management members on the same joint committee.

### B. Structure and Function of the JHSC

#### 1. Structure

In a workplace where twenty or more people are regularly employed, the Joint Health and Safety Committee must be comprised of a minimum of four persons, with at least 50% representation from workers. Worker representatives are appointed/elected by their bargaining units.

**OSSTF/FEESO should seek representation for each of its bargaining units on the JHSC**, but as a minimum the District Health and Safety Officer should be a worker representative on the JHSC. It is the position of OSSTF/FEESO that an OSSTF/FEESO representative on the JHSC should be trained as a “certified worker” (See definition and special duties/rights stipulated in the Act).

This Act provides for co-chairpersons, one representing the employer and one representing workers. The employer must provide a secretary who

Prepares and keeps minutes, compiles agendas, distributes copies of inspection reports and other materials, etc. The JHSC must meet at least once every three months; however, it is the position of OSSTF/FEESO that meetings should be held monthly.

## 2. Functions

Some of the functions of the JHSC outlined in Section 9 are to:

- a. Identify situations which would be dangerous or hazardous to workers;
- b. Make suggestions for the improvement of worker health and safety;
- c. Recommend to the employer the establishment, maintenance and monitoring of programs, measures and procedures respecting the health and safety of members;
- d. Obtain information from the employer about:
  - i. Identification of potential or existing hazards connected with materials, processes or equipment;
  - ii. Health and safety experience and work practices and standards in related industries of which the employer is, or should be aware;
  - iii. Results of testing and procedures for conducting tests of any equipment, machine, device, article, thing, material or biological, chemical or physical agent in or about a work place for the purpose of occupational health and safety;
- e. Maintain minutes of meetings (available for review by Ministry of Labour inspectors);
- f. Designate a worker member(s) of the JHSC or designate to inspect the physical condition of the workplace monthly, or at intervals established by the JHSC such that entire workplace (all worksites) is annually inspected. It is preferable to have a certified member do the inspection;
- g. Designate one or more worker committee members to investigate fatalities and critical injuries and one member to investigate the scene of the incident and report his/her findings to the Minister of Labour and the JHSC;
- h. Meet at least once every three months (OSSTF/FEESO position is monthly meetings);

- i. Consult with management on any hygienic testing and have a worker member, designated by the worker members, present during the testing;
- j. Perform any additional functions or duties arising from a collective agreement;
- k. Participate in the design and implementation of training as prescribed under the Act in its Regulations;
- l. Assist in the preparation of hazardous materials inventories;
- m. Receive and review copies of all Material Safety Data Sheets (MSDS);
- n. Perform other duties as outlined in Section 9 of the Act.

**C. Compensation for JHSC Members [Section 9(34), (35) and (36)]**

Worker members of the JHSC are entitled to take paid time from work as is necessary to carry out duties related to workplace inspections, committee meetings, and accident investigations, and other duties approved by the JHSC.

A member of a JHSC is entitled to:

- 1. One hour or such longer period of time as the committee determines is necessary to prepare for each committee meeting;
- 2. Such time as is necessary to attend meetings of the committee;
- 3. such time as is necessary to carry out the member's duties related to workplace inspections and accident investigations, as determined by the JHSC.

**9. "Certified Workers"**

**A. Definition**

A "certified worker" means a worker member of the JHSC who is certified by the Workplace Safety Insurance Board (WSIB). (*See* section D. Training, below).

## **B. Selection**

A “certified worker” is to be selected by the workers from among the worker members of the JHSC in accordance with Section 9(12).

## **C. Duties**

A certified worker shall:

1. Inspect the physical condition of the workplace on behalf of the workers in accordance with the schedule established by the JHSC [Section 9(25) & (26)];
2. Be present and act on behalf of workers during an inspection by the Ministry of Labour or the investigation of a work refusal [Section 43];
3. Request the immediate investigation of “dangerous circumstances” in the workplace [Section 45].

**It is the position of OSSTF/FEESO that at least one OSSTF/FEESO representative on the JHSC should be trained as a “certified worker”.**

## **D. Training**

The Workplace Safety and Insurance Board (WSIB) requires a minimum certification training program (Category B) comprised of basic certification and hazard specific modules, as determined by the Joint Health and Safety committee.

Safe Work Associations are licensed by the WSIB to train and approve trainers of the certification program. The employer may decide who delivers the training.

