

Subject: The OPS of the Future

Secretary of Cabinet, Mr. Steve Orsini

Mr. Orsini, my name is Frank Wendling and I am an OPSEU OPS member in Kingston Ontario. I work for the Ministry of Health and Long-Term Care. I am a local President, a MERC Co-Chair and I have been in the OPS officially for over 19 years. In my various roles as an OPSEU member and representative, I have seen and experienced many things that have me believing that the OPS can do, and can be better.

Your announcement in 2017 about the OPS of the Future initiative and the information and events related to that process are of interest to me and in addition to reading some of the material, I did participate in the event that was held in Kingston in November.

Mr. Orsini, in the past you shared the following with all OPS employees.

“It is important to me to learn about our organization from your perspective and hear your ideas. I continue to be impressed by the strong commitment to public service, the high levels of employee engagement and the strong dedication to creating a positive workplace culture. At the same time, I have heard that more needs to be done to build a stronger, more diverse and inclusive public service. I am committed to working with you to do just that.”

I am writing this as an “open letter” as I believe that it is important that what I share be seen by as many OPS employees as possible and that others in the OPS have an opportunity to respond and be aware of how you respond to my message. Such transparency and openness is important to a large organization such as ours.

I will, in this letter, attempt to instill an understanding for a need for a change in the OPS to support your vision. A change that where those who are presented with concerns, will put any individual before them, first in the decision making process. Then an effort can be made to find a way, a respectful way, to figure out how the resources and people of the OPS, within the framework of policy can help them.

I hope to make a modest effort to help you learn about my perspective in this letter. What I want to have anyone who also reads my words to know, is that respect is all about how choices and decisions in the OPS can impact the lives of OPS employees as they interact in the workplace. It is about how even the perception of the choices made can result in a negative impact that in a lot of cases we would be outraged if such situations involved a loved one or family member.

Mr. Orsini, I agree with a lot of what is being discussed regarding moving the OPS forward in a positive manner in relation to our changing times. I see value for the organization, all OPS employees and the people of Ontario in bringing about positive

change. However, as things are from my experience, your vision can never be realized due to a few, but simple to correct existing concerns.

Partners in the Workplace

I have always promoted that I believe that bargaining agents are “partners” in the workplace and that is because we have common cause with the employer and other groups in that we all want there to be a safe and healthy workplace for everyone and a workplace that is respectful and responsive to needs and concerns. It is in the interest of any bargaining agent to help improve the workplace as much as it is for the employer.

This is supported by the fact that in regard to Ontario Human Rights Code requirements in the workplace, bargaining agents are required to be responsible to their members and all other employees in promotion and protection of those rights, as is the employer.

I believe that a good working relationship between not only employees and managers can and should exist, but also a good working relationship with bargaining agent reps as well, particularly when they are asked to support employees who quite often are not comfortable or able to speak out for themselves.

The Respectful Workplace Policy

Recently the OPS leadership has taken the initiative to help transform the OPS in regard to how we treat each other and how we treat our clients. That initiative also covers how we are treated as well. The vehicle driving this change is the Respectful Workplace Policy. As a concept and a directive as to what can and should happen in the OPS, it is great. The problem as I see it, is that the need for a culture shift at the higher levels of our organization is the greatest obstacle to this policy being effective.

In my opinion, when I think of a respectful workplace, it includes understanding what impact my words and actions – at the time or in the future – will have on others. Particularly on those whom I am interacting with. Will the choices I make end up creating negative consequences for others that they should not be subject to?

Please take no offense as I try to explain why, in my opinion, this is important in regard to the push for the OPS of the Future.

In any organization, the leadership of the organization sets the path and the goals of the workplace. In the Respectful Workplace Policy it is described through the **Policy Statement** as:

“4.2. The policy of the OPS is to take every reasonable step to:

- cultivate and sustain a respectful, positive, inclusive and supportive work culture
- promote awareness of rights and responsibilities

- prevent, identify and eliminate workplace harassment and discrimination in a timely manner
- improve and/or restore work environments and work relationships affected by incidents or allegations of workplace harassment or discrimination.”

And in the **Purpose** statement it shares:

“5.1. The purpose of this policy is to:

- promote respectful and inclusive behaviours in support of the health, safety, human rights and dignity of individuals in OPS workplaces
- establish principles for maintaining positive and productive workplaces and mandatory requirements for the prevention of workplace harassment and discrimination.”

