

Health Law Bulletin

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Ontario Mandates Safety-Engineered Needles or Needle-less Systems

By: Rosalind H. Cooper

The Ontario government has enacted a regulation that mandates the use of safety-engineered needles or needle-less systems in all hospitals by September 1, 2008. The Government has also indicated its intent to amend the new regulation to mandate the use of safety-engineered needles or needle-less systems in long-term care homes, psychiatric facilities, laboratories and specimen collection centres in 2009, and in other health care workplaces (such as home care, physician's offices and ambulances) in 2010.

health care workers use, disassemble or dispose of needles. There have been some studies indicating that, in hospitals, one-third of nursing and laboratory staff suffer needle stick injuries each year. The action of recapping needles accounts for approximately 25-30% of all needlestick injuries for nursing and laboratory staff.

Most needlestick injuries occur during standard procedures such as blood collection, administration of injections, intravenous insertion and sharps disposal. Difficult patient care situations and poor lighting conditions, especially at night, are two contributing factors. Needle stick injuries can transmit infectious diseases, especially blood-borne viruses. The key concerns in this regard are AIDS, hepatitis B, and hepatitis C, but can also include transmission of viruses, bacteria, fungi and other micro-organisms.

The Government has stated that the regulation, which has been enacted under the Ontario *Occupational Health and Safety Act* will provide better protection for health care workers. This new requirement is the result of many years of lobbying and petitioning by health care workers and various organizations and associations representing health care workers, and follows several other provinces in Canada that have already enacted legislation to address this safety concern in the health care sector.

The needlestick injury problem is significant, with nurses sustaining approximately 70% of the total number of exposures. However, available statistics are said to underestimate the severity of the problem because many health care workers do not report their injuries for a variety of reasons. Many advocates for the implementation of safety-engineered devices believe that the solution to the needlestick injury problem is to

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Purpose of the Regulation

Needlestick injuries are a hazard for health care workers who work with syringes and other needle equipment. Such injuries can occur at any time when

mandate the use of safety-engineered needles for the health care sector. Statistics support this view since studies have found that the decrease in needlestick and sharps injuries following legislation being implemented is between 51% and 83%.

In the United States, California was the first state to enact needlestick legislation in 1997, but many others have followed. At the federal level, the United States passed the *Needlestick Safety and Prevention Act* on November 6, 2000. The Occupational Safety and Health Agency in the United States is actively pursuing health care facilities that do not comply with the requirements. For example, a Pennsylvania rehabilitation centre was fined \$92,500 for wilful failure to use sharps with engineered protections.

Canadian Legislative History

In Canada, the Provinces of Alberta, Manitoba, Saskatchewan, Nova Scotia and British Columbia had all enacted legislation prior to Ontario. Alberta was the first province to enact legislation in November of 2003, requiring engineering controls to eliminate or control exposure to biological hazards by April of 2004. Manitoba followed suit with legislation in June of 2005 with an implementation date of January, 2006. Saskatchewan following shortly thereafter with regulations coming into effect October 18, 2005, with an implementation date of July of 2006. Nova Scotia and British Columbia followed shortly after.

In Ontario, the estimated annual number of needlestick injuries in the health care sector is 33,000 and the estimated annual cost of testing and treating such injuries is \$64 million. In 2005, a private member's bill was introduced in the Ontario legislature and passed second reading in November of 2006. That bill required the use of safe needles in all workplaces where workers face exposure to blood-borne pathogens. However, the bill stalled and there was significant pressure, particularly from the three unions that represent about 130,000 Ontario

health care workers – namely, the Ontario Nurses Association, the Service Employees International Union Canada and the Ontario Public Services Employees Union.

Finally, in August of 2007, the Government announced that it intended to mandate the use of safety-engineered needles or needle-less systems. This was accomplished by virtue of a new regulation under the *Occupational Health and Safety Act* entitled "Needle Safety". The Regulation defines a "safety-engineered needle" as either (i) a hollow-bore needle that is designed to eliminate or minimize the risk of skin puncture injury to a worker and is licensed as a medical device by Health Canada, or (ii) a needleless device that replaces a hollow-bore needle and is licensed as a medical device by Health Canada.

Requirements of the Regulation

The Regulation applies to every hospital as defined in the *Public Hospitals Act*, every private hospital as defined in the *Private Hospitals Act*, every institution as defined in the *Mental Hospitals Act* and Homewood Health Centre Inc. and puts the onus on the employer to provide workers that are required to use a hollow-bore needle with safety-engineered needles that are appropriate for the work being undertaken. It should be noted that there is an exception within the Regulation for employers that are unable to obtain safety-engineered needles that are appropriate for the work, provided those employers made reasonable efforts in the circumstances to locate such a device. The Regulation also contains exceptions for emergency circumstances.

The Regulation makes it mandatory for workers to use safety-engineered needles. However, it provides an exception for workers who believe that the use of a safety-engineered needle would pose a greater risk of harm than using a regular needle. "Risk of harm" is defined within the Regulation and includes either

a risk of harm to the worker and other workers, or risk of harm to the person on whom the needle is being used. The Regulation requires that employers work to develop, establish and provide training for workers to assist them in determining the circumstances in which it would be acceptable for them to avoid use of safety-engineered needles.

As a result of this legislation, hospitals and other health care facilities will need to purchase safety-engineered needles and conduct appropriate training for health care workers that are required to use these devices prior to the implementation date of September 1, 2008. In addition, hospitals and health care facilities will need to work to develop appropriate policies and procedures for workers to assist them to determine under what circumstances they are entitled to avoid using a safety-engineered needle.

Policies and Procedures

It is important to ensure that appropriate legal advice is obtained in developing these policies and procedures to ensure that they comply with the requirements of the Regulation, and can withstand scrutiny by Ministry of Labour inspectors that will

be enforcing the Regulation. It should be noted that failure to comply with any of the requirements set out in the Regulation could result in charges for the hospital or health care facility, supervisors and the workers involved, and significant fines under the *Occupational Health and Safety Act*.

For more information on the subject of this bulletin, please contact the author in our **Toronto** office:

Rosalind H. Cooper
416 865 5127
rcooper@fasken.com

Information and assistance on this topic is also available through our regional offices by contacting:

Vancouver
Lauri Ann Fenlon
604 631 3118
lfenlon@fasken.com

Montréal
Sylvie Bourdeau
514 397 4388
sbourdeau@fasken.com

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Vancouver 604 631 3131 info@van.fasken.com	Calgary 403 261 5350 info@cgyp.fasken.com	Toronto 416 366 8381 info@tor.fasken.com	Ottawa 613 236 3882 info@ott.fasken.com	Montréal 514 397 7400 info@mtl.fasken.com	Québec City 418 640 2000 info@qc.fasken.com
London 44 (0)20 7917 8500 info@fasken.co.uk	Johannesburg 27 11 685 0800 info@jnb.fasken.com	New York 212 935 3203 info@nyc.fasken.com			