

June 13 Cancellation at Mount Sinai Hospital

Introduction

Allegations of political interference ran high on June 13, 2003, when the Ministry of Labour cancelled an urgent safety meeting under the *Occupational Health and Safety Act* to investigate worker safety complaints at Mount Sinai Hospital and to avert a possible walkout by nurses.

The Ministry's motivation to back off from safety enforcement at Mount Sinai remains unclear to this day. Also unclear is the process by which the decision was made and even the identity of the officials who made the decision. This section will deal with three questions:

- What happened?
- Was there political interference?
- Why was the meeting cancelled?

The Commission investigated this allegation in detail because, in all the rumours and suspicions around the SARS crisis of 2003, it is the only concrete allegation of political interference.

Rumours and Allegations

Rumours abounded that the meeting was cancelled because of political pressure at the behest of the Premier, or the Minister of Labour, or the Deputy Minister of Labour, or someone in government above them, or Mount Sinai. A nursing union representative thought it was one of the first three. She told the Commission:

[The circumstances of cancellation] clearly indicate that problems around the Ministry of Labour not enforcing the Act are coming from above the director level. So it's either from the Deputy Minister's office,

from [the Premier's] office, or from [then Labour Minister] Brad Clark's office, so there's only three offices that it could be coming with.

A Ministry of Labour employee thought it was the hospital itself:

... and my understanding was that the next place to meet with people was going to be at Mount Sinai. My recollection at the time was that we just got told to back off, and the rumour going around, and all I can say is that what I heard at the time is that the CEO at the hospital called somebody at 400 Bay [Ministry of Labour head office] and said back off, and we backed off ... Everybody seemed to be running scared of the hospitals.

The concrete allegation, although hearsay, came from a reliable confidential source:

[...] told me that ... [the] CEO of Mount Sinai called Tony Dean and said we don't have a problem so cancel the inspection. Tony Dean called [Deputy Minister] Paavo [Kivisto] and said cancel it.

Intervention by Mr. Dean, the Secretary of Cabinet, to cancel a statutory safety investigation at the behest of a hospital would raise serious issues of improper interference with worker safety procedures mandated by the *Ministry of Labour Act* and the *Occupational Health and Safety Act*.

The investigation of this allegation is set out in detail below.

The purpose of the aborted June 13 meeting was to avert a threatened walkout by Mount Sinai nurses who were concerned about personal protective equipment, lack of respirator fit testing and other practices they considered dangerous to their safety. One observer said:

People were really scared there.

On June 11, Andy Summers, the Ontario Nurses' Association (ONA) union representative at Mount Sinai, sent an email to the ONA advising that he had held three meetings with Mount Sinai CEO Joseph Mapa and that he had told Mapa that the lack of action on fit-testing issues had forced Summers to support a work stoppage:

I informed him that the three weeks of promising mask testing and to this date not one nurse tested, has forced me to provide all nurses with the necessary tools and support to institute a work stoppage ... and I would be contacting every one of my members via mail to give them information and instructions to do so ...⁷⁸⁹

The ONA brought these concerns to the attention of the Ministry of Labour and in particular of Dr. Leon Genesove, the Provincial Physician, who described the nurses' concern:

... a big concern that the staff of Mount Sinai Hospital, that nurses represented by ONA may walk out of the hospital. It came to the attention of the Ministry of Labour and I was asked if I could address the concerns. I spoke to people – I had been speaking to Erna Bujna, and I was also speaking with the president of ONA at the time. And there were lots of concerns from the staff about respirators and infection control issues and infection.

Dr. Genesove also described the Ministry's response:

What we agreed to then [was] that they, the ONA president, would advise their staff not to walk out and the Ministry of Labour would conduct an investigation. So what I arranged for is a Ministry of Labour inspector and myself, or Dr. Lillian Wong, the Ministry of Labour inspector and myself, we would meet with the Mount Sinai people off-site and deal with the issues. So we're going to have the Ministry of Labour inspector and myself, a management representative from the hospital and worker representatives from the Joint Health and Safety Committee. So we agreed to that, and I reported back to my director, Ed

789. This is a convenient place to note that Mr. Mapa, the Mount Sinai CEO, recalled no such conversation:

I don't recall that, union representatives come into my office all the time. It could have happened, but no.

Neither did he recall anything about the cancelled meeting, nor did Leslie Vincent, the Mount Sinai senior VP of nursing. They both thought they would have recalled any suggestion of a work stoppage and a meeting to deal with the threat of a work stoppage. Without finding against Mr. Mapa, it is clear from other evidence that the possibility of a work stoppage was brought to his attention and that the hospital was formally notified of the meeting that was to take place on June 13.

