

Submission: Harmonization of Head Protection Requirements under the Occupational Health and Safety Act

September 2021

Council of Ontario Construction Associations

POn Box 246
Orono ON M5G 1Z8

T: 416-968-7200
www.coca.on.ca

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Head Protection Harmonization
Health, Safety and Insurance Policy Branch
Ministry of Labour, Training and Skills Development
400 University Avenue, 14th floor
Toronto, Ontario M7A 1T7
WebHSpolicy@ontario.ca

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The Council of Ontario Construction Associations (“COCA”) is a federation of 29 construction associations representing approximately 10,000 general and trade contractors, both unionized and non-union, of all sizes, that perform work in the industrial, commercial, institutional (ICI) and heavy civil construction sectors in all regions of Ontario. COCA is mandated to work with our members and officials at Queen’s Park to ensure that the provinces laws and regulations support success in the construction industry and foster broad prosperity across the province.

We are pleased to have this opportunity to respond to the questions posed in your consultation paper on the above noted proposal.

1. Do you support the proposed harmonized head protection requirements? Please indicate why or why not.

We cannot support the harmonization of the head protection requirements as proposed. Construction is very different from most other industries and requires a different approach in respect of the head protection requirements. In construction, the shape of the working environment changes constantly as projects are built. Hazards can change daily. The following are the reasons why we oppose the proposed harmonization:

- The current requirement is unequivocal, and easy to understand and easy to follow: every person on a construction site must wear a hard hat at all times
- The current regulation that mandates hard hats to be worn at all times on all construction sites has been in force for many years. Wearing a hard hat on a construction site has become part of the construction culture, it’s a habit for construction workers. It has taken a long time but today, workers are conditioned to wearing their hard hats. Wearing a hard hat on a construction site is the natural and safe thing to do. It’s like putting on a seat belt when travelling in a car

- Approximately 80% of construction companies have fewer than 20 employees. These small companies may not have the capability to perform proper hazard assessments even though the law requires their supervisors to be competent including having the ability to perform hazard assessments.
- If the proposed harmonized hazard-based regulation is enacted, the MLTSD will be required to publish comprehensive guidance materials to assist construction employers with their compliance and help them determine the appropriate types of head protection that must be worn, if any, based upon the hazards that are present and identified in their hazard assessments
- There are numerous examples of instances where the wearing of a hard hat has prevented potential injuries (fatal/serious and even minor), where there was no reasonably identifiable or foreseeable hazard. We can provide many real-life examples of such instances. In such cases, head injuries can be prevented by the wearing of hard hats. This reality supports the wearing of hard hats at all times on construction sites.
- We recognize that in the construction industry there are some activities that do not present the risk of head injury, such as installing carpeting in a finished room or painting in a closed room, yet the workers are required to wear hard hats
- We also appreciate that in other types of construction work, for instance when a worker is making repairs in a ceiling cavity where there is no possibility of head injury, the wearing of a hard hat itself can present a hazard to worker safety
- We speak only for the construction industry in our opposition to the proposed harmonized, hazard-based regulation
- If a new harmonized hazard-based regulation is enacted that applies to all industries, there must be a “cut out” or exception for the construction industry that mandates the wearing of hard hats on all construction sites at all times unless a proper hazard assessment has been conducted by a competent person that determines otherwise

2. Would this proposal change the type of protective headwear that workers in your workplace would wear?

- If the proposed hazard-based regulation becomes law, it is our best guess that most construction employers, in the interests of worker safety, will default to the current requirement and mandate the wearing of hard hats
- In the event the proposed regulation is enacted, there will likely be a number of construction employers who will undertake the required hazard assessments to eliminate the requirement for their workers to wear hard hats. Most of these contractors will be in the construction finishing trades and they will accept the risk of having the due diligence associated with their hazard assessments challenged by MLTSD inspectors

- Over time, new types of protective headwear that are specific to the head protection requirements of certain types of work could be introduced to the industry

3. Do you have any suggestions for improvements to this proposal?

- It is our strongly held position that the head protection regulation pertaining to the construction industry must require the wearing of hard hats by all persons on construction sites at all times unless a proper hazard assessment has been conducted by a competent person that determines otherwise
- In the event that the proposal is enacted, the MLTSD must develop guidance materials to help construction employers train their supervisors to conduct hazard assessments to a standard that is acceptable to the Ministry
- In the event that the proposal is enacted, it will be important for workplaces to engage the Internal Responsibility System (IRS). All workers must be provided with the training needed to succeed in contributing and ensuring a safe and healthy work environment for themselves, their co-workers, visitors and contractors. We are all responsible for health and wellness in our workplace including the elimination of head injuries.

4. Should the proposed head protection harmonized requirements apply to all Ontario workplaces under the Occupational Health and Safety Act? Why or why not?

- The harmonized head protection regulation as proposed must NOT apply to the construction industry
- As stated above, there must be a “cut out” for the construction industry that requires the wearing of hard hats by all persons on construction sites at all times unless a proper hazard assessment has been conducted by a competent person that determines otherwise
- As outlined in our responses to #1 above, there are many sound reasons to retain the head protection regulation for the construction industry mandating the wearing of hard hats on construction sites as it currently exists. We also acknowledge that there are circumstances in the construction industry where the proposed hazard-based approach makes good sense too. We believe requiring the wearing of hard hats by all persons on construction sites at all times unless a proper hazard assessment has been conducted by a competent person that determines otherwise, is the most sensible and practical approach for the construction industry

5. Would this proposal increase, decrease or have no effect on the amount of money that your workplace spends on protecting workers from head injury hazards?

- In the construction industry, it's unlikely that the amount of money spent on head protection would change significantly.
- There could be increases in costs relating to training supervisors to perform hazard assessments and executing that training on construction sites as required. In this regard, the MLTSD and its partners would have to undertake active outreach to smaller construction companies to alert them and equip them with the skills to perform hazard assessments to meet the ministry's standards

These are our submissions respectfully submitted.

Sincerely,

A handwritten signature in blue ink that reads "Ian Cunningham". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Ian Cunningham
President