**It is the policy of OSSTF/FEESO that only the Workers Health and Safety Centre will provide training for our members.**

## **10. Protective Issues**

The Act and Regulations are considered only the minimum standard. While some employers recognize that they must comply with the Act, in so far, as it pertains to members, others are unwilling to facilitate its operation quite as easily as they perhaps might. This means that a number of items which go beyond the provisions of the Act itself may need to be negotiated



and set out in the collective agreement. Provisions which should be negotiated include, but are by no means limited to:

- A. compliance by the employer with the Act and Regulations;
- B. adherence to recommendations of the JHSC;
- C. right to OSSTF/FEESO certified workers;
- D. release time/compensation for the performance of health and safety related activities;
- E. hiring of replacement workers for health and safety representatives engaged in health and safety business;
- F. exclusion of teachers in charge of organizational units as supervisors;
- G. inspections during the regular work day;
- H. training in health and safety;
- I. required equipment;
- J. refusal to work;
- K. access to information;
- L. health and safety grievances;
- M. Workplace Safety and Insurance Board;
- N. in-school medical procedures;
- O. communicable diseases (AIDS/Hepatitis);
- P. first aid training.

**For further information, consult your Chief Negotiator and the Collective Bargaining Handbooks, particularly the OSSTF/FEESO paper SWC Number 37/97-98 on Health & Safety Contract Language.**

## 11. Professional Issues

The *Education Act* deals with the relationship between school boards, teachers, students, and the workplace. The *Occupational Health and Safety Act* deals with the relationship between employers, workers, and the workplace. A comparison of the *Education Act* and the *Occupational Health and Safety Act* in Chart form is provided on the next page.

### Section 265 – Duties of Principal

“(j)care of pupils and property, - to give assiduous attention to the health and comfort of the pupils, to the cleanliness, temperature and ventilation of the school, to the care of all teaching materials and other school property, and to the condition and appearance of the school buildings and grounds;”

### Regulation 339/91, Section 17 (formerly reg.262, Section17) – Duties of Teachers in charge of Organizational Units

“In addition to duties as a teacher under the Act and this Regulation, a teacher appointed under section 15 or 16 shall;

- (f) ensure that equipment for use in courses and activities in the organizational unit or programme is maintained in safe working order;”

### Regulation 298, Section 20 (formerly reg. 262, Section 21) – Duties of Teachers

“In addition to the duties assigned to the teacher under the Act and by the board, a teacher shall;

- (g) ensure that all reasonable safety procedures are carried out in courses and activities for which the teacher is responsible;”

**The Education Act  
And the  
Occupational Health and Safety Act**

Issue	Education Act	Occupational Health & Safety
1. Kind of Prosecution	Civil	Criminal
2. Duties	Principal Department Heads Teachers	Employers Supervisors (e.g. Principal) Workers
3. Relationship to Students	Direct Responsibility	Indirect Responsibility Students' safety must be assured before a refusal to work is invoked by teacher members
4. Application	Only for teacher members (not other workers)	Workers in Ontario
5. Enforcement	Ministry of Education	Ministry of Labour
6. Implementation	Employer Trustees Supervisory Officers Principals Teachers	Employer Joint Health Safety Committees District/Bargaining Unit H&S Officers Supervisors (e.g. Principals) Workers

Teachers are included under the provisions of the *Occupational Health and Safety Act*. These provisions were extended to include teachers through Regulation 857/90, in force November 16, 1992.

### Regulation 857/90 (Formerly Reg. 191/84)

- Sec. 1. The purpose of this Regulation is to make the Act apply to teachers in a manner that is consistent with the *Education Act*.
- Sec. 2. Subject to section 3, the Act applies to all persons who are employed as teachers as defined in the *Education Act*.
- Sec. 3. The following conditions and limitations apply to the application of the Act to teachers.
- A. A supervisor or teacher appointed by an employer of teachers to direct and supervise a school or an organizational unit of a school is a person who has charge of a school or authority over a teacher and exercises managerial functions.\*
  - B. An employer of teachers that establishes and maintains one joint health and safety committee for all its teachers shall be deemed to have complied with subsection 9(2) of the Act with respect to all its teachers but nothing in this paragraph requires the discontinuance of any joint health and safety committee or committee of a like nature in existence on the 1<sup>st</sup> day of October, 1979 or prevents the employer from establishing more than one joint health and safety committee for its teachers.
  - C. Part V of the Act does not apply to a teacher where the circumstances are such that the life, health or safety of a pupil is in imminent jeopardy. (See Appendix B for details of this clause's effect on our right to refuse unsafe work)

CBC Health & Safety/WSIB Sub-Committee

## Information Bulletin

TO: All Members

### Your Right to Refuse Unsafe Work

The *Occupational Health and Safety Act*, 1990 affirmed three important rights for workers:

1. The right to **KNOW** about all hazards in the workplace;
2. The right to **PARTICIPATE** in training and consideration; and
3. The right to **REFUSE UNSAFE WORK**

In 2010, the OHSA was amended to include workplace violence as a hazard.

Section 43 of the Act provides that:

You may refuse to work where you have “**reason to believe**” that any equipment, machine, device, thing, or physical condition of the workplace is likely to endanger yourself or another worker or that workplace violence is likely to endanger himself or herself.