McCloskey. He had told me about the potential walkout, and so it ended up being scheduled for two days after the telephone conversations.

June 13 at 11 a.m. was the time scheduled for the meeting of the Ministry of Labour, Mount Sinai officials, union officials and representatives of the hospital's Joint Health and Safety Committee. The Ministry did not want its inspectors to go physically into the hospital because possible SARS exposure might force them into quarantine and make them unavailable to carry on their work. It was a common practice for the Ministry, in urgent situations when it was difficult or dangerous to meet in the work-site, to meet offsite, and it was therefore arranged to have the meeting at the downtown Marriott Hotel. Although the meeting was not to be physically in the hospital, it was still a formal field visit under the provisions of the *Occupational Health and Safety Act* and under the safety regulations for health care facilities.

The Ministry, on the afternoon of Thursday, June 12, in an internal email, confirmed the meeting for the following morning at 11:00:

From: Grier, Stephen (MOL)
Sent: Thursday, June 12, 2003 2:51 PM
To: Rae, Robert (MOL); Wong, Lillian (MOL); Genesove, Leon (MOL); Ward, Ian (MOL); Walker, David (MOL); Fliegl, Anna (MOL); Baker, Murray (MOL); Boeswald, Joe (MOL); Kwok, Steve (MOL)
cc:
Subject: Proactive Meetings with Hospital Personnel

The following proactive meetings have been arranged with hospital staff to address the issue of worker health and safety as it pertains to SARS.

Mt. Sinai Hospital

Meeting will take place at 11:00 am on Friday, June 13th 2003 at the Marriott Hotel (Eaton Centre) in the Carlton Room. Arrangements have been made with the hospital's Director of Occupational Health & Safety, Mary Anne Adams, for the cochairs of the JHSC and an ONA representative to be present. Further employer representatives will be identified prior to the meeting.

William Osler Health Centre (Etobicoke General)

Meeting will take place at a Medical Building located at 89 Humber College Blvd. (near but not connected to the hospital) on Monday, June

16th 2003 at 10:00am. The hospital's Director of Occupational Health & Safety, Terry Siriska, will ensure that there is adequate worker and employer representation at the meeting.

FYI.

Steve G.

As a result of the Ministry promise of the June 13 meeting, the Ontario Nurses' Association advised its members at Mount Sinai to stay on the job.⁷⁹⁰

On the late afternoon of June 12, the Ministry abruptly cancelled the meeting and thereby created for itself a serious credibility problem and a loss of confidence among nurses.

Different Versions

Ministry of Labour

The official Ministry explanation for the cancellation is that the meeting was cancelled because there was no problem at Mount Sinai. The Ministry's submission to the SARS Commission in November 2003 said:

The consultation at Mount Sinai Hospital did not take place as scheduled. The hospital had been reclassified to a Category 0 (no known cases of SARS).

Pages 15-17 of the Ministry's March 15, 2006, response to a Commission letter contain a brief summary of SARS-related communications received by it during the outbreak. Page 16 contains the following information under the heading "MOL Response" for Mount Sinai:

790. ONA President Barb Wahl pointed out to the local Mount Sinai union representatives the limited circumstances under which nurses could withdraw their services, even for serious safety concerns.

Mt. Sinai reported no issues – field visit deferred pending worker complaints.

These explanations required further investigation. There were in fact serious unresolved issues at Mount Sinai, issues that led to a threatened work stoppage averted only by the Ministry promise of an inspection into worker complaints.

The fact that Mount Sinai reported no issues is no reason to back off the investigation of serious worker complaints. The whole point of an inspection is to not see whether the hospital reports any safety issues, but to see whether there are in fact any safety issues. The Ministry is supposed to investigate worker complaints independently of the employer. The Ministry is not supposed to cancel an investigation because the employer says there is no problem.

The complaint from the nurses had nothing to do with the hospital's classification. The complaint was that safety directives were not followed and that there were breaches of the *Occupational Health and Safety Act*. The fact that a hospital has a zero SARS classification is no defence to a failure to follow safety directives and no defence to a breach of the *Occupational Health and Safety Act*. And because the Commission has seen no evidence that Mount Sinai's SARS status changed between June 11, when the meeting was scheduled, and June 12, when it was cancelled, it seems implausible to advance the hospital's SARS status as a reason for cancelling the scheduled meeting.

Furthermore, the fact that Mount Sinai reported zero SARS is no reason to take off the table a safety inspection to investigate worker safety in a hospital where seven health workers⁷⁹¹ had already come down with SARS despite assurances that all appropriate safety measures were in place.