These ideals/directions are very meaningful and important in helping to cultivate a culture of “respect”. I appreciate the time and thought that went into crafting this document and the effort to capture an intent with an eye towards making the workplace better for everyone.

But I have to share with you the biggest barrier that has to be eliminated to help grow and promote this culture shift that we all want and would truly appreciate having.

That barrier is that we have an employer (the collective of all management of all levels) that have gone to great lengths to make every effort to avoid ever admitting to making mistakes or wrong-doing. My experience of the last ten years or more in my multiple roles has put me in many situations to see first-hand how concerns that should be resolved and addressed in a timely manner are often prolonged to the detriment of employees only because the management involved will not admit to either being wrong, having acted inappropriately or have exercised authority in an improper manner.

Let me back-track for a moment. I have brought up the Respectful Workplace Policy so my question is, can there ever be any belief in management as being respectful to employees when there is never any admission of fault, wrong-doing, inappropriate action, lack of action or just lack of consideration for basic interactions?

Respect of Others with Official Process Notices

Let’s look at the first of two very important and common processes in the OPS and the impact they have on employees. In WDHP situations circumstances often arise where someone who is identified as a respondent will be removed from their work environment as a precaution in respect to the concerns of the individual who brought the issue forward. I have seen several times now the standard letter provided to some

respondents who have been sent home, as a precaution. That letter pronounces in big bold letters that the individual is sent home on a **“Suspension with Pay”**.

Let me explain how incredibly insensitive that is, even though there is a disclaimer that this is not disciplinary. “Suspension” is a prescribed step in the disciplinary process. The use of the term, even though there is the disclaimer, sets a tone for the recipient of such a letter that they are already believed to be “guilty” of something.

Any disciplinary action can only take place after a proper investigative and review process. As the recipients of these letters have often not been included in any proper investigation yet, it is incredibly insensitive and disrespectful to make such liberal use of a term that has a specific connotation attached to it.

Those who send these letters out and those who help prepare them generally understand the meaning and the process. The recipients do not, and when reading that they are “suspended”, even with pay, it can and actually has had, a very debilitating impact on many of those individuals.

Please see if you can have this changed to “Administrative Leave” with pay as there is an Administrative process taking place and no decision on any guilt or innocence should have taken place yet.

This leads me to the second process I wish to highlight, with one example of where the concern as to what is respect has a very significant impact.

Respect for the Health and Well-Being of Others

I am and have been, involved in a lot of Medical Accommodation processes and some are relatively easy and others are more complicated. A disturbing trend in the not easy ones, is that the lack of “timeliness” in the process is exceedingly evident and that can lead to issues for those who ask for and need to be accommodated.

If I were to tell you of a few situations that I personally have been a part of where the process has dragged on and on for months to the point of where the employee seeking accommodation has been taken to the end of their Short Term Sickness credit entitlements I hope you would ask “how that can be”?

Accommodations are an important and often challenging processes and they should be given proper time and resources to get it right. One would hope that when the employer gets a note that the employee is being cleared to return to work, with accommodation needs specified, there should be a reasonable turn-around time before the accommodation is in place. Remember the simple truth about accommodations is that they are most often to help reduce pain and provide a measure of comfort or relief from suffering.

Without going into a lot of specifics of individual's situations, I will ask you how is it that the Return to Work process can sometimes take over four months to address a clear accommodation request? Because of the lack of timeliness, the person who trusts the employer and the Disability Accommodation Policy to help them, can end up losing 25% of more than four month's pay.

Often, employees I have represented, have been told that they were not using their sick time according to the provisions outlined, yet in the cases I have alluded to above, it is the employer misusing the STSP credit process for employees who are cleared to return to work - with proper accommodation. The employer is abusing employee's credits to cover for their own issues with accommodating those employees. In doing so, they are in effect punishing employees financially, emotionally and through loss of credits that might be needed for proper usage in the future.

As mentioned, WDHP processes can have a respondent in a WDHP concern where they are put on a full paid leave and there is the possibility that they may have done something wrong. How is that with accommodations, we have those who genuinely need help and take the step to ask the employer for it, yet they can be financially disadvantaged and sometimes left destitute. How does that make sense in a Respectful Workplace and is that part of your vision for the OPS of the Future?

