



Consultation Paper
On Workplace Violence Prevention

Ministry of Labour
September 17, 2008

AN OPEN LETTER TO THE PEOPLE OF ONTARIO

September 17, 2008

The McGuinty Government is committed to investing in safe and healthy workplaces. This includes ensuring that the necessary safeguards are in place to protect workers from incidents of violence in the workplace.

Currently, the general duty clause in the *Occupational Health and Safety Act (OHSA)* requires an employer to take every precaution reasonable in the circumstances for the protection of the worker. This includes preventing workplace violence. We have heard about a number of issues regarding workplace violence from both labour and employer stakeholders, as well as the general public. We would like to learn more about these issues so that we can determine whether the current protections in the *Occupational Health and Safety Act* should be clarified or enhanced to address workplace violence in Ontario.

We want to ensure that Ontario workers enjoy safe and healthy workplaces and that our occupational health and safety legislation protects them from workplace violence in a balanced way that reflects the realities of today's workplaces.

This is an opportunity for you to help shape the future of health and safety in Ontario workplaces. Your views are important to us and I hope you will participate in the consultation process. The consultation paper outlines how to submit your comments by fax, mail or e-mail.

I look forward to hearing from you on these important issues regarding how best to prevent workplace violence in Ontario.

Sincerely,

Peter Fonseca
Minister

A Consultation Paper on Workplace Violence Prevention

INTRODUCTION

Our government does not tolerate workplace violence and we expect all employers to protect their workers at the workplace.

The Ministry of Labour (the Ministry) currently addresses issues of workplace violence that fall within the jurisdiction and scope of the *Occupational Health and Safety Act (OHS)*. The Ministry's occupational health and safety inspectors are trained to handle complaints of workplace violence. They proactively check for procedures to address workplace violence where the risk of violence is higher due to the nature of the work.

However, despite the current protections under the *OHS*, issues have been raised by individuals, groups and by Coroner's Inquests that suggest it is timely to review the requirements under the *OHS* that pertain to workplace violence and to assess whether these requirements should be clarified or enhanced.

This consultation paper provides background information on workplace violence and related issues, and, through a series of questions, asks for your input on a number of topics. We encourage you to review this paper and provide us with your comments and suggestions.

CONTEXT AND BACKGROUND

Workplace violence is a serious issue, which is of growing concern. A 2004 Statistics Canada Survey entitled “Criminal Victimization in the Workplace” found that 17 per cent of violent incidents in Canada occur at the workplace. This represents approximately 356,000 workplace violence incidents in a 12-month period across Canada.

Violence against workers is most likely to arise from clients, customers, or other members of the public. Violence perpetuated by co-workers is less common, while incidents involving intimate or domestic partners account for a small fraction of reported incidents. These incidents of violence can occur in any workplace, regardless of the type of work.

The risk of violence is higher in certain sectors, such as health care, social services, retail, hospitality, education, transportation, police, security agencies, and correctional services. In addition, there are several work activities that are associated with an increased risk of workplace violence. These include: handling cash, protecting or securing valuables, transporting people and goods, a mobile workplace (such as a vehicle), public or community contact, working with unstable or volatile people, working alone or with just a few people, or working late nights or very early mornings.

Workers may also encounter objectionable behaviours in the workplace, such as bullying and teasing. These terms generally refer to interactions, often between co-workers, that are characterized by repeated unwelcome or objectionable verbal and nonverbal behaviours. Although these aggressive behaviours may not, in themselves, be physically violent, they may escalate into threats of physical violence or physically violent behaviour. In some cases, a targeted worker may react violently to prolonged bullying or teasing in the workplace.

Many jurisdictions in Canada have specific requirements regarding workplace violence in regulations under their respective occupational health and safety legislation. Most of these jurisdictions focus on physical violence and require that the risk of workplace violence be assessed, that violence prevention policies and procedures be put into place, and that workers be trained in these policies and procedures. A few Canadian jurisdictions address harassment in occupational health and safety or employment standards legislation. No Canadian jurisdiction specifically addresses domestic violence, when it may enter the workplace, in its occupational health and safety legislation.