The direction to cancel the June 13 meeting came from David Walker, the director of the Ministry's central region, in a telephone call to Dr. Genesove, who had been dealing with the ONA.

Dr. Leon Genesove, Provincial Physician

Dr. Genesove recalls:

Dave Walker is director of central region of the Ministry of Labour and instructed me that the visit to Mount Sinai Hospital should be cancelled,

791. See Ministry of Labour occupational illness investigation, Synopsis of Investigator's Findings, p. 2.

apparently because the issues had been resolved there.

Dr. Genesove recalls that he advised Mr. Walker that there were still concerns at the hospital, and that Mr. Walker said, “Let me give you the phone to Helle and she’ll explain it.” Walker gave the phone to Helle Tosine, the Assistant Deputy Minister. Dr. Genesove said:

I was in the Downsview office at the time and he was somewhere, I guess at our head office. He said, let me give you the phone to Helle Tosine, our ADM, and she’ll explain it. Helle gets on and she said, we have to cancel the visit. I said, this is really a bad idea, why are we doing this? She says, here, speak with Paavo Kivisto, the Deputy Minister; Paavo said we have to cancel the meeting. I spoke to Paavo afterwards.

Dr. Genesove called the ONA to let them know the meeting had been cancelled:

Dr. Genesove: Later on in the afternoon, I phoned up the Ontario Nurses’ Association and spoke to [one of its representatives] and let her know the Mount Sinai Hospital meeting was being cancelled, and of course she was quite upset about that because the issues hadn’t gone away.

Question: So is there someone we should talk to who might know more about this?

Dr. Genesove: To get more information, you have to speak to probably Paavo or Helle about it and get additional information. The visit ended up taking place about two or three weeks later, at least we started it ...

Paavo Kivisto, then Deputy Minister, Ministry of Labour

Mr. Kivisto recalled an issue around Mount Sinai, but not the details. He said that he did not tell staff what to investigate and what not to investigate, that there was no political pressure from the Minister of Labour and that all complaints and refusals were investigated:

Mr. Kivisto: There was an issue at Mount Sinai. I don’t remember the details; I think you’re correct to say that there was a

planned inspection, or a planned something, and then it was discovered that Mount Sinai was not – didn't fit the criteria that the Ministry had established of who we were supposed to inspect. So it was taken off the list. There was some controversy over that. Helle [Tosine] can give you a better understanding around that, because I was not involved in that transaction that I am aware of.

Question: In November of 2003, at the public hearings, the Ministry's comment at that time was that there was a consultation but that it didn't take place because Mount Sinai was classified to a level zero.

Mr. Kivisto: They had no SARS. Because they were focusing on the ones that had SARS. I remember there was some question, some controversy over ...

Question: ONA's complaint to the Ministry was that Mount Sinai was not following all of the directives given in respect of SARS and they had evidence to support it. The complaint was that there was a serious health and safety concern at Mount Sinai, that the employer was violating the Act and the directives. The consultation was cancelled, so you can see, obviously, ONA saying, we went to the Ministry, we said we had evidence, you cancelled it, there must have been some political pressure brought to bear.

Mr. Kivisto: I don't think so, no, not in that matter. I've no recollection of any political pressure in that the Minister – in terms of him, personally, or his office, never took an active hand in determining how to respond, what was investigated. I didn't tell staff what to investigate and what not to investigate. All complaints and refusals were investigated and were expected to be investigated. That one, my recollection was that I thought it was a planned inspection that we were going to do and because it didn't fit the criteria we took it off the list and focused on the ones that fit the criteria. Helle was

on the scene and could give you more detail on that, because I can't ...

***Helle Tosine, Assistant Deputy Minister,
Ministry of Labour***

The Commission put to Ms. Tosine the suggestion that Tony Dean called Mr. Kivisto and the Mount Sinai consultation was off:

Question: At Mount Sinai there was a consultation scheduled for some day in June, I think it was around the 11th or the 12th of June. We have the suggestion that the CEO of Mount Sinai called Tony Dean, the Secretary of Cabinet, who I think, at one point, worked in the Ministry of Labour.

Ms. Tosine: Not then.

Question: Not then, no, no, but in a prior life. The suggestion is that Tony Dean then calls Paavo, and the Mount Sinai consultation is called off.

Ms. Tosine: That's not what happened.

Question: No. Then what happened?

Ms. Tosine: We were, it wasn't a consultation, it was more of a proactive inspection.

Question: An inspection?