I now propose a simple fix that will address a lot of the systemic problems that make this a reality for many OPS employees. When clearance to return to work is provided by a medical practitioner and there is direction as to what is required to support the employee upon their return, allow a two-week grace period where the employee stays on STSP.

If the accommodation is not in place by that time, accord them the same respect as a respondent in a WDHP concern and put them on an Administrative Leave with full pay until such a time as an accommodation (a necessary/legislated administrative process), even a temporary one, is in place. Your concern for the treatment of those who need accommodation can surely be accorded the same respectful treatment that those whom may have done wrong receive?

This will accomplish several important and meaningful goals:

- It will protect the livelihood of the employee as indicated in the DA Policy and the Ontario Human Rights Code.
- It will promote "healing" and positive reinforcement for those in need of accommodation.
- It will encourage the management and the HR support structure to stay focused and involved in getting this done as a priority as all Accommodations are

essentially Health and Safety concerns and as such should take precedence over other work related activities.

- If nothing else, it will help encourage the management of these employees to make an effort to work out temporary accommodation arrangements (again as proposed in the DA Policy and the Code) to help get the employee back at work and being productive in a way that respects them and their dignity.
- It will help avoid grievances, WDHP complaints and Human Rights applications being filed and as such there are significant cost savings to be had by this approach.
- It will show that a Respectful Workplace is possible as described in the Policy Statement and the Purpose sections of the policy as quoted above.
- It will encourage others that are reluctant to ask for help, to self-identify and share their need of accommodation to get help. Employees who are properly accommodated are often more likely to have their attendance improve which will help more than any new attendance management policy can.
- The reported “Sick time” for the OPS will adjust accordingly allowing the employer to better understand what is happening in OPS attendance and wellness, as well as eliminating the need to pay employees for work not being done. It is good stewardship and proper use of the public purse and should be given serious consideration.

All of those reasons would seem to be demonstrative of a Win – Win situation and the right thing to do. And as we are reminded in regular emails and published information on Topical, OPS News from OPS leadership, we should all “Do the Right Thing”. I am presenting an opportunity for the leadership of the OPS as led by you Steve Orsini, to lead by example and show all of the OPS that Respect in all forms matters. This would greatly support all other efforts to achieve your vision of the OPS of the Future.

How can that happen?

Help and Guidance from the Experts

As I have shared, the two policies mentioned so far are based on the requirements of the Ontario Human Rights legislation. The Social Justice website which covers the Human Rights segment of their responsibilities has a wealth of information/direction for employers as to how to do things right based on the experience and knowledge of the Human Rights Tribunal of Ontario. There can and should be no doubt that those who are part of that organization and their supports are the de facto experts in how to meet the requirements of the Code. And because of that fact, I rely heavily on what materials

they provide as I try to support and protect the rights of OPS members in relation to Accommodations and Discrimination and Harassment concerns.

Why would I rely on them this way? This piece of information they provide does say it all quite clearly.

“Section 30 of the Ontario *Human Rights Code* authorizes the OHRC to prepare, approve and publish human rights policies to provide guidance on interpreting provisions of the *Code*. The OHRC’s policies and A policy primer: Guide to developing human rights policies and procedures guidelines **set standards for how individuals, employers, service providers and policy-makers should act to ensure compliance with the *Code***. They are important because **they represent the OHRC’s interpretation of the *Code* at the time of publication.**[24] Also, they advance a progressive understanding of the rights set out in the *Code*.”

(emphasis added by me)

As you can see, the Tribunal themselves are identifying that they know they are the source for accurate information as to how they will handle concerns related to the Code as they are presented to them. Yet in almost every instance where I show the concerns of individuals are supported and substantiated by the direction provided by the Tribunal, local management and members of the HR community summarily discount the Tribunal’s directions.

To make matters worse, there is a systemic process of denial that a violation of the Code is indeed a violation of any collective agreement. The Documentation provided by the Tribunal substantiates that it is a violation with a reference to a Supreme Court of Canada decision where it was clearly stated that a violation of the Code is a violation of any collective agreement.