CURRENT RULES REGARDING WORKPLACE VIOLENCE

Workplace Violence

In Ontario, there are currently no explicit requirements in the *OHSA* or its regulations concerning workplace violence.

However, employers have a general duty under the *OHSA* to take every precaution reasonable in the circumstances to protect the health and safety of their workers, which includes taking reasonable precautions to prevent workplace violence. Reasonable precautions may include identifying the risk of injury to workers from workplace violence, and taking the appropriate measures to protect them. Employers are also obligated to provide instruction, information and supervision to protect workers from workplace hazards, including workplace violence.

The Ministry currently regards workplace violence as the attempted or actual exercise, by a person, of any intentional physical force that causes or may cause injury to a worker, and includes any threats which give a worker reasonable cause to believe he or she is at risk of physical injury.

Ministry occupational health and safety inspectors have been trained to handle complaints of workplace violence, irrespective of whether the assailant is a client, member of public, co-worker or domestic or intimate partner. They also address workplace violence during proactive inspections. For example, if an inspector finds that the nature of the workplace, type of work performed (i.e. exchange of money with the public) and/or the work conditions (i.e. physical location of the work or hours of work) increases a worker's risk of being exposed to workplace violence, he or she may order the employer to perform a risk assessment, implement a workplace violence prevention program and provide training to workers.

Violence or threats of violence in the workplace often fall within the scope of the *Criminal Code*, and these situations are dealt with by the police. In such situations, the Ministry may determine whether follow-up action under the *OHSA* is warranted.

Objectionable Behaviours in the Workplace

There are a number of legal protections available for workers who are the target of objectionable workplace behaviours. The Ontario *Human Rights Code* prohibits sexual harassment and harassment on a range of grounds (race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, age, record of offences, marital status, family status or disability). There are also certain behaviours that may be covered by the *Criminal Code*, such as stalking and intimidation. Workplace bullying, teasing, and other abusive or aggressive behaviour that gives a worker reasonable cause to believe there is a risk of physical violence may fall within the scope of the *OHSA*.

Workers may also have other legal remedies available to address offending behaviours. Depending on the wording of the collective agreement, unionized workers may be able to seek redress through the grievance arbitration system. Non-unionized workers may

be able to pursue a civil action depending on the specific circumstances of their situation.

Work Refusals

Under the *OHSA*, workers have the right to refuse unsafe work without fear of reprisal. A worker may refuse to work or do particular work where he or she has reason to believe that any equipment, machinery, device, thing or the physical condition of the workplace is likely to endanger him, her, or another worker. The refusing worker must remain in a safe place near his or her work station until the investigation of the situation is complete.

Specific workers, such as police officers, firefighters, and workers in correctional facilities, hospitals, nursing homes, and psychiatric facilities have the right to refuse work, but are restricted as to when they may exercise this right. These workers may not refuse unsafe work when:

- the circumstance is inherent in the worker's work or is a normal condition of his/her employment, or
- when the refusal to work would directly endanger the life, health or safety of another person.

Concerns about violent behaviour, or the threat of violent behaviour, do not usually meet the criteria for refusing work, as violence is not equipment, a machine, a device, a thing, or a physical condition of the workplace. Even when workplace violence concerns do not qualify as work refusals, Ministry occupational health and safety inspectors respond to these concerns on a priority basis.

A DISCUSSION ABOUT WORKPLACE VIOLENCE PREVENTION

This paper deals with issues that have been brought to the Ministry's attention by individuals and groups interested in the prevention of workplace violence, through health and safety inspections and investigations, and through recommendations arising from Coroner's Inquests.

We are seeking your input on whether the current protections in the *OHSA* and its regulations should be clarified or enhanced to further prevent and address workplace violence in Ontario. We would like to know how any changes would impact your workplace. We are also interested in your suggestions for specific provisions that could protect workers from workplace violence.