Ms. Tosine: Yeah, so those hospitals were categorized into those three levels – into 3, 2, 1, they were. And it was mandatory proactive inspection of all level 3 hospitals. So we got the rankings from Health, I can't remember how frequent it was, but they were pretty critical rankings of whether there was probable or suspected SARS in those hospitals. So, as I understand it, I was trying to check that point, I think the ranking changed,

absolutely nothing to do with the CEO calling Tony Dean.

Question: Why would he call Tony Dean?

Ms. Tosine: Because people do that.

Question: Thinking they can solve a problem by ...

Ms. Tosine: No, they just go on about it. People do that now. You know that happens all the time, you get calls from various manufacturing firms ... There was absolutely no interference from Tony Dean.

Question: So when he calls Tony Dean, it's to what, to complain about the fact that there is going to be a review and say well we're not a Level 3 or 2 or whatever it was, or ...

Ms. Tosine: I don't know what he told him about. I guess you'll have to ask Tony Dean about it. But certainly nobody called me, nobody called me to direct me.

Question: No. Okay. But Paavo spoke to you?

Ms. Tosine: About the call?

Question: Yeah.

Ms. Tosine: Actually I don't remember that, maybe, maybe he did. If he said he did then he probably did, but I actually don't remember that.

Paavo Kivisto, then Deputy Minister, Ministry of Labour

Mr. Kivisto, in a further interview, was asked about the alleged phone calls from Joe Mapa to Tony Dean to Mr. Kivisto to cancel the Mount Sinai inspection. Mr. Kivisto told the Commission:

I would not have cancelled that meeting. Tony would never give me direction ... inspections or investigations. He was formerly a deputy. He

would not ever put that kind of request. If he put that kind of request on me, I'd have difficulty and I'd remember that. I don't take direction from ministers, from other deputies, and CEOs about how we do work at the Ministry of Labour. Never have, never will. A couple of times I thought I was going to be fired for that, stood my ground around investigations of the Ministry because my boss or somebody had given me expectations of what we should or should not do. I guard that jealously. As Deputy, I will not [tell] Operations what to do, what not to do on our investigations or meetings with stakeholders. That's their job. You know, CEOs, I got calls from CEOs. I got calls from unions when I was there. You listen to them but that doesn't influence a decision. The decisions are made on the basis of fact, so if there was a meeting planned and it was a meeting cancelled, talk to the people who planned the meeting or cancelled the meeting. It has nothing to do with any conversations I may have had with Tony Dean. I don't remember him calling me. I don't remember talking to a CEO. I don't remember talking to Helle about it, because I wouldn't. Tony had called me a few times on matters, saying, somebody's called upset about something. All I would do with those calls is, look, Helle, either you call him or I call him, but somebody's going to talk to him, find out what's going on. That doesn't determine whether we do inspections or investigations. That's done by people who are responsible for that job, by the officers and the managers who run the show. I've never had a Secretary of Cabinet ever tell me, stop an inspection, stop an investigation or start one. I've gone the other way as ADM Operations, if anything, I will be giving direction to do more, not less. So that doesn't resonate with me. I don't recall if – I can't believe it happened.

... if he [Dean] called me about any call from a hospital, he would have said I had a call from a concerned hospital, would you look after it. I don't, if there's something about a whole hospital shutting down, I would have, I'd remember it. I don't remember anybody talking to me about a whole hospital being shut down. If there was a complaint, a work refusal, I would expect a field staff to go investigate like we're investigating other work refusals, through investigations and inspections. They're holding meetings off site with unions and hospitals. That did not happen. It would not happen. If it did, I'd know, I'd remember.

And I can't help you. I just don't know. I don't remember being on any phone call around that. I don't remember anything about a meeting at Mount Sinai being cancelled. I would expect that every complaint that

was called into the Ministry was investigated. I know we were having meetings off site to do those investigations done by Helle [Tosine] and her folks.

I don't remember that name [Mapa]. If a CEO calls with any concerns, I'll listen to it. If it's something that alleges improper action by the Ministry, I'll have it investigated. I don't let it influence how we carry out our work.

***Helle Tosine, Assistant Deputy Minister,
Ministry of Labour***

In a later interview with the Commission, Ms. Tosine said:

Nobody called me and I was never made aware of any conversation that happened between the CEO of Mount Sinai and Tony Dean. Tony Dean never called me once during SARS, also Paavo [Kivisto] never directed me on which hospital to go in, or which hospital not to run to.

Well, that's right. So, we never got a formal complaint from Mount Sinai. I recognize that, we don't have a formal complaint from Mount Sinai.

I'm going to assure you again we experienced no interference from anyone around Mount Sinai.