You do NOT have to prove it is unsafe – only have “reason to believe”.

Remember, the *Education Act* requires that teachers **MUST** ensure the safety of students in your care **FIRST**.

- **Any unsafe condition of work should be corrected immediately.**
- **No work should endanger anyone’s health or safety.**
- **If your concern cannot be corrected immediately using existing resources, you should exercise your legal right to refuse unsafe work.**

Often threatening to refuse unsafe work is sufficient to get the problem corrected.

See refusal procedure on the next page...

## CBC Health &amp; Safety/WSIB Sub-Committee

## Steps to follow in a work refusal situation

## First Stage

1. ENSURE the safety of your students first. (Teachers only)
2. REPORT the circumstances to your supervisor/principal (not a Department Head) and state the following:

“I have already ensured the safety of my students (Teachers only). I have reason to believe that by performing the work, which I am required to do, I am likely to endanger a fellow worker or myself. Therefore, I am refusing to do the particular work in question, as permitted by the *Occupational Health and Safety Act*, for the following reasons ... Please investigate my concerns in the presence of my OSSTF/FEESO member on the Joint Health & Safety Committee”.

3. REMAIN in a safe place. The supervisor/principal, in the presence of your OSSTF/FEESO Health and Safety Officer, will investigate “forthwith” (i.e. without delay).
4. RETURN to work, upon completion of the investigation, if you agree that it is now safe.

## Second Stage

After following the steps in the First Stage, if you do **NOT** agree that it is safe to resume work, proceed with the following steps:

At this stage, you must have REASONABLE GROUNDS to believe the work is **dangerous**. (Reasonable grounds means that you have some objective information that causes you to believe the work is still unsafe).

5. REMAIN in a safe place, or ACCEPT reasonable alternative work.
6. TELEPHONE the Inspector from the local Ministry of Labour office.  
(Either you, the supervisor or your OSSTF/FEESO Health & Safety Officer can do this).

Any other worker must be informed of your work refusal, and the reasons for it, in the presence of your OSSTF/FEESO Health & Safety Officer (or their worker representative on the Joint Health and Safety Committee) before they can be given and accept the work under dispute.

The Ministry of Labour Inspector will inspect the situation in the presence of your OSSTF/FEESO Health and Safety Officer and your presence, if you wish. The inspector will make a report in writing.

7. You must RETURN to work, if the Inspector deems it safe.
8. APPEAL of the Inspector’s decision can be made by any of the parties involved.

## Resource Organizations

### Canadian Centre for Occupational Health and Safety (CCOHS)

135 Hunter Street East  
Hamilton, Ontario  
L8N 1M5  
[www.ccohs.ca](http://www.ccohs.ca)

Tel: 905-572-2981  
1-800-263-8466

### Occupational Health Clinic for Ontario Workers

[www.ohcow.ca](http://www.ohcow.ca)

Hamilton  
848 Main Street East  
Hamilton ON L8M 1L9  
Tel: 905-549-2552 1-800-263-2129

Sudbury  
84 Cedar Street, 2<sup>nd</sup> Floor  
Sudbury ON P3E 1A5  
Tel: 705-523-2330 1-800-461-7120

Windsor  
3129 Marentette Avenue, Unit #1  
Windsor ON N8X 4G1  
Tel: 519-973-4800 1-800-565-3185

Thunder Bay  
1151 Barton Street, Suite 103B  
Thunder Bay ON P7B 5N3  
Tel: 807-623-3566

Sarnia-Lambton  
171 Kendall Street  
Point Edward ON N7V 4G6  
Tel: 519-337-4627

Toronto  
970 Lawrence Avenue West, Suite 110  
Toronto ON M6A 3B6  
Tel: 416-449-0009 1-888-596-3800

Provincial Office  
15 Gervais Drive, Suite 601  
Don Mills, Ontario  
M3C 1Y8  
Tel: 416-510-8713 1-877-817-0336

**Ontario Ministry of Labour Occupational Health and Safety Division**

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

400 University Avenue  
14<sup>th</sup> Floor  
Toronto, Ontario  
M7A 1T7

Tel: 416-326-7600  
1-866-932-7229

Additional phone numbers:

**Policy and Regulations**

- 416-326-9293

**Occupational Health and Safety Branch**

- 1-877-202-0008

The Ministry of Labour Occupational Health and Safety Division has District Offices in the following cities:

Hamilton	Sault Ste Marie
Kingston	South Porcupine
London	St. Catharines
Mississauga	Sudbury
Newmarket	Thunder Bay
North Bay	Toronto (2 offices)
Ottawa	Waterloo
Peterborough	Windsor