We have a number of questions to help focus your comments and suggestions, and to help us review your answers. They relate to:

- A. Definition of Workplace Violence
- B. Workplace Violence Prevention Requirements
- C. Sector-specific Requirements
- D. Domestic Violence in the Workplace
- E. Work Refusals

The following questions are meant to encourage, not limit, discussion. If you have comments on other issues related to workplace violence, we would be interested in them as well.

A. Definition of Workplace Violence

Workplace violence is not currently defined in the *OHSA* or its regulations. The Ministry has developed an operational policy that defines workplace violence as:

“...the attempted or actual exercise, by a person, of any intentional physical force that causes or may cause injury to a worker, and includes any threats which give a worker reasonable cause to believe he or she is at risk of physical injury.”

This definition of workplace violence is focussed on the outcome to the worker, irrespective of the assailant. It is consistent with the definition used by most Canadian jurisdictions.

What we want to know:

- 1) Is the definition of workplace violence contained in the Ministry's operational policy, as set out above, appropriate to your workplace or organization?

B. Workplace Violence Prevention Program

Currently, and depending on the particular circumstances, an occupational health and safety inspector may order an employer to perform a risk assessment, implement a workplace violence prevention program and provide training to workers.

Some stakeholders have suggested that specific workplace violence requirements under the *OHSA* would help to clarify the duties of Ontario employers with regards to protecting workers from workplace violence.

Most Canadian jurisdictions have specific workplace violence requirements in their occupational health and safety legislation and/or regulations, including a requirement that employers develop and implement a workplace violence prevention policy or program. Two jurisdictions treat the risk of violence arising from co-workers separately from the risk of violence arising from the nature of the work. The federal occupational health and safety regulation requires that an employer's prevention policy specifically address factors such as "bullying, teasing, abusive and other aggressive behaviour" that contribute to workplace violence. Further, the federal regulation, and those in some other jurisdictions, contain specific requirements for how employers must respond when an incident or alleged incident of workplace violence occurs at the workplace.

If a more explicit requirement regarding the development and implementation of a workplace violence prevention program were included under the *OHSA* or its regulations, it could be based on the Ministry's current expectations regarding protection of workers from violence. Specifically, employers could be required to develop and implement a workplace violence prevention program with the following elements:

- a risk assessment of the workplace
- workplace violence prevention measures and procedures; and,
- training for workers.

A specific requirement for a workplace violence prevention program could address other elements in addition to those listed above. For example, there could be a requirement to develop and implement a workplace violence response plan, or a requirement to address behaviours that could contribute to workplace violence (such as bullying or teasing). Another consideration would be whether the prevention program should distinguish between possible sources of violence.

What we want to know:

- 1) Should there be a requirement under the *OHSA* or its regulations that employers develop and implement a workplace violence prevention program (that would include risk assessment, measures and procedures, and worker training)?
 - If so, should a prevention program include a workplace violence response plan?
 - If so, should a prevention program require employers to address behaviours that are likely to lead to workplace violence, such as bullying, teasing, or other abusive or aggressive behaviour?
 - If so, should a prevention program differentiate between sources of violence (such as from clients or customers, co-workers, or intimate partners)?
- 2) What impact, if any, would a requirement for a workplace violence prevention program have on your workplace or organization?
- 3) How does your workplace currently deal with workplace violence prevention and response?

C. Sector-specific Requirements

As mentioned previously, the risk of workplace violence has been identified as being higher in certain sectors. These sectors include: health care, social services, retail, hospitality, education, transportation, police, security agencies, and correctional services. In addition, there are several work activities that have been identified as risk factors for workplace violence, such as handling cash, transporting people or goods, having public or community contact, working alone and working late nights or very early mornings.

In most other Canadian jurisdictions that have workplace violence requirements in their occupational health and safety legislation or regulations, the requirements apply to all employers regardless of sector. Regulatory requirements regarding workplace violence in Nova Scotia and Saskatchewan are limited to specific higher-risk sectors, while British Columbia has specific requirements for late night retail establishments.