Mr. Walker told the Commission:

I mean, what's clear to me, although I wasn't contacted directly by anyone from the hospital or whatever, it's clear to me there were conversations, that there had been a phone call made at a senior level, like from the CEO, but I think last time I mentioned – actually I remember there being discussion around a call from a hospital CEO and actually the hospital was St. Mike's, but honestly, I think I said it, you know this, but it really could've been Mount Sinai, but I know there had been a call from a hospital CAO, or CEO, I certainly recall that there was a conversation. Not that I was, that I remembered being there, I don't believe that I was, but it certainly was relayed to me that there was a conversation between the Deputy Minister and that CEO from the hospital, but that to me is really clear, clear memory of that. I don't remember specifically

sort of that, sort of conversation, when you said pass the – when Leon [Dr. Genesove] said pass – you need to talk to Helle [Tosine], that does sort of jog me. And I am trying to sort of put my mind to sort of who was in the room at the time. I don't remember the Deputy being in the room that moment, but it is possible he was, right.

I was told that, and I could be incorrect, but I believe that it was Steve Grier that told me, but I believe that, I suddenly remembered being told that there was a CEO that had called, was upset, and that there was a conversation between the Deputy Minister and that person – that, to me, that's very clear memory. I wasn't there for it, and then obviously there were discussions that happened after that in terms of how to respond, in terms of a visit, or no visit, and so ...

Sure, I think, it's clear to me in terms of, in terms of what Leon was saying, the fact that I would have said that, I would have said that here you need to speak to Helle, right, that people were uncomfortable, right, that there was a discomfort with how, how to explain to ONA, that there wasn't going to be a meeting.

... CEO, well, I wasn't directly involved in the conversation ... It was quite clear to me there was a call. Now, whether the call was from the CEO directed to the Deputy or the Deputy called the CEO as a result of another conversation, that was clearly relayed to me that there was a conversation between the Deputy and that person ...

Brad Clark, then Minister of Labour

The then Minister of Labour, Brad Clark, appeared unaware of the cancellation. He was visibly appalled at the allegation that the worker safety mandate of his Ministry had been thwarted by a phone call to his officials from the Secretary of Cabinet. He said with some heat that if they had called him he would never have cancelled the meeting:

It does shock me that there was alleged political interference coming from the centre. I had a real reputation as being a real hard-ass, and rules are rules, and ethics are ethics, and we abide.

... So I had no hesitation about getting involved and ordering the right thing to be done. I was not told, it was never brought to my attention

that orders were not being issued or followed up on, inspections were not being done ...

There can never be a hint of political interference.

... I never wanted to be the person that said, no, you lay charges now. Because, these folks are independent, they know their job. I had complete faith in them. They do their inspection, if they recommended charges, then charges should be laid.

I have reservations that it happened, but if it did happen, I would not be a happy camper. And if it did happen, it doesn't surprise me that they didn't come to me, because they know full well I would have blown the whistle.

The strength of the former Minister's reaction gives force to the proposition that a telephone call from the Secretary of Cabinet to a Ministry of Labour official at the behest of a hospital CEO to prevent a worker safety inspection would be regarded within government as an unacceptable form of political interference with the Ministry's legal mandate to protect health workers.

Tony Dean, Secretary of Cabinet

Mr. Dean told the Commission:

I don't recall talking with Mr. [Joseph] Mapa. Perhaps I did talk with him, I don't recall it. What I can tell you with absolute certainty is that I did not, and I would not, and I never have directed or instructed the Ministry of Labour anything or any deputy of any other regulatory ministry to change or alter any field-level inspection, visit, meeting, or order. So, that would not have happened ...

Having told you what I don't do, it's probably helpful to tell you what I do do on occasion. I do get calls from external parties. Examples that spring to mind are concern that my colleagues at a ministry are perhaps overreaching in the protection of the environment to the detriment of people in the development community. That some have the balances getting out of tilt or whatever. That a trade union president will call me and say, "Do you really understand the implications of this strike?" and that's it. And I certainly would, and do on certain occasions, collect that

information and transfer it to the Deputy Ministers as information. I would say, I've had a call from X or Y and this is what I've been told and this is something you should know. I really need to be clear: I would never, in the course of doing that, infer or suggest that any action of any sort ought to be taken ...

Joseph Mapa, CEO of Mount Sinai Hospital

Mr. Mapa told the Commission:

I wish I could shed light on this. I don't even remember that – I just don't. If it did happen, I'll just complete some probability scenarios for you, although I really don't. If it did happen, it must have happened for a good reason. What I mean by that is I would never, knowing my behaviour, and knowing our relationship with the unions as well, our effort to be very close to the unions, call off something such as that. So, if it did happen, it was probably advised by Dr. [Donald] Low and others who advise me. I was very dependent, very fortunate at Mount Sinai Hospital to have people of that expertise available and, at that time, there was so much ambiguity that we were very lucky to have the kind of expertise and talent to advise me. So I was the luckiest CEO, probably, in the city. So I'm giving you probability. I don't know, it's not my nature to do that unless for those reasons. You know, the meeting is set and it's someone from the outside coming in, even during the crisis. In fact during the crisis we invited people during SARS to come and take a look at the ICU [intensive care unit] procedures.