“The rights and obligations of the *Code* are incorporated into collective agreements, and **alleged violations of the *Code* are alleged violations of a collective agreement**. The Supreme Court of Canada has confirmed that grievance arbitrators in Ontario must implement and enforce the **substantive rights and obligations of the *Code* and other employment-related statutes as if they were part of the collective agreement.**[79]”

(emphasis added by me)

That OPS management denies this is true, is a clear indication of an employer that will fight to the bitter end to deny any sort of wrong-doing. This type of total disrespect for the employees, their rights, the Code and the Supreme Court should not exist in your vision of the OPS of the future.

As an example of the systemic disrespect for employees rights I can tell you that the Tribunal indicates that any internal policy to do with Code based concerns (as our Respectful Workplace/WDHP is an example of) has to contain a reference where the employer representative dealing with such issues advises employees that taking their matter through the internal process in no way is abdicating their right to file an application with the HRTO.

This direction in their documentation is clear and hard to misinterpret. Yet no such reference exists in any documentation related to the OPS policy, nor have I ever heard a WDHP Advisor or any manager share this right with an employee. Such an absence of an important piece of information is another example of a disrespectful act and very questionable omission.

I was recently told by a senior management official that I am taking jurisprudence out of context when I use the HRTO documentation references. That I am not educated and should seek guidance elsewhere before taking action based on what I have read and I decide to share. The individual who shared that opinion was not aware of the Tribunal website and the guidance it offers, they were not aware of the requirements of senior management in relation to the Code as laid out in the referenced information and they ignored the fact that what I was sharing had little to do with jurisprudence and it was strictly HRTO provided information pieces, again from the actual de facto experts on Human Rights.

This shows the lack of training, education, dedication to their responsibilities and the lack of adequate support from the Human Resources group (forgive me for saying this but a majority of HR related resource persons I have dealt with have rarely had any idea that very important and relevant information on dealing with Code based concerns even exists).

Sharing that is not an indication of a lack of respect for management or HR professionals, but rather an observation that those whose job is to deal with policy concerns based on Human Rights Legislation, have nowhere near the experience and familiarity that I and other bargaining agent representatives have obtained. We as volunteers who choose to dedicate the time to learn and understand in order to properly assist those who seek our help. Yet because the employer controls the processes, they can summarily dismiss out of hand what we share. They dismiss it rather than research, discuss and respectfully acknowledge what is presented make an honest effort to verify it and then act accordingly. Is this the type of interaction you wish to carry over into the OPS of the future?

The workplace can improve dramatically when the efforts to help others are respected and if proven to be following the direction of the Tribunal, those efforts should be accepted and not hindered.

Just a quick fact. On the HRTTO information pages about Internal Processes to handle Code based concerns – it strongly recommends that internal processes should endeavor to ensure a complainant of substantiated allegations is “made whole” and it goes on to indicate that any remedy available through an application to the Tribunal, including monetary awards for damages, should be considered and where warranted, applied.

If you are asking someone to trust an internal process, why should they give up any right to compensation that might be available elsewhere? The accountability for the concern is still the same regardless of where a concern is dealt with and therefore the resolution, where ever it is arrived at, should be equitable as well.

Not allowing for this in its entirety at all in our WDHP policy, is extremely disrespectful, disappointing and violates just about every OPS value you can name.

In Conclusion

I will let you and everyone else in on a little secret. Even with the information shared by the Tribunal and echoed in OPS policy, these are expressions of the minimum requirements for situations. There is no legislation that says other more effective or reasonable efforts cannot be made to help someone who is part of the OPS family. I honestly believe there is far greater value in making an extra effort to help someone than to only do what you feel you must.

I am hoping that what I have shared here will inspire those who have read this to respond however they see fit. I hope to see comments, hear of more letters being sent to you Mr. Orsini on the topics I have touched on (and possibly some I have yet to bring forward) and who knows, maybe someone will start a debate about this on Inside OPS. I honestly believe that what I have seen and experienced is happening across the province. I hear about this in meetings all year round.

If by chance this letter sparks a desire to open up opportunities for further discussion or debate, I encourage all who may have similar concerns or stories to participate. I would be happy to participate and help engage all OPS members in in conversations that do delve into the side of the OPS that I feel was not addressed in the official OPS of the Future discussions. I am sure that many others would also line up to be heard as well.

Respectfully,

Frank Wendling
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Local President and MERC Co-Chair, MOHLTC