**Windsor Occupational Health Information Services**

[www.mnsi.net/~wohis](http://www.mnsi.net/~wohis)  
3129 Marentette Ave. Unit #2  
Windsor ON N8X 4G1  
Tel: 519-254-5157



## Workplace Safety & Insurance Board

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

200 Front Street West  
Toronto, Ontario  
M5V 3J1

Tel: 416-344-1000  
1-800-387-0750

## Primary Resources for OSSTF/FEESO

### Workers Health and Safety Centre

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

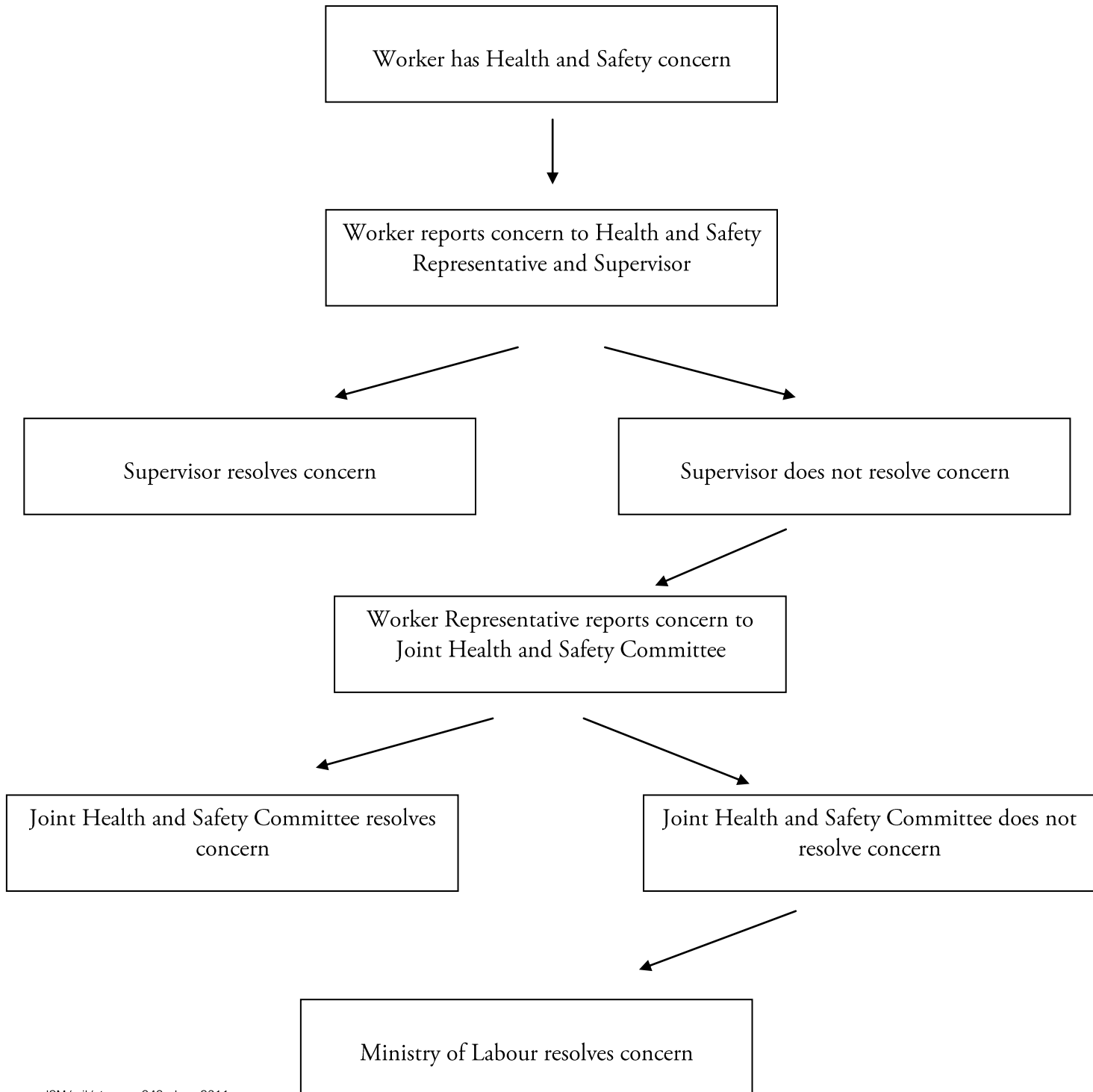
15 Gervais Drive, Suite 802  
Don Mills, Ont  
M3C 1Y8

Tel: 416-441-1939  
1-888-869-7950

The “**Workers Centre**” has offices in the following cities:

Hamilton	905-545-5433	Sarnia	519-541-9333
Ottawa	613-232-7866	Sudbury	705-522-8200
Thunder Bay	807-473-3634	Toronto	416-441-1939

Flow chart for Health and Safety concerns



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