Later Positions and Explanations

In a letter dated June 18, 2003, to Premier Ernie Eves, Barb Wahl, President of ONA, said:

It is with huge concern for public safety that I am writing to you today. As you yourself have said, Ontario Nurses' Association (ONA) members have been heroic, as they have faced both professional and personal challenges in battling the SARS epidemic in the Toronto area.

The Centers for Disease Control investigations have linked the spread of SARS to improperly fitted masks. There is ample evidence that many of the Toronto-area hospitals have not met the basic health and safety

requirement for mask fit testing as set out in Section 10 of the *Regulation for Health Care and Residential Facilities* made under the *Occupational Health and Safety Act*.

We were encouraged by recent decisions and proactive actions of the MOL to help protect our members from further danger. Last week, the MOL issued orders regarding proper protective equipment in two hospitals after investigating a work refusal and a complaint. Thereafter, the MOL began proactively inspecting other high-risk hospitals and committed to continue to visit *all other* Toronto area hospitals to ensure that health care workers are properly protected. On June 12, 2003, I wrote Ed McCloskey, your director of Occupational Health & Safety at the MOL explaining that it was imperative to conduct and complete these investigations immediately.

On the morning of Friday, June 13, 2003, we were advised that the MOL ordered a halt to all proactive inspections for all Toronto area hospitals. In a slight change of position by end of the day, they further advised that pro-active inspections will only proceed for Category 3 & 2 facilities and no other facilities will be proactively inspected. This is unacceptable. Given the current undisputed evidence, we expect the MOL, to continue to at least issue orders regarding provision of personal protective equipment, fit-testing of respirators, and risk assessment programs, where they are found lacking.

Further disappointment followed when the Ministry of Health and Long-Term Care (MOH/LTC) replaced the May 31, 2003, directives with the revised directives issued on June 16, 2003, which reduced the protection for the majority of health care workers. Given increasing evidence that health care workers need properly fitted masks to protect them from SARS, it is premature to reduce the protection of these workers.

A disturbing memo to all staff dated June 13, 2003 from the CEO of Sunnybrook and Women's College Health Sciences Centre confirms that this employer was working with your Science Committee at the SARS Operations Centre to draft these new directives. Why are employers permitted to work directly with the Science Committee when our organization has not even so much as been given an opportunity for direct input? We question whether it is science that changed the directives, or

convenience and economics for employers?

Your labour ministry has an obligation to ensure that employers are taking all reasonable precautions to protect workers. The MOH/LTC directives may act as a base guideline, but in no way should limit the Ministry's enforcement powers under the *OHSA* to ensure that employers are taking the maximum precautions, not the minimum as set out in the directives.

As you must know, since the original SARS outbreak we repeatedly advised the Ministry of Labour of our health and safety concerns, and of the employers' non-compliance with the *Occupational Health and Safety Act*. On June 7, 2003, your Commissioner of Public Health & Chief Medical Officer of Health and your Commissioner of Public Security sent a letter to all acute care hospitals in Toronto, York and Durham Regions, admitting knowledge of their awareness that several employers are known to be breaching the provincial directives.

ONA has also repeatedly advised the MOL/LTC that the directives did not go far enough to adequately protect our members' health and safety. I ask that you intervene at once and direct the MOH/LTC to re-issue the directive requiring any staff working in patient care areas in the GTA (Toronto, York and Durham Regions) to wear full personal protective equipment. Despite everyone's desire for this crisis to be over, we simply cannot afford to reduce health and safety measures again *unless and until there is conclusive scientific evidence to support such an action*.

In light of the circumstances the Ministry of Labour officials' scaling down of inspections, in our opinion, borders on regulatory negligence. I ask you to direct the MOH/LTC to re-instate precautions in the directives that fully protect all health care workers in patient care areas and ask you to direct the MOL to reinstitute proactive health and safety investigations, with sufficient resources to complete them forthwith. We believe that you, too, have an obligation and duty under the statutory regime. Failure to meet these obligations, in our opinion, would also constitute statutory negligence on the part of this government. We urge you in the strongest terms not to stand back and knowingly aid and abet those employers who continue to put our members' lives at risk.