There may be particular risks associated with some activities performed in higher-risk sectors that could be mitigated by specific precautions designed to protect workers from workplace violence. However, any specific legislative or regulatory requirements would need to be applicable to a variety of workplaces and workers within these sectors.

What we want to know:

- 1) In your sector, would it be useful to have requirements under the *OHS*A or its regulations that address particular precautions that are needed to protect workers from workplace violence? These provisions would be in addition to requirements for a more general workplace violence prevention program (see section B).
 - If so, what specific requirements would you suggest to protect workers in your sector?

D. Domestic Violence in the Workplace

There may be violent incidents that occur in the workplace that are perpetrated by the intimate or domestic partners of workers. In some cases a worker may bring concerns to the employer's attention before any incidents occur at work, but in other cases employers may not be aware of the domestic circumstances of their workers.

Some stakeholders and Coroner's juries have recommended that the *OHS*A or its regulations should include specific requirements regarding domestic violence that may enter the workplace. Currently, no other Canadian jurisdiction explicitly addresses domestic violence, when it may enter the workplace, in its occupational health and safety legislation.

Any new legislative or regulatory requirements would need to take into account the sensitivity of these situations, as well as the privacy interests and expectations of workers. Employers may encounter difficulty in assessing the potential risk for domestic violence, as these situations often initially arise outside of the workplace.

What we want to know:

- 1) Should there be a requirement under the *OHS*A or its regulations that employers address the risk of domestic violence, when it may enter the workplace?
 - If so, should situations of domestic violence be addressed within or separately from the more general workplace violence prevention program outlined in section B?
 - If not, what actions could employers take to better protect their workers in situations where domestic violence enters the workplace, separate from a legislative or regulatory change?
- 2) What impact, if any, would a requirement to address situations of domestic violence (when it may enter the workplace) have on your workplace or organization?
- 3) How does your workplace currently deal with domestic violence, when it may enter the workplace?

E. Work Refusals

Current work refusal provisions in the *OHSA* do not usually apply to incidents of workplace violence. This is because concerns about violent behaviour, or the threat of violent behaviour, do not usually meet the criteria for refusing work in the *OHSA*, which involve dangers posed by equipment, machines, devices, things, or the physical condition of the workplace.

In addition, under the current work refusal provisions, a refusing worker must promptly report the circumstances of the refusal to his or her employer or supervisor. Further, he or she must remain in a safe place near his or her workstation until the investigation of the work refusal is complete. If the work refusal provisions were extended to situations involving workplace violence, these requirements may not be compatible with worker safety in these types of cases.

Some stakeholders have suggested that the current work refusal provisions should be broadened so that they also apply to situations involving violence or the threat of violence.

What we want to know:

- 1) Should the current work refusal provisions in the *OHSA* be expanded to include violence or the threat of violence as grounds for a work refusal?
 - If so, should there be any restrictions on when a worker may refuse work, in addition to the current limitations on when specific workers, such as police officers, firefighters, and workers in correctional facilities, hospitals, nursing homes, and psychiatric facilities, may refuse work?
 - If so, should a worker be allowed to leave the workplace prior to the completion of the investigation in situations where there is a threat of physical violence?
- 2) If the current work refusal provisions in the *OHSA* are not expanded to include violence or the threat of violence, should there be another provision that addresses the steps that should be taken to allow a worker to remove himself or herself from the workplace when there is an imminent risk of physical injury due to workplace violence?
 - If so, what should these steps be?

How to Respond to this Consultation Paper

Stakeholder input is an essential part of the Ministry's review of requirements regarding workplace violence under the *OHSA*. As a result, the Ministry is conducting this 30-day consultation.

Please send your comments, ideas and suggestions to:

Mail: Workplace Violence Review Project
Ontario Ministry of Labour
400 University Ave., 12th Fl.
Toronto, ON M7A 1T7

Fax: (416) 326-7650

E-mail: workplaceviolenceprevention@ontario.ca

Please provide your response by October 17, 2008

Your input will help us address issues related to workplace violence in a balanced, fair and responsible way. Thank you for taking the time to participate.