In a letter dated June 26, 2003, to Ms. Wahl, Premier Eves said:

Thank you for your letter about health care workers in Ontario and the *Occupational Health and Safety Act*.

From the very onset of the SARS crisis in Ontario, our government has been both scrupulous and consistent in issuing directives concerning proper infection control procedures, including the wearing of personal protective equipment. As additional information has become available, and our understanding of the virus has increased, the directives have become more focused. We are doing more to better protect the health and safety of patients and health care workers.

The Provincial Operations Centre provided guidelines dated April 14 on the safe and proper use of masks. On May 2, the Provincial Operations Centre issued a communication containing a list of companies providing mask fit testing services. On May 28, in a communique to providers, the Ministry of Health and Long-Term Care reinforced the importance of fit testing of masks and communicated that health care workers who are most at risk of being in close contact with people who have febrile respiratory illnesses should be fit tested as a first priority.

Directives issued by the Ministry of Health and Long-Term Care on June 16 reinforce the message that people working in SARS units must wear personal protective equipment at all times. Further directives issued on the same date deal with high risk procedures and require a personal protective system that covers the face and head completely.

The directives are drafted by the Ontario SARS Scientific Advisory Committee, which includes two infection control nurses. The directives are predicated on the best available science and the need for caution. They are circulated to a reference group from health care facilities, including infectious disease specialists. The focus of the review is on the clarity and implementation of the directives.

With respect to the Ministry of Labour's actions, I want to assure you that the Ministry will continue to investigate all complaints and work refusals in a timely fashion and issue orders as appropriate. As you have noted, the Ministry has investigated complaints and work refusals and has issued orders to two hospitals. On June 10, the Ministry issued four orders to North York General Hospital following a work refusal investi-

gation. On June 10, the Ministry issued three orders to St. Michael's Hospital following a complaint investigation.

The ministry initially concentrated its proactive efforts on the health facilities that are at higher risk because of SARS. To date, the Ministry has completed consultations and/or investigations in all Category 2 & 3 health facilities. The ministry is now working proactively with all Category I hospitals to ensure compliance with the *Occupational Health and Safety Act* and applicable regulations. To this end, the ministry has already contacted all Category I hospitals and will arrange for a consultation with the workplace parties in the near future. As always, any worker health and safety concern should be brought to the attention of the Joint Health and Safety Committee and the Ministry of Labour should be contacted concerning any unresolved issues.

We will continue to be vigilant to protect the health and safety of patients, health care workers, and the community. We must not let our guard down.

The unprecedented challenge of SARS has placed tremendous strain on health care workers across the Province as they strive, under unique and extraordinary circumstances, to combat this new disease. I recognize that they have all been working tirelessly to protect those in their care, as well as their community, from further SARS infection.

I also recognize that our government could not have succeeded in moving forward with our initiatives to combat the outbreak of SARS without the support of our nurses. It is this steadfast commitment to the health of Ontarians that is assisting health officials at all levels of government to move us towards the successful containment of SARS.

Ontarians are grateful knowing that they can rely on our nurses and other health care workers during this difficult time. We want to assure them that we will continue to support health care workers in treating the sick, in protecting the vulnerable, and in containing SARS.

I appreciate your bringing these matters to my personal attention.

In their joint submission to the SARS Commission public hearings, ONA and OPSEU said:

Mount Sinai Hospital – The MOL was targeting Mount Sinai for a proactive MOL investigation into respirator fit testing and training for June 13, 2003. On June 13th, the proactive inspection for Mount Sinai was cancelled. Prior to this decision, ONA had complained earlier in June to the MOL that Mt. Sinai was not meeting its obligation to fit-test employees as per the directives. Both unions wonder why the MOL decided to cancel this proactive inspection despite ongoing member complaints.⁷⁹²

On the one hand, to schedule or to cancel one of a series of proactive consultations would properly require the policy involvement of senior Ministry of Labour officials. On the other hand, to cancel a formal investigation scheduled under the statutory authority of the Act and regulations in response to safety complaints by workers or their union is an operational decision that should not involve the policy involvement of senior Ministry officials, particularly if the reason given for the cancellation is that the employer says there are no problems.

The suggestion that the Mount Sinai meeting was cancelled because of a call from the hospital's CEO to the Secretary of the Cabinet involves a serious perception of political interference with the Ministry of Labour's legal mandate to protect worker safety. It is one thing for a hospital to consult with government. It is another thing to go over the head of officials responsible for worker safety, not just to their Director or their Assistant Deputy Minister or their Deputy Minister, and not even to their Minister, but directly to the centre of government, the Secretary of Cabinet, who sits at the Premier's right hand and speaks with the authority of the Premier. A direction from the Secretary of Cabinet to any Ontario public servant is understood to be a direction from the Premier.

The Commission found strong evidence of a perception that political interference was at work in the abrupt cancellation without reasonable explanation of the Mount Sinai worker safety initiatives.

Because of its timing and the fact that the decision came from somewhere above in some mysterious way without reasonable explanation, and because of the lack of

792. ONA and OPSEU Submission to the SARS Commission, SARS Commission public hearings, p. 20.

appropriate documentation and the fact that no one is prepared to step up now and take responsibility for the decision, the perception of political interference is natural and inevitable.

The curious thing about the cancellation is that no one in a position of authority, no one in the direct chain of cancellation, seems able to remember what happened or why. Mr. Walker, who directed Dr. Genesove to cancel the meeting, said he could not recall the reasons:

I don't know who made the decision – it wouldn't have been a decision that, as regional director, I would have made, on my own, just to sort of say, oh well, we won't go or we won't do that, right, so it's reasonable to assume that there was some, some direction or some discussion about [it]. If I was a participant in that discussion program about that particular facility, I honestly can't remember whether I was.

Dr. Genesove, who got the direction from Mr. Walker and spoke at the same time to Deputy Minister Paavo Kivisto and to Assistant Deputy Minister Helle Tosine, suggested the Commission speak to Mr. Kivisto or Ms. Tosine:

To get more information, you have to speak to probably Paavo or Helle about it and get additional information.

Paavo Kivisto, the Deputy Minister, in turn suggested we ask the Assistant Deputy Minister:

Question: Mount Sinai? Why was the visit cancelled?

Mr. Kivisto: I don't remember the details. There was a planned inspection. When Mount Sinai didn't meet criterion, it was cancelled. Ask Helle Tosine.

Helle Tosine, the Assistant Deputy Minister, did not recall who made the decision:

I don't know ... personally who made that decision to go to Sinai, on or off, but I was certainly told about it.

Someone made this controversial high-profile decision, but no one in a position of authority remembers who made the decision. This collective lack of recollection becomes more and more pointed with every witness in the direct chain of cancellation

who suggests the Commission speak to someone else in the chain of cancellation, and that person – indeed, each person in turn – cannot recall who made the decision. This jarring lack of recollection adds fuel to the perception of political interference.

The Minister of Labour, as noted above, made it very clear to the Commission that he had nothing to do with the cancellation and knew nothing about it in advance. The strength of his reaction gives force to the proposition that a telephone call from the Secretary of Cabinet to a Ministry of Labour official at the behest of a hospital CEO to prevent a worker safety inspection would be regarded within government as an unacceptable form of political interference with the Ministry of Labour's legal mandate to protect health workers.

Those involved in the incident use different language to describe the June 13 meeting. There is still some confusion about what exactly it is that was cancelled. Confusing terminology is used to describe the process by which the Ministry of Labour hears about and responds to worker safety concerns, terminology like “complaint,” “formal complaint,” “inquiry,” “proactive field visit” and “investigation.”

In the end, the confusing terminology is not of prime importance, although more will be said later about the need to ensure that nurses and hospitals and the Ministry of Labour understand each other and use consistent language when they describe vital processes such as the investigation of workplace danger in hospitals.

The reason terminology is relatively unimportant is because political interference or improper pressure on the Ministry of Labour to cancel any worker safety procedure is unacceptable, whether you call it an “inspection” or an “investigation” or a “proactive consultation” or a “field visit.”

The evidence of Mr. Mapa, Mr. Dean and Mr. Kivisto is uncontradicted by any direct or circumstantial evidence and there is no reason to doubt it. The evidence taken as a whole makes it clear that there was no phone call from Joe Mapa to Tony Dean to Paavo Kivisto to cancel the Mount Sinai June 13 worker safety consultation.

The Commission finds that Mr. Mapa did not call Tony Dean about the June 13 meeting or about anything else. Although the Commission's source is honest and reliable, the hearsay relied upon by the source is inaccurate. It may be that in the chain of hearsay transmission, confusion arose over a call from another hospital to Mr. Dean about another matter or over another call from Mr. Mapa to other Ministry of Labour officials about another matter.

Regardless of how the meeting was cancelled, the bottom line is it was called off. If a health and safety inspection is cancelled, the process requires full transparency and accountability. There should be no mystery surrounding its cancellation and surrounding the chain of command that led to its cancellation. Regardless of the terminology attached to the nature of the “inspection,” the prime consideration should be the safety of health workers. The safety of health workers is always paramount. If they are not safe, then neither are patients, visitors or the public.